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

Press Release
issued by the Registrar of the Court

ECHR 207 (2018)
07.06.2018

Court rejects complaint about restrictions on the right to strike and compulsory arbitration

In its decision in the case of **Association of Academics v. Iceland** (application no. 2451/16) the European Court of Human Rights has unanimously declared the application inadmissible as being manifestly ill-founded. The decision is final.

The case concerned restrictions on the right to strike and the introduction of compulsory arbitration.

Relying on Article 11 of the European Convention on Human Rights, the applicant association, which represented 18 of its member unions, many in the health-care sector, complained that the Icelandic State had violated its members' right to freedom of assembly and association by passing an Act in June 2015 which prohibited strikes that had been going on for several months during a period of collective bargaining. The law also provided for a binding decision on employment terms by an arbitration tribunal.

Among other findings, the Court held that taking account in particular of the assessment made by the domestic courts of the effects of the strike on the health-care sector, the measures could be regarded as "necessary in a democratic society",

It noted that the member unions had in fact been able to exercise two of the essential elements of freedom of association, namely the right for a trade union to seek to persuade the employer to hear what it had to say and the right to engage in collective bargaining.

The Court agreed with the overall assessment of the Icelandic Supreme Court in the case and found the application association's complaints to be manifestly ill-founded and thus inadmissible.

Principal facts

The applicant, the Association of Academics (*Bandalag háskólamanna*), is an association of trade unions of university graduates in Iceland. It includes many employees in the health sector.

After unsuccessful negotiations with the State on a new collective agreement, 17 of the association's 18 member unions voted in March 2015 to take strike action, which began in April 2015.

In June 2015, Parliament passed an Act prohibiting further strikes and any work stoppages by the association's member unions and the Nurses' Association. The Act also provided for a binding decision on employment terms, including wages, to be taken by an arbitration tribunal if a collective agreement was not signed by the parties by 1 July 2015. In August, the tribunal, appointed by the Supreme Court, extended the existing collective agreement for two years with certain amendments.

In the meantime, the Association of Academics challenged the Act before the domestic courts. However, both the District Court of Reykjavik and, on appeal, the Supreme Court, on 13 August 2015, found for the State.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 21 December 2015.

Relying on Article 11 (freedom of assembly and association), the applicant association alleged in particular that by passing the Act, the State had rendered the member unions' right to protect the interest of their members illusory and had restricted the rights and freedoms under Article 11 of all

the member unions in an unjustified and disproportionate manner. Alternatively, it complained that the Government had restricted the rights and freedoms under Article 11 of the member unions that were not, at the time, engaged in collective action. Lastly, it submitted that the Icelandic Supreme Court had not examined the case in accordance with the Court's case-law.

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

Paul **Lemmens** (Belgium), *President*,
Robert **Spano** (Iceland),
Ledi **Bianku** (Albania),
Nebojša **Vučinić** (Montenegro),
Valeriu **Griţco** (the Republic of Moldova),
Jon Fridrik **Kjølbro** (Denmark),
Stéphanie **Mourou-Vikström** (Monaco),

and also Stanley **Naismith**, *Section Registrar.*

Decision of the Court

Article 11

The Court reiterated that any interference with the right to freedom of association had to be "necessary in a democratic society". However, it saw no reason to question the domestic courts´ finding regarding the necessity of the impugned measures.

In its assessment, based on evidence, the Supreme Court found that the restrictions had been necessary as there had been a serious threat to public safety and the rights of others, namely the right to health care. Furthermore, it took into account the fact that the applicant association's union members had been able to take strike action for between 11 and 67 days before they were restricted and that the Act did not restrict the member unions´ rights immediately. It found that the parties had exhausted all attempts to conclude the dispute with a collective agreement at the time the Act was passed.

The Court saw no reason to disagree with the domestic assessment and noted that the member unions had in fact been able to exercise two of the essential elements of freedom of association, namely the right for a trade union to seek to persuade the employer to hear what it had to say and the right to engage in collective bargaining. Even if the outcome of the strikes had not been the desired one, this did not mean that their rights under Article 11 were illusory.

The Court agreed with the Supreme Court´s finding that the disputed Act did not go further than necessary. The Court found that, in the circumstances of the case, the national courts, namely the Supreme Court, had weighed the interests at stake by applying the principles laid down in the Court's case-law, had acted within its discretion ("margin of appreciation") and had struck a fair balance between the measures imposed and the legitimate aim pursued. The Court therefore concluded that the application was manifestly ill-founded and unanimously declared it inadmissible.

The decision is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.