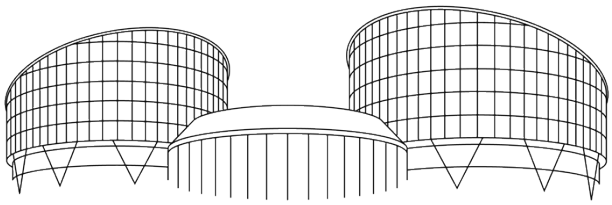

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF VÖRÐUR ÓLAFSSON v. ICELAND

(Application no. 20161/06)

JUDGMENT

STRASBOURG

27 April 2010

FINAL

27/07/2010

This judgment has become final under Article 44 § 2 of the Convention.

In the case of Vörður Ólafsson v. Iceland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Nicolas Bratza, *President*,
Giovanni Bonello,
Davíd Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä,
Ledi Bianku,
Nebojša Vučinić, *judges*,
and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 24 March 2009, 5 January 2010 and 30 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 20161/06) against the Republic of Iceland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Icelandic national, Mr Vörður Ólafsson ("the applicant"), on 16 May 2006.

2. The applicant was represented by Mr T. Child and Mr Einar Hálfdánarson, lawyers practising in London and Reykjavik respectively. The Icelandic Government ("the Government") were represented by their Agent, Ms Björg Thorarensen.

3. The applicant alleged, in particular, that the imposition of an obligation by law to pay an "industry charge" to the Federation of Icelandic Industries violated his right to freedom of association under Article 11 of the Convention, as interpreted in the light of Articles 9 and 10 of the Convention. He further complained that the industry charge in effect amounted to a separate taxation being imposed on a restricted group of citizens on top of their ordinary tax in a manner violating Article 1 of Protocol No. 1. Finally, he complained of discrimination in breach of Article 14 of the Convention taken in conjunction with Article 11 of the Convention and Article 1 of Protocol No. 1.

4. By a decision of 2 December 2008, the Court declared the application admissible.

5. A hearing took place in public in the Human Rights Building, Strasbourg, on 24 March 2009 (Rule 59 § 3 of the Rules of Court).

There appeared before the Court:

(a) *for the Government*
Ms BJÖRG THORARENSEN, *Agent*,
Mr SKARPHEDINN THORISSON, Attorney-General, *Counsel*,
Mr GUNNAR NARFI GUNNARSSON, Legal Expert,
of the Ministry of Justice and Ecclesiastical Affairs,
Ms ELIN FLYGERING, Ambassador, Permanent Representative
of Iceland to the Council of Europe, *Advisers*;

(b) *for the applicant*
Mr T. CHILD, solicitor, *Counsel*,
Mr EINAR HÁLFDÁNARSON, Supreme Court Advocate,
Ms C. MURRAY, trainee solicitor, *Advisers*.

The Court heard addresses by Ms Björg Thorarensen, Mr Skarphedinn Thorisson, Mr Child and Mr Einar Hálfdánarson.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant, Mr Vörður Ólafsson, is an Icelandic national who was born in 1961 and lives in Reykjavik.

A. The disputed industry charge

7. The applicant is a master builder and is a member of the Master Builders' Association ("the MBA"). Under the Industry Charge Act (Law no. 134/1993 – "the 1993 Act"), he was under an obligation to pay a levy known as the "industry charge" to the Federation of Icelandic Industries ("the FII"), an organisation of which the applicant was not a member and to which the MBA was not affiliated. The 1993 Act provided that a charge of 0.08% should be levied on all industrial activities in Iceland as defined in the Act. The definition included all activities coming under activity code numbers enumerated in an appendix to the Act. Private-sector enterprises not covered by the code numbers were not subject to the industry charge. This was the case, for example, for enterprises in the meat-processing, milk-processing and fish-processing industries. Other enterprises in the food and drink industry were covered. Enterprises entirely under public ownership or established by special statute were not covered (section 2). Revenues from

the industry charge were to be transferred to the FII, and were to be used for the promotion and development of industry in Iceland (section 3). The State Treasury was to receive 0.5% of the charge collected in order to cover the costs of its collection (section 1).

8. More than 10,000 persons (legal persons and self-employed individuals) paid the industry charge. The FII had between 1,100 and 1,200 members (enterprises and self-employed individuals).

9. The Government supplied copies of the FII's reports to the Ministry of Industry regarding the disbursement of the industry charge for the years 2000, 2003 and 2006.

10. The FII's report for the year 2003 (dated 4 July 2004) stated:

> "The Federation's accounts have not indicated whether particular operational items are paid for with funds from membership fees, capital income or the industry charge, because an overwhelming proportion of its work benefits industrial companies whether they are members of the Federation or not. The Ministry of Industry has not expressed any reservation regarding this arrangement, and legislation concerning the industry charge imposes no other requirements.
>
> The Federation and the Ministry of Industry are, however, in agreement about the requirement for a more detailed account of how the industry charge is disbursed, and that has been done in this report."

11. Under the title "Disbursement of the industry charge in 2003 according to the Federation's accounts", the report included a table showing the "Income and expenditure according to the Federation's audited accounts for the year 2003". In a separate column the table indicated the percentage of funds originating from the industry charge in relation to each item and sub-item. This included the following items: "Operating profits" and "Operating expenses". It also detailed "Further itemisation of disbursement of the industry charge according to the accounts", namely: (1) "Wages and related expenses"; (2) "Meetings and conferences"; (3) "Promotional activities"; (4) "Publications"; (5) "Branches and special projects"; and (6) "General and administrative expenses".

For each of these sub-items the report contained explanatory notes, providing information on the treatment of members as compared with non-members. For example, under sub-item (1) it was stated that 2.5 of the 20 man-years concerned work that benefited members only. With reference to sub-item (3) it was stated that FII exhibitions were open to everyone and that FII members enjoyed a discount on participation fees. Under sub-item (5) it was stated that non-members could access the quality management project but would be charged a higher fee than members.

12. From the table it appears that in 2003 the FII's operating revenues totalled 315,800,000 Icelandic krónur (ISK), of which ISK 197,359,000 had originated from the industry charge transferred to the FII by the State Treasury; ISK 84,973,000 from membership fees; and ISK 33,468,000 from other income. That same year, the operating expenses had totalled

ISK 289,654,000, of which ISK 234,617,000 (81%) had been spent on public projects (comprising ISK 197,359,000 derived from the industry charge and ISK 37,258,000 from membership fees and other income).

13. The Government explained that in fulfilling its role and objectives of promoting Icelandic industry pursuant to section 3 of the 1993 Act, the FII notably worked to develop and protect the image of the industry, allocated large amounts of the funds obtained though the industry charge to training, gave opinions on behalf of the business community on draft legislation and regulations in the sphere of environmental affairs, and instilled in public authorities the need to observe restraint in public procurement and to observe clear and transparent tender rules.

14. At the material time, the applicant paid the following amounts in industry charge for the years indicated: for 2001 ISK 23,023 (255 euros (EUR)); for 2002 ISK 20,639 (EUR 229); for 2003 ISK 12,567 (EUR 139); and for 2004 ISK 5,946 (EUR 66).

B. Judicial proceedings brought to challenge the industry charge

15. On 8 November 2004 the applicant lodged proceedings against the State with the Reykjavik District Court, requesting an order to exempt him from the charges imposed on him in respect of the years 2001 to 2004.

16. By a judgment of 13 July 2005, the District Court found in favour of the State and dismissed the applicant's action.

17. The applicant appealed to the Supreme Court of Iceland, arguing, *inter alia*, that section 3 of the 1993 Act meant that all individuals and companies engaged in particular business activities had to pay membership fees to the FII, irrespective of whether they were members or not. The applicant considered that Article 14 of the Articles of the Federation, which provided for the membership charge, clearly reflected its nature in that, as was provided therein, FII members paying an industry charge which was transferred to the FII should have that part deducted from their membership fees. Thus, by the levy and collection of the charge, membership of the FII was in fact made compulsory for others, although they enjoyed no rights *vis-à-vis* the FII. Consequently, the industry charge was merely a membership fee to the FII. The applicant submitted that he was a member of the MBA, to which he paid his fees and through which he considered his interests to be best served, and he had no wish to be a member of the FII. The latter pursued policies with which he disagreed and which were contrary to his own interests. The compulsory membership of the FII was incompatible with his right to freedom of association as protected by Article 74 § 2 of the Icelandic Constitution and Article 11 of the Convention. The applicant also argued that by virtue of the 1993 Act, he was unjustifiably taxed in excess of other taxes and that, under the Act, a limited group was being taxed "for the benefit of another limited group or

the restricted interests of others". Finally, he submitted that the imposition of the charge amounted to discrimination in breach of Article 65 of the Constitution, as the taxation was dependent upon the ownership structure of an enterprise, and the enumeration of activity code numbers, on which the taxation was based, was haphazard in nature.

The State disputed the applicant's submission that the industry charge constituted a membership fee to the FII. They argued that by law it was a tax levied by the State on particular groups of individuals and legal persons, in accordance with general and applicable standards, without anything being required in return. By the same Act, the decision had been taken to have the charge transferred to the FII, which was to use it for the promotion and development of Icelandic industry. Such an allocation of tax revenues to an association provided for by law did not mean that those who paid the relevant tax were thereby obliged by law to become members of it. The charge was not expected to be used for the benefit of the members alone, but for the benefit of all industries and industrial development in Iceland, under the supervision of the Ministry of Industry. Any discounts on membership fees were decided unilaterally by the FII, without any connection to the assessment and collection of the charge. The State also denied that the 1993 Act involved discrimination between persons who were in the appellant's situation and those who enjoyed an exemption from the charge. It was a reasonable and objective arrangement to exempt public enterprises from the charge, and it was in the nature of things that the considerations that applied to companies under public ownership were different from those relating to private enterprises. The State also argued that public support for industry and industrial development sometimes took the form of launching industrial activities that others were not capable of initiating. Finally, the number of publicly owned industrial enterprises had been greatly reduced in recent years. The State also disputed the allegation that the enumeration of activity code numbers governing the taxation had been haphazard.

18. By a judgment of 20 December 2005, the Supreme Court, by four votes to one, rejected the applicant's appeal and upheld the District Court's judgment. It held as follows:

> "As mentioned in the District Court's judgment, the Supreme Court rendered a judgment on 17 December 1998 in case no. 166/1998, *Gunnar Pétursson v. the Republic of Iceland*, published at page 4406 of the Court's *Reports* for that year. The appellant in that case requested an exemption from his liability to pay the industry loan fund charge and the industry charge for the years 1995 and 1996. He based his case on arguments that are to a significant degree identical to those invoked by the appellant in the present case. The Supreme Court accepts the view of the respondent in that the above-mentioned case must be regarded as the precedent in the case now to be determined, to the extent that the issues raised by the appellant in support of his present claim were determined in that case.

In the earlier case the appellant, as here, maintained that as a result of his liability to pay the industry charge, which is to be transferred to the Federation of Icelandic Industries, he was obliged to be a member of the Federation. The Supreme Court mentioned in its judgment that although the charge was transferred to the Federation, it was to be used for a certain purpose (see section 3 of the 1993 Act), and did not constitute a grant to the Federation. The use of the revenues was subject to the supervision of the Ministry of Industry. The Court accepted that this arrangement did not involve obligatory membership of the Federation of Icelandic Industries in breach of the Constitution and the European Convention [on Human Rights]. It also noted that even if the Federation of Icelandic Industries had exceeded the boundaries laid down in the [1993] Act, this could not have the effect of exempting the appellant from paying the charge. With this in mind, and in other respects by reference to the grounds stated in the contested judgment, the Court must reject the conclusion that the appellant's arguments in this regard may lead to a granting of his request. Bearing in mind that the Federation of Icelandic Industries is under a legal duty to use the revenues from the industry charge for promoting Icelandic industries and industrial development, and consequently for the benefit of the activities being taxed, the Court cannot accept that the legislature thus exceeded its powers.

The appellant submits that equality was not respected, since enterprises under public ownership may be exempted from the charge. As regards this argument, it must be noted that various factors distinguish enterprises under public ownership from privately owned enterprises, and in various fields their taxation is governed by different considerations, as seen in Icelandic tax legislation in general. In his written submissions, the appellant did not present a comparison of his situation *vis-à-vis* any particular public enterprises. It has not been established that any discrimination has taken place between the appellant and the parties to whom the exemptions of the [1993] Act apply. Finally, the appellant bases his request on the assertion that the activity code enumeration, by reference to which taxation under section 2(1) of the 1993 Act takes place, is haphazard in nature. The charge is levied on industry, subsequently defined as any activity coming under the activity code numbers enumerated in the classification of Icelandic business activities in an appendix to the 1993 Act, as amended by Law no. 81/1996. Industry, thus defined, does not only cover manufacturing industry, but also processing and services, including the construction industry. This defines the activities to be included under the term 'industry' within the meaning of the [1993] Act, distinguishing them from other fields of economic activity, including activities that have developed within the fields of agriculture and fishing. Such classification of economic activity has furthermore been recognised as a basis for other forms of taxation other than the industry charge. The appellant's claim cannot be granted on the basis of the arguments presented."

19. The dissenting member of the Supreme Court, Mr Justice Ólafur Börkur Þorvaldsson, gave a separate opinion containing, *inter alia*, the following reasons:

"I

The original Industry Charge Act was Law no. 48/1975. It was stated in the explanatory notes to the draft law that it had been submitted in accordance with a recommendation of the FII, the National Federation of Craftsmen, and the Union of Icelandic Cooperative Societies. These provided a detailed report, which apparently was adopted verbatim in the explanatory notes. It included the observation that '... it may be noted that industrial enterprises and self-employed persons in industry collect

various taxes for public authorities, both from their employees and from the consumers. The tax collection they carry out and are responsible for amounts to thousands of millions annually, entirely without remuneration. It therefore seems reasonable that the State should undertake to collect, by way of compensation for these parties, a charge which amounts to only a small fraction of what they collect for the State. This source of revenue should create a financial basis for more active participation by professional federations within Icelandic industry in shaping future industrial development'. The Act also contained a provision similar to that of the Act now in effect, that the Ministry of Industry should be sent an annual report on the use of the revenues derived from the charge. In this context, it was mentioned in the explanatory notes that this was a 'provision intended to ensure that public authorities will be given a reasonable account of how the industry charge is used'.

Law no. 48/1975 was superseded by the present Law no. 134/1993. It was stated in the explanatory notes to the [1993] Act that those liable for the charge would be the same as before, but a system of reference to activity code numbers in accordance with the business activity classification of the Bureau of Statistics was adopted in order to 'remove any doubt as to who are liable for this charge'. It was furthermore provided that the revenues derived from the charge should be transferred to the FII in their entirety, whereas under the previous Act they had been distributed between the Union of Icelandic Cooperative Societies, the Canning Industry Sales Office, the Federation of Icelandic Industrialists and the National Federation of Craftsmen. At the same time the tax base was changed, since the municipal business tax, on which the level of tax had previously been determined, had been abolished.

II

According to the Articles of its Statute, the FII is a federation of enterprises, self-employed persons, trades and master builders' associations, who jointly wish to pursue common goals as enumerated in Article 2. This Article states the purpose and role of the Federation in ten points, as involving the promotion of Icelandic industries in various ways and supporting the members by all the means which are detailed therein. According to the documents submitted, the association involves itself with political issues, for example as regards membership of the European Union and taxation in various fields. Pursuant to Article 8, each member of the Federation enjoys voting rights at its meetings in proportion to his paid membership fees. It is provided in Article 14 that the membership fees are a maximum of 0.15% of the previous year's turnover, but the board of the Federation may decide to collect lower membership fees. The provision goes on to state that '[p]arties paying an industry charge that is transferred to the Federation shall have that part recognised, and deducted when their membership fees to the Federation are calculated. If the industry charge is no longer levied, this deduction shall automatically be abolished. The voting right of each member shall be calculated on the basis of his paid membership fee. Management and decision-making within the Federation is, as generally within associations, the responsibility of its board and the managing director'.

Documents submitted from the FII relating to the period to which the [applicant's] requests pertain do not contain a clear breakdown of how the industry charge is used. It also appears from a comment in the Federation's reports on the use of the charge for the years 2002 and 2003 that the Federation does 'not keep separate accounts of whether the individual elements of the Federation's operations are financed by monies derived from membership fees, capital income, or the industry charge'. A similar declaration on this point is found in the report to the Minister in respect of the year

2001, but a report for 2004 is not in the case file. The Federation's reports to the Minister are also in other respects similar from year to year. In fact the case file seems to permit the inference that part of the charge is used for the general management of the Federation. It cannot be seen from the submissions in this case that the Minister of Industry has made any observations concerning the use of the charge, and in a letter to the Master Builders' Association of 15 February 2002, following complaints relating to the use of the charge, he expresses the following opinion: 'As can be clearly seen from the Industry Charge Act, the FII has the unrestricted power to decide how the charge is allocated, and the Ministry of Industry cannot interfere with this as long as it remains within the framework of the law.' It can be seen from the submitted reports of the FII for the periods to which this case relates that the arrangement has been used for granting those members of the Federation who pay the industry charge a discount on their membership fees equal to the amount of the charge. As an example, the following comment in the Federation's report to the Minister of Industry for 2003 may be quoted: 'It may be pointed out that members who pay the industry charge have it deducted in full from their membership fees to the Federation. It would not be considered proper that companies within the Federation that are liable to the industry charge should pay more to the Federation's activities than companies that are members, but not liable to the charge. In this way all the member companies of the Federation make equal payments to the Federation, irrespective of whether they are liable to the industry charge or not. On the other hand other companies, remaining outside, only pay the industry charge and thus make a contribution to the general protection of the interests of Icelandic industries.'

III

Provisions on freedom of association are found in Article 74 of the Constitution ... They contain more detailed rules on freedom of association than those directly expressed in Article 11 of the Convention ... Article 74 § 2 of the Constitution provides: 'No one may be obliged to be a member of any association. Membership of an association may, however, be made obligatory by law if this is necessary in order to enable an association to discharge its functions in the public interest or on account of the rights of others.'

As noted above, the purpose of the industry charge is, according to the 1993 Act, the promotion of Icelandic industry, but it is also expressly provided that only the part of the charge corresponding to the cost of its collection is to be transferred to the State Treasury. The remainder is transferred to the FII, to be used as the Federation decides. It also seems that an unspecified proportion of the charge is used for the general activities of the Federation as its board may decide. It can furthermore not be seen from the provisions of the 1993 Act that the Minister of Industry is adequately empowered to ensure that the charge is used in the manner provided for in the Act; in this regard, the Minister simply receives the reports of the Federation. For these reasons the provisions of the 1993 Act cannot be regarded as ensuring that the charge will be used for the activities the Act requires.

The payment of membership fees to an association is generally a chief obligation of the members of an association that requires such payments. The applicant is a member of the Master Builders' Association. Neither he nor his association is a member of the FII. The applicant does not agree with the Federation's objectives in various fields, considering, as mentioned in the contested judgment, that the Federation acts contrary to his interests, and indeed also contrary to those of many others within industry who also pay the industry charge without being members of the Federation. Nevertheless,

by virtue of the 1993 Act, the [applicant] is bound by a duty to pay the charge, which, as described, is transferred to a free association with the purpose of protecting the interests of those active in Icelandic industries and those of its members, as these interests are assessed at any particular time by a decision of the managing director and the board, without any significant involvement of public authorities.

When considering the above and the history of the 1993 Act, and in view of the use of the charge, without objection, for the general activities of the Federation, the arrangement provided for in the Act must be seen as involving, in fact, a duty on the part of the appellant to take a significant part in the Federation's activities without his agreement. The above provisions of Article 74 § 2 of the Constitution, concerning people's rights to remain outside associations, must be interpreted as prohibiting an arrangement such as provided for by the 1993 Act, unless that arrangement fulfils the requirements laid down in the second paragraph of the Article. The FII is not an association engaged in activities of the kind referred to therein. For this reason in itself, the appellant's request for an exemption from his liability to pay the industry charge for the years 2001 to 2004 should be granted, and the respondent should be ordered to pay the appellant the costs of the case in the District Court as well as before the Supreme Court."

II. RELEVANT DOMESTIC LAW

20. Article 74 §§ 1 and 2 of the Icelandic Constitution provide:

"Associations may be formed without prior permission for any lawful purpose, including political associations and trade unions. An association may not be dissolved by administrative decision. The activities of an association found to be in furtherance of unlawful objectives may, however, be enjoined, in which case legal action shall be brought without undue delay for a judgment dissolving the association.

No one may be obliged to be a member of any association. Membership of an association may, however, be made obligatory by law if this is necessary in order to enable an association to discharge its functions in the public interest or on account of the rights of others."

21. The relevant provisions of the 1993 Act (Law no. 134/1993) read:

Section 1

"A charge of 0.08%, the industry charge, shall be levied on all Icelandic industries as defined in section 2. The charge shall be based on the turnover as provided for in section 11 of the Value-Added Tax Act, plus any revenue exempted from value-added tax pursuant to section 12 of that Act.

The assessment and collection of the industry charge shall be governed by the provisions of Chapters VII-XIV of the Income and Net-Worth Tax Act, as applicable.

The State Treasury shall receive 0.5% of the industry charge collected in accordance with the first paragraph to cover the cost of its collection.

The amounts paid under the industry charge are deductible from the revenue of the operating year on which the level of tax is based."

Section 2

"Any activity coming under the activity code numbers enumerated in the appendix to this Act shall be included in the term 'industry'.

Enterprises entirely under public ownership, and enterprises formed under particular acts of law to be under public ownership to a significant extent, shall be exempt from the charge, unless a provision to the contrary is made in the Act in question."

Section 3

"Revenues derived from the industry charge shall be transferred to the Federation of Icelandic Industries. The revenues shall be used to promote industry and industrial development in Iceland. The Federation shall provide an annual report to the Ministry of Industry on the use of the revenues."

Section 7

"The Office of the Auditor-General may demand accounts from institutions, associations, funds and other parties that receive funding or guarantees from the State, and they shall be obliged to provide the Office of the Auditor-General with the materials requested. Furthermore, the Office of the Auditor-General shall be permitted access to, and shall have the right to examine, the original materials or reports that are created as well as invoices issued to the State or State bodies for work or services that are to be paid for, entirely or to a substantial extent, by the State Treasury in accordance with the law or contracts or labour agreements on the basis of tariffs that have been agreed with individuals or legal entities, in order to verify the contents of invoices and the payment obligation borne by the State Treasury. ...

In the event of a dispute regarding the right of the Office of the Auditor-General to carry out audit work in accordance with this section, the Office of the Auditor-General may seek a ruling by the District Court."

III. RELEVANT INTERNATIONAL LAW AND PRACTICE

A. Position of the European Committee of Social Rights

22. The European Committee of Social Rights has addressed the issue of trade-union fees and contributions from the angle of Article 5 of the European Social Charter on several occasions, notably those referred to below:

***Confederation of Swedish Enterprise v. Sweden*, Collective Complaint No. 12/2002, Decision on the merits of 15 May 2003**

"39. The Committee observes firstly that the fees deducted from the wages of workers pursuant to a collective agreement concluded between SBWU and the Swedish Construction Federation are, according to the collective agreement, for the

service of wage monitoring. The Committee considers that the system of wage monitoring may, depending upon national traditions, be assumed either by public authorities, or, on the explicit or implicit authorisation of the legislator, by professional associations or trade unions. In the latter case this could legitimately require the payment of a fee.

40. Consequently, the Committee considers that the payment of a fee to the trade union for financing its activity of wage monitoring cannot be regarded in itself as unjustified. It also considers that it cannot be regarded as an interference with the freedom of a worker to join a trade union as the payment of the fee does not automatically lead to membership of the SBWU and in addition is not required from workers members [who are members] of trade unions other than SBWU.

41. However, the Committee considers that doubts exist as to the real use of the fees and that, in the present case, if they were to finance activities other than wage monitoring, these fees would, on the grounds indicated in paragraph 29, be deducted, at least for a part, in violation of Article 5.

42. In the present case, the Committee is not in a position to verify the use of the fees and in particular to verify to what extent the fees are proportional to the cost of the service carried out and to the benefits wage monitoring confers on the workers. These are decisive factors in determining a violation of Article 5 with reference to paragraphs 39 and 40 or 41. The Committee considers therefore that it is for the national courts to decide the matter in the light of the principles the Committee has laid down on this subject or, as the case may be, for the legislator to enable the courts to draw the consequences as regards the conformity with the [European Social] Charter and the legality of the provisions at issue.

43. The Committee reserves the right to supervise the situation in practice through the reporting procedure and, as the case may be, the collective complaints procedure.

..."

Conclusions 2002, Romania, p. 126

"... According to the report, it is common for trade unions to impose the payment of a fee and 'the filling [out] of an application form or of an engagement' on non-members within the enterprise in consideration for negotiating a collective agreement. Supplementary information received from the government at the Committee's request indicates that the basis for this practice is the single national collective agreement 2001-2002, according to which the amount of the deduction should be no less than 0.3% of salary and no more than the amount of union dues. The Committee observes that by virtue of section 9 of [Law] no. 130/1996 on collective labour agreements, collective agreements apply to all workers in the enterprise, irrespective of their length of service or trade-union membership. In these circumstances, the imposition of a fee on workers who are not members of a trade union constitutes a union security practice that is contrary to the right to organise.

The Committee asks that the next report indicate clearly whether, in addition to paying a fee to the union, non-members are also required, as the report would seem to suggest, to apply for membership. ..."

Conclusions 2004, Romania, pp. 454-55

"... The Committee previously concluded that the situation in Romania was not in conformity with Article 5 because of the obligation on non-unionised workers to pay a fee to the trade union that had negotiated the applicable collective agreement, even though such agreements applied by law to all workers independently of whether or not they were members of a trade union (the situation is described in Conclusions 2002, p. 126).

The Committee has re-examined the situation in the light of the explanations in the report and of the principles it has laid down in Complaint No. 12/2002 (*Confederation of Swedish Enterprise v. Sweden*, decision on the merits of 15 May 2003, §§ 26-31). It notes firstly that the contribution helps to finance an activity that benefits all employees: negotiating collective agreements. Secondly, under the single national collective agreement for 2001-2002, on which the practice is based, the contribution is not obligatory and is not earmarked for a trade union. Finally there is no statutory provision for automatic affiliation to a trade union. The Committee therefore considers that the payment of this sum cannot in itself be regarded as an infringement of employees' right to join or not to join a trade union."

Conclusions XVIII-1, Hungary, p. 390

"... In its previous conclusion, the Committee asked if automatic deductions from all workers' wages, including those who were not unionised, were forbidden under the present legislation. The report states that according to rules on deducting trade-union dues, union dues are paid only by persons who are mandated to pay such dues, which means that they must be trade-union members.

Union dues can be paid in two ways. Union members may either pay their dues directly into the union account or ask their employers to deduct the dues from their wages, in which case the employer is required to comply. In 2002, parliament adopted legislation, with the support of the unions, requiring employers to deduct and transfer dues. Prior to that, deductions were only possible with the agreement of both employer and employee. The Committee considers that the procedure for deducting trade union contributions from wages at source may not be prohibited or made obligatory by national legislation. It must be made a criminal offence to use such a procedure for illegitimate purposes, for example to secure information on trade-union membership. ..."

B. International Labour Organization (ILO) standards

23. Information on the right of workers and employers to establish and join organisations of their own choosing may be found in Chapter 5 of the *Digest of Decisions and Principles* of the Freedom of Association Committee of the Governing Body of the ILO.

Under the subheading "Trade union unity and pluralism", it is pointed out, *inter alia*, that the fact that workers and employers generally find it in their interest to avoid a multiplication of the number of competing organisations would not be sufficient to justify direct or indirect

intervention by the State (see *Digest of Decisions and Principles*, 2006, paragraph 319). A monopoly situation imposed by law would be at variance with the principle of free choice of workers' and employers' organisations (ibid., paragraph 320). A government should neither support nor obstruct a legal attempt by a trade union to displace an existing organisation. Workers should be free to choose the union which, in their opinion, will best promote their occupational interests without interference by the authorities (ibid., paragraph 322). The imposition of an obligation on all the workers in the category concerned to pay contributions to a single national trade union, the establishment of which is permitted by branch of industry and by region, would not be compatible with the principle that workers should have the right to join organisations "of their own choosing" (ibid., paragraph 325).

24. Under the subheading "Favouritism or discrimination in respect of particular organisations", it is stated, *inter alia* (references in the *Digest of Decisions and Principles* added after each paragraph have been omitted here):

> "339. Considering the limited functions which, in one case, were by law open to certain categories of trade unions, the Committee felt that the distinction made between trade unions under the national legislation could have the indirect consequence of restricting the freedom of workers to belong to the organisations of their choosing. The reasons which led the Committee to adopt this position are as follows. As a general rule, when a government can grant an advantage to one particular organisation or withdraw that advantage from one organisation in favour of another, there is a risk, even if such is not the government's intention, that one trade union will be placed at an unfair advantage or disadvantage in relation to the others, which would thereby constitute an act of discrimination. More precisely, by placing one organisation at an advantage or at a disadvantage in relation to the others, a government may either directly or indirectly influence the choice of workers regarding the organisation to which they intend to belong, since they will undeniably want to belong to the union best able to serve them, even if their natural preference would have led them to join another organisation for occupational, religious, political or other reasons. The freedom of the parties to choose is a right expressly laid down in [ILO] Convention No. 87 [concerning freedom of association and the right to organise].
>
> ...
>
> 340. By according favourable or unfavourable treatment to a given organisation as compared with others, a government may be able to influence the choice of workers as to the organisation which they intend to join. In addition, a government which deliberately acts in this manner violates the principle laid down in [ILO] Convention No. 87 that the public authorities shall refrain from any interference which would restrict the rights provided for in the Convention or impede their lawful exercise; more indirectly, it would also violate the principle that the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in the Convention. It would seem desirable that, if a government wishes to make certain facilities available to trade-union organisations, these organisations should enjoy equal treatment in this respect.

...

341. In a case in which there was at the very least a close working relationship between a trade union and the labour and other authorities, the Committee emphasised the importance it attaches to the resolution of 1952 concerning the independence of the trade-union movement and urged the government to refrain from showing favouritism towards, or discriminating against, any given trade union, and requested it to adopt a neutral attitude in its dealings with all workers' and employers' organisations, so that they are all placed on an equal footing.

...

342. On more than one occasion, the Committee has examined cases in which allegations were made that the public authorities had, by their attitude, favoured or discriminated against one or more trade union organisations:

(1) ...

(2) unequal distribution of subsidies among unions ...

(3) ...

Discrimination by such methods, or by others, may be an informal way of influencing the trade-union membership of workers. It is therefore sometimes difficult to prove. The fact, nevertheless, remains that any discrimination of this kind jeopardises the right of workers set out in [ILO] Convention No. 87, Article 2, to establish and join organisations of their own choosing."

25. Chapter 8 of the *Digest of Decisions and Principles* contained the following principles regarding public financing and control of trade unions (references in the text added after each paragraph have been omitted here):

"466. The right of workers to establish organisations of their own choosing and the right of such organisations to draw up their own constitutions and internal rules and to organise their administration and activities presuppose financial independence. Such independence implies that workers' organisations should not be financed in such a way as to allow the public authorities to enjoy discretionary powers over them.

...

467. With regard to systems of financing the trade-union movement which made trade unions financially dependent on a public body, the Committee considered that any form of State control is incompatible with the principles of freedom of association and should be abolished since it permitted interference by the authorities in the financial management of trade unions.

...

470. A system in which workers are bound to pay contributions to a public organisation which, in turn, finances trade union organisations, constitutes a serious threat to the independence of these organisations.

...

473. Questions concerning the financing of trade union and employers' organisations, as regards both their own budgets and those of federations and confederations, should be governed by the by-laws of the organisations, federations and confederations themselves, and therefore, constitutional or legal provisions which require contributions are incompatible with the principles of freedom of association."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

26. The applicant complained that the imposition of an obligation by law to pay the industry charge to the Federation of Icelandic Industries ("the FII") violated his right to freedom of association under Article 11 of the Convention, the relevant parts of which read:

"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 ... for the protection of health or morals or for the protection of the rights and freedoms of others. ..."

In addition, the applicant relied on Articles 9 (right to freedom of thought, conscience and religion) and 10 (right to freedom of expression) of the Convention.

27. The Government disputed this contention.

28. The Court considers that this part of the application falls most suitably to be examined under Article 11 of the Convention, as interpreted in the light of Articles 9 and 10.

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

1. The parties' submissions

(a) The applicant

29. In the applicant's view, the negative aspect of the right to freedom of association should be considered on an equal footing with the positive aspect of that right. Any other conclusion would be illogical and would undermine the principle of freedom of association. Thus, the Court had correctly held that an obligation to join a particular trade union and to fund

its activities contrary to the negative aspect of the right to freedom of association "str[uck] at the very substance of the freedom of association guaranteed by Article 11" (see *Young, James and Webster v. the United Kingdom*, 13 August 1981, § 55, Series A no. 44, and *Sørensen and Rasmussen v. Denmark* [GC], nos. 52562/99 and 52620/99, § 54, ECHR 2006-I).

30. The applicant disputed the Government's contention that the present case involved a tax and not a membership fee and that therefore the negative aspect of the right to freedom of association had not been violated. While the Government recognised that a tax was a compulsory payment to the State to be used by the State in accordance with decisions taken in the public interest by the State, they failed to appreciate that the industry charge did not have these characteristics but was a payment to the FII collected on its behalf by the State. It was the FII which decided how to spend the funds it accrued in this way, guided by its policies and views and without regard to the views of the applicant and others who were obliged by law to contribute to its financing. For the reasons set out in particular in the opinion of the dissenting member of the Supreme Court, the applicant had been obliged through the compulsory payment of charges to be a member of the FII and/or to associate himself with others within the FII. Notwithstanding the compulsory character of the industry charge and the fact that FII members could have their charges deducted from their membership fees, the FII had reserved the right to deny the applicant and others like him membership.

31. The applicant further submitted that the disputed obligation to pay the industry charge adversely affected his enjoyment of his positive right to freedom of association. Article 11 § 1 protected the right to freedom of association with others, including the right to form and join a collective entity or association for the furtherance of the common interests of the members of the group. The imposition of the industry charge reduced the resources available to the applicant and others to form and to fund associations which promoted their views and interests. At the very least, there had been an interference with the positive right of the applicant, and others, voluntarily to associate with others in the promotion of their common interests and views. In this regard, the applicant relied on paragraphs 339 to 342 of the *Digest of Decisions and Principles* of the Freedom of Association Committee of the Governing Body of the ILO (see paragraphs 23 and 24 above). Any discrimination of the kind mentioned in those paragraphs, including favourable or unfavourable treatment of a given organisation as compared with others, jeopardised the rights of individuals to establish and join organisations of their own choosing.

32. In the applicant's view, it was clear that the FII, a private association, was placed at an advantage *vis-à-vis* other private associations. The industry charge was a tax levied to fund the activities of the FII. Neither

the Master Builders' Association ("the MBA") nor any other private organisation was the beneficiary of such a tax.

33. The applicant argued that protection of the freedom of thought in Article 9 and of the freedom of expression in Article 10 involved a freedom of choice. This implied that a person ought to enjoy a choice as to whether or not he or she would contribute towards the expenditure incurred by others in promoting and promulgating political views and whether or not to be grouped with others whose views he or she disagreed with or for purposes of which he or she disapproved. Thus, to compel a person to pay fees to an association, notwithstanding his or her objections to its policies, activities and views, and to contribute towards expenditure incurred by that association in promoting and promulgating those views would in itself interfere with that individual's Article 11 rights.

(b) The Government

34. The Government disputed that there had been any restriction on the applicant's right of association, as provided for in Article 11 of the Convention, with respect to either his right to form and join trade unions or his right not to belong to an association. The applicant was not a member of the FII and had not been coerced in any way into becoming a member. The applicant was only one of 10,000 – in a country with a population of 300,000 – who were subject to the industry charge. The amount of the industry charge was very low, constituting 0.08% of business turnover. It was not a membership fee but a tax imposed for a specific purpose laid down in statute, in the Industry Charge Act ("the 1993 Act"), namely to promote industry and industrial development in Iceland. Like other taxes, the charge was collected by the State. In accordance with the Act, the funds were disbursed to the FII, which was obliged to use them for the stated purpose. It should be stressed that, even though the FII was a non-governmental organisation, it had been given a clear and legally prescribed role in one aspect, which was to use the industry charge for the benefit of industry as a whole. This included the applicant as a self-employed individual.

35. While the FII worked specifically in the interests of its members, care was taken in its operations to maintain separate records of how revenues from the industry charge were used for the service of their particular interests, on the one hand, and for the common and overall interests of the entire industrial sector, on the other hand. The FII's use of funds derived from the industry charge had been subject to statutory conditions and effective public scrutiny. In this area, supervision was exercised in a manner fully complying with the requirements of transparency *vis-à-vis* persons who, like the applicant, paid the charge to the FII without being a member of it or otherwise affiliated to it. In this regard, the present case differed from that of *Evaldsson and Others v. Sweden*

(no. 75252/01, 13 February 2007). The fact that the FII granted its members who also paid the industry charge a discount on membership fees had no effect on the applicant's position. As a non-governmental organisation, the FII had been completely within its rights in deciding what arrangement should apply regarding its membership fees and, in doing so, it enjoyed protection under Article 11 against State interference.

36. The Government emphasised that the imposition of the industry charge was essentially different from the situation described by the ILO in its *Digest of Decisions and Principles* under the heading "Favouritism or discrimination in respect of particular organisations" (see paragraph 24 above). The tax revenues that were transferred to the FII could not be viewed as a form of State subsidy unevenly distributed to one employer association and not to others. On the contrary, they were meant to cover the costs of the official duties imposed on the FII to promote Icelandic industry and industrial development. The reason why no other employer association received revenues from the industry charge was that no other association had been assigned such duties. Thus, there could be no question of discrimination between the FII and the traditional employer associations in the sense envisaged by the ILO Committee.

37. In the Government's opinion, there was a fundamental difference between the situation at issue in the present case and that in previous judgments by the Court concerning the *negative* aspects of the freedom of association, notably *Young, James and Webster* (cited above), *Sigurður A. Sigurjónsson v. Iceland* (30 June 1993, Series A no. 264), and *Sørensen and Rasmussen* (cited above). Unlike in those cases, in the case at hand a refusal by the applicant to pay the industry charge would not have led to his losing his employment or his means of livelihood and would have had no bearing whatsoever on these aspects. What was involved was merely a tax, not a membership fee.

38. Had the applicant not paid the industry charge, he would have suffered no personal consequences from the point of view of either labour law or criminal law or been forced to close down his business under the special rules that applied to the collection of value-added taxes. Any arrears would have been the subject of ordinary collection measures employed by the tax authorities, namely recovery and attachment of the applicant's assets (Enforcement Measures Act, Law no. 90/1989) and the compulsory sale of those assets at an auction (Law no. 90/1991). Thus, the only consequences, if the applicant were to have refused to pay the industry charge, would have been financial pressure of the same type as that applied to taxes ordinarily. In any event, the charge levied on the applicant's operations was very low (0.08%), amounting to the equivalent of only 66 euros for the entire year 2004. Such a small sum could not constitute a financial burden for him and distinguished the present case from that of *Evaldsson and Others* (cited above).

39. The Government further disputed the applicant's submissions with regard to Articles 9 and 10 of the Convention. The FII had no political objectives relating to the functioning or the policies of any political parties. It had never declared support for any specific political party or established political affiliations, for example through funding, directly or indirectly. The Government therefore firmly rejected the applicant's unsubstantiated claims that the FII took part in political activities. The FII inevitably took part, at times, in public discussions in which the focus was on the interests of industry and how best to ensure a suitable operating environment for the sector. But this was irrespective of the political party or parties that happened to be in power at any given time. In this respect too, the applicant's situation differed from that of the applicants in *Young, James and Webster* and *Sørensen and Rasmussen* (both cited above), where there had been clear and openly declared affiliations between the trade unions to which they were obliged to belong and specific political parties.

40. Nor were the circumstances in the applicant's case comparable to those in *Chassagnou and Others v. France* ([GC], nos. 25088/94, 28331/95 and 28443/95, ECHR 1999-III). As the largest forum for the entire industrial sector in Iceland, the FII had evaluated and expressed an opinion on how the European Union served the broad interests of industry and how industry in European Union member States was ensured certain operating conditions in comparison with the situation in Iceland. However, this did not involve the adoption of a particular political view or convictions with which the applicant considered he had been associated contrary to his wishes. The FII was the representative of an extremely broad and disparate group of enterprises and employers across a wide range of categories of industry, in which the only policy was to work in the interests of industry as a whole, not to support the policy of any particular political party or parties or to take part in political activity.

41. In the light of the above, the Government submitted that the applicant's case did not involve a form of obligation which struck at the very substance of the rights guaranteed by Article 11. Nor did it follow from the Court's case-law that the negative aspect of the right to freedom of association should be considered on an equal footing with the positive aspect.

42. As to whether the obligation to pay the charge had any effect on the applicant's *positive* freedom of association, it was to be noted that it had no effect on his right to join a union or association of his choice. The MBA, of which he was a member, had not been bound by the collective agreements negotiated by the Confederation of Icelandic Employers, to which the FII was affiliated. Thus, the applicant's freedom to negotiate had not been threatened. Without any interference, the MBA was able to act in furthering the special interests of its members and to use membership fees paid by them for these purposes. The applicant's allegation that the FII's activities

were contrary to his own interests or convictions was unsubstantiated. Both the MBA and the FII were employers' associations and the applicant had not pointed to any interests of his that clashed with those of the FII in this respect. On the contrary, the interests of construction companies, like those of other industrial companies, coincided fully with those promoted by the FII. The applicant himself benefited from the FII's activities promoting Icelandic industry.

43. While the FII participated in public discussions on the operating conditions of Icelandic industry, including whether Icelandic membership of the European Union would be advantageous, the applicant remained free not to identify himself with FII opinions and to adopt his own position, as did the MBA.

44. Relying on the above considerations, the Government requested the Court to hold that there had been no interference with the applicant's rights under Article 11 of the Convention.

2. The Court's assessment

45. The Court reiterates that the right to form and to join trade unions is a special aspect of freedom of association and that the notion of a freedom implies some measure of freedom of choice as to its exercise (see *Young, James and Webster*, cited above, § 52). Accordingly, Article 11 of the Convention must also be viewed as encompassing a negative right of association or, put in other words, a right not to be forced to join an association (see *Sigurður A. Sigurjónsson*, cited above, § 35). Although an obligation to join a particular trade union may not always be contrary to the Convention, a form of such an obligation which, in the circumstances of the case, strikes at the very substance of the freedom of association guaranteed by Article 11 will constitute an interference with that freedom (see *Gustafsson v. Sweden*, 25 April 1996, § 45, *Reports of Judgments and Decisions* 1996-II; see also *Young, James and Webster*, cited above, § 55; *Sigurður A. Sigurjónsson*, cited above, § 36; and *Sørensen and Rasmussen*, cited above, § 54).

46. Furthermore, regard must also be had in this context to the fact that the protection of personal opinions guaranteed by Articles 9 and 10 of the Convention is one of the purposes of the guarantee of freedom of association, and that such protection can only be effectively secured through the guarantee of both a positive and a negative right to freedom of association (see *Chassagnou and Others*, cited above, § 103; *Young, James and Webster*, cited above, § 57; *Sigurður A. Sigurjónsson*, cited above, § 37; and *Sørensen and Rasmussen*, cited above, § 54).

In this connection, the notion of personal autonomy is an important principle underlying the interpretation of the Convention guarantees. This notion must therefore be seen as an essential corollary of the individual's freedom of choice implicit in Article 11 and confirmation of the importance

of the negative aspect of that provision (see *Sørensen and Rasmussen*, cited above, § 54).

47. In the present instance, the applicant, an employer in the building sector who was a member of the MBA, was under a statutory obligation under the 1993 Act to pay an industry charge to the FII, of which he was not a member and to which the MBA was not affiliated. A first issue to be determined is whether, as argued by the applicant but contested by the Government, this obligation was tantamount to compulsory membership adversely affecting the negative aspect of his freedom of association, namely his freedom not "to join" a professional organisation against his will, as interpreted in the Court's case-law.

48. The Court observes that the circumstances of the present case differ from those in the cases previously examined by it in that neither the applicant nor the MBA to which he belonged were obliged "to join" the FII in the sense of becoming members of the Federation. However, although the obligation to which the applicant was subject did not involve formal membership, it had an important feature in common with that of joining an association, namely that of contributing financially to the funds of the FII (ibid., § 63). This common feature could be seen as being reinforced by the fact that FII members who paid the industry charge were entitled to a reduction of their membership fees by an amount equivalent to the charge.

49. It is true that, in contrast to an association membership fee, the industry charge was not paid directly to the FII but indirectly through the State Treasury which, after the deduction of collection costs, transferred the sums received to the FII, where the sums were recorded separately from membership fees. Although the industry charge may in this respect be seen as having the characteristics of a dedicated tax, it was one of a special kind, being levied on a restricted group of persons and disbursed to a private-law association for use by the association without any significant involvement or control by public authorities.

50. It is further true, as pointed out by the Government, that the annual amounts which the applicant had to pay, calculated on the basis of his turnover at the statutory rate of 0.08%, were relatively modest and that any failure on his part to comply with the statutory obligation to pay the charge would have been met by civil or administrative sanctions only, including the recovery of any sums due by way of the attachment and sale of the applicant's assets. In this respect, the degree of obligation to which the applicant was subjected may be regarded as significantly less serious than that in certain other cases examined by the Court, where an applicant's refusal to join a union resulted in the loss of his employment or professional licence and, in consequence, his means of livelihood (see, for example, *Young, James and Webster*, cited above, § 55, and *Sigurður A. Sigurjónsson*, cited above, §§ 36-37). At the same time, the Court observes that much less serious consequences of a refusal to comply with the

requirement to join a union have similarly been found to be capable of striking at the very substance of the freedom of choice and personal autonomy inherent in the right of freedom of association protected by Article 11 of the Convention (see, for example, *Sørensen and Rasmussen*, cited above, § 61).

51. The fact remains that in the present case the applicant was obliged by statute financially to support a private-law organisation that was not one of his own choosing. It was also an organisation which advocated policies – notably accession to the European Union – which the applicant deemed to be fundamentally contrary to his own political views and interests. His complaint under Article 11 ought therefore to be considered in the light of Articles 9 and 10, the protection of personal opinion being also one of the purposes of the freedom of association guaranteed by Article 11 (see *Sørensen and Rasmussen*, cited above; *Sigurður A. Sigurjónsson*, cited above, § 37; and *Young, James and Webster*, cited above, § 57).

52. The Court further notes that, although the annual contributions involved may have been modest from an individual point of view, the systematic, extensive and continuous character of the industry charge scheme gave it a considerable impact. Involving no fewer than 10,000 entities paying charges to an organisation with little more than 1,100 members and generating the greater part of its funds (see paragraph 12 above), the scheme consisted of a large-scale system of finance accruing to one single recipient organisation, the FII. No other organisations, including the MBA, of which the applicant was a member, received funds derived from the industry charge. Unlike members of the FII, members of other organisations, such as the applicant, were not in a position to have the membership fees which they paid to their respective organisations reduced by the amounts that they had paid by way of the industry charge. Notwithstanding the Government's argument that the funds were used for the promotion and development of Icelandic industry as a whole, there can be no doubt that the FII and its members were treated more favourably than, for example, the MBA and its members, including the applicant.

53. In this connection, the Court has also had regard to the respective conclusions of the European Committee of Social Rights (in relation to Article 5 of the European Social Charter) and the Freedom of Association Committee of the Governing Body of the ILO (in relation to Convention No. 87 concerning freedom of association and the right to organise), from which it transpires that the imposition on non-union members of an obligation to pay fees to a trade union and government measures entailing favouritism towards or discrimination against a trade union may in certain circumstances be considered incompatible with the right to organise and the right to join an organisation of one's own choosing (see paragraphs 22-24 above).

54. In sum, the Court finds that the statutory obligation on the applicant to pay the industry charge impinged on the applicant's freedom of choice in his pursuit of his occupational interests as a trade-union member and amounted to an interference with the applicant's right to freedom of association as protected by paragraph 1 of Article 11.

B. Whether the interference was justified under paragraph 2 of Article 11

1. The parties' submissions

(a) The applicant

55. The applicant accepted that the requirement that he pay the industry charge was "prescribed by law" but disputed the Government's submission that the interference with his right to freedom of association pursued a legitimate aim.

56. Nor could the imposition of the industry charge on non-members like the applicant be considered necessary for the purposes of the second paragraph of Article 11 of the Convention, which Article ought to be interpreted in the light of Articles 9 and 10. There was no pressing and proportionate need to interfere with his (negative) right to freedom of association, his freedom of thought and freedom of expression, by requiring him to be a member of the FII and/or to associate with others within the FII through the payment of fees to the FII. These fees were used in part by the FII to incur expenditure in promoting and promulgating political views which were contrary to the views of the applicant and others like him, who were obliged to play a significant part in the FII activities through the payment of those compulsory fees to the FII, which he (and others) considered to be contrary to their own interests and the national interests. The Icelandic authorities could not show that there was no way to promote the interests of Icelandic industry, as represented by the FII, other than requiring him (and others) to pay the charge and thereby contribute to the expenditure incurred by the FII in promoting and promulgating views to which the applicant (and others) were opposed. In this connection, the applicant relied on the Court's judgment in *Evaldsson and Others* (cited above).

57. The applicant further stressed that the FII's decisions on how to spend the funds generated by the industry charge were taken without the involvement of any public authority. As the Government had affirmed in their letter of 15 February 2002 (quoted under "II" of the opinion of the dissenting member of the Supreme Court – see paragraph 19 above), the FII

enjoyed unrestricted power in deciding how the industry charge was to be allocated and the Ministry of Industry could not intervene.

58. Moreover, it was indisputable that the FII took part in political activities, such as campaigning in favour of Icelandic membership of the European Union.

59. Nor could it assist the Government's position that enforcement action to compel payment of the industry charge was taken by the State, not by the FII. Quite the contrary, it supported the applicant's case that while the industry charge was enforced and collected by the State, the compulsory fees were then transferred to the FII, which spent the funds as it saw fit without public supervision.

60. Contrary to what the Government suggested, the industry charge was not levied in the public or general interest but in the interests of a private association, the FII.

61. While the Government prayed in aid the Court's judgment in *Evaldsson and Others* (cited above), that ruling rather supported the applicant's position. Whereas the impugned duty of payment in the *Evaldsson and Others* case had been imposed under a collective labour agreement, the disputed obligation in the present case was imposed by statute, which meant that the position adopted in the former case applied with even greater force in the present case. Furthermore, in a similar way to the situation in *Evaldsson and Others*, there was a lack of information and transparency as to the monitoring activities and the way in which the funds had been spent by the FII.

62. Also, as in the former case, the applicant had to pay fees against his wishes to an organisation with a political agenda which he did not support. However, unlike the applicants in the former case, the applicant had not received any return on the fees paid in his case.

63. In the light of the above, it could not be said that the Icelandic authorities had struck a "fair balance" between the competing interests.

(b) The Government

64. In the event that the Court, notwithstanding the arguments above, should find that there had been an interference with the applicant's right to freedom of association as protected by paragraph 1 of Article 11, the Government argued that the interference fulfilled the conditions set out in the second paragraph. The industry charge was clearly prescribed by law and pursued the legitimate aim of "protection of the rights and freedoms of others". At the same time, it should be noted, by serving the purpose of promoting one of the most vital sectors of the Icelandic economy, the industry charge also served important public interests.

65. As to the necessity of the interference, the Government stressed that the legislature had considered that the objective of promoting Icelandic industry could best be achieved by entrusting this role to the FII, subject to

public supervision in accordance with the law, and by allocating the funds derived from the industry charge to this single organisation rather than dispersing them between many smaller ones. The FII was an umbrella federation embracing a wide variety of enterprises, individuals and associations in all branches of industry, for the purpose of working together with the Government towards this objective. The FII defended the interests of all types of industry, both in Iceland and abroad, exerting influence on policies of the Government and financial institutions, State bodies and other parties involved in industrial operations. This was with the aim of ensuring that Icelandic companies had a working environment that enabled them to be competitive in domestic and foreign markets, without hindrance and in a profitable manner.

66. Having regard to the various arguments set out above to the effect that no interference with the applicant's right to freedom of association had occurred (see paragraphs 34-44 above), the Government submitted in any event that the industry charge had not entailed a disproportionate interference with his right. The industry charge by no means constituted a heavy burden on the applicant but only a tiny proportion (0.08%) of his turnover. On this score, the case differed from *Evaldsson and Others* (cited above).

67. Pursuant to section 3 of the 1993 Act, the legislature had entrusted the executive with monitoring in order to ensure that the funds were used in the public interest as provided for by the Act and for the benefit of the industrial sector as a whole. This was done in an entirely transparent manner and also in this respect the case was to be distinguished from *Evaldsson and Others* (cited above). Moreover, since the revenues in question were public funds, the Office of the Auditor-General had full authority to investigate the FII's operations and accounts.

68. The Government moreover submitted that, in its decision of 15 May 2003 in the case of *Confederation of Swedish Enterprise v. Sweden* concerning a wage-monitoring fee deducted from the wages of workers who were not members of the trade union in question, the European Committee of Social Rights had interpreted Article 5 of the European Social Charter in a manner that only served to support the Government's position in the present case. Four main points of special significance for the present case could be inferred from that case. Firstly, a fee could be imposed by law or even by a collective agreement when it was intended to serve substantial interests of all the workers in the occupation involved. Secondly, and very importantly, the payment of a fee which was made over to a specific association did not automatically entail obligatory membership. Thirdly, the sums raised by the collection of fees must be used for the purposes for which they were intended. Fourthly, the size of the fee should not be disproportionate in terms of the services provided by the association. All the

conditions set forth in the *Confederation of Swedish Enterprise* case were met in the present case.

69. Furthermore, the imposition of the industry charge was fundamentally different from the situation described in the ILO *Digest of Decisions and Principles* regarding "Favouritism or discrimination in respect of particular organisations". The tax revenues transferred to the FII could not be viewed as any form of State subsidies, leading to unequal distribution of subsidies among employers' associations. The Government stressed that these revenues were meant to cover the cost of the official duties imposed upon the FII to promote Icelandic industry and industrial development. No other employers' association in the field of industry in Iceland received such revenues, owing to the undisputed fact that no other association had comparable legally prescribed duties. Accordingly, the Government firmly denied that any discrimination was taking place between the FII and traditional employers' associations within the meaning of ILO standards.

70. Should the Court find that the impugned industry charge arrangement was incompatible with Article 11, this would constitute a major departure in the interpretation of the effect and scope of that provision. It would also have far-reaching consequences undermining the freedom of action necessary for the Contracting States to enjoy in matters of tax collection and also their freedom to choose methods for achieving political goals in such important areas as supporting and encouraging development in their occupational sectors.

2. The Court's assessment

71. The Court will next examine whether the obligation to pay the industry charge fulfilled the conditions set out in the first sentence of Article 11 § 2 of the Convention.

72. It was undisputed that the first condition, namely that the measure should be "prescribed by law", was fulfilled. The obligation to pay the industry charge clearly had a basis in sections 1 to 3 of the 1993 Act. While noting the finding by the minority of the Supreme Court that the obligation was incompatible with Article 74 § 2 of the Constitution, the Court finds no reason to question the majority's finding to the effect that the industry charge was in conformity with national law. It is in the first place for the domestic authorities, notably the courts, to interpret and apply the domestic law (see *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 86, ECHR 2005-VI; *Wittek v. Germany*, no. 37290/97, § 49, ECHR 2002-X; *Forrer-Niedenthal v. Germany*, no. 47316/99, § 39, 20 February 2003; and *Former King of Greece and Others v. Greece* [GC], no. 25701/94, § 82, ECHR 2000-XII). Thus, the Court is satisfied that the interference was "prescribed by law".

73. As regards the second condition, the Court disagrees with the applicant that the industry charge failed to pursue a legitimate aim. Pursuant to section 3 of the 1993 Act, the revenues from the charge were to "be used to promote industry and industrial development in Iceland". In the Court's view, the measure pursued the legitimate aim of protection of the "rights and freedoms of others".

74. As to the third condition, the Court reiterates that the test of necessity in a democratic society requires it to determine whether the interference complained of corresponded to a "pressing social need", whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it are relevant and sufficient (see, for instance, *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 47, *Reports* 1998-I).

75. In the area of trade union freedom, in view of the sensitive character of the social and political issues involved in achieving a proper balance between the respective interests of labour and management, and given the wide degree of divergence between the domestic systems in this field, the Contracting States enjoy a wide margin of appreciation as to how the freedom of trade unions to protect the occupational interests of their members may be secured (see *Swedish Engine Drivers' Union v. Sweden*, 6 February 1976, § 39, Series A no. 20; *Gustafsson*, cited above, § 45; *Schettini and Others v. Italy* (dec.), no. 29529/95, 9 November 2000; *Wilson, National Union of Journalists and Others v. the United Kingdom*, nos. 30668/96, 30671/96 and 30678/96, § 44, ECHR 2002-V; and *Sørensen and Rasmussen*, cited above, § 58).

76. This power of appreciation is not, however, unlimited but goes hand in hand with European supervision by the Court, whose task it is to give a final ruling on whether a restriction is reconcilable with freedom of association as protected by Article 11. The Court's task in exercising its supervisory function is not to take the place of the national authorities, but rather to review under Article 11, in the light of the case as a whole, the decisions taken pursuant to their power of appreciation (see *United Communist Party of Turkey and Others*, cited above, § 47).

77. Turning to the particular circumstances of the present case, the Court has taken note of the Government's argument that the Icelandic legislature had considered that the objective of promoting Icelandic industry could best be achieved by entrusting this role to the FII, subject to public supervision in accordance with the law, and by allocating the funds derived from the industry charge to this single organisation rather than dispersing them between many smaller ones. In the Government's submission, the FII was a broad federation embracing a wide variety of enterprises, individuals and associations in all branches of industry, working together with the Government towards this objective. The FII defended the interests of all types of industry, both in Iceland and abroad, exerting influence on policies

of the Government and financial institutions, State bodies and other parties involved in industrial operations. This was to ensure that Icelandic companies had a working environment enabling them to be competitive in domestic and foreign markets. The Court accepts that these were relevant considerations for the purposes of the necessity test under Article 11 § 2.

78. As to the further issue of whether the reasons were also sufficient, the Court observes that the FII's role and duties in respect of the use of the revenues from the industry charge were defined in very broad and unspecific terms in section 3 of the 1993 Act: "to promote industry and industrial development in Iceland." That was also the case as regards its section 3 duty to "provide an annual report to the Ministry of Industry on the use of the revenues". Neither the 1993 Act nor any other instrument drawn to the Court's attention set out any specific obligations *vis-à-vis* non-members who financially contributed to the FII by their payment of the industry charge (compare, *mutatis mutandis*, *Evaldsson and Others*, cited above, § 57).

79. While the FII's annual reports to the Ministry of Industry contained information on the proportion of the industry charge in the FII's revenues and its expenditures in respect of the different items and sub-items, the Court observes that, as noted by the dissenting member of the Supreme Court, the FII did "not keep separate accounts of whether individual elements of the Federation's operations [were] financed by monies derived from membership fees, capital income, or the industry charge" (see under "II" at paragraph 19 above).

80. Nor is the Court convinced that the FII's reporting to the Ministry of Industry involved substantial and systematic supervision by the latter. According to the Minister's comments to the MBA of 15 February 2002 (quoted by the dissenting member of the Supreme Court under "II" at paragraph 19 above), "[a]s can be clearly seen from the Industry Charge Act, the FII has the unrestricted power to decide how the charge is allocated, and the Ministry of Industry cannot interfere with this as long as it remains within the framework of the law".

81. What matters in the present instance is the lack of transparency and accountability towards non-members, such as the applicant, who are obliged financially to support the FII through their payment of the industry charge (see, *mutatis mutandis*, *Evaldsson and Others*, cited above, §§ 63 and 64).

82. Accordingly, the Court observes that not only did the relevant national law define the FII's role and duties in an open-ended manner and fail to set out specific obligations for the FII, there was also a lack of transparency and accountability, *vis-à-vis* non-members such as the applicant, as to the use of the revenues from the industry charge. In these circumstances, the Court is not satisfied that there were adequate safeguards against the disputed arrangement giving the FII a more favourable standing

in its pursuit of the specific interests of its members and placing the applicant and other non-members like him at a disadvantage.

83. Having regard to the above considerations, the Court does not find that the restriction on the applicant's freedom of association entailed by the obligation to financially support the FII contrary to his own opinions was supported by sufficient reasons and was "necessary". Notwithstanding Iceland's margin of appreciation, the authorities of the respondent State failed to strike a proper balance between the applicant's freedom of association on the one hand and the general interest in promoting and developing Icelandic industry on the other hand.

84. Accordingly, there has been a violation of Article 11 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLE 1 OF PROTOCOL No. 1 AND ARTICLE 14 OF THE CONVENTION

85. With reference mainly to those arguments summarised above in relation to his complaint under Article 11 of the Convention (viewed in the light of Articles 9 and 10) the applicant also alleged a violation of Article 1 of Protocol No. 1. In his view, the imposition of the industry charge amounted to a deprivation of his possessions in breach of Article 1 of Protocol No. 1. It was inconceivable that the industry charge paid to the FII under the guise of taxation could be viewed as justified in the general interest. Those who, like him, paid the charge were taxed separately, in excess of such other taxes as were imposed on taxpayers generally, without any relevant reasons being given, for instance a requirement that the tax be used for their benefit. This taxation of a restricted group for the benefit of another restricted group or in the interests of others could not be justified. For the reasons stated in paragraphs 56, 61 and 62 above in the context of Article 11, the Court's judgment in *Evaldsson and Others* (cited above) supported his position.

86. The applicant further alleged violations of Article 14 taken in conjunction with the former provisions. The differential treatment between him and those public-sector enterprises, partly or fully owned by the State, and also certain private-sector businesses, that were exempted from the duty to pay the industry charge could not be deemed justified by any objective and reasonable considerations. The favourable treatment of the FII compared with other organisations was yet further evidence of the discriminatory nature of the industry charge.

87. The Government disputed that the imposition of the industry charge constituted deprivation of property, though they accepted that it involved a control of the use of his property and maintained that this was permitted under the second paragraph of Article 1 of Protocol No. 1. They stressed that the imposition of the industry charge bore all the features of taxation as

interpreted in Icelandic law and should be regarded as falling within the term "taxes" as used in the second paragraph of Article 1 of Protocol No. 1. The impugned interference fell within the wide margin of appreciation accorded to States in this area. The industry charge was clearly lawful and served the interests not only of those who worked in the industrial sector but also the general interest of the community as a whole. For the reasons summarised in paragraphs 66 and 67 above in relation to the Article 11 complaint, the Government invited the Court to distinguish the present case from *Evaldsson and Others* (cited above).

88. The Government further denied the existence of discrimination between industries that were obliged to pay the industry charge and those that were not. The rules on the levying of the industry charge applied equally to all entities that were in the same position as the applicant.

89. The Court, in the light of its findings above with regard to the complaint under Article 11 of the Convention, does not find it necessary to review the complaints under Article 1 of Protocol No. 1 on its own or under Article 14 taken in conjunction with the former and with Article 11.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

90. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Costs and expenses

91. The applicant stated that he would not seek an award for pecuniary and non-pecuniary damage but he requested the reimbursement of legal costs and expenses, in sums totalling 3,920,773 Icelandic krónur (ISK) and 36,392.07 pounds sterling (GBP) (approximately 22,000 euros (EUR) and EUR 42,000) for services provided by Mr Einar Hálfdánarson and Mr Child respectively, covering the following claims submitted on 28 February 2008 and 20 March 2009:

(a) ISK 1,494,000 for Mr Einar Hálfdánarson's work in representing the applicant before the domestic courts (inclusive of value-added tax);

(b) GBP 25,860 for Mr Child's legal advice in the domestic proceedings and his representation of the applicant before the Strasbourg Court until 28 February 2008;

(c) ISK 314,985 for translation costs;

(d) ISK 281,925 for travel expenses;

(e) ISK 35,863 for photocopying and transcripts (ISK 34,363 and ISK 1,500 respectively);

(f) ISK 1,494,000 for Mr Einar Hálfdánarson's work in the Strasbourg proceedings after 28 February 2008;

(g) ISK 300,000 for various expenses incurred by the latter after 28 February 2008;

(h) GBP 9,500 for further work by Mr Child in the Strasbourg proceedings after 28 February 2008;

(i) GBP 1,032.07 for the latter's expenses (accommodation, travel and translation) incurred after 28 February 2008.

92. As to the claims for items (a) and (b), which had been submitted on 28 February 2008, the Government objected to them, arguing that the legal fees for two lawyers in the Strasbourg proceedings were excessively high, both in terms of the number of hours indicated and the hourly rate charged. Item (d) had not in the Government's opinion been necessarily incurred. The claims for items (f), (g), (h) and (i), submitted on 20 March 2009, had not been accompanied by a detailed breakdown or any other particulars and also seemed excessive.

93. The Court will consider the above claims in the light of the criteria laid down in its case-law, namely whether the costs and expenses were actually and necessarily incurred in order to prevent, or obtain redress for, the matter found to constitute a violation of the Convention and were reasonable as to quantum. In the present case, the Court considers that the claims for items (a) and (b) should be awarded in their entirety, as should those for items (c) and (e). The expenses in respect of item (d) do not appear to have been necessarily incurred and that claim must therefore be rejected. No vouchers or particulars have been submitted in support of items (f) to (i), incurred after 28 February 2008 up to and including the oral hearing on 24 March 2009, and the additional fees do not in any event appear reasonable as to quantum. The Court is nevertheless prepared to accept that some of the additional expenses and fees claimed were actually and necessarily incurred for the applicant's legal representation at the oral hearing before the Court. Regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant EUR 15,000 for Mr Child's work and EUR 10,000 for Mr Einar Hálfdánarson's work and EUR 1,000 and EUR 3,000 for their respective expenses.

B. Default interest

94. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 11 of the Convention;

2. *Holds* that it is unnecessary to examine the applicant's complaints under Article 1 of Protocol No. 1 on its own or in conjunction with Article 14 or under Article 14 taken in conjunction with Article 11;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 16,000 (sixteen thousand euros) in respect of the costs and expenses claimed by Mr Child and EUR 13,000 (thirteen thousand euros) in respect of those claimed by Mr Einar Hálfdánarson, to be converted respectively into pounds sterling and the national currency of the respondent State at the rates applicable at the date of settlement, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Nicolas Bratza
Deputy Registrar	President