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Art. 8 EVRM

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Openbaar maken persoonsgegevens wegens belastingschuld. Bescherming persoonlijke data. Belang van toetsing in individuele gevallen. Margin of appreciation. Schending van art. 8 EVRM. Grote Kamer.

Klager heeft een boete van de Hongaarse belastingdienst opgelegd gekregen nadat was gebleken dat hij een betalingsachterstand had. Daarnaast hebben de nationale autoriteiten, op grond van de Hongaarse Tax Administration Act, de persoonsgegevens van klager openbaar gemaakt en klager op een openbare, via het internet te raadplegen, lijst van 'major tax debtors' geplaatst.

In de Straatsburgse procedure doet klager een beroep op art. 8 EVRM en stelt dat zijn recht op privéleven is geschonden.

EHRM: Het publiceren van persoonlijke gegevens (i.c. naam en adres) vormt een inmenging in het recht op privéleven. Deze inmenging kan gerechtvaardigd zijn indien deze in overeenstemming met de wet is, een legitiem doel dient en noodzakelijk is in een democratische maatschappij.

De openbaarmaking van de gegevens van grote belastingschuldenaren is bedoeld om de kans op nietnaleving van de belastingwetgeving te verkleinen en belastingplichtigen ervan te weerhouden hun belastingschulden niet te betalen en om derden inzicht te verschaffen in de fiscale situatie van belastingschuldigen. Met de omstreden maatregel wordt een legitiem doel, in de zin van art. 8 lid 2 EVRM, nagestreefd.

Centraal staat de vraag of een juist evenwicht is gevonden tussen enerzijds het economisch welzijn van het land en het belang van potentiële zakenpartners om toegang te krijgen tot bepaalde informatie over particulieren, en anderzijds het belang van het individu bij de bescherming van zijn persoonsgegevens.

In de context van gegevensbescherming beschikken lidstaten over een ruime discretionaire bevoegdheid bij de vaststelling van regelingen die erop gericht zijn de belastinginning te waarborgen. Die discretionaire bevoegdheid is echter niet onbeperkt. De bevoegde autoriteiten dienen een goede afweging te maken tussen de tegenstrijdige belangen en dienen rekening te houden met o.a.: i) het algemeen belang, ii) de aard van de bekendgemaakte informatie; (iii) de persoonlijke levenssfeer van de betrokkenen; iv) het potentiële bereik van het medium dat voor de verspreiding zorgt; en v) de basisbeginselen inzake gegevensbescherming. In dit verband kan het bestaan van procedurele waarborgen ook een belangrijke rol spelen.

Een belangrijk kenmerk van de verplichte publicatieregeling in Hongarije is dat de belastingdienst op grond van het nationale recht geen discretionaire bevoegdheid had om de noodzaak van het publiceren van persoonsgegevens van belastingbetalers te beoordelen. Bovendien is er door de wetgever ook geen beoordeling geweest van de gevolgen voor het gedrag van de belastingbetaler en dus het nut van de maatregel. In het bijzonder is niet gebleken dat de wetgever heeft beoordeeld in hoeverre de publicatie van alle persoonsgegevens, noodzakelijk zou zijn om een afschrikkende werking te bewerkstelligen. Verder is niet gebleken dat er aandacht is besteed aan de impact van de publicatieregeling op het recht op privacy, en in het bijzonder aan het risico van misbruik van het woonadres van de belastingschuldenaar door andere leden van het publiek. Evenmin is gebleken dat er rekening is gehouden met het potentiële bereik van het medium. Overwegingen op het gebied van gegevensbescherming lijken weinig of helemaal geen rol te hebben gespeeld bij het vaststellen van de regelgeving, ondanks de groeiende hoeveelheid bindende nationale en EU-vereisten op het gebied van gegevensbescherming die van toepassing zijn in het Hongaarse recht. Kortom, het is niet gebleken dat de wetgever heeft getracht een 'fair balance' tot stand te brengen tussen de relevante concurrerende individuele en publieke belangen, teneinde de evenredigheid van de inmenging te waarborgen.

L.B.
tegen
Hongarije

EHRM:

The law

I. Scope of the case before the grand chamber

58. The Grand Chamber observes at the outset that the applicant's personal data were first (in the last quarter of 2014) published on the list of major tax defaulters pursuant to section 55(3) of the 2003 Tax Administration Act (...), and were then (from 27 January 2016 to 5 July 2019) published on the list of major tax debtors pursuant to section 55(5) of the Act as someone who had tax debts exceeding 100 million forints for a period longer than 180 consecutive days (...). Whilst the Chamber appears to have examined both instances of publication (see paragraphs 44 and 56 of the Chamber judgment), the Grand Chamber notes that the first publication of the applicant's details was terminated more than six months before the applicant lodged his application under the Convention (on 7 June 2016). It will ac-

cordingly limit its examination to his complaint in relation to the second publication, under section 55(5) of the Act.

59. It is also to be noted that (1) while in his observations to the Chamber, the applicant complained that publication of his details had entailed public shaming adversely affecting his physical and moral integrity, before the Grand Chamber he maintained that publication had infringed his right to reputation. Before the latter, he further submitted (2) that, as of 1 January 2020, his personal data had become accessible through a search interface on the website of the Tax Authority, and (3) that the Tax Authority was liable for the subsequent republication of his personal data by third parties. The Government raised a preliminary objection in respect of each of these three submissions, which the Grand Chamber will consider in turn below.

A. The Government's preliminary objection ratione materiae concerning the alleged loss of reputation

1. The parties' submissions

60. In their observations before the Grand Chamber and during the hearing, the Government argued that the present case did not raise an issue of loss of reputation bringing Article 8 into play, since the publication of the list of major tax debtors had neither been motivated by, nor had it resulted in, gratuitous shaming. The impugned list had contained factual information without any moral judgment. The Government also pointed out that there was no evidence that the term 'tax debtor' carried a negative connotation in Hungarian society. In their view the applicant could not invoke his right to reputation as a diligent taxpayer when he had clearly not been one. In any case he could have avoided the publication of his personal data by paying his tax debt. Accordingly, the Government submitted that this complaint was incompatible *ratione materiae* with the provisions of the Convention.

61. The applicant invited the Court to find that Article 8 was applicable in the circumstances of the present case. He argued that the very aim of the list was shaming and that the attack on his reputation reached the requisite level of seriousness and caused prejudice to the enjoyment of his right to respect for private life and thus rendered Article 8 applicable. In his understanding, 'listing' people was by definition already a negative term and action, added to which the fact that the list concerned the biggest tax debtors necessarily bore a stigma and had the potential to severely damage his dignity and reputation. This public shaming list was a modern form of pillory, was extremely humiliating and caused huge distress. During the hearing the applicant stated that his teenage son and one of the latter's friends had found out about his circumstances from the list of major tax debtors, putting him in an uncomfortable situation with them.

2. The Court's assessment

62. The Court finds it appropriate to join the Government's preliminary objection concerning the alleged loss of the applicant's reputation to the merits of the complaint under Article 8 of the Convention.

B. The Government's preliminary objection concerning the search interface

1. The parties' submissions

63. As regards the applicant's complaint concerning the processing of personal data under the 2017 Tax Administration Act, the Government emphasised during the hearing before the Grand Chamber that this issue constituted a new complaint not raised before the Chamber and could not be regarded as an inherent part of the case before the Grand Chamber. The search interface had a different legal basis in Hungarian law and was based on a different administrative act.

64. In any event the Government were of the view that, for any grievance stemming from the 2017 Tax Administration Act, a constitutional complaint under section 26(2) of the Constitutional Court Act constituted an effective remedy, as acknowledged by the Court in the case of *Mendrei v. Hungary* ((dec.), no. 54927/15, 19 June 2018).

65. The applicant urged the Court to rule on the question whether the fact that his personal data were accessible through a search interface as of 1 January 2020 (following the entry into force of the new legislative provisions,...) was in compliance with the Convention. He advanced three arguments to justify the assertion that this complaint was admissible. Firstly, since he could not have submitted these facts in the Chamber proceedings, it was only before the Grand Chamber that he could address this issue. Secondly, in his view the situation constituted a continuing violation of Article 8 and therefore his complaint could not be regarded as belated. Thirdly, any challenge to the new legislative scheme, in particular before the Constitutional Court, was futile, since the Constitutional Court could not make an award in respect of pecuniary damage for the infringement of his rights.

2. The Court's assessment

66. According to the Court's case-law, the 'case' referred to the Grand Chamber necessarily embraces all aspects of the application previously examined by the Chamber in its judgment. The 'case' referred to the Grand Chamber is the application as it has been declared admissible, together with the complaints which have not been declared inadmissible (see *S.M. v. Croatia* [GC], no. 60561/14, §§ 216-19, 25 June 2020 (*NJ* 2021/136, m.nt. T. Kooijmans; *red.*), with further references; see also *Big Brother Watch and Others v. the United Kingdom* [GC], nos. 58170/13 and 2 others, § 268, 25 May 2021 (*NJ* 2021/361, m.nt. E.J. Dommering; *red.*), and *Denis and Irvine v. Belgium* [GC], nos. 62819/17 and 63921/17, § 98, 1 June 2021).

67. The applicant in the present case lodged his application on 7 June 2016. His complaint concerned the disclosure of his personal data on the list of major tax debtors under section 55(5) of the 2003 Tax Administration Act. The latter was subsequently replaced by the 2017 Tax Administration Act, which entered into force on 1 January 2018 and by virtue of which the section 55(5) publication regime continued. On 5 July 2019, as his tax arrears had become time-barred, the applicant's personal data were removed from the list of major tax debtors. Subsequently, after an interval of approximately half a year, as of 1 January 2020 (upon the entry into force of certain amendments to the 2017 Tax Administration Act;...), his personal data became accessible through a search interface available on the website of the Tax Authority.
68. The Chamber reviewed in its judgment the Convention compliance of the law in force on the date on which it examined the admissibility of the applicant's complaint; that is, it considered the law as it stood on 7 June 2016 and up until 5 July 2019.
69. In the view of the Grand Chamber, the entry into force on 1 January 2020 of the amendments to the 2017 Tax Administration Act was a specific event that cannot be analysed as a continuing violation as suggested by the applicant (see *Petkov and Others v. Bulgaria* (dec.), nos. 77568/01, 178/02 and 505/02, 4 December 2007).
70. Thus, the submissions concerning the search interface made by the applicant for the first time before the Grand Chamber constitute in substance a new and separate complaint relating to distinct requirements arising from the provisions that entered into force on 1 January 2020, some six months after the section 55(5) publication had been terminated (on 5 July 2019). This complaint did not form part of 'the application as it has been declared admissible' by the Chamber, and the Grand Chamber must similarly limit its examination to the legislative regime as it stood on 7 June 2016 and until 5 July 2019 (see *Centrum för rättvisa v. Sweden* [GC], no. 35252/08, § 151, 25 May 2021 (*NJ* 2021/362, m.nt. E.J. Dommering; *red.*), and *Big Brother Watch and Others*, cited above, § 270).
71. In any event, the applicant could have raised any alleged grievance deriving from the 2017 Tax Administration Act under section 26(2) of the Constitutional Court Act. This legal avenue was available for situations where the alleged grievance had occurred directly as a result of the taking effect of a legal provision, provided that no other remedies existed and that the 180-day statutory time-limit following the entry into force of the legislation was complied with. Subject to the applicability of the remedies available under the Data Protection Act and the corresponding provisions of EU law, the applicant's case could fall into this category, since his grievance was precisely that with the entry into force of the new legal provisions on tax administration, his personal data had become accessible again through a search function on the Tax Authority's website. The Court has previously found that under such circumstances a constitutional complaint under section 26(2) of the Constitutional Court Act is an accessible remedy offering reasonable prospects of success (see *Mendrei*, cited above, § 42).
72. Against this background, the Government's preliminary objection to the effect that the applicant's complaint concerning the search interface fell outside the scope of the case referred to the Grand Chamber, and that he had in any event failed to exhaust domestic remedies in this regard, must be upheld.

C. The Government's preliminary objection concerning the republication of the applicant's personal data

1. The parties' submissions

73. The Government argued during the hearing before the Grand Chamber that the complaint concerning the republication of information by an online news portal fell outside the scope of the case. In any event, they submitted that this part of the applicant's complaint was inadmissible on the grounds of failure to exhaust domestic remedies. In particular, the applicant could have requested from the media outlet the erasure or blocking of his personal data under section 14(c) of the Data Protection Act, which was an available legal avenue by which to challenge the processing of personal data, irrespective of whether they had been processed lawfully or unlawfully. The Government pointed in this regard to the practice of the domestic courts consisting in ordering both search engines and media outlets to erase personal data and to pay compensation in respect of damage caused by failure to erase such data.
74. The applicant suggested that the conduct and liability of the Tax Authority should be assessed together with the subsequent republication of his personal data by an online newspaper in the form of a 'national map of tax debtors'. He relied on his right to be forgotten.

2. The Court's assessment

75. The Chamber judgment specified that it did not concern the republication of the applicant's personal data by an online news portal in the form of a 'national map of tax debtors' (see *L.B. v. Hungary*, no. 36345/16, § 16, 12 January 2021). In the light of the principles set out at paragraph 66 above, this matter did not therefore form part of 'the application as it has been declared admissible' by the Chamber, and thus fell outside the scope of the case referred to the Grand Chamber. Having no jurisdiction to review the compatibility with Article 8 of the republication of the data by the online news portal, the Grand Chamber will confine its examination to the complaint concerning the publication as such under section 55(5) of the 2003 Tax Administration Act. The foregoing does not prevent the Grand Chamber from taking into account the risk of

republication as an element in its overall assessment below.

D. The Grand Chamber's conclusion on the scope of the case

76. Having regard to the above, the Grand Chamber will limit its examination of the applicant's complaint to the publication of his personal data on the list of major tax debtors under the regime of section 55(5) of the 2003 Tax Administration Act. It joins his allegation of loss of reputation to the merits. it will not entertain his new and separate complaint about the search interface, nor will it examine his complaint about republication, albeit the risk of republication may be taken into account in the overall assessment below.

II. Alleged violation of Article 8 of the Convention

77. The applicant complained that the publication of his personal data on the list of major tax debtors on the Tax Authority's website for failure to comply with his tax obligations had infringed his right to respect for private life as provided for in Article 8 of the Convention, which reads:

> '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. The Chamber judgment

78. The Chamber considered that the personal data published by the Tax Authority in connection with the applicant's failure to contribute to public revenue related to his private life, and found Article 8 to be applicable in the present case. It held that publication of the data had constituted an interference with the applicant's private life. It accepted that the impugned measures were in accordance with the law and aimed to improve tax payment discipline and had been taken in the interests of the economic well-being of the country. Disclosure also served to protect the rights and freedoms of others by providing them with information on the situation of tax debtors.

79. When assessing whether the measure had 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 that of third parties, the Chamber found it relevant that the impugned measure had been implemented in the framework of the State's general tax policy, that publication had been limited to those taxpayers whose conduct was most detrimental to revenue, that it was restricted in time and that the dissemination of both the name and home address of the taxpayers served the purpose of accuracy. The Chamber held that in the light of the objective sought by publication, the legislature's choice was not manifestly without reasonable foundation. The Chamber was satisfied that publication through an Internet portal designated for tax matters had ensured that such information was distributed in a manner reasonably calculated to reach those with a particular interest in it. Finally, the applicant had not indicated that the publication had led to any concrete repercussions on his private life.

80. For all the above reasons, the Chamber concluded that the disclosure of the private data in question had not placed a substantially greater burden on the applicant's private life than was necessary to further the State's legitimate interest.

B. The parties' submissions before the Grand Chamber

1. The applicant

81. The applicant alleged an infringement of his right to respect for private life in that the publication of his name and home address on the list of major tax debtors on the Tax Authority's website had been in breach of his right to protection of his personal data.

82. The applicant did not dispute that the contested publication of personal data had a legal basis in section 55(5) of the 2003 Tax Administration Act.

83. He contested the assertion that the interference with his right to respect for private life had served a legitimate aim. The measure had only theoretically served the goal of improving tax payment discipline. The State could rely on a legitimate aim only if it was able to demonstrate that it was pursuing such an aim in reality. In his view, the Tax Authority had had no means of assessing whether the tax debtors' shaming list had yielded any results. He submitted that the complete lack of interest on the part of the Tax Authority in checking the success rate (that is, whether taxpayers fulfilled their tax obligations for fear of being listed) undermined the existence of any legitimate aim of the disputed measure and deprived the reasons put forward by the Government to justify the interference of any reasonable basis. He maintained that the real purpose of the list was shaming and public humiliation.

84. There had been no pressing social need for the interference, as it did not serve the supposed purpose of tax discipline. The applicant also questioned whether the aim of informing business partners could constitute a pressing social need. Not only had the Government failed to provide data on whether business partners actually used the lists in question, but it was also debatable whether the fact that a person had tax debts was in any way telling about his or her reliability in business. In the absence of any serious intention of pursuing a public policy the State's margin of appreciation could only

be narrow, even in the field of economics and taxation.

85. Another reason militating in favour of a narrow margin of appreciation was that the publication of the applicant's name and home address, together with the information that he had been unable to pay his tax debts, had been a very sensitive matter which entailed stigma, meaning that he had had a particularly strong interest in keeping them private.

86. The applicant further suggested that the publication of his data had been in breach of data processing principles, in particular those on data minimisation and storage limitation, and had failed to provide protection against unauthorised secondary processing.

87. The Hungarian legislation had not made provision for an expiry or end date for publication, whereas public disclosure of the personal data lost its relevance as soon as collection of the tax arrears ceased to be enforceable or the tax debtor paid his or her tax debts. In fact, the applicant's personal data had remained on the Tax Authority's website for a couple of weeks following the date when his tax debts had become time-barred.

88. In the applicant's submission, the processing of his personal data had moreover been 'excessive' since the State could have chosen less intrusive and more accurate identifying information, such as simply publishing his tax number. In any event his home address, unlike his tax number, had been completely irrelevant for his business partners.

89. Furthermore, the measure in question had been disproportionate since it had allowed for unlimited access to and republication of his personal data, without any substantive or procedural safeguards. Given that the effective protection of the right to respect for private life under the Convention also entailed a positive obligation to protect private life, the State was under an obligation to put in place safeguards restricting and preventing the republication of the information in question. In this regard the applicant pointed out that the State could have established a system requiring persons accessing tax debtors' personal data to show the existence of their business interest.

90. The applicant argued that the lists of tax debtors had triggered widespread media attention which had multiplied the shaming effect of the lists. Moreover, the fact that the information had been published on the Internet, 'combined with [the effect of] search engines', meant that the State should have recourse to such measures only when it was absolutely necessary.

2. The Government

91. The Government submitted that the publication of tax debtors' personal data has been provided for by the Hungarian legislation since 1996. The only challenge to the publication scheme before the Constitutional Court had been declared inadmissible for the petitioner's failure to invoke any constitutional right. The provisions of the 2017 Tax Administration Act had not been challenged before the Constitutional Court either.

92. The Government asserted that the primary aim of the list of major tax debtors was to protect the interest of the economic well-being of the country by contributing to the effective collection of taxes. The scheme had ensured tax discipline by deterring taxpayers from disregarding the payment of taxes. The Government acknowledged that it was difficult to assess in general why taxpayers complied with tax regulations, just as it could not be measured how criminal sanctions contributed to preventing people from committing crimes. For that very reason and because taxpayers were not required to reveal information about their motives, the Tax Authority could not provide statistics on whether taxpayers paid their tax debts voluntarily or were motivated by the list of major tax debtors.

93. Moreover, the interference with the applicant's right to respect for private life had served the legitimate aim of protecting the rights and freedoms of others in that it had informed potential contractual partners so that they could exercise due diligence, for instance by having knowledge of potential insolvency. In that sense the publication of the data had secured respect for the right to property by protecting private-law relationships and by promoting fairness in economic life. It had also served the interest of others in so far as it enforced the principle of equal burden-sharing.

94. The Government also emphasised that the measure in question could not attain the intended goals in itself but was part of a complex system of measures in relation to both aims.

95. States ought to be accorded a wide margin of appreciation in deciding how to regulate tax evasion, especially in the absence of a European consensus. The Government pointed to a survey carried out by the Intra-European Organisation of Tax Administrations in 2014, which showed that a number of countries published tax debtors' data as a dissuasive measure (including, besides Hungary, Bulgaria, Estonia, Finland, Greece, Ireland, Portugal, Romania, Slovakia, Slovenia and the United Kingdom). The measure had not given rise to much controversy at national level, as evidenced by the fact that it had never been challenged before the Constitutional Court.

96. The measure was also proportionate to the legitimate aims sought to be achieved, since it only concerned those taxpayers whose tax debts and tax arrears exceeded HUF 10 million. The amount of a tax debt (subject to publication) could only reach this level if the person's income was at least twenty times more than the annual gross average income. Furthermore, the applicant's tax debt had been twenty-three times above the statutory threshold.

97. Publication could take place if the tax arrears had been established by a final judicial decision. The measure had also fulfilled the criterion of gradual restrictions, since it had only concerned tax

debts that had been outstanding for a substantial period of time. Any taxpayer could request the erasure of his or her data once the conditions for publication were no longer met. In any event, the applicant's personal data had been erased once the statute of limitations had expired on 30 June 2019, taking into account the period of the unsuccessful enforcement proceedings.

98. Publication on the Internet had been an efficient way to ensure access to the information for anyone concerned. The system put in place also ensured that in the case of unlawful republication by third parties, the taxpayer in question could seek remedies before the domestic courts.

99. As to the scope of the published information, the Government were of the view that it had been restricted to the minimum necessary. The name alone was not sufficient to identify persons who had a common name, and persons who had no tax number, like the applicant, could not be identified other than by their home address. The tax identification code as a means of identification would not have served the purpose, as these codes were unknown to the public and were used only in dealings with the Tax Authority.

100. The Government contested the assertion that the State had a positive obligation to prevent republication by third parties, since the data in question had constituted data subject to disclosure in the public interest, containing information which contributed to the discussion of a matter of public interest.

101. The legislation had ensured that a person concerned by the publication of his or her personal data by parties other than the Tax Authority could seek the deletion of the data irrespective of the lawful or unlawful nature of its publication. This allowed a balance to be struck between the conflicting interests at stake.

C. The Court's assessment

1. Existence of an interference

102. The Court reiterates that the concept of 'private life' is a broad term not susceptible to exhaustive definition. It can embrace multiple aspects of the person's physical and social identity. Article 8 protects in addition a right to personal development and the right to establish and develop relationships with other human beings and the outside world (see *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 66, ECHR 2008 (*NJ* 2009/410, m.nt. E.A. Alkema; *red.*), and *Vukota-Bojić v. Switzerland*, no. 61838/10, § 52, 18 October 2016). In cases decided under Article 8 of the Convention, the Court has also held that reputation forms part of personal identity and psychological integrity and falls within the scope of private life (see *White v. Sweden*, no. 42435/02, § 26, 19 September 2006, and *Pfeifer v. Austria*, no. 12556/03, § 35, 15 November 2007). However, Article 8 may come into play where an attack on a person's reputation attains a certain level of seriousness and is made in a manner causing prejudice to personal enjoyment of the right to respect for private life (see *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012 (*NJ* 2013/251, m.nt. E.J. Dommering; *red.*), and *A. v. Norway*, no. 28070/06, § 64, 9 April 2009 (*NJ* 2011/331, m.nt. E.J. Dommering; *red.*)). It must be stressed that Article 8 cannot be relied on where the alleged loss of reputation is the foreseeable consequence of one's own actions, such as, for example, the commission of a criminal offence (see *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, § 49, ECHR 2004-VIII, and *Axel Springer AG*, cited above, § 83).

103. The Court notes that the right to protection of personal data is guaranteed by the right to respect for private life under Article 8. As it has previously held, 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. Article 8 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 *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 137, 27 June 2017 (*NJ* 2018/67, m.nt. E.J. Dommering; *red.*)). In determining whether the personal information retained by the authorities involves any private-life aspects, the Court will have due regard to the specific context in which the information at issue has been recorded and retained, the nature of the records, the way in which these records are used and processed and the results that may be obtained (see *S. and Marper*, cited above, § 67).

104. In the light of the Court's case-law on Article 8 of the Convention, it follows that data such as the applicant's name and home address (see *Alkaya v. Turkey*, no. 42811/06, § 30, 9 October 2012 (*NJ* 2018/67, m.nt. E.J. Dommering; *red.*)), processed and published by the Tax Authority in connection with the fact that he had failed to fulfil his tax payment obligations, clearly concerned information about his private life. This is so notwithstanding the fact that, under Hungarian law, the data were classified as information in the public interest. The public character of the data processed does not exclude such data from the guarantees for the protection of the right to private life under Article 8 (see also *Satakunnan Markkinapörssi Oy and Satamedia Oy,* cited above, § 138).

105. Moreover, even if the effects of appearing on the list of major tax debtors published by the Tax Authority under section 55(5) were not proved to be substantial, it cannot be excluded that having one's identity disclosed on the list may have had certain negative repercussions.

106. In these circumstances, the Court takes the view that the publication of the applicant's personal data may be considered to have entailed interfer-

ence with the applicant's right to respect for his private life. Such interference will be in breach of Article 8 of the Convention unless it can be justified under Article 8 § 2 as being 'in accordance with the law', pursuing one or more of the legitimate aims listed therein, and being 'necessary in a democratic society' in order to achieve the aim or aims concerned.

2. Lawfulness

107. The parties did not dispute that the publication of the list of major tax debtors had a legal basis in national law, namely section 55(5) of the 2003 Tax Administration Act. The Court sees no reason to question that the interference complained of was 'in accordance with the law' within the meaning of the second paragraph of Article 8 of the Convention.

3. Legitimate aim

108. The Court reiterates that the enumeration of the exceptions to the individual's right to respect for his private life, as listed in Article 8 § 2, is exhaustive and that their definition is restrictive. For it to be compatible with the Convention, a limitation of this freedom must, in particular, pursue an aim that can be linked to one of those listed in this provision (see *Parrillo v. Italy* [GC], no. 46470/11, § 163, ECHR 2015).

109. The Court has itself recognised that in most cases it will deal quite summarily with the question of the existence of a legitimate aim within the meaning of the second paragraphs of Articles 8 to 11 of the Convention (see *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 99, ECHR 2005-XI (*NJ* 2006/170, m.nt. E.A. Alkema; *red.*); see also *Merabishvili v. Georgia* [GC], no. 72508/13, § 297, 28 November 2017). Although the legitimate aims and grounds set out in the restriction clauses in the Convention are exhaustive, they are also broadly defined and have been interpreted with a degree of flexibility. The real focus of the Court's scrutiny has rather been on the ensuing and closely connected issue: whether the restriction is necessary or justified, that is, based on relevant and sufficient reasons and proportionate to the pursuit of the aims or grounds for which it is authorised. Those aims and grounds are the benchmarks against which necessity or justification is measured (ibid., § 302).

110. However, in the present case the substance of the objectives invoked in this connection by the Government, and strongly disputed by the applicant, call for closer examination. The applicant sought to cast doubt on the aim of the disclosure by arguing that the purpose of publication was public shaming and that the Tax Authority had never assessed whether the result intended by the legislature had been achieved. According to the Government, publication contributed to the interests of the economic well-being of the country by enhancing tax compliance through deterrence. It also served the protection of the rights and freedoms of others by informing potential business partners and ensuring equal burden-sharing.

111. As regards the first of the aims invoked by the Government, the pursuit of the 'interests of … the economic well-being of the country', there can be little doubt that securing tax collection is an instrument of economic and social policy of the State and that optimising tax revenue corresponds to the aforementioned aim. A measure targeting taxpayers' non-compliance seeks to enhance the efficiency of the tax system.

112. The public disclosure of major tax debtors' data was designed to reduce the possibilities of tax non-compliance and to dissuade taxpayers from not paying their tax debts. In the Court's view, the publication requirement could in principle be expected to have a deterrent effect regarding non-compliance with tax regulations. It accepts that the measure was in principle aimed at bringing about improvements in tax discipline and might have been capable of achieving this aim.

113. As regards the second aim invoked by the Government, the Court notes that according to the explanatory note to the 2003 Tax Administration Act (...), disclosure under section 55(5) served the interests of third parties by providing them with insight into the fiscal situation of tax debtors. The Court accepts that in this respect the measure served the transparency and reliability of business relations and thereby 'the protection of the rights and freedoms of others' within the meaning of the second paragraph of Article 8.

114. Having regard to the above considerations, the Court finds that the impugned measure pursued legitimate aims for the purposes of Article 8 § 2.

4. Necessary in a democratic society

(a) Preliminary remarks

115. 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 the reasons adduced by the national authorities to justify it are 'relevant and sufficient' and if it is proportionate to the legitimate aim pursued (see *Vavřička and Others v. the Czech Republic* [GC], nos. 47621/13 and 5 others, § 273, 8 April 2021).

116. At the heart of this case lies the question whether a correct balance was struck between, on the one hand, the public interest in ensuring tax discipline and the economic well-being of the country and the interest of potential business partners in obtaining access to certain State-held information concerning private individuals and, on the other hand, the interest of private individuals in protecting certain forms of data retained by the State for tax collection purposes. Thus, the Court finds it necessary, at the outset, to outline the general principles deriving from its case-law on the right to privacy under Article 8 of the Convention, particularly in the context of data protection.

117. The Court further finds it important to point out that the disputed publication was not a matter of individual decision by the Tax Authority, but fell within the scheme set up by the legislature using systematic publication of major tax debtors' personal data on the Tax Authority's website as a tool to tackle non-compliance with tax regulations. The scheme applied to all taxpayers who, at the end of the quarter, had owed large amounts of tax for a period longer than 180 consecutive days, and provided for the publication of the debtors' names, home addresses, registered offices, places of business and tax identification numbers. It is recalled that a State can, consistently with the Convention, adopt general measures which apply to pre-defined situations regardless of the individual facts of each case even if this might result in individual hard cases (see *Žd*anoka *v. Latvia* [GC], no. 58278/00, §§ 112-15, ECHR 2006-IV). Given this context the Court considers it appropriate to examine whether the chosen statutory scheme remained within the State's margin of appreciation in the light of the competing public and private interests at stake. It therefore finds it instructive for its examination to reiterate the principles applied in the context of general measures (see paragraphs 124–126 below). Moreover, since the Court has 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, is compatible with Article 8, it is particularly important to consider from the outset the scope of the margin of appreciation available to the State when regulating questions of this nature.

(b) Scope and operation of the margin of appreciation

(i) General considerations

118. The margin of appreciation to be accorded to the competent national authorities will vary in the light of the nature of the issues and the seriousness of the interests at stake (see *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 211, 10 September 2019). 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 will be restricted (see *S. and Marper*, cited above, § 102).

119. When assessing the compatibility with Article 8 of the Convention of an interference resulting from the publication of personal data, the Court has had regard to the nature of the disclosed information and whether it related to the most intimate aspects of an individual, such as health status (see *Z v. Finland*, 25 February 1997, § 96, *Reports of Judgments and Decisions* 1997-I, concerning HIV-positive status, and *M.S. v. Sweden*, 27 August 1997, § 47, *Reports* 1997-IV, concerning records on abortion), attitudes to religion (see, in the context of freedom of religion, *Sinan Işık v. Turkey*, no. 21924/05, §§ 42–53, ECHR 2010), and sexual orientation (see *Lustig-Prean and Beckett v. the United Kingdom*, nos. 31417/96 and 32377/96, § 82, 27 September 1999). In contrast, the Court has considered that purely financial information which does not involve the transmission of intimate details or data closely linked to identity does not merit enhanced protection (see *G.S.B. v. Switzerland*, no. 28601/11, § 93, 22 December 2015 (*NJ* 2016/338, m.nt. J.W. Zwemmer; *red.*)).

120. The Court has also taken into account the repercussions of publication on the applicant's private life, such as the ensuing feeling of insecurity (see *Alkaya*, cited above, § 39), the public humiliation and exclusion from social life (see *Armonienė v. Lithuania*, no. 36919/02, § 42, 25 November 2008), and the possible impediment to the applicant's leading a normal personal life (see *Sidabras and Džiautas*, cited above, § 49).

121. In considering the risk of harm, the Court has had regard to the type of medium used when disclosing the data in question. In relation to the dissemination of personal information on the Internet, the Court has found — in the context of complaints under both Article 8 and Article 10 — that the risk of harm posed by content and communications on the Internet to the exercise and enjoyment of other human rights, particularly the right to respect for private life, is certainly higher in comparison to that posed by the press (see *Delfi AS v. Estonia* [GC], no. 64569/09, § 133, ECHR 2015 (*NJ* 2016/457, m.nt. E.J. Dommering; *red.*)). Therefore, policies governing the reproduction of material from the print media and the Internet may differ. The latter undeniably have to be adjusted according to the technology's specific features in order to secure the protection and promotion of the rights and freedoms concerned (see *Węgrzynowski and Smolczewski v. Poland*, no. 33846/07, § 58, 16 July 2013, and *Editorial Board of* Pravoye Delo *and Shtekel v. Ukraine*, no. 33014/05, § 63, ECHR 2011 (extracts)). The Court has paid heed to the difference between the reach of statements made on different Internet platforms, depending on the breadth of their audience (compare *Delfi AS*, cited above; *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary*, no. 22947/13, 2 February 2016; and *Pihl v. Sweden* (dec.), no. 74742/14, 7 February 2017).

122. As stated previously (see paragraph 103 above), the Court has held that 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. Domestic law must afford appropriate safeguards to prevent any such use of personal data as may be inconsistent with the guarantees in Article 8 of the Convention (see *Z v. Finland*, cited above, § 95; *S. and Marper,* cited above, § 103; and *Satakunnan Markkinapörssi Oy and Satamedia Oy,* cited above, § 137).

(ii) Data protection principles

123. With regard to the limitations on the States' margin of appreciation resulting from the above re-

quirement to afford appropriate safeguards, it is equally noteworthy that, when assessing the processing of personal data under Article 8 of the Convention, the Court has frequently had regard to the principles contained in data protection law (...). These have included:

(α) *The principle of purpose limitation* (Article 5 (b) of the Data Protection Convention), according to which any processing of personal data must be done for a specific, well-defined purpose and only for additional purposes that are compatible with the original purpose (see, as examples, *M.S. v. Sweden*, cited above, § 42; *Z v. Finland*, cited above, § 110; and *Biriuk v. Lithuania*, no. 23373/03, § 43, 25 November 2008). Thus, in some instances the Court has found that broad entitlement allowing the disclosure and use of personal data for purposes unrelated to the original purpose of their collection constituted a disproportionate interference with the applicant's right to respect for private life (see *Karabeyoğlu v. Turkey*, no. 30083/10, § 118, 7 June 2016, and *Surikov v. Ukraine*, no. 42788/06, § 89, 26 January 2017).

(β) *The principle of data minimisation* (Article 5 (c) of the Data Protection Convention), according to which personal data should be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (see *S. and Marper,* cited above, § 103), and the excessive and superfluous disclosure of sensitive private details not related to the purported aim of informing the public is not justified (see *Khadija Ismayilova v. Azerbaijan*, nos. 65286/13 and 57270/14, § 147–49, 10 January 2019).

(γ) *The principle of data accuracy* (Article 5 (d) of the Data Protection Convention). The Court has emphasised that the inaccurate or false nature of the information contained in public registers can be injurious or potentially damaging to the data subject's reputation (see *Cemalettin Canlı v. Turkey*, no. 22427/04, § 35, 18 November 2008; *Khelili v. Switzerland*, no. 16188/07, § 64, 18 October 2011; and *Rotaru v. Romania* [GC], no. 28341/95, § 44, ECHR 2000-V), requiring statutory procedural safeguards for the correction and revision of the information (see *Cemalettin Canlı*, cited above, §§ 41–42; see also *Anchev v. Bulgaria* (dec.), nos. 38334/08 and 68242/16, 5 December 2017).

(δ) *The principle of storage limitation* (Article 5 (e) of the Data Protection Convention), according to which personal data are to be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data are processed. The Court has held that the initially lawful processing of accurate data may over time become incompatible with the requirements of Article 8 where those data are no longer necessary in the light of the purposes for which they were collected or published (see, to this effect, *M.L. and W.W. v. Germany*, nos. 60798/10 and 65599/10, §§ 99 and 106, 28 June 2018 (*NJ* 2019/97, m.nt. E.J. Dommering; *red.*), and *Sõro v. Estonia*, no. 22588/08, § 62, 3 September 2015).

(iii) General measures and the quality of parliamentary review

124. The Contracting Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in the Convention and the Protocols thereto, and in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the Court. Through their democratic legitimation, the national authorities are, as the Court has held on many occasions, in principle better placed than an international court to evaluate local needs and conditions (see, *inter alia, Lekić v. Slovenia* [GC], no. 36480/07, § 108, 11 December 2018, and *M.A. v. Denmark* [GC], no. 6697/18, § 147, 9 July 2021).

125. Where the legislature enjoys a margin of appreciation, the latter in principle extends both to its decision to intervene in a given subject area and, once having intervened, to the detailed rules it lays down in order to ensure that the legislation is Convention compliant and achieves a balance between any competing public and private interests. However, the Court has repeatedly held that the choices made by the legislature are not beyond its scrutiny and has assessed the quality of the parliamentary and judicial review of the necessity of a particular measure. It has considered it relevant to take into account the risk of abuse if a general measure were to be relaxed, that being a risk which is primarily for the State to assess. A general measure has also been found to be a more feasible means of achieving the legitimate aim than a provision allowing a case-by-case examination, when the latter would give rise to a risk of significant uncertainty, of litigation, expense and delay as well as of discrimination and arbitrariness. The application of the general measure to the facts of the case remains, however, illustrative of its impact in practice and is thus material to its proportionality (see *M.A. v. Denmark*, cited above, § 148, and *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 108, ECHR 2013 (*NJ* 2016/321, m.nt. E.J. Dommering; *red.*), with further references). It falls to the Court to examine carefully the arguments taken into consideration during the legislative process and leading to the choices that have been made by the legislature and to determine whether a fair balance has been struck between the competing interests of the State or the public generally and those directly affected by the legislative choices (see *S.H. and Others v. Austria* [GC], no. 57813/00, § 97, ECHR 2011, and *Correia de Matos v. Portugal* [GC], no. 56402/12, § 117, 4 April 2018).

126. 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 impugned measure, 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 afford-

ed to it (see *Animal Defenders International,* cited above, § 110).

(iv) The degree of consensus at national and European level

127. Yet a further factor of relevance to the scope of the margin of appreciation is the existence or not of common ground between the national laws of the Contracting States. According to the comparative-law survey (...), in twenty-one of the thirty-four Contracting States surveyed the public authorities may, and in some cases must, disclose publicly the personal data of taxpayers who fail to comply with their payment obligations, subject to certain conditions. At the same time, it should be noted that within the former group there is 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, although a majority of the States in this group provide unrestricted access to taxpayer information. Furthermore, only eight of the Contracting States surveyed disclose the home address of taxpayers, while an additional two indicate their municipality of residence.

(v) Conclusions

128. In the light of all of the above factors, the Court considers that the Contracting States enjoy a wide margin of appreciation when assessing the need to establish a scheme for the dissemination of personal data of taxpayers who fail 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 is 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 (see paragraph 116 above), but also to (ii) the nature of the disclosed information (see paragraph 119 above); (iii) the repercussions on and risk of harm to the enjoyment of private life of the persons concerned (see paragraphs 120 and 121 above); (iv) the potential reach of the medium used for the dissemination of the information, in particular, that of the Internet (see paragraph 121 above); and also to (v) basic data protection principles including those on purpose limitation, storage limitation, data minimisation and data accuracy (see paragraphs..., and 123 above). In this connection, the existence of procedural safeguards may also play an important role (see paragraph 122 above). The Court will thus examine whether the national authorities acted within their margin of appreciation in choosing the means for achieving the legitimate aims.

5. Application of the above principles and considerations to the present case

(a) Legislative and policy framework

129. The Court notes at the outset that an important feature of the mandatory publication scheme was that the Hungarian Tax Authority had no discretion under domestic law to review the necessity of publishing taxpayers' personal data. Where a tax debt had been outstanding for 180 days continuously, the debtor's name and home address were subject to mandatory publication by the Tax Authority. As already stated above, regardless of the existence or not of any subjective fault or other individual circumstances, 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.

130. While, as explained above, the choice of such a general scheme is not in itself problematic, nor is the publication of taxpayer data as such, the Court must assess the legislative choices which lay behind the impugned interference and whether the legislature 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 is of central importance in assessing the proportionality of a general measure (see *Animal Defenders,* cited above, §§ 108 and 113). In this regard, as stated above, the central question is not whether less restrictive rules should have been adopted, but whether the legislature acted within the margin of appreciation afforded to it in adopting the general measure and striking the balance it did (see paragraph 126 above).

131. Turning first to the public interest in dissemination of the information in question, the Court notes that the national legislature, through the 2006 amendment of the 2003 Tax Administration Act, introduced a provision in section 55(5) whereby a list of major tax debtors was to be published. This measure was aimed at complementing, amongst others, the scheme for the publication of information on tax defaulters under section 55(3). As appears from the preparatory works to the 2006 Amendment Act, the legislature considered this new measure necessary in order to 'whiten the economy' and reinforce the capacities of the tax and customs authorities (...). The justification for broadening the categories of taxpayers subject to publication to include tax debtors was that unpaid tax debts were not only a matter of tax arrears, established in tax inspection proceedings, but could also have been the result of conduct in breach of tax payment obligations (...).

132. However, even though the 2006 Amendment Act was passed to complement existing measures allowing taxpayer data to be disseminated for the same purposes, the preparatory works to the 2006 Amendment Act do not reveal any assessment of the likely effects on taxpayer behaviour of the publication schemes that already existed, notably the section 55(3) scheme. Nor do they disclose any reflection as to why those measures were deemed insufficient to achieve the intended legislative purpose or as to the potential complementary value of the section 55(5) scheme, 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.
133. In particular, it does not emerge that Parliament assessed to what extent publication of all the elements of the section 55(5) list, most notably the tax debtor's home address, was 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) of the 2003 Tax Administration Act (..., and *Animal Defenders International*, cited above, § 108).
134. The Court further observes that while the explanatory report to the 2003 Tax Administration Act referred to taxpayers' right to privacy as justification for strict rules on confidentiality (...), there is no evidence that consideration was 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 (...).
135. Nor does it appear that consideration was 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.
136. Thus, in so far as it could be said that publication of that list corresponded to a public interest, Parliament does not appear to have considered to what extent publication of all the data in question, and in particular the tax debtor's home address, was 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 (see *Samoylova v. Russia*, no. 49108/11, §§ 100-01, 14 December 2021), sufficient parliamentary consideration was particularly important in the circumstances of the case. Data protection considerations seem to have featured little, if at all, in the preparation of the 2006 amendment, despite the growing body of binding national and EU data protection requirements applicable in domestic law.
137. While the Court accepts that the legislature's intention was to enhance tax compliance, and that adding the taxpayer's home address ensured the accuracy of the information being published, it does not appear that the legislature contemplated taking measures to devise appropriately tailored responses in the light of the principle of data minimisation. The Court finds no evidence of such considerations in the legislative history either of the 2003 Tax Administration Act or of the 2006 Amendment Act.
138. In short, the respondent State has not demonstrated that the legislature sought to strike a fair balance between the relevant competing individual and public interests with a view to ensuring the proportionality of the interference.

(b) Conclusion
139. In the light of the above, given the systematic publication of taxpayer data, which included taxpayers' home addresses, the Court is 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, were sufficient to show that the interference complained of was 'necessary in a democratic society' and that the authorities of the respondent State struck a fair balance between the competing interests at stake.
140. There has accordingly been a violation of Article 8 of the Convention.

III. Application of Article 41 of the Convention
141. Article 41 of the Convention provides:
> 'If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.'

A. Damage
142. The applicant claimed € 10,000 (EUR) in respect of non-pecuniary damage.
143. The Government contested this claim.
144. Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *O'Keeffe v. Ireland* [GC], no. 35810/09, § 199, ECHR 2014).
145. The Court considers that in the particular circumstances of the present case the finding of a violation can be regarded in itself as sufficient just satisfaction for any non-pecuniary damage sustained by the applicant, and thus rejects his claim under this head.

B. Costs and expenses
146. In the proceedings before the Grand Chamber, in his claim submitted on 29 October 2021, the applicant sought the reimbursement of € 25,200 for

legal costs and expenses incurred in the proceedings before the Chamber and Grand Chamber, including the preparation of and participation in the hearing, corresponding to 106 hours' legal work at an hourly rate of € 200.

147. The applicant also claimed € 3,341 for travel and accommodation expenses related to the hearing.

148. The Government found these claims excessive. They submitted, in particular, that the amount of € 3,341 claimed for expenses related only partly to participation in the hearing.

149. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of € 20,000 covering costs under all heads.

C. Default interest

150. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

For these reasons, the Court,

1. *Accepts,* unanimously, the Government's preliminary objection with regard to the search interface;

2. *Accepts*, unanimously, the Government's preliminary objection with regard to the republication of the information published on the Tax Authority's website;

3. *Joins*, unanimously, the Government's preliminary objection, in so far as it concerns the applicability of the 'reputational aspect' of Article 8, to the merits and *dismisses* it;

4. *Holds*, by fifteen votes to two, that there has been a violation of Article 8 of the Convention;

5. *Holds*, by sixteen votes to one, that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;

6. *Holds*, by fifteen votes to two,

(a) that the respondent State is to pay the applicant, within three months, € 20,000 (twenty thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses*, by sixteen votes to one, the remainder of the applicant's claim for just satisfaction.

(...)

Concurring opinion of Judge Kūris

1. While I fully subscribe to the finding of a violation of Article 8 of the Convention, I do not agree with the reasoning which has led to this finding. That reasoning is methodologically unsustainable, and the message which it conveys is worrying from the perspective of respect for private and family life as enshrined in Article 8.

2. The reasoning leading to the finding of the said violation is contained in paragraphs 129–140 of the judgment, which comprise the section 'Application of the above principles and considerations to the present case'. The preceding sections include: the description of the factual situation; presentation of the relevant domestic, EU, international and comparative law; considerations on the Government's preliminary objections; the determination of the scope of the case before the Grand Chamber; the presentation of the Chamber judgment; the summary of the parties' submissions; considerations on the existence of an interference with the applicant's rights, the legal basis for the interference and the legitimate aim pursued; and considerations on the necessity or otherwise of the general measure applied to the applicant, including the member States' margin of appreciation, the principles of data protection, the justifiability of general measures in the context of the 'quality of the parliamentary review', and the degree of consensus on the publication of taxpayers' personal data at national and European level. All these considerations are by way of introduction to the examination of the necessity and proportionality of the measure in question *per se*, that examination being squeezed into twelve paragraphs.

3. In a nutshell, the finding of a violation of Article 8 is based on what may be called the 'poor performance' of the respondent State in pleading its case — 'poor' in the sense that the State has proved unable to convince the Court that the publication of the applicant's personal data was necessary in a democratic society and proportionate to the legitimate aim pursued. No matter how hard the State tries, the majority are 'not satisfied' with its efforts. They state as follows:

> '… given the systematic publication of taxpayer data, which included taxpayers' home addresses, the Court is not satisfied, notwithstanding the margin of appreciation of the respondent State, that the reasons relied on by the Hungarian legislature in enacting the [statutory provisions in question], although relevant, were sufficient to show that the interference complained of was 'necessary in a democratic society' and that the authorities of the respondent State struck a fair balance between the competing interests at stake' (see paragraph 139 of the judgment).

More specifically, it is maintained that, although 'sufficient parliamentary consideration was particularly important in the circumstances of the case', 'Parliament does not appear to have considered to what extent publication of all the data in question,

and in particular the tax debtor's home address, was 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', and that '[d]ata protection considerations seem to have featured little, if at all, in the preparation of the 2006 amendment, despite the growing body of binding national and EU data protection requirements applicable in domestic law' (see paragraph 136 of the judgment). The majority then conclude that 'the respondent State has not demonstrated that the legislature sought to strike a fair balance between the relevant competing individual and public interests with a view to ensuring the proportionality of the interference' (see paragraph 138 of the judgment).

4. The readership is thus left with one of two alternatives: either (i) the Hungarian Parliament, while deliberating on the statutory provisions by which it introduced the general measure applicable to the applicant (and other persons in a similar situation), did not even bother to seek to strike a fair balance between the 'competing interests'; or (ii) even if at the stage of enactment of the said provisions the national legislature sought to balance the 'competing interests', the Government's representatives did not succeed in convincing the Court that such a balance had indeed been sought. In the first alternative, the blame for the respondent State's setback in Strasbourg is placed on Parliament; in the second, it is placed on the Government's representatives.

5. It would be self-deceptive to turn a blind eye to the fact that in neither of the two above-mentioned alternatives is the blame put on the impugned measure itself. Moreover, the *substance* of this measure is *not assessed*, at least *not fully*. What *is* assessed is the *parliamentary procedure* leading to the introduction of the general measure in question. Moreover, this measure is not only *upheld*, but in fact *encouraged*, if any of the member States should choose to introduce such a measure after what the Court regards as a parliamentary debate of the requisite quality — a debate in which 'data protection considerations' have featured prominently and 'competing interests' have been sought to be balanced. In theory, even the Hungarian Parliament is not prevented from reintroducing the same measure anew, this time after a deliberation process meeting the Court's (emerging) very exacting standard of the 'quality of the parliamentary review' (although, of course, such an experiment is wholly hypothetical, for in reality it would raise too many eyebrows, not only in Hungary).

Be that as it may, the present judgment does not mean that *the impugned general measure as such has been invalidated*. It may stay. For what else can be meant by the majority's statement that 'the choice of such a general scheme is not in itself problematic, nor is the publication of taxpayer data as such' (see paragraph 130 of the judgment)? From this statement, made in particular in the context of (though some may say notwithstanding) general considerations regarding the margin of appreciation afforded to member States (see paragraphs 118–122 of the judgment), it follows that the choice of a 'general scheme' of this kind which encompasses the publication of taxpayers' home address and other personal data falls comfortably within the margin of appreciation of a member State. The message is thus conveyed that the 'systematic' publication of taxpayers' personal data is in principle permitted under the Convention, provided that the necessity and proportionality of the measure were properly debated by the legislature and that in the course of that debate 'competing interests' were duly weighed against each other. For the majority, observance of this condition ensures the 'quality of the parliamentary review of the necessity of the interference [which] is of central importance in assessing the proportionality of a general measure', as opposed to the issue 'whether less restrictive rules should have been adopted' (see paragraph 130 of the judgment). That issue becomes secondary: it matters only inasmuch as it can be ascertained whether the possibility of less restrictive rules was debated in sufficient detail, even if it was rejected, because the MPs considered that such rejection fell within the State's margin of appreciation. It looks as though discussion of the decision is more important than the decision itself.

6. Having stated that 'the choice of such a general scheme is not in itself problematic, nor is the publication of taxpayer data as such', the majority immediately switch to 'assess[ing] the legislative choices which lay behind the impugned interference and whether the legislature weighed up the competing interests at stake, given the inclusion of personal data such as a home address' (ibid.).

The approach whereby the 'quality of the parliamentary review' in some cases may be determinative in deciding whether the Convention has been observed or disregarded is not novel in the Court's case-law. Yet it has its limits; in certain cases it is insufficient.

7. One of the reasons underlying the limited appropriateness of the said approach is that there is a risk of overstepping the fine line beyond which the use of the 'quality of the parliamentary review' yardstick becomes a tool for *substituting* the examination of a general measure for the examination of the issue raised by the applicant. That fine line is not overstepped where the 'quality of the parliamentary review' is invoked alongside other criteria for determining the Convention compliance of the application of a contested measure. But substitution occurs where the yardstick of the 'quality of the parliamentary review' is used as the *sole* criterion for the said determination, because an individual assessment of the applicant's situation is replaced by a general assessment, that is to say, the Court assesses not the impugned measure as *applied* to the applicant, but its *applicability* to that person and other persons in a similar situation.

8. Let me make myself clear: I do not object to the assessment of general measures as such. In many cases such assessments have proved informative, serviceable, productive, even indispensable. I take exception only to an auxiliary superseding a principal, to what is secondary being considered primary, to an exception becoming a rule, to such an incomplete examination of cases whereby the Court, having assessed the procedure leading to the adoption of the impugned general measure, halts and undertakes no individual assessment of the particular applicant's situation. If it assesses the procedure as being beyond reproach, it holds that there has been no violation of the Convention, and if it finds that procedure to be flawed, it holds that there has been a violation.

9. Indeed, there are specific situations where an individual assessment would be redundant, for instance where the general measure complained of is so blatantly at odds with the Convention that *any* individual assessment would result in the finding of a violation of the Convention (as, for example, in *Roman Zakharov v. Russia* ([GC], no. 47143/06, ECHR 2015 (*NJ* 2017/185, m.nt. E.J. Dommering; *red.*))). But in most cases the Court, after having endorsed the impugned general measure, and not merely the procedure leading to its adoption, will still scrutinise the applicant's complaints from at least some angles. One example would be *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* ([GC], no. 931/13, 27 June 2017 (*NJ* 2018/67, m.nt. E.J. Dommering; *red.*)), where the Court, having found that the impugned general measure was 'designed to … enabl[e] a debate on matters of public interest' and that the 'parliamentary review … ha[d] been both exacting and pertinent' (§§ 172 and 193), proceeded to examine the 'gravity of the sanction' imposed on, *inter alia*, the applicants, and found that that 'sanction' was not even 'a sanction within the meaning of the case-law of the Court' (§ 197), allowing it to find that there had been no violation of Article 10 (§ 199). In that case the general measure, of which one could not say that it was 'not in itself problematic', was assessed not only in general terms but also as it applied to the applicants.

10. Individual assessment should not be dispensed with readily even where the general measure complained of is 'not in itself problematic'. The point is that this applies to perhaps most of the measures which the Court is called upon to assess in the cases brought before it. To wit, seizures of property, arrests, detentions, criminal charges or expulsions are 'not in themselves problematic'; but they may become — and indeed often do become — problematic when applied to particular individuals in particular circumstances. Restrictions on various freedoms (of movement, of expression, of assembly) or on the right to apply to a court, and so forth, are also 'not in themselves problematic'; but they may and do become problematic depending on who specifically is restricted in doing specifically what, and under what specific circumstances. The same goes for the publication of personal data: it may be 'not in itself problematic', but the publication of *certain* personal data, especially *urbi et orbi*, may be highly problematic. What is determinative in the application of the 'not in itself problematic' formula is the 'in itself' element, which requires the Court to ascertain that no caveat has been overlooked; this formula must not be read in an unqualified manner as plainly 'not problematic'.

11. Is there such a caveat in the 'general scheme' approved in the present case? There is at least one. The majority mention here and there in their reasoning that the personal data published under the 'general scheme' vindicated by the majority encompassed, *inter alia*, individuals' home addresses (see paragraphs 129, 130, 133–137 and 139 of the judgment). But the judgment does not provide any targeted assessment of the publication of home addresses. Home addresses made public under the 'general scheme' are thus absorbed into the other personal data made public.

At the same time it is all too visible that the majority are not comfortable with the publication of home addresses. For instance, they state that 'Parliament does not appear to have considered to what extent publication of all the data in question, and in particular the tax debtor's home address, was 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', that such information is of a 'rather sensitive nature' (see paragraph 136 of the judgment) and that, while 'adding the taxpayer's home address ensured the accuracy of the information being published, it does not appear that the legislature contemplated taking measures to devise appropriately tailored responses in the light of the principle of data minimisation' (see paragraph 137 of the judgment). But the 'systematic' publication of the persons' home addresses does not resonate very strongly, because the concern of the majority is limited to whether the choice of 'general scheme' was sufficiently debated by the national legislature from the standpoint of the balancing of 'competing interests' and was justified by reference to the margin of appreciation afforded to the respondent State.

12. The methodology according to which the 'central question as regards [the impugned] measures is not whether less restrictive rules should have been adopted or, indeed, whether the State could prove that, without the impugned measure, the legitimate aim would not be achieved', but 'whether, in adopting the general measure and striking the balance it did, the legislature acted within the margin of appreciation afforded to it' (see paragraph 126 of the judgment), has been uncritically copy-pasted from *Animal Defenders International v. the United Kingdom* ([GC] no. 48876/08, 22 April 2013 (*NJ* 2016/321, m.nt. E.J. Dommering; *red.*)). Yet that judgment should not have been afforded the force of precedent in the present case. It

is a weak ally for the purposes of the present case, for a number of reasons.

13. Firstly, in *Animal Defenders International* the applicant complained not only of the application of the general measure to it, but also of the measure itself, whereas in the present case the applicant complains first and foremost of the application of the general measure to him; even if some parts of his complaint call into question the measure as such, they are derivative from the principal complaint and thus secondary (see paragraphs 77 and 81–90 of the judgment). The majority have chosen to examine what is secondary and leave aside what is principal.

14. Secondly, *Animal Defenders International* was not about privacy rights. That case was about restrictions on political advertising on radio and television. The Court took a sympathetic view of the United Kingdom 'authorities' desire to protect the democratic debate and process from distortion by powerful financial groups with advantageous access to influential media' and recognised 'that such groups could obtain competitive advantages in the area of paid advertising and thereby curtail a free and pluralist debate, of which the State remains the ultimate guarantor' (§ 112). But, in contrast to the 'general scheme' dealt with in the present case, restrictions on advertising (any, including political) are *not an active measure*: persons who do not seek to advertise anything do not experience any interference by the State. Meanwhile, the crux of the present case is not restrictions on anyone's activity but the publication, by the authorities themselves, of an individual's personal data for everyone to read, in other words, *active steps* taken by the State. The majority have chosen to ignore this difference.

15. Thirdly, in *Animal Defenders International* the Government argued, *inter alia*, that there had been 'detailed consideration and rejection of less restrictive alternatives by various expert bodies and democratically-elected politicians who were peculiarly sensitive to the measures necessary to safeguard the integrity of the democratic process', that 'Parliament was entitled to judge that the objective justified the prohibition and it was adopted without dissent', and that '[i]t was then scrutinised by the national courts which endorsed the reasons for, and scope of, the prohibition' (§ 95). The Court took these submissions most seriously and found no violation (of Article 10), owing to what it considered to be the sufficient quality of the parliamentary debate on the impugned general measure. The 'quality of the parliamentary review' (and, in addition, of the judicial review) thus served not as a principal but as an additional argument in favour of the finding of no violation (of Article 10) in a situation where the measure complained of did not lend itself to straightforward justification. However, in the present case the lack of such quality has become the principal argument for finding a violation of Article 8.

16. Last but not least, in *Animal Defenders International* the Court did not stop at establishing that the 'quality of the parliamentary review' was satisfactory. Having established that (see the 'Preliminary remarks' sub-section, §§ 106-12), it proceeded to assess the proportionality of the impugned measure (see the 'Proportionality' sub-section, §§ 113-25). Nothing of this kind is to be found in the present judgment. Considerations as to the compliance of the measure complained of are set out in the section headed 'Application of the above principles and considerations to the present case'. That section consists of two sub-sections, entitled 'Legislative and policy framework' (paragraphs 129–138) and 'Conclusion' (paragraphs 139 and 140). All the reasoning relevant to the assessment of the necessity and proportionality of the impugned measure falls under the first of these two headings. There proportionality is mentioned three times: in paragraph 129 it is stated that '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'; in paragraph 130 it is mentioned in the reference to *Animal Defenders International* (the citation provided states that the 'quality of the parliamentary review of the necessity of the interference is of central importance in assessing the proportionality of a general measure'); and in paragraph 138 it is concluded that the 'respondent State has not demonstrated that the legislature sought to strike a fair balance between the relevant competing individual and public interests with a view to ensuring the proportionality of the interference'. That is it.

Where is the Court's own assessment of the proportionality of the measure, as applied to the applicant? It is not there. *Animal Defenders International* has been invoked and applied in reverse — distortedly, contrary to its logic and sequence of reasoning.

17. The so-called *Animal Defenders* line of reasoning has become a lifebelt for the Court in some cases in which it ascertains that the application of the measure complained of has gone well beyond what is permitted by the Convention, but in which it is either not ready (for whatever reason) to harshly criticise the measure itself or believes that the applicant may have deserved some negative treatment owing to his or her non-law-abiding conduct. In the present case both these conditions are present: (i) the general measure in question has been applied not only in Hungary but also in several other member States, therefore the finding that it runs counter to the requirements of Article 8 is fraught with the risk of opposition from some member States; and (ii) the applicant has not given the impression of being an honest taxpayer, so informing the public of his alleged misdoings may serve some legitimate aim (even if this is defined as broadly as providing 'third parties … with insight into the fiscal situation of tax debtors' and thus 'the protection of the rights

and freedoms of others'; see paragraph 113 of the judgment). At the same time the Court realises that there is something fishy about some elements of the 'general scheme' which call for it to be invalidated. On what basis? The majority considered that *Animal Defenders International* presented a way out of this predicament.

Except that it did not.

18. The so-called *Animal Defenders* line of reasoning (as followed also, for example, in *Satakunnan Markkinapörssi Oy and Satamedia Oy*, cited above) can be invoked *to justify, but not to invalidate* a general measure: this precedent is applicable where, on the facts of the case, the measure complained of, which is borderline and does not lend itself to straightforward justification under Convention standards, was properly debated by the legislature, which sought a balance between the 'competing interests', that is to say, where the 'quality of the parliamentary review' was satisfactory. This precedent should not be relied upon for the purposes of justifying otherwise unjustifiable measures. For if it were, then just imagine how many contested measures could be justified based on the fact that their adoption was preceded by an extensive parliamentary debate from the standpoint of whether the choice of those measures fell within the margin of appreciation afforded to the member State, especially if there was no European consensus on the matter. There was a full and frank debate (a mixture of quality and its opposite) in the Lithuanian legislature regarding the adoption of the general measure which the Court dealt with in *Macatė v. Lithuania* ([GC], no. 61435/19, 23 January 2023), but the extensive nature of that debate could not serve to justify the impugned measure.

In a similar vein, the *Animal Defenders International* precedent should not be used to invalidate general measures which, upon inspection, may prove to be justifiable but whose adoption was not preceded by any extensive parliamentary debate. For if the measure is acceptable as such, what difference can it make if its statutory introduction was debated by the legislature, briefly or extensively, *inter alia* from the standpoint of the margin of appreciation? The applicability of *Animal Defenders* line of reasoning has its limits.

19. Be that as it may, the *Animal Defenders* line of reasoning requires consideration to be taken not only of the factual situation relating directly to the application of the impugned measure to the applicant, but also of that relating to the adoption of the measure by the legislature.

20. As mentioned, the majority maintain that 'it does not appear that the legislature contemplated taking measures to devise appropriately tailored responses in the light of the principle of data minimisation' (see paragraph 137 of the judgment). This is quite a straightforward assessment of a situation which in fact was not so straightforward.

In fact, there *was* an extensive parliamentary debate on the 'general scheme', as convincingly shown by the national judge (I refer to his and Judge Wojtyczek's separate opinion). To wit, 'measures to devise appropriately tailored responses in the light of the principle of data minimisation' were indeed contemplated in various organs of the respondent State, but much earlier, when the 'general scheme' was first considered and introduced in the 1990s. Firstly, before the 'general scheme' was submitted for Parliament's consideration, its pros and cons were assessed by the executive branch, in particular by the Ministry of Finance, whose head submitted the draft statute to Parliament. The measure was then debated in no fewer than four committees of Parliament. Later, the draft statute was most actively debated in a plenary session of Parliament. After that it was again considered by the government, which, in view of the legislature's unwillingness to adopt the original version of the statute, bowed to MPs' objections and withdrew part of its initial proposals. Lastly, the 'general scheme' was again debated in Parliament.

It is not clear under which provisions of the Convention the legislature should engage in a new full-scale debate on these matters when, a decade later, it amends a statute which introduced a long-functioning 'general scheme', but does not change the said 'scheme' in essence. The judgment is silent on the legal reasons underlying the necessity of such new debate. That weakens the majority's criticism of the Hungarian legislature for not having duly considered the necessity of publishing 'all the data in question' and of '[d]ata protection [in the light of] the growing body of binding national and EU data protection requirements' (see paragraph 136 of the judgment). Is it not, to put it mildly, discordant that the Court criticises the national legislature in general, vague terms for the lack of quality of its 'review', but does not concretely indicate what constituted that lack, in view of the fact that the 'little consideration' had been preceded by in-depth consideration years previously?

21. By substituting an examination of the 'quality of the parliamentary review' of the impugned measure for an examination of the measure itself, the majority opted for what looked like an easy way of dealing with a not-so-easy legal and factual situation — what, in the Court's *argot*, is called a 'narrow procedural violation'.

Alas, too narrow. On closer inspection, it appears that it is not so easy to substantiate the choice of this seemingly easy way.

Meanwhile, the question which the Grand Chamber was expected and obliged to answer is whether the publication of the applicant's personal data, and first and foremost his name and home address, was necessary and proportionate on its own merits (I resist the temptation to put the last word in quotation marks). This question was circumvented by the majority. And yet it is not so difficult to answer, although a conclusive answer would require an individual assessment of the applicant's situation.

22. Tax defaulters are different. There are a variety of reasons why one might have tax arrears and become indebted to the State. I shall not go into the intricacies of the differences between tax defaulters, tax debtors and tax evaders. Suffice it to say that these are different categories and that not all tax defaulters are malevolent tax evaders. Consequently, not all tax defaulters deserve public naming and shaming. What is more, if a tax defaulter for whatever reason has no means of paying taxes, the authorities can write his or her name on all the walls in Budapest, announce it every evening on primetime television news and highlight it on every scoreboard of every football stadium, and still this will not help the hapless defaulter to pay his or her tax arrears; on the contrary, it may damage that person's reputation to such an extent that he or she is no longer able to obtain enough money to pay the debt. *Cui bono?* A rhetorical question.

On the other hand, there are also (not so few) 'hopeless' tax debtors or even malevolent tax evaders of whom the public (in particular potential new business partners) must beware so that they can be avoided and are unable to do even greater damage to the 'rights and freedoms of others'. The publication of the names of such persons may prove to be necessary and proportionate.

23. The general measure applied to the applicant was *indiscriminate*: it targeted not only malevolent tax evaders but also those tax defaulters who became indebted to the State owing to a conjunction of highly unfavourable circumstances, who did not dispute their financial obligations, did not try to avoid the payment of taxes and even did what was within their abilities to pay their debt. Normally, one size of garment must not fit all, and if it does fit all, the garment is most likely not 'appropriately tailored' (compare paragraph 137 of the judgment). The general measure examined in the present case was faulty on its own merits, and not because it was not debated in sufficient detail in Parliament. The majority themselves come close to this finding when they rightly criticise the national authorities for the fact that the 'publication policy', which indiscriminately imposed the impugned general measure on every tax debtor, 'did not require a weighing-up of the competing individual and public interests or an individualised proportionality assessment by the Tax Authority' (see paragraph 129 of the judgment). But having written that, the majority refrain from the logical next step and instead take a step back. Rather than blaming the measure as it is, they blame Parliament for allegedly not properly weighing the 'competing individual and public interests'.

24. Any determination of whether the application of the general measure to the applicant was necessary and proportionate would require an individual assessment, which was not undertaken in this case. While not wishing to prejudge the issue, I cannot easily shake off the impression that there might have been solid reasons for disclosing the applicant's name to the public. But owing to the fact that this aspect of the case has not been scrutinised by the Grand Chamber, it is not for one of its individual members to pronounce any conclusive views on this matter.

25. Things stand differently with regard to the publication of the applicant's home address. It would require a truly unchained imagination to invent any legitimate aim for making *that* individual's home address public. Moreover, the address in question is not only his home address but also that of the members of his family, including any children. No members of the public, no third persons have any legitimate interest in knowing the home address of an individual against that individual's will; if any exceptions to this basic rule could nevertheless be imagined, they would have to be dictated by a clearly articulated and indeed pressing public need. Be that as it may, it is obvious that the applicant does not fall into any such hypothetical category of exceptions. With regard to such (and many other) 'rule-breakers' (I cite the label used in the courtroom by the Government's representative), the publication of their home address should be off-limits; the member State's margin of appreciation in these matters should be zero; and that zero is not subject to any parliamentary debate, full stop.

26. The friction that is the subject of the present case is between the tax authorities and the tax debtor. What legitimate and/or practical aim did the publication of the home address of the latter serve? Didn't the authorities know that address? Of course they did — and still do. Then at whom was this publication directed? Who might benefit from it? Potential new business partners, who would be spared the dubious pleasure of dealing with a person who has financial troubles and, as the authorities maintain, is not honest in the eyes of the law? Well, no … for in order to be warned about such risks they did not need to know the person's home address. Then who? The neighbours who would frown in disapproval on meeting the applicant? Or taxi drivers who might not want to take a booking from him? This is all speculation, and, after all, it is about peanuts, so let's leave it aside. But what about potential uninvited 'visitors' who might arrange, in the applicant's absence, a 'fact-finding mission' to ascertain whether his material and financial situation was as bad as he perhaps attempted to convince the tax authorities, or who might even show up with their own 'claims'?

27. Public curiosity, and still less indiscriminate public naming and shaming, are not 'public interests' which can legitimately 'compete' with the interest of an individual, even a tax debtor, in not disclosing his or her home address to anyone to whom he or she does not wish to disclose it. So what was the interest with which, as the majority maintain, Parliament should have struck a 'fair balance' *vis-à-vis this* individual interest? The answer is: there was none.

Article 8 has therefore been violated not because Parliament did not seek to strike a 'fair balance' between the individual's right not to have his or her and his or her family's home address published for everyone to know and the public's spurious right to know it, but because the publication of the applicant's home address against his will was not capable of serving anyone's legitimate interest or any legitimate aim.

This is not only about that person's reputation — this is about *his and his family's security*. Contrary to what the majority maintain, 'the choice of such a general scheme' which allowed the publication of his home address *is* 'in itself problematic'.

That alone should have sufficed for the finding of a violation of Article 8. The inquiry into the 'quality of the parliamentary review', as undertaken by the majority, is not only unnecessary for deciding this case — it is misleading.

28. I am not suggesting that the violation of Article 8 should have been found at the stage of examining whether there was a legitimate aim behind the general measure applied to the applicant because the 'general scheme' was not limited to the publication of his home address but also encompassed the publication of his name and other personal data. As mentioned, in certain circumstances such publicity may be justified, for instance as a warning aimed at 'the protection of the rights and freedoms of others'. Without wishing to prejudge the issue, it cannot be excluded from the outset that the application of some other elements of the 'general scheme' might have been justified in the applicant's situation, had the individual assessment not been dispensed with. In that case the final finding could have been more nuanced.

29. In the judgment, references are made to *Alkaya v. Turkey* (no. 42811/06, 9 October 2012) and *Samoylova v. Russia* (no. 49108/11, 14 December 2021). The lesson drawn from these judgments is that information about a person's home address is 'about his private life' and that such information is of a 'rather sensitive nature' (see paragraphs 104 and 136 of the judgment respectively). But why was a broader and more relevant conclusion not drawn from these judgments, namely that, if the Court finds (as it has done) a violation of the Article 8 right where the State has failed to protect the individual from the public disclosure of his or her home address by non-State actors, it must, *a fortiori*, find a violation of that right in the case of indiscriminate ('systematic') publication of the applicant's home address by the authorities. The least the Court should do is not to attempt to 'rationalise' the 'general scheme' which allows for such publication as being 'not in itself problematic'.

References are also made in the judgment to *Satakunnan Markkinapörssi Oy and Satamedia Oy*, cited above, and in particular to the statements that even the public character of the data processed does not exclude such data from the guarantees for the protection of the right to private life under Article 8, and that domestic law must afford appropriate safeguards to prevent any use of personal data as may be inconsistent with the guarantees of Article 8 (see paragraphs 104 and 122 of the judgment respectively).

So what? References go their way, and the reasoning goes its own way.

30. During the hearing, I enquired from the Government's representative whether the Hungarian legislation provided for the personal data not only of tax defaulters but also of other 'rule-breakers' to be made public. For instance, what about traffic violators, in particular those who have developed the habit of driving under the influence? Those who misappropriate property? Bribe-givers and takers? Disclosers of State secrets? Sexual offenders? Polygamists? Those guilty of domestic violence? Exam cheaters? Criminals 'in general'? The list could go on: killers, bank robbers, criminal gang members, drug dealers, human traffickers, smugglers, illegal arms traders, etc. From the representative's cursory response, I understood that indiscriminate tax defaulters were in good company: there is a register of sexual offenders, the entries in which are publicly accessible. As to the other mentioned and unmentioned categories of 'rule-breakers', I took the omission to answer my direct question as confirmation that they have been spared. The public is informed as to where a tax defaulter lives, but not a serial killer or a child abductor.

I almost exclaimed: 'But where is everybody?' But no. This question was asked by Enrico Fermi in a loftier context than that of the present case. So I did not enquire any further.

Partly concurring and partly dissenting opinion of Judge Serghides

I. Introduction

(enz., *red.*)

Joint dissenting opinion of Judges Wojtyczek and Paczolay

(enz., *red.*)

Noot

Inleiding

1. Sinds 1996 kent het Hongaarse recht de regel dat de geheimhoudingsplicht van de overheid in fiscale aangelegenheden wordt opgeheven voor onbetaalde belastingschulden, voor particulieren vanaf 10 miljoen forint (€ 28000), voor rechtspersonen vanaf 100 miljoen forint (€ 280.000). Deze worden in het 'register van grote belastingschulden' op de website van de Hongaarse Fiscus gepubliceerd. Nieuwe wetgeving geïnitieerd in 2003 die de privacy in fiscale zaken beter beoogde te regelen had deze uitzondering gehandhaafd onder het motto dat dit onderdeel was van het regeringsprogramma van het 'witwassen van de Hongaarse economie'. Het register was op naam doorzoekbaar en gekoppeld aan een zoekmachine. De klager in deze zaak, aangeduid als LB (initialen die in het Nederlands de

afkorting zijn van 'Loonbelasting'!), was in 2013 in dit register terechtgekomen, omdat hij in de periode daarvoor een onbetaalde belastingschuld van € 800.000 had opgebouwd. Bovendien kwam de fiscus een onttrekking van meer dan 2 miljoen euro op het spoor van een bv waarvan LB vroeger directeur/oprichter was geweest, maar waarmee hij geen banden meer onderhield. De onttrekking was niet in de boeken van deze vennootschap verantwoord. De fiscus legde voor dit geknoei een boete van 6 ton in euro op en bracht voor achterstallige rente op belastingschulden in rekening.

Omvang van het geschil in Straatsburg

2. LB had een aparte zaak aangespannen en schadevergoeding gevorderd. Deze claim was door het Hongaarse Hof van Beroep op grond van de vigerende publicatieregels afgewezen (r.o. 36 en 37). De klacht over de effecten van de zoekmachine valt af omdat deze klacht geen onderdeel van het geschil dat naar het Hof was verwezen, uitmaakte (r.o. 66-72). Ook de klacht over de her-publicatie van de persoonsgegevens afkomstig van de site van de Fiscus op een nieuwssite valt buiten de boot (r.o. 75). De zaak beperkt zich dus tot de openbare lijst van personen met (te) grote belastingschulden (r.o. 76). Daardoor is zij niet minder principieel, temeer daar zij mijns inziens een heel algemene vraag beslist: Hoe kan de overheid debiteuren van openbare schulden op een proportionele manier aanpakken? Daarom betrek ik in mijn conclusie aan het slot de 'toeslagenaffaire'.

De beslissing van de meerderheid van de Grote Kamer

3. Het is gebruikelijk dat in de schets van het juridische kader van het geschil wordt stilgestaan bij het nationale recht van de jurisdictie waaruit de zaak afkomstig is (in dit geval de Hongaarse). Daarnaast is er altijd een rechtsvergelijkend kader (rechtsontwikkelingen in de landen van de Raad van Europa). Naast het Straatsburgs kader (eigen jurisprudentie, resoluties, EVRM, verdragen van de Raad van Europa) wordt steeds vaker het EU-kader genoemd (het VWEU, het EU-handvest, richtlijnen en verordeningen, jurisprudentie van het HvJ EU). We vinden dit in hoofdstuk III van het arrest. Met name is daar interessant de uitvoerige analyse van de jurisprudentie van het HvJ EU in paragraaf D.

4. We zien echter dat het Hof in zijn onderzoek deze normen van verschillende herkomst door elkaar toepast. De vraag of er door de publicatie een inbreuk is op het privéleven beantwoordt het Hof bevestigend aan de hand van zijn eigen jurisprudentie. Met name is van belang het *Satamedia*-arrest (*Satakunnan Markkinapörssi Oy and Satamedia Oy tegen Finland*, EHRM 27juni 2017, *NJ* 2018/67, m.nt. E.J. Dommering) dat ging over de openbaarheid van de Finse belastingaangifte; die zaak spitste zich echter toe op het hergebruik van deze voor fiscale doeleinden openbaargemaakte gegevens voor journalistieke doeleinden. Op basis daarvan concludeert het Hof dat de publicatie door de fiscus van de persoonsgegevens van belastingdebiteuren een inbreuk op het privacyrecht is (r.o. 104-106).

5. Er is discussie bij het Hof geweest of de strafpublicatie op zichzelf een legitiem doel had. De meerderheid vindt van wel, met een argumentatie ontleend aan de uitspraak in de zaak *Animal Defenders* (EHRM 22 april 2013, *NJ* 2016/321, m.nt. E.J. Dommering, zie ook E.J. Dommering, *De Europese Informatierechtsorde*, Amsterdam: DeLex 2019, VI 1), maar een gelopen race was dat niet, want er is een concurring opinion van de Litouwse rechter Kūris met scherpe kritiek op dat standpunt (paragraaf 12 e.v. van de opinie). In punt 17 van zijn opinie stelt deze: *'The so-called Animal Defenders line of reasoning has become a lifebelt for the Court in some cases in which it ascertains that the application of the measure complained of has gone well beyond what is permitted by the Convention, but in which it is either not ready (for whatever reason) to harshly criticise the measure itself or believes that the applicant may have deserved some negative treatment owing to his or her non-law-abiding conduct.'* Daar zou hij wel eens gelijk in kunnen hebben.

6. De kern van de discussie komt daarom te liggen bij de vraag hoe zwaar de privacy-inbreuk is die wordt teweeggebracht door publicatie van de persoonsgegevens op de openbare debiteurenlijst. Hoewel de koppeling aan een internetzoekmachine buiten het geschil valt, kent het Hof wel bijzonder gewicht toe aan het feit dat het hier een publicatie op het internet betreft (r.o. 121). Verder past het de fundamentele beginselen uit het dataprotectierecht toe (r.o. 123).

7. Bijzondere aandacht verdient r.o. 127, die handelt over de mate van overeenstemming op Europees niveau over deze materie. Die is gering, hoewel de meeste staten niet zulke vergaande publicatieverplichtingen in het kader van de belastingplicht kennen als Hongarije. Dit alles bij elkaar nemende acht het Hof de Hongaarse openbaarheidsregeling op zich wel gerechtvaardigd, maar in de uitwerking disproportioneel en daarom een te grote inbreuk op de privacy. De beslissende overweging 129 is mijns inziens, mutatis mutandis, ook op de Nederlandse 'toeslagenaffaire' van toepassing. Deze citeer ik daarom integraal:

> *'The Court notes at the outset that an important feature of the mandatory publication scheme was that the Hungarian Tax Authority had no discretion under domestic law to review the necessity of publishing taxpayers' personal data. Where a tax debt had been outstanding for 180 days continuously, the debtor's name and home address were subject to mandatory publication by the Tax Authority. As already stated above, regardless of the existence or not of any subjective fault or other individual circumstances, 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 pub-*

lished 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.'

En de conclusie in r.o. 137 en 138:

'While the Court accepts that the legislature's intention was to enhance tax compliance, and that adding the taxpayer's home address ensured the accuracy of the information being published, it does not appear that the legislature contemplated taking measures to devise appropriately tailored responses in the light of the principle of data minimisation.' (..) In short, the respondent State has not demonstrated that the legislature sought to strike a fair balance between the relevant competing individual and public interests with a view to ensuring the proportionality of the interference.'

De ABRvSt had bij toetsing van de desbetreffende Nederlandse terugvorderingsbepalingen aan de privacy van de 'uitkeringsgerechtigden' en andere grondrechten die in het geding waren (bijv. hun eigendomsrecht), op basis van het EVRM veel meer ruimte om een proportionaliteitstoetsing toe te passen. Die ruimte had zij mijns inziens op grond van art. 94 Gw kunnen en moeten benutten. Het reflectierapport 'Lessen uit de kinderopvangtoeslagen' van de Afdeling Bestuursrechtspraak van de Raad van State van november 2021 gaat niet op deze vraag in, ook niet in paragrafen 4.3. en 4.4. waar het rapport stilstaat bij de vraag waarom de Afdeling pas zo laat 'om' is gegaan en wat de lessen voor de toekomst zijn.

E.J. Dommering

NJ 2024/145*

HOGE RAAD (CIVIELE KAMER)
16 september 2022, nr. 21/01623
(Mrs. M.V. Polak, C.H. Sieburgh, H.M. Wattendorff, F.R. Salomons, G.C. Makkink; A-G mr. P. Vlas)
m.nt. M.L. Hendrikse**

Art. 6, 7, 8, 9, 11 CMR; art. 150 Rv

RvdW 2022/829
NJB 2022/2101
S&S 2023/14
ECLI:NL:HR:2022:1222
ECLI:NL:PHR:2022:138

Vervoerrecht. CMR-Verdrag. Bewijsrecht. Bewijslastverdeling m.b.t. vraag of tijdens vervoer door douane aangetroffen goederen dezelfde zijn als door afzender aan vervoerder meegegeven goederen; art. 150 Rv.

Met betrekking tot de vraag of de vervoerder moet bewijzen dat de tijdens het vervoer door de douane aangetroffen goederen dezelfde zijn als de door de afzender aan de vervoerder meegegeven goederen, dan wel dat de afzender moet bewijzen dat de door de douane aangetroffen goederen niet de door hem aan de vervoerder meegegeven goederen zijn, bevat de CMR geen uitdrukkelijke regels. Dergelijke regels liggen evenmin besloten in art. 6, 7, 8, 9 en 11 CMR. Niet de CMR, maar het nationale recht is bepalend voor de bewijslastverdeling ten aanzien van de vraag of de tijdens het vervoer door de douane aangetroffen goederen dezelfde zijn als de door de afzender aan de vervoerder meegegeven goederen.

[eiseres], eiseres tot cassatie, adv.: mrs. J.H.M. van Swaaij en J.M. Moorman,
tegen
[verweerster], verweerster in cassatie, adv.: mr. N.T. Dempsey.

Hof (tussenarrest):

3. De beoordeling

3.1. In dit hoger beroep kan worden uitgegaan van de volgende thans relevante feiten.

(a) [verweerster] verzorgde in 2015 regelmatig in opdracht van [A], gevestigd te [plaats 1], Bulgarije ([A]), transporten van zendingen keukenartikelen naar het Verenigd Koninkrijk. Deze keukenartikelen werden door of in opdracht van [A] afgeleverd bij [verweerster] te [plaats 2].

(b) [verweerster] gaf vervolgens de opdracht aan [eiseres] om deze zendingen bij haar in [plaats 2] op te halen en naar de eindbestemming te vervoeren. Zo gaf [verweerster] bij e-mail van 21 oktober 2015 de volgende opdracht aan [eiseres]:

> "Eerste 4 zijn binnen. Papieren ook. Kunnen afgehaald worden."

(c) Op 21 oktober 2015 heeft chauffeur [chauffeur] van [eiseres] de pallets in [plaats 2] bij [verweerster] geladen. De inhoud van de dozen was niet zichtbaar. De dozen hadden geen opdruk. Over die belading verklaarde [chauffeur] in een overgelegde schriftelijke verklaring:

> "Bij [verweerster] werden de pallets altijd naar de vrachtwagen gereden met een heftruck van [verweerster]. (..) Deze medewerker heeft mij verteld dat de zendingen van [verweerster] bestek bevatten. Ik heb de vrachtbrief gedateerd op 21 oktober 2015 ontvangen (..) De CMR-vrachtbrief leverde ik altijd in bij het kantoor van [eiseres]. Deze werd niet op de lading geplakt. (..) Bij [verweerster] laadde ik de bewuste pallets vanaf de klep in de trailer met een palletwagen. Na het

* Dit arrest is eerst onlangs in handen van de annotator gesteld; *red.*

** Prof. mr. M.L. Hendrikse is hoogleraar Handels- en Verzekeringsrecht aan de Open Universiteit, vicevoorzitter van de Geschillencommissie Kifid en directeur van het UvA Amsterdam Centre for Insurance Studies (ACIS).