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Volume

58

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PREFACE

The growth of the jurisprudence of judicial and quasi-judicial tribunals dealing with human rights is a major feature of the development of international law in recent years. The present volume, devoted exclusively to the decisions of the European Court of Human Rights, is an attempt to provide in the *International Law Reports* a proper reflection of that expansion. Although earlier judgments of this tribunal have appeared in these *Reports* (see the table at p. xi below), its activity in the last four years has been such that further deferment of the presentation of so large a body of material contributing significantly to the development both of the law of human rights and of international law generally seemed inappropriate. As a result of the decision to include all those judgments rendered up to the end of 1979 and, as well, two decisions given in 1980 on applications for damages in two of the earlier cases, the present volume has had to be extended to approximately 730 pages, some 15% more than usual. A number of technical consequences of the specialist character of the volume are explained in the Editorial Note at p. vii below.

Of course, the present volume does not exhaust the significant materials in the field of human rights. The next volume of the *Reports* will contain the "views" of the United Nations Committee on Human Rights in two cases in respect of which it reached conclusions in 1979. Decisions of the European Court of Human Rights following those printed in the present volume will appear in regular sequence in successive volumes of these *Reports*. The *Deweer* case (27 February 1980) and the *Artico* case (13 May 1980), for example, will be published in volume 60. Also, we are conscious that much material of importance and interest is contained in many decisions of the European Commission of Human Rights not subsequently made the subject of consideration by the European Court of Human Rights. To a selection of the more important of such decisions of the European Commission we hope to be able to devote a volume or more in the not too distant future.

The production of the present volume owes much to two persons. As will be seen, each decision is preceded by a substantial summary. Eleven of these have been prepared by Mr C. H. R. Thornberry and six by Mr T. F. Martin. In addition, Mr Martin has been primarily responsible for putting the volume together, preparing the Tables and the Index and seeing the whole through the press. For all that they have done, we warmly thank Mr Thornberry and Mr Martin.

To this should be added an expression of appreciation to the Secretariat of the European Court of Human Rights for providing the mimeographed texts of the judgments, to my secretary, Mrs S. Rainbow, and to our printers, the Gomer Press, who have admirably discharged in the setting of this volume, which contains no photo-reproduction, an exacting task.

It is particularly sad to have to record the deaths within a few days of each other of two major friends of and contributors to these *Reports:* Professor Alona E. Evans and Judge Richard Baxter. Of Judge Baxter I shall write in the Preface to the next volume. Professor Alona Evans, Professor of Political Science at Wellesley College, Massachusetts—whose prominence as an international lawyer was reflected in her position, at the time of her death on 22 September 1980, as President of the American Society of International Law—carried for a number of years the heavy burden of contributing the cases from the United States of America. She did so with skill, efficiency and patience. I note her association with these *Reports* with gratitude, respect and affection.

E. LAUTERPACHT

TRINITY COLLEGE,
CAMBRIDGE
October 1980

EDITORIAL NOTE

As the present volume contains only cases emanating from a single tribunal, the European Court of Human Rights, a number of technical changes have been made in the form of presentation usually followed in the *International Law Reports*.

The system of Classification is followed to the extent of placing all the cases within Part VI, A, I, "The Individual in International Law—In General—Human Rights and Freedoms". Beyond this, no attempt is made further to classify the cases since each touches so many aspects of the law of human rights. Instead, the cases are printed in chronological order, according to the dates of the judgments.

The bold-letter headings at the beginning of each case seek to identify the main points of law dealt with in the case, whether or not related exclusively to human rights. This, coupled with the fulness of the Index, has been thought to justify the omission of cross-references.

The standard Table of Contents, indicating the main Parts of the Classification, and the Classification itself have been replaced by a Table of Contents which lists the cases in the order in which they are printed. The Table of Cases arranged according to Courts is unnecessary in this volume, but the alphabetical Table of Cases is maintained. The Table of Treaties consists, of course, mainly of references to the provisions of the European Convention on Human Rights.

To assist the reader in finding earlier decisions of the European Court of Human Rights printed in previous volumes of the *International Law Reports*, alphabetical and chronological tables of judgments before 1976 appear immediately following the Table of Cases Reported.

The names of the cases are those given to them by the European Court of Human Rights, except for the *Case concerning Certain Aspects of the Laws on the Use of Languages in Education in Belgium* which has been abbreviated to the *Belgian Linguistics Case*.

Where a judgment mentions earlier cases printed in the *International Law Reports*, appropriate footnote references have been inserted.

The texts from which the judgments have been printed are the mimeographed texts supplied by the Secretariat of the Court. Where bold figures in square brackets appear in the margins, they correspond to the pagination used in such of the cases as have already appeared in the series of reports published under the auspices of the Court.

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PART VI

THE INDIVIDUAL IN INTERNATIONAL LAW

A—IN GENERAL

I.—Human Rights and Freedoms

TABLE OF CONTENTS

TABLE OF CASES REPORTED

TABLE OF CASES DECIDED

BY THE EUROPEAN COURT OF HUMAN RIGHTS BEFORE 1976

[ALPHABETICAL]

(The bold figures represent the volume numbers of these Reports.)

TABLE OF CASES DECIDED

BY THE EUROPEAN COURT OF HUMAN RIGHTS BEFORE 1976

[CHRONOLOGICAL]

(The bold figures represent the volume numbers of these Reports.)

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TABLE OF TREATIES

[This table contains a list, in chronological order according to the date of signature, of the treaties referred to in the decisions printed in the present volume. It has not been possible to draw a helpful distinction between treaties judicially considered and treaties which are merely cited.

In the case of bilateral treaties, the names of the parties are given in alphabetical order. Multilateral treaties are referred to by the name by which they are believed commonly to be known, *e.g.* Hague Convention No. 1 of 1899; Treaty of Versailles, 1919. References to the texts of treaties have been supplied, including wherever possible at least one reference to a text in the English language. The full titles of the abbreviated references will be found in the List of Abbreviations printed in the volume containing the Consolidated Tables and Index to Vols. 1—35.]

The individual in international law—Human rights and freedoms—Right to form and join trade unions—Whether creating obligations for State in its capacity as employer—Right to strike — Non-striking members of striking union denied retroactive application of pay award—Whether a violation of right to form and join trade unions—Whether discrimination—European Convention for the Protection of Human Rights and Fundamental Freedoms, Articles 11 and 14

SCHMIDT AND DAHLSTRÖM CASE

European Court of Human Rights. 6 *February* 1976

(Chamber composed of: Balladore Pallieri, *President;* Mosler, Cremona, Wiarda, O'Donoghue, Mrs Pedersen and Petrén, *Judges)*

SUMMARY[1]: *The facts:*—The Applicants, Swedish nationals, were, respectively, a professor of law and an army officer. They were members of two trade unions affiliated to two of the main federations representing Swedish State employees. In 1971, after the expiry of one collective agreement and during negotiations for a new agreement, the Applicants' unions called selective strikes not affecting the sectors in which the Applicants worked. The Applicants thus did not come out on strike. They complained that on conclusion of the new agreement they, as members of the "belligerent" unions, were denied certain retroactive benefits paid to members of other trade unions, and to non-union employees, who had not participated in the strikes.

Proceedings before the Commission

The Applicants alleged breaches of Articles 11[2] and 14[3] of the Convention. The applications were declared admissible and the Commission, in its report of 17 July 1974, stated its opinion:

—that Article 11(1) might legitimately extend to cover State responsibility in the field of labour-management relations and provide some protection for unions against interference by employers;

[1] Prepared by Mr. C. H. R. Thornberry.

[2] Article 11 provides that:

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.

[3] Article 14 provides that:

The enjoyment of the rights and freedoms set forth in this 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.

—(by nine votes to one), that the Government's policy of denying retroactive benefits to non-striking members of belligerent unions did not in the circumstances infringe the Applicant's right, under Article 11(1), to form and join trade unions;
—that in view of the preceding finding, it was not called upon to examine whether the action complained of was justified under Article 11(2);
—(by eight votes to one), that the differential treatment complained of was in the circumstances justified as an aspect of industrial relations policy and that there had been no violation of Article 14 read in conjunction with Article 11(1).

Proceedings before the Court

The Commission referred the case to the Court in order to obtain a decision as to whether the facts disclosed any breach of the Convention. The Court decided to constitute a single Chamber to deal with this matter and with the *Swedish Engine Drivers' Union* case.[4]

Held (unanimously):—that there had been no breach either of Article 11 or of Articles 11 and 14 taken together.

As to Article 11:—The Court took the view that the Convention at no point made a distinction between the functions of a Contracting State as the holder of public power, and as employer; and held that Article 11 was binding upon the State as employer. It was unnecessary to consider an allied submission that the Convention could not impose upon the State obligations which were not incumbent upon private employers. Article 11(1) did not secure any particular treatment of trade union members by the State, such as the right to retroactivity of benefits resulting from a new collective agreement. Such a right was not indispensable to the effective enjoyment of trade union freedom and in no way constituted an element necessarily inherent in a right guaranteed by the Convention.

As to the Applicants' submission that the application to them of the principle of non-retroactivity tended to discourage them from thenceforth availing themselves of their right to strike (which, in their submission, was an "organic right" included in Article 11), the Court recalled that in the *Belgian Police* case[5] it had held that the Convention gave each State a free choice of means to ensure compliance with the purpose of Article 11. The right to strike was one of the most important of such means. It was not an unqualified right either under the Convention or the European Social Charter. The Court held that the Convention required that under national law trade unionists should be enabled, in conditions not at variance with Article 11, to strive through the medium of their organisations for the protection of their occupational interests. There was no indication that the Applicants had been deprived of this capacity.

There being no breach of a right guaranteed by Article 11(1) it was unnecessary to consider Article 11(2) (pp. 14-16).

[4] See below, p. 19.
[5] 57 *I.L.R.* 262.

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