



The blanket ban on trade unions within the French armed forces is contrary to the Convention

The European Court of Human Rights has today issued its Chamber judgment¹ in the case of [Matelly v. France](#) (application no. 10609/10).

The case concerned the absolute prohibition on trade unions within the French armed forces.

The Court held, unanimously, that there had been:

a violation of Article 11 (freedom of assembly and association) of the European Convention on Human Rights.

The Court found in particular that the authorities' decision in respect of Mr Matelly (an order to resign from an association of which he was a member) amounted to an absolute prohibition on military personnel joining a trade-union-like occupational group, formed to defend their occupational and non-pecuniary interests, and that the grounds for such a decision had been neither relevant nor sufficient. It concluded that, while the exercise by military personnel of freedom of association could be subject to legitimate restrictions, a blanket ban on forming or joining a trade union encroached on the very essence of this freedom, and was as such prohibited by the Convention.

Principal facts

The applicant, Jean-Hugues Matelly, is a French national who was born in 1965 and lives in Le Plessis-Robinson (France). An officer in the gendarmerie, he has worked as a management accountant in the Picardy Gendarmerie Region since 2005. He is also an associate researcher in a laboratory affiliated to the French National Scientific Research Centre (CNRS).

In April 2007 an internet forum entitled "Gendarmes and Citizens" (*Gendarmes et citoyens*) was created; Mr Matelly described it as an administered and moderated space, intended to enable gendarmes and citizens to express themselves and exchange views. Towards the end of March 2008 an association entitled "Forum for Gendarmes and Citizens" (*Forum gendarmes et citoyens*) was formed to provide a legal framework for this internet forum; Mr Matelly was a founder member and subsequently its vice-president. As well as civilians and retired gendarmes, other serving gendarmes were involved in the association as members, and some sat on its administrative board.

On 6 April 2008 Mr Matelly informed the Director General of the National Gendarmerie that the association had been set up, and specified that its primary purpose was one of communication.

On 27 May 2008, the day after the official announcement that the association had been formed, the Director General of the National Gendarmerie ordered Mr Matelly and the other serving gendarmes who were members of the association to resign from it immediately. This senior commanding officer considered that the association resembled a trade-union-like occupational group, which was

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.

prohibited under Article L. 4121-4 of the Defence Code, on account of the reference in the definition of its objectives to “defending the pecuniary and non-pecuniary situation of gendarmes”.

On 28 May 2008 Mr Matelly wrote to the Director General, informing him that the association was willing to amend the ambiguous references in its memorandum of association in the light of the military obligations concerned. On 5 June 2008 Mr Matelly resigned from the association. On 26 July 2008 the association’s administrative board removed the reference in its memorandum of association to “defending the pecuniary and non-pecuniary situation of gendarmes”.

On 26 February 2010 the *Conseil d’État* dismissed an application for judicial review of the order to resign which had been sent to Mr Matelly and other serving gendarmes who were members of the association.

Complaints, procedure and composition of the Court

Relying on Article 11 of the Convention (freedom of assembly and association), Mr Matelly complained of an unjustified and disproportionate interference in the exercise of his freedom of association. Mr Matelly also alleged a violation of Article 10 (freedom of expression), in view of the fact that none of the documents which were published by the association and to which he had contributed had been challenged by the military authority. Lastly, under Articles 6 § 1 (right to a fair hearing) and 13 (right to an effective remedy), he complained that the proceedings before the *Conseil d’État* had been unfair.

The application was lodged with the European Court of Human Rights on 6 February 2010.

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

Mark Villiger (Liechtenstein), *President*,
Ann Power-Forde (Ireland),
Ganna Yudkivska (Ukraine),
Vincent A. de Gaetano (Malta),
André Potocki (France),
Helena Jäderblom (Sweden),
Aleš Pejchal (the Czech Republic),

and also Claudia Westerdiek, *Section Registrar*.

Decision of the Court

Article 11

The Court decided to examine the complaints under Articles 10 and 11 solely from the perspective of Article 11. The latter article guaranteed the right to freedom of association, of which trade-union freedom was one aspect. The Court emphasised that the provisions of Article 11 did not exclude any occupation or office from its scope. They merely provided, particularly in respect of members of the armed forces, that “lawful restrictions” could be imposed by the States. The Court reiterated that those “lawful restrictions” were to be construed strictly and to be confined to the “exercise” of the rights in question, and must not impair the very essence of the right to organise. In this connection, the Court pointed out that the right to form and join a trade union was one of the essential elements of the freedom in question.

With regard to Mr Matelly’s case, the Court considered that the order to resign from his membership of the association “Forum for Gendarmes and Citizens” amounted to interference with the exercise of his rights as guaranteed by Article 11. This interference had been prescribed by law, since the Defence Code specifically distinguished between membership of ordinary associations,

which was authorised, and membership of occupational groups, which was forbidden. In addition, the *Conseil d'État* had ruled that an association which existed to defend the pecuniary and non-pecuniary interests of military personnel belonged to the second category.

Holding that this prohibition pursued a legitimate aim, namely preservation of the order and discipline necessary in the armed forces, of which the gendarmerie formed a part, the Court then examined whether this interference had been necessary in a democratic society. It noted at the outset that the relevant provisions of the Defence Code, on the basis of which the order given to Mr Matelly had been taken, prohibited military personnel, purely and simply, from joining any trade-union-like group. While the Court noted that the French State had put in place special bodies and procedures to take into account the concerns of military personnel, it nonetheless considered that those institutions did not replace the granting of freedom of association to military personnel, a freedom which included the right to form and join trade unions. The Court was aware that the special nature of the armed forces' mission required that trade-union activity – which, in fulfilling its purpose, could bring to light the existence of critical views regarding certain decisions that affected the non-pecuniary and pecuniary situation of military personnel – be adapted to those particular circumstances. It therefore emphasised that, under Article 11, restrictions, even significant ones, could be imposed on the forms of action and expression of an occupational association and of the military personnel who joined it, provided that such restrictions did not deprive them of the general right of association in defence of their occupational and non-pecuniary interests.

However, the Court noted that the order that Mr Matelly resign from the association had been taken on the sole basis of its memorandum of association and the possible existence, in a relatively wide interpretation of its purpose, of a trade-union dimension. Moreover, the authorities had not had regard to Mr Matelly's attitude and his willingness to comply with his obligations by amending the association's memorandum.

In conclusion, the Court considered that the grounds put forward by the authorities to justify the interference in Mr Matelly's rights had been neither relevant nor sufficient, given that their decision amounted to an absolute prohibition on military personnel joining a trade-union-like occupational group which had been set up to defend their occupational and non-pecuniary interests. This blanket ban on forming or joining a trade union encroached on the very essence of freedom of association, could not be considered proportionate and had not therefore been "necessary in a democratic society". It followed that there had been a violation of Article 11.

Other articles

The Court examined Mr Matelly's complaints under Articles 6 and 13 of the Convention under Article 6 alone. It found no appearance of a violation in this connection, and the complaint was accordingly rejected as manifestly ill-founded.

Just satisfaction (Article 41)

The Court held that France was to pay Mr Matelly 1,400 euros (EUR) in respect of costs and expenses.

Separate opinion

Judge De Gaetano, joined by Judge Power-Forde, expressed a separate opinion. This opinion is annexed to the judgment.

Judgment [ADEFDROMIL v. France](#) (no. 32191/09)

The Court has today issued a Chamber judgment in the case of **ADEFDROMIL v. France**, which also concerned the prohibition on trade unions within the French armed forces.

The applicant association, the Association de Défense des Droits des Militaires (Association for the Protection of the Rights of Military Personnel, ADEFDROMIL), had been set up in 2001 by two servicemen, Captain Bavoil (then a serving officer) and Major Radajewski, with the statutory aim of “examining and defending the collective or individual rights and pecuniary, occupational and non-pecuniary interests of military personnel”. From June 2007 onwards, the applicant association lodged several applications for judicial review, on the grounds of abuse of authority, against administrative decisions that it considered to have an adverse effect on the pecuniary and non-pecuniary situation of military personnel. The *Conseil d’État* dismissed these applications on the ground that the applicant association was in breach of the provisions of Article L. 4121-4 of the Defence Code, and that, in consequence, it did not have standing to request that the decisions in question be set aside.

In this case the Court also concluded, unanimously, that there had been a violation of Article 11 on account of the blanket ban which prohibited military personnel from forming or joining a trade union.

The judgments are available only in French.

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Press contacts

echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Céline Menu-Lange (tel: + 33 3 3 90 21 58 77)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

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.