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Committee to Protect Journalists

EUROPEAN COURT OF HUMAN RIGHTS

18 September 2018

Emin Huseynov v. Azerbaijan Application no. 1/16

JOINT THIRD PARTY INTERVENTION SUBMITTED IN ACCORDANCE WITH RULE
44(3) OF THE RULES OF COURT BY
**International Media Support (IMS), IFEX, Committee to Protect Journalists (CPJ) and
International Senior Lawyers Project (ISLP).**

INTRODUCTION

1. This is a third party submission by IMS, IFEX, CPJ and ISLP (“the Interveners”), pursuant to rule 44 § 3 of the Rules of the Court. Permission was granted by the President of the Fifth Section, by a letter dated 31th August 2018. These organisations have long histories of working to support freedom of expression and journalists, writers and media outlets whose work both relies upon, and fosters, that freedom.¹
2. This communication addresses the persecution and denationalisation of prominent journalist and human rights defender Mr. Emin Huseynov. One of the core issues raised by the present case is the severe impairment of freedom of expression as guaranteed under

¹ Further information about the expertise and experience of the Interveners is set out in the application for leave to intervene, dated 6th July 2018.

Article 10 of the European Convention on Human Rights (hereinafter referred to as ECHR or the Convention), as a result of on-going and systematic repressive practices towards civil society, including media and journalists, by the Republic of Azerbaijan.

3. The comments below place the persecutory treatment and denationalisation of Mr. Huseynov in the context of continuous repression of journalists, media and civil society actors in Azerbaijan, and outlines how deprivation of citizenship is used to silence dissenting voices. The present case is not an isolated one and bears similar hallmarks to many other cases of journalists, bloggers and civil society figures. This continuous clampdown on rights and freedoms in Azerbaijan poses an existential threat to country's peaceful and democratic development.
4. Having regard to the essential link between citizenship and democratic participation in a political community, the Interveners consider other similar cases of the use of the deprivation of nationality based on the ulterior motives and address the impact of such a strict measure on freedom of expression of both the affected person and more generally of the other public and private speakers in the country.
5. Consequently, we believe that this case presents the European Court of Human Rights ("the Court") with an important opportunity to assess Azerbaijan's current conduct towards journalists, human rights defenders and civic activists, including the applicant in this case, and how such conduct correlates with Azerbaijan's obligation to uphold country's commitments under the ECHR.

Repressive environment for freedom of expression, freedom of the media and civil society in Azerbaijan

6. In the view of the undersigned organisations, the present case involves a severe threat to the right to hold opinions and receive and impart information, regardless of frontiers, as guaranteed under Article 10 of the European Convention on Human Rights. The case should be situated within the ongoing systematic crackdown on civil society, including journalists and media organizations, by the government.
7. The alleged attacks on IRFS and the persecution, denationalisation and expulsion of its leader, Mr. Huseynov, advance an anti-speech agenda, imperilling an important media development organisation that has been an agent of change in an extremely difficult context and a valued member of IFEX, the international network of free expression organisations, since 2007. While the present case concerns a particular individual, it is not isolated. The methods employed – deprivation of nationality and expulsion – are distinct in this case, but it is symptomatic of a generalized pattern of suppression in the Republic of Azerbaijan.
8. Our intervention, thus, draws on our organisations' collective experience in defending freedom of expression in Azerbaijan to illustrate the connections between the present

application and the overall clampdown on civil society, independent journalism and political debate in the country in recent years.

9. Azerbaijan's freedom of expression record has been increasingly deteriorating. Despite its commitment to respect and protect the right to freedom of expression through its accession to the ECHR and as provided in its Constitution, Azerbaijan's government is continually employing variety of tactics aimed at silencing dissenting voices and distracting the public from widespread corruption, anti-government protests, and other important social issues.² Azerbaijan's authorities use national legislation to silence regime critics, human rights activists and impair civil society organisations.³
10. The Azerbaijani government has enacted restrictions on the ability of journalists to obtain information from state agencies and corporate entities.⁴ This obstructs realisation of the principles of governmental transparency and accountability and prevents journalists and media outlets from effectively serving their role as "watchdogs of democracy".
11. The Azerbaijani government has also engaged in a large-scale prosecution of domestic and international civil society actors since 2014.⁵ The highly restrictive and punitive legal restrictions imposed on nongovernmental organisations encumber their capacity to raise funding and conduct statutory activities.⁶ In 2014, following reactionary changes made to the law on NGOs, the government filed criminal cases against independent NGOs on the alleged tax evasion which forced many organisations to cease their activities. Several prominent civil society leaders who had been arrested as part of that criminal investigation were then sentenced to imprisonment on spurious charges in 2015⁷. As was noted by UN Special Rapporteur on Human Rights, "many human rights defenders and dozens of NGOs, their leaders and employees and their families have been subjected to administrative and criminal prosecution, including arbitrary detention, the seizure of their assets and bank accounts, travel bans and enormous fines and tax penalties."⁸ According to the report published on 1st September 2018 by the Working Group for the Unified List of Political Prisoners, at the time of publication, there were 128 political prisoners in Azerbaijan.⁹

² Human Rights Watch, *World Report 2018: Azerbaijan*, 18 January 2018, available at: https://www.hrw.org/sites/default/files/azerbaijan_3.pdf

³ Criminal Code of the Azerbaijan Republic, Article 147, 148; Law on Mass Media of the Azerbaijan Republic, Article 10; Law on Public TV-Radio Broadcasting 2004, Article 32.3.

⁴ IRFS, *A Comprehensive Analysis of Azerbaijan's Media Landscape*, 14 July 2007, p. 6 – 9, available at: <https://www.irfs.org/media-monitoring/a-comprehensive-analysis-of-azerbaijans-media-landscape/>

⁵ Human Rights Watch, *World Report 2018: Azerbaijan*, 18 January 2018, available at: https://www.hrw.org/sites/default/files/azerbaijan_3.pdf

⁶ IRFS, *Shrinking Space for Civil Society in Azerbaijan*, June 2016 available at: <https://www.irfs.org/wp-content/uploads/2016/07/Shrinking-Space-for-Civil-Society-in-Azerbaijan.pdf>

⁷ *Ibid.*

⁸ UN Human Rights Council, *Report of the Special Rapporteur on the situation of human rights defenders on his mission to Azerbaijan*, 20 February 2017, A/HRC/34/52/Add.3, ¶ 113, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/038/12/PDF/G1703812.pdf?OpenElement>

⁹ The Working Group for the Unified List of Political Prisoners, *AZƏRBAYCANDA SİYASİ MƏHBUSLAR*, 1 September 2018, available at: <https://www.humanrightsclub.net/wp-content/uploads/2018/09/Vahid-Siyasi-Mahbus-Siyahisi-IQ-01.09.2018.pdf>, see also <https://www.meydantv.org/en/site/news/30335/>

12. The Azerbaijan authorities deprived Emin Huseynov of citizenship after his long record of independent reporting and press freedom advocacy. CPJ's research demonstrates that Huseynov has been subject to the politically-motivated prosecution in retaliation to his work¹⁰. While living as a political refugee in Switzerland, Mr. Huseynov has continued to report on press freedom restrictions in Azerbaijan and advocate for the rights of journalists, including his jailed brother Mehman Huseynov¹¹. In recent years, he has become known in political and diplomatic circles in Europe as an outspoken critic of the government of Azerbaijan. However, having been deprived of his citizenship, Mr. Huseynov is not able to participate fully in Azerbaijan's political discourse as there are nationality requirements, inter alia, for founding and managing a media outlet.¹²
13. In May 2015, in the preceding case of *Emin Huseynov v. Azerbaijan*¹³, the European Court of Human Rights found Azerbaijan guilty of torturing Mr. Huseynov and violating his right to freedom of assembly. Azerbaijan is characterized by a well-established pattern of torturing human rights activists and journalists in detention and forcing them to denounce their human rights work. In the same year, the United Nations Committee Against Torture sharply criticised Azerbaijan for its record on torture and ill-treatment¹⁴. The report, inter alia, criticised the authorities' frequent denials of access to a lawyer of a detainee's own choosing, lack of independence of the judiciary and of lawyers, the disbarment of several lawyers who have taken on human rights-related cases, and allegations that confessions coerced through torture or ill-treatment "were subsequently admitted as evidence in court". For example, youth activists Giyas Ibrahimov, 22, and Bayram Mammadov, 21, currently in jail on the politically-motivated charges of drug possession, were forced to sign false confessions under torture:¹⁵

"Baku police detained Ibrahimov and Mammadov on 10 May 2016 after identifying them through CCTV footage as having painted graffiti on a statue of former president Heydar Aliyev, father of the current president. Police ordered the men to publicly apologize, on camera, in front of the monument, in exchange for their release. When they refused, police beat them, forced them to take their

¹⁰ CPJ, *In Azerbaijan, journalist in hiding faces criminal investigation*, 12 February 2015, available at: <https://cpj.org/2015/02/in-azerbaijan-journalist-in-hiding-faces-criminal-philp>

¹¹ IRFS, *A Comprehensive Analysis of Azerbaijan's Media Landscape*, 14th July 2007, p. 6 – 9, available at: <https://www.irfs.org/media-monitoring/a-comprehensive-analysis-of-azerbajians-media-landscape/>, see also, IRFS, *Free Azerbaijani Journalist Mehman Huseynov*, 3 May 2017, available at: <https://www.irfs.org/news-feed/mehman/free-azerbaijani-journalist-mehman-huseynov/>

¹² Law on Mass Media of the Azerbaijan Republic, Article 22

¹³ *Huseynov v. Azerbaijan* No. 59135/09, ECtHR, 7th May 2015

¹⁴ Human Rights Watch, *Azerbaijan: UN Criticizes Torture Record, Highlights Need to End Impunity, Free Rights Defenders*, 11 December 2015, available at: <https://www.hrw.org/news/2015/12/11/azerbaijan-un-criticizes-torture-record>

¹⁵ Human Rights Watch report, "Harassed, Imprisoned, Exiled": Azerbaijan's Continuing Crackdown on Government Critics, Lawyers, and Civil Society, 20 October 2016, available at: <https://www.hrw.org/report/2016/10/20/harassed-imprisoned-exiled/azerbajians-continuing-crackdown-government-critics>

pants off, and threatened to rape them with truncheons and bottles. They signed the confessions after this”¹⁶.

14. In this light, the Interveners place the pressure on Mr. Huseynov to renounce his citizenship in the context of well-documented long history of the harassment and persecution of the applicant by the Azerbaijani authorities. Furthermore, the Interveners consider the pressure on Mr. Huseynov as part of Azerbaijan’s well-known practice of forcing activists and journalists to denounce their human rights work.
15. Azerbaijani authorities have also attempted to obstruct access to legal aid and adequate remedies of those who suffered from state persecution. Thus, lawyers defending critical media outlets and individuals have been banned or suspended from the national Bar Association¹⁷. The legal practitioners in question include inter alia Khalid Bagirov¹⁸, Fakhraddin Mehdiyev¹⁹ and Samad Rahimli²⁰.
16. In the case of Mr. Huseynov, his whole family has become the target of politically motivated persecution by the authorities. In January 2017, the applicant’s brother Mehman Huseynov, well-known for his critical journalism investigating alleged corruption by the Azerbaijani officials, publicized the story of his detention and beating by the police (he had been “adducted” by the policemen and his whereabouts had been unknown for some time). Consequently, in March 2017, he was sentenced to two years in prison for allegedly defaming the police staff.²¹ Prior to Mehman Huseynov’s sentencing in March 2017, Azerbaijani authorities had kept open a bogus criminal investigation against Mehman since 2012, cancelled his national identification card and passport, effectively preventing him from both travelling abroad and participating in political life in his home country, and repeatedly questioned him about his work and about his brother Emin Huseynov²².

¹⁶ *Ibid.*

¹⁷ The Working Group for the Unified List of Political Prisoners, *AZƏRBAYCANDA SİYASİ MƏHBUSLAR*, 1 September 2018, available at: <https://www.humanrightsclub.net/wp-content/uploads/2018/09/Vahid-Siyasi-Mahbus-Siyahisi-IQ-01.09.2018.pdf>, see also <https://www.meydantv.org/en/site/news/30335/>, see also OZY, *What Happened to Azerbaijan’s Lawyers?*, 13 August 2018, available at: <https://www.ozy.com/acumen/what-happened-to-azerbaijans-lawyers/88538>

¹⁸ Commissioner for Human Rights, *Azerbaijan: Repression of lawyers who defend human rights must stop*, 28 November 2016, available at: <https://www.coe.int/en/web/commissioner/-/azerbaijan-repression-of-lawyers-who-defend-human-rights-must-stop?desktop=true>

¹⁹ International Bar Association, *IBAHRI calls for Azerbaijan Bar Association to revoke suspension of human rights lawyer’s licence*, 22 March 2018, available at: <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=468f15c6-f397-43ea-8796-86583b43287e>

²⁰ Ismail Djalilov & Tamara Grigoryeva, *Injustice for all: how Azerbaijan’s bar association was reduced to tatters*, 18 July 2018, openDemocracy, available at: <https://www.opendemocracy.net/od-russia/ismail-djalilov-and-tamara-grigoryeva/injustice-for-all%20>

²¹ Front Line Defenders, *Mehman Huseynov Sentenced*, available at: <https://www.frontlinedefenders.org/en/case/mehman-huseynov-sentenced>

²² Human Rights Watch report, “Harassed, Imprisoned, Exiled”: Azerbaijan’s Continuing Crackdown on Government Critics, Lawyers, and Civil Society, 20 October 2016, available at: <https://www.hrw.org/report/2016/10/20/harassed-imprisoned-exiled/azerbaijans-continuing-crackdown-government-critics>

17. On the night of 5th to 6th August 2018, the applicant's mother, Frangiz Huseynova, passed away under unknown circumstances in a hospital in Baku. Even though human rights actors and political opposition of Azerbaijan urged the authorities to carry out an objective investigation into the death of the mother of the two well-known critics of the regime, Azerbaijani law enforcement agents have only nominally initiated a criminal case and are unwilling to recognize Huseynov family as a victim side.²³ Results of Huseynova's post-mortem examination that had been carried out on the 6th August 2018 were not disclosed to the relatives for a long period, and alternative examination was not allowed.²⁴
18. Needless to mention that the aforesaid circumstances put an aggravated pressure on the applicant, cause his enormous psychological suffering and provide for an illustration of the determination of the Azerbaijani government to eliminate critical voices.

Arbitrary deprivation of citizenship and its impact on public debate, freedom of expression and free flow of information

19. Deprivation of citizenship is generally considered to be an extreme measure, and even though there has been a recent tendency of incorporating it into the national legislation related to the anti-terrorism policies in the range of countries across the globe, the overarching international principle in this regard is the avoidance of statelessness. Azerbaijan has not joined the European Convention on Nationality which restricts state freedom to deprive a person of nationality if as a result of such measure, the person would become stateless²⁵. However, it is a party to the UN Convention on the Reduction of Statelessness which prohibits deprivation of nationality on political grounds²⁶.
20. In addition to the applicant's claim that the deprivation of his Azerbaijani nationality violated his right to freedom of expression under Article 10 of the Convention, the Court has communicated, ex officio, a question to Azerbaijan under Article 18 taken together with Article 8 (right to private life). We submit that it is equally vital to consider the ambit of Article 10 in relation to the application of Article 18 in this case as there are, in our view, grounds to suggest that the "enforced" deprivation of citizenship was effectively employed as a punitive measure against Mr. Huseynov for his outspoken civic and political stance, and the legitimacy of such a restriction imposed on his fundamental rights and freedoms is questionable.

²³ Institute for Reporters' Freedom and Safety, *Azerbaijani Authorities Bear Responsibility the Prominent Journalist Mother's Death*, 6 August 2018, available at: <https://www.irfs.org/news-feed/irfs-azerbaijani-authorities-bear-responsibility-the-prominent-journalist-mothers-death/>

²⁴ Kavkazkiy Uzel, *Representatives of Azerbaijani independent Mass Media Outlets demand liberty for convicted colleagues*, (original (in Russian): Представители независимых СМИ Азербайджана потребовали освободить осужденных коллег), 9th September 2018, available at: <http://www.kavkaz-uzel.eu/articles/325153/>

²⁵ Articles 7 and 8 of the European Convention on Nationality, Strasbourg, 06 November 1997

²⁶ Article 9 of the UN Convention on the Reduction of Statelessness, New York, 30 August 1961

21. The link between citizenship and membership in a democratic political community is indispensable. By design, citizens have a prominent stake in political debates of their society. Deprivation of nationality legally, physically (through expulsion) and psychologically delegitimizes political speech of the affected person, imposing literal and figurative frontiers that impede his/her participation in the public debate on socially important issues. This consideration is of the particular importance for a number of post-soviet countries, including Azerbaijan, where civil society and independent media actors are often marginalised by the governments through presenting them as “foreign agents”, outsiders and aliens. Governments have been widely exploiting various conspiracy theories to undermine the legitimacy of opposition speakers and suggest that critics have vicious state-destructive intentions. Stripping a political opponent of his/her nationality takes away a substantial measure of his/her authority in the eyes of the audience and robs him/her of the moral right to criticise country’s political course.

22. As it was poignantly articulated in the U.S. Supreme Court case *Trop v. Dulles* describing the deprivation of citizenship:

“There may be involved no physical mistreatment, no primitive torture. There is instead the total destruction of the individual's status in organized society. It is a form of punishment more primitive than torture, for it destroys for the individual the political existence that was centuries in the development. The punishment strips the citizen of his status in the national and international political community.

...

This punishment is offensive to cardinal principles for which the Constitution stands. It subjects the individual to a fate of ever-increasing fear and distress. He knows not what discriminations may be established against him, what proscriptions may be directed against him, and when and for what cause his existence in his native land may be terminated. He may be subject to banishment, a fate universally decried by civilized people. He is stateless, a condition deplored in the international community of democracies.”²⁷

23. In *Ivcher Bronstein v. Peru*²⁸, the case adjudicated by the Inter-American Court of Human Rights (hereinafter referred to as IACtHR), the applicant-owned television channel had broadcast news reports highly critical of the intelligence services, the army, and corruption in the Alberto Fujimori administration. The government retaliated by effectively stripping the applicant of his controlling shares in the channel and revoking his citizenship. After domestic courts had upheld the government's actions, the IACtHR unanimously found multiple violations of the American Convention, notably those relating to stripping the applicant's citizenship and his freedom of expression. While the regulation of nationality is

²⁷ *Trop v. Dulles*, 356 U.S. 86 (1958), para 101-102

²⁸ *Ivcher Bronstein v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 74 (06 February 2001)

usually left to each State's competence, the State's discretion has limits where necessary to protect human rights. With respect to freedom of expression, the IACtHR found that the State removed Ivcher Bronstein's Peruvian nationality in order to "prevent him from broadcasting unfavourable stories about the State". The IACtHR further asserted that (i) the government's primary objective in revoking citizenship was to violate the applicant's freedom of expression; (ii) it was a means of reprisal and served to silence investigative journalism; and (iii) freedom of expression is not protected by effective judicial guarantees in Peru. The IACtHR determined that by stripping the applicant of his nationality Peru violated Article 13 (Freedom of Thought and Expression) of the American Convention on Human Rights.

24. In the relevant case of *Cox v. Turkey*, this Court has stated that:

"When the interference with a right under the Convention takes the form of a denial of re-entry to a country, the Court is empowered to examine the grounds for that ban... Moreover, given that the sole reason for her inability to return to Turkey was based on her previously expressed opinions, the Court is unable to agree with the Ankara Administrative Court that 'the situation complained of by the applicant did not fall within the ambit of any of her fundamental rights and freedoms'. As the Court has already found, the purported national security grounds for the denial of the applicant's re-entry indeed concerned the applicant's freedom of expression" and

"Having regard to the fact that the applicant has not been shown to have been engaged in any activities which could clearly be seen as harmful to the State, the Court considers it established that the *ban on the applicant's re-entry into Turkey was designed to repress the exercise of her freedom of expression and stifle the spreading of ideas*"²⁹.

In a similar vein, deprivation of nationality could be employed as an instrument of politically-motivated persecution and disproportionate restriction of free speech.

25. The use of deprivation of nationality against journalists and political opponents has a severe and permanent impact not only on the individual concerned. It also disproportionately and unlawfully constrains free flow of information in the country and produces chilling effect over the free speech rights of other citizens. Deprivation of nationality should never be permissible based on holding or expressing political opinion or conducting professional journalistic activities. The heightened risk that states will use deprivation of nationality based on ulterior motives – to control and repress open debates and flow of information in society – necessitates serious consideration as to the legitimacy of the practice overall.

26. To illustrate the potential for this practice to be used as a systematic tool of repression, the example of The Kingdom of Bahrain is instructive. Since 2011, there have been 738 nationals who have had their citizenship stripped through court proceedings that demonstrated widespread fair trial rights violations. Many of these individuals were human

²⁹ *Cox v. Turkey*, Application No. 35877/04, ECtHR, 20 May 2010, para 43-44

rights defenders, political activists, journalists and religious figures who faced such charges as “defaming the image of the regime, inciting against the regime and spreading false news to hinder the rules of the constitution” and “defaming brotherly countries”. High profile examples include that of Sayed Alwadai, human rights defender working for the Bahrain Institute for Rights who has been forced into exile and is seeking asylum in the UK, and Sheikh Issa Qassim, the Shia leader of the former Al-Wafaq opposition party dissolved by the government in 2016. The scope and impact of the practice of denaturalisation here and in other Gulf countries is indicative of the urgent need to establish jurisprudence to help prevent its further use in Azerbaijan and elsewhere.³⁰

27. The politically motivated persecution of prominent individuals amongst the country’s civil society is a growing concern in Azerbaijan and beyond, including in other Council of Europe Member States. Tactics used by the respective authorities are increasingly plural and legally sophisticated. We hope that the Court’s decision in this case will address the link between persecution based on freedom of speech and deprivation of citizenship. This could be an important step to stand against state repressive hypocrisy and creative legal circumvention and to enhance the Convention framework’s safeguards for a free and democratic society.

CONCLUSION

28. Journalists and civic activists in Azerbaijan are operating in an increasingly repressive environment. The persecution, forced denationalization and de facto expulsion of Emin Huseynov is symptomatic of the widespread pattern of abuse aimed at delegitimising and silencing critical voices.
29. These actions by the Azerbaijani authorities compromise country’s human rights commitments. The Court has denounced Azerbaijan’s undemocratic practices in several judgments which the Azerbaijani authorities have largely failed to implement.³¹ Rather, the Azerbaijani authorities have continued these repressive activities unabated. The ongoing crackdown demonstrates the impunity with which the Azerbaijani government operates and its lack of respect towards its international obligations.
30. The applicant’s case is emblematic of an increasing, and deeply concerning, sophistication in the authorities’ techniques for silencing and physically eliminating critical voices from Azerbaijani society. Moreover, it creates a dangerous precedent in times where harassment and persecution of the freedom of speech and political opposition actors is on the rise globally. The case, therefore, presents a singular opportunity for the Court to place much-needed limits on states’ power to use deprivation of nationality where such a measure has

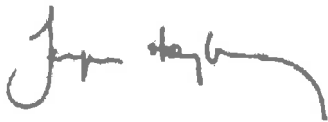
³⁰ Human Rights Watch, *Bahrain: Hundreds Stripped of Citizenship*, 27 July 2018, available at: <https://www.hrw.org/news/2018/07/27/bahrain-hundreds-stripped-citizenship>

³¹ Council of Europe, *Committee of Ministers launches infringement proceedings against Azerbaijan*, Ref. DC 177(2017), 5 December 2017.

the purpose or effect of restricting free expression by journalists, civil society and independent voices of political opposition in a democratic society.

31. This amicus brief is respectfully submitted to the Court on behalf of the International Media Support (IMS), IFEX, the Committee to Protect Journalists (CPJ) and the International Senior Lawyers Project (ISLP).

Yours sincerely,



Jesper Højberg
Executive Director
International Media Support



Courtney C. Radsch
Advocacy Director
Committee to Protect Journalists



Katherine Mulhern
Executive Director
International Senior Lawyers Project



Annie Game
Executive Director
IFEX