

The Registrar  
European Court of Human Rights  
Council of Europe  
F-6005 Strasbourg CEDEX  
France

**Application for leave to intervene under Rule 44(3) of the Rules of Court**  
***Alessandro Biancardi v. Italy*, Application no. 77419/16**

Dear President,

This request for leave to intervene as *amicus curiae* is made by Professor David Kaye, the United Nations (“UN”) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (“**the UN Special Rapporteur**”), and Mr. Edison Lanza, the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (“**the IACHR Special Rapporteur**”). The Special Rapporteurs respectfully seek permission to intervene in the case of *Alessandro Biancardi v. Italy*, Application no. 77419/16, pursuant to Article 36(2) of the European Convention on Human Rights (“**the ECHR**”), read together with Rule 44(3) of the Rules of Court.

The mandate and work of the proposed *amicus curiae* interveners

The UN Special Rapporteur is an independent expert appointed by the UN Human Rights Council, the central human rights institution of the UN and a subsidiary organ of the UN General Assembly. The IACHR Special Rapporteur is appointed by the Inter-American Commission on Human Rights, a principal and autonomous organ of the Organization of American States (“OAS”). Both Special Rapporteurs examine, monitor, advise and report on freedom of expression issues. They do this by receiving individual complaints, conducting country visits, issuing thematic reports and joint declarations, providing technical assistance to governments, and engaging in public outreach and promotional activities – all with the ultimate goal of promoting and protecting freedom of expression. It is against this background and within their mandates that the Special Rapporteurs seek to contribute to this case, in which the rights to freedom of opinion and expression are at stake.

The UN Special Rapporteur is mandated by Human Rights Council Resolution 7/36 to, *inter alia*:<sup>1</sup>

- (a) gather all relevant information, wherever it may occur, relating to violations of the right to freedom of opinion and expression, discrimination against, threats or use of violence, harassment, persecution or intimidation directed at persons seeking to exercise or to promote the

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<sup>1</sup>UN. Human Rights Council. Resolution 7/36. *Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*. [http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_7\\_36.pdf](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_36.pdf)

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

- (b) seek, receive and respond to credible and reliable information from governments, non-governmental organizations and any other parties who have knowledge of these cases; and
- (c) make recommendations and provide suggestions on ways and means to better promote and protect the right to freedom of opinion and expression in all its manifestations.

The Human Rights Council has also specifically requested the UN Special Rapporteur to focus on freedom of expression issues and challenges online. In particular, Resolution 7/36 states that the UN Special Rapporteur should “provide his/her views, when appropriate, on the advantages and challenges of new information and communication technologies, including the Internet and mobile technologies, for the exercise of the right to freedom of opinion and expression, including the right to seek, receive and impart information and the relevance of a wide diversity of sources, as well as access to the information society for all.”

In discharging his mandate, the UN Special Rapporteur has collected and continues to collect evidence, and to report, on the extent, nature and severity of violation of freedom of expression relating to balancing the right to digital privacy with the right to freedom of expression, the right of the public to access information, and freedom of the media and online journalism. His mandate rests in part upon Article 19 of the International Covenant on Civil and Political Rights (“the ICCPR”), which, similar to Article 10 of the ECHR, protects, *inter alia*, the right “to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

For example:

- (a) He prepares and publishes thematic reports. His reports to the Human Rights Council and the General Assembly have examined the duty of States to protect and promote the full range of rights online, and to ensure freedom of expression by promoting media diversity and independence and access to information. One such report published in 2018 noted the international acceptance that offline rights apply equally online.<sup>2</sup> The report also highlighted that content regulation, stemming from privacy concerns, puts significant pressure on private companies to over-broadly remove lawful content in order to avoid liability, thus creating risks to freedom of expression.<sup>3</sup> In another report published in 2016, he emphasized that “attacks on journalism are fundamentally at odds with protection of freedom of expression and access to information and, as such, they should be highlighted independently of any other rationale for restriction.”<sup>4</sup> The report noted that States should refrain from imposing obstacles that undermine independent media.<sup>5</sup>

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<sup>2</sup> U.N. Doc. A/HRC/38/35, ¶ 1, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/096/72/PDF/G1809672.pdf?OpenElement>

<sup>3</sup> Id. ¶ 17.

<sup>4</sup> U.N. Doc. A/71/373, ¶ 35, available at [https://www.un.org/ga/search/view\\_doc.asp?symbol=A/71/373](https://www.un.org/ga/search/view_doc.asp?symbol=A/71/373)

<sup>5</sup> Id. ¶ 57(d)

- (b) He also addresses communications and urgent appeals to Members States on particular cases of restrictions on freedom of expression. Between 1 August 2014 and 1 April 2020, he has issued 1,373 communications and urgent appeals to Member States of the United Nations. In particular, he has communicated his concerns to States about the legality of overbroad or ambiguous laws that allow for inequitable censorship and regulation of online media, and how such measures restrict access to public information. The growing body of evidence suggests the potential abuse of censorship, similar to that complained in this case, to restrict online media and journalism in violation of freedom of expression.
- (c) He submits amicus interventions and expert testimony in key cases that raise issues of freedom of expression. For example, in *Privacy International and Others v. United Kingdom*, the UN Special Rapporteur submitted an amicus filing before the European Court of Human Rights examining the legality and proportionality of government surveillance policies with respect to the right to privacy and freedom of opinion.

Both Special Rapporteurs sign joint declarations with the freedom of expression experts of the other two regional intergovernmental mechanisms that address expanding issues of international importance. For example, they both signed the Joint Declaration on Media Independence and Diversity in the Digital Age in 2018 with the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE) and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights (ACHPR). The Joint Declaration highlighted that the "right to be forgotten" raises freedom of expression issues and States should ensure any removal or de-indexing of online content is "provided for by law in clear, specific terms, are applicable only where the petitioner demonstrates substantive harm to his or her privacy which overrides any freedom of expression interest involved, are subject to appropriate due process guarantees and are otherwise conducted in a manner which, both procedurally and substantively, fully respects the right to freedom of expression."<sup>6</sup>

The Office of the Special Rapporteur for Freedom of Expression was created by the IACHR in October 1997 during its 97th Period of Sessions, with the purpose of "strengthening the capacity of the IACHR's to promote and protect full observance of this important right in the Americas, and thus help to ensure its effective exercise."<sup>7</sup> Since its establishment the Office of the Special Rapporteur has also been endorsed by the member states of the OAS.

This office was created by the Commission as a permanent, independent office that acts within the framework and with the support of the IACHR with the mandate to "raise public awareness of the importance of freedom of expression throughout the hemisphere. This is being done in the conviction that this basic right plays a fundamental role in the development and consolidation of democracy and in the protection of all other human rights. The other purposes of the Office are: to make specific recommendations to Member States regarding freedom of expression so that they can better take

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<sup>6</sup>Joint Declaration on Media Independence and Diversity in the Digital Age. 2 May 2018.

[https://www.ohchr.org/Documents/Issues/Opinion/JointDeclaration2May2018\\_EN.pdf](https://www.ohchr.org/Documents/Issues/Opinion/JointDeclaration2May2018_EN.pdf)

<sup>7</sup> IACHR. Annual Report 1998. Chapter II. OEA/Ser.L/V/II.102. Doc. 6 rev. 16 April 1999. <http://www.cidh.org/annualrep/98eng/ChapterII.htm>; IACHR. Directive 1/19: Guidelines on the Activities and Functions Provided for in the Mandates of The Special Rapporteurships of the IACHR. 30 September 2019. <http://www.oas.org/en/iachr/expression/publications/DirectivaRelatoriasEN.pdf>

measures to support it, to draft specific reports and studies, and to quickly respond to any petition or communication reporting violations of freedom of expression in an OAS Member State.”<sup>8</sup>

In discharging his mandate, the IACHR Special Rapporteur has collected and continues to collect evidence, and to report, on the extent, nature and severity of violation of freedom of expression. His mandate rests in part upon Article 13 of the American Convention on Human Rights (“the ACHR”), which, similar to Article 10 of the ECHR, protects, *inter alia*, the right “to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.”

During its twenty-two years of existence, the Office of the Special Rapporteur has carried out each of the tasks assigned to it by the IACHR and by other OAS bodies. This includes the following activities:

- (a) Advise the IACHR in the evaluation of individual petitions and prepare the corresponding reports. The advancement of individual petitions not only provides justice in the specific case, but also helps call attention to paradigmatic situations that affect freedom of thought and expression, and creates important case law that can be applied in the Inter-American human rights system itself as well as in courts in countries throughout the Americas region. The Special Rapporteur also advises the IACHR in the presentation of important cases involving freedom of expression to the Inter-American Court of Human Rights and the request of provisional measures. Furthermore, the Special Rapporteur advises the IACHR in the adoption of precautionary measures.
- (b) Prepare specific reports on particular countries and thematic reports. For example, in 2016 he published the thematic report “Standards for Free, Open, and Inclusive Internet.”<sup>9</sup> The report “underscored that the right to freedom of expression, in particular, is fully applicable to communications, ideas, and information that is disseminated and accessed through the Internet.”<sup>10</sup> The report analyzed certain issues that represent important challenges for freedom of expression and warrant particular attention, including the removal and de-indexing of content. The report draws from the standards developed on the 2013 “Report on Freedom of Expression and the Internet”<sup>11</sup>, broadening its analysis to the new challenges faced in the exercise of human rights online, particularly freedom of expression.
- (c) Daily monitor the state of freedom of expression in the region, based on which the Office of the Special Rapporteur issues statements such as press releases, reports, and opinions on specific cases or situations that are relevant to its mandate. In particular, the Special Rapporteur has communicated his concerns to States about the legality of laws that defined extremely broad, vague, and ambiguous offenses that punish speech and allow to suppress and censor content, by

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<sup>8</sup> IACHR. Directive 1/19: Guidelines on the Activities and Functions Provided for in the Mandates of The Special Rapporteurships of the IACHR. 30 September 2019. <http://www.oas.org/en/iachr/expression/publications/DirectivaRelatoriasEN.pdf>

<sup>9</sup> IACHR. Standards for Free, Open, and Inclusive Internet. Report by Special Rapporteur for Freedom of Expression Edison Lanza. OEA/Ser.L/V/II. CIDH/RELE/INF.17/17. [http://www.oas.org/en/iachr/expression/docs/publications/INTERNET\\_2016\\_ENG.pdf](http://www.oas.org/en/iachr/expression/docs/publications/INTERNET_2016_ENG.pdf)

<sup>10</sup> Id. ¶ 4.

<sup>11</sup> IACHR. Freedom of Expression and the Internet. Report by Special Rapporteur for Freedom of Expression Catalina Botero. OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13. 31 December 2013.

[www.oas.org/en/iachr/expression/docs/reports/2014\\_04\\_08\\_Internet\\_ENG%20WEB.pdf](http://www.oas.org/en/iachr/expression/docs/reports/2014_04_08_Internet_ENG%20WEB.pdf)

granting the State the power to block Internet websites and revoke the licenses of audiovisual media outlets. Such concerns were addressed in the 2019 annual report<sup>12</sup>, in press releases, and country reports.<sup>13</sup>

- (d) Perform on-site visits to countries of the region to gather information about the situation regarding freedom of expression in a particular country to advance international standards on the exercise of this right, and to promote the use of the Inter-American human rights system.
- (e) Prepare an Annual Report on the state of freedom of expression in the hemisphere analyzing the situation regarding this right in the OAS Member States, which includes noting the principal threats to ensuring the exercise of the right to freedom of expression and the advances that have been made in this area. This have opened up important channels for discussion in the hemisphere and led to the implementation of important legislative and administrative reforms.
- (f) Provide technical advisory support to the OAS bodies, including technical opinions on laws or bills regarding cybersecurity and privacy issues when requested by the States.
- (g) Promote the adoption of legislative, judicial, administrative, or other types of measures that may be necessary to make effective the exercise of the right to freedom of thought and expression.

#### Significance of the issues raised by the case and the scope of the proposed intervention

In reaching its judgment on the case of *Alessandro Biancardi v. Italy*, the Court may be called upon to consider and determine, amongst other matters, critical issues of relevance to the work of the Special Rapporteurs (as summarised above). The Court's judgment on these issues is likely to be relevant and influential to the interpretation and application of international human rights standards on the right to freedom of expression under the ECHR and beyond, including Article 19 of the ICCPR and Article 13 of the ACHR.

In light of the above, the Special Rapporteurs are seeking leave to intervene in order to assist the Court by providing it with:

- (a) observations on the interpretation and application of Article 10 of the ECHR in light of Article 19 of the ICCPR and Article 13 of the ACHR, particularly the requirements of a legitimate aim, of legality, and of necessity and proportionality;
- (b) an analysis of the global impact and implication of the Court's judgment on the freedom of expression around the world.

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<sup>12</sup> IACHR. Annual Report 2019. Report of the Office of The Special Rapporteur for Freedom of Expression. OEA/Ser.L/V/II. Doc. 5. February 24, 2020.

<http://www.oas.org/en/iachr/expression/reports/ENGIA2019.pdf>

<sup>13</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression expresses serious concern over the enactment of the "Anti-Hate Law" in Venezuela and its effects on freedom of expression and freedom of the press. Press Release R179/17.

<http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1082&IID=1>.

Freedom of Expression in Cuba. Country report. OEA/SER.L/V/II. CIDH/RELE/INF.21/18. 31 de diciembre de 2018.

<http://www.oas.org/es/cidh/expression/docs/informes/Cuba-es.pdf>

It is respectfully suggested that an intervention by the Special Rapporteurs would be of benefit to the Court in discharging its function in accordance with "*the interests of the proper administration of justice*" (Rule 44(3)(a)).

If the President decides to grant the Special Rapporteurs' application to intervene, the Special Rapporteurs shall of course abide by any terms attached to that decision and by the Rules of Court. If the Special Rapporteurs' request to intervene is accepted, please indicate the timetable within which his submissions should be filed with the Court.

The proposed intervention submitted to the European Court of Human Rights by the UN Special Rapporteur would be drafted on a voluntary basis and should not be considered as a waiver, express or implied, of the privileges and immunities of the United Nations, its officials and experts on missions, pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations. Authorization for the positions and views to be expressed by the UN Special Rapporteur, in full accordance with his independence, was neither sought nor given by the United Nations, the Human Rights Council, the Office of the High Commissioner for Human Rights, or any of the officials associated with those bodies. Likewise, authorization for the positions and views to be expressed by the IACHR Special Rapporteur, in full accordance with his independence, was neither sought nor given by the Inter-American Commission on Human Rights.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'D. Kaye', written in a cursive style.

David Kaye

UN Special Rapporteur on the promotion and protection of the right to  
Freedom of opinion and expression

A handwritten signature in black ink, appearing to read 'Edison Lanza', written in a cursive style.

Edison Lanza

Special Rapporteur for Freedom of Expression of the  
Inter-American Commission on Human Rights