



## Conviction of trade-union representative for refusing members breached the European Convention

In today's **Chamber judgment**<sup>1</sup> in the case of **Vlahov v. Croatia** (application no. 31163/13) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 11 (freedom of association)** of the European Convention on Human Rights.

The case concerned the right of trade unions to control their membership *vis-à-vis* the right to freedom of association of would-be members. The applicant, a trade-union representative, complained that he had been convicted in 2010 of preventing 15 would-be members from joining his union.

The Court reiterated certain principles in its case-law under Article 11, notably that trade unions had the right to control their membership, but that a balance had to be achieved to ensure fair treatment and to avoid abuse of a dominant position.

It found that the domestic courts had not explained, in the light of those principles, how it could be considered that the applicant had acted in an abusive manner when refusing the memberships. In particular, the decisions had lacked detail, and had not elaborated on the applicant's argument that he had the right as trade-union representative to take actions to protect the interests of the existing members, who had not wished to extend membership at the time, and dismissing as irrelevant his request to hear evidence from witnesses to an internal dispute within the union.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

### Principal facts

The applicant, Goran Vlahov, is a Croatian national who was born in 1959 and lives in Šibenik (Croatia).

At the beginning of 2007 Mr Vlahov was representative for the Šibenik branch of the Croatian Customs Officers' Trade Union ("the CSH"). The CSH was one of two trade unions operating within the Šibenik Customs Office and was a relatively small organisation of some 30 members at the time, with membership being purely on a voluntary basis.

Between 3 January and 16 February 2007 Mr Vlahov refused the applications of 15 employees of the Šibenik Customs Office. He explained the decision in a letter addressed to those concerned within the customs office, saying that he was acting in agreement with other members of the trade union not to extend membership of the CSH.

At the same time, however, the president of the CSH, who had had disagreements with Mr Vlahov as to the governance of the trade union, enrolled the 15 would-be members. At an extraordinary general meeting in March Mr Vlahov's refusal to accept the 15 members was discussed and it was decided to remove him as trade-union representative.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

The CSH subsequently lodged a criminal complaint against Mr Vlahov under Article 109 of the Criminal Code on charges of preventing 15 would-be members from joining the trade union.

The Municipal Court found him guilty as charged in September 2010 and gave him a four-month suspended prison sentence. The court found in particular that the applicant had acted contrary to the Constitution, the relevant domestic law and the statutes of the CSH. It also dismissed as irrelevant his request for three witnesses to be questioned.

This reasoning was endorsed by the County Court in December 2010 and by the Constitutional Court in October 2012.

## Complaints, procedure and composition of the Court

Relying on Article 11 (freedom of association), Mr Vlahov complained that his conviction had been arbitrary and excessive, submitting that he had acted in the interests of the existing members of the trade union, who had not wished to extend membership at the time.

Also relying on Article 6 §§ 1 and 3 (d) (right to a fair trial/right to obtain attendance and examination of witness), he alleged that the criminal proceedings against him had been unfair because his proposal to hear certain witnesses for the defence had been dismissed.

The application was lodged with the European Court of Human Rights on 23 April 2013.

Judgment was given by a Chamber of seven judges, composed as follows:

Marko **Bošnjak** (Slovenia), *President*,  
Péter **Paczolay** (Hungary),  
Krzysztof **Wojtyczek** (Poland),  
Alena **Poláčková** (Slovakia),  
Erik **Wennerström** (Sweden),  
Raffaele **Sabato** (Italy),  
Davor **Derenčinović** (Croatia),

and also Renata **Degener**, *Section Registrar*.

## Decision of the Court

### Article 11

Firstly, the Court considered that Mr Vlahov's conviction had amounted to an interference with the right of trade unions – as associations formed by people – to control their membership, as guaranteed under Article 11 of the Convention.

It was, furthermore, prepared to accept that that interference had been prescribed by law, namely Article 109 of the Criminal Code, and that it had aimed to protect the would-be trade-union members' right to exercise freedom of association.

It found, however, that the domestic courts' decisions had lacked proper reasoning. The decisions had lacked detail and had failed to elaborate, in the light of the relevant principles under Article 11 of the Convention, on the applicant's compliance with the trade union's internal regulations and statutes, on the fact that the applicant had had the right at the time as trade-union representative to take actions to protect the interests of its members and on the internal dispute in the CSH and its possible effects.

Moreover, the courts had refused the applicant's request to take further evidence, without a properly reasoned decision.

In any case, the Court found that the would-be members had not apparently suffered any identifiable hardship as there had been no closed-shop agreement. Furthermore, they had been free to join the other trade union or to bring legal proceedings concerning their conditions of employment.

Nor could the Court find any discriminatory motive behind the applicant's actions. Indeed, he had not intended to deny the would-be members' admission as such but to delay the decision on extending the union's membership until an upcoming annual general meeting.

The Court found that the interference complained of had not been necessary in a democratic society and therefore held that there had been a violation of Article 11 of the Convention.

#### [Article 6 §§ 1 and 3 \(d\)](#)

Given the findings under Article 11, the Court held that there was no need to examine the complaint under Article 6 §§ 1 and 3 (d).

#### [Article 41 \(just satisfaction\)](#)

The Court held that Croatia was to pay the applicant 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 53 in respect of costs and expenses.

*The judgment is available only in English.*

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