Introduction by the editorial team

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Introduction by the Editorial Team

International Labour Rights Case Law (*ILaRC*) features salient, innovative, or ground-breaking cases in which fundamental labor standards and other key work-related human rights play an important role. Its focus is not only on cases, decisions, and recommendations by international courts and mechanisms, such as regional human rights courts or the supervisory bodies of the International Labour Organization, but also on cases in which international standards and principles are applied at a national level. Depending on whether a state follows a monist, dualist, or mixed system of application of international law in its domestic legal order, ratified international labor standards may be directly applicable or may indirectly transposed into national legislation. Further, national courts may and in fact often use international norms—whether binding or nonbinding—to reinforce their argumentation. This edition of *ILaRC* features several cases from different higher or supreme national courts in which fundamental labor standards are at the heart of the matter.

Eva Kocher of the European University Viadrina analyzes a recent case by the Federal Constitutional Court (Bundesverfassungsgericht) of Germany in which an employee and long-time member of the Works Council in a German logistics company had been fired for his insulting racist slur toward a colleague. This case, she explains, offers a good example of the interrelations of labor law, constitutional law, and equal treatment legislation. The Bundesverfassungsgericht highlights the importance of the employer's duty to protect employees from discrimination. The case focuses on "the employee's duty of care, a general and implied contractual duty," that the fundamental rights of colleagues need to be respected and discriminatory behavior ought to be prevented. A genuine labor law approach to this type of discrimination, Kocher observes, is unfortunately still largely absent.

Nauber Gavski da Silva of the Universidade Estadual de Campinas examines a judgment of the Brazilian Supreme Court about the so-called Dirty List of Slave Labor, a register published by the Brazilian government of employers that have exploited workers under slavery-like conditions. In this case, an employers' association argued that the register violates the constitutional principle of separation of powers and that employers do not have a fair trial, because they are listed in the register without a prior court decision. The Supreme Court

did not agree and underlined that the employers are listed only after all possibilities of appeal in administrative proceedings are exhausted. This decision means that the list will continue to be published in the future and, according to da Silva, seems to be considered as an effective policy to combat modern slavery in Brazil.

Federico Rosenbaum Carli of the Catholic University of Uruguay considers the judgment of the Labour Appeal Court of Montevideo about the legal qualification of the relationship between Uber and its drivers as either an employment relationship or as self-employment. ILO Recommendation No. 198 on the Employment Relationship plays an important role in the Court's considerations. Uber argued that the company drivers' contracts are quite different from employment contracts. The Court determined that the company does not provide a transportation service but instead related technology and that it serves simply as an intermediate between driver and passengers. Uber drivers, the Court concluded, can be classified as dependent workers. Applying the principles of ILO Recommendation No. 198, the Court concluded that the facts that point to the qualification of the relationship as self-employment are less important than those that point to an actual employment relationship.

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