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

FIRST SECTION

CASE OF BORONYÁK v. HUNGARY

(Application no. 4110/20)

JUDGMENT

Art 10 • Positive obligations • Freedom of expression • Imposition of a fine on an actor for having disclosed confidential information about the terms of his contract, in particular his fees, with a private production company • Existence of adequate mechanisms to ensure public's access to information in question irrespective of non-disclosure clause • Public entities managing central budget under a statutory obligation to disclose such data upon request • Relevant and sufficient reasons • Fair balance struck between interests at stake • Margin of appreciation not overstepped

Prepared by the Registry. Does not bind the Court.

STRASBOURG

20 June 2024

FINAL

20/09/2024

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

In the case of Boronyák v. Hungary,

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

Marko Bošnjak, *President*,
Alena Poláčková,
Krzysztof Wojtyczek,
Lətif Hüseynov,
Péter Paczolay,
Gilberto Felici,
Erik Wennerström, *judges*,
and Ilse Freiwirth, *Section Registrar,*

Having regard to:

the application (no. 4110/20) 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 Gergely Boronyák ("the applicant"), on 23 December 2019;

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

the parties' observations;

Having deliberated in private on 21 May 2024,

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

INTRODUCTION

1. The case concerns the applicant's complaint under Article 10 of the Convention about a fine imposed on him for having disclosed confidential information concerning the terms of his contract with a private company.

THE FACTS

2. The applicant was born in 1978 and lives in Budapest. He was represented by Mr Cs. Tordai, a lawyer practising in Budapest.

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

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

5. On 28 November 2011 the applicant, an actor, concluded an agency contract for an indefinite period with the production company M. to play one of the main characters in a television series. The contract stipulated that the production company was commissioned by the Media Services and Support Trust Fund (*Médiaszolgáltatás-támogató és Vagyonkezelő Alap*, "MTVA", a fund company owned and financed by the Hungarian State) to co-produce the TV series *Marslakók.* The contract specified that the television series was an asset of public service media. The applicant's fee constituted

28,000 Hungarian forints (HUF – approximately 70 euros (EUR)) per episode and a monthly lump sum of HUF 600,000 (approximately EUR 1,500).

6. In accordance with the non-disclosure clause in section 20 of the contract, the applicant agreed not to disclose any confidential business information covered by the agreement, including data and information related to the principal and its partners, its ownership and business connections, to media service activities, programme production, the actors of the series or to any other persons who received fees for their contribution to the series. Under the terms of the agreement, besides any payment of damages, the applicant was to pay a penalty of HUF 10,000,000 (approximately EUR 26,000) if he breached the obligation of confidentiality, unless the production company had agreed to the disclosure of confidential information. The production company retained the right to unilaterally terminate the contract at any time.

7. In 2012, apparently on account of the low interest in the television series, its production was ended, and on 1 August 2012 the production company terminated the applicant's contract.

8. On an unspecified date, atlatszo.hu, an investigative internet portal specialising in publishing public-interest information, in particular about public expenditure, lodged a freedom-of-information action against MTVA, seeking access to information about the production costs of the TV series and the disclosure of various documents pertaining to the termination of the production. The Budapest High Court ordered the release of the information sought and that decision was upheld by the Budapest Court of Appeal in June 2013.

9. On 16 January 2014 the applicant gave a video interview to atlatszo.hu about the fees he had received from the production company. Atlatszo.hu also published an article, based on the interview, about the non-payment of severance fees to the applicant.

10. The production company brought proceedings against atlatszo.hu, seeking a retraction of the statements made in the article of 16 January 2014 about the non-payment of fees owed. On 18 February 2014 the applicant testified as a witness before the Budapest High Court about his contract and its terms.

11. On 17 January 2014 the production company asked the applicant to pay the penalty of HUF 10,000,000 for the breach of his confidentiality obligation. The applicant did not comply with the request and the production company initiated civil proceedings against him for breach of contract by disclosing confidential information in an interview and as a witness in court proceedings.

12. The applicant asked the court to dismiss the action on the grounds that, upon the termination of his contract, his contractual obligations, including those regarding confidentiality, had been discharged. In any event, the information he had disclosed had been public-interest information.

13. On 14 January 2014, the Pest Central District Court found for the production company in full, reasoning that the confidentiality clause bound the applicant even after the termination of his contract. It further considered that although MTVA had been ordered to release budgetary information about the production of the television series, being public-interest information, this had no bearing on the confidential nature of the information divulged by the applicant. Neither the applicant, nor the production company had processed public-interest information under Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information (“the Data Protection and Information Act”). The court ordered the applicant to pay the penalty of HUF 10,000,000 and the production company’s court expenses. The applicant appealed against the judgment.

14. In its judgment of 15 September 2015, the Budapest High Court upheld the first-instance judgment, endorsing its reasoning. The court pointed out that the applicant had agreed to keep business information confidential even if he considered that it constituted public-interest information. The court dismissed the production company’s argument that the publication of confidential business information had affected the feasibility of its operations, but accepted that given the cost, labour, personnel and financial implications of the production, the M. company had a vital interest in keeping that information secret. It found that there was no scope for a lighter penalty, given the serious breach of contractual obligations.

15. The applicant sought a review of the judgment by the *Kúria*, which dismissed the request on 30 June 2016. The *Kúria* reasoned that information relating to the budgets of central and local government did not constitute business secrets. Consequently, entities managing public funds could not rely on the confidentiality of business information to deny access to public-interest information. However, the applicant himself had not been managing public funds, nor had he been processing public information, even if the other party to the contract had been commissioned by a public entity to produce the television series in question. Thus, he could not rely on Article 81 of the Civil Code to release him from his obligation to keep business information confidential.

16. The applicant’s constitutional complaint was dismissed on 18 June 2019 by the Constitutional Court, which held that the Fundamental Law did not exclude the conclusion of non-disclosure agreements between private parties and entities which would otherwise themselves have been under an obligation to disclose public-interest information. The dissemination of public-interest information of this kind by contractual private parties could be restricted by confidentiality obligations to protect business interests.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

17. The relevant parts of the Fundamental Law provide as follows:

Article VI

"...

(3) Everyone shall have the right to the protection of his or her personal data, and also to have access to and to disseminate data of public interest.

..."

Article 39

"...

(2) Every organisation managing public funds shall be obliged to account publicly for its management of those funds. Public funds and national assets shall be managed in accordance with the principles of transparency and integrity in public life. Data relating to public funds or to national assets shall be recognised as data of public interest.

(3) Public funds shall be the revenues, expenditures and claims of the State."

18. Act no. IV of 1959 on the Civil Code, as in force at the material time, provided in so far as relevant as follows:

Article 81

"...

(2) Business secrets shall comprise all facts, information, conclusions or data pertaining to economic activities that, if published or released to or used by unauthorised persons, are likely to imperil the rightful financial, economic or market interest of the owner of such secrets – other than the State of Hungary – provided the owner has taken all of the necessary steps to keep such information confidential.

(3) Any data relating to the central budget; the budget of a local government; the allocation of funds received from the European Communities; any subsidies and allowances in which the budget is involved; the management, processing, use and allocation and restriction of central and local government assets; and the acquisition of any rights in connection with such assets shall not be deemed business secrets, nor shall any data that other specific legislation, in the public interest, classifies as public information. Such publication, however, shall not include any data pertaining to technological procedures, technical solutions, manufacturing processes, work organisation, logistical methods or know-how which, if made public, would be unreasonably detrimental for the business operation to which it is related, provided that withholding such information shall not interfere with the publication of public information in the public interest.

(4) Any person entering into a financial or business relationship with a subsystem of the central budget shall, upon request, supply information in connection with such relationship that is deemed public under subsection (3). Disclosure of information may be made on the website or in the registered publication medium of the entity concerned. In the event of non-compliance or if the information supplied is deemed insufficient by the party requesting it, judicial oversight proceedings may be initiated at the relevant entity."

19. The relevant parts of the Data Protection and Information Act provide as follows:

General rules concerning access to data of public interest
Section 27

"...

(3) Any data relating to the central budget, the budget of a local government, the allocation of European Union financial assistance; any subsidies and allowances in which the budget is involved, the management, processing, use and allocation and restriction of central and local government assets, and the acquisition of any rights in connection with such assets shall be deemed information of public interest, and as such shall not be deemed business secrets, nor shall any data that other specific legislation classifies – in the public interest – as public information.

(3a) A natural or legal person or unincorporated business association entering into a financial or business relationship with a subsystem of the central budget shall, upon request, supply information to any member of the general public in connection with that relationship, which is deemed public under subsection (3). The obligation referred to above may be satisfied by the public disclosure of information of public interest, or, if the information requested has previously been made public electronically, by way of reference to the public source where the data are available.

..."

20. Report no. NAIH/2017/1368/10/V of the National Authority for Data Protection and Freedom of Information ("the Data Protection Authority") was issued in the case of a freedom-of-information request, which sought access to information on the beneficiaries of grants from a foundation established by local and regional governments and funded from the municipal budget. The Data Protection Authority concluded that the foundation was processing public-interest information and could not deny access to such information by relying on the protection of privacy of the beneficiaries. It stated, *inter alia*, that "data accessible on public-interest grounds cannot be kept secret by confidentiality agreements".

21. In its opinion in case no. NAIH/2016/3031/2/V, the Data Protection Authority emphasised that entities funded or managed by the central budget were under an obligation to provide access to information on their expenditure. Therefore, contracts concluded by those entities with private persons involving the use of public funds were considered data of public interest and data accessible in the public interest, save for a narrow set of data, such as know-how.

THE LAW

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

22. The applicant submitted that the penalty imposed on him for having divulged confidential information amounted to a disproportionate

interference with his right to freedom of expression as provided for by Article 10 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers ....
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, ... for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

23. The Court notes that the application 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' submissions

24. The applicant submitted that the imposition of a fine for having disclosed the terms of his contract to the public had been disproportionate. He argued that the national courts had paid no heed to the circumstances of the disclosure or to the fact that the information had been of public interest as it concerned payments from public funds.

25. The applicant highlighted the interpretation of the domestic courts that access to information in the public interest could only be restricted if the disclosure of the information would cause disproportionate harm to the conduct of business. He maintained that the production company had not demonstrated that it had suffered any harm on account of his conduct.

26. He pointed to the resolution of the Data Protection Authority, according to which information concerning contracts that included provisions on public expenditure constituted information in the public interest and was accessible to the public.

27. The applicant further argued that the authenticity of the information had not been questioned by the parties and his motive in making the disclosure had been solely to provide information on a matter of public interest.

28. The applicant also contested the proportionality of the fine. In his opinion the domestic courts had imposed an exceptionally heavy fine of HUF 10,000,000, for the sole reason that it was the amount stipulated in the contract between the parties, but had not considered whether such an amount corresponded to the harm caused by his conduct. Such a harsh penalty hindered transparency and public accountability.

29. The Government submitted that the restriction of the applicant's free speech had been prescribed in the contractual provision which he had voluntarily agreed to, and which had been in compliance with the relevant provisions of the Civil Code on contractual obligations. The restriction had been necessary to protect the interests of third parties and had been proportionate to that aim. They pointed out that the national law guaranteed access to public information pertaining to the management of public funds, and entities managing public funds could not refuse to disclose that information on the basis of confidentiality. However, that provision did not exclude recourse to confidentiality clauses in private-law contracts between private parties to protect confidential business information.

30. The applicant had been bound by the obligation of confidentiality even after the termination of his contract, and even if he had considered that the information in question was information in the public interest, he should have obtained consent from the other contracting party prior to divulging that information.

31. The Government did not consider the penalty imposed on the applicant to be excessive since he had been in breach of an essential contractual obligation.

2. *The Court's assessment*

(a) General principles

32. The basic principles concerning the necessity in a democratic society of interference with the exercise of freedom of expression are well established in the Court's case-law and have been summarised in *Steel and Morris v. the United Kingdom* (no. 68416/01, § 87, ECHR 2005-II), and *Rubins v. Latvia* (no. 79040/12, §§ 75-79, 13 January 2015), among other cases.

33. When considering disputes involving freedom of expression in the context of professional relationships, the Court has found that the protection of Article 10 of the Convention extends to the workplace in general. It has also pointed out that this Article is not only binding in the relations between an employer and an employee when those relations are governed by public law but may also apply when they are governed by private law. Indeed, genuine and effective exercise of freedom of expression does not depend merely on the State's duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals. In certain cases, the State has a positive obligation to protect the right to freedom of expression, even against interference by private persons (see *Halet v. Luxembourg* ([GC], no. 21884/18, § 111, 14 February 2023, with further references).

(b) Application of those principles

34. In the present case the measure complained of by the applicant, namely the imposition of a penalty for breach of contractual obligations, was not taken by a State authority but by a private party and was upheld by the domestic courts. In those circumstances, the Court finds that it is appropriate to examine the case in terms of the positive obligations of the respondent State under Article 10 of the Convention. The Court will therefore ascertain whether, in the present case, the Hungarian judicial authorities, in upholding the claims of the production company M., adequately secured the applicant's right to freedom of expression as guaranteed by Article 10 in the context of contractual relations and balanced it against the right of the M. company to the protection of its commercial interests.

35. The Court finds it relevant to note, with regard to the circumstances of the case, that the applicant had a duty of secrecy and discretion with respect to his contract. However, it does not appear that he was in the position of being the only person, or part of a small category of persons, aware of what was happening at work and thus best placed to act in the public interest by alerting the employer or the public at large. Furthermore, the applicant did not argue that he was seeking to uncover any wrongdoing by the M. company. The Court therefore does not find it necessary to enquire into the kind of issues which have been central to its case-law on whistleblowing (contrast *Halet*, cited above, §§ 116-18).

36. Furthermore, the circumstances of the present case do not concern a subordinate relationship inherent in employment or the exercise of the right to freedom of expression in the light of the specific features of labour law. Nonetheless, the contractual relationship between the applicant and M. was characterised by mutual trust and good faith and entailed reciprocal rights and obligations specific to the professional environment, similar to the employment context. The Court therefore considers it necessary to take into account the specific characteristics of the contractual relationship, including on the one hand a certain discretion owed by the applicant to the M. company, and, on the other hand, his economic reliance on the company.

37. The Court observes that the crucial issue before the domestic courts was whether the applicant remained bound by the confidentiality obligation following the termination of his contract and whether the disclosures he made during the interview in question (see paragraph 9 above) had amounted to a violation of the provisions of the contract.

38. The Court takes note of the fact that in the present case the parties themselves determined the scope of their obligations set out in the agency contract and the applicant voluntarily and knowingly agreed to the non-disclosure clause, waiving his right to release information about the terms of the contract.

39. However, the Court must have regard to the fact that in the present case the voluntary nature of the contract was not the sole factor relied upon

by the domestic courts as justification for allowing the restriction on the applicant's right to freedom of expression. Rather than automatically upholding the confidentiality obligation and the ensuing penalty by relying on the parties' freedom to enter into contracts, the domestic courts analysed the implications of the clause for free speech and the public's access to information of public concern.

40. In reaching their conclusion on the lawfulness of imposing the penalty of HUF 10,000,000 on the applicant, the courts had regard to the applicant's argument that he had shared public-interest information on the spending of public funds. They were of the opinion that even if the television series had been commissioned by a public entity and had been paid for from the central government budget, the applicant was neither the manager of public funds nor the processor of public data and was therefore not obliged by the Data Protection and Information Act to provide access to the information in question.

41. The Court considers that the above reasoning by the domestic courts is relevant in the context of the specific features of contractual relationships, especially when it comes to weighing up the conflicting interests of the contracting parties.

42. As to the question whether those reasons were sufficient for the purposes of Article 10, the Court must take into account the overall background against which the statements in question were made, the public interest in the remarks in issue, their consequences and the severity of the measure taken against the applicant.

43. The applicant relied on the public interest in disclosing information about State budget expenditure as a justification for the publication of certain terms of his contract. The Court considers that such information was undeniably of public interest. Moreover, as it has previously found, the conduct of private parties, such as companies, who also inevitably and knowingly lay themselves open to close scrutiny of their acts can, in certain situations, constitute information of public concern (see *Steel and Morris*, cited above, § 94).

44. However, the disclosure of public-interest information cannot be assessed independently of the duty of confidentiality or of secrecy which has been breached.

45. Moreover, the Court is mindful that the public interest in disclosure of confidential information decreases depending on whether the information disclosed relates to unlawful acts or practices, to reprehensible acts, practices or conduct, or to a matter that sparks a debate giving rise to controversy as to whether or not there is harm to the public (see, for similar reasoning in the context of whistle-blowers, *Halet*, § 140, cited above). It notes, in this connection, the relative weight of the public interest in the information disclosed in the present case, having regard to the fact that it concerned

neither unlawful acts nor reprehensible practices, but merely the individual terms of the applicant's contract.

46. The Court also agrees with the approach of the domestic courts that the justification relied on by the applicant must be assessed in the light of the right of the public to access public-interest information. As the domestic courts pointed out, the non-disclosure clause had not jeopardised the public's access to the information in question. Indeed, pursuant to section 27 of the Data Protection and Information Act, the entities managing the State budget were under a statutory obligation to disclose such data upon request. As demonstrated by the broader context of the case, atlatszo.hu did in fact make use of freedom-of-information proceedings and the domestic courts granted its request, ordering MTVA to release the requested information about the budget of the television series (see paragraph 8 above).

47. Thus, the domestic law has foreseen adequate mechanisms to ensure the public's access to the information in question. The disclosure of confidential information by the applicant was not an indispensable way of securing the availability of information for the purpose of enabling a debate on matters of public interest.

48. As regards the interest which the duty of secrecy intended to protect, the Court has previously accepted that the disclosure of information obtained in the context of an employment relationship could affect private interests, for example by challenging a private company or employer on account of its activities and causing it, and third parties in certain cases, financial and/or reputational damage. In the present case the domestic courts did not find it established that the disclosure in question disrupted the business operations of the M. company. Nonetheless, given the large number of people involved, the high costs, and the considerable time and labour invested in the production of the series, M. had a fundamental interest in keeping business information confidential (see paragraph 14 above). The Court sees no reason to hold otherwise and is ready to accept that confidentiality was, generally speaking, necessary for M.'s business operations.

49. Lastly, the Court reiterates that the nature and severity of the penalty imposed are also factors to be taken into consideration when assessing the proportionality of the interference (see *Wojczuk v. Poland*, no. 52969/13, § 104, 9 December 2021). In the instant case a penalty was imposed on the applicant in an amount equivalent to approximately EUR 26,000. This sum could appear high in view of the circumstances of the disclosure of the information in question. However, the Court cannot but note that the domestic courts examined the possibility to reduce the penalty and dismissed the applicant's corresponding claim relying on the particularly serious nature of breach of contractual obligations.

50. In view of the foregoing, the Court discerns no strong reasons which would require it to substitute its own view for that of the domestic courts and to set aside the balancing exercise they had undertaken (see, *mutatis*

mutandis, *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 107, ECHR 2012). It is satisfied that the disputed interference was supported by relevant and sufficient reasons and that the authorities of the respondent State struck a fair balance between the applicant's interest in free speech, on the one hand, and the M. company's interest in protection of its business secrecy, on the other hand, thus acting within their margin of appreciation (see *Tammer v. Estonia*, no. 41205/98, § 60, ECHR 2001-I, and *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 68, ECHR 2004-XI).

51. Accordingly, there has been no violation of Article 10 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 10 of the Convention.

Done in English, and notified in writing on 20 June 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Registrar	Marko Bošnjak President