

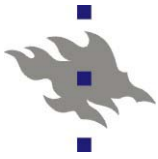


HELSINGIN YLIOPISTO
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Sanctions and industrial action

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22.03.2012 , FORMULA
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Background

The Viking case

C-438/05 International Transport Workers' Federation

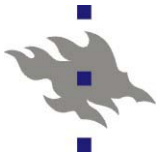
The Balpa dispute

Report of the Committee of Experts on the Application of Conventions and Recommendations (2010), iloex nr 062010GBR087

The Laval case

C-341/05 *Laval un Partneri*
AD 2009 nr 89

(punitive damages 550 000 SEK = 60 000 euro)



AD 2009 nr 89

The collective actions were in conflict with EU law

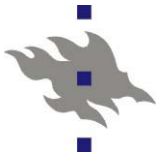
Laval claimed damages

Economic damages (around 140 000 Euro)

Punitive damages (around 140 000 Euro)

Relevance of doctrine of Member State Liability?

(C-46/93 and C-48/93 Brasserie du pêcheur and
Factortame [1996] ECR I-1029)



Court practice

”Horizontal” liability

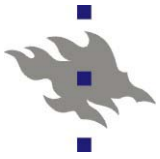
Competition

C-453/99 Courage v. Crehan
[2001] ECR I-6297

C-295/04 to C-298/04 Manfredi v.
Lloyd [2006] ECR I-6619

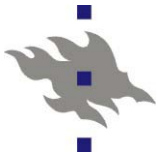
Free movement of workers

C-94/07 Raccanelli [2008] ECR I-
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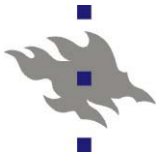
The "Courage" approach

1. Does the piece of EU law have direct horizontal effect?
2. Is the possibility of seeking compensation for loss required to ensure the full effectiveness of the piece of EU law in question?
3. Could the claim be awarded according to national law?



The Courage approach 2

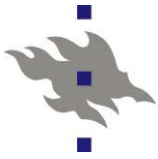
1. Does the piece of EU law have direct horizontal effect?
2. Is the possibility of seeking compensation for loss required to ensure the full effectiveness of the piece of EU law in question?
3. Could the claim be awarded according to national law?
4. Is it possible according to national law to award the damages in **similar cases**?
5. Does national rule which limits the possibility of claiming damages, render the exercise of Union law virtually excessively difficult?



Possible solutions 1

TRADE UNION IMMUNITY
AGAINST ECONOMIC LIABILITY –
(at least in "normal" cases)

- TEU 4.2
- Lack of EU Competences
- Non predictability and equal treatment of different systems
- The responsibility of Member States



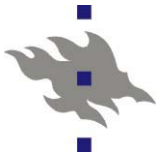
Possible solutions 2

Effective enforcement and the principle of equivalence suggest that *when we have horizontal effect in EU law we also have to have some remedies.*

What follows if we apply national sanctions in accordance with the principle of equivalence?

The Nordic countries – moderate economic sanctions:

In Finland maximum of 29.500 euros (can be imposed repeatedly). In the other Nordic countries no maximum fixed in law, but many factors as economic capacity of the union is taken into account.

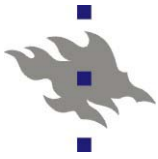


COMPARATIVE OUTLOOK

Internal differences: Unlawful action more expensive in Denmark than in Sweden and Finland.

Germany: Rather strict liability for unions in principle, but in practice there is a heavy burden of proof on the employer on amount of damage and own measures taken to minimise it.

UK : Under TULCRA 250 000 £ maximum damages for large trade unions, 10 000 £



COMPARATIVE OUTLOOK 2

Netherlands and Austria – lack of practice.

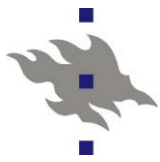
Belgium a very special case.

Member States with an individualistic approach:

Italy: Also trade union responsibility in certain cases (maximum 25.000 euro)

France: Economic liability sometimes relevant in the public sector.

The New Member States: In theory rather strict liability, in practice very few cases.



Some Conclusions

Economic sanctions or liability clearly imposed on unlawful industrial action all over Europe – different limitations apply.

The application of national standards clearly seems to offer effective sanctions in most cases – the Courge approach works.

The Monti II proposal seems to point to the responsibility of the State: Mediation and Alert Mechanism.