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AT/JNA/zna
Application no. 22950/23

The Registrar, Second Section
European Court of Human Rights
Council of Europe
F-67075
Strasbourg, France

THIRD-PARTY INTERVENTION

Mediarey Hungary Services Zrt. against Hungary Application no. 22950/23

Introduction

1. This third-party intervention is submitted on behalf of the Civil Liberties Union for Europe, Civil Rights Defenders, Daphne Caruana Galizia Foundation, Gesellschaft für Freiheitsrechte (GFF), Helsinki Foundation for Human Rights (HFHR), Italian Coalition for Civil Liberties and Rights (CILD), and Ligue des Droits Humains (LDH) ("the Interveners").

2. The Interveners welcome this opportunity to intervene as a third party in this case, by the leave of the President of the Court, granted on 23 April 2026, pursuant to Rule 44(3) of the Rules of Court. This submission does not address the facts or merits of the applicant's case.

3. The *Mediarey Hungary Services Zrt. v. Hungary* (No. 22950/23) case involves a journalist's publication of a list of the richest Hungarians, raising issues of personal data protection and privacy (Article 8) versus freedom of expression and access to information (Article 10). The core issue raised by the present case is the right to access information that serves public interest and the justifiable limits that can be placed on that access.

4. The Interveners invite the Court to reaffirm that the journalistic exemption under Article 85 GDPR should be interpreted in a manner consistent with Convention standards; data-protection claims should not be permitted to operate as SLAPPs; economic journalism should be recognised as public interest journalism where it explains wealth, influence and accountability; and DPA practice should include safeguards against chilling effects on the press.

I. JOURNALISTIC EXEMPTION UNDER ARTICLE 85 GDPR AND PUBLIC INTEREST

A. The function of the journalistic exemption

5. Key CJEU cases on journalistic exemptions confirm a functional approach. *Sergejs Buivids v. Datu valsts inspekcija* (C-345/17, ECLI:EU:C:2019:122), hereafter "*Buivids*", established that the journalistic exemption is not limited to professional journalists or media organisations. *Tietosuojavaltuutettu v. Satakunnan Markkinapörssi Oy, Satamedia Oy* (C-73/07, ECLI:EU:C:2008:727), hereafter "*Satamedia*" found that tax data can be considered "journalistic" even if done for profit-making purposes, as long as the objective is to contribute to a public debate.

6. *Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González* (C‑131/12, ECLI:EU:C:2014:317), hereafter "*Google Spain*", addressed the balance between the "right to be forgotten" and the public's right to access information. The judgment highlighted that the protection of personal data is not absolute and may give way where access to the information remains justified by an overriding public interest, particularly where the persons concerned play a role in public life.

7. The assessment of the lawfulness of personal data processing by investigative journalists is generally conducted under Article 6(1)(f) GDPR, while 6 (1)(e) provides rules for processing when necessary for the performance of a task carried out in the public interest. The balancing test should therefore take into account not only the sensitivity of the data, the impact on the individual concerned and their reasonable expectations, but also the societal interest in access to information on matters of public concern. Where reporting concerns public money, abuse of power, or links between political and economic actors, the public interest in disclosure will often be especially strong.

8. Article 85 GDPR requires Member States to reconcile the right to data protection with freedom of expression and information, including processing for journalistic purposes. It also requires exemptions or derogations from certain GDPR obligations and rights when necessary to preserve that balance. This provision should be read in the light of recital 4 GDPR, according to which "the right to the protection of personal data is not an absolute right; it must be considered in relation to its function in society and be balanced against other fundamental rights" including the right to freedom of expression and information.

9. The establishment of the journalistic exemption does not mean that journalists are placed outside the law. Rather, the protection of individuals is secured through other legal safeguards, including press law, civil liability, criminal law in narrowly defined cases, and general standards of journalistic diligence. The central point is that data protection law should not become a parallel system of prior restraint, nor a mechanism that allows powerful actors to demand the removal of public-interest reporting without engaging with its truth, accuracy, or public importance.

10. In Germany, media privilege under Article 85 of the GDPR is the central mechanism for resolving the tension between the protection of personal data and the freedom of communication. It represents a constitutionally necessary instrument for ensuring an open, pluralistic, and democratic information order.

11. In order to invoke the media privilege, personal data must be processed for journalistic purposes. The media privilege does not constitute a "general privilege of expression." (BGH, Judgment of 29 July 2025, VI ZR 426/24.) Journalistic activities must aim to disseminate information, opinions, or ideas to the public (*Satamedia*). What matters is not whether the activity is classified as a traditional medium. (BGH, Judgment of 29 July 2025, VI ZR 426/24.) The focus of journalism is not decisive. Tabloid media benefit from the protection of press freedom just as much as other, "more serious" media. The same applies to business journalism.

12. The exemption extends to all phases of journalistic work: from research through the selection, structuring, and archiving of material to editorial processing and publication (BGH, Judgment of 9 February 2010, VI ZR 243/08).

13. German media law provides for subsequent protection of data subjects after publication. According to German legal tradition, the general right of personality of data subjects under Article 2(1) in conjunction with Article 1(1) of the German Grundgesetz (GG) applies in this regard, rather than data protection regulations. It protects the free development of personality, particularly against personal reporting and the dissemination of information that could significantly impair this development.

14. Crucially, however, this subsequent protection is not absolute. In each individual case, courts must weigh the infringed right against, in particular, the interest in free expression protected by Article 5(1) GG and positively establish an unlawful violation (BGH, Judgment of 18 September 2012, VI ZR 291/10). To this end, all circumstances of the individual case must be taken into account.

B. The meaning of journalism and public interest

15. Although the GDPR does not provide a definition for the term "journalistic purposes" or "journalism," direction can be understood from the case-law of the CJEU. The GDPR leaves considerable discretion to Member States in shaping the scope of the journalistic exemption.

16. When it comes to applying the journalistic exemption, the ultimate criterion for determining whether data processing should be exempted from some or all of the GDPR rules is the purpose of processing. As a general guideline, if personal data is processed to serve the public interest, it is referred to as "journalistic purposes". Conversely, if a media organisation processes personal data for other

reasons, such as targeted advertising for their commercial purposes, the GDPR will fully apply.

17. The public-interest test under Article 85 GDPR should therefore be understood through four key elements. First, functional approach: the CJEU applies a functional test, looking at the purpose of the processing, namely disclosing information to the public, rather than the status of the person, professional versus citizen. Second, definition of public interest: while the GDPR does not strictly define "public interest," case-law interprets it as contributing to a debate of general interest, such as political, historical, or consumer-related matters. Third, proportionality and balancing: the exemption is not absolute. Member States should adopt exemptions necessary to "reconcile" data protection with freedom of expression, meaning a proportionality test is required, and the intrusion into privacy must be justified by the public interest. Fourth, distinction from gossip: the Court distinguishes between public interest and mere "sensationalism" or public curiosity, with the latter not qualifying for exemption.

C. National implementation and comparative examples

18. The EU Member States have implemented Article 85 differently. In Germany, the Interstate Media Treaty (MStV) and press laws contain such an exemption. Under §12,23 MStV, processing of personal data "for journalistic purposes" is largely excluded from the GDPR, with controllers only subject to penalties for breaching data integrity/confidentiality and the obligation not to use journalistic data for other purposes. This reflects an attempt to balance the rights: Germany permits broad data processing for journalists, subject to security measures, whereas data controllers cannot exploit journalistic data in unrelated ways.

19. The Austrian Constitutional Court struck down Austria's blanket journalistic exemption, holding that freedom of expression cannot per se override privacy. The Court required a "weigh[ing]" of the individual's privacy interest against the media's interests, echoing Article 85's balancing mandate. As the Court explained, "freedom of expression…requires exceptions to data protection if the data protection provisions would be incompatible with…the exercise of journalistic activity," but does not automatically prevail. In practice, this means absolute exemptions are unconstitutional.

20. The Polish legislator adopted a relatively straightforward approach to regulating the journalistic exemption by expressly excluding the application of several GDPR provisions to activities involving the preparation and publication of press materials. Article 2 of the Polish Act of 10 May 2018 on the Protection of Personal Data (Ustawa o ochronie danych osobowych, consolidated text: Journal of Laws of 2019, item 1781) provides that several GDPR provisions do not apply to activities, consisting of editing, preparing, creating or publishing press materials

within the meaning of the Polish Press Law, as well as to literary and artistic expression. The excluded provisions include Articles 5–9, Article 11, Articles 13–16, Articles 18–22, Article 27, Article 28(2)–(10), and Article 30 GDPR.

21. EU law recognises that privacy and data protection must be balanced against freedom of expression and access to information. Hungarian law goes further and acknowledges that data protection and freedom of information are two sides of the same right. Hungarian law is silent about Article 85 exemptions; therefore, the courts must perform the necessary balancing exercise in every case. It is essential to ensure that the public-interest reporting exemption is broad enough to cover data journalism and to create the legal basis for processing and publishing personal data, but not so broad as to entirely weaken privacy rights. This is true in reverse: privacy rights should not gut public-interest reporting, especially when the published information is factual and verified.

II. DATA PROTECTION AND SLAPPS

A. Data protection as a SLAPPs tool in the EU

22. There is growing evidence that data protection law is being used as a new vehicle for SLAPPs. The 2025 CASE report records 15 cases in which the GDPR was cited as a legal basis, alongside 44 cases invoking privacy breach. The report also notes that SLAPPs' initiators increasingly rely on the GDPR and the right to erasure to seek removal of critical articles and public records.

23. In a defamation case, the claimant normally has to confront the truth, accuracy or fairness of the publication. In GDPR-based proceedings, the claimant may instead argue that the journalist had no legal basis to process personal data, or that the publisher failed to comply with data subject rights. A journalist acting as a data controller bears the burden of demonstrating a lawful basis for processing, whereas the claimant need only assert a rights violation. This makes data protection law an attractive substitute for reputation management. It allows claimants to avoid the public-interest defence, which is usually central in freedom-of-expression cases. Furthermore, Data Protection Authorities very often lack the media law expertise to perform the balancing exercise the Convention requires.

24. The GDPR affords SLAPPs filers a new route to pursue targets: administrative authorities are recognised as forums for rights violations, meaning SLAPPs filers can initiate multiple proceedings in tandem on the same issue, forcing targets to defend themselves simultaneously on multiple fronts. Data protection provisions and administrative enforcement by Data Protection Authorities are attractive to powerful figures because GDPR proceedings offer no truth-honesty defense and can carry massive fines.

25. SLAPPs are increasingly invoking the GDPR and the right to erasure to demand the removal of critical articles and public records. This constitutes a powerful form of censorship because it sidesteps any challenge to the accuracy or lawfulness of the content, instead exploiting the chilling effect of potentially severe GDPR regulatory fines. GDPR fines can reach €20 million or 4% of global annual turnover as per Article 83(5) GDPR. The threat of such fines produces a chilling effect that is far more persuasive when the Court can see the actual amounts.

B. Examples of misuse of the GDPR

26. In Romania, the Rise Project NGO reported that Romanian authorities invoked the GDPR to demand journalists reveal their confidential sources or face crippling fines. The Romanian Data Protection Authority issued a formal warning ordering the Rise Project team to identify how they obtained files implicating a politician, or pay a penalty of up to EUR 20 million. The DPA's letter required disclosure of sources, storage methods, and related details, under threat of daily fines and a lump-sum penalty.

27. In Poland, the GDPR is generally not used as a tool to silence journalists. A complaint was lodged by Jacek Kurski, then President of the public broadcaster TVP, against Onet.pl after the outlet reported that he had travelled to Paris for the Junior Eurovision final despite having previously tested positive for COVID-19. Kurski argued that the publication unlawfully processed and disclosed information concerning his health and demanded the removal of the article. He also filed a complaint with the Polish Data Protection Authority (UODO). The President of the UODO ultimately refused to intervene, noting that the information had been obtained exclusively for journalistic purposes and was processed in connection with the exercise of the right to information and freedom of expression.

28. Mapping exercises document scores of SLAPPs incidents in Europe annually; many now involve data-protection or privacy allegations alongside or instead of defamation. In 2021, the European Parliament explicitly warned that abusive use of the GDPR was inhibiting freedom of expression. NGOs and press councils have catalogued dozens of cases, including an ongoing DPA case in Greece in which a businessman is accused of abusing the GDPR against an investigative website.

C. Measures to prevent misuse

29. The GDPR is easy to weaponise in some jurisdictions. The fragmented implementation of Article 85 GDPR across Member States is the root cause of the GDPR's SLAPPs potential. Where national law provides only a narrow journalistic exemption, or none at all, the GDPR becomes an open door for SLAPPs. Hungary is particularly exposed because Hungarian law is silent about Article 85 exemptions.

This means that every case requires a full balancing exercise, which SLAPPs filers can exploit through administrative complaints and parallel proceedings.

30. Preventive measures should therefore include: broad and clear journalistic exemptions in national law; explicit protection of public-interest processing; safeguards against orders requiring disclosure of journalistic sources; careful judicial scrutiny of interim measures seeking removal or redaction of journalistic content; and recognition that GDPR-based claims may constitute SLAPPs where they are used to silence public participation rather than to remedy genuine privacy harm.

31. SLAPP-proofing the GDPR requires three measures in particular. First, implementation, interpretation, and enforcement of the journalistic exemption must be informed by European human rights standards. Second, more attention is needed to the role of Data Protection Authorities in facilitating SLAPPs. Third, an upper limit should be imposed on sanctions for GDPR proceedings that concern public interest journalism, since even the threat of multi-million-euro fines can produce chilling effects.

32. Courts and DPAs should treat data-protection claims against public-interest reporting as requiring Article 10 scrutiny from the outset, including an assessment of chilling effect, procedural burden and proportionality of any interim or final measure.

III. ECONOMIC JOURNALISM AS PUBLIC INTEREST JOURNALISM

A. Informing the public about wealth and power

33. Economic journalism plays a critical role in fulfilling the media's responsibility to transmit public interest information and perform a "watchdog" function over public entities and powerful individuals, in particular those in the business sector. Its expertise in business and financial reporting strengthens the public's awareness and understanding of economic developments and their influence on politics and society more broadly.

34. There is also an undeniable link between wealth and influence, which may be considered a form of power. Economic data can have just as important an impact on society, and just as great an influence on public debate, as political speech.

B. The legal basis for economic journalism as public interest journalism

35. The CJEU has consistently held that the scope of "journalism" and "journalistic purposes" should be understood broadly, possibly extending even to non-professional journalists who document single events and upload them to large online platforms. Furthermore, in *M. A. v Autorité des marchés financiers* (C-302/20, ECLI:EU:C:2022:190), hereafter "*M. A.*", the CJEU held that the work of an

economic journalist enjoys the same protections as other forms of journalism and expression more broadly when standard limitations are satisfied; for example, as in *M. A.*, even reporting market rumors "for the purpose of journalism" should be considered protected as long as "the disclosure is necessary for the purpose of carrying out a journalistic activity".

36. The Court has similarly always construed journalism broadly. In *Magyar Helsinki Bizottság v. Hungary* (No. 18030/11), the Court reiterated that some political content ignored by the traditional media may be shared online by non-professional journalists. The CJEU has further elaborated on the issue of so-called citizen journalists, which may include, for example, bloggers, and held that they too can also rely on the established derogation for journalistic purposes.

37. While there is no ECtHR case specifically on economic journalism, the Court has protected reporting on powerful private entities when it serves public debate. In *Von Hannover v. Germany (No. 2)* (Nos. 40660/08 and 60641/08), hereafter "*Von Hannover (No. 2)*", the Court reiterated that journalists may publish information about public figures if the information is of legitimate public interest. A reputable magazine's investigation into the country's wealthiest people contributes to the debate of general interest and thus deserves wide latitude.

C. Case-law supporting journalists' right to publish personal information

38. The Court has consistently upheld the "public watchdog" function of journalists and the essential role they play in supporting the public's right to receive and impart information. In *Couderc and Hachette Filipacchi Associés v France* (No. 40454/07), the Court noted that journalists' responsibilities extended to transmitting "information and ideas on all matters of public interest" (§ 89). The Court's decision in *Axel Springer AG v. Germany* (No. 39954/08) noted that, while the definition of what constitutes a matter of public interest depends "on the circumstances of the case", the Court has already recognised the existence of such an interest not only when a publication concerned political issues or crimes, but also where it concerned issues relating to sports or performing artists. The basic ownership data of a market-leading company with a large number of employees must therefore be considered to have a public-interest nature.

39. The balancing act between the competing interests under Article 8 and Article 10 ECHR is not solely a matter for national authorities. Instead, it "goes hand in hand with European supervision by the Court, whose task it is to give a final ruling on whether a restriction is reconcilable with freedom of expression as protected by Article 10" (see *Peck v UK* (No. 44647/98) §77*; Paloma Sanchez v Spain* (Nos. 28955/06, 28957/06, 28959/06 and 28964/06) §55). Where the balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong

reasons to substitute its view for that of the domestic courts (see *Von Hannover (No. 2)* § 107).

D. Public interest journalism and democracy

40. Economic journalism cannot be separated from political journalism or other forms of journalism when considering its public-interest nature. Quality journalism, including economic reporting, is essential to democracy. Investigative reporting, of which economic journalism is part, uncovers wrongdoing in both state and corporate realms. Data-driven stories on wealth and taxation expose the first draft of history. In practice, many national laws grant a higher threshold for privacy intrusions when reporting on those acting publicly, often interpreted to include significant business figures.

IV. INSTITUTIONAL SAFEGUARDS AND DPA PRACTICE

A. The risk from Data Protection Authorities

41. The above cases show that Data Protection Authorities (DPAs) can inadvertently facilitate SLAPPs if they treat journalistic data-processing like any other. Without specific guidance, a DPA may demand source disclosure or suspend publications under GDPR rules, as happened in the Rise Project. This runs counter to the notion that press freedom is a fundamental human right under Article 10 ECHR and to GDPR Article 85's intent.

42. Against this backdrop, the GDPR and national data protection laws must allow the processing of personal data for journalistic purposes where the processing is proportionate, necessary and justified for reasons of substantial public interest. The institutional role of journalism requires that Data Protection Authorities treat public-interest reporting differently from ordinary data processing.

B. Institutional safeguards

43. To protect journalism, national Data Protection Authorities should issue public guidelines specifying that Article 85 exemptions are interpreted expansively. The guidance should stress that the GDPR does not guarantee absolute confidentiality where information is processed and published for reasons of public interest.

44. The DPA order affecting a journalist should be immediately appealable to a judicial body with expertise in media law. Like contempt powers against the press, data-protection enforcement can have chilling effects; thus, requiring a court to review novel uses of the GDPR in media cases could prevent abuse. Member State courts should recognise the special status of journalistic speech.

45. Some jurisdictions have press councils or ombudsmen. A similar role could exist within or alongside a DPA: a media liaison who ensures that data-protection proceedings involving journalism consider free speech. This would institutionalise the balancing function.

46. Finally, an upper limit should be imposed on sanctions for GDPR proceedings that concern public interest journalism, since the threat of multi-million-euro fines can produce chilling effects. DPAs must not become instruments against legitimate reporting.

CONCLUSION

47. The Court has the opportunity to clarify that access to information may prevail over data protection where a public-interest element is present. Public interest journalism necessarily involves the processing of personal data. That processing must be lawful, responsible and proportionate, but it cannot be subjected to a data protection framework that gives practical priority to privacy claims in a manner that disables the press from reporting on matters of public concern.

48. The Court should treat Article 10 as requiring a rigorous balancing exercise where data protection rules are invoked to restrict journalism. That balancing exercise must account for the press's public watchdog role, the purpose of the data processing, the contribution to a debate of general interest, the nature and intrusiveness of the data published, the conduct and status of the persons concerned, and the chilling effect of injunctions, administrative complaints, sanctions or threats of erasure.

49. The Court should recognise that data protection law can be misused as a SLAPPs tool. GDPR-based claims may silence public participation where they are used to bypass debates about accuracy and public interest, to seek erasure or redaction, or to threaten journalists with disproportionate administrative sanctions.

50. The Interveners invite the Court to confirm that, where journalism contributes to a debate of public interest, access to information and freedom of expression under Article 10 may prevail over data protection and privacy interests under Article 8, provided that the publication is responsible, proportionate and limited to information necessary to inform the public.

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Annex I.

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