

European Court of Human Rights: Boronyák v. Hungary

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The European Court of Human Rights (ECtHR) delivered an interesting judgment on the impact of the right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR) within private relations and the positive obligation of the authorities to safeguard the right to freedom of expression and information in contractual relations.

The ECtHR unanimously found that imposing a fine on an actor for having disclosed confidential information about the terms of his contract with a TV company, did not violate the actor's freedom of expression. The Court held that the dissemination of the information in question could be restricted by contractual confidentiality obligations to protect business interests in the audiovisual sector.

The agency contract concerned Gergely Boronyák's acting in a television series which was produced by Media Services and Support Trust Fund, a State-owned company. The contract contained a confidentiality clause by which the TV actor agreed not to disclose any confidential business information covered by the agreement, including data and information related to the principal and its partners, its ownership and business connections, media service activities, programme production, the actors of the series or to any other persons who received fees for their contribution to the series. Under the terms of the agreement, besides any payment of damages, the TV actor was to pay a penalty of HUF 10 000 000 , approximately EUR 26 000 if he breached the obligation of confidentiality, unless the production company had agreed to the disclosure of confidential information.

The production company retained the right to terminate the contract at any time unilaterally. Apparently, due to the low interest in the television series, its production ended a year later and the TV production company terminated the contract with Boronyák. About one and a half years later, Boronyák gave an interview to investigative journalists concerning the contract and the TV series, including about the fees he had received from the TV production company. Following court proceedings in Hungary, he was ordered to pay HUF 10,000,000 and the production company's legal expenses.

Relying on Article 10 ECHR, Boronyák complained that the penalty was disproportionate. He also submitted that the information he had disclosed had

been public-interest information, which was already in the public domain: an investigative internet portal specialising in publishing public-interest information, in particular about public expenditure, had succeeded in obtaining access to information about the production costs of the TV series and to various documents about the termination of the production. Boronyák argued that the national courts had paid no heed to the circumstances of the disclosure or to the fact that the information had been of public interest as it concerned payments from public funds. The Hungarian Government, in essence, submitted that the restriction of Boronyák's free speech had been prescribed in the contractual provision, which he had voluntarily agreed to, and which had been in compliance with the relevant provisions of the Civil Code on contractual obligations.

Regarding the general principles applicable, the ECtHR reiterated that in case of disputes involving freedom of expression in the context of professional relationships, the protection of Article 10 ECHR extends to the workplace in general. Article 10 ECHR is not only binding in the relations between an employer and an employee when those relations are governed by public law, but may also apply when they are governed by private law. Indeed, the genuine and effective exercise of freedom of expression does not depend merely on the State's duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals. In certain cases, the State has a positive obligation to protect the right to freedom of expression, even against interference by private persons. Therefore, the ECtHR had to ascertain whether, in the present case, the Hungarian judicial authorities, in upholding the claims of the production company, had adequately secured Boronyák's right to freedom of expression as guaranteed by Article 10 ECHR in the context of contractual relations and balanced it against the right of the TV company to the protection of its commercial interests.

The ECtHR first observed that Boronyák did not argue that he was seeking to uncover any wrongdoing by the TV company, and therefore it does not find it necessary to enquire into the kind of issues which have been central to its case-law on whistleblowing (contrast *Halet v. Luxemburg*, IRIS 2023-4:1/23). Next, the ECtHR took note of the fact that the parties themselves determined the scope of their obligations set out in the agency contract and that Boronyák voluntarily and knowingly agreed to the non-disclosure clause, waiving his right to release information about the terms of the contract. However, the voluntary nature of the contract was not the sole factor relied upon by the domestic courts as justification for allowing the restriction on Boronyák's right to freedom of expression. Rather than automatically upholding the confidentiality obligation and the ensuing penalty by relying on the parties' freedom to enter into contracts, the domestic courts analysed the implications of the clause for free speech and the public's access to information of public concern, to weigh up the conflicting interests of the contracting parties.

The ECtHR accepted that Boronyák relied on the public interest in disclosing information about State budget expenditure to justify the publication of specific terms of his contract. Indeed, the conduct of private parties, such as companies, who also inevitably and knowingly lay themselves open to scrutiny of their acts can, in certain situations, constitute information of public concern. However, the disclosure of public-interest details cannot be assessed independently of the duty of confidentiality or of secrecy which has been breached.

The ECtHR considered that the public interest in disclosure of confidential information decreases depending on whether the information disclosed relates to unlawful acts or practices, to reprehensible acts, practices or conduct, or to a matter that sparks a debate, giving rise to controversy as to whether or not there is harm to the public (see *Halet v. Luxembourg*, IRIS 2023-4:1/23). The ECtHR referred in this connection to the relative weight of the public interest in the information disclosed in the present case, regarding the fact that it concerned neither unlawful acts nor reprehensible practices, but merely the individual terms of Boronyák's contract.

The disclosure of confidential information by Boronyák was not an indispensable way of securing the availability of information to enable a debate on matters of public interest, the more because the entities managing the State budget were under a statutory obligation to disclose such data upon request. The domestic courts granted journalists' requests, ordering the TV company to release the requested information about the budget of the television series. Still, the ECtHR accepted that the confidentiality as stipulated in the contract with Boronyák's was, generally speaking, necessary for the company's business operations.

Lastly, the ECtHR considered that the penalty imposed in an amount equivalent to approximately EUR 26,000 could appear high in view of the circumstances of the disclosure of the information in question, but was justified because of the particularly serious nature of the breach of contractual obligations.

Therefore, the ECtHR discerned no strong reasons that would require it to substitute its own view for that of the domestic courts and to set aside the balancing exercise. It found that the Hungarian judicial authorities struck a fair balance between Boronyák's interest in free speech, on the one hand, and the TV company's interest in the protection of its business secrecy, on the other hand, thus acting within their margin of appreciation. Accordingly, there has been no violation of Article 10 ECHR.

Judgment by the European Court of Human Rights, First Section, in the case Boronyák v. Hungary, Application no. 4110/20, 20 June 2024.

<https://hudoc.echr.coe.int/eng?i=001-234265>

