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

THIRD SECTION

DECISION

Application no. 48281/18
Friðjón Björgvin GUNNARSSON
against Iceland

The European Court of Human Rights (Third Section), sitting on 10 May 2022 as a Chamber composed of:

Georges Ravarani, *President,*
Georgios A. Serghides,
Robert Spano,
Anja Seibert-Fohr,
Peeter Roosma,
Andreas Zünd,
Mikhail Lobov, *judges,*

and Milan Blaško, *Section Registrar*,

Having regard to the above application lodged on 4 October 2018,

Having regard to the declaration submitted by the respondent Government on 19 April 2021 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant, Mr Friðjón Björgvin Gunnarsson, is an Icelandic national who was born in 1976 and lives in Reykjavik. He was represented before the Court by Mr Vilhjálmur H. Vilhjálmsson, a lawyer practising in Reykjavik.

2. The Icelandic Government ("the Government") were represented by their Agent, Ms Fanney Rós Þorsteinsdóttir, State Attorney General.

3. The applicant complained under Article 6 of the Convention. He was convicted of serious tax and accounting offences and money laundering by the District Court of Reykjavik on 6 April 2017. The conviction was upheld by the Court of Appeal on 15 June 2018. The applicant did not request leave to appeal to the Supreme Court. The applicant complained that the

composition of the Court of Appeal had resulted in a violation of his right to be heard by a tribunal established by law, guaranteed by Article 6 § 1 of the Convention, due to irregularities in the appointment of one of the judges who had sat on the bench in his case.

4. Notice of the application was given to the Government.

THE LAW

5. After the failure of attempts to reach a friendly settlement, by a letter of 19 April 2021 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

6. The declaration provided as follows:

> "[T]he Government of Iceland acknowledge that there has been a violation of the applicant's right to a fair trial under Article 6 § 1 of the Convention, with reference to the Court's judgment in the case of *Guðmundur Andri Ástráðsson v. Iceland* [[GC]], no. 26374/18, 1 December 2020."

In the declaration the Government offered to pay the applicant 4,000 euros (EUR) to cover any costs and expenses incurred in the proceedings before the Court, plus any tax that might be chargeable to the applicant. The Government further noted that the applicant had the possibility of applying to the Court on Reopening of Judicial Proceedings for the reopening of the case against him under Chapter XXXV of the Criminal Procedures Act no. 88/2008, as amended by Act no. 47/2020.

7. By a letter of 26 May 2021, the applicant indicated that he was not satisfied with the terms of the unilateral declaration. He stated that it did not sufficiently address his grievances, and that the domestic authorities had failed to prevent a violation of his Convention rights despite his raising the issue while his case had been pending before the Court of Appeal. The applicant furthermore noted that, unlike in the case cited by the Government in their unilateral declaration, he had pleaded not guilty before the domestic courts.

8. The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. In particular, Article 37 § 1 (c) enables the Court to strike a case out of its list if

> "for any other reason established by the Court, it is no longer justified to continue the examination of the applications".

It also reiterates that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by

a respondent Government even if the applicant wishes the examination of the case to be continued.

9. To this end, the Court has examined the declaration in the light of the principles emerging from its case-law, in particular the judgment in *Tahsin Acar v. Turkey* ((preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI), *WAZA Sp. z o.o. v. Poland* ((dec.), no. 11602/02, 26 June 2007), and *Sulwińska v. Poland* ((dec.), no. 28953/03, 18 September 2007).

10. The Court established in *Guðmundur Andri Ástráðsson v. Iceland* ([GC], no. 26374/18, 1 December 2020) its general principles concerning complaints about the violation of the right to a fair trial by a tribunal established by law in the context of irregularities in the appointment of judges to the Court of Appeal.

11. The Court notes that by two rulings of 11 January 2022, the Court on Reopening of Judicial Proceedings granted the reopening of criminal proceedings where it identified the same irregularities in the appointment of judges as those present in *Guðmundur Andri Ástráðsson*, cited above. In its conclusion, that court referred directly to the Grand Chamber's judgment in *Guðmundur Andri Ástráðsson*, as well as to subsequent unilateral declarations submitted by the Government. The Court on Reopening of Judicial Proceedings considered that the cases in question should be reopened on the grounds of section 228(1)(a) of the Criminal Procedures Act, which provides for the possibility to reopen proceedings in the light of new evidence or new information which could have had great significance for the case if it had been available before the judgment was announced.

12. Having regard to the nature of the admissions contained in the Government's declaration and the possibility for the applicant to apply for the reopening of the proceedings against him, the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

13. Moreover, in the light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

14. The Court considers that the amount of costs and expenses should be converted into Icelandic krónur at the rate applicable at the date of settlement and paid within three months from the date of notification of the Court's decision issued in accordance with Article 37 § 1 of the Convention. In the event of failure to settle within this period, simple interest shall be payable on the amount in question at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

15. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be

restored to the list in accordance with Article 37 § 2 of the Convention (see *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

16. In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration under Article 6 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Done in English and notified in writing on 2 June 2022.

Milan Blaško Registrar	Georges Ravarani President