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This Factsheet does not bind the Court and is not exhaustive

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”.

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

The Court held that there had been **no violation of Article 11** of the Convention, finding that 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 of the Convention: 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 of the Convention 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**: “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 of the Convention: 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 of the Convention: 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.

Wilson, National Union of Journalists and Others v. the United Kingdom

2 July 2002

The applicants submitted that the law applicable in the United Kingdom at the relevant time failed to secure their rights under Article 11 of the Convention. They complained in particular that the requirement to sign a personal contract and lose union rights, or accept a lower pay rise, was contrary to the Employment Protection Act.

The Court noted in particular 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. In the present case, it found that, the absence, under United Kingdom law, of an obligation on employers to enter into collective bargaining **did not give rise, in itself, to a violation of Article 11** of the Convention. However, 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. In this regard, the Court noted in particular that 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.

Demir and Baykara v. Turkey

12 November 2008 (Grand Chamber)

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

The Grand Chamber held that there had been a **violation of Article 11** of the Convention on account of the interference with the exercise of the applicants' right to form trade unions and a **violation of Article 11** on account of the annulment *ex tunc* of the collective agreement. It noted in particular that the list of elements of the right of association was not finite but was "subject to evolution depending on particular developments in labour relations". Having regard to "developments in labour law, both international and national, and to the practice of Contracting States in such matters", it held that "the right to bargain collectively with the employer ha[d], 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, it being understood that States remain[ed] free to organise their system so as, if appropriate, to grant special status to representative trade unions".

Unite the Union v. the United Kingdom

26 May 2016 (decision on the admissibility)

Following a series of consultations with interested parties, including the applicant – a trade union representing around 18,000 employees in the agricultural sector –, the UK Government succeeded in having adopted new legal provisions abolishing the Agricultural Wages Board for England and Wales, a statutory body which for many years had set minimum wages and conditions in the agricultural sector. The Board comprised among its members representatives of employers and employees, the latter being nominated most recently by the applicant. The applicant argued that the abolition of the Board infringed its right to engage in collective bargaining in the interests of its members, being an essential element of the right to form and join a trade union.

The Court declared the application **inadmissible** as being manifestly ill-founded. Bearing in mind the wide margin of appreciation in this area, it was not satisfied that, in deciding to abolish the Agricultural Wages Board for England and Wales, the UK Government had failed to observe their positive obligations incumbent under Article 11 of the Convention. It could not be said that the UK Parliament had lacked relevant and sufficient reasons for enacting the contested legislation or that the abolition of the Board had failed to strike a fair balance between the competing interests at stake. The Court noted in particular that, even accepting the applicant's submission that voluntary collective bargaining in the agricultural sector was virtually non-existent and impractical, this was not sufficient to lead to the conclusion that a mandatory mechanism should be recognised as a positive obligation. The applicant further remained free to take steps to protect the operational interests of its members by collective action, including collective bargaining, and by engaging in negotiations to seek to persuade employers and employees to reach collective agreements and it had the right to be heard. Lastly, the relevant European and international instruments, as they currently stood, did not support the view that a State's positive obligations under Article 11 of the Convention extended to providing for a mandatory statutory mechanism for collective bargaining in the agricultural sector.

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 of the Convention: Closed shop agreements had to protect individuals' freedom of thought (see also: **Sibson v. the United Kingdom**, judgment of 20 April 1993).

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

30 June 1993

This 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 of the Convention: “Article 11 [encompasses] a **negative right of association**”.

[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 of the Convention: 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 in this case complained of the existence of pre-entry closed-shop agreements in Denmark.

Violation of Article 11 of the Convention: 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 Grand Chamber 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.

The Grand Chamber noted in particular that “there [was] little support in the Contracting States for the maintenance of closed-shop agreements” and that several European instruments “clearly indicate[d] that their use in the labour market [was] not an indispensable tool for the effective enjoyment of trade union freedoms”.

[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** of the Convention, the State having failed to provide clear and effective judicial protection against discrimination on the grounds of trade union membership.

[Matelly v. France](#)

2 October 2014

This case concerned the absolute prohibition on trade unions within the French armed forces. The applicant complained in particular of an unjustified and disproportionate interference in the exercise of his freedom of association.

The Court held that there had been a **violation of Article 11** of the Convention. It found in particular that the authorities’ decision in respect of the applicant (an order to resign from an association of which he was a member) amounted to an absolute prohibition on military personnel joining a trade-union-like occupational group, formed to defend their occupational and non-pecuniary interests, and that the grounds for such a decision had been neither relevant nor sufficient. The Court concluded that, while the exercise by military personnel of freedom of association could be subject to legitimate restrictions, a blanket ban on forming or joining a trade union encroached on the very essence of this freedom, and was as such prohibited by the Convention.

See also: **[ADEFDROMIL v. France](#)**, judgment of 2 October 2014.

Right to strike and freedom of peaceful assembly

Ezelin v. France

26 April 1991

This 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 of the Convention: 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

See above, under “Right to bargain collectively”.

In this judgment, the Court noted in particular that “[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”.

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

Johansson v. Sweden

7 May 1990 (decision of the European Commission of Human Rights¹)

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

The Commission declared the application **inadmissible** as being manifestly ill-founded, finding in particular that the trade union’s decision to affiliate its members to a collective home insurance scheme fell within the scope of its legal competence under its regulations. In this respect, the Commission noted that “the right to form trade unions involve[d], for example, the right of trade unions to draw up their own rules and to administer their own affairs”.

¹. Together with the European Court of Human Rights and the Committee of Ministers of the Council of Europe, the European Commission of Human Rights, which sat in Strasbourg from July 1954 to October 1999, supervised Contracting States’ compliance with their obligations under the European Convention on Human Rights. The Commission ceased to exist when the Court became permanent on 1st November 1998.

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

27 February 2007

This 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).

The Court held that there had been a **violation of Article 11** of the Convention, in the absence of any identifiable hardship suffered by the individual concerned or any abusive and unreasonable conduct by the applicant trade union. It noted in particular 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 union registration

Sindicatul "Păstorul cel Bun" v. Romania

9 July 2013 (Grand Chamber)

This 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 Grand Chamber held that there had been **no violation of Article 11** of the Convention, finding 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 (freedom of thought, conscience and religion) of the Convention. Whereas the Chamber had found in its judgment of 31 January 2012 that the 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 considered that the County Court's decision had simply applied the principle of the autonomy of religious communities. In the Grand Chamber's view, 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.

Manole and "Romanian Farmers Direct" v. Romania

16 June 2015

This case concerned the refusal of the Romanian courts to register a union of self-employed farmers which the first applicant wished to set up.

The Court held that there had been **no violation of Article 11** of the Convention, finding that the refusal to register the applicant union had not overstepped the Romanian authorities' margin of appreciation as to the manner in which they secured the right of freedom of association to self-employed farmers. The Court, taking into consideration the relevant international instruments in this sphere and in particular the Conventions of the International Labour Organisation, found in particular that under the Romanian legislation farmers' organisations enjoyed essential rights enabling them to defend their members' interests in dealings with the public authorities, without needing to be established as trade unions. In agriculture as in the other sectors of the economy, that form of association was now reserved solely for employees and members of cooperatives.

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.

The Court held that there had been a **violation of Article 11** of the Convention. It noted in particular that 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.

The Court held that there had been a **violation of Article 11** of the Convention. It noted in particular that the Turkish Government had not indicated whether there were other means for public servants to defend their rights. However, only "convincing and compelling reasons" could justify restrictions on trade union rights in the public sector.

In the Demir and Baykara v. Turkey Grand Chamber judgment of 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 of the Convention. At most the national authorities are entitled to impose "lawful restrictions" on them, in accordance with Article 11 § 2.

Enerji Yapi-Yol Sen v. Turkey

1 April 2009

This 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.

The Court held that there had been a **violation of Article 11** of the Convention, finding that the adoption and application of the impugned circular – which, *inter alia*, prohibited public-sector employees from taking part in a national one-day strike organised in connection with events planned by the Federation of Public-Sector Trade Unions to secure the right to a collective-bargaining agreement – did not answer a "pressing social need" and that there had therefore been disproportionate interference with the applicant union's rights. The Court acknowledged that the right to strike was not absolute and could be subject to certain conditions and restrictions. It noted, however, that, while certain categories of civil servants could be prohibited from taking strike action, the ban did not extend to all public servants or to employees of State-run commercial or industrial concerns. In this particular case, however, the circular had been drafted in general terms, completely depriving all public servants of the right to take strike action.

Kaya and Seyhan v. Turkey

15 September 2009

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

The Court held that there had been a **violation of Article 11** of the Convention, finding that the penalties complained of, although very light in the case of the applicants, had been such as to dissuade trade union members from legitimate participation in strikes or other trade union action and had not been "necessary in a democratic society".

Şişman and Others v. Turkey

27 September 2011

This case concerned disciplinary measures taken against employees of tax offices attached to the Ministry of Finance for displaying a trade union's posters in support of the annual 1 May demonstration in areas other than the designated notice boards.

The Court held that there had been a **violation of Article 11** of the Convention. It observed in particular that disciplinary sanctions had been taken against the applicants for putting up their trade union's posters on their own office walls rather than on the designated notice board. Furthermore, the posters in question had not contained anything illegal or shocking that could have disturbed order within the institution. The Court also noted that the sanction complained of, however minimal, was capable of deterring trade union members from engaging freely in their activities. That prompted it to conclude that the warnings issued by the tax offices had not been "necessary in a democratic society".

Junta Rectora Del Ertzainen Nazional Elkartasuna (ER.N.E.) v. Spain

21 April 2015

This case concerned the inability of the members of a police officers' trade union to exercise the right to strike. The applicant trade union complained in particular of the ban on strike action imposed on *Ertzainas* – who are the police officers of the Basque country and perform their duties within the jurisdiction of that Autonomous Community –, which, in its view, discriminated against them compared with other groups which performed similar duties but had the right to strike.

The Court held that there had been **no violation of Article 11 taken alone or in conjunction with Article 14** (prohibition of discrimination) of the Convention. It found in particular that the more stringent requirements imposed on "law-enforcement agents", on account of the fact that they were armed and of the need for them to provide an uninterrupted service, justified the ban on strike action in so far as public safety and the prevention of disorder were at stake. The Court noted that the specific nature of these agents' duties warranted granting the State a lot of room for manoeuvre ("a wide margin of appreciation") to regulate certain aspects of the trade union's activities in the public interest, without however depriving the union of the core content of its rights under Article 11.

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