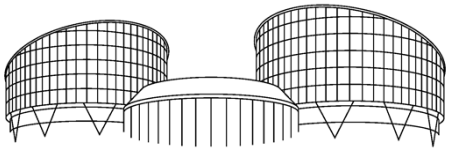

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF L.B. v. HUNGARY

(Application no. 36345/16)

JUDGMENT

Art 8 • Private life • Unjustified publication of applicant's identifying data, including home address, on tax authority website portal for failing to fulfil his tax obligations • Legitimate aims of enhancing tax system's efficiency, improving tax discipline and providing insight to third parties into tax debtors' fiscal situation • Wide State margin of appreciation in establishing scheme for dissemination of personal data of taxpayers who fail to comply with tax obligations • Legislature's failure to strike fair balance between competing public and private interests at stake • No requirement of an individualised proportionality assessment by tax authority • No assessment of the necessity to publish tax debtor's home address in order to achieve deterrent effect • No assessment of the impact on the right to privacy, especially in light of the medium used for dissemination (Internet) • Legislature's failure to devise appropriately tailored responses in light of data minimisation principle and other data protection considerations

STRASBOURG

9 March 2023

This judgment is final but it may be subject to editorial revision.

Table of Contents

In the case of L.B. v. Hungary,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Síofra O'Leary,
Robert Spano,
Gabriele Kucsko-Stadlmayer,
Pere Pastor Vilanova,
Ksenija Turković,
Krzysztof Wojtyczek,
Valeriu Griţco,
Egidijus Kūris,
Georgios A. Serghides,
Lətif Hüseynov,
Péter Paczolay,
Ivana Jelić,
Raffaele Sabato,
Saadet Yüksel,
Lorraine Schembri Orland,
Ana Maria Guerra Martins,
Ioannis Ktistakis*, judges*,

and Søren Prebensen, *Deputy Grand Chamber Registrar,*

Having deliberated in private on 7 December 2022,

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

INTRODUCTION

1. The application concerns the publication of the applicant's personal data on a list of major tax debtors on the website of the National Tax and Customs Authority, for failure to comply with his tax obligations. The applicant alleged that the publication infringed his right to respect for private life as protected by Article 8 of the Convention.

PROCEDURE

2. The case originated in an application (no. 36345/16) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Hungarian national, Mr L.B. ("the applicant"), on 7 June 2016. The President of the Grand Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 4 of the Rules of Court).

3. The applicant was represented by Mr D. Kiss and Mr D. Karsai, lawyers practising in Budapest. The Hungarian Government ("the Government") were represented by their Agent, Mr Z. Tallódi, from the Ministry of Justice.

4. On 18 October 2017 the Government were given notice of the application.

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1). On 12 January 2021 a Chamber of that Section composed of Yonko Grozev, President, Iulia Antoanella Motoc, Branko Lubarda, Carlo Ranzoni, Georges Ravarani, Jolien Schukking and Péter Paczolay, and Andrea Tamietti, Section Registrar, delivered its judgment. The Chamber unanimously declared the applicant's complaint concerning Article 8 of the Convention admissible, and the remainder of the application inadmissible. It held by five votes to two that there had been no violation of Article 8 of the Convention. The dissenting opinion of Judges Ravarani and Schukking was annexed to the judgment.

6. On 8 April 2021, in accordance with Article 43 of the Convention, the applicant requested the referral of the case to the Grand Chamber. The panel of the Grand Chamber accepted that request on 31 May 2021.

7. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24. Robert Spano's term as President of the Court came to an end. Síofra O'Leary succeeded him in that capacity and took over the presidency of the Grand Chamber in the present case (Rule 9 § 2). Robert Spano, Ksenija Turković, and Valeriu Griţco continued to sit following the expiry of their terms of office, in accordance with Article 23 § 3 of the Convention and Rule 24 § 4. By virtue of Rule 24 § 3, Jon Fridrik Kjølbro, who was prevented from sitting, was replaced by Raffaele Sabato.

8. The applicant and the Government each filed written observations (Rule 59 § 1) on the merits of the case.

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 3 November 2021.

There appeared before the Court:

(a) *for the Government*
Mr Z. TALLÓDI, *Agent*,
Ms M. WELLER, *Co-Agent*,
Ms H. VIZI, *Adviser*;

(b) *for the applicant*
Mr D.B. KISS,
Mr D. A. KARSAI, *Counsel*;
Ms E. MIHÁLY,
MS E. FRANK,
Mr J. NAGY *Advisers.*

The Court heard addresses by Mr Tallódi and Mr Karsai, as well as their replies to questions put by the Court.

THE FACTS

I. BACKGROUND

10. Since 1996 the Hungarian tax administration system has allowed limits to be placed on taxpayer confidentiality in the public interest, requiring the National Tax and Customs Authority (*Nemzeti Adó és Vámhivatal*, hereinafter "the Tax Authority") to publish data which would otherwise be subject to taxpayer confidentiality. The first publications concerned taxpayers whose tax arrears exceeded 10 million Hungarian forints (HUF), or in the case of legal entities HUF 100 million (corresponding to approximately 28,000 euros (EUR) and EUR 280,000 respectively) (*nagy összegű adóhiánnyal rendelkező adózók*, hereinafter "list of major tax defaulters"), and those who engaged in business activities without registering with the Tax Authority (section 48(3)(a) of Act no. XCI of 1990 on Tax Administration).

11. On 10 November 2003 Parliament passed Act no. XCII of 2003 on Tax Administration (hereinafter "the 2003 Tax Administration Act"), which was then promulgated on 14 November 2003 and entered into force on 1 January 2004. The 2003 Tax Administration Act left the obligation to publish the data of taxpayers with tax arrears unchanged: section 55(3) prescribed the publication of a list of major tax defaulters containing the data of taxpayers whose tax arrears exceeded HUF 10 million (in the case of private individuals). This provision required the Tax Authority to publish the taxpayer's name, home address, commercial premises (where applicable) and tax identification number, as well as the amount of the tax arrears and the legal consequences for taxpayers in respect of whom a final decision established that they had taxes in arrears for the previous quarter and that they had failed to fulfil their payment obligations within the time prescribed by the decision.

12. According to the explanatory note to the Draft Bill concerning sections 53 to 55 on "taxpayer confidentiality", the text incorporated the provisions on taxpayer confidentiality contained in the previous legislation and explained the exceptional circumstances in which disclosure of tax data was permissible. The explanatory note stated as follows:

> "The purpose of strict regulation of taxpayer confidentiality is to protect the right to privacy and business confidentiality. There is a fundamental interest in the protection of the private sphere of taxpayers and in the prevention of dissemination of their private data to unauthorised persons. The detailed and – even by international standards – strict regulation of taxpayer confidentiality, and the inaccessibility of tax data to the public or third persons, serve as a guarantee, since the tax authority is necessarily in possession of vital information obtained through tax returns and tax inspections, among other sources. The legislation obliges both the tax authority and any persons who have accessed tax data for the fulfilment of their tasks to preserve the confidentiality of tax data. Breaches of taxpayer confidentiality are sanctioned by criminal law. The protection of taxpayer confidentiality is an obligation for tax officials, experts and

anybody else who obtains knowledge of confidential tax information, for instance during the processing of tax data, tax deduction or advance tax deduction.

The unauthorised use or publication of data, or rendering the data accessible to unauthorised persons, constitute a breach of taxpayer confidentiality ...

Section 54 regulates the conditions for authorised use and the obligation to provide information. Section 55 regulates exceptional situations in which the tax authority is entitled to disclose tax data. This is only possible if the taxpayer has provided false information or provided accurate information in a misleading manner, or if the tax authority has assessed a particularly high amount of unpaid tax. Furthermore, the preconditions for the tax authority to be authorised to publicly refute false information are that the information is capable of undermining public confidence in the work of the public administration, that the Minister of Finance has given his or her authorisation and that the person concerned has been heard."

13. On 10 July 2006 Parliament passed Act no. LXI of 2006 amending certain pieces of financial legislation – twenty legislative acts in total – including the 2003 Tax Administration Act ("the 2006 Amending Act"). Section 114 of the 2006 Amending Act added to section 55 of the 2003 Tax Administration Act a new subsection (5), which prescribed the publication of a list of major tax debtors containing the personal data – the name (company name) and home address (registered office) – of tax debtors (*nagy összegű adótartozással rendelkező adózók*) whose tax debts exceeded HUF 10 million over a period longer than 180 days (hereinafter the "list of major tax debtors", see paragraph 30 below).

14. The explanatory report to the Act contained the following passage concerning section 55(5) of the 2003 Tax Administration Act:

"With a view to strengthening the clarity and reliability of economic relations and encouraging law-abiding conduct by the taxpayer, for years the tax authority has followed the practice of publishing the data of tax defaulters who have fallen behind in paying a significant amount of tax which has been established in a final decision. Since significant debts may originate not only from tax arrears revealed during a tax inspection, and ... regular non-payment may constitute extremely important information for contractual parties about a taxpayer's solvency, the Act also makes it possible to publish the data of taxpayers who have owed a large debt for a long time."

15. The background document submitted by the Minister of Finance to Parliament pointed out, under the heading "Whitening the economy", that the amendments broadened the categories of taxpayers whose personal data could be published by the Tax Authority.

16. During the general debate held on 20 June 2006, the Minister of Finance explained to Parliament, regarding the amendments to the 2003 Tax Administration Act, that further steps were necessary in order to "whiten the economy" and to reinforce the capacities of the tax and customs authorities to collect State revenue efficiently.

17. A further amendment to the 2003 Tax Administration Act in 2010 required the Tax Authority to publish a list of taxpayers in respect of whom a final administrative or court decision had established that they had

employed undeclared employees (section 55(6)). This list included the taxpayer's name, registered office, tax identification number (in the case of business entities) and address (in the case of private individuals), as well as the date of the final decision. In 2017 the categories of taxpayers subject to disclosure were extended to include those persons who had failed to submit their tax returns for two consecutive years (section 55(8)).

18. After the events which are the subject of the present case, a further change to the regulation of tax administration came into effect on 1 January 2018 with the entry into force of Act no. CL of 2017 ("the 2017 Tax Administration Act"). It maintained the publication obligation in respect of tax defaulters and tax debtors. Under the current system the Tax Authority also publishes a list of taxpayers against whom enforcement proceedings have been initiated (section 266(d)), a list of employers who have failed to declare their employees to the tax authorities (section 265), a list of taxpayers who have failed to declare their value-added tax for two consecutive years (section 266(l)) and a list of taxpayers whose tax number has been revoked as a sanction, making it unlawful for them to continue the business activities for which registration is required under the fiscal legislation (section 266(c)). In addition, the Tax Authority makes available on its website a list of taxpayers who have no tax debts *vis-à-vis* the public revenue (section 260) and a list of so-called "reliable taxpayers" (section 261). Since the enactment of the amendments to the 2017 Tax Administration Act (in force since 1 January 2020) the Tax Authority is furthermore under an obligation to create a search interface that allows access to the data of tax debtors from previous years (dating back to 31 December 2014). This database does not provide access to the full tax debtors' lists from previous years, but enables users to search for information about taxpayers by their names.

II. THE CIRCUMSTANCES OF THE CASE

19. The applicant was born in 1966 and lives in Budapest.

A. Tax inspection proceedings

20. In 2013 the Tax Authority carried out a tax inspection in respect of the applicant concerning the 2008-2010 fiscal years, assessing the applicant's income tax liability. By a decision of 3 July 2013 the Tax Authority found that the applicant had a tax deficit of HUF 290,738,542 (approximately EUR 800,000) which was classified as tax arrears. It established that between 5 January and 29 December 2010 the applicant had withdrawn HUF 715,025,000 (approximately EUR 2,018,000) from the bank account of a limited liability company of which he had previously been the founder and managing director, but with which he no longer had a legal relationship at the material time. There had been no trace of these financial operations in the

company's tax documents and the applicant had paid no income tax on that revenue. The Tax Authority fined the applicant HUF 219,948,110 (approximately EUR 603,000) and ordered him to pay an additional HUF 67,531,880 (approximately EUR 185,000) in interest. On appeal the second-instance Tax Authority found that the applicant's tax arrears amounted to HUF 227,985,686 (approximately EUR 625,000), and reduced the fine to HUF 170,883,486 (approximately EUR 490,000) and the interest to HUF 52,999,572 (approximately EUR 145,000).

21. The applicant sought judicial review of the second-instance administrative decision. By a decision of 15 October 2014 the Budapest Surroundings Administrative and Labour Court dismissed the applicant's action. According to the court's findings the applicant had established a limited liability company on 24 February 2009, of which he had been managing director until 12 November 2009. Subsequently, the company had been sold within short intervals to different foreign and Hungarian owners. The company had neither the personnel nor the material resources necessary to carry out any meaningful activity. In 2010 the applicant and the company's accountant had issued invoices for fictitious supplies in a total amount of approximately HUF 100 million. The payment for those fictitious invoices had been made into the company's bank account, from where the applicant, between 5 January and 29 December 2010, had withdrawn HUF 715,025,000 (approximately EUR 2,018,000) in cash, on which he had paid no income tax at all. The court found that, although the applicant maintained that he had transferred the amount in question to various business partners, the invoices he had submitted to the court as evidence had been fabricated.

22. The applicant lodged a petition for review with the *Kúria.*

23. The *Kúria* upheld the first-instance judgment on 11 June 2015. It endorsed the reasoning of the administrative authorities and the first-instance court, according to which the applicant had not paid income tax and could not substantiate his allegations with evidence that he had passed on the HUF 715,025,000 that he had withdrawn from the company's bank account to the company's business partners.

24. The applicant lodged a constitutional complaint alleging a violation of his right to a fair trial and right to equal treatment, and a violation of the principle of rule of law. In the Constitutional Court's understanding the applicant was challenging in essence the facts established by the tax authorities and was seeking the reassessment of evidence, both of which lay outside the jurisdiction of the Constitutional Court. The complaint was therefore declared inadmissible on 7 November 2017.

B. Publication of the applicant's data

25. In the last quarter of 2014 the Tax Authority published the applicant's personal data, including his name and home address, on the list of major tax

defaulters on its website. This measure was provided for by section 55(3) of the 2003 Tax Administration Act; see paragraphs 11 above and 30 below).

26. Subsequently – in the applicant's submission, as of 27 January 2016 – the applicant appeared on the list of "major tax debtors" which was also made available on the Tax Authority's website, pursuant to section 55(5) of the 2003 Tax Administration Act (see paragraphs 13 above and 30 below). The applicant's name and home address were published on the list.

27. On 16 February 2016 an online media outlet produced an interactive map called "the national map of tax debtors". The applicant's home address, along with the addresses of other tax debtors (altogether 3,624 persons), was indicated with a red dot, and if a person clicked on the dot the applicant's personal information (name and home address) appeared, thus making the data available to all readers.

28. On 5 July 2019 the applicant's personal data were removed from the list of major tax debtors when his tax arrears became time-barred.

C. Subsequent developments

29. Following the entry into force of the amendments to the 2017 Tax Administration Act on 1 January 2020 (see paragraph 18 above), the applicant's personal data, together with information on which fiscal years his tax debts related to, became accessible through the search interface on the Tax Authority's website. The applicant provided no information as to whether he had sought the erasure of his personal data in accordance with the relevant provisions of domestic and EU law (see further below).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

30. The relevant parts of the 2003 Tax Administration Act, as in force at the material time, provided as follows:

Section 53

"(1) Taxpayer confidentiality covers any information, data, facts, ruling, decision, certificate or document concerning taxation. ...

... The tax authority should keep confidential all documents, data, information and circumstances of which it acquires knowledge in the course of its official proceedings."

Section 55

"...

(3) Within 30 days following the end of the quarter, the tax authority shall publish on its website, on the list of major tax defaulters (*nag összegű adóhiánnyal rendelkező adózók közzétételi listája*), the names, places of residence, commercial premises, places

of business and tax identification numbers of taxpayers in respect of whom a final decision has assessed that they have tax arrears (*adóhiány*) in excess of 10 million Hungarian forints – in the case of private individuals – or in excess of 100 million Hungarian forints – in the case of other taxpayers – for the previous quarter, along with the amount of tax arrears and the legal consequences of the taxpayer failing to fulfil his or her payment obligation prescribed in the relevant final decision by the deadline also prescribed in that decision. For the purposes of this subsection, a decision of the Tax Authority may not be considered final if the time-limit for judicial review has not yet expired, or if court proceedings initiated by the taxpayer for a review of the decision have not been concluded.

...

(5) Within thirty days following the end of the quarter, and on a quarterly basis, the tax authority shall publish on its website, on the list of major tax debtors (those who owe a large amount of tax, *nagy összegű adótartozással rendelkező adózók közzétételi listája*), the names (corporate names), home addresses, registered offices, places of business and tax identification numbers of those taxpayers who have owed tax debts (*adótartozás*) to the tax authority exceeding 100 million Hungarian forints in total, minus any overpayment, or 10 million Hungarian forints in total in the case of private individuals, for a period longer than 180 consecutive days.

…"

Section 170

"(1) Tax arrears shall be sanctioned by tax penalties. Unless otherwise provided for by this Act, the tax penalty shall be 50 % of the tax arrears on which it is imposed. The tax penalty shall be 200 % of the tax arrears if it relates to the concealment of revenues or the falsification or destruction of documents, books or records. The tax authority shall also impose a tax penalty on taxpayers who apply for tax exemptions, subsidies or tax refunds without being eligible or who file declarations concerning tax exemptions, subsidies or refunds, and whose ineligibility is established by the tax authority prior to disbursement. The penalty in such cases shall be based on the amount claimed for which the taxpayer was not eligible.

(2) A tax deficit established in respect of a taxpayer shall be regarded as tax arrears; in the case of self-assessment, it shall be regarded as such only if the tax deficit has not been paid by the due date or if central subsidies have been claimed. Any overpayment existing on the due date can be considered as a payment in respect of tax liability only if the overpayment exists on the day when the tax compliance proceedings are opened.

..."

Interpretative provisions
Section 178

"For the purposes of this Act and – unless otherwise prescribed by law – other legislation on taxes:

...

3. 'tax deficit' shall mean the difference between the amount of tax or central subsidy, whether or not declared (reported), and the amount assessed on the basis of a tax return (declaration) and subsequently levied by the tax authority, or any tax revenues unpaid owing to tax evasion, as established by the final decision of a criminal court, or a central subsidy received for which the taxpayer was not eligible;

4. ‘tax debt’ shall mean the amount of tax unpaid when due and any central subsidies received for which the taxpayer was not eligible;

...”

31. The explanatory report to the Act contained the following passage concerning section 55(5) of the 2003 Tax Administration Act:

“With a view to strengthening the clarity and reliability of economic relations and encouraging law-abiding conduct by the taxpayer, for years the tax authority has followed the practice of publishing the data of tax defaulters who have fallen behind in paying a significant amount of tax which has been established in a final decision. Since significant debts may originate not only from tax arrears revealed during a tax inspection, and ... regular non-payment may constitute extremely important information for contractual parties about a taxpayer’s solvency, the Act also makes it possible to publish the data of taxpayers who have owed a large debt for a long time.”

32. The relevant parts of Act no. CXII of 2011 on the right to informational self-determination and freedom of information (hereinafter “the Data Protection Act”), as in force at the material time, provided as follows:

5. Legal basis for data processing
Section 5

“(1) Personal data may be processed under the following circumstances:

(a) when the data subject has given his or her consent; or

(b) when processing is ordered in the public interest by an Act of Parliament or by a local authority as authorised by an Act of Parliament (hereinafter referred to as ‘mandatory processing’).

...”

13. Rights of data subjects
Section 14

“The data subject may request from the data controller:

(a) information on his or her personal data which are being processed;

(b) the rectification of his or her personal data; and

(c) with the exception of mandatory processing, the erasure or blocking of his or her personal data.”

Section 17

“...

(2) Personal data shall be erased if:

(a) they are processed unlawfully;

(b) the data subject requests this in accordance with subsection (c) of section 14;

(c) they are incomplete or inaccurate and cannot be lawfully rectified, provided that erasure is not prohibited by a statutory provision of an Act;

(d) the processing no longer has any purpose, or the legal time-limit for storage has expired; or

(e) a court or the Data Protection Authority orders erasure.

..."

Section 19

"The rights of the data subject under sections 14-18 may be restricted by law for reasons of external and internal State security, and in particular for reasons of national defence, national security, the prevention or prosecution of criminal acts and the security of penal institutions, as well as in the economic and financial interests of the State or local governments and the major economic and financial interest of the European Union, and to prevent and expose disciplinary and ethical offences and labour law-related and occupational safety infringements – including in each case the relevant control and supervision – and to protect the rights of the data subject or others."

Section 22

"(1) In the event of an infringement of his or her rights the data subject, and in the cases referred to in section 21 the data recipient, may take court action against the controller. The court shall hear such cases in priority proceedings.

(2) The burden of demonstrating compliance with the law shall lie with the data controller ... If the data subject so requests, the action may be brought before the court in whose jurisdiction the data subject's home address or temporary residence is located.

...

(4) Any person otherwise lacking legal capacity to be a party to legal proceedings may also be involved in such actions. The Authority may intervene in the action on the data subject's behalf.

(5) Should the court decision be in favour of the plaintiff, the court shall order the controller to provide the information, to rectify, block or erase the data in question, to annul the decision adopted by means of automated data-processing systems, to allow the data subject's objection, or to disclose the data requested by the data recipient referred to in Section 21.

..."

Section 23

"(1) Data controllers shall be liable for any damage caused to a data subject as a result of unlawful processing or by any breach of data security requirements. The data controller shall also be liable for any damage caused by a data processor acting on its behalf. The data controller may be exempted from liability if it proves that the damage was caused by reasons beyond its control.

(2) No compensation shall be paid where the damage was caused by intentional or serious negligent conduct on the part of the aggrieved party."

33. The Constitutional Court Act, in force as of 1 January 2012, provides as follows:

Section 26

"(1) Under Article 24 § 2 (c) of the Fundamental Law individuals or organisations involved in a particular case may lodge a constitutional complaint with the Constitutional Court where, owing to the application of a piece of legislation allegedly contrary to the Fundamental Law in the court proceedings conducted in the particular case

(a) their rights enshrined under the Fundamental Law have been violated, and

(b) they have exhausted the available legal remedies or no remedies are available.

(2) In exceptional cases, and by way of divergence from subsection (1), Constitutional Court proceedings may also be initiated under Article 24 § 2 (c) ... of the Fundamental Law where

(a) the grievance has occurred directly, without a court ruling, as a result of the application or the taking effect of a provision of the law [allegedly] contrary to the Fundamental Law, and

(b) no remedy is available for redressing the damage, or the complainant has already exhausted the available remedies."

II. OTHER RELEVANT MATERIAL

34. Decision no. 26/2004 (VII.7.) AB of 7 July 2004 of the Constitutional Court concerned the publication of a list of taxpayers who had failed to comply with certain registration requirements. It contained the following relevant passages:

"As to section 55(4) of the Tax Administration Act [Act no. XCII of 2003], it can be established that in order to protect persons who duly pay their taxes, this provision obliges the tax authorities to continuously publish the data of those who, through their unlawful conduct, might cause damage to other persons who enter into business relations with them.

Persons who carry out activities without the necessary registration, or who operate sham companies, may not issue bills, invoices or any other replacement invoice that another taxpayer could make use of. Thus, through [the] publication [of data], the tax authority contributes to isolating those who are engaged in such activities, and to whitening the economy.

The rule which requires the tax authorities to publish the available identifying data of those taxpayers who do not fulfil their obligations in relation to registration does not in itself infringe the right to protection of personal data (Article 59 § 1 of the Constitution). Section 2(5) of Act no. LXIII of 1992 on the protection of personal data and the public accessibility of data of public interest (hereinafter 'the [1992] Data Protection Act') provides that data subject to disclosure in the public interest means any data, other than public-interest data, that by law are to be published or disclosed for the benefit of the general public. Pursuant to section 3(4) of the [1992] Data Protection Act, an Act of Parliament can order the publication of personal data in the public interest in relation to a certain type of data."

35. Judgment no. P.23.608/2012/34 of 13 November 2014 of the Budapest High Court (*Fővárosi Törvényszék*) concerned an action for damages by the claimant on account of the publication of his name and

address on the list of major tax debtors under section 55(5) of the 2003 Tax Administration Act between April 2010 and 29 June 2011 and subsequently – following new administrative proceedings – for four days as of January 2012. The Tax Authority had conducted tax compliance proceedings in respect of the claimant and had established tax arrears in the amount of HUF 28,438,544. Since the claimant had failed to pay this amount within the prescribed fifteen days, the Tax Authority had registered the amount as an overdue tax debt. When the claimant failed to pay his tax debts within 180 days, the Tax Authority automatically published his personal data. The claimant argued that the publication of his personal data on the list had been unlawful since it took place while the judicial proceedings for review of the Tax Authority's decision on his tax debts were still ongoing. Furthermore, he argued that the publication in January 2012 had been unlawful, since his tax debts for the relevant period had not exceeded HUF 10 million. The Tax Authority, as respondent, argued that the conditions of publication under section 55(3) and section 55(5) of the 2003 Tax Administration Act differed. Publication under section 55(5) was the automatic consequence of tax debts outstanding for more than 180 days, irrespective of their origin. Publication under section 55(3) served to sanction persons in respect of whom the Tax Authority – during tax compliance proceedings – had established tax arrears exceeding HUF 10 million. The precondition for publication in such cases was that no judicial review proceedings were ongoing or that the courts upheld the administrative decision.

36. The Budapest High Court dismissed the claimant's action. It found that his data had been published under section 55(5), which provided for the automatic publication of personal information once the 180-day period had expired. It explained, referring to the definition of tax debts and tax arrears, that such publication could take place irrespective of the origin of the tax debts, that is, also in cases where the tax debts were the result of unpaid tax arrears established by the Tax Authority. It held that although judicial proceedings had been ongoing at the time of publication, this could only be relevant in relation to publication under section 55(3) on the list of major tax defaulters and not for publication under section 55(5) on the list of major tax debtors. The court thus concluded that publication had been lawful and dismissed the claimant's action.

37. The judgment was upheld on appeal by the Budapest Court of Appeal on 19 January 2016 (no. 1.PF.20.168/2015.II).

38. Judgment no. 8.Pf.20.406/2017/3 of 25 May 2017 of the Budapest Court of Appeal concerned a claimant's civil action requesting the court to order the anonymisation of an online article which linked him to a set of criminal proceedings conducted some seven years previously and which had ended with his acquittal. The claimant maintained that some three years after his acquittal he had started practising as a lawyer and that the article was still accessible and appeared on the list of results following a Google search. The

Budapest Court of Appeal held that the claimant's personal data published in the online article could only be processed if the preconditions of either section 4(1) or section 6(1)(b) of the Data Protection Act were met. It held that there was a particular public interest in the prosecution of very serious crimes and that the public had the right to receive information on such matters. However, when balancing the claimant's interest against that of the public the court concluded that seven years after the criminal proceedings and the claimant's acquittal, he had very weighty reasons not to be identifiable in an article linking him to criminal acts. The court also emphasised that the anonymisation of the articles would not jeopardise the substance of the article. The court thus ordered the anonymisation of the article in question.

39. Judgment no. P.22422/2015/21 of 3 February 2016 of the Budapest High Court originated in a civil action by the claimant, a businessman and moderately successful sportsman, seeking the deletion from the search results of links that led to content, including videos, pictures and written texts, depicting his sexual life and containing negative comments about him. The claimant also sought compensation for damage. Prior to lodging a civil action, the claimant had requested the operator of the search engine to remove the links in question, to no avail. In the course of the proceedings the respondent company operating the search engine had removed the links in question from the search results.

40. Relying on the case of *Google Spain and Google* (judgment of 13 May 2014, C-131/12, EU:C:2014:317) of the Court of Justice of the European Union (hereinafter "the CJEU"), the Budapest High Court noted that as the operator of the search engine the respondent company qualified as a data processor and could be held liable for unlawful data processing under the Data Protection Act. The court emphasised that under section 14(c) of the Act – apart from cases of mandatory data processing – anyone could request the deletion of his or her personal data irrespective of whether the publication concerned unlawful content or not. Since the respondent company had not removed the disputed link from its search results at the claimant's request (and prior to the civil proceedings), the court held it liable for the unlawful processing of personal data and ordered it to pay compensation to the claimant.

41. A circular of the National Authority for Data Protection and Freedom of Information of 21 February 2012 concerning the publication of the personal data of local tax debtors reads as follows:

> "The public interest is best served if the names of local persons who owe tax are published in the manner which is customary in the local area, for example on the noticeboard of the mayor's office. The personal data of local persons who owe tax should be removed from websites, since their online publication renders them accessible around the globe, which goes beyond the aim of the legislature.
>
> The National Authority for Data Protection and Freedom of Information has been informed that public notaries in a number of local governments have published or intend

to publish in the near future the names and addresses of local private individuals who have local or vehicle tax debts and the amount of unpaid tax which they owe, grouped according to the type of tax owed. Act no. XCII of 2003 on Tax Administration provided a legal basis for local tax authorities to publish on the tenth day following the date when a debt was due the names and addresses of persons whose local or vehicle tax debts exceeded 100 million Hungarian forints, and the amount of unpaid tax which they owed; [that information] was to be published in the manner which was customary in the local area. The Tax Administration Act prescribes the preconditions for publishing the data, and how [such data should be published].

According to the President of the National Authority for Data Protection and Freedom of Information, the publication of the data on the website of the local government is not in compliance with the legislative provisions. With any publication in relation to the activities of the local tax authority, it has to be borne in mind that tax income in the budget of the local government concerns the community of the local electorate, and publication – according to the aim of the legislature – should only take place in the manner which is customary in the local area. Publication in a manner which is customary in the local area means that it is the community of the local electorate that is being informed about the published data, for example *via* the noticeboard of the mayor's office. The purpose of the legislative amendment was to influence the life of the local community. [Publication *via* the] Internet is not publication in a manner which is customary in the local area, since data published on the World Wide Web can be accessed around the world. Such publication goes beyond what the legislature intended in respect of the local community.

The President of the National Authority for Data Protection and Freedom of Information calls on local tax authorities to remove the data of private individuals from their websites and refrain from publishing such data in the future. Moreover, it calls public notaries' attention to the plausible solution of providing private individuals with a grace period for the repayment of their tax debts, if need be by means of a tax rollover."

III. RELEVANT COUNCIL OF EUROPE MATERIAL AND EUROPEAN UNION LAW

A. Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data

42. The relevant parts of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108, hereinafter "the Data Protection Convention"), which entered into force on 1 February 1998 in respect of Hungary and is currently being updated, read as follows:

Article 2 – Definitions

"For the purposes of this Convention:

'personal data' means any information relating to an identified or identifiable individual ('data subject');

..."

Article 5 – Quality of data

"Personal data undergoing automatic processing shall be:

(a) obtained and processed fairly and lawfully;

(b) stored for specified and legitimate purposes and not used in a way incompatible with those purposes;

(c) adequate, relevant and not excessive in relation to the purposes for which they are stored;

(d) accurate and, where necessary, kept up to date;

(e) preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored."

Article 7 – Data security

"Appropriate security measures shall be taken for the protection of personal data stored in automated data files against accidental or unauthorised destruction or accidental loss as well as against unauthorised access, alteration or dissemination."

Article 8 – Additional safeguards for the data subject

"Any person shall be enabled:

(a) to establish the existence of an automated personal data file, its main purposes, as well as the identity and habitual residence or principal place of business of the controller of the file;

(b) to obtain at reasonable intervals and without excessive delay or expense confirmation of whether personal data relating to him are stored in the automated data file as well as communication to him of such data in an intelligible form;

(c) to obtain, as the case may be, rectification or erasure of such data if these have been processed contrary to the provisions of domestic law giving effect to the basic principles set out in Articles 5 and 6 of this Convention;

(d) to have a remedy if a request for confirmation or, as the case may be, communication, rectification or erasure as referred to in paragraphs b and c of this Article is not complied with."

Article 9 – Exceptions and restrictions

"1. No exception to the provisions of Articles 5, 6 and 8 of this Convention shall be allowed except within the limits defined in this Article.

2. Derogation from the provisions of Articles 5, 6 and 8 of this Convention shall be allowed when such derogation is provided for by the law of the Party and constitutes a necessary measure in a democratic society in the interests of:

(a) protecting State security, public safety, the monetary interests of the State or the suppression of criminal offences;

(b) protecting the data subject or the rights and freedoms of others.

3. Restrictions on the exercise of the rights specified in Article 8, paragraphs b, c and d, may be provided by law with respect to automated personal data files used for statistics or for scientific research purposes when there is obviously no risk of an infringement of the privacy of the data subjects."

43. The Modernised Convention for the Protection of Individuals with regard to the Processing of Personal Data was opened for signatures on 10 October 2018 and has been ratified by eighteen Contracting States. It will enter into force upon ratification by all Parties to Treaty ETS No. 108, or on 11 October 2023 if there are 38 Parties to the Protocol at that date. Article 5 of the Convention will be replaced by the following:

Article 5
Legitimacy of data processing and quality of data

"1. Data processing shall be proportionate in relation to the legitimate purpose pursued and reflect at all stages of the processing a fair balance between all interests concerned, whether public or private, and the rights and freedoms at stake.

2. Each Party shall provide that data processing can be carried out on the basis of the free, specific, informed and unambiguous consent of the data subject or of some other legitimate basis laid down by law.

3. Personal data undergoing processing shall be processed lawfully.

4. Personal data undergoing processing shall be:

(a) processed fairly and in a transparent manner;

(b) collected for explicit, specified and legitimate purposes and not processed in a way incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes is, subject to appropriate safeguards, compatible with those purposes;

(c) adequate, relevant and not excessive in relation to the purposes for which they are processed;

(d) accurate and, where necessary, kept up to date;

(e) preserved in a form which permits identification of data subjects for no longer than is necessary for the purposes for which those data are processed."

B. Directive 95/46/EC

44. Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data ("the Data Protection Directive"), as in force at the material time, was aimed at protecting the fundamental rights and freedoms of individuals, and in particular the right to privacy, with regard to the processing of personal data, while removing obstacles to the free movement of such data. Under Article 7 of the Directive, member States were to provide that personal data could be processed if processing was necessary "for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or in a third party to whom the data are disclosed" or if "for the purposes of the legitimate interests pursued by the controller or by the third party or parties to whom the data are disclosed, except where such interests are overridden by the interests for fundamental rights and freedoms of the data subject which require protection

under Article 1 (1).”Under Article 6 member States were to provide that personal data must be processed fairly and lawfully; collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes; adequate, relevant and not excessive in relation to the purposes for which they were collected and/or further processed; accurate and, where necessary, kept up to date; and kept in a form which permitted identification of data subjects for no longer than was necessary for the purposes for which the data had been collected or for which they were further processed. Article 13 permitted restrictions on condition that they were necessary to safeguard national security, defence or public security, the prevention, investigation, detection and prosecution of criminal offences or of breaches of ethics for regulated professions, an important economic or financial interest of a member State, including monetary, budgetary and taxation matters, a monitoring, inspection or regulatory function connected, even occasionally, with the exercise of official authority, or the protection of the data subject or of the rights and freedoms of others.

45. This directive was repealed by Regulation (EU) 2016/679 with effect from 25 May 2018 (see further below).

C. Regulation 2016/679

46. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation, “GDPR”) (OJ 2016 L 119/1), entered into force on 24 May 2016 and is applicable from 25 May 2018. It provides as follows:

Article 5
Principles relating to processing of personal data

“1. Personal data shall be:

(a) processed lawfully, fairly and in a transparent manner in relation to the data subject (‘lawfulness, fairness and transparency’);

(b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, in accordance with Article 89(1), not be considered to be incompatible with the initial purposes (‘purpose limitation’);

(c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (‘data minimisation’);

(d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay (‘accuracy’);

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) subject to implementation of the appropriate technical and organisational measures required by this Regulation in order to safeguard the rights and freedoms of the data subject ('storage limitation');

(f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality').

2. The controller shall be responsible for, and be able to demonstrate compliance with, paragraph 1 ('accountability')."

Article 6
Lawfulness of processing

"(1) Processing shall be lawful only if and to the extent that at least one of the following applies:

(a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;

(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;

(c) processing is necessary for compliance with a legal obligation to which the controller is subject;

(d) processing is necessary in order to protect the vital interests of the data subject or of another natural person;

(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;

(f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

..."

Article 23
Restrictions

"(1) Union or Member State law to which the data controller or processor is subject may restrict by way of a legislative measure the scope of the obligations and rights provided for in Articles 12 to 22 and Article 34, as well as Article 5 in so far as its provisions correspond to the rights and obligations provided for in Articles 12 to 22, when such a restriction respects the essence of the fundamental rights and freedoms and is a necessary and proportionate measure in a democratic society to safeguard:

(a) national security;

(b) defence;

(c) public security;

(d) the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security;

(e) other important objectives of general public interest of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, including monetary, budgetary and taxation matters, public health and social security;

(f) the protection of judicial independence and judicial proceedings;

(g) the prevention, investigation, detection and prosecution of breaches of ethics for regulated professions;

(h) a monitoring, inspection or regulatory function connected, even occasionally, to the exercise of official authority in the cases referred to in points (a) to (e) and (g);

(i) the protection of the data subject or the rights and freedoms of others;

(j) the enforcement of civil law claims.

..."

D. CJEU case-law on data protection

47. The CJEU has repeatedly held that the provisions of the Data Protection Directive, inasmuch as they govern the processing of personal data liable to infringe fundamental freedoms, in particular the right to respect for private life, must necessarily be interpreted in the light of the fundamental rights guaranteed by the Convention and the Charter (see, variously, the judgments of 20 May 2003, *Österreichischer Rundfunk and Others*, C-465/00, C-138/01 and C-139/01, EU:C:2003:294; of 13 May 2014, *Google Spain and Google*, C-131/12, EU:C:2014:317; and of 11 December 2014, *Ryneš*, C-212/13, EU:C:2014:2428).

48. In *Lindqvist* (judgment of 6 November 2003, C-101/01, EU:C:2003:596), the CJEU held that the act of referring, on an Internet page, to various persons and identifying them by name or by other means, for instance by giving their telephone number or information regarding their working conditions and hobbies, constituted the processing of personal data wholly or partly by automatic means within the meaning of Article 3(1) of the Data Protection Directive. It was, according to the CJEU, for the national authorities and courts responsible for applying the national legislation implementing the Directive to ensure a fair balance between the rights and interests in question, including the fundamental rights protected by the EU legal order.

49. In *Volker und Markus Schecke GbR* (judgment of 9 November 2010, C-92/09 and C-93/09, EU:C:2010:662), the CJEU held that the obligation imposed by EU regulations to publish on a website data relating to the beneficiaries of aid from EU agricultural and rural development funds,

including their names and the income received, constituted an unjustified interference with the fundamental right to the protection of personal data. It pointed out that the professional nature of the activities to which the data referred did not imply the absence of a right to privacy. As regards the proportionality of the interference with privacy rights, the CJEU held that it did not appear that the EU institutions had properly balanced the public interest in the transparent use of public funds against the rights which natural persons were recognised as having under Articles 7 and 8 of the Charter. Regard being had to the fact that derogations and limitations in relation to the protection of personal data were to apply only in so far as was strictly necessary, and that it was possible to envisage measures which would have affected less adversely that fundamental right of natural persons and which would still have contributed effectively to the objectives of the European Union rules in question, the CJEU held that the EU regulations in question exceeded the limits which compliance with the principle of proportionality imposed, and struck them down.

50. In *Manni* (judgment of 9 March 2017, C-398/15, EU:C:2017:197) concerning the inclusion of an individual's personal data in a public commercial register, the CJEU was called on to balance the commercial interest in removing the information about the individual's former company's bankruptcy with the public interest in access to the information. It held that the protection of legal certainty, fair trading and thus the proper functioning of the internal market took precedence over the individual's rights under data protection legislation. The CJEU also noted that "it cannot be excluded ... that there may be specific situations in which the overriding and legitimate reasons relating to the specific case of the person concerned justify exceptionally that access to personal data entered in the register is limited, upon the expiry of a sufficiently long period ... to third parties who can demonstrate a specific interest in their consultation."

51. In *Puškár* (judgment of 27 September 2017, C-73/16, EU:C:2017:725), the CJEU concluded that Article 7(e) of Directive 95/46/EC did not preclude the processing of personal data by the authorities of a member State for the purpose of collecting tax and combating tax fraud such as that effected by the drawing-up of a list of persons of the kind at issue in the main proceedings, without the consent of the data subjects. This was subject to the proviso, firstly, that those authorities were invested by the national legislation with tasks carried out in the public interest within the meaning of that Article, that the drawing-up of that list and the inclusion on it of the names of the data subjects were in fact appropriate and necessary for the attainment of the objectives pursued and that there were sufficient indications to assume that the data subjects were rightly included in that list; and, secondly, that all of the conditions for the lawfulness of that processing of personal data imposed by Directive 95/46/EC were satisfied. The CJEU left it for the national court to decide whether the establishment of the list at

issue was necessary for the performance of the tasks carried out in the public interest and whether or not that list was of a public nature, whether the establishment of the list was suitable for achieving the objectives pursued by it and whether there was no other less restrictive means of achieving those objectives. The CJEU noted that being included in the list at issue could affect a person's reputation and his relations with the tax authorities.

52. In *Latvijas Republikas Saeima (Penalty points)* (judgment of 22 June 2021, C-439/19, EU:C:2021:504), the CJEU held that the GDPR precluded legislation which obliged the competent authority to make the data relating to the penalty points imposed on drivers of vehicles for road-traffic offences accessible to the public, without the person requesting access having to establish a specific interest in obtaining the data. The CJEU found that the legislature had a large number of methods which would have enabled it to achieve that objective by other means less restrictive of the fundamental rights of the persons concerned, and that account had to be taken of the sensitivity of the data relating to penalty points and of the fact that their public disclosure was liable to constitute a serious interference with the rights to respect for private life and to the protection of personal data, since it could give rise to social disapproval and result in stigmatisation of the data subject.

53. In *Luxembourg Business Registers* (judgment of 22 November 2022, C-37/20 and C-601/20, EU:C:2022:912), the CJEU found that the provision of a 2018 directive whereby information on the beneficial ownership of companies incorporated within the territory of the member States was accessible in all cases to any member of the general public was invalid. It held that the general public's access to the information constituted an interference with the fundamental rights guaranteed in Articles 7 and 8 of the EU Charter (the rights to respect for private life and to the protection of personal data). In so far as the information made available to the general public related to the identity of the beneficial owner as well as to the nature and extent of the beneficial interest held in corporate or other legal entities, that information was capable of enabling a profile to be drawn up concerning certain personal identifying data more or less extensive in nature depending on the configuration of national law, the state of the person's wealth and the economic sectors, countries and specific undertakings in which he or she had invested. In addition, it was inherent in making that information available to the general public in such a manner that it was then accessible to a potentially unlimited number of persons, with the result that such processing of personal data was liable to enable that information to be freely accessed also by persons who, for reasons unrelated to the objective pursued by that measure, sought to find out about, *inter alia*, the material and financial situation of a beneficial owner. That possibility was all the easier when the data in question could be consulted on the Internet. Although the CJEU considered that providing such access could contribute to the attainment of the general-interest objective of combating the misuse of corporate and legal

entities and helping criminal investigations, it found that such considerations were not such as to demonstrate that that measure was strictly necessary to prevent money laundering and terrorist financing. The CJEU found that the interference, considerably more serious than the previous regime requiring the demonstration of a legitimate interest to access the data in question, was not offset by any additional benefits which might have resulted from it in terms of combating money laundering and terrorist financing.

IV. COMPARATIVE-LAW MATERIAL

54. The information available to the Court reveals that in twenty-one of the thirty-four Contracting States surveyed (Albania, Azerbaijan, Bosnia and Herzegovina, Croatia, Estonia, Finland, France, Greece, Ireland, Latvia, Lithuania, North Macedonia, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain and the United Kingdom), public authorities may, and in some cases must, disclose publicly the personal data of tax debtors. Publication in those countries is subject to certain conditions relating to, for instance, whether the tax debtor is an individual or a legal entity (Finland, France and Romania), or to whether the tax debt exceeds a certain limit (Bosnia and Herzegovina, Croatia, Estonia, Greece, Latvia, Lithuania, North Macedonia, Poland, Portugal, San Marino, Serbia, Slovakia, Slovenia, Spain and the United Kingdom). The reasons for publication may range from a "simple" failure to submit a (correct) tax return to established fraud. In Austria, Iceland and the Netherlands the publication of personal data may take place in some contexts involving fiscal matters other than the person's failure to pay taxes.

55. It is also clear that all the Contracting States in question aim to restrict, in one way or another, the scope of the information published to what appears to be necessary for the identification of the tax debtor concerned. The taxpayer's full name is published in most of the countries, in addition to his or her identification number (Albania, Azerbaijan, Bosnia and Herzegovina, Finland, Greece, Latvia, Poland, Portugal, San Marino, Serbia and Spain), year of birth (Croatia, North Macedonia, Poland and Slovenia), permanent or temporary address (Albania, Croatia, Finland, Ireland, North Macedonia, Slovakia, the United Kingdom) or municipality of residence (Bosnia and Herzegovina and Iceland), the amount of tax debts, the relevant sanction imposed, or the taxpayer's occupation. Also, all the Contracting States concerned release the information in question online, on the government or relevant authorities' websites, with only very few of them restricting access to that information (Finland, Latvia, Portugal and San Marino), whilst some others allow the media to further disseminate the information.

56. In some Contracting States (Greece, France, the Netherlands, North Macedonia, Poland, Portugal, Romania, Spain and the United Kingdom), the relevant tax authority is under an obligation to notify taxpayers about the

disclosure of their personal data. Although a number of safeguards regarding publication are in place in the relevant legislation of the Contracting States concerned, there seem to be no specific mechanisms by which to challenge, restrict or prevent publication in a situation where it does not breach the relevant statutory requirements and is not the result of errors or omissions on the part of the authorities. Indeed, the examples of domestic case-law clearly demonstrate that in those countries where the publication of personal data of tax debtors is provided for in national law, all attempts to challenge such publication as interfering disproportionately with the rights of the persons concerned have so far been unsuccessful.

57. There appear to be no specific legal provisions in any of the Contracting States concerned which expressly impose an obligation on the relevant authorities to prevent republication of taxpayers' personal data. At the same time such republication is considered as data processing to which the general rules of data protection legislation apply.

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 (see paragraph 25 above), 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 (see paragraphs 26 and 28 above). 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 accordingly 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, see paragraph 18 above) 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, 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, 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; see paragraph 18 above), 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, 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, 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, and *A. v. Norway*, no. 28070/06, § 64, 9 April 2009). 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). 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), 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 interference 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; 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 (see paragraph 14 above), 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 *Ždanoka 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).

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). 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 requirement 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 (see paragraphs 42-46 above). 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, 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, 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 afforded 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 (see paragraphs 54-57 above), 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 42, 44, 46, 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 (see paragraph 16 above). 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 (see paragraphs 16 and 30 above).

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 (see paragraph 31 above, 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 (see paragraph 12 above), 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 (see paragraph 14 above).

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 euros (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 EUR 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 EUR 200.

147. The applicant also claimed EUR 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 EUR 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 EUR 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, EUR 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.

Done in English and in French, and notified at a public hearing on 9 March 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Prebensen	Síofra O'Leary
Deputy to the Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) concurring opinion of Judge Kūris;
(b) partly concurring and partly dissenting opinion of Judge Serghides;
(c) joint dissenting opinion of Judges Wojtyczek and Paczolay.

S.O.L.
S.C.P.

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)). 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), 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). 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

1. The present case concerns the applicant's complaint that the mandatory disclosure and publication, without his consent, of his personal data including his name and home address on the National Tax and Customs Authority's website, and more specifically on a list of major tax debtors (those whose tax arrears for a defined period exceeded a threshold corresponding to approximately EUR 28,000), for failure to comply with his tax obligations, had infringed his right to respect for private life as provided for by Article 8 of the Convention.

2. At the outset, I wish to state that I agree with points 1-4 and 6 of the operative provisions of the judgment and that I disagree with points 5 and 7 thereof.

3. Regarding the reasoning of the judgment leading to the finding that there has been a violation of Article 8 of the Convention, this opinion concurs, while delving deeper into two issues, namely the impugned interference and the balancing of the competing individual and public interests.

II. The nature, multifaceted operation and consequences of the impugned interference

4. One aspect of an individual's right to respect for his or her private life under Article 8 of the Convention is that his or her personal data, including his or her name and home address, cannot be published or disseminated without his or her consent. This aspect, facet or component of the right is very important because it concerns the function, exercise and enjoyment of the right and is part of its core.

5. The disclosure and publication of an individual's personal data, including his or her name and home address, without his or her consent is therefore an interference with the individual's right to respect for his or her private life under Article 8 of the Convention. The interference in the present case, consisting of the publication of the applicant's name and home address, was not only mandatory but also automatic and was of indefinite duration.

6. The said interference was exacerbated by the fact that the publication of the data was carried out by the competent tax authority and concerned the applicant's duty as a law-abiding citizen, in this case his compliance with his tax obligations.

7. This interference was, by its very nature, capable of causing the applicant feelings of shame or humiliation and of having other negative repercussions for him, as well as harmful repercussions on the enjoyment of

his private life under Article 8 § 1 of the Convention. The applicant alleged that he had indeed suffered such negative repercussions.

8. At the same time, the standard of effectiveness enshrined in Article 8 § 1 of the Convention was wholly disregarded, in violation of the principle of effectiveness as a norm of international law, according to which all Convention provisions which safeguard human rights must be practical and effective and be treated as such. In fact, the said interference did not merely render the applicant's right theoretical and illusory, it seriously impaired and in fact extinguished an important aspect or component of the right and, in the process, its very essence.

III. Failure to balance the competing individual and public interests

9. The judgment (see paragraphs 129, 138 and 139) based its finding that there had been a violation of Article 8 of the Convention on the fact that the respondent State had not demonstrated that the legislature, in particular through section 55(5) of the 2003 Tax Administration Act, had sought to strike a fair balance between the relevant competing individual and public interests.

10. However, the judgment failed to base its conclusion also on the fact that the said legislation effectively prevented the domestic courts from performing a test of proportionality stricto sensu between the relevant competing interests, a function which is fundamental and indispensable from the Convention standpoint and for the effective protection of human rights, the latter being inherent in or falling within the power of the judiciary. As the Court stated in *Kalda v. Estonia (no. 2)* (no. 14581/20, § 41, 6 December 2022), albeit in the context of a different human right, when it comes to the restriction of a right there are two available routes for Contracting States to follow. Adapting what the Court said in that case to the facts of the present case, the respondent State should have taken one of the following two routes in the case of *L.B. v Hungary*: either the legislature should have defined any individual circumstances of taxpayers which might justify not publishing their names and home addresses, or the State should have made provision for the domestic courts to determine the proportionality of the impugned measure themselves.

11. In the present case, however, neither route for dealing with the interference was followed by the respondent State. In my dissenting opinion in *Kalda*, cited above, I explain the legal consequences arising when the domestic courts undertake such a proportionality test even though this is not permitted by the relevant legislation.

12. Indeed, within the system of individual applications, the Court's task is not to examine the case in the abstract (see *Kalda*, cited above, § 50; *Anchugov and Gladkov v. Russia*, nos. 11157/04 and 15162/05, §§ 51-52, 4 July 2013; and *Strøbye and Rosenlind v. Denmark*, nos. 25802/18

and 27338/18, § 115, 2 February 2021). In the present case, the domestic legislation did not permit any appropriate discussion as to why an applicant did not or could not pay the relevant tax amount due, his family status and his financial status in general, or even as to the situation of the national economy at the time. This kind of contextual information is indispensable in the course of an *in concreto* examination of each particular individual application and especially for conducting the required assessment of proportionality *stricto sensu*.

13. In my submission, the absolute lack of a test of proportionality *stricto sensu* in the present case breached the principle of the effective protection of human rights and led to the violation of Article 8 § 1 of the Convention.

IV. Finding of a violation does not constitute in itself sufficient just satisfaction

14. I have already noted above that I disagree with point 5 of the operative provisions of the judgment, according to which the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant (see also paragraph 145 of the judgment).

15. I would submit that Article 41 of the Convention, as worded, cannot be interpreted as meaning that "[the] finding [of] a violation of a Convention provision" can in itself constitute sufficient "just satisfaction to the injured party". This is so because the former is a prerequisite for the latter and one cannot take them to be the same (see, to similar effect, paragraphs 5-9 of my joint partly dissenting opinion with Judge Felici in *Grzęda v. Poland* [GC], no. 43572/18, 15 March 2022; paragraph 2 of my partly dissenting opinion in *Anderlecht Christian Assembly of Jehovah's Witnesses and Others v. Belgium*, no. 20165/20, 5 April 2022; and paragraph 9 of my partly dissenting opinion in *Abdi Ibrahim v. Norw*ay [GC], no. 15379/16, 10 December 2021).

16. But even if the above reading of Article 41 were wrong I would still make an award for non-pecuniary damage, because I consider that in the particular circumstances of the present case the applicant should receive just satisfaction in respect of such damage.

17. Failure to award the applicant a sum in respect of non-pecuniary damage for the violation of his right amounts, in my view, to rendering the protection of his right illusory and fictitious (see, to similar effect, the opinions referred to in paragraph 15 above of the present opinion). This runs counter to the Court's case-law to the effect that the protection of human rights must be practical and effective and not theoretical and illusory, as required by the principle of effectiveness which is inherent in the Convention (see *Artico v. Italy*, 13 May 1980, §§ 33 and 47-48, Series A no. 37).

18. I would thus award the applicant an amount in respect of non-pecuniary damage, by way of just satisfaction under Article 41 of the

Convention. Since, however, I am in the minority, it is not necessary to determine the sum that should have been awarded.

19. For the foregoing reasons, I voted against points 5 and 7 of the operative provisions of the judgment.

V. Conclusion

20. In the light of what has been said above, I conclude that there has been a violation of Article 8 § 1 of the Convention and I would make an award to the applicant in respect of non-pecuniary damage.

JOINT DISSENTING OPINION OF JUDGES WOJTYCZEK AND PACZOLAY

1. With regret, we cannot agree with the majority's finding that there has been a violation of Article 8 of the Convention in the present case based on the reasons given in the judgment. We agree with several of the judgment's findings in terms of its reasoning. However, owing to the smaller part that is not acceptable to us, we do not agree with the final conclusions of the judgment.

I. POINTS OF AGREEMENT

2. We agree that reputation forms a part of personal identity and falls within the scope of private life and that the right to protection of personal data is guaranteed by the right to respect for private life under Article 8. It is also obvious that the applicant's name and home address constitute information about private life, which means that publication of these data amounts to interference with Article 8. There is clear statutory authorisation in Hungarian national law for the publication of debtors' personal data, and we agree with the conclusion of the judgment that this rule pursues a legitimate aim. This legitimate aim is to bring about an improvement in tax discipline and thereby ensure the economic well-being of the country. The further aim of the rule is to protect the rights and freedoms of others by serving the transparency and reliability of business relations. This led the majority in the Chamber to find no violation.

3. The majority of the Grand Chamber found a violation of Article 8 on the following grounds:

> "... 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. ... 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" (see paragraphs 137-138 of the judgment).

We have serious objections to this approach, which finds a violation of the Convention based solely on shortcomings in the Hungarian parliamentary review without showing any evidence to that effect.

II. THE APPLICANT'S REQUEST AND THE SCOPE OF THE CASE

4. The applicant alleged that the publication of his personal data on a list appearing on the website of the National Tax and Customs Authority ("the Tax Authority"), for failure to comply with his tax obligations, infringed his right to respect for private life as protected by Article 8 of the Convention (see paragraph 1 of the judgment).

5. 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*, 25 February 1997, § 95, *Reports of Judgments and Decisions* 1997-I; *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 103, ECHR 2008; and *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 137, 27 June 2017) (see paragraph 122 of the judgment).

6. What the Grand Chamber examined were the general measure and the quality of the parliamentary review. We see serious procedural problems with focusing the scope of the case on these elements. Firstly, the applicant did not request examination of the general measure, thus the judgment ruled *ultra petita*. Secondly, the issue was not communicated to the parties, the applicant had no opportunity to reflect on it, and the Government could not respond to it in their written observations. Hence the present judgment is a clear example of what the procedural law calls a "surprise judgment", where a court grounds its judgment on elements that were not raised during the deliberation of the case. This clearly violates the requirement of a fair trial. This situation was aggravated by the fact that the burden of proof was reversed and the Court found against the respondent State because it had not demonstrated something that had not been requested (see paragraph 138 of the judgment). According to the case-law of our Court, each party must be given a reasonable opportunity to comment on all relevant aspects of the case, not only in respect of the evidence, but also in respect of the legal issues, that is to say, an opportunity to participate effectively in the proceedings. It is to be emphasised that this also refers to legal arguments raised by the Court of its own motion.

III. SOME COMMENTS ON THE FINDINGS OF THE JUDGMENT

7. We feel obliged to add the following to the factual background.

8. The provision concerning the list of major tax defaulters discussed in this case was introduced into the Hungarian legal system for the first time in 1995. It should be noted that Hungary reverted to a market economy in 1990. The Minister of Finance submitted the draft Law to Parliament (amending Tax Administration Act no. XCI of 1990) on 24 October 1995. Between 31 October 1995 and 5 December 1995 four parliamentary committees (constitutional affairs, economic affairs, budget and agriculture respectively) discussed the draft Law on four occasions. Subsequently, the full Parliament also discussed it several times, and members of Parliament intervened in that debate 49 times.

9. The explanatory statement by the Secretary of State at the Ministry of Finance emphasised the following:

> "It is obvious to everyone how important the rules of tax secrecy are and what weighty interests attach to their compliance. At the same time, it is also justified for the public to be made aware in a regulated manner of the identity of those taxpayers who have seriously breached the principle of equal sharing of the public burden."

During the parliamentary debate one of the most contentious topics was precisely this provision, and especially its constitutionality, and the Government withdrew a part of the proposal. (For the list of documents relating to the draft Law in Hungarian see https://www.parlament.hu/iromany/01548ir.htm)

10. The provision enacted in Act CX of 1995 – which entered into force on 1 January 1996 – is exactly and literally the same as section 55(3) of the 2003 Tax Administration Act. The subsequent amendments to the Tax Administration Act (in 2006 and 2017) upheld this provision without any change. (The rule was supplemented in 2006 by the list of major tax debtors – section 55(5), see paragraph 13 of the judgment.)

11. The list of major tax debtors was part of a statutory scheme set up to respond by means of deterrence to the phenomenon of non-compliance with the tax rules. The national legislature introduced through the 2006 amendment of the 2003 Tax Administration Act a new provision, section 55(5), whereby lists of tax debtors at large were to be published. These measures were aimed at complementing the schemes for the publication of information on tax defaulters under section 55(3) and on companies that had failed to register with the Tax Authority. Other mandatory lists for publication concerned employers who had failed to declare their employees and taxpayers who had not submitted a tax return for two years. As is apparent from the preparatory works to the 2006 amendments, the legislature considered this new measure necessary for the purposes of "whitening the economy" and reinforcing 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 liability was not only a matter of tax arrears established in tax inspection proceedings, but could also be the result of any conduct in breach of the person's tax payment obligations.

12. Section 55(5) differs from section 55(3) only in the manner in which the published tax debt arose: while subsection (3) refers to the "tax arrears" (*adóhiány*), subsection (5) refers to the "tax debt" (*adótartozás*) that is owed. From the point of view of the *raison d'être* of the legal institution and its impact on human rights, it is irrelevant whether the non-payment of the tax was determined by a decision of the tax authority or transpired from the taxpayer's declaration; similarly, from the point of view of tax payment morals – or the lack thereof – the two situations are of the same nature. This was precisely one of the reasons for the introduction of subsection (5), in

order to remedy the lack of precision of the previous rule. That is why we think the debate surrounding section 55(3) is still important.

13. Moreover, the constitutionality of the rule was accepted by the Constitutional Court following judicial review proceedings (see paragraph 34 of the judgment).

And let us add that, when in 2000 the European Commission assessed the adequacy of the protection of personal data in Hungary, the preamble to its Decision stated as follows:

> "(8) The legal standards applicable in Hungary cover all the basic principles necessary for an adequate level of protection for natural persons, even if exceptions and limitations are also provided for in order to safeguard important public interests. The application of these standards is guaranteed by judicial remedy and by independent supervision carried out by the Commissioner appointed by the Parliament pursuant to Law LXIII of 1992. Furthermore, the compensation of persons who have suffered prejudice as a result of unlawful processing is guaranteed by law."

The Commission concluded in Article 1 of the Decision that "[f]or the purposes of Article 25(2) of Directive 95/46/EC, for all the activities falling within the scope of that Directive, Hungary is considered as providing an adequate level of protection of personal data transferred from the Community[1]."

IV. THE DEFICIENCIES OF THE PARLIAMENTARY REVIEW APPROACH

14. The Grand Chamber majority decided that the necessity test should focus on the quality of the parliamentary and judicial review and the risk of abuse of general measures (see paragraph 125 of the judgment). In this regard they cite *Correia de Matos v. Portugal* ([GC], no. 56402/12, § 117, 4 April 2018), stating that "... 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." The case in which this approach was first implemented was *Animal Defenders International v. the United Kingdom* ([GC], no. 48876/08, § 108, ECHR 2013 (extracts)), a controversial 9:8 judgment in a case that bears no similarity to the present one.

15. We would just point out three substantial differences between *Animal Defenders* and the present case. Firstly, in *Animal Defenders* the applicant complained under Article 10 about the statutory prohibition of paid political advertising on radio and television (§ 76); the applicant was not, as in the present case, a gross tax debtor seeking to assert his privacy rights. Secondly,

[1] Commission decision of 26 July 2000 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data provided in Hungary (2000/519/EC).

the applicant claimed that the proportionality of a general measure fell to be tested against, and demonstrated by, the practical and factual realities of an individual case (§ 83). Thirdly, *Animal Defenders* used the fact of the exceptionally detailed parliamentary debate in order to exonerate the respondent State. We know the political science clichés about the functioning of the United Kingdom Parliament, where the governing majority, essentially the government, decides on everything and the true function of the House, stirred by an active opposition, is to question and debate the policy of the government.

16. In our case the applicant did not seek a test in respect of the general measure, and the role of the parliamentary debate was reversed: the exception became the rule, and a deviation from the rules of parliamentary debate led the majority to find a violation of the Convention. We would quote the following passage from *Animal Defenders* (§ 111):

> "Accordingly, it is relevant to recall that there is a wealth of historical, cultural and political differences within Europe so that it is for each State to mould its own democratic vision (*Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, 6 October 2005, § 61; and *Scoppola v. Italy (no. 3)* [GC], no. 126/05, 22 May 2012, § 83). By reason of their direct and continuous contact with the vital forces of their countries, their societies and their needs, the legislative and judicial authorities are best placed to assess the particular difficulties in safeguarding the democratic order in their State (*Ždanoka v. Latvia* [GC], no. 58278, 16 March 2006, § 134). The State must therefore be accorded some discretion as regards this country-specific and complex assessment which is of central relevance to the legislative choices at issue in the present case."

17. We would add an important remark from the concurring opinion of Judge Bratza in that case (§ 17):

> "The role of the Strasbourg Court in a case of this kind is not to carry out its own balancing test or to substitute its own view for that of the national legislature, based on independent scrutiny, as to whether a fair and workable compromise solution could be found which would address the underlying problem or as to what would be the most appropriate or proportionate way of resolving that problem. Its role is rather, as the judgment makes clear, to review the decision taken by the national authorities in order to determine whether in adopting the measures in question and in striking the balance in the way they did, those authorities exceeded the margin of appreciation afforded to them."

18. As regards the other case referred to by the judgment (*Correia de Matos*, cited above), in that judgment the Court stated that "[t]here is therefore no doubt that Portuguese law on criminal procedure is particularly restrictive when it comes to the possibility for accused persons to conduct their own defence without legal assistance if they wish to do so" (§ 144). The Court further noted that the Portuguese legislature had reviewed certain questions relating to mandatory assistance in criminal proceedings, but that the legislative choice of this legal defence mechanism remained unchanged, in one case following confirmation by the Constitutional Court in 2001 of its compatibility with the Constitution and the Convention (§ 146). This and

nothing more was effected by the legislation. Nevertheless the Court approved this very limited parliamentary review and held, by nine votes to eight, that there had been no violation of Article 6 §§ 1 and 3 (c) of the Convention. This makes even stranger the conclusion reached in our case.

19. We are somewhat sceptical as to the possibility of an objective assessment of the quality of parliamentary work. Paradoxically, the more controversial the issue, the more debates and expert documents there are, suggesting prima facie a higher quality of review, while the greater the agreement among parliamentarians about the necessity of an interference, the fewer debates and expert documents there are, suggesting prima facie a lower quality of review. The approach adopted by the majority may end up inciting parliamentary majorities more frequently to commission accommodating expert opinions justifying an interference with Convention rights, in order to satisfy the test of the quality of parliamentary review in the Strasbourg proceedings. At the same time, the opposition's efforts to challenge a measure may ultimately tip the balance in favour of the contested measure, under the test in question.

20. In this context we agree with the view expressed by Judge Kūris in his separate opinion, that the respondent State could, hypothetically, execute the instant judgment by re-enacting the impugned measures, thereby ensuring that the parliamentary review meets the standards set by the majority. And what if complaints arrive from the countries that similarly publish the addresses of tax debtors (Albania, Croatia, Finland, Ireland, North Macedonia, Slovakia, the United Kingdom)? Will the Court examine the legislative history in each case?

V. LACK OF INDIVIDUAL ASSESSMENT

21. While the above-mentioned cases examined the general measures as applied to the concrete circumstances of the case, the individual assessment in the present case is completely absent. The Court consistently refrains from dealing with *actio popularis* type requests, yet this judgment does not deal with the person of the applicant at all.

22. When assessing the balancing of private rights and the public interest, the factual background to the case should not be forgotten. The applicant's company issued fictitious invoices in the value of hundreds of millions of Hungarian forints. The corresponding amounts were paid into the company's account, from which they were withdrawn in cash by the applicant. The first-instance court could only establish from the receipts attached by the applicant that he was able to produce at any given time the documents that seemed necessary to substantiate his claims. It is also worth mentioning that a part of the applicant's tax debt (450 million Hungarian forints [HUF], approximately 1,140,000 euros [EUR]) was not paid and could not be

reimbursed in the enforcement proceedings; indeed, ultimately it had to be cancelled in 2019 as being time-barred.

23. Instead of conducting an abstract review of the legislative process the Court should have decided on the measures taken by the authorities in the specific proceedings. The justification for the finding of a "narrow" violation is simply that Parliament did not sufficiently consider the balance to be struck between the public interest in disclosure of the data and the rights protected under Article 8 as private interests, before enacting a law serving a legitimate purpose. We cannot agree with this argument.

24. In our opinion, the rule itself and not the path leading to it should have been examined, and a violation could have been established if the result did not meet the requirement of necessity in a democratic society, that is, if the rule unreasonably gave precedence to the public interest over private interests. However, the judgment does not make such a finding (which would have affected at least seven other countries).

VI. REASONS FOR THE ABSENCE OF A VIOLATION

25. Our opinion on the case is basically similar to the findings of the Chamber judgment, to the effect that the disclosure of the private data in question did not place a substantially greater burden on the applicant's private life than was necessary to further the State's legitimate interests.

26. Firstly, it is true that once the legislature had established the criteria for publication, the Tax Authority was only required to make a factual determination as to whether the information fell within the exceptions to tax confidentiality under section 55(5), with no further argument or inquiry into the competing considerations being required, namely the interest in disclosure and the interest of the taxpayer in the protection of his or her privacy. While in theory it would be possible to empower the Tax Authority to examine the various interests at stake in publication, we have doubts as to whether it was reasonable to expect such an assessment to be conducted in sufficient depth in situations where the information was extensive and concerned thousands of taxpayers. Moreover, if the Tax Authority were to decide how to interpret and apply the exceptions in the Tax Administration Act in each individual situation, it would risk distorting the legislature's aim in enacting the publication scheme, namely deterrence on the one hand and scrutiny by business partners on the other. Therefore, we see no reason to criticise the legislature for finding that a general measure was a more feasible means of achieving the said aims – and, by implication, those considered legitimate under Article 8 § 2 of the Convention – than a provision allowing for case-by-case examination.

27. Moreover, as to the nature of the information disclosed on the list in question and its potential harm to the persons concerned, we note that it did not affect an important aspect of an individual's existence or identity or any

intimate aspects of private life. As regards the applicant's argument that the section 55(5) publication scheme was overbroad and inconsistent with the principle of data minimisation, we find it significant that the disclosure of tax information was structured as an exception to the general rule of tax confidentiality. It is apparent that Parliament, by specifically providing for the disclosure of tax identity information in relation to tax debts, considered in substance that the public interest in ensuring tax compliance and the private interests of potential business partners outweighed, in certain circumstances, the privacy interests of tax debtors requiring that tax identity information generally be kept confidential.

28. Furthermore, Parliament itself put in place safeguards to tightly restrict disclosure, tailoring the provisions of the 2003 Tax Administration Act to the risk posed by the tax debtor to public revenue and to potential business partners. Firstly, only those individual tax debtors whose tax debts exceeded HUF 10 million (EUR 28,000) came within the sweep of the publication requirement. Secondly, an additional precondition for publication on the list of major tax debtors was that the taxpayer had failed to fulfil his or her payment obligations for 180 days. We find these thresholds material to the assessment of the proportionality of the measure here in issue. We thus consider that the legislature made the necessary distinction between different types of taxpayers subject to disclosure, limiting the interference with private life to those whose conduct presented a considerable risk to public revenue or to potential business interests.

29. Since the cornerstone of the publication scheme was identifying taxpayers who had failed to fulfil their payment obligations, the competent national authorities were entitled to consider that adding the home address to the tax debtors' list might be instrumental to the success of the publication scheme. It also ensured the accuracy of taxpayer information by making it possible to distinguish between taxpayers who had the same name, in order not to give a misleading impression of third parties. The Court cannot criticise the domestic authorities for finding that using a different category of data, namely the tax identification number, which was apparently indecipherable for the public, was not a viable solution.

30. Finally, we note that although tax debtors could not seek the erasure of their private data from the list, any interference with their private life was subject to a temporal limitation and the publication scheme was set up in a manner ensuring that they were not to be identified on the list of major tax debtors for any longer than was required for the purpose of disclosure. The taxpayers' personal data were removed from the list of major tax debtors once they had paid their tax debts or the limitation period had expired, as in the applicant's case.

31. As regards the repercussions on and risk of harm to the enjoyment of private life of the persons concerned, the Court should have considered that, even accepting the applicant's argument that he had a privacy interest in the

non-disclosure of his home address combined with financial information about him, these repercussions did not appear excessive in the particular circumstances of the present case. We attach considerable weight in our assessment to the context in which those data were published. As described above, there is an obvious public aspect to tax collection and a taxpayer cannot reasonably expect that failure to settle his or her tax liabilities, especially in a field so much in the public eye as tax evasion, will remain a purely private matter. Thus, the interest in non-disclosure asserted by the applicant lay in practice not in preserving the privacy of purely personal matters, but rather in preserving his anonymity regarding his conduct as a taxpayer.

32. On the basis of the above considerations, we cannot find that the impact of the publication of the applicant's personal data outweighed the convincing reasons justifying the general measure that are described above. In the circumstances of the present case we are persuaded that there were relevant and sufficient reasons for the publication of the applicant's personal data and that the contested measure was subject to important limitations and was accompanied by effective and adequate safeguards against abuse. It was therefore not disproportionate to the legitimate aims pursued.

33. Accordingly, we conclude that there has been no violation of the applicant's right to respect for his private life as guaranteed by Article 8 of the Convention.