CROSS-BORDER COLLECTIVE ACTIONS IN EUROPE: A LEGAL CHALLENGE

A Study of the Legal Aspects of Transnational Collective Actions from a Labour Law and Private International Law Perspective

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intersentia
Antwerpen – Oxford
Cross-Border Collective Actions in Europe: A Legal Challenge
Filip Dorssemont, Teun Jaspers and Aukje van Hoek (eds.)

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Antwerpen – Oxford
http://www.intersentia.com

D/2007/7849/59
NUR 825

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PREFACE

The present volume offers a lawyer’s perspective of cross-border collective action in Europe. The subject has been dealt with starting from the well-documented case law on transnational collective action in the transport sector (e.g. collective action or boycotts) which was primarily organized by the International Transport Workers’ Federation. Subsequently, this practice was extrapolated by means of a *pars pro toto* to cross-border collective action in general. Due to the expanding “Europeanisation” of the economy industrial disputes with a cross-border impact will and do arise, as the recent cases of *Viking* and *Laval* may show. Moreover, industrial disputes become or may become a more common feature in multinational enterprises when they operate in a European and a global context. These disputes with a potential transnational dimension give rise to legal questions such as to the right to resort to collective action.

The choice between the Member States concerned has been made due to the presence (or the absence) of sufficient case law, which challenges labour conditions of seamen on board ships sailing under a flag of convenience as produced by a local “*iudex portus*”. That case law has stimulated the authors in their legal discussion of transnational industrial action in general. Other case law concerning transnational industrial action has been analysed as well. The various national reports have contemplated the theme from a labour law as well as from a private international law perspective. The following Member States have been involved in the study: Belgium, Finland, France, Germany, Italy, the Netherlands, Spain, Sweden and the United Kingdom.

The right to take collective action lies at the heart of industrial relations. Historically, the recognition of the right to take collective action is a distinguishing feature of a democratic, i.e. non-totalitarian vision of industrial relations. An effective means to have recourse to collective action is a necessary tool for the development of a system of cross-border industrial relations. The question arises whether divergencies between domestic labour law and domestic private international law impede the effective use of cross-border collective action. Furthermore, the question arises to what extent Community law can constitute a means to resolve legal obstacles to cross-border collective action or whether Community law itself can amount to an obstacle to the effective use of collective action (Cf. the *Viking* and *Laval* cases).
The European Commission has made increased efforts to promote the quality of industrial relations within the European Union. It has recently been the instigator of comparative studies on industrial relations at the national level as a lever for the development of a European system of cross-border industrial relations. (Cf. the studies on “The Freedom of Association” (co-ordinated by Professor D. Valdés Dal-Ré) and “The Evolving Structure of Collective Bargaining in Europe (1990–2003)” (coordinated by Professor S. Sciarra)). Furthermore, in the recent Communication on the Social Agenda 2006–2010 the elaboration of an optional framework for transnational collective bargaining is envisaged. However, up until now scarce attention has been paid to the legal issues of transnational collective action in the European area.

The present volume is the outcome of an international Colloquium held at Utrecht University on 28 April 2006. The Colloquium managed to enhance expertise in the field of industrial relations, especially in European and comparative terms. The exchange of information between legal experts from the European and national trade union movement and lawyers from the European academic community was extremely fruitful.

This book starts with several contributions addressing general issues related to the right to take collective action in the transnational context. The second part deals with the national reports on the approach of labour law. Similarly, the third part contains the reports dealing with the issues raised from a private international law perspective. The three parts are completed with a comparative contribution. The report of the United Kingdom is an integrated report dealing with both branches of law.

The Colloquium was made possible due to the joint efforts that emerged from a unique academic partnership between the Labour Law department of the Utrecht Law School (Utrecht University) (Prof. Dr A. Ph. C.M. Jaspers; Dr F. Dorssemont) and the Faculties of Law of the Erasmus University of Rotterdam (Prof. Dr C.J. Loonstra) and Groningen University (Prof. Dr W.A Zondag; Dr H. Voogsgeerd). The involvement of the Labour Law Departments from Rotterdam and Groningen operated within the framework of the Bakels Institute. The Wiarda Institute of Utrecht University and the Faculties of Law of the Erasmus University and Groningen University financed this academic co-operation. The project could not have been organized without a substantial contribution from the European Commission (Budget heading 04.03.03.01 Industrial relations and Social Dialogue).

We are grateful to the European Trade Union Confederation and the European Transport Workers’ Federation for their moral support.
Many distinguished colleagues dedicated their time and selfless efforts in attending a preparatory expert seminar at Utrecht University in the winter of 2006 and in attending the colloquium. Their valuable written contributions provide ample evidence of their highly esteemed intellectual efforts.

Last but not least, we owe many thanks to Peter Morris for his linguistic revision of the written contributions and to Michelle Möhl for her precious editorial assistance.

This study has been finished by June 2007.

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