



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Legal summary

December 2023

Humpert and Others v. Germany [GC] - 59433/18, 59477/18, 59481/18 et al.

Judgment 14.12.2023 [GC]

Article 11

Article 11-1

Freedom of association

Disciplinary sanctions on teachers with civil-servant status for participating during their working hours in strikes organised by their trade union, in breach of the constitutional ban on civil servants striking: *no violation*

Facts – At the relevant time, the four applicants were State school teachers with civil-servant status employed by different German Länder. They were all members of the Trade Union for Education and Science. In 2009 and 2010 the applicants participated in strikes, which included a demonstration, organised by that union during their working hours to protest against worsening working conditions for teachers. In particular, they did not turn up to work for periods between one hour and three days. They were subsequently reprimanded or fined in disciplinary proceedings for having breached their duties as civil servants by participating in strikes during their working hours. The first applicant was reprimanded for failing to teach two classes, the second and third applicants were given an administrative fine of 100 euros (EUR) each for missing five lessons and the fourth applicant received a disciplinary decision against her - which was not enforced because she had since left the civil service on her request - and a fine of EUR 300 (on appeal) for missing twelve lessons. They unsuccessfully challenged those decisions before different administrative courts and the Federal Constitutional Court.

On 6 September 2022 a Chamber of the Court relinquished jurisdiction in favour of the Grand Chamber.

Law –

Article 11:

(1) *Admissibility* – Although the complaint in the present case was very similar to that examined and declared inadmissible (manifestly-ill founded) by the former European Commission of Human Rights in *S. v. Federal Republic of Germany* and the relevant domestic legal framework remained the same, the Court held, having regard to the developments in its case-law on Article 11 since that decision, that the applicants' complaint was admissible.

(2) *Merits* –

(a) *General principles* –

The Court reiterated that trade-union freedom was not an independent right but a specific aspect of freedom of association as recognised by Article 11. Through its case-law the Court had built up a non-exhaustive list of the essential elements of trade-union freedom without which that freedom would become devoid of substance, including the right to form and join a trade union, the prohibition of closed-shop agreements, 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 collective bargaining. It had to date left open the question whether a prohibition on strikes affected an essential element of trade-union freedom under Article 11 of the Convention.

That question was context-specific and could not therefore be answered in the abstract or by looking at the prohibition on strikes in isolation. Rather, an assessment of all the circumstances of the case was required, considering the totality of the measures taken by the respondent State to secure trade-union freedom, any alternative means – or rights – granted to trade unions to make their voice heard and to protect their members' occupational interests, and the rights granted to union members to defend their interests. Other aspects specific to the structure of labour relations in the system concerned also needed to be taken into account in this assessment, such as whether the working conditions in that system were determined through collective bargaining, as collective bargaining and the right to strike were closely linked. The sector concerned and/or the functions performed by the workers concerned might also be of relevance for that assessment. Even where a prohibition on strikes might not affect an essential element of trade-union freedom in a given context, it would, nonetheless, affect a core trade-union activity if it concerned "primary" or direct industrial action. In each case, the margin of appreciation allowed to the State was reduced.

(b) Application of those principles to the present case –

(i) Existence of an interference, its lawfulness and legitimate aim –

The disciplinary measures had been imposed on the applicants due to their participation in strikes during working hours. As such, they had interfered with their freedom of association. The measures had been based on Article 33 § 5 of the Basic Law and the relevant parts of the different *Länder's* Civil Servants' Status Acts and Civil Servants Acts. The Federal Constitutional Court had consistently interpreted the Basic Law as enshrining such a prohibition on strikes for all civil servants. The impugned interference was therefore prescribed by law. The prohibition on civil servants going on strike was to ensure the maintenance of a stable administration, the fulfilment of State functions and the proper functioning of the State and its institutions was held to be a legitimate purpose by the Court. In that connection, the Court held that the disciplinary measure had also served to ensure a functioning school system and therefore to safeguard the right of others to education protected by Article 7 § 1 of the Basic Law and by Article 2 of Protocol No. 1 to the Convention.

(ii) Necessity in a democratic society –

Turning to the proportionality assessment, the Court considered that all circumstances of the case had to be taken into account. That included (i) the nature and extent of the restriction on the right to strike; (ii) the measures taken to enable civil servants' trade unions and civil servants themselves to protect occupational interests; (iii) the objective(s) pursued by the prohibition on strikes by civil servants; (iv) further rights encompassed by civil servant status; (v) the possibility of working as a State school teacher under contractual State employee status with a right to strike; and (vi) the severity of the impugned disciplinary measures. It therefore examined all these aspects of the case.

The prohibition on strikes by civil servants, including teachers with that status, was based on their status and was absolute. The restriction on the right to strike by German civil servants, including the applicants, could thus be characterised as severe. A general ban on strikes for all civil servants raised specific issues under the Convention. Regarding the applicants' reliance on international labour law, the Court noted that Germany's approach to prohibit strikes by all civil servants, including teachers with that status, such as the applicants, was not in line with the trend emerging from specialised international instruments, as interpreted by the competent monitoring bodies, or from the practice of Contracting States. The competent monitoring bodies set up under the specialised international instruments (notably, the Committee of Experts on the Application of Conventions and Recommendations, the European Committee of Social Rights, the United Nations (UN) Committee on Economic, Social and Cultural Rights and the UN Human Rights Committee) had repeatedly criticised the status-based prohibition of strikes by civil servants in Germany, including as regards teachers with that status. Without calling into question the analysis that had been carried out by those bodies in their assessment of the respondent State's compliance with the international instruments which they had been set up to monitor, the Court reiterated that its task was to determine whether the relevant domestic law in its application to the applicants had been proportionate as required by Article 11 § 2, its jurisdiction being limited to the Convention.

Moreover, while any trend emerging from the practice of the Contracting States and the negative assessments made by the aforementioned monitoring bodies of the respondent State's compliance with international instruments constituted relevant elements, they were not in and of themselves decisive for the Court's assessment as to whether the impugned prohibition on strikes and the disciplinary measures imposed on the applicants had remained within the margin of appreciation afforded to the respondent State under the Convention.

While strike action was an important part of trade-union activity, it was not the only means for trade unions and their members to protect the relevant occupational interests. German civil servants' unions and civil servants themselves had been granted different rights to protect the relevant occupational interests, in particular, civil servants could form and join trade unions, and many civil servants, including the applicants, had availed themselves of that right. The civil-service trade unions had a statutory right to participate when legal provisions for the civil service were drawn up. The Court observed, based on the comparative material available to it, that none of the other Contracting Parties surveyed provided for comparable rights of trade-union participation in the process of fixing working conditions as a means of compensating for a prohibition on strikes by the workers concerned.

Furthermore, civil servants had an individual constitutional right to be provided with "adequate maintenance", commensurate with, *inter alia*, the civil servant's grade and responsibilities and in keeping with the development of the prevailing economic and financial circumstances and the general standard of living (the "principle of alimentation"), which they could enforce in court. That right was for life, including after retirement from active service and in the event of illness. Domestic law also granted them the right to lifetime employment. The Court observed that in Germany, civil servant status was more advantageous than contractual State employee status in several ways, both legally and in terms of resulting material conditions and that the employment conditions of State-school teachers, in terms of salary and teaching hours, compared favourably to those in most other Contracting Parties.

The Court underlined that the right to education, which was indispensable to the furtherance of human rights, played a fundamental role in a democratic society. Primary and secondary education was of fundamental importance for each child's personal development and future success. While the Convention did not dictate how education

was to be provided and still less did it prescribe any specific status for teachers, the Court emphasised the huge importance, from a public-policy perspective, of an efficient educational system capable of providing teaching and educating children, in a credible manner, about freedom, democracy, human rights and the rule of law.

The Court considered that the variety of different institutional safeguards, in their totality, enabled civil servants' trade unions and civil servants themselves to effectively defend the relevant occupational interests. The high unionisation rate among German civil servants illustrated the effectiveness in practice of trade-union rights as they were secured to civil servants. Moreover, the impugned prohibition on strikes by civil servants was a general measure reflecting the balancing and weighing-up of different, potentially competing, constitutional interests.

The prohibition on strikes did not render civil servants' trade-union freedom devoid of substance.

Furthermore, the disciplinary measures against the applicants had not been severe; they pursued, in particular, the important aim of ensuring the protection of rights enshrined in the Convention through effective public administration (in the specific case, the right of others to education), and the domestic courts had adduced relevant and sufficient reasons to justify those measures, weighing up the competing interests in a thorough balancing exercise that had sought to apply the Court's case-law throughout the domestic proceedings. The material employment conditions of teachers with civil servant status in Germany further militated in favour of the proportionality of the impugned measures in the present case, as did the possibility of working as State school teachers under contractual State employee status with a right to strike.

The Court thus concluded that the measures taken against the applicants did not exceed the margin of appreciation afforded to the respondent State and had been shown to be proportionate to the important legitimate aims pursued.

Conclusion: no violation (sixteen votes to one).

(See also *S. v. Federal Republic of Germany*, [10365/83](#), Commission decision of 5 July 1984; *Federation of Offshore Workers' Trade Unions and Others v. Norway* (dec.), 38190/97, 27 June 2002, [Legal Summary](#); *Demir and Baykara v. Turkey* [GC], 34503/97, 12 January 2008, [Legal Summary](#); *Enerji Yapı-Yol Sen v. Turkey*, 68959/01, 21 April 2009, [Legal Summary](#); *Animal Defenders International v. the United Kingdom* [GC], 48876/08, 22 April 2013, [Legal Summary](#); *National Union of Rail, Maritime and Transport Workers v. the United Kingdom*, 31045/10, 8 April 2014, [Legal Summary](#))

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