CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 34142/96
by SÍGLFIRÐINGUR EHF
against Iceland

The European Court of Human Rights (First Section) sitting on 7 September 1999 as a Chamber composed of

Mrs E. Palm, *President*,
Mr J. Casadevall,
Mr Gaukur Jörundsson,
Mr R. Türmen,
Mr C. Bîrsan,
Mrs W. Thomassen,
Mr R. Maruste, *Judges*,

with Mr M. O'Boyle, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 3 December 1996 by SÍGLFIRÐINGUR EHF against Iceland and registered on 12 December 1996 under file no. 34142/96;

Having regard to the reports provided for in Rule 49 of the Rules of Court;

Having regard to the observations submitted by the respondent Government on 4 January 1999 and the observations in reply submitted by the applicant on 25 February 1999;

Having deliberated;

Decides as follows:

THE FACTS

The applicant company is operating Icelandic fishing vessels. Its vessels are registered in Siglufjörður. Before the Commission the applicant company is represented by Mr Baldur Guðlaugsson, a lawyer practising in Reykjavik.

The facts of the case, as submitted by the parties, may be summarised as follows.

A. Particular circumstances of the case

One of the applicant company's ships is a trawler, the Siglir SI-250. It is exclusively used for fishing outside Icelandic territorial fishing limits.

The terms of employment of the crew members of the Siglir were governed by a particular agreement between the applicant company and the crew. This agreement did not come within the sphere of application of the collective agreements concluded between the Federation of Icelandic Fishing Vessel Owners (FIFVO) and the Icelandic Sailors' Federation (ISF).

Most crew members of the Siglir who were not in positions of command were members of the Vaka Labour Union, which is a union of sailors in the home port of the vessel. Vaka is a member of the ISF, which in turn is a member of the Icelandic Federation of Labour (IFL), the overall federation of trade unions in Iceland.

The Federation of Icelandic Employers (FIE) is a federation of employers' associations in Iceland. The FIFVO, of which the applicant company is a member, is a member of the FIE.

The applicant company generally pays wages in accordance with the collective agreements concluded between the FIFVO and the ISF as its ships fish on the fishing banks around Iceland. The operation of the Siglir, which did not fish in those waters however, did not come under the applicant company's membership of the FIFVO, and therefore the collective agreements between the FIFVO and the ISF did not apply. The applicant company had initiated some efforts to make a special agreement with the ISF concerning the operation of the Siglir but the discussions had not borne fruit even though there were examples of such separate agreements having been concluded in situations similar to that of the operation of the Siglir.

On 3 May 1995 the ISF notified the FIFVO of its decision to strike in order to press for the conclusion of a new collective agreement. The strike lasted from 24 May until 15 June 1995.

In the opinion of the applicant company the strike did not concern the operation of the Siglir, as the operation of the vessel did not come under the applicant company's membership of the FIFVO, against which the strike was directed. The applicant company had not been notified separately of a decision to strike in relation to the Siglir. The applicant company furthermore considered that the Vaka Labour Union had not given notice of the decision to strike in the procedurally correct manner in the correct form, with the effect that a strike by its members could not be regarded as lawful.

Accordingly, the applicant company decided to send its ship to sea on 2 June 1995, while the sailors were striking, and ordered the crew to report on board. Four of the crew members refused to go out with the vessel, as they considered themselves to be on strike. Their employment was terminated and other crew members engaged in their place.

The ISF considered that the applicant company had violated the provisions of the Act on Trade Unions and Labour Disputes, No. 80/1938, by sending its ship to sea on 2 June 1995 while a strike was going on and by terminating the employment of the crew members who refused to go to sea with her on that day.

For this reason the Icelandic Federation of Labour took legal action against the applicant company before the Labour Court on behalf of the ISF and, in turn, of the Vaka Labour Union, requesting that the court declare the applicant company to be in violation of Act No. 80/1938 and order it to pay a fine to the State Treasury.

As it was considered that the applicant company was outside the employers' association, i.e. the FIE, in so far as the matter of the Siglir was concerned, the IFL decided to bring proceedings against the applicant company but not the FIE.

Under section 39 of the Labour Relations Act the applicant company had the option of nominating a judge to sit in the Labour Court. The applicant company would have had to nominate the judge within twelve hours from the moment when the complaint was filed. The applicant company did not avail itself of this opportunity to nominate a judge. By decision of the President of the court, the judge nominated by the FIE sat on the bench as usual.

Judgment in the case was delivered on 10 June 1996. The applicant company's arguments were rejected and the applicant company was held to be in violation of sections 4 and 18 of the Labour Relations Act. The applicant company was therefore ordered to pay a fine of ISK 500,000 to the State Treasury and legal costs of ISK 100,000 to the IFL.

B. Relevant domestic law and practice

The Act on Trade Unions and Labour Disputes No. 80/1938, the Labour Relations Act, provide that a special court, the Labour Court, shall resolve disputes as to alleged violations of that act. The composition of the Court and the proceedings before it are regulated in chapters IV and V of this Act as follows:

(Translation)

"CHAPTER IV

Respecting the Labour Court

section 38

A court of law shall be established in the capital of Iceland to serve the entire country. This shall be named the Labour Court. The sphere of the court is specified in the present Act.

section 39

The court consists of 5 persons appointed for a term of three years, thus: One by the Confederation of Icelandic Employers, another by The Icelandic Federation of Labour, a third by the Minister of Trade out of group of three persons nominated by the Supreme Court of Iceland and two by the Supreme Court, one of whom shall be specifically nominated to be Presiding Judge. In case an employer being a party to a case is not a member of the Confederation of Icelandic Employers the judge nominated by the Confederation shall vacate his seat, but in his place the employer will nominate a judge for the case and he shall have done so prior to half the respite for writ of summons having passed, but alternatively the President of the court will nominate the judge. The same parties nominate reserve judges who will replace judges who are excused from attending.

When the cases referred to in section 44 § 2 come before the Labour Court the judges nominated by the Confederation of Icelandic Employers and The Icelandic Federation of Labour shall vacate their seats, but in their place the plaintiff and the defendant will nominate one person each from a group of 18 nominated for the purpose by the Federation of Icelandic Master Craftsmen, the Journeymen's Council of the Icelandic Federation of Labour and the Federation of Icelandic Manufacturers for a term of three years at a time. Each of the aforementioned federations will nominate six persons and an equal number of reserves. In case a party does not nominate a judge or an accord cannot be reached on the nomination between the joint parties to a case, the Presiding Judge of the Labour Court will nominate a judge to replace him out of the selfsame group of persons.[1]
...

section 42

The judges shall be Icelandic citizens, in charge of their financial affairs and of blameless reputation. Those two who are appointed by the Supreme Court of Iceland shall have completed a university degree in law.

section 43

Prior to taking their seats in the court for the first time the judges shall swear an oath or pledge their word of honour to the effect that they will discharge their duties to the best of their ability.

section 44

The function of the Labour Court is as follows:

1. To pass judgments in cases arising on account of charges concerning violation of the present Act and loss sustained due to unlawful stoppage of work.

[1] Sub-section added by Act No. 70/1954, section 1

2. To pass judgments in cases arising on account of charges concerning violations of a work agreement or due to disagreement relating to the interpretation of a work agreement or its validity.
3. To pass judgments in other cases between workers and employers which the parties concerned have agreed to refer to the court, provided that at least 3 of the judges be agreed upon such a procedure.

Trade unions, associations of masters and manufacturers and individual employers are authorised to seek a decision by the Labour Courts as to whether an activity come under Section I and II of the Act respecting Craft and Trade as well as to which authorised branch of trade it cover.[2]

section 45

Federations of trade unions and employers' associations proceed with cases before the court for and on behalf of their members. Associations not being members of the federations proceed with their cases themselves. Unaffiliated parties will proceed with their cases themselves.

In case a federation or union decline to instigate proceedings for their members the party concerned is authorised to file the lawsuit himself, but prior to a writ of summons being issued he shall submit evidence of the refusal of the union or federation concerned before the Chairman of the Labour Court.
...

section 48

The judges nominated by the Supreme Court of Iceland vacate their seats according to the same rules as those applying to Justices of the Supreme Court. The court will decree as to whether a judge shall vacate his seat. The court will be unable to function unless all the judges have been appointed. Judges having commenced consideration of a case shall complete it although the electoral term be at an end.
...

section 58

The duty of a witness, the value of evidence of a report by a witness, the calling of witnesses as well as penalty for incorrect testimony will be subject to the same rules as civil cases before district courts.

section 59

Judges may undertake inspections and assessments, either all together or some of them, according to the court's decision.

[2] Sub-section added by Act No. 70/1954, section 2

The court may furthermore nominate surveyors and assessors to undertake a specific survey or assessment and this is subject to general rules respecting civil suits before district courts.

section 60

The court may sentence witnesses, surveyors and assessors and others lawfully called to appear before the court to pay fines in accordance with the same rules as courts of law in general.
...

section 63

The court will impose fines upon parties, counsel and others in respect of censurable conduct in the course of pleadings or before court in accordance with the same rules as do courts of law in general.

The court may order people to leave a session due to improper conduct.
...

section 65

The court may order parties to pay damages, fines and costs in accordance with customary rules. In determining the amount of damages regard may be had to the culpability of the violation.

The judgments and decrees of the Labour Court are subject to execution. The court will decide upon the respite for execution.
...

section 67

The Labour Court's decrees and judgments are final and will not be appealed. Within a week of the pronouncement of judgment or decree the following may, however, be appealed to the Supreme Court of Iceland:

1. A judgment for decree of dismissal.
2. A judgment of invalidation on the grounds that the case does not fall within the jurisdiction of the Labour Court.
3. A decree respecting the duty to testify, the swearing of oath and fines.
...

section 69

Items relating to the proceedings of cases which are not stipulated in the present Act shall be subject to the code of procedure of civil cases before the lower courts as far as may be possible.

CHAPTER V

Concluding Provisions

section 70

Violations of the present Act are, in addition to damages, subject to fines ...[3] The fines accrue to the Treasury and may be collected as monetary claims in the customary manner, but there shall not be a question of prison services."

COMPLAINTS

1. The applicant company complains of a violation of its right to a fair hearing before an independent and impartial tribunal. It refers to the fact that its adversary, the IFL, had appointed one of the judges, who participated in the case, to the Labour Court. It thus complains that the parties were not in an equal situation as regards the appointment of the judges as the applicant company had not appointed a judge itself. The applicant company further complains that the fact that the judges are appointed only for a short term of three years raises doubt as to their independence. The applicant company invokes Article 6 § 1 of the Convention in this respect.

2. The applicant company also complains of a violation of its right to have its conviction or sentence reviewed by a higher tribunal as it has not been able to obtain a review by a superior court of the fine imposed. The applicant company invokes Article 2 of § 1 of Protocol No. 7 to the Convention in this respect.

PROCEEDINGS

The application was introduced on 3 December 1996 and registered on 12 December 1996.

On 21 October 1998 the Commission decided to communicate the application to the respondent Government.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

The Government's written observations were submitted on 4 January 1999. The applicant company replied on 25 February 1999.

[3] Act No. 10/1983, section 9

THE LAW

The applicant company complains of a violation of Article 6 § 1 of the Convention in that it did not have a fair and public hearing by an independent and impartial tribunal.

Article 6 § 1 of the Convention provide as follows:

> "In the determination of his civil rights and obligations and of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ..."

The applicant refers in particular to the fact that two of the five judges are generally expected to be appointed by the parties themselves. The applicant considers that a court for which the parties appoint judges for adjudicating their own cases can generally not be regarded as independent and impartial, and that in this respect it is immaterial that the judges in question are only two out of five.

The applicant also points out that in cases where the legal action is taken against the employer himself, as in this case, the parties are not in an equal situation as regards appointment of judges.

In the case of the applicant company the outcome as regards the appointment of judges was that the applicant company's adversary, the IFL, had a judge on the bench who had been specially appointed by the IFL itself, but there was no judge there whom the applicant company had appointed.

The applicant company furthermore points out that the judge appointed by the IFL was appointed to serve as a judge only in legal action brought by the IFL on behalf of its members. The same applies to the judge appointed by the FIE; he or she only serves as a judge in cases to which the FIE is a party. This applies also to cases where an employer has an opportunity, like the applicant, to appoint a judge. If the applicant had appointed a judge, that judge would only have been appointed in order to adjudicate the applicant's case. In the applicant company's opinion the above arrangement of appointing judges to serve in the Labour Court provides a reason to fear that the court is not independent of the parties to a case and therefore can not be regarded as independent and impartial.

In the applicant company's opinion the short term of appointment of the judges, i.e. three years, must also be considered when assessing whether a judge seems to lack independence with respect to a party. The applicant company considers that the short duration of the appointment supports further the contention that the judge in question was, or appeared to be, dependent upon the party nominating him.

The Government argue that it is evident that the applicant company never brought this issue to the attention of the Labour Court during the proceedings in question. It cannot be said to have been clearly without any prospects of success if the applicant company had revoked, either directly or at least in substance the matter of the complaint. At the time the

proceedings before the Labour Court took place the European Convention on Human Rights was, by Act No. 62/1994, incorporated into Icelandic law, and thus enjoys the status of domestic legislation within the Icelandic legal system. Examples from the past few years show very clearly that the courts of Iceland take seriously any allegations of violations of the Convention. The Supreme Court has, in the recent years, rendered policy-setting judgments, in particular on the interpretation of the Convention's Article 6, which have just set aside provisions of national law and called for changes in legal procedure and judicial organisation. Consequently, the applicant company cannot be considered to have exhausted the effective remedies available under Icelandic law.

The Court does not find it necessary to deal with the arguments of the Government that the applicant company has failed to exhaust domestic remedies since it finds this part of the application in any event inadmissible for the following reasons.

The Court recalls that in order to establish whether a tribunal can be considered as "independent", regard must be had, *inter alia*, to the manner of appointment of its members and their term of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence (see e.g. the Findlay v. the United Kingdom judgment of 25 February 1997, *Reports of Judgments and Decisions* 1997-I, p. 281, § 73).

As to the question of "impartiality", there are two aspects to this requirement. First, the tribunal must be subjectively free of personal prejudice or bias. Secondly, it must also be impartial from an objective viewpoint, that is, it must offer sufficient guarantees to exclude any legitimate doubt in this respect (see the Findlay judgment cited above).

The concepts of independence and objective impartiality are closely linked and the Court will consider them together as they relate to the present case.

In this case there is no doubt about the personal impartiality of the Labour Court judges. The applicant company has emphasised that its observations do not concern the personal competence of the judges and that there was, accordingly, no question of a judge withdrawing.

As regards the objective impartiality of the judges and the question whether they presented an appearance of independence the Court notes that the applicant company has referred in particular to the fact that two out of the five judges were in principle to be appointed by the parties whereas it had not, itself, appointed a judge. The applicant company also finds it important that the tenure of office is only three years.

The Court recalls that the judges of the Labour Court are appointed for a period of three years. One is appointed by the Confederation of Icelandic Employers, one by the Icelandic Federation of Labour, one by the Minister of Trade out of a group of three persons nominated by the Supreme Court and two by the Supreme Court, one of whom shall be nominated presiding judge. In specific cases the judges, nominated by the associations of employers and employees are replaced by judges nominated by the parties in those cases, see sections 39 and 44 of the Act of Trade Unions and Labour Disputes, No. 80/1938 (the Labour Relations Act).

Prior to taking their seats in the Labour Court judges shall swear on oath or pledge their word of honour to the effect that they will discharge their duties to the best of their ability. Section 48 of the above-mentioned Act provides that the judges nominated by the Supreme Court shall vacate their seats according to the same rules as those applying to the Justices of the Supreme Court and the Labour Court will decree as to whether a judge shall vacate his seat. This appears to mean that the links of the judges, who are nominated by the associations, on the one hand with the employees and on the other hand with the employers, through their nomination, will not for that reason alone disqualify them as judges.

The Code of Civil Procedure, as far as it relates to the lower courts, shall in principle apply to the proceedings before the Labour Court, unless the Labour Relations Act stipulates otherwise.

It is thus clear that the Labour Court and the proceedings before it are basically of judicial nature and that the Labour Court functions in principle as a normal court of law. It is clear that during their term of office as Labour Court judges it is not possible for any authority to change the composition of the Labour Court from the one provided for by law or in any other way influence the judges. Their term of office is admittedly rather short but it cannot, in the Court's opinion, by itself affect their independence and impartiality within the meaning of Article 6 § 1 of the Convention (see the Campbell and Fell v. the United Kingdom judgment of 28 June 1984, Series A no. 80, p. 40 § 80).

The Court emphasises the importance of pre-established courts to which are appointed judges who are totally unconnected with the case they are to hear. Article 6 § 1 of the Convention cannot, however, be interpreted in the way that it rules out the possibility in special circumstances of establishing extraordinary courts, with to a certain degree, specific procedures. The Icelandic Labour Court system provides that the interests of both the employers and of the employees are represented in the composition of the Labour Court. This cannot be considered to the contrary of Article 6 § 1, if no imbalance between what might be seen as conflicting interests arises in the case concerned. There must be a guarantee of equality between the parties in regard to the influence they exercise on the composition of the court. It is not in dispute that the applicant company had the possibility to appoint a judge to the Labour Court but it did not avail itself of this opportunity. The examination of the case does not, therefore, reveal that such inequality prevailed in the present case.

In the light of the foregoing the Court concludes that the Labour Court fulfilled in the present case the independence and impartiality required by Article 6 § 1 of the Convention. This part of the application is, therefore, manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected as inadmissible in accordance with Article 35 § 4.

2. The applicant company also complains of a violation of its rights to have its conviction or sentence reviewed by a higher tribunal as it has not been able to obtain a review by a superior court of the fine imposed by the Labour Court. The applicant company invokes Article 2 of Protocol No. 7 to the Convention, which reads as follows:

> "1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

> 2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal."

The applicant company points out that it was found guilty of a violation of the Labour Relations Act and sentenced on account of that offence. The penalty was a fine in the amount of ISK 500,000. The applicant company considers that according to section 67 of the Labour Relations Act a person sentenced by the Labour Court can not obtain review of a conviction, or of a sentence, by a superior court. Furthermore, the exception provided for in Article 2 § 2 of the Protocol No. 7 can not justify the provision of section 67 of the Labour Relations Act to the effect that sentences imposed by the Labour Court are not subject to review, because the provision totally precludes any such review and is completely independent of whether the offence is of a minor or major nature. The applicant company maintains that this fine cannot be regarded as being of a minor nature.

The Government note that it is apparently the applicant company's opinion that the proceedings involved the determination of a "criminal charge" and that it was convicted of a "criminal offence". However, during the procedure before the Labour Court the applicant company never brought the issue to the attention of the Labour Court which was therefore not afforded the opportunity to decide upon the matter. Had the applicant company invoked the issue, the Labour Court would have answered the question whether the case involved criminal charge within the meaning of Article 6 § 1 of the Convention and accordingly whether the applicant company was convicted of a criminal offence within the meaning of Article 2 § 1 of Protocol No. 7.

The Government argue, furthermore, that the Labour Relations Act provides for the possibility to have a decree of the Labour Court concerning fines reviewed by a higher tribunal. According to section 67 of the Act the general rule is that the court's decrees and judgments and will not be appealed. However, the exceptions from this are set forth in paragraphs 1-3 of the provision. Paragraph 3 stipulates that a decree respecting the duty to testify, the swearing of oath and fines may be appealed to the Supreme Court within a week of its pronouncement. The Government admit that the meaning of this exception is not fully clear, and the fines discussed in the provision are not defined further such as whether this applies, e.g. only to fines concerning conduct in court provided for in section 60 or all fines provided for in the Act, including those in section 65 and 70. It cannot be said, however, to have been clearly without any prospects of success if the applicant company had tried to base an appeal on the same argumentation as its complaint now before the Court.

The Government consider, therefore, that this part of the application should be declared inadmissible by reference to Article 35 §§ 1 and 4 of the Convention.

The applicant company considers that it would have been pointless and contrary to Icelandic law to argue before the Labour Court that specific provisions of the Labour Relations Act were inconsistent with Article 6 § 1 of the Convention and Article 2 of Protocol No. 7 to the Convention.

The applicant company rejects the opinion of the Government to the effect that it should have attempted to appeal the case to the Supreme Court, notwithstanding the provisions of section 67 of the Labour Relations Act to the contrary, as it is unclear how such an appeal should have been made, under what rules and in what form. The burden can hardly be placed on the applicant company of seeking to reverse clear provisions of law and decades of court practice as a part of the process of exhausting domestic remedies.

The applicant company cannot see what significance it could have had for the result of the case if the question had been submitted to the Labour Court whether the claim of the IFL against the applicant company for payment of a fine constituted “criminal charges” or not. It has been the opinion of the applicant company that it is undisputed, and always has been undisputed, that a violation of the Labour Relations Act is subject to penalties in the form of fines and that such violation therefore constitutes a “criminal offence” under Icelandic law. There was never any doubt on that point requiring clarification by the Labour Court. Also, it is difficult to see how it could have been possible to place such a question before the court in a lawful manner pursuant to Icelandic law.

The applicant company also disputes the Government's allegation that section 67 § 3 of the Labour Relations Act may possibly provide some grounds for appealing the judgment of the Labour Court in the case. The interpretation of the provision has not caused any doubt in the legal profession in the six decades which have passed since its approval. In this context it is sufficient to point out that the wording of section 67 is clear in itself and any attempt to distort paragraph 3 in the manner suggested by the Government is doomed to failure if only for the reason that fines under section 70 are established by judgment and not by decree. However, fines imposed pursuant to section 60 are established by decree, and section 67 § 3 refers to such fines, as the provision makes clear.

The Court finds that the arguments provided by the parties as to exhaustion of domestic remedies are in fact related to the merits of the applicant company's complaint and considers it appropriate to deal with them at the merits stage. The Court accordingly joins to the merits the Government's claim that this part of the application should be declared inadmissible for the failure to exhaust domestic remedies.

As regards the merits of the complaint the Government argue that the applicant company was not convicted of a criminal charge within the meaning of Article 2 of Protocol No. 7. Sections 65 and 70 of the Labour Relations Act have been applied quite rarely during the last decades. It is therefore not possible to refer to established case-law of the Icelandic courts concerning these provisions. No clear definitions, neither in practice nor theory, have been set forth on the issue as to whether the fines provided for in these provisions belong to the sphere of criminal law. However, the Government emphasise that there is a significant difference between the rules governing these fines and fines as criminal sanctions in the General Penal Code No. 19/1940 or specific criminal legislation concerning fines for certain offences. In this respect it should in the first place be pointed out that the sanction provided for in sections 65 and 70 of the Labour Relations Act does not presuppose prosecution, unlike all other criminal sanctions according to Icelandic criminal law, apart from certain types of sanctions for defamation offences. Accordingly, the application of these provisions is subject to a request by a plaintiff in a case before the Labour Court.

Furthermore, it is a fact that unlike fines for criminal offences, according to Icelandic penal law, there is no prison sentence in default. Accordingly, it is impossible and indeed expressly forbidden in section 70 to convert the sanction into a term of imprisonment. Also it should be noted that the sanction provided for in sections 65 and 70 will not enter in the criminal register, unlike other criminal offences. Finally, it should be noted that according to the general principles of Icelandic penal law criminal liability shall be personal and individual. It is only possible to impose criminal sanctions upon legal persons in exceptional circumstances, and this requires clear legal authorisation. According to the Labour Relations Act, there is no specific provisions providing for this possibility. Nevertheless, a fine was imposed upon the applicant company, a legal person. This indicates clearly that the Labour Court does not consider the sanction provided for in sections 65 and 70 of the Labour Relations Act as criminal.

As to the very nature of the offence, the Government point out that the Labour Relations Act governs quite a limited field, dealing with the rights of trade unions and their position toward employers, rules concerning strike and lockouts and the functions of the Labour Court which are defined exhaustively in section 44 of the Act. Furthermore, it is according to the Government unknown that private individuals are parties in cases before the Labour Court, even though it is possible according to the Labour Relations Act. In the light of this, the Government submit that the sanction provided for in sections 65 and 70 of the Labour relations Act will definitely not affect potentially the whole population. It is practically impossible that such fines will be imposed upon a private individual, instead they will only apply to legal persons in a limited sphere, i.e. federations of the trade unions and employers' associations in the labour market. In the light of this, the Government submit that the nature of the sanction is clearly more in line with a general characteristic of a disciplinary sanction even though it has not been strictly classified as such in theory. Accordingly, instead of being a criminal sanction for a criminal offence, the fines provided for in the Labour Relations Act serve the purpose to ensure that the members of particular groups, i.e. parties of the labour market (trade unions/employers associations), comply with the specific rules governing their conduct.

The Government finally emphasise that the amount of the fine will hardly be considered as sever for the applicant company or have serious consequences for its financial status. The sanction in question cannot be considered to have a punitive purpose, since it only amount to a part of the profit of the violation on the Act and its size is not so substantial that it brings the issue within the scope of a “criminal charge” under Article 6 nor a “criminal offence” under Article 2 § 1 of Protocol 7 to the Convention. The Government recall that there is no possibility of converting the fine into a term of imprisonment, which would in addition be impossible when borne in mind that there is a legal person in question. The fact that there is no imprisonment in default for fines provided for in the Labour Relations Act supports strongly the view that the sanction in question does not serve a punitive purpose.

The applicant company is of the opinion that under Icelandic law, theory and practice, fines pursuant to section 67 of the Labour Relations Act have been defined as sanctions for criminal offences, and furthermore the case-law of the Labour Court shows that the court, in practice, has regarded fines pursuant to section 70 of the Labour Relations Act as fines for criminal offences and not as disciplinary sanctions.

The applicant company maintains that the assertion of the Government to the effect that sanctions provided for in section 65 and 70 of the Act do not presuppose prosecution, unlike all other criminal sanctions according to Icelandic criminal law, apart from certain types of sanctions for defamation offences, is incorrect. There are other instances in the Icelandic judicial system where fines are imposed without preceding prosecution. An example of this is the extensive category of tax fines. Another category is fines for violations of competition law, which the competition authorities may impose on companies or associations of companies.

The applicant company also regards as unfounded and inaccurate the assumption of the Government that the fact that fines pursuant to the Labour Relations Act are not registered in the criminal register suggests that the violation does not constitute a "criminal offence".

The contention of the Government to the effect that it is unknown that private individuals are parties in cases before the Labour Court is, according to the applicant company, not correct as there are several examples of individuals being parties to cases before that court.

The applicant company is of the opinion that, by concluding that it had no authority to impose fines except for in cases of violation of the law, the Labour Court has confirmed the understanding that the fines imposed represent normal sanctions and not disciplinary measures, as in fact it is a principal feature of criminal law that sanctions cannot be imposed unless there are clear legal grounds and the criminal action and the sanctions are defined by law.

The applicant company points out, furthermore, that the legislature, by amending the Labour Relations Act in 1983, Act No. 10/1983, confirmed the status of the act as pertaining to Icelandic criminal law. The amendment removed the provision of section 70 on the maximum fine, which at that time amounted to ISK 50,000. The amendment was made with reference to the fact that the maximum fine should be governed by the provisions of section 50 of the Penal Code No. 19/1940. The maximum fine for criminal offences is currently ISK 4,000,000 pursuant to section 50 of the Penal Code No. 19/1940.

Regarding the degree of severity of the penalty the applicant company points out that the amount of the fine, ISK 500,000, is among the highest known in Icelandic court practice apart from statutory fines for tax fraud.

According to the applicant company it is also clear that the fine imposed by the Labour Court did not constitute compensation.

The Court considers, in the light of the parties' submissions that this complaint raises serious questions of fact and law which are of such complexity that their determination should depend on an examination of the merits. This part of the application cannot, therefore,

be regarded as being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and no other ground for declaring it inadmissible has been established.

For these reasons, the Court, unanimously,

JOINS TO THE MERITS the Government's objection that the applicant company's complaint under Article 2 of Protocol No. 7 should be rejected for failure to exhaust domestic remedies.

DECLARES ADMISSIBLE, without prejudging the merits of the case, the applicant company's complaint of a violation of its rights under Article 2 of Protocol No. 7 to have its conviction or sentence renewed by a higher tribunal as it has not been able to obtain a review by a superior court of the fine imposed by the Labour Court's judgment of 10 June 1996.

DECLARES INADMISSIBLE the remainder of the application.

Michael O'Boyle
Registrar

Elisabeth Palm
President