

## Tilburg University

### Introduction by the editorial team

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## Introduction by the Editorial Team

Within the normative framework of fundamental labor standards, freedom of association and the right to collective bargaining have a specific function: they aim to facilitate a fair and equitable dialogue about the establishment of other rights and working conditions. Thus, freedom of association and the right to collective bargaining can be seen as enabling rights, opening the gateway to other terms and conditions of employment, and are at the heart of what is called *industrial democracy*. Conventions no. 87 and no. 98 are perhaps the most well-known of ILO conventions and most member states have ratified them, but some large and powerful states have not. Freedom of association and corollary rights, however, are indispensable to giving all workers a fair say in matters that affect them. This edition of ILaRC features several cases that relate to these key workers' rights.

Yvonne Erkens of Leiden University analyzes the case of *SOMO and others v. C&A Nederland C.V.* under the Complaints and Disputes Committee for the Dutch Agreement on Sustainable Garments and Textile (CDC). Several of these sectoral agreements have been adopted in the Netherlands. They aim to address human and workers' rights in the supply chains of transnational corporations and are based on the UN Guiding Principles for Business and Human Rights and the OECD Guidelines for Multinational Enterprises. In this case, the Dutch company C&A is alleged to have made inadequate efforts to prevent the violation of trade union rights at the production site in Myanmar of its supplier in China. Trade union leaders and members were systematically harassed and intimidated; several employees were also dismissed or forced to resign. The CDC recommends, in its interlocutory ruling, that the parties first conduct a dialogue, following the instructions of the CDC, and that C&A reports on the result. Erkens explains that this case illustrates the scope of the obligations under the covenant and how corporations should conduct their due diligence process. The degree of involvement in adverse human rights impacts determines the content of the obligations to “respect and remedy” those. Erkens concludes that the CDC's recommendation, to conduct and report on a constructive dialogue, is a realistic solution in light of the current tense situation in Myanmar.

Anette Hemmingby of BI Norwegian Business School examines the ruling by the European Court of Human Rights (ECtHR) in *Norwegian Confederation*

of *Trade Unions (LO) and Norwegian Transport Workers' Union (NTF) v. Norway*. In this case, using a balance test, the Norwegian Supreme Court held unlawful the announced boycott by NTF to force the shipping company Holship to enter into a collective agreement. According to the court, the boycott had an unlawful purpose and constituted an unacceptable restriction to the right of establishment under Article 31 of the Agreement on the European Economic Area. Despite criticizing how the court used the test, the ECtHR held that Norway did not violate Article 11 of the European Convention of Human Rights on the freedom of assembly and association. In analyzing this case, Hemmingby deepens the question of conflicting rights, in this case, the fundamental human right of freedom of assembly and association, on the one hand, and the freedom of establishment, on the other. According to Hemmingby, “[t]he message from the ECtHR is clear: economic rights and market rights are not considered equal to fundamental rights such as the right to collective action.”

Antonio Rodrigues de Freitas Júnior and Henrique da Silveira Zanin of the University of Sao Paulo School of Law analyze the decision by the ILO Committee on Freedom of Association (CFA) in relation to Brazil in Case no. 3327. In this commentary, Rodrigues de Freitas and Silveira Zanin comment on the distinction between purely political strikes and protest strikes, highlighting that, according to the ILO CFA, jurisprudence “protest strikes driven by dissatisfaction with economic and social state policies are entirely acceptable.” This is exactly what the ILO CFA reiterates in its conclusions to Case no. 3327: although purely political strikes fall outside the scope of the ILO principles of freedom of association as laid down in ILO Conventions no. 87 and 98, protest strikes are allowed. Thus, the ILO CFA invites the Brazilian government to “submit for tripartite dialogue the issue of fines imposed for abusive exercise of the right to strike,” the matter that was at stake in this case.

As always, the editorial team welcomes suggestions from readers of cases to be included in later issues. Please email [ilarc@hhs.nl](mailto:ilarc@hhs.nl).