IN THE EUROPEAN COURT OF HUMAN RIGHTS
FIFTH SECTION

Application no. 1/16
Emin Huseynov
Against Azerbaijan

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

Under Article 36 of the European Convention on Human Rights
and
Rule 44 of the Rules of Court

I. Introduction

1. This is the 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 (**"the Special Rapporteurs"**) in connection with the application no. 1/16 (**"the Application"**) made by Mr. Huseynov (**"the Applicant"**). The intervention is submitted in accordance with Article 36 of the European Convention on Human Rights (**"the Convention"**) and Rule 44 of the Rules of Court. The Special Rapporteurs were granted leave to intervene by the President of the Section by way of letter dated 31 August 2018.

II. Background

The Special Rapporteurs

2. The Special Rapporteurs are independent experts appointed by the Human Rights Council of the United Nations **("**UN**").** The Special Procedures system is a central element of the UN human rights machinery and covers all human rights: civil, cultural, economic, political, and social. As of 1 August 2018, there are 44 thematic and 12 country mandates.

3. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression ("the Special Rapporteur on freedom of expression") is mandated by Human Rights Council resolution 7/36 to, *inter alia*, gather all relevant information, wherever it may occur, relating to violations of the right to freedom of opinion and expression, discrimination against, threats or use of violence, harassment, persecution or intimidation directed at persons seeking to exercise or to promote the exercise of the right

to freedom of opinion and expression, including, as a matter of high priority, against journalists or other professionals in the field of information.

4. The Special Rapporteur's mandate rests upon Article 19 of the International Covenant on Civil and Political Rights ("the ICCPR"), which is similar to Article 10 of the Convention, as illuminated further below. In discharging his mandate, the Special Rapporteur has collected and continues to collect evidence, and to report, on the extent, nature and severity of the violations of, in particular, journalists' right to freedom of expression in different countries, as well as the means by which these violations are effected by state actors.

5. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance ("the Special Rapporteur on racism") examines, monitors, advises and publicly reports on contemporary forms of racism, racial discrimination, xenophobia and related intolerance worldwide. UN Human Rights Council resolution 7/34 mandates the Special Rapporteur to gather information on all issues and alleged violations falling within the mandate, to investigate them, and to make concrete recommendations "to be implemented at the national, regional and international levels, with a view to preventing and eliminating all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance."[1] In discharging her mandate, the Special Rapporteur relies on equality and non-discrimination standards enshrined in international human rights law as well as in relevant regional and national instruments. Of special relevance to this submission, her 2018 report to the UN Human Rights Council highlighted, *inter alia*, the heightened vulnerability of stateless persons to racial, ethnic and xenophobic discrimination and intolerance.[2]

6. This intervention is submitted to the European Court of Human Rights by the Special Rapporteurs on a voluntary basis without prejudice to, and should not be considered as a waiver, express or implied, of the privileges and immunities of the United Nations, its officials, and experts on missions, including the individuals listed above, pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations. In accordance with the Special Rapporteurs' independence, they will neither seek nor be granted authorisation to make this submission, nor for the positions and views expressed therein from the United Nations, including the Human Rights Council and the Office of the High Commissioner for Human Rights, or any of the officials associated with those bodies.

[1] A/HRC/RES/7/34: http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_34.pdf
[2] A/HRC/38/52: http://undocs.org/A/HRC/38/52

III. Issues addressed in the Intervention

A. The pattern of abuse against journalists and human rights defenders in Azerbaijan

7. There is clear evidence of the pattern of authorities abusing arrest and detention powers in Azerbaijan against journalists and human rights defenders. This section refers to recent interventions of the Special Rapporteur on freedom of expression.

8. The Special Rapporteur and other UN experts have regularly communicated to the Government of Azerbaijan ("The Government") their concerns about the situation of journalists and human rights defenders. For example, on 5 March 2018, the Special Rapporteur (in conjunction with other UN experts whose mandates concern arbitrary detention, the situation of human rights defenders, and enforced disappearances) issued an urgent appeal on the alleged arrest, arbitrary detention, torture and fabricated charges against Mr. Tahir Teymurov for reasons that appeared to be linked to the human rights work of his step-brother, Mr. Sahib Teymurov.[3] On 29 November 2017, the Special Rapporteur (in conjunction with other UN experts whose mandates concern freedom of association and assembly, and the situation of human rights defenders) sent an urgent appeal concerning the alleged freezing of the bank account of Ms. Khadija Ismayilova, an investigative journalist and human rights defender.[4] The alleged freezing of Ismayilova's bank account was the latest action taken against the award-winning journalist, who has been restricted from traveling abroad and has been previously arrested.[5] Her arrest and conviction has been raised in several communications from special rapporteurs, including on 8 November 2017 (ref. AZE 4/2017), 29 May 2015 (ref. AZE 2/2015) and 1 February 2013 (ref. AZE 2/2013). On 11 May 2017, the Special Rapporteur (in conjunction with UN experts whose mandates concern arbitrary detention, torture and the situation of human rights defenders) sent an allegation letter regarding the detention and conviction to two years of imprisonment of Mr. Mehman Huseynov, Applicant's brother and an Azerbaijani photojournalist and blogger, on charges of defamation against the police after having denounced being subjected to torture.[6] Mr. Mehman Huseynov had been subject of an earlier communication by Special Procedures to Azerbaijan sent on 26 June 2012 (ref. AZE 4/2012), concerning allegations of detention and prosecution under charges of "hooliganism" in relation to his participation in campaigns calling for the respect of human rights in Azerbaijan and for his activities documenting human rights violations.

9. On 20 August 2015, the Special Rapporteur (in conjunction with UN experts whose mandates concern arbitrary detention, the independence of judges and lawyers, freedom of association and assembly, health, and the situation of human rights defenders) condemned the imprisonment of Azerbaijani human rights defenders Leyla and Arif Yunus as "manifestly politically motivated and representative of the continuing repression of

[3] https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23663
[4] https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23493
[5] https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23493
[6] https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23113

independent civil society in Azerbaijan."[7] Referring to a number of other cases[8], the experts reiterated their call to "reverse the trend of repression, criminalization and prosecution of human rights work in the country" as "[s]ilencing these prominent voices is having a devastating impact on the Azerbaijani civil society as a whole." The Special Rapporteur's communications over the years to the Azerbaijani Government are publicly available online, together with the Government responses.[9]

10. The Special Rapporteur's predecessor completed a fact-finding visit to Azerbaijan in 2007, during which he met with a variety of state and non-state actors, including journalists. He reported on the government's use of, *inter alia*, violence, defamation laws and malicious prosecutions for other criminal charges (such as drugs and incitement charges) as a means of severely restricting the exercise of the right to freedom of expression by journalists in that country.[10] Since then, as the communications noted above demonstrate, the situation has deteriorated. On 19 August 2014, the Special Rapporteur and other UN experts condemned the growing tendency to prosecute prominent human rights defenders in Azerbaijan stating: "We are appalled by the increasing incidents of surveillance, interrogation, arrest, sentencing on the basis of trumped-up charges, assets-freezing and ban on travel of the activists in Azerbaijan," they said. "The criminalization of rights activists must stop. Those who were unjustifiably detained for defending rights should be immediately freed."[11]

11. The Special Rapporteur has not been alone in raising concerns about Azerbaijan's treatment of journalists, media outlets and human rights defenders, including the use of arbitrary arrest, detention, travel bans and fabricated charges as a means of silencing them.[12] For example:

    a. The OSCE Representative on Freedom of the Media has repeatedly condemned the treatment of journalists in Azerbaijan,[13] including the Government's treatment of Applicant. On 8 August 2014, the Representative concluded that harassment of Applicant and his family is "further proof of a wide-scale deterioration of the

[7] https://freedex.org/2015/08/20/deeply-distressing-un-experts-condemn-latest-prison-sentencing-of-rights-defenders-in-azerbaijan/

[8] Other highly criticised arrests and convictions of journalists include: Rasul Jafarov, free speech advocate, on charges of abuse of power and tax evasion; Seymur Hazi, columnist for Azadliq newspaper, on a charge of hooliganism; Omar Mamedov and Abdul Abilov, bloggers, on charges of illegal storage and sale of drugs; Parviz Hashimli, journalist, on charges of smuggling and illegal storage and sale of firearms; Nijat Aliyev, editor-in-chief of azadxeber.org news website, on various charges, including drug possession and incitement of hatred; Sardar Alibeyli, editor-in-chief of P.S. Nota newspaper, on charges of hooliganism; and Rashad Ramazanov, an independent blogger on charges of illegal storage and sale of drugs, and others.

[9] https://spcommreports.ohchr.org/TmSearch/Results

[10] http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/7/14/Add.3

[11] http://www.ohchr.org/en/newsevents/pages/displaynews.aspx?NewsID=14952&LangID=E

[12] The intervention of the Council of Europe Commissioner for Human Rights in the case of *Mammadov v Azerbaijan*: judgment of 22 May 2014 provides a summary of the evidence the Commissioner has collected and considered on the systematic practice of unjustified or selective criminal prosecutions of journalists and others who express critical opinions.

[13] See https://www.osce.org/fom/122481; https://www.osce.org/fom/366346; https://www.osce.org/fom/363206; https://www.osce.org/fom/303016; http://www.osce.org/fom/213301; http://www.osce.org/fom/179391; http://www.osce.org/fom/176611; http://www.osce.org/fom/204186; http://www.osce.org/fom/130076; http://www.osce.org/fom/126534; http://www.osce.org/fom/122389.

media freedom situation in Azerbaijan that includes targeted persecution of independent journalists, freedom of expression advocates and bloggers."[14]

b. During this year's Universal Periodic Review of Azerbaijan, several states raised concerns about Azerbaijan's record in relation to freedom of expression and the treatment of journalists and the media.[15]

c. The United Nations Special Rapporteur on the situation of human rights defenders, in a report detailing his findings from a 2016 country visit to Azerbaijan, noted that Azerbaijani "authorities have targeted defenders, journalists, lawyers and grassroots activists through the use of politically motivated criminal prosecutions, arrests, imprisonment and travel bans."[16]

d. The Report of the International Bar Association's Human Rights Institute, entitled *Azerbaijan: Freedom of Expression on Trial*, documents concerns about the widespread prosecution of journalists on fabricated charges.[17]

12. Journalists and human rights defenders in Azerbaijan are also regularly the victims of violence, which is committed with impunity.[18]

13. The Council of Europe has responded to concerns about the widespread practice in Azerbaijan of arbitrary misapplication of the law by launching an inquiry into its implementation of the Convention pursuant to Article 52. In announcing the inquiry, the Secretary General stated: "Judgments from the European Court of Human Rights have highlighted an arbitrary application of the law in Azerbaijan, notably in order to silence critical voices and limit freedom of speech. . . . In these worrying circumstances, and given the lack of positive steps to address the situation, I will send representatives to Azerbaijan to seek explanations from the authorities concerning the country's implementation of the Human Rights Convention. I am particularly alarmed when individuals are deprived of their liberty due to an abuse of power by a country's legal authorities, as the European Court of Human Rights found in the case of Ilgar Mammadov. This is a very serious violation of the Convention"[19] In September 2017, the Committee of Ministers decided to trigger legal infringement proceedings against Azerbaijan for failure to implement the Court's decisions.[20]

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[14] https://www.osce.org/fom/122481.

[15] http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/14 See, for example, paragraphs 34, 41, 50, 82, 102, 141.28, 141.33, 141.41, 141.53, 141.55 & 141.86.

[16] https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session34/Documents/A_HRC_34_52_Add_3_EN.docx . See paragraph 32.

[17] Azerbaijan: Freedom of Expression on Trial April 2014 Report of the International Bar Association's Human Rights Institute (IBAHRI) Supported by the British Embassy Baku and the Open Society Foundations Central Eurasia Project, pages 26-31: https://www.ibanet.org/Document/Default.aspx?DocumentUid=D168B0B4-C377-4EC7-A0B9-D029EF09A39C.

[18] See, for example, ibid. and http://www.osce.org/fom/176611.

[19] https://www.coe.int/enf/web/portal/news-2015/-/asset_publisher/9k8wkRrYhB8C/content/secretary-general-launches-inquiry-into-respect-for-human-rights-in-azerbaijan?desktop=true.

[20] https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680749f3c.

B. Article 10 Protections

14. Article 10(1) of the Convention guarantees the right to freedom of expression, subject to the qualifications laid down in Article 10(2).[21] Rooted in Article 19 of the Universal Declaration of Human Rights, the right to freedom of opinion and expression has been adopted by international regional treaties, and is widely understood to be a fundamental right and a keystone of modern democratic society.[22]

15. The Court has continuously stressed the importance of freedom of expression[23] and stated that freedom of expression "constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and for each individual's self-fulfilment."[24]

16. At the core of the right is the recognition that, as this Court has noted, "freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders;"[25] the press is the "purveyor of information and public watchdog" (§58); and that the press's "vital role of 'public watchdog' is to impart, in a manner consistent with its obligations and responsibilities, "information and ideas on all matters of public interest".[26] Critically, the law has protected the press not merely so that specific journalists may conduct their work; it has protected the press in order to guarantee the public's right of access to information in the public interest.[27] The Court has set out these important propositions in a number of its judgments.[28]

17. The Court applies the "most careful scrutiny" to measures taken or sanctions imposed by the State's authorities where they are capable of discouraging participation in the press in debates over matters of legitimate public concern.[29] The margin of appreciation otherwise afforded to member States is "circumscribed by the interest of democratic society in enabling the press to exercise its rightful role of "public watchdog" in imparting information of serious public concern...".[30]

18. The Court has found violations of Article 10 when journalists have been wrongly detained, arrested, or prosecuted.[31] When finding a violation of Article 10, the Court considers both the important role of journalists and the possibility that the action in question could have a

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[21] https://www.echr.coe.int/Documents/Convention_ENG.pdf.
[22] *Steel and Others v. United Kingdom, judgment of* 23 Sept. 1998, no. 24838/94, § 101.
[23] See, e.g., *Lingens v. Austria*: judgment of 8 July 1986; *Thorgeir Thorgeirson v. Iceland*: judgment of 25 June 1992; *Jersild v. Denmark*: judgment of 23 September 1994; *Özgür Gündem v. Turkey*: judgment of 16 March 2000; *Butkevich v. Russia*: judgment of 13 February 2018.
[24] *Lingens v. Austria*: judgment of 8 July 1986.
[25] Application 11798/95: *Castells v Spain* (1992) 14 EHRR 445, at §43; and *Lingens v. Austria*: judgment of 8 July 1986 at §42.
[26] *Gaweda v. Poland*, 14 March. 2002, no. 26229/95, §34.
[27] See the Special Rapporteur's Report to the General Assembly, A/70/361, paragraphs 4 to 7: https://freedex.org/resources/sources-and-whistleblowers/.
[28] See, for example, *The Sunday Times v. The United Kingdom*: judgment of 26 April 1979, , §65; *Handyside v. the United Kingdom:* judgment of 7 December 1976, §49.
[29] *Björk Eidsottir v Iceland*: judgment of 10 July 2012, §69.
[30] *Dalban v. Romania*, judgment of 28 September 1999, §67.
[31] See, e.g., *Lingens v. Austria*: judgment of 8 July 1986; *Thorgeir Thorgeirson v. Iceland*: judgment of 25 June 1992; *Jersild v. Denmark*: judgment of 23 September 1994; *Özgür Gündem v. Turkey*: judgment of 16 March 2000; *Butkevich v. Russia*: judgment of 13 February 2018.

chilling effect on freedom of expression. For example, when determining that the government of Iceland violated Article 10 in *Thorgeir Thorgeirson v. Iceland*, in which a writer was prosecuted and sentenced to a fine or imprisonment for reporting what others in Iceland were saying about police brutality, the Court discussed the "pre-eminent role of the press" and the fear that this type of prosecution would be "capable of discouraging open discussion of matters of public concern".[32] Furthermore, in *Özgür Gündem v. Turkey*, the Court found that the government violated Article 10 by its search-and-arrest operation, where 107 individuals working for a newspaper were arrested, and by prosecuting numerous journalists for charges such as "insulting" Turkey—imposing sentences totalling 147 years of imprisonment and fines reaching TRL 21 billion.[33] More recently in *Butkevich v. Russia*, the Court found that a journalist's prosecution and conviction resulting from his photographing a protest, as well as the pre-trial deprivation of his liberty in a police station, violated Article 10.[34] Again, the Court discussed both the importance of journalists and the fear of a chilling effect on freedom of expression from this kind of government action.[35]

19. The UN has likewise made the protection of journalists and promotion of free and open news media a global priority. Its Human Rights Council, General Assembly, and Security Council have each stressed the importance of protecting a "free, uncensored and unhindered press or other media".[36]

20. While opinion may not be restricted by any measure, the ECHR (similar to the ICCPR) provides that the exercise of the right to freedom of expression "may be subject to such formalities, conditions, restrictions or penalties as [i] are prescribed by law and [(ii)] are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary".[37]

21. Based on his communications to the Government of Azerbaijan and his predecessor's visit to the country, addressing the situation for journalists, the Special Rapporteur is gravely concerned that the Government's deprivation of the citizenship of Mr. Huseynov, fails to meet the standards of restrictions to the freedom of expression, as it is not "prescribed by law" nor necessary and proportionate to achieve a legitimate objective.

C. Deprivation of citizenship is an unlawful restriction to freedom of expression

22. International law provides that States' rights over nationality determinations are not absolute and must be exercised in compliance with relevant provisions of international human rights law.[38] In a recent report to the Human Rights Council (A/HRC/38/52), the Special Rapporteur on racism emphasizes the importance of the right to nationality as a universal human right that is recognized and protected in a wide variety of international

[32] *Thorgeir Thorgeirson v. Iceland*: judgment of 25 June 1992.
[33] *Özgür Gündem v. Turkey*: judgment of 16 March 2000 .
[34] *Butkevich v. Russia*: judgment of 13 February 2018.
[35] *Butkevich v. Russia*: judgment of 13 February 2018.
[36] UN General Assembly, Promotion and Protection of the Right to Freedom of Opinion and Expression, U.N. Doc. A/70/361 ; A/72/290.
[37] ECHR, art. 10.
[38] See A/HRC/13/34, paras. 20 and 57: http://undocs.org/A/HRC/13/34 .

and regional human rights instruments. [39] It entails the right of each individual to acquire, change and retain a nationality. [40] The right to retain a nationality entails a prohibition of the arbitrary deprivation of nationality,[41] a prohibition implicitly or explicitly recognized in numerous international and regional instruments.[42] Indeed, article 15(2) of the Universal Declaration of Human Rights specifically stipulates that "[n]o one shall be arbitrarily deprived of his nationality […]." In this context, various United Nations human rights mechanisms have found that that arbitrary deprivation of nationality violates States' obligations under international human rights law.[43] Similarly, the European Court of Human Rights has recognized that arbitrary denial of citizenship may violate the right to respect for private life under Article 8 of the European Convention of Human Rights.[44]

23. The UN Secretary General has made several findings concerning the consequences of statelessness.[45] Given the severity of the consequences where statelessness results, the "consequences of any withdrawal of nationality must be carefully weighed against the gravity of the behaviour or offence for which the withdrawal of nationality is prescribed."[46] International standards prohibit "the arbitrary deprivation of nationality," including depriving nationality with a discriminatory purpose.[47] Under international law, "loss or deprivation of nationality that does not serve a legitimate aim, or is not proportionate, is arbitrary and therefore prohibited."[48] It "may be difficult to justify loss or deprivation resulting in statelessness in terms of proportionality."[49]

24. Deprivation of nationality negatively and significantly affects enjoyment of several human rights, including the rights to freedom of expression and opinion, and privacy.[50]

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[39] The right to nationality is enshrined, inter alia, in the Universal Declaration of Human Rights, art. 15; the International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (d) (iii); the International Covenant on Civil and Political Rights, art. 24 (3); the Convention on the Elimination of All Forms of Discrimination against Women, art. 9; the Convention on the Rights of the Child, arts. 7–8; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 29; the Convention on the Rights of Persons with Disabilities, art. 18; the Convention on the Nationality of Married Women, arts. 1–3; the United Nations Declaration on the Rights of Indigenous Peoples, art. 6; and the European Convention on Nationality. In addition, the issue of nationality is regulated in the Convention on the Reduction of Statelessness, the Convention relating to the Status of Stateless Persons, and the Convention relating to the Status of Refugees.

[40] See A/HRC/13/34, para. 21. http://undocs.org/A/HRC/13/34

[41]For an analysis of the term "arbitrary deprivation of nationality", see A/HRC/13/34, paras. 23–27. http://undocs.org/A/HRC/13/34. See also A/HRC/25/28, para. 22 http://undocs.org/A/HRC/25/28

[42]See A/HRC/13/34, para. 26 http://undocs.org/A/HRC/13/34; and Human Rights Council resolution 32/5.

[43] A/HRC/RES/32/5;

[44] See *Karassev and family v. Finland*, judgment of 12 January 1999 ("although right to a citizenship is not as such guaranteed by the Convention or its Protocols, the Court does not exclude that an arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual"): http://www.refworld.org/docid/45d076a92.html ; *Hoti v. Croatia*, judgment of 26 April 2018 : http://www.refworld.org/cases,ECHR,5ae1b4e94.html

[45] A/HRC/25/28: http://undocs.org/en/A/HRC/25/28

[46] *Ibid.*

[47] *Ibid.*

[48] *Ibid.*

[49] *Ibid.*

[50] A detailed report of the impact of deprivation of nationality on the enjoyment of human rights is contained in A/HRC/19/43: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/174/43/PDF/G1117443.pdf?OpenElement

Statelessness[51] greatly restricts the right to freedom of movement, which directly limits a stateless person's ability to engage in society and utilize her freedom of expression.[52]

25. Many States have improperly used deprivation of citizenship as a punishment for citizens' lawful exercise of their freedom of expression. For example, since 2012, the government of Bahrain has revoked the citizenship of at least 738 nationals—232 in 2018 alone. This includes many "human rights defenders, political activists, journalists, and religious scholars."[53] In 2015, human rights advocate Sayed Ahmed Alwadaei was stripped of his citizenship for having allegedly "'defamed the image of the regime, incited against the regime and spread false news to hinder the rules of the constitution,' and 'defamed brotherly countries,' among other allegations.'"[54] In 2017, the Vietnamese Government stripped blogger Pham Minh Hoang's citizenship. Hoang had been previously arrested in 2010 for "attempting to overthrow the government," citing 33 articles he had written.[55] And, in 2004, the Azerbaijani Government forced Alikram Hummatov, a former political prisoner, to renounce his citizenship.[56]

D. The effects of statelessness on vulnerability to racial and xenophobic discrimination

26. The Special Rapporteur on Racism wishes to draw the Court's attention to the heightened vulnerability to racial, ethnic, and xenophobic discrimination and intolerance that individuals who are rendered stateless by citizenship stripping face.

27. International human rights law affirms that all human beings are entitled to fundamental human rights on account of their inherent dignity. In reality, however, the lived experience of many is that citizenship, nationality and immigration status effectively determine their ability to fully enjoy all human rights on an equal and non-discriminatory basis. Across the globe, States require passports, identification cards and other forms of proof of citizenship in order for residents to enjoy access to health care, education, financial services and to maintain formal employment. In short, citizenship, nationality and immigration status often remain preconditions for the full enjoyment of human rights.

28. The dire circumstances confronting stateless persons make clear the vital role that citizenship and nationality play in determining access to fundamental human rights. Without documentation, stateless persons face grave and often insurmountable barriers in access to employment, education, health care, birth registration, property ownership, freedom of movement and political participation.[57] Stateless persons also face greater risks

[51] The Convention relating to the Status of Stateless Persons, Article 1 establishes the legal definition for a stateless person as a person "who is not considered as a national by any State under the operation of its law." : http://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf

[52] See http://www.unhcr.org/en-us/protection/statelessness/4e8338d49/shadows-towards-ensuring-rights-stateless-persons-persons-risk-statelessness.html?query=freedom%20of%20expression

[53] https://www.hrw.org/news/2018/07/27/bahrain-hundreds-stripped-citizenship

[54] https://www.hrw.org/news/2018/07/27/bahrain-hundreds-stripped-citizenship

[55] https://cpj.org/2017/06/vietnamese-blogger-stripped-of-citizenship-deporte.php

[56] *Hummatov v. Azerbaijan*, 9852/03 and 13413/04, Council of Europe: European Court of Human Rights, 29 November 2007: http://www.refworld.org/cases,ECHR,474fcc072.html

[57] See UNHCR, "This is our home: stateless minorities and their search for citizenship", November 2017. Available at www.refworld.org/docid/59e4a6534.html

of human trafficking victimhood and other forms of exploitation.[58] Furthermore, individuals subjected to statelessness live lives of constant fear of arrest, detention and even physical expulsion because they lack official documents.

29. Furthermore, individuals rendered stateless and expelled from their country often face an oppressive environment of discrimination, xenophobia and intolerance on the basis of their perceived "foreignness" in their new country of residence. In European countries today, all non-citizens—including refugees, asylum seekers and stateless persons—encounter heightened vulnerability to various forms of racist and xenophobic harassment, violent attacks, and hate crimes. The rise of nationalist populism and extremism across Europe has contributed to the spread of racist and xenophobic rhetoric in the mainstream political discourse. Across the region, populist parties, media outlets and even public officials have fostered a climate of hostility and intolerance by spreading prejudice and negative stereotypes targeting non-citizens and those considered to be "outsiders". In furtherance of their political agenda, populist movements in particular have fuelled xenophobic sentiment and stigmatization of non-citizens. The Special Rapporteur has observed that such harmful narratives result in widespread social exclusion and marginalisation of non-citizens, and increasingly translate into violence towards certain groups, including stateless persons.

30. The Special Rapporteurs urge the Court to consider this broader human rights context as it applies to stateless persons, in the Court's adjudication of the matter before it.

[58] UNHCR and Open Society Justice Initiative, "Citizens of nowhere: solutions for the stateless in the U.S.", December 2012, p. 10. Available at www.refworld.org/docid/50c620f62.html.