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

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ECHR 231 (2022)
05.07.2022

German legislation regulating trade union collective agreements did not breach the European Convention

In today's **Chamber** judgment[1] in the case of Association of Civil Servants and Union for Collective Bargaining and Others v. Germany (application no. 815/18 and 4 others) the European Court of Human Rights held, by 5 votes to 2, that there had been:

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

The case concerned trade-union rights and notably legislation in Germany regulating conflicting collective agreements. In particular, in the event of a conflict, only the collective agreement of the largest trade union remained applicable.

The Court found that the restrictions brought on by the legislation had concerned smaller trade unions, which nonetheless retained other rights, including the right to collective bargaining and to strike. Moreover, the legislation was intended to ensure the proper functioning of the collective bargaining system in the interests of both employees and employers.

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

Principal facts

The applicants are three German trade unions: the Association of Civil Servants and Union for Collective Bargaining, *Marburger Bund* – the Association of Employed and State-employed Physicians in Germany and the Trade Union of German Train Drivers; and, six German nationals, who are members of the third applicant trade union.

The applicants' case before the European Court originated in the Uniformity of Collective Agreements Act (*Tarifeinheitsgesetz*), which regulates conflicts that arise if there are several collective agreements in one "business unit" (*Betrieb*) of a company. This Act, which entered into force in July 2015, prescribes that, in the event of a such a conflict, the collective agreement of the trade union which has fewer members in the business unit is no longer applicable.

The applicants lodged a constitutional complaint with the Federal Constitutional Court, arguing that this legislation breached their right under the Basic Law to form associations to safeguard and improve working and economic conditions.

In a judgment of 11 July 2017 the Constitutional Court essentially dismissed the first and second applicant trade unions' complaints, finding that the interference with their rights had for the most part been justified. In particular, the interference aimed to safeguard the system of autonomous collective bargaining (*Tarifautonomie*) and to encourage trade unions to cooperate (notably by avoiding the negotiation of different collective agreements for employees in similar positions).

Referring to this leading judgment, the court subsequently declined to consider the other applicants' constitutional complaints.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

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Complaints, procedure and composition of the Court

Relying on Article 11 (freedom of association), the applicants complained that the relevant provisions of the Uniformity of Collective Agreements Act had violated their right to form and join trade unions, including the right to collective bargaining. They argued in particular that the legislation had resulted in their not being able to conclude collective agreements in companies in which a different trade union had more members, and in employers no longer wishing to negotiate with them.

The application was lodged with the European Court of Human Rights on various dates in 2017 and 2018.

The German Trade Union Confederation, the Confederation of German Employers' Associations, the German Railway stock corporation together with the Employers' and Trade Association of Mobility and Transport Providers and the Aviation Employers' Association were granted leave to intervene in the proceedings as third parties.

Judgment was given by a Chamber of seven judges, composed as follows:

Georges **Ravarani** (Luxembourg), *President*,
Georgios A. **Serghides** (Cyprus),
María **Elósegui** (Spain),
Darian **Pavli** (Albania),
Anja **Seibert-Fohr** (Germany),
Andreas **Zünd** (Switzerland),
Frédéric **Krenc** (Belgium),

and also Milan **Blaško**, *Section Registrar.*

Decision of the Court

The Court reiterated that the right to collective bargaining as guaranteed under Article 11 of the Convention did not include a "right" to a collective agreement. What was essential was that trade unions could make representations to and be heard by employers.

It observed that the main restriction brought about by the legislation in issue in this case had concerned the rights of trade unions which had fewer members within the "business unit" of the company concerned.

Those minority trade unions did not lose the right as such to bargain collectively and to take industrial action if necessary. They also retained considerable other rights: they were entitled to adopt the majority union's collective agreement and could present claims and make representations to employers for the protection of their members.

Most importantly, the legislation was intended to ensure the fair and proper functioning of the system of collective bargaining, notably by preventing trade unions representing employees in key positions from negotiating collective agreements separately to the detriment of other employees, and also to facilitate an overall compromise.

Indeed, several other States also had systems restricting in one way or another collective agreements to larger or more representative unions.

The respondent State was, moreover, to be given leeway as regards the restriction on trade union freedom in this case, and all the more so given the sensitive policy choices involved in balancing the respective interests of labour – including trade unions – and management.

The Court concluded that there had been no disproportionate restriction on the applicants' rights and that there had therefore been no violation of Article 11 of the Convention.

Separate opinion

Judges Serghides and Zünd expressed a joint dissenting opinion. This opinion is annexed to the judgment.

The judgment is available only in English.

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