

20 January 2016

Judge Guido Raimondi
President of the European Court, Grand Chamber
European Court of Human Rights
Council of Europe
F-67075 Strasbourg Cedex
France

Re: Application for leave to intervene in *10 Human Rights Organizations and Others v the United Kingdom* (Application no. 24960/15)

Dear Judge Raimondi,

Pursuant to Article 36 of the Convention and Rule 44 § 4(a) of the Rules of the Court, the Electronic Privacy Information Center (“EPIC”) respectfully requests leave to submit written observations, and make oral representations, as an intervenor in *10 Human Rights Organizations and Others v the United Kingdom* (Application no. 24960/15) case. The case was communicated on November 24, 2015.¹

I. EPIC’s Mission

EPIC is a public interest non-profit research and educational organization in Washington, D.C. EPIC was established in 1994 to focus public attention on emerging privacy and civil liberties issues and to protect privacy, freedom of expression, and democratic values in the information age. EPIC pursues a wide range of program activities including policy research, public education, conferences, litigation, publications, and advocacy. EPIC routinely files amicus briefs in U.S. courts, pursues open government cases, defends consumer privacy, coordinates non-profit participation in

¹ *10 Human Rights Organizations and Others v the United Kingdom* (Application no. 24960/15), <http://hudoc.echr.coe.int/eng?i=001-159526>.

international policy discussions, and advocates before legislative and judicial organizations about emerging privacy and civil liberties issues.²

EPIC also works closely with a distinguished board of advisors, who are experts in law, technology and public policy. EPIC maintains one of the most popular privacy web sites in the world—epic.org.³ EPIC is a leading privacy and freedom of information organization in the US with special expertise in government surveillance related legal matters⁴. With regard to EPIC’s international activities, EPIC frequently appears before European institutions to provide expert opinion⁵, and recently prepared an article on NGO participation in matters before the European Court of Human Rights and the Court of Justice of the European Union⁶. This is the first time, however, that EPIC has requested leave to submit a third party intervention with the European Court of Human Rights.

II. The Matter Before the Court

*10 Human Rights Organizations and Others v the United Kingdom*⁷ is the consolidated result of challenges by human rights groups to surveillance activities of British intelligence agencies. The case concerns whether the surveillance activities (bulk interception, collection, inspection, distribution and retention of communications including metadata and content) by MI5, MI6, and the Government Communications Headquarters (GCHQ) violated the European Convention on Human Rights, Article 8 and 10, in particular. The Court posed questions to the Parties as follows:

- (1) Can the applicants claim to be “victims”, within the meaning of Article 34 of the Convention, of violations of their rights under Articles 8 and 10?
- (2) Are the acts of the United Kingdom intelligence services “in accordance with the law” and “necessary in a democratic society” within the meaning of Article 8 of the Convention?

² See *California v. Patel*, 135 S. Ct. 2443 (2015), *Riley v. California*, 134 S. Ct. 2473 (2014), and EPIC, *In re EPIC – NSA Telephone Records Surveillance* (2016), <https://epic.org/privacy/nsa/in-re-epic/#legal>.

³ EPIC, *About EPIC* (2016), <https://epic.org/epic/about.html>.

⁴ EPIC, *Government Surveillance Project* (2016), <https://epic.org/privacy/surveillance/>.

⁵ EPIC, *EPIC’s Rotenberg Addresses European Parliament* (Oct. 3, 2013), <https://epic.org/2013/10/epics-rotenberg-addresses-euro.html>

⁶ Rotenberg, *On International Privacy: A Path Forward for the US and Europe*, *Harvard International Review* (June 15, 2014), <http://hir.harvard.edu/on-international-privacy-a-path-forward-for-the-us-and-europe/>.

⁷ EPIC, *Liberty v GCHQ* (2016), <https://www.epic.org/amicus/echr/liberty-gchq/>.

- (3) Are the acts of the United Kingdom intelligence services “prescribed by law”, and “necessary in a democratic society” in the pursuit of a legitimate aim, within the meaning of Article 10 of the Convention?
- (4) Did the proceedings before the Investigatory Powers Tribunal involve the determination of “civil rights and obligations” within the meaning of Article 6 § 1?
- (5) If so, were the restrictions in the IPT proceedings, taken as a whole, disproportionate or did they impair the very essence of the applicants’ right to a fair trial?
- (6) Has there been a violation of Article 14, taken together with Article 8 and/or Article 10, on account of the fact that the safeguards set out in section 16 of the Regulation of Investigatory Powers Act 2000 grants additional safeguards to people known to be in the British Islands?

III. EPIC’s Intervention

With regard to Article 6 of the Convention (Question 2), EPIC is in a strong position to assist the Court in understanding U.S. surveillance law, which has a special relevance in this case. In particular, EPIC can provide background related to the UK and US security agencies’ activities, including the Prism and Upstream programs of the National Security Agency (NSA). EPIC has obtained relevant information through litigation conducted in the United States under the Freedom of Information Act.⁸ EPIC proposes to provide information with regard to these programs and details of Section 702 and 215 collection, based on original evidence.

EPIC can also provide the Court with insights on the question of victim status (Question 1) with a special regard to procedural hurdles in privacy cases in the US (“standing”) related to the Court’s recent judgments in *Zakharov v Russia* and *Szabo, Vissy v Hungary*. This issue also relates to EPIC’s expertise in the question of remedies, and the failure of the proposed bill to provide privacy safeguards for non-U.S. persons in the United States in particular.⁹ This discussion could also inform the Court’s consideration of the discrimination and the fair trial issue (Questions 4, 5, and 6).

EPIC can also inform the question of whether the fundamental right to privacy is essential to freedom of expression (Article 10 of the Convention) in general (Question 3), and also in the particular case of human rights and watchdog NGOs (such as the applicants).

⁸ EPIC, *EPIC v DOJ – PRISM* (2016), <http://epic.org/foia/doj/olc/prism/>.

⁹ EPIC, *EPIC Urges Senate to Postpone Action on Judicial Redress Act* (Jan. 16, 2016), <https://epic.org/2016/01/epic-urges-senate-to-postpone-.html>.

III. Conclusion

EPIC respectfully requests leave to submit written comments, and to participate in the hearing making short oral submission.

If leave is granted, EPIC will accommodate whatever schedule suits the Court's needs in the provision of the written comments.

Sincerely,

Marc Rotenberg
EPIC President and Executive Director

Alan Butler
EPIC Senior Counsel

Fanny Hidvegi
EPIC International Privacy Fellow