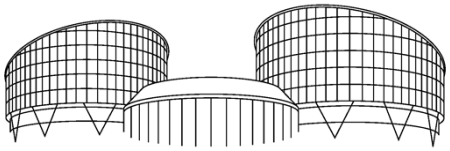

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF HERBAI v. HUNGARY

(Application no. 11608/15)

JUDGMENT

Art 10 • Freedom of expression • Dismissal from private company for publication to external website on work's subjects • Applicability of free speech in employment context • Proportionality • Absence of fair balance between employee's right to freedom of expression and employer's right to protect legitimate business interests • Positive obligations

STRASBOURG

5 November 2019

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Herbai v. Hungary,

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

Jon Fridrik Kjølbro, *President,*
Faris Vehabović,
Iulia Antoanella Motoc,
Branko Lubarda,
Stéphanie Mourou-Vikström,
Georges Ravarani,
Péter Paczolay, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 15 October 2019,

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

PROCEDURE

1. The case originated in an application (no. 11608/15) 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 Csaba Herbai ("the applicant"), on 2 March 2015.

2. The applicant was represented by Ms A.K. Soós, a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented by Mr Z. Tallódi, Agent, Ministry of Justice.

3. The applicant alleged a breach of his right to freedom of expression under Article 10 of the Convention.

4. On 15 December 2017 the Government were given notice of the application.

5. The Government objected to the examination of the application by a Committee. Taking into account the issues raised in the application, the Court finds it appropriate to allocate the case to a Chamber.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1974 and lives in Budapest.

7. From 2006 the applicant worked as a human resources management expert at Bank O. His tasks included the analysis and calculation of salaries and staffing management. At the material time the applicant's employer

initiated a reform of its remuneration policy, in which the applicant was also involved.

8. According to the code of ethics of the bank, the applicant was under an obligation not to publish formally or informally any information relating to the functioning and activities of his employer.

9. In January 2011 the applicant, together with Ms A.N., started a knowledge-sharing website for human resources management-related publications and events. The website also contained a presentation of the applicant with his photograph, describing him as an expert in human resources management and indicating that he worked in the human resources (HR) department of a large domestic bank, without mentioning his employer.

10. In January 2011 two articles were published on the website. The article "*New year, new strategy – Really new? Really a strategy?"* was written by Ms A.N. and contained the following passage:

> "I was called today in connection with a conference and was asked some very exciting and inspiring questions. How does one prepare a HR strategy? What is the role of HR strategy? Do you have to employ HR professionals to create a HR strategy? Do you know how to link business objectives to HR strategy? We could say that this is a boring issue and these are boring questions, particularly at the beginning of the year, when every portal overwhelms us with articles like homework on this topic, in a partly false belief that creating such a strategy is connected to the beginning of the calendar year in every company. The subject is painfully topical, at the same time. This is only my opinion, not the result of a representative survey or international research carried out by British scientists. Simply, I think that some HR professionals should be taught as regards strategy that the connecting of business objectives and HR strategy is not clear in all organisations. (The reasons are various, but discussing them would use up my 'character limit' by itself, so I will not cover this issue.) We read often about problems regarding 'how HR could be a strategic partner'. This approach is always surprising to me. It is rather like a 'learn Japanese in two weeks' course. Both learning Japanese and building strategic partnerships are the result of long-term processes. A responsible professional should not give the impression that one article or one blog entry, or concentrating for five minutes a day, is enough. The process itself cannot be done away with. A detailed knowledge of the organisational structure, the education system and recruiting policy is not enough. We have to be able to break away from the interests of our professional field if the interests of the organisation so require. We have to know the business, the market, our competitors, our service and our products. If someone complains that 'he is not taken seriously by the management', I always think about learning Japanese. None of this should be an aim in itself, but the result of hard professional work.. (I would point out that unfortunately we have met people whose cousins worked in a place where even this was unable to achieve the desired outcome.)"

11. The second article "*Sweet 16%"* was written by the applicant and contained the following passage:

> "How sweet is that big spoonful of jam? – Motivation in the light of tax changes
>
> A topic which concerns everybody today, and which led us to take the fresh fruit jar off the shelf too: as of 2011, according to the Personal Income Tax Act, all income

payable as salary is subject to the 16% tax rate. The numbers indicate that in reality the only people who will benefit from this are those whose monthly earnings exceed HUF 300,000, excluding family allowances. This amount exceeds the current average income level by far. We can see in the enclosed table how net payments will change from 2011. The majority of companies plan to modify their remuneration policies and the level of wage increases, the latter being expected to fall in those jobs where tax change results in positive net income. The other thing that caused my thoughts to race is that tax is payable after rewards and bonuses, just as it is payable after salary. This may also mean that bonuses will gain in importance. Certainly, I have to say from a professional point of view that rewarding achievements by means other than fixed wages results in achievements and their fluctuation becoming more traceable. On the other hand, this trend runs counter to the professional efforts of recent years aimed at restricting the proportion of bonus payments and fixing remuneration systems in a more responsible manner.

Further unanswered questions leave a bitter taste in our mouth after the first sweet mouthful. Following the changes, how will all this follow inflation as regards real net salaries? How committed and motivated will employees remain in the light of the changes? Will it matter to employees whether changes are decided at State or company level? What impact will different rates of salary increase and wage development have? My opinion may be surprising in certain respects and I have some further exciting comments to make as well, which I would like to share with you in the course of our discussions. So I look forward to your opinions and comments."

12. The applicant's employment was terminated on 11 Februar 2011 for breaching his employer's confidentiality standards. The bank argued that the applicant's conduct in providing educational services in the field of human resources management had infringed its economic interests. Moreover, given the nature of his position, the applicant was in possession of information whose publication would have interfered with the bank's business interests.

13. The applicant instituted proceedings before the Budapest Labour Court challenging his dismissal.

14. On 26 June 2012 the Budapest Labour Court dismissed his action, finding that the website and the content of the articles constituted a breach of the duty of mutual trust. It pointed out that the applicant operated the website and that the question whether he was the author of the impugned articles was irrelevant for the court's assessment. It also found it established that the applicant's conduct had jeopardised Bank O.'s business interests, in breach of Article 3 § 5 of the Labour Code (see paragraph 20 below), irrespective of whether actual damage had occurred. The court found that the applicant had revealed information relating to his employment, since the knowledge shared on the website had necessarily been acquired during his employment at Bank O.

15. The applicant appealed, arguing that he could not be held liable for the publication of articles written by others and that he did not operate the website. Furthermore, he had not sought to reveal the business secrets of his employer but to engage in professional discussions.

16. On 26 March 2013 the Budapest High Court upheld the applicant's appeal. The High Court considered that it was irrelevant who had written the impugned articles, since the applicant featured as an expert on the website and was thus necessarily associated with the articles. Nonetheless, the articles had discussed human resources policies in general terms that could not be linked to Bank O. The High Court also found that the knowledge-sharing element of the website did not mean that the applicant had intended to reveal information acquired through his work. It concluded that the applicant's conduct had not jeopardised his employer's business interests and that his dismissal for breach of trust had therefore not been lawful.

17. On 3 September 2014 the *Kúria* upheld a request for review made by the bank, endorsed the findings of the first-instance court and observed that the applicant's conduct could endanger his employer's business interest (see paragraph 14 above). It concluded that the similarities between the website and the applicant's tasks at his workplace demonstrated that he had provided information about current policies at his workplace and that he had intended to share knowledge acquired there about issues relevant to his tasks, in breach of his employer's code of ethics.

18. The applicant lodged a constitutional complaint, maintaining that his activities concerned the exercise of his right to freedom of expression, which had not been taken into consideration by the courts.

19. The decision of the Constitutional Court, issued on 26 June 2017, contained the following passages:

> "... Article 8 § 3 of the Labour Code, as currently in force, explicitly mentions the restriction on the right to freedom of expression. Accordingly, 'the employee may not exercise his or her right to freedom of expression by gravely infringing or jeopardising the employer's reputation and justified business and organisational interests'. Furthermore, Article 103 § 3 of the former Labour Code, as well as Article 8 § 4 of the current one, prohibits the publication of any information which the employee acquires through his or her employment and whose publication would have negative consequences for the employer or any third person. These general employment obligations may justify the restriction of employees' right to freedom of expression, even if it is exercised outside the workplace and working hours. ... Thus, in employment the right to freedom of expression may be subject to tighter restrictions and it does not protect material published by employees if the sole intention is to convey comments tarnishing their employer's dignity and business reputation or its market and commercial valuation, or to convey injurious comments concerning the employer's private or family life. The freedom does not extend to opinions that are published with the aim of destroying business or causing any other harm. Furthermore, an employee's opinions are not protected by the right to freedom of expression if their aim is to criticise, question or undermine the values and value-based policies of his or her employer. This also flows from the secrecy and duty of loyalty characterising employment relations, according to which the employee contributes effectively to the achievement of the employer's goals. The expression of opinions infringing the duty of loyalty cannot entail the protection of fundamental rights based on the general clauses of labour law.

At the same time, freedom of expression is at the core of a democracy based on the rule of law. Therefore, the freedom of those who seek to exercise their right in the context of employment may only be restricted in compliance with and while respecting the values of the Fundamental Law, based on the necessity and proportionality test applicable to the restriction of fundamental rights. ... The right to freedom of expression of employees may be restricted if the restriction is absolutely necessary for a reason related to the person's employment and if it is proportionate to the aim pursued. ... Therefore, when assessing the protection of opinions, it is necessary to consider (1) whether the expression in question relates to a matter of public or professional interest, (2) whether the expression is a statement of fact or a value judgment, (3) whether the expression caused damage or negatively influenced the employer's reputation, (4) whether the person who exercised his or her right to freedom of expression acted in good faith, (5) the gravity of the measure applied by the employer ...

Based on the above, in the present constitutional complaint the Constitutional Court will examine whether the conduct and expression in question are protected under Article IX (1) of the Fundamental Law, that is to say, whether in the present case there is an issue concerning fundamental rights. According to the settled practice of the Constitutional Court it is necessary to examine whether the opinion has public characteristics and is linked to a public interest, that is to say, whether it contributes to a debate on public matters. In this context the manner and circumstances of publication, the subject-matter and context of the opinion, the type of medium used, the event underlying the expression, and as further elements the content, style, topicality and aim of the expression, need to be assessed ...

Based on the facts as established in the course of the labour proceedings, the Constitutional Court finds that the conduct in question related only to questions concerning human resources management, that is to say questions concerning a specific profession and addressing professionals. The aim of the website and of the articles published was "knowledge-sharing", targeting a limited circle, namely the human resources experts of competing companies. ... Having regard to the above, the Constitutional Court finds that the conduct complained of in the labour proceedings, the content of the website and the articles are mainly of a professional nature and do not disclose any public link which would enable the conduct to be characterised clearly as a discussion of matters of public interest. Therefore, the conduct complained of in the labour proceedings and the published articles are not protected by the right to freedom of expression enshrined in Article IX (1) of the Fundamental Law. Given that the conduct in question is not protected by the fundamental right to freedom of expression, its restriction is not to be assessed on the basis of the labour-law standards prohibiting the infringement of the employer's legitimate business interests. Accordingly, in the present case the Constitutional Court dismisses the constitutional complaint for lack of any connection between the fundamental right relied on and the standards applicable in labour proceedings.

..."

II. RELEVANT DOMESTIC LAW

20. Act no. XXII of 2012 on the Labour Code, in force at the material time, provided as follows:

Article 3

"(5) In the employment relationship, employees shall not engage in any conduct which would jeopardise the legitimate economic interests of the employer, unless so authorised by a legal regulation. ..."

21. Article IX of the Fundamental Law provides as follows:

"1. Everyone shall have the right to freedom of speech. ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

22. The applicant complained that the termination of his employment on account of articles published on a website had infringed his right to freedom of expression as protected by Article 10 of the Convention, which reads as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

23. The Government argued that the constitutional complaint mechanism had provided an effective remedy against the contested dismissal decision. They submitted that the Constitutional Court had adjudicated the applicant's case in line with the standards set out in the Court's case-law. Thus, the applicant's right to freedom of expression had not been violated.

24. The applicant disputed the assertion that the Constitutional Court had remedied the grievances complained of, since it had dismissed his constitutional complaint for lack of a link to a right protected by the Fundamental Law. In any event, in the applicant's view, a constitutional complaint in general could not be regarded as an effective remedy, owing to the low percentage of complaints that were upheld.

25. The Court notes that it is not disputed by the parties that the applicant availed himself of the remedy referred to by the Government. Indeed, the applicant lodged a constitutional complaint which was examined on the merits (see paragraphs 18 and 19 above). Thus, the Court is bound to conclude that the applicant complied with the obligation to exhaust domestic remedies.

26. Inasmuch as the Government's submissions may be understood to suggest that the applicant had lost his victim status, the Court notes that the Constitutional Court dismissed the applicant's complaint on 26 June 2017, concluding that the applicant's conduct and the articles published were not protected by Article IX (1) of the Fundamental Law enshrining the right to freedom of expression (see paragraph 21 above). Thus, the decision did not involve any acknowledgment of the violation alleged, nor did it afford the applicant adequate redress.

27. In these circumstances, the Court considers that the applicant may still claim to be a victim of a violation of Article 10 of the Convention.

28. The Court also notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

29. The applicant contended that the articles published on the website had raised issues of professional and public interest concerning changes to the personal income tax regulations affecting four million employees. This had, however, been done in a general manner and the articles had not contained confidential information from his employer. In the applicant's view there was no direct connection between the published articles and his former employer's activities either: the website had served as a discussion forum for general human resources knowledge, without disseminating specific information about his work at Bank O.

Therefore, the blog entries had caused no detriment to his former employer.

30. According to the applicant, the domestic courts had paid no heed to his arguments that he had been exercising his right to freedom of expression in the public interest, and had limited their analysis to finding that he had breached his contractual obligations.

31. He maintained that he had acted in good faith, raising issues and opinions in a credible, truthful and genuine manner.

32. He also pointed out that he had suffered the most serious legal consequences, since he had been dismissed from his employment.

(b) The Government

33. The Government disputed that the applicant's dismissal on account of the knowledge-sharing website had constituted an infringement of his right to freedom of expression as guaranteed by Article 10 § 1 of the Convention. They took the view, relying on the decision of the Constitutional Court, that the applicant's activity did not enjoy the protection afforded to the right to freedom of expression, since it had not contributed to a discussion on a public matter, but had related almost exclusively to a specific profession.

34. In any event the Constitutional Court had adjudicated the applicant's case in line with the standards set out in the Court's case-law.

2. The Court's assessment

(a) General principles

35. The general principles developed in the Court's case-law concerning freedom of expression have been summarised in *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* ([GC], no. 17224/11, §§ 5-77, 27 June 2017).

36. The Court has held in a number of cases involving the freedom of expression of civil servants that Article 10 applies to the workplace in general (see, for example, *Kudeshkina v. Russia*, no. 29492/05, § 85, 26 February 2009). The Court has also held that the signalling by an employee in the public sector of illegal conduct or wrongdoing in the workplace should, in certain circumstances, enjoy protection (see *Guja v. Moldova* [GC], no. 14277/04, § 72, ECHR 2008). It however also held that comments which lay within the applicant's sphere of employment in the civil service and which had been made pursuant to his official duties did not involve any statements or views in the context of a public debate and did not relate to freedom of expression (see *Harabin v. Slovakia*, no. 58688/11, §§ 151-153, 20 November 2012).

37. The Court has further found that Article 10 of the Convention also applies when the relations between employer and employee are governed, as in the case at hand, by private law, and that the State has a positive obligation to protect the right to freedom of expression even in the sphere of relations between individuals (see *Heinisch v. Germany*, no. 28274/08, § 44, ECHR 2011 (extracts), with further references). The responsibility of the authorities would be engaged if the facts complained of stemmed from a failure on their part to secure to the applicants the enjoyment of the right enshrined in Article 10 of the Convention. While the boundary between the State's positive and negative obligations under the Convention does not

lend itself to precise definition, the applicable principles are, nonetheless, similar. In both contexts regard must be had in particular to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole, subject in any event to the margin of appreciation enjoyed by the State (see *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06 and 3 others, §§ 60 and 62, ECHR 2011). The Court has also found that this margin of appreciation is essential in an area as fluctuating as that of commercial speech. It follows that, where commercial speech is concerned, the standards of scrutiny may be less severe (see, *mutatis mutandis*, *Demuth v. Switzerland*, no. 38743/97, §§ 41-42, ECHR 2002-IX, and *markt intern Verlag GmbH and Klaus Beermann v. Germany*, 20 November 1989, § 33, Series A no. 165); and the margin of appreciation afforded to the national authorities is broad (see *Ashby Donald and Others v. France*, no. 36769/08, § 39, 10 January 2013).

38. As the Court has previously observed, in order to be fruitful, labour relations must be based on mutual trust. Even if the requirement to act in good faith in the context of an employment contract does not imply an absolute duty of loyalty towards the employer or a duty of discretion to the point of subjecting the worker to the employer's interests, certain manifestations of the right to freedom of expression that may be legitimate in other contexts are not legitimate in that of labour relations (see *Palomo Sánchez and Others*, cited above, § 76).

(b) Application of the above principles in the present case

39. In the present case the measure complained of by the applicant, namely his dismissal, was not taken by a State authority but by a private bank and was upheld by the domestic courts (see paragraphs 12 and 17 above). In those circumstances, the Court finds that it is appropriate to examine the application in terms of the positive obligations of the respondent State under Article 10 of the Convention. The Court will therefore ascertain whether, in the present case, the Hungarian judicial authorities, in dismissing the applicant's claims, adequately secured his right to freedom of expression as guaranteed by Article 10 in the context of labour relations and balanced it against the employer's right to protection of its commercial interests.

40. In the absence of any wrongdoing which the applicant might have sought to uncover, the Court does not find it necessary to enquire into the kind of issues which have been central to its case-law on whistle-blowing (compare Guja, cited above, §§ 73-78), but considers the following elements to be relevant when examining the permissible scope of the restriction of free speech in the employment relationship in the present case: the nature of the speech in question, the motives of the author, the damage, if any, caused by the speech to the employer, and the severity of the sanction imposed.

(i) The nature of the speech

41. In rejecting the applicant's argument that his conduct had amounted to the exercise of his right to freedom of expression, the Constitutional Court attributed importance to the nature of the speech on the impugned website. It found that reporting on matters which an employee had learned in general in the course of his or her employment was protected by the Fundamental Law to the extent that those matters were of public interest. In the present case, however, according to the Constitutional Court, the applicant's speech had concerned information of a professional nature acquired by virtue of his employment at Bank O. and had addressed issues relevant only to a specific profession and not to the public as whole. Therefore, the applicant's conduct was not protected by the fundamental right of freedom of expression (see paragraph 19 above).

42. The Court observes the domestic courts noted that the applicant had contributed as a private individual to a website on human resources policies providing information and opinion on recent developments in the field. Not excluding that the published articles might contribute, as alleged by the applicant (see paragraph 29 above), to the ongoing debate on tax issues, those courts found that the website conveyed information of a commercial nature, inviting discussion on the business practices of the audience; and, moreover, that the contested articles were addressed to a limited circle of professionals and did not directly concern the public as a whole.

43. However, as the Court has previously found, such information cannot be excluded from the scope of Article 10 § 1, which does not apply solely to certain types of information or ideas or forms of expression (see *markt intern Verlag GmbH and Klaus Beermann*, cited above, § 26). In other words, workplace-related free speech does not only protect comments that demonstrably contribute to a debate on a public matter. The Court cannot therefore agree with the finding of the Constitutional Court that comments made by an employee do not fall within the scope of protection of the right to freedom of expression on the grounds that they are of a professional nature and do not disclose any "public link" which would enable to clearly characterise them as part of a discussion on matters of public interest (see paragraph 19 above).

(ii) The motives of the author

44. When examining the applicant's motives, the Court is mindful of the fact that an act motivated by a personal grievance or a personal antagonism or the expectation of personal advantage, including pecuniary gain, would not justify a particularly strong level of protection (see *Kudeshkina*, cited above, § 95).In the present case, however, the Courts notes that the domestic courts did not find that the applicant had acted in pursuit of purely private interests or aired a personal grievance. There is no reason to question the

applicant's submission (see paragraph 29 above) to the effect that the issues raised on the website pertained to a profession and were published with the intention of sharing knowledge with and among the audience.

(iii) The damage caused by the speech to the employer

45. As regards the damage, if any, suffered by Bank O., it is certainly true that without some degree of control over its employees' conduct, it would have little prospect of providing services effectively or pursuing its business strategies. This consideration is even more relevant in a situation where the material published concerned the subject-matter of the applicant's employment, and the speech arguably owed its existence to the author's professional responsibilities and professional knowledge.

46. The case before the domestic courts involved a factual dispute regarding the question whether the articles published conveyed information and opinions directly reflecting policies within Bank O. or more general information on human resources management. The Court observes the conclusion drawn by the *Kúria* in this regard, which held that the information shared by the applicant was closely related to his employment tasks (see paragraph 17 above).

47. The standard applied by the domestic courts in assessing whether the dissemination of such information had been detrimental to Bank O. and could justify the applicant's dismissal was that of potential damage to legitimate business interests and the possibility of divulging business secrets. Thus, for the *Kúria*, the mere fact that the applicant had featured as an expert on the website and had authored a contribution on human resources management reflecting knowledge acquired through his work was sufficient to conclude that he had acted to his employer's detriment.

48. The Court accepts that, under Hungarian law, employers are entitled to a degree of deference in deciding which conduct could lead to the disruption of working relations even without such disruption being manifest. However, in the present case neither the applicant's employer nor the *Kúria* made any attempt to demonstrate in what way the speech in question could have adversely affected the business interests of Bank O.

(iv) The severity of the sanction imposed

49. The Court also notes that a rather severe sanction was imposed on the applicant, namely the termination of his employment without any assessment of the availability of a less severe measure.

(v) Conclusion

50. In sum, while it was for the domestic authorities to carry out a proper assessment of proportionality, the Court reiterates that the enjoyment of the right to freedom of expression should be secured even in the relations

between employer and employee (see the case-law cited in paragraph 37 above). In the present case, the Court cannot discern any meaningful balancing of the interests at issue by the domestic courts: as noted above, the Constitutional Court found that the applicant's fundamental right was not engaged (see paragraph 19 above) and the *Kúria* did not attribute any relevance to free speech in the present case. The substantive outcome of the labour dispute was dictated purely by contractual considerations between the applicant and Bank O. (see paragraph 17 above) and voided the applicant's reliance on freedom of expression of any effect.

51. In the light of the above considerations, the Court finds that in the present case the domestic authorities have failed to demonstrate convincingly that the rejection of the applicant's challenge against his dismissal was based on a fair balance between the applicant's right to freedom of expression, on the one hand, and his employer's right to protect its legitimate business interests, on the other hand. They therefore did not discharge their positive obligations under Article 10 of the Convention.

52. There has therefore been a violation of this provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant claimed 29,478 euros (EUR) in respect of pecuniary damage. This sum comprises the compensation for lost income which would have been awarded to him had he been successful in the domestic proceedings. He also claimed EUR 10,000 in respect of non-pecuniary damage.

55. The Government contested these claims.

56. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. As to non-pecuniary damage, the Court finds it appropriate to award the full sum claimed, that is to say, EUR 10,000, plus any tax that may be chargeable on that amount.

B. Costs and expenses

57. The applicant also claimed EUR 1,468 for the costs and expenses incurred before the domestic courts. This amount corresponds to the court

fees at three levels of jurisdiction and the legal expenses paid to the respondent. He also claimed EUR 3,421 for cost and expenses incurred before the Court, comprising EUR 3,000 for his lawyer's fees, equal to thirty hours of legal work at an hourly rate of EUR 100, EUR 375 for translation costs, EUR 24 for postal costs and EUR 22 for copies of judicial documents.

58. The Government contested these claims.

59. 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 total sum of EUR 4,800 covering costs under all heads.

C. Default interest

60. 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, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 4,800 (four thousand eight hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 November 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Jon Fridrik Kjølbro
Deputy Registrar	President