

IN THE EUROPEAN COURT OF HUMAN RIGHTS

BETWEEN:

IVAN SZABOLCS MÁNDLI AND OTHERS

Applicants

-and-

HUNGARY

Respondent

(1) MEDIA LEGAL DEFENCE INITIATIVE

(2) HELSINKI FOUNDATION FOR HUMAN RIGHTS

(3) OSSIGENO PER L'INFORMAZIONE

(4) MASS MEDIA DEFENCE CENTRE

(5) MEDIA DEVELOPMENT CENTRE

Third Party Interveners

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JOINT WRITTEN COMMENTS OF THE  
THIRD PARTY INTERVENERS

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**Introduction**

1. The Third Party Interveners (**'the Interveners'**) submit these written comments pursuant to leave granted by the President of the Fourth Section under Rule 44 §3 of the Rules of the Court.<sup>1</sup>
2. This Application raises issues of considerable public importance, engaging the right to freedom of expression and information protected by Article 10 of the Convention in the context of reporting upon, and facilitating the free distribution of information and discussion relating to, the workings of elected parliamentarians in a democratic society. It engages the interests of a large number of journalists and media outlets that provide reports of parliamentary proceedings, as well as their audiences and readership throughout the Council of Europe member states.

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<sup>1</sup> As set out in the letter dated 24 July 2017 from the Section Registrar, Marialena Tsirli.

3. *Summary of submissions.* By this intervention, the Interveners draw upon their expertise as organizations working with international networks of media professionals to make the following three submissions to the Court:
  - i. The Court must take account of, and give sufficient weight to, the important democratic principle of allowing people to be informed about and to discuss freely the activities of the legislature;
  - ii. The factors that should be taken into account when assessing whether restrictions on the media's access to or ability to report first-hand from parliament violates the right to freedom of expression; and
  - iii. The right of parliamentarians to respect for their private life in parliament is limited, in particular with respect to the protection of their own images.

**Submission I: The Court must take account of, and give sufficient weight to, the important democratic principle of allowing people to be informed about and to discuss freely the activities of the legislature**

4. The Interveners submit that, in a case such as the present where consideration is given to restrictions placed upon the activities of journalists in providing coverage of Parliament, it is necessary, as this Court has noted in *Otegi Mondragon v Spain*,<sup>2</sup> to take into account the particular importance of free expression in the area of political speech.<sup>3</sup> It follows that the importance of free expression in this area weighs heavy in the balancing exercise which this Court is obliged to undertake as part of its assessment of the proportionality of any restriction imposed by a Council of Europe member state in this context.
5. In *Surek v Turkey*, the Court noted that “there is little scope under Article 10 (2) of the Convention for restrictions on political speech or on debate on matters of public interest.” In *Eon v France*, in recognising the limited scope for restrictions on political matters, the Court noted that “[a politician] inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance.”<sup>4</sup>
6. The reason why freedom of expression in relation to political matters is so important is well established by this Court: it is through free access to information, reported by the

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<sup>2</sup> European Court of Human Rights, *Otegi Mondragon v Spain*, Application No. 2034/07 (2011), [50].

<sup>3</sup> This Court has stated that “the promotion of free political debate is a very important feature of a democratic society. It attaches the highest importance to the freedom of expression in the context of political debate and considers that very strong reasons are required to justify restrictions on political speech”: European Court of Human Rights, *Feldek v Slovakia*, Application No. 29032/95 (2001), [83].

<sup>4</sup> European Court of Human Rights, *Eon v France*, Application No. 26118/10 (2013), [59]; See also: European Court of Human Rights, *Lingens v Austria* [1986] ECHR 7; (1986) 8 EHRR 407, [41].

media, that citizens in a democratic society come to be informed about matters of public interest and are empowered to be full participants in a democratic society. As was observed in *Janowski v Poland*, free expression in this regard 'constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment.'<sup>5</sup>

7. Ensuring that the press is able to report freely on Parliamentary proceedings and the actions of elected representatives in Parliament also means that the public can be fully informed on the activities undertaken by their representatives and the content of important debates. As this Court held in *Castells v Spain*, the '[f]reedom 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 ... it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.'<sup>6</sup>
8. The approach of this Court, which recognizes that free expression is particularly important in the context of the dissemination of information relevant to political matters, reflects the position at international law generally. Article 19 of the International Covenant on Civil and Political Rights ('the ICCPR') is in similar terms to Article 10 of the Convention.<sup>7</sup>
9. The United Nations Human Rights Committee, considering the scope of Article 19 of the ICCPR, observed in its General Comment 34 that '[t]he principle of proportionality must also take account of the form of expression at issue ... For example, the value placed by the Covenant upon uninhibited expression is particularly high in circumstances of public debate in a democratic society concerning figures in the public and political domain.'<sup>8</sup>
10. International legal opinion has repeatedly reflected the foundational importance of free expression and freedom of the press for proper scrutiny of government and the functioning of a democratic society. The Court of Justice of the European Union observed in the case of *Criminal Proceedings Against Patricello* that freedom of expression is 'an

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<sup>5</sup> European Court of Human Rights, *Janowski v Poland*, Application No. 25716/94 (1999), [30]. See also European Court of Human Rights, *Lingens v Austria* [1986] ECHR 7; (1986) 8 EHRR 407, [41].

<sup>6</sup> European Court of Human Rights, *Castells v Spain*, [1992] ECHR 48; (1992) 14 EHRR 445, [43].

<sup>7</sup> Article 19 of the *International Covenant on Civil and Political Rights* ("ICCPR") provides as follows, "1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals."

<sup>8</sup> UN Human Rights Committee, *General Comment No. 34, Article 19: Freedoms of Opinion and Expression*, UN Doc. CCPR/C/GC/34 (2011), [34]. See also UN Human Rights Committee, *Aduayom, Diasso and Dobou v Togo*, UN Doc. CCPR/C/57/D/422-4/1990 (1994), [7.4]; and UN Human Rights Committee, *Bodrozic v Serbia and Montenegro*, UN Doc. CCPR/C/85/1180/2003 (2005), [7.2].

*essential foundation of a pluralist, democratic society reflecting the values on which the Union ... is based.*<sup>9</sup>

11. Other regional human rights mechanisms have expressed similar views. The African Commission on Human and Peoples' Rights, for example, observing in the case of *Amnesty International v Sudan* that the right of freedom of expression is essential to individual development, political consciousness, and participation in the public affairs of a country,<sup>10</sup> and the Inter-American Court, in the Advisory Opinion concerning *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, noted that:

'[f]reedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion ... It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.'<sup>11</sup>

12. The important role of freedom of expression as facilitating political debate and participation is explicitly protected in Article 25 of the ICCPR, which provides that every citizen shall have the right and opportunity:

'(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;' and

'(c) To have access, on general terms of equality, to public service in his country.'

13. The Human Rights Committee, in its General Comment 25, has declared that:

'[i]n order to ensure the full enjoyment of rights protected by Article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.'<sup>12</sup>

14. Accordingly, the consistent position of this Court and at international law is clear. Any restriction imposed upon the exercise of free expression regarding Parliamentary matters, including a practical restriction which restricts or prohibits access to certain Parliamentary

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<sup>9</sup> European Court of Justice (Grand Chamber), *Criminal Proceedings Against Patricello (Case C-163/10)*, ECLI:EU:C:2011:543 (2012), [31].

<sup>10</sup> African Commission on Human and Peoples' Rights, *Amnesty International and Ors v Sudan*, (2000) AHRLR 297, [54].

<sup>11</sup> Inter-American Court of Human Rights, *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85, (Ser. A) No 5 (1985), [70].

<sup>12</sup> UN Human Rights Committee, *General Comment 25*, UN Doc. CCPR/C/21/Rev.1/Add.7 (1996), [25].

precincts, is subject to review on the grounds that it inhibits the right to freedom of expression. But not only that. Given the public interest in the subject matter of those exercising free expression relating to Parliamentary matters, and how integral free exchange of information with respect to that political subject matter is for public participation in democratic politics, any restriction upon free expression in this context will require a compelling justification, since the right of free expression will bear a very significant weight in any assessment of the proportionality of a restriction.

**Submission II: The Court must take into account the following factors when assessing whether restrictions on the media's access to or ability to report first-hand from parliament violates the right to freedom of expression**

15. Proceeding from the starting point, therefore, that the proportionality assessment of any restriction on the right of freedom of expression will need to take into account and give sufficient weight to the particular importance of that right in the context of the exchange of political information, the Interveners submit that it is important for this Court to bear in mind a series of additional factors relevant to cases where journalists are prevented or restricted from reporting from parliamentary buildings, including through removal.
16. Firstly, such measures must be subject to strict scrutiny as not only do they interfere with the media's ability to disseminate information and ideas of public importance, they also significantly hinder the media's ability to gather information relevant to the political affairs of a country.<sup>13</sup> This Court addressed this factor in *Selmani and Ors v the Former Yugoslav Republic of Macedonia*, where it drew a parallel between the removal of journalists from public demonstrations and the removal of journalists from a parliamentary gallery.<sup>14</sup> The Court noted that the removal of journalists in both contexts should be subject to strict scrutiny, with particular scrutiny being given to the latter context where journalists were exercising their right to impart information '*about the behaviour of elected representatives in Parliament*'.<sup>15</sup> The importance of this principle has been recognised by the Parliamentary Assembly of the Council of Europe in Resolution 1636/2008, which set out a number of indicators for how the media should function in a democratic society, including that '*government, parliament and the courts must be open to the media in a fair and equal way*'.<sup>16</sup>
17. Measures restricting or preventing journalists from reporting from parliament should also be subject to strict scrutiny because they interfere with one of the primary means by which the public receive information on what happens in parliament. This consideration was recently addressed by the Supreme Court of Appeal of South Africa in *Primedia*

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<sup>13</sup> European Court of Human Rights, *Társaság a Szabadságjogokért v Hungary*, Application No. 37374/05 (2009), [27].

<sup>14</sup> European Court of Human Rights, *Selmani and Ors v the Former Yugoslav Republic of Macedonia*, Application No. 67259/14 (2017), [75].

<sup>15</sup> *Id.*

<sup>16</sup> Parliamentary Assembly of the Council of Europe, *Indicators for Media in a Democracy*, Resolution 1636/2008, 36<sup>th</sup> Sitting (2008), [8.24].

*Broadcasting v Speaker of the National Assembly*, a rare example of a national court considering the media's right to gather information on the activities of politicians in parliament and report on them from the precincts of parliament. More specifically, the case concerned a constitutional challenge to the rules and policies governing the broadcasting of the proceedings of the South African Parliament. In its judgment, the Supreme Court of Appeal noted that;

'[t]he right to vote held by all adult citizens in the country can be exercised meaningfully only if voters know what their representatives do and say in Parliament. And since the vast majority of people are not actually in Parliament, they must rely on public records and broadcasts.'<sup>17</sup>

18. Secondly, the Court must take into account the media's right to report on *all* activities conducted by members of parliament, and not only those that have been authorised by the institution itself. This has been alluded to by this Court, albeit in a different context, in *Karácsony and Szél v Hungary*, where it was stated that;

'[i]n modern societies all forms of expression at the parliamentary level need to be considered in the light of potential media coverage and public access to differing viewpoints. In the determination of the need to protect speech in Parliament, it must be borne in mind that not only authorised speech, which is expressed in the deliberation process, constitutes communication contributing to the public debate of eminently political issues in society. In the Court's view, other communicative acts in Parliament (including votes, walk-outs and other informal expressions of agreement and disagreement) are also constitutive elements of the broader social communication originating from Parliament.'<sup>18</sup>

19. Thirdly, measures that exclude journalists from accessing parliamentary buildings to carry out their journalistic activity should be "prescribed by law", meaning that such measures require a legal framework that ensures both tight control of their scope and

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<sup>17</sup> South African Supreme Court of Appeal, *Primedia Broadcasting v Speaker of the National Assembly*, [2016] ZASCA 142, [29]. The Supreme Court of Appeal of South Africa took into account the dissenting judgment of Cory J in the Canadian Supreme Court case of *New Brunswick Broadcasting Co. v Nova Scotia*, in which he said that '[i]f Canadians are to have confidence in the actions of their elected representatives, they must have accurate information as to what has transpired in the legislative assemblies and House of Commons. Informed public opinion is the essential bedrock of a successful democratic government. Accurate information can only be obtained by the public through the work of a responsible press which must today include television coverage': Supreme Court of Canada, *New Brunswick Broadcasting Co. v Nova Scotia*, [1993] 1 SCR. 319, per dissent of Cory J.

<sup>18</sup> European Court of Human Rights, *Karácsony and Ors v Hungary*, Application No. 42461/13 and 44357/13, [67]. This position was endorsed by the Supreme Court of Appeal of South Africa in *Primedia Broadcasting v Speaker of the National Assembly*, [2016] ZASCA 142, [45], where it was stated that the fact that parliamentarians may act in an unacceptable manner 'does not mean that the business of Parliament becomes illegitimate.' It then went on to recognise that such activities still fall within the public's right to see, hear and know what happens in the South African Parliament.

effective judicial review to prevent potential abuses.<sup>19</sup> Otherwise, such measures could be adopted in a discriminatory manner to exclude journalists who are overly critical of, or unfavourable to, parliament. This factor was considered by the UN Human Rights Committee in *Gauthier v Canada*.<sup>20</sup> That case concerned an application by a journalist for membership of the Canadian Parliament's Press Gallery, a private body administering the system of accreditation and access to parliamentary precincts in Ottawa. The application in issue in that case had been refused. The Committee took the view that '*citizens, in particular through the media, should have wide access to information and the opportunity to disseminate information and opinions about the activities of elected bodies and their members.*'<sup>21</sup> While the Committee accepted that a restriction on access to parliament could in theory be lawful where such restrictions were necessary to ensure that the functions of elected bodies were not interfered with or obstructed, it concluded that the Canadian system – a scheme of accreditation that did not ensure that there would be no arbitrary exclusion from access to the parliamentary media facilities – constituted a violation of Article 19(2) ICCPR.<sup>22</sup>

20. Fourthly, measures that amount a ban on journalists from reporting from parliament constitute a form of prior-restraint on freedom of expression by restraining journalists' ability to access information concerning parliamentary activities before a story has developed. As a result, such measures should only be used in the most exceptional of circumstances. In *Observer and Guardian v the United Kingdom*, this Court observed that '*the dangers inherent in prior restraints are such that they call for the most careful scrutiny by the Court. This is especially so as far as the press is concerned.*'<sup>23</sup> This matter was recently considered by the administrative court of Berlin in a case that concerned a year-long ban on a journalist from entering the Bundestag.<sup>24</sup> This ban was imposed because the journalist had breached the legislative house's rules by filming in the restrooms of the Reichstag, without prior authorisation, in the course of an investigation into cocaine consumption. In that case, the court repealed the ban on the basis it could not be imposed as a punishment. Instead, it could only be imposed where the individual had breached the house rules and there was a real risk that they would breach the house rules again in a comparable way. The court also highlighted that less severe measure could have been adopted in response to the breach.<sup>25</sup>

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<sup>19</sup> European Court of Human Rights, *Association Ekin v France*, Application No. 39288/98 (2001), [58]. In *RTBF v Belgium*, when finding that the legal framework governing the scope of a ban on broadcasting was not drafted with "sufficient precision", this Court noted the framework's lack of 'any clarification as to the type of restrictions allowed, their purpose, duration and scope or the possibility of reviewing them': European Court of Human Rights, *RTBF v Belgium*, Application No. 50084/06 (2011), [108].

<sup>20</sup> UN Human Rights Committee, *Gauthier v Canada*, UN Doc. CCPR/C/65/D/633/1995 (1999).

<sup>21</sup> *Id.*, [13.4].

<sup>22</sup> *Id.*, [13.6].

<sup>23</sup> European Court of Human Rights, *Observer and Guardian v the United Kingdom*, [1991] ECHR 49, [60].

<sup>24</sup> VG Berlin, Case No. 27 A 344/00, NJW 2002, 1063.

<sup>25</sup> See also European Court of Human Rights, *Urper and Ors v Turkey*, Application No. 14526/07 (2009), [43]-[44].

21. Finally, the fact that a journalist can obtain information about what happens in parliament by other means than being present in the parliamentary building should be given little or no weight when determining whether a measure restricting, preventing or removing that journalist from reporting from parliament was necessary in a democratic society. This is because the right to freedom of expression protects a journalist's right to report first-hand from an area where public interest stories are unfolding.<sup>26</sup> The Interveners note that, in *Selmani*, this Court specifically recognised that a journalist's 'first-hand and direct knowledge based on their personal experience of the events unfolding in' parliament were 'important elements in the exercise of the applicants' journalistic functions, which the public should not have been deprived of.'<sup>27</sup> The Human Rights Committee endorsed this position in *Gauthier v Canada* by rejecting the State party's argument that the unaccredited journalist could 'report on proceedings by relying on broadcasting services, or by observing the proceedings' from the public gallery.<sup>28</sup>
22. Also relevant to this final consideration is the exercise of the right of free expression by the press in conducting interviews directly with Members of Parliament, which serves the interests of the public in disseminating the political views of their representatives in an even more direct manner than the second-hand reporting of the positions of parties and politicians.<sup>29</sup> Indeed providing direct access to the views of representatives allows members of the public to judge for themselves not only the contents of those representatives' statements, but less tangible but no less significant matters such as their demeanour and apparent character.<sup>30</sup> Obstructing the access of the press – and by extension the access of the public – to that type of political reporting is particularly harmful to the education of the public and the dissemination of relevant information on political affairs.

**Submission III: The right of parliamentarians to respect for their private life in parliament is limited, in particular with respect to the protection of their own images**

23. The Interveners note that any system of access of the press to certain areas of a parliamentary precinct creates the "legitimate expectation"<sup>31</sup> that political figures present in those areas (for instance, in the background of an interview) may have their images subject to broadcast notwithstanding that those figures are in parts of the parliament which are not open to the public at large. While the Interveners recognize that the

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<sup>26</sup> European Court of Human Rights, *Gsell v Switzerland*, Application No. 12675/05 (2009), [49].

<sup>27</sup> European Court of Human Rights, *Selmani and Ors v the Former Yugoslav Republic of Macedonia*, Application No. 67259/14 (2017), [84].

<sup>28</sup> UN Human Rights Committee, *Gauthier v Canada*, UN Doc. CCPR/C/65/D/633/1995 (1999), [13.5].

<sup>29</sup> See European Court of Human Rights, *Jersild v Denmark*, [1994] ECHR 33, [35].

<sup>30</sup> See South African Supreme Court of Appeal, *Primedia Broadcasting v Speaker of the National Assembly*, [2016] ZASCA 142, [34]-[37] and [46].

<sup>31</sup> European Court of Human Rights, *Axel Springer AG v Germany*, Application No. 39954/08 (2012), [101]; *Von Hannover v. Germany (No. 2)*, Application No. 40660/08 and 60641/08 (2012), [97].



Convention may provide protection against the unauthorized broadcast of private images in certain circumstances, it is submitted that such protection does not apply to prevent the use of images of public figures engaged in political activity within the precincts of parliament.

24. As this Court observed in *Lingens v Austria*, a person who takes up public office ‘inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance’ than a private individual.<sup>32</sup> With respect specifically to the use of images of politicians, this Court determined, in its inadmissibility decision in *Schüssel v Austria*,<sup>33</sup> that the limits of acceptable use of image rights for critical comment are wider with regard to a politician than with regard to a private individual. In that case, the applicant, the Deputy Prime Minister of Austria, complained about the use of his picture overlapping with the far-right politician Jörg Haider and a critical slogan. This Court held that the Austrian Supreme Court had correctly weighed the politician’s right to privacy against the general interest in an open political debate pursuant to Article 10 of the Convention.
25. Where a political or public figure seeks to rely upon privacy protections offered by Article 8 of the Convention to restrict a publication made in exercise of the right of freedom of expression, among other conditions that figure will need to demonstrate that the use of their image in the context of the publication fails to serve any general interest purpose, or that the purported general interest purpose of the publication is merely a pretext to provide for the publication of the relevant images.
26. The sequence of cases relating to complaints made by Princess Caroline and Prince Ernst von Hannover illustrate this Court’s approach to the issue. In the first (*Von Hannover v Germany*),<sup>34</sup> the bare publication of unauthorized paparazzi photographs was judged a violation of Article 8, since the publications set out no clear matter of public interest to which the images related underlining the fact that Princes Caroline did not exercise any official function on behalf of the state of Monaco. But in subsequent cases (*Von Hannover v Germany (No 2)*<sup>35</sup> and *Von Hannover v Germany (No 3)*),<sup>36</sup> where the relevant press publication demonstrated that the images were used to illustrate articles on matters of general public interest, no such violation was found. In these cases, the Court also took into account the manner in which the photographs were obtained,<sup>37</sup> stressing the

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<sup>32</sup> European Court of Human Rights, *Lingens v Austria*, [1986] ECHR 7 [42].

<sup>33</sup> European Court of Human Rights, *Schüssel v Austria*, Application No. 42409/98 (2002).

<sup>34</sup> European Court of Human Rights, *Von Hannover v Germany*, Application No. 59320/00 (2004).

<sup>35</sup> European Court of Human Rights, *Von Hannover v Germany (No 2)*, Application No. 40660/08 and 60641/08 (2012).

<sup>36</sup> European Court of Human Rights, *Von Hannover v Germany (No 3)*, Application No. 8772/10 (2013).

<sup>37</sup> European Court of Human Rights, *Von Hannover v Germany*, Application No. 59320/00 (2004), [68]; *Von Hannover v Germany (No 2)*, Application No. 40660/08 and 60641/08 (2012), [113]; *Von Hannover v Germany (No 3)*, Application No. 8772/10 (2013), [56].

importance of obtaining consent of the person concerned and considering the more or less strong sense of intrusion that was caused by the photographs.<sup>38</sup>

27. The Grand Chamber, in *Couderc and Hachette Filipacchi Associés v France*, found the lack of consent before the publication of an image of the Prince of Monaco in a private context not to be determinative of whether the Article 8 rights of the Prince outweighed the Article 10 rights of the publisher.<sup>39</sup> Instead, finding a violation of Article 10 in that case, the Court attached weight to the fact that the photographs were not taken without his knowledge, were not obtained through fraudulent or clandestine operations, and were not taken in circumstances showing him in an unfavourable light.<sup>40</sup> Applying this approach, images of politicians that are taken within a parliamentary building would not cause a strong sense of intrusion since politicians will expect to be seen in this forum by various individuals, albeit not by the general public in all parts of the building, and such images would unlikely be taken in circumstances that are unfavourable to the politicians.
28. Where a journalist is exercising their right to freedom of expression under Article 10 through the obtaining of images in parliamentary buildings, and even more so where the images are used in reporting on a matter of general public interest, the Interveners submit that the incidental publication of the images of politicians under these circumstances cannot constitute a violation of Article 8. Given the particularly acute public interest in reporting upon parliamentary matters, the approach taken by the Court in the aforementioned cases must apply *a fortiori* to cases such as the present.

**CAN YEGINSU  
ANTHONY JONES  
4 New Square Chambers**

**London, 4 September 2017**

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<sup>38</sup> See also European Court of Human Rights, *Couderc and Hachette Filipacchi Associés v France*, Application No. 40454/07 (2015), [86].

<sup>39</sup> *Id.*, [135].

<sup>40</sup> *Id.*, [123] and [135].