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Introduction

1. This case concerns the 'banning'[1] of local journalist Norbert Orłowski (the plaintiff) from the Facebook Page[2] of Krzysztof Kosiński, Mayor of Ciechanów (the defendant). It is the plaintiff's case that the defendant's Facebook Page is being used by him in his official capacity, and therefore the ban constitutes an infringement of the plaintiff's rights to freedom of expression and access to information. This case raises important questions on the standards to be applied to ensure protection of freedom of expression and access to information that apply to journalists in relation to ostensibly personal social media accounts of public officials or persons who work in local municipalities, where those accounts are used by those persons in their official capacity.

2. Social media accounts have become an important source of news and information about government and governance, and an important public forum for speech by people in public office. That speech can often include discussion on policy decisions that have an impact on members of the public. The Intervener submits that any effort to suppress dissent or criticism in this forum, or to prevent interaction through blocking certain members of the public from interacting with public officials in this context, should be subject to strict scrutiny. The following written comments provide an overview of relevant international laws applicable to this case and the principles to be applied that it is hoped will assist the Court in carrying out a proper determination of the issues. These written comments address the following matters:

   (i) International legal standards on the right to freedom of expression;
   (ii) International standards protecting freedom of expression on matters of public interest;
   (iii) Newsgathering as a component of the watchdog function carried out by journalists;
   (iv) 'Blocking' or 'banning' of individuals carrying out a watchdog role must be subject to strict scrutiny.

International legal standards on the right to freedom of expression

3. The right to freedom of expression is a fundamental right in international law and includes the right to impart and to receive information and ideas. Under international law relevant to Poland, in addition to article 10 of the European Convention on Human Rights (ECHR),[3] the right to freedom of expression is guaranteed under article 19 of the International Covenant on Civil and Political Rights (ICCPR).[4] Poland ratified the ICCPR in 1977.

4. The Internet is one of the principal means by which individuals exercise their rights to freedom of expression and access to information, providing as it does, essential tools for participation in activities and discussions concerning political issues and issues of general interest.[5] The European

[1] According to Facebook, "When you ban someone from your Page, they'll still be able to share content from your Page to other places on Facebook, but they'll no longer be able to publish to your Page, like or comment on your Page's posts, message your Page or like your Page". See Facebook, *How do I ban or unban someone from my Facebook Page?* Available at: https://www.facebook.com/help/185897171460026.

[2] Facebook Pages are "places on Facebook where artists, public figures, businesses, brands, organisations and charities can connect with their fans or customers. When someone likes or follows a Page on Facebook, they can start seeing updates from that Page in their News Feed". See Facebook, *What's the difference between a profile, Page and group on Facebook?* Available at: https://www.facebook.com/help/337881706729661.

[3] The relevant part of article 10 of the European Convention on Human Rights (ECHR) states as follows: Everyone has the right to freedom of expression. This right includes the freedom to hold opinions and to receive and impart information and ideas without interference *by a public authority* and regardless of frontiers.

[4] Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR): Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

[5] See ECtHR, *Ahmet Yildirim v Turkey*, No. 3111/10 (18 March 2013).

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Court of Human Rights (ECtHR) in the case of *Times Newspapers Ltd v the United Kingdom* (App. No. 3002/03 and 23676/03), held that, in the light of its accessibility and its capacity to store and communicate vast amounts of information, the Internet plays an important role in enhancing the public's access to news and facilitating the dissemination of information in general. Therefore, State authorities have a negative obligation not to interfere with the right to receive and impart information online or are otherwise prohibited from preventing a person from receiving information online that others wished or were willing to impart.[6] In the case of *Delfi v Estonia* it was held that the Internet provides an unprecedented platform for the exercise of the right to freedom of expression by facilitating user-generated expressive activity.[7]

5. Connected to this, the Special Rapporteur on the right to freedom of opinion and expression has stated that internet platforms are essential for individuals to share critical views and find objective information.[8] In this regard, the UN Human Rights Committee has recognized that the right to freedom of expression protects all forms of expression, including all forms of electronic and internet-based modes of expression.[9] Accordingly, States are urged to take account of the extent to which development in information and communication technologies, such as internet and mobile based electronic information dissemination systems, have substantially changed communication practices around the world. As a consequence of this development, States should take all necessary steps to foster the independence of these new media and to ensure access of individuals thereto.[10]

6. Under international law, the right to freedom of expression is not absolute and may be legitimately restricted in certain circumstances. The well-established three-part test sets out the requirements that must be met in order for a restriction to be permissible:

   i. The restriction must be provided by law: it must have a basis in law, which is publicly available and accessible, and formulated with sufficient precision to enable citizens to regulate their conduct accordingly.[11]
   ii. The restriction must pursue a legitimate aim, as set out in article 10(2) of the ECHR and article 19(3) of the ICCPR. Those aims include national security, territorial integrity or public safety, the prevention of disorder or crime, the protection of health or morals, and/or the protection of the reputation or rights of others.[12]
   iii. The restriction must be necessary and proportionate in a democratic society. This requires an assessment of whether the proposed limitation responds to a "pressing social need" and whether the measure is the least restrictive means available in order to achieve the aim sought.[13]

7. As Poland is a party to the ICCPR and the ECHR, courts in Poland must apply this three-part test when assessing whether any interference to the right to freedom of expression is permissible.

[6] ECtHR, *Kalda v Estonia*, No. 17429/10 (19 January 2016). The right to freedom of expression carries both positive and negative obligations by the State. The former implies the State's obligation to create a favourable environment for participation in public debate "of all those concerned, enabling them to express their opinion and ideas without fear, even if they run counter to those defended by the official authorities". See ECtHR, *Dink v Turkey*, Nos. 2668/07, 6102/08, 30079/08 *et al* (14 December 2010), para 137.
[7] ECtHR, *Delfi v Estonia*, No. 64569/09 (16 June 2015), para 66.
[8] See UN Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/17/27, 16 May 2011.
[9] See UN Human Rights Committee, General comment No. 34 - Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011, para 12.
[10] *Id*., para 15.
[11] *Id*., para 57.
[12] See ECtHR, *Colombani and Others v France*, No. 51279/99 (25 September 2002), para 57; and ECtHR, *Mouvement Raëlien Suisse v Switzerland*, No. 16354/06 (13 July 2012), para 75.
[13] ECtHR, *Observer and Guardian v the United Kingdom*, No. 13585/88 (26 November 1991), para 59

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Considering the legal matters in dispute in this case, it is submitted that the Court should consider international and comparative standards on:

- Protection of freedom of expression under international law; and
- The standards protecting newsgathering as a preparatory step for those carrying out a 'public watchdog' role.

International standards protecting freedom of expression on matters of public interest

8. The ECtHR has consistently held that there is little scope under article 10(2) of the European Convention on Human Rights for restrictions on political speech or on the debate of questions of public interest.[14] According to the established jurisprudence of the ECtHR, public interest ordinarily relates to matters which the public legitimately takes an interest in, which attract the public's attention or which concerns the public to a significant degree, especially in that a matter might affect the well-being of citizens or the life of the community. This is also the case with regard to matters which are capable of giving rise to considerable controversy, which concern an important social issue, or which involve a problem that the public would have an interest in being informed about.[15]

9. The ECtHR has noted that politicians inevitably and knowingly lay themselves open to close scrutiny of their words and deeds by journalists and the public at large.[16] As a consequence, they must display a greater degree of tolerance of criticism.[17] In such cases, the requirements of protection of privacy or honour have to be weighed in relation to the interests of open discussion of political issues.[18] This principle applies to every level of the political spectrum, from the Prime Minister,[19] to ministers,[20] mayors,[21] members of parliament[22] or even the head of a political party.[23] Further, the requirement of tolerance by public officials is even more relevant in the case of politicians who make public statements that are susceptible of criticism.[24] The ECtHR applied the same logic to other people who, in various ways, engage in public life.[25]

10. In addition, the ECtHR has also established that in a democratic society the actions or omissions of public officials or persons who work in local municipalities must be subject to the close scrutiny not only of the legislative and judicial authorities but also of public opinion. The limits of permissible criticism are wider with regard to the government than in relation to a private citizen, or even a politician.[26] In the case of *Vides Aizsardzības Klubs v Latvia*, the ECtHR extended this

[14] See ECtHR, *Castells v Spain*, No. 11798/85 (23 April 1992), para 43; *Wingrove v the United Kingdom*, para 58.
[15] ECtHR, *Satakunnan Markkinapörssi Oy and Satamedia Oy v Finland [GC]*, No. 931/13 (27 June 2017), para 171.
[16] ECtHR, *Lingens v Austria*, No. 9815/82 (8 July 1986), para 42.
[17] See ECtHR, *Lingens v Austria*, para 42; *Nadtoka v Russia*, No. 29097/08 (8 October 2019), para 42.
[18] ECtHR, *Lingens v Austria*, para 43.
[19] ECtHR, *Tuşalp v Turkey*, Nos. 32131/08 & 41617/08 (25 May 2012), para 45; *Axel Springer AG v Germany (no. 2)*, No. 39954/08 (7 February 2012), para 67.
[20] ECtHR, *Turhan v Turkey*, No. 48176/99 (19 August 2005), para 25.
[21] ECtHR, *Brasilier v France*, No 71343/01, 11 April 2006, para 41.
[22] ECtHR, *Mladina d.d. Ljubljana v Slovenia*, No. 20981/10 (17 April 2014); *Monica Macovei v Romania*, No. 53028/14 (28 July 2020)
[23] ECtHR, *Oberschlick v Austria (no. 2)*, No. 47/1996/666/852, (1 July 1997).
[24] ECtHR, *Mladina d.d. Ljubljana v Slovenia*, para 40; *Pakdemirli v Turkey*, No. 35839/97 (22 February 2005), para 45.
[25] ECtHR, *Kuliś v Poland*, No. 15601/02 (18 March 2008), para 47.
[26] See ECtHR, *Castells v Spain*, No. 11798/85 (23 April 1992), para 46; *Tammer v Estonia*, No. 41205/98 (6 February 2001), para 62; *Margulev v Russia*, No. 15449/09 (8 October 2019), para 53.

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rationale to public authorities because of the important role they play in a democratic society.[27] The same wide limits of acceptable criticism apply to civil servants acting in an official capacity.[28]

11. Similarly, the UN Human Rights Committee (HRC) has stated that "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."[29]

12. Considering these well-established international law standards, any restriction to freedom of expression in the context of political debate must be subject to strict scrutiny on the basis it inhibits the right to free expression. This is so due to the public interest in political discourse, and how integral the free exchange of ideas is for public participation in democratic politics.

13. Case law from international and regional courts recognise that politicians and public officials are required to tolerate a greater degree of scrutiny than ordinary citizens (see para 8 and 9 *supra*). This principle has been emphasised in a number of jurisdictions for the following reasons:

    - First, democracy depends on the possibility of open public debate about matters of public interest. Those who hold office in government and who are responsible for public administration must always be open to scrutiny. A democratic society demands pluralism, tolerance and broadmindedness.[30]
    - Second, politicians have willingly and knowingly exposed themselves to examination by assuming public roles.[31] The ECtHR has held that an even greater degree of tolerance is expected from governmental bodies than by a politician.[32]
    - Third, political actors nearly always have greater access to means of public communication and can therefore respond to any allegations with a speed and ease that is unavailable to ordinary citizens.

14. The issue of blocking or restricting access to social media accounts is relatively new. Partly because of the growth and spread of social media in the United States, some courts have had the opportunity to rule on the matter. In the recent case of *Knight First Amendment Institute v Donald Trump*, the United States Court of Appeals for the Second Circuit ruled that that the social media account of the former U.S. President was used for official purposes and that the blocking of certain users (the plaintiffs) represented a restriction by the government.[33] The Court of Appeals for the Second Circuit considered Twitter's interactive functions such as replying, retweeting, and liking to be forms of expressive conduct allowing individuals to communicate not only with the President but with thousands of others.[34] Furthermore, functions such as replying, retweeting, and liking were considered to be forms of expressive conduct allowing individuals to communicate with the then President and others, which were restricted by the blocking. Given that the then President used his social media account to inform the public about government policy – a situation identical to the present case – the Twitter account constituted a public forum and that social media's interactive

[27] See ECtHR, *Vides Aizsardzības Klubs v Latvia*, No. 57829/00 (27 May 2004), para 46; *Dyuldin and Kislov v Russia*, No. 25968/02 (31 July 2007), para 83; *Radio Twist a.s. v Slovakia*, No. 62202/00 (19 December 2006), para 53.
[28] ECtHR, *Romanenko and Others v Russia*, No. 11751/03 (8 October 2009), para 47; *Toranzo Gomez v Spain*, No. 26922/14 (20 November 2018), para 65. See also ECtHR, *Lombardo and Others v Malta*, No. 7333/06 (24 April 2007), para 54.
[29] UN Human Rights Committee, General Comment 25, CCPR/C/21/Rev.1/Add/7 (1996) para 25.
[30] ECtHR, *Handyside v the United Kingdom*, No. 5493/72 (7 December 1976), para 49
[31] ECtHR, *Lingens v Austria*, No. 9815/82 (8 July 1986), para 41.
[32] See ECtHR, *Castells v Spain*, para 46.
[33] United States Court of Appeals for the Second Circuit, *Knight First Amendment Institute v Donald J. Trump*, No. 18-1691-cv (9 July 2019).
[34] *Id.*, p. 24.

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features made it accessible to the public without limitation.[35] According to the Court of Appeals for the Second Circuit, "a public forum need not be "spatial or geographic" and even if the forum is metaphysical, "the same principles are applicable".[36]

15. Another relevant precedent from the United States is the judgment in *Davison v Randall*, by the US Court of Appeals for the Fourth Circuit.[37] In that case the Loudoun County School Board (LCSB) Chair Phyllis Randall had deleted comments from a user on her Facebook Page and banned him for 12 hours. The effect of the ban was that the user could see and share content on the page but was unable to post directly on it. The Court of Appeals for the Fourth Circuit's judgment confirmed the first instance decision that the Facebook Page constituted a "public forum", as the Chair actively solicited comments from citizens without any stated restrictions. Furthermore, the government had substantial control over the webpage, which was corroborated by: i) the fact that the Chair designated the page as belonging to a "government official", and ii) provided her official contact information on it and iii) had clothed the page in the trappings of her public office. The Court of Appeals for the Fourth Circuit thus held that the Chair engaged in viewpoint discrimination that violated the user's freedom of speech and that she was not entitled to block citizens.

Newsgathering as a component of the watchdog function carried out by journalists

16. International law expressly recognises newsgathering as a preparatory step for the exercise of freedom of expression by individuals and organisations performing a 'public watchdog' role,[38] This role has been recognised as essential in facilitating the emergence of an informed public opinion and democratic debate through dissemination of information of public concern and controversy.[39] The legal rights afforded individuals engaged in newsgathering extend to digital environments like social media. In that regard, the right to access specific places and events in the course of newsgathering, is analogous to the right to communicate directly with officials and to make inquiries online.

17. The rationale behind the protection of newsgathering is that it allows journalists, non-governmental organisations and others engaged in a public watchdog role, to create forums of public debate by imparting information to the public.[40] The ECtHR has recognized that "given the important role played by the Internet in enhancing the public's access to news and facilitating the dissemination of information […], the function of bloggers and popular users of the social media may be also assimilated to that of 'public watchdogs' in so far as the protection afforded by Article 10 is concerned".[41] Additionally, the HRC has stressed that "journalism is a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self- publication in print, on the internet or elsewhere" and that

[35] *Id.*, p. 23.
[36] *Id.*, p. 8.
[37] United States Court of Appeals for the Fourth Circuit, *Davison v Randall*, 912 F.3d 666, 680 (7 January 2019).
[38] See, e.g., ECtHR, *Szurovecz v Hungary*, No. 15428/16 (8 October 2019), para 52; *Butkevich v Russia*, No. 5865/07 (13 February 2018); *Satakunnan Markkinapörssi Oy and Satamedia Oy v Finland*, No. 931/13, para 128; *Társaság a Szabadságjogokért v Hungary*, No. 37374/05 (14 July 2009), para 27; *Damman v Switzerland*, No. 77551/01 (25 April 2006), para 52.
[39] See for example ECtHR, *Erla Hlynsdottir v. Iceland*, No. 43380/10 (10 July 2012); ECtHR, *Bladet Tromso and Stensaas v. Norway*, No. 21980/93 (20 May 1999); ECtHR, *Observer and the Guardian v. The United Kingdom*, No. 13585/88 (26 November 1991).
[40] See, *e.g.*, ECtHR, *Magyar Helsinki Bizottság v Hungary*, No. 18030/11 (8 November 2016), para 168; *Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung eines wirtschaftlich gesunden land- und forstwirtschaftlichen Grundbesitzes v Austria*, No. 39534/07 (28 February 2014), para 36; *Youth Initiative for Human Rights v Serbia*, No. 48135/06 (25 June 2013); *Társaság a Szabadságjogokért v Hungary*, No. 37374/05 (14 July 2009), para 27.
[41] ECtHR, *Magyar Helsinki Bizottság v Hungary*, No. 18030/11 (8 November 2016), para 168.

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limited accreditation schemes are only permissible when deemed necessary for granting privileged access to specific places.[42]

18. Newsgathering, in the form of gathering information and material, is an essential preparatory step for individuals and organisations engaging in a watchdog role. According to the ECtHR, "[g]iven that accurate information is a tool of their trade, it will often be necessary for persons and organisations exercising watchdog functions to gain access to information in order to perform their role of reporting on matters of public interest. Obstacles created in order to hinder access to information may result in those working in the media or related fields no longer being able to assume their "watchdog" role effectively, and their ability to provide accurate and reliable information may be adversely affected".[43]

19. In this context, the ECtHR has consistently recognised that "the gathering of information is an essential preparatory step in journalism and an inherent, protected part of press freedom."[44] The most careful scrutiny is called for when authorities enjoying an information monopoly interfere "with the exercise of the function of a social watchdog".[45] In that sense, States have an obligation concerning the "elimination of barriers to the exercise of press functions where, in issues of public interest, such barriers exist solely because of an information monopoly held by the authorities".[46]

20. The need to protect newsgathering in order to protect press freedom is reflected in the UN Special Rapporteur's definition of journalism: individuals carrying out a journalistic function "observe and describe events, document and analyse events, statements, policies, and any propositions that can affect society, with the purpose of systematizing such information and gathering of facts and analyses to inform sectors of society or society as a whole".[47] The fundamental importance of newsgathering to the exercise of the right to freedom of expression has also been recognised in the jurisprudence of a number of courts around the world, including in the United Kingdom,[48] Canada,[49] South Africa,[50] Colombia[51] and Japan.[52]

21. A relevant part of newsgathering activities relates to the possibility of applying the wide range of reporting techniques that are available to each circumstance. In that sense, the ECtHR has consistently held that "the methods of objective and balanced reporting may vary considerably" and that it was not to itself, "nor for the national courts for that matter, to substitute their own views for those of the press as to what technique of reporting should be adopted by journalists".[53] In line with this, the ECtHR has emphasized that "[n]ews reporting based on interviews, whether edited or not,

[42] UN Human Rights Committee, General Comment 34, *Article 19 - Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34, para 44.
[43] ECtHR, *Magyar Helsinki Bizottság v Hungary*, para 167.
[44] See, *e.g.*, ECtHR, *Satakunnan Markkinapörssi Oy and Satamedia Oy v Finland*, para 128
[45] ECtHR, *Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung eines wirtschaftlich gesunden land- und forstwirtschaftlichen Grundbesitzes v Austria*, para 41.
[46] ECtHR, *Társaság a Szabadságjogokért v Hungary*, No. 37374/05 (14 July 2009), para 36.
[47] UN Special Rapporteur on Freedom of Opinion and Expression, Report of the UN Special Rapporteur to the Human Rights Council, A/HRC/20/17, para 3 to 4.
[48] UK House of Lords, *R v Shayler*, [2002] UKHL 11 (21 March 2002), para 21; UK House of Lords, *Reynolds v Times Newspapers Ltd*, [2001] 2 AC 127 (28 October 1999), para 205 (per Lord Nicholls).
[49] Supreme Court of Canada, *Globe and Mail v Canada (Attorney General)*, 2010 SCC 41 (22 October 2010), para 56.
[50] South African Constitutional Court, *South African Broadcasting Corporation Limited v National Director of Public Prosecutions and Others*, [2006] ZACC 15 (21 September 2006), para 96.
[51] Colombia Constitutional Court, *Radio Cadena Nacional S.A. - RCN v Consejo de Estado*, Sentencia T-391/07 (22 May 2007), para 4.1.1.
[52] Supreme Court of Japan, *Kaneko v Japan, Sup. Ct. Keishu* 23-11-1490 (26 November 1969).
[53] See, *e.g.*, ECtHR, *Jersild v Denmark*, No. 15890/89 (23 September 1994), para 31.

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constitutes one of the most important means whereby the press is able to play its vital role of 'public watchdog'".[54]

22. The importance of allowing for a broad range of newsgathering techniques and, in particular, the possibility of raising questions, is more critical in contexts with limitations of access to physical spaces or events like the ones triggered by the COVID-19 pandemic. The UN Special Rapporteur on the right to freedom of opinion and expression has considered relevant that governments "provide detailed information to the public and answer questions from an independent media".[55] Also in that context, the Special Rapporteur has said that the duty of the government to provide a favourable environment for freedom of expression includes "ensuring that all media outlets, not just State-owned media, have access to public officials and other information sources".[56] Consistent with this approach, the Council of Europe has stated that "official communications cannot be the only information channel about the pandemic. […] outright blocking of access to on-line communication platforms call for the most careful scrutiny and are justified only in the most exceptional circumstances".[57]

23. Digital environments play a fundamental role in the gathering of information. In that sense, the ECtHR has established that due to "its accessibility and its capacity to store and communicate vast amounts of information, the Internet has played an important role in enhancing the public's access to news and facilitating the dissemination of information in general".[58] As a way to guarantee the protection and promotion of human rights, the ECtHR has established that policies governing the reproduction of material on the Internet "have to be adjusted according to technology's specific features".[59] The imposition of restrictions to newsgathering activities and techniques online must take into account the way in which such platforms function/operate.

'Blocking' or 'banning' of individuals carrying out a watchdog role must be subject to strict scrutiny

24. The Intervener submits that where an ostensibly personal social media account of a person who works for government or a local municipality is used, even partially, to inform the public about or to promote government policies or the work carried out by the official in question, that account should be considered as being used for official purposes. In those circumstances any restriction on access, in any form, to that account cannot be limited to an examination of private terms of service or community standards provided by that platform. Such restrictions interfere with the right to receive and impart information and ideas on matters of public interest, and, in particular, with newsgathering. They must therefore be subject to the most careful scrutiny through the application of the three-part test referred to above.

25. With regards to the first limb of the test, the lawfulness of the interference, the Intervener submits that there is a rebuttable presumption that restrictions to social media accounts of for example government officials are unlawful. This presumption must also extend to social media accounts that are ostensibly personal or private accounts of persons who work in government or hold public office but are used by those persons in their official capacity. With regard to the second limb of the test,

[54] *Id.*, para 35.
[55] UN General Assembly, Disease pandemics and the freedom of opinion and expression - Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/44/49, 23 April 2020. para 22.
[56] *Id.* para 37.
[57] Council of Europe, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis - A toolkit for member states, Information Documents - SG/Inf(2020)11, 7 April 2020.
[58] ECtHR, *Magyar Jeti Zrt v Hungary*, No. 11257/16 (4 March 2019), para 66; *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v Hungary*, No. 22947/13 (2 May 2016), para 56.
[59] ECtHR, *Magyar Jeti Zrt v Hungary*, para 68.

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the Intervener takes no position on whether there might be a legitimate interest in such an interference.

26. With regard to the third limb of the test, the Intervener submits that restrictions on access to official information relating to matters of public interest will almost always be unnecessary and disproportionate in a democratic society. It is difficult to conceive of a circumstance where the blocking or banning of a journalist from the social media account of a public official that uses such account for official purposes can meet the requirements of careful scrutiny required by international law.

27. Having that in mind, the Intervener submits that digital scenarios where public officials engage in communication with citizens have a role comparable to physical forums where public watchdogs can obtain first-hand information from events, statements and activities of the government. As such, those spaces play a fundamental role as a tool for newsgathering: they allow access to information, and allow individuals engaging in a 'public watchdog role' to raise questions and comment on matters of public interest. Restricting the ability of a 'public watchdog' to apply the interactive functionalities of social media accounts of public officials acting in an official capacity implies establishing a barrier to their newsgathering activities and their ability to create public forums for debate.

28. Newsgathering involves a wide range of reporting techniques. However, it is no answer to an interference with one type of technique to suggest that another technique could have been used instead. The ECtHR in its case law has noted that "the existence of other alternatives to direct newsgathering […] did not extinguish the applicant's interest in having face-to-face discussions on and gaining first-hand impressions […] In those circumstances the availability of other forms and tools of research were not sufficient reasons to justify the interference complained".[60] Consistent with this approach, the HRC, in *Gauthier v Canada*, referred to the case of a journalist who had applied for membership of the Parliamentary Press Gallery, a private association that administers accreditation for physical access to the buildings in the Canadian Parliament. He had been denied full access to the facilities and services provided to the press in parliament and only received a temporary pass that gave only limited privileges. The HRC rejected the Government's position that even without full accreditation the journalist could "report on proceedings by relying on broadcasting services, or by observing the proceedings" from the public gallery in parliament.[61]

29. Restricting interaction with the social media accounts of public officials can reduce the opportunity to ask questions and obtain first-hand information. This restriction is not justified even if the individual performing their 'watchdog role' who is banned or blocked on social media is able to resort to other means and techniques of newsgathering or accessing information, either on or offline. Allowing such limitations would mean government entities could decide which reporting techniques could be used by, for example, journalists. Additionally, the Intervener emphasizes that a journalist who is 'banned' or 'blocked from a social media account will be prevented not only from obtaining impressions and interactions with the public official in question, but from other individuals interacting with that profile. As a result, journalists are limited in the information that they can receive, process and provide to the public. Public debate will be limited and democracy will be hindered.

30. The jurisprudence developed by the ECtHR and apex courts in the United States confirms that in situations where the ostensibly personal social media accounts of public officials or persons who

[60] ECtHR, *Szurovecz v Hungary*, No. 15428/16 (8 October 2019), para 74.
[61] UN Human Rights Committee, *Gauthier v Canada*, CCPR/C/65/D/633/1995 (1999), para 13.5.

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work in local municipalities are used by those persons in their official capacity– even partially – to inform the public or to promote government policies or the work carried out by the official in question, they are considered to be used for official purposes. As a consequence, followers cannot be blocked or have their access restricted. As the Court of Appeals ruled in *Knight First Amendment Institute*, mentioned above, the social media account must be "accessible to the public without limitation." Taking this standard into account, the intervener submits that it is difficult to conceive of the existence of any pressing social need that would outweigh the interest of a democratic society in receiving information gathered by an individual carrying out a watchdog role.

31. To sum up, the Intervener concludes that, taking into account the three part test, the actions of the defendant herein amount to an unlawful interference with the plaintiff's right to freedom of expression and access to information.