EUROPEAN COURT OF HUMAN RIGHTS

PRESS RELEASE

INTERPRETATION OF LEGISLATION BY NATIONAL AUTHORITIES CREATED UNCERTAINTY FOR UNIONS AND EMPLOYEES AS TO LAWFULNESS OF STRIKE

Alonso Radesca and Others v. Switzerland

ECHR 276 (2026) 05.11.2026

Press release issued by the Registrar of the Court



In today's **Chamber** [1]judgment in the case of Alonso Radesca and Others v. Switzerland (application no. 38204/19) the European Court of Human Rights held, unanimously, that there had been **a violation of Article 11 (Freedom of assembly and association)** of the European Convention on Human Rights.

The case concerned a strike in a private hospital over its withdrawal from a collective bargaining agreement. The national authorities had found the strike to be unlawful, resulting in the hospital employees who had participated in it being dismissed and criminal sanctions being imposed on the secretaires of the unions who had been mandated to conduct the negotiations.

The Court found, in particular, that neither Article 28 of the Constitution, which guaranteed the right to strike, nor the national case-law provided 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 meant that the continuation of the strike was unnecessary. Such an interpretation 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 under national law.

By depriving the applicant employees of protection against dismissal, the national courts had failed to secure their right to strike. As regards the applicant trade union secretaries, the Court concluded that their convictions could not be regarded as necessary in a democratic society.

As concerns just satisfaction (Article 41), the Court held that Switzerland was to pay 10,000 euros (EUR) to the applicant employees and EUR 5,000 to the applicant trade union secretaries and EUR 2,500 in respect of costs and expenses to one of the applicants.

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

PRINCIPAL FACTS
AND COMPLAINTS

The applicants are 17 former employees of the Providence Hospital, a private hospital located in the Canton of Neuchâtel (application no. 38204/19), and four union secretaries (application nos. 30379/21 and 30786/21).

In June 2012 the hospital withdrew from the collective bargaining agreement, the CCT Santé 21 agreement, applicable to the health sector in the Canton of Neuchâtel with effect from 31 December 2012. It also began negotiations for a takeover of its activities by the GSMN, a Swiss private hospital group. In July 2012, hospital employees mandated two unions, the Public Services Union and the Syna Union, to conduct negotiations to ensure that the hospital continued to be subject to the CCT Santé 21 agreement. A half-day strike took place in September 2012.

On 16 November 2012 staff voted to support the plan to integrate the hospital into the GSMN. After the negotiations with the employer over the maintenance of the CCT Santé 21 agreement failed, a second strike began on 26 November 2012. The aim of the strike was to maintain the CCT Santé 21 agreement, prevent the outsourcing of services and avoid dismissals. Tents were set up for a picket line in the car park at the hospital's entrance. In December 2012 the hospital announced that the agreement for its takeover by the GSMN had been signed.

On 23 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 a service, to ensuring that all employees concerned would be taken on by the new provider. Furthermore, the GSMN had committed to increase, as of 2014, the salaries of current staff to compensate for the changes in working conditions. Formal notice was given to the striking employees, stating that the strike was, as of that moment, disproportionate, ran counter to the wishes of most of the hospital staff and had lasted longer than was acceptable.

On 4 February 2013 the hospital dismissed 22 employees who were still refusing to return to work. In September 2018 the applicant trade union secretaries were found guilty of trespassing, owing to their organisation of the picket line on the private grounds of the hospital. The applicants unsuccessfully challenged their dismissals and convictions before the domestic courts, ultimately before the Federal Supreme Court, which dismissed their appeals in final judgments in 2018 and 2020.

Relying on Article 11 (freedom of assembly and association), the applicant employees complained about their dismissals following their participation in the strike and the applicant trade union secretaries complained about their criminal convictions for trespassing in the context of their trade union activity.

OUTCOME
REASONING OF THE COURT

Dismissal of the applicant employees

Article 28 of the Swiss Constitution, as interpreted by the Federal Supreme Court, set out the four conditions which had to be met for a strike to be considered lawful. A strike had to 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 noted that on 23 January 2013 the hospital's administration had informed its employees of the GSMN's commitments. Since the applicants had considered that the working conditions offered by the GSMN were significantly inferior to those provided for in the CCT Santé 21 agreement, they had refused to return to work and, on 4 February 2013, had been dismissed with immediate effect. The applicants' attempt to challenge the lawfulness of their dismissals had been unsuccessful.

There was no dispute that the strike had initially been lawful. However, the Federal Supreme Court had concluded that, after 23 January 2013 the strike had lost its character as a method of last resort and had therefore become disproportionate. The Court noted that neither the wording of Article 28 of the Constitution nor the national case-law provided 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 made it unnecessary to continue the strike. Such an interpretation 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 under national law. The Court further noted that a trade union enjoyed primary responsibility for assessing the necessity of continuing a strike, while the national courts retained power to review whether the resulting interference with competing interests remained proportionate under Article 11.

In the present case the trade unions had 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 had been necessary to continue the strike. The Court considered 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 had rendered that right ineffective.

The national courts had based their finding of unlawfulness on an interpretation of the proportionality requirement that had not been sufficiently foreseeably in its application to the applicants' situation. By depriving the applicants of protection against dismissal on that basis, without having carried out a balancing exercise between the competing private interests involved, the national courts had failed to secure the applicants' right to strike as an essential element of their freedom of association.

There had therefore been a violation of Article 11.

Criminal convictions of trade union secretaries

The applicant trade union secretaires had been convicted of trespassing. That interference had had the aim of protecting the rights and freedoms of others, namely the exercise by the hospital of their property rights. The crucial question was whether that interference had been necessary in a democratic society.

In assessing whether the national courts had struck a fair balance between the competing rights, the Court was not satisfied that the applicants' right to exercise their freedom of association had been properly taken into account. The picket line had been set up within the framework of the strike, which had been peaceful and which at the time in question had not been found unlawful. It had not been until 17 December 2018 that the finding that the strike had been unlawful had become final.

It was clear from both national and international law that peaceful picketing was protected and that criminal sanctions should not be imposed for participating in a peaceful strike. 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. While the monetary penalty had not been excessive or harsh it was nonetheless a criminal sanction and the national courts had not explained why they had not applied less severe measures. The criminal sanction had an undeniable "chilling effect" on trade union members and an impact on the applicants' professional lives as trade union representatives.

The Court concluded that the national courts could not be said to have applied standards that had been in conformity with the principles deriving from Article 11. The conviction of trade unionists for non-violent actions that had been fully within their mandate and had not caused any damage was not compatible with the strict requirement of a "pressing social need" and had not been proportionate to the legitimate aim pursued and therefore could not be regarded as necessary in a democratic society.

There had therefore been a violation of Article 11.

PROCEDURE
AND COMPOSITION OF THE COURT

The applications were lodged with the European Court of Human Rights on 12 July 2019 and 7 June 2021.

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

Kateřina **Šimáčková** (the Czech Republic), *President*,
Gilberto **Felici** (San Marino),
Andreas **Zünd** (Switzerland),
Mykola **Gnatovskyy** (Ukraine),
Vahe **Grigoryan** (Armenia),
Sébastien **Biancheri** (Monaco),
Nicholas **Emiliou** (Cyprus),

and also Martina **Keller**, *Deputy Section Registrar.*

The judgment is available only in English.

The Court's judgments finding a violation are binding on the State concerned. The Committee of Ministers of the Council of Europe, the executive body of the Council of Europe, supported by the Department for the Execution of Judgments of the European Court of Human Rights, is responsible for supervising their implementation.

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

[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