

EUROPEAN COURT OF HUMAN RIGHTS
Huseynov v. Azerbaijan - Application No. 01/16

Submissions in Reply to the Government's Response
21 November 2018

INTRODUCTION

1. Mr. Huseynov is an award-winning journalist and agent of change who has dedicated his life to countering repression in his native Azerbaijan. Unfortunately, that commitment and the patriotism that drives him have resulted in a history of torment and suppression visited upon Mr. Huseynov and his family. He is a torture survivor, a refugee and a stateless person, deprived of his nationality on account of his ideas and his determination to express them freely and to create platforms where others may do so as well.
2. Rather than meet Mr. Huseynov's allegations that he was forced to renounce his nationality as a punishment for his ideas and activism with consideration and due respect for Mr. Huseynov and the Court, the Government of Azerbaijan responds to the Application with hollow denials.
3. Specifically, the Government's Observations do not acknowledge a history of persecution and chronic medical conditions that were used to pressure Mr. Huseynov into signing away his rights and his very identity as a member of Azerbaijan's political community. The fact that Mr. Huseynov became stateless as a result of his denationalization does not feature in the Government's rendition of the relevant factual or legal background. The Government furthermore omits any reference to the applicant's well-supported allegation that his treatment is part of a wider pattern of repression enacted by the Aliyev regime against independent voices in Azerbaijan.
4. The Application is admissible contrary to the Government's preliminary objections as to the status of Mr. Huseynov's representatives and the requirement that domestic remedies be exhausted.
5. The Government's conduct in respect of these proceedings transgresses procedural rights and duties set out in the Convention. Through its ongoing

persecution of Mehman Huseynov, Mr. Huseynov's brother, the Azerbaijani government has interfered with Mr. Huseynov's right of application (Article 34). The Government has also failed to disclose material information in its sole possession central to the establishment of facts and has otherwise failed to cooperate in good faith in responding to the Court's Questions arising from the Application (Article 38).

6. As to the merits of Mr. Huseynov's substantive claims, his Convention rights have been violated, as described in detail in the Application and below in response to the Government's Observations and the Court's Questions:

- The deprivation of Mr. Huseynov's nationality runs contrary to international and domestic law, and was effectuated in order to punish, slander and exile him, in breach of **Article 8**.
- Mr. Huseynov was denationalized in order to punish his journalistic activities and his expressions of political dissent and to stifle free exchange of information and ideas in a democratic society, in violation of **Article 10**.
- Azerbaijan's actions were undertaken with impunity in the domestic sphere, violating **Article 13, in conjunction with Article 8**.
- Mr. Huseynov's persecution defies justification within the Convention framework. The Government's baseless dismissals and denials, further underscore the ulterior motives behind the interference with Mr. Huseynov's rights and freedoms in this case, warranting a finding that **Article 18** has been breached.

7. Mr. Huseynov seeks just satisfaction in the form of pecuniary and non-pecuniary damages and individual and general measures, in addition to declaratory relief.

FACTUAL BACKGROUND

8. Mr. Huseynov asserts and the Government appears to agree that Azerbaijan's law and its operation in practice provide for unbridled discretion over nationality matters in the office of the President.
9. Mr. Huseynov disputes the remainder of the Government's portrayal of the relevant factual and legal background, specifically the many material factual omissions deployed in order to mischaracterize the circumstances of

Mr. Huseynov's denationalization and subsequent expulsion from Azerbaijan.

10. The Government has not addressed significant portions of Mr. Huseynov's factual submissions in support of his claims. These include:
 - *The Government's persecution of Mr. Huseynov and his family*
 - *Mr. Huseynov's chronic medical conditions and precarious health*
 - *Mr. Huseynov's consistent position that he was forced to renounce his nationality*
 - *The fact that Mr. Huseynov became a stateless person as a result of his denationalization*
 - *The broader repressive context targeting civil society and free press in Azerbaijan*
11. Following a brief explanation of relevant factual developments since the filing of his application, the remainder of this section responds to the above-noted central factual omissions in the Government's response.
12. In failing to respond to Mr. Huseynov's submissions, the Government presents an improbable and incoherent characterization of the relevant events. In such cases, the Court has drawn inferences that are unfavourable to the Government's position even where the Government does not bear the burden of proof in a strict sense.¹ Unlike the Government, Mr. Huseynov has furnished substantial relevant evidence in support of his Application and has identified the particular difficulties he has faced in obtaining additional support. The Court is urged to consider these imbalances in weighing the disputed factual assertions underlying Mr. Huseynov's claims.

A. Recent Factual Developments

Mr. Huseynov's statelessness status recognized by Swiss authorities

13. As stated in the application, Mr. Huseynov received political asylum in Switzerland following his expulsion from Azerbaijan.

¹ See, e.g., *Nizomkhon v. Russia*, European Court of Human Rights (ECtHR), Judgment of 10 March 2013, at paras. 88 & 93.

14. In September 2017, the Swiss authorities recognized Mr. Huseynov as a stateless person under Switzerland's statelessness statute (See Annex 1).

Persecution of Mr. Huseynov's brother, Mehman Huseynov

15. In January 2017, Mehman Huseynov, Emin Huseynov's younger brother and a well-known blogger, was abducted and detained by plainclothes police. He was physically assaulted and tortured during the abduction and while in pre-trial detention.² A domestic court found Mehman Huseynov guilty of disobeying police orders, fining him 200 manat.³ He filed a complaint with the Prosecutor's Office against the police for torture. The Prosecutor declined to investigate the allegations. In response, the Nasimi District Police Department Chief filed a criminal prosecution with the court, under Article 147.2 of Azerbaijan's Criminal Code, for defamation.⁴
16. The former Commissioner for Human Rights for the Council of Europe issued a statement expressing his concern over what is the first use of criminal defamation charges against critical voices in Azerbaijan in the last several years.⁵
17. The Surakhani District Court found Mehman Huseynov guilty of defamation and sentenced him to 2 years in prison on 3 March 2017.⁶ The Court of Appeals upheld the district court's judgment on 12 April 2017.

² See, e.g., Mandates of Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Allegation letter to the Republic of Azerbaijan concerning detention and conviction of Mehman Huseynov, 11 May 2017, available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=23113>.

³ Giorgi Gorja, *Jailing the Messenger in Azerbaijan*, Human Rights Watch, 7 March 2017, available at: <https://www.hrw.org/news/2017/03/07/jailing-messenger-azerbaijan>.

⁴ *Mehman Huseynov's Conviction Upheld in a Mockery of Justice*, IRFS, 12 April 2017, available at: <https://www.irfs.org/news-feed/mehman/mehman-huseynovs-conviction-upheld-in-a-mockery-of-justice/>.

⁵ Commissioner for Human Rights, Council of Europe, Statement: Azerbaijan should release all persons detained because of their views expressed or legitimate civic activity, 17 May 2017, available at: <https://www.coe.int/en/web/commissioner/-/azerbaijan-should-release-all-persons-detained-because-of-their-views-expressed-or-legitimate-civic-activity>.

⁶ *Hearing Held on Mehman Huseynov's Appeal against the Decision of the Prosecutor's Office*, IRFS, 6 April 2017, available at: <https://www.irfs.org/news-feed/mehman/hearing-held-on-mehman-huseynovs-appeal-against-the-decision-of-the-prosecutors-office/>.

18. Mehman Huseynov is currently imprisoned in Azerbaijan.⁷ He has been repeatedly asked about his brother's activities while in custody.⁸

The death of Mr. Huseynov's mother, Frangiz Huseynova

19. Mr. Huseynov's mother, Frangiz Huseynova, died in Baku on 6 August 2018. Mr. Huseynov and his brother, Mehman (who was imprisoned and not granted permission to visit her), were both prevented from caring for their mother during her acute cardiovascular illness, and both have publicly linked their mother's death with their own political persecution.⁹
20. Frangiz Huseynova was reportedly roused from a medically-induced coma, removed from a ventilator, and transferred out of intensive care. She quickly succumbed to her illness.¹⁰
21. His inability to be present during his mother's illness, death and funeral has had a profound impact on Mr. Huseynov, accompanied by haunting suspicions as to the unusual circumstances of her death.¹¹
22. In this 2015 statement in support of his application, Mr. Huseynov expressed his profound concern that such a fate might befall members of his family as a result of his denationalization and expulsion from the country:
- "I am concerned for the safety and well-being of my mother and father, my two brothers and their family members who, as of the time of application,

⁷ See Intervention of the United Nations Special Rapporteurs, at para. 8. See also *Blogger Mehman Huseynov to be Transferred to Prison*, IRFS, 19 April 2017, available at: <https://www.irfs.org/news-feed/mehman/blogger-mehman-huseynov-to-be-transferred-to-prison/>.

⁸ Human Rights Watch, *Harassed, Imprisoned, Exiled*, October 2016, available at: <https://www.hrw.org/report/2016/10/20/harassed-imprisoned-exiled/azerbaijans-continuing-crackdown-government-critics>. See also IRFS, *Blogger Mehman Huseynov Sentenced to Two Years in Jail*, 3 March 2017, available at: <https://www.irfs.org/news-feed/mehman/blogger-mehman-huseynov-sentenced-to-two-years-in-jail/> (citing Mehman Huseynov's own testimony that one of the Nasimi District police officers involved in his arrest had also participated in an arrest of his brother).

⁹ See, e.g., IRFS Press Release, "Azerbaijani authorities bear responsibility the [sic] prominent journalist mother's death," available at: <https://www.irfs.org/news-feed/irfs-azerbaijani-authorities-bear-responsibility-the-prominent-journalist-mothers-death/>.

¹⁰ IRFS Press Release, "Azerbaijani authorities bear responsibility the [sic] prominent journalist mother's death," available at: <https://www.irfs.org/news-feed/irfs-azerbaijani-authorities-bear-responsibility-the-prominent-journalist-mothers-death/>.

¹¹ See Joint Third Party Intervention of International Media Support (IMS), IFEX, Committee to Protect Journalists (CPJ) and International Senior Lawyers Project (ISLP) (hereafter: "IMS et al."), at paras. 17-18.

remain in Azerbaijan at the mercy of a government which has so mistreated me.”¹²

Deepening repression of independent voices in Azerbaijan and international outcry

23. Assaults on human rights defenders and journalists in Azerbaijan have escalated since Mr. Huseynov filed the present application. The submissions by third parties including the Council of Europe Commissioner for Human Rights, the United Nations Special Rapporteurs, and independent civil society organizations confirm this state of affairs. There are now 128 political prisoners in Azerbaijan, as of 1 September 2018;¹³ well-known lawyers who defend those accused continue to face unjustified disbarment,¹⁴ and prosecutions for acts of “hooliganism” and “criminal defamation” (against the applicant’s brother, as described above) now join the previous wave of criminal prosecutions based on restrictive measures targeting the operations of non-governmental organizations.
24. Since Mr. Huseynov filed the present application in December 2015, the Council of Europe has also taken extraordinary measures to address the alarming repressive techniques of the Azerbaijani government. In addition to the Article 52 inquiry concerning Azerbaijan’s implementation of the Convention launched by the Secretary General of the Council of Europe in 2015,¹⁵ on 5 December 2017, the Committee of Ministers launched infringement proceedings against Azerbaijan for flouting the Court’s 2014 judgment ordering the release of opposition leader Ilgar Mammadov.

B. Factual omissions and mischaracterizations in the Government’s Observations

25. The Government’s Observations do not address though they do mischaracterize specific factual assertions raised in the application which, on their own and cumulatively, serve to undermine the Government’s

¹² See Application, Annex 7 (Statement of Emin Huseynov), at para. 56.

¹³ Joint Third Party Intervention of IMS et al., at para. 11.

¹⁴ Joint Third Party Intervention of IMS et al., at para. 15.

¹⁵ See Application, Annex 1, at para. 1.

overall characterization of the factual circumstances of Mr. Huseynov's denationalization and subsequent expulsion from the country. In short, the Government presents an unsupported skeletal fact pattern of a person accused of criminal tax evasion who blithely renounces his nationality and voluntarily leaves his homeland forever.

26. Without belabouring the record already before the Court, Mr. Huseynov highlights the following well-supported facts of this case that belie the Government's account.

The Government's persecution of Mr. Huseynov

27. The Government fails to mention that Mr. Huseynov and his immediate family have been harassed and persecuted on account of their political opinions for more than 15 years.¹⁶ The persistent pattern of persecution of Mr. Huseynov and potential threats against his family are undisputed and unexplained by the Government, even though they are material to the Government's ultimate assertion that his "request" to renounce his nationality was a "voluntarily [*sic*] act effected by the applicant himself"¹⁷ concocted "in order to allow him to escape from justice."¹⁸
28. "Escaping justice" is not and has never been the rationale advanced by Mr. Huseynov for his involuntary departure from Azerbaijan. There is no evidence to support such a sensational claim. To the contrary, Mr. Huseynov has never accepted the legitimacy of the criminal proceedings lodged against him and his organization, nor do independent observers, like the United Nations Special Rapporteur on freedom of expression, who base their judgment on their own inquiries and interactions with the Government.¹⁹ Contrary to the Government's assertion, Mr. Huseynov has

¹⁶ See Application, at para. 6 and *Emin Huseynov v. Azerbaijan*, European Court of Human Rights, Judgment of 7 May 2015.

¹⁷ Government of the Republic of Azerbaijan, Observations Concerning the Admissibility and Merits of the Application, 2 October 2018 (hereafter: "Government's Observations"), at para. 71.

¹⁸ Government's Observations, at para. 72.

¹⁹ See Joint Third Party Intervention of the United Nations Special Rapporteurs on the Promotion and Protection of the Right to Freedom of Opinion and Expression and on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and related Intolerance (hereafter: "United Nations Special Rapporteurs"), at para. 21.

challenged the lawfulness of these charges in a separate action before this Court.²⁰

29. The Government also fails to respond to Mr. Huseynov's statement that he could not possibly have paid his alleged tax liability himself and that he believes the "debt" was satisfied by a third party in order to secure his release.²¹

Mr. Huseynov's chronic medical conditions and precarious health

30. Similarly, the Government does not dispute that Mr. Huseynov suffers from chronic medical conditions that were of grave concern to him during his confinement in the Swiss embassy, where, because of the Government's repressive actions, his acute anxiety and inability to receive necessary medical treatment caused his condition to deteriorate.²²
31. To a significant extent, corroborated by medical reports and the findings of this Court,²³ his medical condition is linked with past persecution on the part of Azerbaijani authorities; the same authorities who at the relevant time held him effectively imprisoned prior to his denationalization.

Mr. Huseynov's consistent position that he was forced to renounce his nationality

32. Mr. Huseynov has consistently affirmed that his renunciation of nationality was coerced and exacted "as punishment" for his political and journalistic activities.²⁴ Both his past persecution and ongoing poor health factored in an excruciating decision to succumb to the Government's pressure.²⁵ The Government hardly acknowledges this basic premise of Mr. Huseynov's case, and its Observations treat the subject inconsistently. The Government states that voluntariness of renunciation "is supposed" and that Mr.

²⁰ See Annex 2; Government's Observations, at para. 70.

²¹ See Application, Annex 7, at para. 50.

²² See, e.g., Application, at para. 12 (citing then Council of Europe Human Rights Commissioner's remark that Emin Huseynov "will not survive an Azerbaijani prison" due to his poor health) and para. 13 (health deteriorating and inadequate treatment in embassy); Application, Annex 7, at paras. 47 & 49.

²³ See Joint Third Party Intervention of United Nations Special Rapporteurs, at para. 21.

²⁴ See, e.g., Application, at para. 15 (citing Application, Annex 7, para. 48).

²⁵ See, e.g., Application, at para. 16.

Huseynov's situation is the result of "his own choices and actions,"²⁶ but later mysteriously suggests that he should "raise the questions" with Swiss authorities about the diplomatic agreement that set the conditions of his forced renunciation.²⁷ The latter suggestion is the only instance in which the Government even indirectly addresses the factual conditions surrounding Mr. Huseynov's "choice" as raised in the application.²⁸

The fact that Mr. Huseynov become a stateless person as a result of his denationalization

33. It is undisputed that Mr. Huseynov is now a stateless refugee as a result of his denationalization.
34. In its presentation of facts and relevant domestic law, the Government makes several unsubstantiated assertions that mischaracterize the significant vulnerability and limitations that statelessness status imposes on him personally and in general.²⁹
35. The Government states that "nothing precludes" Mr. Huseynov from petitioning to reacquire Azerbaijani nationality nor from "entering Azerbaijan in the order prescribed by law," but this is untrue and misleading.³⁰
36. As a stateless person, Mr. Huseynov lacked documentation sufficient to establish his own identity at the time of his arrival in Switzerland.³¹ Obtaining travel documents and visas to enter any territory as a stateless refugee is furthermore extraordinarily difficult.³² Most importantly,

²⁶ Government's Observations, at paras. 50 & 54.

²⁷ Government's Observations, at para. 75.

²⁸ See Government's Observations, at para. 75.

²⁹ In its recent judgment in *Hoti v. Croatia*, the Court emphasized that states have an obligation to recognize and account for the particular vulnerability and limitations faced by stateless persons in respect of regularizing their status and asserting their rights. See *Hoti v. Croatia*, ECtHR, Judgment of 26 April 2018, at paras. 108, 138 (finding Croatia's lack of attention to the applicant's statelessness "striking") and 139 (noting the Ministry's failure to take account of "the special features of the applicant's case and his private-life situation" in exercising its discretion in respect of his efforts to regularize his status as a stateless person).

³⁰ Government's Observations, at paras. 55 & 57.

³¹ See Application, Annex 1, at para. 24.

³² See, e.g. *Hoti v. Croatia*, ECtHR, Judgment of 26 April 2018, at para. 126; Third Party Intervention by the Council of Europe Commissioner for Human Rights, at paras. 37 & 39.

however, the Government's suggestion that Mr. Huseynov should simply apply to reacquire Azerbaijani nationality both openly reaffirms the extraordinary executive discretion involved in such procedures and underscores the arbitrary way in which such a request might be handled. As a factual and legal matter, a stateless person is still stateless even if a theoretical possibility exists to acquire a nationality – this is an essential facet of the protection regime designed to address statelessness as a human rights concern.³³

The repressive context targeting civil society and free press in Azerbaijan

37. The underlying environment of sham criminal prosecutions, surveillance, intimidation, persecution and other forms of retaliation against independent voices in Azerbaijan is not directly disputed by the Government. Instead, the Government's Observations cast allegations of bias against the Court and third party interveners in the applicant's case.³⁴
38. Most importantly, the Government does not respond to the well-supported allegations that Mr. Huseynov's persecution, denationalization and exile are part of a wider pattern of repressive behaviour.³⁵ The Government does not attempt to explain or justify its actions against civil society, journalists and other political prisoners.³⁶

ADMISSIBILITY

39. The application should be declared admissible. The preliminary objections raised by the Government principally relate to the status of Mr. Huseynov's representatives and exhaustion of domestic remedies, with additional

³³ See Government's Observations, at para. 57 (suggesting that because the applicant's "citizenship may be restored" through a discretionary act by the President, Mr. Huseynov's "allegation" that he is "currently stateless" should be dismissed). See also UN High Commissioner for Refugees (UNHCR), *Handbook on Protection of Stateless Persons*, 30 June 2014, at para. 50 (statelessness determination is "neither a historic nor a predictive exercise"), available at: <http://www.refworld.org/docid/53b676aa4.html>.

³⁴ See Government's Observations, at para. 61 (third-party interveners "would support the applicant's allegations again without submission of any valid evidence to this effect") and para. 67 (Court's "eagerness" to look at "political implications" of interference with individuals' rights).

³⁵ See Application, at paras. 22-29 & Annex 1, paras. 1-7.

³⁶ See, e.g. Application, Statement of Facts, at paras. 22-29; Application, Annex 1, at paras. 1-7.

unexplained references to the application as “manifestly ill-founded” and an abuse of the right of petition.

40. Each ground is addressed below, with the conclusion that they all fail and the Court should proceed to consider the merits of Mr. Huseynov’s claims.

A. Representation of the Applicant

41. The Government’s objection to Mr. Huseynov’s representation arrangements should be dismissed and the Court is respectfully requested to confirm the conformity of those arrangements with the Rules of the Court, specifically Rule 36.
42. On 16 December 2015, together with the application, Mr. Huseynov’s representatives, James A. Goldston, Laura Bingham and Rupert Skilbeck, requested approval from the President of the Court that Mr. Goldston and Ms. Bingham continue as representatives following notification of the application to Azerbaijan, in accordance with Rule 36(4). Mr. Skilbeck is a practicing member of the Bar of England and Wales, residing in the United Kingdom, who served as the point of contact for the Court at the time of filing through 9 February 2018. Mr. Huseynov’s representatives have renewed their pending request for approval to continue to act on his behalf. As an extraordinary measure, to cure any potential defect in the status and nature of Mr. Huseynov’s representation, he has added counsel, Ms. Mercedes Melon, who is a practicing member of the Spanish bar and resides in London, United Kingdom (see Annex 1).
43. Even assuming there is merit in the Government’s objection arising from representation, Mr. Huseynov asserts that it would be extraordinarily unjust to deny the admissibility of the Application on this account. The proper and just remedy would be for the Court to approve the request made concerning his representation or to require him to regularize his representation within a specified period of time.

B. There Are No Available, Effective Domestic Remedies

44. Mr. Huseynov has satisfied Article 35(1) of the Convention: in the first instance, no appropriate remedies exist through which to challenge his denationalization; in addition, any theoretical remedy – including those named by the Government – are unavailable and ineffective.³⁷
45. As a general point, Mr. Huseynov reiterates that the Government's Observations underscore the vast executive discretion over all nationality determinations, both in law and in practice, in Azerbaijan.³⁸
46. Nevertheless, the Government proposes that Mr. Huseynov should have sought redress at the Constitutional Court, in the administrative courts or in courts of general jurisdiction. The Government selectively cites legal provisions to suggest that there may be a legal remedy in various jurisdictions without addressing Mr. Huseynov's arguments as to why each of these remedies is – in law and in fact – non-existent, unavailable or ineffective.
47. *Constitutional Court.* Mr. Huseynov asserts that, from text of the Constitution cited by the Government, only certain official bodies may refer Presidential enactments such as Order 1296 for review by the Constitutional Court.³⁹ As discussed in the Application and supported by an expert legal opinion, only “normative legal acts of a generally applicable character” may be challenged by individuals like Mr. Huseynov at the Constitutional Court, which forecloses his ability to challenge a Presidential order or decree through this recourse.⁴⁰
48. The Government also argues that Mr. Huseynov could have appealed to the Azerbaijan Human Rights Commissioner (or to unspecified “other authorities”) to refer his case before the Constitutional Court.⁴¹ While the Commissioner has the power to lodge complaints with the Constitutional

³⁷ See Application, Section G, paras. 1-6; Annex 1, paras. 8-28.

³⁸ See Government's Observations, at paras. 18, 21 (indicating the President's unqualified power under Constitution Article 109(20) to “resolve the questions of citizenship”).

³⁹ See Government's Observations, at para.18.

⁴⁰ See Application, Annex 1, para. 18; Annex 8, para. 8.

⁴¹ Government's Observations, at para. 38.

Court,⁴² any complaint that the Commissioner can make is identical to the scope of complaints that an individual such as Mr. Huseynov can make.⁴³ Resort to the Commissioner to pursue such a claim would, in any case, constitute an extraordinary and discretionary remedy and should not have been expected of Mr. Huseynov.⁴⁴

49. *Administrative courts.* Mr. Huseynov cannot legally challenge Presidential decrees in administrative courts, as argued in detail and supported by expert legal opinion in the Application. Implementing regulations to the Law on Administrative Execution, cited by Mr. Huseynov but not referenced by the Government, preclude judicial review of administrative acts by the President and the Presidential Administration.⁴⁵
50. *Courts of general jurisdiction.* Finally, the Government argues that Mr. Huseynov should have challenged the criminal investigation and prosecution before courts of general jurisdiction, invoking Convention Articles as directly applicable under Azerbaijani law. Presumably (as no specific avenue of redress is presented) this would have been within or parallel to the criminal proceedings which unfolded against him in absentia while he sought refuge in the Swiss embassy. At the time Mr. Huseynov had yet to be stripped of his nationality, the central basis for his present claims would accordingly not be subject to challenge even were such an avenue necessary or theoretically possible. As a practical matter, Mr. Huseynov was in no position to and should not have been required to contest the abuse of his right to nationality in the context of an illegitimate and hostile criminal proceeding.

⁴² The Constitutional Law on the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, section 13(2)(8), available at: <http://www.commission-anticorruption.gov.az/upload/file/Law%20Ombudsman.pdf>.

⁴³ Compare arts. 130(V) and 130(VII) of the Constitution of the Republic of Azerbaijan (1995), available at: <http://www.wipo.int/edocs/lexdocs/laws/en/az/az057en.pdf>.

⁴⁴ See, e.g., *Prystavska v. Ukraine*, European Court of Human Rights, Judgment of 17 December 2002.

⁴⁵ See Application, Annex 8, para. 10.

51. Contrary to the Government's assertions, Mr. Huseynov has lodged a separate Application (See Annex 2) directly challenging the underlying criminal charges brought against himself and his organization.
52. Even had judicial scrutiny of Order 1296 been possible as a legal matter, such a remedy would have been ineffective in practice. The reasons for this were set out in the Application: Mr. Huseynov did not have a copy of Order 1296 and had no way of obtaining one; he also lacked the necessary documentation of his identity to engage public agencies, the courts, and domestic counsel.⁴⁶ Any attempt to initiate proceedings, had they been extant, would have put Mr. Huseynov and any representatives in physical danger. Finally, the lack of judicial independence means that even had court proceedings been legally and practically available, Mr. Huseynov would not have received impartial justice.⁴⁷
53. The Government's Observations do not engage with, or attempt to refute, these practical barriers to accessing a domestic remedy. They do, however, as noted above, affirm that the President exercises unreviewable discretion over nationality matters in Azerbaijan.

C. Other Admissibility Issues

54. The Government has not presented additional argument to justify its objections to admissibility on the ground that the Application is "manifestly ill-founded" and an abuse of Mr. Huseynov's right of individual application.⁴⁸ The application is, on the contrary, supported by substantial evidence, draws on the Court's relevant case law and raises claims that are based on the Convention rights enjoyed by the applicant.

AZERBAIJAN'S NON-COMPLIANCE WITH PROCEDURAL OBLIGATIONS

A. Effective Exercise of the Right of Application (Article 34)

⁴⁶ See Application, Annex 1, at paras. 22-28.

⁴⁷ The Court is urged to consider the submissions of the Human Rights House Foundation in respect of lack of independence of courts in Azerbaijan. See Third Party Intervention of Human Rights House Foundation, at p. 6-7 ("Impossibility to seek remedies in Azerbaijan").

⁴⁸ See Government's Observations, at para. 47.

55. The attacks on Mehman Huseynov (see paras. 15-18, above) interfere with Mr. Huseynov's ability to effectively exercise his right of application to the Court.
56. Intimidation of an applicant's family and retaliatory actions taken against family members affect any applicant's ability to seek redress for substantive Convention violations.⁴⁹ "The intentions or reasons underlying the acts or omissions in question are of little relevance when assessing whether Article 34 of the Convention was complied with; what matters is whether the situation created as a result of the authorities' act or omission conforms to Article 34."⁵⁰ Applicants do not need to show an actual impact on the exercise of the right to individual petition, as the procedural obligation is enforced to avoid "potential chilling effect" on applicants.⁵¹ The individual facts and circumstances of each case, including an applicant's separation and isolation from family members targeted,⁵² ground the Court's consideration of Article 34 obligations.
57. Mr. Huseynov's statement specifically cites the acute distress he felt concerning potential reprisals against his family members in Azerbaijan.⁵³ Mehman Huseynov, who was arrested in Baku just three weeks after Emin Huseynov lodged this Application, has been repeatedly harassed by authorities concerning his brother's activities.⁵⁴ The fact that Emin and Mehman Huseynov face an overwhelming atmosphere of repression and yet

⁴⁹ See, e.g. *Novinskiy v. Russia*, European Court of Human Rights, Judgment of 10 February 2009, at para. 117 ("'pressure' includes not only direct coercion and flagrant acts of intimidation but also other improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing a Convention remedy.").

⁵⁰ *Rasul Jafarov v. Azerbaijan*, ECtHR, Judgment of 17 March 2016, at para. 178.

⁵¹ *Annagi Hajibeyli v. Azerbaijan*, ECtHR, Judgment of 22 October 2015, at para. 77.

⁵² See, e.g. *Novinskiy v. Russia*, European Court of Human Rights, Judgment of 10 February 2009, at para. 118.

⁵³ See Application, Annex 7 (Statement of Emin Huseynov), at para. 56.

⁵⁴ Human Rights Watch, *Harassed, Imprisoned, Exiled* (October 2016), at p. 4 & 54 (Mehman Huseynov told HRW that an investigator told him: "We could not arrest your brother, but we control whatever happens to you and your family"), available at: <https://www.hrw.org/report/2016/10/20/harassed-imprisoned-exiled/azerbajians-continuing-crackdown-government-critics>. See also IRFS, "Blogger Mehman Huseynov Sentenced to Two Years in Jail," 3 March 2017 (citing Mehman Huseynov's own testimony that one of the Nasimi District police officers involved in his arrest had also participated in an arrest of his brother), available at: <https://www.irfs.org/news-feed/mehman/blogger-mehman-huseynov-sentenced-to-two-years-in-jail/>. See also Joint Third Party Intervention of IMS et al., at paras. 16 & 18.

still courageously choose to persist in their activism should not obscure the personal toll that the harassment, physical abuse, arbitrary detention and unjust punishment of Mr. Huseynov's brother has had on his ability to exercise his Convention right to petition this Court. On the contrary, it is submitted that the Court should exercise all available means at its disposal to register and provide protection against such abuses, Article 34 being one such measure.

58. The ongoing persecution of Mr. Huseynov's brother, Mehman Huseynov, has interfered with Emin Huseynov's free and effective exercise of his right of application. The Court should accordingly find a procedural violation of Article 34.

B. The Government's Duty to Provide Adequate Responses to the Court's Questions (Article 38)

59. States have an obligation to furnish the necessary facilities in relation to the establishment of the facts, including providing adequate responses to the Court's questions.⁵⁵ The Court has clarified that Article 38 requires respondent states, of their own motion, to produce documents in their possession that are "unquestionably of fundamental importance for elucidating disputed facts."⁵⁶
60. Mr. Huseynov repeatedly raised his inability to challenge his denationalization domestically on account of the non-publication of Order 1296, which purportedly "granted" his "request" to renounce his Azerbaijani nationality.⁵⁷ Yet, although the Government references the President's action, it failed to furnish the text of the Order or any form of supporting documentation for its thin version of the facts, without any

⁵⁵ See *Nizomkhon Dzhurayev v. Russia*, European Court of Human Rights, Judgment of 3 October 2013, at paras. 160-165 (finding failure to respond to Court's questions on key factual issues, including submission of "evasive answers" amounts to disregard of Article 38).

⁵⁶ *Ahmet Ozkan and others v. Turkey*, European Court of Human Rights, Judgment of 6 April 2004, at para. 481. See also *Janowiec and others v. Russia*, European Court of Human Rights, Judgment of 21 October 2013 (finding non-compliance with Article 38 where Russian Government failed to furnish copy of decision to discontinue investigation into murders by Soviet secret police).

⁵⁷ See Application: Section G, para. 4; Application, Annex 1, para. 24 & Annex 8, para. 11.

explanation.⁵⁸ Similarly, the applicant stated in his own testimony that he was forced to produce a handwritten note “requesting” to renounce his nationality and agreeing not to take part in human rights activities if allowed to safely leave the territory of Azerbaijan.⁵⁹ Mr. Huseynov has no access to these materials; they have, at all relevant times, been in the exclusive possession of the Government.

61. The Government of Azerbaijan has failed to comply with its Article 38 obligation to cooperate in the production of evidentiary materials, and the Court should so find, drawing adverse evidentiary inferences against the Government as to the well-foundedness of the applicant’s allegations, as it deems appropriate.⁶⁰

MERITS

62. The Court should find violations of Mr. Huseynov’s Convention rights to respect for his private life (Article 8), to enjoyment of freedom of expression (Article 10), and to an effective remedy (Article 13). The Court’s questions on these alleged violations, together with the Government’s response to the Questions and to the Application, are addressed below (Questions 1-3). The Court raised *ex officio* whether the restrictions placed on Mr. Huseynov’s Article 8 rights – his denationalization and its consequences – violate Article 18 as acts taken contrary to the aims contemplated in the Convention (Question 4). The actions of Azerbaijan challenged through Mr. Huseynov’s Application represent a brazen circumvention of the legitimate restrictions on rights and freedoms permitted under the Convention, violating Article 18 alongside Articles 8 and 10.⁶¹

A. Article 8 (Question 1)

⁵⁸ Government’s Observations, at para. 16.

⁵⁹ Application, Annex 7 (Statement of Emin Huseynov), at para. 49.

⁶⁰ See Rule 44B, Rules of Court. See also *Benzer and Others v. Turkey*, European Court of Human Rights, Judgment of 12 November 2013, at para. 161.

⁶¹ See Joint Third Party Intervention of IMS et al., at para 20.

63. Azerbaijan deprived Mr. Huseynov's nationality arbitrarily and for punitive purposes. The Court should construe the facts and circumstances of his denationalization as exactly that: an instance of arbitrary deprivation of nationality designed to punish, debase and permanently exile him. The Government's attempt to cast what happened to Mr. Huseynov as a voluntary renunciation defies logic and ignores the connection between his case and the wider pattern of coercive measures taken by Azerbaijani authorities to silence dissenting voices. The "acceptance" of Mr. Huseynov's "renunciation" was furthermore in direct violation of Azerbaijan's national law and its international legal obligations in respect of the duty to avoid statelessness.

The Government minimizes the severity of the interference with Mr. Huseynov's Article 8 rights

64. On several occasions in its Observations, the Government argues or implies that Mr. Huseynov's statelessness should not be a concern to the Court. Its Observations state, for example, that Mr. Huseynov is stateless by choice, that he should petition to the President of the Republic to reacquire his nationality, and that his statelessness poses no barrier to his freedom of movement including entry into the territory of Azerbaijan.⁶² Such an attitude toward the condition of statelessness is deeply worrying.
65. The Government cites the Court's case-law underscoring the impact that loss of nationality in itself has on the person concerned, registering that withdrawal of nationality may have an even greater negative impact when stripped away later in life.⁶³ The impact is of a wholly different order where, as is often the case, the individual is left stateless as a result of deprivation of nationality.⁶⁴
66. In reality, through its deprivation of Mr. Huseynov's nationality and consequently his statelessness, the Government aimed to humiliate, degrade

⁶² Government's Observations, at para. 57.

⁶³ See *Ramadan v. Malta*, European Court of Human Rights, Judgment of 21 June 2016, at para. 85.

⁶⁴ See, e.g., Third Party Intervention of Institute on Statelessness and Inclusion, at paras. 3, 11-12; Joint Third Party Intervention of United Nations Special Rapporteurs, at para. 24; Third Party Intervention of the Council of Europe Commissioner for Human Rights, at para. 39.

and punish him (see below, Article 10), exiling him from his political community. Mr. Huseynov has amply supported this contention with evidence of the facts surrounding his own case and evidence that his ordeal is part of a wider pattern of repression. The Government's denials are neither justified nor presented in good faith (see below, Article 18).

Mr. Huseynov was forced to renounce his nationality

67. While the Government would have the Court believe that Mr. Huseynov voluntarily renounced his Azerbaijani nationality, the applicant has furnished substantial evidence that "renunciation" is a transparent misnomer and in fact, the Government's actions should be understood as an instance of arbitrary deprivation of Mr. Huseynov's nationality, perpetrated by means of a coerced and therefore involuntary renunciation request.
68. As outlined above (see para. 32), Mr. Huseynov succumbed to extraordinary, life-threatening pressures when he handwrote a "request" to relinquish his only nationality, contrary to his will and his entire life's work.⁶⁵ As a consequence of this action he would become separated from his family members and unable to defend them against reprisals, nor could he continue his work as a journalist and member of the human rights advocacy community in Azerbaijan.⁶⁶
69. The coercive factors underlying his forced renunciation are covered in the Application, although, as noted above, the Government either does not dispute or chooses to ignore them. These include: a long history of persecution by the Government, a massive tax fine lodged against him that he could not possibly pay himself, the risk of life-threatening and unjust imprisonment, his confinement and isolation from the outside world including legal counsel, and his serious and deteriorating health conditions and lack of access to adequate medical and dental care.⁶⁷

⁶⁵ Application, Annex 7, at para. 49.

⁶⁶ See Joint Third Party Intervention of IMS et al., at para. 12.

⁶⁷ See Application: Statement of Facts, paras. 11-17; Application, Annex 1, paras. 46-48, 60.

70. The Government also fails to provide any alternative explanation for the peculiar circumstances of Mr. Huseynov's supposedly voluntary renunciation of his nationality including the extraction of a promise that he would desist from human rights advocacy, payment of his exorbitant tax "liability" by an unknown third party, and his departure from Azerbaijan on a plane with the Swiss Foreign Minister.⁶⁸
71. Finally, the overall context and past practice of Azerbaijan in similar cases strongly suggests that the Government knowingly and intentionally abused its powers to coerce Mr. Huseynov into renouncing his nationality. As noted in the Application, the same tactics were used against another former political prisoner, Alikram Hummatov, who was forced to renounce his nationality in 2004.⁶⁹
72. In light of the Government's failure to provide any plausible alternative explanation or to furnish information likely to be in its sole possession that would shed light on the dispute as to the alleged voluntariness of Mr. Huseynov's renunciation of his nationality, and in view of the consistency and detailed nature of his statements, the Court should draw adverse inferences against the Government. Moreover, where questions arise over the interpretation of an individual's subjective will in taking such a consequential decision, the burden should be strictly on the Government depriving nationality to show that the renunciation was voluntary and did no harm to the person concerned.

Azerbaijan violated its own laws and international obligations in stripping Mr. Huseynov's nationality (not in accordance with the law)

73. The Government's analysis of Mr. Huseynov's Article 8 claims fails to consider that his denationalization violated both national and international legal protections relevant to the decision to deprive nationality and specifically prohibiting politically motivated deprivation and any withdrawal or loss of nationality that results in the creation of

⁶⁸ See Application, Annex 7 (Statement of Emin Huseynov), at paras. 50-51.

⁶⁹ See Application: Statement of the Facts, para. 26; Joint Third Party Intervention of United Nations Special Rapporteurs, at para. 25.

statelessness.⁷⁰ As such, as argued in the Application, the deprivation of Mr. Huseynov's nationality was not "in accordance with the law."⁷¹ This is equally true whether the Government's actions are styled as a "voluntary" renunciation, "coerced" renunciation or affirmative deprivation of his nationality.⁷² In each scenario, the withdrawal of nationality was politically motivated and left Mr. Huseynov stateless, meaning it was by definition an arbitrary and unlawful act.⁷³

74. The Court is also urged to consider the many indicia of arbitrariness arising within the process of Mr. Huseynov's denationalization, running contrary to national law and procedure, to the extent procedures are established in law at all. The applicable law specifically prohibited renunciation of nationality when criminal charges are pending against a relevant individual; the Government's Observations confirm that Mr. Huseynov's "request" was "granted" while his name still appeared on "wanted lists."⁷⁴ Mr. Huseynov has been unable to obtain a copy of the order "granting" his "request" to renounce his nationality, which was not published as it should have been, according to national procedures.⁷⁵ His initial "request" was handwritten, and he was later pressured to complete a "form" although he was never furnished with a copy of either document.⁷⁶ Mr. Huseynov was not provided with counsel in relation to his request,⁷⁷ despite the Government's assertions that he "was aware" of the consequences of his "application."⁷⁸ Mr. Huseynov was furthermore forced to swear, as part of his "request" for renunciation of his nationality, that he would cease to engage in human rights activism once he reached safety outside the borders of Azerbaijan.⁷⁹

⁷⁰ See Government's Observations, at paras. 53-59; Application, Annex 1. See also Third Party Intervention by the Council of Europe Commissioner for Human Rights, 28 September 2018, at paras. 27-40 for an extensive analysis of international and European law on arbitrary deprivation of nationality and the duty to avoid statelessness.

⁷¹ See Application, Annex 1, at paras. 55-58.

⁷² See Application, Annex 1, at para. 55-56.

⁷³ See Application, Annex 1, at para. 56 (1961 Convention, Article 7), 58 (1961 Convention, Article 9).

⁷⁴ Government's Observations, at paras. 15-16.

⁷⁵ See Application, Annex 7, at para. 53; Application, Annex 8, at paras. 9 & 11.

⁷⁶ See Application, Annex 7, at para. 52-53.

⁷⁷ See Application, Annex 7, at para. 45, 48 (relevant exchanges carried out through Swiss officials).

⁷⁸ Government's Observations, at para. 54.

⁷⁹ Application, Annex 7, at para. 49.

75. Each of these excesses underscores the arbitrary nature of the Government's endeavour and helps to expose its true and illegitimate aim: to eliminate Mr. Huseynov's physical presence, his identity and his voice in the political discourse of the country.

Azerbaijan stripped Mr. Huseynov's nationality in order to permanently expel him

76. The government of Azerbaijan used denationalization not only as a tool of "shaming," addressed above (see para. 66), but also to pursue another common aim of denationalization: banishment.⁸⁰ The Government's strict condition in allowing Mr. Huseynov to leave the Swiss embassy and escape persecution was to ensure that he renounced his nationality so that he could be permanently excluded from the territory.⁸¹ Yet, the Government argues that it has placed "no limitations on [Mr. Huseynov's] entry to the country."⁸² Such a statement contradicts the Court's case law, which the Government in part references, articulating domestic competence over exercise of the power to grant permission to enter and remain on a state's territory.⁸³ In reality, the Government's aim was to ensure that Mr. Huseynov left Azerbaijan, his own country, and never returned. This gross interference with Mr. Huseynov's freedom of movement should weigh heavily in the consideration of his Article 8 claim.

B. Article 10 (Question 2)

77. The arbitrary deprivation of Mr. Huseynov's nationality was both a specific punitive measure targeting Mr. Huseynov for his own expression and opinions and a generalized measure enacted in order to chill speech.

⁸⁰ See Matthew Gibney, "Denationalization," in *The Oxford Handbook of Citizenship* 361-62 (2018). The drafting committee for Protocol 4 considered inserting a provision forbidding deprivation of nationality for the purposes of expulsion, which would have reflected international norms, including the International Covenant on Civil and Political Rights (Article 12). See *Ramadan v. Malta*, Separate Opinion of Judge Pinto de Albuquerque, 21 June 2016, at para. 7 (referencing Explanatory Report to Protocol No. 4, at para. 23). See also Third Party Intervention of Institute on Statelessness and Inclusion, paras. 20-26; Joint Third Party Intervention of United Nations Special Rapporteurs, para. 24.

⁸¹ See Application, Annex 7, at paras. 48-50.

⁸² See Government's Observations, at para. 58.

⁸³ See Government's Observations, at para. 56.

78. The Government challenges the evidentiary basis connecting Mr. Huseynov's deprivation of nationality with his Article 10 right to free expression.⁸⁴ In doing so, the Government disregards the component of the violation that relates to punishment for past speech, focusing instead on whether Mr. Huseynov continues to face limitations on his ability to exercise his Article 10 rights without interference as a result of his denationalization. In fact, his rights are unjustifiably limited in both senses.
79. As fully set out in the Application, Mr. Huseynov's denationalization was punitive in nature, targeting him on account of his activities as a journalist and human rights defender.⁸⁵ He reasonably construed his experiences at the hands of the Azerbaijani authorities as an instance of degrading treatment falling under Article 3 of the Convention. His representatives continue to maintain this view, for the reasons articulated at length in the Application.⁸⁶
80. Furthermore, as a stateless exile, Mr. Huseynov is cut off from his political community and portrayed as "unpatriotic."⁸⁷ The fact that Mr. Huseynov was forced to sign a document forswearing further engagement in human rights activities alongside his "request" to renounce his citizenship speaks to the Government's own appreciation for the link between the two spheres. As a practical matter, he cannot found and manage a media outlet as a non-citizen of Azerbaijan.⁸⁸ More importantly though, the Court should consider the information presented in the Third Party Intervention of *IMS et al.* concerning the particular context of post-Soviet states today:

"Deprivation of nationality legally, physically (through expulsion) and psychologically delegitimizes political speech of the affected person,

⁸⁴ See Government's Observations, at para. 62.

⁸⁵ See Application, Section F; Application, Annex 1, at paras. 29-41; 64-65. See also *Women on Waves and others v. Portugal*, ECtHR, Judgment of 3 February 2009, at para. 42 ("more important when it comes to conveying ideas which... challenge the establish order").

⁸⁶ Application, Annex 1, at paras. 30, 37 and 40.

⁸⁷ Application, Annex 1, at para. 65, citing Application, Annex 7, at para. 55.

⁸⁸ See also *Yildirim v. Turkey*, ECtHR, Judgment of 18 December 2012, para 50 and *De Haes and Gijssels v. Belgium*, ECtHR, Judgment of 2 February 1997, para 48 (chilling effect on speech tied not only to ability to impart content but also restrictions as to *means* of communication); cf. Government's Observations, para. 62 (noting that Mr. Huseynov still has access to social media outside of Azerbaijan).

imposing literal and figurative frontiers that impede his/her participation in the public debate on socially important issues. This consideration is of particular importance for a number of post-soviet countries, including Azerbaijan, where civil society and independent media actors are often marginalized 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 [a] country’s political course.”⁸⁹

81. The Government furthermore does not address the allegation that the punitive nature of Mr. Huseynov’s denationalization also entailed an aim of general deterrence, that is to achieve a “chilling effect” on freedom of expression within the country.⁹⁰ Relatedly, the Court’s case law has consistently emphasized that Article 10 safeguards the right of the public to receive information as an essential guarantee in a democratic society.⁹¹ Mr. Huseynov and his organization, IRFS, served as a “public watchdog” in Azerbaijan. His silencing is intended to, and does, interfere with the public’s right.
82. The Court is referred to the Application for further arguments and supporting evidence regarding the lack of justification in law and in a democratic society for such treatment.⁹² The Government does not address the question in its Observations, arguing that there was no interference with any dimension of Article 10 of the Convention.

⁸⁹ Joint Third Party Intervention of IMS et al., at para. 21.

⁹⁰ See Application, Annex 1, at para. 69; Joint Third Party Intervention of IMS et al., at para. 25.

⁹¹ *Observer and Guardian v. UK*, ECtHR, Judgment of 26 November 1991, at para 59 (b); *Guerra and Others v. Italy*, ECtHR, Judgment of 19 February 1998, at para, 53. Indeed, States have a positive obligation under Article 10 to create a favourable environment for participation in public debate. *Dink v. Turkey*, ECtHR, Judgment of 14 September 2010, at para. 137. See also Third Party Intervention of Institute on Statelessness and Inclusion, at para. 15; Joint Third Party Intervention of United Nations Special Rapporteurs, at para. 16.

⁹² See Application, Annex 1, at paras. 67-69.

C. Article 13, with Article 8 (Question 3)

83. The Government relies upon the erroneous proposition that effective remedies existed in Azerbaijan to argue that there has been no violation of Article 13. The Court is referred to the arguments presented in the Application and above (see paras. 44-53), and urged to find that, on the contrary, the facts and circumstances of his case mean that Mr. Huseynov's right to redress under Article 13 has been violated.

D. Article 18, with Article 8 (Question 4)

The Court is empowered to raise Article 18 of its own motion

84. The Government erroneously contends that the Court is not empowered to construe the factual allegations as it sees fit in respect of framing the application of the Articles of the Convention, including Article 18.⁹³ The Court is not bound in its consideration of applications by the specific pleadings of the parties, as is well established in its practice specifically in cases brought against Azerbaijan by other political prisoners.⁹⁴

Violation of Article 18 in conjunction with Article 8

85. The facts of Mr. Huseynov's individual case and the wider systematic crackdown of which his case forms a part make clear that the true aim of his denationalization was punitive and regressive in nature: unjustified, unlawful and unacceptable under Convention framework.
86. Due to the interlinkages between the violation of Mr. Huseynov's private life (Article 8) and his right to freedom of expression (Article 10), the Court should consider finding a violation of Article 18 in conjunction with both provisions.⁹⁵
87. The assumption that "public authorities in member States act in good faith" requires an "exacting" standard of proof in order to be dislodged. Still, the Court will draw inferences "from the concrete circumstances and the context of the case" in light of the fact that applicants will not ordinarily

⁹³ See Government's Observations, at para. 67.

⁹⁴ See, e.g., *Rashad Hasanov and Others v. Azerbaijan*, ECtHR, Judgment of 7 June 2018.

⁹⁵ See Joint Third Party Intervention of IMS et al., at para. 20.

have access to direct information as to ulterior motives behind instances of abuse.⁹⁶ Mr. Huseynov has met this burden. The Government's actions stem from the same improper motives that this Court identified in *Aliyev v. Azerbaijan*: "to silence and to punish."⁹⁷ In failing to present a plausible alternative explanation for Mr. Huseynov's mistreatment, the Government's Observations only reinforce the plain fact that the current regime considers itself to be above the law.

AWARD FOR PECUNIARY AND NON-PECUNIARY DAMAGES

88. Mr. Huseynov suffered significant injuries, both pecuniary and non-pecuniary, as a result of the violations of his Convention rights, such that declaratory relief alone would not provide sufficient relief in order to return him as near as possible to the situation existing before the breach.⁹⁸ He has lost his nationality, which carries both material implications⁹⁹ and a weighty emotional and moral toll; he has suffered serious health problems as a result of lack of medical and dental care while trapped in the Swiss embassy; his livelihood and home in Azerbaijan are lost to him and he has been forced to start a new life in an unknown country; he has been prevented from seeing his family members including a brother facing spurious imprisonment and his ailing and dying mother; and he has experienced frustration and anguish at being silenced for his political beliefs. Mr. Huseynov was also forced to satisfy a fabricated tax liability in exchange for his safe departure, for which he now seeks restitution.¹⁰⁰

A. Award for Pecuniary Damages

⁹⁶ *Tymoshenko v. Ukraine*, ECtHR, Joint Concurring Opinion of Judges Jungwiert, Nussberger, and Potocki, 30 April 2013.

⁹⁷ *Aliyev v. Azerbaijan*, ECtHR, Judgment of 20 September 2018, at para. 215-216 (finding violation of Article 18). *See also* Third Party Intervention of Institute on Statelessness and Inclusion, at para. 26 (citing *Aliyev*); Third Party Intervention of Council of Europe Commissioner for Human Rights, at paras. 20, 41-42 and 53; Joint Third Party Intervention of IMS et al., at paras. 11, 13-17.

⁹⁸ *Kurić and others v. Slovenia*, ECtHR, Grand Chamber Judgement (Just Satisfaction) of 12 March 2014, at para. 79.

⁹⁹ *See ibid.* at 86 (loss of legal status of the "erased" "entailed significant material consequences for all the applicants").

¹⁰⁰ Particularly in light of the facts and circumstances of his case, Mr. Huseynov requests that any award, pecuniary as well as non-pecuniary, should be free of tax chargeable in law or in fact at the domestic level either in his state of residence or in Azerbaijan.

89. The Court has underscored the difficulties associated with quantifying the material impact of loss of legal status.¹⁰¹ Mr. Huseynov presents below specific pecuniary losses most directly associated with his forcible renunciation of nationality and exile from his own country. He requests that the Court take his particular circumstances during this period into account in assessing the adequacy of supporting documentation.¹⁰²
90. *Legal expenses incurred to obtain legal status and identity documents.* Mr. Huseynov left Azerbaijan without any valid identity documentation and without any secure legal status.¹⁰³ He should be reimbursed for legal expenses in the amount of 1,000 Swiss Francs, incurred in securing political asylum and statelessness status in Switzerland.¹⁰⁴
91. *Lost earnings.* During his time in the Swiss embassy (18 August 2014-12 June 2015) and following his arrival in Switzerland through 15 December 2015, Mr. Huseynov was unable to work gainfully, due to his confinement and subsequently his lack of an identity document.¹⁰⁵ President Aliyev made Mr. Huseynov's denationalization a condition of his release from the embassy, and used this *de facto* imprisonment as a coercive and punitive measure against him in violation of his Article 8 and 10 rights. Mr. Huseynov seeks reimbursement for his lost wages during this period based on his salary at IRFS, which was \$3,609/month in 2014 and projected to be \$4,000/month in 2015.¹⁰⁶ Mr. Huseynov therefore requests lost earnings in the amount of \$61,884.
92. *Fabricated tax payment.* Mr. Huseynov was forced to pay a tax liability, purportedly owed by IRFS, as a condition of his safe departure from the

¹⁰¹ See *ibid.* at 92-93. See also *Tanli v. Turkey*, ECtHR, Judgment of 10 April 2001, at para. 182 (uncertainty as to amount does not necessarily preclude an award of damages).

¹⁰² See, e.g., *Hasan and Chaush v. Bulgaria*, ECtHR, Judgment of 26 October 2000, at para. 118.

¹⁰³ See Application, Annex 8, at paras. 9 & 11.

¹⁰⁴ See Application, Annex 6 (political asylum decision, 22 October 2015); Annex 3: Statelessness status determination decision, dated 13 July 2017.

¹⁰⁵ See Application, Annex 6 (political asylum decision, 22 October 2015); Annex 4: Travel document issued 15 December 2015.

¹⁰⁶ See Annex 5: Salary certification letter from Tatyana Krychkina, Financial Manager of IRFS, dated 20 November 2018. Calculations based on daily rate of approximately \$116.41 for August 12-August 31, 2014 (based on monthly salary for 2014) and \$129.03 for December 1-15, 2015 (based on monthly projected salary for 2015). Figures are reflected in US\$ based on currency provided in the salary letter.

Swiss embassy. This sum was paid, in order to secure his release, on the same date that he lost his nationality as part of the same agreement.¹⁰⁷ The debt and the payment are linked exclusively to Mr. Huseynov's name as Chairman of IRFS.¹⁰⁸ The unjustly obtained funds (\$236,281) should be returned to Mr. Huseynov as a measure of damages that could not possibly be cured through declaratory relief.¹⁰⁹

B. Award for Non-pecuniary Damages

93. Mr. Huseynov has suffered extensive emotional and moral damage as a result of the violations of his rights. As detailed in the Application,¹¹⁰ the experience of being forced to renounce his nationality under coercive conditions (see also paras. 32, 68-69), in defiance of his "every wish," was humiliating and debasing by design, causing him great anguish in a situation exacted in order to break his moral resistance.¹¹¹ He has suffered the uncertainty of statelessness – not knowing when, if ever, he will regain Azerbaijani nationality or any other.¹¹² Separated from his family members and his home, he was forced to watch helplessly as his mother died under suspicious circumstances, turning his worst nightmare into a shattering reality.¹¹³ He has furthermore experienced deep frustration due to his

¹⁰⁷ See Annex 6: Personal Electronic Account Statement for IRFS, linked to the Azerbaijan Ministry of Finance online database, retrieved 21 November 2018. The document indicates two payments on 10 June 2015 totaling USD 236,281.00. See also Application, Annex 7, para. 50.

¹⁰⁸ See Annex 6: Personal Electronic Account Statement for IRFS, linked to the Azerbaijan Ministry of Finance online database, retrieved 21 November 2018.

¹⁰⁹ Mr. Huseynov maintains, as he has consistently throughout these proceedings, that the payment was made on his behalf by a third party. See Application, Annex 7, at para. 50. Government-controlled outlets have reported that the payor is the Swiss government. See, e.g., "How Emin Huseynov Violated the Swiss 'Gentleman's Agreement,'" Virtual Azerbaijan, 24 June 2015 (unofficial translation), available at: <http://virtualaz.org/uzbeuz/49160>. Mr. Huseynov's aim in claiming the payment as a measure of pecuniary damages is to repay the funds; alternatively, he asks that Court direct that the funds are repaid, pursuant to Article 46 (see para. 97). In addition to curing the unjust enrichment of the Azerbaijani government, Mr. Huseynov is seeking to absolve himself of any actual or apparent personal debt to the payor.

¹¹⁰ See Application, Annex 7, paras. 43, 49, 55.

¹¹¹ See Application: Statement of alleged violation(s) (Article 3); Application, Annex 1, at paras. 29-41.

¹¹² See *Kurić and others v. Slovenia*, ECtHR, Judgment of 26 June 2012, at para. 420 (noting different heads of non-pecuniary damage, recognized in the Court's case-law, experienced by the "erased" due to lack of secure status: "pain and feelings of deep instability and insecurity about the future, which they had endured for an extremely long period, anxiety deriving from the danger of deportation, and a deep sensation of anxiety and sadness because of xenophobic attitudes and because of the absence of effective remedies").

¹¹³ See *Kutzner v. Germany*, ECtHR, Judgment of 26 February 2002 (separation from family); *Djavit An v. Turkey*, ECtHR, Judgment of 20 February 2003 (feelings of helplessness).

inability to engage as part of the political community in his home country, as a journalist and human rights defender, on equal footing with his peers and without stigma (see para. 80).¹¹⁴

94. In light of these severe hardships, Mr. Huseynov requests an award of non-pecuniary damages in the amount of €35,000.¹¹⁵

C. Default Interest

95. It is requested that any award include default interest at the marginal lending rate of the European Central Bank plus 3 percentage points.

GENERAL MEASURES OF PROTECTION UNDER ARTICLE 46

96. *Full restoration of nationality.* Mr. Huseynov requests that the Court order Azerbaijan to nullify Presidential order 1296 and restore his original nationality (by birth), automatically, retroactively and without any qualification or further penalty, and immediately issue him identity and travel documents to which he is entitled.¹¹⁶ Without restoration of his nationality, Mr. Huseynov will not be made whole in the most human sense, and there are no realistic avenues available to him to rectify this situation at the domestic level, contrary to the Government's assertions, as has been shown (see paras. 44-53). It is essential in order to comply with a finding

¹¹⁴ See *Dicle on behalf of the Democratic Party (DEF) of Turkey v. Turkey*, ECtHR, Judgment of 10 December 2002, at para. 78 (awarding moral damages based on feelings of profound frustration caused by dissolution of political party and resulting inability to take part in national and local political scene).

¹¹⁵ The sum requested is comparable to awards made in other cases against Azerbaijan where applicants suffered imprisonment and lack of access to medical treatment based on politically-motivated prosecutions – all of which form part of the abuses used to target, punish and coerce Mr. Huseynov in the present case. See, e.g., *Jafarov v. Azerbaijan*, ECtHR, Judgment of 17 March 2016, at para. 195. Additionally, Mr. Huseynov has lost his nationality indefinitely as a consequence of the violations in this case, constituting a severe hardship unique to his case. See also *Kuric and others v. Slovenia*, ECtHR, Judgment of 26 June 2012, at para. 425 (awarding €20,000 in non-pecuniary damages on account of suffering caused by erasure of names from registry of permanent residents and resulting lack of legal status); *Kim v. Russia*, ECtHR, Judgment of 17 July 2014, at para. 61 (awarding €30,000 in non-pecuniary damages to stateless man who, as a result, suffered prolonged detention in inhuman conditions).

¹¹⁶ See, e.g., *Fatullayev v. Azerbaijan*, ECtHR, Judgment of 22 April 2010, at para. 177 (ordering immediate release from unlawful detention where applicant was imprisoned in violation of Article 10); *Gluhakovic v. Croatia*, ECtHR, Judgment of 12 April 2011 (ordering restoration of contact with family members following violation of Article 8); *Oleksandr Volkov v Ukraine*, ECtHR, Judgment of 9 January 2013 (reinstatement as Supreme Court judge following unfair domestic proceedings); *Kim v. Russia*, ECtHR, Judgment of 17 July 2014 (incumbent on state to provide identity documentation to stateless applicant and procedures for ensuring non-repetition of his unlawful detention).

that his Article 8 rights were violated through his forcible renunciation of nationality that Mr. Huseynov not be required to undertake any further step, such as a “request” to have his nationality restored.¹¹⁷

97. *Reimbursement of fabricated tax payment.* The Court is requested, in the alternative to an award of pecuniary damages (see para. 92), to indicate that Azerbaijani authorities must reimburse the full sum of the funds that were paid by a third party in order to secure Mr. Huseynov’s release from the Swiss embassy in Baku.¹¹⁸ Such funds were illegitimately and unjustly procured through the cultivation and exploitation of an atmosphere of coercion, leaving Mr. Huseynov indebted to his rescuers for a tax penalty he never owed. The payment was extracted alongside his denationalization and is an inextricable facet of the punishment and humiliation he has endured, in violation of his Article 8 and 10 rights, and in violation of Article 18.¹¹⁹ The Government used the payment against Mr. Huseynov in these very proceedings.¹²⁰ These actions form part of a pattern of abuse that must be checked, as this Court has forcefully stated, and cannot be allowed to enrich Mr. Huseynov’s tormentors in defiance of the Convention framework.¹²¹
98. *Executive discretion over nationality determinations.* The Court is also requested to indicate general measures to address the arbitrary nature of nationality decisions in Azerbaijan, stemming from the unchecked Presidential power to settle questions of nationality (see paras. 8, 45).



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¹¹⁷ Execution of judgments must be compatible with the substantive conclusions found in the Court’s judgment. *See, e.g., Scozzari and Giunta v. Italy*, ECtHR, Judgment of 13 July 2000, at para. 249.

¹¹⁸ *See* Application, Annex 7, at para. 50; Annex 6: Personal Electronic Account Statement for IRFS, linked to the Azerbaijan Ministry of Finance online database, retrieved 21 November 2018.

¹¹⁹ *Cf.* Cases directing the restitution of property, *e.g., Bozcaada Kimisis Teodoku Rum Ortodoks Kilisesi Vakfi v. Turkey*, ECtHR, Judgment of 3 March 2009.

¹²⁰ *See* Government’s Observations, at para. 14-15, 54.

¹²¹ *See Aliyev v. Azerbaijan*, ECtHR, Judgment of 20 September 2018, at paras. 223-225.

LIST OF SUPPORTING DOCUMENTS

- Annex 1 Open Society Justice Initiative, Letter to ECtHR, dated 6 November 2018, *re*: Legal Representation pursuant to Rule 36(4) in *Huseynov v. Azerbaijan* (App. No. 01/16)
- Annex 2 ECtHR, Fifth Section, *Imranova and others v. Azerbaijan*, Subject Matter of the Cases and Questions to the Parties
- Annex 3 Swiss Secretary of State for Migration, Decision regarding statelessness of Emin Huseynov, 13 July 2017
- Annex 4 Copy of Swiss travel document of Emin Huseynov, issued 15 December 2015
- Annex 5 Salary certification letter from Tatyana Krychkina, Financial Manager of IRFS, dated 20 November 2018
- Annex 6 Personal Electronic Account Statement for IRFS, linked to the Azerbaijan Ministry of Finance online database, retrieved 21 November 2018