

## TRANSCRIPT

# "VICTORIES AND CHALLENGES FOR MEDIA DEFENSE: A CONVERSATION WITH MEDIA LEGAL DEFENSE INITIATIVE"

*A Conversation With Nani Jansen, Peter Noorlander, and Dirk Voorhoof*

*Moderator: Darian Pavli*

\*\*\*TRANSCRIBER'S NOTE\*\*\*SOME SPEAKERS' ACCENTS ARE DIFFICULT TO UNDERSTAND.\*\*\*

## **ANNOUNCER:**

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## **DARIAN PAVLI:**

So thanks, everyone, for coming. We have-- three guests today. We're here for a major conference at-- Columbia University on free speech jurisprudence around the world. Peter Noorlander and Nani Jansen in for the Media Legal Defense Initiative which has been in existence for?

## **PETER NOORLANDER:**

Since 2000 and (UNINTEL)

## **DARIAN PAVLI:**

Two thou-- is a separate entity?

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## PETER NOORLANDER:

Yes.

## DARIAN PAVLI:

I think we can take some pride in-- in saying that-- d-- it-- it-- the-- the idea grew-- out of-- some brainstorming within this organization and it was initially housed-- I think it was-- Aria's idea and-- the media program and-- with some assistance from a justice initiative-- helped-- conceive-- of it and-- and-- and then housed it for a while. But-- it is now one of the-- many successful spinoff-- stories.

(OFF-MIC CONVERSATION)

## DARIAN PAVLI:

MLDI-- was just awarded last night at Columbia. They-- they just instituted this award for-- what is it? Excellence in?

## PETER NOORLANDER:

Excellence in legal services in freedom (UNINTEL PHRASE) globally.

## DARIAN PAVLI:

So that's (LAUGHTER)-- that's one part of it. (LAUGHTER) It's-- it basically meant-- the best--litigants of the year in-- in the major free speech case. And there's also another 1/2 of it that goes-- to the-- the courts-- that decided major-- or it doesn't have to be the same court in the same case.

The two courts that were-- recognized last night were-- was-- sort of an exchequer between the-- Turkish constitutional court-- over the unblocking of-- Twitter and YouTube and the-- Zimbabwean Supreme Court over-- Akai's-- outlines, the criminal definition of aspect of-- of criminal defamation and-- MLDI-- was recognized, was awarded for their role in-- probably the-- the-- the-- the single most important case of last year-- the ruling by the African Court of Human Rights in Konaté versus Burkina Faso which you're gonna hear more-- about shortly.

And-- we also had-- the-- the good fortune to have-- here Derek Verhal (PH) who is a law professor and a political affairs pr-- lecturer in-- splitting his time between Kent University and Copenhagen-- University. Derek is one of the-- closest observers and-- and one of the-- the more astute commentators on-- Article 10 of the European Convention of Human Rights which-- Derek likes to call somewhat provocatively, "Europe's First Amendment." (LAUGHTER)

So-- so we'll hear-- from-- from-- Derek-- afterwards about-- what are the main trends of-- (SOMEONE COUGHS OVER WORDS) free speech-wise at European Court of Human Rights in-- in-- in Strasbourg but-- we'll st-- we'll start with-- Peter and Nani. So Peter (UNINTEL)

## **PETER NOORLANDER:**

So-- so Darian, you-- you-- you were far too modest because it was really you and Sandy and Aria who were the instigators of-- of our organization, the Media Legal Defense Initiative. Together, we-- the media programs too over in-- over in London-- and Quidana (PH).

And-- and-- and-- and we were set up because there was n-- there was a real need for-- an organization that is specifically focused on-- on providing legal assistance and legal defense and making sure that journalists around the world, when they-- when I-- when they're under threat, under legal threat specifically, that there are specialists especially as lawyers available to-- to defend them, to do a good job and to stand by them-- throughout the trial and to-- to-- to-- to make sure not only that-- that the case that they're involved in is then won but that the journalists concerned can continue their reporting. And that is actually for us as an organization is something that we are becoming more and more focused on.

It's almost the-- although we're an organization of lawyers and we love winning cases because that's what we do as lawyers-- the-- the-- the-- the outcome further down the line which is far more important is making sure that that journalist can then continue to do their work and isn't hounded-- out of the profession or even out of their country.

And that does actually have implications in terms of how we approach cases. And sometimes it's-- it's better to advise a journalist to settle a case and get on with their lives-- rather than fights that (UNINTEL) and-- and-- and-- and-- and often very necessary fight to promote (UNINTEL) especially when something is not-- is not the wisest thing to do.

And yeah, I will-- I will just take a few minutes because I don't wanna take any time away from-- from Nani or from Derek-- to s-- set out kind of the overall environment that-- that we work in and what we see as the-- as the key challenges-- but also what we see as the key sort of opportunities in terms of where-- where things can move forward.

And we're at s-- as regards challenges, the CPJ-- put out their annual-- press freedom reports. There are-- last year was the year with the second highest numbers of journalists-- in prison-- so that clearly is a-- is a key challenge.

The challen-- the challenge on violence against journalists is-- is-- is a trend that continues. And the overall-- dimensioning of a respect for the rule of law generally, if you look at development in-- in Russia but also in places like India and in other large and important countries, the d-- the challenge isn't just to media freedom-- the

challenge is to the rule of law and to-- and to respect for human rights.

And media freedom is at the forefront of that because it's the-- journalists are the canary in the coal mine and it is that indicator. This-- this is why freedom of expression is so important. It is that indicator of-- levels of respect for democracy generally. And if you see in a country that journalists are being targeted and that respect for media freedom is going down, that usually means that there are larger underlying problems.

How does that manifest itself? It manifests itself in ways that are both old and new. So for us, as-- as-- as lawyers, I've been working on freedom of expression issues since-- since-- since the early 2000s and-- and we see a lotta the same problems have remained exactly the same.

It's the abuse of defamation laws-- re-examine our dockets-- percentage wise, the-- the-- the overwhelming majority of cases are defamation cases. It is so easy to bring a case against-- against a journalist who has written a story. It is very easy for-- the person that's the target of the story and-- and often they are-- they're local mayors or they're local prosecutors.

Or they're sort of people in what I like to think of as middle management in government. They're-- they're-- they're often the very sensitive ones. And it's very easy for them when they're being criticized to just (UNINTEL) a case and say, "That's not true. Prove it."

And-- the laws in most of the countries around the world are-- place a very heavy burden on the journalists or on the media outlet concerned to-- to prove-- to a-- to a criminal standard of proof sometimes which means that that's a very high standard of proof, to-- to-- to bring evidence that the story was indeed true. That challenge-- is a-- I think a constant challenge and is one that's in the-- sort of the media freedom or freedom of expression world, we-- we are still struggling with.

And that is why the case that many will be talking about-- later at the African Court of Human Rights is so important because it is still extremely important to chip away at-- at those really repressive libel laws. So that is one thing and there's a-- there's a use of national security laws that is increasingly present particularly in Western societies and-- and the use of-- of public order laws.

And again against-- journalists as well as-- manifestations thereof that are sometimes country specific. So in places like Rwanda, national security/public order gets merged with-- genocide denial and what they call, "divisionism." So-- but-- but in essence, these are all manifestations of national security that place again very heavy burdens on journalists and-- and place very sort of thick red lines through what can and cannot be reported in the media.

So-- so-- so that's a whole sort of power packet of all the challenges-- that we're all working on. The Internet has brought a whole bunch of new challenges as well as a whole bunch of new opportunities. We spent the last two days at Columbia University talking about some of those. There was a really exciting panel on, "the right to be forgotten."

Which has come up as-- as a real threat to media freedom and to freedom of expression. There're issues around the extent to which-- m-- m-- m-- media companies or media websites are libel for comments left by their users. And people go to prison for that.

There were cases in-- in-- in Thailand most-- most prominently where a website-- editor faced 20 years in prison for comments that were left by-- their users which were defamatory of-- of the Thai-- of the Thai king. And those are challenges that didn't exist-- 15 years ago or they weren't as prominent.

And they're certainly coming to the fore. But with those challenges, there's also-- actually, no. Since the-- those are-- those are a bunch of legal challenges. I-- the-- there are very practical challenges for an organization such as ourselves as well.

The-- the-- the-- the main practical challenge is actually finding good lawyers to work with and-- and r-- and retaining those lawyers and-- and-- and-- and building their skills. This is-- this is a problem that actually I've-- I've been struck with that that's a problem not just for us because we're an NGO.

And I used to think, "Is this because we can't-- we can't pay much?"-- but it's a problem that-- that even big media companies struggle with. When you have a case against you in-- Kenya, to name a random country, or in the Philippines or in Malaysia, just finding-- there-- there-- there's a very small pool of lawyers a) that are willing to take the cases.

But-- but-- but then finding the ones that are actually good at it is so hard. And that again in the Burkina Faso case was a real-- was a real issue was finding the right-- finding a lawyer who was willing to represent a journalist and stand by him. And that is a real challenge.

## **DARIAN PAVLI:**

Is-- is that because of the-- sort of the high stakes politically or-- is it a question of the legal profession that there's no media bar as such? There's no-- media to sustain them?

## **PETER NOORLANDER:**

D-- yeah, d-- it is both those things definitely-- but it is also-- it is a-- the legal culture and the culture that lawyers working in-- in some of these countries is it-- it's-- it's just a completely different culture. And some of the lawyers behave in-- in-- in ways that are-- lawyer-- no-- I-- I'm a lawyer.

Lawyers have massive egos, right? (LAUGHTER) And-- and they all think that they're the best thing since sliced bread. And-- and don't tell a lawyer how to run a case because they're just not gonna listen (LAUGHTER)-- and I can deal with all of that, right?

That's-- all-- all-- all-- all of that is fine. But when you combine an ego like that with a ne-- the-- the-- the fact is that-- that they aren't s-- as good as they think they are usually-- that they're actually not as good as they think they are to a-- an astonishingly high degree. And you-- and-- and-- and-- and they--

**DARIAN PAVLI:**

It is just the lack of specialization?

**PETER NOORLANDER:**

It's a lack of specialization. There is--

**NANI JANSEN:**

It's just some very basic training very often.

**PETER NOORLANDER:**

Exactly.

**NANI JANSEN:**

And-- and-- and-- and sometimes also a reluctance of more lawyers to take junior lawyers under their wing and teach them the tricks of the trade, so to speak-- 'cause a lot of the things that you actually learn is when you start practicing, right? And you need a good mentor for that. You need good training. And that is often lacking.

**MALE VOICE:**

Peter, what-- what's the texture of how these things get adjudicated and in the US, we're obviously focused on motion practice and discovery and all that sort of thing but are-- are these-- are most of these coming up as criminal cases where they're going straight to trial or is there a motion practice? And-- and because I-- this goes to the competency more--

(OVERTALK)

**PETER NOORLANDER:**

It-- it really depends--

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(OVERTALK)

## QUESTION:

You wanna introduce yourself (UNINTEL)

## DAVID MCCRAW:

David McCraw, *The New York Times*.

## DARIAN PAVLI:

We did (UNINTEL PHRASE) very quick (UNINTEL) and-- with-- Monroe Price over there who's a Yale law professor and--

## JEREMY KENNERMAUS:

And Jeremy Kennermaus (PH) at the *New York Times*.

## PETER NOORLANDER:

That is so different, the answer to that is so different from country to country-- but it is often-- journalists are at a bigger disadvantage-- in the countries where we work. And I should have said that we focus most of our work in Asia-- Africa and central and eastern Europe-- at the moment anyway. And the sort of the-- the-- the inequality of arms, as it were, is far more pronounced.

And-- and that's either because people get to s-- spend time in pre-trial detention p-- (UNINTEL PHRASE) and they shoot. But it's also because the legal assistance available to them isn't-- the-- there-- there isn't that high caliber of-- of lawyers out there that-- that-- that can-- that can defend them.

So that is just-- just to say that, I-- that in terms of (UNINTEL PHRASE) that's a real challenge for us is just finding the right people to work with. But when you then find them, that becomes a real opportunity because the people-- the way that we work, we've got a very small office in London.

There's-- there's eight of us now. There's oh-- actually only three lawyers. And we-- we work through networks and we work through peop-- together with people like Kathy sitting here who do fantastic work in-- in Uganda but also people li-- li-- like Dirk who's sitting here who's-- incredibly generous with his time and advises on cases and advises on strategy particularly on European Court of Human Rights level.

And I think that is actually-- that's a real opportunity because there is-- once you

found the good lawyers to-- to work with, there is a tremendous appetite and then-- and so much good will and people wants to-- I think they want to be involved in the cases because-- they're often inherently interesting. But it's also because they often provide an opportunity to move the-- the-- the law forward. And I wanted to just--

## **DICK VOORHOOF:**

Can I just you, please, can you also use this network of international media, lawyers association, do you often work with people which belong to that network or most of the time outside?

## **PETER NOORLANDER:**

It-- yes, we do. Yes, we do. Absolutely. It doesn't cover enough countries-- so that's-- that's a real problem and sometimes the memberships are a little bit-- out of date so you-- people-- people tend to move on sometimes. But-- but that's-- that's-- that's real-- li-- like Inla (PH)-- and Gene.

## **DIRK VOORHOOF:**

And reactivated more or--

## **PETER NOORLANDER:**

I think-- I-- I think there's-- there's definitely opportunity for that, absolutely, yeah. And to expand into-- to-- to new countries as well and so we're working on ways of doing that. But-- but so-- and-- and-- so there's an opportunity there. There-- there are oth-- other opportunities in terms of moving things forward. I-- I started by saying that the reality on the ground is very harsh at the moment-- and there's a real downward pressure at-- at-- at that several-- politically downward pressures that are-- that are very powerful.

But at the same time, the-- there are opportunities and there is really insi-- interesting constitutional litigation in places where you wouldn't expect it like Zimbabwe-- like Zambia where-- courts are actually willing to-- to stand up and-- and-- and push back at that and sort of stand up for constitutional values.

And I would identify that as a-- you've gotta push that-- where-- where-- where things are going well, you need to push that further, right, and I would really identify that as-- as-- as one area (UNINTEL PHRASE) that's constitutional litigation as well as the litigation before-- international human rights courts.

And that is in Africa, there are really interesting regional tribunals as well as-- continent wide-- courts that have been established. And the European Court of

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Human Rights which still is a leader in this field-- it is much criticized for all sorts of reasons but it's still fundamentally a-- a-- a force for good in Europe and that continues to be-- incredibly needed.

## **MALE VOICE:**

And could you say a little more on the regional courts in Africa? Does the Ekolas Court or Sada (PH) Court play-- a role?

(OVERTALK)

## **PETER NOORLANDER:**

Absolutely. Absolutely. And I think Nani will talk a little bit more about the African regional courts because she's-- she's litigating it at the East African Court of Justice and she's also building a coupla cases at Ekolas and Barbary and you have experience of litigating at Ekolas as well. So I-- I-- I don't wanna steal Nani's thunder.

(LAUGHTER)

## **DARIAN PAVLI:**

Okay. So the-- and-- yeah, if I-- I don't have to do anything at the (SOMEONE COUGHS OVER WORDS) southern African court is a little bit of a sad story but--

## **NANI JANSEN:**

There's no-- then there's not much to be done there anymore, right? As a human rights (UNINTEL) that-- that's that, right? Yeah.

## **DARIAN PAVLI:**

It's kind of a (UNINTEL)

## **PETER NOORLANDER:**

It's in a hiatus.

(OVERTALK)

## **FEMALE VOICE:**

And a d-- a different question, how much you encounter in your work referencing of

security laws in the US or surveillance as a kind of defense and justification for adopting that kind of legislation in African countries?

**PETER NOORLANDER:**

I think in Ethiopia, that's very pronounced, for example, where the anti-terror laws are used on a daily basis against activists and journalists and they were drafted by US, UK expert-- experts. And--

**NANI JANSEN:**

I'll-- I'll say a little bit more about that, okay?

**PETER NOORLANDER:**

Right. Okay, yeah.

**DARIAN PAVLI:**

And Kenya and some issues that--  
(OVERTALK)

**NANI JANSEN:**

Yeah, Kenyan.

**PETER NOORLANDER:**

Absolutely. Absolutely. Yeah.

**DARIAN PAVLI:**

I think I-- started us off on a slightly unusual format here-- with too many questions. We'll-- we'll let you do your-- your-- presentations.

**NANI JANSEN:**

I just figured I'd just say that I'm going to actually--  
(OVERTALK)

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## DARIAN PAVLI:

And then we'll collect more but-- so I think makes for a more interesting conversation that--

## NANI JANSEN:

No, it's good.

## DARIAN PAVLI:

It's-- keep it not (UNINTEL PHRASE)

## PETER NOORLANDER:

Actually I might as well hand it over to you at this point and-- and--

## NANI JANSEN:

We-- we have question time after this anyway so we can talk about everything a little bit more-- 'cause-- I actually had-- listed three of our cases and Africa through different mechanisms just as an-- a kind of nice little package. The-- which Peter didn't-- mention yet is that we have about a hundred cases in our dockets at any one time in between fif-- 40 and 50 different jurisdictions.

So we litigate all over-- all over (LAUGHTER) and-- and-- not just at these borders set out about now but also at the European court, at the Human Rights Committee-- various-- of the human special mechanisms so there's also all of that. But I'm happy to talk more about that if anyone's interested-- during the Q&A or afterwards so just feel free to-- to ask.

The three cases that I listed are the case-- at the African courts on human and people's rights, Connate versus Burkina Faso and-- and a court that-- a case that we have pending at the East African Court of Justice. That's-- a far better (UNINTEL) journalist union-- challenging the press (UNINTEL) in the country.

And the third one is an African commission case against Ethiopia. What we have of Eskinanaga (PH) moving out Malongo. I'll give you a little bit of background on the facts and then how the litigation went at the court and give you a bit of background on how they worked in practice.

And then we can talk about it in more detail if you-- if you like. So-- the Connate decision-- basically-- which was handed down in December last year is the result of-- Mr. Connate having served-- a year in prison-- for writing two articles that were critical of the public prosecutor in the nation's capitol, Ouagadougou.

He alleged that the prosecutor had been involved in corruption. The prosecutor fought-- a criminal-- complaint, was criminally prosecuted. The prosecutor also joined the case as a civil party so it resulted in-- a prison sentence of a year.

The closure of this newspaper and-- the organization to pay damages and fines-- amounting to an 18 times average annual salary in the country-- so we-- we kind of got to know of the case because CPJ reported on the initial conviction.

And then we reached-- through CPJ's contacts, we got in touch with-- with the lawyer and said, "Can we do anything to support it? You should appeal obviously"-- and they did. Unfortunately, this was one of those situations where the lawyers weren't very-- thorough in their-- in their-- legal strategy.

But their main strategy was basically to kind of apologize and then hope that the judge-- would-- let him off which in all honesty-- had worked a couple of times before. But this time it didn't and I-- I kept on suggesting that we really also file a substantive defense.

But n-- really that wasn't a good idea. Once the-- conviction was upheld-- I spoke to the lawyer about the option and said, "What do you want to do? How are you going to escalate this?" They're like, "No. That's not-- not gonna work. Never mind."

So fortunately-- someone else was willing to go and visit Mr. Connate in prison and-- present the possibility of-- of taking the case at the Ekolas Court of Justice or to African courts. And he authorized us directly-- to-- to do that for him which we did.

We filed in June, 2013-- had another written exchange. Burkina Faso responded. We responded to that and then we-- basically had a hearing in March last year. So that went relatively quick-- which is-- which is nice. The court is quite young. It doesn't have a huge case load and so-- it can actually be efficient.

We-- I'll tell you a little bit more about the hearing. Just for the timeline set up was March and then December, we got a judgment. We first thought we'd have it in September but something went wrong there and then we ended up getting it in-- in December.

So I think that's relatively quick for an international tribunal particularly if you compare to other courts, you'd have an-- a much larger case load. The procedure there is-- the court is very accessible. It's-- it's still-- it's easy to deal with in the sense that you can file electronically to meet your deadline and then subsequently sending your-- your signed documents.

So that's-- that's really nice and flexible. The registry could do a little bit m-- with a little bit of upscaling I think. Communications aren't always clear. It's not always clear what's being communicated to the other party in the case. You sometimes don't get copies of letters. Sometimes you do. They often tell you that they had informed you about something which they haven't and so that requires a bit of chasing-- up from time to time. They also--

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## DARIAN PAVLI:

They have hearings with five days' notice?

## NANI JANSEN:

Yeah. The hearing we had in March, we got a notify of-- yeah, sufficiently in advance in January. The hearing-- in s-- what we were supposed to have on September 1st for the reading of a judgment that ended up happening in December, we were notified of just really, really late.

The-- the-- I think it literally, yeah, five days in advance which-- oddly enough actually for us flying in from London isn't that difficult because you can fly to Africa fairly easily but travel within Africa-- as-- most of you will know is pretty difficult.

So if you have a regional court where you would like the actual complainants actually able to attend hearings, it's kind of tricky to not give-- enough advance notice. So those are some of the-- some of the challenges that are there and there was a procedure-- fairly big.

They're not entirely clear on all points. We had a wonderful coalition of (UNINTEL) in intervening in the case. But, for example, (UNINTEL) rules of procedure say that you can file an (UNINTEL) brief but it doesn't say where you should file a request, what should be in the request or anything.

So that's l-- l-- leaves room for-- flexibility (LAUGHTER) but also it leaves things a little bit-- unclear for people. So yeah, those are things that just could be refined-- I would say. So I will-- I'll-- I'll leave it at that for the moment. Oh no, I do want to say something about the judgment actually.

## DARIAN PAVLI:

The judgment, yes. (LAUGHTER)

## NANI JANSEN:

Minor detail. It's the only case that I can say something on the judgment that I have on my list here. So-- the judgment-- what we basically did was-- argue-- an enormous-- amount of comparative law examples 'cause this was the first time that the African court was looking at a f-- an explicit freedom of expression case.

And they looked at a case with some other journalists before also (UNINTEL PHRASE) Burkina Faso, the Zungo (PH) case, but that concerned-- the-- the-- the murder and lack of-- failure to investigate and criminal defamation-- (UNINTEL PHRASE) campaign going on and-- so this was kind of-- a thing.

So we invited them to-- look at the standards that had been-- established by the

European courts, Inter-American Court, Human Rights Committee and also higher level-- national courts-- worldwide and basically said like, "Look, the baseline here is that everyone has said that-- imprisonment for defamation is not acceptable; that penalties have to be proportionate. This is where you have to start. But we invite you to go further and basically say that criminal defamation as such violates free speech. Here are resolutions, standards, et cetera, that basically point to that."

They didn't go that far-- in total-- but was really interesting is that four out of ten judges-- voted a dissenting opinion, actually saying this. They basically said, "Criminal defamation, you don't need it. Once you get to the point where the speech is so offensive and awful and so that would merit-- criminal sanctions, you get to the point where it's protected," or sorry, "where there is-- proscribed by other-- articles in the criminal law such as hate speech and things like that so you don't need criminal defamation." And I think that's-- that's a really wonderful-- thing to-- to-- to take note of.

And also it shows the potential of the court and thinking progressively about-- about human rights. So-- that's something that hopefully will be tapped into further. Another thing that's-- we now have this so now it's-- it's time to kind of use it in national proceedings. I think the day or so after we got the judgment, we already got requests from-- (LAUGHTER) peoples from Senegal and to c-- provide them with the text.

We've had a request from India and-- other countries-- in Africa-- to kind of use it. I know that in Uganda, some-- criminal proceedings have been suspended because-- the lawyer there learned about the judgment and basically said, "Let's"-- so-- how about-- how about dismissing this case?" (LAUGHTER) So that's wonderful. So there-- there's-- a lot of potential to create further impacts w-- with this decision. And-- yeah. And--

## **DARIAN PAVLI:**

Isn't it-- isn't it-- right the-- is this the furthest that any international tribunal has ever gone in saying, "No-- prison terms for speech offenses?"

## **NANI JANSEN:**

No, I'm not saying it's the first; I'm saying that they're allying themsel-- aligning themselves with the European Inter-American Courts and the--  
(OVERTALK)

## **NANI JANSEN:**

--European c--

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**DARIAN PAVLI:**

No, but I was saying have they actually gone further 'cause I-- I don't think the European court has ever said that in such absolute terms.

**NANI JANSEN:**

This is what they said so that (LAUGHTER) maybe-- may-- maybe they are more progressive in-- in-- in that sense. I-- the sense that I got is that th-- that-- that this really basically is the standard. I don't know--

(OVERTALK)

**PETER NOORLANDER:**

I d-- I d-- I feel that they're sitting on the-- it was about kind of waiting for the-- for the English language translation to come out as well because my French, I can read it but it's-- it's not very sophisticated. My sense is that they're sitting at the European--

**DARIAN PAVLI:**

That it's-- it's definitely cutting edge. I-- (LAUGHTER)

**PETER NOORLANDER:**

No, no, no. But-- and-- and but-- but the dissent of the court is really interesting and that kind of sets up-- some-- some interesting future stuff. And then the-- the same four are also voted, one of w-- as an interim measure, we requested-- this was while Connate was still in prison, we requested--

**NANI JANSEN:**

That was when he was ready for--

**PETER NOORLANDER:**

--that he be released pending the-- decision of the court. Instead of saying, "You-- you'll go back to prison if you-- if you find that this doesn't violate his right, he'll go back to prison." And-- and yeah, we got-- we almost got that interim measure.

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## **NANI JANSEN:**

We basically-- you-- you-- you know that the-- the-- the standard for interim measure is pretty-- is pretty high, right? the threshold, it's-- but if there's-- a danger of eminent harm, torture, death and that sort of thing. But we figured that we'd give it-- give it a try.

And basically said like, "Look, this is irreversible-- he's in prison. He can't get that time back"-- so there is no risk basically in letting him out while these proceedings are pending if the court holds that his conviction was-- was okay, he can always serve the rest of his prison term." And-- and yeah, the f-- the four indeed said like, "Yeah. This makes sense," and-- so the-- there's-- there's some interesting-- thinking going on in the panel there and I think that's--

## **DARIAN PAVLI:**

And has he been released now?

## **NANI JANSEN:**

He has-- he has-- he has served his full term because--

## **DARIAN PAVLI:**

Oh, he just-- so--

## **NANI JANSEN:**

He had-- he was already-- he already served about 2/3 of his term when we filed the case. We had hoped a little bit that the government would have been like, "Let's just kind of release him," 'cause he would have been-- he would have been eligible for early release actually. He-- he was-- for quite some time. He filed num-- numerous requests to that end but-- they all got denied.

The-- it just really seemed very much like they were really adamant about handing down the highest possible penalties that there were-- possible under-- Burkina by law and also really letting him serve his entire term. They were just really clearly sending a message that--

## **PETER NOORLANDER:**

And he had been deserted by his own lawyers so that didn't help him.

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## NANI JANSEN:

So anyway, moving on. I just wanted to flag-- the case-- at the East African Court of Justice-- that we also filed-- in 2013, actually a month after we filed-- Konaté. Barauni's in elections-- at the moment-- and in 2013, they adopted a number of-- laws kind of restricting-- space for discussion-- about the elections.

So-- they adopted-- a very impressive press law. They adopted-- really restrictive laws for civil society in the country, et cetera. The press law had been challenged-- nationally at the constitutional courts-- which came with a kind of nice cosmetic decision basically saying, "Oh, yes. These three articles that are-- completely procedural are clearly unconstitutional. The rest is totally fine."

So the law-- actually-- establishes prior censorship-- disproportionate penalties and fines. There's-- there's a m-- a body overseeing the implementation of a press law that's entirely appointed by the President's office so there's no real independence going on there.

So-- we had a hearing on the case-- last month and we hope to get a judgment-- next month in-- in-- in April-- this year. The East African Court of Justice is-- less accessible. We've had-- enormous-- trouble getting our finding in, could speculate about the reasons for that but-- anyone who's doing anything there, we can talk about that separately.

Once the case was in though-- the case handled really expeditiously. We had-- the-- the reason that it got delayed so far is because Barauni-- responded out of time. It's interesting. They have several cases pending at the East African Court but they seem very confused about how things work.

To a certain extent, I have to say the rules of procedure aren't very clear. It's-- it's a bit difficult when you get answers from the registry saying, "But clearly, you have to do such and such according to rule x, y, z," and rule x, y, z really doesn't seem to say anything about it. (LAUGHTER) So-- the-- that-- that sometimes is a bit difficult.

You have to-- when you file, you have to serve-- all documents on all the parties which is also a little bit different from what I'm used to with most international courts which distribute pleadings that have been filed. So-- it-- it's-- it's a slightly different system. And-- for us, it was just kind of challenging but you can also see that partner states are-- are struggling with it. Barauni never has managed to actually serve documents on us within any time frame that they were supposed to.

## PETER NOORLANDER:

Or (UNINTEL PHRASE)

## **NANI JANSEN:**

But eventually we got them and-- it-- it's fine but it-- it-- they should perhaps consider making it a little bit-- more easy to manage for people. The judges, I have a very good impression of. I went to both the scheduling conference. It-- it's kind of an interesting hybrid between kind of an arbitration and proper-- a court driven procedure.

Cause the parties actually get to set the deadlines. They get to decide together whether or not they want to do everything in writing, if they want to have a hearing, et cetera, and to sit the timelines for it. So that's-- that's really nice.

They're very sharp. There's a panel of three and the court also has an appellate chamber so that-- that is-- and that is clearly something at the hearing that they-- that they look towards. Some of the questions that we got-- for example, we introduced the Connate decision as-- as-- as an authority-- during the hearing.

It was like, "But how are we supposed to use this? What are we bound by by this other court or by the-- our own appellate chamber," its persuasive authority, et cetera. So it's-- it's-- it's really interesting-- and I'm-- I'm really looking forward to-- to-- seeing how that-- how that works out. And--

## **DARIAN PAVLI:**

Who's the client in this 'cause I think the other-- peculiar thing about this case is that you're challenging the whole law, right?

## **NANI JANSEN:**

Yes.

## **DARIAN PAVLI:**

As-- as such?

## **NANI JANSEN:**

Yeah.

## **DARIAN PAVLI:**

Which is not something that-- that-- that too many international tribunals do.

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## NANI JANSEN:

This is another thing indeed. The-- there-- before that actually, there's another thing I should mention and that's that the East African Court of Justice is a regional economic court which hasn't been given explicit human rights jurisdiction just yet.

There is a protocol for that but-- the partner states are not ratifying it-- so the court can actually-- has interpreted its mandate as such that it can actually hear human rights cases if the claim is a violation of one of the treaty articles.

And it's usually Article 5, 6 or 7 which deal with the community principles of transparency, democracy, rule of law, et cetera. If it happens to also-- relates to a human rights, they say, "It's fine. You can-- you can"-- and they've studied-- case law on that which has been upheld by their-- by-- their appellate chamber as well.

What we did basically was-- say-- "Press freedom is a cornerstone of those principles; therefore the press law violates the right of-- the obligation to uphold principles of transparency rule of law," et cetera, et cetera. We challenged specific articles of the law.

So we didn't say like, "You have to get rid of it wholesale." We-- we explained exactly which ones whether the ones that were-- were-- in violation of the treaty obligations in our eyes and-- y-- basically asked the court to strike them down or order-- Barauni to-- amend them. And this is also something that they seemed to be keen on doing but also were struggling a little bit as to how they were-- they-- they needed to go about it.

## MALE VOICE:

Was there any requirement that you exhaust remedies in the national courts?

## NANI JANSEN:

No. There is not. Like Ekolas, you can actually g-- access the court directly regardless of what's pending-- at the national level. This is an argument that Barauni kept on making and we kept on pointing out that those were two completely things and that moreover, national r-- domestic remedies had actually been exhausted. So I know that there's very little time, right?

## DARIAN PAVLI:

Yes. Yes.

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**NANI JANSEN:**

So I don't want to--  
(OVERTALK)

**DARIAN PAVLI:**

So if you could--

**NANI JANSEN:**

I'll d--

**DARIAN PAVLI:**

Could you--  
(OVERTALK)

**NANI JANSEN:**

--be very super, super brief about the African commission case-- which is still-- pending against Ethiopia, a problem we have with Eskinder Nega who's being convicted to 18 years imprisonment under the Anti-Terrorism law. And-- Reeyot Alemu whose sentence has been reduced to four years.

But-- both of them-- had-- got charged basically after publishing-- normal journalistic pieces, not-- nothing even-- remotely-- out of-- out of line. Eskinder wrote an-- an op ed, a blog-- asking if perhaps one day, something like the Arab Spring could happen in Ethiopia.

And Reeyot's last-- publication-- questioned the-- the fundraising that was taking place by the Ethiopian government for building a hydroelectric dam. The evidence that was presented against them in the national trials basically consisted of their journalistic writing.

So yeah, it was very clear that those terrorism, alleged terrorism charges, were because of-- of their journalistic work. And just to come back to the question about the-- the-- the-- the legislation and so the-- the kind of-- the running theme in the-- the-- by the Ethiopian government about their legislation is, "But it's basically UK law. It's based on the US law."

But while taking out any of the articles in those laws that offer some sort of checks and balances there and also then as we argued in our-- in our-- submissions there, it's also about implementation. And if you look at what has been happening in Ethiopia

over the past-- years-- under the t-- Anti-Terrorism laws is-- was adopted in 2013, you see that it's just-- it's-- it's-- it's used as a blanket excuse to-- shut down newspaper, imprison people, et cetera.

So-- we actually tried to get the case referred to the African c-- court-- arguing that it was-- a systematic violation of human rights-- which didn't work. The courts-- the commission basically said, "The court-- that Ethiopia didn't ratify the protocol established in the courts so we can't do a referral."

Cause as you know, they can't refer if there's a systematic violation or if the country doesn't implement-- the measures that were ordered by the commission. So we're still at the commission and we're at the-- admissibility stage. We hope to get a decision on that-- after their April session and then to move on to where it's-- arguing the merits.

The commission, I don't know if any of you has litigated there. It's not very transparent what goes on. It's not very clear-- how long it will take them to actually reach decisions in various stages. I think also that there's still a lot of work to be done in-- clarifying the relation betw-- rela-- relationship between the commission and the courts.

There are only seven countries that made the declaration-- allowing direct petitions through the African courts. So the only other route that you have basically is-- to get to the court is via the commission and they've been testing the waters a bit there.

The-- in-- in-- in the-- during the December session-- this is the first time actually that a case that was referred to the courts-- actually got-- presented before it by the commission. There's this weird thing that the original-- complainant gets overtaken by the commission. So you file a case with the commission. If the commission thinks you go to the court, the commission-- the commission takes it to the courts.

## **DARIAN PAVLI:**

Bit like the inter-American system?

## **NANI JANSEN:**

Yeah. So you're-- you're kind of out of the-- but there's no-- it's not-- there's no real formal role anymore-- for the person who originally filed so-- but-- that seems to have worked-- with the case against Kenya-- in December. So maybe now they'll get a bit more comfortable and we might see more referrals also.

## **DARIAN PAVLI:**

(UNINTEL PHRASE) inter-American system also s-- quite a bit of time to introduce some role for the parties so now the parties are also-- have-- they-- they can

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participate in the hearing and make arguments but it's sort of like the--

**NANI JANSEN:**

In the works.

(OVERTALK)

**MALE VOICE:**

Takes some time.

**DARIAN PAVLI:**

--secondary to the commission?

**NANI JANSEN:**

Yeah. I think the group who originally filed-- the Kenya case got to make some sort of statements in the end but that was also something that was kind of decided last minute-- at the session. So there were some of the-- of the complainants there to give witness testimony which-- is also useful but, yeah. Anyway but it's in-- under construction.

**DARIAN PAVLI:**

It's also-- has got its benefit especially if you're a lawyer, they're not great (LAUGHTER) in the press 'cause the commission sort of takes over.

**NANI JANSEN:**

And--

**DARIAN PAVLI:**

Great. Thanks for the-- so-- so Dirk, we've (UNINTEL PHRASE) to-- do a whirlwind tour of the sort of the most salient issues of the-- European Court of Human Rights in Strasbourg including-- if-- if you can-- as we discussed, the-- the question of access to information as-- as-- as a right under Article 10 which is something that-- various parts of OSI-- have worked to developed and have a keen interest. I hope that's something is of interest for the-- the-- the (UNINTEL PHRASE)

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## DIRK VOORHOOF:

I would like briefly to-- to introduce the position of-- of the European Court which was also court of the reporting-- at our conference. It's-- it's 48 member states. It's about 900 million people who are under the jurisdiction of the European Convention on Human Rights, monitored by the-- the human rights court. Maybe I have in a moment also possibility to say something about the Court of Justice.

And because we see that the Court of Justice which is the EU court also more and more gets involved in human rights issues. It was a bit the situation-- that you compare it with the-- East African court and the European Court of Justice could only deal with EU law with the internal market.

But the rules had to be applied in accordance to the principles of the European Convention. And since we have the chart of fundamental rights in the EU, there's-- has become-- an integral part of many, many cases and we see also freedom of expression-- data protection, copyright law-- getting in this area.

So this is a very interesting-- moving area. Also the relation between European court and Strasbourg, Human Rights Court and the Court of Justice in-- in Luxembourg. There's an interesting dynamic going on that-- a harsh conflict even now due to an opinion by the Court of Justice who wants to put itself above European Convention on Human Rights. Just to-- to say that there's a lot of dynamic and movement.

## DARIAN PAVLI:

Has that-- of-- are the EU becoming-- a party, formally a party--  
(OVERTALK)

## DIRK VOORHOOF:

Yeah. Cause in the-- in the new treaty-- it is mentioned that the EU would-- will adhere, will become a member of the convention. And they have been working four years now to make an-- a draft agreement between the EU and the Council of Europe and European Court.

And on that issue, the-- Court of Justice, that was the agreement, would make an opinion and-- and on ten points, they find that this agreement would be in breach with EU law-- in this area of human rights. And the-- the conditions that the Court of Justice proposes make that it's unacceptable for the other member states.

Because it puts the EU law in some concern, in some-- perspective above the European Convention. It-- it would lead too far to go into detail but it's a very interesting dynamic which is going on. So for the moment, there is a total blockage.

And we-- we-- we-- we don't know yet what will happen now. They need to sit around at the table again but it's very unclear what direction it will-- it will take. But

that's a bit the general picture. Also just to mention maybe 'cause the Eur-- the African Court just delivered its first-- judgment.

We are around thousand judgments by now at-- European Court of Human Rights. Last year, I counted 55 judgments related to freedom of expression, media and journalism-- of which 46 European Court found a violation. So when you look at that (UNINTEL PHRASE) score, you can say the court makes a difference.

Because it means that in 46 cases, the victims of an-- violation and interference with their right of freedom of expression, they lost their case after exhaustion of all national remedies in their own country. But European Court monitored, scrutinized the case and found violation by that man, the State-- in relation to Article 10-- freedom of expression.

And-- some general trends in 2014 were-- were discovered and-- and-- and I-- especially put two on the agenda also two days ago. That is one: protection of whistleblowers because we've found out the last few years that at a national level, there is an insufficient protection of whistleblowers and-- European Court of Human Rights took this issue and has started to protect whistleblowers under the right of freedom of expression.

And in a series of cases now-- were-- which were successful for the whistleblowers, European Court found violations at the level of protection-- level that was not-- acquired at the domestic-- level. So that's one and we have seen again in 2000-- 14-- a very interesting case against Hungary, Matthus (PH) versus Hungary-- which was also elected as the best judgment on Strasbourg observers.

I mentioned it so there's a lot of support. It's a very important signal by European Court that the member states need to go one step further in more effectively protecting whistleblowers at the domestic level. And there's also a recommendation or a declaration by the Council of Europe-- to take more steps to-- effectively protect whistleblowers. Article 10 doesn't refer to whistleblowers. It has been a kind of a creative interpretation, the Convention as a living instrument.

We need nowadays to make the Convention practical and effective. And that means also that you need to protect whistleblowers because they're at the very beginning, at the source, of the free flow of information. And-- and when we are there at the very source of information, we also have the other issue, access to information.

European Convention doesn't mention the right to seek or the right to have access to information. It only refers to the right to express in part and receive information. So during very many years, the European Court has produced a very consistent case law-- affirming that the right of access to information was not covered by Article 10. There is not the reference like in Article 19 and the ITCPR, the right to seek. There was no way to open Article 10 into a right of access to information. There wasn't--

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## DARIAN PAVLI:

And-- and access to government information. Access to--  
(OVERTALK)

## DIRK VOORHOOF:

Access to public documents, yeah. We-- we need to clarify that, access to official documents, public documents-- was-- was excluded because it was said it's only information that others want to offer to you. That should not be interfered with.

But when there is no will to offer information, that you cannot enforce through Article 10 of the convention. And in 2005, even a grand chamber against the UK wrote against the UK, confirmed this point of view. So it looked in 2005 when I was giving classes on the right of access to information.

That was the end of the story. There is no right of access to information under Article 10. So it depends from the most and very often unwilling member states how they apply their domestic law which was very insufficient. Maybe it was good on paper but the practice did not function.

So it would have been very nice if it could be scrutinized by the European Court but precisely therefore, the court was unwilling to do it because you-- the member states didn't want to have that kind of watchdog on-- on how they dealt with confidential information and-- and official documents.

But then very strange and that's due to-- to good lawyers who-- who-- who thought, "We-- we don't stop with. Even if there is a grand chamber judgment, the European Convention is a living instrument." And many NGOs also were advocating that the European Court should take up its role to-- to-- to bridge the gap-- of the-- deficiency at national level, to bring it to-- to a higher level. And first an-- an admissibility decision, the court implicitly and-- but still applied Article 10.

And then short time later then in a judgment against Hungary, the court stated by saying, "It is difficult to derive from Article 10, a right of access to public documents-- but we know what is difficult in life is not impossible." And the court said that there had been some developments in our (SOMEONE COUGHS OVER WORDS) that need to justify the curve of 180° they made in two years time-- taking distance from a grand chamber judgment.

That was quite a bit step in applying Article 10 again in a case introduced by an NGO. The-- Human Rights, civil rights organization in-- in Hungary in which the court not only applied Article 10 but also found a violation of Article 10 because that NGO was refused access to-- a document which at that time was in the possession of the-- constitutional court. And ever since, NGOs, journalists, academics, have used-- Article 10-- as a tool to apply in-- in Strasbourg.

And we have seen again in 2014 an interesting case of-- Brucianu (PH) where again

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the court has-- confirmed this-- right of access. And there's a very recent case also where-- where this is done. But there's one disclaimer in this. The European Court has not recognized in general terms until now a separate right of access to public documents.

It is derived from the right when it's a journalist who wants to write a book or an article, to express information, to make information available to the public, that is the justification that you need to have access to the information that you want to integrate in your report. So it is a bit-- a secondary right.

### **DARIAN PAVLI:**

But-- but not only a journalist, right?

### **DIRK VOORHOOF:**

No.

### **DARIAN PAVLI:**

Would that--  
(OVERTALK)

### **DARIAN PAVLI:**

Historian, an NGO?

### **DIRK VOORHOOF:**

Absolutely. So-- and with a journalist but it's also a historian. It-- it has been used and the court has used a strong image though in this. That is that a monopoly over information as such is a breach of Article 10. So if the government is the only one or public authorities who have information in their possession which is of public interest.

Because that's always the link. It's with the idea to share that information with the public because there is a public interest involved with that information, then it's not acceptable that the authorities only keep that information for themselves and they have to share it with journalists, with NGOs, with academic, with historians who-- who requested for that information.

What is also important in some of these cases is that there is a connection between Article 10, right of access to information, and Article 13, a right to effective remedies.

Because many of these cases are concerned also in Article 13 because many states in Europe have very good-- acts, laws at national level on paper guaranteein' right of access to public documents.

We had a set of limitations but in practice, it-- it's not functioning. The limitations are interpreted over (UNINTEL) or you don't get an answer and there are no effective remedies or there's no access to-- court has no judicial review to enforce your right.

So and that is what European Court in some of these cases also has found that it's not sufficient to have it on paper, that you need to have strong, effective remedies to enforce your right within a short period, to have the-- the information and the-- the-- the member states.

The authorities need to motivate very precisely why in this case they refuse the access to information. So we in ten years time, I would say, we-- we-- we have seen an enormous, interesting development in this area and-- and it makes that now the member states, they cannot consider themselves anymore where the limits are.

And a very good example of that is a case against Serbia where a human rights organization wanted to have information of the intelligence services. How many-- cases of surveillance they had with regard to politicians and journalists. And the intelligence service of Serbia, they-- they first refused to answer and then they said, "We don't keep this records. We don't have that." And if they contu-- continued asking it to a commissioner, they still refused to hand over that information.

They went to Strasbourg and the Strasbourg court said that even information in possession of intelligence services is covered under the right of access to-- to public documents. So that was an important step forward. And secondly, it was serious.

According to the European Court, this right has to be taken serious. So it imposed an order on the Serbian government within a short period to hand over the information to the NGO requesting for that information. So it's a good example also where European Court is trying to practically enforce their judgments and their finding of a violation-- somewhere very abstract.

And that-- member state need to be-- to pay a fine or award of damages but they start also to connect-- orders and-- effective instruments they integrate to impose their decisions on the member states who are clearly unwilling to-- to implement them otherwise. So that's a bit-- that's a bit the story.

## **DARIAN PAVLI:**

Great. Thanks. So I'll-- I'll open it up to questions in a second but in solving sort of this mystery of what happened between the grand chamber in 2005 saying, "No, no, no. We've said clearly there's no such right." And in 2007, they had the Hungarian case, turning it sort of around slowly. W-- w-- what do you think might be the relevancy of any of the Inter-American Court deciding (UNINTEL PHRASE) in 2006, I think, that there is a right of-- a full right of access under the American Convention?

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## DIRK VOORHOOF:

I think there were two things which-- which happened and that also shows that European Court integrates civil society arguments and policy documents from within the Council of Europe because the-- the first one is that more and more NGOs in Europe were knocking on the door of the Council of Europe.

That also we needed a higher level to take one step further in-- enforcing the right of access to information and that Article 10 could play an important role in that. Or Article 10 or European Convention on access to official documents so these were the two tracks which were open.

And then there was a recommendation of 2002 already by-- the Committee of Ministers but that got s follow up by an expert committee-- that-- advocated to use Article 10 also as an instrument for enforcement of right of access to information. And maybe a third element but European Court is not willing to admit it explicitly.

And that is the case of Claude Reyes versus Chile in 2006 which is just in the middle of 2005 and 2007, the occasion with the Inter-American Court of Human Rights recognized under the inter-American Convention, a right of access to information.

So probably the judges in Europe who have the perception that we are always in the lead of-- extending human rights and freedom of expression, all at once, we found behind the Inter-American Court of Human Rights. So there was no explicit reference, n-- neither in the case against the Czech Republic, neither in the cases against Hungary.

But I'm sure that the judges were aware of-- of this judgment and together with the other m-- material I-- I refer to, that probably played a role that they couldn't uphold anymore, this too rigid attitude that they had until 2005. So it's probably a combination. Maybe only one part in the Inter-American Court wouldn't have made the difference but all the elements together, the advocacy in Europe itself, strong cases.

Because that's maybe also something that is applicable to-- to your experience, bring strong cases to produce new, creative applications of-- of-- of-- of Article 10. And it w-- it was strong case-- it was a strong case, this-- this Hungarian case, the first two Hungarian cases so that also makes it easier-- were good guys. It was-- really an-- an issue of public interest. There were some tools at-- at the national level which hadn't functioned so that probably made the European Court in a very good mood to-- to go one step further in the other direction even.

## DARIAN PAVLI:

I-- I-- I-- I love the justification by the Hungarian courts. They said-- this was a petition by a member of Parliament that was refused. And they said, "If you read this petition, you'll get an insight into his inner thinking and that's part of privacy and" (LAUGHTER)-- "and maybe he should have chosen a different profession," or

something. (LAUGHTER)

## **FEMALE VOICE:**

So I think another factor that changed between 2005 and 2008 was a change in the membership of the judges at the European Court, in-- in particular the-- and when Mischo joined the court and became the author of this decision. And I think-- it's-- actually we don't know that he was the author of the decision. But-- I think it-- it-- it reflects a certain k-- kind of leadership-- and it's-- it's fair enough to report that-- membership on-- of-- of the court can-- can be a factor.

## **DIRK VOORHOOF:**

And m-- maybe because you mentioned-- more and more research is-- is started now and is done in-- in Europe as well and you're very familiar within the United States what the individual role of the judges is and to try to find out when they belong to majority, concurring or dissenting opinions, what their profile is, what is their background, so some more sociological studies as well of the importance of the membership of the European Court.

So it's also a very important issue for the future because we know that-- let's say, the political landscape is changing in-- in Europe. We have more and more political parties focusing on national identity, protection of national policy, reducing the role of European Court and there's a strong movement to represent judges to the European Court who are more in favor of this approach and leave more subsidiarity, leave more margin of appreciation to the member states.

And I am aware of-- of a network of-- judges in constitutional courts and supreme courts who are promoting the idea that European Court of Human Rights should contain more judges from the Constitutional Court and the Supreme Court while it's precisely their judgments that are overruled (LAUGHTER) in Strasbourg so it's-- it's-- it's a bit an interesting debate which is going on there and it says something about the importance s-- sometimes-- sometimes one judge can make a difference when it's a four/three decision or an eight/nine decision in the grand chamber.

But in general, the recruitment of-- of judges is-- is something that we need to-- to keep an eye on and to monitor and to be very aware-- what is happening-- like-- like it is an important-- factor in-- in the United States but it's more transparent. I think here in the United States, what the background is and what the political moments is to decide on-- on new judges. It's a much more complex process in-- in Europe with 47 judges from-- or 48 judges from 48 member states.

## **DARIAN PAVLI:**

I think most-- most European judges would cringe over the kind of attention the

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Supreme Court justices get here-- their every thought. Questions?

## **MALE VOICE:**

Can I-- can I ask you a quick question? So for the 46 favorably decided Article 10 cases and in the Serbian case that you mentioned, do you know what the actual practical outcome was? Was-- have the documents actually been turned over? Were fines paid? To what degree were the-- were the judgments actually--

## **DIRK VOORHOOF:**

Oh, yeah. By--

(OVERTALK)

## **DIRK VOORHOOF:**

In-- in-- in Europe, the judgments are monitored by-- not by the court itself but by-- the Committee of Ministers who have a special division in the enforcement and the monitoring of the judgment. So, for instance, when there is-- a fine, they'll actually call it, "the fine," that is to be paid or damages which are to be paid, that is the Committee of-- of Ministers through their diplomatic ways, who enforce the judgments. When there was an order to-- hand over the information within a short delay, then it is the Committee of Ministers which will monitor that.

And if it's not done, they make a resolution and then there's diplomatic pressure on the member states to-- to do that. But sometimes it's not easy. For instance, there has been a case against Azerbaijan where the court decided that Fatu Lief (PH), a journalist who was very critical to the government and who-- was convicted to years, I think seven years of imprisonment, European Court decided that he needed to be released immediately from prison.

And the-- the Ar-- the Azerbaijan authorities were not willing to do that. And they found drugs in his cell so that was an argument to keep him in jail because there was-- a charge of possession of drugs. But there was so strong pressure during months by international organizations, NGOs, diplomacy, that after a few months, Mr. Fatu Lief was released from jail. So that would have never happened with-- without the court judgment.

So it-- it can really make a difference. There were some weak element as well. We are aware of that. So there are situations in-- in Russia, in Azerbaijan, in Turkey, where the court keeps on repeating that the judgments need to be-- executed, that the law need to be changed, that the jurisprudence need to be adjusted or-- or changed and it's not happening.

We cannot send a military unit from Strasbourg to Ankara or to Baku. That'd be to

Moscow. That would be totally (LAUGHTER) unthinkable. So w-- we have the tools of political diplomacy, pressure, international pressure. When they meet, the ministers and the other colleagues say, "Come on. You have to change this."

But some countries are not very much willing to-- to do that. And I have understood that with regard to Russia, there is the beginning of a procedure eventually to exclude them from-- from membership because of the repeated denial of the execution of judgments by European Court. But it will be a very long and sensitive-- procedure. But the Committee of Ministers is-- is the-- the central body monitoring the-- enforcement of the judgments, yeah.

## **FEMALE VOICE:**

(WHISPERS PHRASE) I have a question for MLDI. Looking at your annual report and maybe we could pass some-- those pamphlets there to people who-- who came in. I'm-- I'm really-- intrigued by the spread of your cases and I wondered if you could explain some of the numbers of the central chart. You have cases where you provide direct support and then you have cases-- handled by country partners. And how did you make decisions to-- engage with country partners and-- it-- it's-- it's-- it's--

## **PETER NOORLANDER:**

It-- it is--

## **FEMALE VOICE:**

Explain the breakdown.

## **PETER NOORLANDER:**

In a nutshell, in countries where we see a high level of demand-- we-- we try to-- we actually fund partner organizations. So K-- Kathy who works for the Human Rights Network for Journalists in Uganda heads up their legal department-- and they handle a large volume of cases on a daily sort of-- on-- on a rolling and ongoing basis and they do that very well.

So that is in a nutshell is your answer and then-- and in countries where there-- the demand is more sort of incidental or it's-- it-- it-- it-- it doesn't run into the dozens of cases-- we typically contract very literally like an insurance agency. So we-- we will-- a l-- journalist comes to us with a-- with a case and they say, "I don't have a lawyer. Please help me." We will contract with a lawyer on a case by case basis to provide-- legal defense to that individual journalist. And that-- and that ranges-- we-- we're

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not strategic about how we promote it or not strategic enough, I should say. And it means that we get cases in some strange places. So we have one in-- is it Tonga?

## **FEMALE VOICE:**

Yeah.

## **PETER NOORLANDER:**

So d-- Tonga's not a place we would choose to litigate although I understand the beaches are very nice. (LAUGHTER) We haven't had the opportunity to go yet. But-- but-- but that is kind of how it works. So where we see a high level of demand, we will actually go in there proactively and seek out partners to work with. Elsewhere we sort of mop up on-- on a case by case basis.

## **FEMALE VOICE:**

And-- there-- there had been talk at early stages of forming councils, regional councils, to identify what would be the cases in which you should get involved. There was great concern at the founding of the organization that you'd be overwhelmed with requests. What-- how did-- have you been overwhelmed or h--

## **DIRK VOORHOOF:**

No, and it's really-- I think the-- the regional councils don't-- so-- so-- so that wasn't followed through on but what happens, what tends to happen is that cases get referred on by people like the CPJ who have large networks of reporters all by national journalist associations.

Because the natural thing for a journalist, when they get into trouble, to do is to go to their own union or to their own association and say, "Help." And so for us, we-- we network with those associations and we make sure that they know that we exist more than trying to ensure that every individual journalist or blogger on the planet knows that-- that we exist. So de facto, it's that-- it's very much that method of-- getting cases referred on-- by-- by national associations or by groups like the CPJ or RSF or others.

## **DARIAN PAVLI:**

Peter, can you say a bit more about the-- the balance or the con--

**PETER NOORLANDER:**

(UNINTEL PHRASE)

**DARIAN PAVLI:**

Or the convergence of sort of firefighting cases versus or going into strategic cases like the-- the Kunate one sounds, what we call, "strategic," or whatever, "high impact."

**FEMALE VOICE:**

But it came from an ordinary--

**PETER NOORLANDER:**

If it came from just a journalist, it was a brilliant--

**FEMALE VOICE:**

--case.

**PETER NOORLANDER:**

There-- there-- there was no sort of strategic beginning to it. We didn't seek it; it just was-- somebody who came to us for help and we-- and we-- and we provided the assistance both because we felt that the individual deserved-- he deserved justice. He shouldn't be in prison. And we saw that it was a strategic opportunity.

**DARIAN PAVLI:**

But what sort of-- what is the primary consider-- is there-- one primary consideration or you have, sort of have two dockets, one that-- cases that you take up because the individual-- is in serious trouble or it's an important loss to the local media scene?

**PETER NOORLANDER:**

Yeah.

**DARIAN PAVLI:**

And developing the law?

**PETER NOORLANDER:**

Yeah. It is-- in-- in that sense, it is two dockets. There-- there-- there-- there's a large basket of cases that are just sort of churning through and that they're (UNINTEL PHRASE) any particular point beyond the importance to the individual journalist or the media outlet concerned. And then there is--

**NANI JANSEN:**

Yes and no but-- because each individual case in and of itself is strategic. That-- that's the mo--

**PETER NOORLANDER:**

And you know the--

**NANI JANSEN:**

It's the whole point about fi-- fi--

**PETER NOORLANDER:**

Fights.

(OVERTALK)

**DARIAN PAVLI:**

Politically strategic?

**NANI JANSEN:**

No, no. But it's the whole point about fighting back, right? Every time a journalist fights back, it's pushing back against the people oppressing free speech. So in that sense-- but I-- I know that you mean something different with strategic. You mean change in goals and-- and things like that maybe but--

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**DARIAN PAVLI:**

No, it's-- it's an open question.

**NANI JANSEN:**

But, yeah.

(OVERTALK)

**DARIAN PAVLI:**

What is strategic? It's--

**NANI JANSEN:**

But-- but generally speaking, that's-- that's more what strate-- considered as a strategic case is-- in which you can kind of-- but-- I do think that each individual case, that we can get a good result and it's a strategic one, right? So, yeah. But--

**DARIAN PAVLI:**

They-- what's-- what's strategic in your ex-- what-- how do you decide what to litigate and--

**DAVID MCCRAW:**

When the *New York Times* gets sued, it's not strategic. (LAUGHTER) When we are at-- in-- in our (UNINTEL) litigation, we obviously are making choices about, "Can we move the law more often and get documents?" The system's so slow here that unless the story is gonna always be a story for years to come by project, we do feel very strongly though about trying to change doctrine about (UNINTEL) and we will look for it in particular cases to do that in.

**PETER NOORLANDER:**

And then it's-- I--

**DARIAN PAVLI:**

You also have to keep people out of jail.

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**DAVID MCCRAW:**

Occasionally.

**MALE VOICE:**

Sometimes. (LAUGHTER)

**PETER NOORLANDER:**

But-- but compare it to firefighting, so it's not very strategic to allow lots of small fires-- fires to burn all over the city of New York, right?

**MALE VOICE:**

Sure.

**MALE VOICE:**

Or anywhere.

**DARIAN PAVLI:**

Or anywhere.

**DIRK VOORHOOF:**

I-- I can maybe give us another example than what-- MLDI is also doing in-- in Europe and that's strategic, for instance, when there is-- a chamber judgment-- which-- find no violation and it's-- it contains an important principle. And I don't know if this is off the record or on the record but I can say it anyway.

Then, for instance, the next day already on one of the blogs on Strasbourg Observers or European-- Court of Human Rights-- blog, there is a critical blog, for instance, published and then there is contact between some academics and some of the organizations like Article 19 of Peter's and Nani's organizations, trying to make a coalition for-- request for a referral. And I think that-- is an enormous strong support because then the court becomes aware. It's not in-- just in this case of small, online news platform in one of these Baltic states.

All at once, it seems that the whole community of-- of media, of NGOs, of journalistic organizations, is concerned and is very worried about this-- case. And-- and then-- then this organization plays a role in-- in-- in making the network and organizing a

collective action nearly against such-- a chamber decision.

So that is also a kind of a strategic way and-- it happened with the Dalaphi (PH) case. I think it also happened with the Penta Kiene (PH) case, a journalist which-- which was-- convicted in Finland while he was-- participating in a demonstration and doing his work. And I have also seen sometimes afterwards you jump on the wagon.

In the case against France-- about the right of privacy of-- of a head of state so I-- I think these are instruments where also there is a coalition sometimes between the professional organizations, the stakeholders, the NGOs and the academic world. I'm not litigating myself like Yahman Agdenes (PH) in Turkey. I'm not that kind of an activist because also we need to play our-- our different roles. But I think we can-- we can empower each other in this.

## **DARIAN PAVLI:**

And does-- does it reach the courts? I-- I find one of the challenges with these far away international tribunals is that they're-- they're far away and there's-- so it's not a national court. They're not-- the national media does not cover them in the same way. And they're a little bit twice removed, as it were. Has-- has that changed with-- with time? Do they feel the public pressure, in other-- in other words, when there's a judgment that--

## **DIRK VOORHOOF:**

I think the panel who-- who has to decide when they saw this massive support in the Dalaphi case, they couldn't do else than refer it to the grand chamber. They had literally the whole world of media and NGOs and journalism against them.

## **PETER NOORLANDER:**

You-- we-- we had a very odd decision in a-- in the privacy case at a convention. So we-- I think it was with Thomson-Reuters and-- and the *New York Times* and a few other broad sheets intervened in what was essentially a tabloid case about the privacy, the entire privacy law of Strasbourg is about the privacy of the royal family of Monaco, right? (LAUGHTER) And so--

## **DIRK VOORHOOF:**

That's three-quarters of it.

**PETER NOORLANDER:**

And then so we wrote in with-- coalition of media companies, asking to intervene. And the grand chamber allowed us to intervene on our own and expressly disallowed the media companies. And they-- w-- w-- which we--

**MALE VOICE:**

Was it something we said? (LAUGHTER)

**PETER NOORLANDER:**

I don't know. It made absolutely no sense. And it's-- and-- and-- and it's not something that they'd done before. So that's-- that was very odd. And-- and I think that that indicates that yes, it has an impact and-- if you have these large media groups that are all coming together and intervening formally--

**DARIAN PAVLI:**

Did you have the--  
(OVERTALK)

**DARIAN PAVLI:**

--media or was it--

**PETER NOORLANDER:**

It was the-- it was Thomson-Reuters. It was the *New York Times*. It was *The Guardian*.

**DARIAN PAVLI:**

*The Guardian?*

**PETER NOORLANDER:**

It was one of the Italian--  
(OVERTALK)

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**DARIAN PAVLI:**

What is--

**NANI JANSEN:**

Plus-- plus it'll go to the (UNINTEL) (LAUGHTER)

**PETER NOORLANDER:**

It was the mo--

(OVERTALK)

**PETER NOORLANDER:**

--French?

**NANI JANSEN:**

And USA.

**PETER NOORLANDER:**

Dutch one. So we'd chosen-- so some of the big broad sheets from across Europe and they were-- and then the-- and the European--

(OVERTALK)

**PETER NOORLANDER:**

--courts grand chamber, the president-- it's a President's decision, said, "No." But-- but the real (UNINTEL) MLDI and that-- that's all right because that's not a big name apparently. (LAUGHTER) And but not the *New York Times*, not Thomson-Reuters.

**DARIAN PAVLI:**

It's also the-- I don't know. It's got-- if it's got anything to do with the nature of what they see-- a third party intervention which is much less partisan than-- the-- the-- the amici can be in-- in this legal system, for example, is I don't know, some sort of a Latin concept of a friend of the court not-- not a friend of other people.

(LAUGHTER)

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**FEMALE VOICE:**

(UNINTEL PHRASE) questions over there?

**FEMALE VOICE:**

I'm sorry I put this in here, an annual report. But I was wondering what the breakdown is of direct, transparent attacks of freedom of the press like criminal defamation and defamation cases versus what we see in Azerbaijan a lot like heroin, tax evasion, a whole host of other types of crimes that you'd see?

**NANI JANSEN:**

I'd say the ones that are listed as, "other."  
(OVERTALK)

**NANI JANSEN:**

Criminal charges and-- terrorism, I would say.

**FEMALE VOICE:**

Yeah, terrorism.

**NANI JANSEN:**

And things like that so those would be those ones from the-- from the list. But I-- I'm not good at numbers but that would give you-- a sense of the-- the (UNINTEL) Do you know it up till here?

**PETER NOORLANDER:**

No. The-- the majority are li-- libel cases. I g-- I-- whether criminal or civil-- and we're sort of-- yeah. And then-- then there is a-- there-- there's a coupla countries where the others--  
(OVERTALK)

**PETER NOORLANDER:**

So and Azerbaijan is always tax evasion.

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**NANI JANSEN:**

Vietnam as well.

**PETER NOORLANDER:**

And you get Nam tax evasion, yeah.

**FEMALE VOICE:**

I was wondering what sort of legal challenges MLDI faces when they're prosecuting cases in so many different jurisdictions. Aside from the geographic challenges, I know that you mentioned-- dealing with the varying rules of procedure and then also trying to pick the appropriate precedent.

**NANI JANSEN:**

Are you referring to the international cases now or the national ones?

**FEMALE VOICE:**

Or when you-- when you go to a-- a new court that you haven't been in, just kind of adjusting to that in terms of the--

(OVERTALK)

**NANI JANSEN:**

Learning the rules of procedure?

**FEMALE VOICE:**

Yes. Yeah. Nitty gritty.

**NANI JANSEN:**

But-- but with most of these case, it actually-- the African Court, there was no one to talk to basically-- because-- no one-- no one had gone there-- yet. (LAUGHTER) So-- at least no one we knew. But with-- particularly with the African Commission, I just tried to get information from people who had litigated there before.

Cause-- and-- and then you find out that the rules of procedure actually don't really

give the actual procedure-- but that there are some other steps that need to be taken and so on. And that has been really helpful and I've been trying to kind of also share that information with whoever else goes, right? Cause, yeah. There's just a lot that you-- you learn from people who've had the experience there.

## **FEMALE VOICE:**

Maybe-- maybe you can talk about how you work with pro bono lawyers?

## **NANI JANSEN:**

Yeah. Sure. That's-- that's not--

## **FEMALE VOICE:**

Not directly--  
(OVERTALK)

## **NANI JANSEN:**

Not directly related but (LAUGHTER)-- fine. So we have-- we have-- basically a panel of pro bono lawyers from-- large firms and also individuals-- that have indicated that they're-- that they're-- that they're interested in-- in working the cases that we-- that we have on our dockets.

It depends a bit on-- on what's necessary in a case, the same with-- depends on what's necessary in a case, how far we get involved. So-- and some things, we just do in house because we just have-- have the information ready based on our prior experience.

So an example of that is a case that was reported-- in Zambia last year in which the false news laws in the country were-- were struck down by the constitutional courts. They basically wanted comparative and international law arguments on that front.

We had that so we wrote a nice memo for the lawyers so they could use that. And other times, you get very much more specific questions, right? And you need to get every additional research done. So that's really wonderful-- to call upon our pro bono-- panel for.

Then there-- at the African Court-- case, once we'd filed that and actually the same also for the East African courts and then-- African Commission case that I just mentioned, you-- we filed the case and after that, we went looking for-- a partner basically to kind of create a slightly larger legal team.

Cause it's always good to kind of have several people aboard so you can brainstorm a

bit and also because it-- there's a capacity issue, right? We're a really small organization-- getting-- getting-- getting your-- you-- all your-- authorities in, for example, creating bundles and things like that.

These are things that law firms can do wonderfully easy. They have dedicated people to help you with that. For us, that would mean spending a week copying and putting stuff in binders which is not necessarily the most effective way to-- to go about things.

So we've had support-- with-- from other firms in-- in-- in the-- in all three of those cases, for example, where we basically kind of formed a little-- d-- cross-organizational legal team and which we-- we have people to discuss next steps with.

They can pitch in with research when we need to do something really ad hoc, help with really practical things which is preparing bundles. And-- and-- at the (UNINTEL) court case, we-- we had a partner also of the-- of the law firm that helped us there when we-- go to the hearing with us and also deliver part of the pleading so-- does that answer your question or is that not what you--

(OVERTALK)

## **FEMALE VOICE:**

Yes. Just-- that's exactly but in-- in-- in addition, do you cover costs of-- of pro bono? Do you cover the costs of travel-- to-- to the court hearing?

## **NANI JANSEN:**

So, yeah. It depends a bit on what the pro bono person in question can-- can do. A lot of the firms can actually-- in that case-- pay for their own travel. But-- if we, for example-- ask-- an in-- an individual barrister who is-- basically are a little economic entity in and of themselves, they dedicate their time pro bono and we make sure that they get there and-- that their costs in that sense are covered. Yep?

## **FEMALE VOICE:**

I think there's-- I see a thick-- just behind you or panel behind you.

(OVERTALK)

## **DARIAN PAVLI:**

Yeah. I can't always--

(OVERTALK)

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## FEMALE VOICE:

That's okay. My question is how does MLDI navigate your own risks in terms of-- 'cause-- in challenging defamation laws or defending those being challenged under those laws, you also run the risk of also being pulled under that as well. For instance, you speak about Thailand.

Just even talking about the law in a poor way also puts you at risk of being charged under it as well. And so how do-- how do you navigate that in terms of choosing which cases you approach or terms of working with your partners-- in defending those cases?

## PETER NOORLANDER:

We're-- we're also not at the forefront ourselves. We often-- because we are so small, we-- we-- we-- we try to work through partner organizations and through others. And so when we work with-- with Kathy, for example, it's-- it-- it's-- Kathy does all of the court work out there.

And our role is in-- in-- in backing that up both financially and with-- when she needs an advising strategy or whatever. Kathy doesn't need any but (LAUGHTER) she-- she knows it all. But so our-- our own sort of exposure in that is-- is-- it-- it is quite-- it's very low profile. And so we-- there isn't a vis-- there-- there are some--

## NANI JANSEN:

There are-- there are-- the-- there are some countries against which we have a lot of mitigation pending, we wouldn't necessarily visit. (LAUGHTER) If we could avoid it.

## FEMALE VOICE:

How 'bout in terms of your partners ensuring that 'cause they're in the country?

## PETER NOORLANDER:

That's--

## FEMALE VOICE:

And they're working those cases--

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**NANI JANSEN:**

That's--

(OVERTALK)

**PETER NOORLANDER:**

That-- that's (UNINTEL PHRASE) But they know the risks and-- and I think actually they-- they take on too many risks sometimes. And we actively-- I certainly actively dissuade them sometimes from putting themselves out and--

**FEMALE VOICE:**

I see.

**PETER NOORLANDER:**

It's the last thing we wanna do, right, is to put more p-- it's-- that's exactly.

**NANI JANSEN:**

You see very different styles. People have-- make very personal choices in that. You'll have people who just kind of-- even up the (UNINTEL) you want the activism because they think they're getting more attention actually protects them more.

Then you have people who just kind of go a bit more for all the technical angles in-- in-- in-- in-- defending cases such as these so just kind of steering clear from the more principle human rights/political arguments-- so that-- yeah, that differs a lot. But these are things that we have-- we do discuss with our parties but yeah and--

**FEMALE VOICE:**

I see.

**NANI JANSEN:**

--we-- we ask like, "So how will this implicate you? Is there anything we can do to help you minimize it?" that's-- yeah.

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## PETER NOORLANDER:

It is also their-- their choice-- in Vietnam-- the lawyers that we worked with are either in prison or currently under house arrest, right? And-- and it's-- it's not because we asked them to put themselves forward and-- they-- they d-- d-- and they work in extremely oppressive regimes and-- yeah.

They-- they know that they-- they-- they are also true believers themselves, right? These are not sort of lawyers who are just sort of doing a technical job; they-- they're activists often themselves as much as anything else which also puts them at risk.

And that also will so there's risks in that. In Rwanda, some of the lawyers that we worked with actually said that they deliberately don't have any kind of political profile. They just say, "Look, we-- we-- we're just doing a legal job. We're just-- don't confuse us. Don't take us from our clients. We don't share their beliefs. We're just defending their"-- but that works for them so it's--

## DARIAN PAVLI:

Very Voltaire like. (LAUGHTER)

## FEMALE VOICE:

That's fine.

## DARIAN PAVLI:

Marie (UNINTEL)?

## MARIE:

I have two questions, if I may. So for-- Peter and Nani-- I was curious, does your-- organization also work on implementation of judgments? Do you, for example, submit-- briefs to the Committee of Ministers-- or do you just focus on-- on the litigation aspect?

And-- and my second question relates to what Peter said at the beginning of the talk-- about n-- one of the trends being that national security and there-- and-- and that there was some legislations being recently-- applied to journalists as well. I was wondering whether you also see a trend in that in western Europe and are you getting any cases actually from western Europe-- referred to you?

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## FEMALE VOICE:

Through the first (UNINTEL)? (LAUGHTER)

## NANI JANSEN:

UH-HUH (AFFIRM) On implementation. We-- with the Connate case, we're now at the-- reparation stage so we're-- we're still far removed from implementation actually. We just filed on-- on-- on-- on-- trying to figure out exactly what a year in prison is worth-- which is quite difficult to see what-- what the amount of damages he-- he could get.

Burkina Faso's also been ordered to change their laws. They have been given two years for that so that's also-- it's also very far removed. Our European court cases are all in too early a stage to even get there. So-- we haven't worked with the Committee of Ministers in that-- sense-- so far. So-- but it is something we're looking towards but not-- not just yet.

## DARIAN PAVLI:

Peter, do you wanna?

## PETER NOORLANDER:

Yeah. We don't get a lotta cases referred to us from-- from western Europe. I think there's-- there's a lot of capacity in western Europe itself, right? And we-- we don't wanna duplicate any efforts. We also don't wanna tread on the toes on this.

And then so it's-- I-- in the UK, there's an obviously a lot of abuse. And then we're involved a tiny little bit because we're concerned that-- that we shouldn't just be seen to be doing work in some of the countries that we-- that we have mentioned but-- but that we should also tackle some of. And-- but it's also because there is a-- a strategic opportunity in some of these cases to push the law--

## NANI JANSEN:

But--

## PETER NOORLANDER:

We have not pushed the law forward but--

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## NANI JANSEN:

It's-- it's-- it's-- it's m-- is more of a strategic decision in the sense that the-- there's-- there's an allocation of resources thing so you try to allocate them where the need is highest, right? But then there's also that certain decisions from-- coming from the UK, for example, we know have a huge effect in a lot of the other countries that we work. So when we're on a case in-- in-- in that sense, protection of sources versus terrorism and so on, that's-- that's kind of a important case not only for the UK but also for--

## PETER NOORLANDER:

I think it's for the development-- yeah, in developing the common law so we did an-- a FY case in the UK-- that we got involved in. Also because actually nobody wanted to get involved in it so we were, "Okay. We'll do it." (LAUGHTER) (UNINTEL PHRASE) But-- but-- but we-- we also took that because it was partly common law based and it was partly Article 10.

(UNINTEL PHRASE) a job based and so we wanted to push the Article 10 obviously-- in the end to court to emphasize the common law aspects of the right of information of the Article 10 aspect. In fact, they rubbished it (UNINTEL PHRASE) That's now going to Strasbourg on appeal.

But that was-- that-- that ended up being very useful in the-- in developing common law which-- the-- the UK Supreme Court's interpretation of that is m-- is massively-- authoritative-- elsewhere around the world. So that-- there's obvious strategic value in that.

## FEMALE VOICE:

What's the name of that case?

## PETER NOORLANDER:

Kennedy, Kennedy versus Charity Commission and that's going to Strasbourg, yes, Kennedy versus-- or (UNINTEL PHRASE) No, it's (UNINTEL) Kennedy.

## NANI JANSEN:

It's gonna be-- yeah.

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## PETER NOORLANDER:

--UK, Kennedy versus the UK. They've asked for that to be referred to the grand chamber to be--

## DIRK VOORHOOF:

We're gonna stop and-- stop and research case against United Kingdom-- which was-- found-- a breach of Article 8-- which was also in the line of anti-terror law and-- security but I forgot the-- the name of the-- the case, two or three years ago.

And-- and some other cases also-- I was thinking about this case against the Netherlands in Bladit-- Osta, the Bladit (PH) where-- a magazine received a letter of an organization that claimed-- a terrorist attack. And-- in order not to hand over it to the judiciary, they-- they destroyed the documents to leave no trace.

And they were convicted in-- in the Netherlands for-- for doing that. They got a fine and European Court-- did not find a violation of Article 10 because it was considered as-- an obstruction of the-- administration of-- of justice.

So you feel also that some national law is applied and I could also refer to a resolution by the-- what is it? The meeting of media ministers who years ago also very strongly supported by NGOs where this-- meeting of media ministers requested all member states of the Council of Europe to review their anti-terror legislation in order not to have collateral damage with regard to freedom of expression and journalistic activities.

There was only one country who did not vote the resolution; that was Russia. But nothing has happened and many NGOs have tried to-- to know what is happening with this resolution but the Council of Europe isn't doing anything with it for the moment. So it's a very sensitive area. The member states don't feel that others need to-- be involved in that, yeah.

## DARIAN PAVLI:

And la-- last question, all right? Cause they have another meeting to--

## MALE VOICE:

Have you had any requests for assistance from China and if so, how do you react?

## PETER NOORLANDER:

We haven't and I think our first reaction would be to find somebody who can translate. (LAUGHTER)

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**NANI JANSEN:**

(UNINTEL PHRASE) Pu's case though.

**PETER NOORLANDER:**

Oh yeah, Pu's case, right. You-- do you wanna mention that?

**NANI JANSEN:**

No, you-- you know it better. (LAUGHTER)

**PETER NOORLANDER:**

This was the-- this was-- okay. This was the only case. This was-- a Chinese lawyer-- called Pu Chi Chang who-- was picked up-- ahead of the-- Tiananmen-- Tiananmen Square anniversary-- last year and has been in detention ever since on-- various public order charges.

And he was both a-- he was one of those lemon water who's also a true believer and a-- also an active blogger and-- and-- and a democracy activist. He represented-- Ai Wei Wei is probably his highest profile client. He also represents many other bloggers.

And the only thing that we've been able to do for him is to submit a petition to the UN working group and that will create attention because that's the only international remedy available to anybody in China. But I think for us right now, we-- we-- we lack the-- the capacity to-- to do much, to do any work in China realistically. And it also takes very specific expertise. It's a--

**MALE VOICE:**

It needs specific expertise but there are-- lawyers with Chinese language skills, knowledge of Chinese law-- who could-- be available.

**PETER NOORLANDER:**

Maybe it's something to look into.

**DARIAN PAVLI:**

Next frontier. Great. Thanks to all three of our-- our speakers-- especially for doing this after two full days of conferencing (LAUGHTER) on free speech. But that's-- the

flip side of that is that if you wanna know more-- I think all the materials are on the Columbia website. There was really-- a very rich collection of-- presentations on jurisprudence from all corners-- not from Tonga maybe but (LAUGHTER)-- m-- most of the globe. So--

**PETER NOORLANDER:**

Global freedom of expression got on it, right?

**DARIAN PAVLI:**

Yeah.

**DIRK VOORHOOF:**

Here's the website (UNINTEL)

**DARIAN PAVLI:**

Great. Thanks very much.

**PETER NOORLANDER:**

Thank you, Nani.

**FEMALE VOICE:**

Thank you. (APPLAUSE)

\* \* \*END OF TRANSCRIPT\* \* \*