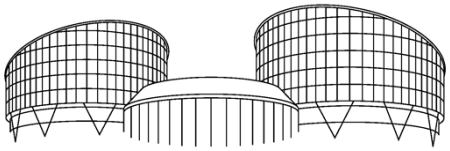

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF GREEN v. THE UNITED KINGDOM

(Application no. 22077/19)

JUDGMENT

Art 8 • Positive obligations • Private life • Use of parliamentary privilege by a Member of Parliament to disclose on the floor of the House the applicant's identity subject to an interim privacy injunction pending trial • Disclosure with serious consequences for the applicant • First and foremost for national parliaments to assess the need to restrict their Members' conduct • Rule on parliamentary privilege not entirely devoid of *ex ante* and *ex post* controls • Parliamentary privilege, in the majority of Member States, afforded absolute protection from external legal actions to statements made by parliamentarians in Parliament or in the exercise of their parliamentary duties • Wide margin of appreciation not exceeded • Lack of sufficiently strong reasons to justify requiring the introduction of further *ex ante* and *ex post* controls to prevent Members of Parliament from revealing information subject to privacy injunctions • Respondent State to regularly review the need for appropriate controls, given serious impact of disclosure of information subject to privacy injunctions

Prepared by the Registry. Does not bind the Court.

STRASBOURG

8 April 2025

FINAL

08/07/2025

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.

In the case of Green v. the United Kingdom,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Lado Chanturia*, President*,
Tim Eicke,
Lorraine Schembri Orland,
Ana Maria Guerra Martins,
Anne Louise Bormann,
Sebastian Răduleţu,
András Jakab*, judges*,

and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the application (no. 22077/19) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a British national, Mr Philip Nigel Ross Green ("the applicant"), on 23 April 2019;

the decision to give notice to the United Kingdom Government ("the Government") of the complaints concerning Article 6, Article 8 (in respect of the regulation of parliamentary privilege) and Article 13 of the Convention and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 4 March 2025,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. Invoking parliamentary privilege, a Member of the House of Lords made a personal statement in the chamber identifying the applicant as the subject of an anonymised newspaper article even though the Court of Appeal had granted an interim injunction and anonymity orders to prevent the publication of his identity.

2. Before the Court the applicant relies on Articles 6 § 1, 8 and 13 of the Convention.

THE FACTS

3. The applicant is a British national who was born in 1952 and lives in Monaco. He is represented before the Court by Mr I.R. Burton of BCL Solicitors in London.

4. The Government were represented by their Agent, Mr S. Linehan of the Foreign, Commonwealth and Development Office.

5. The facts of the case may be summarised as follows.

6. The applicant was a well-known businessman and chairman of the Arcadia Group, a multinational retail company which had a number of major high street brands, including Topshop.

7. On 16 July 2018 Arcadia was contacted by a journalist working for the Telegraph Media Group Limited ("the Telegraph"), who intended to report details of serious allegations of sexual harassment and bullying made against the applicant by former employees of Arcadia and Topshop.

8. The applicant, Arcadia and Topshop had previously settled actual and potential employment proceedings with former employees. Under the settlement agreements (referred to as "NDAs", or "non-disclosure agreements"), both sides had undertaken to keep information related to the complaints and the settlement confidential, although the employees remained able to make legitimate disclosures (including reporting any criminal offences) if they chose. The employees had each had independent legal advice in relation to the settlement agreements.

9. On 18 July 2018 the applicant, Arcadia and Topshop ("the claimants") sought an injunction to prevent the Telegraph from publishing material disclosed to it in breach of confidence. Their cause of action was for inducement of breach of contract and breach of confidentiality. They also sought an interim injunction preventing disclosure pending trial.

10. On 23 July 2018 the High Court refused the interim injunction following a private hearing but preserved the confidentiality of the information pending any appeal. The claimants duly sought leave to appeal.

11. On 25 September 2018 the Court of Appeal heard the appeal in private. On 23 October 2018 it allowed the appeal and granted an interim injunction and anonymity orders pending an expedited trial. Closed and open judgments were handed down.

12. In its open judgment the Court of Appeal examined in detail the balance to be struck between the Article 8 and Article 10 rights at issue in the case. It considered it likely that substantial and important parts of the information which the Telegraph wished to publish had been passed to it in breach of a duty of confidence to the claimants. Underlining the important and legitimate role played by non-disclosure agreements in the consensual settlement of disputes, the Court of Appeal disagreed with the High Court that publication would necessarily be in the public interest. It found no evidence that any of the settlement agreements had been procured by bullying, harassment or undue pressure by the claimants. It also noted that the employees had been independently advised by lawyers and that each settlement agreement contained provisions authorising disclosure to third parties, including to regulatory and statutory bodies. Finally, it considered that there was a real prospect that publication by the Telegraph would cause immediate, substantial and possibly irreversible harm to all of the claimants due to adverse customer reaction. There was therefore a sufficient likelihood

of the claimants defeating a public interest defence at trial to justify the grant of an interim injunction.

13. On 24 October 2018 the Telegraph published a story detailing the nature of the information subject to the injunction but respecting the order made.

14. On 25 October 2018, after the conclusion of a debate on an unrelated issue in the House of Lords, Lord Hain, a life peer and former labour Member of Parliament, took the floor to make a short personal statement in the following terms:

> "My Lords, having been contacted by someone intimately involved in the case of a powerful businessman using non-disclosure agreements and substantial payments to conceal the truth about serious and repeated sexual harassment, racist abuse and bullying which is compulsively continuing, I feel that it is my duty under parliamentary privilege to name Philip Green as the individual in question, given that the media have been subject to an injunction preventing publication of the full details of a story which is clearly in the public interest."

15. After Lord Hain had finished making his statement the House moved on to discuss other unrelated business.

16. Lord Hain's statement was widely reported. The orders for anonymity, having become pointless, were later discharged by consent. However, Lord Hain's disclosure did not include details of the underlying information, which therefore remained protected by the interim injunction (see paragraph 11 above).

17. On 29 October 2018 the Lord Speaker of the House of Lords (see paragraph 25 below) made a statement in the following terms:

> "I would like to make a short statement about parliamentary privilege in the light of representations I have received. A robust and healthy democracy such as ours rests upon a number of common and shared features.
>
> Two of the most important are the freedom for members of the legislature to speak freely, without repercussion, and respect by the legislature for the independence of the courts and the rule of law. As we know, this is not the case everywhere in the world. The relationship between these two should not be one of conflict but one of mutual respect.
>
> As parliamentarians we should be keen to respect the proper business of the courts, just as we expect the courts to respect the authority of Parliament. In particular, we should be careful that in exercising our undoubted right to free speech in Parliament we do not set ourselves in conflict with the courts or seek to supplant them."

18. On 31 October 2018 the applicant's legal representatives lodged a formal complaint against Lord Hain with the House of Lords Commissioner for Standards ("the Commissioner" – see paragraph 26 below). Complaints were also made by members of the public. They alleged that Lord Hain had violated the House of Lords Code of Conduct (see paragraph 26 below) by, *inter alia*, breaching the *sub judice* rule and by abusing parliamentary privilege (see paragraphs 32-33 below); and that he had failed to declare his

role as a Global and Governmental Adviser to the law firm acting on the behalf of the Telegraph Media Group Limited.

19. Following a preliminary assessment of the complaint, the Commissioner found that she could not examine allegations concerning the *sub judice* rule and parliamentary privilege since they did not fall within the House of Lords Code of Conduct (see paragraph 26 below) and were therefore outside her remit. She launched an investigation into the claim that Lord Hain had failed to declare his connection to the law firm representing the Telegraph but ultimately accepted Lord Hain's account that he had not read the court judgment and was therefore unaware of the connection.

20. The claimants subsequently sought damages in the underlying court proceedings against the Telegraph for the consequences of Lord Hain's statement (see paragraph 14 above), seeking to attribute to the Telegraph responsibility for the making of that statement. The Telegraph's defence was that, having regard to Article 9 of the Bill of Rights (see paragraph 27 below), the issues raised were non-justiciable as they invited investigation of a parliamentarian's source for something said in proceedings in Parliament. The claimants resisted that proposition and made clear that they intended to press on to determine, if they could, who provided the applicant's identity to Lord Hain, and what role (if any) the Telegraph played in that disclosure.

21. In a judgment of 23 January 2019 the judge addressed the issue as follows:

> "42. After hearing from Counsel, I determined that I should draw these issues to the attention of the Lord Speaker, in order to give the Parliamentary authorities an opportunity, if so advised, to make representations on questions of Parliamentary Privilege. I have therefore written to Lord Fowler accordingly ... The issue may need to be revisited at the Pre-Trial Review next Tuesday, 29 January 2019."

22. On 28 January 2019 the applicant and Arcadia issued a statement confirming their decision to discontinue the claim against the Telegraph on the basis that they considered it pointless to continue following Lord Hain's actions. The claimants applied to the High Court for permission to discontinue the legal proceedings, explaining to the court that "there is insufficient confidentiality left in the information concerned in this case ... to justify the risk, and the staff time and disruption, involved in pursuing it".

23. According to the judgment of 8 February 2019:

> "23. ... Following [the judgment of 23 January 2019], the clerk to the Parliaments wrote to the Court submitting that an investigation into Lord Hain's source(s) would infringe Parliamentary Privilege. The claimants accepted that Lord Hain himself was immune from suit in respect of what he had said."

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. REGULATION OF CONDUCT IN THE HOUSE OF LORDS

24. The House of Lords, the upper house of the Parliament of the United Kingdom, is self-regulating. This means that the preservation of order and the maintenance of the rules of debate are the responsibility of the House itself. Like the House of Commons, it has mechanisms for disciplining Members whose behaviour improperly interferes with its performance of its functions, such interference being known as "contempt of Parliament".

25. The House does not recognise points of order. It elects a Lord Speaker to preside over proceedings in the Chamber. However, the Lord Speaker has no power to rule on matters of order. As explained in the Companion to the Standing Orders and Guide to the Proceedings of the House of Lords (25th edition, 2017 – "the Companion"), the Speaker's function is to assist and not to rule.

26. There is a Code of Conduct which regulates the conduct of Members of the House of Lords. It is principally enforced by the Commissioner for Standards and the House of Lords Committee on Privileges and Conduct. The Code of Conduct contains no provisions on parliamentary privilege or discussion of *sub judice* matters (see paragraphs 32-33 below).

II. PARLIAMENTARY PRIVILEGE

A. Law and practice

27. Article 9 of the Bill of Rights 1689 states (in modern English):

> "That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament."

28. The Companion (see paragraph 25 above) explains [references omitted]:

> "**Freedom of speech**
>
> 12.03 Members need to be able to speak freely in the House and in committee, uninhibited by possible defamation claims. Freedom of speech is guaranteed by article 9 of the Bill of Rights 1689 ... Article 9 affords legal immunity ('ought not to be questioned') to members for what they say or do in 'proceedings in Parliament'. The immunity applies in 'any court or place out of Parliament'. The meaning of 'proceedings in Parliament' and 'place out of Parliament' has not been defined in statute.
>
> ...
>
> 12.05 In order to prevent abuse, freedom of speech is subject to self-regulation by Parliament. Thus, for example, by the *sub judice* rule the two Houses ensure that court proceedings are not prejudiced by discussion in Parliament."

29. The domestic courts have consistently recognised the privilege conferred by Article 9 of the Bill of Rights (see paragraph 27 above) as a "provision of the highest constitutional importance", pursuant to which Parliament should be permitted to regulate the business conducted in Parliament, including the conduct of its Members, without external interference. The principle, and its importance, were articulated by Lord Browne-Wilkinson in *Prebble v. Television New Zealand Ltd* [1995] 1 AC 321 in the following terms (at 322):

> "In addition to article 9 itself, there is a long line of authority which supports a wider principle, of which article 9 is merely one manifestation, viz. that the courts and Parliament are both astute to recognise their respective constitutional roles. So far as the courts are concerned they will not allow any challenge to be made as to what is said or done within the walls of Parliament in performance of its legislative functions and protection of its established privileges....As Blackstone said in his Commentaries on the laws of England, 17th ed. (1830), vol. 1, p.163: 'the whole of the law and custom of parliament, has its original form in this one maxim, "that whatever matter arises concerning either House of Parliament, ought to be examined, discussed, and adjudged in that House to which it relates, and not elsewhere."'"

30. The extension of the immunity beyond freedom of speech in the House was recently confirmed by the Supreme Court *in R (SC) v. Secretary of State for Work and Pensions* [2022] AC 2233 at § 165:

> "165. ... the law of Parliamentary privilege is not based solely on the need to avoid any risk of interference with freedom of speech in Parliament. It is underpinned by the principle of the separation of powers, which, so far as relating to the courts and Parliament, requires each of them to abstain from interference with the functions of the other, and to treat each other's proceedings and decisions with respect. It follows that it is no part of the function of the courts under our constitution to exercise a supervisory jurisdiction over the internal procedures of Parliament. That principle was affirmed by this court in *R (Buckinghamshire County Council) v. Secretary of State for Transport* [2014] 1WLR 324, in my own judgment at para 110 and in the judgment of Lord Neuberger PSC and Lord Mance JSC at paras 203—206, where they observed (at para 206) that 'Scrutiny of the workings of Parliament and whether they satisfy externally imposed criteria clearly involves questioning and potentially impeaching (i.e. condemning) Parliament's internal proceedings, and would go a considerable step further than any United Kingdom court has ever gone."

31. However, the Supreme Court confirmed in *R. v. Chaytor and Others* [2010] UKSC 52 that while parliamentary privilege is essentially a matter for Parliament itself, the scope of parliamentary privilege is a matter for the courts. In assessing in that case whether the submission of fraudulent expenses claims by Members of Parliament was protected by parliamentary privilege, Lord Phillips said:

> "47. In considering whether actions outside the Houses and committees fall within parliamentary proceedings because of their connection to them, it is necessary to consider the nature of that connection and whether, if such actions do not enjoy privilege, this is likely to impact adversely on the core or essential business of Parliament.

...

61. There are good reasons of policy for giving article 9 a narrow ambit that restricts it to the important purpose for which it was enacted – freedom for the Parliament to conduct its legislative and deliberative business without interference from the Crown or the Crown's judges. The protection of article 9 is absolute ... Its effect where it applies is to prevent those injured by civil wrongdoing from obtaining redress and to prevent the prosecution of Members for conduct which is criminal ..."

B. The *sub judice* rule

32. The *sub judice* rule is set out in a resolution passed by each of the two Houses of Parliament. The relevant resolution of the House of Lords was passed on 11 May 2000. It provides that, subject to the discretion of the Lord Speaker, cases in which proceedings are active in United Kingdom courts shall not be referred to in any motion, debate or question. However, where in the opinion of the Lord Speaker a case concerns issues of national importance such as the economy, public order or the essential services, reference to the issues or the case may be made in motions, debates or questions.

33. The Companion (see paragraph 25 above) explains that the privilege of freedom of speech in Parliament places a corresponding duty on Members to use the freedom responsibly. This, it says, is the basis of the *sub judice* rule. The Companion also provides that the Lord Speaker must be given at least twenty-four hours' notice of any proposal to refer to a matter which is *sub judice*, and that the exercise of his discretion may not be challenged in the House.

C. Personal statements in the House of Lords

34. As to the making of personal statements in the House of Lords, the Companion (see paragraph 25 above) explains:

"6.01 Members may by leave of the House make a short factual statement of a personal character, such as a personal apology, a correction of information given in a speech made by them in the House or a reply to allegations made against them in the House. Personal statements are usually made at the beginning of business and are not debatable."

D. Reports of parliamentary committees

35. In 1997 a Joint Committee of both Houses of Parliament on Parliamentary Privilege was appointed and tasked with reviewing parliamentary privilege and making recommendations. In its Report on Parliamentary Privilege 1999 (Session 1998-99, HL 43, HC 214), it explained [references omitted]:

"12. Freedom of speech is central to Parliament's role. Members must be able to speak and criticise without fear of penalty. This is fundamental to the effective working of Parliament, and is achieved by the primary parliamentary privilege: the absolute protection of 'proceedings in Parliament' guaranteed by article 9 of the Bill of Rights 1689. Members are not exposed to any civil or criminal liabilities in respect of what they say or do in the course of proceedings in Parliament. There is no comprehensive definition of the term proceedings in Parliament... Proceedings are broadly interpreted to mean what is said or done in the formal proceedings of either House or the committees of either House, together with conversations, letters and other documentation directly connected with those proceedings.

...

"37. ... The modern interpretation is now well established: that article 9 and the constitutional principle it encapsulates protect members of both Houses from being subjected to any penalty, civil or criminal, in any court or tribunal for what they have said in the course of proceedings in Parliament..."

36. After analysing parliamentary privilege, the Report recommended that a Parliamentary Privileges Act be enacted to codify parliamentary privilege as a whole. However, the Government of the time saw no need for such codification.

37. A Joint Committee of both Houses of Parliament on Privacy and Injunctions was appointed in 2011. The Committee published its report in March 2012 (Session 2010-12, HL 273, HC 1443). It noted that there had been examples in recent years of information subject to injunctions being revealed in Parliament, but considered such examples to be rare. It continued [references omitted]:

"214. Article IX [of the Bill of Rights] means that it would not be constitutionally possible for a court order, including an injunction, to apply to Parliament. It follows that it is not a contempt of court for a parliamentarian to reveal in parliamentary proceedings information subject to an injunction.

215. Whilst it may be legal for parliamentarians to reveal information in this way, some witnesses suggested it was not appropriate to do so. Injunctions are granted by a judge after hearing evidence and representations from both sides. A parliamentarian who does not conform to the injunction can be seen as in effect placing him- or herself in the shoes of the judge, and overruling the decision to grant anonymity. Once the name has been revealed in Parliament, and subsequently reported in the media, anonymity cannot be regained: the effect of the anonymity order is set at nought. Moreover, there is no redress for the individual whose identity or private information has been revealed; Article IX prevents them taking proceedings against the member."

38. It concluded:

"230. We regard freedom of speech in Parliament as a fundamental constitutional principle. Over the last couple of years a few members have revealed in Parliament information covered by injunctions. We have considered carefully proposals for each House to instigate procedures to prevent members from revealing information subject to privacy injunctions. The threshold for restricting what members can say during parliamentary proceedings should be high. We do not believe that the threshold has yet been crossed.

> 231. If the revelation of injuncted information becomes more commonplace, if injunctions are being breached gratuitously, or if there is evidence that parliamentarians are routinely being 'fed' injuncted material with the intention of it being revealed in Parliament, then we recommend that the Procedure Committees in each House should examine the proposals made to us for new restrictions with a view to implementing them."

39. In April 2012 the Government published a Green Paper on Parliamentary Privilege. A Joint Committee on Parliamentary Privilege was subsequently appointed by both Houses of Parliament to consider the Green Paper. The Committee published its Report on Parliamentary Privilege on 3 July 2013 (Session 2013-14, HL 30, HC 100). It explained at the outset:

> "20. The possibility of tension between parliamentary privilege and the rule of law means that Parliament's claim to exclusive cognisance should be strictly limited to those areas where immunity from normal legal oversight is necessary in order to safeguard the effective functioning of Parliament. It is agreed that immunity applies to that core work itself, to things said or done as part of proceedings in either Chamber or in a select committee of either House – the 'proceedings in Parliament' whose immunity from challenge is enshrined in Article 9. The difficulty lies in assessing how far such immunity applies to ancillary matters, to things said or done outside proceedings themselves, but which are necessarily connected to those proceedings."

40. The members of the Committee did not consider that there was a need to codify parliamentary privilege as a whole. On the specific question of breaches of court injunctions by Members of either House in parliamentary proceedings, it noted that this had been addressed at length by the Joint Committee on Privacy and Injunctions (see paragraphs 37 and 38 above). It considered that there had been no significant developments since, and endorsed the conclusions reached by that Joint Committee.

III. BREACH OF AN INTERIM INJUNCTION

41. Breach of an interim injunction can constitute contempt of court which is punishable with imprisonment of up to two years or a fine of up to 2,500 pounds sterling.

IV. THE HUMAN RIGHTS ACT 1998

42. Section 4 of the Human Rights Act 1998 provides as follows:

> "**Declaration of incompatibility.**
>
> (1) Subsection (2) applies in any proceedings in which a court determines whether a provision of primary legislation is compatible with a Convention right.
>
> (2) If the court is satisfied that the provision is incompatible with a Convention right, it may make a declaration of that incompatibility.
>
> ...
>
> (6) A declaration under this section ("a declaration of incompatibility") —

(a) does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given; and

(b) is not binding on the parties to the proceedings in which it is made."

V. COMPARATIVE LAW MATERIAL

43. The Court carried out a comparative-law survey of the operation of parliamentary immunity in the legal systems of forty-one of the forty-six member States of the Council of Europe.[1]

44. The basic principle of parliamentary non-liability (meaning absolute immunity from any legal action for parliamentary votes and utterances in the exercise of the parliamentary mandate) was found in all the surveyed States. The primary point of divergence in national constitutional provisions concerning the material scope of parliamentary immunity was whether non-liability applied to opinions expressed "in the exercise of parliamentary duties" or was limited to those expressed "in Parliament."

45. In roughly half of the surveyed States (Armenia, Austria, Belgium, Bosnia and Herzegovina, France, Georgia, Greece, Hungary, Italy, Latvia, Luxembourg, the Republic of Moldova, Montenegro, the Netherlands, Poland, Portugal, Romania, Serbia, Spain, Sweden, Türkiye and Ukraine), national legislation referred to freedom of expression in the context of the "exercise of parliamentary duties". In the other half (Albania, Bulgaria, Croatia, Czech Republic, Cyprus, Denmark, Estonia, Finland, Germany, Iceland, Ireland, Liechtenstein, Lithuania, Malta, North Macedonia, Norway, San Marino, Slovakia and Slovenia) freedom of expression applied only to opinions made "in Parliament".

46. In most States parliamentary non-liability protected any statements made by parliamentarians in Parliament or, more broadly, in the exercise of parliamentary duties from external legal actions. This was the case in Armenia, Belgium, Bosnia and Herzegovina, Cyprus, Denmark, Estonia, France, Georgia, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, the Republic of Moldova, Montenegro, the Netherlands, North Macedonia, Norway, Portugal, Romania, San Marino, Serbia, Slovakia, Spain, Sweden, Türkiye and Ukraine, in respect of criminal, civil and administrative liability, and in Bulgaria, Croatia, Finland, Hungary and Slovenia, in the case of criminal liability only. In Denmark, Finland, Iceland, and Sweden immunity could be lifted by the respective parliament.

47. In some States, however, parliamentary non-liability was subject to restrictions which excluded certain types of remarks. This was the case in Albania, Austria, Germany, Greece, Hungary, Latvia, Lithuania and Poland. There was no common model governing which categories were exempted; this varied from State to State. However, the rationale behind these provisions

[1] The survey did not cover Andorra, Azerbaijan, Monaco, Switzerland or the United Kingdom.

was often the exclusion of defamatory or otherwise particularly offensive statements. In most jurisdictions providing exclusions to the protection of non-liability (Austria, Germany, Greece, Hungary, Latvia, Lithuania and Poland), external legal action could only be initiated with the consent of Parliament, effectively requiring a waiver of immunity. In Austria, Croatia, Hungary and Latvia, Parliament's decision was not subject to review by a court, whereas in Germany (to a narrow extent) and also in Italy, the Republic of Moldova, Spain and Türkiye it could be subject to a constitutional complaint.

48. In the Czech Republic non-liability did not cover statements that were directed outside Parliament, i.e. not made in connection with the exercise of a parliamentarian's mandate, even if they were made during parliamentary sessions and, in order to be protected, a parliamentarian's statement had to contribute to political discussions in Parliament and be part of the normal parliamentary debate process.

49. It would appear that in some states, such as Croatia, Spain and Ukraine, non-liability, while seemingly absolute, did not necessarily protect parliamentarians if they abused their parliamentary privileges.

50. It would also appear that in most states surveyed there was no specific *sub judice* rule, although such a rule did exist in Ireland and, to a certain extent, Serbia. In Ireland, pursuant to Standing Order 70 of the 2024 Standing Orders of the Dáil Éireann, a parliamentarian is not prevented from raising in Parliament any matter of general public importance, even where court proceedings have been initiated, unless it related to a case where notice had been served and which was being or was to be heard before a jury, or where it appeared to be an attempt to encroach on the functions of the courts. The Committee on Parliamentary Privileges and Oversight enforced compliance with Standing Order 70 and could make such recommendations as it considered appropriate and report to Parliament thereon. The Committee decisions in this context, however, are also non-justiciable except in truly exceptional circumstances where "the very basis of the constitutional architecture might be under threat". In Serbia, there was a parliamentary code of conduct governing what parliamentarians could say about ongoing criminal proceedings. Any natural or legal person could file a complaint about a violation of a provision of the code, and such a complaint would be decided by an internal board of the Parliament which could give a warning or impose a fine.

THE LAW

I. PRELIMINARY REMARKS

51. The applicant complains under Article 6 § 1 of the Convention that his right to a fair trial was violated because the statement by Lord Hain (see

paragraph 14 above) rendered his claim for breach of confidence against the Telegraph futile, and that there was a breach of his right of access to court because he was not able to bring proceedings against Lord Hain for breach of an injunction. He further complains under Article 8 that his reputation was harmed as a direct consequence of the rules permitting disclosure in Parliament of information subject to an injunction. Finally, he complains under Article 13 that he had no effective remedy in respect of his Articles 6 and 8 complaints since he was unable to bring a claim against Lord Hain and the Government failed to implement effective controls on parliamentary speech.

52. The Court has primarily considered cases brought by individuals who suffered harm due to the actions of parliamentarians, which were protected by parliamentary privilege, from the standpoint of Article 6 § 1 of the Convention (see *A. v. the United Kingdom*, no. 35373/97, ECHR 2002-X; *Cordova v. Italy (no. 1)*, no. 40877/98, ECHR 2003-I; *Cordova v. Italy (no. 2)*, no. 45649/99, ECHR 2003-I (extracts); *Zollmann v. the United Kingdom* (dec.), no. 62902/00, ECHR 2003-XII; *De Jorio v. Italy*, no. 73936/01, 3 June 2004; *Tsalkitzis v. Greece*, no. 11801/04, 16 November 2006**;** and *Bakoyanni v. Greece*, no. 31012/19, 20 December 2022). Where those applicants also complained under Article 8 of the Convention, the Court did not carry out a separate assessment of that complaint, since in its view it raised the same issues as the Article 6 § 1 complaint (see *A. v. the United Kingdom*, §§ 102-03, and *Zollmann*, both cited above).

53. In the present case, however, the applicant does not challenge the principle of parliamentary privilege itself. Instead, he is seeking a declaration that the absence of *ex ante* and *ex post* controls on the power to use parliamentary privilege to reveal information subject to an injunction breached his Convention rights. The gravamen of his complaints is therefore that the respondent State was in breach of a positive obligation to have in place a legal framework that ensured that injunctions preventing the disclosure of confidential information were respected by third parties, including those otherwise protected by parliamentary privilege. For the Court, such a complaint sits most comfortably under Article 8 of the Convention. Therefore, it will first examine the applicant's complaints from the standpoint of that Article, before turning to his complaints under Article 6 § 1 and Article 13 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

54. The applicant complained that the absence of *ex ante* and *ex post* controls on the power to use parliamentary privilege to reveal information subject to an injunction breached Article 8 of the Convention, which reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and, freedoms of others."

A. Admissibility

1. Exhaustion of domestic remedies

55. The Government expressly conceded that the applicant had exhausted domestic remedies in respect of his Convention complaints. While the meaning of "proceedings in Parliament" had not been defined in statute, and the boundaries of privilege were matters for the courts (see paragraphs 29-31 above), according to the Government there was "no doubt at all that the words spoken by a Parliamentarian, in Parliament, in the course of a speech or debate on the floor of the House of which they are a member fall squarely within the scope of the privilege conferred by Article IX". Words spoken on the floor of the House formed part of the "core or essential business" of Parliament and it would not have been open to the applicant to argue that Lord Hain's disclosure fell outside the scope of parliamentary privilege.

56. According to the Government, the only remedy available to the applicant had been to seek a declaration under section 4 of the Human Rights Act 1998 (see paragraph 42 above) that the operation of Article 9 of the Bill of Rights (see paragraph 27 above) was incompatible with his Convention rights. However, the Government, referring to *Burden v. the United Kingdom* ([GC], no. 13378/05, §§ 39-40, ECHR 2008), conceded that applicants were not required to seek a declaration of incompatibility before the domestic courts in order to satisfy the requirements of Article 35 § 1 of the Convention.

57. The Court reiterates that its usual practice – where a case has been communicated to the respondent Government – is not to declare the application inadmissible for failure to exhaust domestic remedies unless the matter has been raised by the Government in their observations (see *Y v. Latvia*, no. 61183/08, § 40, 21 October 2014, with further references; see also *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 62, 15 November 2018). In the present case, the Government have not objected that domestic remedies have been exhausted and the Court will not examine the matter of its own motion.

2. Other inadmissibility grounds

58. The Government did not raise any other plea of inadmissibility in respect of the Article 8 complaint.

59. The Government do not, therefore, appear to dispute that Article 8 was applicable to the facts of the case. While the Court is not prevented from examining this question of its own motion (see *Béláné Nagy v. Hungary* [GC], no. 53080/13, § 71, 13 December 2016, and *Vegotex International S.A. v. Belgium* [GC], no. 49812/09, § 59, 3 November 2022), it sees no reason to doubt that the disclosure of the applicant's name in the House of Lords, linking him to allegations of "serious and repeated sexual harassment, racist abuse and bullying" (see paragraph 14 above) in defiance of an interim injunction and anonymity order granted by the Court of Appeal, attained a sufficient level of seriousness as to harm his reputation (see, for example, *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012; see also *Narbutas v. Lithuania*, no. 14139/21, § 224, 19 December 2023). The Court therefore concludes that Article 8 is applicable to the facts of the present case.

3. Conclusion

60. As the applicant's Article 8 complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention, it must be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

61. At the outset, the applicant made it clear that he did not seek to challenge the principle of parliamentary privilege itself, but rather the absence of *ex ante* and *ex post* controls on the power to use it to reveal confidential information that was subject to an injunction.

62. According to the applicant, the United Kingdom had a positive obligation to ensure that parliamentary privilege could not be used to circumvent a court injunction. He was not asking the Court to impose an obligation on Parliament to implement controls to ensure that court orders were not breached in the course of parliamentary debate. Rather, he was seeking a declaration that in the circumstances of the case at hand the absence of *ex ante* and *ex post* controls gave rise to a situation in which his Convention rights were violated. The nature, design and implementation of those *ex ante* and *ex post* controls would be a matter for Parliament.

63. For the applicant, the current legal framework could not be justified by reference to maintaining the separation of powers, since it allowed parliamentarians to undermine a judicial decision. Speech which violated the terms of a court injunction designed to protect confidential information was not the sort of meaningful debate that parliamentary privilege was designed to protect. The need for comity and respect for the rule of law placed an onus

on the legislature and its Members to act compatibly with the separation of powers.

64. Furthermore, the current legal framework did not strike a fair balance between the interests protected under Article 8 of the Convention, on the one hand, and Article 10, on the other. The applicant submitted that the following considerations were of particular relevance when considering the balance between the right to privacy and right to freedom of expression: the Court of Appeal had granted an interim injunction on the basis that disclosure of the applicant's identity would cause "immediate, substantial and possibly irreversible harm to all the claimants", and publication of that information would not be in the public interest (see paragraph 12 above); the information had been subject to a number of confidentiality orders and undertakings and would have remained confidential but for the statement of Lord Hain; the information had been disclosed to, or obtained by, Lord Hain in breach of a court order, contrary to the rule of law; the disclosure had received a great deal of publicity and was made to a national audience; the consequences of the disclosure had been grave, both for the applicant's reputation and because it had rendered his underlying claim against the Telegraph futile; and there had existed no effective procedural controls or avenues of redress for the applicant (in this final respect the applicant relied on *A. v. the United Kingdom*, § 86, and *Zollmann*, both cited above). Unlike defamation cases, in which damage could be undone or mitigated by way of retraction or apology, once confidentiality was lost, it was lost forever. That is why there was a need for effective *ex ante* controls on the power of parliamentarians to reveal confidential information which was the subject of an injunction.

(b) The Government

65. The Government argued that the implementation of the *ex ante* and *ex post* controls advocated for by the applicant would render the freedom of speech in Parliament subject to the control of the courts, regardless of the mechanism by which they were applied. If the courts had the power to require Parliament to implement such controls, it must also have jurisdiction to review their adequacy. The applicant was therefore seeking a fundamental alteration of the constitutional structure such that the courts could control, by way of injunction, what a parliamentarian could say in the course of a speech in Parliament. There was nothing in the Court's jurisprudence which provided support for the existence of a positive obligation of that nature in order to protect the Convention rights of individual litigants. On the contrary, the Court had repeatedly made it clear that the important public interests safeguarded by parliamentary privilege amply justified any consequential curtailment of individual rights (in this respect, the Government referred to *A. v. the United Kingdom*, cited above, §§ 84-87). This analysis, which was directed at Article 6 of the Convention, applied equally to Article 8.

66. According to the Government, in the particular circumstances of the present case the controls sought by the applicant would translate into a mechanism by which any person or body with sufficient resources could seek to control what was said in Parliament about a particular matter by obtaining a court order that would be enforceable by way of a sanction against any parliamentarian who acted in breach of it. A positive obligation to introduce controls over freedom of speech in Parliament would therefore directly counter the two legitimate aims identified by the Court in *A. v. the United Kingdom*: namely, protecting free speech in Parliament and maintaining the separation of powers between the legislature and the judiciary.

67. The Government further argued that the limited nature of the exception to parliamentary privilege sought by the applicant did nothing to address the fundamental point of principle at the heart of the case. Either speech and debate in Parliament was privileged or it was not. Conferring a power on the Court to regulate what may or may not be said in Parliament would undermine both of the aforementioned principles, however widely or narrowly the power was drawn. If Parliament were not the sole judge of the application of its law to its own proceedings, it would undermine the very purpose of privilege.

68. Finally, the Government argued that the harm caused to the applicant and the nature of the parliamentary speech in question were immaterial. As the Court made clear in *A. v. the United Kingdom*, the application of parliamentary privilege to parliamentary speech would be proportionate in the strict sense even where the harm caused was very severe indeed. It also made it very clear that the underlying merits of the disclosure were irrelevant.

2. The Court's assessment

(a) Existence of an interference

69. As indicated in paragraph 59 above, the disclosure of the applicant's name in the House of Lords, linking him to allegations of "serious and repeated sexual harassment, racist abuse and bullying" (see paragraph 14 above), attained a sufficient level of seriousness as to harm his reputation. This disclosure took place despite the existence of an interim injunction granted by the Court of Appeal, which, having examined in detail the balance to be struck between the Article 8 and Article 10 rights at issue in the case, concluded that publication would cause immediate, substantial and possibly irreversible harm to all of the claimants, including the applicant. While the harm referred to by the Court of Appeal might have been primarily financial in nature (see paragraph 12 above), the impact on the applicant's reputation was undoubtedly also serious. The Court therefore considers that there has been an interference with the applicant's right to respect for his private life.

(b) Compliance with Article 8 of the Convention

70. The applicant's complaint – that the absence of *ex ante* and *ex post* controls on the power to use parliamentary privilege to reveal confidential information subject to an injunction – relates to the general framework for balancing rights of privacy and freedom of expression in Parliament in the domestic legal order. It must therefore be examined from the standpoint of the State's positive obligations under Article 8 of the Convention.

(i) General principles

(α) Article 8

71. Although the object of Article 8 is essentially that of protecting an individual against an arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference. In addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private and family life (see *Bédat v. Switzerland* [GC], no. 56925/08, § 73, ECHR 2016). In choosing how to comply with their positive obligations, States enjoy a broad margin of appreciation (see *A, B and C v. Ireland* [GC], no. 25579/05, § 249, ECHR 2010).

72. A number of factors must be taken into account when determining the breadth of the margin of appreciation to be accorded to the State in a case in which Article 8 of the Convention is engaged. First, the Court reiterates that the notion of "respect" in Article 8 is not clear-cut, especially as far as the positive obligations inherent in that concept are concerned. Bearing in mind the diversity of the practices followed and the situations obtaining in the Contracting States, the notion's requirements will vary considerably from case to case. Contracting Parties therefore enjoy a wide margin of appreciation in determining the steps to be taken to ensure compliance with the Convention. Moreover, by reason of their direct and continuous contact with the vital forces of their countries, the State authorities are, in principle, in a better position than the international judge to give an opinion on how best to secure the right to respect for private life within the domestic legal order (see *Mosley v. the United Kingdom*, no. 48009/08, § 108, 10 May 2011, with references therein).

73. Secondly, the nature of the activities involved affects the scope of the margin of appreciation. Thus, in cases concerning Article 8, where a particularly important facet of an individual's existence or identity is at stake, the margin allowed to the State is correspondingly narrowed (see *Evans v. the United Kingdom* [GC], no. 6339/05, § 77, ECHR 2007-IV, and *A, B and C v. Ireland* (cited above, § 232). The same is true where the activities at stake involve a most intimate aspect of private life (see, *mutatis mutandis*, *Dudgeon v. the United Kingdom*, 22 October 1981, § 52, Series A

no. 45, and *A.D.T. v. the United Kingdom*, no. 35765/97, § 37, ECHR 2000-IX).

74. Third, the existence or absence of a consensus across the member States of the Council of Europe, either as to the relative importance of the interest at stake or as to the best means of protecting it, is also relevant to the extent of the margin of appreciation: where no consensus exists, the margin of appreciation afforded to States is generally a wide one (see *Evans*, cited above, § 77; *X, Y and Z v. the United Kingdom*, 22 April 1997, § 44, *Reports of Judgments and Decisions* 1997-II; and *Dickson v. the United Kingdom* [GC], no. 44362/04, § 78, ECHR 2007-XIII).

75. Finally, where measures which an applicant claims are required pursuant to positive obligations under Article 8 would have an impact on freedom of expression, regard must be had to the fair balance that has to be struck between the competing rights and interests arising under Article 8 and Article 10 (see *Mosley*, cited above, § 111, with references therein).

(β) Article 10

76. In cases concerning publications by newspapers, the Court has held that the competing rights and interests arising under Article 8 and Article 10 merit, in principle, equal respect (see, for example, *Mosley*, cited above, § 111, and *Hachette Filipacchi Associés (ICI PARIS) v. France*, no. 12268/03, § 41, 23 July 2009). However, while freedom of expression ordinarily constitutes one of the essential foundations of a democratic society (see, among many examples, *Monnat v. Switzerland*, no. 73604/01, § 55, ECHR 2006-X), the Court has expressly recognised that in a democracy Parliament is a unique and fundamentally important forum for political debate, and the right to freedom of speech therein enjoys an elevated level of protection (see *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 138, ECHR 2016 (extracts), and *Jerusalem v. Austria*, no. 26958/95, § 36, ECHR 2001-II). In fact, very weighty reasons must be advanced to justify interfering with the freedom of expression exercised in Parliament (see *Jerusalem*, cited above, § 40; see also, in the context of Article 6 § 1 of the Convention, *A. v. the United Kingdom*, § 79, *Cordova (no. 1)*, § 59, and *Zollmann*, all cited above).

77. The Court has acknowledged that the rule of parliamentary immunity pursues the legitimate aims of protecting free speech in Parliament and maintaining the separation of powers between the legislature and the judiciary (see *Karácsony and Others*, cited above, § 138). The regulation of parliamentary immunity belongs to the realm of parliamentary law, in which a wide margin of appreciation is left to member States (see, in the context of Article 6 of the Convention, *Kart v. Turkey* [GC], no. 8917/05, § 82, ECHR 2009 (extracts)).

78. Furthermore, pursuant to the well-established constitutional principle of the autonomy of Parliament, which is widely recognised in the member

States of the Council of Europe, the Court has acknowledged that Parliament is entitled, to the exclusion of other powers and within the limits of the constitutional framework, to regulate its own internal affairs. The autonomy of Parliament extends to Parliament's power to enforce rules aimed at ensuring the orderly conduct of parliamentary business (see *Karácsony and Others*, cited above, § 142; see also, in the Article 6 context, *Kart*, cited above, § 99).

79. In principle, therefore, the rules concerning the internal functioning of national Parliaments, as an aspect of parliamentary autonomy, fall within the margin of appreciation of the Contracting States. The national authorities, most notably Parliaments (or comparable bodies composed of elected representatives of the people), are better placed than the international judge to assess the need to restrict conduct by a Member causing disruption to the orderly conduct of parliamentary debates and which may be harmful to the fundamental interest of ensuring the effective functioning of Parliament in a democracy (see *Kart*, cited above, § 99 and *Karácsony and Others*, cited above, § 143, with references therein).

80. As to the breadth of the margin of appreciation to be afforded to the respondent State, this depends on a number of factors. It is defined by the type of the expression in issue and, in this respect, the Court reiterates that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on matters of public interest (see *Karácsony and Others*, cited above, § 144, with references therein).

(ii) Application of the general principles to the facts of the case

81. It is clear that a positive obligation arises under Article 8 in order to ensure the effective protection of the right to respect for private life (see the case-law quoted in paragraph 71 above). The question for consideration in the present case is whether this positive obligation requires the implementation of *ex ante* and *ex post* controls to prevent Members of Parliament from revealing information subject to privacy injunctions. In answering this question, regard must be had to the fair balance that has to be struck between the competing rights and interests arising under Article 8 and Article 10 of the Convention.

82. In respect of the application for an interim injunction in the proceedings against the Telegraph the domestic courts carefully balanced the applicant's Article 8 rights and the Telegraph's Article 10 rights, and found that the former had to be given precedence over the latter (see paragraph 12 above). However, the balancing exercise to be carried out by the Court in its examination of the case before it is of a different order, since it is the right to freedom of speech in Parliament, and not the Telegraph's freedom of expression, that has to be balanced against the competing Article 8 rights. While the specific facts of the applicant's case provide a backdrop to the Court's assessment, the implications of requiring Parliament to introduce

ex ante and *ex post* controls on Members' speech are necessarily wider. Therefore, regardless of the respective merits of the applicant's own case, the Court must bear in mind the general nature of the controls he is calling for (see, *mutatis mutandis*, *Mosley*, cited above, § 121).

83. It is evident from the Court's Article 10 case-law summarised in paragraphs 76-80 above that the House of Lords enjoyed a wide margin of appreciation in regulating its own affairs and, by extension, in deciding whether to implement *ex ante* and *ex post* controls to prevent its Members from revealing information subject to privacy injunctions.

84. In the United Kingdom both Houses of Parliament have considered it necessary to pass resolutions adopting a *sub judice* rule, which, insofar as it requires Members of the House of Lords to give the Lord Speaker at least twenty-four hours' notice of any proposal to refer to a matter which is *sub judice*, provides a degree of *ex ante* control on the power to use parliamentary privilege to discuss proceedings which are active before the domestic courts (see paragraphs 32-33 above).

85. As the *sub judice* rule is not incorporated into the Code of Conduct, breaches of the rule are not within the remit of the House of Lords Commissioner for Standards (see paragraph 19 above). Nonetheless, the system of parliamentary privilege in the respondent State is not entirely devoid of *ex post* control. While the House of Lords Commissioner for Standards could not examine the applicant's allegations concerning a breach of the *sub judice* rule, she was able to consider the allegation that Lord Hain had failed to declare his connection to the law firm representing the Telegraph (see paragraph 19 above). This complaint was rejected by the Commissioner following an investigation (see paragraph 19 above). Moreover, while parliamentary privilege is a matter for Parliament itself, the scope of that privilege is a matter for the courts (see paragraph 31 above). In the present case the Government have expressed "no doubt" that the actions of Lord Hain fell within the scope of parliamentary privilege (see paragraph 55 above), and it would appear that in the vast majority of member States words spoken by a parliamentarian on the floor of the House would also be privileged (see paragraphs 43-50 above, setting out the findings of the recent survey carried out by the Court in forty-one of the member States). However, in a less clear cut case it would be open to the person concerned to argue before the domestic courts that the actions of the parliamentarian fell outside the scope of parliamentary privilege. If that argument were to succeed, the parliamentarian could be held to be in contempt of court, and there would be no constitutional obstacle to a claim for damages.

86. The United Kingdom Parliament has repeatedly considered and rejected proposals to implement further controls of the kind the applicant now seeks. In 2011 a Joint Committee of both Houses of Parliament was appointed to consider and report on privacy and injunctions. The Committee noted that there had been examples in recent years of information subject to anonymised

injunctions being revealed in Parliament, but found such examples to be rare. It considered carefully proposals for each House to instigate procedures to prevent Members from revealing information subject to privacy injunctions but did not think that the high threshold for restricting what Members could say during parliamentary proceedings had yet been crossed. Nonetheless, it indicated that if the revelation of injuncted information became more commonplace, if injunctions were being breached gratuitously, or if there was evidence that parliamentarians were routinely being "fed" injuncted material with the intention of it being revealed in Parliament, then the Committee would recommend that the Procedure Committees in each House should examine the proposals for new restrictions with a view to implementing them (see paragraphs 37-38 above). The following year a Joint Committee on Parliamentary Privilege was appointed by both Houses of Parliament to consider a Green Paper on Parliamentary Privilege. On the specific question of breaches of court injunctions by Members of either House in parliamentary proceedings, the Committee endorsed the conclusions reached by its predecessor (see paragraphs 39-40 above).

87. Given that the national authorities, most notably parliaments, are better placed than the international judge to assess the need to restrict conduct by a Member (see *Kart*, cited above, § 99 and *Karácsony and Others*, cited above, § 143, with references therein), the Court would require strong reasons to substitute its view for that of Parliament.

88. While over ten years have elapsed since Parliament last considered whether further controls – going above and beyond the *sub judice* rule – were required to prevent Members using parliamentary privilege to reveal confidential information subject to an injunction, the applicant has not suggested that there has since been a significant increase in such incidents which would call into question whether the justification for the conclusions of the Joint Committee in 2011 remained valid. The Court is not aware of any other Contracting States which have implemented more robust *ex ante* and/or *ex post* controls. Indeed, it would appear from the recent survey carried out by the Court (see paragraphs 43-50 above) that in most States parliamentary privilege affords absolute protection from external legal actions to any statements made by parliamentarians in Parliament or, more broadly, in the exercise of their parliamentary duties (see paragraphs 45-46 above). Only a small number of States exclude statements of a particular type from the scope of parliamentary privilege (and in the majority of those states external legal action can only be brought with the consent of Parliament – see paragraphs 47-48 above). Furthermore, only Ireland and, to a certain extent, Serbia, have a dedicated *sub judice* rule (see paragraph 50 above). In Ireland the rule would appear to be supported by *ex ante* controls (in certain limited circumstances) and *ex post* controls, but those controls are internal and not judicial (see paragraph 50 above). The Court has previously recognised that the immunity afforded to Members of Parliament in the United Kingdom is

in several respects narrower than that afforded to Members of national legislatures in certain other signatory States and those afforded to representatives to the Parliamentary Assembly of the Council of Europe and Members of the European Parliament (see *A. v. the United Kingdom*, cited above, § 84). The results of the recent survey strongly suggest that this is still the case.

89. Nevertheless, the applicant has argued that speech which violates the terms of a court injunction is not the sort of meaningful debate that parliamentary privilege was designed to protect (see paragraph 63 above). Given that parliamentary speech which violates a judgment of a domestic court risks undermining both the judicial process and the constitutional balance between the legislature and the judiciary, there is undoubtedly force to the argument that the scope for restriction should accordingly be greater (see *Karácsony and Others*, cited above, § 144). However, it is not for the Court to assess the value of parliamentary speech or its contribution to "meaningful debate". In the context of Article 6 § 1 of the Convention it has preferred to focus on the existence of a clear connection with a parliamentary activity, and only in the absence of any such connection has it adopted a narrow interpretation of the concept of proportionality between the aim sought to be achieved and the means employed (see *Cordova (no. 1)*, cited above, § 63; *Cordova (no. 2)*, cited above, § 64; and *De Jorio*, cited above, § 54). To date, the only behaviour by parliamentarians which the Court has found not to be connected to the exercise of their parliamentary functions took place before the individual in question was elected to Parliament (see *Tsalkitzis*, cited above, § 48), or took place outside Parliament and was "more consistent with a personal quarrel" (see *Cordova (No. 1)*, cited above, § 62, *Cordova v. Italy (no. 2)*, cited above, § 63 and *De Jorio*, cited above, § 53; see also *Bakoyanni*, cited above, § 70). For the Court to find that a speech in Parliament, by a Member of Parliament, fell outside the scope of his or her parliamentary activity would be unprecedented, and would run counter to the operation of parliamentary privilege in the majority of member States (see paragraphs 43-50 above).

90. Furthermore, contrary to what the applicant appears to suggest (see paragraphs 61 and 62 above), if the Court were to find that the absence of *ex ante* and *ex post* controls on the power to use parliamentary privilege to reveal information subject to an injunction was in breach of Article 8 of the Convention, in order to execute the Court's judgment Parliament would be required to implement controls – going above and beyond the existing *sub judice* rule – to ensure that court orders were not breached in the course of parliamentary debate. While the nature, design and implementation of those *ex ante* and *ex post* controls might in theory be a matter for Parliament, if they were not effective in practice their adequacy would likely be subject to further challenge before the Court. Consequently, regardless of the careful manner in which the applicant has framed his complaint, the finding of a

violation of Article 8 would in practice render the nature, design and implementation of those *ex ante* and *ex post* controls subject to the oversight of the Court. Furthermore, such oversight could amount to indirect control by the Court over the free speech itself, as it would undoubtedly become at least indirectly involved in an evaluation of the statements that had been made in Parliament. After all, the ultimate practical outcome of a successful challenge could be the reconsideration of the complaint by Parliament and the possibility that a different view might be taken of the utterances of the deputies concerned. The response to a parliamentarian acting incompatibly with the principle of the separation of powers should not further undermine the very principle it seeks to defend.

91. The events giving rise to the present application are undoubtedly of considerable concern. At the point when Lord Hain's disclosure was made, the Court of Appeal had not had the opportunity to weigh up the competing interests at stake in the course of a full hearing. However, having carefully considered the evidence before it, it had found there to be both a real prospect that publication by the Telegraph would cause immediate, substantial and possibly irreversible harm to all of the claimants, and a sufficient likelihood of the claimants defeating a public interest defence at trial, to justify granting an interim injunction to protect the confidentiality of the material pending an expedited trial (see paragraphs 11 and 12 above). Although Lord Hain had not read the judgment of the Court of Appeal, his disclosure had the sole purpose of overriding its carefully considered conclusions because he considered it to be in the public interest to reveal the applicant's identity before the expedited trial could take place (see paragraphs 14 and 19 above). The consequences for the applicant were serious: while Lord Hain's disclosure related to his professional behaviour (see paragraph 8 above), and did not concern an intimate aspect of his private life (see the case-law quoted in paragraph 73 above; see also, by way of comparison, *Mosley*, cited above, § 123), his anonymity, once lost, was lost forever. There were also consequences for Arcadia and Topshop (see paragraph 12 above), and any former employees who did not want details of their employment disputes and settlements made public.

92. Nonetheless, in keeping with the well-established constitutional principle of the autonomy of Parliament (see the case-law quoted in paragraph 78 above), it is in the first instance for national parliaments to assess the need to restrict conduct by their Members (see the case-law quoted in paragraph 79 above). As the United Kingdom Parliament is aware of the problem of parliamentary privilege being used to frustrate injunctions and has addressed the need for further controls (see paragraphs 35-40 above), the Court considers that for the time being it may be left to the respondent State, and Parliament in particular, to determine whether and to what extent *ex ante* and *ex post* controls might be necessary to prevent its Members from revealing information subject to privacy injunctions. However, given the

serious impact that the disclosure of such information may have on the privacy of the individual concerned, not to mention the implications for the rule of law and the separation of powers within the United Kingdom constitution of parliamentarians usurping the role of judges, who have considered it necessary, after viewing the evidence before them, to grant an injunction, the Court considers that the need for appropriate controls must be kept under regular review at the domestic level.

93. Consequently, as things currently stand the rule on parliamentary privilege did not exceed the margin of appreciation afforded to the respondent State and there exist no sufficiently strong reasons to justify the Court substituting its view for that of Parliament and requiring it or the respondent State to introduce further *ex ante* and *ex post* controls on freedom of speech in Parliament.

94. Accordingly, the Court concludes that there has been no violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

95. The applicant complained that his Article 6 § 1 rights were violated because he was not able to bring proceedings against Lord Hain for breach of the injunction, and the statement by Lord Hain rendered his claim for breach of confidence against the Telegraph futile (see paragraph 22 above), thereby denying him a fair trial.

In so far as relevant, Article 6 § 1 of the Convention provides as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Access to court

1. The parties' submissions

96. As already noted in paragraph 61 above, the applicant does not challenge parliamentary privilege in and of itself. Rather, he argues that the absence of effective *ex ante* and *ex post* controls on the power to use parliamentary privilege to reveal information subject to an injunction did not pursue a legitimate aim and constituted a disproportionate interference with his right of access to court. The applicant seeks to distinguish his case from previous authorities (notably *A v. the United Kingdom*, cited above) on the grounds that there were no forms of redress available to him, and the consequences were more wide-reaching as Lord Hain's disclosure rendered the underlying proceedings nugatory.

97. The Government submitted that to the extent that there had been any interference with the applicant's Article 6 rights arising from the disclosure by Lord Hain, the interference was proportionate to the overriding public

interest in protecting freedom of speech and debate in Parliament and maintaining the constitutional separation of powers.

2. The Court's assessment

98. In previous similar cases the Court has proceeded on the basis that Article 6 § 1 was applicable to the facts of the case (see, for example, *A. v. the United Kingdom*, cited above, § 65, *Zollmann*, cited above, and *Kart*, cited above, § 65). As the Government have not disputed that Article 6 § 1 is applicable to the facts of the case at hand, the Court will proceed on the basis that it is.

99. The Court has expressly considered the Article 6 § 1 compliance of the applicable legal framework in the United Kingdom and concluded that the rule on parliamentary privilege did not exceed the margin of appreciation allowed to States in limiting an individual's right of access to court (see *A. v. the United Kingdom*, cited above, § 87 and *Zollmann*, cited above). In *A. v. the United Kingdom* (§§ 84-86) the Court relied on three features of the United Kingdom's legal framework that rendered the interference with the applicant's right of access to court proportionate: parliamentary immunity only attached to statements made in the course of parliamentary debates on the floor of the House of Commons or the House of Lords; it was designed to protect the interests of Parliament as a whole as opposed to those of its individual Members; and the victims of defamatory statements were not without means of redress, because they could petition the House with a view to securing a retraction and in extreme cases deliberately misleading statements were punishable by Parliament as contempt. The applicants in the subsequent case of *Zollmann* (cited above) sought to distinguish their case from *A. v. the United Kingdom* on the ground that they had been deprived of all possible redress, but the Court rejected that argument as it was not persuaded that the possibility for redress had been decisive in *A. v. the United Kingdom*. The Court also made it clear that the severity of the damage caused by statements made under the guise of parliamentary immunity was not, and should not be, a decisive factor capable of altering its conclusion on proportionality, since the creation of exceptions to parliamentary immunity, the application of which depended upon the individual facts of any particular case, would seriously undermine the legitimate aims pursued (see *Zollmann*, cited above).

100. Consequently, any complaint based on the operation of parliamentary privilege in the United Kingdom would be bound to fail. The applicant does not challenge parliamentary privilege in and of itself; rather, he argues that the absence of effective *ex ante* and *ex post* controls on the power to use parliamentary privilege to reveal information subject to an injunction did not pursue a legitimate aim and constituted a disproportionate interference with his Article 6 rights.

101. In essence, however, his complaint still concerns the scope of parliamentary privilege in the United Kingdom, which the Court has previously found not to exceed the wide margin of appreciation afforded to the respondent State. Moreover, insofar as the applicant relies on the absence of effective *ex ante* and *ex post* controls, this aspect of his Article 6 § 1 complaint is very similar to his Article 8 complaint. In practice, though, it goes further. In the context of his Article 8 complaint, the applicant made it clear that he was only seeking a declaration that in the circumstances of the case the absence of *ex ante* and *ex post* controls gave rise to a breach of his Convention rights; the nature, design and implementation of those of *ex ante* and *ex post* controls would be a matter for Parliament (see the applicant's arguments summarised in paragraph 62 above). In asking the Court to find a violation of Article 6 § 1 of the Convention, he is in in fact asking it to compel the national authorities to provide for a legal remedy in the event that a parliamentarian were to disclose information subject to an injunction. However, such a remedy would appear to exist in very few (if any) of the forty-one member States recently surveyed (see paragraphs 43-50 above), and for the Court to now require such a remedy would be incompatible with the wide margin of appreciation afforded to member States in the regulation of parliamentary immunity (see paragraphs 77, 78, 83 and 90 above).

102. Accordingly, insofar as this aspect of the applicant's Article 6 § 1 complaint raises an issue separate to his Article 8 complaint, the Court considers that it must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

B. The fairness of the proceedings against the Telegraph

1. The parties' submissions

103. The applicant argued that Lord Hain's statement rendered the proceedings against the Telegraph futile, thereby denying him a fair trial.

104. The Government submitted that the applicant was not precluded from continuing to pursue his claim against the Telegraph (and thereby seeking to protect the confidentiality of the information passed to the Telegraph). He was prevented from doing so anonymously, but in this respect his complaint was essentially the same as that raised under Article 8 of the Convention.

2. The Court's assessment

105. The conduct of the proceeding against the Telegraph cannot be impugned. The claimants brought the proceedings on 18 July 2018 (see paragraph 9 above). The High Court refused their request for an interim injunction on 23 July 2018 following a private hearing, but preserved the confidentiality of the information pending any appeal (see paragraph 10

above). The claimants' appeal was heard on 25 September 2018, again in a private hearing, and the Court of Appeal handed down judgment on 23 October 2018, allowing the appeal and granting an interim injunction and anonymity orders pending an expedited trial. Closed and open judgments were handed down (see paragraph 11 above). It is clear from the open judgment that the Court of Appeal carefully weighed the claimants' Article 8 rights against the Telegraph's Article 10 rights before concluding that there was a sufficient likelihood of the claimants defeating a public interest defence at trial to justify the grant of an interim injunction (see paragraph 12 above).

106. While the conduct of those proceedings – the purpose of which was to prevent the publication of material disclosed to the Telegraph in breach of confidence – was undoubtedly impacted by the disclosure by Lord Hain of the applicant's identity (see paragraph 14 above), the applicant has not suggested that the domestic courts failed to take appropriate measures to protect his anonymity pending trial, or even that there were any further measures available to them in this regard. Rather, this complaint, like the applicant's Article 6 § 1 complaint concerning his right of access to court, and his Article 8 complaint, is focused on the alleged failure by the respondent State to have in place sufficient measures to prevent parliamentarians from disclosing information subject to an injunction.

107. As such, it does not give rise to a separate issue under Article 6 § 1 of the Convention (see *Erikan Bulut v. Turkey*, no. 51480/99, §§ 47 and 59, 2 March 2006).

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

108. Lastly, the applicant complained under Article 13 that he had no effective remedy in respect of his complaints since he was unable to bring a claim against Lord Hain and the Government had failed to implement effective controls on the use of parliamentary privilege to disclose information subject to a privacy injunction.

Article 13 provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

109. Although the Court has held the applicant's complaint under Article 6 § 1 of the Convention to be manifestly ill-founded (see paragraph 102 above), in finding no violation of Article 8 of the Convention (see paragraph 94 above), it declared this complaint admissible (see paragraph 60 above). The Court is therefore satisfied that the applicant had an "arguable claim" that that Article had been violated.

110. However, Article 13 does not go so far as to guarantee a remedy allowing a Contracting State's primary legislation to be challenged before a national authority on grounds that it is contrary to the Convention (see *James*

and Others v. the United Kingdom, judgment of 21 February 1986, § 85, Series A no. 98). As the applicant's Article 13 complaint relates to the immunity conferred by Article 9 of the Bill of Rights 1689 (see paragraph 27 above), it must also be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaint concerning Article 8 of the Convention admissible;

2. *Declares*, by a majority, the complaints concerning Article 6 § 1 of the Convention (access to court) and Article 13 of the Convention inadmissible;

3. *Holds*, unanimously, that there has been no violation of Article 8 of the Convention;

4. *Holds*, unanimously, that it is not necessary to examine separately the admissibility and merits of the complaint under Article 6 § 1 of the Convention concerning the fairness of the proceedings against the Telegraph.

Done in English, and notified in writing on 8 April 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Simeon Petrovski	Lado Chanturia
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Judge Răduleţu joined by Judge Guerra Martins is annexed to this judgment.

PARTLY DISSENTING OPINION OF JUDGE RĂDULEŢU JOINED BY JUDGE GUERRA MARTINS

111. I decided to write this separate opinion for two reasons. First, I think that the main issue at stake in this case is not the right to private life, but rather the right to a fair trial. In light of this, I do not consider the Article 6 § 1 complaint to be manifestly ill-founded, as the majority decided. Owing to the new and different aspects this complaint raises, a reasoning on the merits would have been desirable, even if, in the end, the outcome may have been no violation. Secondly, while I agree with the solution adopted for the Article 8 complaint, I do not entirely share the reasoning used for reaching it. The analysis under this Article should have taken into consideration not only the State's positive obligations, but also its negative ones. The interference with that fundamental right was caused by a member of parliament (MP) who used the absolute immunity that was "designed to protect the interests of Parliament as a whole as opposed to those of individual MPs" (see *A. v. the United Kingdom*, no. 35373/97, § 85, ECHR 2002-X). In this context, I am not prepared to fully accept the majority's view that an MP, who used that absolute immunity to reveal the identity of the applicant, can be viewed simply as a "private person".

112. Concerning my first reason, I would like to emphasise that in its previous case-law on the absolute immunity designed to protect the interests of Parliament, the Court assessed the cases mainly under Article 6 § 1 (see *A. v. the United Kingdom*, cited above, and *Zollmann v. the United Kingdom* (dec.), no. 62902/00, ECHR 2003-XII). Indeed, the main tension inherent in that line of cases was between the right to a fair trial and MPs' freedom of speech based on that privilege. In my opinion, Lord Hain's statement seems to affect mainly due process, owing to its impact on the court's interim order, and thus it appears to raise a problem concerning the separation of powers between Parliament and the courts. I therefore see no convincing reason to change the previous approach and to now focus especially on Article 8. An additional argument for this is the fact that the application focused more on Article 6 than on Article 8.

113. This case is not just a duplicate of the cases mentioned above. It can be distinguished from them on an important point: while in *A. v. the United Kingdom* (cited above), no judicial decision had been issued when the MP made his statement and no litigation had yet started, in the present case a court had already issued an interim order (injunction) at that point in time and judicial proceedings were also ongoing. Moreover, this judicial decision was final. In the previous cases the statement therefore had only potential effects by removing the possibility for the applicants to access the courts in the future in order to protect their privacy. By contrast, in the present case Lord Hain's statement had not only such a prospective effect of preventing future access to a court, but also a strong and concrete impact on the already final judicial

decision on interim measures and on the proceedings which were underway. The exercise of the absolute immunity designed to protect the interests of Parliament therefore collided more obviously with judicial power and with the applicant's due process rights than in previous cases where no concrete proceedings had existed at the time the statements were made.

114. In my opinion this new aspect of the present case distinguishes it from the previous ones. A more in-depth analysis was therefore necessary in order to assess whether the applicant's rights under Article 6 were violated by the statement in issue or not. Of course, such an analysis would only have been possible in a reasoning on the merits of the Article 6 complaint. The confinement of the Court's assessment to admissibility alone, followed by its declaration that that complaint was manifestly ill-founded, seems to be inappropriate in the context of the relevant facts of this case and the importance of the issues under scrutiny here, namely the relationship between this parliamentary privilege and the separation of powers, due process rights and, more generally, the rule of law.

115. Concerning my second reason, while I could agree in principle with the solution of no violation of Article 8, I think that the reasoning used to reach it seems rather incomplete. As I mentioned above, this Court has clearly held that absolute immunity aims to protect this important constitutional body as an institution, not the individual MPs:

> "The absolute immunity enjoyed by MPs is moreover designed to protect the interests of Parliament as a whole as opposed to those of individual MPs. This is illustrated by the fact that the immunity does not apply outside Parliament. In contrast, the immunity which protects those engaged in the reporting of parliamentary proceedings, and that enjoyed by elected representatives in local government, are each qualified in nature." (See *A. v. the United Kingdom*, cited above, § 85.)

116. In this context it is difficult to maintain, as the majority do, that Lord Hain acted as a private person on 28 October 2018, when he made the statement in the House of Lords. He behaved rather as a public authority. The Court's approach to the alleged violation of Article 8 should therefore have been based mainly on the State's negative obligation not to arbitrarily interfere with the private life of the applicant. Instead of such a straightforward assessment, the majority preferred one based exclusively on the State's positive obligation to protect the right to private life against interferences by private persons. Even though the applicable principles are quite similar, the two approaches are technically different: the former supposes an interference by the public authorities, while the latter involves a State's failure to act. Since Lord Hain acted as a member of parliament and within this institution, using a privilege designed to protect Parliament itself, I think the correct approach for the Court should have been to assess whether the State had fulfilled its negative obligations under Article 8. Such an approach appears to be more appropriate for assessing the effects of the

statement on the right to private life of a person who had already taken steps to protect that right by concluding non-disclosure agreements (NDAs).

117. Subsidiarily, while the fact that the MP in question was not at the relevant time a member of the Government was viewed by the majority as so significant as to trigger positive obligations for the State, this fact alone cannot justify in itself the total elimination of negative obligations from the analysis. Indeed, from this latter perspective there are examples in our case-law where the Court has found it unnecessary to make this distinction concerning the State's obligations (see *Nunez v. Norway*, no. 55597/09, § 69, 28 June 2011; *Osman v. Denmark*, no. 38058/09, § 53, 14 June 2011; and *Konstatinov v. the Netherlands*, no. 16351/03, § 47, 26 April 2007). However, an assessment based solely on positive obligations seems not to be appropriate in this case.