



## Sigurjonsson v. Iceland

16 E.H.R.R. 462 (1993)

**Country:** Iceland

**Region:** Europe

**Year:** 1993

**Court:** European Court of Human Rights European Court of Human Rights

**Human Rights:** Freedom of association, Freedom of expression

### Facts

The applicant, an Icelandic national, was a taxi driver and resident in Reykjavik, Iceland. He refused to join an automobile association which, *inter alia*, protected taxi-cab drivers' rights.

Membership of the association was, under an Icelandic law passed in 1989, a prerequisite for acquisition of a taxi-cab driver's license. The applicant complained that the subsequent refusal by the relevant authorities to grant him a license violated his right not to join an association, which he claimed was protected by Articles 11, 9, 10 and 13 of the European Convention on Human Rights.

### Decision and Reasoning

The Court held that there had been a violation of Article 11.

The Court held that while the automobile association in question performed certain functions which were to some degree of a public law nature, it was not sufficient to affect the association's principle private law character, since the "organization and its aims were determined autonomously and included the protection of its members' professional interests." However, the Court did not deem it necessary to determine whether the association amounted to a trade union, because "the right to join the latter comprised one aspect of the wider right to freedom of association and was not a separate right."

The Court addressed what it termed the "growing measure...at both the domestic and international levels" an interpretation of freedom of association that includes the "freedom not to join or to withdraw from an association." The Court concluded that Article 11 encompassed a negative right of association, but did not stipulate whether this right was considered to be of equal importance with the positive right. Because the law that mandated membership in the association was passed in 1989 and the applicant had established that he objected to membership prior to the introduction of the law, compelling the applicant to join the association "struck at the very substance of right guaranteed by Article 11."

In regards to freedom of association and its necessary role in democratic society, the Court held that membership in the association concerned was "not the only conceivable way either of ensuring the performance of the duties and responsibilities expected of taxi-cab drivers (for which, in any case, the association was not principally responsible) nor of protecting taxi-cab drivers' professional interests." Therefore, the Court held that the interference was not "necessary in a democratic society."

It was also put forward to the court whether Articles 9, 10 and 13 had been breached. The Court found it unnecessary to consider separately whether there had been breaches of Articles 9 and 10 having found that there had been a breach of Article 11. Additionally, the Court accepted the European Commission on Human Rights' conclusion that there had been no violation of Article 13 on the basis that the source of the applicant's complaint was the Icelandic legislation itself, and to require an effective remedy would amount to a form of judicial review of the Icelandic legislation, which would exceed the accepted scope of Article 13.

### Decision Excerpts

"The fact that the automobile association in question performed certain functions which were to some extent of a public law nature was not sufficient to affect the association's principal private law character. Its organization and aims were determined autonomously and included the protection of its members' professional interests."

"There was a growing measure of common ground at both the domestic and international levels that the freedom of association included a negative aspect, namely, the freedom not to join or to withdraw from an association. It was important to recall that the Convention was a living instrument to be interpreted in the light of present-day conditions. The Court concluded that Article 11 encompassed a negative right of association, but left open whether this right was to be considered on an equal footing with the positive right."

"...it was established that membership of the association concerned was a necessary precondition to lawful practice as a taxicab driver under Icelandic law. The applicant established that he objected to membership and had done so prior to introduction of the impugned law in 1989. Such a form of compulsion struck at the very substance of right guaranteed by Article 11."

"Membership of the association concerned was not the only conceivable way either of ensuring the performance of the duties and responsibilities expected of taxi-cab drivers (for which, in any case, the association was not principally responsible) nor of protecting taxi-cab drivers' professional interests. The Court held that the interference was not "necessary in a democratic society."

"The Court accepted the Commission's conclusion that there had been no violation of Article 13 on the basis that the source of the applicant's complaint was the Icelandic legislation itself. Consequently, to require an effective remedy in such circumstances would amount to a form of judicial review of the legislation, which goes beyond the accepted scope of Article 13."

Copyright © 2015 [www.GlobalHealthRights.org](http://www.GlobalHealthRights.org)