



Press Release

Appeal to the Federal Constitutional Court: Do Civil Servants get rid of themselves?

Karlsruhe/Munich, 15 January 2018 – Are German civil servants allowed to strike? The Federal Constitutional Court is dealing with this question on Wednesday, 17 January 2018. Teachers from various German federal states submitted an appeal to the Federal Constitutional Court against the ban on strikes for civil servants (2 BvR 1738/12 *et al.*).

During teaching time the teachers had taken part in industrial actions of the Trade Union for Education and Science which was punished by disciplinary measures, since according to German Basic Law civil servants are prohibited from striking. The European Convention on Human Rights, however, allows a strike of civil servants if the civil servants concerned exercise activities which are not directly sovereign tasks, as it is the case with teachers.

In the year 2014 the Federal Administrative Court dealt with this dilemma and concluded that the ban on strikes for civil servants as enshrined in the German constitution has priority over the European Convention on Human Rights. However, in the long term, the legislator should adjust German law to the European Convention on Human Rights and grant a right to strike, at least, for some of the civil servants.

"In our view there can be no right to strike for civil servants. If the Federal Constitutional Court recognizes a right to strike for civil servants, then this would finally mean that collective agreements would have to be concluded for them", says *Thomas Drosdeck*, Partner of the international commercial law firm BEITEN BURKHARDT. "Since a strike is only admissible if it pursues an objective which can be regulated by collective bargaining. However, at present the remuneration of the civil service is regulated by law", explains the lawyer. *Markus Künzel*, Labour Law Specialist and also Partner at BEITEN BURKHARDT, adds: "If the Federal Constitutional Court follows and adopts the opinion of the Federal Administrative Court, then the legislator would have to grant a right to strike for civil servants who do not exercise directly sovereign tasks." *Wolfgang Lipinski*, also a Labour Law Specialist and a Partner at BEITEN BURKHARDT, further adds: "In many cases it is within the discretion of the authorities whether or not they grant the status of an established civil servant. It is questionable whether teachers would be granted the status of an established civil servant in the future. In any event, employers in the public sector would have a new and wider scope of discretion."



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Dr. Thomas Drosdeck, Markus Künzel and Dr. Wolfgang Lipinski are available for further information, statements and guest contributions.

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- Through our long-established offices in Germany, Brussels, China and Russia we advise large and mid-sized companies and corporate groups from various industries, banks and financial institutions as well as the public sector.