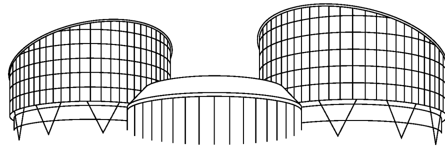

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF GEOTECH KANCEV GMBH v. GERMANY

(Application no. 23646/09)

JUDGMENT

STRASBOURG

2 June 2016

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Geotech Kancev GmbH v. Germany,

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

Ganna Yudkivska, *President,*
Angelika Nußberger,
Khanlar Hajiyev,
André Potocki,
Faris Vehabović,
Yonko Grozev,
Carlo Ranzoni, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 26 April 2016,

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

PROCEDURE

1. The case originated in an application (no. 23646/09) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Geotech Kancev GmbH (“the applicant”), a limited company registered in Castrop-Rauxel, on 29 April 2009.

2. The applicant company was represented by Ms H. Böttcher, a lawyer practising in Hamburg. On 30 March 2010 insolvency proceedings were opened over the applicant company’s assets. The company has not been struck off the Commercial Register (*Handelsregister*). The Insolvency Administrator (*Insolvenzverwalter*) authorised the applicant’s counsel to continue the proceedings before this Court. The German Government (“the Government”) were represented by their Agent, Mr H.-J. Behrens, *Ministerialrat*, of the Federal Ministry of Justice.

3. Third-party comments were received from the Supplementary Pension Scheme for the Construction Industry Corporation (*Zusatzversorgungskasse des Baugewerbes AG*, “ZVK”), which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of the Court). The parties were given an opportunity to reply to those comments (Rule 44 § 6 of the Rules of the Court).

4. The applicant company mainly alleged that its obligation to participate in the Social Welfare Fund, jointly set up by the employers’ associations and the trade union in the building industry, violated its right to freedom of association under Article 11 of the Convention as well as its right to peaceful enjoyment of its possessions under Article 1 of Protocol No. 1.

5. On 19 June 2013 the complaints concerning Article 11 of the Convention and Article 1 of Protocol No. 1 were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant company specialises in taking soil samples by way of drilling for geological examination, *inter alia,* for the purpose of assessing suitability for building sites and for the construction of wells.

A. The disputed obligation to contribute to the Social Welfare Fund in the building industry

7. In the building industry in Germany, a number of collective agreements operated, which contained regulations related to the social welfare of employees working in that sector (see relevant domestic law and practice paragraphs 21-28). The employers' associations in the building industry (*Hauptverband der Deutschen Bauindustrie* and *Zentralverband des Deutschen Baugewerbes*) and the trade union (*IG Bauen-Agrar-Umwelt*) concluded the Collective Agreement on Social Welfare Proceedings in the Building Trade (*Tarifvertrag über das Sozialkassenverfahren im Baugewerbe*, "VTV"). The VTV contained rules about contributions and entitlements in relation to both the ZVK and the Holiday and Wage Equalisation Fund of the Construction Industry (*Urlaubs- und Lohnausgleichskasse der Bauwirtschaft*, "ULAK"), which jointly comprised the Social Welfare Fund in the building industry which went by the common name "SOKA-BAU".

8. As the Federal Ministry for Labour and Social Affairs declared the VTV generally binding (*allgemeinverbindlich*) pursuant to Section 5 § 1 of the Law on Collective Agreements (*Tarifvertragsgesetz*), it was binding on all employers in the building industry, even if they did not belong to the employers' association (Section 5 § 4 of the Law on Collective Agreements, see relevant domestic law and practice paragraph 20). As a consequence, all employers in the building industry were obliged to contribute to the Social Welfare Fund an additional sum amounting to 19.8% of the gross wages paid to their employees.

9. The applicant company was not a member of an employers' association that was party to the relevant collective agreements. It was thus

not directly bound by any collective agreements by virtue of such membership.

10. On 10 August 2004 the Social Welfare Fund sent a letter to the applicant company with key information about the supplementary welfare schemes, including with regard to contributions to be paid and possible benefits it might receive. The applicant company did not react to this letter.

11. On 12 April 2005, following enquiries made in order to establish whether the applicant was obliged to pay contributions, the Social Welfare Fund sent a letter to the applicant company, informing it about its duty to pay contributions and that an account had been opened into which benefits would be paid.

12. On 28 April 2005 the applicant company's lawyer sent a letter to the Social Welfare Fund, objecting to being registered with the Fund.

B. Judicial proceedings

13. On 11 October 2007 the Wiesbaden Labour Court ordered the applicant company to pay 63,625.58 euros (EUR) in welfare fund arrears for the period between September 2002 and March 2004 to the ZVK. The applicant company was further ordered to submit copies of the wage slips issued to its employees between January 2006 and June 2007. The Labour Court considered that the applicant company was bound by the VTV, which was binding on all employers in the building industry even if they did not belong to one of the employers' associations. The activities of the applicant company fell within the scope of the VTV which, in its Article 1 § 2 (v) no. 6, listed drilling as an activity within its scope.

14. The applicant company lodged an appeal submitting, in particular, that the generally binding effect of the VTV violated the negative aspects of its right to freedom of association. It argued that it was obliged to contribute to a fund jointly set up by the employers' association and the trade union, even though it did not belong to either of these associations. The applicant company further complained that it was prevented from founding its own association, due to a lack of funds.

15. On 27 June 2008 the Hesse Labour Court of Appeal rejected the applicant company's appeal and did not grant leave for an appeal on points of law. As well as confirming the Labour Court's reasoning, the Court of Appeal held that the generally binding effect of the VTV did not violate the applicant company's right to freedom of association. It observed that the generally binding effect did not entail an obligation to adhere either to one of the employers' associations or to the Social Welfare Fund. Referring to the case-law of the Federal Constitutional Court (decision of 15 July 1980, 1 BvR 24/74, see relevant domestic law and practice paragraph 27), the Labour Court of Appeal conceded that the applicant company, which was not a member of one of the employers' associations, had the disadvantage of

not being able to assert its interests by exercising control over the activities of the Social Welfare Fund via these associations. The right to participate in the decision-making process within these associations was reserved to members of the respective association. In so far as this fact exerted a certain pressure to become a member of one of the employers' associations, this was, however, not sufficient to amount to a violation of the negative aspect of its right to freedom of association.

16. The Court of Appeal further considered that the obligation to contribute to the Social Welfare Fund did not prevent the applicant company from founding its own association. It observed that the major parts of the contributions due would be reimbursed to the applicant if properly declared.

17. The Court of Appeal finally considered that the obligatory contribution to the Social Welfare Fund took account of the high fluctuation of employees in the building industry and served the public interest of allowing for management of the employee's claims by the Social Welfare Fund, thus preventing a distortion of competition.

18. On 10 December 2008 the Federal Labour Court rejected the applicant company's complaint against the refusal to grant leave to appeal.

19. On 5 February 2009 the Federal Constitutional Court refused to accept the applicant company's constitutional complaint for adjudication without providing reasons (1 BvR 243/09).

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Generally binding collective agreements in the building industry

20. Section 5 of the Law on Collective Agreements, which constituted the legal basis for declaring collective agreements generally binding and set out the procedure for and effects of such a declaration, provided:

> "(1) The Federal Ministry for Labour and Social Affairs may, on request, and with the consent of a committee consisting of three representatives each of the head organisations of the employers and of the employees, declare a collective agreement generally binding, if
>
> 1. the employees of the employers which are bound by the collective agreement constitute no less than 50% of the employees to which the collective agreement applies and
>
> 2. it appears to be in the public interest to grant the agreement binding effect.
>
> The conditions referred to in numbers 1 and 2 may be waived if the declaration of general applicability appears necessary to rectify a social emergency.
>
> (2) Before taking a decision concerning an application, employers and employees who might possibly be affected by the declaration of general applicability, the trade unions and employers' associations interested in the outcome of the procedure, and the highest labour authorities of the *Länder* included in the scope of the collective

agreement shall be given the opportunity to submit written statements and to make statements in an oral and public hearing.

(3) Where the highest labour authority of an involved *Land* raises an objection against the declaration of general applicability, the Federal Ministry of Labour and Social Affairs may only grant the application with the prior approval of the Federal Government.

(4) In case a collective agreement has been declared generally binding, the provisions of that agreement also apply to those employers and employees who had previously not been bound by it.

(5) The Federal Ministry of Labour and Social Affairs may revoke the declaration of general applicability of a collective agreement with the consent of the committee referred to in subsection (1) if the revocation appears expedient in the public interest. Subsections (2) and (3) shall apply mutatis mutandis.

(6) The Federal Ministry of Labour and Social Affairs may, in individual cases, transfer the right to make the declaration of general applicability and to revoke the declaration of general applicability to the highest *Land* labour authority.

(7) Public notification shall be made of the declaration of general applicability and of the revocation of the declaration of general applicability."

21. In the building industry, a number of collective agreements operated, which contained regulations related to the social welfare of employees in that sector. These agreements took account of the specific working conditions in the building industry, notably that building work was largely weather-dependent; the building industry was subject to considerable fluctuations in orders, but production in advance was not possible, so that low demand inevitably led to a shortage of orders; employee fluctuation between construction companies was generally high; and the majority of persons employed in the building industry left the labour force before they reached the age of retirement. This resulted in employees in the building industry not being able to fulfil the prerequisites for obtaining social welfare benefits in respect of one single employer.

22. In order to protect the employees in the building industry against these disadvantages and to guarantee them certain minimum social welfare benefits, supplementary social welfare schemes were introduced through collective agreements. The relevant collective agreements were: the Federal Framework Collective Agreement for the Building Industry (*Bundesrahmentarifvertrag für das Baugewerbe*, "BRTV"), which regulated the entitlement to holiday pay for employees in the construction industry, among other things; the Collective Agreement on Pension Allowances in the Building Industry (*Rentenbeihilfen im Baugewerbe*, "TVR"); the Collective Agreement on Vocational Training in the Building Industry (*Tarifvertrag über die Berufbildung im Baugewerbe*, "BBTV"); and the VTV.

23. The holiday fund and the supplementary pension scheme had in common that they eliminated the link to a concrete employment relationship

and instead focused on the fact that an employee was a member of a specific sector. If an employee moved from one employer in the building industry to another, he retained any previously accrued entitlements. The employee's periods of employment in various companies in the building industry were added up.

24. All employers within the scope of application of the respective generally binding collective agreements were obliged to contribute financially to the said social welfare schemes. These contributions were used to reimburse the companies that provided the respective benefits to the employees. In other words, the employers in the building industry financed the social welfare benefits of the employees in that sector, based on the principle of solidarity.

25. These social welfare schemes have been implemented in accordance with the respective generally binding collective agreements for several decades: the holiday scheme was introduced in 1949, the supplementary pension scheme in 1957, and the vocational training scheme in 1975.

26. In 1965 the Federal Labour Court found that declaring the collective agreements on which the social welfare schemes were based generally binding was legal (judgments of 3 February 1965, 4 AZR 483/62 and 4 AZR 385/63).

27. In 1980 the Federal Constitutional Court held that declaring the collective agreements concerning the Social Welfare Fund generally binding did not violate the Basic Law (*Grundgesetz)* (judgment of 15 July 1980, 1 BvR 24/74 and 1 BvR 439/79). It found, in particular, that the pressure on a company to become a member of an association that was party to the respective collective agreements, so as to be able to assert its interests by exercising control over the activities of the social welfare schemes via this association, did not constitute a violation of the negative aspect of the right to freedom of association. The Federal Constitutional Court recently upheld the keynotes of that decision (judgment of 11 July 2006, 1 BvL 4/00), finding that a mere incentive to join an association was not sufficient to constitute an interference with the negative aspect of the right to freedom of association.

28. The declaration of generally applicability of each of these collective agreements was preceded by the procedure prescribed by Section 5 of the Law on Collective Agreements.

B. The Social Welfare Fund in the building industry ("SOKA-BAU")

29. The VTV contained rules about contributions and entitlements in relation to both the ZVK and the ULAK, which jointly comprised the Social Welfare Fund in the building industry which went by the common name "SOKA-BAU". The ZVK and the ULAK were responsible for administering and implementing the above-mentioned social welfare

schemes as regulated in the respective generally binding collective agreements concluded in the building industry.

30. The Social Welfare Fund in the building industry did not establish – nor foresee – that any employer or employee falling within the scope of the Fund became, or could become, a member of the Fund. The only members of the ZVK were the parties to the respective collective agreements, namely the employers' associations (*Hauptverband der Deutschen Bauindustrie* and *Zentralverband des Deutschen Baugewerbes*) and the trade union in the building industry (*IG Bauen-Agrar-Umwelt*). Members of the ULAK included, in addition, regional employers' associations.

31. At the time relevant for the present case, the ZVK was responsible for collecting contributions for the holiday scheme, for financing pension allowances, and for financing sector-wide vocational training in the building industry. It was also responsible for administrating the pension allowance scheme. The holiday scheme and the vocational training scheme, however, were administered by the ULAK.

32. In addition, the ZVK and the ULAK also administered and paid optional benefits to the employers and employees. These benefits were not part of the applicable collective agreements and were not financed from the contributions paid in accordance with the VTV.

33. From 21 December 2007 the Social Welfare Fund operated in the legal form of a stock company. Before 21 December 2007, and at the time relevant to the instant case, the ZVK was organised as a mutual insurance association (*Versicherungsverein auf Gegenseitigkeit*), a specific legal form in private law available in the area of insurance only. The ULAK was organised as a commercial association within the meaning of Article 22 of the Civil Code.

34. The benefits provided by the ZVK constituted an insurance product under domestic law. The ZVK was thus subject to state insurance supervision by the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*, "BaFin"). The ULAK was likewise subject to state supervision, by the State capital of the Federal State (*Land*) of Hesse.

35. According to their statutes, neither the ZVK nor the ULAK were allowed to realise or to distribute any profits. The contributions they received could exclusively be used to administer and to finance social welfare schemes and to pay out the respective benefits. Profits could only be used to build up reserves.

36. Whenever a firm registered with the Social Welfare Fund, or the Social Welfare Fund learned of the existence of a building company by other means, a letter was sent to the company briefly outlining the social welfare schemes, including associated reimbursements. In addition, a brochure containing information about the benefits paid to employees and the reimbursement of employers was enclosed. The brochure also provided

an overview of the legal bases for the social welfare schemes. Reference was made to the website www.soka-bau.de and to further information available by telephone or in electronic form.

37. If the Social Welfare Fund's enquiries revealed that a company was bound by the respective collective agreements, the company received written notification thereof. Additional information about, *inter alia*, the benefits paid by the ZVK and the ULAK, the respective social welfare schemes, the tasks of the ZVK and the ULAK, and the use of the financial contributions was enclosed. In addition, the company was offered a free personal on-site consultation.

38. In terms of reporting, the ZVK and the ULAK each provided individual annual reports of their activities and the concrete use to which the contributions they received were put. As from 2004, they also prepared a joint annual report in addition to the individual reports.

39. The ZVK's annual report was published in the Federal Gazette. From 2002, the annual reports of the ZVK and the ULAK could also be downloaded from the Fund's website. Companies registered with the Social Welfare Fund received a letter of information as soon as a new annual report had been published. These letters did not only indicate the possibility of downloading the annual reports but also contained a form which a firm could use to order printed copies by post.

40. The annual reports set out the tasks of the Social Welfare Fund and provided a description of its income and expenditure. The respective information was detailed (for example, for the ZVK report as it related to the pension allowance: number of pensioners, pension payment expenditure, average amount of pension allowance, year-on-year comparison). The reports also featured information on staffing costs of the ZVK and the ULAK. The annual accounts, including balance sheets, were compiled in accordance with the relevant national provisions and audited by accountants. The annual reports showed that the Social Welfare Fund did not make any profit. Any surpluses generated were primarily used to build up reserves. This information was provided to the companies that were obliged to pay contributions, regardless of whether or not a specific company was a member of one of the associations that were party to the collective agreement.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

41. The applicant company complained that the obligation to participate in the Social Welfare Fund in the building industry violated its right to

freedom of association as provided in Article 11 of the Convention, the relevant parts of which read as follows:

> "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... for the protection of health or morals or for the protection of the rights and freedoms of others. ..."

42. The Government disputed this contention.

A. Admissibility

43. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

44. The applicant company alleged that the negative aspect of its right to freedom of association was interfered with because it was obliged to contribute to the Social Welfare Fund in the same way as a member of one of the employers' associations, but without having any competence to control the protection of its own interests within the organisation. This exerted a significant pressure on the applicant company to become a member of one of the employers' associations, in order to defend its interests.

45. In addition, the applicant company submitted that it had not been properly informed about its obligation to participate in the Social Welfare Fund and its corresponding rights and duties. Moreover, the statements of accounts published by the Social Welfare Fund lacked transparency and did not provide sufficient information on the use of the employers' contributions.

46. The applicant company further alleged that the obligation to contribute to the Social Welfare Fund deprived it of the necessary means to found its own employers' association and thus interfered with the positive aspect of its right to freedom of association.

(b) The Government

47. The Government disputed that there had been any interference with the negative aspect of the applicant’s right to freedom of association, as provided for in Article 11 of the Convention. It submitted that the applicant company was merely under the obligation to pay contributions to the Social Welfare Fund which were used to pay benefits to employers and employees in the building industry. The applicant company did not become, nor was it obliged to become, a member of the Social Welfare Fund on account of the declaration of general applicability of the VTV, nor of the employers’ associations which concluded the VTV. It was not threatened with sanctions or other disadvantages if it did not join. There was, therefore, no compulsion that the applicant company join an association.

48. The Government further submitted that the declaration of the general applicability of the VTV did not create an incentive for the applicant company to join one of the parties to the VTV, for the agreement’s rules applied to it anyway. Even assuming that there was a *de facto* incentive for the applicant company to join an employers’ association, it was not sufficiently strong to constitute an interference with the applicant’s right not to join an association against its will.

49. The Government further submitted that the duty to contribute to the Social Welfare Fund did not in any way take away the applicant company’s right to establish an association, to promote it or to join an existing association. In so far as the applicant company claimed to be deprived of the necessary financial means on account of having to pay contributions to the Social Welfare Fund, the Government emphasised that the duty to pay contributions was offset by entitlements against the Social Welfare Fund. In that regard, it submitted that the applicant company had applied for a reimbursement for holiday pay it had paid to its employees in the amount of EUR 100,000. The reimbursements claimed by the applicant were offset against the contributions owed. The Government also submitted that there was no direct link between the payment of contributions and the alleged restriction of the applicant company’s right to freedom of association.

(c) The third party

50. The ZVK provided information on the Social Welfare Fund in the building industry, comprising the ZVK and the ULAK, in particular as regards the scope of application of the VTV and the ensuing obligation of employers falling within that scope to participate in the Fund; the contributions of the applicant company at the material period in time; information about the payments from the Social Welfare Fund to employers and employees relating to, *inter alia*, the holiday scheme, the vocational training scheme, and the supplementary pension scheme. It submitted that all of these payments were financed through the contributions made by the employers, and elaborated on conditions for entitlement and reimbursement.

The ZVK further provided information on its additional areas of activity, its staff expenditure and its reporting.

2. The Court's assessment

51. The Court reiterates that the freedom of association implies some measure of freedom of choice as to its exercise and encompasses both a positive right to form and to join an association and a negative right not to be forced to join an association (*Sigurður A. Sigurjónsson v. Iceland*, 30 June 1993, § 35, Series A no. 264; *Vörður Ólafsson v. Iceland*, no. 20161/06, § 45, ECHR 2010). Although an obligation to join a particular association may not always be contrary to the Convention, a form of such an obligation which, in the circumstances of the case, strikes at the very substance of the freedom of association guaranteed by Article 11 will constitute an interference with that freedom (see *Gustafsson v. Sweden*, 25 April 1996, § 45, Reports of Judgments and Decisions 1996-II).

52. At the outset, the Court notes that it was legally impossible for the applicant company directly to become a member of the Social Welfare Fund, which was jointly set up by the employers' associations in the building industry (*Hauptverband der Deutschen Bauindustrie* and *Zentralverband des Deutschen Baugewerbes*) and the trade union (*IG Bauen-Agrar-Umwelt*). Nor was it obliged to become a member of one of the two employers' associations in question.

53. Rather, the applicant company alleged an interference with the negative aspect of its right to freedom of association because it was, following the declaration of general applicability of the VTV, obliged to contribute financially to the Social Welfare Fund. In that regard, it must be determined whether, as argued by the applicant but contested by the Government, this obligation was tantamount to compulsory membership adversely affecting the negative aspect of the applicant's freedom of association, namely its freedom not "to join" one of the employers' associations against its will. The Court reiterates that the obligation to contribute financially to an association can resemble an important feature in common with that of joining an association and can constitute an interference with the negative aspect of the right to freedom of association (*Vörður Ólafsson*, cited above, § 48).

54. The Court observes that the applicant company was obliged to contribute financially to social welfare entitlements in the interest of all employees working in the building industry, based on the principle of solidarity (see, *a contrario*, *Vörður Ólafsson*, cited above, § 51). It notes that the relevant collective agreements were designed to be declared generally applicable. Sector-specific supplementary social welfare systems could not provide the intended social security for all employees in that sector if only employers who were members of an employers' association had to participate. In order to provide the intended social security, the social

welfare schemes presupposed that all employers and employees in the building industry, especially those not bound by collective agreements, were included in the schemes. The Court further notes that the applicant's contributions could exclusively be used to administer and to implement these schemes and to pay out the respective benefits (see relevant domestic law and practice paragraph 35). In addition, the ZVK and the ULAK offered optional benefits to employers and employees, irrespective of whether or not the employer was a member of an employers' association (see relevant domestic law and practice paragraph 32). The contributions at stake in the present case can thus not be considered membership contributions. What is more, the duty to pay contributions was offset by the applicant company's entitlement to reimbursement by the Social Welfare Fund.

55. The Court further considers that the members of the associations that set up the Social Welfare Fund did not receive reductions in their membership fees (see, *a contrario*, *Vörður Ólafsson*, cited above, §§ 48, 52), nor more favourable treatment than non-members in other areas. The members of these associations, too, had no direct control over the use of the financial contributions of the Social Welfare Fund, but could only exert their influence via these associations. What is more, all companies that contributed to the Social Welfare Fund received comprehensive information on their rights and duties as well as annual reports informing them about the use of the contributions, irrespective of whether or not they were members of an employers' association (see relevant domestic law and practice paragraphs 36-40). Non-members of employers' associations were thus not treated less favourably than members in relation to transparency and accountability (see, *a contrario*, *Vörður Ólafsson*, cited above, §§ 81-82).

56. Finally, the applicant company's obligation to contribute financially to the Social Welfare Fund originated in the declaration of general applicability of the VTV, a collective agreement in the building industry, by the Federal Ministry for Labour and Social Affairs. The entity of the Social Welfare Fund to which the applicant company was obliged to contribute financially, the ZVK, was subject to supervision by the German Federal Financial Supervisory Authority (see relevant domestic law and practice paragraph § 34). There was hence a significant level of involvement of, and control by, public authorities (see, *a contrario*, *Vörður Ólafsson*, cited above, § 49).

57. It is true that the obligation to contribute financially to the Social Welfare Fund could be regarded as creating a *de facto* incentive for the applicant company to join one of the employers' associations in the building industry in order to be able to participate in that association's decision-making process and to assert its interests by exercising control over the activities of the Social Welfare Fund. However, in light of the above, the Court finds that this *de facto* incentive was too remote to strike at

the very substance of the right to freedom of association guaranteed by Article 11 of the Convention and did, therefore, not amount to an interference with the applicant company's freedom not to join an association against its will.

58. In so far as the applicant company alleged that there had been an interference with the positive aspects of its right to freedom of association, the Court observes that the duty to contribute to the Social Welfare Fund did not in any way take away the applicant company's right to establish an association, to promote it or to join an existing association. In so far as the applicant company claimed to be deprived of the necessary financial means on account of having to pay contributions to the Social Welfare Fund, the Court observes that the applicant company's duty to pay contributions was offset by its entitlements against the Social Welfare Fund.

59. Accordingly, the Court considers that in the present case there has been no violation of Article 11 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

60. The applicant company also complained that its obligation to contribute to the Social Welfare Fund violated its right to the peaceful enjoyment of its possessions guaranteed by Article 1 of Protocol No. 1 to the Convention, which provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his 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."

61. The Government contested that argument.

A. Admissibility

62. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

63. The applicant company submitted, in particular, that its activities did not fall within the scope of the VTV and that declaring the VTV generally applicable was not in the public interest. Also, it was required to pay higher wages than competitors that did not have to contribute to the Social Welfare Fund. It alleged that the obligation to pay EUR 63,625.58 to the Social Welfare Fund drove it into bankruptcy.

(b) The Government

64. The Government submitted that there was no indication that the applicant company's duty to pay contributions to the Social Welfare Fund affected its ownership of moveable property or real estate nor certain rights in rem or under the law of obligations. It argued that, at most, the applicant company's assets were affected because they would initially decrease on account of the duty to pay contributions and that assets as such did not fall within the protection of Article 1 of Protocol No. 1. Also, the duty to pay contributions was offset by the applicant company's entitlement to reimbursement by the Social Welfare Fund. Moreover, declaring collective agreements establishing supplementary social welfare schemes in the building industry generally applicable was necessary in the public interest and within the wide margin of appreciation that member States enjoyed in relation to social and economic policies.

2. The Court's assessment

65. The Court reiterates that in order for an interference to be compatible with Article 1 of Protocol No. 1 it must be lawful, be in the general interest and be proportionate, that is, it must strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see, among many other authorities, *Beyeler v. Italy* [GC], no. 33202/96, § 107, ECHR 2000-I; *Zammit and Attard Cassar v. Malta*, no. 1046/12, § 47, 30 July 2015).

(a) Whether there was an interference

66. The Court reiterates that Article 1 of Protocol No. 1 is applicable to compulsory contributions to social insurance schemes (*Fratrik v. Slovakia* (dec.), no. 51224/99, 25 May 2004) and finds that the obligation to contribute financially to the Social Welfare Fund interfered with the applicant company's right to peaceful enjoyment of its possessions as

guaranteed by the first sentence of the first paragraph of Article 1 of Protocol No. 1 to the Convention.

(b) Compliance with the principle of lawfulness

67. The Court notes that the applicant company's obligation to contribute financially to the Social Welfare Fund in the building industry was based on the declaration of general applicability of the VTV by the Federal Ministry of Labour and Social Affairs, in line with the procedure prescribed by Section 5 of the Law on Collective Agreements (see relevant domestic law and practice paragraphs 20, 25-28). The Court further considers that it was established case-law of domestic courts that drilling work, as carried out by the applicant company, fell within the scope of the VTV. Whilst noting that there is dispute between the parties as to whether the conditions for declaring the VTV generally binding were met at the material time, and whether the applicant company fell within the scope of application of the VTV, the Court finds no reason to question the finding of the domestic courts that declaring the VTV generally applicable was in conformity with domestic law and that the applicant company fell within its scope of application. It is in the first place for the domestic authorities, notably the courts, to interpret and apply the domestic law (see *Vörður Ólafsson*, cited above, § 72, with further references). Thus the Court is satisfied that there was a legal basis in domestic law which was sufficiently clear to enable the applicant to foresee the obligation to pay the respective contributions given its field of activity.

(c) The aim of the interference

68. The Court observes that declaring the collective agreements in the building industry generally binding, and the ensuing obligation for all employers in that sector to contribute financially to the Social Welfare Fund, aimed at ensuring a certain level of social security for all employees in that sector, especially for those employees not bound by collective agreements. The said collective agreements took account of the specific working conditions in the building industry and ensured, *inter alia*, that employees were able to take continuous annual holiday merely on account of working in the building industry, irrespective of whether they switched employers in a given year, and that disadvantages as regards the acquisition of statutory pension entitlements were compensated. The Court finds that the interference pursued a legitimate aim "in accordance with the general interest", notably to ensure the social protection of all employees working in the building industry.

(d) Whether a fair balance was struck

69. The Court observes that the present case involves questions related to the implementation of political, economic and social policies and recalls

that the Contracting States enjoy a wide margin of appreciation in this area (see *Zolotas v. Greece (no. 2)*, no. 66610/09, § 44, ECHR 2013 (extracts); *Fratrik*, cited above; *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands*, 23 February 1995, § 60, Series A no. 306-B). The Court will respect the assessment of the national authorities in this area unless it is manifestly without foundation.

70. The Court observes that, in order to provide the intended social security, the social welfare schemes presupposed that all employers and employees in the building industry, especially those not bound by collective agreements, were included in the schemes. The schemes were based on the principle of solidarity among all employers in the building industry in the interest of the employees in that sector.

71. The Court also notes that the contributions paid by the applicant and other employers could exclusively be used for the payment of the respective social welfare benefits to employees and for the reimbursement of employers that provided such benefits to their employees. Moreover, the applicant company was actually entitled to reimbursements from the Social Welfare Fund for benefits it provided to its employees, which were offset against the contributions owed.

72. What is more, the applicant company did not experience any disadvantages in relation to the Social Welfare Fund compared to companies that were members of the employers' associations which were parties to the collective agreements, neither financially nor otherwise. The Court observes that companies that contributed to the Social Welfare Fund received comprehensive information on their rights and duties as well as annual reports informing them about the use of the contributions, irrespective of whether or not they were members of an employers' association (see relevant domestic law and practice paragraphs 36-40). The Social Welfare Fund, which comprised the ZVK and the ULAK which were each audited and under state supervision, thus complied with the requirements of transparency and accountability (see, *a contrario*, *Evaldsson and Others v. Sweden*, no. 75252/01, §§ 62-64, 13 February 2007).

73. The Court finds that the interference was proportionate to the legitimate aim pursued, in that a fair balance was struck between the interest to ensure the social protection of all employees working in the building industry on the one hand and the applicant company's right to peaceful enjoyment of its possessions on the other hand. The domestic authorities acted within their wide margin of appreciation in the area of social and economic policies.

74. Accordingly, the Court considers that in the present case there has been no violation of Article 1 of Protocol No. 1 to the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the remainder of the application admissible;

2. *Holds* that there has been no violation of Article 11 of the Convention;

3. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 2 June 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Ganna Yudkivska
Registrar	President