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

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Fines for striking teachers with civil-servant status did not violate rights

In today's **Grand Chamber** judgment[1] in the case of Humpert and Others v. Germany (application nos. 59433/18 and 3 others) the European Court of Human Rights held, by 16 votes to 1, that there had been:

no violation of Article 11 (freedom of assembly and association) of the European Convention on Human Rights.

The case concerned the disciplinary sanctions imposed on the applicants, teachers with civil-servant status, for having participated, during their working hours, in strikes organised by their trade union in order to protest against worsening working conditions for teachers.

The Court found in particular that the prohibition of strikes by teachers with civil-servant status – which was in place to ensure the fulfilment of State functions through effective public administration, including the provision of education – did not render their trade-union freedom devoid of substance, as the variety of different institutional safeguards which had been put in place enabled civil servants and their unions to effectively defend their professional interests. As a result, the Court held that the disciplinary measures against the applicants following their participation in strikes had been within the State's discretion ("margin of appreciation").

A legal summary of this case will be available in the Court's database HUDOC (link).

Principal facts

The applicants, Karin Humpert, Kerstin Wienrank, Eberhard Grabs and Monika Dahl, are German nationals who were born in 1961, 1960, 1951 and 1965, respectively. They live in Rantrum, Bremerhaven, Neuenhaus and Diemelstadt (all in Germany), respectively. At the relevant time, they were employed by different *Bundesländer* as teachers with civil-servant status (*Beamte*) at State schools.

In 2009 and 2010 the applicants – all members of the Trade Union for Education and Science – did not turn up to work for between one hour and three days, demanding an improvement in learning and working conditions. They were subsequently subjected to disciplinary sanctions for having been on strike. The measures were based on the prohibition of strikes by civil servants.

Ms Humpert was found by the Schleswig-Holstein Ministry for Education and Culture to have failed to teach two classes and was reprimanded. The Lower Saxony School Authority found against Ms Wienrank and Mr Grabs, fining them 100 euros (EUR) each for missing five lessons. Ms Dahl received a disciplinary decision against her from the Cologne District Government and a fine of EUR 300 (on appeal) for an unauthorised absence from 12 lessons.

After the applicants had unsuccessfully challenged the decisions against them in different administrative courts, they lodged constitutional complaints with the Federal Constitutional Court. In June 2018 that court found against the applicants, holding that Article 9 § 3 (freedom of association) of the Basic Law applied to every person including civil servants, and that is why the disciplinary actions against the applicants had interfered with their right to form associations. However, the court held that that interference was justified by other constitutional interests,

1. Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

specifically the traditional principles of the career civil service under Article 33 § 5 of the Basic Law, of which the prohibition to strike was one. It served the purpose of maintaining a stable administration, of ensuring the fulfilment of State functions and thereby the functioning of the State and its institutions. A right to strike, even if it were for only some civil servants, would fundamentally question the entire set-up of Germany's career-civil-service system and would, at the very least, require fundamental changes to the "principle of alimentation", the duty of loyalty, the principle of lifetime employment, and the principle that material rights and duties, including remuneration, had to be regulated by the legislature. It would therefore encroach on the guarantees set out in Article 33 § 5 of the Basic Law. Overall, the restriction on the applicants' rights was not unreasonable and did not render their freedom of association ineffective. Notably, the legislature had sufficiently compensated for the prohibition on strikes by giving umbrella organisations of civil servants' trade unions a right to participate in the drafting of new legal provisions on the status of civil servants and the possibility for civil servants to sue for "adequate maintenance" in the courts, in accordance with the "principle of alimentation".

As regards Article 11 of the Convention, the Federal Constitutional Court found the prohibition on strikes compatible with that provision, stating that it was justified under the first sentence of Article 11 § 2 ("No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others."). The court furthermore saw the applicants as "members of the administration of the State", on whom restrictions could be imposed under the Convention.

Complaints, procedure and composition of the Court

Relying on Articles 11 (freedom of assembly and association) and 14 (prohibition of discrimination) of the European Convention on Human Rights, the applicants complained that the disciplinary measures against them for having participated in a strike during their working hours, as well as the general prohibition on strikes by civil servants, were not prescribed by law, were disproportionate and, in comparison with teachers employed on a contractual basis, discriminatory. They also complained, under Article 6 § 1 (right to a fair trial), that the Federal Constitutional Court had failed to consider the relevant international treaties.

The applications were lodged with the European Court of Human Rights on 10 December 2018. On 6 September 2022 the Chamber relinquished jurisdiction in favour of the Grand Chamber.

A hearing took place in public in the Human Rights Building, Strasbourg, on 1 March 2023.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Síofra **O'Leary** (Ireland), *President*,
Georges **Ravarani** (Luxembourg),
Marko **Bošnjak** (Slovenia),
Gabriele **Kucsko-Stadlmayer** (Austria),
Pere **Pastor Vilanova** (Andorra),
Arnfinn **Bårdsen** (Norway),
Faris **Vehabović** (Bosnia and Herzegovina),
Egidijus **Kūris** (Lithuania),
Stéphanie **Mourou-Vikström** (Monaco),
Alena **Poláčková** (Slovakia),
Georgios A. **Serghides** (Cyprus),
Tim **Eicke** (the United Kingdom),
Lətif **Hüseynov** (Azerbaijan),

Raffaele **Sabato** (Italy),
Anja **Seibert-Fohr** (Germany),
Diana **Sârcu** (the Republic of Moldova),
Mykola **Gnatovskyy** (Ukraine),

and also Johan **Callewaert**, *Deputy Grand Chamber Registrar.*

Decision of the Court

Article 11

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 of the Convention. Over time that had been expounded upon in more detail to set out as essential elements of that freedom 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 as essential elements of trade-union freedom. It had to date left open whether a prohibition on strikes affected an essential element of trade-union freedom under Article 11 of the Convention.

In order to answer whether a prohibition on strikes affected an essential element of trade-union freedom, the Court had to consider the totality of the measures taken by the respondent State to secure trade-union freedom, and the alternative means and rights granted to trade unions and their members to defend their interests. It took into account other aspects of labour relations in the system concerned, such as collective bargaining, the sector concerned and the particular workers' positions. Even where a prohibition on strikes did not affect an essential element of trade-union freedom in a given context, it would affect a core trade-union activity if it concerned direct industrial action. In each case, the discretion ("margin of appreciation") allowed to the State was limited.

The applicants had had measures taken against them owing to their participation in strikes during working hours. As such, these measures had been an interference with their freedom of association. The measures were 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 restriction was therefore prescribed by law. The Government's argument that the restriction on civil servants' striking 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.

The Court observed that the prohibition on strikes by civil servants, including teachers with that status, was absolute, and could be qualified as a "severe" restriction. A general ban on strikes for all civil servants did raise specific issues under the Convention.

Concerning the applicants' arguments regarding international labour law, the Court noted that Germany's approach to prohibit strikes by all civil servants, such as the applicants, was not in line with the international trend. International monitoring bodies set up under the specialised international instruments had repeatedly criticised that status-based prohibition in Germany. Without calling into question the analysis carried out by those bodies, the Court reiterated that its task was to determine whether the relevant domestic law as applied to the applicants was proportionate, as required by Article 11 § 2 of the Convention, its jurisdiction being limited to the Convention.

Strike action was an important part of trade-union activity, but it was not the only means for trade unions and their members to protect the relevant interests. German civil servants could form and

join trade unions, and many civil servants, including the applicants, availed themselves of that right. The civil-service trade unions had a statutory right to participate when civil-service regulations were drawn up. The Court observed that none of the other Contracting Parties 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 a constitutional right to be provided with "adequate maintenance", commensurate with 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.

The variety of different institutional safeguards, in their totality, enabled civil servants' trade unions and civil servants themselves to effectively defend their relevant 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. The prohibition on strikes did not render civil servants' trade-union freedom devoid of substance.

Moreover, the disciplinary measures taken against the applicants had not been severe, and they had pursued 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 cited relevant and sufficient reasons to justify those measures, while weighing up the competing interests and having regard to the European Court's case-law throughout the domestic proceedings. The actual 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 had not exceeded the discretion of the State and they had been proportionate to the important legitimate aims pursued. There had been no violation of Article 11.

Article 14 read in conjunction with Article 11

Noting that the applicants had been legally represented before the national courts and their detailed submissions, the Court held that the applicants had failed to raise a complaint of discrimination before the Federal Constitutional Court. As the national courts had to be given a chance to respond to this complaint first, this part of the application was therefore inadmissible for non-exhaustion of domestic remedies.

Article 6 § 1

The applicants alleged that the Federal Constitutional Court had not addressed their arguments regarding civil servants' right to strike under international labour law. The European Court declared the complaints inadmissible, as the Federal Constitutional Court had taken account of international labour law in dealing with the main thrust of their case.

Separate opinions

Judge Ravarani expressed a concurring opinion. Judge Serghides expressed a dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.