AKDENIZ, ALTIPARMAK AND GUVEN V. TURKEY
THIRD PARTY INTERVENTION

Introduction

1. This is a third party intervention on behalf of the Media Legal Defence Initiative, ARTICLE 19, Platform for Independent Journalism (P24), Index on Censorship, Media Law Resource Center, and Reporters Committee for Freedom of the Press[1] pursuant to Rule 44(3) of the Rules of Court.[2]

2. This case concerns a judicial order amounting to an absolute prohibition against everyone on publication of certain information in certain forms anywhere in the world. The order was not directed against an individual or class of individuals, and is analogous to injunctions *contra mundum* which have occasionally been granted by courts in the United Kingdom (the "UK"). Injunctions *contra mundum* are an unusual form of relief that prohibit everyone, wherever they are in the world, from publishing information that is the subject matter of the injunction.

3. This intervention seeks to provide the Court with an analysis of injunctions *contra mundum*, and suggests how the issue of victim status should be approached to ensure such injunctions can, if appropriate, be effectively challenged as violations of the right to freedom of expression.[3] The intervention addresses the following matters:

   (i) injunctions *contra mundum* and their impact on Article 10 rights;

   (ii) the need for a broad interpretation of victim status in relation to injunctions *contra mundum*; and

   (iii) how victim status can and should be interpreted broadly by the Court in such circumstances.

(I) Injunctions *contra mundum* and their impact on Article 10 rights

4. Injunctions *contra mundum* are directed against everyone in the world and amount to a form of prior restraint, their imposition should therefore be subject to the closest scrutiny. In *Bladet Tromso and Stensaas v Norway*, this Court stated that "[t]he most careful scrutiny on the part of the Court is called for when … the measures taken or sanctions imposed by the national authority are capable of discouraging the participation of the press in debates over matters of legitimate public concern."[4] In *Observer and Guardian v. the United Kingdom*, this Court observed that injunctive relief against a newspaper was a form of prior restraint[5] and went on to state 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, for news is a

---

[1] See Annex for further information on these organizations.

[2] This Intervention is made with the permission of the Vice-President of the Second Section by letter dated 29 August 2016.

[3] This intervention addresses points of general principle and does not address the facts of this case.

[4] European Court of Human Rights ("ECtHR"), *Bladet Tromso and Stensaas v. Norway*, Application No. 21980/93 (20 May 1999), par. 64.

[5] ECtHR, *Observer and Guardian v. the United Kingdom,* Application No. 13585/88 (26 November 1991), par 48.

perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest."[6]

5. Consistent with this approach, and extending the protections afforded to freedom of expression in this context, the American Convention on Human Rights includes a strict prohibition on "prior censorship", limiting the circumstances where such censorship can take place to "public entertainment" that is censored for the sole purpose of regulating access for the moral protection of childhood and adolescence.[7]

6. The principle of limiting the use of prior restraint in order to properly protect freedom of expression has been endorsed by courts at domestic level. In the judgment of the UK House of Lords in *Attorney-General v. Times Newspapers Ltd*, Lord Scarman stated that "the prior restraint of publication, though occasionally necessary in serious cases, is a drastic interference with freedom of speech and should only be ordered where there is a substantial risk of grave injustice."[8] This statement was subsequently endorsed by South Africa's Supreme Court of Appeal and Constitutional Court.[9]

7. The High Court of Australia, the highest court in that jurisdiction, has drawn a distinction between a law that provides for civil or criminal consequences to the abuse of the right to freedom of expression, and occasions where there is an interference of a court through prior restraint. The High Court noted that "wider considerations are involved" when a court is asked to intervene in advance of publication.[10] This was recognised as being a primary reason for approaching the imposition of interlocutory injunctions in defamation proceedings with "exceptional caution".[11]

8. The Irish High Court, in *Murray v. Newsgroup,* noted that "[t]ime and time again the courts have referred to the dangers inherent in granting what are described as prior restraint orders and have determined that such orders should only be made following a close and penetrating examination of the factual justification for the restraint sought."[12] In *Attorney General for England and Wales v. Brandon Book Publishers*, where an injunction was sought to prevent the publication in Ireland of a book about the British Secret Service, the Irish High Court referred to "the very important constitutional right to communicate now and not in a year or so when the case has worked its way through the courts."[13]

9. Consistent with this approach, the United States Supreme Court has stated that "[a]ny system of prior restraints of expression comes to [the] Court bearing a heavy presumption against its constitutional validity".[14]

---

6 *Id.*, par. 60. See further paragraph 22 below: nowadays it is not just the 'press' that are responsible for sharing information and holding governments to account. Citizen bloggers also play a critical role.

7 Article 13(4), American Convention on Human Rights (the "ACHR"), OAS Treaty Series No. 36; 1144 UNTS 123; 9 ILM 99 (1969).

8 House of Lords (UK), *Attorney General v. Times Newspapers Ltd* [1974] AC 273, p. 362.

9 Supreme Court of Appeal of South Africa, *Midi Television (Pty) Ltd t/a E-TV v. Director of Public Prosecutions (Western Cape)* 2007 (5) SA 540, par. 15; Constitutional Court of South Africa, *Print Media South Africa and Another v. Minister of Home Affairs and Another* [2012] ZACC 22, par. 44.

10 High Court of Australia, *Australian Broadcasting Corporation v. James Ryan O'Neill* [2006] HCA 46, par. 32.

11 *Id.*

12 High Court (Ireland), *Murray v. Newsgroup*, 2010 No. 4661P (unreporterd), par. 72.

13 High Court (Ireland), *Attorney General for England and Wales v. Brandon Book Publishers Ltd* [1987] ILRM 135, p. 138.

14 United States Supreme Court, *Bantam Books, Inc. v. Sullivan* (1963), 372 U.S. 58, p. 70.

10. The Supreme Court of Canada has described prior restraint as a "particularly severe restriction" on freedom of expression.[15] In approving the "reticence" of other common law jurisdictions to impose prior restraint on speech, the Supreme Court highlighted the inherent flaws in prior restraint systems, including "the breadth of potential censorship, delays in publication of time-sensitive material, a lack of transparency, and a propensity to favour censorship over speech."[16]

11. Injunctions *contra mundum* made against everyone in the world, without limitation on the basis of jurisdiction or class of individual, are a particularly disproportionate form of prior restraint. They should therefore only be granted in exceptional circumstances and in accordance with domestic procedures that safeguard against their abuse.

12. This Court in *RTBF v. Belgium*, stated that "if prior restraints are required in the media sphere, they must form part of a legal framework ensuring both tight control over the scope of any bans and effective judicial review to prevent potential abuses."[17] More recently, in *Yildirim v. Turkey*,[18] the Court was critical of the fact that the domestic courts had failed to consider whether a less far reaching measure than the one adopted, in that case the blocking of access to Google Sites, could have been taken.

13. The courts in the UK and Hong Kong have confirmed that injunctions *contra mundum* should be confined to rare and exceptional cases.[19] It has been observed that "*[c]ontra mundum* orders are at the extremity of the court's power, and would not commonly be granted in aid of a private right, except where life or limb was at risk."[20] An overview of cases where injunctions *contra mundum* have been granted in the UK provides an insight into the approach of the courts in that jurisdiction to this question:

    (a) In *Venables v. News Group Newspapers & Ors*,[21] an injunction *contra mundum* was granted to protect the new identities of individuals who had murdered a two-year-old boy when they were young children. In granting the injunction, the judge was strongly influenced by the real and serious risk to the individuals under Articles 2 and 3 of the Convention.
    (b) In *X, a Woman formerly known as Mary Bell and another v. NGN*,[22] the court noted that the an injunction *contra mundum* in that case was being granted in an "exceptional" case protecting the identity and whereabouts of a child killer and her daughter following her release from prison.
    (c) In *Maxine Carr v. NGN Ltd & Others*,[23] the court granted an injunction *contra mundum* on the basis of evidence giving reason to support that the claimant's physical wellbeing was at some risk. The court concluded that "[i]t is necessary to protect life and limb and psychological health. In so far as there will be restrictions on freedom of expression

---

15 Supreme Court of Canada, *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)* [2000] 2 SCR 1120, par. 232.

16 *Id.*, par. 236, quoting Thomas Jefferson, *The Doctrine of Prior Restraint* (1955), 20 L. & Contemp. Probs. 648, p. 656 to 659.

17 ECtHR, *RTBF v. Belgium,* Application No. 50084/06 (29 March 2011), par. 115.

18 ECtHR, *Ahmet Yildirim v. Turkey*, Application No. 3111/10 (18 December 2012), par 64.

19 In relation to Hong Kong, see paragraph 14 below.

20 Dr Nicole Moreham and Sir Mark Warby (Eds.), *Tugendhat and Christie: The Law of Privacy and the Media Injunctions* (2nd edition, Oxford University Press 2011), editors' note, par. 13.35.

21 High Court, Queen's Bench Division (UK), *Venables v. News Group Newspapers & Ors* [2001] 2 WLR 1038; (2001) 1 All ER 908.

22 High Court, Queen's Bench Division (UK), *X, a Woman formerly known as Mary Bell and another v. NGN* [2003] EWHC 1101 (QB); [2003] EMLR 37; [2003] 2 FCR 686.

23 High Court, Queen's Bench Division (UK), *Maxine Carr v. NGN Ltd & Others* [2005] EWHC 971.

those are proportionate to the very real physical dangers to which the applicant remains exposed."[24]

(d) In *OPQ v. (1) BJM (2) CJM,* [25] a case where an injunction *contra mundum* was ordered to protect the Article 8 rights of an applicant and his family, the court referred to strong medical evidence demonstrating that publicity relating to the subject matter of the injunction could have "very serious consequences" for the health, including mental wellbeing, of the applicant.[26] In granting the injunction *contra mundum*, the court highlighted that there was "unfortunately no other means open to the court of fulfilling its obligation [under the Convention] to protect those rights".[27]

14. In Hong Kong, the courts have also recognised that such injunctions should only be granted in exceptional circumstances.[28]

15. Because of their general effect, it is essential that effective safeguards are in place to ensure that injunctions *contra mundum* are not abused. Such injunctions should only be granted in limited and exceptional circumstances, following close scrutiny of the reasons for imposing such a disproportionate restriction on the right to freedom of expression. This is particularly relevant when these injunctions prevent access to, and discussion about, information that is of high public interest.[29]

(II) The need for a broad interpretation of victim status when dealing with injunctions *contra mundum*

16. Given the exceptional nature of injunctions *contra mundum* and the significant impact they have on the Article 10 rights of every individual, there is a need to broadly interpret victim status in order to properly safeguard those rights. This is justified on the basis of the general interest in examining such cases, the fact that a fundamental right is interfered with in such general terms, and the exceptional nature of such a form of redress.

17. Freedom of expression is globally recognised as a key human right, in particular because of its fundamental role in underpinning democracy.[30] Article 10 guarantees not only the right to impart information but also the right of the public to receive it.[31] As set out above, given their scope, injunctions *contra mundum* form a particularly disproportionate restriction of the rights to receive and impart information. There would be a serious lacuna in the protection afforded by the Convention if the compatibility of injunctions *contra mundum* with the Convention could not be challenged. By their nature, they do not directly name anyone, but they are directed against everyone. It would make the protection of Article 10 rights illusory if such injunctions could only be challenged by a narrow class of people, such as the media.

18. As a consequence, it is important that the Court apply a broad and flexible interpretation to the

---

[24] *Id.*, par. 9.

[25] High Court, Queen's Bench Division (UK), *OPQ v. (1) BJM (2) CJM* [2011] EWHC 1059 (QB).

[26] *Id.*, par. 24.

[27] *Id.*, par. 26.

[28] High Court of the Hong Kong Special Administrative Region, Court of First Instance, *University of Hong Kong v. Hong Kong Commercial Broadcasting Co and Persons Unknown*, High Court Miscellaneous Proceedings No. 2801/2015, par. 51.

[29] ECtHR, *Bladet Tromso and Stensaas v. Norway*, Application No. 21980/93 (20 May 1999).

[30] See, for example, ECtHR, *Handyside v. United Kingdom,* Application No. 5493/72 (7 December 1976), par. 49.

[31] See ECtHR, *Observer and Guardian v. the United Kingdom,* Application No. 13585/88 (26 November 1991), par. 59 (b); and ECtHR, *Guerra and Others v. Italy*, Application No. 14967/89 (19 February 1998), par. 53.

definition of "victim status" when dealing with rare and exceptional applications concerning injunctions *contra mundum* preventing publication.

19. Article 10 guarantees freedom of expression to "everyone". It makes no distinction according to the nature of the aim pursued or the role played by natural or legal persons in the exercise of that freedom.[32] The Court has recognised that the function of creating forums for public debate is not limited to the press. That function may also be exercised by non-governmental organisations, the activities of which are an essential element of informed public debate. The Court has accepted that non-governmental organisations, like the press, may be characterised as social "watchdogs".[33] However, there is no good reason why this should be limited to non-governmental organisations. The same should apply to other individuals who are concerned to report on matters of public interest.[34] In *Kennedy v Charity Commission*, the UK Supreme Court stated: "Information is the key to sound decision-making, to accountability and development; it underpins democracy and assists in combatting poverty, oppression, corruption, prejudice and inefficiency. Administrators, judges, arbitrators, and persons conducting inquiries and investigations depend upon it; likewise the press, NGOs and individuals concerned to report on issues of public interest."[35]

20. Especially in the age of social media, as information has become accessible to an audience far wider than the "traditional" press, those individuals who wish to Tweet, blog, or otherwise write about events in the public interest should have equal standing to members of the press.[36] The Council of Europe Committee of Ministers has explained that information and communication technologies "provide unprecedented opportunities for all to enjoy freedom of expression".[37]

21. As an injunction *contra mundum* amounts to an injunction of general effect, restraining the world at large, it is an exception to the general principle that injunctions cannot be made except against a party to judicial proceedings.[38] Accordingly, the individuals whose rights to freedom of expression are being interfered with are not heard in the underlying proceedings to the grant of that injunction.[39] As these injunctions affect everyone, it will often be public spirited individuals, interested in monitoring public affairs, who will seek to challenge such measures. It is therefore of utmost importance that these individuals have an opportunity to be heard, and are provided with the opportunity to challenge these measures as an infringement of their right to freedom of expression.

---

[32] See ECtHR, *Çetin and Others v. Turkey*, Application Nos. 40153/98 and 40160/98 (13 February 2003), par. 57.

[33] See ECtHR, *Österreichische Vereinigung zur Erhalttung, Stärkung und Schaffung v Austria*, Application No. 39534/07, (28 November 2013).

[34] The Court has recognised that other categories of individuals, such as employers and employees, have specific important Article 10 rights and the Court has spoken of "the right of civil servants and other employees to report illegal conduct and wrongdoing at their place of work": see ECtHR, *Guja v Moldova* Application No. 14277/04 (12 February 2008), par. 97.

[35] UK Supreme Court, *Kennedy v Charity Commission* [2014] UKSC 20, Par. 1

[36] The UK Supreme Court referred to the ability of individuals using social media to be heard in relation to orders restricting disclosure in the case of *A v. BBC* [2015] AC 588 at par. 67: "it would be impractical to afford a hearing to all those that might be affected by [a reporting restriction] (including "bloggers, social media users and internet-based organisations) before such an order was made, fairness required that they should be able to seek the recall of the order promptly at a hearing *inter partes*".

[37] Council of Europe, Committee of Ministers, *Declaration of the Committee of Ministers on human rights and the rule of law in the Information Society* (13 May 2005) CM(2005)56-final.

[38] House of Lords (UK), *Iveson v. Harris* (1802) 32 ER 102.

[39] The High Court (Ireland) in *Cogley v. RadioTelifis Eireann* [2005] IEHC 181 ("a court should be reluctant to grant an interim orders which would have the effect of restraining in advance, publication in circumstances where the intended publisher had not had an opportunity to be heard.").

22. In the United States, a broad approach has been taken to the standing of recipients (or would-be recipients) of information to challenge any restriction on their right to receive that information.[40] The US Supreme Court has recognised that would-be recipients of information have standing in their own right to challenge restraints on those wishing to disclose information. The right to listen is distinct from the right to speak, and may apply even if the speaker is not based in the US and has no particular speech right. This right is not limited to the press, but extends to academics and members of the general public. The press, of course, can assert such rights as well as members of the public.

23. The only limitation on this right is that there must be a willingness to disclose; there is no right to demand information from one who does not want to disclose it.[41] However, a speaker should not be deemed "unwilling" merely because he is subject to a court's restraining order and lacks the resources or inclination to challenge it; in other words, the burden imposed by the court order should not be factored into the speaker's "willingness."[42]

24. A broad and flexible interpretation of victim status in circumstances concerning injunctions *contra mundum* would serve two purposes: 1) it would acknowledge the reality of the situation, namely that these injunctions by their very nature affect everyone; and 2) it would guarantee that there is proper supervision to ensure such injunctions are only granted in limited circumstances and ensure that Convention safeguards are practical and effective. Such a broad and flexible approach is particularly necessary in cases concerning matters of public interest, where there is little scope for restriction on freedom of expression.[43] In such cases, it is all the more essential in a democratic society that someone – whether the media or another contributor to the free flow of information and ideas, such as academics and members of civil society – be allowed to challenge the injunction.

(III) How victim status can and should be interpreted broadly in the context of injunctions *contra mundum*

A. European Court case law

25. The victim status requirement in Article 34 of the Convention implies that the applicant has been directly affected by the measure at issue.[44] Consequently, the position of principle is that any person claiming to be the direct victim of a violation of one of the rights included in the Convention may bring a complaint to the Court either in person or through a duly-appointed representative, with the exclusion of any other individual who does not comply with this basic requirement.

26. The Court has repeatedly stated that the interpretation of victim status is a broad and flexible one.[45] A broad and flexible interpretation of victim status is in line with the object and purpose

---

[40] The United States Supreme Court, *Lamont v. Postmaster General*, 381 U.S. 301 (1965), p. 307 to 308; the United States Supreme Court, *Kleindienst v. Mandel*, 408 U.S. 753 (1972), p. 762 to 765.

[41] The United States Court of Appeals, Seventh Circuit, *Bond v. Utreras*, 585 F.3d 1061, p. 1077 to 1078.

[42] The District Court for the Northern District of Illinois (US), *Snyder v. Bd. of Trustees*, 286 F. Supp. 927 (1968), p. 932.

[43] See ECtHR, *Sürek v. Turkey (no. 1)*, Application No. 26682/95 (8 July 1999), par. 61.

[44] ECtHR, *Amuur v. France*, Application No. 19776/92 (25 June 1996), par. 36.

[45] ECtHR, *Michallef v Malta*, Application No. 17056/06 (15 October 2009), par. 45; ECtHR, *Karner v. Austria*, Application No. 40016/98 (24 July 2003), par. 25; ECtHR, *Norris v Ireland*, Application No. 10581/83 (26 October 1988).

of the Convention, which must function as "an instrument designed to maintain and promote the ideals and values of a democratic society".[46] Its object and purpose require that the Convention provisions be interpreted and applied so as to make its safeguards practical and effective for the individuals the Convention seeks to protect.[47]

27. Victim status is liable to evolve "in light of conditions in contemporary society".[48] The victim status criterion "must be applied without excessive formalism".[49] In other words, it should not be applied in a "rigid, mechanical and inflexible way".[50] As a result, victim status has been interpreted broadly by the Court on previous occasions where the specific circumstances of a case required the Court to do so in order to ensure protection of Conventions rights

28. The Court has for instance found that it is sufficient that there is a risk of being directly adversely affected by a law or measure, even where that risk does not materialise. For example, in *Norris v Ireland,*[51] a law criminalising consensual homosexual sex was found to affect the applicant's respect for private life. He was granted victim status, even though he had not broken the relevant criminal law or been prosecuted, because he had been forced to choose between exercising his right to private life on the one hand and breaking the criminal law on the other. He was therefore a member of a class of people who risked being directly affected by the legislation or measure in question.[52]

29. Even where it is unclear whether or not an interference has taken place, victim status can exist. The applicant in *Zakharov v. Russia,*[53] a publisher and a chairman of an NGO campaigning for media freedom and journalists' rights, could not show that he himself had been subject to State surveillance but argued that the existence of the system was itself enough to bring him within the meaning of "victim" under Article 34. The Grand Chamber accepted that if an applicant can show that "due to his personal situation, he is potentially at risk of being subjected to such measures" he will meet the definition of "victim" under Article 34.[54]

30. The facts that rights could potentially be violated could be sufficient to demonstrate victim status if the relevant measure or law is in itself incompatible with the Convention. As explained by the Court in *Altuğ Taner Akçam v. Turkey*,[55] the fact that an investigation on the basis of Article 301 of the Turkish Criminal Code could potentially be brought against the applicant for his academic work interfered with his right to freedom of expression. In situations where an applicant has not been subject to a concrete interference, the question of whether the applicant is actually a victim involves "determining whether the contested legislation is in itself

---

[46] ECtHR, *Mamatkulov and Askarov v. Turkey*, Application Nos. 46827/99 and 46951/99 (4 February 2005), par. 101.

[47] ECtHR, *Yaşa v. Turkey,* Application No. 22495/93 (2 September 1998), par. 64: "In so far as it constitutes a treaty for the collective enforcement of human rights and fundamental freedoms, [the Convention] must be interpreted and applied so as to make its safeguards practical and effective".

[48] ECtHR, *Gorraiz Lizarraga and Others v Spain*, Application No. 62543/00 (20 November 2004), par. 38.

[49] *Id*.

[50] See ECtHR, *Michallef v Malta*, Application No. 17056/06 (15 October 2009), par. 45; ECtHR, *Karner v. Austria*, Application No. 40016/98 (24 July 2003), par. 25.

[51] ECtHR, *Norris v Ireland*, Application Number 10581/83 (26 October 1988).

[52] See also ECtHR, *S.A.S. v France,* Application No. 42835/11 (1 July 2014), par. 57; ECtHR, *Marckx v. Belgium*, Application No. 6833/74 (13 June 1979), par. 27; ECtHR, *Johnston and Others v. Ireland*, Application No. 9697/82 (18 December 1986), par. 42; ECtHR, *Burden v. the United Kingdom*, Application No. 13378/05 (29 April 2008), par. 34; ECtHR, *Michaud v. France*, Application No. 12323/11 (6 December 2012), par. 51 to 52.

[53] ECtHR, *Zakharov v. Russia*, Application No. 47143/06 (4 December 2015).

[54] *Id.*, par. 171.

[55] ECtHR, *Altuğ Taner Akçam v. Turkey*, Application No. 27520/07 (25 October 2011).

compatible with the Convention's provisions".[56] The Court noted "the chilling effect that the fear of sanction [has] on the exercise of freedom of expression even in the event of an eventual acquittal, considering the likelihood of such fear discouraging one from making similar statements in the future"[57].

31. In the context of a ban on a specific website, affecting all users of the relevant website, the Court found that "active" users of the website could be considered victims of the general ban. In *Cengiz and Others v. Turkey*,[58] the Court found that the blocking of the entire YouTube website in response to content which was said to breach Turkish legislation violated the applicants' Article 10 rights to receive and access information. The applicants in this case were not involved with the disputed content themselves, but were "active" users of YouTube and so capable of being adversely affected by the domestic ban on access.

32. Interested parties could in exceptional circumstances also have standing as a victim. In *Vallianatos and Ors v. Greece*,[59] the Court has held that it is "not just the direct victim or victims of the alleged violation" that has standing, "but also any indirect victims to whom the violation would cause harm or who would have a valid and personal interest in seeing it brought to an end".[60] In this context, in shaping the contents of the requirements of standing and victim status, the Court has taken into consideration a number of factors including the nature of the interference and whether a general interest principle arises.

33. Striking applications of the general interest principle have occurred in the following cases. In *Micaleff v. Malta.*[61]*,* domestic proceedings were initiated by Mrs. M, who died before lodging a complaint with the Court. Her brother complained before the Court on his sister's behalf that she had been denied a fair hearing, in particular because of her lack of opportunity to make submissions before an impartial tribunal contrary to Article 6 of the Convention. The Grand Chamber, like the Chamber before it, decided that the general interest, arising out of the issues raised by the case, justified extending the concept of victim status to include the victim's brother, even in the absence of any interest on his part in the application before the Court.[62] In *Karner v. Austria*,[63] the original applicant had complained of his inability to succeed to the tenancy of his homosexual partner when a heterosexual partner would be able to do so in analogous circumstances. When the original applicant in the proceedings before the Court died, his heir waived the right to succeed to his estate, including in relation to any right regarding those proceedings. Nevertheless, the Court chose not to strike the application out of its list. It noted that its judgments serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties. In addition, although the primary purpose of the Convention system is to provide individual relief, its purpose is also to determine issues on public-policy grounds in the common interest, thereby raising the general standards of protection of human rights and extending human rights jurisprudence throughout the community of Convention States. Finally, the Court noted the subject matter of the application involved an important question of general

---

[56] *Id.*, par. 67.
[57] *Id.*, par. 68.
[58] ECtHR, *Cengiz and Others v. Turkey,* Application Nos. 48226/10 and 14027/11 (1 December 2015).
[59] ECtHR, *Vallianatos and Others v. Greece*, Application Nos. 29381/09 and 32684/09 (7 November 2013).
[60] *Id.*, par. 47.
[61] ECtHR, *Micaleff v. Malta*, Application No. 17056/06 (15 October 2009).
[62] *Id.,* par. 49 to 50.
[63] ECtHR, *Karner v. Austria*, Application No. 40016/98 (24 July 2003).

interest not only for Austria but also for other States Parties to the Convention.[64]

34. The Court's case law on victim status provides clear guidance on how it should approach the question of victim status in the context of injunctions *contra mundum.* The interveners submit that the extensive scope of such injunctions and the serious nature of the restrictions to the Article 10 rights these injunctions entail are "exceptional circumstances" that warrant a broad interpretation of victim status. This is necessary in order to ensure the "practical and effective" enforcement of Convention rights. It is particularly important when the underlying information relates to political matters,

B. Comparative law

35. The Inter-American Commission and Court of Human Rights maintain a broad basis for standing in the Inter-American system, in line with the spirit of the American Convention on Human Rights. The Commission and the Court both have been flexible in their interpretation of victim status in cases that involve potentially grave violations of human rights. Similar to the approach of this Court in *Norris v. Ireland*, the Inter-American Court has accepted complaints of potential victims as well, for instance where a law was passed that could result in the violation of the rights of an applicant. In the *Suárez Rosero* case, the Inter-American Court observed that, because Ecuador's Law on Narcotic Drugs and Psychotropic Substances left persons charged under that law without certain legal protections, there was a violation of the Convention, regardless of the fact the law was not enforced.[65]

36. The jurisprudence of the African Court of Human and Peoples' Rights does not clearly state whether an individual must have "victim status" before they can make an application to the African Court. However, in *Tanganyika Law Society v. Tanzania*,[66] the African Court took a broad approach to victim status when it considered an application based on a Tanzanian law restricting electoral candidates to those who are a member of, and sponsored by, a political party. One of the Applicants had set up his own political party, which meant that he was not prevented from running for elections under the domestic law. Nonetheless, he had standing to challenge the laws that restricted electoral candidates without a party. The African Court held that; "[I]t is […] arguable that, even if the Applicant has successfully formed a political party, he cannot be stopped from challenging the validity of the laws in question and from asserting that the same amounts to a violation of the Charter. A matter such as this one cannot and must not be dealt with as though it were a personal action, and it would be inappropriate for this Court to do so. If there is [a] violation, it operates to the prejudice of all Tanzanians; and if the Applicants' application succeeds, the outcome inures to the benefit of all Tanzanians."[67]

37. Case law from common law jurisdictions also provide examples of a broad interpretation of victim status where it concerns restrictions to the right to receive information to include for instance public spirited persons, social media users, and other members of the public.

---

[64] See also ECtHR, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, Application No. 47848/08 (17 July 2014), par.112: "To find otherwise would amount to preventing such serious allegations of a violation of the Convention from being examined at an international level, with the risk that the respondent State might escape accountability under the Convention ... Allowing the respondent State to escape accountability in this manner would not be consistent with the general spirit of the Convention.".

[65] Inter-American Court of Human Rights, *Suárez-Rosero v. Ecuador*, Judgment of 12 November 1997 (Merits), par. 98.

[66] African Court on Human and Peoples' Rights, *Tanganyika Law Society and Legal and Human Rights Centre v. The United Republic of Tanzania*, Application No. 009/2011 (14 June 2013).

[67] *Id.*, par. 110.

38. As set out above, a broad approach has been taken to victim status in the United States where it concerns restrictions of the right to receive information. The US Supreme Court has held that the right to receive information is not limited to the press, but extends to (and can therefore be relied upon to challenge restrictions by) academics and members of the general public. Would-be recipients of information have standing in their own right to challenge restraints on those wishing to disclose information. For example, in *Lamont v. Postmaster General*,[68] the Supreme Court struck down a provision of the Postal Service and Federal Employees Salary Act of 1962 that restricted access to communist propaganda after a challenge filed by members of the public. In *Kleindienst v. Mandel*,[69] professors who wished to hear, speak, and debate with a speaker that had been denied entry into the United States were able to challenge this restriction of their right to receive information. For the purpose of standing, it is not considered relevant that a restriction or injury is "shared by a large class of other possible litigants."[70]

39. The victim status of public spirited citizens has also been acknowledged in the United Kingdom in *ETK v. News Group Newspapers*,[71] in which an individual who followed cases especially in the field of media law, intervened to apply to have the case heard in open court. The application was accepted and heard by the court (but refused).

Conclusion

40. The case at hand raises important issues the clarification of which could contribute to improved standards of protection for one of the cornerstone provisions of the Convention. Injunctions *contra mundum* severely restrict the right to receive and impart information. In such exceptional circumstances, the approach taken to the question of who is a "victim" for the purposes of Article 34 of the Convention must be as wide and as flexible as the particular circumstances of the case dictate in order to ensure the practical and effective fulfilment of Convention rights. In the exceptional circumstances of injunctions that prohibit the disclosure of information to the world at large, a broad and flexible interpretation as outlined above would not amount to a relaxation on the rule against speculative or abstract applications, but is necessary to allow the Court to carry out its task of examining potentially serious violations of the Convention.

SARA MANSOORI
KIRSTEN SJOVOLL
Matrix Chambers

19 September 2016

[68] The United States Supreme Court, *Lamont v. Postmaster General*, 381 U.S. 301 (1965).
[69] The United States Supreme Court, *Kleindienst v. Mandel*, 408 U.S. 753 (1972).
[70] Court of Appeals, Third Circuit (US), *Pansy v. Borough of Stroudsburg* (1994), 23 F.3d 772, p. 777.
[71] Court of Appeal of England and Wales (UK), *ETK v. News Group Newspapers* [2011] EWCA Civ 439, par. 3.

Annex: Descriptions of the Interveners

Media Legal Defence Initiative

The Media Legal Defence Initiative is a non-governmental organisation that provides legal support and helps defend the rights of journalists, bloggers and independent media across the world. It is based in London and works closely with a world-wide network of experienced media and human rights lawyers, as well as local, national and international organisations, donors, foundations and advisors who are all concerned with defending media freedom. To those ends, MLDI maintains close links with bar associations and media freedom organisations in Asia, Africa, Europe and Latin America. MLDI is unique as it is the only organisation that focuses on providing legal defence to journalists and independent media on a global scale. As part of its mandate, MLDI engages in strategic litigation to protect and promote media freedom. MLDI has previously intervened in many cases before the European Court of Human Rights including *Sanoma v. the Netherlands*, *Mosley v. UK, MGN v. UK*, *Axel Springer v. Germany (No.2)*, *Haldimann v. Switzerland, Couderc and Hachette Filipacchi Associés v. France* and *Delfi v. Estonia*.

Index on Censorship

Index on Censorship is an international organisation that promotes and defends the right to freedom of expression. Index uses a unique combination of journalism, campaigning and advocacy to defend freedom of expression for those facing censorship and repression, including journalists, writers, social media users, bloggers, artists, politicians, scientists, academics, activists and citizens.

Platform for Independent Journalism P24

The Platform for Independent Journalism P24 is a Turkish registered NGO, founded in 2013 by prominent journalists working to promote independent media at a time when Turkish press integrity is under serious threat. The Platform does this through a complex strategy (including advocacy, training, an anti-censorship platform, investigative journalism projects and content production).

ARTICLE 19

ARTICLE 19 is an international human rights organisation. It takes its name and mandate from Article 19 of the Universal Declaration of Human Rights, which proclaims the right to freedom of expression, including the right to receive and impart information and ideas. ARTICLE 19 seeks to develop and strengthen international standards that protect freedom of expression. ARTICLE 19 is a registered UK charity (No. 32741) with headquarters in London. As an organization whose work contributes to the application and reinforcement of international law on freedom of expression, ARTICLE 19 regularly submits legal opinions, written comments and amicus curiae briefs, either directly or through the commissioning of expert opinions, to both international and national courts in cases involving freedom of expression and freedom of information. ARTICLE 19's briefs, which are based on relevant international human rights law and comparative standards, aim to assist courts to elaborate the specific meaning of freedom of expression in the context of the particular case in a manner which best protects this fundamental human right.

Reporters Committee for Freedom of the Press

The Reporters Committee for Freedom of the Press is a U.S.-based unincorporated association of reporters and editors that works to defend the free speech rights and freedom of information

interests of the news media. The Reporters Committee has provided assistance and research in news media litigation since 1970.

Media Law Resource Center

The Media Law Resource Center ("MLRC") is a non-profit membership association for content providers in all media, and for their defence lawyers, providing a wide range of resources on policy issues relating to media law. These include newsletters and analyses of legal, legislative and regulatory developments; litigation resources and practice guides; and national and international media law conferences and meetings. MLRC was founded in 1980 by leading American publishers and broadcasters to assist in defending and protecting free press rights. Today MLRC is supported by about 125 media company members, including leading publishers, broadcasters, and cable programmers, internet operations, and media and professional trade associations in America and around the world and 200 law firms specializing in media law also in America, Europe and globally.