

Human rights, employment and social media

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The European Court of Human Rights has held that the dismissal of an employee for writing a social blog could be a violation of their human rights under Article 10 the right to freedom of expression.

In the case of [Herbai v Hungary](#), an HR manager, Mr Herbai, was dismissed following two blog posts he made on HR strategy and tax rates. In his blog, Mr Herbai described himself as an HR expert in management at a large bank. When this came to his employer's attention, he was dismissed on the grounds that his conduct had damaged the bank's economic interests and breached its confidentiality standards.

The Hungarian Supreme Court upheld the bank's decision to dismiss Mr Herbai on the grounds that his conduct had endangered the bank's business interests.

Mr Herbai appealed the decision on the basis that the termination of his employment had breached his freedom of expression rights under [Article 10](#) of the Human Rights Act.

Article 10 confirms an individual's right to freedom of expression and information, subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society". This right includes the freedom to hold opinions, and to receive and impart information and ideas.

The court considered four elements relevant to the restriction of free speech in the context of an employment relationship:

1. The nature of the speech

The court rejected the bank's argument that Article 10 did not apply as the published comments were addressed to HR professionals, rather than to the public as a whole.

2. The motives of the author

The motive was simply to share knowledge with a professional readership.

3. The damage caused by the speech to the employer

The bank made no attempt to demonstrate how the speech could have adversely affected its interests.

4. The severity of the sanction imposed.

It was clear that Mr Herbai had suffered a severe penalty, as he had been dismissed without any lesser sanction being considered.

The European Court of Human Rights found that the Hungarian courts had failed to carry out the balancing act between an individual's right to freedom of expression and an employer's rights to protect its legitimate business interests. They therefore did not discharge their positive obligations under Article 10.

Employers need to be vigilant so as not to violate employees' rights in relation to freedom of expression. It is always advisable to take legal advice before taking steps to dismiss an employee.

If you have a query over the dismissal of an employee, or any other employment enquiries, call [Lauren Cullen](tel:02072996920) today.

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