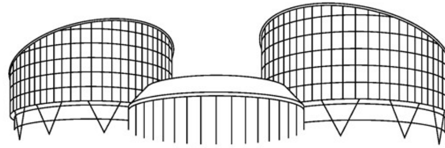
UNIVERSITY OF PERUGIA (ITALY)
DEPARTMENT OF LAW
The effectiveness of Rights in the Light of European Court of Human Rights Case Law



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

FOURTH SECTION

CASE OF L.B. v. HUNGARY

(Application no. 36345/16)

JUDGMENT

Art 8 • Respect for private life • Justified publication of applicant's identifying data, including home address, on tax authority website portal for failing to fulfil his tax obligations • Legitimate aims of protecting the tax system and third parties • State margin of appreciation in matters of economic and social strategy • Manner and scope of published information designed and sufficiently circumscribed to secure availability and accessibility of information in the public interest • Limited effect on the applicant's private life

STRASBOURG

12 January 2021

Referral to the Grand Chamber

31/05/2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

diritti-cedu.unipg.it

In the case of L.B. v. Hungary,

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

Yonko Grozev, *President,*
Iulia Antoanella Motoc,
Branko Lubarda,
Carlo Ranzoni,
Georges Ravarani,
Jolien Schukking,
Péter Paczolay, *judges,*
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 36345/16) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Hungarian national, Mr L.B. (“the applicant”), on 7 June 2016;

the decision to give notice of the application to the Hungarian Government (“the Government”);

the decision not to have the applicant’s name disclosed;

the parties’ observations;

Having deliberated in private on 1 September and 25 November 2020,

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

INTRODUCTION

1. The application, lodged under Articles 8 and 13 of the Convention, concerns the publication of the applicant’s personal data on the website of the National Tax and Customs Authority for his failure to fulfil his tax obligations.

THE FACTS

2. The applicant was born in 1966 and lives in Budapest. The applicant was represented by Mr D. B. Kiss, a lawyer practising in Budapest.

3. The Government were represented by their Agent at the Ministry of Justice, Mr Z. Tallódi.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. On 27 January 2016 the National Tax and Customs Authority (hereinafter “the Tax Authority”) published the applicant’s personal data, including his name and home address, on the list of tax defaulters on its website. This measure was provided for by section 55(3) of Act no. XCII of 2003 on Tax Administration, which required the Tax Authority to publish a

list of taxpayers (*nagy összegű adóhiánnyal rendelkező adózók közzétételi listája*) in respect of whom a final decision of the Tax Authority had assessed that they had tax arrears (*adóhiány*) in excess of 10 million Hungarian forints (HUF) for the previous quarter; the published information included their names, addresses, tax identification numbers and the amount of tax arrears.

6. On 16 February 2016 an online media outlet produced an interactive map called "the national map of tax defaulters". The applicant's home address, along with the addresses of other tax defaulters, was indicated with a red dot, and if a person clicked on the dot the applicant's personal information (name and home address) appeared, thus the data was available to all readers.

7. Subsequently, the applicant appeared on a list of "major tax evaders" (who owed a large amount of tax, *nagy összegű adótartozással rendelkező adózók közzétételi listája*) that was also made available on the Tax Authority's website pursuant to section 55(5) of Act no. XCII of 2003 on Tax Administration, which provided for the publication of a list of persons who had owed a tax debt (*adótartozás*) to the Tax Authority exceeding HUF 10 million for a period longer than 180 days.

8. As indicated by the case-file material, the applicant's data is no longer available on the Tax Authority's website.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

9. Act no. XCII of 2003 on Tax Administration (hereinafter "the Tax Administration Act"), as in force at the material time, in so far as relevant, provided as follows:

Section 55

"...

(3) Within 30 days following the end of the quarter, the tax authority shall publish on its website, on the list of major tax defaulters (*nagy összegű adóhiánnyal rendelkező adózók közzétételi listája*), the names, places of residence, commercial premises, places of business and tax identification numbers of taxpayers in respect of whom a final decision has assessed that they have tax arrears (*adóhiány*) in excess of 10 million Hungarian forints – in the case of private individuals – or in excess of 100 million Hungarian forints – in the case of other taxpayers – for the previous quarter, along with the amount of tax arrears and the legal consequences of the taxpayer failing to fulfil his or her payment obligation prescribed in the respective final decision by the deadline also prescribed in that decision. For the purposes of this subsection, a decision of the tax authority may not be considered final if the time limit for judicial review has not yet expired, or if court proceedings initiated by the taxpayer for a review of the decision have not been concluded.

...

(5) Within thirty days following the end of the quarter, and on a quarterly basis, the tax authority shall publish on its website, on the list of major tax evaders (who owe a

large amount of tax, *nagy összegű adótartozásssal rendelkező adózók közzétételi listája*), the names (corporate names), home addresses, registered offices, places of business and tax identification numbers of those taxpayers who have owed tax debts (*adótartozás*) to the tax authority exceeding 100 million Hungarian forints in total, minus any overpayment, or 10 million Hungarian forints in total in the case of private individuals, for a period longer than 180 consecutive days.

..."

10. The explanatory note to section 55(5) of the Tax Administration Act contained the following:

"With a view to strengthening the clarity and reliability of economic relations and encouraging law-abiding conduct by the taxpayer, for years the tax authority has followed the practice of publishing the data of tax defaulters who have fallen behind in paying a significant amount of tax which has been established in a final decision. Since significant debts may originate not only from tax arrears revealed during a tax inspection, and ... regular non-payment may constitute extremely important information about a taxpayer's solvency for contractual parties, the Act also makes it possible to publish the data of taxpayers who have owed a large debt for a long time."

11. Act CXII of 2011 on the right to informational self-determination and freedom of information (hereinafter "the Data Protection Act"), as in force at the material time, provided as follows:

5. Legal basis for data processing
Section 5

"(1) Personal data may be processed under the following circumstances:

(a) when the data subject has given his or her consent; or

(b) when processing is ordered in the public interest by an Act of Parliament or by a local authority as authorised by an Act of Parliament (hereinafter referred to as 'mandatory processing').

..."

13. Rights of data subjects
Section 14

"The data subject may request from the data controller:

(a) information on his personal data which are being processed;

(b) the rectification of his personal data; and

(c) with the exception of mandatory processing, the erasure or blocking of his personal data."

Section 17

"...

(2) Personal data shall be erased if:

(a) it is processed unlawfully;

(b) the data subject requests this in accordance with subsection (c) of section 14;

(c) it is incomplete or inaccurate and cannot be lawfully rectified, provided that erasure is not prohibited by a statutory provision of an Act;

(d) the processing no longer has any purpose, or the legal time-limit for storage has expired; or

(e) a court or the Data Protection Authority orders erasure.

..."

12. Decision no. 26/2004 (VII.7) AB of the Constitutional Court concerned the publication of a list of taxpayers who failed to comply with certain registration requirements. It contained the following relevant passages:

"As to section 55(4) of the Tax Administration Act [Act no. XCII of 2003], it can be established that in order to protect persons who duly pay their taxes, this provision obliges tax authorities to continuously publish the data of those who, through their unlawful conduct, might cause damage to others who enter into business relations with them.

Persons who carry out activities without the necessary registration, or sham companies, cannot issue bills, invoices or any other replacement invoice that another taxpayer could make use of. Thus, through [the] publication [of data], the tax authority contributes to isolating those who are engaged in such activities, and to whitening the economy.

The rule which obliges tax authorities to publish the available identifying data of those taxpayers who do not fulfil their obligations related to registration does not in itself infringe the right to protection of personal data (Article 59 § 1 of the Constitution). Section 2(5) of Act no. LXIII of 1992 on the Protection of Personal Data and the Public Accessibility of Data of Public Interest (hereinafter "the Data Protection Act") provides that data subject to disclosure in the public interest means any data, other than public-interest data, that by law are to be published or disclosed for the benefit of the general public. Pursuant to section 3(4) of the Data Protection Act, an Act of Parliament can order the publication of personal data in the public interest in relation to a certain type of data."

13. A circular of the National Authority for Data Protection and Freedom of Information of 21 February 2012 reads as follows:

"The public interest is best served if the names of local persons who owe tax are published in the manner which is common in the local area, for example on the noticeboard of the mayor's office. The personal data of local persons who owe tax should be removed from websites, since their online publication renders them accessible around the globe, which goes beyond the aim of the legislature.

The National Authority for Data Protection and Freedom of Information has been informed that public notaries in a number of local governments have published or intend to publish in the near future the names and addresses of local private individuals who have local or vehicle tax debts and the amount of unpaid tax which they owe, grouped according to the type of tax owed. Act no. XCII of 2003 on the Rules of Taxation provided a legal basis for local tax authorities to publish on the tenth day following the date when a debt was due the names and addresses of persons whose local or vehicle tax debts exceeded 100 million Hungarian forints and the amount of unpaid tax which they owed; [such information] was to be published in a manner which was common in

the local area. The Rules of Taxation Act prescribes the precondition for publishing the data, and how [such data should be published].

According to the President of the National Authority for Data Protection and Freedom of Information, the publication of the data on the website of the local government is not in compliance with the legislative provisions. With any publication in relation to the activities of the local tax authority, it has to be borne in mind that tax income in the budget of the local government concerns the community of the local electorate, and publication – according to the aim of the legislature – should only take place in the manner which is common in the local area. Publication in a manner which is common in the local area means that it is the community of the local electorate that is being informed about the published data, for example via the noticeboard of the mayor's office. The purpose of the legislative amendment was to influence the life of the local community. [Publication via the] Internet is not publication in a manner which is common in the local area, since data published on the World Wide Web can be accessed around the world. Such publication goes beyond what the legislature intended in respect of the local community.

The President of the National Authority for Data Protection and Freedom of Information calls on local tax authorities to remove the data of private individuals from their websites and refrain from such publications in the future. Moreover, it calls public notaries' attention to the plausible solution of providing private individuals with a grace period for the repayment of their tax debts, if need be by means of a tax rollover."

14. For the relevant international legal material, see the Court's judgment in *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* ([GC], no. 931/13, §§ 55, 59-62, 67-68, and 73-74, 27 June 2017).

15. The relevant parts of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (hereinafter "the Data Protection Convention"), which entered into force on 1 February 1998 in respect of Hungary and is currently being updated, read as follows:

Article 2 – Definitions

"For the purposes of this Convention:

'personal data' means any information relating to an identified or identifiable individual ('data subject');

..."

Article 5 – Quality of data

"Personal data undergoing automatic processing shall be:

a. obtained and processed fairly and lawfully;

b. stored for specified and legitimate purposes and not used in a way incompatible with those purposes;

c. adequate, relevant and not excessive in relation to the purposes for which they are stored;

d. accurate and, where necessary, kept up to date;

e. preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored."

Article 9 – Exceptions and restrictions

"1. No exception to the provisions of Articles 5, 6 and 8 of this Convention shall be allowed except within the limits defined in this article.

2. Derogation from the provisions of Articles 5, 6 and 8 of this Convention shall be allowed when such derogation is provided for by the law of the Party and constitutes a necessary measure in a democratic society in the interests of:

a. protecting State security, public safety, the monetary interests of the State or the suppression of criminal offences;

b. protecting the data subject or the rights and freedoms of others."

THE LAW

I. PRELIMINARY REMARKS

16. The Court notes at the outset that the case at issue does not concern the republication of the applicant's personal data by an online news outlet in the form of a "tax defaulters' map" (see paragraph 6 above), or the subsequent accessibility of the applicant's personal data through links in the list of results displayed by online search engines, but merely the publication of such data on the website of the Tax Authority. The Court acknowledges that it is primarily because of the subsequent republication of the tax defaulters' list and because of search engines that the information on the applicant could easily be found by Internet users. Nevertheless, the Tax Authority's actions and its responsibility as regards the initial publication of the information are essentially different from the dissemination of that information by online media outlets or search engines, and this latter aspect (the wider dissemination of that information) does not form part of the present case.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

17. The applicant complained that the publication of his personal data on the Tax Authority's website for his failure to comply with his tax obligations had infringed his right to private life as provided for in 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. Applicability of Article 8

18. Although this has not been disputed by the Government, the Court considers it necessary to address whether, in the circumstances of the present case, the right to privacy under Article 8 of the Convention is engaged in connection with the publication of the applicant's name, home address and tax identification number on the tax defaulters' list and the list of major tax evaders.

19. The Court firstly reiterates that in the particular context of data protection, it has on a number of occasions referred to the Data Protection Convention (see, for example, *Amann v. Switzerland* [GC], no. 27798/95, § 65, ECHR 2000-II). It must be held that within the meaning of Article 2 of the Data Protection Convention, an applicant's name, home address and tax identification number – as information relating to an identified or identifiable natural person – constitute "personal data" (see paragraph 15 above).

20. In determining whether the personal data published by the Tax Authority related to the applicant's enjoyment of his right to respect for private life, the Court will have due regard to the specific context (see *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 67, ECHR 2008).

21. The Court also reiterates that the concept of "private life" is a broad term not susceptible to exhaustive definition (ibid., § 66, and *Vukota-Bojić v. Switzerland*, no. 61838/10, § 52, 18 October 2016). It is well established in the Court's case-law that private life also includes activities of a professional or business nature (see *Niemietz v. Germany*, 16 December 1992, § 29, Series A no. 251-B) or the right to live privately, away from unwanted attention (see *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 95, ECHR 2003 IX (extracts)). The concept can embrace multiple aspects of a person's identity, including a person's name. It also covers personal information which individuals can legitimately expect should not be published without their consent (see *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012).

22. It follows from well-established case-law that where there has been compilation of data on a particular individual, processing or use of personal data or publication of the material concerned in a manner or degree beyond that normally foreseeable, private life considerations arise. The protection of personal data is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life, as guaranteed by Article 8 of the Convention. The domestic law must afford appropriate safeguards to prevent any such use of personal data as may be inconsistent with the guarantees of this Article. Article 8 of the Convention thus provides for the right to a form of informational self-determination, allowing individuals to rely on their right to privacy as regards data which, albeit neutral, are

collected, processed and disseminated collectively and in such a form or manner that their Article 8 rights may be engaged (see *SatakunnanMarkkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, §§ 136-37, 27 June 2017, with further references). As the Court held in that judgment, providing details of the taxable earned and unearned income of individuals, as well as their taxable net assets, clearly concerned their private life (ibid. § 138).

23. The Court notes that in the present case the Tax Authority published personal data in connection with the applicant's failure to contribute to public revenue, which could arguably be considered conduct that may be recorded or reported in a public manner (see *P.G. and J.H. v. the United Kingdom*, no. 44787/98, § 57, ECHR 2001-IX). Nonetheless, in the light of the consideration that such data provided information on the applicant's economic situation, and on the basis of the Court's case-law under Article 8, the Court considers that the data published by the Tax Authority related to the applicant's private life (see *Lundvall v. Sweden*, no. 10473/83, Commission decision of 1 December 1985, Decisions and Reports (DR) 45, p. 131). In this context, it is of no relevance whether the published data concerned unpaid tax on activities of a professional nature.

24. Furthermore, it has not been disputed that the measure involved the publication of the applicant's home address, which, in line with the Court's case-law, constitutes personal data and personal information entailing the protection of the right to private life (see *Alkaya v. Turkey*, no. 42811/06, § 30, 9 October 2012).

25. Having regard to the foregoing, the Court finds that Article 8 is applicable in the present case.

2. The Government's objection regarding non-exhaustion of domestic remedies

26. The Government argued that the applicant could have requested from the data controller the erasure of his personal data under section 14(c) of the Data Protection Act (see paragraph 11 above). In their view, in the event of his request being refused, he could have challenged the decision of the data controller before the courts or before the Data Protection Authority. They concluded by stating that the applicant had failed to exhaust the domestic remedies available under domestic law.

27. The applicant submitted that the Government had failed to show that a request based on section 14(c) of the Data Protection Act would have been an effective remedy. He argued that the erasure of personal data on the basis of this provision could only be requested if processing had been unlawful, whereas in his case the publication of his personal data had been prescribed by the Tax Administration Act. Thus, the legal avenue suggested by the Government could not remedy his situation.

28. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention requires applicants first to use the remedies provided by the national legal system, thus exempting States from answering before the European Court for their acts before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption that the domestic legislative system provides an effective remedy in respect of an alleged breach. The burden of proof is on the Government claiming non-exhaustion to satisfy the Court that an effective remedy was available both in theory and practice at the relevant time, that is to say that the remedy was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from the requirement (see *Tiba v. Romania*, no. 36188/09, § 21, 13 December 2016, with further references).

29. Turning to the present case, the Court notes that section 17 of the Data Protection Act, as in force at the material time, provided for the erasure of personal data upon a data subject lodging a request under section 14(c) of the same Act. In terms of section 14(c), a request could be made in relation to data which were not subject to mandatory processing. Mandatory processing was defined in section 5(1)(b) as processing ordered in the public interest by an Act of Parliament or by a local authority exercising powers conferred upon it by an Act of Parliament (see paragraph 11 above).

30. Since the publication of the applicant's personal data was based on section 55(3) and (5) of the Tax Administration Act (see paragraph 9 above) and was thus mandatory, a request for erasure was not applicable in his situation. Under the Data Protection Act, there was no prospect of the applicant having his personal data deleted from the tax defaulters' list. The Court also notes that the Government have not supplied any comparable examples from domestic jurisprudence suggesting that a person in the applicant's situation would have had any prospect of success in challenging the publication of personal data under section 14(c) of the Data Protection Act. The Court therefore does not accept that it would have served any purpose for the applicant to lodge a request for the erasure of his personal data.

31. The Court therefore finds that the remedy relied on by the Government cannot be regarded as effective in the particular circumstances of the applicant's case. In conclusion, the Court dismisses the Government's objection as to the applicant's failure to exhaust domestic remedies.

32. The Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' observations

(a) The applicant

33. In the applicant's submission, the publication of his name on the tax defaulters' list could not be regarded as necessary in a democratic society.

34. The applicant submitted that the main reason behind the publication of his personal data on the tax defaulters' list had been public shaming, which could not be held to be a legitimate aim under Article 8 of the Convention. He made the point that listing tax defaulters in that way deprived them of their dignity. He did not dispute that the stated aim of the legislature had been to deter people from avoiding their tax liability, but he argued that the means chosen was clearly unfit for attaining that objective. Even though his data had become known to the public, it was unlikely that third parties could influence his compliance with the tax regime.

35. As regards the aim of protecting business partners, the applicant argued that failure to pay tax did not necessarily correspond to unreliability in business. He thus contested the Government's argument that such a list was an appropriate method of informing business partners about his non-compliance with tax regulations.

36. Concerning the proportionality of the measure, the applicant submitted that even accepting that the interference with his right to privacy had served a legitimate aim, it had clearly been disproportionate. He invited the Court to have regard to the fact that his personal data had been published online, which had made the data at issue more accessible. Owing to the fact that the publication had appeared on the Tax Authority's website, his personal data had been made accessible around the world to third parties for whom such information had been completely irrelevant. He referred to the circular of the President of the National Authority for Data Protection and Freedom of Information (see paragraph 13 above) in arguing that the method chosen to publish tax defaulters' personal data should correspond to the group of people for whom such information was relevant.

37. Lastly, he argued that even if the information had subsequently been removed from the website of the Tax Authority, it had still been accessible to the public through the list of results displayed by online search engines.

(b) The Government

38. The Government submitted that the interference had been prescribed by law, namely section 55(3) and (5) of the Tax Administration Act.

39. They argued that the interference had pursued the legitimate aim of protecting the economic well-being of the country and the rights of others, that is, the interests of tax defaulters' business partners. They pointed out that the aim of the regulation was to secure the State funds necessary to carry out

State tasks, and to enforce the principle of equal burden sharing. It also intended to inform actual and potential business partners about the liquidity of other economic actors. Therefore, it contributed to the proper functioning of the market economy.

40. The Government emphasised that the measure was proportionate to those stated objectives, since it only concerned taxpayers whose tax debts exceeded HUF 10 million (approximately 30,000 euros), and only if those tax debts had been established by a final decision. In addition, the personal data of the tax defaulters were immediately deleted once they had settled the debts which they owed to the revenue.

41. In the Government's opinion, the measure was also proportionate, since publishing information on tax defaulters on the Internet was the most appropriate means of achieving the objective pursued, particularly in relation to providing easily accessible information for potential business partners. As regards the applicant's argument that the online publication of the tax defaulters' list had led to the republication of his personal data by online media outlets and Internet search engines, the Government pointed out that the applicant could have asked those data processors to delete his personal data or remove the relevant links.

2. The Court's assessment

(a) Whether there was an interference

42. It is established case-law that the release or use by a public authority of information relating to a person's private life amounts to an interference with Article 8 § 1 of the Convention (see *Leander v. Sweden*, 26 March 1987, § 48, Series A no. 116, and *Rotaru v. Romania* [GC], no. 28341/95, § 46, ECHR 2000-V).

43. In the present case, because the information in question became available to third parties, the publication on the Tax Authority's website of data naming the applicant as a tax defaulter (see paragraph 5 above) and subsequently a major tax evader (see paragraph 7 above), and detailing the precise amount of his tax arrears and tax debts, his tax identification number and his home address, constituted an interference with his private life within the meaning of Article 8. In examining whether the interference was justified in the light of paragraph 2 of Article 8, the Court has to assess whether the authorities acted "in accordance with the law", pursuant to one or more legitimate aims, and whether the impugned measure was "necessary in a democratic society" (see *Šantare and Labazņikovs v. Latvia*, no. 34148/07, § 52, 31 March 2016).

(b) In accordance with the law

44. The applicant did not deny that the contested publication of information had had a legal basis in section 55(3) and (5) of the Tax

Administration Act (see paragraph 11 above), and the Court sees no reason to call this into question.

(c) Legitimate aim

45. According to the Government, the aim underpinning the Hungarian legislative policy of making the taxation data of major tax defaulters available was the need to protect the economic well-being of the country and the rights of others (see paragraph 39 above). The applicant contested that argument, and was of the view that the aim of the legislation was public shaming (see paragraph 34 above).

46. The Court is ready to accept that the impugned measures aimed to improve discipline as regards tax payment, and thereby protect the economic well-being of the country. Furthermore, it is apparent from the explanatory note of the Tax Act that the aim of the disclosure provided for by section 55(5) is to protect the particular interests of third parties in relation to persons who owe tax (see paragraph 10 above) by providing them with an insight into those persons' financial situation. It is therefore legitimate for the State to invoke the need to protect the rights and freedoms of others within the meaning of the second paragraph of Article 8.

(d) Necessary in a democratic society

(i) General principles

47. An interference will be considered "necessary in a democratic society" for the achievement of a legitimate aim if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it are "relevant and sufficient" (see *S. and Marper*, cited above, § 101).

48. The Court's case-law indicates that in order to determine the proportionality of a general measure, the Court must primarily assess the legislative choices underlying it. The quality of the parliamentary and judicial review of the necessity of the measure is of particular importance in this respect, including to the operation of the relevant margin of appreciation (see *A.-M.V. v. Finland*, no. 53251/13, § 82, 23 March 2017). The central question as regards such measures is not whether less restrictive rules should have been adopted or, indeed, whether the State could prove that, without the prohibition, the legitimate aim would not be achieved. Rather the core issue is whether, in adopting the general measure and striking the balance it did, the legislature acted within the margin of appreciation afforded to it (see, *mutatis mutandis, Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 110, ECHR 2013 (extracts)). Other factors to be taken into account in assessing the compatibility of a legislative scheme involving the imposition of restrictive measures in the absence of an individualised assessment of an individual's conduct is the severity of the measure involved

and whether the legislative scheme is sufficiently narrowly tailored to address the pressing social need it seeks to address in a proportionate manner (see *Polyakh and Others v. Ukraine*, nos. 58812/15 and 4 others, § 293, 17 October 2019, with further references). The application of the general measure to the facts of the case remains illustrative of its impact in practice, and is thus material to its proportionality (see, for example, *James and Others v. the United Kingdom*, 21 February 1986, § 36, Series A no. 98).

49. A wide margin is usually allowed to the State under the Convention when it comes to general measures of economic or social strategy (see *Dubská and Krejzová v. the Czech Republic* [GC], nos. 28859/11 and 28473/12, § 179, 15 November 2016). Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the public interest on social or economic grounds, and the Court will generally respect the legislature's policy choice unless it is "manifestly without reasonable foundation" (see, among other authorities, *Stec and Others v. the United Kingdom* [GC], nos. 65731/01 and 65900/01, § 52, ECHR 2006-VI, and *Dickson v. the United Kingdom* [GC], no. 44362/04, § 78, ECHR 2007-V). There will also usually be a wide margin accorded if the State is required to strike a balance between competing private and public interests or Convention rights (see *S.H. and Others v. Austria* [GC], no. 57813/00, § 94, ECHR 2011).

50. On the other hand, the Court also has regard to the essential role played by personal data protection in safeguarding the right to respect for private life as guaranteed by Article 8 (see *G.S.B. v. Switzerland*, no. 28601/11, § 90, 22 December 2015). The Court's case-law indicates that the protection afforded to personal data depends on a number of factors, including the nature of the relevant Convention right, its importance to the person in question, and the nature and purpose of the interference. According to the judgment in *S. and Marper* (cited above, § 102), the margin will tend to be narrower where the right at stake is crucial to the individual's effective enjoyment of intimate or key rights. Where a particularly important facet of an individual's existence or identity is at stake, the margin allowed to the State will be restricted (see *S.H. and Others*, cited above, § 94).

(ii) Application to the present case

51. In the present case, the Court must consider whether the State can be said to have struck a fair balance between the applicant's interest in protecting his right to privacy, and the interest of the community as a whole and third parties, as invoked by the Government.

52. In its assessment, the Court will have due regard to the specific context in which the information at issue was made public. The Court finds it important that the impugned measure was implemented in the framework of the State's general tax policy. It is relevant to note at this point the

instrumental role of taxes in financing State apparatus, but also in implementing the economic and social policy of the State in a broader sense. The Court acknowledges the difficulties in establishing whether the publication of tax defaulters' data actually tackled tax evasion and revenue losses. The Government argued that it did (see paragraph 39 above), and the applicant disagreed (see paragraph 34 above). The Court does not find it unreasonable that the State considers it necessary to protect its general economic interest in collecting public revenue by means of public scrutiny aimed at deterring persons from defaulting on their tax obligations.

53. In addition to the economic interests of the country as a whole in a functioning tax system, the Government also referred to the protection of the economic interests of private individuals, that is, potential business partners (see paragraph 39 above). The Court sees no reason to call into question the idea that any person wishing to establish economic relations with others has a specific interest in obtaining information relating to another person's compliance with his or her tax obligations, and ultimately his or her suitability to do business with, particularly when tax avoidance persists for an extended period of time. Since access to such information also has an impact on fair trading and the functioning of the economy, the Court is ready to accept that the disclosure of the list of persons who owed a large amount of tax had an information value for the public on a matter of general interest. Such publication did not concern a purely private matter (see, *mutatis mutandis*, *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 194, 8 November 2016) or an issue merely satisfying public curiosity (see *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 110, ECHR 2012).

54. Based on the above, and bearing in mind the margin of appreciation allowed to States as regards general measures of economic and social strategy, the Court finds that the legislature's choice to make public the identity of persons who fail to respect their tax obligations, in order to improve payment discipline and protect the business interests of third parties, and thereby contribute to the general economy, is not manifestly without reasonable foundation (see the case-law quoted in paragraph 49 above).

55. However, the applicant also took issue with the rationale underlying the legislative choices made as regards the scope of the personal data published and the manner of publication on the Internet. The question thus remains as to whether the impact of the publication in the present case outweighed the above-described justifications for the general measure. In this connection, the Court must have regard to the essential role played by personal data protection in safeguarding the right to respect for private life as guaranteed by Article 8 and the fundamental principles of data protection (see paragraphs 15 and 50 above).

56. The Court notes at the outset that the Tax Administration Act, which was the basis of the impugned measure, provided for the publication of the

personal details of major tax defaulters and major tax evaders. Publication under section 55(3) and section 55(5) of the Tax Administration Act was only authorised in respect of those private individuals whose tax arrears and tax debts exceeded HUF 10 million, which, given the economic realities of contemporary Hungary, cannot be held to be an insignificant amount (see paragraph 9 above). Furthermore, the publication of the personal data of major tax evaders under section 55(5) of the Tax Administration Act was subject to the condition that the affected persons had failed to fulfil their tax obligations over an extended period of time, namely 180 days. The legislation thus drew a distinction between taxpayers, based on relevant criteria. The Court therefore accepts that the measure was circumscribed to address the risk of distortion of the tax system, and the legislature limited any negative effect of such publication to those whose conduct was the most detrimental to revenue (see the case-law quoted in paragraph 48 above).

57. The Court also observes that, as alleged by the Government (see paragraph 40 above) and not contested by the applicant, the personal data of a person who owed a large amount of tax were removed from the Tax Authority's website and the information in question was no longer made available to the general public once the person concerned had paid his or her due taxes. Consequently, the Court is satisfied that the identification of data subjects on the Tax Authority's website was possible for no longer than was necessary for the purposes of publication.

58. The Court notes that the disputed publication concerned the applicant's name, home address, tax identification number and the amount of unpaid tax which he owed. While these data cannot be considered intimate details linked to the applicant's identity, they still provided quite comprehensive information about him. Furthermore, despite the fact that the applicant's home address might have been publicly available in any event (for example, from telephone directories), his interest in the protection of his right to respect for his private life was still engaged by the disclosure of his home address along with the other information. Furthermore, it is important to emphasise at this point that the publication of personal data, including a home address, can have significant effects or even serious repercussions on a person's private life (see, *mutatis mutandis*, *Alkaya*, cited above, §§ 29 and 39).

59. In the circumstances of the present case, the Court accepts that the list of tax defaulters and tax evaders would have been pointless if it had not allowed for the identification of the taxpayers in question. While it is true that a name is one of the most common means of identifying someone, in the present context, it is clear that the communication of a taxpayer's first name and surname only would not have made it possible to distinguish him or her from other individuals. The publication of those personal data would not have been sufficient to fulfil the publication's purpose of facilitating public scrutiny of tax evasion. Moreover, a list restricted to taxpayers' names would

have been likely to provide inaccurate information and entail ramifications for persons bearing the same name.

60. Therefore, the Court does not call into question the legislature's view that, in the circumstances, a combination of identifiers was necessary to ensure the accuracy and efficacy of the scheme. The legislature cannot be criticised for the fact that in order to provide accurate information on tax evaders, it chose a person's home address as additional identifying information. Besides, the applicant did not suggest, and the Court does not find, that the publication of any identifying data other than those at issue would have been manifestly less onerous, or would have constituted a less intrusive interference with his right to respect for his private life.

61. The Court further notes the applicant's argument that the information about him was published on the Internet and made available to an unnecessarily large audience, potentially worldwide (see paragraph 36 above).

62. It is important to emphasise at this point the Court's well-established case-law holding that the risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms, particularly the right to respect for private life, is certainly higher than that posed by the press (see, *inter alia*, *Egill Einarsson v. Iceland*, no. 24703/15, § 46, 7 November 2017).

63. In the present case, it must be acknowledged that the publication of information concerning unpaid taxes subjects a taxpayer to public scrutiny, scrutiny which increases in proportion to the extent of the publicity. Uploading the applicant's personal data to the Tax Authority's website made those data accessible to anyone who connected to the Internet, including people in another country.

64. On the other hand, the Court finds force in the Government's argument that widespread public access to the data concerned was necessary for the efficacy of the scheme (see paragraph 41 above). While recognising the importance of the rights of a person who has been the subject of content available on the Internet, these rights must also be balanced against the public's right to be informed (see *M.L. and W.W. v. Germany*, nos. 60798/10 and 65599/10, § 104, 28 June 2018). In the present case, the purpose and the principal effect of publication were to inform the public, and the main reason for making such data available on the Internet was to make the information easily available and accessible to those concerned, irrespective of their place of residence.

65. The Court finds that the applicant's reliance in this regard on the circular issued by the National Authority for Data Protection and Freedom of Information (see paragraph 36 above) is to no avail. That document was issued in respect of persons who owned unpaid local tax to the local government, and was of relevance to only the local community (see paragraph 13 above). However, in the present case, the publication was

intended to provide the general public with an insight into the state of tax defaulters' debt. It corresponded to everyone's interest in knowing who owed money to the central revenue and the whole community.

66. It is also clear that the reach and thus potential impact of a statement released online with a small readership is certainly not the same as that of a statement published on mainstream or highly visited web pages (see *Savva Terentyev v. Russia*, no. 10692/09, § 79, 28 August 2018; contrast *Delfi AS v. Estonia* [GC], no. 64569/09, § 117, ECHR 2015).

67. In the present case, the fact alone that access to the list was not restricted did not necessarily mean that the list drew much public attention: amongst other things, an individual seeking the information had to take the initial step of going to the Tax Authority's website, proceeding to the tax defaulters' or tax evaders' list, and then looking up the desired information.

68. Furthermore, the Court has doubts as to whether the list of tax defaulters and tax evaders, appearing in Hungarian on the website of the Tax Authority, would have attracted public attention – worldwide – from persons other than those concerned. On the contrary, more than any other form of publication, publication by means of a portal designated for tax matters ensured that such information was distributed in a manner reasonably calculated to reach those with a particular interest in it, while avoiding disclosure to those who had no such interest.

69. The Court also finds it relevant that the Tax Authority's website did not provide the public with a means of shaming the applicant, for example, a way of posting comments underneath the lists in question.

70. Finally, the Court cannot but note that although the applicant referred to the general public-shaming effect of appearing on the list (see paragraph 34 above), his submissions contained no evidence or reference to personal circumstances indicating that the publication of his personal data on the tax defaulters' and tax evaders' list had led to any concrete repercussions on his private life. In the Court's view, in the circumstances of the present case, making the information in question public could not be considered a serious intrusion into the applicant's personal sphere. It does not appear that making his personal data public placed a substantially greater burden on his private life than was necessary to further the State's legitimate interest.

71. Given the specific context in which the information at issue was published, the fact that the publication was designed to secure the availability and accessibility of information in the public interest, and the limited effect of the publication on the applicant's daily life, the Court considers that the publication fell within the respondent State's margin of appreciation.

72. It follows that there has been no violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

73. The applicant alleged that no effective remedy was available in domestic law enabling him to assert before the domestic courts his complaint concerning the publication of his personal data. He relied on Article 13 of the Convention, which provides:

> "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."

74. The Court reiterates that Article 13 does not go so far as to guarantee a remedy allowing a Contracting State's laws as such to be challenged before a national authority on the ground of being contrary to the Convention (see *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 94, ECHR 2013 (extracts)).

75. In essence, the applicant's complaint related to provisions in the applicable legal regime providing for the publication of personal data, namely section 55(3) and (5) of the Tax Administration Act (see paragraph 9 above). It cannot be considered that Article 13 of the Convention required the provision of a remedy to challenge that regime.

76. Consequently, this complaint is manifestly ill-founded and as such must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaint concerning Article 8 of the Convention admissible, and the remainder of the application inadmissible;

2. *Holds*, by five votes to two, that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 12 January 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Registrar

Yonko Grozev
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint dissenting opinion of Judges Ravarani and Schukking is annexed to this judgment.

Y.G.
A.N.T.

JOINT DISSENTING OPINION OF JUDGES RAVARANI AND SCHUKKING

With regret, we cannot agree with the majority's finding that there has been no violation of Article 8 of the Convention in the present case.

1. ***Points of agreement.*** We actually agree on many points with the majority. We agree that Article 8 is applicable to the publishing of the applicant's home address on the Government's website as it "constitutes personal data and personal information entailing the protection of the right to private life" (see paragraph 24 of the judgment). We also subscribe to the statement that "because the information in question became available to third parties, the publication on the Tax Authority's website of data naming the applicant as a tax defaulter ... and subsequently a major tax evader ..., and detailing the precise amount of his tax arrears and tax debts, his tax identification number and his home address, constituted an interference with his private life within the meaning of Article 8" (see paragraph 43 of the judgment).

2. Whereas we have serious reservations as to the legitimacy of one of the aims of the publication, namely – under cover of protecting the well-being of the country and equal burden sharing, which are obviously legitimate purposes (see paragraphs 39 and 45 of the judgment) – to deter people from defaulting on their tax obligations by means of public scrutiny, which we consider to be a kind of modern pillory (see paragraph 52 *in fine* of the judgment), we do not challenge the legitimacy of the purpose of protecting the interests of third parties, more precisely potential business partners who may have a legitimate aim in being informed about the liquidity of potential business partners (see paragraphs 39 and 45-46 of the judgment).

3. Lastly, we do not dispute that when balancing the public and private interests at stake, the State could not be blamed for publicising to a certain extent, within its general tax policy, the identity of persons who failed to respect their tax obligations (see paragraph 54 of the judgment). Thus, we ultimately do not challenge the Hungarian State's choice to make public, for a certain period (until final payment of the tax debts and arrears), the identity of major tax defaulters (owing more than 10 million forints).

4. ***The point of disagreement.*** The only – but weighty – point where we disagree is on the scope of the personal data published and on the manner of publication. While we can go along with the publication of those tax defaulters' names, tax identification numbers and amount of unpaid taxes, we are unable to follow the majority in their approval of the publication, on the Government's website, of the home address of these persons. Our disagreement is thus twofold: we consider it unnecessary to have published the applicant's home address and, moreover and even more importantly, to have published it on the internet.

5. ***Publication of the applicant's home address.*** The majority agree that the publication of personal data, including a home address, "can have significant effects or even serious repercussions on a person's private life" (see paragraph 58 of the judgment). They accept, however, that such publication was the only means to distinguish him from other tax payers and to avoid providing inaccurate information and entailing ramifications for persons bearing the same name (see paragraph 59 of the judgment).

6. There we disagree. As to the – doubtful – deterrent effect, one should show some realism. Where people do not even know an individual, they will not "identify" him or her merely by the inclusion of their home address. However, if they are known – publicly or individually – the name in itself is sufficient to identify who is being dealt with. It is true that there are homonyms and perhaps more in one country than in another. But here too, the same reasoning as developed above applies: those who are really interested will easily find out who is actually being targeted.

7. As to the – admissible – purpose of allowing potential business partners to better assess the financial morality of future trading parties, the former, once informed of the latter's names, will have no difficulty in identifying them precisely, through further research or simply via the – published – tax identification number.

8. With regard to the last argument, drawn from the fact that home addresses are publicly available from, for example, telephone directories, this argument can easily be turned around: if they are so easily accessible, there is no need to publish them elsewhere.

9. In sum, the publication of his home address was in our view not needed to identify the applicant and thus to achieve the objective of the law. Its publication therefore does not sit well with the principle of "data minimisation".

10. ***Publication on the internet.*** What ultimately triggered our dissent was the fact that the personal data, especially the home address, were published on the internet. There is no need to paraphrase the immense multiplicative effect of any piece of information published on the internet, combined with search engines. The Court has emphasised in its case-law, as the majority themselves recognise (see paragraph 62 of the judgment), that the risk of harm posed by content and communications on the internet to the exercise and enjoyment of human rights and freedoms, particularly the right to respect for private life, is certainly higher than that posed by the press (see, *inter alia*, *Egill Einarsson v. Iceland*, no. 24703/15, § 46, 7 November 2017).

11. ***Publication of the personal data on the Government's website.*** First, the publication on the Government's website is in itself problematic. We are far from convinced that such publication was necessary in order to make the information easily available and accessible to those concerned, irrespective of their place of residence. What is particularly problematic is the reference to "those concerned" (see paragraph 64 of the judgment) because the

judgment does not specify who is really supposed to be interested in the information provided. If it is to ensure greater impact for the "shaming" effect, beyond the fact that this is a largely unavowable goal (paragraph 69 of the judgment discloses the majority's uneasiness with that concept), it does not even achieve this aim efficiently, because except for people who are known nationwide – and who are identifiable by their names alone – people's addresses are, in the specific circumstances of pointing at tax defaulters, only relevant in a restricted geographical area where people can and want to put a face to a certain name. If the aim is to provide nationwide or even worldwide coverage of the information to those who might be interested in carrying out business with them, the latter have at their disposal many other efficient means to identify those who are unworthy of trust and certainly, as stated before, identifying such individuals on the Government's website by their name and tax identification number would have sufficed to achieve such objective. Ultimately the majority themselves acknowledge "the difficulties in establishing whether the publication of tax defaulters' data actually tackled tax evasion and revenue losses" (see paragraph 52 of the judgment). So much for necessity.

12. ***Republication of the personal data by third parties.*** Secondly, it is in our view inaccurate to hold that the scope of the case excludes any potential republication of the applicant's personal data by third parties and that the responsibility of the tax authorities is limited to the initial publication (see paragraph 16 of the judgment). The truth is that it is perfectly foreseeable and even probable that such precious "gossip" will interest a certain public and will therefore find a publisher or disseminator who will ensure wide and popular coverage. In fact, this concern is far from a theoretical one, as less than a month after the appearance of the impugned information on the Governments website an online media outlet produced an interactive map called "the national map of tax defaulters", on which the applicant's home address, along with the addresses of other tax defaulters, was indicated with a red dot, and if a person clicked on the dot the applicant's personal information – name and home address – appeared (see paragraph 6 of the judgment). The Tax Authority certainly could and should have foreseen this excessive coverage and it bears the responsibility, not for the actual republishing of the data, but for having enabled or even fostered it. In this context, it is difficult to follow the majority's reasoning in asserting that "the reach and thus potential impact of a statement released online with a small readership is certainly not the same as that of a statement published on mainstream or highly visited web pages" (see paragraph 66 of the judgment) and that it was doubtful, given the need to take the initial step to go on the Tax Authority's website, that the list drew much attention (see paragraph 67 of the judgment). This statement, as well as the assertion that there are doubts as to whether the list of tax evaders appearing on the Tax Authority's website would have attracted worldwide public attention from persons other than

those concerned, is contradicted by the facts of the case and contradictory in itself: if, by nature, the information does not attract much attention, then its shaming effect – put forward by the Government and acknowledged by the majority – is not attained and in that case, it is all the less necessary to provide the "interested" public with the tax defaulters' home addresses.

13. It appears sanctimonious to state that the applicant had not demonstrated concrete repercussions on his private life. Such evidence is extremely difficult to adduce and it usually remains in the moral sphere, where the concrete impact of such a measure is simply impossible to measure objectively. This could have been dealt with easily via the amount of compensation awarded in respect of non-pecuniary damage; it would also have been possible to find a violation of Article 8 and to consider this finding sufficient in terms of compensation.

14. Furthermore, in the context of the republishing of the impugned personal data, the deletion of the data of the tax defaulters who had paid their outstanding tax debts from the Tax Authority's website (see paragraph 40 of the judgment) is, in our view, totally irrelevant. As a matter of fact, there is no "right to be forgotten" once one has been caught in the "web of the internet".

15. ***Potential serious consequences.*** Finally, publishing an individual's home address on the internet can trigger dramatic consequences. The case of *Alkaya v. Turkey* (no. 42811/06, 9 October 2012) is a very telling example. If the home addresses of defaulters who have not paid a substantial amount of taxes, approximatively 30,000 euros, are made public, one does not need an overactive imagination to suppose that those who appear on that list will be considered wealthy and will run an increased risk of being the victims of burglary.

16. ***Conclusion.*** To conclude, it is the lack of necessity in the means used to attain the partially doubtful purpose, and the very serious – and potentially dangerous – intrusion into the applicant's private life, that lead us to conclude that the domestic authorities, and ultimately the majority, conducted an unsatisfactory balancing exercise between the respective interests at stake. We have reached the conclusion that the proportionality assessment should have led to a finding of a violation of Article 8 of the Convention.