



Website articles for a professional audience protected by freedom of speech; breach of a bank employee's rights

In today's **Chamber** judgment¹ in the case of [Herbai v. Hungary](#) (application no. 11608/15) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned the applicant's dismissal from his job in human resources in a bank owing to his involvement with a website devoted to HR issues.

The Court found in particular that the domestic courts had failed to carry out an adequate exercise to balance the applicant's right to freedom of expression against the bank's right to protect its legitimate business interests.

In particular, it disagreed with domestic court findings that articles on topics that were of interest to a professional audience could not benefit from free speech protection simply because they were not part of a debate of general public interest.

Principal facts

The applicant, Csaba Herbai, is a Hungarian national who was born in 1974 and lives in Budapest (Hungary).

In 2011 the applicant was working in the human resources department of a bank, O., and was also contributing to a website which carried general articles about HR practice.

In February of that year the bank dismissed the applicant on the grounds that his website articles had breached its confidentiality standards and infringed its financial interests. It also argued that his position at the bank meant that he was privy to information that could interfere with the bank's business interests if published.

Mr Herbai went to court over his dismissal, with the Kúria ultimately ruling on the case in favour of the bank, observing that his conduct could have presented a risk to his employer's business interests.

The applicant lodged a constitutional complaint that the courts had not taken account of his right to freedom of expression. The Constitutional Court rejected his complaint, finding that the website content was not protected by freedom of speech because the articles did not cover issues of public interest.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression) of the European Convention on Human Rights, the applicant complains about the termination of his employment owing to the website articles.

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.

The application was lodged with the European Court of Human Rights on 2 March 2015.

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

Jon Fridrik **Kjølbro** (Denmark), *President*,
Faris **Vehabović** (Bosnia and Herzegovina),
Iulia Antoanella **Motoc** (Romania),
Branko **Lubarda** (Serbia),
Stéphanie **Mourou-Vikström** (Monaco),
Georges **Ravarani** (Luxembourg),
Péter **Paczolay** (Hungary),

and also Andrea **Tamietti**, *Deputy Section Registrar*.

Decision of the Court

Article 10

The applicant argued that the articles he had written for the website had touched on questions of professional and public interest as they had related to changes in personal income tax regulations, albeit in a general manner and not in a way that had had any direct connection with his employer. The courts had paid no heed to his arguments of an infringement of his right to freedom of speech.

The Government submitted that the writings had not been protected by the right to freedom of speech as they had not contributed to a debate on a matter of public interest. In any event, the Constitutional Court had dealt with the matter in line with standards set by the Strasbourg Court.

The Court held that it had to ascertain whether the courts had carried out the necessary balancing of the applicant's right to freedom of expression in the context of labour relations against that of the employer in protecting its commercial interests.

It looked at four elements in the permissible scope of restricting the right to free speech in the employment relationship at issue: the nature of the speech; the author's motives; any damage caused; and the severity of the sanction.

Firstly, the Court did not agree with the Constitutional Court's finding that the type of speech in question, addressed to a professional audience, was not the kind that could be protected as it did not have the characteristics of being part of a discussion on matters of public interest.

Secondly, while comments motivated by personal grievance or antagonism could not enjoy a strong level of protection, it found that the domestic courts had not seen such motives in the applicant's actions. Nor did it question his submission that the issues raised on the website had pertained to a profession and had been aimed at sharing knowledge.

On the third question, the Court noted that the domestic courts had focussed on the question of potential damage to the bank's legitimate business interests and at the possibility of the applicant divulging confidential business information. However, even given a certain level of deference under domestic law to employers to determine which conduct could disrupt working relations without such disruption being clearly manifest, neither the bank nor the Kúria had made any attempt to show how the speech in question could have adversely affected the bank.

On the final question, it was clear that the applicant had suffered a severe penalty as he had lost his job without any assessment of a less serious measure.

The Court found that it could not discern any meaningful balancing of the interests in question, the two senior courts either finding that Mr Herbai's free speech rights were not engaged or that they were not relevant. The outcome of the labour dispute had been dictated purely by contractual

considerations between the applicant and the bank, voiding his reliance on his right to free speech of any effect.

The Court concluded that the domestic authorities had failed to demonstrate convincingly that the rejection of Mr Herbai's challenge to his dismissal had been based on a fair balancing of each party's rights. They had therefore not met their obligation under Article 10 and there had been a violation of that provision.

Just satisfaction (Article 41)

The Court held that Hungary was to pay the applicant 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,800 in respect of costs and expenses.

The judgment is available only in English.

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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.