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

344
27.04.2010

Press release issued by the Registrar

Chamber judgment[1]

Vörður Ólafsson v. Iceland (application no. 20161/06)

MASTER BUILDER'S OBLIGATION TO CONTRIBUTE TO FUNDING OF THE NATIONAL FEDERATION OF INDUSTRIES, ALTHOUGH NOT A MEMBER, NOT JUSTIFIED

Violation of Article 11 *(freedom of assembly and association) of the European Convention on Human Rights*

Principal facts

The applicant, Vörður Ólafsson, is an Icelandic national who was born in 1961 and lives in Reykjavik.

An employer in the building sector and a member of the Master Builders' Association, Mr Vörður Ólafsson complained about a statutory obligation to make a contribution to the Federation of Icelandic Industries ("the FII"), a private organisation, although he (like his Association) was not a member and was not obliged to join.

The Industry Charge Act No. 134/1993 ("the 1993 Act") provides that 0.08% should be levied on all industrial activities in Iceland with some exceptions, in particular in the meat processing, milk processing and fish processing industries. State-owned companies established by special statute are not subject to the charge. Revenues from the charge are transferred to the FII and are used for industrial development. More than 10,000 persons (legal persons and self-employed individuals) pay the charge. The FII has between 1,100 and 1,200 members.

On 8 November 2004 Mr Vörður Ólafsson brought proceedings against the State with the Reykjavik District Court requesting an order to invalidate the charges imposed on him from 2001 to 2004. On 13 July 2005 the District Court found in favour of the State and rejected the applicant's action. Mr Vörður Ólafsson then appealed to the Supreme Court of Iceland, arguing in particular that section 3 of the 1993 Act effectively meant that all individuals and companies engaged in specific business activities had to pay membership fees to the FII,

[1] Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

irrespective of whether they were members. Indeed, he considered that the charge amounted to a *de facto* FII membership fee and that that was clearly reflected by the fact that FII members who paid the charge – under Article 14 of the Articles of the Federation – were entitled to a reduction of their membership fees by an amount equivalent to the charge. The levy and collection of the charge therefore made membership of the FII compulsory for others, although they enjoyed no rights vis-à-vis the FII. Mr Vörður Ólafsson argued that such compulsory membership of the FII was incompatible with his right to freedom of association as protected by Article 74 § 2 of the Constitution and Article 11 of the European Convention on Human Rights. In addition he considered that he was unjustifiably taxed under the 1993 Act in excess of other taxes. Finally, he submitted that the imposition of the charge amounted to discrimination in breach of Article 65 of the Constitution, as the taxation was dependent upon the ownership structure of an enterprise, and the enumeration of activity code numbers, on which the taxation was based, was haphazard in nature.

On 20 December 2005 the Supreme Court rejected the applicant's appeal and upheld the District Court's judgment.

Complaints, procedure and composition of the Court

Mr Vörður Ólafsson complained in particular under Article 11 (freedom of assembly and association) about the obligation by law to make a contribution to the FII. He further complained under Article 1 of Protocol No. 1 (protection of property) that that contribution amounted to a separate taxation being imposed on a restricted group of citizens on top of their ordinary tax. This was without any condition that it be used for their benefit. On the contrary, the levy was to be transferred to another restricted group of citizens to their benefit. Finally, he complained that he had been the victim of discrimination in that there was no objective and reasonable justification for the selection of enterprises that were included in or excluded from the list of those liable to contribute, in breach of Article 14 (prohibition of discrimination).

The application was lodged with the European Court of Human Rights on 16 May 2006 and declared admissible on 2 December 2008. A public hearing was held in the case in the Human Rights Building, Strasbourg, on 24 March 2009.

Judgment was given by a Chamber of seven judges, composed as follows:

Nicolas **Bratza** (the United Kingdom), ***President***,
Giovanni **Bonello** (Malta),
David Thór **Björgvinsson** (Iceland),
Ján **Šikuta** (Slovakia),
Päivi **Hirvelä** (Finland),
Ledi **Bianku** (Albania),
Nebojša **Vučinić** (Montenegro), ***judges***,

and also Fatoş **Aracı**, ***Deputy Section Registrar***.

Decision of the Court

Article 11

The Court found that the statutory obligation on Mr Vörður Ólafsson to make a financial contribution to the FII, a private law organisation, that was not of his own choosing and which advocated policies – accession to the European Union for example – which were

contrary to his own political views and interests had amounted to an interference with his right not to join an association. It further considered that that obligation, its basis being in sections 1 to 3 of the 1993 Act, had been "prescribed by law" and pursued the legitimate aim of promoting industry in Iceland.

The Court essentially observed that not only had the relevant national law been open-ended, failing to set out specific obligations for the FII, but that there had also been a lack of transparency and accountability, vis-à-vis non-members such as the applicant, as to the use of the revenues from the charge. The definition of the FII's role and duties – "to promote industry and industrial development in Iceland" – in section 2 of the 1993 Act was very broad and unspecific. As was its duty under section 3 to "annually provide a report to the Ministry of Industry on the use of the revenues". Furthermore, neither the 1993 Act nor any other instrument drawn to the Court's attention set out any specific obligations vis-à-vis non-members who financially contributed to the FII via the Industry Charge. Indeed, according to the FII's annual reports to the Ministry of Justice, no separate accounts were kept of whether the Federation's operations were financed by monies derived from membership fees, capital income, or the Industry Charge. Nor was the Court convinced that the FII's reporting to the Ministry of Industry involved substantial and systematic supervision, the FII having unrestricted power to decide how the charge was allocated, and the Ministry of Industry not being able to interfere with that as long as it remained within the framework of the law. The Court was therefore not satisfied that there had been adequate safeguards against the FII favouring its members and placing the applicant and other non-members like him at a disadvantage.

In conclusion, the Icelandic authorities having failed to sufficiently justify the interference with the applicant's freedom of association, had not struck a proper balance between his right not to join an association on the one hand and the general interest in promoting and developing Icelandic industry on the other. Accordingly, there had been a violation of Article 11.

Given that finding, the Court held that it was not necessary to examine the applicant's complaints under Article 1 of Protocol No. 1 on its own or in conjunction with Article 14 or under Article 14 taken in conjunction with Article 11.

Under Article 41 (just satisfaction), the Court awarded the applicant 26,000 euros (EUR) for costs and expenses. The applicant had not submitted a claim pecuniary or non-pecuniary damage.

***

The judgment is available only in English. This press release is a document produced by the Registry. It does not bind the Court. Further information about the Court can be found on the Court's Internet site (http://www.echr.coe.int)

Press contacts
Tracey Turner-Tretz (telephone : 00 33 (0)3 88 41 35 30)
Stefano Piedimonte (telephone : 00 33 (0)3 90 21 42 04)
Kristina Pencheva-Malinowski (telephone : 00 33 (0)3 88 41 35 70)
Céline Menu-Lange (telephone : 00 33 (0)3 90 21 58 77)
Frédéric Dolt (telephone : 00 33 (0)3 90 21 53 39)
Nina Salomon (telephone: 00 33 (0)3 90 21 49 79)