



December 2010

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Trade union rights

Scope of trade union rights

Article 11 (freedom of assembly and association): “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.”

In the judgment in [National Union of Belgian Police v. Belgium](#) (27.10.1975), the Court found no violation of Article 11; however, the judgment set forth the main principles concerning trade union freedom:

Article 11 safeguards:

- the right to form a trade union and to join the trade union of one's choice;
- the right to be heard and “freedom to protect the occupational interests of trade union members by trade union action, the conduct and development of which the Contracting States must both permit and make possible” (§ 39).

In this case, the applicant trade union complained that the government had not recognised it as one of the most representative organisations which the Ministry of the Interior was required by law to consult.

No violation of Article 11: the applicant trade union had other means of acting *vis-à-vis* the government, besides consultations with the Ministry of the Interior.

The Court further considered that Belgium's general policy of restricting the number of organisations to be consulted was not in itself incompatible with trade union freedom and was a matter for the State's discretion.

The rules governing the exercise of the right to organise fall within States' margin of appreciation:

[Schmidt and Dahlström v. Sweden](#)

06.02.1976

The applicants, trade union members, complained that they had been denied certain retroactive benefits in their capacity as members of organisations which had engaged in strike action.

No violation of Article 11: Article 11 “presents trade union freedom as one form or a special aspect of freedom of association” but “does not secure any particular treatment of trade union members by the State, such as the right to retroactivity of benefits, for instance salary increases, resulting from a new collective agreement”.

Hence, Article 11 does not guarantee:

- the right for trade unions to be consulted ([National Union of Belgian Police v. Belgium](#));

- the right to retroactive benefits resulting from a collective agreement (Schmidt and Dahlström v. Sweden; Satilmis v. Turkey, 17.07.2007);

- the right to strike as such (Schmidt and Dahlström v. Sweden, § 36: "Article 11 ... leaves each State a free choice of the means to be used [to make collective action possible]. The grant of a right to strike represents without any doubt one of the most important of these means, but there are others".)

- the right for trade union members not to have their posts transferred:

[Akat v. Turkey](#), 20.09.2005

The applicants alleged that their posts had been transferred because of their trade union membership.

No violation of Article 11: given that the applicants' status as civil servants implied the possibility of their being transferred in accordance with the requirements of the public service, the Court was not satisfied that the transfers constituted a constraint or an infringement affecting the very essence of their right to freedom of association, or that they would be prevented from engaging in trade union activity in their new posts or places of work.

Right to join or not join a trade union

[Young, James and Webster v. the United Kingdom](#)

13.08.1981

The applicants' complaint concerned the "closed shop" agreement between British Rail and three railway workers' unions. A closed shop is an undertaking or workplace in which, as a result of an agreement or arrangement between one or more trade unions and one or more employers or employers' associations, employees of a certain class are in practice required to be or become members of a specified union.

Violation of Article 11: closed shop agreements had to protect individuals' freedom of thought (see also [Sibson v. the United Kingdom](#), 20.04.1993)

[Sigurdur A. Sigurjónsson v. Iceland](#)

30.06.1993

Obligation imposed on the applicant, a taxi driver, to join the Frami Automobile Association or lose his licence.

Violation of Article 11: "Article 11 [encompasses] a negative right of association" (§ 35).

[Gustafsson v. Sweden](#)

25.04.1996

Trade union action (boycott and blockade of a restaurant) against an applicant who had refused to sign a collective agreement in the catering sector.

No violation of Article 11: while the State had to take "reasonable and appropriate measures to secure the effective enjoyment of the negative right to freedom of association", the restriction imposed on the applicant had not interfered significantly with the exercise of his right to freedom of association.

[Sorensen and Rasmussen v. Denmark](#)

Grand Chamber judgment 11.01.2006

The applicants complained of the existence of pre-entry closed-shop agreements in Denmark.

Violation of Article 11: the fact that the applicants had been compelled to join a particular trade union struck at the very substance of the right to freedom of association

guaranteed by Article 11. The Court held that Denmark had not protected the negative right to freedom of association, that is to say, the right not to join a trade union. It noted that “there is little support in the Contracting States for the maintenance of closed-shop agreements” and that several European instruments “clearly indicate that their use in the labour market is not an indispensable tool for the effective enjoyment of trade union freedoms” (§ 75).

Trade unions’ right to draw up their own rules and choose their members

Johansson v. Sweden

07.05.1990

The applicant complained of the obligation for members of the Swedish Electricians Trade Union to sign up to a collective home insurance scheme.

Application inadmissible (complaint manifestly ill-founded): the Union’s decision to affiliate its members to a collective home insurance scheme fell within the scope of its legal competence under its regulations.

The Court articulated “the right of trade unions to draw up their own rules and to administer their own affairs”.

Associated Society of Locomotive Engineers & Firemen (ASLEF) v. the United Kingdom **27.02.2007**

Inability of a trade union to expel one of its members who belonged to a political party which advocated views inimical to its own (the person concerned was an activist in the BNP, a far-right, lawful, party formerly known as the National Front).

Violation of Article 11, in the absence of any identifiable hardship suffered by the individual concerned or any abusive and unreasonable conduct by the applicant trade union. The Court noted that trade unions were not bodies solely devoted to politically neutral aspects of the well-being of their members, but were often ideological, with strongly held views on social and political issues. Furthermore, the trade union did not have any public role such that it could be required to take on members to fulfil any wider purposes.

Collective bargaining

Swedish Engine Drivers’ Union v. Sweden

06.02.1976

The applicant trade union complained of the refusal of the National Collective Bargaining Office to conclude a collective agreement with it although it had concluded such agreements with the main trade union federations and sometimes with independent trade unions.

No violation of Article 11: the Office’s general policy of restricting the number of organisations with which it concluded collective agreements was not in itself incompatible with trade union freedom and fell within the State’s margin of appreciation. Article 11 did not secure any particular treatment of trade unions such as the right to conclude collective agreements (§ 39).

[Wilson, National Union of Journalists and Others v. the United Kingdom](#)

02.07.2002

The applicants complained that they had had to either sign personal contracts and surrender their trade union rights or accept a smaller salary increase.

No violation of Article 11: the absence, under United Kingdom law, of an obligation on employers to enter into collective bargaining was not in breach of Article 11.

In this judgment the Court held that although collective bargaining was not indispensable for the effective enjoyment of trade union freedom, it might be one of the ways by which trade unions were enabled to protect their members' interests (§ 44).

Violation of Article 11: permitting employers to use financial incentives to induce employees to surrender important union rights amounted to a violation of Article 11, as regards both the applicant trade unions and the individual applicants. "It is the role of the State to ensure that trade union members are not prevented or restrained from using their union to represent them in attempts to regulate their relations with their employers" (§ 46).

Grand Chamber judgment Demir and Baykara: the right to conclude a collective agreement is "one of the principal means – even the foremost of such means – for trade unionists to protect their interests."

[Demir and Baykara v. Turkey](#)

12.11.2008

Annulment, with retrospective effect, of the collective agreement that a trade union had entered into following collective bargaining with the administration, and prohibition on forming trade unions imposed on the applicants, municipal civil servants.

Violation of Article 11 on account of the interference with the exercise of the applicants' right to form trade unions;

Violation of Article 11 on account of the annulment *ex tunc* of the collective agreement.

The list of elements of the right of association was not finite, but was "subject to evolution depending on particular developments in labour relations" (§ 146). Having regard to "developments in labour law, both international and national, and to the practice of Contracting States in such matters" (§§ 147 to 152), the Court held that "the right to bargain collectively with the employer has, in principle, become one of the essential elements of the 'right to form and to join trade unions for the protection of [one's] interests' set forth in Article 11 of the Convention, it being understood that States remain free to organise their system so as, if appropriate, to grant special status to representative trade unions" (§ 154).

[Right to strike and right of peaceful assembly](#)

[Ezelin v. France](#)

26.04.1991

Disciplinary penalty imposed on the applicant, who was Vice-Chairman of the Trade Union of the Guadeloupe Bar at the time, for taking part in a public demonstration – during which insulting remarks were made – organised by a number of Guadeloupe independence movements and trade unions at Basse-Terre (in protest against two court decisions imposing prison sentences and fines on three activists for criminal damage to public buildings), and for refusing to give witness evidence before the investigating judge.

Violation of Article 11: although the penalty had mainly moral force, the Court considered that "the freedom to take part in a peaceful assembly - in this instance a

demonstration that had not been prohibited - is of such importance that it cannot be restricted in any way, even for an *avocat*, so long as the person concerned does not himself commit any reprehensible act on such an occasion."

[Wilson, National Union of Journalists and Others v. the United Kingdom](#)

02.07.2002

(see above)

"[T]he essence of a voluntary system of collective bargaining is that it must be possible for a trade union which is not recognised by an employer to take steps including, if necessary, organising industrial action, with a view to persuading the employer to enter into collective bargaining with it on those issues which the union believes are important for its members' interests" (§ 46).

[Barraco v. France](#)

05.03.2009

Conviction of the applicant for obstructing the public highway. The applicant, a lorry driver, was one of seventeen motorists who participated in a traffic-slowing operation organised as part of a national day of protest by a joint trade union committee representing hauliers.

No violation of Article 11: the complete blockage of motorway traffic, several times, had gone beyond the disruption inherent in any demonstration. Moreover, the applicant had been able for several hours to exercise his right to freedom of peaceful assembly.

[Danilenkov and Others v. Russia](#)

30.07.2009

Members of the Dockers' Union of Russia dismissed as a result of the structural reorganisation of the seaport company after taking part in a two-week strike calling for salary increases and better working conditions and health and life insurance.

Violation of Article 14 (prohibition of discrimination) in conjunction with Article 11: the State had failed to provide clear and effective judicial protection against discrimination on the grounds of trade union membership.

Trade union rights in the public sector

[Tüm Haber Sen and Cinar v. Turkey](#)

21.02.2006

Dissolution of a union of public-sector workers on the ground that civil servants could not form trade unions.

Violation of Article 11: The "State as employer" must respect trade union freedom and guarantee its effective exercise.

[Satilmis v. Turkey](#)

07.17.2007

The applicants, public-sector workers on fixed-term contracts, who had taken part in union actions allowing motorists to drive past toll barriers without paying, had been ordered to pay damages in civil proceedings.

Violation of Article 11: The Court noted that the Turkish Government had not indicated whether there were other means for public servants to defend their rights. Only "convincing and compelling reasons" could justify restrictions on trade union rights in the public sector.

In the Grand Chamber case of [Demir and Baykara v. Turkey](#) (12.11.2008) the Court held that "members of the administration of the State" could not be excluded from the

scope of Article 11. At most the national authorities were entitled to impose “lawful restrictions” on them, in accordance with Article 11 § 2 (§ 107).

In that case the Court found two violations of Article 11 for interference with the right of the applicants, as municipal civil servants, to form trade unions and also for the annulment *ex tunc* of a collective agreement negotiated with the employing authority.

[Enerji Yapi-Yol Sen v. Turkey](#)

01.04.2009

Disciplinary measures taken against public-sector workers who had participated in a one-day national strike for the recognition of their right to a collective agreement.

Violation of Article 11

[Kaya and Seyhan v. Turkey](#)

15.09.2009

Teachers disciplined for taking part in national strike action organised by their trade union.

Violations of Article 11

Noteworthy pending cases

Freedom of expression and trade union freedom

Palomo Sánchez and Others v. Spain, [Grand Chamber hearing](#) held on 08.12.2010

The applicants argue that their dismissal following an offensive and humiliating publication initiated by them – with a cartoon on the cover showing employees of the company giving sexual favours to the director of human resources – infringed their right to freedom of expression (Article 10), and that the real reason for their dismissal was their trade union activity, thus breaching their right to freedom of assembly and association (Article 11).

In its judgment of 8 December 2009, the Court held that the authorities had not exceeded their discretion in penalising the applicants and that there had been no violation of Article 10. The case was referred to the Grand Chamber at the applicants’ request.

Examples of cases concerning sanctions imposed on members of Turkish trade unions:

Akmeşe and Eğitim-Sen v. Turkey (no. 2575/08)

[Communicated June 2009](#) (French only)

The second applicant is the trade union Eğitim-Sen (union of public servants in education, science and culture), affiliated to the KESK (trade union confederation of public-sector workers), which, on the world day of teachers, distributed greetings cards in Turkish and Kurdish to its members. A disciplinary measure (withholding of salary) was taken against the first applicant, a primary school teacher and union member, after he displayed the card on the union’s noticeboard. The applicants complain in particular under Articles 10 and 11.

Other cases concerning members of Turkish trade unions who were punished for making statements to the press:

[Rıza Erdoğan and Others v. Turkey](#) (no. 15520/06, communicated June 2009).

[Halil Özbent and Others v. Turkey](#) (no. 56395/08, communicated June 2009).

[Murat Işeri and Others v. Turkey](#) (no. 29283/07, communicated May 2010).

(for these three cases, French only)

Bernard Vellutini and Cédric Michel v. France (no. 32820/09)

[Communicated June 2010](#) (French only)

Relying on Articles 10 and 11, the applicants, respectively chairman and secretary general of the Professional Union of Municipal Police Officers, complain about their conviction for public defamation against a citizen holding public office (in a dispute with a mayor). They argue among other things that the offending remarks were made in the context of their union duties and did not constitute a personal attack.

Other cases

S.P. v. Romania (no. 2330/09)

[Communicated April 2010](#) (French only)

The applicant trade union was formed by a number of Orthodox priests from parishes in the Oltenia region (south-western Romania), to represent and defend the professional, economic, social and cultural rights of the clergy and lay members of the church in their relations with the authorities of the Oltenia region, the Patriarchate and the Ministry of Culture and Religion. It complains of a violation of its freedom of association on account of the courts' refusal to grant it legal personality.

Cem Dinç and Kanber Saygili v. Turkey (no. 17923/09)

[Communicated May 2010](#) (French only)

Trade union members were convicted of incitement to commit an offence, attempted trespass on company premises with violence, and insulting a public official, in connection with action in support of workers demanding unpaid wages.

Solectron Trade Union v. Romania (no. 27921/07)

[Communicated January 2010](#)

The applicant trade union complains that, in spite of the fact that it was affiliated to a representative trade union in the relevant industry, the domestic courts denied it the right to represent its members at company level and thus to defend their rights and interests.

Svoboden zheleznicharski sindikat "Promyana" v. Bulgaria (no. 5044/04)

[Communicated December 2008](#)

The applicant trade union complains that the national railway company refused to enter into a collective agreement with it.

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