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

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Ban on sympathy strikes in the UK was not excessive in a case concerning a transport trade union and an employer who was not party to a labour dispute

In today's Chamber judgment in the case of **R.M.T. v. the United Kingdom** (application no. 31045/10), which is not final[1], the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned a trade union's complaints about statutory restrictions on the right to strike and, in particular, the ban on secondary industrial action (strike action against a different employer aimed at exerting indirect pressure on the employer involved in the industrial dispute).

What was important for the Court in this case was that the ban affected only an accessory aspect of the freedom of association of trade unions as opposed to any core aspect of their rights under Article 11. The facts of the case showed that the applicant union had been able to act in defence of its members' interests through collective bargaining with the employer and then primary strike action, even if its members rejected the revised terms offered to them. The claim that the union would have prevailed in its demands had it had the possibility of leading a strike by its members in another, bigger company was regarded by the Court as speculative. It decided that the United Kingdom's room for manoeuvre ("margin of appreciation") to regulate trade union freedom should be wide, since a country's industrial relations policy formed part its overall economic and social policy, and was of recognised sensitivity. The Court would therefore respect the legislature's choices unless these were manifestly without reasonable foundation. Parliament's reason for introducing the ban, informed by previous experience, was to guard against excessive disruption of the economy and to strike a better balance between unions, employers and the wider public. It was relevant that the ban had been maintained by three different Governments since its introduction over 20 years ago.

The Court concluded that there was nothing in the facts raised by the applicant union to show that the general prohibition on secondary strikes had had a disproportionate effect on their rights under Article 11. The United Kingdom had therefore remained within its margin.

Principal facts

The applicant, the National Union of Rail, Maritime and Transport Workers ("the RMT"), is a trade union based in London with a membership of more than 80,000 persons employed in different sectors of the transport industry in the United Kingdom.

The RMT made two complaints about statutory restrictions on the right to strike.

The first complaint is that national law is too strict and detailed when it comes to the organisation of a strike ballot. The RMT provided the example of a situation involving the company EDF Energy Powerlink Ltd, with which it entered into dispute over pay and conditions in 2009. The union sought to call a strike but the employer obtained an injunction to prevent this on the grounds that the union

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

had failed to specify clearly enough the exact job descriptions of the workers concerned. The union organised a new ballot shortly afterwards that complied with the statutory criteria and the strike took place in late 2009 and early 2010. EDF made an improved offer which was accepted by the union's members and took effect as a collective agreement the following April.

The second complaint is that there is no right to take secondary or sympathy industrial action. This form of industrial action was restricted in the United Kingdom in 1980 and has been unlawful since 1990. The RMT gave the example of a situation involving two companies in the rail maintenance sector, named Hydrex and Jarvis. A group of 20 workers, members of the RMT, was transferred from Jarvis to Hydrex in 2007. These workers went on strike when the company indicated two years later that it would reduce their terms and conditions to the level of its other employees. While this led the company to change its position somewhat, the workers voted to reject the revised offer. In the end, however, given the very small number of RMT members in the Hydrex workforce, they had no other option but to accept the new terms and conditions. The union considered that the strike was ineffective because so few workers took part. It would have wished to organise a sympathy strike at the bigger Jarvis firm – even though it was not a party to the labour dispute – so as to increase pressure on Hydrex, but this was clearly forbidden by law.

Complaints, procedure and composition of the Court

Relying on Article 11 (freedom of assembly and association), the RMT alleged that the restrictions on strike-ballot notice and the total ban on secondary strike action had hampered its ability to protect its members' interests.

The application was lodged with the European Court of Human Rights on 1 June 2010.

The European Trades Union Confederation, the Trades Union Congress and Liberty were authorised to intervene as third parties (under Article 36 § 2 of the Convention) in the written procedure.

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

Ineta **Ziemele** (Latvia), *President*,
Päivi **Hirvelä** (Finland),
George **Nicolaou** (Cyprus),
Paul **Mahoney** (the United Kingdom),
Krzysztof **Wojtyczek** (Poland),
Faris **Vehabović** (Bosnia and Herzegovina),
Ledi **Bianku** (Albania),

and also Françoise Elens Passos, *Section Registrar.*

Decision of the Court

Strike-ballot notice

The Court declared this complaint inadmissible as there was no basis for it to find that the union's rights had been interfered with, over and above having had to comply with the procedural requirement set down in law. The issue had to be considered in light of the fact that the union had succeeded in leading a strike two months after the injunction and that action had induced EDF to improve its offer to union members. The offer had been accepted and it had taken effect as a collective agreement shortly afterwards. Ultimately therefore, the EDF situation was in reality successful collective action by the union on behalf of its members.

Secondary strike action

This is the first time that the Court has had to address the question of whether the right to secondary action falls within the scope of Article 11. The Court ruled that the applicant could rely on Article 11. It found, firstly, that secondary action was protected under the relevant International Labour Organisation Convention and the European Social Charter, and it would be inconsistent for the Court to take a narrower view of freedom of association of trade unions than that which prevailed in international law. Secondly, and as regards the situation in other Contracting States, the Court observed that many of them had a long-established practice of accepting secondary strikes as a lawful form of trade union action.

The Court therefore accepted that the statutory ban on secondary action had interfered with the applicant union's right to freedom of association. That interference had been prescribed by law, namely section 224 of the Trade Union and Labour Relations (Consolidation) Act 1992. Furthermore, it was satisfied that the ban had pursued the legitimate aim of protecting the rights and freedoms of others, which included not only the employer directly involved in the industrial dispute but also the wider interests of the domestic economy and the public potentially affected by the disruption of secondary industrial action, which could be on a scale greater than primary strike action.

The Court further recalled that the Convention required trade unions to be able under national law to protect their members' interests. What was important therefore for the Court was the extent to which the applicant union had been able in the circumstances to vindicate the interests of its members, in spite of the ban on taking industrial action against Jarvis. On the facts, the applicant union had been able to exercise its labour rights with respect to Hydrex, the employer party to the dispute. It had been able to represent its members, negotiate with Hydrex on their behalf and to organise a strike at their place of work, albeit on a limited scale and with limited results. The fact that the union was convinced that secondary action would have won the day could only be a matter of speculation.

The Court stressed, in this legislative policy area of recognised sensitivity, that a State's room for manoeuvre ("margin of appreciation") to regulate trade union freedom in cases such as the union's – where a secondary or accessory aspect of trade union was affected – was wide. In particular, democratically elected parliaments were in principle better placed than the international judge to appreciate what was in the public interest on social or economic grounds and what were legislative measures best suited for the conditions in their country in order to implement the chosen social, economic or industrial policy.

The margin was thus wide, even though the United Kingdom is one of a small group of Member States[2] to prohibit secondary action in the field of industrial relations. Nor was the Court's conclusion affected by the criticism leveled against the United Kingdom by specialised international monitoring bodies operating under the European Social Charter and the ILO Convention since their standpoint is different to that of the Court's, being general.

Indeed, the ban on secondary action had remained intact for over 20 years – with two changes of government – in the United Kingdom, showing a democratic consensus in support of it, and acceptance of the reasons for it.

The Court therefore concluded that the facts of the specific situation of the union's case had not disclosed an unjustified interference with the union's right to freedom of association. Nor had there been any basis to consider that the way in which the ban on secondary action operated in relation to the union's dealings with Hydrex had been disproportionate. Therefore, given the facts of the applicant union's case, there had been no violation of Article 11 of the Convention.

[2] There is a broadly permissive stance to sympathy strikes in countries such as Greece, Finland, Norway and Sweden; States that, like the United Kingdom, do not permit secondary action are Austria, Luxembourg and The Netherlands.

Separate opinions

Judges Ziemele, Hirvelä and Bianku expressed a joint concurring opinion. Judge Wojtyczek also expressed a concurring opinion. These opinions are annexed to the judgment.

The judgment is available only in English.

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