IN THE INTER-AMERICAN COURT OF HUMAN RIGHTS

Case No. 12.524

JORGE FONTEVECCHIA AND HECTOR D'AMICO

v

ARGENTINA

Written Comments

of

ARTICLE 19, Global Campaign for Freedom Expression

ARTICLE 19
Free Word Centre
60 Farringdon Road
London EC1R 3GA, UK
Tel: +44 207 324 2500
Fax: +44 207 490 0566
Web: www.article19.org

ARTIGO 19
Rua Barão de Itapetininga, 93 - 5o andar
República, São Paulo, Brasil
Brasil
tel. +55 11 3057 0042 / 0071
www.artigo19.org/www.livreacesso.net

ARTICULO 19
Oficina para México y Centroamérica
José Vasconcelos 131 Col. San Miguel Chapultepec
México D.F. C.P.11850
Tel: +52 55 1054 6500 ext. 102

September 2011

Table of Contents

Table of Authorities

International Agreements

Universal Declaration of Human Rights (10 Dec. 1948), U.N.G.A. Res. 217 A (III) (1948)

International Covenant on Civil and Political Rights (New York, 16 Dec. 1966) 999 U.N.T.S. 171 and 1057 U.N.T.S. 407, entered into force 23 Mar. 1976

European Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No 5. 1950

American Convention on Human Rights, O.A.S.Treaty Series No. 36, Nov. 21, 1969

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by General Assembly resolution 45/158 of December 18, 1990

International Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of November 20, 1989, entry into force September 2, 1990

Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data

Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, Strasbourg, ETS 108, 1981

Economic Community for West African States, Supplementary Act A/SA.1/01/10 on Personal Data Protection within ECOWAS, 16 February 2010

Cases

A v B & C [2002] EWCA Civ 337 (11th March, 2002) (UK Court of Appeal)

Ayer Productions Pty. Ltd. and Mcelroy & Mcelroy Film Productions v. Hon. Ignacio M. Capulong and Juan Ponce Enrile, G.R. No. L-82380. 29 April 1988 (Supreme Court of the Philippines)

Biriuk v. Lithuania (Application no. 23373/03), 25 November 2008 (European Court of Human Rights)

Mr. Zeljko Bodrožić v Serbia and Montenegro, Communication No. 1180/2003, U.N. Doc. CCPR/C/85/D/1180/2003 (2006). (UN Human Rights Committee)

Case of Ricardo Canese vs. Paraguay, Judgment of August 31, 2004 (Inter-American Court of Human Rights)

"Cantábrico de Prensa S.A." case, (2002) STC 185/2002, of 14 October 2002 (Constitutional Court of Spain)

Chauvy and Others v France (Application no. 64915/01), 29 June 2004. (European Court of Human Rights)

Decision 60/1994 (XII. 24) AB. (Hungarian Constitutional Court)

Decision of December 15, 1983, 1 BvR 209, 269, 362, 420, 440, 484/83 (German Federal Constitutional Court)

Fressoz and Roire v. France (Application No. 29183-95), 21 January 1999 (European Court of Human Rights)

Karhuvaara and Iltalehti v Finland (Application No. 53678/00), 16 November 2004 (European Court of Human Rights)

Khumalo v Holomisa, 2002 (5) SA 401 (CC) 418 (South African Constitutional Court)

Lingens v Austria (Application no. 9815/82), 8 July 1986. (European Court of Human Rights)

Mosley v The United Kingdom (Application no. 48009/08), 10 May 2011 (European Court of Human Rights)

New York Times Co. v. Sullivan, 376 U.S. 254 (1964). (US Supreme Court)

Niemietz v. Germany, judgment of 16 December 1992, Series A no. 251 B, (European Court of Human Rights)

Mr Richard Oakley, The Sunday Tribune newspaper and the Office of the Houses of the Oireachtas, Case 99168 - 27 July 1999 (Irish Information Commission)

Palamana-Iribarne v Chile, Judgment of November 22, 2005 (Inter-American Court of Human Rights)

Pfeifer v Austria (Application No. 12566/03), 15 November 2007 (European Court of Human Rights)

Plon (Societe) v France (Application No. 58148/00), [2004] ECHR 200 (18 May 2004) (European Court of Human Rights)

The Rachel affaire. Judgment of June 16, 1858, Trib. pr. inst. de la Seine, 1858 D.P. III 62. (French Paris Tribunal)

Case of Claude-Reyes et al. v. Chile Judgment of September 19, 2006 (Inter-American Court of Human Rights)

Sunday Times v United Kingdom, (1979) 2 EHRR 229 (European Court of Human Rights)

Supreme Court Of India vs Subhash Chandra Agarwal & Anr, High Court Of Delhi W.P. (C) 288/2009, 02.09.2009. (High Court of Delhi, India)

Tshabalala-Msimang and Another v Makhanya and Others (18656/07) [2007] ZAGPHC 161 (30 August 2007) (South African High Court)

Union of India v. Association For Democratic Reforms, [2002] 2 LRI 305 (Supreme Court of India)

Von Hannover v Germany, (2005) 40 EHRR 1 (European Court of Human Rights)

WIC Radio Ltd. v. Simpson, [2008] 2 S.C.R. 420, 2008 SCC 40 (Supreme Court of Canada)

Declarations

Council of Europe, Resolution no 1165 (1998) of the Parliamentary Assembly on the right to privacy

Council of Europe, Committee of Ministers Declaration on freedom of political debate in the media, 12 February 2004

OAS General Assembly, AG/RES. 2661 (XLI-O/11) Access to Public Information and Protection of Personal Data, 7 June 2011

United Nations General Assembly, Guidelines for the Regulation of Computerized Personal Data Files, Adopted by General Assembly resolution 45/95 of 14 December 1990

Laws

Constitution of Albania (1998)

Constitution of Republic of Macedonia (1992)

Constitucion Politica de los Estados Unidos Mexicanos. (1977), revised 2010

Constitution of the Republic of Mozambique, (1990)

The Constitution of the Republic of South Africa, Act 108 of 1996

Constitution of Thailand (2007)

Code Civil (France)

Ley Federal de Protección de Datos Personales en Posesión de los Particulares, Diario Oficial de la Federación, 5 de Julio de 2010. (Mexico)

Ley de Protección de los Datos Personales No 25.326 (Argentina)

Personal Data Protection Law 18,331 (Uruguay)

Privacy Act No 18 of 2003 (St Vincent and the Grenadines)

Personal Information and Electronic Documents Act (Canada)

Ley de Protección de Datos Personales, Ley 29733 (Peru)

Law 1682 on Information of a Private Nature (Paraguay)

Other Materials

ARTICLE 19, Defining Defamation: Principles on Freedom of Expression and Protection of Reputation, July 2000

Australian Communications and Media Authority, Investigation Report 2431, 10 February 2011

Banisar, The Right to Information and Privacy: Balancing Rights and Managing Conflicts (World Bank Institute Governance Working Paper, March 2011)

Bygrave, Data Protection Pursuant to the Right of Privacy in Human Rights Treaties, 6 International Journal of Law and Information Technology 247-284 (1998)

Embassy of France to the United States, French Legislation on Privacy, 2007

Guadamuz, Habeas Data: An update on the Latin America data protection constitutional right (2001)

Glasser (ed.), International Libel and Privacy Handbook (Bloomberg, 2006)

Hauch, Protecting Private Facts in France: The Warren & Brandeis Tort is Alive and Well and Flourishing in Paris, 68 Tul. L. Rev. 1219 (May 1994)

Laurent et al, Privacy and Human Rights 2006 (EPIC and Privacy International 2006).

OAS, Inter-American Commission on Human Rights , Report on Terrorism and Human Rights OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr.22 October 2002

Smet, Freedom of Expression and the Right to Reputation: Human Rights in Conflict, 26 Am U. Int'l L. Rev 184, 2010

United Kingdom Equality and Human Rights Commission, Protecting information privacy, Research report 69, 2011

United Kingdom House of Commons Culture, Media and Sport Committee, Press standards, privacy and libel, 9 February 2010

United Nations Human Rights Committee, General Comment No. 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Art. 17), CCPR/C/GC/16, 4 August 1988

United Nations Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, Advanced Unedited Copy, CCPR/C/GC/34, 11 July 2011

United Nations Human Rights Council, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, A/HRC/13/37, 28 December 2009

US Department of State, 2010 Country Reports on Human Rights Practices, April 2011

Vienna Declaration and Programme of Action, U.N. Doc A/CONF.157/23, 12 July 1993

Warren and Brandeis, The Right to Privacy, 4 Harv. L. Review 193 (1890)

I. Introduction

1. The signatory organizations respectfully submit this amicus curiae brief for the benefit of the Court's consideration of the salient issues raised by the above- referenced case.

2. ARTICLE 19, Global Campaign for Free Expression, is an international freedom of expression NGO, based in London with regional and national offices in Brasil, Mexico, Bangladesh, Senegal and Kenya. ARTIGO 19 and ARTICULO 19 are regional offices of the Amici in the Americas. The organization takes its name from Article 19 of the Universal Declaration of Human Rights, ARTICLE 19 works globally to protect and promote the right to freedom of expression, including access to information and the means of communication.

3. The Amici have extensive experience of working to promote freedom of expression and other human rights around the world. It has contributed to the elaboration and advocacy of international law and standards, and have been engaged in litigation in national and international fora involving states' obligations arising from international law on freedom of expression and other human rights. They are well known for their authoritative work in elaborating the implications of the guarantee of freedom of expression in different thematic areas. The Amici regularly contributes amicus briefs to international and national courts, including this Court in the *Marcel Claude Reyes and Others v. Chile*, *Ulloa and Rohrmoser vs Costa Rica* and *Gonzalez and Fries vs. Chile* cases.

4. The Amici submit that right to freedom of expression is a fundamental human right which can only be limited in strict circumstances. At the same time, the human right to privacy is also strongly protected in international law. Thus it is necessary to balance the two rights within the frameworks about their restrictions and exemptions to ensure that both are respected to the greatest available extent.

5. The Amici also submit that public figures, especially senior political leaders, have a lesser expectation of privacy than private persons. However, they do not give up all privacy rights.

6. The Amici submit that it is necessary to balance the rights, by examining the public interest in the information published. The Court should adopt a broad definition of the concept to ensure that it applies in all cases of public concern.

7. Part II of this brief summarizes some of the international and national standards on FOE and privacy and key developments and cases relating to the balance of the two. Since the Court has not previously considered the issues relating to the protection of privacy, the brief provides more detail on the right to assist the Court.

8. The case before the Court involves the conviction and order to pay damages of two journalists, Jorge Fontevecchia and Héctor D'Amico, for the disclosure of personal information about the personal life of Mr. Carlos Saúl Menem, then-President of Argentina. The key issues to be considered are the extent of the right of privacy of a head of state, the importance of the information to the public and the interests of freedom of expression, and the balancing of the rights based on the public interest.

9. The person to contact about this amicus curiae brief is David Banisar, Senior Legal Counsel, ARTICLE 19 at +44 20 7324 2500 or email: banisar@article19.org.

II. Discussion

1. Freedom of Expression is an Essential Foundation of Democracy

a) Defining the Right of FOE

10. The right of freedom of expression is one of the bedrock principles of democracy and human rights. It has been described as "essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment".

11. Under Article 19 of the International Covenant on Civil and Political Rights (ICCPR), freedom of expression is strongly protected. The recently adopted General Comment of the UN Human Rights Committee sets out the authoritative view of Committee on the Article:

> This right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, subject to the provisions in article 19, paragraph 3, and article 20. It includes political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse. It may also include commercial advertising. The scope of paragraph 2 embraces even expression that may be regarded as deeply offensive, although such expression may be restricted in accordance with the provisions of article 19, paragraph 3 and article 20.[1]

12. In addition, the Committee has also stated the importance of the media in the promotion of freedom of expression:

> A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society. The Covenant embraces a right whereby the media may receive information on the basis of which it can carry out its function. 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. The public also has a corresponding right to receive media output.[2]

13. This strong protection of freedom of expression is common across international human rights bodies. Under the European Convention on Human Rights (ECHR), freedom of expression is considered a core human right especial to democracy:

> Freedom of expression 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. Subject to paragraph 2, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic

[1] United Nations Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, Advanced Unedited Copy, CCPR/C/GC/34, 11 July 2011
[2] General Comment No. 34, ibid.

society". As set forth in Article 10, this freedom is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly.[3]

14. In this brief, it is not necessary to repeat to the Court the importance of freedom of expression that the Court has found in its previous decisions under Article 13 of the American Convention on Human Rights. It is sufficient to say that that Court has held that freedom of expression is essential to the functioning of a truly democratic system. This includes "the right of each person to be well informed, thus affecting one of the fundamental basis of a democratic society".[4]

b) Freedom of Expression Can Only Be Restricted in Limited Circumstances

15. Under international law, there is a strict three part test that must be followed before freedom of expression can be restricted. First, the interference must be provided for by law. This requirement will be fulfilled only where the law is accessible and "formulated with sufficient precision to enable the citizen to regulate his conduct."[5] Second, the interference must pursue a legitimate aim. The list of aims in Article 19(3) of the ICCPR is exclusive in the sense that no other aims are considered to be legitimate as grounds for restricting freedom of expression. Third, the restriction must also be necessary to secure one of those aims in the sense that there must be a "pressing social need" for the restriction. Furthermore, the reasons given by the State to justify the restriction must be "relevant and sufficient" and the restriction must be proportionate to the aim pursued.[6]

16. As noted in the Human Rights Committee's General Comment No 34 on Article 19 of the ICCPR, freedom of expression can be limited when intended to protect other rights. The Committee noted that: "The term "rights" includes human rights as recognised in the Covenant and more generally in international human rights law."[7] This would include privacy as noted below is protected in Article 17 of the Convention.

17. The approach has also been adopted by IACHR. The grounds for limited expression must be expressly, previously and strictly limited by law; they should be necessary to ensure "respect for the rights or reputations of others" or "the protection of national security, public order, or public health or morals," and should in no way restrict, beyond what is strictly necessary, the full exercise of freedom of expression or become either direct or indirect means of prior censorship.[8]

2. Privacy is an Essential Human Right

a) Defining Privacy

[3] Plon (Societe) v France (Application No. 58148/00), [2004] ECHR 200 (18 May 2004) (European Court of Human Rights).
[4] Palamana-Iribarne v Chile, Inter-American Court of Human Rights, Judgment of November 22, 2005, paragraphs 79-85.
[5] Sunday Times v United Kingdom (1979) 2 EHRR 229 (European Court of Human Rights).
[6] Lingens v Austria, (Application No 9815/82) Judgment of 8 July 1986. (European Court of Human Rights).
[7] United Nations Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, Advanced Unedited Copy, 11 July 2011.
[8] Palamara, ibid.

18. Privacy is a broad concept encompassing a number of different ideas including autonomy and protection of personality, as well as protecting the ability of individuals to control information about themselves. The debate about its scope has existed for over a century and its understanding varies from county and society.

19. The European Court of Human Rights has described it as a broad concept which includes, inter alia, "the right to establish and develop relationships with other human beings"[9] It has also said that:

> As to respect for the individual's private life, the Court reiterates the fundamental importance of its protection in order to ensure the development of every human being's personality. That protection extends beyond the private family circle to include a social dimension.[10]

20. The German Federal Constitutional Court in a seminal case in 1983 defined it as "the authority for the individual to determine himself, on the basis of the idea of self-determination, when and within what limits information about his private life should be communicated to others" [11]

21. The Supreme Court of Spain described its purpose as:

> [I]n connection with respect for their dignity as persons, to guarantee individuals the privacy of a portion of their lives, thus affording protection from the actions or knowledge of others, be they public authorities or private individuals. The right to privacy empowers its holder to shield this reserved portion ... from dissemination by third parties and from unwanted publicity.[12]

22. A recent report by the UK Equality and Human Rights Commission noted that like freedom of expression, privacy can also be expressed in terms of important social values which it enhances and encourages, including the right of freedom of expression:

> [T]here are also many different but overlapping ways in which privacy can be understood and justified. Privacy can, for example, be seen as a good in itself – as essential to our development as individuals, and bound up with ideas of dignity, liberty, and 'personhood'. In addition to promoting these values, privacy can also be justified on more instrumental grounds. Without a degree of privacy, it can become very difficult for individuals to maintain a distinction between their personal and public lives, or to exercise other important social and political rights, such as rights to freedom of religion, freedom of association, and freedom of expression.[13]

23. The South African Constitutional Court has stated that privacy is interlinked other basic human rights:

> The right to privacy recognises the importance of protecting the sphere of our personal daily lives from the public. In so doing, it highlights the inter-relationship between privacy, liberty and dignity as the key constitutional rights which construct our understanding of what it means to be a human being. All these rights are therefore

[9] Niemietz v. Germany, judgment of 16 December 1992, Series A no. 251 B,
[10] Biriuk v. Lithuania (Application no. 23373/03), 25 November 2008.
[11] Federal Constitutional Court decision of December 15, 1983, 1 BvR 209, 269, 362, 420, 440, 484/83
[12] "Cantábrico de Prensa S.A." case, (2002) STC 185/2002, of 14 October 2002 (Constitutional Court of Spain)
[13] Equality and Human Rights Commission, Protecting information privacy, Research report 69, 2011.

inter-dependent and mutually reinforcing. We value privacy for this reason at least – that the constitutional conception of being a human being asserts and seeks to foster the possibility of human beings choosing how to live their lives within the overall framework of a broader community. The protection of this autonomy, which flows from our recognition of individual human worth, presupposes personal space within which to live this life.[14]

b) Privacy is Well Established in International and National Law

24. The right of privacy is well established in both international and national laws. It is found in treaties, national constitutions, national laws, common law and in decisions by international courts and human rights treaty bodies.

i) Privacy in International Law

25. The right of privacy is well recognized in international law. It is recognised in most major human rights treaties at the international and regional levels.[15] Article 12 of the Universal Declaration of Human Rights of 1948 states:

> No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

26. The right was further elaborated in Article 17 of the ICCPR which states:

> 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
> 2. Everyone has the right to the protection of the law against such interference or attacks.

27. At the European level, Article 8 of the ECHR states:

> (1) Everyone has the right to respect for his private and family life, his home and his correspondence. (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

28. Within the Inter-American system, Article 11 of the American Convention on Human Rights protects both privacy and reputation:

> 1. Everyone has the right to have his honor respected and his dignity recognized.

[14] NM and Others v Smith and Others (CCT69/05) [2007] ZACC 6 (4 April 2007).
[15] For a review of international conventions and the right to privacy, see Bygrave, Data Protection Pursuant to the Right of Privacy in Human Rights Treaties, 6 International Journal of Law and Information Technology 247-284 (1998).

> 2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.
> 3. Everyone has the right to the protection of the law against such interference or attacks.

29. The right of privacy is also found in numerous other international documents including the Convention on Migrant Workers,[16] and the Convention on Protection of the Child[17] and at the regional level in the African Charter on the Rights and Welfare of the Child, the African Union Principles on Freedom of Expression and the Arab Charter on Human Rights.

ii) States have a Positive Obligation to Protect Privacy Under International Law

30. While the right of privacy is usually stated as a negative right against the state, major human rights bodies have found that it creates positive obligations on states to also ensure they adopt laws to protect all persons against attacks.

31. The UN Human Rights Committee in their General Comment No 16 on "The right to respect of privacy, family, home and correspondence, and protection of honour and reputation" stated:

> In the view of the Committee this right is required to be guaranteed against all such interferences and attacks whether they emanate from State authorities or from natural or legal persons. The obligations imposed by this article require the State to adopt legislative and other measures to give effect to the prohibition against such interferences and attacks as well as to the protection of this right.[18]

32. The European Court of Human Rights has also found that the Article 8 creates positive obligations in some circumstances to protect privacy not just against public authorities but also to ensure rights are protected in relationships with other members of society:

> The Court reiterates that, although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in effective respect for private and family life. These obligations may involve the adoption of measures designed to secure respect for private and family life even in the sphere of the relations of individuals between themselves. The boundary between the State's positive and negative obligations under this provision does not lend itself to precise definition. The applicable principles are, nonetheless, similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation.[19]

---

16 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by General Assembly resolution 45/158 of December 18, 1990.

17 Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of November 20, 1989, entry into force September 2, 1990.

18 UN Human Rights Committee, General Comment No. 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Art. 17) : . 04/08/1988.

19 Pfeifer v Austria (Application No. 12566/03), 15 November 2007.

iii) National Legal Protections

33. The right of privacy is also legally protected in a number of ways at the national level in nearly every country in the world. First, nearly every nation in the world has expressly recognized at least some aspects of privacy in their constitution.[20]

34. Furthermore, most nations have civil and often criminal code protections for the right of privacy.[21] For example, in France, privacy has been recognised as far back as the *Rachel* case in 1858.[22] The Civil Code adopted in 1970 provides for extensive protection of private life:

> Everyone has the right to respect for his private life. Without prejudice to compensation for injury suffered, the court may prescribe any measures, such as sequestration, seizure and others, appropriate to prevent or put an end to an invasion of personal privacy; in case of emergency those measures may be provided for by interim order.[23]

35. In the United Kingdom, there is no generalized law on privacy. In the last ten years, following the adoption of the Human Rights Act 1998, the courts have increasingly been developing law based on the guidance provided by the European Court of Human Rights.[24] Prior to that, the courts used a breach of confidence action to protect privacy.

36. Within the Americas, many nations have formalized a privacy right either in constitutions or laws under the right of *Habeas Data*, which gives individuals a right in the words of the Inter-American Commission on Human Rights to "to modify, remove, or correct such information due to its sensitive, erroneous, biased, or discriminatory nature." The Commission has described the importance of the right as also relating to "the right to know" within Article 13 protecting freedom of expression:

> [T]he action of habeas data imposes certain obligations for entities that process information: the obligation to use the data for specific, explicitly stated objectives, and the obligation to guarantee the security of the data against accidental, unauthorized access or manipulation. In cases where entities of the state or the private sector obtain data improperly and/or illegally, the petitioner must have access to that information, even when classified, so that individuals have control over data that affects them. The action of habeas data as a mechanism for ensuring the accountability of security and intelligence agencies within this context provides a means to verify that personal data has been gathered legally. The action of habeas data entitles the injured party, or his family members, to ascertain the purpose for which the data was collected and, if collected illegally, to determine whether the responsible parties are punishable. Public disclosure of illegal practices in the

[20] See e.g. US Department of State, 2010 Country Reports on Human Rights Practices, April 2011.
[21] US Department of State, 2010 Human Rights Report, ibid; Privacy and Human Rights 2006 (EPIC and Privacy International); Glasser (ed.), International Libel and Privacy Handbook (Bloomberg, 2006).
[22] The Rachel affaire. Judgment of June 16, 1858, Trib. pr. inst. de la Seine, 1858 D.P. III 62. See Jeanne M. Hauch, Protecting Private Facts in France: The Warren & Brandeis Tort is Alive and Well and Flourishing in Paris, 68 Tul. L. Rev. 1219 (May 1994).
[23] See also, Embassy of France to the United States, French Legislation on Privacy, 2007. Available at http://ambafrance-us.org/spip.php?article640 (last accessed 6 September 2011).
[24] See e.g. House of Commons Culture, Media and Sport Committee, Press standards, privacy and libel, 9 February 2010.

collection of personal data can have the effect of preventing such practices by these agencies in the future.[25]

37. In addition, an increasing number of countries have adopted data protection laws regulating the collection, use and dissemination of personal data, especially those held in computerized databases, both by governments and private bodies. These laws create regulatory structures that regulate its use, oversight mechanisms and structures. They also typically include specific exemptions for information gathered in the process of newsgathering. Today, over 70 counties have laws in force.[26] In the American region, these include Argentina, Canada, Colombia, Mexico, Peru, Paraguay, St Vincent and the Grenadines, and Uruguay.[27]

38. These data protection laws are now increasingly being internationalised. The United Nations General Assembly issued Guidelines in 1990 urging all states to ensure that the right was respected[28] and there are major international conventions on the subject by the European Union[29], Council of Europe[30] and the Economic Community for West African States (ECOWAS)[31]. The General Assembly of the OAS has recently ordered the Inter-American Juridical Committee to develop regional wide principles.[32]

c) The Right of Privacy Can Only be Restricted in Limited Circumstances

39. Under International human rights law, restrictions on privacy should be based on the same permissible limitations requirements as are found for protection of FOE. According the UN Special Rapporteur on promotion and protection of human rights and fundamental freedoms while countering terrorism:

> The Special Rapporteur takes the view that, despite the differences in wording, article 17 of the Covenant should also be interpreted as containing the said elements of a permissible limitations test. Restrictions that are not prescribed by law are "unlawful" in the meaning of article 17, and restrictions that fall short of being necessary or do not serve a legitimate aim constitute "arbitrary" interference with the rights provided

[25] OAS, Inter-American Commission on Human Rights, Report on Terrorism and Human Rights OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr.22 October 2002. See also See Guadamuz, Habeas Data: An update on the Latin America data protection constitutional right (2001).

[26] See Banisar, David, The Right to Information and Privacy: Balancing Rights and Managing Conflicts (March 10, 2011). World Bank Institute Governance Working Paper. Available at SSRN: http://ssrn.com/abstract=1786473; Privacy and Human Rights, Ibid; See e.g. Constitution of the Republic of Mozambique, (1990), § 71; §Constitution of Republic of Macedonia (1992), §18; Constitution of Albania (1998), §35; Constitution of Thailand (2007), §35; The Constitution of the Republic of South Africa, Act 108 of 1996

[27] Ley Federal de Protección de Datos Personales en Posesión de los Particulares, Diario Oficial de la Federación, 5 de Julio de 2010. (Mexico); Ley de Protección de los Datos Personales No 25.326 (Argentina); Personal Data Protection Law 18,331 (Uruguay); Privacy Act No 18 of 2003 (St Vincent and the Grenadines); Personal Information and Electronic Documents Act (Canada); Ley de Protección de Datos Personales, Ley 29733 (Peru); Protecton de Datos (Colombia); Law 1682 on Information of a Private Nature (Paraguay).

[28] Guidelines for the Regulation of Computerized Personal Data Files, Adopted by General Assembly resolution 45/95 of 14 December 1990.

[29] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data

[30] Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, Strasbourg, ETS 108, 1981.

[31] Economic Community for West African States, Supplementary Act A/SA.1/01/10 on Personal Data Protection within ECOWAS, 16 February 2010.

[32] See OAS General Assembly, AG/RES. 2661 (XLI-O/11) Access to Public Information and Protection of Personal Data, 7 June 2011; OAS Department of International Law, Draft: Preliminary Principles and Recommendations on Data Protection (The Protection of Personal Data)," CP/CAJP-2921/10, 2011.

under article 17. Consequently, limitations to the right to privacy or other dimensions of article 17 are subject to a permissible limitations test, as set forth by the Human Rights Committee in its general comment No. 27 (1999).[33]

40. Under the ECHR, restrictions on privacy can only be imposed when it is "in accordance with the law" and "necessary in a democratic society" which examines if the interference is legitimate and proportionate.[34]

3. Public Figures Have a Lesser Expectation of Privacy

41. The Amici submits that the Court should recognize that public figures, especially leaders of states, have a lesser expectation of privacy than private figures or even lesser officials. In the current case, the state is defending the right of privacy of the President of Argentina. As leader of the state, the President should be subject to the highest level of scrutiny.

a) Limits on Public Officials Rights to Privacy

42. The Court has previously ruled that in cases of defamation that that officials must have a higher level of tolerance than private individuals in accordance with the principles of democratic pluralism. The Court set out its justification as:

> [I]n the case of public officials, individuals who exercise functions of a public nature, and politicians, a different threshold of protection should be applied, which is not based on the nature of the subject, but on the characteristic of public interest inherent in the activities or acts of a specific individual. Those individuals who have an influence on matters of public interest have laid themselves open voluntarily to a more intense public scrutiny and, consequently, in this domain, they are subject to a higher risk of being criticized, because their activities go beyond the private sphere and belong to the realm of public debate. Therefore, in the context of the public debate, the margin of acceptance and tolerance of criticism by the State itself, and by public officials, politicians and even individuals who carry out activities subject to public scrutiny, must be much greater than that of individuals.[35]

43. This approach of lesser expectation for public figures because of their role in society has also been by many jurisdictions for the privacy context. In both international law and in case law at the national level, political bodies and courts have recognised that public figures have a lesser expectation of privacy than those of persons who are not in the public view because of their positions and role in public life.[36] The Council of Europe Parliamentary Assembly has stated:

> Public figures must recognise that the special position they occupy in society - in many cases by choice automatically entails increased pressure on their privacy....Certain facts relating to the private lives of public figures, particularly

[33] Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, A/HRC/13/37, 28 December 2009.
[34] Niemietz v. Germany, ibid.
[35] Case of Ricardo Canese vs. Paraguay, Judgment of August 31, 2004.
[36] See for example, Case of Lingens v. Austria (Application no. 9815/82), 8 July 1986; Mr. Zeljko Bodrožić v. Serbia and Montenegro, Communication No. 1180/2003, U.N. Doc. CCPR/C/85/D/1180/2003 (2006). (UN Human Rights Committee); New York Times Co. v. Sullivan, 376 U.S. 254 (1964).

politicians, may indeed be of interest to citizens, and it may therefore be legitimate for readers, who are also voters, to be informed of those facts.[37]

44. The Committee of Ministers of the Council of Europe further stated in 2004:

> Political figures have decided to appeal to the confidence of the public and accepted to subject themselves to public political debate and are therefore subject to close public scrutiny and potentially robust and strong public criticism through the media over the way in which they have carried out or carry out their functions.[38]

45. In Hungary, the Constitutional Court ruled in 1994 that there are, "narrower limits to the constitutional protection of privacy for government officials and politicians appearing in public [...than to that of] the ordinary citizen."[39]

46. In India, the Supreme Court ruled that the criminal records of persons running for parliament should be released.[40] The Indian High Court described the difference between private citizens and public officials in a case involving access to information about the financial reporting by court officials:

> A private citizen's privacy right is undoubtedly of the same nature and character as that of a public servant. Therefore, it would be wrong to assume that the substantive rights of the two differ. Yet, inherent in the situation of the latter is the premise that he acts for the public good, in the discharge of his duties, and is accountable for them. The character of protection, therefore, afforded to the two classes – public servants and private individuals, is to be viewed from this perspective. The nature of restriction on the right to privacy is therefore of a different order; in the case of private individuals, the degree of protection afforded is greater; in the case of public servants, the degree of protection can be lower, depending on what is at stake.[41]

47. The UK Court of Appeals in 2003 set out a long discussion on public figures and their privacy interests:

> Where an individual is a public figure he is entitled to have his privacy respected in the appropriate circumstances. A public figure is entitled to a private life. The individual, however, should recognise that because of his public position he must expect and accept that his actions will be more closely scrutinised by the media. Even trivial facts relating to a public figure can be of great interest to readers and other observers of the media. Conduct which in the case of a private individual would not be the appropriate subject of comment can be the proper subject of comment in the case of a public figure. The public figure may hold a position where higher standards of conduct can be rightly expected by the public. The public figure may be a role model whose conduct could well be emulated by others. He may set the fashion. The higher the profile of the individual concerned the more likely that this will be the position. Whether you have courted publicity or not you may be a legitimate subject of public attention. If you have courted public attention then you have less ground to object to the intrusion which follows. In many of these situations it would be overstating the position to say that there is a public interest in the information being published. It

[37] Resolution no 1165 (1998) of the Parliamentary Assembly of the Council of Europe on the right to privacy
[38] CoE, Committee of Ministers Declaration on freedom of political debate in the media, 12 February 2004
[39] Decision 60/1994 (XII. 24) AB.
[40] Union of India v. Association For Democratic Reforms, [2002] 2 LRI 305.
[41] The CPIO, Supreme Court of India, High Court Of Delhi W.P. (C) 288/2009, 02.09.2009.

> would be more accurate to say that the public have an understandable and so a legitimate interest in being told the information. If this is the situation then it can be appropriately taken into account by a court when deciding on which side of the line a case falls. The courts must not ignore the fact that if newspapers do not publish information which the public are interested in, there will be fewer newspapers published, which will not be in the public interest.[42]

48. The limitation on the right of privacy to public figures can also extend to more intimate parts of their private and family lives. The COE Committee of Ministers declared in 2004 that:

> [I]nformation about [political figures and public officials] private life may be disseminated where it is of direct public concern to the way in which they have carried out or carry out their functions, while taking into account the need to avoid unnecessary harm to third parties. Where political figures and public officials draw public attention to parts of their private life, the media have the right to subject those parts to scrutiny.[43]

49. This European Court of Human Rights has found that this extends in cases including when a Member of Parliament's husband was convicted of a crime, articles highlighting the case and the relationship of the two were protected under Article 10, even if it had nothing to do with the persons' official duties.[44] In a further case, the European Court of Human Rights ruled that the tax records of public figures could be published as a means of improving the public debate.[45]

50. Therefore, as stated by the Court, in the case of public officials, individuals who perform public services, politicians, and other public figures a different threshold of protection should be applied, which is not based on the specific individual, but on the fact that the activities or conduct of a certain individual is of public interest.

b) Public Figures Retain Some Privacy Rights

51. At the same time, it should also be recognised that public figures do not give up all privacy rights. They maintain some right for those things that are done in private and that are not relevant to their public activities and do not affect the public interest. The European Court of Human Rights has created a distinction for facts that are relating to the public interest and those that are not. In Von Hannover, the European Court of Human Rights stated:

> The Court considers that a fundamental distinction needs to be made between reporting facts – even controversial ones – capable of contributing to a debate in a democratic society relating to politicians in the exercise of their functions, for example, and reporting details of the private life of an individual who, moreover, as in this case, does not exercise official functions. While in the former case the press exercises its vital role of "watchdog" in a democracy by contributing to "impart[ing] information and ideas on matters of public interest .... it does not do so in the latter case.

[42] A v B & C [2002] EWCA Civ 337 (11th March, 2002) (UK Court of Appeal)
[43] CoE 2004, ibid.
[44] Karhuvaara and Iltalehti v Finland (Application No. 53678/00), 16 November 2004.
[45] Fressoz and Roire v. France (Application No. 29183-95), 21 January 1999.

> The Court reiterates the fundamental importance of protecting private life from the point of view of the development of every human being's personality. That protection – as stated above – extends beyond the private family circle and also includes a social dimension. The Court considers that anyone, even if they are known to the general public, must be able to enjoy a "legitimate expectation" of protection of and respect for their private life.[46]

52. In a 2008 case, the court reiterated that:

> The Court considers that anyone, even if they are known to the general public, may legitimately expect the protection of and respect for their private life.[47]

53. Similarly, the Supreme Court of the Philippines, while recognising the limitations on privacy for public figures also ruled that the disclosure should not include "matters of essentially private concern."[48]

4. The Right to Privacy and the Right to Freedom of Expression Must be Reconciled

54. As described above, privacy and freedom of expression are both recognized human rights. As two equal human rights, it is essential that the court balance the two in a fair manner without giving precedence to one over the other. International human law does not recognize a hierarchy of rights in which one trumps the other.

55. As the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in 1993 states:

> All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.[49]

56. The UN High Commissioner for Human Rights has stated:

> [A]ll human rights are equally important. The 1948 Universal Declaration of Human Rights makes it clear that human rights of all kinds—economic, political, civil, cultural and social—are of equal validity and importance....Human rights are also indivisible and interdependent. The principle of their indivisibility recognizes that no human right is inherently inferior to any other.[50]

---

[46] Von Hannover v Germany (2005) 40 EHRR 1
[47] Biriuk v Lithuania (Application no. 23373/03), 25 November 2008 (European Court of Human Rights).
[48] Ayer Productions Pty. Ltd. and Mcelroy & Mcelroy Film Productions v. Hon. Ignacio M. Capulong and Juan Ponce Enrile, G.R. No. L-82380. 29 April 1988 (Supreme Court of the Philippines)
[49] Vienna Declaration and Programme of Action, U.N. Doc A/CONF.157/23 (12 July 1993).
[50] Office of the United Nations High Commissioner for Human Rights, Frequently Asked Questions On A Human Rights-Based Approach To Development Cooperation, 2006.

57. This approach of balancing competing rights has been taken up by the European Court of Human Right in cases involving privacy and freedom of expression:

> [W]hen verifying whether the authorities struck a fair balance between two protected values guaranteed by the Convention which may come into conflict with each other in this type of case, freedom of expression protected by Article 10 and the right to respect for private life enshrined in Article 8, the Court must balance the public interest in the publication of a photograph and the need to protect private life ....The balancing of individual interests, which may well be contradictory, is a difficult matter and Contracting States must have a broad margin of appreciation in this respect since the national authorities are in principle better placed than this Court to assess whether or not there is a "pressing social need" capable of justifying an interference with one of the rights guaranteed by the Convention.[51]

58. In a 2005 case on balancing Article 8 and Article 10, the ECtHR found that the domestic court had not "construed the principle of freedom of expression too restrictively or the aim of protecting the reputation and the rights of others too extensively."[52]

59. Many national courts have also recognised that the rights are not rankable. Many also seek to reconcile the rights rather than just balance them. In Canada, the Supreme Court has stated in a reputation case that overemphasis of one right over another is not appropriate:

> The Court's task is not to prefer one over the other by ordering a "hierarchy" of rights but to attempt a reconciliation.[53]

60. Noted South African Constitutional Court Justice Albie Sachs has described the South African approach as harmonizing rights:

> [The approach of the Constitutional Court] seeks to harmonise as much as possible respect for human dignity and freedom of the press, rather than to rank them in terms of precedence. The emphasis is placed on context, balance and proportionality, and not on formal and arid classifications accompanied by mantras that favour either human dignity or press freedom. The more private the matter, the greater the call for caution on the part of the media, while conversely, the more profound the public interest, the more heavily will it weigh in the scales. Secondly, by stressing the need for the media to take reasonable steps to verify the information to be published, it introduces objective standards that can be determined in advance by the profession and then evaluated on a case-by-case basis by the courts. The result is the creation of clearly identifiable and operational norms, and the fostering in the media of a culture of care and responsibility.[54]

61. Thus, when the two interests conflict substantially, the Amici submit that the best approach is for the court to work towards ensuring both rights are only limited in such a way so that they are both respected to the greatest possible measure. When this is not possible, the rights and interests must be weighed.[55] This needs to be done on a case by

---

[51] See e.g. Von Hannover v Germany, ibid.
[52] Chauvy and Others v France (Application no. 64915/01), 29 June 2004.
1. [53] WIC Radio Ltd. v. Simpson, [2008] 2 S.C.R. 420, 2008 SCC 40
[54] NM and Others v Smith and Others [2007] ZACC 6
[55] See e.g. Smet, Freedom of Expression and the Right to Reputation: Human Rights in Conflict, 26 Am U. Int'l L. Rev 184, 2010 on German Constitutional Court doctrine of Praktische Kondordanz for balancing rights.

case basis to determine the strength of the two interests, including taking into account the importance of the right of access to information by the public and the level of intrusiveness to the privacy interest. This should also take into account the public interest in the information, as discussed in the following section.

5. The Public Interest Should be Broadly Defined

62. The Court should clearly define the public interest in a manner which broadly encompasses information about public officials and public figures which is important to matters of public concern. In previous work relating to defamation, ARTICLE 19 has proposed the following definition which it submits should be considered in this case also:

> the term 'matters of public concern' is defined expansively to include all matters of legitimate public interest. This includes, but is not limited to, all three branches of government – and, in particular, matters relating to public figures and public officials – politics, public health and safety, law enforcement and the administration of justice, consumer and social interests, the environment, economic issues, the exercise of power, and art and culture. However, it does not, for example, include purely private matters in which the interest of members of the public, if any, is merely salacious or sensational.[56]

a) International Definitions of the Public Interest

63. It should be noted that the concept of public interest as an exemption to privacy has existed for a considerable time. In the seminal 1890 Harvard Law Review article "The Right to Privacy" by future US Supreme Court Justice Louis Brandeis and his law partner Samuel Warren, which largely created the modern tort of privacy, the two recognized that there was a public interest exemption similar to the one found the law on defamation:

> The right to privacy does not prohibit any publication of matter which is of public or general interest. In determining the scope of this rule, aid would be afforded by the analogy, in the law of libel and slander, of cases which deal with the qualified privilege of comment and criticism on matters of public and general interest. There are of course difficulties in applying such a rule; but they are inherent in the subject-matter, and are certainly no greater than those which exist in many other branches of the law....The design of the law must be to protect those persons with whose affairs the community has no legitimate concern, from being dragged into an undesirable and undesired publicity and to protect all persons, whatsoever; their position or station, from having matters which they may properly prefer to keep private, made public against their will.[57]

64. This Court has previously ruled that the public interest in ensuring debate about officials is essential in determining limitations to Article 13:

> [In] the terms of Article 13(2) of the Convention, a certain latitude in the broad debate on matters of public interest that is essential for the functioning of a truly democratic system. ... to matters of public interest about which society has a

[56] ARTICLE 19, Defining Defamation: Principles on Freedom of Expression and Protection of Reputation July 2000.
[57] Warren and Brandeis, The Right to Privacy, 4 Harv. L. Review 193 (1890).

legitimate interest to keep itself informed and to know what influences the functioning of the State, affects general interests or rights, or entails important consequences.[58]

65. In the case of *Plon Society v France*, the ECtHR ruled that a book publishing the medical information of the French President which revealed that he had been hiding his terminal medical condition from the public was in the public interest:

> The Court considers that the book was published in the context of a wide-ranging debate in France on a matter of public interest, in particular the public's right to be informed about any serious illnesses suffered by the head of State, and the question whether a person who knew that he was seriously ill was fit to hold the highest national office. Furthermore, the secrecy which President Mitterrand imposed, according to the book, with regard to his condition and its development, from the moment he became ill and at least until the point at which when the public was informed (more than ten years afterwards), raised the public-interest issue of the transparency of political life.[59]

66. In a 2007 case, the South African High Court examined its elastic properties and proposed some guidelines on its application:

> Public interest it must be noted is a mysterious concept. Like a battered piece of string charged with elasticity, impossible to measure or weigh. The concept changes with the dawn of each new day, tempered by the facts of each case. Public interest will naturally depend on the nature of the information conveyed and on the situation of the parties involved. Public interest is central to policy debates, politics, and democracy. While it is generally acclaimed that promoting the common well-being or general welfare is constructive, there is little, if any, consensus on what exactly constitutes the public interest.
>
> The public has the right to be informed of current news and events concerning the lives of public persons such as politicians and public officials. This right has been given express recognition in Section 16(1) (a) and (2) of the Constitution which protects the freedom of the press and other media and the freedom to receive and impart information and ideas. The public has the right to be informed not only on matters which have a direct effect on life, such as legislative enactments, and financial policy. This right may in appropriate circumstances extend to information about public figures.[60]

67. There have also been a number of discussions in the context of laws on access to information (which this court has of course recognized as an essential part of the right of freedom of expression)[61] on how to balance the two rights. These may be useful for consideration by the court in setting out standards on public interest. In a leading case in Ireland, the Irish Information Commissioner set out public interest arguments to consider when balancing requests for information determined to be personal information about the activities of elected members of Parliament:

- The public interest in the public having access to information.

[58] Case of Ricardo Canese v. Paraguay, Ibid,
[59] Plon Society v France, ibid
[60] Tshabalala-Msimang and Another v Makhanya and Others (18656/07) [2007] ZAGPHC 161 (30 August 2007).
[61] Case of Claude-Reyes et al. v. Chile Judgment of September 19, 2006.

- The public interest in the accountability of elected representatives.
- The public interest in a free and informed debate on the level of remuneration/expenses paid to elected representatives.
- The public interest in accountability for use of public funds.
- The public interest in an individual's right to privacy in respect of information relating to his/her financial affairs.
- The public interest in the entitlement of members of the Houses of the Oireachtas (Irish national parliament) to discharge their Constitutional responsibilities without being put in a position where they are or may be subjected to unjust attack for claiming financial entitlements which are theirs as a matter of law and the amounts of which are not, in the normal course, relevant to the member's performance as a public representative.
- The possibility of prejudice to, or distortion of, the democratic process by equation, in the eyes of members of the public, of the level of payment of expenses to members with individual performance of members, with possible adverse consequences for the careers of individual members.
- The possibility that disclosure of records which are, or may not be, comparable, and which are likely to be used for comparison purposes, may mislead the public and result in comment based on partially or wholly unreliable conclusions which may be damaging to the interests of individual members.
- The possibility that such comparisons may result in certain members being forced to release further personal information relating to their financial affairs in order to deal with inaccurate public speculation as to their income and to repair perceived damage to their interests.[62]

b) Limits on the Public Interest

68. However, the public interest is not considered to be all encompassing of anything that might interest the public. The ECtHR puts a higher value on information which would contribute to public debate rather than a lesser interest in merely providing to the public curiosity:

> [T]he Court considers that the publication of the photographs and articles, the sole purpose of which is to satisfy the curiosity of a particular readership regarding the details of a public figure's private life, cannot be deemed to contribute to any debate of general interest to society despite the person being known to the public. In such conditions freedom of expression calls for a narrower interpretation.[63]

69. More recently, the Court stated that some information would not attract the same level of protection:

> The Court also reiterates that there is a distinction to be drawn between reporting facts – even if controversial – capable of contributing to a debate of general public interest in a democratic society, and making tawdry allegations about an individual's private life. In respect of the former, the pre-eminent role of the press in a democracy and its duty to act as a "public watchdog" are important considerations in favour of a narrow construction of any limitations on freedom of expression. However, different considerations apply to press reports concentrating on sensational and, at times, lurid

[62] Case 99168 - Mr Richard Oakley, The Sunday Tribune newspaper and the Office of the Houses of the Oireachtas, 27 July 1999.
[63] Von Hannover, Ibid.

news, intended to titillate and entertain, which are aimed at satisfying the curiosity of a particular readership regarding aspects of a person's strictly private life. Such reporting does not attract the robust protection of Article 10 afforded to the press. As a consequence, in such cases, freedom of expression requires a more narrow interpretation. While confirming the Article 10 right of members of the public to have access to a wide range of publications covering a variety of fields, the Court stresses that in assessing in the context of a particular publication whether there is a public interest which justifies an interference with the right to respect for private life, the focus must be on whether the publication is in the interest of the public and not whether the public might be interested in reading it [References removed].[64]

III. Conclusions

70. The Amici suggests that the court should adopt a balancing test when considering cases involving privacy and freedom of expression. The balancing test should take into account the lesser expectation of privacy of public figures and the public interest in the information. The public interest should be widely construed to include a wide variety of information which would be important to the public in determining governing.

Dated: 9 September 2011

Respectfully submitted,

For ARTICLE 19, Global Campaign for Freedom of Expression

David Banisar Senior Legal Counsel	Paula Martins Director, ARTIGO 19	Dario Ramirez Director, ARTICULO 19

[64] Mosley v United Kingdom, (Application No. *48009/08),* 10 May 2011.