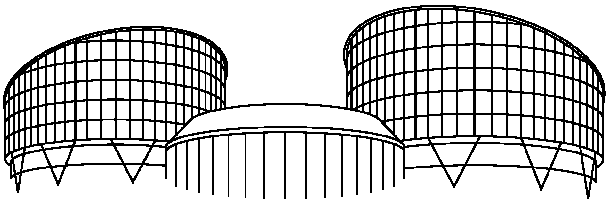

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

251658240

FOURTH SECTION

DECISION

Application no. 22897/08
ÁSATRÚARFÉLAGID
against Iceland

The European Court of Human Rights (Fourth Section), sitting on 18 September 2012 as a Chamber composed of:

Lech Garlicki, *President,*
David Thór Björgvinsson,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Vincent A. de Gaetano, *judges,*

and Lawrence Early, *Section Registrar,*

Having regard to the above application lodged on 23 April 2008,

Having regard to the decision of 7 July 2011,

Having deliberated, decides as follows:

## THE FACTS

1. The applicant, Ásatrúarfélagið, is a religious association which was established in 1972 and registered in 1973. Its seat is in Reykjavík, Iceland. The applicant association was represented before the Court by Mr Ragnar Aðalsteinsson, a lawyer practising in Reykjavík.

## A. The circumstances of the case

2. The facts of the case, as submitted by the applicant association, may be summarised as follows.

### *1. General background*

3. The applicant is a religious association which was registered in May 1973 in accordance with the Act on Registered Religious Associations No. 108/1999. The stated purpose of the applicant association was, among other things, to honour the ways of the old Nordic Gods. In 2007 it was one of twenty-eight registered religious associations in Iceland with 1,149 members, which amounted to 0.4% of the population.

4. According to Article 63 of the Icelandic Constitution and section 1 of the Act on Registered Religious Associations, all persons had the right to form religious associations and to practise their religion in conformity with their individual convictions.

5. According to Article 62 of the Icelandic Constitution, the Evangelical Lutheran Church was the National Church of Iceland and the State was to protect and support it as such. In 2007 it had 252,461 members, which amounted to 81% of the population. Act No. 78/1997 on the Position, Administration and Procedures of the National Church established a legislative framework for the National Church and stated, among other things, that the National Church was a religious association based on the Evangelical Lutheran faith and that it was independent of the State, within statutory limits.

### *2. Funding of the National Church and other religious associations*

6. In accordance with the relevant legislation, the State collects, through the general tax system, a fixed amount, the so-called parish charge, from every person aged sixteen or older and allocates the funds so collected to the religious organisation to which he or she belongs (sections 2 and 3 of the Act on Parish Charges, etc. No. 91/1987). Accordingly, the applicant association receives this amount for each of its members sixteen years of age and older. The same applies to the National Church and every other registered religious organisation.

7. Moreover, the State allocates from the State budget specific funding to the National Church. This includes a contribution to the Church Affairs Fund and to the Parish Equalisation Fund, the level of which represents respectively 11.3 and 18.5 per cent of the amounts of parish charges collected from the members in accordance with the above system. These payments are derived from income taxes and are distributed in this manner in accordance with statutory law, i.e. the abovementioned Act on Parish Charges etc. and the Act on the Church Affairs Fund No. 138/1993.

8. In addition, the State provides funding, *inter alia* for the payment of the salaries of certain ministers of the National Church and of the employees of the Bishop's Office. Furthermore, the State makes an annual contribution to the National Church, which together with its statutory and other sources of revenue, is supposed to be sufficient for its operation, (see the abovementioned Act on the Position, Administration and Procedures of the National Church).

*3. The Parish Equalisation Fund and the Church Affairs Fund*

9. The Parish Equalisation Fund was solely intended for the parishes of the National Church and the role of the fund, according to section 6 of the Act on Parish Charges etc., was to provide grants to the churches within the National Church which had a special status, to attempt to even the position among the parishes and to strengthen the position of those where the parish charges were insufficient to cover necessary expenses. Moreover, the fund was meant to facilitate the establishment of parishes in new urban areas and to support social and cultural work of the National Church.

10. The Church Affairs Fund belonged to the National Church. The role of the fund, according to sections 3 and 4 of the Act on the Church Affairs Fund, was to supply an amount of money to the Vicarage Fund and to finance the Annual Church Assembly, the Church Council and the Pastoral Synod, the Episcopal residence, the Church's family counselling service, choral activities and musical training conducted by the National Church, internships for theological candidates and other tasks.

*4. Administrative and judicial proceedings initiated by the applicant association*

11. On 19 October 1998 the applicant association submitted a request to the Ministry of Justice and Ecclesiastical Affairs for recognition of its right to receive a similar contribution from the State, i.e. an amount equivalent to 29.8% of the parish charges. On 17 November 2003 it again submitted a request to the Ministry, this time for the payment of the equivalent of the two disputed contributions for the year 2002. Both requests were rejected by the Ministry in letters of 20 November 1998 and 15 January 2004, respectively.

12. On 12 January 2006 the applicant association lodged proceedings before the Reykjavík District Court against the State requesting the payment of ISK 1.074.242, a sum which amounted to 29.8% of the parish charges which the applicant association had received in the year 2002.

13. In its judgment, delivered on 28 November 2006 (not submitted to the Court), the District Court made a distinction between the Church Affairs Fund and the Parish Equalisation Fund. It noted that the Church Affairs Fund was meant to fund statutory tasks assigned to the National Church,

such as the annual Church Assembly, the Church Council and the Pastoral Synod. It also funded the Church's family counselling service, the musical activities within the churches and other tasks. No such tasks were assigned to the applicant association. The situation of the applicant association and the National Church was therefore different in this respect. The same was not found to apply in regard to the Parish Equalisation Fund the role of which was, among other things, to attempt to even out the position between certain parishes and facilitate the establishment of new parishes. The District Court found that the allocation of this supplementary funding to the National Church and not to the applicant association could, to a certain extent, be regarded as discriminatory. However, the District Court stated that it was not within its jurisdiction to adopt a judgment requiring the State to pay the disputed contributions to the applicant association; such decision was clearly for the legislator to take. Accordingly, it found in favour of the State and rejected the applicant association's action.

*5. The Supreme Court judgment of 25 October 2007*

14. The applicant association appealed to the Supreme Court of Iceland, which also found in favour of the State. The majority stated (translation submitted by the applicant association):

> "Section 1 of Act No. 78/1997 on the Position, Administration and Procedures of the State Church states that the State Church of Iceland is an independent religious association built on an Evangelical Lutheran foundation which the State government is required to support and protect. Admission to the Church is granted through christening and registration in the National Registry. On the issue of legal status, section 2 of the Act states that the State Church is independent of the State within the statutory limits, and section 3 states that the defendant shall pay to the State Church an annual contribution on the basis of agreements on Church assets and parsonages between the defendant and the State Church in addition to its other sources of revenue, statutory and otherwise. Furthermore, the salaries of the ministers employed by the State Church and other employees of the Church shall be paid in accordance with the provisions of section 60 of the Act. The Act contains further provisions on the administration and organisational structure of the State Church, its central administration in the hands of the Bishop of Iceland and other ecclesiastical authorities, suffragan bishops, the Annual Church Assembly (*kirkjuþing*), the Church Council (*kirkjuráð*), the Pastoral Synod (*prestastefna*), ordained deacons and ministers. The Act addresses ministers in general, their eligibility requirements, selection and obligations. The Act also contains provisions on parishes and benefices and their organisation, parish meetings, parish councils, their employees and role. The Act contains a special chapter on the payment of wages and the legal status of employees. Section 60 of the Act states that the State shall pay the salaries of the Bishop of Iceland, suffragan bishops, 138 ministers and ordained deacons employed by the State Church and eighteen employees of the Bishop's Office. Their salaries are subject to the Act on the Wage Terms Commission or the Act on Public Employees' Wage Bargaining Agreements, as applicable. Section 61 states that the employees of the State Church who receive salaries from the State Treasury shall enjoy rights and be subject to obligations as public servants.

> In accordance with Articles 63 and 64 of the Constitution, section 1 of Act No. 108/1999 on Registered Religious Associations states that all persons have the right to form religious associations and practise their religion in accordance with their respective convictions. In the same manner, all persons have the right to form associations around any teachings or philosophies of life, including atheism. The public authorities do not need to be notified of the establishment or activities of religious associations or other associations around philosophies of life, although this is permitted under section 2 of the Act, in which case the provisions of Chapter II apply to the association in question. Chapter II contains provisions on registered religious associations outside the State Church, including the conditions for registration; registration application; supervision of registered religious associations; cancellation of registration; the leadership of registered religious associations; membership of such associations, including admission and withdrawal; and withdrawal from the State Church. The appellant is a registered religious association pursuant to this Act. The Act contains no provisions which are equivalent to the provisions of the Act on the position, administration and procedures of the State Church, as described above, or other Acts pertaining to the State Church and its activities. The employees of the State Church are civil servants, with rights and obligations as such with regard to the general public, and not only with regard to members of their congregations. There is nothing in the law regarding such obligations of the employees of other religious associations. As a result of these obligations of the State Church in Icelandic society, and with reference to Article 62 of the Constitution, the legislature has decided on allocations to the State Church from the State Treasury in excess of other religious associations, for instance in Acts No. 91/1987 and 138/1993, which form the basis of the appellant's case. The fact that the appellant's tasks and obligations to society cannot be compared to the statutory tasks and obligations of the State Church is in and of itself sufficient reason to determine that the legislature's decision on allocations to the State Church from the State Treasury in excess of other religious associations does not constitute discrimination and hence does not violate the equality principle of Article 65 of the Constitution."

15. The minority of the Supreme Court reached the same conclusion but with different arguments. After discussing the relevant domestic and international law it concluded that the State was under no general obligation *"to level the financial position of other religious associations with that enjoyed by the State Church as a result of Article 62 of the Constitution."* It further stated that notwithstanding this conclusion, *"it must be assumed that financial allocations to the State Church under special legislation are required to meet conditions that are objective in view of the special tasks and obligations of the State Church. In light of this, and with reference to Article 65 of the Constitution, the question must be asked whether it is fair that only the State Church should enjoy the special financial contributions to which the appellant claims to be entitled."* The minority then went on to discuss the purpose and the historical context of the legal acts in question and reached the following conclusion:

> "From the notes to the bills for the Act on the Church Affairs Fund and the Act on Parish Charges, it is clear that the tasks in question are linked to the goal of transferring to the State Church certain administrative responsibilities and other statutory tasks relating to church affairs, which were previously in the hands of the State. Although it can hardly be maintained that all of the specified tasks of the

two funds are directly related to the administrative system of the State Church, and despite the general purpose of parish charges to even out the position of registered religious associations, the primary objective of the acts of law was to transfer the supervision and administration of particular tasks from the State to the Church. Taking this into consideration, as well as the special status of the State Church under Article 62 of the Constitution, and in light of the administrative changes described above, the defendant's argument must be accepted that the disputed State allocations to the State Church are founded on sufficiently objective considerations to be deemed tenable."

# COMPLAINTS

16. The applicant association complained under Article 9 on its own and in conjunction with Article 14 of the Convention about the allocation of the additional funding equivalent to 29.8 % of the parish charges to the National Church but not to the applicant.

17. The applicant association also complained under Article 1 of Protocol No. 1 to the Convention that a certain percentage of its members' income tax had been allocated to the National Church (amounting to 29.8 % of the parish charges), a church to which they did not belong.

# THE LAW

## A. Complaint under Article 9 of the Convention taken alone and in conjunction with Article 14

18. Article 9 of the Convention reads:

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others"

In so far as is relevant, Article 14 of the Convention reads:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as ... religion ...

*1. The applicant association's submissions*

19. The applicant association complained under Article 9 of the Convention on its own and in conjunction with Article 14 that the allocation of the supplementary funding amounting to 29.8 % of the parish charges to the National Church but not to the applicant constituted an interference with the applicant's freedom of religion as it discriminated against it.

20. It argued that the Icelandic State had violated its right to freedom of religion by upholding the legal provisions concerning the above-mentioned funding and that it was being subjected to unlawful discrimination. It stated that the significantly greater financial contributions to the National Church could only be explained by the difference in religion. The religion represented by the National Church was given greater weight than other religions, including the one practised by the members of the applicant association. The crucial issue was therefore whether the discrimination was permitted and justified in a democratic society. The applicant association believed it was not.

21. It further argued that the limitation of its freedom of religion, inherent in the financial discrimination, although prescribed by law, did not pursue a legitimate aim. Its purpose was to reduce the possibility of religious associations other than the National Church to thrive.

22. Moreover, the limitation was not necessary in a democratic society, there being no public need for it. The limitation and discrimination went beyond what was necessary to achieve a legitimate aim, if accepted that such aim existed. It further argued that the protection of religious communities had to be equal so as not to harm the identity of believers and their conception of life.

23. Furthermore, by providing the registered religious associations with parish charges the Icelandic State was protecting its members' freedom of religion. However, there should be no discrimination in such protection. The Icelandic State was violating the religious rights of the applicant association's members by supplying additional funding, corresponding to 29.8% of the parish charges, to the National Church and thereby limiting proportionately the service offered by other religious organisations compared to the service available to the members of the National Church. This was particularly relevant for the members of the applicant association who were living outside Reykjavík and who did not have access to similar services to those living in the capital city. The applicant association stated that additional funding would have made a clear difference for its members' ability to manifest their religion.

24. Also, the purpose of the Parish Equalisation Fund and the Church Affairs Fund applied to the applicant association and to other registered religious associations in Iceland, just as much as it applied to the National Church. The financial support in question facilitated the latter's pursuit of its religious aims, whereas the members of the applicant association were

restricted in the free exercise of their religion to the area where they lived as the applicant association was not able to provide equal services in all parts of the country.

25. Moreover, the applicant association rejected the finding of the Supreme Court that the statutory obligations imposed on the National Church differed from the obligations imposed on the applicant association or on other religious associations. In that context it stated that if statutory provisions exempted one party from being compared with others, the legislation could serve as a "veil of immunity" against the ban on discrimination enshrined in the Convention.

*2. Assessment by the Court*

26. At the outset the Court reiterates that a religious association may, as such, exercise on behalf of its members the rights guaranteed by Article 9 of the Convention (see, among other authorities, *Leela Förderkreis e.V. and Others v. Germany*, no. 58911/00, § 79, 6 November 2008). The application can therefore not be declared inadmissible under Article 34 of the Convention as being incompatible *ratione personae*.

27. The Court further reiterates, as held by the European Commission of Human Rights in *Darby v. Sweden* (23 October 1990, opinion of the Commission, § 45, Series A no. 187*)*:

> "[a] State Church system cannot in itself be considered to violate Article 9 of the Convention. In fact, such a system exists in several Contracting States and existed there already when the Convention was drafted and when they became parties to it. However, a State Church system must, in order to satisfy the requirements of Article 9, include specific safeguards for the individual's freedom of religion. In particular, no one may be forced to enter, or be prohibited from leaving, a State Church."

The Court has not, in its subsequent case-law, questioned this principle.

28. Turning to the particular circumstances of the case, the Court notes that, like the National Church of Iceland, the applicant association, being a registered religious association, received the so-called parish charges which the Icelandic State collected from each of its members who had reached sixteen years of age. The level of funding derived from the said charges thus depended on the number of members. It further observes that, unlike the applicant association, the National Church received funding from the State, notably contributions to the Church Affairs Fund and to the Parish Equalisation Fund, representing altogether 29.8 % of the parish charges collected from the National Church's members. The question raised by the present application is whether the fact that the National Church received such funding from the State budget, whilst the applicant association did not, was incompatible with Article 9 of the Convention taken on its own or together with Article 14.

29. The Court will first consider whether the allocation of the disputed additional funding to the National Church entailed an interference with the Article 9 rights of the members of the applicant association.

30. In the first place, the Court notes that, according to Article 63 of the Icelandic Constitution and section 1 of the Act on Registered Religious Associations, every person has the right to form religious associations and to practise their religion in conformity with their individual convictions. Having been registered in accordance with the Act, the applicant association and its members enjoyed the rights and assumed the obligations that followed from the act of registration. Thus, as mentioned above, the association received funding in the form of parish charges collected by the State from each of its members. In this connection, the Court cannot but note that, according to the applicant association *"[b]y providing registered religious associations with parish charges, based on income tax of individual citizens, the State of Iceland is actively protecting the members' rights to practise their religion."* It should also be observed that, in order to register in accordance with the Act, religious associations must appoint a representative who meets the general conditions for being a civil servant and is accountable as such for the execution of the functions assigned to him or her by law. Such a representative was authorised to perform ceremonies which were comparable to christening, confirmations, weddings and funerals, as well as general spiritual guidance (compare, for instance, *Savez crkava "Riječ života" and Others v. Croatia*, no. 7798/08, 9 December 2010). Against this background the Court finds nothing to indicate that the authorities of the respondent State in any way hindered or limited the exercise of the rights of the applicant association and its members under paragraph 1 of Article 9 of the Convention.

31. Nor does the Court find, in light of the considerations above, that the matter complained of disclosed any failure on the part of the respondent State to comply with any positive obligations that it may have had under Article 9 (see *Jakóbski v. Poland*, no. 18429/06, § 47, 7 December 2010). The freedom to manifest one's religion or beliefs under this Article does not confer on the applicant association or its members an entitlement to secure additional funding from the State budget.

32. On the basis of the above considerations, the Court finds that there is no appearance of a breach of the applicant association and its members´ right to practise their religion. Accordingly the Court considers that this part of the application must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

33. As to the alleged violation of Article 14 in conjunction with Article 9, the Court further reiterates that in *Cha'are Shalom Ve Tsedek v. France* [GC],( no. 27417/95, § 86, ECHR 2000-VII), it held:

> "[...] that, according to the established case-law of the Convention institutions, Article 14 only complements the other substantive provisions of the Convention and

> the Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to that extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter."

34. In light of the findings in paragraphs 30 to 32 above it is questionable whether Article 14 is applicable in the present case. In any event, even assuming that it was and that the facts fall within the ambit of Article 9, the Court reiterates that a difference in treatment will only be discriminatory if it has no objective and reasonable justification (see, for instance, *Darby v. Sweden*, 23 October 1990, § 31, Series A no. 187). The Court sees no cause for calling into question the Supreme Court's view that the fact that the applicant association's tasks and obligations to society could not be compared to those of the National Church was a sufficient reason to find that the allocation of additional funding to the National Church alone did not constitute discrimination. As held by the Supreme Court (see paragraph 14 above), the Act on Registered Religious Associations does not contain provisions equivalent to those pertaining to the National Church, as described in the Supreme Court judgment. Moreover, the employees of the State Church are civil servants who, unlike employees of other religious associations, have rights and obligations as such with respect to the general public, not only with respect to members of their congregations. The statutory obligations imposed on the National Church and its employees by the abovementioned Act on the Position, Administration and Procedures of the National Church and by other acts pertaining to the National Church and its activities, cannot be compared to those imposed on the applicant association. Thus, in so far as there was a difference of treatment, the Court is satisfied that it pursued a legitimate aim and was objectively and reasonably justified (see, for instance, *Cha'are Shalom Ve Tsedek* (cited above), § 87).

35. It follows that this part of the application too must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

## B. Complaint under Article 1 of Protocol No. 1 to the Convention

36. Article 1 of Protocol No. 1 to the Convention reads:

> "Every natural or legal person is entitled to the peaceful enjoyment of is possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

*1. The applicant's submissions*

37. The applicant association complained that the system of parish charges constituted a violation of Article 1 of Protocol No. 1 in respect of its members. It submitted that a certain sum was taken monthly from the income tax of each of its members, *i.e.* the so-called parish charge which was then allocated to the applicant association. An individual belonging to the National Church, however, benefitted from the additional 29.8% of the parish charge allocated to his church, providing him with a better service than was the case for members of other religious associations. This led to less money being allocated to other public services available to its members, who, at the same time, were not able to use the services of the National Church. The lack of rural religious services and the low availability of religious educational materials were examples of the disadvantages faced by the applicant association's members.

*2. Assessment by the Court*

38. Leaving aside the question whether the applicant association may exercise on behalf of its adherents the rights guaranteed by Article 1 of Protocol No. 1 and claim to be a victim of a breach of that Article, the Court notes that it does not appear to have raised this complaint before the domestic courts. It has therefore failed to exhaust domestic remedies. It follows that this part of the application should be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

39. In any event, the Court finds that this complaint is in effect a mere restatement of the complaints already rejected. It follows that, for the reasons set out in paragraphs 30 to 34, this part of the application too could be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court by a majority

*Declares* the application inadmissible.

Lawrence Early
Registrar

Lech Garlicki
President