

In the **Jón Kristinsson** case\*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court\*\*, as a Chamber composed of the following judges:

Mr R. Ryssdal, President,  
Mr J. Cremona,  
Mr Thór Vilhjálmsson,  
Mr F. Matscher,  
Mr N. Valticos,  
Mr S. K. Martens,  
Mrs E. Palm,

and also of Mr M.-A. Eissen, Registrar,

Having deliberated in private on 22 February 1990,

Delivers the following judgment, which was adopted on that date:

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Notes by the Registrar:

\* The case is numbered 13/1989/173/229. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of corresponding originating applications to the Commission.

\*\* The amendments to the Rules of Court, which entered into force on 1 April 1989, are applicable to the present case.

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## PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 12 April 1989,

within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 12170/86) against the Republic of Iceland lodged with the Commission under Article 25 (art. 25) by an Icelandic citizen, Mr **Jón Kristinsson**, on 10 April 1986.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Iceland recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 para. 1 (art. 6-1).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio Mr Thór Vilhjálmsson, the elected judge of Icelandic nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 29 April 1989, in the presence of the Registrar, the President drew by lot the names of the other five members, namely Mr J. Cremona, Mr F. Matscher, Mr N. Valticos, Mr S. K. Martens and Mrs E. Palm (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, after consulting, through the Registrar, the Agent of the Icelandic Government ("the Government"), the Delegate of the Commission and the lawyer for the applicant decided on 2 August 1989 that it was not necessary at that stage for memorials to be filed (Rule 37 para. 1). He had been informed on 25 July 1989 by the Agent of the Government that negotiations were shortly to take place with a view to achieving a friendly settlement of the case. Pending the outcome of such negotiations the oral hearing was provisionally scheduled by the President for 19 February 1990.

5. On 28 December 1989 the Agent communicated to the Registrar

the text of an agreement signed by the Minister for Justice of Iceland, Mr Öli T. Gudbjartsson, and by Mr Erikur Tómasson on behalf of the applicant; he asked the Court to accept it and to strike the case out of its list. As a result the hearing was cancelled.

On 22 January 1990 the Government filed further documents relating to the friendly settlement.

6. The Delegate of the Commission was consulted by the Court (Rule 49 para. 2) and replied on 16 January 1990 that he had no comments to make as regards either the striking of the case out of the list or the terms of the friendly settlement.

7. On 22 February the Court decided to dispense with a hearing in this case, having established that the conditions for this derogation from its usual procedure were met (Rules 26 and 28).

#### AS TO THE FACTS

8. Two police reports drawn up in 1984 alleged that on 20 and 26 June of that year, whilst driving his car, the applicant had committed offences against the Traffic Act: exceeding the speed limit on the first occasion and failure to observe a stop sign on the second.

9. These reports were transmitted to the chief of police of Akureyri, who, under Article 32 of the Code of Criminal Procedure (Act no. 74 of 21 August 1974), was also the town magistrate (Baejarfogeti).

It fell to the chief of police to decide whether a preliminary criminal investigation should be set in motion. However, having regard to the amount of the fine he thought might be imposed (12,000 Icelandic crowns at most) and acting pursuant to Article 112 of the Code of Criminal Procedure, he offered the applicant the possibility of settling both cases by paying, within two weeks, a fine of 1,720 Icelandic crowns. This offer was contained in two letters, dated 10 and 12 July 1984 and signed by Mr S.J., acting as deputy chief of police.

10. Mr **Jón Kristinsson**, who had made certain objections to the police concerning their allegations, did not return the letters with his signature and thus declined the offer. He was subsequently summoned to appear before the Akureyri District Criminal Court. According to Article 4 of the Code of Criminal Procedure, the functions of District Criminal Courts outside Reykjavik were performed by the town magistrate, whose task it was to conduct the investigation, hear the case and pass judgment.

11. On 30 August 1984 the applicant appeared before the above-mentioned Mr S.J., who on this occasion was representing the town magistrate in his capacity as district court judge. The applicant refused to settle the case in court and repeated the objections he had made to the police. Mr S.J. subsequently heard evidence from the police officers involved. Once the preliminary court enquiry was completed, he transmitted, on 7 November, the case-file to the public prosecutor.

12. On 23 November 1984 the public prosecutor issued an indictment against the applicant for the two alleged offences against the Traffic Act and referred the cases to the Akureyri District Criminal Court for trial. The applicant appeared before the court on 4 December, when the indictment was served on him and he was given the opportunity to comment on the evidence of the police officers. At his request, Mr S.J., acting again as district court judge, adjourned the hearing. It was resumed on 10 December and, on 27 December, Mr S.J. delivered judgment in open court. The applicant was found guilty on both counts, sentenced to a fine of 3,000 Icelandic crowns and ordered to pay costs.

13. The applicant appealed to the Supreme Court of Iceland, submitting that the inquiry had been inadequate and that the case had not been heard by an impartial judge since Mr S.J. had been involved in it both as deputy chief of the police and as deputy district judge. He alleged a violation of Articles 2 and 61 of the Icelandic Constitution and of Article 6 (art. 6) of the Convention.

On 25 November 1985 the Supreme Court acquitted the applicant of the charge of non-observance of the stop sign, but upheld the

District Court's judgment as regards the other offence. It imposed on him a fine of 1,500 Icelandic crowns and ordered him to pay the costs of both proceedings. As to the alleged partiality of the judge in question, the Supreme Court stated:

"In the Icelandic court system, judicial powers in district courts outside Reykjavik are vested in town and county magistrates who serve collaterally as chiefs of police. The District Criminal Court's decision cannot be set aside on the ground that the deputy town magistrate of Akureyri tried the case in question. Furthermore, no specific facts have been established which would disqualify the town magistrate or his deputy."

14. On 19 May 1989 the Icelandic Parliament adopted an Act (no. 92/1989) on the Separation of District Judicial and Administrative Powers, which is due to enter into force on 1 July 1992. Under this Act, the administration of the police will be entrusted to district executive agents, to be called "magistrates" (sylumadur), and criminal cases will be dealt with by district court judges, independent of the executive.

On 9 January 1990 the Supreme Court of Iceland quashed a judgment of the Arnessysla District Criminal Court and referred the case back for re-trial, on the ground that the judge concerned was both deputy county magistrate and head of the district police which had conducted the investigation. In its decision, the Supreme Court took account of the Commission's report in the present case.

As a result, the President of Iceland, acting on the advice of the Minister for Justice, issued on 13 January a Provisional Act which, as an interim measure, creates new posts of district court judge.

#### PROCEEDINGS BEFORE THE COMMISSION

15. In his application of 10 April 1986 to the Commission (no. 12170/86), Mr **Jón Kristinsson** alleged that he had not been tried by an impartial tribunal within the meaning of Article 6 para. 1 (art. 6-1), since the judge who had convicted him had previously dealt with the case in his capacity as deputy chief of police.

16. The Commission declared the application admissible on 13 October 1987. In its report of 8 March 1989 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a violation of Article 6 para. 1 (art. 6-1). The full text of its opinion and of the separate opinion contained in the report is annexed to the present judgment\*.

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\* Note by the Registrar. For practical reasons this annex will appear only with the printed version of the judgment (volume 171-B of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

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#### AS TO THE LAW

17. The agreement concluded on 28 December 1989 between the Government and the applicant (see paragraph 5 above) contains a summary of the facts and refers to Act no. 92/1989 (see paragraph 14 above). It then records the parties' agreement that the dispute should be settled on the following terms:

"1. That the Icelandic State Treasury reimburse Mr **Jón Kristinsson** for his fine and the costs of the case he has paid, Icel. Kr. 26,650, with interest as from 12 May 1986, Icel. Kr. 53,353, or a total of Icel. Kr. 80,003.

2. That the Icelandic State Treasury pay Mr **Jón Kristinsson** the costs incurred by him for legal assistance on account of his application to the European Commission of Human Rights, totalling Icel. Kr. 461,130 when the financial assistance received by Mr **Kristinsson** from the European Commission of Human Rights has been taken into account.

3. That Mr **Jón Kristinsson** undertakes, following the payment of the above amounts and without receiving damages or any further payments from the Icelandic State Treasury, not to prosecute the case now before the European Court of Human Rights any further, and not to take any other legal action against the Government of

Iceland before Icelandic or international courts on account of the facts described above.

4. That Mr **Kristinsson** accepts that the Icelandic State Treasury pay the above payments immediately, provided the European Court of Human Rights agrees to strike the case, referred to it by the European Commission of Human Rights, against the Government of Iceland out of its list in accordance with Rule 49 para. 2 of the Rules of Court.

5. That the Icelandic Minister for Justice will request the Public Prosecutor of Iceland to have a note entered into the State Criminal Register relating to **Jón Kristinsson**, stating that the Government of Iceland have today, on account of the stand taken by the European Commission of Human Rights with regard to his application, concluded a settlement with him providing for refund of the amounts he was ordered to pay to the Icelandic State Treasury by the judgment of the Supreme Court of Iceland of 25 November 1985.

6. That the obligations here undertaken by the Government of Iceland, on the one hand, and Mr **Jón Kristinsson**, on the other, be automatically cancelled in case the European Court of Human Rights withholds its approval as referred to under (4) above." (English translation provided by the Government)

18. The Court takes formal note of the friendly settlement reached by the Government and the applicant, as well as of the absence of any objection on the part of the Delegate of the Commission. In view of its responsibilities under Article 19 (art. 19) of the Convention, it would be open to it to disregard this settlement and proceed with the consideration of the case if a reason of public policy appeared to necessitate such a course (Rule 49 para. 4). However, the Court, having regard to the changes in Icelandic law and case-law mentioned in paragraph 14 above and to its case-law on the matter (see Piersack judgment of 1 October 1982, Series A no. 53, De Cubber judgment of 26 October 1984, Series A no. 86 and Hauschildt judgment of 24 May 1989, Series A no. 154), sees no such reason.

Accordingly, it is appropriate to strike the case out of the list pursuant to Rule 49 para. 2.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English and in French, and notified in writing under Rule 55 para. 2 of the Rules of Court on 1 March 1990.

Signed: Rolv RYSSDAL

President

Signed: Marc-André EISSEN

Registrar