

22 April 2020

Mr. Linos-Alexandre Sicilianos
President of the European Court of Human Rights
European Court of Human Rights
Council of Europe
F-67075 Strasbourg Cedex
France

Via post and fax: +33 3 8841 2730

Re: Application for Leave to Intervene in *Biancardi v. Italy* (Application No. 77419/16)

Dear President Sicilianos:

Pursuant to Article 36(2) of the European Convention on Human Rights and Rule 44(3)(a) of the Rules of the Court, the Reporters Committee for Freedom of the Press (the “Reporters Committee”) respectfully requests leave to submit written comments in *Biancardi v. Italy* (Application No. 77419/16). The case has been assigned to the First Section of the Court, and was communicated to Italy, the respondent Contracting Party, on January 29, 2020.

I. The Matter Before the Court in *Biancardi v. Italy*

The case of *Biancardi v. Italy* concerns the application of the right to be forgotten against an online newspaper. The applicant in the case—who claims that his right to freedom of expression has been breached—is the chief director of an online newspaper who was ordered by an Italian court to compensate the reputational damages allegedly suffered by an individual mentioned in an online news article regarding a stabbing incident. The Italian court based its decision on the grounds that the article had remained available online after the individual in question had exercised his right to be forgotten by requesting the removal of the article from the online newspaper. The court held that the continued publication of the article breached the individual in question’s right to privacy and reputation, when weighed against the journalists’ right to report. This decision was upheld by the Italian Supreme Court (“*Corte Suprema di Cassazione*”).

The case has significant implications for the developing jurisprudence on the right to be forgotten of the European Court of Human Rights. It requires a careful examination of the fair balance to be struck between the right to freedom of expression, particularly the right to publish information, guaranteed by Article 10 of the Convention, and the right to privacy and reputation, protected by Article 8 of the Convention.

To date, the Court has addressed the right to be forgotten in a limited number of cases,¹ but none of these cases deal with all of the specific issues raised in *Biancardi v. Italy*. Thus, the Court’s ruling in this case is likely to set an important precedent on how the right to be forgotten applies to online media outlets and how it should be weighed against the right to publish. Due to the global nature of the Internet and the fact that Europe’s privacy laws are increasingly being used as a model in other jurisdictions, the Court’s ruling is also likely to influence how the right in question will be operationalized globally, not only in Europe.

¹ See *Węgrzynowski and Smolczewski v. Poland*, Application no. 33846/07; *M.L. and W.W. v. Germany*, Applications nos. 60798/10 and 65599/10.

II. The Reporters Committee's Mission and Expertise

The Reporters Committee is a U.S. non-profit organization that has provided free legal resources to protect the freedom of expression and the newsgathering rights of journalists since 1970. Its board chair is Stephen J. Adler, editor in chief of Reuters, one of the world's largest news organizations. As part of its commitment to protecting the rights of journalists, the Reporters Committee has filed amicus curiae briefs in numerous cases on freedom of expression and privacy before U.S. courts and other courts around the globe,² including the European Court of Human Rights³ and the Court of Justice of the European Union ("CJEU").⁴ The Reporters Committee's intervention before the CJEU specifically concerned the territorial scope of the right to be forgotten under EU law.⁵ Thus, the Reporters Committee is well-versed in assisting both international and domestic courts in their adjudicative tasks through third-party interventions, including on issues related to the right to be forgotten.

III. The Reporters Committee's Proposed Intervention

Should the Court decide to grant the requested leave to intervene, the Reporters Committee's written comments will primarily focus on the balance between the right to be forgotten and the right to freedom of expression, without commenting on the facts or merits of the case. In particular, the Reporters Committee's comments will provide the Court with an overview of the relevant legal instruments of the Council of Europe and of the European Union (e.g., European Convention on Human Rights, Convention 108, Convention 108+, and the GDPR) that concern these rights,⁶ including their implementation and application in a number of jurisdictions. Such an overview is likely to be particularly useful to the Court in light of the fact that these legal instruments allow for the establishment of national derogations to the right to be forgotten, including in the interest of protecting freedom of the press.⁷ Furthermore, the Reporters Committee's comments will include an analysis of how different supranational and domestic courts have interpreted the right to be forgotten, and have balanced such a right against the fundamental right to freedom of expression. Uniquely, the Reporters Committee will use its expertise in connection with the operation of, and the editorial and legal decision-making at, news organizations to inform its comments.

Should the Court allow it, the Reporters Committee will prepare its written comments in cooperation with the following leading global media organizations which have pledged to sign them as co-interveners: ALM Media, The Associated Press, Atlantic Media, Bloomberg L.P., Boston Globe Media Partners, BuzzFeed, Committee to Protect Journalists, Dow Jones & Company, The E.W. Scripps Company, Gannett, International Documentary Association, Los Angeles Times Communication, The Media Institute, Media Law Resource Center, MPA — The Association of Magazine Media, National Press Photographers Association, The News Leaders Association, The New Yorker, The New York Times Company, POLITICO, Radio Television Digital News

² For an overview of the amicus briefs submitted by the Reporters Committee, see: <<https://www.rcfp.org/briefs-comments/>>.

³ See *Szurovecz v. Hungary*, Application no. 15428/16.

⁴ See Case C-507/17, *Google (Portée territoriale du déréférencement)*.

⁵ The Reporters Committee's submission to the CJEU in Case C-507/17 is available at: <<https://www.rcfp.org/briefs-comments/google-v-cnii-cjeu/>>. The Reporters Committee also appeared before the CJEU for oral argument in the same case.

⁶ Council of Europe Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data, ETS no. 108 ("Convention 108"); Council of Europe Modernised Convention for the Protection of Individuals with Regard to the Processing of Personal Data, CM/Inf(2018)15-final ("Convention 108+"); Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC ("GDPR").

⁷ See Art. 9(2)(b) Convention 108; Art. 11(1)(b) Convention 108+; Art. 85 GDPR.

Association, Reuters News & Media, Reveal from The Center for Investigative Reporting, Society of Environmental Journalists, Society of Professional Journalists, Time USA, Tribune Publishing Company, Tully Center for Free Speech, and The Washington Post. A description of these organizations is provided in the Annex to the present request.

IV. Conclusion

As mentioned above, the Court's decision in *Biancardi v. Italy* is greatly important for the operationalization of the right to be forgotten after *Węgrzynowski and Smolczewski v. Poland* and *M.L. and W.W. v. Germany*. The Reporters Committee is in a particularly strong position to assist the Court in this regard, given its longstanding global experience on matters concerning freedom of expression and having already provided written comments to the Court in *Szurovecz v. Hungary*. If leave is granted, the Reporters Committee will accommodate whatever schedule suits the Court's needs in the provision of the written comments.

Respectfully submitted on behalf of the Reporters Committee for Freedom of the Press,



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Annex: Descriptions of the Proposed Co-Interveners

ALM Media, LLC

ALM Media, LLC publishes over 30 national and regional magazines and newspapers, including The American Lawyer, The National Law Journal, New York Law Journal and Corporate Counsel, as well as the website Law.com. Many of ALM Media's publications have long histories reporting on legal issues and serving their local legal communities. ALM Media's The Recorder, for example, has been published in northern California since 1877; New York Law Journal was begun a few years later, in 1888. ALM Media's publications have won numerous awards for their coverage of critical national and local legal stories, including many stories that have been later picked up by other national media.

The Associated Press

The Associated Press ("AP") is a news cooperative organized under the Not-for-Profit Corporation Law of New York. The AP's members and subscribers include newspapers, magazines, broadcasters, cable news services and Internet content providers. The AP operates from 280 locations in more than 100 countries. On any given day, AP's content can reach more than half of the world's population.

Atlantic Media, Inc.

Atlantic Media, Inc. is a privately held, integrated media company that publishes The Atlantic, National Journal, and Government Executive. These award-winning titles address topics in national and international affairs, business, culture, technology and related areas, as well as cover political and public policy issues at federal, state and local levels in the U.S. The Atlantic was founded in 1857 by Oliver Wendell Holmes, Ralph Waldo Emerson, Henry Wadsworth Longfellow and others.

Bloomberg L.P.

Bloomberg's newsroom of more than 2,300 journalists delivers thousands of stories a day to Bloomberg Terminal subscribers, producing content that is featured across multiple platforms, including digital, TV, radio, print and live events. In Europe, the Middle East and Africa alone, Bloomberg News's operations are comprised of hundreds of journalists in more than 50 cities, including Milan and Rome.

Boston Globe Media Partners, LLC

Boston Globe Media Partners, LLC publishes The Boston Globe, the largest daily newspaper in New England.

BuzzFeed, Inc.

BuzzFeed is an independent digital media company which leverages data and innovation to reach hundreds of millions of people globally.

Committee to Protect Journalists

The Committee to Protect Journalists ("CPJ") is an independent, nonprofit organization that promotes press freedom worldwide. We defend the right of journalists to report the news without

fear of reprisal. CPJ is made up of about 40 experts around the world, with headquarters in New York City. A board of prominent journalists from around the world helps guide CPJ's activities.

Dow Jones & Company, Inc.

Dow Jones & Company is the world's leading provider of news and business information. Through The Wall Street Journal, Barron's, MarketWatch, Dow Jones Newswires, and its other publications, Dow Jones has produced journalism of unrivaled quality for more than 130 years and today has one of the world's largest newsgathering operations. Dow Jones's professional information services, including the Factiva news database and Dow Jones Risk & Compliance, ensure that businesses worldwide have the data and facts they need to make intelligent decisions. Dow Jones is a News Corp company.

The E.W. Scripps Company

The E.W. Scripps Company serves audiences and businesses through local television, with 60 television stations in 42 markets. Scripps also owns Newsy, the next-generation national news network; podcast industry leader Stitcher; national broadcast networks Bounce, Grit, Escape, Laff and Court TV; and Triton, the global leader in digital audio technology and measurement services. Scripps serves as the long-time steward of the nation's largest, most successful and longest-running educational program, the Scripps National Spelling Bee.

Gannett Co., Inc.

Gannett Co., Inc. is the largest local newspaper company in the United States. Its 260 local daily brands in 46 states and Guam—together with its iconic publication USA TODAY—reach an estimated digital audience of 140 million each month. Gannett's subsidiary, Newsquest Media Group, is among the largest regional news publishers in the United Kingdom and has a portfolio of more than 165 news brands plus more than 40 magazines online and in print. With an online audience of almost 30 million users a month and six million readers a week in print, Newsquest content is read by a substantial proportion of the UK population.

International Documentary Association

The International Documentary Association (“IDA”) is dedicated to building and serving the needs of a thriving documentary culture. Through its programs, the IDA provides resources, creates community, and defends rights and freedoms for documentary artists, activists, and journalists.

Los Angeles Times Communications, LLC

Los Angeles Times Communications LLC and The San Diego Union-Tribune, LLC are two of the largest daily newspapers in the United States. Their popular news and information websites, www.latimes.com and www.sduniontribune.com, attract audiences throughout California and across the U.S.

The Media Institute

The Media Institute is a nonprofit foundation specializing in communications policy issues founded in 1979. The Media Institute exists to foster three goals: freedom of speech, a competitive media and communications industry, and excellence in journalism. Its program agenda encompasses all sectors of the media, from print and broadcast outlets to cable, satellite, and online services.

Media Law Resource Center, Inc.

Media Law Resource Center, Inc. (“MLRC”) is a non-profit professional association for content providers in all media, and for their defense lawyers, providing a wide range of resources on media and content law, as well as policy issues. These include news and analysis of legal, legislative and regulatory developments; litigation resources and practice guides; and national and international media law conferences and meetings. The MLRC also works with its membership to respond to legislative and policy proposals, and speaks to the press and public on media law and First Amendment issues. It counts as members over 125 media companies, including newspaper, magazine and book publishers, TV and radio broadcasters, and digital platforms, and over 200 law firms working in the media law field. The MLRC was founded in 1980 by leading American publishers and broadcasters to assist in defending and protecting free press rights under the First Amendment.

MPA — The Association of Magazine Media

MPA — The Association of Magazine Media (“MPA”) is the industry association for magazine media publishers. The MPA, established in 1919, represents the interests of close to 100 magazine media companies with more than 500 individual magazine brands. MPA’s membership creates professionally researched and edited content across all print and digital media on topics that include news, culture, sports, lifestyle and virtually every other interest, avocation or pastime enjoyed by Americans. The MPA has a long history of advocating on First Amendment issues.

National Press Photographers Association

The National Press Photographers Association (“NPPA”) is a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its creation, editing and distribution. NPPA’s members include television and still photographers, editors, students and representatives of businesses that serve the visual journalism industry. Since its founding in 1946, the NPPA has vigorously promoted the constitutional rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism. The submission of this application was duly authorized by Mickey H. Osterreicher, its General Counsel.

The News Leaders Association

The News Leaders Association was formed via the merger of the American Society of News Editors and the Associated Press Media Editors in September 2019. It aims to foster and develop the highest standards of trustworthy, truth-seeking journalism; to advocate for open, honest and transparent government; to fight for free speech and an independent press; and to nurture the next generation of news leaders committed to spreading knowledge that informs democracy.

The New Yorker

The New Yorker is an award-winning magazine of general interest, published weekly in print, digital, and online. Its writers regularly use information provided by sources, confidential and non-confidential, to report on matters of state, national, and international importance.

The New York Times Company

The New York Times Company is the publisher of The New York Times and The International Times, and operates the news website nytimes.com.

POLITICO, LLC

POLITICO is a global news and information company at the intersection of politics and policy. Since its launch in 2007, POLITICO has grown to nearly 300 reporters, editors and producers. It distributes 30,000 copies of its Washington newspaper on each publishing day and attracts an influential global audience of more than 35 million monthly unique visitors across its various platforms.

Radio Television Digital News Association

Radio Television Digital News Association (“RTDNA”) is the world’s largest and only professional organization devoted exclusively to electronic journalism. RTDNA is made up of news directors, news associates, educators and students in radio, television, cable and electronic media in more than 30 countries. RTDNA is committed to encouraging excellence in the electronic journalism industry and upholding First Amendment freedoms.

Reuters News & Media, Inc.

Reuters, the world’s largest international news agency, is a leading provider of real-time multi-media news and information services to newspapers, television and cable networks, radio stations and websites around the world. Through Reuters.com, affiliated websites and multiple online and mobile platforms, more than a billion professionals, news organizations and consumers rely on Reuters every day. Its text newswires provide newsrooms with source material and ready-to-publish news stories in nine languages and, through Reuters Pictures and Video, global video content and over 1,600 photographs a day covering international news, sports, entertainment, and business. In addition, Reuters publishes authoritative and unbiased market data and intelligence to business and finance consumers, including investment banking and private equity professionals.

Reveal from The Center for Investigative Reporting

Reveal from The Center for Investigative Reporting, founded in 1977, is the nation’s oldest nonprofit investigative newsroom. Reveal produces investigative journalism for its website <https://www.revealnews.org/>, the Reveal national public radio show and podcast, and various documentary projects. Reveal often works in collaboration with other newsrooms across the country.

Society of Environmental Journalists

The Society of Environmental Journalists is the only North-American membership association of professional journalists dedicated to more and better coverage of environment-related issues.

Society of Professional Journalists

Society of Professional Journalists (“SPJ”) is dedicated to improving and protecting journalism. It is the U.S.’s largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as

Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-informed citizenry, works to inspire and educate the next generation of journalists and protects First Amendment guarantees of freedom of speech and press.

Time USA, LLC

TIME is a global multimedia brand that reaches a combined audience of more than 100 million around the world. TIME's major franchises include the TIME 100 Most Influential People, Person of the Year, Firsts, Best Inventions, Genius Companies, World's Greatest Places and more. With 45 million digital visitors each month and 40 million social media followers, TIME is one of the most trusted and recognized sources of news and information in the world.

Tribune Publishing Company

Tribune Publishing Company is one of the country's leading media companies. The company's daily newspapers include the Chicago Tribune, New York Daily News, The Baltimore Sun, Sun Sentinel (South Florida), Orlando Sentinel, Hartford Courant, The Morning Call, the Virginian Pilot and Daily Press. Popular news and information websites, including www.chicagotribune.com, complement Tribune Publishing's publishing properties and extend the company's nationwide audience.

Tully Center for Free Speech

The Tully Center for Free Speech began in Fall, 2006, at Syracuse University's S.I. Newhouse School of Public Communications, one of the nation's premier schools of mass communications.

The Washington Post

The Washington Post (formally, WP Company LLC d/b/a The Washington Post) is a news organization based in Washington, D.C. It publishes The Washington Post newspaper and the website www.washingtonpost.com, and produces a variety of digital and mobile news applications. The Post has won 47 Pulitzer Prizes for journalism, including awards in 2018 for national and investigative reporting.