



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

Legal summary

March 2023

L.B. v. Hungary [GC] - 36345/16

Judgment 9.3.2023 [GC]

Article 8

Article 8-1

Respect for private life

Unjustified publication of applicant's identifying data, including home address, on tax authority website portal, for failing to fulfil his tax obligations: *violation*

Facts – In accordance with the 2003 Tax Administration Act, the National Tax and Customs Authority published the applicant's personal data (including his name and home address) on its website: initially on a list of major tax defaulters, pursuant to section 55(3) of the Act, and subsequently on a list of major tax debtors, pursuant to section 55(5). Introduced as a tool to tackle non-compliance with tax regulations, the systematic and mandatory publication of major tax debtors' personal data applied to all taxpayers who, at the end of the quarter, owed more than 10 million Hungarian forints (approximately EUR 28,000) in tax for a period longer than 180 consecutive days.

In a judgment of 12 January 2021 (see [Legal Summary](#)) a Chamber of the Court held, by five votes to two, that there had been no violation of Article 8 finding that in the circumstances of the case, making the applicant's personal data public had not placed a substantially greater burden on his private life than had been necessary to further the State's legitimate interest.

On 31 May 2021 the case was referred to the Grand Chamber at the applicant's request.

Law –

(a) *Scope of the case* – The Grand Chamber's examination of the case was limited to the second publication of the applicant's personal data on the list of major tax debtors as the first publication on the list of major tax defaulters had terminated more than six months before the lodging of his application before the Court. Further, as delimited by the Chamber's admissibility decision, the Grand Chamber could not entertain the applicant's complaints about his personal data becoming subsequently accessible through the search interface of the Tax authority's website and its republication by an online newspaper in the form of a "national map of tax debtors".

(b) *Article 8* –

(i) *Whether there was an interference prescribed by law* – In the light of the Court's case-law on Article 8, data such as the applicant's name and home address processed and published by the Tax Authority for failing to fulfil his tax payment obligations, had clearly concerned information about his private life. Even though the data was classified as information in the public interest under Hungarian law they were not thereby

excluded from the guarantees for the protection of the right to private life. Moreover, even if the effects of appearing on the list of major tax debtors had not been proved to be substantial, certain negative repercussions could not be excluded. Accordingly, the impugned publication might be considered to have entailed interference with the applicant's right to respect for his private life. That interference had been "in accordance with the law", namely section 55(5) of the 2003 Tax Administration Act.

(ii) *Legitimate aim* – In the first place, the public disclosure of major tax debtors' data had pursued the "interests of ... the economic well-being of the country". Indeed, the measure had been in principle aimed at bringing about improvements in tax discipline through its deterrent effect and might have been capable of achieving this aim. Secondly, by providing third parties with insight into the fiscal situation of tax debtors, the measure had served the transparency and reliability of business relations and thereby "the protection of the rights and freedoms of others".

(ii) *Necessary in a democratic society* – The main question in the present case was whether a correct balance had been struck between, on the one hand, the above legitimate aims and interests and, on the other hand, the interest of private individuals in protecting certain forms of data retained by the State for tax collection purposes.

Scope and operation of the margin of appreciation –

The disputed publication had not been a matter of individual decision by the Tax Authority but had fallen within the scheme set up by the legislature. As the Court had not previously been called on to consider whether, and to what extent, the imposition of a statutory obligation to publish taxpayers' data, including the home address, had been compatible with Article 8, the Court examined the scope and operation of the margin of appreciation available to the State when regulating questions of that nature. In this context, it considered the general principles deriving from its case-law on the right to privacy under Article 8, particularly those concerning data protection as well as the principles concerning general measures and the quality of parliamentary review. In that connection, the Court had repeatedly held that the choices made by the legislature were not beyond its scrutiny and had assessed the quality of the parliamentary and judicial review of the necessity of a particular measure.

The Court further had regard to the degree of consensus at national and European level was pertinent. According to the comparative-law survey, in twenty-one of the thirty-four Contracting States surveyed the public authorities might, and in some cases must, disclose publicly the personal data of taxpayers who failed to comply with their payment obligations, subject to certain conditions. At the same time, although within the former group there was great diversity under national legislations as to the scope of the data published and the preconditions for publication, including the amount of unpaid tax debt and the length for which tax debts should be outstanding prior to publication, a majority of the States in that group provided unrestricted access to taxpayer information. Furthermore, only eight of the States surveyed disclosed the home address of taxpayers, while an additional two indicated their municipality of residence.

Taking all the above factors into account, the Court found that the Contracting States enjoyed a *wide* margin of appreciation when assessing the need to establish a scheme for the dissemination of personal data of taxpayers who failed to comply with their tax payment obligations, as a means, among others, of ensuring the proper functioning of tax collection as a whole. However, the discretion enjoyed by States in this area was not unlimited. In this context, the Court must be satisfied that the competent domestic authorities, be it at a legislative, executive, or judicial level, performed a proper balancing exercise between the competing interests and, at least in substance, had due regard not only to (i) the public interest in dissemination of the information in question, but also to (ii) the nature of the disclosed information; (iii) the repercussions on and risk

of harm to the enjoyment of private life of the persons concerned ; (iv) the potential reach of the medium used for the dissemination of the information, in particular, that of the Internet; and also to (v) the basic data protection principles (as set out in the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data), including those on purpose limitation, storage limitation, data minimisation and data accuracy. In this connection, the existence of procedural safeguards might also play an important role.

Whether the chosen statutory scheme remained within the State's margin of appreciation –

An important feature of the mandatory publication scheme had been that the Hungarian Tax Authority had no discretion under domestic law to review the necessity of publishing taxpayers' personal data. Regardless of the existence or not of any subjective fault or other individual circumstances, publication was mandatory and any tax debtors meeting the objective criteria in section 55(5) were systematically identified by their name as well as their home address on the list published by the Tax Authority on its website. The information was published as long as the debt had not been settled or until it was no longer enforceable. In other words, the publication policy as set out in the 2003 Tax Administration Act did not require a weighing-up of the competing individual and public interests or an individualised proportionality assessment by the Tax Authority.

The choice of such a general scheme was not in itself problematic, nor was the publication of taxpayer data as such. The Court, however, had to assess the legislative choices which lay behind the impugned interference and whether the legislature had weighed up the competing interests at stake, given the inclusion of personal data such as a home address. In that context the quality of the parliamentary review of the necessity of the interference had been of central importance in assessing the proportionality of a general measure. In this regard, the central question was not whether less restrictive rules should have been adopted but whether the legislature had acted within the margin of appreciation afforded to it in adopting the general measure and striking the balance it did.

In the present case, there had been no assessment of the likely effects on taxpayer behaviour of the publication schemes that had already existed, notably the section 55(3) scheme (tax defaulters), or any reflection as to why those measures had been deemed insufficient to achieve the intended legislative purpose or as to the potential complementary value of the section 55(5) scheme (tax debtors), aside from the evident fact that certain negative repercussions as to the reputation of the person concerned might follow from being identified as a major tax debtor on the impugned list. In particular, it did not emerge that Parliament had assessed to what extent publication of all the elements of the section 55(5) list, most notably the tax debtor's home address, had been necessary to achieve a deterrent effect, as suggested by the Government, in addition to that of tax defaulters identified on a separate list pursuant to section 55(3). Further, there was no evidence that consideration had been given to the impact of the section 55(5) publication scheme on the right to privacy, and in particular the risk of misuse of the tax debtor's home address by other members of the public. Nor did it appear that consideration had been given to the potential reach of the medium used for the dissemination of the information in question, namely the fact that the publication of personal data on the Tax Authority's website implied that irrespective of the motives in obtaining access to the information anyone, worldwide, who had access to the Internet also had unrestricted access to information about the name as well as the home address of each tax debtor on the list, with the risk of republication as a natural, probable and foreseeable consequence of the original publication.

Thus, in so far as it could be said that publication of that list corresponded to a public interest, Parliament did not appear to have considered to what extent publication of all

the data in question, and in particular the tax debtor's home address, had been necessary in order to achieve the original purpose of the collection of relevant personal data in the interests of the economic well-being of the country. Given the rather sensitive nature of such information, sufficient parliamentary consideration had been particularly important in the facts of the case. Data protection considerations seemed to have featured little, if at all, in the preparation of the section 55(5) publication scheme, despite the growing body of binding national and EU data protection requirements applicable in domestic law.

While the Court accepted that the legislature's intention had been to enhance tax compliance, and that adding the taxpayer's home address ensured accuracy in the information being published, it did not appear that the legislature had contemplated taking measures to devise appropriately tailored responses in the light of the principle of data minimisation.

Consequently, given the systematic publication of taxpayer data, which included taxpayers' home addresses, the Court was not satisfied, notwithstanding the margin of appreciation of the respondent State, that the reasons relied on by the Hungarian legislature in enacting the section 55(5) publication scheme, although relevant, had been sufficient to show that the interference complained of had been "necessary in a democratic society" and that the authorities of the respondent State had struck a fair balance between the competing interests at stake.

Conclusion: violation (fifteen votes to two).

Article 41: The finding of a violation constituted sufficient just satisfaction in respect of any non-pecuniary damage sustained.

(See also *Animal Defenders International v. the United Kingdom* [GC], 48876/08, 22 April 2013, [Legal Summary](#); *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 931/13, 27 June 2017, [Legal Summary](#))

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