



RIGHT TO STRIKE AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS AFTER THE HUMPERT JUDGMENT

This contribution aims to take stock of the current *status* of the case-law of the European Court of Human Rights (ECtHR) on the right to strike, in the framework of Article 11 of the European Convention on Human Rights (ECHR) on Freedom of assembly and association, after the judgment delivered by the Grand Chamber of Strasbourg Court in the case of *Humpert and others v. Germany* on 14 December 2023.

The paper starts with an analysis of the judgment, which refers to the denial of the right to strike applying in Germany to the teachers with civil-servant *status* – like for all civil-servants – while the same right is granted to the teachers recruited on a “contractual” basis. It is noted that in considering this general ban to the right to strike the ECtHR follows the reasoning of the German Constitutional Tribunal (*Bundesverfassungsgericht*), which came to the conclusion that the variety of different domestic institutional safeguards granted to civil-servants, in their totality, enabled civil servants’ trade unions and civil servants to effectively defend the relevant occupational interests. The ECtHR eventually excluded, therefore, a breach of Article 11 of the ECHR, stressing that the prohibition on strikes is a general measure reflecting the balancing and weighing-up of different, potentially competing, constitutional interests, and that the German authorities had not exceeded their *margin of appreciation*.

The second part of the study refers to the Strasbourg case-law on the right to strike preceding *Humpert*, describing its evolution from the very restrictive approach followed in the first judgments to the openness shown in judgments like *Demir and Baykara* and *Enerji Yapi-Yol Sen*.

The third and last part of the contribution contains a critical reading of the *Humpert* judgment and raises some concerns about the use in this case of the method of the *procedural rationality*, downplaying the importance of the “European *consensus*” and of the *status* of international labour law.