

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

FIFTH SECTION

CASE OF ALONSO RADESCA AND OTHERS v. SWITZERLAND

(Applications nos. 38204/19 and 2 others –
see appended list)

JUDGMENT

Art 11 • Positive obligations • Freedom of assembly and association • Dismissal of private hospital employees for participating in a strike deemed unlawful by the domestic courts • Domestic courts' failure to comply with their positive obligations by failing to secure applicants' right to strike • Interpretation of domestic law created a significant degree of uncertainty for unions and employees as to the circumstances in which they continued collective action while retaining the protection afforded by domestic law • Interpretation not sufficiently foreseeable in its application in the applicants' situation • Essence of the right to strike undermined • Lack of balancing exercise between competing private interests
Art 11 • Freedom of assembly and association • Criminal convictions for trespassing, as a result of organising a picket line on the hospital grounds, of secretaries of the trade unions mandated to conduct the strike negotiations in the context of their trade union activity • Convictions for non-violent actions, fully within the trade unionists' mandate and did not cause damage • Fines imposed with chilling effect on trade union members and an impact on the applicants' professional lives as trade union representatives • Disproportionate interference not compatible with a "pressing social need" and thus not "necessary in a democratic society"

Prepared by the Registry. Does not bind the Court.

STRASBOURG

5 November 2026

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Alonso Radesca and Others v. Switzerland,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Kateřina Šimáčková*, President*,
Gilberto Felici,
Andreas Zünd,
Mykola Gnatovskyy,
Vahe Grigoryan,
Sébastien Biancheri,
Nicholas Emiliou*, judges*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 38204/19, 30379/21 and 30786/21) against the Swiss Confederation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by twenty Swiss nationals and one French national ("the applicants"), on the various dates indicated in the appended table;

the decision to give notice of the applications to the Swiss Government ("the Government");

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the letter from the French Government informing the Court that they do not wish to make use of their right to intervene in the proceedings in respect of application no. 38204/19 (Article 36 § 1 of the Convention);

the comments submitted by the European Trade Union Confederation, who were granted leave by the President of the Section to intervene in the written procedure;

Having deliberated in private on 29 September 2026,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns a strike in a private hospital over its withdrawal from a collective bargaining agreement. The domestic authorities found the strike to have been unlawful, resulting in the dismissal of the hospital employees who had participated in it and criminal sanctions against the secretaries of the unions who had been mandated to conduct negotiations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

2. The applicants are 17 former employees of a private hospital (application no. 38204/19) and four union secretaries (applications

nos. 30379/21 and 30786/21). Their details are set out in the appendix. The applicants were represented by Mr Christian Dandrès, a lawyer practising in Geneva.

3. The Government were represented by Mr Xavier-Baptiste Ruedin, Representative of Switzerland to the European Court of Human Rights.

4. The facts of the case may be summarised as follows.

A. Background information

5. The Providence Hospital is a private hospital located in the canton of Neuchâtel (La Fondation de l'Hôpital de la Providence, referred to hereinafter as "the Providence Hospital" or "the Hospital").

6. On 28 June 2012 the Providence Hospital withdrew from the collective bargaining agreement applicable to the health sector (almost all public and private healthcare establishments) in the Canton of Neuchâtel (*Convention Collective de Travail du secteur de la santé dans le canton de Neuchâtel*, hereinafter "the CCT Santé 21 agreement"), with effect from 31 December 2012. It also entered into negotiations for a takeover of its activities by the Genolier Swiss Medical Network SA, a Swiss private hospital group that owns and manages a network of several private clinics and medical centres in Switzerland ("the GSMN").

7. On 19 July 2012, 129 Hospital employees held a general assembly. By a large majority (no votes against and 4 abstentions), they adopted a resolution expressing their concern about the deterioration in their working conditions that would follow the Hospital's withdrawal from the CCT Santé 21 agreement and the outsourcing of certain services. The assembly decided to mandate the Public Services Union (Syndicat Suisse des Services Publics – "the SSP") and the Syna Union (Syndicat interprofessionnel), parties to the CCT Santé 21 agreement, to conduct negotiations to ensure that the Hospital continued to be subject to the CCT Santé 21 agreement and that no services were outsourced. They stated that "if the negotiations and all standard means of social dialogue were to fail, the staff would resort to the means of struggle provided for in the Federal Constitution of the Swiss Confederation".

8. In a letter dated 20 July 2012 the SSP and the Syna unions requested that the Providence Hospital open negotiations with a view to maintaining the application of the CCT Santé 21 agreement to all staff of the Providence Hospital.

9. On 29 August 2012 a meeting took place between the unions and the Hospital's administration.

10. In a request dated 4 September 2012 the Hospital staff, acting through the SSP and the Syna unions, referred the matter to the Labour Dispute Conciliation Office ("the Conciliation Office"). The Providence Hospital did the same on 14 September 2012.

11. On 18 September 2012 the staff of the Providence Hospital went on strike for the first time, for a half-day. Their demands were the maintenance of the CCT Santé 21 agreement, the non-outsourcing of services and the maintenance of all jobs.

12. On 19 September 2012 the SSP wrote to the Conciliation Office to inform it that its intervention was no longer necessary because the State Council (the Cantonal Government, *le Conseil d'État*) had agreed to act as a mediator between the parties.

13. On 9 November and 13 November 2012 the Providence Hospital invited its staff to an information session to be held on 16 November 2012 concerning the GSMN's plan to take over its operational activities. At the meeting all employees would be asked for their opinion, with a guarantee of anonymity, on the takeover plan and its alternatives. The letter of 13 November 2012 (which was co-signed by the GSMN) described the voting procedure and contained a presentation by the GSMN on its proposals for the Hospital's future and a table summarising the working conditions that would apply as from 1 January 2014, as well as the voting materials.

14. On 14 November 2012, after the negotiations conducted with the assistance of the State Council had failed, the Conciliation Office informed the parties that it was resuming the management of the case, that the unions remained subject to absolute industrial peace, and set a conciliation hearing for 22 November 2012.

15. During the information session held by the Providence Hospital and the GSMN on 16 November 2012, 85% of staff cast secret ballots and 76% of voters supported the plan to integrate the Providence Hospital into the GSMN.

16. On 22 November 2012 the Conciliation Office held a conciliation hearing. However, after discussions the conciliation was declared a failure.

B. Strike and dismissal of strikers (application no. 38204/19)

17. On 26 November 2012 a second strike began. Its aim was to maintain the CCT Santé 21 agreement, prevent the outsourcing of services and avoid dismissals. Tents were set up for the picket line in the car park at the Hospital's entrance.

18. In a circular letter of 17 December 2012 the Providence Hospital announced to all its employees that the agreement for its takeover by the GSMN had been signed following the 16 November 2012 vote, that the terms of the CCT Santé 21 agreement would remain in effect until 31 December 2013, that the new working conditions would apply starting from 2014, and that the GSMN had committed to compensating each employee, as of 1 January 2014, for any potential loss related to allowances or benefits through a corresponding salary increase, thereby protecting them from any financial loss resulting from the change in working conditions.

19. In their application the applicants specified that the new working conditions involved: an increase in working hours (40 to 42 hours per week); a reduction in compensation for Sunday work (8 Swiss francs (CHF) to CHF 3 per hour); a reduction in on-call allowances (from CHF 5 to CHF 2 per hour); replacement of the 15% increase in pay for night hours (defined as between 8 p.m. and 7 a.m.) with a simple allowance of CHF 6 per hour for night hours (newly defined as between 11 p.m. and 6 a.m.); maternity leave paid at 80% for 14 weeks instead of 100% for 16 weeks; the elimination of automatic salary increases based on seniority; and the removal of protection against collective redundancies (social plan).

20. In late December 2012 the State Council announced that it would keep the Providence Hospital on the canton's hospital list until 31 December 2016 and grant it an exemption from the application of the CCT Santé 21 agreement for the years 2014 to 2016, enabling it to obtain public funding. It further announced that it had negotiated favourable working conditions for employees with the new employer, the GSMN.

21. On 3 January 2013 the SSP informed the administration of the Hospital that "the majority of staff" were calling for the long-term maintenance of the CCT Santé 21 agreement, the retention of all jobs and no outsourcing of services (such as cleaning, laundry and housekeeping). It specified that the strikers were prepared to return to work if these demands were met.

22. On 23 January 2013 the State Council wrote to the SSP and the Syna unions informing them that the GSMN was guaranteeing the employment of all staff of the Providence Hospital. In the event of the outsourcing of a service, the GSMN would ensure that all employees concerned would be taken on by the relevant service provider. The GSMN would refrain from taking any disciplinary action against the strikers if they returned to work by 31 January 2013. It had already committed to complying with the terms of the CCT Santé 21 agreement until 31 December 2013. Beyond that date it had "formally committed to an upward adjustment of salaries starting in 2014 for current staff in order to compensate for the announced increase in working hours, the reduction in certain allowances (weekends, public holidays, on-call duty), the reduction of the period considered night work, and the gradual loss of supplementary child allowances". It therefore invited the strikers to take advantage of those commitments and return to work within the specified time frame.

23. On the same day the State Council publicly announced that it had been engaged in intensive negotiations with the GSMN since December and the guarantees it had obtained from the latter (see paragraph 22 above). It stated that it strongly hoped that those guarantees would put an end to the conflict between the Providence Hospital and some of its staff.

24. Also on 23 January 2013 the Providence Hospital's administration informed its employees about the commitments made by the GSMN in terms

of salary, compensation and employment. A formal notice was given to the 26 striking employees to return to work, stating that the strike was disproportionate, ran counter to the wishes of the vast majority of the Hospital staff and had lasted for longer than was acceptable. Each striker was asked to indicate by 28 January 2013 whether or not they intended to return to work. No dismissal measures would be taken against employees who returned to work as indicated and their return would be facilitated with the help of a mediator. The Hospital specified that if the employees concerned decided to continue participating in the strike, it would consider terminating their contracts with immediate effect. However, individual interviews would be scheduled on 29 January or 30 January 2013 in order to hear them in person before proceeding with the dismissals.

25. In a letter dated 28 January 2013, 25 employees reiterated that their demands concerned the maintenance of the CCT Santé 21 agreement, the absence of outsourcing of services, and the absence of layoffs. In their view, the working conditions being offered by the GSMN were significantly inferior to those provided for in the CCT Santé 21 agreement. They further argued that the principle of proportionality was not a condition set out in Article 28 of the Federal Constitution, which only required employees to have attempted to negotiate before resorting to strike action. In this case, the duration of the mobilisation had been the result of the obstinacy of the Providence Hospital's owner. In that context, threats of dismissals were unacceptable and could be considered an attempt at coercion.

26. On 30 January 2013 the SSP and 25 hospital employees applied to the Civil Court of Littoral and Val-de-Travers (*Tribunal civil du Littoral et du Val-de-Travers*, "the Regional Court") seeking an injunction prohibiting the Providence Hospital from dismissing the employees in question.

27. On the same day the Regional Court declared the application inadmissible in so far as it originated from the SSP union and dismissed it in so far as it had been lodged by the employees, having considered that the maintenance of employment relations against the employer's wishes was not provided for by any provision of substantive law.

28. On 31 January 2013 the Providence Hospital met with the striking employees. Three of them expressed their willingness to reintegrate into workplace as of 1 February 2013.

29. By registered letters of 4 February 2013 the Providence Hospital dismissed with immediate effect 22 employees who were still refusing to return to work.

30. On 5 February the State Council offered to facilitate further negotiations between the Providence Hospital and the SSP on the terms of a new collective agreement (different from the CCT Santé 21 agreement) that would be acceptable to both the employer and the employees. Prior to the substantive discussion, the State Council proposed, in particular, the immediate suspension of the strike and the above-mentioned dismissals.

31. An initial meeting took place on 6 February 2013. At it the State Council set the following preconditions for negotiations on a new collective agreement: the reinstatement of all dismissed strikers, approval by all parties of the takeover of the Providence Hospital by the GSMN, job guarantees, and equal pay levels with no time-limit. The Providence Hospital accepted those preconditions, but the SSP did not.

32. Between 8 February and 11 February 2013 the parties held six additional rounds of negotiations. On each occasion the Providence Hospital agreed to reinstate the dismissed employees, but demanded that a new collective agreement be negotiated with the partners determined by the State, while the SSP insisted that negotiations should focus on the maintenance of the CCT Santé 21 agreement.

33. On 27 February 2013 the 22 former employees of the Providence Hospital lodged a request with the Conciliation Chamber of the Regional Court seeking the opening of a conciliation process.

34. Meanwhile, on 1 March 2013 the Providence Hospital integrated into the GSMN.

35. After a conciliation hearing was held on 18 April 2013, on 16 August 2013 22 former employees of the Providence Hospital lodged a claim with the Regional Court seeking compensation in respect of pecuniary and non-pecuniary damage resulting from their unlawful dismissals.

36. On 6 June 2017 the Regional Court dismissed their claim.

37. On 7 July 2017, the 22 former Hospital employees appealed against the above judgment to the Civil Appeals Chamber of the Neuchâtel Cantonal Court (*Cour civile du Tribunal cantonal*, "the Cantonal Court").

38. On 12 December 2017 the Cantonal Court dismissed the appeal, having found the strike unlawful on the following grounds:

(a) the decision to initiate the strike and to continue it for 71 days had not been made in accordance with the rules of civil law governing trade unions because it had not been approved by a majority of voters or at least by a representative part of the affected workers;

(b) despite the significant guarantees the employees had received on 23 January 2013 (in addition to the extension of the CCT Santé 21 agreement until 31 December 2013), the unions had refused to negotiate a new collective bargaining agreement by expressly rejecting the preconditions for negotiation set by the State Council consisting of approval of the takeover of the Hospital by the GSMN, which led the Cantonal Court to believe that the strike was no longer motivated by a disagreement over demands concerning labour relations, but rather had to do with the takeover of the Providence Hospital by the GSMN;

(c) since the terms of the CCT Santé 21 agreement had been maintained until 31 December 2013 and wage gains had been preserved, the strike in January 2013 had been premature and ran contrary to the obligation to preserve industrial peace.

The Cantonal Court therefore acknowledged the existence of just cause permitting dismissals with immediate effect.

39. On 30 January 2018, 20 out of 22 complainants lodged an appeal against that judgment with the Federal Supreme Court, alleging a violation of Article 11 of the Convention. They argued that the conclusions of the Cantonal Court regarding the unlawfulness of the strike had no basis in Article 28 of the Federal Constitution and that the respondent could therefore not rely on just cause to proceed with their immediate dismissals.

40. On 17 December 2018 the Federal Supreme Court dismissed that appeal. The Federal Supreme Court reiterated the provisions contained in Article 28 of the Swiss Constitution, as well as its own case-law setting out four conditions to which the right to strike was subject (see paragraphs 58 and 67-63 below). It noted at the outset that the fulfilment of the second condition (compliance of the strike with the obligations to maintain industrial peace or to resort to conciliation) had not been disputed by the parties, and that the examination of compliance with the fourth condition (support of the strike by a trade union, examined in connection with the requirement relating to the representativeness of the strikers) could be left open since the arguments raised by the appellants with regard to the remaining two conditions had been in any case insufficient to call into question the finding of the Cantonal Court concerning the unlawfulness of the strike. Regarding the first condition (requiring that the strike must relate to labour relations), the Federal Supreme Court endorsed the findings of the Cantonal Court to the effect that at least since 23 January 2013 the strikers had been advancing not a demand relating to labour relations, but a political demand (in a broad sense). It concluded, therefore, that the first condition had not been met and that the strike had been, at the very least since 23 January 2013, unlawful. The Federal Supreme Court further considered that the third condition (compliance of the strike with the principle of proportionality) also confirmed the unlawfulness of the strike. In particular, after 23 January 2013 the strike could no longer be considered a measure of last resort, since at that time the application of the terms of the CCT Santé 21 agreement was guaranteed for the next 11 months, until 31 December 2013. That had granted the appellants a respite allowing them to assert their demands through a less drastic measure than continued strike action. They could no longer refuse to return to work with reference to the loss of a means of pressure essential to bringing about the resumption of negotiations on a new collective bargaining agreement, since the Hospital – unlike the strikers – had agreed to such a resumption. In addition, the new employer had committed to maintaining wage levels beyond 31 December 2013, and, in early February 2013, the respondent had accepted the State Council's preconditions for negotiation, consisting of the reinstatement of all dismissed strikers, job security, and maintaining equal pay levels indefinitely, as well as the conclusion of a new collective bargaining agreement. Given that the search for consensual solutions was a prevailing consideration during

labour disputes, it had been incumbent upon the strikers to return to work and upon the unions to resume negotiations. The Federal Supreme Court further held that the application of the principle of proportionality to the exercise of the freedom of association, derived from Article 28 § 2 of the Federal Constitution, had always been recognised in its case-law and therefore did not lack, contrary to the appellants' assertions, sufficient legal basis. It was not the judge's role to review *a posteriori* whether the strikers had correctly assessed all the circumstances underlying their decision to initiate (or continue) a strike, but to verify that the conditions set by the legislature had been met and to determine whether the chosen industrial action (the strike) truly constituted an *ultima ratio*. Relying on the practice of the International Labour Organization's (ILO) Committee on Freedom of Association, the Federal Supreme Court reiterated in that regard that, as a general rule, a decision to suspend a strike for a reasonable period so as to allow the parties to seek a negotiated solution through mediation or conciliation efforts does not constitute a violation of freedom of association. While Article 11 of the Convention implicitly recognised the right to strike as an inherent element of freedom of association, it left the States considerable discretion to determine the modalities for exercising trade union rights, including the right to collective action (such as strikes), and the appellants had failed to explain how the principle of proportionality as applied in their case had exceeded the State's margin of appreciation. The Federal Supreme Court was unconvinced by the appellants' argument to the effect that the actions taken by the strikers would only have been disproportionate if they had resorted to violence or damage of property. The necessity criterion was independent of the question whether criminal offences had been committed, and called for a broader definition. Lastly, the Federal Supreme Court held that the Cantonal Court had conducted a thorough examination of all the circumstances of the case that had led to the appellants' dismissals. The strikers knew that the strike was unlawful or, at the very least, they should have had serious doubts as to its lawfulness; on 23 January 2013 they had been informed that continuing the strike would warrant their immediate dismissal, a warning which had been reiterated on 31 January 2013. Faced with employees who had refused to end the strike even though they had been assured that the CCT Santé 21 agreement would remain in effect until 31 December 2013, the Providence Hospital could reasonably have considered the relationship of trust to have been broken, all the more so since a clear warning had been given to the strikers beforehand, and given that on six occasions in February 2013 the appellants had been afforded opportunities to be reinstated if they agreed to immediately suspend the strike. Since they had rejected those proposals, they could not derive any argument from them as to the alleged preservation of the relationship of trust.

41. On 14 January 2019 the appellants received a copy of that judgment.

C. Criminal proceedings (applications nos. 30379/21 and 30786/21)

42. On 26 November 2012 the four applicants who were secretaries of the SSP (Ms Chantal Hayoz and Mr Yves Mugny) and the Syna trade unions (Ms Yasmina Produit and Mr Giorgio Bragoni) set up a picket line on parking spaces located on the Providence Hospital grounds. That was the location that had been indicated to the unions by the Providence Hospital administration. Tents were set up on the site to allow the strikers to come there every day.

43. On 13 December 2012 the Providence Hospital lodged a criminal complaint alleging that the applicants were trespassing and asking the public prosecutor to immediately intervene with the help of the police to put an end to the violation of its private property. The public prosecutor gave the unions until 18 December 2012 to vacate the Hospital's grounds.

44. On 19 December 2012 the Providence Hospital proposed to the unions that they leave the hospital grounds that same day and dismantle the tents by 21 December 2012.

45. On the same day the public prosecutor's office decided to temporarily suspend police intervention so that an amicable solution could be found between the parties. Later that day the Providence Hospital's representative informed the public prosecutor that discussions between the parties had failed and asked him to call in the police.

46. On 20 December 2012 a hearing was held before the Civil Court (*Tribunal Civil*), during which the parties expressed their disagreement as to the lawfulness of the strike. The Providence Hospital agreed to tolerate the presence of the picket line until 31 December 2012, and the unions were given until 21 December 2012 to respond. The unions rejected that proposal.

47. On 26 December 2012 the police intervened on the orders of the public prosecutor. They seized the equipment used for the picket line (tents and a yurt owned by a third party and entrusted to the SSP).

48. On 16 January 2013 the unions travelled to Geneva to demonstrate in front of a medical centre belonging to the GSMN (the Centre medico-chirurgical des Eaux-Vives), accusing the network, in particular, of wage dumping.

49. On 21 January 2013 the SSP challenged the seizure of the above-mentioned equipment before the Cantonal Court of the Canton of Neuchâtel (*Autorité de recours en matière penale du Tribunal cantonal de la Republique et canton de Neuchâtel*).

50. On 22 February 2013 the Cantonal Court found that complaint inadmissible on the ground that the SSP had not been the owner of the seized equipment, but at most a tenant or borrower of the items in question. The rent or compensation the SSP would owe on this basis was merely a consequence of the seizure measure, which was to say an indirect infringement of the SSP's interests. The Cantonal Court further noted that the seized assets were not the

property of the unions and that the lawfulness of such a seizure was therefore questionable.

51. Meanwhile, following the police intervention, the strikers and unions obtained permission from the municipality to set up a picket line in a public park outside the hospital. They maintained a two-hour picket line every day in front of the Providence Hospital.

52. Meanwhile, on 30 November 2012 and 30 January 2013 the GSMN and the Providence Hospital, respectively, had filed criminal complaints against the applicants for defamation.

53. In indictments dated 8 May and 9 August 2013 the public prosecutor referred the applicants to the Police Court of Littoral and Val-de-Travers (*Tribunal de police du Littoral et Val-de-Travers*, "the Police Court").

54. On 24 October 2013 the Police Court ordered the joinder of the cases against the applicants relating to trespassing and defamation.

55. On 1 November 2013 the former President and Director of the Providence Hospital lodged a new complaint for defamation against Ms Yasmina Produit and Mr Yves Mugny. That complaint was joined to the above-mentioned case, which was still pending.

56. On 3 March 2014 an unsuccessful attempt at conciliation was made before the Police Court.

57. On 9 August 2016 the Police Court acquitted the applicants of trespassing and on some of the defamation charges. It found them guilty of the remainder of the defamation charges, but declined to impose a penalty. Both parties lodged appeals against that decision.

58. On 6 September 2018 the Criminal Chamber of the Cantonal Court of the Canton of Neuchâtel (*Cour pénale du Tribunal cantonal de la Republique et canton de Neuchâtel*) found the applicants guilty of trespassing and defamation and sentenced them to 30 day-fines of 10 Swiss francs (CHF) per day for Ms Chantal Hayoz and Mr Giorgio Bragoni and of CHF 80 per day for Mr Yves Mugny and Ms Yasmina Produit, suspended for two years. Regarding the effects of the strike on the hospital, the Criminal Chamber held as follows:

> "The presence of strikers and unions had not caused any disruption to hospital activity, apart from a 'few minor problems'. ... It has not been established that any patient was not treated or received only minimal care; according to a statement from a hospital representative, the 'hospital closed' banner could have caused misunderstanding among patients, but no physical harm. However, a report from the director of the dialysis unit, which had six striking nurses, reveals that the strike caused complications and workloads exceeding what could be characterised as 'minor problems'; in any case, significant tensions arose. The situation could only have negative effects on the staff as a whole and, consequently, on the quality of care provided to patients."

59. On 1 July 2019 the Federal Supreme Court quashed the convictions for defamation, but confirmed those for trespassing. It referred the case back to the Criminal Chamber of the Cantonal Court with an instruction to acquit

the applicants of defamation and to determine new sentences for trespassing only.

60. On 8 May 2020 the Criminal Chamber of the Cantonal Court held that, in accordance with the principle of the authority of the remittal order deriving from unwritten federal law, the cantonal authority to which the case was remitted by the Federal Supreme Court was required to base its new decision on the legal considerations contained in the Federal Supreme Court's ruling. It was thus bound by what had already been definitively decided by the Federal Supreme Court and by the factual findings that had not been challenged before it or had been challenged unsuccessfully. Having been seised of an appeal against the new cantonal decision, the Federal Court was also bound by its remittal order. Following the Federal Supreme Court's ruling of 1 July 2019, the Criminal Chamber of the Cantonal Court therefore acquitted the applicants of defamation and sentenced them for trespassing to 10 day-fines of 10 Swiss francs (CHF) per day for Ms Chantal Hayoz and Mr Giorgio Bragoni, and of CHF 80 per day for Mr Yves Mugny and Ms Yasmina Produit, suspended for two years. The applicants appealed against that ruling.

61. On 25 November 2020 the Federal Supreme Court examined whether the severity of the sentence was appropriate and concluded that 10 day-fines seemed fair. It found inadmissible the applicants' complaints regarding the conviction for trespassing as that issue had been fully examined by it in the judgment of 1 July 2019 and was therefore *res judicata*.

62. On 8 December 2020 the applicants received a copy of the above-mentioned judgment.

63. On 24 August 2022 the Federal Supreme Court upheld a refusal to grant social partner status to the Avenir trade union (Avenir Syndical) owing to, among other reasons, the criminal conviction of Mr Mugny. The other decisive factors included the fact that another representative of the Avenir trade union had been convicted of defamatory behaviour towards a hospital worker who had refused to recognise the union's status as a social partner, and unreasonable behaviour by the union during the recognition procedure.

II. RELEVANT LEGAL FRAMEWORK

A. Domestic law

64. The Federal Constitution of the Swiss Confederation reads as follows:

Article 28: Freedom of association

"1. Workers, employers and their organisations have the right to form unions to defend their interests, to create associations, and to join or not to join them.

2. Disputes shall be settled, as far as possible, through negotiation or mediation.

3. Strikes and lockouts are permitted if they relate to employment relations and if they do not contravene any requirements to preserve peaceful employment relations or to conduct conciliation proceedings.

4. The law may prohibit certain categories of persons from taking strike action."

65. The Federal Act on the Amendment of the Swiss Civil Code (Part Five: The Code of Obligations) of 30 March 1911 reads, in so far as relevant, as follows:

Article 337: Termination [of an employment relationship] with immediate effect, for just cause

"1. Either the employer or the employee may terminate the employment relationship with immediate effect at any time for just cause; the party doing so must give reasons for its decision in writing if the other party so requests.

2. Just cause shall include, in particular, any circumstance which renders the continuation of the employment relationship in good faith unacceptable for the party giving notice.

3. The court determines at its discretion whether there is just cause. However, under no circumstances may the court hold that just cause is established by an employee being prevented from working through no fault of his or her own."

Article 337c: Termination [of an employment relationship] without just cause

"1. If the employer dismisses the employee with immediate effect without just cause, the employee is entitled to damages in an amount equal to what he or she would have earned had the employment relationship ended after the required notice period or on expiry of its agreed duration.

2. Such damages are reduced by any amounts saved by the employee as a result of the termination of the employment relationship or that he or she earned by performing other work or would have earned had he or she not intentionally foregone such work.

3. The court may order the employer to pay the employee compensation in an amount determined at the court's discretion, taking due account of all the circumstances; however, compensation may not exceed the equivalent of six months of the employee's salary."

Article 357a: On the contracting parties

"...

2. Each contracting party [to a collective labour agreement] has a duty to maintain industrial peace and in particular to refrain from any hostile action on matters regulated by the collective labour agreement; such duty applies without restriction only where expressly so agreed."

66. The Swiss Criminal Code of 21 December 1937 reads, in so far as relevant, as follows:

Article 14: Acts permitted by law

"Any person who acts as required or permitted by the law, acts lawfully even if the act carries a penalty under this Code or another Act."

Article 21: Error as to unlawfulness

"Any person who is not and cannot be aware that, by carrying out an act, he or she is acting unlawfully, does not commit an offence. If the error was avoidable, the court shall reduce the sentence."

Article 52: Grounds for exemption from punishment. No need for a penalty

"The competent authority shall refrain from prosecuting the offender, bringing him or her to court or punishing him or her if the level of culpability and consequences of the offence are negligible."

Article 186: Trespassing

"Any person who, against the will of the lawful occupants, enters a building, an apartment, a self-contained room within a building, an enclosed area, courtyard or garden forming a direct part of a building, or a clearly demarcated workplace or, despite requests from the lawful occupants to leave, remains in such a location, shall, upon complaint, be punished by imprisonment for up to three years or a fine."

B. Domestic practice

1. Right to strike

67. In accordance with the case-law of the Federal Supreme Court, a strike is a collective refusal to perform work in order to obtain specific working conditions from the employer (see ATF 134 IV 216, point 5.1.1; ATF 132 III 122, point 4.3; and ATF 125 III 277, point 3a).

68. The right to strike, enshrined in Article 28 of the Federal Constitution, had already been recognised by the Federal Supreme Court before the Constitution came into force on 1 January 2000 (see ATF 125 III 277, point 2, and ATF 132 III 122, point 4.4.1). It has an indirect horizontal effect on labour relations in the private sector (see ATF 132 III 122, point 4.1.1, and ATF 144 I 50, point 4.1).

69. The right to strike is subject to four conditions:

1) *The strike must relate to labour relations*. More specifically, it must concern an issue that can be settled by a collective bargaining agreement. This excludes political strikes, which are not related to labour relations and aim at putting pressure on the authorities (see ATF 132 III 122, point 4.4.2, and ATF 125 III 277, point 3b).

2) *The strike must comply with the obligations to maintain industrial peace or to resort to conciliation*. The obligation to maintain peaceful labour relations stems from Article 357a § 2 of the Code of Obligations (see paragraph 65 above). This is a relative obligation of industrial peace, which must be distinguished from the absolute obligation of industrial peace. The latter extends the obligation to matters not covered by the collective labour agreement and only exists if the agreement expressly requires it (see ATF 132 III 122, point 4.4.2).

3) *The strike must comply with the principle of proportionality*. This principle stems from the invitation addressed to the parties in

Article 28 § 2 of the Constitution to settle disputes "as far as possible" through negotiation or mediation. It must be understood that strikes must not be more drastic than is necessary to achieve the intended goal (criterion of necessity). Collective industrial action is only lawful as a last resort. While peaceful picketing to persuade non-striking workers is legally protected, physically or verbally blocking access is strictly unlawful (see ATF 132 III 122, points 4.4.2, 4.5.4.1 and 4.5.4.2).

4) *The strike must be supported by a workers' organisation (trade union) with the capacity to conclude a collective labour agreement.* Although the text of Article 28 of the Constitution did not include this condition, the Federal Supreme Court considered that the legislature only omitted this requirement from the provision in question for drafting reasons, without intending to make any legal change. The Federal Supreme Court therefore accepted that it was still valid (see ATF 132 III 122, point 4.4.2).

70. The Federal Supreme Court considered that, although the Conventions of the ILO were not generally directly applicable (not self-executing), they did exert influence through Article 11 of the Convention and Article 22 of the International Covenant on Civil and Political Rights, and the judge could refer to them in order to give concrete expression to the scope of Article 28 of the Constitution (see ATF 144 I 50, point 5.3.3.1 s).

2. Immediate dismissal

71. In accordance with the case-law of the Federal Supreme Court, even if a strike is unlawful that does not automatically mean that the employees who took part in it can be dismissed with immediate effect (see ATF 111 II 245, point 5.d). Consequently, the judge remains obliged to examine all the circumstances that led to the dismissal (see the Federal Supreme Court's ruling of 17 December 2018, point 6.2).

C. Relevant international materials

1. International Covenant on Economic, Social and Cultural Rights

72. Article 8 of the International Covenant on Economic, Social and Cultural Rights of 1966, ratified by Switzerland in 1992, 993 UNTS 3, reads as follows:

> "1. The States Parties to the present Convention undertake to ensure:
>
> (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
>
> ...

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

..."

73. Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant (2010) E/C.12/CHE/CO/2-3, 26 November 2010, by the United Nations Committee on Economic, Social and Cultural Rights reads, in respect of Switzerland as follows:

"10. The Committee notes with concern that, if the right to strike is provided by legislation, it is being compromised in the State party by the interpretation of the principle of "reasonableness". As a result, trade unionists have been given criminal sentences because of their involvement in a strike or a trade union campaign, due to the interpretation of the principle of 'reasonableness' by the court (art. 8).

The Committee requests that the State party undertake a comprehensive review of the right to strike in practice. It also requests that the State party ascertain that its interpretation of "reasonableness" is in conformity with international standards. The Committee requests the State party, in its next periodic report, to provide detailed information regarding this concern."

2. International Labour Organisation (ILO) material

74. The ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise of 1948 ("ILO Convention No. 87"), which was ratified by Switzerland in 1975, does not contain an explicit reference to the right to strike, but has been interpreted by the ILO's two main supervisory bodies – the Committee of Experts on the Application of Conventions and Recommendations ("the CEACR") and the Committee on Freedom of Association ("the CFA") – as providing for such right, mainly derived from Articles 3 and 10 of that Convention. On 21 May 2026 the International Court of Justice delivered an Advisory Opinion stating that the right to strike of workers and their organizations is protected under the ILO Convention No. 87 as an implicit component of freedom of association (see paragraph 81 below).

75. The ILO Convention No. 98, which was ratified by Switzerland in 1999, outlines the rights to organise and engage in collective bargaining, emphasising the protection of workers from discrimination and the establishment of regulatory authorities.

76. In its Digest of decisions and principles (sixth edition, 2018) the CFA stated as follows, in so far as relevant, in the section entitled "Right to strike" (references to specific cases have been removed):

"752. The Committee has always recognized the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests.

753. The right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interests.

...

766. The right to strike should not be limited solely to industrial disputes that are likely to be resolved through the signing of a collective agreement; workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction as regards economic and social matters affecting their members' interests.

...

789. 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.

...

791. Economic consideration should not be invoked as a justification for restrictions on the right to strike.

...

793. Legislation which provides for voluntary conciliation and arbitration in industrial disputes before a strike may be called cannot be regarded as an infringement of freedom of association, provided recourse to arbitration is not compulsory and does not, in practice, prevent the calling of the strike.

794. In general, a decision to suspend a strike for a reasonable period so as to allow the parties to seek a negotiated solution through mediation or conciliation efforts, does not in itself constitute a violation of the principles of freedom of association.

...

815. The Committee has expressed its concern at the imposition of a limit on the duration of a strike which, due to its nature as a last resort for the defence of workers' interests, cannot be predetermined.

...

954. Penal sanctions should not be imposed on any worker for participating in a peaceful strike.

...

957. The dismissal of workers because of a strike constitutes serious discrimination in employment on grounds of legitimate trade union activities and is contrary to Convention No. 98."

77. 343rd CFA Report adopted at the 297th Session of the ILO in Geneva, November 2006, reads in respect of Switzerland as follows:

"(a) The Committee requests the Government to take measures to provide the same protection to trade union representatives who suffer anti-union discrimination as for victims of dismissals that violate the principle of equal treatment for men and women, including the possibility of reinstatement, with due regard to the fundamental principles referred to above and Conventions Nos. 87 and 98, ratified by Switzerland.

(b) The Committee encourages the continuation of tripartite discussions on the whole matter, including a review of the situation in certain cantons with regard to compensation for anti-union dismissal."

3. The European Social Charter

78. The European Social Charter (revised), opened for signature on 3 May 1996, not ratified by Switzerland, ETS 163, provides as follows, in so far as relevant:

Article 6 – The right to bargain collectively

"With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

...

[to] recognise:

4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into."

Article G – Restrictions

"1. 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.

2. The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed."

Appendix to the Social Charter
Article 6, paragraph 4

"It is understood that each Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article G."

79. In its Digest of the case-law of the European Committee of Social Rights of June 2022, the Committee ("the ECSR"), whose function is to rule on the conformity of the situation in signatory States with the European Social Charter, stated as follows in the section "Interpretation of the different provisions" (the footnotes, which contain references to specific cases, have been removed):

"Under Article 6§4, the Charter recognises the right of workers and employers to collective action where conflicts of interest arise. It does not, however, raise any obstacle to the existence of legislation regulating the exercise of the right to strike ... provided that neither legislation nor judicial decisions affect the very existence of the right thus recognised.

The right to strike is intrinsically linked to the right to collective bargaining, as it represents the most effective means to achieve a favourable result from a bargaining

process. It is therefore of specific relevance to trade unions. The abolition of the right to strike affects one of the essential elements of the right to collective bargaining, as provided for in Article 6 of the Charter, and without which the content of this right becomes void of its very substance and is therefore deprived of its effectiveness. Consequently, restrictions on this right may be acceptable only under specific conditions.

Where the limits within which the right to strike may be exercised have been determined in a State Party by the courts rather than by legislation, it is for the Committee to examine whether the case law thus established is in accordance with the requirements of the Charter. The Committee examines the case law of domestic courts in order to verify whether the courts do not overly restrict the right to strike and in particular if any intervention by domestic courts reduces the substance of the right to strike so as to render it ineffective. In this regard, the fact that a national judge may determine whether recourse to strikes are 'premature' is not in conformity with Article 6§4 as this allows the judge to exercise the trade unions' key prerogative of deciding whether and when a strike is necessary.

...

Permitted objectives of collective action

Article 6§4 recognises the right to collective action only in cases of conflicts of interests. ... Political strikes are not covered by Article 6 ...

...

Specific restrictions to the right to strike

The right to strike may be restricted provided that any restriction satisfies the conditions laid down in Article G which provides that restrictions on the rights guaranteed by the Charter must be prescribed by law, serve a legitimate purpose and be 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. In providing that restrictions on the enjoyment of Charter rights must be 'prescribed by law', Article G does not require that such restrictions must necessarily be imposed solely through provisions of statutory law. The case law of domestic courts may also comply with this requirement provided that it is sufficiently stable and foreseeable to provide sufficient legal certainty for the parties concerned. ...

...

... Excessive or abusive forms of collective action, such as extended blockades, which would put at risk the maintenance of public order or unduly limit the rights and freedoms of others (such as the right of other workers to work, or the right of employers to engage in a gainful occupation) may be limited or prohibited by law.

However, national legislation which prevents *a priori* the exercise of the right to collective action, or permits the exercise of this right only in so far as it is necessary to obtain given minimum working standards are not in conformity with Article 6§4 of the Charter, as it infringes the fundamental right of workers and trade unions to engage in collective action for the protection of economic and social interests of the workers."

4. Inter-American system

80. On 5 May 2021 the Inter-American Court of Human Rights issued an Advisory Opinion on the "right to freedom of association, right to collective

bargaining and right to strike, and their relation to other rights, with a gender perspective" (OC-27/21). Drawing on international material, in particular that of the ILO, it stated that the right to strike could be considered as a general principle of international law (paragraph 97) and that the right to strike was an essential component of freedom of association (paragraph 118) and one of the "essential tools" for the freedom of association and the freedom to organise (paragraph 124). It considered that the exercise of the right to strike could be restricted or prohibited only in the case of public servants who served as arms of public power and exercised authority on behalf of the state, and workers in essential services (paragraph 102). Workers who provided essential services should be defined according to the strict sense of the term, that is, as those providing services whose interruptions entailed a clear and imminent threat to the life, safety, health or freedom of the whole or part of the population (paragraph 103).

5. International Court of Justice

81. On 21 May 2026 the International Court of Justice delivered an Advisory Opinion in response to a request by the Governing Body of the International Labour Office on whether the right to strike of workers and their organizations was protected under the ILO Convention No. 87, the relevant parts of which read as follows:

> "73. The Court notes that strike action is one of the main activities engaged in and tools used by workers and their organizations to promote their interests and improve conditions of labour, thereby ensuring the effective exercise of the freedom of association protected under Convention No. 87. At the same time, freedom of association is instrumental in facilitating workers' organizations to take collective action to further and defend the interests of their members, including through the exercise of the right to strike. Therefore, the protection of the right to strike is in line with the object and purpose of Convention No. 87.
>
> 74. The Court concludes from the above analysis that the ordinary meaning of the relevant terms of the Convention, read in good faith, in their context and in light of the object and purpose of the treaty, indicates that protection of the right to strike is encompassed in the protection of the freedom of association provided for in Convention No. 87.
>
> ...
>
> 91. ... The [International Covenant on Economic, Social and Cultural Rights], in Article 8, paragraph 1 *(d)*, expressly protects the right to strike, provided that it is exercised in conformity with domestic laws. Importantly, paragraph 3 adds that nothing in that article shall authorize the States parties to Convention No. 87 to take legislative measures that would prejudice the guarantees provided for in that Convention. ...
>
> ...
>
> 98. The Court concludes that an interpretation taking into account the relevant rules of international law contained in the [International Covenant on Economic, Social and Cultural Rights] and the [International Covenant on Civil and Political Rights] indicates

that the protection of the right to strike is encompassed in the protection of the freedom of association provided by Convention No. 87.

...

137. A large majority of States parties to Convention No. 87 are parties to the various regional instruments examined above. These instruments reveal a shared view of those States parties to Convention No. 87 that the protection of the right to strike is encompassed in the protection of the freedom of association. This view, which is supported by the relevant regional jurisprudence and pronouncements, further confirms the interpretation reached by the Court in applying the general rule reflected in Article 31 of the Vienna Convention on the Law of Treaties that the protection of the freedom of association under Convention No. 87 encompasses the protection of the right to strike.

...

139. In light of the foregoing, the Court concludes that, in accordance with the customary rules of interpretation reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties, the right to strike is protected under Convention No. 87.

140. The Court's conclusion that the right to strike is protected by Convention No. 87 does not entail any determination on the precise content, scope or conditions for the exercise of that right."

THE LAW

I. JOINDER OF THE APPLICATIONS

82. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

83. The applicants complained that their dismissals following their participation in a strike deemed unlawful by the domestic authorities (application no. 38204/19) and their criminal convictions for trespassing in the context of their trade union activity (applications nos. 30379/21 and 30786/21) had violated their right to strike protected by, as an aspect of their freedom of assembly and association, Article 11 of the Convention, which reads as follows:

"1. 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.

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. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

A. Admissibility

84. The Government argued that, in so far as the complaint concerned the seizure of the equipment used for the picket line (applications nos. 30379/21 and 30786/21), as well as the involvement of the State Council in the conciliation proceedings, it was inadmissible for failure to exhaust the domestic remedies, as neither of those issues had been raised before the domestic authorities in the context of the applicants' complaint under Article 11 of the Convention.

85. The applicants argued that since the seized equipment had been neither owned by them nor rented in their personal capacity, they had had no standing to challenge the seizure before the domestic authorities. In any event, the domestic court had held that the lawfulness of such a seizure was questionable (see paragraph 50 above). They considered, therefore, that the domestic remedies had been exhausted.

86. The Court notes that, in so far as the applicants may be understood to complain about the involvement of the State Council in the conciliation proceedings, that is not an elaboration of their original complaint communicated to the Government. The Court will therefore not examine it. In so far as the seizure of the equipment used for the picket line is concerned, it raises an issue under Article 1 of Protocol No. 1 to the Convention, to which Switzerland is not a Party. That part of the application is therefore incompatible *ratione materiae* with the Convention.

87. The Court further notes that the remainder of the applications is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The applicants

88. The applicants considered that there had been an interference with their rights under Article 11 of the Convention. In application no. 38204/19 the alleged interference consisted in the decision of the domestic courts to declare the strike unlawful and their failure to protect the applicants' rights, as well as in the involvement of the State Council in the negotiations (see paragraphs 22-23 above). In the remaining applications the interference consisted in the applicants' criminal convictions punishing their trade union activity.

(i) Legal basis

89. The applicants submitted that the interference was not provided for by law. Article 28 § 2 of the Federal Constitution stipulated that "disputes shall

be settled, as far as possible, through negotiation or mediation". That rule was interpreted as requiring employees supported by a union to first attempt conciliation before going on strike, and the Federal Supreme Court's practice was to assess the lawfulness of a strike according to four conditions, which the applicants did not contest (see paragraph 67 above). One of the four conditions – compliance of the strike with the principle of proportionality – was to be assessed on the basis of (1) whether the strike was necessary to achieve the aim pursued, and (2) whether or not it involved the use of violence or damage to property. The applicants argued, however, that in the present case the Federal Supreme Court had approached in a new way the assessment of the strike's compliance with the principle of proportionality. In particular, it had for the first time allowed the judges to examine the necessity of the strikers' demands throughout the strike in the light of the employer's proposals made during the strike in order to rule on its lawfulness. This broad interpretation of the concept of the "necessity of the strike" raised the issue of foreseeability and required trade unions and employees to constantly ask themselves how a judge might assess each proposal that the employer might make during a strike. With regard to the criminal convictions, the applicants acknowledged that the offence of trespassing, of which they had been found guilty, was provided for by law. They argued, however, that they could not have foreseen that such a conviction could be imposed on them for peaceful actions carried out in the context of their trade union activity.

(ii) Legitimate aim

90. The applicants did not dispute that the contested measure had been intended to pursue a legitimate aim, namely the protection of the full exercise of the Providence Hospital's property rights. However, there had been no legitimate aim to the measures aimed at finding the strike unlawful and refusing to grant the applicants taking part in it the protection provided in cases of immediate, unjustified, and abusive dismissal.

(iii) Necessary in a democratic society

91. The applicants considered that by finding the strike unlawful and refusing them the protection provided by domestic law in the event of unjustified or unfair summary dismissals, and by convicting trade unionists for actions essential to their mandates, the domestic authorities had undermined one of the essential elements of freedom of association – the right of a trade union to seek to persuade an employer to listen to what it had to say on behalf of its members. The restrictions in question had struck at the very heart of trade union activity. The domestic authorities' margin of appreciation was therefore a narrow one and they were required to provide substantial justification with regard to the proportionality of the interference.

92. The Federal Supreme Court had ruled retrospectively that the guarantees obtained from the employer had been sufficient to justify the strike being called off. The applicants noted, however, that those "guarantees" had only concerned the staff already in place and had not met the strikers' demands of maintaining the CCT Santé 21 agreement, the non-outsourcing of services and the maintenance of all jobs. Furthermore, the compensation that the GSMN had proposed to offset the deterioration in salary conditions, the amount of which had not been specified, had been far from covering the losses resulting from the Hospital's withdrawal from the CCT Santé 21 agreement (including salary increases based on seniority, maternity leave for a longer period with full pay, and a social plan obligation in the event of collective redundancies). The aims pursued by the strike had thus remained unsatisfied on objectively important points and they had been obliged to continue the strike. The employees and their unions could not be required to end a strike when the employer made a concession if that concession did not meet their expectations. Removing this means of struggle meant denying the employees the opportunity to achieve their goals. After all, what could not be achieved through a strike was very unlikely to be achieved without one.

93. The Federal Supreme Court had disregarded the factual context of the case including, in particular, the fact that the mobilisation had been ongoing for five months and that the strike had been preceded by several months of discussions with the employer under the auspices of the State Council and the Conciliation Office. Under those circumstances the strikers and the unions could not have anticipated that continuing the strike would be deemed unlawful and that they would be expected to continue the discussions without being able to employ strike action.

94. The applicants further contended that the Government had reversed the logic of Article 11 of the Convention by asking whether the strikers had had a materially sufficient interest in continuing the strike rather than whether there had been sufficient grounds for the State to infringe upon the rights of the strikers.

95. Furthermore, neither the Government nor the Federal Supreme Court had indicated any overriding interest in a democratic society requiring that the strike be considered unlawful or that the immediate dismissal of all strikers and the criminal conviction of four union employees following a collective labour dispute initiated by the union be considered lawful. The strike had never been motivated by political reasons – none of the strikers' demands had concerned a law or a social project. The only motivation for the Providence Hospital and the GSMN to break away from the CCT Santé 21 agreement and worsen the applicants' working conditions was the pursuit of additional profit. The purpose of freedom of association was precisely to enable the employees concerned to oppose such a plan. The State could not impede this right to resist by depriving the strikers of the protection provided by domestic law in the event of anti-union dismissal merely because the

employer had offered to "limit the danger" temporarily and for a limited group of workers.

96. The sanctions imposed on the applicants in connection with their trade union activities had a deterrent effect on the exercise of their freedom of association and were disproportionate to the aim pursued. This deterrent effect was further exacerbated by the severity of the sanctions, which had had a major negative impact. With regard to Mr Mugny (application no. 30379/21), after he had joined another union (Avenir Syndical) that organisation had been denied social partner status on the grounds that the applicant had been convicted of trespassing on the premises of the Providence Hospital and that, consequently, the union did not meet the good-faith requirement for social partners. That refusal had been confirmed by the Federal Supreme Court, which had considered that it was possible to convict trade unionists for non-violent actions that were fully within their mandate and that such convictions justified the exclusion of the unions for which the convicted persons worked from any form of collective bargaining.

97. The applicants further argued that at no point had the authorities weighed the imperatives of the aims listed in Article 11 § 2 of the Convention against those of the free exercise of trade union freedom. In the case of the dismissal of the striking employees the authorities had not examined whether the private interest of the Providence Hospital in maximising its profits by hiring lower-cost employees and gaining a competitive advantage should take precedence over the applicants' interest in protecting their working conditions and ensuring that those conditions were not dictated unilaterally by the employer. To do so, it would have been necessary to examine the economic situation of the Providence Hospital and the GSMN, as well as the GSMN's position in the duopoly of private clinics and hospitals in Switzerland, and the threat that the withdrawal from the sectoral collective bargaining agreement by a group with such a dominant position posed to all workers in the sector. The authorities should have also examined the impact of the deterioration in the financial situation of the current and future employees and the imposed increase in working hours on their daily lives, particularly their family life. With regard to the criminal penalties, the criminal law had been applied automatically without weighing the interference with the applicants' freedom of association against the interest of a private institution in having them criminally punished for accessing the parking spaces where the picket line had been set up. Even if the presence of the trade unionists in the car park had been found unlawful, Swiss law provided for less severe measures affecting the applicants' rights. Namely, the civil procedures could have been given priority over the criminal proceedings: the Providence Hospital could have sought an injunction to stop the disturbance. Even within the framework of the criminal proceedings the Swiss authorities could have found the unions' action unlawful, but, given the absence of any violence or damage, have found the consequences of the

act insignificant, which would have allowed them to refrain from prosecuting the trade unionists or to exempt them from punishment (Article 52 of the Criminal Code).

98. Regarding the "significant concessions" made by the employer, the applicants reiterated that those "concessions" had only marginally reduced the proposed deterioration in working conditions. The employer had managed to opt out of the working conditions that applied to all other healthcare establishments in the canton, which remained subject to the CCT Santé 21 agreement. Regardless of its refusal to comply with the CCT Santé 21 agreement, the employer had obtained, by way of an exception, permission from the State Council to continue receiving funding from the compulsory health insurance scheme and the state budget, and had thereby been afforded a competitive advantage over other hospitals that did comply with the CCT Santé 21 agreement.

99. With regard to the Government's argument to the effect that Article 11 of the Convention did not impose an obligation on an employer to enter into, or remain in, any particular collective bargaining arrangement or accede to the requests of a union on behalf of its members, the applicants submitted that the Government had confused union demands with legal rights. Signing or remaining in a collective agreement was a choice made by the employer, which the employees could influence through persuasion and, if necessary, through industrial action such as a strike. The outcome of the mobilisation should depend on the capacity of the employees and unions to mobilise, not on the intervention of the State. The latter should refrain from supporting either party in a collective labour dispute, unless it involved an important interest in a democratic society that needed to be safeguarded, which was not the case here.

100. The applicants further disagreed with the Government's statement that strikes had to remain a last resort throughout collective disputes. They believed that once negotiations had been attempted unsuccessfully, the parties were free to resort to strike action and to carry it out without interference, except for cases of violence against persons or property or when there was a risk that the strike would destroy the employer's economic existence.

101. In so far as the Government stated that the strike had had an impact on the functioning of the Providence Hospital, the applicants submitted that the strikers and the unions had repeatedly contacted the employer to indicate that they had been available to establish a minimum service for the patients. The employer, however, had not considered it necessary to take up that offer. In any event, the strike had not been deemed unlawful on that ground. Nor had the demonstrations of support organised in another city and another canton by trade unions in solidarity with the applicants' mobilisation served as such a ground.

(b) The Government

102. The Government considered that application no. 38204/19 should be examined from the perspective of the State's positive obligations under Article 11 of the Convention because the applicants' dismissals were not attributable to the State, but to their private employer. As regards the remaining two applications, they acknowledged an interference with the applicants' rights guaranteed by Article 11.

(i) Legal basis

103. The Government noted that the disputed measures had been based on Article 28 § 2 of the Constitution, Article 337 of the Code of Obligations (application no. 38204/19) and Article 186 of the Criminal Code (applications nos. 30379/21 and 30786/21).

104. Contrary to the applicants' assertions, the principle that strikes were to comply with the condition of proportionality was clearly set out in Article 28 § 2 of the Constitution as interpreted by the Federal Supreme Court, and indeed in the case-law of that court pre-dating the adoption of the current Constitution. In particular, the Federal Supreme Court had specified that the principle of proportionality stemmed from the invitation made to the parties in the above-mentioned constitutional provision to settle disputes "as far as possible" through negotiation or mediation, that the strikes should not be more aggressive than was necessary to achieve the intended goal, and that collective action was to be used only as a measure of last resort. By seeking the advice of a lawyer where necessary the applicants could have foreseen, with a sufficient degree of certainty, the consequences that might result from their actions.

105. The applicants had interpreted too narrowly the considerations of the Federal Supreme Court regarding the assessment of the strike's compliance with the principle of proportionality. Contrary to the applicants' assertions, the limit not to be exceeded was not set at the boundary of criminal law (violence or damage to property). The principle of proportionality was also breached when a strike began while the negotiations were still ongoing.

(ii) Legitimate aim

106. In the Government's view, the restrictions on the right to strike pursued the legitimate aim of protecting the rights and freedoms of others.

(iii) Necessary in a democratic society

107. The Government argued that on 17 December 2012 the GSMN had guaranteed that the terms of the CCT Santé 21 agreement would apply until 31 December 2013, and that after that date the employees would receive a pay increase so that they would not suffer any financial loss as a result of the changes in their working conditions. Taking into account the statements made

by the strikers in the internal proceedings and the unions' refusal to resume negotiations under certain conditions (in particular, the approval by all parties of the takeover of the Providence Hospital by the GSMN), the courts hearing the case considered that at the time relevant to the examination of the contested measures the strike was essentially aimed at objectives unrelated to the employment relations, namely at opposing the hospital's acquisition by the new owner. Thus, it no longer fulfilled the first condition laid down by domestic law (requiring that a strike had to relate to labour relations).

108. The Government submitted that the strike at issue, which had begun on 26 November 2012 after the Conciliation Office had declared the conciliation to have failed, had been lawful at the outset. However, once the applicants had been assured that the terms of the CCT Santé 21 agreement would be maintained for another year, continuing the strike could no longer be justified on the sole ground that the Hospital had withdrawn from the agreement in question. Maintaining the terms of the CCT Santé 21 agreement gave employees and the unions a respite long enough to allow them to conduct new negotiations and thus to assert their demands through a less drastic measure than continuing their strike. With regard to the strikers' other demands (to prevent the outsourcing of services and to avoid layoffs), even assuming that they affected labour relations within the meaning of the Federal Supreme Court's case-law, the GSMN had made a commitment to the State Council in January 2013 to effectively guarantee the employment of all hospital staff. In the event of the outsourcing of a service, the persons concerned would be taken on by the new service provider. The applicants did not argue, and it does not appear from the case file, that the outsourcing of services or dismissals had taken place or had been about to take place at the time of the events. The applicants therefore had had the time necessary to assert their demands in negotiations, and the strike had not been a measure of last resort. Consequently, after the above guarantees had been provided by the GSMN the strike had ceased to meet the third condition of lawfulness under the domestic law (compliance with the principle of proportionality).

109. The Government further submitted that the Federal Supreme Court had left open the question whether the fourth condition for the lawfulness of a strike under domestic law (support of the strike by a trade union, examined in connection with the requirement of representativeness of the strikers) had been fulfilled. However, they considered it necessary to clarify the following. At the time of the formal notice warning of possible dismissals issued by the Hospital on 23 January 2013 there had been 26 strikers, while the hospital had 335 employees. It was therefore highly unlikely that the majority of the hospital staff had been in favour of continuing the strike on that date. The unions had not submitted the documents requested by the civil court on how the decisions relating to the strike had been taken by their bodies. Therefore, the Government submitted that the fourth condition had not been met.

110. In so far as the applicants criticised the domestic authorities for having examined proportionality as a condition for exercising the right to strike rather than as one of the conditions to be met when justifying an infringement of that right, the Government submitted that the condition of proportionality, as derived from Article 28 § 2 of the Swiss Constitution, was to be distinguished from the requirement of proportionality under Article 11 of the Convention. Freedom of association, which included the right to strike, governed relations between employees, supported by trade unions, and employers. In legal theory that relationship was described as horizontal. It was to be distinguished from the vertical relationship between private actors and the State, which was subject to the general conditions governing all restrictions on fundamental rights. In domestic law, the conditions for the lawfulness of a strike were not considered as infringements of the right to strike, but as conditions that were to be met in order for those who resorted to strike action to validly exercise that right. They related to the horizontal dimension that pitted employees and trade unions against employers. At the same time, as with all fundamental rights, the restrictions on the right to strike had to comply with the conditions set out in Article 11 of the Convention. In the Government's view, the principle of proportionality as derived from Article 28 § 2 of the Swiss Constitution, according to which collective action was lawful only as a last resort when a dispute could not be settled by negotiation or mediation, fell within the margin of appreciation granted to States with regard to the implementation of the guarantees of Article 11 of the Convention.

111. As regards the fair balance between the interests at stake, in relation to application no. 38204/19 the Government submitted that the employer had made significant concessions, as a result of which the applicants had no longer been faced with a real and immediate risk of disadvantage or of being left defenceless against a deterioration of their working conditions. The guarantees provided had justified the resumption of negotiations and the end of the strike. Article 11 of the Convention did not impose an obligation on an employer to enter into, or remain in, any particular collective bargaining arrangement or to accede to the requests of a union on behalf of its members. At the time of the dismissals the strike had been going on for more than two months. The applicants had thus been able to exercise their right to strike for an extended period without suffering any consequences. The strike had exposed the hospital to complications and overloads that went beyond "minor problems". Furthermore, it had taken place in a context of high tension (see paragraphs 48 and 58 above). Before being dismissed the applicants had been formally warned to return to work. The Hospital had also conducted interviews with each of them, giving them opportunity to return to their jobs without incurring any penalties. In deciding to continue the strike the applicants knew or should have known that it was unlawful and what consequences they were exposing themselves to. The day after the dismissals

the State Council had offered its help to the social partners in order to negotiate a new collective bargaining agreement. The GSMN had agreed to reinstate the dismissed strikers as a precondition for negotiations, but the SSP had refused to enter into discussions. Faced with employees who refused to return to work despite having obtained a significant concession, the Hospital could reasonably consider the relationship of trust to have been broken. The domestic authorities thus struck a fair balance between the interests at stake.

112. In relation to applications nos. 30379/21 and 30786/21, the Government submitted that the applicants had been convicted of trespassing relating to the maintenance of the picket line on Hospital grounds during the period between 2.30 p.m. on 21 December and the police intervention on 26 December 2012. By 21 December 2012 the strike had already been going on for almost a month and it posed particular challenges owing to the sensitivity of the hospital sector. Throughout this time the picket line had been tolerated within the Hospital grounds. Having been warned by the public prosecutor on two occasions, the second time on 19 December 2012, the applicants had known that the strike was unlawful or should have at least had doubts about the lawfulness of their actions. They had thus knowingly exposed themselves to punishment by maintaining the picket line. The unions on behalf of which the applicants were acting were able to exercise all essential aspects of the freedom of association. They had been able to continue the strike after 26 December 2012 by setting up the picket line at another location. The right to strike did not imply the right to succeed. The applicants could not maintain the picket line indefinitely on the sole ground that they had not obtained satisfaction of all their demands, regardless of the concession made to them by the employer. Finally, the penalty imposed on them – 10 day-fines, suspended for two years – had been particularly light and could not be described as a deterrent to trade union activity. The applicants' convictions had therefore been necessary in a democratic society.

113. The Government argued that the domestic authorities could not have given priority to civil proceedings over criminal. Namely, the issue of the applicants' guilt in having committed a criminal offence could not have been dealt with in the civil proceedings. Having received a criminal complaint from the Hospital, the criminal authorities could not have closed the case in favour of civil proceedings. Civil proceedings did not offer the Hospital the same possibilities as criminal proceedings: recourse to civil law instruments for the protection of possessions did not systematically involve police intervention and the clearing of an occupied building by the police could often only be obtained under certain conditions or even required a court order.

114. Regarding the issue of the denial of social partner status to the Avenir trade union raised by the applicants, the Government submitted that Mr Mugny's conviction had only been one of several factors on which the Federal Supreme Court had based its findings (see paragraph 63 above), and that there had been no reason to believe that without those additional elements

Mr Mugny's conviction alone would have been sufficient for the judicial authorities to refuse to grant the Avenir trade union social partner status.

115. Contrary to the applicants' assertions, the Federal Supreme Court had examined the interests at stake, particularly in the context of its examination of whether the strike had been proportional (one of the conditions of lawfulness laid down in its case-law), but also in connection with its review of the sanctions imposed. All the relevant factors had been addressed in a detailed and thorough manner. There had therefore been no violation of the procedural aspect of Article 11 of the Convention.

(c) The third party

116. The European Trade Union Confederation ("the ETUC") stated its view that the right to strike was to be considered an essential element of Article 11 of the Convention and that national courts could not render it ineffective, illusory and without real chance of success. The ETUC considered that the two main issues in the present case (dismissal and criminal sanctions), both separately and considered in their cumulative effect, had amounted to an interference with the applicants' right to freedom of association guaranteed by Article 11 of the Convention. For the ETUC the interference in question had not been lawful under domestic law, taking into account the principles developed in international law, in particular in the framework of the ILO (see paragraphs 74-77 above), and had not been necessary in a democratic society. Labour law and criminal law sanctions, to which the applicants had been subjected, could be considered the most severe sanctions that could be imposed on a participant in a strike. They were extremely dissuasive in character and their spill-over effects considerably weakened trade union activity. International case-law was opposed to such sanctions on the exercise of the right to strike, and peaceful picketing was permitted under it.

2. The Court's assessment

(a) General principles

(i) The Court's approach to trade-union freedom

117. Trade-union freedom is not an independent right but a specific aspect of freedom of association as recognised by Article 11 of the Convention. Article 11 affords members of a trade union the right for their union to be heard with a view to protecting their interests, but does not guarantee them any particular treatment by the State. What the Convention requires is that under national law, trade unions should be enabled, in conditions not at variance with Article 11, to strive for the protection of their members' interests (see *Humpert and Others v. Germany* [GC], nos. 59433/18 and 3 others, § 98, 14 December 2023, with further references).

118. The guiding principles of the Court's approach to trade-union freedom were set out in the case of *Demir and Baykara v. Turkey* [GC], no. 34503/97, ECHR 2008:

> "144. ... [T]he evolution of case-law as to the substance of the right of association enshrined in Article 11 is marked by two guiding principles: firstly, the Court takes into consideration the totality of the measures taken by the State concerned in order to secure trade-union freedom, subject to its margin of appreciation; secondly, the Court does not accept restrictions that affect the essential elements of trade-union freedom, without which that freedom would become devoid of substance. These two principles are not contradictory but are correlated. This correlation implies that the Contracting State in question, while in principle being free to decide what measures it wishes to take in order to ensure compliance with Article 11, is under an obligation to take account of the elements regarded as essential by the Court's case-law."

119. In line with the aforementioned guiding principles of the Court's approach, the Court has built up, through its case-law, a non-exhaustive list of the essential elements of trade-union freedom, 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 has to say on behalf of its members and, having regard to developments in labour relations, the right to bargain collectively with the employer, which has, in principle, except in very specific cases, also become one of those essential elements (see *Humpert and Others,* cited above, § 100, with further references).

120. 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. Any consensus emerging from specialised international instruments and from the practice of Contracting States may constitute a relevant consideration for the Court when it interprets the provisions of the Convention in specific cases. At the same time, the Court's jurisdiction is limited to the Convention. It has no competence to assess a respondent State's compliance with the relevant standards of the ILO or the European Social Charter (ibid., § 101, with further references).

121. In ascertaining whether restrictions on union freedoms have complied with Article 11, the Court must carry out a proportionality assessment which takes into account all the circumstances of the case – and the totality of the measures taken by the State to secure trade-union freedom – even where the restrictions affected an essential element of such freedom (see, in particular, *Demir and Baykara*, cited above, §§ 154 et seq., in respect of the right to collective bargaining).

(ii) The right to strike

122. The right to strike allows a trade union to make its voice heard and constitutes an important instrument for the trade union to protect the occupational interests of its members and in turn for the members of a trade union to defend their interests. Strike action is clearly protected by Article 11 in so far as it is called by trade unions (see *Humpert and Others,* cited above, § 104, with further references). In addition, there has to be a link between such action and the professional interests of trade-union members (see *Almaz and Others v. Türkiye* (dec.), nos. 55789/19 and 3 others, §§ 62-63, 19 November 2024; *Kaya v. Türkiye* (dec.), no. 51194/19, §§ 58-59, 19 November 2024; and *Ercan and Others v. Türkiye* (dec.), nos. 50763/22 and 20 others, §§ 61-64, 4 February 2025).

123. The right to strike is not absolute. It may be subject to certain conditions and restrictions (see *Humpert and Others,* cited above, § 107). Restrictions imposed by a Contracting State on the exercise of the right to strike do not in themselves give rise to an issue under Article 11 of the Convention (see *Federation of Offshore Workers' Trade Unions and Others v. Norway* (dec.), no. 38190/97, ECHR 2002-VI).

124. The impact of any restrictions on unions' ability to take strike action must not place their members at any real or immediate risk of detriment or of being left defenceless against future attempts to downgrade pay or other work conditions (see *UNISON v. the United Kingdom* (dec.), no. 53574/99, ECHR 2002-I).

(iii) Positive obligations and margin of appreciation

125. The boundaries between the State's positive and negative obligations under Article 11 of the Convention do not lend themselves to precise definition, but the applicable principles are similar. Whether the case is analysed in terms of a positive duty on the State or in terms of interference by the public authorities which needs to be justified, the criteria to be applied do not differ in substance. In both contexts regard must be had to the fair balance to be struck between the competing interests of the individual and of the community as a whole (see *Sindicatul "Păstorul cel Bun" v. Romania* [GC], no. 2330/09, § 132, ECHR 2013 (extracts)).

126. In the area of trade-union freedom, in view of the sensitive character of the social and political issues involved in achieving a proper balance between the respective interests of labour and management, and given the high degree of divergence between the domestic systems in this field, the Contracting States enjoy a wide margin of appreciation as to how trade-union freedom and protection of the occupational interests of union members may be secured (see *Norwegian Confederation of Trade Unions (LO) and Norwegian Transport Workers' Union (NTF) v. Norway*, no. 45487/17, §§ 97

and 114, 10 June 2021, and *Sindicatul "Păstorul cel Bun"*, cited above, § 133).

127. The breadth of the margin of appreciation depends on, among other things, the nature and extent of the restriction on the trade-union right in issue, the object pursued by the contested restriction, the competing rights and interests of other individuals in society who are liable to suffer as a result of the unrestricted exercise of that right, and the degree of common ground between the member States of the Council of Europe or any international consensus reflected in the relevant international instruments (see *National Union of Rail, Maritime and Transport Workers v. the United Kingdom*, no. 31045/10, § 86, ECHR 2014).

(b) Application of those principles to the present case

(i) Whether there has been an interference

128. The Court reiterates that Article 11 of the Convention protects the rights to freedom of peaceful assembly and to freedom of association with others from arbitrary, unlawful and unjustified restrictions. The term "restrictions" in Article 11 § 2 of the Convention is not limited to bans and refusals to authorise the exercise of Convention rights, but also embraces measures taken during and after such rights have been exercised, including various disciplinary measures and administrative or criminal liability (see *Ezelin v. France*, 26 April 1991, § 39, Series A no. 202; *Sergey Kuznetsov v. Russia*, no. 10877/04, § 35, 23 October 2008; *Trofimchuk v. Ukraine*, no. 4241/03, § 35, 28 October 2010; and *Ognevenko v. Russia*, no. 44873/09, § 61, 20 November 2018).

129. The Court observes that the present case concerns the applicants' dismissal from their jobs at the Providence Hospital – a private hospital in the canton of Neuchâtel – in February 2013 following their participation in a strike (application no. 38204/19) and the criminal convictions of the secretaries of the trade unions mandated to conduct negotiations during the strike (applications nos. 30379/21 and 30786/21). The restrictions consisted, therefore, in punitive measures taken against the applicants at the moment when they were exercising their right to strike, as an aspect of their freedom of assembly and association under Article 11 of the Convention.

130. As regards the applicants' dismissal from their jobs as a consequence of their participation in the strike, the Court observes that the measure complained of was not taken by a State authority but by a private employer and cannot therefore be regarded as "interference" with the applicants' rights by a State authority. Nevertheless, the Court notes that the measure taken by the employer was accepted by the national courts. It is true that the applicants' dismissal from their jobs was not the result of direct intervention by the national authorities; however, the authorities' responsibility would be engaged if the facts complained of stemmed from a failure on their part to

secure to the applicants the enjoyment of their rights enshrined in Article 11 of the Convention. This part of the complaint should therefore be examined from the standpoint of the State's positive obligations (compare to, in the context of Article 8 of the Convention, *Bărbulescu v. Romania* [GC], no. 61496/08, §§ 108-11, 5 September 2017, with further references).

131. As regards the criminal prosecution of four of the applicants in the context of their trade union activity, the parties did not dispute that it constituted an interference with the applicants' rights protected by Article 11 of the Convention (see paragraphs 88 and 102 above).

132. The Court reiterates that whether a case is analysed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicants' rights under the Article in question or in terms of interference by the public authorities to be justified in accordance with paragraph 2, the applicable principles are similar (see paragraph 125 above).

(ii) Alleged failure of the authorities to secure to the applicants the enjoyment of their right to strike (application no. 38204/19) – job dismissals

133. The Court reiterates that the labour dispute in the context of which the strike took place involved private parties, namely the Providence Hospital and the GSMN on the one side and the strikers and unions on the other. The role of the domestic authorities was therefore, to a large extent, to ensure a fair balance between the private interests involved.

134. Accordingly, in the present case the Court must determine, in particular, whether the domestic courts struck a fair balance between the applicants' right to freedom of association on the one hand and protection of the employer's interests on the other hand. In doing so the Court has to satisfy itself that the reasons adduced by the national authorities were relevant and sufficient and, in particular, that the standards applied were in conformity with the principles embodied in Article 11 of the Convention and that the national authorities based themselves on an acceptable assessment of the relevant facts (see *Straume v. Latvia*, no. 59402/14, § 101, 2 June 2022, with further references).

135. Turning to the circumstances of the present case, the Court observes that in June 2012 the Providence Hospital withdrew from the collective agreement CCT Santé 21 applicable to the health sector in the Canton of Neuchâtel, with effect from 31 December 2012. The withdrawal from the agreement took place in the context of the takeover of the Hospital's activities by a Swiss private hospital group, the GSMN, which sought to apply its own general terms and conditions of employment. In July 2012 the general assembly of the Hospital's employees expressed their concern about the deterioration of their working conditions following the Hospital's withdrawal from the CCT Santé 21 agreement. It mandated the SSP and the Syna unions to conduct negotiations to ensure that the Hospital would continue to be subject to the CCT Santé 21 agreement, that no services would be outsourced,

and that all jobs would be maintained. Following a meeting between the unions and the Hospital's administration the matter was referred in September 2012 to the Conciliation Office. After the negotiations at the Conciliation Office failed on 22 November 2012, the strike at issue began on 26 November 2012.

136. The Court notes that the right to strike is guaranteed by Article 28 of the Swiss Constitution, which enshrines freedom of association and sets forth the conditions under which a strike is lawful. In accordance with that Article, as interpreted by the Federal Supreme Court (see paragraphs 64, 67-69 above), for collective action to be lawful it must meet four conditions. Namely, it must relate to labour relations, respect industrial peace as established by law or by a collective bargaining agreement, be supported by a workers' organisation, and be used only as a last resort (principle of proportionality). The Court reiterates that the conditions for the lawfulness of a strike developed in domestic law must be formulated and applied with sufficient clarity and foreseeability so as to enable trade unions and workers to regulate their conduct accordingly.

137. The Court further notes the Government's submission to the effect that, at the outset, the strike had been lawful (see paragraph 108 above). The central question in the present case is therefore whether the strike could lawfully be regarded as having ceased to fulfil the relevant statutory conditions and, in particular, whether the applicants could reasonably have foreseen that its continuation would render it unlawful.

138. The Court notes in this connection that in January 2013 the Hospital's administration informed its employees that the GSMN had committed to complying with the terms of the CCT Santé 21 agreement until the end of 2013, to guaranteeing the employment of all staff and, in the event of outsourcing of a service, to ensuring that all employees concerned would be taken on by the new service provider. Furthermore, the GSMN committed to increase, as of 2014, the salaries of current staff in order to compensate for the changes in working conditions including increased working hours, the reduction of certain allowances and in the periods considered night work, and the gradual loss of supplementary child allowances. A formal notice was given to the striking employees stating that the strike was, as of that moment, disproportionate, ran counter to the wishes of the vast majority of the Hospital staff and had lasted for longer than was acceptable, and that their failure to return to work by 31 January 2013 would lead to the termination of their contracts with immediate effect.

139. Since the applicants considered that the working conditions offered by the GSMN were significantly inferior to those provided for in the CCT Santé 21 agreement (see, in particular, paragraphs 25, 92 and 97 above), they refused to return to work and, on 4 February 2013, were dismissed with immediate effect. The applicants' attempt to challenge the lawfulness of their dismissals was unsuccessful. The Federal Supreme Court found at final

instance that starting from 23 January 2013 the strike had not been lawful on the following grounds. Firstly, it had no longer related to labour relations, but had been, in the broad sense, political in nature as it had mostly to do with the takeover of the Providence Hospital by the GSMN. Secondly, as from 23 January 2013 the strike had been disproportionate as it had lost its character as a last resort: the application of the terms of the CCT Santé 21 agreement had been guaranteed for the next eleven months, which meant that the applicants had had sufficient time to assert their demands through a less drastic measure than strike action (see paragraph 40 above).

140. As regards the Federal Supreme Court's conclusion that the strike was political rather than labour-related in nature, the Court notes that the strike does not appear to be politically motivated: the dispute involved private parties, and the strikers' demands concerned their individual working conditions rather than a law or a social project. The trade unions' refusal to negotiate a new collective bargaining agreement, which followed the applicants' dismissal from their jobs, by rejecting the preconditions for negotiations – particularly approval of the takeover of the Hospital by the GSMN – could not by itself change the nature of the dispute from a purely labour-related one to a political one.

141. As regards the Federal Supreme Court's conclusion regarding the strike having lost its character of an *ultima ratio* after 23 January 2013 and having therefore become disproportionate, the Court considers that the applicants' argument concerning foreseeability lies at the heart of the present case. The applicants submitted that the Federal Supreme Court had given a novel interpretation of the proportionality requirement by examining not whether the strike itself had remained a permissible means of pursuing its legitimate objectives, but whether the employer's proposals had become sufficiently satisfactory to deprive the strike of its character as a measure of last resort. In the applicants' view, such an approach required trade unions and employees to anticipate how a court might subsequently assess the adequacy of concessions made by the employer during an ongoing strike. The Court notes in this respect that neither the wording of Article 28 of the Constitution nor the domestic case-law cited before it appears to provide a clear basis for concluding that a lawful strike could become unlawful because a court, with the benefit of hindsight, considered that an employer had offered terms which rendered the continuation of the strike unnecessary. Such an interpretation created a significant degree of uncertainty for unions and employees as to the circumstances in which they could continue collective action while retaining the protection afforded by domestic law. The Court further notes that a trade union enjoys primary responsibility for assessing the necessity of continuing a strike, while domestic courts retain power to review whether the resulting interference with competing interests remains proportionate under Article 11. In the present case the trade unions considered that the aims pursued by the strike remained unsatisfied on objectively

important points (the long-term maintenance of the CCT Santé 21 agreement and non-outsourcing of services) and that it was necessary to continue the strike. The Court considers that depriving the applicants of protection against dismissal on the basis of an interpretation whose consequences for the lawfulness of the strike were not reasonably foreseeable undermined the essence of their right to strike and rendered that right ineffective.

142. The Federal Supreme Court further held that a decision to suspend a strike for a reasonable period so as to allow the parties to seek a negotiated solution through mediation or conciliation efforts did not constitute a violation of freedom of association. It did not, however, show that the existing domestic legal framework provided for such a possibility. Therefore the finding that the strike had been unlawful in the present case was not based on its lawful suspension in the sense of the term as used by the ILO Committee on Freedom of Association (see paragraph 76 above).

143. With regard to the reasoning advanced by the domestic courts, the Court notes, furthermore, that contrary to the Government's assertion (see paragraph 115 above), it contained no balancing exercise between the applicants' right to freedom of association on the one hand and the protection of the employer's interests on the other. The absence of such an assessment is particularly significant in the present case given that the domestic courts relied on an interpretation of the proportionality requirement entailing consequences for the continued lawfulness of the strike that were not readily foreseeable for the applicants.

144. In so far as the Government argued that the strike had exposed the Hospital to complications and overloads that went beyond "minor problems" (see paragraph 111 above), the Court notes that those circumstances had not been considered in the judgments of the domestic courts concerning the lawfulness of the strike and had not served as the ground for finding the strike unlawful and the applicants' dismissals justified.

145. Having regard to the foregoing, the Court considers that the domestic courts based their finding of unlawfulness on an interpretation of the proportionality requirement that was not sufficiently foreseeable in its application to the applicants' situation. By depriving the applicants of protection against dismissal on that basis, without carrying out a balancing exercise between the competing private interests involved, the domestic courts failed to secure the applicants' right to strike as an essential element of their freedom of association. They therefore failed to comply with their positive obligations under Article 11 of the Convention.

146. There has therefore been a violation of Article 11 of the Convention on this account.

(iii) Alleged interference with the applicants' right to strike (applications nos. 30379/21 and 30786/21) – criminal convictions for trade union activity

(α) Legal basis

147. The Court reiterates that an interference will constitute a breach of Article 11 of the Convention unless it is "prescribed by law", pursues one or more legitimate aims under paragraph 2, and is "necessary in a democratic society" for the achievement of those aims (see the above-cited cases of *UNISON*; *Federation of Offshore Workers' Trade Unions and Others*; and *Demir and Baykara*, § 117).

148. The expression "prescribed by law" requires firstly that the impugned measure should have a basis in domestic law. It also refers to the quality of the law in question, requiring that it be accessible to the persons concerned and foreseeable as to its effects. A law is "foreseeable" if it is formulated with sufficient precision to enable the individual – if need be with appropriate advice – to regulate his or her conduct (see *Internationale Humanitäre Hilfsorganisation e.V. v. Germany*, no. 11214/19, § 66, 10 October 2023).

149. In the present case the applicants, secretaries of the SSP and the Syna unions who set up a picket line on the private grounds of the Providence Hospital in the course of the strike action, were convicted of trespassing for their refusal to leave the Hospital grounds after having received warnings from the public prosecutor. The parties did not dispute that the legal basis for the applicants' conviction was Article 186 of the Criminal Code, which prescribed criminal liability for the offence of trespassing (see paragraph 66 above). The Court considers, however, that, although the offence of trespassing had indeed been provided for by the Criminal Code, the applicants could not have foreseen that a conviction could be imposed for peaceful actions carried out in the context of trade union activity. In the Court's opinion, however, it is not the "quality" of the law itself that is at stake in the present case, but the domestic courts' assessment of the relevant facts and the quality of their reasoning. These issues will be examined in the context of the question of whether or not the impugned interference was necessary in a democratic society (see *Vlahov v. Croatia*, no. 31163/13, § 56, 5 May 2022).

(β) Legitimate aim

150. The Court notes that the applicants were convicted of the offence of trespassing as set out in the Criminal Code. The Court accepts that the impugned interference had the aim of protecting the rights and freedoms of others, namely the exercise by the Providence Hospital of their property rights without undue hindrance. That aim is as such legitimate under Article 11 § 2 of the Convention. The crucial question is whether this interference was necessary in a democratic society.

(γ) Necessary in a democratic society

151. An interference with trade union freedom can be regarded as necessary in a democratic society if it answers a pressing social need and is proportionate to the legitimate aim pursued. The Court will proceed, therefore, with the assessment of whether the domestic courts struck a fair balance between the applicants' right to freedom of association on the one hand and protection of the employer's interests on the other, having regard to the relevance and sufficiency of the reasons adduced by the national authorities and ascertaining whether the standards applied were in conformity with the principles embodied in Article 11 (see paragraph 134 above).

152. The nature and severity of the penalties imposed are also factors to be taken into account when assessing the proportionality of an interference in relation to the aim pursued under Article 11 of the Convention. Criminal sanctions require particular justification (see *Russ v. Germany*, no. 44241/20, § 51, 20 May 2025, with further references).

153. Turning to the circumstances of the present case and having examined the domestic decisions, the Court is not satisfied that during the examination of the criminal charges against the applicants their right to exercise their freedom of association was properly taken into consideration and balanced with the legitimate aim of protecting the rights and freedoms of others.

154. The Court reiterates that the applicants, who were involved in the strike as secretaries of the SSP and the Syna unions, were convicted for trespassing as a result of their organisation of the picket line on the private grounds of the Providence Hospital between 21 December and 26 December 2012 despite formal warnings by the public prosecutor. The picket line was set up within the framework of the strike, which was peaceful and which at the time in question had not been found unlawful. The Court notes in this respect that it was not until 17 December 2018 that the finding of the strike unlawful by the domestic courts became final (see paragraph 40 above). Nothing in the case file shows that the picket line taking place in the car park of the Hospital involved the use of violence or caused any damage to the Hospital or other persons. The Criminal Chamber of the Cantonal Court of the Canton of Neuchâtel held, in particular, that aside from significant tensions that arose, the presence of strikers and unions had not caused any disruption to hospital activity, apart from a "few minor problems", and that it had not been established that any patient had not been treated or had received only minimal care (see paragraph 58 above).

155. With respect to the nature and severity of the repercussions, the Court notes at the outset that it is clear from both domestic and international law that peaceful picketing is protected and that penal sanctions should not be imposed for participating in a peaceful strike (see paragraphs 69 and 76 above). It also notes in this connection that the UN Committee on Economic, Social and Cultural Rights had already expressed its concern that the right to

strike was being compromised by Switzerland by the imposition of criminal sentences on trade unionists because of their involvement in strikes (see paragraph 73 above).

156. The Court further notes that the applicants Ms Chantal Hayoz and Mr Giorgio Bragoni were sentenced to 10 day-fines, suspended for two years, with the daily fine set at CHF 10, and the applicants Mr Yves Mugny and Ms Yasmina Produit – to 10 day-fines set at CHF 80 per day. In the Court's view, although the monetary penalty can arguably be considered to have not been excessive or particularly harsh, it was nonetheless a criminal sanction. It notes in this connection that the domestic law provided for the possibility of finding the unions' action unlawful, but, given the absence of any violence or damage, to find the consequences of the act insignificant, which would have allowed the authorities to refrain from prosecuting the trade unionists or to exempt them from punishment (see paragraph 66 above). However, the domestic courts did not explain why the possibility of applying those less severe measures was not considered.

157. The Court notes, furthermore, that the criminal sanction had an undeniable "chilling effect" on trade union members and an impact on the applicants' professional lives as trade union representatives. In particular, the Court notes that after Mr Mugny (application no. 30379/21) joined another union (Avenir Syndical), that organisation was denied social partner status for failure to meet the good-faith requirement owing to, among other factors, the applicant's having been convicted of trespassing on the premises of the Providence Hospital (see paragraphs 63, 96 and 114 above).

158. The Court concludes that, in the present case, the domestic courts cannot be said to have applied standards that were in conformity with the principles deriving from Article 11 of the Convention. The Court accordingly concludes that the conviction of trade unionists for non-violent actions that were fully within their mandate and did not cause any damage was not compatible with the strict requirement of a "pressing social need" and were not proportionate to the legitimate aim pursued, and therefore could not be regarded as "necessary in a democratic society".

159. There has accordingly been a violation of Article 11 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

160. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

161. The applicants claimed non-pecuniary damage in an amount to be determined by the Court.

162. The Government considered that it would be appropriate to award each applicant in the civil aspect of the case 5,000 euros (EUR) and each applicant in the criminal aspect of the case EUR 1,000 as compensation for non-pecuniary damage.

163. The Court considers that the applicants' claims for non-pecuniary damage are substantiated, reasonable and relate to the violation of the Convention found. Ruling on an equitable basis, it awards the applicants who were dismissed from their jobs EUR 10,000 each (application no. 38204/19), and the applicants who were subjected to criminal liability EUR 5,000 each (applications nos. 30379/21 and 30786/21) in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

164. The applicant Mr Mugny (application no. 30379/21) also claimed EUR 2,500 for legal fees incurred before the Court. He submitted an invoice dated 22 May 2023 detailing the number of hours spent by his lawyer on the preparation of the observations in the case (a total of 17 hours and 55 minutes). The remaining applicants had their procedural costs and expenses covered by the SSP and the Syna unions.

165. The Government submitted that, as Mr Mugny's complaint was identical to those of other applicants in the criminal aspect of the case and joint observations on behalf of all the applicants had been submitted to the Court, Mr Mugny had failed to demonstrate the necessity of the efforts of an additional lawyer for the preparation of the observations. Furthermore, the invoice submitted by Mr Mugny to support his claim did not make it clear how the flat-rate amount billed corresponded to the services listed. The Government considered therefore that the Court should reject his claim for costs and expenses.

166. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award Mr Mugny the sum of EUR 2,500 for the proceedings before the Court, plus any tax that may be chargeable to him.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* admissible the complaint under Article 11 of the Convention concerning the dismissal from their jobs of the applicants in application no. 38204/19 following their participation in a strike deemed unlawful by the domestic authorities and the criminal convictions for trespassing in the context of their trade union activity of the applicants in applications nos. 30379/21 and 30786/21, and the remainder of the applications inadmissible;

3. *Holds* that there has been a violation of Article 11 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 10,000 (ten thousand euros) to each of the applicants in application no. 38204/19 and EUR 5,000 (five thousand euros) to each of the applicants in applications nos. 30379/21 and 30786/21, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,500 (two thousand five hundred euros) to Mr Mugny (application no. 30379/21), plus any tax that may be chargeable to him, in respect of costs and expenses incurred by him;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 5 November 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Kateřina Šimáčková President

APPENDIX

List of cases:

Application no.	Case name	Lodged on	Applicant Year of birth Place of residence Nationality	Represented by
38204/19	Alonso Radesca and Others v. Switzerland	12/07/2019	**Maria de Los Angeles ALONSO RADESCA** 1956 Peseux Swiss **Martine ARDIA** 1954 Peseux Swiss **Sarah BOCHUD** 1978 Cernier Swiss **Sabine FURRER** 1971 Neuchâtel Swiss **Catherine Isabelle GITTON** 1972 Morteau French **Laurence Nicole GREMAUD** 1969 Valeyres sous Montagny Swiss	Christian DANDRÈS

			Christelle HAUSSENER 1977 Cernier Swiss **Thierry HUMBERT DROZ** 1970 Neuchâtel Swiss **Corinne JACCARD** 1973 Bevaix Swiss **Susana MARCOZZI** 1968 Boudry Swiss **Valerie Louise RICHARD** 1965 Cressier Swiss **Nathanael Willy ROCHAT** 1965 Rochefort Swiss **Fedzrije SEILER** 1967 Cernier Swiss **Myriam STRÜBI** 1980 Cortaillod Swiss	

Application no.	Case name	Lodged on	Applicant Year of birth Place of residence Nationality	Represented by
			Catherine VILLANUEVA VERA 1962 Neuchâtel Swiss **Brigitte WILLEMIN** 1958 Neuchâtel Swiss **Chantal ZIEGLER WENGER** 1959 Neuchâtel Swiss	
30379/21	Hayoz Clement and Mugny v. Switzerland	07/06/2021	**Chantal HAYOZ CLEMENT** 1950 Avry sur Matran Swiss **Yves MUGNY** 1967 Geneva Swiss	Christian DANDRÈS
30786/21	Bragoni and Produit v. Switzerland	07/06/2021	**Giorgio BRAGONI** 1954 Playa Honda Swiss **Yasmina PRODUIT** 1972 Le Locle Swiss	Christian DANDRÈS