

IN THE EUROPEAN COURT OF HUMAN RIGHTS

Kryštof STUPKA

v.

The Czech Republic

Application No. 30276/25

Written Submissions of the International Service for Human Rights

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A. Introduction

1. On 10 April 2026, the European Court of Human Rights (the “**Court**”) granted leave to the International Service for Human Rights (“**ISHR**”) to intervene and submit written observations in the case of Kryštof STUPKA v. the Czech Republic.¹
2. This case raises important questions about safeguards for the right to privacy, including of individuals engaged in human rights activities, and about the conditions necessary for the effective exercise of the right to defend rights. The Court's jurisprudence addresses the scope of the right to privacy and the conditions under which it may be restricted under Article 8 of the European Convention on Human Rights (the “**Convention**”). This case provides an opportunity to consider the situation where a State's intrusion into an individual's private life is compounded by and adversely affects the individual's activities as a human rights defender, as well as the broader chilling effect such conduct may have on civil society. Where such interference also implicates the freedom of expression, it requires careful scrutiny of necessity and proportionality under the Convention.
3. ISHR submits, in essence, that: (1) States have a positive obligation to protect human rights defenders and enable exercise of the right to defend rights, (2) any restrictions on exercise of the right to defend rights and associated rights (including rights to private life and freedom of expression) must be subject to heightened scrutiny, and (3) this scrutiny must be particularly high where a restriction or interference may have a chilling effect on the activities of other human rights defenders.

B. Interest of ISHR

4. ISHR is an independent, non-governmental organisation which promotes and protects human rights. It supports human rights defenders at international, regional and national levels, offering strategic guidance on human rights mechanisms, advocacy and legal support. ISHR engages in strategic litigation before courts and bodies at all levels to secure safe and enabling conditions in which defenders can carry out their work freely and without fear of reprisals. ISHR collaborates closely with lesbian, gay, bisexual, transgender and intersex (“**LGBTI**”) rights defenders to ensure their protection needs are reflected in international standards and implemented at the domestic level.
5. ISHR submits that the present case exemplifies a serious and systemic concern: the use of criminal procedure as a vehicle for intrusive State interference with the right to privacy, specifically of human rights defenders, and in particular those defending the rights of LGBTI persons. ISHR submits that human rights defenders are entitled to benefit from the full protection of rights guaranteed under the Convention, including the right to privacy and the right to freedom of expression. These rights are integral to the functioning of a democratic society and must be safeguarded accordingly. Further, when a defender who has reported a hate crime is subjected to extensive personal data collection by the very authorities from whom he sought protection, this may have a chilling effect on the individual concerned and civil society more broadly.
6. In this context, ISHR invites the Court to interpret Article 8 of the Convention in light of relevant international standards concerning the protection of human rights defenders,

¹ Application no. 30276/25. The case was lodged on 26 September 2025 and communicated on 10 December 2025.

including those reflected in the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (commonly called the Declaration on Human Rights Defenders (“**Declaration**”)) and the International Covenant on Civil and Political Rights (the “**ICCPR**”), as well as the Court’s own jurisprudence. These materials may assist the Court in assessing the necessity and proportionality of the State’s interference.

7. These submissions address international standards concerning the protection of human rights defenders and their right to privacy (Section C), the right to freedom of expression (Section D), the chilling effect of disproportionate State action on civil society (Section E), and the impact of those principles on the Court’s assessment of Article 8 (Section F).

C. International and Regional Standards on the Rights of Human Rights Defenders

8. This section examines international and European legal standards that safeguard the rights of human rights defenders and define the limits of permissible State interference with those rights.

The UN Declaration on Human Rights Defenders

9. Human rights defenders, including those advocating for the rights of LGBTI persons, play a central role in the functioning of a democratic society and the enforcement of human rights. States’ obligations to protect human rights defenders arise under binding international human rights law, such as the ICCPR, to which the Czech Republic is a party, as well as under the Declaration on Human Rights Defenders.²
10. The Declaration was unanimously adopted by the United Nations General Assembly by Resolution 53/144 in 1998. By joining the consensus in its adoption, the Czech Republic affirmed its commitment to protect and promote the right to defend rights and human rights defenders. Although the Declaration is not a legally binding instrument, it reflects, articulates and elaborates existing rights already guaranteed under binding international human rights treaties, by clarifying their application to the specific context of human rights defence. Soft law instruments, such as the Declaration, inform a State’s understanding of its obligations under regional and international human rights instruments. Accordingly, ISHR submits that both the ICCPR and the European Convention should be read in light of the Declaration. The Declaration assists in clarifying the scope and content of States’ positive obligations and the standard of due diligence required in protecting individuals engaged in human rights activity. This approach to interpretation is consistent with Article 31(3)(c) of the Vienna Convention on the Law of Treaties, which requires that account be taken, together with the context, of “any relevant rules of international law applicable in the relations between the parties”.³ Both the Inter-American Court of Human Rights and this Court have treated the Declaration as a relevant interpretive source. In *Aliyev v. Azerbaijan*, the Court cited the Declaration and the 2015 General Assembly Resolution on human rights defenders as relevant international material, drawing on both instruments in

² See the United Nations Human Rights Status of Ratification Interactive Dashboard: <https://indicators.ohchr.org/>.

³ Vienna Convention on the Law of Treaties (1969), Article 31(3)(c).

its assessment of the Applicant as a human rights defender and of whether restrictions on his rights had been imposed for an improper purpose.⁴

11. As set out in the paragraphs below, a State's obligation to protect defenders requires refraining from violating human rights and to act with due diligence to prevent and impartially investigate any violation of the rights enshrined in the Declaration.
12. Article 1 of the Declaration provides that everyone has the right to "promote and to strive for the protection and realization of human rights and fundamental freedoms".⁵ States are required to ensure that individuals engaging in activism, including reporting hate speech arising from such activism, are effectively protected.
13. Article 2(1) of the Declaration provides that States must create social, economic, political, legal and other conditions which ensure that all persons under its jurisdiction can enjoy human rights and fundamental freedoms in practice. Article 2(2) requires States to adopt "legislative, administrative and other steps" to ensure that the rights and freedoms of the Declaration are guaranteed.⁶ The collection of personal data by State authorities, rather than action to guarantee those rights, calls into question whether these obligations have been fulfilled. This is particularly so where data collection is extensive, encompasses sensitive personal and financial information, and is not accompanied by clear and effective safeguards against misuse or unnecessary disclosure.
14. Article 9 of the Declaration provides for due process and effective remedies for victims. Article 9(1) provides, in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights, everyone has the right to an effective remedy and to be protected in the event of a violation of those rights. Article 9(5) provides that the State shall conduct a prompt and impartial investigation or ensure an inquiry takes place whenever there is reasonable ground to believe a rights violation has occurred. These provisions underscore that individuals who report human rights violations, including hate speech and threats of violence, including associated with human rights advocacy, are entitled to an impartial inquiry from the State. Such an inquiry must not subject them to measures that themselves constitute an interference with their rights.
15. Article 12(2) of the Declaration requires States to take all necessary measures to ensure the protection of persons against any violence, threats, retaliation, adverse discrimination, pressure or other arbitrary action as a consequence of their legitimate exercise of the rights in the Declaration. Discrimination associated with a person's status or activities as a human rights defender is prohibited under international law. LGBTI rights defenders face a heightened risk of targeted violence, threats and discrimination, and States must pay specific attention to their protection, including from hate speech and death threats as a consequence of their activism. Article 12(3) entitles everyone to be protected effectively under national law in reacting against or opposing, through peaceful means, acts attributable to States that result in violations of human rights, as well as acts of violence by groups or individuals that affect the enjoyment of human rights.⁷ Human rights defenders who report hate speech or threats of violence (acts by individuals affecting the enjoyment of the right to defend human rights and the right to freedom of expression, within the

⁴ ECHR, *Aliyev v. Azerbaijan*, Application Nos. 68762/14 and 71200/14, Judgment of 20 September 2018, paragraphs 88–92, 208.

⁵ Declaration, Article 1.

⁶ Ibid., Article 2.

⁷ Ibid., Article 12.

meaning of Article 12(3)) must be protected. State measures therefore require particular justification where they risk undermining the effective exercise of the right to defend rights or the right to expose or seek accountability for violations.

16. The Declaration defines the scope of limitations on the rights it articulates. Article 17 provides that such rights are only subject to limitations arising out of applicable international obligations that are determined by law solely for the purposes of securing due recognition and respect for the rights and freedoms of others and of meeting requirements of morality, public order and general welfare in a democratic society.⁸ ISHR submits that extensive and intrusive data gathering measures directed against human rights defenders reporting hate crimes calls for a particularly careful assessment of necessity and proportionality. Such measures require especially weighty justification where they risk undermining the effective exercise of rights protected under Articles 8 and 10 of the Convention. In this context, it is relevant to examine whether such measures are genuinely required for the aims of securing the rights and freedoms of others, and meeting the democratic requirements of morality, public order and general welfare.

The International Covenant on Civil and Political Rights & Council of Europe Standards

17. Article 2(2) of the ICCPR requires States to adopt such legislative, administrative or other measures as may be necessary to give effect to the rights recognised in the Covenant.⁹ This reflects the general obligation of States to ensure the effective implementation of Covenant rights through appropriate legal and institutional frameworks. This obligation is further informed by the standards set out in the Declaration, which articulates the responsibility of States to protect individuals in the exercise of their legitimate human rights activities and exercise of the right to defend rights. The ICCPR's substantive protections of freedom of expression (Article 19) and freedom of association (Article 22), corresponding to the rights also reflected in Articles 1 and 6 of the Declaration, are addressed in Section D below.
18. Article 17 of the ICCPR provides that no person shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence.¹⁰ This provision, read in light of Article 12 of the Declaration, underscores that human rights defenders should not be subject to intrusive or disproportionate investigative measures in response to, or in the course of, the exercise of their legitimate activities and the exercise of the right to defend rights.
19. The judgment of *Kavala v. Turkey*¹¹ extensively references Council of Europe materials on the protection of human rights defenders, including the Committee of Ministers' 2008 'Declaration on Council of Europe action to improve the protection of human rights defenders', which calls on member States to create an environment conducive to the work of human rights defenders and to take effective measures to protect, promote and respect their activities.¹² The Court also referred to Parliamentary Assembly Resolution 2225 (2018), which calls on States to refrain from acts of intimidation,¹³ notes the rise of judicial

⁸ Ibid., Article 17.

⁹ ICCPR, Article 2(2).

¹⁰ Ibid., Article 17.

¹¹ ECHR, *Kavala v. Turkey*, Application No. 28749/18, Judgment of 10 December 2019, paragraphs 74-75.

¹² Decl. (06/02/2008) - Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities, 6 February 2008, paragraph 2(i)-(ii).

¹³ Parliamentary Assembly Resolution 2225 (2018), "Protecting human rights defenders in Council of Europe member States", paragraph 5.2.

harassment¹⁴ and calls on States to refrain from arbitrary surveillance of human rights defenders.¹⁵ These obligations reinforce the duty of States to ensure that any investigative measures directed at human rights defenders are necessary, proportionate, and accompanied by adequate safeguards against arbitrariness.

Declaration +25 (a civil society led supplement to the Declaration)

20. The 2024 Declaration on Human Rights Defenders+25¹⁶ (“**Declaration+25**”), whilst not a binding instrument, compiles regional and international law and reflects a consolidation of existing regional and international standards on the right to defend human rights, which may assist the Court in interpreting the scope of States’ obligations under Article 8 of the Convention. The Declaration+25 has been endorsed in recent resolutions of the UN Human Rights Council, which the Czech Republic supported.¹⁷
21. In the context of the protection of human rights defenders’ privacy, the Declaration+25 emphasises States’ obligation to: (i) recognize, protect, respect, and fulfil all human rights and fundamental freedoms enabling the exercise of the right to defend human rights, including the right to privacy¹⁸; (ii) enable human rights defenders to work without stigmatization and criminalization and, *inter alia*, refrain from any practices that limit the right to defend rights (including those that limit defenders’ privacy contrary to international law)¹⁹; and (iii) enact laws and policies to protect the privacy of individuals’ data and digital communications and ensure that any personal data collected is done so consistently with human rights.²⁰

D. Analysis of the right to freedom of expression

22. Exercising the right to freedom of expression is fundamental to human rights defenders engaging in advocacy and exercising the right to defend rights. If a State’s actions deter such expression through intrusive investigative measures, it operates to silence dissent. In these circumstances, the interference with private life must also be examined through the lens of its impact on freedom of expression and its limitation of the right to defend rights.
23. The right to freedom of expression is firmly established in international law in Article 19(2) of the ICCPR, and is binding on the Czech Republic as a party²¹. Article 19(2) further provides “this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers [...]”²² Article 10(1) of the Convention similarly guarantees freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.²³

¹⁴ Ibid., paragraph 3.

¹⁵ Ibid., paragraph 5.8.

¹⁶ *Declaration on Human Rights Defenders +25: A Supplement to the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: 25 Years On* (Annotated Version, June 2024, updated October 2024).

¹⁷ A/HRC/RES/59/10 on ‘Civil society space’ (10 July 2025); A/HRC/61/L.29/Rev.1 on ‘Mandate of Special Rapporteur on the situation of human rights defenders’ (25 March 2026).

¹⁸ Declaration+25, Article 2.

¹⁹ Ibid., Article 5.

²⁰ Ibid., Article 9.

²¹ See United Nations Human Rights Status of Ratification Interactive Dashboard: <https://indicators.ohchr.org/>.

²² ICCPR, Article 19(2).

²³ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) (4 November 1950), Article 10 § 1.

24. The UN Human Rights Committee (“**Human Rights Committee**”) described this right as “a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights”.²⁴
25. In the specific context of the right to defend rights, these guarantees are further elaborated in the Declaration. Article 6 recognises the right, individually and in association with others, to access and retain information concerning human rights and fundamental freedoms; to publish and disseminate views and knowledge on such matters; and to study, debate, and form opinions on how those rights are observed in law and in practice, including by drawing public attention to those matters.²⁵ Article 7 provides that everyone has the right to develop and discuss new human rights ideas and principles and to advocate their acceptance.²⁶ LGBTI human rights defenders, who frequently face opposition due to the perceived challenge their work poses to prevailing social or cultural norms, rely particularly on these guarantees. Many human rights now widely recognised were secured through sustained advocacy, and defenders working on LGBTI rights continue to face heightened risks as a result of that work.²⁷
26. The right to freedom of expression has three interrelated aspects: (i) entitlement to hold opinions free from interference; (ii) right to access information; and (iii) right to communicate information and ideas through any medium.²⁸ The Human Rights Committee has confirmed that this right extends to all forms of communicable ideas and opinions, including political discourse, commentary on public affairs, and discussion of human rights.²⁹ Further, all branches of the State, whether executive, legislative, or judicial, have the responsibility to respect the right to freedom of expression.³⁰

State Obligations to Protect Freedom of Expression

27. Importantly, the right to freedom of expression imposes on States a duty to abstain from interference, and also positive obligations to protect and take measures for its realisation, particularly where the persons concerned are engaged in reporting human rights violations or participating in public debate on matters of general interest, hold unpopular or controversial views, or belong to groups exposed to higher risks of victimisation.
28. In *Özgür Gündem v. Turkey*, the Court held that the genuine, effective exercise of freedom of expression “does not depend merely on the State’s duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals”.³¹ The Court found that, where a newspaper and persons associated with it had been subjected to

²⁴ UN Human Rights Committee, General comment No. 34 Article 19: Freedoms of opinion and expression (12 September 2011), paragraph 3.

²⁵ Declaration, Article 6.

²⁶ Declaration, Article 7.

²⁷ Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (“**Commentary to the Declaration**”) (July 2011), pages 83-85.

²⁸ Commentary to the Declaration, page 58.

²⁹ UN Human Rights Committee, General comment No. 34 Article 19: Freedoms of opinion and expression (12 September 2011), paragraph 11.

³⁰ Ibid., paragraph 7.

³¹ ECHR, *Özgür Gündem v. Turkey*, Application No. 23144/93, Judgment of 16 March 2000, paragraph 43.

a series of violent acts and the authorities failed to take adequate protective or investigative measures, the resulting cumulative impact violated Article 10.

29. The Court's majority judgment in *Dink v. Turkey* confirmed that, under Article 10 of the Convention, the real and effective exercise of freedom of expression does not simply depend on the duty of the State to refrain from any interference, but may require positive measures of protection even in the sphere of relations between individuals with each other.³² Critically, the case touched upon positive obligations requiring States: "to create a favourable environment for participation in public debate by all the persons concerned, enabling them to express their opinions and ideas without fear. In the present case, the State must not just refrain from any interference with the individual's freedom of expression, but is under a "positive obligation" to protect their right to freedom of expression against attack, including by private individuals".³³
30. The Human Rights Committee emphasised that any restriction on freedom of expression must not put the right itself in jeopardy.³⁴ Under Article 19(3) of the ICCPR any interference must be provided by law, pursue a legitimate aim, and be necessary and proportionate.³⁵ The UN Special Rapporteur on freedom of opinion and expression further clarified that expression concerning government policies, political debate, reporting on human rights, peaceful demonstrations, and the expression of opinion and dissent (including by persons belonging to minorities or vulnerable groups), lies at the core of protected speech and attracts the highest level of protection.³⁶ In the specific context of human rights defenders, Article 12 of the Declaration requires States to take all necessary measures to ensure protection against retaliation and/or arbitrary action arising from the legitimate exercise of rights under the Declaration.³⁷ Read in conjunction with States' obligations under Article 19 of the ICCPR, this underscores a positive duty to safeguard human rights defenders from interference in the exercise of their right to freedom of expression, and to ensure that State action does not indirectly deter or penalise the exercise of protected expression.
31. Where a human rights defender reports a hate crime, advocates for minority rights, or uses public platforms to highlight discrimination, that activity falls squarely within the core protection of the right to freedom of expression and engages the highest level of protection under the Convention, particularly where it contributes to public debate on matters of general interest. The Court has held that: "conferring substantive rights on homosexual persons is fundamentally different from recognising their right to campaign for such rights".³⁸ Even where a State disagrees with the substance of the views being expressed, it remains under an obligation to protect the right of an individual exercising the right to

³² ECHR, *Dink v. Turkey*, Application Nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, Judgment of 14 September 2010, paragraph 106.

³³ Press release issued by the Registrar, *Dink v. Turkey*, Application Nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, 14 September 2010, page 6.

³⁴ UN Human Rights Committee, General comment No. 34 Article 19: Freedoms of opinion and expression (12 September 2011), paragraph 21; see also Commentary to the Declaration, page 65.

³⁵ ICCPR, Article 19(3); UN Human Rights Committee, General comment No. 34 Article 19: Freedoms of opinion and expression, paragraph 22.

³⁶ Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue, A/HRC/14/23, 20 April 2010, paragraphs 80–81.

³⁷ Declaration, Article 12(2).

³⁸ ECHR, *Alekseyev v. Russia*, Application Nos. 4916/07, 25924/08 and 14599/09, Judgment of 21 October 2010, paragraph 84.

defend rights, and engaging in that advocacy. Any measure, including State action, that penalises or deters such expression must accordingly be subject to particularly careful scrutiny as to its necessity and proportionality.

E. The Chilling Effect of State Action on Human Rights Defenders

32. As this submission has demonstrated, the right to defend human rights and to freedom of expression impose on States both negative obligations of non-interference and positive obligations of protection. This section addresses the consequences of these obligations not being fulfilled: the deterrent or “chilling” effect that State action against human rights defenders may exert upon the willingness of others to engage in human rights advocacy.
33. The “chilling effect” is well established in the Court’s jurisprudence. It describes the phenomenon by which State action directed against one individual, community or entity discourages others from exercising their Convention rights, producing a climate of self-censorship and constraint that extends far beyond the immediate target of the impugned measures. The Court recognised that this may arise from direct prohibitions or sanctions and also from the cumulative impact of surveillance, data collection, criminal prosecution, and other forms of State interference that, taken together, signal that the exercise of fundamental rights carries a risk of adverse consequences. This is a relevant consideration in assessing whether an interference is proportionate and “necessary in a democratic society” within the meaning of Articles 8 and 10 of the Convention.
34. In *Aliyev v. Azerbaijan*, the Court noted the “chilling effect” that the de facto criminalisation of the Applicant’s activities had on civil society at large, observing that civil society “who often act collectively within NGOs and who, for fear of prosecution, may be discouraged from continuing their work of promoting and defending human rights”.³⁹ In *Kavala v. Turkey*, the Court found that the extended detention of a human rights defender in the absence of reasonable suspicion pursued the ulterior purpose of reducing him to silence, and concluded that the measures were “likely to have a dissuasive effect on the work of human rights defenders”.⁴⁰
35. The UN Special Rapporteur on the situation of human rights defenders, together with a number of other UN experts, has expressed concern regarding digital surveillance tools, noting that “arbitrary and pervasive surveillance is overwhelmingly used against civil society, human rights defenders, journalists, peaceful assemblies, minorities, political opposition and dissenting voices, thereby undermining free democratic participation” and warning of the “profound chilling effects” this has on fundamental freedoms.⁴¹
36. These principles find direct application where a human rights defender, after reporting a hate crime arising out of the legitimate exercise of their rights and freedoms, is subjected by State authorities to extensive and intrusive collection of personal data. In such circumstances, the nature and cumulative effect of these measures of the State - including the scope of the data collected, its sensitivity, and the extent of its disclosure - may deter the defender and others from continuing their human rights work, and also from seeking

³⁹ ECHR, *Aliyev v. Azerbaijan*, Application Nos. 68762/14 and 71200/14, Judgment of 20 September 2018, paragraph 213.

⁴⁰ *Kavala v. Turkey*, paragraph 232.

⁴¹ Joint statement by UN Special Procedures mandate holders, OHCHR Press Release, “UN experts: Safeguard human freedoms from systematic digital interference” (April 2026).

protection from the authorities in the future. This deterrent effect is especially acute for human rights defenders whose work often involves public visibility and advocacy on sensitive issues, including LGBTI rights.

37. The Court has recognised that measures capable of discouraging participation in public debate or human rights advocacy may give rise to a chilling effect incompatible with a democratic society, as reflected in its jurisprudence in this section. This is relevant when assessing the proportionality of State conduct affecting human rights defenders.

F. Application to Article 8 of the Convention

38. The definition of “private life” in Article 8 has been interpreted by the Court as extending beyond an “inner circle” of personal affairs and including activities of a professional nature, that it is “not always possible to distinguish clearly which of an individual’s activities form part of his professional or business life and which do not”.⁴² It was held in *Peck v. the United Kingdom* that: “Private life is a broad term not susceptible to exhaustive definition. The Court has already held that elements such as gender identification, name, sexual orientation and sexual life are important elements of the personal sphere protected by Article 8. That Article also protects a right to identity and personal development, and the right to establish and develop relationships with other human beings and the outside world and it may include activities of a professional or business nature. There is, therefore, a zone of interaction of a person with others, even in a public context, which may fall within the scope of “private life.”⁴³
39. Accordingly, the concept of “private life” under Article 8(1) extends to a “zone of interaction” between the individual and others, including in public and professional contexts. Where the individual is a human rights defender, this zone encompasses a broad range of activities integral to their role, including advocacy, communication with civil society actors, documentation of violations, and engaging with public authorities.
40. Further, any interference with Article 8 must be assessed in light of the State’s obligations to protect defenders, safeguard the right to defend rights and freedom of expression, impartially investigate violations, and refrain from actions that produce a chilling effect on their activities. Where such interference affects activities protected by the right to freedom of expression, including reporting hate speech and engaging in advocacy, the Court has required particularly careful scrutiny and the provision of especially weighty reasons to justify the measures in question. In interpreting Article 8, particular attention must be paid to the role of human rights defenders in advancing Convention values. Those who document discrimination, report hate crimes and engage in public advocacy carry out activities essential to the functioning of a democratic society, and their right to privacy must be afforded commensurate protection, including against investigative measures liable to deter individuals from reporting violations or engaging with public authorities. As established in Sections C, D and E above, this protection requires not only abstention from interference, but also the adoption of measures to ensure that State procedures do not discourage individuals from reporting violations or seeking redress. ISHR therefore invites

⁴² ECHR, *Niemietz v. Germany*, Application No. 13710/88, Judgment of 16 December 1992, paragraph 29.

⁴³ ECHR, *Peck v. the United Kingdom*, Application No. 44647/98, Judgment of 28 January 2003, paragraph 57. See also ECHR, *P.G. and J.H. v. the United Kingdom*, Application No. 44787/98, Judgment of 25 September 2001, paragraph 56.

the Court to take these considerations into account in determining whether the interference was compatible with Article 8(2) of the Convention.

41. The Court has clarified that for the purposes of Article 8, an interference is “necessary in a democratic society” only if it corresponds to a pressing social need and is proportionate to the legitimate aim pursued”.⁴⁴ In assessing proportionality, the Court attaches particular weight to activities that contribute to public debate on matters of general interest, and has emphasised that interferences affecting such activities require particularly convincing and compelling justification, including human rights advocacy. Accordingly, measures affecting individuals engaged in such activities require especially careful scrutiny, including consideration of whether less intrusive means could have achieved the same legitimate aim and whether adequate safeguards were in place to limit the scope and dissemination of personal data, given the risk of a chilling effect on the exercise of fundamental rights (see Section E above). In particular, the Court should consider whether investigative measures - such as the extent of data collection and the granting of access to third parties - were strictly necessary in the circumstances, especially in the criminal sphere. Measures that produce a disproportionate deterrent effect are unlikely to satisfy the requirement of necessity, particularly where they result in the creation of a detailed personal profile encompassing financial, professional and private communications data. Human rights defenders play a vital role in a democratic society, as also reflected in the Declaration, and any risk that State action may deter such activity is a relevant factor in the proportionality assessment under Article 8.

G. Conclusion

42. This intervention is intended to assist the Court by providing an analysis of relevant international and European standards concerning the right to defend human rights and the rights of human rights defenders, including the right to freedom of expression, and to demonstrate the chilling effect that disproportionate State action can exert on defenders and civil society. ISHR respectfully invites the Court to interpret the State’s obligations under Article 8 of the Convention in light of these standards.
43. ISHR submits that human rights defenders are entitled to benefit from the full protection of rights guaranteed under the Convention, read with relevant standards including the Declaration and its Commentary, the Declaration+25, the ICCPR, and the Court’s own jurisprudence. These instruments collectively recognise that the ability to exercise the right to defend human rights - including through reporting hate crime, advocating for the rights of minorities, and engaging in public debate - is integral to the functioning of a democratic society and must be safeguarded accordingly. Where State authorities subject a human rights defender to extensive and intrusive measures in connection with a complaint made by the defender, and where such measures are upheld by the domestic courts, these factors are relevant to the Court’s assessment of whether the interference with the defender’s right to privacy was necessary and proportionate under Article 8(2) of the Convention. It further calls for particularly careful scrutiny where the interference is liable to affect the exercise of freedom of expression in addition to the right to privacy. Such measures are capable of having a deterrent effect on the vital work of human rights defenders and civil society more broadly, which is relevant to the analysis of proportionality.

⁴⁴ ECHR, “Guide on Article 8 of the European Convention on Human Rights”, 31 August 2025, paragraph 27.

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