Sigurdur A. Sigurjónsson v. Iceland

The case is numbered 24/1992/369/443. 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.

In the case of Sigurdur A. Sigurjónsson v. Iceland*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention")** and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr R. Ryssdal, President,
Mr Thór Vilhjálmsson,
Mr B. Walsh,
Mr R. Macdonald,
Mrs E. Palm,
Mr J.M. Morenilla,
Mr F. Bigi,
Mr G. Mifsud Bonnici,
Mr J. Makarczyk,

and also of Mr M.-A. Eissen, Registrar, and Mr H. Petzold, Deputy Registrar,

Having deliberated in private on 25 February and 24 June 1993,

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

Notes by the Registrar

* The case is numbered 24/1992/369/443. 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.

** As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

PROCEDURE

1. The case was referred to the Court on 10 July 1992 by the European Commission of Human Rights ("the Commission"), within the three-month period laid down in Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 16130/90) against the Republic of Iceland lodged with the Commission under Article 25 (art. 25) by Mr Sigurdur A. Sigurjónsson, an Icelandic citizen, on 22 December 1989.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Iceland recognised the compulsory jurisdiction of the Court (Article 46)

(art. 46). The object of the request was to obtain a decision as to whether or not the facts of the case disclosed a breach by the respondent State of its obligations under Article 11 (art. 11) of the Convention.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio Mr Thór Vilhjálmsson, the elected judge of Icelandic nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 26 September 1992 the President drew by lot, in the presence of the Registrar, the names of the seven other members, namely Mr F. Matscher, Mr B. Walsh, Mrs E. Palm, Mr J.M. Morenilla, Mr F. Bigi, Mr G. Mifsud Bonnici and Mr J. Makarczyk (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr Matscher, who was unable to attend, was replaced by Mr R. Macdonald, substitute judge (Rules 22 para. 1 and 24 para. 1).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Icelandic Government ("the Government"), the Delegate of the Commission and the representative of the applicant on the organisation of the proceedings (Rules 37 para. 1 and 38). In accordance with the order made in consequence, the Registrar received the applicant's memorial on 1 December 1992 and the Government's memorial on 15 December.

On 14 January 1993 the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

5. On 13 January 1993 the Commission had filed a number of documents which the Registrar had sought from it on the President's instructions. On various dates between 16 February and 5 March the Registrar received several documents from the Government and the applicant, as well as further particulars of the latter's claims under Article 50 (art. 50).

6. As directed by the President, the hearing took place in public in the Human Rights Building, Strasbourg, on 22 February 1993. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr Thorsteinn Geirsson, Secretary General of the Ministry of Justice and Ecclesiastical Affairs, Agent,
Mr Gunnlaugur Claessen, Solicitor-General of the Government of Iceland, Counsel,
Mr Markús Sigurbjörnsson, University Professor, Adviser;

(b) for the Commission

Mr H. Danelius, Delegate;

(c) for the applicant

Mr Jón Steinar Gunnlaugsson, Supreme Court advocat Counsel.

The Court heard addresses by Mr Thorsteinn Geirsson and Mr Gunnlaugur Claessen for the Government, by Mr Danelius for the Commission and by Mr Jón Steinar Gunnlaugsson for the applicant, as well as replies to its questions.

AS TO THE FACTS

I. The particular circumstances of the case

7. Mr Sigurdur A. Sigurjónsson is an Icelandic national. He is a taxi driver and resides in Reykjavik.

8. On 24 October 1984 he was granted a licence to operate a taxicab by the "licence issuers" (a body later named the Committee for Taxicab Supervision - the "Committee"; see paragraphs 18 and 20 below). The decision was taken under Law no. 36/1970 on Motor Vehicles for Public Hire ("the 1970 Law") and Regulation no. 320/1983 ("the 1983 Regulation") issued by the Minister of Transport under Article 10 of the Law (see paragraph 18 below).

The applicant had applied for a licence using a printed form addressed to the Frami Automobile Association ("Frami"). This standard form contained a statement to the effect that the applicant was aware of the obligation to pay membership fees to Frami on becoming a member.

When he was granted the licence, the applicant undertook to observe the conditions provided for in the 1983 Regulation, on the understanding that a failure to do so could lead to its suspension or revocation. One such condition was that he apply for membership of Frami (Article 8 of the 1983 Regulation), which he had done on 26 September 1984.

9. After joining Frami, the applicant paid membership fees to the association until August 1985, when he stopped doing so. As a result, Frami advised him on 5 February 1986 that it intended to exclude him and his taxicab from taxi station services until the fees were paid (Article 27 of Frami's Articles of Association).

In reply, the applicant, by letter of 14 February 1986, indicated that he did not wish to be a member of Frami; he refused to accept the obligation to remain a member of and to pay membership fees to it. Furthermore, he explained that he had accepted the licence "without first ascertain[ing] [his] legal position with regard to membership" because he had lacked sufficient funds to take the necessary steps. Also he had

preferred to avoid time-consuming litigation which would have delayed the granting of the licence.

10. On 30 June 1986 the Committee upheld a request by Frami for the revocation of the applicant's licence, especially because he had ceased paying membership dues.

11. In a letter of 1 July 1986 to the Ministry of Transport ("the Ministry") the applicant protested against the revocation of his licence and requested the suspension of the revocation pending the decision of a court action which he intended to take.

12. In its reply dated 17 July 1986, the Ministry, referring to Articles 7 and 12 of Regulation no. 293/1985 (see paragraph 18 below), confirmed the revocation. A copy of this letter was addressed to the Reykjavik Chief of Police.

13. By letter of 28 July 1986, the applicant's lawyer informed the Chief of Police that the applicant considered the revocation unlawful; he intended to bring the matter before the courts and asked the police not to interfere with his taxi business. However, on 1 August 1986, while driving his taxi, the applicant was stopped by the police, who removed the plates identifying his vehicle as one for public hire.

14. On 18 September 1986 the applicant instituted proceedings against both the Committee and the Ministry before the Civil Court of Reykjavik, seeking a declaration that the revocation was null and void.

The Civil Court dismissed his claim on 17 July 1987.

15. The applicant appealed to the Supreme Court.

By judgment of 15 December 1988, the Supreme Court, sitting in plenary with seven members, unanimously rejected his claim that, in view of Article 73 of the Constitution, he could not be obliged to remain a member of Frami. In its opinion, the drafting history of this Article showed that it was intended to guarantee only a right to "form associations", not a right to remain outside one. The applicant had not made out his allegation that, if construed in this manner, Article 73 conflicted with the relevant provisions of international instruments. Finally, it could not be inferred from the Article that a business licence could not lawfully be made conditional upon membership of an association.

On the other hand, the Supreme Court, by a majority of four, annulled the revocation of the applicant's licence. It found that the provision in the 1983 Regulation imposing trade-union membership as a prerequisite for granting a licence (see paragraph 8 above) lacked a statutory basis.

16. Following the above-mentioned ruling by the Supreme Court, the Althing (the Icelandic Parliament) enacted new legislation - Law no. 77/1989 on Motor Vehicles for Public Hire ("the 1989 Law") - which made operating licences conditional upon

trade-union membership. This entered into force on 1 July 1989 (see paragraph 18 below).

17. In a letter to Frami dated 4 July 1989, a copy of which was transmitted to the Ministry, the applicant stated that, in the light of the new legislation, he had no choice but to be a member of the association and that he therefore agreed to pay membership fees. At the same time he stressed that membership was contrary to his own wishes and interests; not only did Frami's Articles contain provisions contrary to his political opinions, but the association also used the revenue from membership fees to work against his interests. In addition, he maintained that the new legislation providing for obligatory membership was incompatible with the Convention and expressed his intention to pursue the matter before the Convention institutions.

II. Relevant domestic law and practice

A. Introduction

18. At the time when the applicant was granted a taxicab licence, such licences were governed by the 1970 Law on Motor Vehicles for Public Hire and the 1983 Regulation. The latter was subsequently amended by Regulation no. 293/1985 ("the 1985 Regulation"): the body previously called the "licence issuers" was thereafter to be known as the Committee for Taxicab Supervision (see paragraph 20 below).

In 1989 the 1970 Law and the 1985 Regulation were replaced by the 1989 Law on Motor Vehicles for Public Hire and Regulation no. 308/1989 ("the 1989 Regulation"). The applicant's original complaint to the Commission was concerned only with the situation after the entry into force of the 1989 legislation on 1 July 1989 (see under the heading "Complaints", in Appendix II of the Commission's report).

B. Organisation and administration of licences to operate a taxicab

19. Under Article 4 of the 1989 Law, the Ministry may, at the request of a trade union (stéttarfélag) of automobile drivers and on the recommendation of the town council and the regional board, limit the number of motor vehicles for public hire within the trade union area.

Restrictions on the number of taxicabs are set out in Article 8 of the 1989 Regulation which provides, inter alia, that within Frami's area, which comprises Reykjavik and six surrounding communities, the number of taxicabs is to be limited to 570. Such limitations are to be effected by the issuing of licences, each licence-holder being required, among other conditions, to own a passenger car and to use it as a taxi himself as his main occupation (Article 7 of the 1989 Law and Article 8 of the 1989 Regulation). Taxi business within the area in issue is to be carried on from a taxi station approved by the municipal council (Article 2 of the 1989 Law).

20. In a trade-union area where limitations have been placed on the number of vehicles for public hire, a Committee for Taxicab Supervision composed of three members appointed by the Minister of Transport is set up. Two of the members are nominated; one by the relevant trade union, the other by the municipality. The third member chairs the Committee (Article 10 of the 1989 Law). The Committee adopts its own rules of procedure, subject to endorsement by the Ministry; it takes its decisions by a majority and reports annually to the Ministry (Article 10 of the 1989 Law and Article 9 of the 1989 Regulation).

The Committee's task is to "supervise and control", within the area of the trade union in question, the implementation of laws and regulations relating to the operation of vehicles for public hire; the issuing and revocation of operating licences; and the manner in which taxi stations provide their services (Article 10 of the 1989 Law).

21. Frami (until 1959 named Hreyfill) was formed in 1936 by professional automobile drivers in Reykjavik. Its Articles, which may be amended by the association itself (clause 32 of the Articles), are not subject to governmental approval. According to clause 2 of the Articles, the purpose of the association is: (1) to protect the professional interests of its members and promote solidarity among professional taxicab drivers; (2) to determine, negotiate and present demands relating to working hours, wages and rates of its members; (3) to seek to maintain limitations on the number of taxicabs and (4) to represent its members before the public authorities.

The Articles are currently under revision.

22. Under the 1989 rules, associations such as Frami have certain administrative functions, namely:

(a) they propose such limitations as mentioned in paragraph 19 above (Article 4 of the 1989 Law);

(b) they serve as a depository for licences (Article 13 of the 1989 Regulation);

(c) they approve the suitability of vehicles for use as taxicabs (Article 14 of the 1989 Regulation);

(d) within narrow limits specified in the 1989 rules, they regulate, and decide on requests for, temporary exemption from the requirement that the licence-holder personally operate his own taxicab (Article 9 of the 1989 Law and Article 16 of the 1989 Regulation).

23. In addition to the above, according to material submitted by the Government, Frami carries out the following tasks:

(a) it supervises the performance of taxi services;

(b) it reports to the Committee instances of failure by a licence-holder to observe the licence conditions;

(c) it regulates the operation of taxicabs to ensure that the level of services corresponds to the significantly higher demand at weekends;

(d) it monitors the fulfilment by licence-holders of registration and insurance requirements and payment by them of requisite charges;

(e) it fixes the rates for taxi services, subject to approval by the price-control authorities.

Frami does not engage in collective bargaining on behalf of its members and is therefore not affiliated to the Icelandic Federation of Labour.

C. Obligation of membership

24. Article 5 of the 1989 Law provides that within a trade-union area where a limitation on the number of vehicles for public hire applies (see paragraph 19 above), operators of vehicles of the same category are to be members of the same trade union. If there is a trade union of taxicab operators for a particular area, persons not possessing an operating licence are prohibited from carrying out taxi services in that area.

Pursuant to Article 8 of the 1989 Law, an operating licence may be granted only to a person who is a member, or has applied for membership, of the relevant trade union. It follows from Article 8 of the 1989 Regulation (see paragraph 19 above) that Frami is the relevant association for taxi licence-holders in Reykjavik. The membership condition continues to apply after a licence has been granted.

25. In the case of violations by a licence-holder of laws or regulations relating to motor vehicles for public hire, he may receive an admonition from the Committee, his licence may be suspended or, in the event of serious or recurring violations, revoked by the Committee and the licence-holder may be liable to pay a fine; if it is revoked, he may, on certain conditions, reapply for a licence after five years (Articles 9 and 13 of the 1989 Law and Article 18 of the 1989 Regulation).

PROCEEDINGS BEFORE THE COMMISSION

26. In his application (no. 16130/90) lodged with the Commission on 22 December 1989, Mr Sigurdur A. Sigurjónsson alleged a violation of Article 11 (art. 11) of the Convention (right to freedom of association) or, in the alternative, Articles 9 (art. 9) (right to freedom of thought and conscience), 10 (art. 10) (right to freedom of expression) and 13 (art. 13) (right to an effective remedy).

27. On 10 July 1991 the Commission declared the application admissible.

In its report adopted on 15 May 1992 (Article 31) (art. 31), the Commission expressed the opinion:

(a) by seventeen votes to one, that there had been a violation of Article 11 (art. 11);

(b) unanimously, that it was not necessary to examine separately whether there had been a violation of Articles 9 and 10 (art. 9, art. 10);

(c) unanimously, that there had been no violation of Article 13 (art. 13).

The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment*.

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* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 264 of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

FINAL SUBMISSIONS MADE BY THE GOVERNMENT TO THE COURT

28. At the hearing on 22 February 1993, the Government invited the Court to hold, as submitted in their memorial of 15 December 1992, that there had been no violation of the Convention in the present case.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 (art. 11)

29. The applicant alleged that the obligation incumbent on him to be a member of Frami on pain of losing his licence constituted a violation of Article 11 (art. 11) of the Convention, which reads:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

The Government disputed this contention, whereas the Commission agreed.

A. The existence of an interference with a right guaranteed by Article 11 (art. 11)

1. Whether Frami was an "association"

30. The Government contended that Frami was not a "trade union", nor even an "association", within the meaning of Article 11 (art. 11), but a professional organisation of a public-law character. They invoked mainly the following arguments:

(a) Although not established by law, Frami performed certain functions which were provided for by law or had evolved through practice and served the public interest no less than the interests of its members (see paragraphs 22-23 above). Frami was thus the lowest administrative level in a hierarchy comprising, apart from Frami itself, the Committee and the Ministry.

(b) Frami was not an employees' organisation representing its members in conflicts with their employer or engaging in collective bargaining and was not affiliated to the Icelandic Federation of Labour. Instead, it had a membership composed principally of independent business operators and itself fixed the rates for services, any changes in which were subject to the approval of the price-control authorities.

31. The Court agrees with the applicant and the Commission that the above-mentioned elements are not sufficient for Frami to be regarded as a public-law association outside the ambit of Article 11 (art. 11). Admittedly, Frami performed certain functions which were to some extent provided for in the applicable legislation and which served not only its members but also the public at large (see paragraphs 22-23 above). However, the role of supervision of the implementation of the relevant rules was entrusted primarily to another institution, namely the Committee, which in addition had the power to issue licences and to decide on their suspension and revocation (see paragraphs 20 and 25 above). Frami was established under private law and enjoyed full autonomy in determining its own aims, organisation and procedure. According to its Articles, admittedly old and currently under revision, the purpose of Frami was to protect the professional interests of its members and promote solidarity among professional taxicab drivers; to determine, negotiate and present demands relating to the working hours, wages and rates of its members; to seek to maintain limitations on the number of taxicabs and to represent its members before the public authorities (see paragraph 21 above). Frami was therefore predominantly a private-law organisation and must thus be considered an "association" for the purposes of Article 11 (art. 11).

32. It is not necessary to decide whether Frami can also be regarded as a trade union within the meaning of Article 11 (art. 11), since the right to form and join trade unions in that

provision is an aspect of the wider right to freedom of association, rather than a separate right (see, amongst other authorities, the Schmidt and Dahlström v. Sweden judgment of 6 February 1976, Series A no. 21, p. 15, para. 34).

2. Whether the right claimed by the applicant was covered by Article 11 (art. 11)

33. The Government, whilst accepting the view enunciated in the Young, James and Webster v. the United Kingdom judgment of 13 August 1981 (Series A no. 44, pp. 21-22, para. 52) that the negative aspect of the right to freedom of association does not fall completely outside the ambit of Article 11 (art. 11), contested that it extended as far as encompassing a right for the applicant not to be a member of Frami. They contended that such a negative right must be interpreted restrictively, bearing in mind a passage in the travaux préparatoires cited in that judgment, which showed that a general rule, modelled on Article 20 para. 2 of the 1948 United Nations Universal Declaration of Human Rights, that no one may be compelled to belong to an association, had deliberately been omitted from the Convention (ibid., paras. 51-52).

Furthermore, they maintained that the present case should be distinguished from the 1981 case in view of the following factors:

(a) In the latter instance, the applicants had been employed for a considerable time when their employer concluded the impugned agreements with the trade unions - with the effect that they had to join one of the unions or lose their job. The position in the proceedings now before the Court was quite different in that the membership obligation existed before the applicant was granted a licence in 1984, on which occasion he unreservedly and without compulsion agreed to become a member of Frami. Although the Supreme Court's December 1988 judgment (see paragraph 15 above) could be taken to mean that he had not been obliged under Icelandic law to join Frami in 1984, there was, nevertheless, a de facto obligation so to do. Anyhow, the applicant was entirely free either to accept this or to seek employment in another field.

(b) His objections to membership of Frami could not be compared to those of Mr Young and Mr Webster, both of whom had been opposed to trade-union policies and activities and one of them, to the unions' political affiliations.

(c) Whilst the organisation at issue here was non-political, the 1981 case had concerned a type of association - a trade union - which was frequently affiliated to political parties or otherwise involved in politics and was thus likely to interfere with its members' enjoyment of the Convention freedoms, notably the freedom of opinion.

The Government submitted that should the Court find that the applicant was protected by Article 11 (art. 11) it would mean a step further than the Young, James and Webster judgment and the

above-mentioned passage in the travaux préparatoires would be rendered nugatory.

34. Both the applicant and the Commission were of the view that there had been an interference with his right to freedom of association as covered by Article 11 (art. 11). The Delegate stressed that the proper construction of the relevant extract of the travaux préparatoires was that it fell to the Convention institutions to determine whether such a negative right existed under this Article (art. 11) and, if so, its scope.

35. As to the question of the general scope of the right in issue, the Court notes, in the first place, that although the aforementioned judgment took account of the travaux préparatoires, it did not attach decisive importance to them; rather it used them as a working hypothesis (see, for example, pp. 21-22, paras. 52 and 55: "Assuming for the sake of argument ..." and "Assuming that Article 11 (art. 11) does not guarantee the negative aspect of that freedom on the same footing as the positive aspect ..."). Moreover, whereas the membership obligation concerning Mr Young, Mr James and Mr Webster was based on an agreement between their employer and the trade unions, that of Mr Sigurdur A. Sigurjónsson was imposed by law. Under Articles 5 and 8 of the 1989 Law and Article 8 of the 1989 Regulation, he had to be a member of a specified association - Frami - in order to satisfy the licence conditions and it was not possible for him to join or form another association for that purpose. It was further provided that a failure to meet this condition could entail revocation of the licence and liability to pay a fine. Compulsory membership of this nature, which, it may be recalled, concerned a private-law association, does not exist under the laws of the great majority of the Contracting States. On the contrary, a large number of domestic systems contain safeguards which, in one way or another, guarantee the negative aspect of the freedom of association, that is the freedom not to join or to withdraw from an association.

A growing measure of common ground has emerged in this area also at the international level. As observed by the Commission, in addition to the above-mentioned Article 20 para. 2 of the Universal Declaration (see paragraph 33 above), Article 11 para. 2 of the Community Charter of the Fundamental Social Rights of Workers, adopted by the Heads of State or Government of eleven member States of the European Communities on 9 December 1989, provides that every employer and every worker shall have the freedom to join or not to join professional organisations or trade unions without any personal or occupational damage being thereby suffered by them. Moreover, on 24 September 1991 the Parliamentary Assembly of the Council of Europe unanimously adopted a recommendation, amongst other things, to insert a sentence to this effect into Article 5 of the 1961 European Social Charter (see Parliamentary Assembly, Forty-third Ordinary Session (second part), 18-25 September 1991: Official Report of Debates, Vol. II, p. 502, and Texts adopted by the Assembly, Appendix to Recommendation 1168 (1991), p. 5). Even in the absence of an express provision, the Committee of Independent Experts set up to supervise the implementation of the

Charter considers that a negative right is covered by this instrument and it has in several instances disapproved of closed-shop practices found in certain States Parties, including Iceland. With regard to the latter, the committee took account of, inter alia, the facts of the present case (see Conclusions XII-1, 1988-89, pp. 112-113, of the aforementioned committee). Following this, the Governmental Committee of the European Social Charter issued a warning to Iceland (by ten votes to four with two abstentions; see the Governmental Committee's 12th report to the Committee of Ministers of 22 March 1993, paragraph 113).

Furthermore, according to the practice of the Freedom of Association Committee of the Governing Body of the International Labour Office (ILO), union security measures imposed by law, notably by making union membership compulsory, would be incompatible with Conventions Nos. 87 and 98 (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; see Digest of decisions and principles of the said committee, 1985, paragraph 248).

In this connection, it should be recalled that the Convention is a living instrument which must be interpreted in the light of present-day conditions (see, amongst other authorities, the Soering v. the United Kingdom judgment of 7 July 1989, Series A no. 161, p. 40, para. 102). Accordingly, Article 11 (art. 11) must be viewed as encompassing a negative right of association. It is not necessary for the Court to determine in this instance whether this right is to be considered on an equal footing with the positive right.

36. As to the specific circumstances of the case, the Court is not persuaded by the Government's argument that an obligation to join Frami already existed when the applicant obtained his licence in 1984. No significant weight can be attached to the fact that, before being granted the licence, he agreed to become a member; it is a matter of speculation whether he would have done so in the absence of the membership condition laid down in the 1983 Regulation (see paragraph 8 above), which was later held by the Supreme Court to lack a statutory basis (see paragraph 15 above), though his conduct since August 1985 suggests that he would not (see paragraphs 9 to 17 above). Nor has it been established that an obligation of membership arose for any other reason. In fact, only when the 1989 Law entered into force on 1 July 1989 did it become clear that membership was a requirement. The applicant has since been compelled to remain a member of Frami and would otherwise, as was amply illustrated by the revocation of his licence in 1986 (see paragraph 10 above), run the risk of losing his licence again. Such a form of compulsion, in the circumstances of the case, strikes at the very substance of the right guaranteed by Article 11 (art. 11) and itself amounts to an interference with that right (see the above-mentioned Young, James and Webster judgment, pp. 22-23, paras. 55 and 57, and the Sibson v. the United Kingdom judgment of 20 April 1993, Series A no. 258-A, p. 14, para. 29).

37. What is more, Mr Sigurdur A. Sigurjónsson objected to

being a member of the association in question partly because he disagreed with its policy in favour of limiting the number of taxicabs and, thus, access to the occupation; in his opinion the interests of his country were better served by extensive personal freedoms, including freedom of occupation, than State regulation. Therefore, the Court is of the view that Article 11 (art. 11) can, in the circumstances, be considered in the light of Articles 9 and 10 (art. 9, art. 10), the protection of personal opinion being also one of the purposes of the freedom of association guaranteed by Article 11 (art. 11) (see the above-mentioned Young, James and Webster judgment, pp. 23-24, para. 57). The pressure exerted on the applicant in order to compel him to remain a member of Frami contrary to his wishes was a further aspect going to the very essence of an Article 11 (art. 11) right; there was an interference too in this respect. The Government's argument that Frami was a non-political association is not relevant in this regard.

3. Recapitulation

38. In the light of the above, the Court agrees with the applicant and the Commission that the measures complained of constituted interference with his right to freedom of association as guaranteed by paragraph 1 of Article 11 (art. 11-1).

Such interference entails a violation of Article 11 (art. 11) unless it meets the conditions laid down in paragraph 2 (art. 11-2).

B. Whether the interference was justified under paragraph 2 of Article 11 (art. 11-2)

39. The applicant's complaint to the Strasbourg institutions concerned only the period after 1 July 1989, when the 1989 legislation entered into force (see paragraph 18 above). It is not contested that, after that date, the impugned membership obligation was "prescribed by law" and pursued a legitimate aim, namely as found by the Commission, the protection of the "rights and freedoms of others". The Court sees no reason to disagree.

40. On the other hand, the applicant and the Commission disputed the Government's view that the interference was "necessary in a democratic society".

The Government, referring to their arguments set out in paragraphs 30 and 33 above, maintained in particular that, bearing in mind the status of the licence-holders as independent business operators, membership constituted a crucial link between them and Frami in that the latter would not be able to ensure the kind of supervisory functions which it performed unless all the licence-holders within its area were members. It would not be desirable to confer such tasks on taxi stations as these were in many instances owned by the licence-holders themselves and thus lacked the necessary authority; doing so would not only require legislative measures, but would also radically alter the relationship between the stations and the licence-holders. Nor would it be appropriate for the functions to be assumed by a

public authority, as having them carried out by Frami was more expedient and less expensive.

41. In the first place, the Court recalls that the impugned membership obligation was one imposed by law, the breach of which was likely to bring about the revocation of the applicant's licence. He was thus subjected to a form of compulsion which, as already stated, is rare within the community of Contracting States and which, on the face of it, must be considered incompatible with Article 11 (art. 11) (see, mutatis mutandis, the Le Compte, Van Leuven and De Meyere v. Belgium judgment of 23 June 1981, Series A no. 43, p. 27, para. 65).

The Court does not doubt that Frami had a role that served not only the occupational interests of its members but also the public interest, and that its performance of the supervisory functions in question must have been facilitated by the obligation of every licence-holder within the association's area to be a member. However, the Court is not convinced that compulsory membership of Frami was required in order to perform those functions. Firstly, the main responsibility for the supervision of the implementation of the relevant rules lay with the Committee (see paragraph 20 above). Secondly, membership was by no means the only conceivable way of compelling the licence-holders to carry out such duties and responsibilities as might be necessary for the relevant functions; for instance, some of those provided for in the applicable legislation (see paragraph 22 above) could be effectively enforced without the necessity of membership. Lastly, it has not been established that there was any other reason that would have prevented Frami from protecting its members' occupational interests in the absence of the compulsory membership imposed on the applicant despite his opinions (see, inter alia, the above-mentioned Schmidt and Dahlström judgment, p. 16, para. 36, and the above-mentioned Young, James and Webster judgment, pp. 25-26, para. 64).

Having regard to the foregoing, the reasons adduced by the Government, although they can be considered relevant, are not sufficient to show that it was "necessary" to compel the applicant to be a member of Frami, on pain of losing his licence and contrary to his own opinions. In particular, notwithstanding Iceland's margin of appreciation, the measures complained of were disproportionate to the legitimate aim pursued. Consequently, there has been a violation of Article 11 (art. 11).

II. ALLEGED VIOLATIONS OF ARTICLES 9 AND 10 (art. 9, art. 10)

42. The applicant shared the Commission's opinion that if a violation were found of Article 11 (art. 11), it would be unnecessary to consider separately whether there have also been breaches of Articles 9 or 10 (art. 9, art. 10).

43. Having taken account of these Articles (art. 9, art. 10) in the context of Article 11 (art. 11) (see paragraphs 37 and 41 above), the Court agrees with this view.

III. ALLEGED VIOLATION OF ARTICLE 13 (art. 13)

44. Before the Commission, the applicant, without invoking other arguments than those with respect to Article 11 (art. 11), alleged a violation of Article 13 (art. 13). However, in his submissions to the Court he stated that he accepted the Commission's conclusion that there has been no violation of this Article (art. 13).

45. The Court does not find it necessary to examine the matter of its own motion.

IV. APPLICATION OF ARTICLE 50 (art. 50)

46. Mr Sigurdur A. Sigurjónsson sought just satisfaction under Article 50 (art. 50), according to which:

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

The applicant did not seek compensation for damage but claimed reimbursement of costs and expenses, totalling 3,128,626 Icelandic crowns, in respect of the following items:

(a) 78,941 crowns to cover translations of pleadings made and documents submitted in the proceedings before the Commission and Court;

(b) 55,460 crowns for expenses relating to his lawyer's journey to Strasbourg to appear before the Court;

(c) 2,994,225 crowns for 370 hours' work (at 6,500 crowns per hour, plus 24.5% Value Added Tax) by the lawyer in respect of the Strasbourg proceedings.

47. The Government made no objection to items (a) and (b) and agreed to pay item (c) at a reasonable amount if a violation were to be found.

48. The Court is satisfied that items (a) and (b) were necessarily incurred and were reasonable as to quantum; these should be reimbursed in their entirety, less the corresponding sum already paid by the Council of Europe by way of legal aid, namely 7,813 French francs.

As regards item (c), the Court, making an assessment on an equitable basis, considers that the applicant should be awarded under this head 2,000,000 Icelandic crowns, from which

must be deducted the 7,050 French francs received from the Council of Europe in respect of legal fees.

FOR THESE REASONS, THE COURT

1. Holds by eight votes to one that there has been a violation of Article 11 (art. 11);

2. Holds unanimously that it is not necessary also to examine the case under Articles 9 or 10 (art. 9, art. 10);

3. Holds unanimously that it is also not necessary to determine whether there has been a violation of Article 13 (art. 13);

4. Holds unanimously that Iceland is to pay the applicant, within three months, for legal fees and expenses, 2,134,401 (two million, one hundred and thirty-four thousand, four hundred and one) Icelandic crowns, less 14,863 (fourteen thousand, eight hundred and sixty-three) French francs to be converted into Icelandic crowns at the rate applicable on the date of delivery of the present judgment;

5. Dismisses unanimously the remainder of the claim for just satisfaction.

Done in English* and delivered at a public hearing in the Human Rights Building, Strasbourg, on 30 June 1993.

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* Note by the Registrar: as a derogation from the usual practice (Rules 26 and 27 para. 5 of the Rules of Court), the French text was not available until September 1993; but it too is authentic.

Signed: Rolv RYSSDAL
President

Signed: For the Registrar
Herbert Petzold
Deputy Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of the Rules of Court, the dissenting opinion of Mr Thór Vilhjálmsson is annexed to this judgment.

Initialled: R.R.

Initialled: H.P.

DISSENTING OPINION OF JUDGE THÓR VILHJÁLMSSON

In the case of Young, James and Webster v. the United

Kingdom*, which was decided by the Court in 1981, I voted with a minority that did not find a violation of Article 11 (art. 11) of the Convention. It was my opinion that the text of this Article (art. 11) cannot be construed as guaranteeing the so-called negative freedom of association. Its text makes no express reference to such a guarantee.

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* Note by the registry: judgment of 13 August 1981, Series A no. 44.

This is of particular significance because the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948, is cited in the Preamble to the European Convention. There it is stated that the aim of our Convention is to take "the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration". Moreover, the travaux préparatoires show that those responsible for drafting the Convention were not prepared to include the negative freedom of association in it at that time. None of the ten protocols has changed that situation.

Even if others may be better qualified to give an interpretation of the 1981 judgment than I am, I venture to suggest that the very special circumstances of the above-mentioned British case make the judgment in it an unclear precedent.

The present case shows, in my opinion, that the classic freedom of association, which is expressly guaranteed in Article 11 (art. 11) of the Convention, is essentially different from the negative freedom of association. The freedom guaranteed by the Convention was originally one of the foundations of political freedom and activity. Since then, under the protection of this freedom, the trade unions, and their activities aimed at improving the lot of their members, have developed. The Icelandic case before the Court now shows that in certain circumstances it is not clear whether the negative freedom of association is likely to further the interests of those concerned in a way comparable to the clear benefits of the classic freedom. The applicant, Mr Sigurdur A. Sigurjónsson, was, according to Icelandic law, under an obligation to join a private-law association, Frami, which had certain duties in connection with the operation of taxi services. This was a part of a system that in modern-day usage could be called "subsidiarity". There are arguments for and against making membership of an association a legal obligation. The situation in Iceland in this respect is currently being examined by the institutions set up under the 1961 European Social Charter. It is not for our Court to take sides in that debate. Its only task is to decide whether Article 11 (art. 11) of the Convention applies in this particular case. I think that the negative freedom is so special and so clearly distinguishable from the positive freedom of association, that a legal interpretation of the Article (art. 11) cannot result in the inclusion of the negative freedom within its sphere of application. Accordingly, and on the same basis as in 1981,

I find no violation.