Application no. 48408/12

Veniamin Vyacheslavovych TYMOSHENKO and others v Ukraine

Submission

by

the European Trade Union Confederation (ETUC) under Rule 44(5)

Introduction

1. The European Trade Union Confederation (ETUC) represents the interests of workers at European level. Founded in 1973, it now represents 85 trade union organisations in 36 European countries, plus 10 industry-based federations. The ETUC's prime objective is to promote the European Social Model and to work for the development of a united Europe of peace and stability where working people and their families can enjoy full human civil and social rights and high living standards.

2. The ETUC regards the right to strike as absolutely essential to the functioning of trade unionism in free societies. As a matter of principle, the ETUC cannot accept that the nature of the work aircraft cabin crew members makes it legitimate to remove their right to strike. As will be described in more detail below, these views are reflected in international legal instruments and the related case-law of the competent organs for interpretation.

Right to Strike in International Law

General principles

3. It will be recalled that the Grand Chamber has specifically drawn attention to the importance of international law in the interpretation of the European Convention on Human Rights (Convention):

> The Court, in defining the meaning of terms and notions in the text of the Convention, **can and must** take into account elements of international law other than the Convention, the interpretation of such elements by competent organs, and the practice of European States reflecting their common values.[1] (emphasis added)

4. In accordance with this approach, the Third Section of the Court has recognised that the right to strike is guaranteed under Art. 11 of the Convention:

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[1] *Demir and Baykara v Turkey* [2008] ECHR 1345, para 85.

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The Court also observed that the right to strike is recognised by the International Labour Organisation's (ILO) supervisory bodies as an indissociable corollary of the right of trade union association that is protected by ILO Convention C87 on trade union freedom and the protection of trade union rights (for the Court's consideration of elements of international law other than the Convention, see *Demir et Baykara*, cited above). It recalled that the European Social Charter also recognised the right to strike as a means of ensuring the effective exercise of the right to collective bargaining. [2]

5. As developed by the ILO supervisory bodies, the right to strike is widely applied. A valuable synthesis of the jurisprudence of the supervisory bodies is to be found in an important study by *Gernigon, Odero and Guido*. Consistently with the views expressed in the previous paragraph, the authors report that the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has concluded that

   organisations responsible for defending workers' socio-economic and occupational interests should, in principle, be able to use strike action to support their position in the search for solutions posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and the standard of living.[3]

6. This reflects the wide–ranging recognition of the right to strike, now also clearly set out in the 'Relevant International Law and Practice' section of the 'Statement of Facts'.[4]

Right to strike and its restrictions in relation to essential services

7. In general terms the right to strike is not guaranteed without certain restrictions. The right to strike may be limited in 'essential services' which are defined by the ILO supervisory bodies as quoted in the 'Statement of Facts':

   the interruption of which would endanger the life, personal safety or health of the whole or part of the population

   The life and health of the population should not be affected by a strike. This concept of 'essential services' is most relevant for a limited approach in justifying certain restrictions to the right to strike.

8. It should be recalled that, even if strikes might legally be prohibited, the workers in question 'should be afforded appropriate guarantees to compensate for this restriction'.[5] This submission,

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[2] *Enerji Yapi-Yol v Turkey*, Application No 68959/01, 21 April 2009, para. 24, see also paras. 31 and 32.

[3] B Gernigon, A Odero, and H Guido, 'ILO Principles concerning the Right to Strike' (1998) 137 *International Labour Review* 441, pp 446 – 7.

[4] This draws attention to the protection of the right to strike as provided by the ICESCR, the ILO standards, the Revised European Social Charter, two documents of the Parliamentary Assembly of the Council of Europe (PACE) and the "Protocol of San Salvador". However, besides the further additions in the text, the references to European Union instruments are also missing: Article 28 of the EU Charter of Fundamental Rights (as referred to in the *Demir and Baykara* judgment, note 1, para. 50) as well as the Community Charter of the Fundamental Social Rights of Workers (Point 13(1)) also provide for the right to strike: The right to resort to collective action in the event of a conflict of interests shall include the right to strike, subject to the obligations arising under national regulations and collective agreements.).

[5] Ibid, note 3, p 453.

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however, does not deal with the compensatory measures because all international standards in relation to the right to strike do not see civil aviation as 'essential service' and therefore not allow restrictions to this right and even less a ban to this right.

9. The following observations are devoted to supplement the 'Relevant International Law and Practice' section of the 'Statements of Facts' mainly by referring to this international jurisprudence.

The UN: in particular International Covenant on Economic, Social and Cultural Rights (ICESCR)

10. In addition to the instruments referred to in the 'Statement of Facts', we would at first like to add the International Covenant on Civil and Political Rights (ICCPR):

> Article 22
>
> 1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
>
> 2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
>
> 3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

This article is now interpreted to include the right to strike.[6]

11. The main UN instrument explicitly guaranteeing the right to strike is Article 8 ICESCR is referred to in the 'Statement of Facts'. However, according to the *Demir and Baykara* judgment (see above para. 3) it would appear necessary to take into account not only this element of international law as such but also the "interpretation of such elements by competent organs" which is the Committee on Economic, Social and Cultural Rights (CESCR). In interpreting the right to strike as guaranteed in Article 8(d) ICESCR this Committee refers and mostly conforms to the relevant ILO jurisprudence. This is particularly true for permissible restrictions to this right. The following examples referring to ILO standards on essential services restrictions might suffice:

> The Committee regrets the extensive limitations imposed on the right to strike by the Labour Code of the State party, exceeding by far the **ILO definition of essential services**.[7] (emphasis added)
>
> The Committee recommends that the State party limit its prohibitions on the right to strike to **essential services, in accordance with ILO Convention No. 87** …[8] (emphasis added)

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[6] Concluding Observations, 8 November 1996 - CCPR/C/79/Add 73 (Germany), para 18; Concluding Observations, 3 August 1993 - CCPR/C/79/Add 21 (Ireland), para 17.

[7] Concluding Observations, 14 December 2004 - E/C.12/1/Add.104 (Azerbaijan), para. 21.

[8] Concluding Observations 01.09.2000, E/C.12/1/Add.50 (Australia), para. 29.

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> The Committee strongly urges the State party to repeal Ordinance … concerning the exercise of the right to strike, and recommends the State party to restrict bans on the right to strike to **essential services**, in conformity with the **ILO** Freedom of Association and Protection of the Right to Organise **Convention, 1948 (No. 87)** …[9] (emphasis added)

12. Most importantly, it should be highlighted that the CESCR criticised the strike ban for air transport workers recently:

> 15. The Committee is concerned about the restrictions on the right to strike of workers, especially in the **air** and railway **transport sector**s. … (art. 8)
>
> The Committee recommends that the State party consider amending the Labour Code and the Criminal Code so as to ensure that all workers can exercise their right to strike, in particular those working in the **air** and railway **transport sector**s, ... [10](emphasis added)

13. In conclusion, the competent organs for the two UN Covenants recognise the right to strike. In defining permissible restrictions the CESCR refers to ILO jurisprudence and explicitly recognises the right to strike for air transport workers.

The ILO: in particular ILO Convention No. 87

14. In order to avoid duplication the ‘Relevant International Law and Practice’ section in the ‘Statement of Facts’ the ETUC can refer to the summary of the jurisprudence in respect of the right to strike and its - limited - permissible restrictions. Nevertheless, the ETUC feels obliged to supplement it by the following material.

15. But at first the importance of ILO standards should be pointed out as they serve as minimum below which countries should not fall. This is recognised by the ICESCR, Article 8(3), in harmony with Article 22(3) ICCPR (see above para. 10), which in making provision for the right to strike does so on the basis that

> Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.[11]

Moreover, the Court has stressed the importance of ILO Convention No. 87 by characterising it as ‘principal instrument’[12].

16. According to ILO case-law it is not to deny that there may be restrictions on the right to strike. The CEACR considers that ‘restrictions relating to the objectives of a strike and to the methods used should be sufficiently reasonable as not to result in practice in an excessive limitation of the exercise of the right to strike’.[13]

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[9] Concluding Observations 5 June 2002, E/C.12/1/ADD.78 (Benin), para. 35.

[10] Concluding Observations, 17 May 2013 E/C.12/AZE/CO/3 (Azerbaijan), para. 15.

[11] See also ICCPR, Art 22(2), which contains a provision similar to ICESCR, Art 8(3).

[12] *Demir and Baykara* judgment, note 1, para. 100.

[13] ILO, Committee of Experts, Observation (United Kingdom) (1989): http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:2027752822319447::NO:13100:P13100_COMMENT_ID:2077801.

17. Although there is wide protection for the right to strike, it is accepted by the ILO supervisory bodies that it may be permissible to impose restrictions on workers engaged in 'essential services'.[14] However, according to a longstanding and well established jurisprudence of the ILO supervisory bodies transport sector in general and civil aviation or aircraft related services in particular are considered to be outside the scope of essential service and therefore restrictions such as a reference to compulsory arbitration are not permitted. This will be further developed by references to the jurisprudence of two main ILO supervisory bodies.

18. In its most recent report the CEACR[15] has made the following observations concerning the right to strike in the transport sector in general and the air transport sector in particular:

> The Committee … expresses the firm hope that … the final draft legislation will take into account all its comments and in particular that … **air** and maritime **transport workers**, … will be fully guaranteed the rights enshrined in the Convention[16] (emphasis added),
>
> The Committee recalls that … the following provisions … raise problems of consistency with the Convention … the possibility to impose compulsory arbitration in the event of a dispute in the **public transport sector**[17] (emphasis added),
>
> The Committee … referred to the need to amend several provisions of the Labour Code to bring them into line with the Convention: … the authority of the Ministry of Labour and Social Security to end disputes in … **transport** and distribution **services**[18] (emphasis added),
>
> The Committee recalls that for a number of years it has been making comments on … the authority of the Regional or General Labour Directorate to refer labour disputes to compulsory arbitration in **private transport enterprises**[19] (emphasis added).

19. More generally, the CEACR in its most recent 'General Survey' referred to several previous reports with individual observations (and direct requests) on various countries indicating that air transport should be excluded from 'essential services' and that the right to strike of workers employed in this sector should be recognised:

> When examining concrete cases, the ILO supervisory bodies have considered that it should be possible for strikes to be organized by workers in both the public and private sectors in numerous services, including the following: … air transport services and civil aviation[298] [20]…

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[14] 'in the strict sense of the term': Gernigon, Odero and Guido, above note 3, p 450.

[15] International Labour Office (ed.), International Labour Conference, 102nd Session, 2013, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A), Geneva 2013.

[16] Ibid, note 15, p. 73 (Cambodia).

[17] Ibid, note 15, p. 113 (Guatemala).

[18] Ibid, note 15, p. 119 (Honduras).

[19] Ibid, note 15, pp. 138 and 139 (Panama).

[20] International Labour Conference, 101st Session, 2012, General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, Third item on the agenda: Information and reports on the application of Conventions and Recommendations, Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution), Report III (Part 1B), Geneva 2012, para. 134 with footnote: [298] See, for example, *Bangladesh* – CEACR, observation, 2010; *Belize* – CEACR, observation, 2010; *Costa Rica* – CEACR, observation, 2010; *Ethiopia* – CEACR,

20. For its part, the Committee on Freedom of Association (CFA) has published the following conclusions in several transport cases recognising that restrictions to the right to strike are not in conformity with ILO standards:

> The Committee recalls that, in the **airport sector**, only air traffic control can be regarded as an essential service justifying restrictions on the right to strike. Neither the distribution of fuel to ensure that flights continue to operate, nor transport per se, can be therefore considered essential services in the strictest sense of the term. …[21] (emphasis added).
>
> The Committee once again emphasizes that … the ferry service is not an essential service ... Similarly, the **transportation of passengers** and commercial goods is not an essential service in the strict sense of the term ...[22] (emphasis added).
>
> The Committee is of the opinion that calling a strike if necessary, to protest against the non-payment of part or all of the workers' wages and demand better security for **transport** and forestry **services** constitutes a legitimate trade union activity, including in cases where there is no negotiation process under way to draw up a collective bargaining agreement. …[23] (emphasis added).
>
> While noting the Government's position that the **transport sector**, which includes the complainants in this case, is under all circumstances essential to the functioning of society, the Committee must recall that it does not consider transport generally to constitute an essential service in the strict sense of the term (see Digest, para. 545).[24] (emphasis added)

21. Related even more directly with the present case the CFA in case No. 2018[25] concerning Ukraine confirmed this approach in respect of the pertinent Article 18 of the Ukrainian Transport Act. Although this case targeted the maritime transport sector it is nonetheless directly applicable to the civil aviation because both are seen as transport services and it is the same provision as in the present case:

> In cases concerning violations of the right to strike, the Committee has always recognized the right to strike of workers and their organizations as a legitimate means of defending their economic and social interests. It has also considered that the conditions that have to be fulfilled under the law in order to render a strike lawful should be reasonable and in any event not such as to place a substantial limitation on the means of action open to trade union organizations. (See Digest, op. cit., paras. 474 and 498.) The Committee has also emphasized that while the right to strike may be

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observation, 2011; *Ghana* – CEACR, direct request, 2010; *Kyrgyzstan* – CEACR, direct request, 2010; *Pakistan* – CEACR, observation, 2010; and *Uganda* – CEACR, direct request, 2011.

[21] Case No 2841 (France) Report in which the committee requests to be kept informed of development - Report No 362, November 2011 (*General Confederation of Labour (CGT)*), para. 1041.

[22] Case No 2838 (Greece) Report in which the committee requests to be kept informed of development - Report No 362, November 2011 (*International Transport Workers' Federation (ITF) and the Pan-Hellenic Seamen's Federation (PNO)*), para. 1076.

[23] Case No 2814 (Chile) Interim Report - Report No 362, November 2011 (*Trade Union Number Two "El Bosque" (Sindicato Número Dos El Bosque – SNDB) and the Federation of National Forestry Sector Transport Trade Unions (Federación Nacional de Sindicatos del Transporte Forestal – FNSTF)*), para. 443.

[24] Case No 1971 (Denmark); Definitive Report - Report No 317, June 1999 (representation made under article 24 of the ILO Constitution by the *Dansk Magisterforening (DM)*), para. 55.

[25] Case No 2018 (Ukraine); Report in which the committee requests to be kept informed of development - Report No 318, November 1999 (*The Independent Trade Union of Workers of the Ilyichevsk Maritime Commercial Port (NPRP)*).

restricted or prohibited in essential services in the strict sense of the term, that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population, provided that the workers are given appropriate guarantees, port activities generally do not constitute essential services in the strict sense of the term, although they are an important public service in which a minimum service could be required in case of a strike. (See Digest, op. cit., paras. 526, 545 and 564.) **The Committee, therefore, requests the Government to amend section 18 of the Transport Act to ensure that it cannot be construed as prohibiting strikes in ports.** …[26] (emphasis added)

22. This short overview has shown that also recent ILO jurisprudence continues to consider the transport sector as non-essential service. Strikes must therefore be permitted in particular in civil aviation.

The Council of Europe: in particular Revised European Social Charter (RESC)

23. The right to strike is guaranteed by Article 6(4) of the Revised European Social Charter. As indicated in the 'Statement of Facts' the Social Charters, it is expressly provided that in some circumstances the right to strike may be subject to restriction and limitation (Article G(1) RESC). The former provides that:

> The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

It does not follow from the foregoing, however, that a ban on the right to strike by air cabin crew members would be consistent with these requirements, the European Committee of Social Rights (ECSR) having raised questions on several occasions about the proportionality of such restrictions.

24. Generally speaking, the ECSR defined permissible restrictions related to essential services/sectors as follows (without expressly including the transport sector in this category):

> Prohibiting strikes in sectors which are essential to the community is deemed to serve a legitimate purpose since strikes in these sectors could pose a threat to public interest, national security and/or public health. However, simply banning strikes even in essential sectors – particularly when they are extensively defined, i.e. "energy" or "health" – is not deemed proportionate to the specific requirements of each sector. At most, the introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6§4. [27]

25. According to Article G the ECSR examines the condition of legitimate aims. In the case of restrictions the railway transport sector the ECSR has expressed general doubts:

> [T]he Committee finds that it has not been established that the restriction of the right to strike imposed by Section 51 of the RTA pursues a legitimate purpose in the meaning of Article G of the

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[26] Case No 2018 (Ukraine), see note 25, para. 514.

[27] ECSR, Digest of the Case Law of the European Committee of Social Rights, 1 September 2008, Strasbourg, p. 56.

Revised Charter. It considers that the alleged and not further specified consequences for the economy do not qualify as a legitimate aim in this respect.[28]

26. Concerning the aviation sector more specifically, the ECSR stated concerns as regards restrictions to the right to strike:

> The Labour Code provides an obligation to provide minimum services ... The undertakings and sectors concerned are the railways and public transport, **civil aviation**, … where work stoppages would result in grave and hazardous consequences for the community or human life and health.
>
> In order to be able to assess the conformity of the restrictions with Article 6§4 of the Revised Charter with reference to Article G, the Committee asked for information in the next report on what criteria are used to determine whether a minimum service should be introduced. It repeats its request for this information.[29] (emphasis added)
>
> As in the previous supervision cycles, the report states that no statistical data on strikes are collected in Slovenia and therefore the requested information may not be provided. The report nevertheless points out that as regards the sectors of the police force, the defence forces, **aviation**, customs and railway transport, as well as other activities where a minimum level of the working process is required to be carried out, there have practically been no relevant strikes in recent years since disputes are resolved by negotiations following the prior announcement of a strike.[30] (emphasis added)
>
> In the second case the Tribunal accepted the claim of the Aviation and Airport Workers' Union (SITAVA) and annulled the order defining minimum services for a three-day strike in **Air Portugal (TAP)** in 1994. The Tribunal found that the minimum services as defined in this case in effect amounted to maintaining TAP flights between the Portuguese continent and its autonomous regions at a normal level and thereby clearly violated Section 8 of the Strike Act. …
>
> The Committee observes that the Government can still define minimum services by order where no agreement is reached between the parties. It further observes that the sectors in which minimum services are applicable are numerous and broadly defined. Although the opinions of the Attorney General and the case law quoted would seem to indicate that considerations reflecting those contained in Article 31 of the Charter (protection of rights and freedoms of others, protection of public interest, national security, public health or morals) are generally taken into account when defining minimum services, the Committee is – given the unilateral definition by the Government and the broad sectoral scope – unable to pronounce itself in a general manner as to whether the situation is in conformity with the Charter. To assess the situation properly it needs detailed information on the circumstances pertaining in each individual case, including on the scope and duration of the strike, on the nature of the service in question and the consequences of disrupting this service, as well as on the proportion of workers ordered to perform the service.[31] (emphasis added)

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[28] ECSR, Decision on the merits 16 October 2006 - *Confederation of Independent Trade Unions in Bulgaria, Confederation of Labour "Podkrepa" and European Trade Union Confederation v. Bulgaria*, para. 36.

[29] Conclusions 2010 - Lithuania - Article 6(4); see also Conclusions 2006 Volume 2 - Lithuania - Article 6(4) and Conclusions 2004 Volume 2 - Lithuania - Article 6(4).

[30] Conclusions 2006 Volume 2 - Slovenia - Article 6(4).

[31] Conclusions XV-1 volume 2 – Portugal – Article 6(4). (In Conclusions XIV-1 volume 2 – Portugal – Article 6(4) - the Committee had noted : "Moreover, it appears to the Committee that the minimum service no longer has to be

27. The 'Statement of Facts' refers to two documents of the Parliamentary Assembly of the Council of Europe. However, these interrelated documents should not be considered as representing the opinion of the Council of Europe for several reasons the most important of which being that they do not take sufficiently into account the obligations arising from Article 6(4) RESC[32] (let alone the other international standards).

28. In conclusion, there is no indication that the CESR would allow restrictions on the right to strike in the civil aviation sector.

The Council of Europe Member States: Recent developments

29. For the practice of European States it should be noted that in recent Turkish legislation the ban of the right to strike in the civil aviation industry has been lifted. This is all the more important as an important number of other provisions of this new legislation are not in harmony with international standards:

> Turkey's government has withdrawn a ban on strikes in the country's civil aviation sector …
>
> The aviation strike ban was added to Law 2822, passed earlier this year. … Although the new law falls seriously short of international standards in relation to trade union rights the amendment that took away aviation workers' right to withdraw their labour has been completely removed.[33]

Indeed, the newly adopted Law on Trade Unions and Collective Labour Agreement - Law No. 6356 – only contains a prohibition in case of a 'not finalised' journey[34].

International law in the Ukrainian internal legal order

30. Finally, it would appear important to clarify to which extent Ukraine is bound by international treaties. Indeed, Ukraine has ratified all treaties mentioned above (date of ratification):

- International Covenant on Civil and Political Rights (ICCPR): 12 November 1973,
- International Covenant on Economic, Social and Cultural Rights (ICESCR): 12 November 1973,
- ILO Convention No. 87: 14 September 1956,
- Revised European Social Charter (RESC): 21 December 2006.

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provided in the transport sector, since paragraph 1, sub-paragraph (g) of Section 8 of the Strikes Act has been declared unconstitutional. The Committee would like this to be confirmed." Obviously, this had not been the case.)

[32] Although the Report (doc. 10456) refers to the European Social Charters in paras. 69 – 76 the description is not complete (e.g. no reference to the general requirements for permissible restrictions, see above para. 24) and even incorrect: para. 71: "the prohibition of strikes not seeking the conclusion of a collective agreement is inconsistent with the Charter (and its Article 6 paragraph 4)" whereas the ECSR clearly stated: "… prohibiting strikes not aimed at concluding a collective agreement is not in conformity with Article 6§4." ECSR, Digest, note 27, p.56, referring in footnote 199 to Conclusions IV, Germany, p. 50).

[33] Union pressure wins removal of strike ban - 25 October 2012 http://www.itfglobal.org/news-online/index.cfm/newsdetail/8072

[34] Article 62(3): It shall not be lawful to call a strike or order a lock-out in sea, air, rail and road transportation vehicles, which have not finalised their journey in places of domestic destination. (Unofficial translation ILO NATLEX).

In assessing the defendant State's obligations the Court has attributed important weight to the fact that it is bound by international treaties dealing with the issue at stake and the competent organ's views[35].

31. Moreover, the question as to legal impact in the internal order arises. The Ukrainian Constitution clearly states:

> Article 9. International treaties in force, consented by the Verkhovna Rada of Ukraine as binding, shall be an integral part of the national legislation of Ukraine.
>
> Conclusion of international treaties, contravening the Constitution of Ukraine, shall be possible only after introducing relevant amendments to the Constitution of Ukraine.

32. In conclusion, Ukraine is not only bound in its internal legal order by the interpretation and application of Article 11 ECHR via international standards but also directly.

Conclusion

33. The right to strike is fully recognized in international law as a fundamental human right, exercisable not only in relation to terms and conditions of employment, but more widely to enable workers to protest against the actions of government that directly affect them.

34. The ETUC believes that the right to strike is protected by Art. 11 (1), and that the restrictions on the rights of cabin crew in the instant case cannot be justified under Art. 11(2), having regard in particular to other international legal instruments by which Ukraine is bound, and which are applicable to the construction of the ECHR.

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[35] See *Demir and Baykara* judgment, note 1, para. 166.