



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

FOURTH SECTION

**CASE OF GRANDE ORIENTE D'ITALIA
DI PALAZZO GIUSTINIANI v. ITALY**

(Application no. 35972/97)

JUDGMENT

STRASBOURG

2 August 2001

FINAL

12/12/2001

In the case of Grande Oriente d'Italia di Palazzo Giustiniani v. Italy,

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

Mr G. RESS, *President*,

Mr A. PASTOR RIDRUEJO,

Mr B. CONFORTI,

Mr L. CAFLISCH,

Mr J. MAKARCZYK,

Mr V. BUTKEVYCH,

Mr M. PELLONPÄÄ, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 10 July 2001,

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

PROCEDURE

1. The case originated in an application (no. 35972/97) against the Italian Republic lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an association registered under Italian law, Grande Oriente d'Italia di Palazzo Giustiniani (“the applicant association”), on 31 January 1997.

2. The applicant association was represented by Mr A.G. Lana, of the Rome Bar. The Italian Government (“the Government”) were represented by their Agent, Mr U. Leanza, and by their co-Agent, Mr V. Esposito.

3. The applicant association alleged a breach of Articles 11, 8, 9, 10, 14 and 13 of the Convention on account of the enactment by the Marches Region of a law requiring candidates for public office to declare that they were not Freemasons.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 21 October 1999 the Chamber declared the application partly admissible [*Note by the Registry*. The Court’s decision is obtainable from the Registry].

7. The applicant association and the Government each filed supplementary observations on the merits of the case (Rule 59 § 1). However, the President of the Chamber decided not to accept the

Government's supplementary observations because they had been submitted outside the time-limit without any request for an extension having been made before the time-limit expired (Rule 38 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant association is an Italian masonic association which groups together several lodges. It has been in existence since 1805 and is affiliated to Universal Freemasonry.

In Italian law the applicant association has the status of an unrecognised private-law association under Article 36 of the Civil Code. It therefore does not have legal personality. It has filed its Articles of Association with a notary (*notaio*) and anyone can have access to them.

By Regional Law no. 34 of 5 August 1996 ("the 1996 Law"), published in the Official Gazette of 14 August of the same year, the Marches Region ("the Region") laid down the rules to be followed for nominations and appointments to public office for which the Region was the appointing authority (*Norme per le nomine e designazioni di spettanza della Regione*).

Before the Court the applicant association complained of the damage allegedly sustained by it as a result of the content of section 5 of the 1996 Law.

Section 1 of the 1996 Law provides that the rules shall apply to all nominations and appointments by the bodies constituted according to the Region's Statute pursuant to laws, rules, statutes and agreements to posts in "departments of public-law and private-law authorities and bodies other than the Region". It also provides that the rules shall likewise apply to nominations to fifteen regional bodies (listed in Schedule A to the 1996 Law) and, in some cases, to other regional bodies for which the Regional Council is the appointing authority (Schedule B to the 1996 Law).

Section 5 of the Law sets out the terms and conditions for submitting applications for nominations and appointments. It provides, *inter alia*, that candidates must not be Freemasons. It is worded as follows:

Section 5 Applications

"1. Applications may be submitted by regional councillors and council groups and by professional bodies, organisations and associations active in the fields concerned to the President of the Regional Council and the President of the Regional Government respectively until thirty days before the period allowed for a nomination or appointment expires.

2. Applications must be accompanied by a statement of supporting reasons and a report containing the following particulars:

(a) municipality of residence, date and place of birth;

(b) qualifications;

(c) career to date, usual occupation, list of currently and previously held public offices or positions in majority State-owned companies and publicly registered private companies;

(d) lack of conflict of interest with the office proposed;

(e) declaration of non-membership of a masonic lodge;

(f) declaration, signed by the candidate, accepting the public office and stating that there is nothing to debar him from office on criminal, civil or administrative grounds.

3. The declaration of acceptance signed by the candidate must be certified authentic and contain a statement by him of any grounds of incompatibility and of the absence of any grounds debarring him from applying or making it impossible for him to do so, regard being had also to section 15 of Law no. 55 of 19 March 1990 as subsequently amended.”

9. In June 1999 the first committee of the Marches Regional Council rejected a regional bill (no. 352/98) proposing amendments and additions to Law no. 34 of 1996. The bill was intended, among other things, to abolish the declaration provided for in section 5 of the 1996 Law.

II. RELEVANT DOMESTIC LAW

10. Article 18 of the Constitution provides:

“Citizens may form associations freely, without authorisation, for purposes not prohibited for individuals by the criminal law.

Secret associations and associations pursuing, even indirectly, a political aim through organisations of a military nature shall be prohibited.”

Law no. 17 of 25 January 1982 contains the implementing provisions for Article 18 of the Constitution with regard to secret associations and provided for the dissolution of the association called “P2 Lodge”. Section 1 lays down the criteria for regarding an association as being a secret one.

Section 4 sets out the measures to be taken in respect of persons employed in the civil service or appointed to a public office who are suspected of belonging to a secret association.

That section also provides that the regions shall enact regional laws for their officials and persons nominated or appointed by a region to a public office. These regional laws must respect principles laid down in the same provision.

According to the information supplied to the Court by the applicant association, such laws have been enacted by the regions of Tuscany (Law no. 68 of 29 August 1983), Emilia-Romagna (Law no. 34 of 16 June 1984), Liguria (Law no. 4 of 22 August 1984), Piedmont (Law no. 65 of 24 December 1984) and Lazio (Law no. 23 of 28 February 1985).

Two of these regional laws provide that persons nominated or appointed to public office must name the associations to which they belong (section 12 of the Tuscany law and section 8 of the Lazio law). The other laws lay down the penalties to be imposed on persons so nominated or appointed if it transpires that they are members of a secret association (section 7 of the Emilia-Romagna law, section 8 of the Liguria law and section 8 of the Piedmont law). The Emilia-Romagna law also contains a prohibition on nominating or appointing persons affiliated to secret associations (section 7 of the Emilia-Romagna law).

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

11. When the admissibility of the application was being examined, the Government maintained that the applicant association could not claim to be a victim of the breaches it alleged (see paragraph 3 above). Section 5 of the 1996 Law did not, they argued, jeopardise either the applicant association's existence or its activities. The alleged breach applied only to individuals and affected a member of the association only if he applied for a public office. It could not concern an association.

In its decision of 21 October 1999 (see paragraph 6 above) the Court upheld the Government's objection with regard to the complaints under Articles 8, 9 and 10 of the Convention and declared them inadmissible. However, with regard to the complaint under Article 11, it considered that "an examination of the status of victim [was] in this case closely linked to an examination of the merits of the complaint, and in particular to the question of the existence of an interference with the applicant association's right". It will therefore come back to this issue later (see paragraph 16 below).

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

12. The applicant association submitted that section 5 of the 1996 Law infringed its right to freedom of association as guaranteed by Article 11 of the Convention, which provides:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

According to the applicant association, section 5 of the 1996 Law forced its members to choose between two alternatives: either renounce membership or forgo public office in a regional body. It thus restricted not only the freedom of association of every member, but also that of the association itself.

A. Whether there was interference

13. The applicant association submitted that the obligation on candidates to declare that they were not members of a masonic lodge was a twofold interference.

Firstly, it was an interference with the right to freedom of association taken as the right of any social group to exist and act without unjustified restrictions being imposed on it or its members by the authorities. Requiring the applicant association's members to declare that they were not Freemasons deprived them of access to numerous public offices at regional level. That constituted interference with the applicant association's activities because either it resulted in a loss of members – where they decided to leave the association, not from conviction but on account of a statutory obligation, in order to apply for public office in the Marches Region – or it imposed an unreasonable sacrifice on the applicant association's members where they decided to remain members of the applicant association rather than apply for public office.

The obligation in question also created a negative image of the association. Section 5 of the 1996 Law gave the impression that Freemasonry was a criminal association or, at any rate, one that did not comply with Italian law. Yet not only had Freemasonry been recognised as a lawful association by the courts and by a parliamentary investigating

committee, but, above all, it was covered by the guarantees set forth in Articles 2 and 18 of the Constitution.

The applicant association deduced from the foregoing that it directly suffered the detrimental effects of section 5 of the 1996 Law.

14. For their part, the Government disputed that there was any interference. They submitted that the right to freedom of association could be relied on by an individual who wanted to join an association, but not by an association, which, they maintained, was the product of the exercise of that freedom. Secondly, even supposing that the guarantees of Article 11 did apply to associations, the disqualifications affecting one of the association's members on account of his or her membership of it could not be challenged by the association because they did not concern it.

15. The Court reiterates that Article 11 applies to associations, including political parties (see *United Communist Party of Turkey and Others v. Turkey*, judgment of 30 January 1998, *Reports of Judgments and Decisions* 1998-I, and *Socialist Party and Others v. Turkey*, judgment of 25 May 1998, *Reports* 1998-III). It has indicated in general that "an association, including a political party, is not excluded from the protection afforded by the Convention simply because its activities are regarded by the national authorities as undermining the constitutional structures of the State and calling for the imposition of restrictions" (see *United Communist Party of Turkey and Others*, cited above, p. 17, § 27). The Court is of the opinion that this reasoning applies all the more to an association which, like the applicant association, is not suspected of undermining the constitutional structures. Additionally, and above all, the Court accepts that the measure in question may cause the applicant association – as it submits – damage in terms of loss of members and prestige.

16. The Court therefore concludes that there has been interference. It follows that the applicant association can claim to be a victim of the alleged violation and that, accordingly, the Government's objection must be dismissed.

B. Whether the interference was justified

1. In the light of the first sentence of paragraph 2 of Article 11

17. Such interference will constitute a breach of Article 11 unless it was "prescribed by law", pursued one or more legitimate aims under paragraph 2 and was "necessary in a democratic society" for the achievement of those aims.

(a) “Prescribed by law”

18. The applicant association did not dispute that the interference was “prescribed by law”, seeing that the impugned measure was based on a regional law (see paragraphs 16-17 above).

(b) Legitimate aim

19. The Government did not indicate which aim among those referred to in paragraph 2 was pursued by the measure in question. However, after asserting that the system of allocating public offices needed to be credible and required confidence in the persons chosen, they referred to suspicion among the public that some candidates might have been appointed because they were Freemasons. The harm caused by such suspicions had to be avoided at all costs, bearing in mind the role certain Freemasons had played in Italy’s democracy, contributing to blacken the image of Italian public life, as had been shown by parliamentary and judicial inquiries.

20. The applicant association submitted that the interference did not pursue any of the legitimate aims referred to in the first sentence of paragraph 2. In particular, the Government could not rely on the prevention of disorder or crime as justifications, because the applicant association was not a secret or criminal association on which it was necessary to impose prohibitions for preventive or punitive purposes.

21. The Court notes that, according to the Government, section 5 of the 1996 Law was introduced to “reassure” the public at a time when there was controversy surrounding the role played by certain Freemasons in the life of the country. The Court therefore accepts that the interference was intended to protect national security and prevent disorder.

(c) “Necessary in a democratic society”*(i) The parties’ submissions*

22. The applicant association submitted that the restriction on freedom of association was not reasonable and proportionate, and that the interference complained of was consequently not necessary in a democratic society. It cited as evidence the fact that the Marches Region was the only region which had made use of the powers delegated in section 4 of Law no. 17 of 1982, which sought to debar members of secret associations (see paragraph 10 above) by introducing an obligation on candidates to declare that they were not Freemasons. Moreover, that obligation did not even exist at central government level, so there was nothing to prevent a prime minister, a minister, a senior official or even the President of the Republic from being a Freemason. The applicant association also pointed out that, according to the Court’s case-law, a judge could be a Freemason without this casting doubt on his or her objective impartiality (see *Kiiskinen v.*

Finland (dec.), no. 26323/95, ECHR 1999-V). Additionally, the debate which had taken place in Parliament after the enactment of the 1996 Law had shown the unreasonable nature of the measure in question. Lastly, the applicant association pointed out that it had been a private-law association since 1805, that it had acted within the law since then and that, even if there was a move in Italy to “outlaw” Freemasonry, the association was still one which pursued a moral aim, was protected by Article 18 of the Constitution and should not be confused with a secret or criminal association. Even if there had been improper activities within Freemasonry, these had not concerned the applicant association and were not sufficient to demonise Freemasonry as a whole.

23. The Government pointed out that there was no restriction on freedom of association, but only a potential disability. Further, the measure in question had been introduced by a law relating to the organisation of the region and therefore fell within the powers devolved to the regions by Article 117 of the Constitution.

(ii) Decision of the Court

24. The Court has examined the impugned measure in the light of the case as a whole in order to determine, in particular, whether it was proportionate to the legitimate aim pursued.

25. The proportionality principle demands that a balance be struck between the requirements of the purposes listed in Article 11 § 2 of the Convention and those of the free exercise of freedom of association. The pursuit of a just balance must not result in individuals being discouraged, for fear of having their applications for office rejected, from exercising their right of association on such occasions.

26. Compared with the total number of members of the applicant association, the number of actual or potential members of the association who may be confronted with the dilemma of choosing between being Freemasons and competing for the public offices referred to in section 5 of the 1996 Law cannot be said to be large. Consequently, the damage which the applicant association may suffer is likewise limited. The Court considers, however, that freedom of association is of such importance that it cannot be restricted in any way, even in respect of a candidate for public office, so long as the person concerned does not himself commit any reprehensible act by reason of his membership of the association. It is also clear that the association will suffer the consequences of its members' decisions. In short, the prohibition complained of, however minimal it might be for the applicant association, does not appear “necessary in a democratic society”.

2. *In the light of the second sentence of paragraph 2 of Article 11*

27. Having arrived at that conclusion, the Court must determine whether the prohibition in issue was justified by the last sentence of Article 11 § 2, since this empowers States to impose “lawful restrictions” on the exercise of the right to freedom of association by the members of certain groups, including “the administration of the State”.

28. The applicant association maintained that the interference was not justified by the second sentence of Article 11 § 2 because it was not “lawful”. In its submission, section 5 of the 1996 Law contravened Articles 2, 3, 18 and 117 of the Constitution; exceeded the limits laid down by Law no. 17 of 1982, section 4 of which provided that rules could be laid down debarring from public office civil servants who were members of secret associations; and, lastly, breached Articles 8, 11 and 14 of the Convention, which was an integral part of Italian domestic law.

The applicant association also disputed that the offices for which it was necessary to make the declaration required by section 5 formed part of “the administration of the State” strictly speaking. These were offices of assorted categories, including professional bodies and associations working in the relevant fields. Likewise concerned were private-law associations or, at any rate, associations having substantial autonomy (universities, leisure, cultural or sports associations, etc.) *vis-à-vis* the regional bodies.

29. For their part, the Government considered that the expression “administration of the State” had to be understood in a broad sense and extended to administrative authorities as a whole.

30. The Court reiterates that the term “lawful” in the second sentence of Article 11 § 2 alludes to the same concept of lawfulness as that to which the Convention refers elsewhere when using the same or similar expressions, notably the expression “prescribed by law” found in the second paragraphs of Articles 9 to 11. The concept of lawfulness used in the Convention, apart from positing conformity with domestic law, also implies qualitative requirements in the domestic law such as foreseeability and, generally, an absence of arbitrariness (see *Rekvényi v. Hungary* [GC], no. 25390/94, § 59, ECHR 1999-III).

In so far as the applicant association criticised the basis of the impugned restriction in domestic law, the Court reiterates that it is primarily for the national authorities to interpret and apply domestic law, especially if there is a need to elucidate doubtful points (see *S.W. v. the United Kingdom*, judgment of 22 November 1995, Series A no. 335-B, p. 42, § 36). In the present case, however, the applicant association could not challenge the constitutionality of the impugned provision in the courts, a fact which was not disputed by the Government. That being so, the Court concludes that the legal position was sufficiently clear to enable the applicant association to regulate its conduct and that the requirement of foreseeability was

consequently satisfied. The contested restriction was therefore “lawful” within the meaning of Article 11 § 2.

31. As to whether the offices covered by section 5 of the 1996 Law fall within the scope of “the administration of the State”, the Court notes that the offices listed in Schedules A and B to the 1996 Law were not part of the organisational structure of the Region, but fell into two other categories: regional organisations and nominations and appointments for which the Regional Council was responsible. According to the Court’s case-law, “the notion of ‘administration of the State’ should be interpreted narrowly, in the light of the post held by the official concerned” (see *Vogt v. Germany*, judgment of 26 September 1995, Series A no. 323, p. 31, § 67). The Court reiterates that in *Vogt* it did not consider it necessary to determine the issue whether a teacher – a permanent civil servant – was part of the administration of the State (*ibid.*, p. 31, § 68). In the present case it notes on the basis of the evidence before it that the link between the offices referred to in Schedules A and B to the 1996 Law and the Marches Region is undoubtedly looser than the link which existed between Mrs Vogt, a permanent teacher, and her employer.

32. Accordingly, the interference in question cannot be justified under the second sentence of Article 11 § 2 either.

33. In conclusion, there has been a breach of Article 11 of the Convention.

III. ALLEGED VIOLATION OF ARTICLES 13 AND 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 11

34. The applicant association also alleged a breach of Articles 13 and 14 of the Convention, taken in conjunction with Article 11. As its complaints related to the same facts as those examined under Article 11, the Court does not consider it necessary to examine them separately.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

36. The applicant association claimed 125,080 euros in respect of non-pecuniary damage. It arrived at that figure by multiplying the nominal sum of ten euros by the number of its members (12,508).

37. The Government submitted that a finding of a violation was sufficient in the present case. They added that, according to the Court's case-law, associations were not entitled to any compensation for non-pecuniary damage.

38. The Court reiterates that, according to its case-law, a juristic person, even a commercial company, may sustain damage other than pecuniary damage calling for pecuniary compensation (see *Comingersol S.A. v. Portugal* [GC], no. 35382/97, §§ 31-37, ECHR 2000-IV). However, in the instant case, having regard to the circumstances, the Court considers that the finding of a breach of Article 11 is sufficient to compensate for the damage alleged.

B. Costs and expenses

39. The applicant association sought reimbursement of 38,291,408 Italian lire (ITL) for the costs incurred before the Convention institutions.

40. The Government left the matter to the Court's discretion.

41. Making its assessment on an equitable basis, the Court awards the applicant association ITL 10,000,000.

C. Default interest

42. According to the information available to the Court, the statutory rate of interest applicable in Italy at the date of adoption of the present judgment is 3.5% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 11 of the Convention;
3. *Holds* that it is not necessary to examine the case under Articles 13 and 14 of the Convention taken in conjunction with Article 11;
4. *Holds* that the finding of a violation constitutes in itself just satisfaction for the damage sustained by the applicant association;

5. *Holds*

(a) that the respondent State is to pay the applicant association, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, ITL 10,000,000 (ten million Italian lire) in respect of costs and expenses;

(b) that simple interest at an annual rate of 3.5% shall be payable from the expiry of the above-mentioned three months until settlement;

6. *Dismisses* the remainder of the applicant association's claim for just satisfaction.

Done in French, and notified in writing on 2 August 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President