

**IN THE EUROPEAN COURT OF HUMAN RIGHTS**

App No. 29807/25

**BETWEEN:**

**ATRESMEDIA CORPORACION DE MEDIOS DE COMUNICACION,  
S.A.**

**Applicant**

**v**

**Spain**

**Respondent**

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**Written Comments of the Third-Party Intervener**

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21 August 2025

## Introduction

1. These written comments are submitted by Media Defence (the ‘Intervener’), pursuant to leave granted by the President of the Section in accordance with Rule 44(3) of the Rules of Court.<sup>1</sup>
2. In this case the regulatory body overseeing the implementation of the electoral process prohibited the applicant, a private television company, from broadcasting a political debate on its own terms during a period when national parliamentary elections were to take place. Following a challenge to this finding by the applicant, the Supreme Court held that when privately owned media outlets were organising electoral debates, they were required to take into account the outcome of the most recent relevant elections when deciding who to invite.
3. Requirements on television broadcasters to ensure on-air access to particular political parties in the name of pluralism or impartiality can be fraught with uncertainty and vagueness, which in turn means they can be quite difficult to implement in practice without significantly undermining editorial independence. While regulatory authorities play a critical role in upholding and promoting media freedom and pluralism, especially at election time, this case raises important questions as to the scope of regulation with respect to decisions of media outlets exercising editorial freedom in the context of an electoral campaign. In particular it raises important questions on the permissibility of restrictions imposed on private television companies by regulators with respect to the rights guaranteed under Article 10.
4. Any restriction on the right of freedom of expression, particularly as it relates to political speech, must be strictly scrutinised. The Intervener submits that this strict scrutiny standard should limit any discretion the state might wish to exercise in determining the means of ensuring political pluralism by private television broadcasters. In seeking to assist the Court in its determination of the matters before it in this case, the Intervener will make the following submissions, with reference to relevant international standards, on permissible restrictions on the broadcast media in the electoral context including by addressing the following matters:
  - i. the role of the broadcast media, and the essential function of editorial independence in safeguarding pluralism and openness in political discourse, particularly in the context of electoral campaigns;
  - ii. the relevant factors to be applied when considering the rights of the media under Article 10, with particular emphasis on the necessity and proportionality of restrictions imposed on editorial content;
  - iii. whether the regulatory authorities should take into account developments in the online environment when assessing whether electoral pluralism has been preserved, and the extent to which regulations applied to the audiovisual media in the electoral context should be maintained in the light of those developments.

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<sup>1</sup> Permission to intervene granted by way of letter from the Section Registrar dated 10 July 2025 directing that submissions should be filed by 21 August 2025. As stipulated in that letter, these submissions do not directly address the facts and merits of the case, instead focusing on the general principles applicable to the case.

## **The role of the broadcast media, and the essential function of editorial independence, in safeguarding pluralism in the context of elections**

5. According to the Court, “freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society”.<sup>2</sup> In the specific context of elections, the Court has emphasised the importance of ensuring “in the period preceding an election, that opinions and information of all kinds are permitted to circulate freely”.<sup>3</sup>
6. Broadcast media play an essential role in a democratic society, particularly during election periods, when their role is to provide information to voters, reflect a diversity of opinion, and facilitate inclusive political debate. The UN Human Rights Committee has noted that “[t]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion”.<sup>4</sup> The Organisation for Security and Co-operation in Europe (‘OSCE’) has highlighted the function of the broadcast media as an ‘invaluable channel’ in promoting political openness during elections due to their wide reach and immediacy by “providing an arena for public debate, and by informing citizens of the positions of the candidates and parties” which in the end “enable the electorate to make an informed decision when they go to vote”.<sup>5</sup> Connected to this, the OSCE has recognised, as a core feature of ensuring an informed electorate, the importance of genuine editorial independence, free from interference or pressure by “governmental or private interest groups or state agencies”.<sup>6</sup>
7. The principle of editorial independence as a key feature of an independent media in a democratic society has been consistently recognised by the institutions of the Council of Europe. The Committee of Ministers in a 1999 Recommendation noted that “[t]he fundamental principle of editorial independence of the media assumes a special importance in election periods”.<sup>7</sup> Further, it recognised that regulatory

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<sup>2</sup> *Castells v. Spain*, no. 11798/85, 23 April 1992, § 43 and *ATV ZRT v. Hungary*, no. 61178/14, 28 April 2020, § 43.

<sup>3</sup> See *Orlovskaya Iskra v. Russia*, no. 42911/08, 21 February 2017, § 110, citing *Mathieu-Mohin and Clerfayt v. Belgium* [Plenary], 9267/81, 2 March 1987, § 47, and *Lingens v. Austria* [Plenary], 8 July 1986, §§ 41 and 42.

<sup>4</sup> UN Human Rights Committee, General Comment no. 34, “Article 19: Freedoms of opinion and expression”, 12 September 2011, CCPR/C/GC/34, § 13. Available at: <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

<sup>5</sup> European Commission for Democracy Through Law (Venice Commission), Guidelines on media analysis during election observation missions, by the OSCE Office for Democratic Institution and Human Rights (OSCE/ODIHR) and the Venice Commission, 16 June 2009, § 7. Available at:

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282009%29031-e&utm\\_source=chatgpt.com](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282009%29031-e&utm_source=chatgpt.com)

<sup>6</sup> European Commission for Democracy Through Law (Venice Commission), Guidelines on media analysis during election observation missions, by the OSCE Office for Democratic Institution and Human Rights (OSCE/ODIHR) and the Venice Commission, 16 June 2009, § 16. Available at:

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282009%29031-e&utm\\_source=chatgpt.com](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282009%29031-e&utm_source=chatgpt.com)

<sup>7</sup> Council of Europe, *Recommendation No. R (99) 15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns*, 9 September 1999. Available at: <https://search.coe.int/cm?i=09000016805e3c6b> See also, Committee of Ministers “Declaration on the

frameworks should also provide for the obligation to cover electoral campaigns in a fair, balanced and impartial manner in the overall programme services of broadcasters” but with ‘due respect’ to their editorial independence.<sup>8</sup> A 2007 Recommendation observed that “[r]egulatory frameworks on media coverage of elections should respect the editorial independence of the media”. Specifically, that recommendation emphasised the importance of “an effective and manifest separation between the exercise of control of media and decision making as regards media content and the exercise of political authority or influence”.<sup>9</sup>

8. According to a 2016 Recommendation, editorial autonomy is one of the core features that allows the media to function.<sup>10</sup> A European Union (EU) commissioned study noted that while political reporting by privately owned media outlets must adhere to standards of fairness and accuracy, that reporting is not required to be impartial, and those outlets are “entitled to follow an editorial line which might show a specific political preference”.<sup>11</sup>
9. This Court has recognised that editorial decisions about content are matters for the media to determine.<sup>12</sup> In the electoral context, the Court has noted that in assisting the public exercise their right to free expression in elections, the public watchdog role of the press “is not limited to using the press as a medium of communication, for instance by way of political advertising, but also encompasses an independent exercise of freedom of the press by mass media outlets such as newspapers on the basis of free editorial choice aimed at imparting information and ideas on subjects of public interest”.<sup>13</sup>
10. This is consistent with the privileged position afforded to political speech and debate on matters of general interest, where the Court has repeatedly confirmed there is little scope for restrictions.<sup>14</sup> The Intervener submits that this principle applies *a fortiori* in situations involving political debate taking place in the electoral context, where particular significance has been attributed by the Court to the unhindered exercise of freedom of speech by candidates.<sup>15</sup> Without such protection, regulations risk becoming tools for political influence or indirect censorship, thereby undermining democratic values.
11. Editorial independence implies, first and foremost, that regulatory frameworks

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guarantee of the independence of public service broadcasting in the member states”, 27 September 2006. Available at: <https://search.coe.int/cm?i=09000016805d3c1e>

<sup>8</sup> *Ibid.* Annex II *Measures concerning the broadcast media*.

<sup>9</sup> CM/Rec(2007)15 - Recommendation of the Committee of Ministers to member states on measures concerning media coverage of election campaigns (Adopted by the Committee of Ministers on 7 November 2007 at the 1010th meeting of the Ministers' Deputies) available at: <https://search.coe.int/cm?i=09000016805d4a3d>

<sup>10</sup> CM/Rec(2016)4 - Recommendation of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors (Adopted by the Committee of Ministers on 13 April 2016 at the 1253rd meeting of the Ministers' Deputies), § 30. Available at: <https://search.coe.int/cm?i=09000016806415d9>

<sup>11</sup> European Commission, Directorate-General Information Society and Media, *Independent Study on Indicators for Media Pluralism in the Member States – Towards a Risk-Based Approach*, April 2009, p. 34. Available at: [https://ec.europa.eu/information\\_society/media\\_taskforce/doc/pluralism/pfr\\_report.pdf](https://ec.europa.eu/information_society/media_taskforce/doc/pluralism/pfr_report.pdf)

<sup>12</sup> See, for instance, *Jersild v Denmark* [GC], no. 15890/89, 23 September 1994, § 31, *Fressoz and Roire v France* [GC], no. 29183/95, 21 January 1999, § 52, and *MGN Limited v the United Kingdom*, no. 39401/04, 18 January 2011, § 145.

<sup>13</sup> *Orlovskaya Iskra v. Russia*, no. 42911/08, 21 February 2017, § 130.

<sup>14</sup> *Lindon, Otchakovsky-Laurens and July v. France* (nos. 21279/02 and 36448/02), 22 October 2007, § 46.

<sup>15</sup> *Kudeshkina v Russia*, no. 29492/05, 26 February 2009, § 87.

governing media coverage during elections must uphold and protect the editorial independence of the media.<sup>16</sup> It remains a cornerstone of media freedom and pluralism, and without it, regulatory obligations risk becoming tools for political control. On that basis, while regulatory frameworks can impose requirements to ensure fair, balanced, and accurate coverage during the course of an election campaign, they must also respect and uphold the editorial independence of broadcasters.<sup>17</sup> This Court recognises the importance of this principled approach, noting that, “[a] situation whereby a powerful economic or political group in a society is permitted to obtain a position of dominance over the audiovisual media and thereby exercise pressure on broadcasters and eventually curtail their editorial freedom undermines the fundamental role of freedom of expression in a democratic society as enshrined in Article 10 of the Convention, in particular where it serves to impart information and ideas of general interest, which the public is moreover entitled to receive.”<sup>18</sup>

12. Consistent with this approach the UN Special Rapporteur on freedom of expression has stated that any form of State intervention in editorial or media-related decisions should be strictly limited and exceptional. The Rapporteur has not only argued that legal frameworks should protect media from political interference, especially during elections, but has also emphasised that self-regulation is the most effective way to uphold ethical standards while preserving independence from the State:

*The media provide a platform for candidates to express their platforms and messages, analyse proposed policies, scrutinize the political process and ensure its integrity, and hold candidates and incumbents to account. A level electoral playing field is impossible without a free, pluralistic and unrestricted media. To this end, national legal frameworks should begin from the fundamental premise that the media must be free from political influence and should not be restricted or regulated, particularly during electoral processes. Self-regulation is arguably the most effective means of ensuring that the media live up to their own ethical standards while remaining free from the influence of the State.*<sup>19</sup>

### **Relevant factors to be considered when assessing the legality of an interference with a political debate broadcast by a private media outlet**

13. Imposing conditions on a broadcaster conducting a political debate during an election period is to ensure diversity of political opinion in that debate in order to protect the democratic process can be considered to correspond to the legitimate aim of protecting ‘the rights of others’, in accordance with Article 10(2) of the Convention. The Court has held that it will ‘scrupulously examine’ the proportionality of any restriction in that situation.<sup>20</sup> It also has affirmed that when the media performs its watchdog role on issues of public concern, the margin of

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<sup>16</sup> Rec(99)15 - on measures concerning media coverage of election campaigns, 9 September 1999. Appendix, I.1. Available at:

<https://search.coe.int/cm?i=09000016805e3c6b>

<sup>17</sup> *Ibid.*, Appendix, I.1.

<sup>18</sup> *VGT Verein gegen Tierfabriken v. Switzerland*, no. 24699/94, 22 April 2013, §§ 73 and 75 and *Manole and others v Moldova*, no. 13936/02, 17 July 2010, § 98.

<sup>19</sup> United Nations Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, A/HRC/26/30, 26 June 2014, § 56. Available at: <https://docs.un.org/en/A/HRC/26/30>

<sup>20</sup> *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, 22 April 2013, § 103.

appreciation afforded to the state in such cases is narrow.<sup>21</sup> Therefore, a close and detailed analysis of the factual justification for the restriction is needed in order to determine whether it was proportionate to the legitimate aim.

14. In addition to the narrow margin of appreciation the standard of justification required of member states is high, reflecting the importance of free expression, particularly where political speech is in issue. The Court has on occasion, recognised a “somewhat wider margin of appreciation”<sup>22</sup> where a state relies on specific aspects of its national situation which justified the restriction,<sup>23</sup> however this is very much the exception in the Court’s case law.
15. Whether a restriction of the type being considered in this case is lawful depends on whether there is a clear legal basis and whether the law is accessible and foreseeable as to its effects to the extent that it is formulated with sufficient precision to allow for the media outlet to regulate their conduct.<sup>24</sup> The Committee of Ministers has highlighted that during an electoral period the legal framework should be designed to foster pluralism in broadcast media coverage and ensure that a wide range of viewpoints are represented. At the same time, “[m]ember states should ensure that there is an effective and manifest separation between the exercise of control of media and decision making as regards media content and the exercise of political authority or influence”.<sup>25</sup>
16. The Court has noted that, with respect to laws relating to restrictions in the audiovisual broadcasting sphere, often they are “to a greater or lesser extent” vague.<sup>26</sup> In addition to avoiding ‘excessive rigidity’, another reason for vagueness is to allow the law “to keep pace with changing circumstances”, which as noted below, is a particularly relevant consideration when considering the transformational impact of the online environment and how that relates to the purpose of the relevant laws.<sup>27</sup>
17. Whether a restriction of the type being considered in this case is proportionate to the legitimate aim and corresponds to a pressing social need can be considered having regard to a number of factors. First, taking into account that such laws are often vague,<sup>28</sup> it is important to establish the impact of the implementation of the relevant law to ensure that it does not disproportionately affect outlier, ‘non-traditional’ or emerging political parties from accessing public debates that are broadcast on television. Relying on criteria that favour established political parties may consolidate their monopoly on access to the public. This can be harmful not just to the emerging political party but also to the public, which will be deprived of hearing the views of that party, thereby distorting the public debate.
18. Second, in circumstances where the rationale for regulation of the audiovisual sphere is no longer as obvious it was once was, the Court should consider whether a

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<sup>21</sup> *Vides Aizsardzības Klubs v. Latvia*, no. 57829/00, 27 May 2004, § 42.

<sup>22</sup> *TV Vest AS and Rogaland Pensjonistparti v. Norway*, no. 21132/05, 11 December 2008, § 67.

<sup>23</sup> See, for instance, *Murphy v. Ireland*, no. 44179/98, 10 July 2003.

<sup>24</sup> *Delfi AS v. Estonia* [GC], no. 64569/09, 10 October 2013, § 120.

<sup>25</sup> CM/Rec(2007)15 - Recommendation of the Committee of Ministers to member states on measures concerning media coverage of election campaigns, *op. cit.*, Principle II.1.

<sup>26</sup> *NIT S.R.L. v. Moldova* [GC], no. 28470/12, 5 April 2022, § 159.

<sup>27</sup> See below §§ 23 to 32.

<sup>28</sup> *Centro Europa 7 S.R.L. and Di Stefano v Italy*, no. 38433/09, 7 June 2012, § 141.

restriction of the type being considered in this case is necessary in a democratic society. To that extent, the Court should have regard to “the changing role of broadcasting in the digital era, and its implications for both external and internal pluralism”.<sup>29</sup> Relevant to the present case, in particular, is the concept of ‘external pluralism, described by the Grand Chamber as “pluralism across multiple outlets ... generated through the existence of various media outlets, each expressing a different point of view, and is basically achieved by ensuring that the media are not concentrated in the hands of too few [ ... ], and it ensures that free speech is not diminished by the overbearing control of too few media entrepreneurs or too few actual media outlets.”<sup>30</sup>

19. As discussed below, the Grand Chamber treats internal and external media pluralism as interdependent noting that “what may be regarded as a lack of internal pluralism in the programmes offered by one broadcaster may be compensated for by the existence of effective external pluralism.”<sup>31</sup> This interdependence has important implications when assessing the necessity of regulatory interference with editorial freedom.
20. Where the overall media environment ensures a wide range of political, ideological, and cultural perspectives - that is, where external pluralism is robust and effective - the justification for imposing restrictions on individual broadcasters’ editorial autonomy becomes significantly weaker. The Court has noted that “[w]hat is required is to guarantee diversity of overall programme content, reflecting as far as possible the variety of opinions encountered in the society at which the programmes are aimed.”<sup>32</sup> The Intervener submits that, in contexts where external pluralism is both strong and functional, state-imposed obligations designed to enforce internal balance within each outlet may be not only unnecessary, but also potentially detrimental to media freedom, as they risk constraining editorial choice and homogenising discourse. In other words, the greater the external pluralism, the more difficult it is to justify any interference with the editorial independence of individual media outlets.
21. In this sense, external pluralism operates not only as a contextual consideration but as an essential criterion in evaluating the necessity and proportionality of restrictions. In the same way that the Court has recognised that audiovisual media have a more immediate and powerful impact than the print media,<sup>33</sup> it would assist in the analysis of whether a restriction in this context is necessary and proportionate to consider the growing influence and societal impact of other forms of communication, such as social media, online streaming platforms, podcasts, and other digital outlets.<sup>34</sup> This is in addition to the external pluralism that exists in the form of programmes on political matters that are broadcast on other television channels, including by public television broadcasters, as well as on radio programmes.
22. Third, taking into account the importance of the rights at stake, the proportionality of the measure restricting expression should be examined having regard to the

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<sup>29</sup> *NIT S.R.L. v. Moldova* [GC], *op. cit.*, Joint dissenting opinion of Judges Lemmens, Jelić and Pavli, § 7.

<sup>30</sup> *Ibid.* § 101.

<sup>31</sup> *NIT S.R.L. v. Moldova* [GC], *op. cit.*, § 190.

<sup>32</sup> *Idem.*

<sup>33</sup> *Jersild v. Denmark* [GC], *op. cit.*, § 31, and *NIT S.R.L. v. Moldova* [GC], *op. cit.*, § 182.

<sup>34</sup> See below §§ 23 to 32.

practical implications of the restriction on a case-by-case basis. This would be an essential step in avoiding arbitrariness. Importantly, the legal framework should not impose arbitrary restrictions relying on the purported aim of advancing pluralism or safeguarding free elections. This is particularly important where the restriction is imposed on political speech as a consequence of a blanket rule or general measure. Fourth, taking into account that the purpose of the restriction can be to maintain the diversity of political debate on television in order to protect the democratic process, the authorities should be required to demonstrate that there was a risk of compromising that diversity without the restriction. The Court can draw a negative inference where the authorities fail to do so.

23. Fifth, with respect to a general measure that applies to ‘pre-defined situations’ and which the Court has recognised may lead to ‘individual hard cases’,<sup>35</sup> states are required to provide convincing evidence for any restrictions under that measure that will show a risk to pluralist public debates, elections and the democratic process if such restrictions are not imposed.<sup>36</sup> Taking that into account, the Court should consider whether the impact of the restriction outweighs the justification provided by the state for the general measure. Connected to that, the state authorities should be required to explore whether a less restrictive measure is available to achieve the aim sought to be realised, consistent with the Court’s principled position that “in order for a measure to be considered proportionate and necessary in a democratic society, there must be no other means of achieving the same end that would interfere less seriously with the fundamental right concerned”.<sup>37</sup> One of the key factors in the analysis of whether the restriction is proportionate is whether the state has demonstrated that it has sought to identify whether any other avenues of expression were available. For example, in the electoral context, where a complainant relies on a general measure to request that a restriction be imposed on a private media outlet from conducting a political debate on its own terms, as part of its analysis the state authority should consider whether that complainant has access to alternative media platforms.

### **The impact of developments in the digital sphere on regulation of the media in the electoral context**

24. In broad terms, one purpose of the regulation of audiovisual broadcasters during electoral campaigns is to avoid the dissemination of one-sided or inaccurate information, taking into account the particular potency and pervasiveness of television and radio.<sup>38</sup> Although that risk is not confined to election periods, in order to avoid this potential mischief states are required to put in place an appropriate legal and administrative framework “to guarantee effective pluralism”.<sup>39</sup> This positive obligation means that the state “as the ultimate guarantor of pluralism, must ensure, through its law and practice, that the public has access through television and radio to impartial and accurate information and a range of opinion and comment, reflecting inter alia the diversity of political outlook within the country and that journalists and other professionals working in the audiovisual media are not

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<sup>35</sup> *Animal Defenders International v. the United Kingdom* [GC], *op. cit.*, §§ 106 to 109.

<sup>36</sup> *Bowman v. the United Kingdom* [GC], no. 24839/94, 19 February 1998, § 41.

<sup>37</sup> *Glor v. Switzerland*, no. 13444/04, 20 April 2009, § 94.

<sup>38</sup> See for example Council of Europe Recommendation No. R(99)15 - on measures concerning media coverage of election campaigns, *op. cit.*, now superseded by other recommendations but which reflected the concerns relating to audiovisual broadcasting in the context of elections.

<sup>39</sup> See *Animal Defenders International v. the United Kingdom* [GC], *op. cit.*, § 111.

prevented from imparting this information and comment.”<sup>40</sup>

25. This concept of pluralism in the electoral context can in a general sense be taken to refer to “the fair and diverse representation of and expression by (*i.e.* passive and active access) various political and ideological groups, including minority viewpoints and interests, in the media”.<sup>41</sup> The emphasis is on the content of the expression. The Court has noted that the principle of media pluralism is “considered crucial for the protection of media freedom under the Convention”.<sup>42</sup> Relevant to the proper application of that principle are developments in the digital sphere which have, in recent years, completely transformed the media landscape. The Intervener submits that, in order to avoid arbitrariness, those developments should be considered where restrictions of the type being considered in the present case are imposed.
26. This Court has described the Convention, as a ‘living instrument’, which “must be interpreted in the light of present-day conditions”<sup>43</sup> and consistently emphasised that it will take into account “the changing conditions within the respondent State and within Contracting States generally”.<sup>44</sup> In a range of contexts it has recognised how technological developments can impact on the rights provided for under the Convention and adapted to those developments.<sup>45</sup> For example, in the case of *Big Brother Watch v the United Kingdom* the Grand Chamber noted that “[l]ives are increasingly lived online, generating both a significantly larger volume of electronic communications, and communications of a significantly different nature and quality, to those likely to have been generated a decade ago”.<sup>46</sup> This observation was made in relation to a contrast that the Grand Chamber drew with bulk interception regimes that had been considered by the Court ten years previously. In contrast to the surveillance activity considered in the *Big Brother Watch* case, the Grand Chamber noted that because of technological advancements, “[t]he scope of the surveillance activity considered in those cases would therefore have been much narrower.”<sup>47</sup> Similarly, in relation to Article 10, the Grand Chamber in *Hurbain v Belgium* stated that “[n]owadays, the content of freedom of the press must be assessed in the light of developments in information technology, as journalistic information no longer consists solely of news coverage in the printed press and broadcasting media”.<sup>48</sup>
27. In *Animal Defenders* the applicant submitted that because the interference in that case, a ban on political advertisements, was confined to television and radio it was ‘illogical’ because it ignored “the comparative potency of newer media, such as the

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<sup>40</sup> *Manole and others v Moldova*, *op. cit.*, § 107.

<sup>41</sup> European Commission, Directorate-General Information Society and Media, *Independent Study on Indicators for Media Pluralism in the Member States – Towards a Risk-Based Approach*, April 2009, p. 26. Available at: [https://ec.europa.eu/information\\_society/media\\_taskforce/doc/pluralism/pfr\\_report.pdf](https://ec.europa.eu/information_society/media_taskforce/doc/pluralism/pfr_report.pdf)

<sup>42</sup> *Centro Europa 7 S.R.L. and Di Stefano v Italy*, § 134 and *NIT S.R.L. v. Moldova* [GC], *op. cit.*, § 187.

<sup>43</sup> See for example, *Rantsev v Cyprus and Russia*, no. 25965/04, §§ 273-274, and *Güzelyurtlu and Others v Cyprus and Turkey*, no. 36925/07, §286, 4 April 2017.

<sup>44</sup> *Scoppola v. Italy (No. 3)*, no. 126/05, 22 May 2012, § 92.

<sup>45</sup> In *Delfi v Estonia* the Grand Chamber considered the complaint was in an evolving field of technological innovation. *Delfi AS v. Estonia* [GC], *op. cit.*, § 111.

<sup>46</sup> *Big Brother Watch and Others v the United Kingdom* [GC], nos. 58170/13, 62322/14 and 24960/15, 25 May 2021, §322.

<sup>47</sup> *Ibid.* §341.

<sup>48</sup> *Hurbain v Belgium*, no. 57292/16, 4 July 2023, § 180.

internet”.<sup>49</sup> The Grand Chamber rejected that argument on the basis that it could draw a “coherent distinction based on the particular influence of the broadcast media”.<sup>50</sup> In that regard the Court, without further elaboration, identified the “immediate and powerful effect of the broadcast media, an impact reinforced by the continuing function of radio and television as familiar sources of entertainment in the intimacy of the home”. Notably, it stated that –

*the choices inherent in the use of the internet and social media mean that the information emerging therefrom does not have the same synchronicity or impact as broadcasted information. Notwithstanding therefore the significant development of the internet and social media in recent years, there is no evidence of a sufficiently serious shift in the respective influences of the new and of the broadcast media in the respondent State to undermine the need for special measures for the latter.*<sup>51</sup>

28. In one of the dissenting opinions in that case, three judges took the opposite view, agreeing with the applicant’s submission on illogicality, noting that “[i]nformation obtained through the use of the Internet and social networks is gradually having the same impact, if not more, as broadcasted information,” and emphasising that “[t]heir development in recent years undoubtedly signals a sufficiently serious shift in the influence of traditional broadcasting media to undermine the need to apply special measures to the latter.”<sup>52</sup>
29. Recent data with respect to media consumption in the EU would seem to bear this analysis out. According to Eurostat,<sup>53</sup> in 2021 89% of people in the EU aged between 16 and 74 years, used the internet at least once within the three months prior to the survey date, with one of the most popular areas being online news. In the same year, 72% of that cohort read online news sites, newspapers or news magazines, which Eurostat indicates was a 2% increase compared with 2016.<sup>54</sup>
30. The highest percentages of internet users reading news online were registered in Finland (ninety three percent), Lithuania and Czechia (both ninety two percent) and Croatia and Greece (both ninety percent).<sup>55</sup> The figure for Spain was over eighty percent.<sup>56</sup> A 2020 Council of Europe publication on monitoring media coverage of elections had described this transformation as follows:

*This technological and social shift is changing the way media influence the whole democratic decision-making process, notably during elections. Television is still generally the most popular source of political information for voters but the internet, with online media and social media networks, has gradually increased its role. For a*

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<sup>49</sup> *Animal Defenders International v. the United Kingdom* [GC], *op. cit.*, § 119.

<sup>50</sup> *Idem.*

<sup>51</sup> *Idem.*

<sup>52</sup> *Animal Defenders International v. the United Kingdom* [GC], *op. cit.*, dissenting opinion of Judge Tulkens, joined by Judges Spielmann and Laffranque, § 11.

<sup>53</sup> Eurostat is the statistical office of the European Union, and its stated mission is to provide high-quality statistics and data on Europe – see here <https://ec.europa.eu/eurostat/web/main/about-us/who-we-are>

<sup>54</sup> Eurostat, Consumption of online news rises in popularity, 24 August 2022, available at:

<https://ec.europa.eu/eurostat/en/web/products-eurostat-news/-/ddn-20220824-1>

<sup>55</sup> Eurostat – *ICT usage in households and by individuals: Internet use*, available at:

[https://ec.europa.eu/eurostat/databrowser/view/ISOC\\_CI\\_AC\\_I\\_custom\\_3155190/bookmark/table?lang=en&bookmarkId=b5c00b47-d10e-45fc-ae2e-a578fe478ef1&c=165953623440e](https://ec.europa.eu/eurostat/databrowser/view/ISOC_CI_AC_I_custom_3155190/bookmark/table?lang=en&bookmarkId=b5c00b47-d10e-45fc-ae2e-a578fe478ef1&c=165953623440e)

<sup>56</sup> *Ibid.*

*certain segment of society, particularly younger people, it has already overtaken television as the main source of political information.*<sup>57</sup>

31. While audiovisual media may still be considered a ‘sensitive sector’ that requires careful regulation,<sup>58</sup> the transformational impact of the online environment means that the assessment of whether there is a sufficiently diverse public debate should also take into account how that debate is conducted outside the audiovisual sphere. An absence of representation from an event on one platform, such as a televised debate, can be offset by participation on other platforms in the context of the overall electoral debate.
32. This is consistent with the general principle identified by the Grand Chamber in *NIT S.R.L. v. Moldova*, where, albeit in the context of a discussion about internal and external pluralism in the audiovisual sphere, it clarified that “the two aspects should be considered in combination with each other. Thus, in a national licensing system involving a certain number of broadcasters with national coverage, what may be regarded as a lack of internal pluralism in the programmes offered by one broadcaster may be compensated for by the existence of effective external pluralism.”<sup>59</sup>

### **Conclusion**

33. The present case offers the Court an important opportunity to clarify the limits of state regulation of private media during electoral campaigns without infringing Article 10 of the Convention. While the promotion of political pluralism and fairness in election coverage is a legitimate aim, regulation must not result in disproportionate interferences with press autonomy, particularly where external pluralism is already secured through diverse media actors and platforms.
34. The Intervener respectfully submits that editorial independence is a cornerstone of democratic discourse. Any interference with freedom of expression in the electoral context must be subject to strict scrutiny, ensuring restrictions on private media are narrowly tailored, proportionate to the legitimate aim, and supported by sufficient evidence and reasoning.
35. In the current media environment, where access to information extends well beyond traditional broadcast channels, restrictions on editorial freedom are increasingly difficult to justify, especially when less intrusive measures exist to ensure fairness and pluralism. The rise of digital platforms further reinforces the need to shield broadcast media from unnecessary or excessive regulatory interference.

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<sup>57</sup> Council of Europe, Monitoring of Media Coverage of Elections, Toolkit for Civil Society Organisations, November 2020, available at:

[https://memo98.sk/storage/media/uploads/content\\_galleries/source/memo/council-of-europe/toolkit/toolkit.pdf](https://memo98.sk/storage/media/uploads/content_galleries/source/memo/council-of-europe/toolkit/toolkit.pdf)

<sup>58</sup> *NIT S.R.L. v. Moldova* [GC], *op. cit.*, § 192.

<sup>59</sup> *Ibid.* § 190.