

ECtHR: Grand Chamber Reinforces Protection of Whistleblowers



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News

With its Grand Chamber judgment of 14 February 2023 in the case *Halet v. Luxembourg* (application no. 21884/18), the ECtHR put an end to the long-lasting legal battle between one of the whistleblowers who triggered the LuxLeaks scandal and the state of Luxembourg. While previous judgments denied the defence of whistle-blower status according to Art. 10 ECHR (freedom of expression), the ECtHR's Grand Chamber decided in the opposite and found a violation of Art. 10 ECHR. The LuxLeaks scandal concerned tax agreements (resulting in tax avoidance) between multinational companies and the Luxembourg fiscal authorities. *Mr Halet*, one of the two whistleblowers, disclosed confidential documents protected by professional secrecy to journalists while he was employed by a private company. Luxembourg courts sentenced him to a €1000 fine and the Luxembourg Court of Appeal concluded that public interest in the disclosure was insufficient to outweigh the damage suffered by the private employer.

The ECtHR was called to decide whether Mr Halet's criminal conviction, following the disclosure of confidential documents issued by his employer, had amounted to a disproportionate interference with his right to freedom of expression. Under Art. 10 ECHR and the criteria established in *Heinisch*, employees may enjoy whistleblowers protection when disclosing in-house information, including secret information if strong public interest is involved. In a chamber judgment of 11 May 2021, the ECtHR had concluded that Mr Halet's criminal conviction did not constitute a breach of his right to freedom of expression arguing that public interest had been insufficient to counterbalance the harm caused to the company (→ [euclid news of 21 June 2021](#)).

In overturning this decision, the ECtHR's Grand Chamber now found that public interest in the disclosure outweighed all of the detrimental effects arising from it, given the importance, at both the national and European levels, of the public debate on the tax practices of multinational companies. It reasoned that the information disclosed by the whistleblower had made an essential contribution to the public's interest in receiving the information on tax rulings. Therefore, the interference with the applicants' right to freedom of expression, in particular his freedom to impart information, had not been "necessary in a democratic society" and thus violated Art. 10 ECHR.

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ISSN: 1862-6947

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The project is co-financed by the Union Anti-Fraud Programme (UAFP), managed by the [European Anti-Fraud Office \(OLAF\)](#).



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