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Trade union rights

Scope of trade union rights

Article 11 (freedom of assembly and association) of the [European Convention on Human Rights](#): “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.”

[National Union of Belgian Police v. Belgium](#)

27 October 1975

In this judgment, the European Court of Human Rights found no violation of Article 11 of the Convention; 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](#)

6 February 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](#), 27 October 1975);
- the right to retroactive benefits resulting from a collective agreement ([Schmidt and Dahlström v. Sweden](#), 6 February 1976; [Dilek and Others v. Turkey](#), 17 July 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 September 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 bargain collectively

[Swedish Engine Drivers’ Union v. Sweden](#)

6 February 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](#)

2 July 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 v. Turkey*: 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 November 2008 (Grand Chamber)

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 join or not join a trade union

Young, James and Webster v. the United Kingdom

13 August 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 April 1993)

Sigurður A. Sigurjónsson v. Iceland

30 June 1993

The case concerned the 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 April 1996

The case concerned 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

11 January 2006 (Grand Chamber)

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).

Danilenkov and Others v. Russia

30 July 2009

The case concerned members of the Dockers' Union of Russia who had been 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.

Right to strike and right of peaceful assembly

Ezelin v. France

26 April 1991

The case concerned a 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

2 July 2002

Violation of Article 11: “[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).

National Union of Rail, Maritime and Transport Workers v. the United Kingdom

8 April 2014

The applicant – a trade union with a membership of more than 80,000 persons employed in different sectors of the transport industry in the United Kingdom – complained about statutory restrictions on the right to strike and, in particular, the ban on secondary industrial action (strike action against a different employer aimed at exerting indirect pressure on the employer involved in the industrial dispute).

The Court held that there had been **no violation of Article 11** of the Convention, finding that there was nothing in the facts raised by the applicant union to show that the general prohibition on secondary strikes had had a disproportionate effect on their rights under Article 11. The United Kingdom had therefore remained within its margin.

Trade union registration

Sindicatul “Păstorul cel Bun” v. Romania

9 July 2013 (Grand Chamber)

The case concerned the refusal by the Romanian State of an application for registration of a trade union formed by priests of the Romanian Orthodox Church.

The Court found **no violation of Article 11** (freedom of assembly and association) of the Convention. Whereas it had held in its Chamber judgment that the Dolj County Court

had not taken sufficient account of all the relevant arguments and had justified its refusal to register the union on purely religious grounds based on the provisions of the Church's Statute, the Grand Chamber took the view that the County Court's decision had simply applied the principle of the autonomy of religious communities. The court's refusal to register the union for failure to comply with the requirement of obtaining the archbishop's permission was a direct consequence of the right of the religious community concerned to make its own organisational arrangements and to operate in accordance with the provisions of its own Statute.

The Court held that in refusing to register the applicant union, the State had simply declined to become involved in the organisation and operation of the Romanian Orthodox Church, thereby observing its duty of denominational neutrality under Article 9 of the Convention.

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

Johansson v. Sweden

7 May 1990

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

The Court declared the case **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

The case concerned the 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.

Trade unions' rights in the public sector

Tüm Haber Sen and Cinar v. Turkey

21 February 2006

The case concerned the 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.

Dilek and Others v. Turkey

17 July 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 November 2008 - see above) 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

1 April 2009

The case concerned 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

The case concerned teachers disciplined for taking part in national strike action organised by their trade union.

Violation of Article 11

Sişman and Others v. Turkey

27.09.2011

The case concerned the display of a trade union’s posters in support of the annual 1 May demonstration in areas other than the designated notice boards. The applicants were employees of tax offices attached to the Ministry of Finance and were board members of the local section of the Büro Emekçileri trade union, affiliated to the Trade Union Confederation of Public-Sector Employees.

Violation of Articles 11 and 13 (right to an effective remedy)

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