



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

Information Note on the Court's case-law 262

May 2022

Vlahov v. Croatia - 31163/13

Judgment 5.5.2022 [Section I]

Article 11

Article 11-1

Freedom of association

Criminal conviction of trade union representative, for refusing to admit would-be members to join, not necessary in a democratic society: *violation*

Facts – The applicant, a representative of a local branch of the Croatian Customs Officers' Trade Union at the relevant time, was criminally convicted after he refused the applications of fifteen individuals to join the trade union. The applicant appealed against the conviction unsuccessfully.

Law – Article 11:

The applicant's criminal conviction had amounted to an interference which had been prescribed by law. The Court proceeded on the assumption that it had had the aim of protection of the rights and freedoms of others, namely the fifteen would-be members, to exercise their right of association without undue hindrance.

The Court therefore had to determine whether the interference had been necessary in a democratic society. The question that arose in the present case concerned the extent to which the State could intervene to protect the would-be trade union members from the hindrance of their right to associate, taking into account the applicant's rights and those of the trade union, which he at the relevant time had represented, to control their membership by deciding with whom they wanted to associate.

The trade union in question operated as an independent and autonomous trade union designed to protect the employment rights and interests of customs officers. It had no public powers and its membership was purely on a voluntary basis. Its major source of income was membership fees, and it received no direct financial support from the State or other public funds. It was also not the only trade union representing customs officers, and there was no closed shop agreement in that area. The particular branch of the union which the applicant had represented had been a relatively small organisation comprising some thirty members at the relevant time.

As there was no closed shop agreement, it was not apparent that the fifteen would-be members had suffered, or had been liable to suffer, any particular detriment or hardship in terms of their livelihood or their conditions of employment owing to their inability to join the applicant's trade union at the relevant time. They had been free to join the other existing trade union and/or establish their own or to protect their rights through legal proceedings concerning the conditions of employment. There was therefore nothing to

suggest that they had been at any individual risk of, or unprotected from, possible adverse actions by the employer.

There was also no indication that the would-be members had been subject to discriminatory treatment by the applicant. Nor had any issue arisen as regards the rules and Statute of the union itself. Rather, a dispute arose over the question whether the applicant had acted in an abusive and unreasonable manner in breach of the union rules when refusing to admit the would-be members. In particular, the Government had argued that the applicant had acted contrary to the Statute of the relevant trade union when refusing to admit the would-be members.

There had been no authoritative guidance on how to interpret the trade union internal rules on the admission of new members, as provided for in its internal regulations. At the same time, the domestic courts' reasoning had been very succinct and had not elaborated on the considerations related to the applicant's compliance with the relevant rules and the Statute, seen in the light of the relevant domestic law and the requirements of Article 11.

In particular, the Statute had provided no specific requirements for the admission of new members. The applicant had eventually, albeit after the change in the membership of the union, been removed from his position of trade union representative by a great majority of the vote of the members. However, there had been nothing to suggest at the relevant time that he had not represented the interests of the union or of other members of the union branch, who had not instituted any action against him under domestic law after he had informed them of the refusal to admit the would-be members. Indeed, according to the internal union regulations and Statute, the applicant's position had included taking actions to represent the union and to protect the interests of its members.

Moreover, there had been established procedures allowing the would-be members to eventually join the trade union, and the applicant's actions had not been intended to deny their admission as such, but to delay the decision on extension of membership until an upcoming ordinary annual assembly of the union. In that connection, it had not been suggested that the applicant had had institutional or other power to decide for the assembly whether the membership would be extended, or to prevent the admission of new members contrary to the decision of the assembly, which was the highest body of the union. However, the domestic courts had not explained how those considerations related to the applicant's conduct when refusing the admission of the would-be members.

In that connection, the domestic courts had refused the applicant's proposal to take further evidence, something which arguably could have shed light on the circumstances in which the would-be members had wanted to join the trade union. In so doing, the courts had merely noted that his request had been irrelevant, which, given the circumstances, could not be considered a properly reasoned decision.

Conclusion: violation (unanimously).

Article 41: EUR 5,000 in respect of non-pecuniary damage.

(See also *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom*, 11002/05, 27 February 2007, [Legal Summary](#))

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