



98 per cent tax on part of the severance pay of a Hungarian civil servant violated her right to peaceful enjoyment of property

In today's Chamber judgment in the case of [N.K.M. v. Hungary](#) (application no. 66529/11), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 1 of Protocol No. 1 (protection of property) of the European Convention on Human Rights.

The case concerned a civil servant who complained in particular that the imposition of a 98 per cent tax on part of her severance pay under a legislation entered into force ten weeks before her dismissal had amounted to an unjustified deprivation of property.

Despite the wide discretion that the Hungarian authorities enjoyed in matters of taxation, the Court held that the means employed had been disproportionate to the legitimate aim pursued of protecting the public purse against excessive severance payments. Nor had the applicant been provided with a transitional period in which to adjust to the new severance scheme. Moreover, in depriving her of an acquired right which served the special social interest of reintegrating the labour market, the Hungarian authorities had exposed the applicant to an excessive individual burden.

Principal facts

The applicant, Ms N.K.M., is a Hungarian national and lives in Budapest (Hungary). She was a civil servant in a government ministry for 30 years before being dismissed on 28 July 2011. On being dismissed, Ms N.K.M. was statutorily entitled to receive severance pay amounting to eight months' salary.

Meanwhile, in 2010, the Hungarian Parliament adopted an Act – hereafter the Tax Act – introducing a new tax on certain payments to public sector employees whose employment had been terminated. The aim of the Tax Act was to fight against excessive severance payments in order to satisfy society's sense of justice and protect the public purse at a time of economic hardship. However, in October 2010, the Tax Act was deemed confiscatory and therefore declared unconstitutional by the Constitutional Court. Following a first amendment, it was partly annulled by that same jurisdiction on 6 May 2011. On 14 May 2011 – i.e. ten weeks before Ms N.K.M.'s dismissal – a further amendment finally entered into force.

In application of the modified Tax Act, the benefits to which Ms N.K.M. was entitled were taxed at 98% in their part exceeding 3.5 million Hungarian forints (HUF)². The exceeding part was HUF 2.4 million³. This represented an overall tax burden of approximately 52%

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

² Approximately EUR 12,000

³ Approximately EUR 8,300

on the entirety of the severance pay - as opposed to the general personal income tax rate of 16% in the relevant period. The tax amount was never disbursed to the applicant, but withheld by the employer and directly transferred to the tax authority.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 (protection of property) – read alone and in conjunction with Article 13 (right to an effective remedy) – Ms N.K.M. complained in particular that the imposition of a 98 per cent tax on part of her severance pay had amounted to an unjustified deprivation of property, with no remedy available. Under Article 14 (prohibition of discrimination) read in conjunction with Article 1 of Protocol No.1, she further complained that only a certain category of people dismissed from the public sector had been subjected to the tax.

The application was lodged with the European Court of Human Rights on 19 October 2011.

Judgment was given by a Chamber of seven judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
Danutė **Jočienė** (Lithuania),
Peer **Lorenzen** (Denmark),
András **Sajó** (Hungary),
Işıl **Karakaş** (Turkey),
Nebojša **Vučinić** (Montenegro),
Helen **Keller** (Switzerland),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

[Article 1 of Protocol No. 1](#)

The Court had to determine the five following factors:

Whether the severance pay could be equated with “possessions” within the meaning of Article 1 of Protocol No. 1

The Court found that, although Ms N.K.M. had never possessed the entirety of the severance pay – the tax having been directly withheld – it had nevertheless constituted a substantive interest protected by Article 1 of Protocol 1. Indeed, the severance pay had already been earned, which turned it into a “possession” for the purposes of that provision and the Constitutional Court had held that this sum had originated in an unconditional statutory entitlement. In any case, the very fact that the tax had been imposed on the applicant’s income showed that the authorities regarded it as existing revenue.

The Court further considered that the statutorily stipulated severance pay had represented a long-term expectation on the part of Ms N.K.M. in her quality as a civil servant, and a commitment on the side of the authorities. The entitlement to severance allowance was not a mere pecuniary asset, but rather a socially important measure intended for workers who had been made redundant and wished to remain in the labour market. Furthermore, the statutory scheme providing for severance pay in exchange for the service rendered had constituted an acquired right. Finally, in the same way as a pension, severance pay had to be regarded as generating a proprietary interest. Hence, in the case of a measure affecting severance, the legislation should have provided the

employees with a transitional period to allow them to adjust themselves to the new scheme.

Whether there had been a state interference

Both parties had agreed that the taxation had represented an interference with the rights of Ms N.K.M. to peaceful enjoyment of her possessions.

Whether the state interference had been lawful

In its 2010 decision, the Constitutional Court of Hungary had found the Tax Act unconstitutional for being confiscatory. Even though it had not considered the new tax unconstitutional in its 2011 decision, that had not changed the findings of substantive unconstitutionality of essentially identical provisions of the original Tax Act, which raised certain issues as to both its constitutionality and legality. However, considering the degree of latitude given to the Hungarian authorities in the exercise of their fiscal functions, the Court concluded that the Tax Act could still be accepted as providing for a proper legal basis for Ms N.K.M.'s taxation.

Whether the taxation had sought to protect the public interest

The Court reiterated that, when adopting measures interfering with the peaceful enjoyment of possessions, the Hungarian authorities enjoyed wide discretion in the determination of what was in the public interest. Therefore, the Court considered that the Tax Act's purported aim, namely to protect society's sense of justice and distribute the public burden, had been legitimate.

Whether the taxation had been proportionate

Considering the wide discretion that the Hungarian authorities enjoyed in matters of taxation, the Court held that the applicable tax rate was not decisive in itself. However, it found of particular importance that Ms N.K.M. had been subjected to this tax whilst unemployed and that the unexpected nature of the change of the tax regime had exposed her to substantial personal hardship. Even assuming that the taxation had served the interest of the State budget at a time of economic crisis, she had been forced to bear an excessive individual burden.

Nor had the legislation given Ms N.K.M a transitional period in which to adjust to the new scheme. Furthermore, the tax had been imposed on income related to activities prior to the tax year at a considerably higher tax rate than the one in force when the revenue in question had been generated, which could be regarded as an unreasonable interference with the expectations protected by Article 1 of Protocol No. 1. Lastly, the tax had been determined in a statute which had entered into force only ten weeks before Ms N.K.M.'s dismissal and had neither been intended to remedy technical deficiencies of the law nor to avoid her coming into a windfall in a changeover to a new tax-payment regime.

The Court therefore concluded that, even if it had been adopted to serve social justice, the taxation could not be justified by the legitimate public interest relied on by the Hungarian authorities. Indeed, it had affected Ms N.K.M. regardless of her good faith and had deprived her of the larger part of an acquired statutorily guaranteed right serving the special social interest of social reintegration.

[Article 13 read in conjunction with Article 1 of Protocol No. 1](#)

The Court noted that this complaint was linked to the one previously examined. Given the finding relating to Article 1 of Protocol No.1, the Court concluded that it was not necessary to examine separately whether there had been a violation of Article 13 in this case.

[Article 14 read in conjunction with Article 1 of Protocol No. 1](#)

The Court considered that the inequality of treatment of which the applicant claimed to be a victim had been sufficiently taken into account in the assessment that had led to the finding of a violation of Article 1 of Protocol No. 1 taken separately. Accordingly, it found that there was no cause for a separate examination of the same facts from the standpoint of Article 14.

[Just satisfaction \(Article 41\)](#)

The court held that Hungary was to pay the applicant 11,000 euros (EUR) in respect of pecuniary and non-pecuniary damage as well as EUR 6,000 in respect of costs and expenses.

Separate opinion

Judges Lorenzen, Raimondi and Jociene expressed a concurring opinion which is annexed to the judgment.

The judgment is available only in English.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHR_press](https://twitter.com/ECHR_press).

Press contacts

echrpres@echr.coe.int | tel: +33 3 90 21 42 08

Jean Conte (tel: + 33 3 90 21 58 77)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.