

European Court of Human Rights

Sigurdur A. Sigurjonsson v. Iceland

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

The applicant, an Icelandic national, was a taxi driver resident in Reykjavik. He refused to join an automobile association which, *inter alia*, protected taxi-cab drivers' rights. Membership of the association was, under Icelandic law, a prerequisite for acquisition of a taxi-cab driver's licence. The applicant complained that the subsequent refusal by the relevant authorities to grant him a licence violated his right not to join an association which he claimed was protected by Articles 11, 9, 10 and 13 of the Convention.

Held:

by eight votes to one, that there had been a violation of Article 11;

unanimously, that it was not necessary also to examine the case under Articles 9 and 10;

unanimously, that it was also not necessary to determine whether there had been a violation of Article 13;

unanimously, that Iceland was to pay the applicant, within three months, for legal fees and expenses, 2,134,401 Icelandic crowns, less 14,863 FF, and that the remainder of the claim for just satisfaction be dismissed.

Freedom of association: association (Art. 11)

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 associations's principal private law character. Its organisation and aims were determined autonomously and included the protection of its members' professional interests. It was not 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.

Freedom of association: interference (Art. 11)

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.

On the facts of the case, 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.

Freedom of association: prescribed by law, legitimate aims, necessary in a democratic society (Art. 11(2)).

It was not contested that the impugned membership obligation was prescribed by law and pursued a legitimate aim, namely the protection of the rights and freedoms of others.

The form of compulsion in question was rare within the community of Contracting States. 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.'

Freedom of thought; freedom of expression; effective remedy (Arts. 9, 10 and 13)

The Court found it unnecessary to consider separately whether there had also been breaches of Articles 9 and 10.

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.

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