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

CASE OF GUSTAFSSON v. SWEDEN

(Revision)

(18/1995/524/610)

(Application no. 1107043)

JUDGMENT

(Merits)

STRASBOURG

30 July 1998

SUMMARY[1]

Judgment delivered by a Grand Chamber

Examination of the merits of a request submitted by the applicant for the revision of an earlier judgment (Rule 60 of Rules of Court B)

I. PRELIMINARY ISSUE

Having regard to its conclusions below on the merits, the Court did not consider it necessary to determine the objections made by the Government as to the procedure followed by the Screening Panel in declaring the revision request admissible.

Conclusion: not necessary to examine (sixteen votes to one).

II. MERITS OF THE REVISION REQUEST

Court, in accordance with its case-law, examined whether evidence adduced by applicant in revision proceedings would actually have had a decisive influence on its judgment of 25 April 1996 ("the original judgment") – in view of his submissions in revision case, Court had particular regard to whether its reasoning and conclusions in the original judgment had taken into account certain additional information submitted by Government in the main case.

Although judgment referred to the additional information in question, this only disposed of a point of procedure in reply to applicant's contention that Government estopped from changing the stance they had adopted before the Commission and adducing the evidence before the Court – its answer that not prevented from taking information into account if it considered it relevant could not of its own be taken to mean that Court actually did have regard to information.

Reasons stated in ensuing part of original judgment were sufficient to support, and were decisive for, the Court's conclusion that there had been no violation of Article 11 of the Convention – no mention of the additional evidence and arguments submitted by Government – nor was there anything to indicate that evidence relied on here – nor did other parts of judgment mention first set of facts in dispute – only second set of disputed facts was alluded to but reasons in relevant part of the judgment were merely accessory to those mentioned above and did not suggest that Court regarded additional facts submitted by Government as established facts.

It followed that the evidence adduced by applicant would not have had a decisive influence on Court's finding with respect to Article 11 complaint – nor would it have had any bearing on its conclusions with regard to his other complaints.

Conclusion: request dismissed (sixteen votes to one).

1. This summary by the registry does not bind the Court.

In the case of Gustafsson v. Sweden (revision of the judgment of 25 April 1996)[1],

The European Court of Human Rights, sitting, in accordance with Rules 53 and 60 § 3 of Rules of Court B[2], as a Grand Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,
Mr THÓR VILHJÁLMSSON,
Mr F. MATSCHER,
Mr L.-E. PETTITI,
Mr A. SPIELMANN,
Mr S.K. MARTENS,
Mrs E. PALM,
Mr I. FOIGHEL,
Mr R. PEKKANEN,
Mr A.N. LOIZOU,
Mr J.M. MORENILLA,
Mr M.A. LOPES ROCHA,
Mr G. MIFSUD BONNICI,
Mr J. MAKARCZYK,
Mr B. REPIK,
Mr P. JAMBREK,
Mr E. LEVITS,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 23 February and 25 June 1998,

Delivers the following judgment, which was adopted on the last-mentioned date:

REQUEST FOR REVISION AND PROCEDURE

1. The applicant submitted to the Court under Rule 60 of Rules of Court B a request for revision of the judgment delivered on 25 April 1996 in the case of Gustafsson v. Sweden (*Reports of Judgments and Decisions* 1996-II – "the original judgment"). The request was lodged on 21 October 1996.

Notes by the Registrar

1. The case is numbered 18/1995/524/610. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning States bound by Protocol No. 9.

I. PROCEEDINGS IN THE MAIN CASE

2. The case of Gustafsson v. Sweden originated in an application against the Kingdom of Sweden lodged with the European Commission of Human Rights ("the Commission") under Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Swedish national, Mr Torgny Gustafsson, on 1 July 1989. The applicant complained that the lack of State protection against an industrial action conducted by the Hotel and Restaurant Workers' Union (*Hotell- och Restauranganställdas Förbund* – "HRF") against his restaurant gave rise to a violation of his right to freedom of association as guaranteed by Article 11 of the Convention and also of his right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1, in conjunction with Article 17 of the Convention. He further alleged breaches of his rights under Article 6 § 1 (right to a fair hearing) and Article 13 (right to an effective remedy), complaining that the court remedies to which he could have recourse in order to challenge the industrial action would have been ineffective since such action was lawful under Swedish law.

In its report of 10 January 1995 (Article 31), the Commission expressed the opinion that:

(a) there had been a violation of Article 11 (by thirteen votes to four);

(b) it was not necessary to examine the complaint under Article 1 of Protocol No. 1 in conjunction with Article 17 of the Convention (by eleven votes to six);

(c) there had been no violation of Article 6 § 1 of the Convention (by sixteen votes to one);

(d) there had been a violation of Article 13 of the Convention (by fourteen votes to three).

3. The case was referred to the Court on 1 March 1995 by the Commission and on 15 May 1995 by the Swedish Government ("the Government").

4. In their memorial to the Court, filed on 12 September 1995, the Government submitted additional information, which had not previously been adduced before the Commission, concerning the circumstances which led to the union action against the applicant's restaurant business. This information was summarised in paragraph 15 of the judgment of 25 April 1996 in the main case as follows:

> "According to the Government, the union action had its background in a request for assistance in 1986 by an HRF member employed by the applicant. In the view of the union, the applicant paid his employees approximately 900 Swedish kronor (SEK) a month less than what they would have received under a collective agreement. He did not pay his staff holiday compensation as provided for in the 1977 Annual Leave Act (*semesterlagen* 1977:480), nor salary during lay-offs due to poor weather conditions as required by the 1982 Employment Protection Act and he did not sign a labour-market insurance until 1988."

5. In its judgment of 25 April 1996, the Court concluded that Article 11 of the Convention was applicable in the applicant's case (eleven votes to eight) but that there had been no violation of this Article (twelve votes to seven). Moreover, it found that none of the following provisions applied to the matters complained of by the applicant and had therefore not been violated: Article 1 of Protocol No. 1 (thirteen votes to six); Article 6 § 1 of the Convention (fourteen votes to five); and Article 13 (eighteen votes to one). In finding no violation of Article 11 of the Convention, the Court gave, *inter alia*, the following reasons:

> "51. As to the particular circumstances of the present case, the Court notes from the outset that the additional information concerning the terms and conditions of employment adduced by the Government before it supplement the facts underlying the application declared admissible by the Commission. The Court is not prevented from taking them into account in determining the merits of the applicant's complaints under the Convention if it considers them relevant (see the Barthold v. Germany judgment of 25 March 1985, Series A no. 90, p. 20, §§ 41–42; and the McMichael v. the United Kingdom judgment of 24 February 1995, Series A no. 307-B, p. 51, § 73).
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> 52. As indicated earlier (see paragraph 44 above), the union action must have entailed a considerable pressure on the applicant to meet the union's demand that he accept to be bound by a collective agreement, either by joining an employers' association or by signing a substitute agreement. However, only the first alternative involved membership of an association.
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> It is true that, had the applicant opted for the second alternative, he might have had less opportunity to influence the contents of future collective agreements than as a member of an employers' association. On the other hand, a substitute agreement offered the advantage that it would have been possible to include in it individual clauses tailored to the special character of the applicant's business. In any event, it does not appear, nor has it been contended, that the applicant was compelled to opt for membership of an employers' association because of economic disadvantages attached to the substitute agreement.
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> In reality the applicant's principal objection to the second alternative was, as in relation to the first alternative, of a political nature, namely his disagreement with the collective-bargaining system in Sweden. However, Article 11 of the Convention does not as such guarantee a right not to enter into a collective agreement (see the above-mentioned Swedish Engine Drivers' Union judgment, pp. 15–16, §§ 40–41). The positive obligation incumbent on the State under Article 11, including the aspect of protection of personal opinion, may well extend to treatment connected with the operation of a collective-bargaining system, but only where such treatment impinges on freedom of association. Compulsion which, as here, does not significantly affect the enjoyment of that freedom, even if it causes economic damage, cannot give rise to any positive obligation under Article 11.
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> 53. Furthermore, the applicant has not substantiated his submission to the effect that the terms of employment which he offered were more favourable than those required under a collective agreement. Bearing in mind the special role and importance of collective agreements in the regulation of labour relations in Sweden, the Court sees no reason to doubt that the union action pursued legitimate interests consistent with

Article 11 of the Convention (see, for instance, the above-mentioned Swedish Engine Drivers' Union judgment, pp. 15–16, § 40; and the Schmidt and Dahlström v. Sweden judgment of 6 February 1976, Series A no. 21, p. 16, § 36). It should also be recalled in this context that the legitimate character of collective bargaining is recognised by a number of international instruments, in particular Article 6 of the European Social Charter, Article 8 of the 1966 International Covenant on Economic, Social and Cultural Rights and Conventions nos. 87 and 98 of the International Labour Organisation (the first concerning freedom of association and the right to organise and the second the application of the principles of the right to organise and to bargain collectively).

54. In the light of the foregoing, having regard to the margin of appreciation to be accorded to the respondent State in the area under consideration, the Court does not find that Sweden failed to secure the applicant's rights under Article 11 of the Convention.

55. In sum, the Court reaches the conclusion that the facts of the present case did not give rise to a violation of Article 11 of the Convention."

II. PROCEEDINGS IN THE REVISION CASE

6. The Screening Panel which was to examine the admissibility of the applicant's revision request included *ex officio* Mrs E. Palm, the elected judge of Swedish nationality, Mr C. Russo, as Chairman, and Mr J. De Meyer (Rules 60 § 3 and, *mutatis mutandis*, 26 § 2 (a), 3 and 4).

7. On 24 and 26 February 1997 the Registrar received from the applicant his observations in support of his request for revision. In accordance with the directions given by the Screening Panel as to the further procedure, the Registrar received on 2 April the Government's comments, on 10 March and 26 May those of the Commission and, on 10 June, the applicant's observations in reply. By letters which were received on 18 and 23 March and 11 June 1997 the applicant sought to submit additional observations on the scope of his request, the filing of which the Panel accepted on 26 June.

8. In his request to the Court to revise its judgment the applicant maintained that there were two allegations which had been advanced by the Government for the first time in their memorial to the Court in the main proceedings which were false and which had been impossible for him to refute effectively: firstly, their assertion that in 1986 one of his employees who also was a member of HRF had contacted the union to complain about the terms of employment and, secondly, their allegation that the applicant could not substantiate his own submission that the employment terms which he offered were, as regards salaries, equal to or better than required under a collective agreement with HRF. In addition, the applicant contended that, contrary to what was suggested in the original judgment, an employer had no possibilities of negotiating with the union the contents of a substitute

agreement. However, as it appears from the observations filed by the applicant on 10 June 1997, he subsequently withdrew this ground.

9. In support of his revision request the applicant appended a number of documents, including affidavits by six persons whom he had employed at his restaurant during the summer of 1986, pay slips from 1986 and 1987, a salary scale for collective agreements with HRF applicable as of 1 April 1986 and a series of articles published by *Dagens Nyheter* and the newspaper *Svenska Dagbladet* between 20 October and 7 November 1996.

All six employees stated in their affidavits that there had been no lay-offs due to poor weather conditions. One employee affirmed that, whilst the applicant had paid her SEK 40 per hour in the summer of 1986, in the autumn another employer had paid her, under a collective agreement, only SEK 34.70 per hour for equivalent work. Another employee had asserted that her salary was in reality superior to the level indicated in the Government's memorial to the Court, a third that it was higher than what it would have been under a collective agreement and, a fourth, that the employees soon realised that the salaries were on a par with that. Two employees stated that the applicant had paid holiday compensation and one of them that the level had corresponded to 12.75% of the salary.

10. The applicant also submitted a declaration, dated 14 November 1995, signed by the six persons mentioned above. This document he had previously submitted on 7 December 1995 (two weeks after the Court's hearing) together with additional observations on the merits and Article 50. The filing of this document had been refused by the President under Rule 39 § 1, third sub-paragraph, on the grounds that it contained additional unsolicited observations on the merits of the case. According to this provision, "no memorial or other document may be filed, except within" the time-limit fixed for the filing of memorials "or with the authorisation of the President or at his or the Chamber's request". The applicant subsequently resubmitted those parts of this material relating to Article 50, in accordance with the indications given by the President at the end of the hearing.

The declaration stated, *inter alia*, that the working hours agreed to before the start of the holiday season were adhered to and that 12.75% holiday compensation was paid at the end of the season, in August, that none of the six employees had been unionised in the summer of 1986 or had contacted HRF to complain about their working conditions.

11. On 13 October 1997, having deliberated in private on 26 June, 27 August and 25 September 1997, the Panel, without prejudging the merits, declared the revision request admissible and referred it to the Chamber which had given the original judgment. In doing so, the Panel observed that it was not unanimous in finding that the request should be rejected and that its members were in disagreement as to the interpretation of Rule 60. The Panel did not consider that its role extended to determining

whether unanimity or majority was required for the rejection of a request submitted by a private party under Rule 60 § 3.

Before taking the above decision, the Screening Panel had decided not to accept for filing observations received from the applicant on 13 August 1997, together with a newspaper article, and comments thereon submitted by the Government on 8 September 1997.

12. As President of the Grand Chamber which originally examined the case (Rule 60 § 3), Mr R. Ryssdal gave directions as to the organisation of the proceedings, in consultation with Mr C.H. Ehrenkrona, the Agent of the Government, Mrs G.H. Thune, the Delegate of the Commission, and Mr G. Ravnsborg, the applicant's lawyer. In accordance with the President's directions, the Registrar received from the Government on 22 November and 8 December 1997 and from the applicant on 24 November and 9 December 1997 their further observations. By letter of 12 December 1997 the Secretary to the Commission informed the Registrar that the Commission did not wish to submit any comments on the observations made by the parties subsequent to the Screening Panel's decision and that it would refer to its previous observations of 7 March and 26 May 1997.

The material filed by the applicant and the Government included the observations which had been refused by the Screening Panel on 13 October 1997 (see paragraph 11 above). The applicant also appended a number of documents, including newspaper articles, particulars of labour-market insurance which he had subscribed to in 1987 and 1988, as well as further statements, signed by persons whom he had employed during the summers of 1987 and 1988. According to these, the salaries had exceeded the minimum wage required by the collective agreement; compensation had been paid for inconvenient working hours; the agreed working hours had been adhered to throughout the summer season and 12.5% holiday compensation had been paid out at the end of the season, in August. Moreover, one of the applicant's employees in 1987 had been a member of HRF and two of his employees in 1988 had been affiliated to the Gotland branch of the Union of Municipal Workers.

13. On 9 February 1998 Mr R. Bernhardt replaced Mr Ryssdal as President of the Grand Chamber, the latter being unable to take part in the further consideration of the case. Since the adoption of the Court's judgment, both Mr Bigi and Mr Walsh had died, the latter on 9 March 1998.

In order to complete the Grand Chamber, the quorum being seventeen judges (Rule 53 § 3), the President called on Mr Thór Vilhjálmsson, the next judge on the list originally drawn by lot for the Grand Chamber on 28 September 1995.

AS TO THE LAW

14. Rule 60 of Rules of Court B reads, in as far as is relevant:

> "1. A party or the Commission may, in the event of the discovery of a fact which might by its nature have a decisive influence and which, when a judgment was delivered, was unknown both to the Court and to that party or the Commission, request the Court, within a period of six months after that party or the Commission, as the case may be, acquired knowledge of such fact, to revise that judgment.
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> 2. The request shall mention the judgment of which the revision is requested and shall contain the information necessary to show that the conditions laid down in paragraph 1 have been complied with. It shall be accompanied by the original or a copy of all supporting documents. The request and supporting documents shall be filed with the registry; they shall be filed in forty copies when they have been submitted by a Contracting Party.
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> 3. When the request has been submitted by a private party, it shall be considered by a Screening Panel composed as provided in Rule 59 § 3. The Panel shall, in the event of declaring the request admissible under paragraph 1 of this Rule, refer the request to the Chamber which gave the original judgment or, if in the circumstances that is not reasonably possible, to a Chamber constituted in accordance with Article 43 of the Convention.
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> …
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> 6. The Chamber shall decide by means of a judgment."

I. PRELIMINARY ISSUE

15. In their observations submitted after the Screening Panel had declared the revision request admissible and referred it to the original Chamber, the Government questioned the procedure followed by the Screening Panel. They recalled that the Panel had not been unanimous in finding that the request should be rejected, that its members had been in disagreement as to the interpretation of Rule 60 and had not considered that the Panel's role extended to determining whether unanimity or majority was required for rejection of a request submitted by a private party.

16. The Commission did not express any views on the point, whereas the applicant invited the Court to limit its review to the merits of the request.

17. The Court, having regard to its conclusions below on the merits of the revision case, does not consider it necessary to settle this point.

II. THE MERITS OF THE APPLICANT'S REQUEST FOR REVISION

A. Arguments of those taking part in the proceedings

1. The applicant

18. In requesting the Court to revise its judgment of 25 April 1996, the applicant adduced evidence in relation to two allegations advanced by the Government for the first time in their memorial to the Court during the main proceedings.

This concerned, firstly, their assertion that in 1986 one of his employees who was also a member of HRF had contacted HRF to complain about the terms of employment.

Secondly, it concerned the Government's allegation that the applicant could not substantiate his own assertion that the employment terms which he offered were, as regards salaries, equal to or better than required under a collective agreement with HRF. The Government had submitted that the applicant offered approximately SEK 6,200 a month, at SEK 36 per hour, without holiday compensation or salary during lay-offs due to poor weather conditions and that the HRF terms required at least SEK 7,100 a month, including compensation for inconvenient working hours and holiday compensation. However, the applicant was able to prove that, whilst the salary required by the collective agreement was only at SEK 34.70 per hour, he offered SEK 40 per hour as a base salary, as well as 12.75% holiday compensation. There was no lay-off due to poor weather. In addition, while the Government had alleged that the applicant did not sign any labour-market insurance until 1988, he could prove that he did so already during the summer of 1987.

Admittedly, when the applicant received the Government's memorial, he was aware of the terms he himself had offered to his employees. However, he had not been in a position to prove how these terms compared with those required by the relevant collective agreement, in the absence of any information of its contents and operation nine years earlier. Nor had he been able to refute effectively the Government's submission that one of his employees, who was at the same time an HRF member, had made a telephone call to the union in 1986 to complain about the terms and conditions of employment in the applicant's restaurant. It was only when he became aware of the evidence discovered through the journalistic investigation carried out by *Dagens Nyheter* that he could disprove the Government's contention.

19. In the applicant's view, the untrue additional information submitted by the Government in the main proceedings had had a decisive influence on the Court's findings in paragraphs 53 to 55 of the judgment and point 2 of

the operative provisions. He requested the Court to revise its reasoning and conclusion and to find that there had been a violation of Article 11 of the Convention.

In addition, the applicant asked the Court to revise its findings in other related parts of its judgment and its conclusions, in points 3 to 5 of the operative provisions, that there had been no violation of Article 1 of Protocol No. 1 and Articles 6 § 1 and 13 of the Convention. In this connection, the applicant questioned in particular the Court's interpretation and application of Article 13 in respect of his complaint that he had been denied an effective remedy with regard to his allegation of a violation of Article 1 of Protocol No. 1. Finally, the applicant claimed just satisfaction under Article 50 of the Convention.

2. The Government

20. The Government, for their part, emphasised that the case originated in a private dispute between the applicant and HRF, which had not been brought before any competent domestic authority empowered to evaluate questions of fact and of law. It was not until the case was before the Court that some of the facts and circumstances became known to the Government. The Commission had based its findings on the facts as submitted by the applicant. Those facts were neither contested nor accepted by the Government before the Commission. In the absence of any judicial powers to conduct enquiries, the Government had no possibility of making an objective assessment or of verifying those facts. Before the Court, the Government had found it necessary to provide the trade union's version of the events, which they could not disregard as false or untrue. On the other hand, a State Party could not guarantee the correctness of all information collected from private individuals in a case concerning complaints, not about unjustified interference by the State, but about the State's failure to intervene in the relationship between private individuals.

21. The Government further stressed that the union confirmed the additional information submitted to the Court and that this had motivated the union to make the applicant sign a collective agreement. Neither the union nor the Government had any certain knowledge as to the terms and conditions of employment which the applicant had offered to his employees. For this reason the Government had requested the Court to hear witnesses during the main proceedings. In any event, in assessing whether the union action had been justified or not, it was not decisive how the new evidence had been collected or whether it had been correct but whether the union had acted in the belief that it was. Even though the applicant might now be able to show that the salary which he offered included holiday compensation and corresponded to the level required by the relevant collective agreement, this had not been clear to the union either at the time of the industrial action or during the main proceedings.

22. In the view of the Government, it was however clear that the truth of the working conditions applied by the applicant was best known by himself and his employees. He must have known what those conditions were. He knew the source of the Government's information and the names of the witnesses whom the Government wished to be heard by the Court. Moreover, the applicant had every opportunity to contest the "new" information adduced by the Government as soon as he acquired knowledge of the contents of their memorial to the Court and at the latest at the hearing. At least he could have contested the accuracy of the information. There was no question in this case of a discovery of "unknown" facts within the meaning of Rule 60.

23. Finally, the Government disputed that the facts in question had had a decisive influence on the Court's judgment. In this connection, they stressed that the principal issue in the case was not whether the trade-union action had been justified but the extent to which, if at all, it had affected the applicant's right to freedom of association under Article 11 of the Convention and engaged the responsibility of Sweden.

3. The Commission

24. The Commission accepted that the applicant may have had difficulties in responding adequately, within the time available in the Court's proceedings, to all the new assertions by the Government.

The new evidence adduced by the applicant showed that his terms of employment were equal to or better than those required under a collective agreement in this field. Moreover, it suggested that the anonymous person to whom the Government referred did not exist.

Some of these new facts had been unknown not only to the Court but also to the applicant. This would seem to have been the case at least as regards the identity of the employee who, according to the Government, had requested assistance from the union.

Furthermore, although the Court's reasoning did not refer to the Government's assertion that one of the applicant's employees in 1986 had contacted HRF and requested its assistance, it did expressly state that the applicant had failed to substantiate his allegation that he offered better terms of employment than required by a collective agreement. The Commission would therefore not exclude that to some extent the facts now adduced by the applicant might by their nature have had a decisive influence on the Court's judgment.

In these circumstances the Commission took the view that the conditions for revision under Rule 60 might be satisfied.

B. The Court's assessment

25. The Court recalls that, in carrying out its examination, it must bear in mind that, by virtue of Article 52 of the Convention, its judgments are final. In as much as it calls into question the final character of judgments, the possibility of revision is an exceptional procedure. Therefore, the admissibility and merits of a request for revision of a judgment of the Court must be subject to strict scrutiny (as regards the admissibility, see the Pardo v. France judgment of 10 July 1996 (*revision – admissibility*), *Reports of Judgments and Decisions* 1996-III, pp. 869–70, § 21).

26. In the present case, the applicant requested the Court to revise its judgment of 25 April 1996 in the main proceedings on the grounds that its reasoning and conclusions had attached decisive weight to additional evidence submitted by the Government for the first time in their memorial to the Court in those proceedings. This related, in the first place, to their contention that the trade-union action had had its background in a complaint in 1986 by an HRF member employed by the applicant and, secondly, to their submissions that the terms of employment offered by him had been less favourable than those required under a collective agreement.

27. In determining the merits of the revision request, the Court will examine whether the evidence adduced by the applicant in the revision proceedings would actually have had a decisive influence on the judgment (see the above-mentioned Pardo judgment (*revision – admissibility*), § 21; and the Pardo v. France judgment of 29 April 1997 (*revision – merits*), *Reports* 1997-III, p. 744, § 23). In view of the applicant's submissions in the revision case, the Court will have particular regard to whether its reasoning and conclusions in the original judgment could be said to have taken into account the additional information submitted by the Government in the main case on the two points referred to above.

28. At the outset, it is to be noted that paragraph 51 of the judgment refers to the additional information submitted by the Government in the main case concerning terms and conditions of employment. However, that part of the judgment only disposes of a point of procedure in reply to the applicant's contention that the Government, having refrained from arguing before the Commission that the union action was justified, were estopped from changing their stance and adducing evidence in this respect in the proceedings before the Court (see paragraph 47 of the judgment). The Court's answer to the point raised by the applicant was that it was not prevented from taking the information into account if the Court considered it relevant. This could not of its own be taken to mean that the Court actually did have regard to the additional information submitted by the Government (see paragraph 5 above).

29. As is apparent from paragraph 52 of the original judgment, the Court attached particular weight, firstly, to the fact that the applicant could chose

between two alternative means of meeting the union's demand that he be bound by a collective agreement (either by joining an employers' association or by signing a substitute agreement). It was true that, had the applicant opted for the second alternative, he might have had less opportunity to influence the contents of future collective agreements than as a member of an employers' association. On the other hand, a substitute agreement offered the advantage that it would have been possible to include in it individual clauses tailored to the special character of the applicant's business. In any event, it did not appear, nor had it been contended, that the applicant had been compelled to opt for membership of an employers' association because of economic disadvantages attached to the substitute agreement (see paragraph 5 above).

Secondly, the Court emphasised that, in reality the applicant's principal objection to the second alternative (i.e. to sign a substitute agreement) had been, as in relation to the first alternative (i.e. to join the employers' association) of a political nature, namely his disagreement with the collective-bargaining system in Sweden. However, as the Court stressed, Article 11 of the Convention does not as such guarantee a right not to enter into a collective agreement. The positive obligation incumbent on the State under Article 11, including the aspect of protection of personal opinion, can well extend to treatment connected with the operation of a collective-bargaining system, but only where such treatment impinges on freedom of association. Compulsion which, as in the case of the applicant, did not significantly affect the enjoyment of that freedom, even if it caused economic damage, could not give rise to any positive obligation under Article 11 (see paragraph 5 above).

The aforementioned reasons were sufficient to support, and were decisive for, the Court's conclusion that, having regard to the respondent State's margin of appreciation, it had not failed to secure the applicant's rights under Article 11 of the Convention and that this provision had thus not been violated in his case (see paragraphs 54–55 of the judgment in the main case). There is no mention in this part of the judgment of the additional evidence and arguments submitted by the Government on the two points in issue. Nor is there anything to suggest that this evidence was relied on in this part of the judgment (see paragraph 5 above).

30. Nor do other parts of the Court's reasoning and conclusions mention the first set of facts in dispute, namely the Government's allegation that the trade-union action had its background in a complaint in 1986 by an HRF member employed by the applicant. Only the second set of disputed facts, concerning the terms and conditions of employment, is alluded to, in paragraph 53 of the judgment (see paragraph 5 above).

31. However, it must be emphasised that the reasons contained in paragraph 53 of the judgment were merely accessory to those mentioned above.

Furthermore, while noting that "the applicant had not substantiated his submission to the effect that the terms of employment which he offered were more favourable than those required under a collective agreement" (see paragraph 5 above), the Court did not state anything suggesting an acceptance on its part of the arguments and evidence advanced by the Government in rebuttal. It did not regard the additional facts submitted by them as established facts. This is also borne out by the general tenor of paragraph 15 of the original judgment (see paragraph 4 above).

In fact, rather than determining the disagreement between the applicant and the Government as to the terms and conditions of employment, the Court had regard to the general interest sought to be achieved through the union action, in particular the special role and importance of collective agreements in the regulation of labour relations in Sweden (see paragraph 5 above).

32. It follows that the evidence adduced by the applicant would not have had a decisive influence on the Court's judgment of 25 April 1996 in as far as concerns the applicant's complaint under Article 11 of the Convention. Nor would it have had any such bearing on its conclusions with respect to his complaints under Article 1 of Protocol No. 1 or Articles 6 or 13 of the Convention. Accordingly, the evidence does not offer any ground for revision under Rule 60.

FOR THESE REASONS, THE COURT

1. *Holds* by sixteen votes to one that it is not necessary to review the procedure followed by the Screening Panel;

2. *Dismisses* by sixteen votes to one the request for revision.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 30 July 1998.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 55 § 2 of Rules of Court B, the dissenting opinion of Mr Mifsud Bonnici is annexed to this judgment.

Initialled: R. B.
Initialled: H. P.

DISSENTING OPINION OF JUDGE MIFSUD BONNICI

1. I am dissenting from the great majority of the Court in this revision case concerning the Court's judgment of 25 April 1996, mainly for the following reasons.

2. I find the majority's approach to the applicant's request for revision too formalistic and legalistic, concentrated as it is on a very restricted interpretation of what can be considered "decisive".

3. The Swedish Government, in the main proceedings, had relied on the trade unions' version of certain facts (see paragraph 20 of the present judgment), which version has now, at least in part, turned out to be incorrect. In my view, the crux of the whole matter has always been of an economic nature and is, thus, indirectly but ultimately, of political relevance. In my first dissenting opinion in the main judgment I noted that the applicant's employees were in fact the principal victims of the trade unions' stranglehold, which effectively prevented them from enjoying better contracts of employment. They did not belong to any trade union and, therefore, in order for the "system" to work, the applicant had to be compelled either to join a trade union or to sign a substitute agreement. In any case, the economic coercion exercised on the applicant and his employees in my view amounted to compulsion violating Article 11.

It has now transpired that the applicant's submission "that the terms of employment which he offered were more favourable than those required under a collective agreement" was correct. Although the Court, in paragraph 53 of the main judgment, was at the time justified in saying that the applicant had not "substantiated his submission" it cannot now simply say, as in paragraph 31 of the present judgment, that this is however not decisive enough (at least for reviewing the matter) because "the reasons contained in paragraph 53 of the judgment were merely accessory to those mentioned *above*" i.e. *in the present judgment*.

4. The Court therefore does not consider the "new" facts to be decisive because they are relevant only to the accessory considerations in paragraph 53, but do not affect the principal considerations set out in paragraph 52.

In this latter paragraph it is stated that,

> "Compulsion which, as here, does not significantly affect the enjoyment of that freedom [i.e. freedom of association], even if it causes economic damage, cannot give rise to any positive obligation under Article 11."

The new facts establish that the applicant and his employees could not enter into a contract of service whose terms were more favourable than those of the national collective agreement. This stranglehold of the trade unions cannot be said not to have significantly affected the freedom of association of the applicant and his employees since they could only enter into a contract to work together on terms dictated by the trade unions which they did not wish to join.

5. I am therefore of the opinion that the applicant's request for a revision of the Court's original judgment should have been accepted.