



January 2023

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 collective bargaining

### **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.

### **Association of Civil Servants and Union for Collective Bargaining and Others v. Germany**

5 July 2022

This case concerned the Uniformity of Collective Agreements Act (*Tarifeinheitsgesetz*), which regulates conflicts that arise if there are several collective agreements in one "business unit" (*Betrieb*) of a company<sup>1</sup>. The applicants – three German trade unions and six members of one of them – submitted that the relevant provisions of the Act in question had violated their right to form and join trade unions, including the right to collective bargaining. They argued in particular that the legislation had resulted in their not being able to conclude collective agreements in companies in which a different trade union had more members, and in employers no longer wishing to negotiate with them.

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<sup>1</sup>. This Act, which entered into force in July 2015, prescribes that, in the event of a such a conflict, the collective agreement of the trade union which has fewer members in the business unit is no longer applicable.

The Court held that there had been **no violation of Article 11** of the Convention, finding that there had been no disproportionate restriction on the applicants' rights in the present case. The Court reiterated in particular that the right to collective bargaining as guaranteed under Article 11 of the Convention did not include a "right" to a collective agreement. What was essential was that trade unions could make representations to and be heard by employers. In this case, the Court found that the restrictions brought on by the legislation had concerned smaller trade unions, which nonetheless retained other rights, including the right to collective bargaining and to strike. Moreover, the legislation was intended to ensure the proper functioning of the collective bargaining system in the interests of both employees and employers.

## Right to form, to join or not join a trade union

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### 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

This 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**<sup>2</sup>

30 July 2009

This 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.

### **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.

### **Tek Gıda İş Sendikası v. Turkey**

4 April 2017

This case concerned the judicial authorities' refusal to recognise the representation of the applicant trade union – which, at the relevant time, represented employees working in the food processing industry – in the Tukaş Gıda Sanayi ve Ticaret company and the dismissal of employees of the company who had refused to cancel their membership of the trade union at their employer's request. The applicant complained, in particular, about the domestic courts' refusal to recognise its representation as a precondition for

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<sup>2</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the European Convention on Human Rights ("the Convention").

collective bargaining within a company, which the union submitted had been a result of an erroneous calculation of the number of union members on the staff of Tukas.

The Court held that there had been **no violation of Article 11** of the Convention concerning the refusal to recognise the applicant trade union's representation, finding that the method of counting the number of employees representing the majority in the impugned company had not affected the trade union's core activity but rather constituted a secondary aspect. The impugned judicial decisions had been geared to striking a fair balance between the competing interests of the applicant trade union and the whole community in question. Those decisions had therefore been a matter for the margin of appreciation available to the State regarding the means of ensuring both freedom of association in general and the applicant trade union's ability to protect its members' professional interests. The Court held, however, that there had been a **violation of Article 11**, in the present case, on account of the fact that the State had failed to fulfil its positive obligation to prevent the employer from dismissing all the employees who were members of the applicant trade union by means of wrongful dismissals.

### **Yakut Republican Trade-Union Federation v. Russia**<sup>3</sup>

7 December 2021

The applicant federation, a non-governmental organisation, was ordered to oust a grassroots union of working prisoners because of a statutory ban on the unionisation of prisoners. The trade union in question had been set up in 2006 by inmates in a high-security prison located in Yakutsk. The inmates worked in the colony's sawmill and in prison maintenance jobs.

The Court held that there had been **no violation of Article 11** of the Convention, finding that the domestic courts' order to the applicant federation to expel the union of the working inmates had not exceeded the wide margin of appreciation available to the national authorities in that sphere, and that the restriction complained of had therefore been necessary in a democratic society. The Court noted in particular that, like prisoners' other Convention rights, their right to form and to join trade unions could be restricted for security, in particular, for the prevention of crime and disorder. It also observed that prison work could not be equated with employment. While it was true that prisoners in general continued to enjoy all the fundamental rights and freedoms guaranteed under the Convention save for the right to liberty, trade-union freedom might, however, be difficult to exercise in detention. The Court nevertheless pointed out that the Convention was a "living instrument" and that it might well be, therefore, that developments in that field might at some point in future necessitate the extension of the trade-union freedom to working inmates. However, having regard to the current practice of the member States of the Council of Europe, there was no sufficient consensus to give Article 11 the interpretation advocated by the applicant federation.

### **Vlahov v. Croatia**

5 May 2022

In this case, which concerned the right of trade unions to control their membership vis-à-vis the right to freedom of association of would-be members, the applicant, a trade-union representative, complained that he had been convicted of preventing 15 would-be members from joining his union. He complained in particular that his conviction had been arbitrary and excessive, submitting that he had acted in the interests of the existing members of the trade union, who had not wished to extend membership at the time.

The Court held that there had been a **violation of Article 11** of the Convention, finding that the interference complained of had not been necessary in a democratic society. It reiterated, in particular, certain principles in its case-law under Article 11, notably that trade unions had the right to control their membership, but that a balance had to be achieved to ensure fair treatment and to avoid abuse of a dominant position. In the

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<sup>3</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.



present case, the Court found that the domestic courts had not explained, in the light of those principles, how it could be considered that the applicant had acted in an abusive manner when refusing the memberships. In particular, the decisions had lacked detail, and had not elaborated on the applicant's argument that he had the right as trade-union representative to take actions to protect the interests of the existing members, who had not wished to extend membership at the time, and dismissing as irrelevant his request to hear evidence from witnesses to an internal dispute within the union.

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

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### Johansson v. Sweden

7 May 1990 (decision of the European Commission of Human Rights<sup>4</sup>)

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".

### 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.

## Right to strike

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### 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

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<sup>4</sup>. 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 1<sup>st</sup> November 1998.

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.

### **Association of Academics v. Iceland**

15 May 2018 (décision sur la recevabilité)

This case concerned restrictions on the right to strike and the introduction of compulsory arbitration. The applicant – an association of trade unions of university graduates in Iceland, which represented 18 of its member unions in collective bargaining with their employer, the Icelandic State – alleged in particular that, by passing an Act in June 2015 prohibiting further strikes and any work stoppages and providing for a binding decision on the union members’ employment terms, including wages, taken by an arbitration tribunal appointed especially for this occasion by the Supreme Court, the State rendered the member unions’ right to protect the interest of their members illusory and restricted the rights and freedoms of all the member unions in an unjustified and disproportionate manner.

The Court declared the application **inadmissible**, as being manifestly ill-founded, finding that the Icelandic Supreme Court had evaluated the evidence presented in the case and weighed the interests at stake by applying the principles laid down in the Court’s case-law, and that it had acted within its margin of appreciation and struck a fair balance between the measures imposed and the legitimate aim pursued. In particular, assessing the necessity of the impugned measures, the Court noted that the applicant association’s member unions had in fact exercised two essential elements of freedom of association, namely the right for a trade union to seek to persuade the employer to hear what it had to say on behalf of its members and the right to engage in collective bargaining. Although the process of collective bargaining and strike action had not led to the outcome desired by the applicant’s member unions and their members, this did not mean that their Article 11 rights were illusory.

### **Ognevenko v. Russia**<sup>5</sup>

20 November 2018

This case concerned the applicant’s dismissal as a train driver for Russian Railways for disciplinary breaches, including taking part in a strike. In April 2008 the *Rosprofzhel* trade union, of which the applicant was a member, decided to call a strike after the

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<sup>5</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.



failure of wage and bonus negotiations. The railway company did not apply to the courts to have the strike declared unlawful and the applicant took part in it. He arrived for work on the day of the strike, but refused to take up his duties. The strike caused delays in the sector where he worked.

The Court held that there had been a **violation of Article 11** of the Convention, finding that the applicant's dismissal had been a disproportionate restriction on his rights. It noted, in particular, that train drivers and some other types of railway worker were included in occupations which were prohibited from striking. That restriction had not been sufficiently justified by the Russian Government and was in conflict with internationally recognised labour rules. The situation had led to the courts only being able to examine the applicant's formal compliance with the law without carrying out any balancing exercise. The applicant had been punished with dismissal because he had gone on strike, which was the second disciplinary offence he had committed. Such sanctions inevitably had a "chilling effect" on others who might consider striking to protect their interests.

### **Barış and Others v. Turkey**

14 December 2021 (decision on the admissibility)

This case concerned the dismissal of employees on account of their involvement in a strike organised outside a trade-union context.

The Court declared the application **inadmissible** (incompatible *ratione materiae*), finding that, on the basis of the evidence in the case file, given that the applicants had not been dismissed for having taken part in a demonstration organised by a trade union, or for having asserted professional rights as part of the activities of a trade union, or for having left a specific trade union, or for having decided not to join a specific trade union, they could not effectively claim a right to the freedom of association that was protected under Article 11 of the Convention.

### **Case pending before the Grand Chamber**

#### **Humpert and Others v. Germany (nos. 59433/18, 59477/18, 59481/18 and 59494/18)**

Relinquishment of jurisdiction in favour of the Grand Chamber in September 2022

This case concerns the sanctions imposed on the applicants, teachers with civil-servant status, for going on strike in order to improve their working conditions. They complain in particular that the ban on teachers – with civil-servant status – striking was not prescribed by law, was disproportionate and, in comparison with teachers employed on a contractual basis, discriminatory.

On 10 September 2019 the Court gave notice of the applications to the German Government and put questions to the parties under Article 11 (freedom of assembly and association) and Article 14 (prohibition of discrimination) of the Convention.

The Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber on 6 September 2022.

## **Boycott**

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### **Norwegian Confederation of Trade Unions (LO) and Norwegian Transport Workers' Union (NTF) v. Norway**

10 June 2021

The first applicant union was a member of the second. The case concerned a decision of the Norwegian Supreme Court to declare unlawful a boycott announced by NTF to pressure a foreign company, *Holship*, into collective agreement in breach of EEA (European Economic Area) freedom of establishment.

The Court held that there had been **no violation of Article 11** of the Convention, finding that, in the particular circumstances of this case, the Norwegian Supreme Court had advanced relevant and sufficient grounds to justify its final conclusion. With regard,

in particular, to the purpose of the proposed action, the Court noted that the impugned boycott had aimed *inter alia* to ensure stable and safe working conditions for dockworkers. Furthermore, the priority right, which was one of the rights the proposed boycott had sought to defend, was based on a long-standing tradition domestically, and provided for in international law. In the light of the above, the impugned boycott, which the applicant unions had notified in advance in accordance with domestic law, was capable of falling within the scope of Article 11 of the Convention. On the merits, the Court further observed, in particular, that the Supreme Court's judgment finding the intended boycott unlawful had entailed a "restriction" on the exercise of the trade unions' rights which was prescribed by law and aimed to protect the "rights and freedoms" of others, in particular *Holship's* right to freedom of establishment as guaranteed by the EEA Agreement.

## Trade unions' rights in the public sector

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### 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 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”.

### **Sisman 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”.

### **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.

### **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.

## Further readings

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See in particular:

- [Guide on Article 11 of the European Convention on Human Rights – Freedom of Assembly and Association](#), document prepared by the Directorate of the Jurisconsult.
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