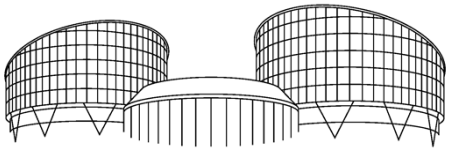

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF HELLGREN v. FINLAND

(Application no. 52977/19)

JUDGMENT

Art 11 • Freedom of association • Withholding of the applicant's wages by her employer for two days for partial performance of work tasks in the context of a "selective strike" following a collective trade union decision • Trade union freedom, in general, secured in the present case • Domestic authorities, in seeking to strike a fair balance between the competing rights at stake, remained within their wide margin of appreciation

Prepared by the Registry. Does not bind the Court.

STRASBOURG

17 December 2024

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Hellgren v. Finland,

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

Arnfinn Bårdsen*, President*,
Saadet Yüksel,
Pauliine Koskelo,
Jovan Ilievski,
Anja Seibert-Fohr,
Gediminas Sagatys,
Stéphane Pisani*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 52977/19) against the Republic of Finland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Finnish national, Ms Anu Marjaana Hellgren ("the applicant"), on 2 October 2019;

the decision to give notice to the Finnish Government ("the Government") of the application;

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

the comments submitted by the Finnish Post and Logistics Union (PAU), which was granted leave to intervene by the President of the Section;

Having deliberated in private on 26 November 2024,

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

INTRODUCTION

1. The case concerns complaints lodged under Articles 11 and 14 of the Convention that the applicant's wages had been withheld by her employer for two days for reasons which the applicant considered discriminated against her by unlawfully restricting her rights relating to trade union membership and industrial action.

THE FACTS

2. The applicant was born in 1976 and lives in Tuulos. She was represented before the Court by Mr M.O.P. Ojanen, a lawyer practising in Helsinki.

3. The Government were represented by their Agent, Ms Krista Oinonen, of the Ministry for Foreign Affairs.

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

I. BACKGROUND

5. The applicant worked for the Finnish postal service – which is operated by a State-owned company governed by private law named *Posti Oy* – as a postal worker. She was employed on a permanent contract under the Employment Contracts Act (see paragraph 35 below). The applicant's place of work was Hämeenlinna and according to the employment contract, which was signed on 1 February 2015, her principal work consisted of sorting and distributing mail. In addition, she worked as an in-company trainer and occasionally provided induction training to new employees. An employee being trained would follow the postal worker's sorting and delivery work, at the same time receiving verbal guidance about the work performed and the procedure, in stages.

6. According to the employment contract, the collective agreement applicable to the terms and conditions of the applicant's employment was the collective agreement relating to workers in Communications and Logistics. That agreement expired at the end of October 2015.

7. The applicant belonged to a trade union named the Finnish Post and Logistics Union (*Posti- ja logistiikka-alan unioni;* PAU), which, after the expiry of the collective agreement, planned to accelerate negotiations on a new agreement through industrial action.

8. The risk of industrial action upon the expiry of the agreement led the Finnish postal service to enter into an agreement with a temporary workers' agency, and the trade union declared, in a collective decision of 1 November 2015, taking effect from the following day, that no overtime was to be worked and no externally recruited employees were to be given induction training or trained for duties in the workplaces where temporary agency workers were hired.

9. On 2 November 2015 hundreds of temporary agency workers were brought to the Finnish postal service's workplaces, and on 5 November 2015 the trade union announced that it would begin a series of strikes as of 19 November 2015, to spur on negotiations for a new collective agreement.

10. According to the shift roster, the applicant had been assigned to ordinary mail delivery work on 10 and 11 November 2015 and had arrived at work at 6.30 a.m., as normal. On both mornings her supervisor had directed her to give induction training to an employee who had been hired through an external staffing agency. The applicant had refused to carry out the training duties because of the trade union's decision that externally hired employees should not be given induction training. She had informed her employer that she was at the company's disposal to perform her normal duties with postal work.

11. The applicant's supervisor sent her home at 7.03 a.m. on 10 November 2015 and at 9.45 a.m. on 11 November 2015 because of her refusal to give induction training. The applicant's wages for the rest of each of these days

were withheld. Similar measures were taken in respect of all employees who refused to provide induction training.

12. On 30 November 2015 a new collective agreement for the sector was agreed upon by the social partners (PAU and the Service Sector Employers organisation, PALTA).

II. CIVIL PROCEEDINGS

A. Proceedings in the District Court

13. On 2 March 2016 the applicant instituted proceedings against her employer in the District Court, requesting that the court order the employer to pay her the wages that had been withheld because she had refused to provide the induction training – an amount of 142,70 euros (EUR). Additionally, the applicant requested compensation of EUR 5,000 based on the Non-Discrimination Act (see paragraph 37 below) and for recovery of her legal costs.

14. The applicant maintained that she had been prevented from carrying out the induction training because she had participated in legal industrial action which had concerned only a part of the work she performed under her contract and the purpose of which had been to influence the terms or conditions of her employment. The applicant's employer contested the claim and asked for it to be dismissed. The employer also applied for recovery of its legal costs.

15. The District Court gave its decision on 11 August 2016. It ordered the employer to pay the applicant EUR 122,70 in respect of wages that had been withheld and EUR 2,000 in compensation based on the Non-Discrimination Act.

16. The District Court found that the applicant had been prevented from providing induction training because she had participated in a lawful industrial action which had concerned only some of the tasks she was required to perform under her contract and the purpose of which had been to influence the terms and conditions of her employment. In respect of the other tasks she performed in her work, that is to say, the postal delivery work, which were not targeted by the collective action, in the District Court's view it was the employer that had prevented the applicant from carrying those out.

17. The District Court considered that the employer had had no right to interrupt the applicant's work entirely. It found, moreover, that she had been discriminated against in breach of the Non-Discrimination Act (see paragraph 37 below) since she had complied with the trade union's collective decision imposing a prohibition on giving induction training. The District Court awarded the applicant EUR 122,70 instead of the EUR 142,70 that she had claimed, as it were of the view that the applicant had herself refused to do

some of her work tasks, namely providing training, which would have given her the right to an extra payment of sixty cents per hour.

B. Proceedings in the Court of Appeal

18. The employer appealed against the District Court's decision to the Court of Appeal, asking the Court of Appeal to overturn the decision of the District Court and to dismiss the applicant's claim in its entirety. The applicant submitted a counter-appeal, asking the Court of Appeal to increase the compensation for the withholding of her wages by twenty euros – to EUR 142,70, in accordance with her original claim (see paragraph 13 above).

19. The Court of Appeal gave judgment on 17 November 2017. It provided additional reasoning to that of the District Court, but agreed with the latter's conclusions to the effect that the applicant's employer had been under an obligation to let her carry out the ordinary mail delivery work as that had not been included in the trade union's collective decision of 1 October 2015. It also upheld the District Court's reasoning on the violation of the prohibition of discrimination. The Court of Appeal increased the compensation for the withheld wages to EUR 142,70, however, as it did not find any basis for the reduction made by the District Court. It did not amend the District Court's decision in other respects.

20. On 16 January 2018 the employer appealed against the Court of Appeal's judgment to the Supreme Court. It asked the Supreme Court to overturn the decision of the Court of Appeal and to dismiss the applicant's claim in its entirety. The Supreme Court granted the employer leave to appeal on 27 February 2018.

C. The Supreme Court's judgment

21. On 12 April 2019 the Supreme Court gave its judgment, in which it overturned the judgment of the Court of Appeal by three votes to two and ruled in the employer's favour.

22. At the outset, the Supreme Court observed that wages were payments for carrying out work tasks falling within what the employer was entitled to require by virtue of the employer's general right to manage and supervise the employee's work. The general rule was accordingly that an employer would not be obliged to pay wages without having the benefit of the performance of any work. Domestic law provided for specific exceptions from that general rule in certain situations where work was impeded by circumstances for which the employee could not be held responsible. These exceptions did not include the situation where an employee refused to carry out work because of participation in industrial action.

23. Having established those issues, the question for the Supreme Court became whether the applicant's not having carried out postal work was her

responsibility as a consequence of her participating in the industrial action (which prohibited training, but not postal work) or the employer's responsibility because the company had not allowed her to do her ordinary postal work.

24. In setting out its general principles, the Supreme Court proceeded to note that participating in industrial action normally entailed that the participant did not fully carry out her or his obligations under an employment contract. In entering into an employment contract, the employee undertook to perform work in accordance with the employment contract on behalf of the employer and under the employer's management and supervision. The employer's corresponding rights included allocating work to the employee at any given time and directing how that work was to be done, in accordance with the employer's own interests. The Supreme Court considered that this right would lose its meaning if the employer, after an employee had refused to do the work assigned to her or him, had an obligation to accept the employee's performance of work of a different kind.

25. Indeed, the principle of loyalty in employment relations required the employer to take the employee's interests into account to a reasonable extent in the exercise of the employer's own rights. The application of this principle depended on the individual circumstances. Furthermore, the parties had the right to belong to unions and to participate in their actions. Legislation provided that an employee could not be dismissed on the grounds of such participation, and case-law had further developed the principle that imposing other sanctions owing to such participation would equally breach that right.

26. Thus far, the Supreme Court had summarised the following principles:

(i) an employer was generally not obliged to pay wages to an employee who refused to carry out work tasks within the scope of his or her job description;

(ii) the fact that the refusal to work was based on industrial action decided on by the trade union was not a reason to regard an obligation to pay wages differently, notwithstanding that an employee should otherwise not suffer any harmful consequences from participating in official industrial action; and

(iii) targeting industrial action against an employer did not in itself reduce that employer's rights to direct the employee's work, even though an employee had the right to refuse work assigned to him or her by the employer if that work was subject to industrial action.

27. Turning to the facts of the case before it, the Supreme Court found that the above principle of loyalty (see paragraph 25) could not require an employer to mitigate any harm the employee might cause to herself or himself by participating in industrial action, given that a labour dispute was a conflict between employees and the employer in which each side aimed to put pressure on the other. Furthermore, the Supreme Court found that the existence of a partial industrial action (a selective strike) did not remove an

employer's right to direct an employee's work in accordance with the employer's interests.

28. In the case before it, the applicant had been ordered by her employer to give induction training. This would have consisted of the employee who was being trained following the applicant as she worked while receiving information from the applicant about the work and procedures relating to it. Training would have gone on throughout the applicant's shift, since the newcomer would have to be shown the entire mail distribution. The applicant had confirmed she would do the postal work but refused to provide training while she was doing it.

29. It was not disputed before the Supreme Court that training newcomers fell within the applicant's contractual obligations. The employer had had the right both to instruct the applicant to give training and to instruct that that training be given while she carried out her other postal work obligations. As it had already indicated (see paragraph 24 above), the Supreme Court emphasised that an employer was not obliged to accept work different from that which the employee was instructed to do if, because of a labour dispute, the employee refused the work assigned to her or him.

30. Indeed, the applicant had argued that her postal delivery work was separable from her training tasks, and that no reduction in the value of her postal work would have been caused by her not providing training at the same time. However, the Supreme Court considered that this would nonetheless have meant that the applicant would have worked in a way other than that decided by the employer. Nor would the employer have received the same benefit from the applicant's work if she had done only postal work and not postal work and training at the same time. From the employer's perspective training was also not a task of minor importance.

31. The above reasoning led the majority of the Supreme Court to conclude that the employer had not been obliged to accept that the applicant would only do postal work without concurrently providing training. The employer could therefore not be held responsible for the fact that no work had been carried out in accordance with the employer's instructions, and the employer therefore had no obligation to pay wages in respect of other work.

32. Turning to the issue of discrimination, the Supreme Court noted that trade union participation was one of the grounds of discrimination that would not be lawful under domestic law. In the case before it, however, noting that wages were payments for work, one could not compare the applicant's situation to that of employees who had not participated in the industrial action and who had performed their work tasks. The relevant comparator would have to be an employee who had been prevented from carrying out work tasks for other reasons over which the employee had control. According to the Supreme Court, the applicant had not been treated unfavourably compared to such an employee.

33. The minority emphasised that in addition to her usual work of sorting and delivering mail, training of temporary employees had occasionally been part of the work the applicant did under her employment contract. In the minority's view, these two work tasks had been separable from each other, and it pointed out that a different rate of payment had been agreed for the training from that paid for the usual work. The question was therefore whether the employer should have allowed the applicant to do her normal work duties. The employer could have locked the employees out, but had not. Instead, the employer had tried to limit the employees' right to industrial action by assigning them to training work that was subject to such action in addition to their usual tasks. As the employer would have benefited from the employee's normal work contribution but had not accepted this, work had been prevented for a reason attributable to the employer, who was therefore obliged to pay wages in full. Moreover, the prevention of work and non-payment of wages had resulted from the applicant's participation in industrial action and there had been no grounds for justifying that treatment under section 11 of the Non-Discrimination Act (see paragraph 37 below). The employer was therefore also, in the minority's view, obliged to pay compensation to the applicant.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

34. Articles 6 and 13 of the Constitution of Finland (*Suomen perustuslaki*, *Finlands grundlag*; Act no. 731/1999) read as follows:

Article 6
Equality

"(1) Everyone is equal before the law.

(2) No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person.

..."

Article 13
Freedom of assembly and freedom of association

"(1) Everyone has the right to arrange meetings and demonstrations without a permit, as well as the right to participate in them.

(2) Everyone has freedom of association. Freedom of association entails the right to form an association without a permit, to be a member or not to be a member of an association and to participate in the activities of an association. The freedom to form trade unions and to organise in order to look after other interests is likewise guaranteed.

(3) More detailed provisions on the exercise of the freedom of assembly and the freedom of association are laid down by an Act."

35. The Employment Contracts Act (*työsopimuslaki*, *arbetsavtalslag*; Act no. 55/2001) contains the following relevant provisions:

Chapter 1
General provisions
Section 1
Scope of application

"(1) This Act applies to contracts (*employment contracts*) entered into by an employee, or jointly by several employees as a team, agreeing personally to perform work for an employer under the employer's direction and supervision in return for pay or some other remuneration.

..."

Chapter 2
Employer's obligations
Section 12
Employee's right to pay in the case of impediment to work

"(1) Unless otherwise agreed, the employer is required to pay the employee full pay if the employee has been available to the employer in accordance with the contract, but has been prevented from working by circumstances for which the employer is responsible.

(2) If the employee is prevented from working due to a fire, an exceptional natural event or another similar event affecting the workplace beyond the control of the employee or the employer, the employee is entitled to pay for the period of the impediment, though not for more than a maximum of 14 days. If the impediment beyond the control of the parties to the employment contract is caused by industrial action by other employees that is independent of the employee's employment terms or working conditions, the employee is, however, entitled to pay for a maximum of seven days.

(3) The employer may deduct from the pay due to employees under subsections 1 and 2 amounts referring to work the employees have not done because their work performance has been impeded and amounts the employees have earned doing other work or chosen intentionally not to earn. In making the deduction, the employer shall observe the provisions of section 17 of this chapter on limitation of the set-off right."

Chapter 7
Grounds for termination of the employment contract by means of notice
Section 2
Termination grounds related to the employee's conduct

"(1) Serious breach or neglect of obligations arising from the employment contract or the law and having essential impact on the employment relationship as well as such essential changes in the conditions necessary for working related to the employee's person as render the employee no more able to cope with his or her work duties can be considered an appropriate and serious reason for termination arising from the employee or related to the employee's conduct. The employer's and the employee's overall

circumstances must be taken into account when assessing whether the reason is appropriate and serious.

(2) At least the following cannot be regarded as appropriate and serious reasons:

...

2) participation of the employee in industrial action arranged by an employee organisation or in accordance with the Collective Agreements Act;

... ."

Chapter 12
Liability for damages
Section 1
General liability

"(1) If the employer intentionally or negligently commits a breach of obligations arising from the employment relationship or this Act, it shall be liable for the loss thus caused to the employee.

(2) In derogation from the provisions of subsection 1 above, liability for termination of the employment contract contrary to the grounds laid down in chapter 1, section 4, or in chapters 7 or 8 is determined under section 2.

(3) If the employee intentionally or negligently commits a breach of, or neglects obligations arising from, the employment contract or this Act or in the course of the employment causes a loss to the employer, the employee shall be liable to the employer for the loss thus caused in accordance with the grounds laid down in chapter 4, section 1, of the Tort Liability Act (412/1974).

(4) The compensation for failing to observe the period of notice is determined under chapter 6, section 4. Chapter 5, section 7, subsection 3 lays down provisions on the entitlement of an employee who has been laid off for a minimum of 200 days, and who terminates the employment relationship, to receive compensation equivalent to pay or part of it for the period of notice."

Section 2
Compensation for groundless termination of an employment contract

"(1) If the employer has terminated an employment contract contrary to the grounds laid down in this Act, it must be ordered to pay compensation for unjustified termination of the employment contract. If the employee has cancelled the employment contract on the grounds laid down in chapter 8, section 1, arising from the employer's intentional or negligent actions, the employer must be ordered to pay compensation for unjustified termination of the employment contract. That compensation must be equivalent to the pay due for a minimum of three months and a maximum of 24 months. Nevertheless, the maximum amount due to be paid to shop stewards elected on the basis of a collective agreement or to elected representatives referred to below in chapter 13, section 3, is equivalent to the pay due for 30 months.

(2) Depending on the reason for terminating the employment relationship, the following factors must be taken into account in determining the amount of compensation: estimated time without employment and estimated loss of earnings, the remaining period of a fixed-term employment contract, the duration of the employment relationship, the employee's age and chances of finding employment corresponding to his or her vocation or education and training, the employer's procedure in terminating

the contract, any motive the employee may have had for leaving, the general circumstances of the employee and the employer, and other comparable matters. In determining the compensation, account must be taken of any compensation payable for the same action under the Non-Discrimination Act. (1331/2014).

(3) If the employer has terminated the employment contract contrary to the grounds laid down in chapter 7, sections 3 or 7, or cancelled it contrary to the grounds laid down in chapter 1, section 4, or solely contrary to the grounds laid down in chapter 8, section 1, the provision in subsection 1 on minimum compensation shall not apply."

Chapter 13
Miscellaneous provisions
Section 1
Freedom of association

"(1) Employers and employees have the right to belong to associations and to be active in them. They also have the right to establish lawful associations. Employers and employees are likewise free not to belong to any of the associations referred to above. Prevention or restriction of this right or freedom is prohibited.

(2) Any agreement contrary to the freedom of association is null and void."

36. Section 8 of the Collective Agreements Act (*työehtosopimuslaki, lag om kollektivavtal*; Act no. 436/1946; of which section 8(2) was amended by Act no. 660/1984) reads as follows:

Section 8

"(1) A collective agreement shall bind all employers and associations who and which are parties thereto or otherwise bound thereby, and likewise any associations whose members or subordinate associations mentioned in point 2 of the first paragraph of section 4 have concluded the agreement with the consent of the association, to refrain from any hostile action directed against the collective agreement as a whole or against any particular provisions thereof. Furthermore, the associations which are bound by the agreement shall be required to ensure that the associations, employers and employees under their direction and covered by the agreement refrain from any such hostile action and that they do not contravene the provisions of the collective agreement in any other manner.

(2) An association which is party to a collective agreement is treated as having failed to fulfil its supervisory duty referred to in paragraph 1 if a clear and undisputed provision of the collective agreement has not been applied in accordance with the unanimous opinion of the associations which are parties to the agreement and if, taking account of the circumstances, the incorrect application is not adjusted promptly, when the association has received knowledge of it."

37. Sections 8, 10, 11 and 23 of the Non-Discrimination Act (*yhdenvertaisuuslaki*, *diskrimineringslag*; Act no. 1325/2014) read as follows:

Section 8
Prohibition of discrimination

"(1) No one may be discriminated against on the basis of age, origin, nationality, language, religion, belief, opinion, political activity, trade union activity, family

relationships, state of health, disability, sexual orientation or other personal characteristics. Discrimination is prohibited, regardless of whether it is based on a fact or assumption concerning the person him/herself or another.

(2) In addition to direct and indirect discrimination, harassment, denial of reasonable accommodation as well as an instruction or order to discriminate against someone constitute discrimination as referred to in this Act."

Section 10
Direct discrimination

"Discrimination is direct if a person, on the grounds of personal characteristics, is treated less favourably than another person was treated, is treated or would be treated in a comparable situation."

Section 11
Justifications for different treatment

"(1) Different treatment does not constitute discrimination if the treatment is based on legislation and it otherwise has an acceptable objective and the measures to attain the objective are proportionate.

(2) Different treatment is however justified even in the case that justifications for the treatment have not been provided for, if the treatment has an acceptable aim in terms of basic and human rights, and the measures to attain the aim are proportionate. However, this provision is not applied in connection with:

1) the exercise of public authority or the discharge of a public administrative function;

2) conditions for access to self-employment and to occupation or support for industrial and commercial activity;

3) access to education, including further education and retraining, or professional guidance;

4) the membership or involvement in an employees' or employers' organisation or other organisation the members of which practise a particular profession, or the benefits provided for by such an organisation;

5) different treatment on the grounds of ethnic origin."

Section 23
Compensation

"(1) A person who has been discriminated against or victimised is entitled to receive compensation from the authority, employer or education provider or supplier of goods or services who has discriminated against or victimised the person contrary to this Act.

(2) Receipt of compensation does not preclude receipt of compensation by virtue of the Tort Liability Act (412/1974) or other legislation."

II. DOMESTIC PRACTICE

38. In a judgment of 22 December 2010 (KKO:2010:93) the Supreme Court dealt with a case concerning a company that operated a performance-based bonus scheme for its employees. The Supreme Court

found that the company had had the right to unilaterally change the scheme by incorporating a condition limiting the employees' rights. However, such limiting conditions could not violate the mandatory provisions of the Employment Contracts Act.

39. In that specific case, the Supreme Court found that a limiting condition according to which financial loss caused by an industrial action deemed to be illegal was deducted from the performance-based bonus of those who took part in the industrial action was discriminatory. Moreover, the Supreme Court found that even if a strike called by an organisation was ruled to be illegally in breach of the Finnish industrial peace obligation, direct sanctions for that breach could only be taken against the organisation, not against the employees who were its members.

40. The Supreme Court found, furthermore, that the limiting condition imposed by the company by means of which it had attempted to prevent illegal strikes, namely by cancelling employees' performance-based bonuses should they take part, had been based on a legitimate business objective. At the same time, however, it had found that this constituted an attempt to prevent and restrict employees from exercising their freedom of association to safeguard their interests. Industrial action for which a trade union bore responsibility was, as such, a permissible and legal form of an employee's participation in association activities. It would be a violation of the freedom of association for an employee to incur adverse consequences in an employment relationship for exercise of a right the prevention of which was expressly forbidden to the employer under section 1 of chapter 13 of the Employment Contracts Act (see paragraph 35 above) unless the restriction was one provided for by law.

41. The Supreme Court's judgment of 4 March 2016 (KKO:2016:13) concerned a situation where an ID card had been temporarily taken away from an employee who worked as a security screener, for which a valid ID card was a necessary precondition, and who was therefore suspended without pay. In its reasoning, the Supreme Court stated, among other things, that where an employer was considering temporary suspension of work because of the absence of a necessary precondition of working relating to an employee's personal characteristics, the employer had to determine whether the suspension could be avoided by placing the employee on other duties consistent with the employment contract. In the case before it, the employer had failed to assess whether other tasks could have been assigned to the employee and had not offered any specific work. The employer was ordered to compensate the employee for the loss of earnings caused by that omission.

THE LAW

I. THE GOVERNMENT'S OBJECTION *RATIONE PERSONAE*

A. The parties' submissions

42. The Government objected to the admissibility of the application on grounds of its being incompatible *ratione personae* with the provisions of the Convention, as they maintained that responsibility for the matters complained of could not be attributed to the State, the *Posti Oy* being a State-owned company operating under private law (see paragraph 5 above). The Government raised a number of matters relating to the Finnish postal service's position in domestic law.

43. The applicant responded that it was undisputed that the Finnish postal service company – *Posti Oy* – was a company governed by private-law, but argued that that fact had no bearing on the issue of admissibility *ratione personae* since the respondent State had a positive obligation to ensure observance of the Convention between private parties and in this case had failed to protect the applicant's Convention rights.

B. The Court's assessment

44. The Court notes that it is not in dispute between the parties that the applicant's employer is a State-owned company governed by private law and thus not a part of the State's public sector.

45. In this context, the Court reiterates that although the essential object of Article 11 is to protect the individual against arbitrary interference by public authorities with the exercise of the rights protected, there may in addition be positive obligations on the State to secure the effective enjoyment of such rights (see *Demir and Baykara v. Turkey* [GC], no. 34503/97, § 110, ECHR 2008). Genuine and effective respect for freedom of association cannot be reduced to a mere duty on the part of the State not to interfere; a purely negative conception would not be compatible with the purpose of Article 11 nor with that of the Convention in general (see *Ouranio Toxo and Others v. Greece*, no. 74989/01, § 37, ECHR 2005-X (extracts)). Furthermore, the Court has held that Article 11 is binding upon the State as employer whether the latter's relations with its employees are governed by public or private law (see *Humpert and Others v. Germany* [GC], nos. 59433/18 and 3 Others, § 98, 14 December 2023, and *Tüm Haber Sen and Çınar v. Turkey*, no. 28602/95, § 29, ECHR 2006-II). Accordingly, the fact that in the present case, the State itself was not the employer but the sole owner of the company, set up and operating under private law, which had position of employer, does not exclude the applicability of Article 11 in the present case.

46. That being so, the Courts finds that the responsibility of the respondent State was engaged, regardless of the *Posti Oy*'s status. Whether its status has any bearing on the type of the State's obligations under the Articles complained of is a different issue that goes to the merits of the case (see *Hoppen and trade union of AB Amber Grid employees v. Lithuania*, no. 976/20, §§ 193-195, 17 January 2023) and is therefore addressed further below (see paragraphs 54-56).

47. Accordingly, the Court finds that the present application is compatible *ratione personae* with the provisions of the Convention, and dismisses the Government's objection in this respect.

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

48. The applicant complained that the Supreme Court ruling that she could be sent home and have her wages withheld by her employer had entailed a violation of her right to freedom of peaceful assembly and to freedom of association with others, as provided in 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

49. The Court has concluded above that the application is not inadmissible for being incompatible *ratione personae* with the provisions of the Convention (see paragraphs 44-47). The Court finds, furthermore, that this complaint 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. The parties' submissions

(a) The applicant

50. The applicant submitted that the measures taken by the Finnish postal service had not been based on the relevant legislation and were therefore not prescribed by law. They had also lacked a legitimate aim, aiming instead to

defeat lawful industrial action. The applicant asserted that industrial action did restrict an employer's right to manage its employees; if an employer had the right to instruct its employees to perform work that was subject to industrial action, the right to take such action would be defeated. The applicant also argued that her employer had breached the rules of play of labour law as a lockout would have been the right measure if it wished to prevent the employees from working, and that, given international law and practice, it had also been wrong to hire temporary workers to carry out work that was subject to a lawful strike.

51. The applicant submitted furthermore that trade unions had a right to define the limits of industrial action and that in this case had limited it to bans on overtime and the training of new temporary agency workers. It had been possible to separate the applicant's normal duties relating to postal work from the duty to give induction training and she could have been allowed to do postal work without providing training at the same time. Under the principles of neutrality and loyalty, the Finnish postal service should not have directed the applicant to provide training and should have let her do her normal postal work, which would not have entailed any active measure from the employer's side.

(b) The Government

52. The Government emphasised that trade union freedom in Finland was secured by a number of domestic legislative measures as well as instruments of international law which Finland had ratified or was otherwise bound by. The present case concerned a situation where there had been no dispute about the collective action. The situation had been that the collective action had encompassed the provision of induction training, which fell within the scope of the applicant's work duties. The employer had however had the right to manage employees' work, and that right included specifying that induction training had to be carried out while doing postal delivery so that the employer could gain the benefit of the applicant's mail delivery work and provision of induction training at the same time. The employer had conversely not been obliged to receive and pay for a partial performance of the applicant's work duties. No other adverse consequences had been suffered by the applicant; such adverse consequences had been struck down by the Supreme Court in other cases, notably KKO 2010:93 (see paragraph 38 above). The Supreme Court had found a proper balance between labour and management rights.

(c) The third-party intervener

53. The Finnish Post and Logistics Union (PAU), which had been granted leave to intervene as a third party, submitted that the Finnish postal service had hired temporary agency workers and given directions to the current employees with the intention of undermining and impeding possible further

industrial action. In ordering its employees to train the temporary agency workers, the company had in fact carried out "covert" strike-breaking action. The employer's side could have declared a lockout, but had not, and instead individual labour law measures had been applied to pressurise workers into not complying with the lawful industrial action that had been declared by the union. PAU also emphasised that freedom for the party declaring industrial action to define the scope and limits of that action lay at the core of domestic labour law. A consequence of the Supreme Court's judgment would be that measures short of a full strike – such as an overtime ban or a ban on providing training – would lose their meaning. The judgment thus not only limited the right of a trade union to determine the scope and limits of industrial action but also created obstacles for less disruptive means of industrial action during the process of collective bargaining.

2. The Court's assessment

(a) Whether the case concerns the State's negative or positive obligations

54. With regard to whether the domestic authorities placed a restriction on the exercise of rights flowing from Article 11 § 1 of the Convention, within the meaning of Article 11 § 2, the Court refers to the parties' observations summarised in paragraphs 42-43 above). In particular, the Government argued that the acts of the applicant's employer, the Finnish postal service, could not be attributed to the respondent State (see paragraph 42 above). The applicant, although she indeed made a number of arguments about the actions of the employer, also argued that the issue of such attribution was immaterial given the positive obligations that in any event rested on the authorities of the State to ensure protection of her Convention rights in a case such as the present one (see paragraph 43 above).

55. As regards the applicant's argument that the position taken by the employer lacked a basis in domestic law (see paragraph 51 above), the Court notes that the Supreme Court's findings were essentially based on an interpretation of the principles expressly set out in the Employment Contracts Act (see paragraph 35 above), in particular the provision set out in section 1, paragraph 1 of the Act, according to which the employment contract involves a duty for the employee to perform the agreed work under the direction and supervision of the employer. In this regard, the Court reiterates that its power to review compliance with domestic law is limited and that it is in the first place for the national authorities, notably the courts, to interpret and apply the domestic law. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see *Hrvatski liječnički sindikat v. Croatia*, no. 36701/09, § 55, 27 November 2014, and *Federation of Offshore Workers' Trade Unions and Others v. Norway* (dec.), no. 38190/97, 27 June 2002). The Court is therefore satisfied that even if the present complaint were to be analysed from the perspective of the State's

negative obligations, the measures complained of were "prescribed by law", as required by Article 11 § 2 of the Convention.

56. This being said, the Court finds that it is not necessary to reach a firm conclusion as to whether the case is to be analysed in terms of a positive duty on the State or in terms of interference by a public authority which needs to be justified, as the further 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 *Sørensen and Rasmussen v. Denmark* [GC], nos. 52562/99 and 52620/99, § 58, ECHR 2006-I; *Sindicatul "Păstorul cel Bun" v. Romania* [GC], no. 2330/09, § 132, ECHR 2013 (extracts); and *Hoppen and trade union of AB Amber Grid employees*, cited above, §§ 193-195).

(b) General principles

57. The general principles relevant to the issue of trade union freedom have been set out in, among other authorities, *Demir and Baykara*, cited above, §§ 109-11 and §§ 140-54, and *Sindicatul "Păstorul cel Bun",* cited above, §§130-35).

58. For the purposes of the present analysis, the Court further reiterates from its case-law in particular that, 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 among 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, for example, *Sindicatul "Păstorul cel Bun"*, cited above, § 133; and *Hoppen and trade union of AB Amber Grid employees*, cited above, § 201).

59. The Court further recalls that 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 called by trade unions is thus protected by Article 11 (see *Humpert and Others*, cited above, § 104, with further references). The prohibition of a strike must be regarded as a restriction on the trade union's power to protect the interests of its members and thus amounts to a restriction on the trade union's freedom of association. It also constitutes a restriction on the freedom of association of trade union members (ibid., § 105). However, the right to strike does not imply a right to prevail (ibid., § 106). Furthermore, the Court has held that the right to strike is not absolute. It may be subject to certain conditions and restrictions (ibid., § 107). Thus, in particular, restrictions may be imposed on the right to strike of workers providing essential services to the population, while a complete ban on the right to strike in respect of certain categories of such workers requires solid evidence from the State to justify the necessity of those restrictions (ibid. §107, with further references). When determining

whether restrictions on the right to strike comply with Article 11 of the Convention, regard must be had to the totality of the measures taken by the State concerned to secure trade-union freedom (ibid. § 108).

60. In the context of a prohibition on strikes, the Court has held that the question whether such a prohibition affects an essential element of trade-union freedom because it renders that freedom devoid of substance in the circumstances is context specific and cannot be answered in the abstract or by looking at the prohibition on strikes in isolation. Rather, it requires an assessment of all the circumstances of the case, taking into account the totality of the measures taken by the respondent State to secure trade-union freedom, any alternative means – or rights – granted to trade unions to make their voice heard and to protect their members' occupational interests, and the rights granted to trade union members to defend their interests. Other aspects specific to the structure of labour relations in the system concerned also need to be taken into account in this assessment, such as whether the working conditions in that system are determined through collective bargaining, as collective bargaining and the right to strike are closely linked. The sector concerned and/or the functions performed by the workers concerned may also be of relevance for that assessment (see *Humpert and Others*, cited above, § 109).

61. As the Court has often stated, the Convention requires that under national law trade unions should be able, in conditions not at variance with Article 11, to strive for the protection of their members' interests (see for example, *National Union of Rail, Maritime and Transport Workers v. the United Kingdom*, no. 31045/10, § 85, ECHR 2014, and *Association of Academics v. Iceland* (dec.), no. 2451/16, § 24, 15 May 2018).

62. In defining the meaning of terms and notions in the text of the Convention, the Court 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. 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 (see *Humpert and Others*, cited above, § 101).

(c) Application of those principles to the facts of the case

63. The Court observes at the outset that the case did not concern the right to take collective action as such. In particular, there is no question in the present case of a prohibition on strikes. Nor does the case raise an issue regarding the right of a trade union to determine the scope of industrial action in general, such as by including only certain groups of employees in a strike. Rather, the sole issue in the case concerns the question whether the freedom of association as protected under Article 11 of the Convention confers a right on a trade union and its members to unilaterally limit strike action so as to

entitle an employee to refuse part of his or her tasks as set out in the employment contract while retaining the right to perform, and to be paid for, other tasks, thus constraining the employer's right under the employment contract to direct and manage the performance of the work covered by the employee's contractual job description. The fact that the dispute concerned the consequences of a particular sort of selective strike for the rights and duties specified in the individual labour contract entered into between the applicant and her employer does not, however, exclude application of Article 11 of the Convention, which protects both workers and unions (see *Yakut Republican Trade-Union Federation v. Russia*, no. 29582/09, § 30, 7 December 2021). It is nonetheless important that there was no dispute before the Supreme Court about the lawfulness of the collective decision not to work overtime or give induction training or about the fact that sanctions could not be imposed on the applicant for complying with that decision; the issue of trade union rights arose instead as a question of whether the employer had been wrong in not allowing the applicant to do – and be remunerated for – postal delivery work only, as the reason why she wished to do postal delivery work only and not train newcomers at the same time was that a ban on providing training was included in the collective decision.

64. In its direct replies to the applicant's arguments, the Supreme Court emphasised that, while an employee enjoyed protection from dismissal and sanctions because of participation in trade union activities, the principle of loyalty that existed under domestic law in respect of labour contracts did not positively require the employer to mitigate the consequences of industrial action for those participating in it. The Supreme Court referred to the fact that a labour dispute remained one in which the parties sought to inconvenience each other (see paragraph 27 above). The Court has likewise emphasised that a right to participate in trade union actions does not entail a right to prevail (see paragraph 59 above).

65. The Court notes that the Supreme Court was unanimous on the above and on the general principles, but the majority and the minority disagreed in their assessment of the specific situation of the applicant. The majority in the Supreme Court concluded that if the employer were ordered to accept that the applicant do and be paid for postal delivery work but not associated training, it would be a matter of allowing the applicant to require to do work other than what the employer had lawfully instructed her to do within the framework of their employment contract and the employer's right to manage an employee's work in accordance with the employer's own interests. The majority of the Supreme Court also considered that it was a matter of the applicant's demanding the right to do work that had less value for the employer, since, while one could carry out the two work tasks – postal delivery work and training – separately, it was valuable to the employer that they could be and were carried out together. In the specific instance, the Supreme Court also emphasised that, seen from the employer's perspective (see paragraph 30

above), the training work was not of minor importance. The minority of the court were, in contrast, of the view that the two work tasks were separable (see paragraph 33 above).

66. The Court observes at this juncture that while the parties agreed on the facts before the Court, their perspectives differed: the applicant viewed the situation principally as one in which she had been ordered to carry out work (that is, to provide training) falling within the scope of the industrial action (namely the ban on, among other things, providing training), and was not allowed to do work (namely postal work) that she was entitled to do under her employment contract. In contrast, the Government viewed it as a situation in which the employer had declined to allow the applicant to do and be remunerated for work that was not in accordance with the employment contract and the general principles relating to employers' rights to manage work (that is, to do postal work while not at the same time providing training).

67. The parties' differing perspectives set out in the preceding paragraph correspond essentially to the split in the Supreme Court (see, in particular, paragraphs 27-31 and 33 above). The Court notes that whether various work tasks are separable or not is an issue that will necessarily depend on the nature of those tasks, the labour contract and any regulation of the employment relationship under domestic law. It must accordingly be examined on a case-by-case basis, and first of all by the domestic courts. In this case, the Supreme Court specifically addressed that issue and the particular circumstances of the labour relationship in the case before it, and specifically explained its view that, while one could separate the two different work tasks – postal work and giving training – in the sense that postal work could be carried out without providing training at the same time, it nonetheless made a difference to the employer whether the two tasks were carried out together or not (see paragraph 30 above). The Supreme Court's findings in these matters do not have any appearance of arbitrariness or manifest unreasonableness that would justify the Court's setting them aside.

68. The applicant argued before the Court that one had to go beyond those formal starting points and take into account that the selective strike (that is to say, the collective decision that PAU's members were not to give induction training) had been decided in order to ensure the effectiveness of a potential ban on postal work, in respect of which the employer was hiring temporary staff to do the work that that strike would target. As indicated above (see paragraphs 50-51), the applicant pointed out that hiring temporary agents to work during a legal strike was to her knowledge unlawful in all Contracting States, and also ran counter to international law. She therefore maintained that her employer had circumvented proper labour law procedures, as the employees could have been locked out collectively; instead the employer had used the rules of individual employment contracts. Moreover, the method employed by the applicant's employer had defeated the trade union's right to decide the scope of its industrial action.

69. While the Court does not exclude the relevance of those matters to its overall assessment of whether the Supreme Court's judgment disproportionately impinged on the applicant's rights under Article 11 of the Convention, it does note that the Supreme Court's judgment would not remove the effect of the strike in so far as it was aimed at putting pressure on the employer. It also observes that a new collective agreement was in fact reached (see paragraph 12 above). The key issue before the Supreme Court was limited to the interpretation of the respective rights and obligations of the parties to the employment contract in the context of the specific type of selective industrial action (see paragraph 63 above). In any event, even if one were to consider that the findings of the Supreme Court would impact upon trade unions' ability to take strike action, in the light of the narrow issue decided upon, this was not a situation which exposed trade union members to a real or immediate risk of detriment or of being left defenceless against future attempts to reduce pay or downgrade other work conditions (see *UNISON v. the United Kingdom* (dec.), no. 53574/99, 10 January 2002). In examining a case such as the present one, the Court must also consider the totality of the measures taken by the State concerned to secure trade union freedom (see, for example, *Demir and Baykara*, cited above, § 144). In view of, among other things, the legislation and practice cited above (see paragraphs 34-41 above), as well as the general principles set out by the Supreme Court in the present case (see paragraphs 22-26 above), the Court is satisfied that trade union freedom in general has been secured.

70. In the light of the foregoing, the Court finds it pertinent in the circumstances of the present case to reiterate that, when exercising its supervisory function, its task is not to take the place of the national courts but rather to review, in the light of the case as a whole, whether the decisions they have taken fall within the power of appreciation afforded to States in interpreting the provisions of the Convention.

71. In view of the specific subject matter and context of the dispute at issue (see paragraph 63 above) and the detailed reasons given by the Supreme Court for the decision in the applicant's case, and taking note of the overall situation with regard to the regulation of trade union interests as it appears from the Supreme Court's judgment and the various law materials submitted by the parties to the Court, the Court is satisfied that the domestic authorities, in seeking to strike a fair balance between the employment rights of the applicant, in her capacity as a union member, and the management rights of the employer, remained within the wide margin that is to be afforded to domestic authorities in a matter such as the one in the present case (see paragraph 58 above). The Court therefore does not discern any grounds for it to substitute its views for those of the Supreme Court in this case.

72. The foregoing considerations are sufficient to enable the Court to conclude that there has been no violation of Article 11 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 11

73. The applicant complained that by accepting that her employer had validly withheld her wages the domestic authorities had failed to secure her rights under Article 11 of the Convention in breach of the prohibition of discrimination as provided in Article 14, which reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

74. The Government submitted that the applicant's complaints did not disclose any interference with rights guaranteed under Article 11 of the Convention and that Article 14 was therefore inapplicable. In any event, the applicant did not allege that she had been discriminated in relation to persons who would have been in a similar position to hers, namely that of an employee whose work had been impeded for reasons falling within her own control. In addition, all employees had been able to personally decide whether or not to refuse to provide training and whether or not to participate in trade union action. There had been no discrimination and no different treatment of the applicant because of her status as a trade union member or her "status" as participant in trade union action or activity. Even if the applicant were considered to have been treated differently from persons in analogous or similar situations because of an identifiable characteristic of "status", the difference would have pursued a legitimate aim and been proportionate. The Government emphasised that it had been a matter of not paying the applicant for work she had refused to do over two days.

75. The applicant submitted that whereas members of the trade union had not been free to choose whether they wanted to give training or not, non-members could choose freely. On that basis, the employer had treated members and non-members, who had been in analogous situations since members and non-members alike had been instructed by the employer to give training, differently. No relevant, objective or reasonable justification for the different treatment had been advanced by the Government.

76. The Finnish Post and Logistics Union (PAU), which had been granted leave to intervene as a third party, submitted that the Finnish postal service had consistently denied that it had taken industrial action. Domestic law prohibited discrimination on the basis of trade union "activity", not trade union membership. In the present case, all persons who had participated in the trade union activity, regardless of their membership status, had been treated less favourably than those that had not. No justification that would render that different treatment lawful had been put forward.

77. The Court notes that the Supreme Court made an assessment of the specific case and concluded that the various work tasks of the applicant were

so intrinsically linked that the applicant could not claim a right under her employment contract to do postal delivery work only without giving induction training at the same time (see paragraph 30 above). The Court has found above that it does not have any basis for considering that issue differently (see paragraph 67) and it was against that background that the Supreme Court concluded that the applicant was in the same position as any other employee who did not carry out their work in accordance with their employment contract for reasons that fell within their own control.

78. In the circumstances, the Court is satisfied that, in view of the reasoning of the Supreme Court, there is no indication of any issue under the two provisions.

79. In the light of the above circumstances, the Court considers that the application discloses no appearance of a violation of Article 14 of the Convention taken in conjunction with Article 11 and that the complaint under those provisions is manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 11 of the Convention admissible and the complaint under Article 14 taken in conjunction with Article 11 inadmissible;

2. *Holds* that there has been no violation of Article 11 of the Convention.

Done in English, and notified in writing on 17 December 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President