



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

ENG - 2014/1

Application Form

About this application form

This application form is a formal legal document and may affect your rights and obligations. Please follow the instructions given in the Notes for filling in the application form. Make sure you fill in all the fields applicable to your situation and provide all relevant documents.

Warning: If your application is incomplete, it will not be accepted (see Rule 47 of the Rules of Court). Please note in particular that Rule 47 § 2 (a) provides that: "All of the information referred to in paragraph 1 (d) to (f) [statement of facts, alleged violations and information about compliance with the admissibility criteria] that is set out in the relevant part of the application form should be sufficient to enable the Court to determine the nature and scope of the application without recourse to any other document."

Barcode label

If you have already received a sheet of barcode labels from the European Court of Human Rights, please place one barcode label in the box below.

Reference number

If you already have a reference number from the Court in relation to these complaints, please indicate it in the box below.

A. The applicant (Individual)

This section refers to applicants who are individual persons only. If the applicant is an organisation, please go to Section B.

1. Surname

Ólafsson

2. First name(s)

Bjarnfreður

3. Date of birth

1	7	1	1	1	9	6	7
D	D	M	M	Y	Y	Y	Y

 e.g. 27/09/2012

4. Nationality

Icelandic

5. Address

Suðurhús 5
112 Reykjavík
ICELAND

6. Telephone (including international dialling code)

+354 5 400 300

7. Email (if any)

bjarnfredur@logos.is

8. Sex

male

female

B. The applicant (Organisation)

This section should only be filled in where the applicant is a company, NGO, association or other legal entity.

9. Name

10. Identification number (if any)

11. Date of registration or incorporation (if any)

D	D	M	M	Y	Y	Y	Y

 e.g. 27/09/2012

12. Activity

13. Registered address

14. Telephone (including international dialling code)

15. Email

C. Representative(s) of the applicant

If the applicant is not represented, go to Section D.

Non-lawyer/Organisation official

Please fill in this part of the form if you are representing an applicant but *are not a lawyer*.

In the box below, explain in what capacity you are representing the applicant or state your relationship or official function where you are representing an organisation.

16. Capacity / relationship / function

17. Surname

18. First name(s)

19. Nationality

20. Address

21. Telephone (including international dialling code)

22. Fax

23. Email

Lawyer

Please fill in this part of the form if you are representing the applicant *as a lawyer*.

24. Surname

25. First name(s)

26. Nationality

27. Address

28. Telephone (including international dialling code)

29. Fax

30. Email

Authority

The applicant must authorise any representative to act on his or her behalf by signing the authorisation below (see the Notes for filling in the application form).

I hereby authorise the person indicated to represent me in the proceedings before the European Court of Human Rights, concerning my application lodged under Article 34 of the Convention.

31. Signature of applicant

32. Date

D	D	M	M	Y	Y	Y	Y	e.g. 27/09/2012	

D. State(s) against which the application is directed

33. Tick the name(s) of the State(s) against which the application is directed

- | | |
|---|--|
| <input type="checkbox"/> ALB - Albania | <input type="checkbox"/> ITA - Italy |
| <input type="checkbox"/> AND - Andorra | <input type="checkbox"/> LIE - Liechtenstein |
| <input type="checkbox"/> ARM - Armenia | <input type="checkbox"/> LTU - Lithuania |
| <input type="checkbox"/> AUT - Austria | <input type="checkbox"/> LUX - Luxembourg |
| <input type="checkbox"/> AZE - Azerbaijan | <input type="checkbox"/> LVA - Latvia |
| <input type="checkbox"/> BEL - Belgium | <input type="checkbox"/> MCO - Monaco |
| <input type="checkbox"/> BGR - Bulgaria | <input type="checkbox"/> MDA - Republic of Moldova |
| <input type="checkbox"/> BIH - Bosnia and Herzegovina | <input type="checkbox"/> MKD - "The former Yugoslav Republic of Macedonia" |
| <input type="checkbox"/> CHE - Switzerland | <input type="checkbox"/> MLT - Malta |
| <input type="checkbox"/> CYP - Cyprus | <input type="checkbox"/> MNE - Montenegro |
| <input type="checkbox"/> CZE - Czech Republic | <input type="checkbox"/> NLD - Netherlands |
| <input type="checkbox"/> DEU - Germany | <input type="checkbox"/> NOR - Norway |
| <input type="checkbox"/> DNK - Denmark | <input type="checkbox"/> POL - Poland |
| <input type="checkbox"/> ESP - Spain | <input type="checkbox"/> PRT - Portugal |
| <input type="checkbox"/> EST - Estonia | <input type="checkbox"/> ROU - Romania |
| <input type="checkbox"/> FIN - Finland | <input type="checkbox"/> RUS - Russian Federation |
| <input type="checkbox"/> FRA - France | <input type="checkbox"/> SMR - San Marino |
| <input type="checkbox"/> GBR - United Kingdom | <input type="checkbox"/> SRB - Serbia |
| <input type="checkbox"/> GEO - Georgia | <input type="checkbox"/> SVK - Slovak Republic |
| <input type="checkbox"/> GRC - Greece | <input type="checkbox"/> SVN - Slovenia |
| <input type="checkbox"/> HRV - Croatia | <input type="checkbox"/> SWE - Sweden |
| <input type="checkbox"/> HUN - Hungary | <input type="checkbox"/> TUR - Turkey |
| <input type="checkbox"/> IRL - Ireland | <input type="checkbox"/> UKR - Ukraine |
| <input checked="" type="checkbox"/> ISL - Iceland | |

Subject matter of the application

All the information concerning the facts, complaints and compliance with the requirements of exhaustion of domestic remedies and the six-month time-limit laid down in Article 35 § 1 of the Convention must be set out in this part of the application form (sections E., F. and G.) (Rule 47 § 2 (a)). The applicant may supplement this information by appending further details to the application form. Such additional explanations must not exceed 20 pages (Rule 47 § 2 (b)); this page limit does not include copies of accompanying documents and decisions.

E. Statement of the facts

34.

NOTE: Reference is made to the attached Applicant's Statement containing a more detailed description of the facts. It is also noted that this application is identical to an application made by Mr. Lýður Guðmundsson on the same date.

Facts.

A legally convened meeting of the shareholders of Exista, held on 30 October 2008, resolved unanimously to grant the board of Exista the authorization to raise the share capital of Exista by up to 50,000,000,000 ISK. Through a structure set up at the time the private limited company Kvakkur purchased on 4 December 2008 ISK 50,000,000,000 share capital issued in Exista by payment in kind worth ISK 1,000,000,000. The share capital increase was notified to the FSK. As a result from the strategy the capital injected into Exista by the share capital increase was paid at the rate of 0.02 ISK for each share of nominal value 1 ISK. Other major shareholders were offered to join the increase at the same rate, but they were not interested.

At the time of the share capital increase in Kvakkur the Applicant LG was the Chairman of the Exista Board. The Applicant BÓ was at this time a partner of LOGOS legal services. The applicant LG and the applicant BÓ are herein collectively referred to as the "Applicants".

The total share capital of Exista after the increase amounted to ISK 64,174,767,632. The Board of Exista did, at the meeting on 4 December 2008, resolve that the share capital of Exista should be lowered against operational losses before end of year 2008 by 62,891,272,280 shares, meaning the nominal value of Exista would after the increase and the subsequent decrease of share capital be 1,283,769,353 ISK. The transactions were a part of a strategy designed by the key management of Exista, in order to save the company from insolvency while injecting new capital into its operations.

Exista's accountants, Deloitte, were assigned the task of confirming that the share increase of Exista was fully paid for by the above explained structure and LOGOS was assigned the task of notifying the FSK of the share capital increase.

According to Article 16(1) of the Act on Public Limited Companies, payment for a share may not amount to less than its nominal value.

On 8 December 2008 FSK was notified that the shares capital of Exista had been increased by ISK 50,000,000,000. The notification stated that LOGOS had been assigned the task of notifying the FSK of the share capital increase and reference was made to an enclosed specialist report prepared by Deloitte on payment for the newly issued shares. The share capital increase was registered on the same day by the FSK and no comments made. It was stated clearly in news bulletins at the time that share capital increase of 50,000,000,000 ISK was paid for by 1,000,000,000 ISK and others identified clearly that the payment was therefore at the rate of 0,02.

On 12 December 2008, the office of the Special Prosecutor was established. The Special Prosecutor launched numerous investigations in the months after the establishment of the office, intended to discover alleged criminal activities in the banking and finance sector of Iceland in the months and years leading up to the financial collapse of 2008. Both Applicants were called in for questioning as defendants or witnesses on several occasions regarding numerous investigations relating to Exista or Kaupþing bank. They suffered many years marked with the positions as suspects in the various investigations. Both have now finally been cleared from these positions and the Special Prosecutor could not find grounds for any charges against them, except for the charges brought in the case at hand.

On 29 June 2009, the FSK decided to withdraw the registration of share capital increase and lowered the registered share capital to the amount of shares registered prior to the increase. By a letter to the Special Prosecutor's office dated 28 September 2009, New Kaupþing Bank hf. (now Arion bank hf.) brought charges against certain members of Exista management, employees of Deloitte and LOGOS, amongst others the Applicants LG and BÓ.

On 22 January 2010 the District Court of Reykjavík granted a warrant for wire-tapping of the Applicant's phones from 22 January through 12 February 2010.

Statement of the facts (continued)

35.

On 25 January 2010 the District Court of Reykjavík granted the Special Prosecutor warrant to perform search of premises in "the applicant BÓ's work facilities and in common filing cabinets at LOGOS, computer systems and other common storages." The verdict of the District Court did not restrict the Special Prosecutor's search authorization to the demarcated evidence the Special Prosecutor himself had deemed necessary in his request.

On 26 January 2010 the Special Prosecutor performed a search of LOGOS's premises. Various documents and data were seized from the law office in large quantities and representatives of the law firm given little or no opportunity to observe which documents were apprehended. During the search of LOGOS' premises, the Special Prosecutor realized that emails and other electrical data of LOGOS was hosted by Síminn hf., an Icelandic telecom company. Hence, the Special Prosecutor obtained on 26 January 2010 a search warrant in the premises of Síminn hf.

By indictment dated 19 September 2012 the Special Prosecutor brought the following charges against the Applicants:

Against the applicant LG for having, on 8 December 2008, as board member of BBR, deliberately violated the Act on Public Limited Companies by paying less than nominal value for 50 billion new shares in Exista.

Against the applicants LG and BÓ for deliberately announcing an increase of share capital of Exista in a misleading manner when BÓ, at the behest of LG, notified the FSK that the share capital of Exista had been increased by 50 billion ISK and that the increase of share capital had been fully paid for, even though only 1 billion ISK had been paid to Exista.

It was witnessed under the court proceedings that the employees of the FSK did not read the auditors confirmation. Evidence further showed that neither LG or BÓ or any employee of Exista tried to conceal or hide what actually happened. The decision was published on the stock market, was on all major media and, as a consequence of the decision, BBR had, under legal obligation, to enter into a mandatory take over process. In the takeover process the capital increase was reviewed and scrutinized by the FME, which hired PwC as their advisors.

By judgment of the District Court of Reykjavík, rendered on 30 May 2013, the District Court found the applicant LG guilty of breaching Article 16(1) of the Act on Public Limited Companies, by paying, through BBR, less than nominal value for the share capital increase of Exista.

The applicant LG was acquitted of having any involvement in notifying the FSK of the share capital increase. In its conclusion the district court judge states that no witnesses have said that the applicant LG had any involvement in producing or filing the notification and no other evidence supports that assessment of the prosecutor.

LG was sentenced to pay a fine of 2 million ISK. The state was ordered to pay half of his legal defense cost.

The District Court moreover found BÓ innocent of the prosecution's claims in its judgment of 30 May 2013. According to the District Court's conclusion, the notification to FSK only states what was resolved at a board meeting of Exista, and BÓ had the duty, as the company's appointed attorney, to notify FSK of its decision, and the notification described the conclusion and a detailed description of the process was in the auditor's report attached to the notification. The District Court furthermore noted that on the contrary to the charges of Special Prosecutor, the notification and the auditor report described what actually happened. Thus, the District Court could not accept that the Applicant BÓ had, deliberately, notified the FSK of the share capital increase in a wrong or misleading manner. On 20 June 2013 the Director of Public Prosecutions appealed the judgment of the District Court to the Supreme Court. The Director of Public Prosecutions called for the applicants LG and BÓ to be found guilty of all charges, that the penalty of LG be increased and that the applicant BÓ be found guilty, penalized and deprived of his license to practice as attorney.

By its judgment on 13 March 2014 the Supreme Court found the applicant LG guilty of breaching Article 16(1) of the Act on Public Limited Companies, by paying, through BBR, less than nominal value for the share capital increase of Exista.

In its judgment, the Supreme Court moreover found the applicant LG innocent of any involvement in notifying FSK of the share capital increase, by reference to the district court's conclusions in that regard.

The Supreme Court found the applicant BÓ guilty of reporting the share capital increase to the FSK in a misleading manner. The Supreme Court sentenced the applicant LG to eight months imprisonment, five of which are suspended on probation for two years. The Supreme Court sentenced the applicant BÓ to six months imprisonment, three of which are suspended on probation for two years. The applicant BÓ was moreover deprived of his license to practice as attorney for a period of one year.

Statement of the facts (continued)

36.

Under Icelandic law, the applicant BÓ is not permitted to be a partner at a law firm while not being allowed to practice as attorney and is therefore no longer a partner at LOGOS, at least not during the one year suspension period.

A more detailed statement of the facts can be found in the **APPLICANTS STATEMENT**, enclosed.

F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments

37. Article invoked

Article 6-1

Explanation

The Applicants did not enjoy the right to a fair trial, when the investigation and prosecution is considered as a whole. They were presumed guilty by the investigation and the prosecution from the start. They also did not enjoy equality of arms guaranteed by Article 6(1) of the Convention.

Icelandic criminal procedure is based on the principle of objectivity which entails that under criminal proceedings, authorities must give equal notice to those issues that would lead towards a verdict of "not guilty" as well as a verdict of "guilty", as the goal is to establish what is true and correct. This is to ensure that no innocent man be found guilty of a crime he did not commit and to protect the legal certainty of the defendant.

However, the objective of the establishment of the office of the Special Prosecutor is, according to the explanatory notes to the Special Prosecutor Act, among other things, to "soothe anger, increase the public sense of justice and increase citizens' faith in the rule of law as well as to serve as a warning and education for the future". This led to the fact that the Applicants never had a real chance of defending against the charges brought against them because of the prejudice of the system as a whole.

Article 6-3-a and 6-3-b

The applicant BÓ submits that his conviction was for an offence different from the one charged. The offence for which the applicant BÓ was charged with specifically states that the Registry of Companies was notified "deliberately and in a false and misleading manner at the behest of LG." The Supreme Court concluded that such "behest of LG" was not present in the case. Also, the Supreme Court concluded that the notification signed by the applicant BÓ "indicated", by reference to enclosed documents prepared by the public accountant of Exista, in a misleading manner, that the share capital increase had been fully paid. Thus, the requirements of the indictment that the notification was "deliberately" presented in a "false" manner "at the behest" of the applicant LG were not fulfilled.

Article 7

The Applicants submit that Article 16, cf. Article 153(1)(2), of the Act on Public Limited Companies does not constitute a clear and foreseeable prohibition for the measures of which he is convicted. Hence, the Applicant's liability was not clearly defined in law at the time of the events at issue.

Article 8

Neither the request for warrant, the decision to grant it nor the conduct of the search and seizure was in accordance with the law and necessary in a democratic society, cf. Article 8(2) of the Convention. Seized materials contained privileged information about correspondence between an attorneys and their clients, inter alia the Applicants of this case and the house search of LOGOS and subsequent seizure of data at LOGOS and from Síminn, were as such in breach of Article 8 of the Convention, violating both Applicants rights to respect for private life.

A more detailed reasoning for each violation is included in the APPLICANTS STATEMENT, enclosed.

G. For each complaint, please confirm that you have used the available effective remedies in the country concerned, including appeals, and also indicate the date when the final decision at domestic level was delivered and received, to show that you have complied with the six-month time-limit.

38. Complaint

All Complaints

Information about remedies used and the date of the final decision

Applicants were investigated and prosecuted by the office of the Special Prosecutor, who issued an indictment on 19 September 2012.

The district court of Reykjavík issued its judgment on 30 May 2013. That judgment was appealed by the Director of Public Prosecutions on 20 June 2013.

The Supreme Court of Iceland found the Applicants guilty for parts of the indictment in a judgment on 13 March 2014.

The Applicants argued that their rights under the Convention had been breached, cf. enclosed APPLICANTS STATEMENT and the enclosed defense statements of each Applicant before both the District Court and the Supreme Court.

Moreover, the arguments were upheld at oral pleadings. However, they are not addressed in the judgments of the District Court nor the Supreme Court.

Regarding the Applicant BÓ's submission that his conviction was for an offence different from the one charged, the Applicant never had the chance to argue this before national courts, as his conviction for an offence different than the one charged first became evident when the Supreme Court rendered its judgment.

Regarding the violation of Article 8 as the premises of LOGOS were searched and data seized, an appeal to the Supreme Court of a district court verdict authorizing a house search and seizure is in fact meaningless, as when the search and seizure has already taken place the Supreme Court has in practice accepted that investigators can hold onto the seized documents and data, regardless of whether procedural rules were followed. LOGOS had therefore exhausted all domestic remedies before the district court.

39. Is or was there an appeal or remedy available to you which you have not used?

Yes

No

40. If you answered Yes above, please state which appeal or remedy you have not used and explain why not.

H. Information concerning other international proceedings (if any)

41. Have you raised any of these complaints in another procedure of international investigation or settlement?

Yes

No

42. If you answered Yes above, please give a concise summary of the procedure (complaints submitted, name of the international body and date and nature of any decisions given).

43. Do you (the applicant) currently have, or have you previously had, any other applications before the Court?

Yes

No

44. If you answered Yes above, please write the relevant application number(s) in the box below.

I. List of accompanying documents

You should enclose full and legible *copies* of all documents.

No documents will be returned to you. It is thus in your interests to submit copies, not originals.

You MUST:

- arrange the documents in order by date and by procedure;
- number the pages consecutively;
- NOT staple, bind or tape the documents.

45. In the box below, please list the documents in chronological order with a concise description.

1. Applicants' statement (not included in the bundle with pages numbered consecutively)
2. Supreme Court Judgment in case No. 385/2007, rendered on 5 June 2007
3. Verdict of the District Court of Reykjavik in case No. R-3/2010, rendered on 22 January 2010 regarding the Special Prosecutors request for warrant to arrest the Applicant LG
4. Verdict of the District Court of Reykjavik in case No. R-41/2010, rendered on 22 January 2010 regarding the Special Prosecutors request for warrant for wire-tapping the Applicant BÓ's phones
5. Verdict of District Court of Reykjavik in case No. R-45/2010, rendered on 22 January 2010 regarding the Special Prosecutors request for warrant for wire-tapping the Applicant LGs phones
6. Verdict of the District Court of Reykjavik in case No. R-52/2010, rendered on 25 January 2010 regarding the Special Prosecutors request for search and seizure at the Applicant LGs home
7. Verdict of the District Court of Reykjavik in case No. R-53/2010, rendered on 25 January 2010 regarding the Special Prosecutors request for search and seizure at the Appl. LG's and AG's summerhouse
8. Print out from mbl.is newspaper - The investigation is a destination unknown journey, dated 1 June 2011
9. Indictment from the Special Prosecutor against Lýður Guðmundsson and Bjarnfreður H. Ólafsson dated 19 September 2012
10. Defence statement submitted to the District Court of Reykjavik for Bjarnfreður Ólafsson, dated 4 December 2012
11. Defence statement submitted to the District Court of Reykjavik on 5 December 2012 for Lýður Guðmundsson
12. Defence statement submitted to the Supreme Court for Lýður Guðmundsson, not dated
13. Defence statement submitted to the Supreme Court for Bjarnfreður H. Ólafsson, not dated
14. Supreme Court Judgment in case No. 408/2013, rendered on 8 October 2013
15. Supreme Court Judgment in case No. 450/2013 (the Exista case), rendered on 13 March 2014. Judgment of the District Court of Reykjavik attached
16. Legal opinion of Jón Steinar Gunnlaugsson, former Supreme Court Judge, on the Supreme Court's Judgment in case No. 450/2013 (the Exista case). Dated 17 April 2014
17. Request for Jón Steinar Gunnlaugsson's opinion together with English translation
18. Report of the investigative officers in the VÍS-case
19. Judgment of the District Court in case No. S-947/2014 (the VÍS-case), rendered on 24 June 2014
20. Print out of Ríkisútvarpið's news bulletin, dated 23 July 2014, that all cases against VÍS and Exista have been dropped
21. Act No. 2/1995 on Public Limited Liability Companies (the Public Limited Companies Act)
22. Act No. 88/2008 on Criminal Procedure
23. Explanatory notes to the Act No. 88/2008 on Criminal Procedure
24. Act on the office of the Special Prosecutor No. 135/2008
25. Explanatory notes to the Act on the office of the Special Prosecutor No. 135/2008

Any other comments

Do you have any other comments about your application?

46. Comments

Declaration and signature

I hereby declare that, to the best of my knowledge and belief, the information I have given in the present application form is correct.

47. Date

1	1	0	9	2	0	1	4	e.g. 27/09/2012
D	D	M	M	Y	Y	Y	Y	

The applicant(s) or the applicant's representative(s) must sign in the box below.

48. Signature(s) Applicant(s) Representative(s) - tick as appropriate



Confirmation of correspondent

If there is more than one applicant or more than one representative, please give the name and address of the one person with whom the Court will correspond.

49. Name and address of Applicant Representative - tick as appropriate

Bjarnfreður Ólafsson
 bjarnfredur@logos.is
 Efstaleiti 5
 103 Reykjavík
 Iceland

The completed application form should be signed and sent by post to:

The Registrar
 European Court of Human Rights
 Council of Europe
 67075 STRASBOURG CEDEX
 FRANCE