NORWAY

June 28th, 2001

Henning Jakhelln

THE RIGHTS OF SEAFARERS

Seamen collective labour law, strikes, boicotting - flags of convenience

I. Introduction

I.1 General

Norway faces the sea – towards the Arctic Ocean, the Atlantic Ocean, the North Sea and Skagerak – having a coast of 2 650 km in length (but if fjords and islands are included, the length of the coast is approximately 21 000 km). The distance from the northernmost point (the North Cape) to the southernmost point (Lindesnes) is approximately 1 752 km in a straight line. In extent, the country is the fifth largest in Europe, but the population density is the next lowest, with approximately 13 inhabitants per square kilometre.

Norway boasts long traditions in shipping, hunting and fishing – industries which are closely related to the country's situation and nature – and these are industries which are of increasingly great importance for the Norwegian people and Norwegian industry.

I.2 Population and employment

The country's population is approximately 4 503 000 persons, of whom approximately 3 201 000 (approx. 73.4 %) are in the 16-74 age group. The number of persons employed was approximately 2 269 000 (approx. 71 %), and the number of unemployed 81 000 (approx. 3.4 %).

By Jan. 1st, 2001, about 64.000 sailors were employed on ships in international trade, about 8.000 in the domestic trade, and there were about 12.000 fishermen.

> As regards the international trade, the following information illustrates the relation between the ordinary Norwegian ship register (NOR), the international Norwegian ship register (NIS) and the number of Norwegian sailors under foreign flags:

NOR	Norwegians	8.560	foreigners	580	totally	9.140
NIS		4.915		22.835		27.750
Foreign flags		2.290		24.940		27.230

I.3 The Merchant Shipping Fleet - NOR and NIS

At the beginning of the year 2000 the Norwegian registered merchant fleet numbered 1 659 ships totalling 22.1 gross tons. Of this, 19.1 million gross tons was registered in NIS, and 3.0 million gross tons in NOR.

954 ships were registered in the Norwegian Ordinary Ship Register (NOR) totalling 3.0 million gross tons.
Of these, there were 50 tankers totalling 1.9 million gross tons, and 904 dry cargo ships totalling 1.1 million gross tons. Passenger ships accounted for the largest part of the dry cargo fleet with 404 ships (45 %).

The Norwegian International Ship Register (NIS) included 705 ships totalling 19.1 million gross tons. There were 251 tankers totalling 10.3 million gross tons registered in NIS, of which 74 were gas tankers, 73 chemical carriers, and 104 oil tankers. While tankers accounted for 5.0 % of the NOR fleet, tankers registered in NIS accounted for 35.6 %. The NIS fleet had 454 dry cargo carriers totalling 8.8 million gross tons. Of these, 91 were combination ships, 79 bulk carriers, 10 refrigeration and freezer ships, 17 passenger ships and 21 supply ships for the oil industry.

Size: 900 ships or 94.3 % of the ships registered in NOR were less than 5 000 gross tons. The equivalent figures for ships registered in NIS were 179 and 25.4% respectively. Further, 225 ships, or 31.9 % of the ships in NIS were in the range 20 000-49 999 gross tons. Clearly this size group contained the most ships. 75 NIS ships were in the range 50 000-99 999 gross tons, and 26 NIS ships were 100 000 gross tons or over. Even though the ships in the largest group accounted for only 3.7 % of all NIS ships, this group of ships accounted for 20.7 % of the total gross tonnage in NIS.

Age: 27.7 % of the gross tonnage registered in NIS was 20 years old or older as at 31.12.1999. 16.8 % of the gross tonnage flying the NIS flag was younger than 5 years old, and 21.8% of the gross tonnage was between 5 and 9 years old.

I.4 Unions

I.4.1 General.

The influence of interest organisations in Norwegian industry and commerce is considerable, and Norwegian industry and commerce are affected by the fact that employers and employees belong to unions to a large extent. The percentage belonging to a union, however, varies considerably from branch to branch.

I.4.2 Employer's organisations

The Confederation of Norwegian Business and Industry (NHO) is the largest employer organisation. In member companies there were approximately 450 000 employees in 2000, in approximately 15 800 companies. As a rule, individual companies are members of NHO through membership of a national union.

Of other employer organisations can be mentioned the Federation of Norwegian Commercial and Service Enterprises, with approximately 9 600 companies, and the Norwegian Association of Local and Regional Authorities(KS), all of which have municipalities and county authorities (except Oslo) as members. It must also be mentioned that the State as an employer enters into wage agreements with the civil servants' unions. In relation to this can also be mentioned The Employer's Organisation NAVO, of which activities such as the Norwegian Medicinal Depot, Postbanken, the Norwegian Agricultural Authority, Statnett SF, Statskog SF, Telenor AS are members. Other employer organisations include the Norwegian Shipowners' Association (NR), Norwegian Employers' Association for the Financial Sector, Forestry Employers' Association, Norwegian Taxi Association, etc.

I.4.3 Employee organisations

The National Federation of Trade Unions in Norway (LO) is the largest of the employee unions. In 2000 LO had approximately 830 members through member organisations. The National Federation of Trade Unions for Government Employees had approx. 107 000 members, The National Federation of Trade Unions for Municipal Employees had approx. 160 000 members, while the Norwegian United Federation of Trade Unions had approx. 155 000 members.

Of the employee organisations outside LO, special mention must be made of the Confederation of Vocational Unions (YS), which had approximately 243 000 members in 2000.

However, the union picture is always changing. During the past two years, several organisations have left the Confederation of Academic and Professional Unions in Norway (AF) and formed a new union – Federation of Norwegian Professional Associations. Establishment of a new educational union, which is to include the Teachers' Union Norway, and the Norwegian Union of Teachers, and the establishment of a new federation for police, teachers and nurses is at this time (2001) under consideration by the respective organisations.

Besides LO, YS and the Federation of Norwegian Professional Associations, there are several employee unions which are not members of a federation. These include the Norwegian Union of Teachers, which has approximately 90 000 members, and the Leader Organisation for Executives (until 1998 Norwegian Union of Work Managers??) which has approximately 14 000 members.

I.5.Shipping unions
I.5.1 Unions of employers

The following unions of employers as regards shipping should be mentioned: Norges Rederiforbund (Norwegian Shipowners' Association - previously Employer's Association for Ships and Offshore Vessels), Rederienes Landsforening, Hurtigbåtredernes forbund, Kommunenes Sentralforbund, Fiskebåtrederenes Forbund, Norges Fiskarlag, Fraktefartøyenes Rederiforening and Fraktefartøyenes Arbeidsgiverforening.

I.5.2 Trade unions

The following trade unions regarding sailors should be mentioned: Norsk Sjømannsforbund (Norwegian Seamens' Association), De Samarbeidende Organisasjoner (The Co-operating Unions, includes Norsk Sjøoffisersforbund [Norwegian Maritime Officers' Association] and Det norske maskinistforbund [Norwegian Union of Marine Engineers]), Norsk Olje- og Petrokjemisk Fagforbund (NOPEF), Oljearbeidernes Fellessammenslutning (OFS) and Mannskapsseksjonen i Norges Fiskarlag (the crew´s section of the Norwegian Fishermens´ Union).

II. Overview of the sources of law as regards Norwegian labour law

The overall picture of sources of law in labour legislation is somewhat composite. It consists of international conventions and recommendations, legislation with appurtenant regulations, wage agreements, staff regulations and other rules. In addition must be noted case law, custom and other practice in working relationships, besides what has been agreed between the parties in the individual employment contract.

On the fundamental level it is important to emphasise the importance of wage agreements, an importance which is closely related to the relatively great degree of importance which the unions have for Norwegian business life. In order to understand how Norwegian working life functions, it is necessary to be aware of the importance of wage agreements. It must also be emphasised that wage agreements can not only supplement the provisions contained in legislation, but even to a certain extent deviate from otherwise mandatory legal provisions. Further, agreed provisions in a wage agreement will set aside contradictory provisions in individual employment contracts, *inter alia*, where both the employer and employee are members of a union which is a party to the wage agreement (the principle of invariability). In addition, several important

reforms in Norwegian labour law have come about through provisions agreed in a wage agreement, which have later been made legislation and supplemented. The right to holidays and holiday pay is an illustrative example of this interaction between wage agreements and legislation.

Further, the international aspect must be emphasised – especially the relationship between international rules and Norwegian domestic law – particularly in relation to two circumstances. Norwegian law is based partly on the presumption that Norwegian domestic law is consistent with international law, and that Norwegian domestic law must be understood such that it is *inter alia* consistent with the international conventions on human rights; in addition, as a participant in the European Economic Area (EEA), Norway is obligated to adhere to the provisions which derive from the EEA agreement. Norwegian law is partly based on the principle standpoint regarding Norwegian sovereignty, and on the principle that Norwegian domestic law and international law are two different legal areas, such that Norwegian domestic law will sometimes deviate from the provisions of international law, especially where the legislator has purposely chosen a deviating solution. Both these aspects are of importance, not least in the labour law area.

> According to § 2 of the EEA agreement the provisions in the law "which serve to fulfil Norway's obligations according to the agreement, ... in the event of conflict will take precedence over the other provisions which regulate the same circumstances. The same applies if a regulation which serves to fulfil Norway's obligations under the agreement, is in conflict with another regulation, or comes into conflict with subsequent legislation." The legal provision must be seen in conjunction with Protocol 35 of the EEA agreement, which states that the EEA agreement "aims at achieving a uniform European Economic Area, which is based on common rules, without a requirement that any contracting party transfers legislative authority to any body within the European Economic Area. Consequently, this will have to be achieved through national procedures", and where it is further stated: "In the event of possible conflict between effective EEA rules and other legislation, the EFTA states are obligated to introduce a rule, if necessary, stating that EEA rules shall take precedence in these cases."
>
> Similarly, § 3 of the Act relating to Human Rights lays down that the provisions contained in the conventions and protocols included by the Act "shall, in the event of incompatibility, take precedence over provisions in other legislation."

However, it must be pointed out that it is not always given that the legislator according to Norwegian domestic law can choose a deviating solution, *inter alia* because § 110 c of the Norwegian Constitution instructs the instruments of the State to "respect and ensure" human rights.

Finally, there is reason to emphasise the fragmental character of labour legislation. This fragmental character is particularly visible in relation to the individual working relationship between employer and employee; on the collective level, however, the labour dispute legislation is general, but such that there are separate rules for government employees.

The legal relationship between employer and employee, and the relationship with public inspection authorities is not regulated in a general Act, but by several laws of a more or less special nature. In addition, the relationship with both social and social security legislation must be emphasised – Norwegian legislation does not allow employees who are terminated because of reduction in production or rationalisation measures any right to claim severance pay from the employer, which is a legal position which must be viewed in relation to the employee's right to *inter alia* unemployment benefits under social security legislation.

> In many ways, the Working Environment Act can be characterised as a relatively general law in this area, and it is central to the labour law debate. The Act gives several provisions regarding requirements for the working environment and the parties' obligations otherwise, including personnel safety representatives, working environment committees, etc. (organised safety work), responsibilities of producers and suppliers, registration and notification of industrial accidents and industrial illnesses, the right to leave from work, leave for educational purposes, child and youth labour, working hours, payment of wages and holiday pay, employment, labour contracting, termination and dismissal, etc. including protection from termination during pregnancy, after birth and adoption, and while doing military service, as well as preference in the event of new employment; further, the Act regulates rights regarding transfer of the activity, the legal position of employees sent out by the company, and public inspection authorities.
>
> Important areas of working life, however, are exempt from the scope of the Working Environment Act; this concerns *inter alia* shipping, hunting and fishing – including processing of the catch on board factory ships, cf, § 2 item 2 of the Working Environment Act.

Because of the fragmental character of labour legislation, it is necessary to discuss in particular the rules which govern seafaring employees, and put these into relief as to the rules which otherwise – normally – are valid for employees on shore. The fragmental character of labour legislation, however, does mean that unintentional differences can occur. It is partly because of this that it is still in its place to raise questions as to whether the present arrangement is rational.

III. Labour conflicts and the right to organize

III.1 General

The general rules contained in the Industrial Disputes Act also apply to labour conflicts - strike, lockout or other labour conflict – which are used by or against seafarers.

In order to legally start a labour conflict, if the relationship between the parties was regulated previously by a wage agreement, not only must that wage agreement be cancelled and the notice period for the cancellation of it have expired, but also the individual wage agreements must be cancelled. In addition, notification must have been given to the State Mediator, cf. § 28 item 1 of the Industrial Disputes Act of 5 May 1927.

The Industrial Disputes Act is thus based on the principle that during the continuance of the wage agreement labour peace will be maintained, and on the principle that a wage agreement – in general, at least - does not expire automatically, but must be terminated.

> It is mentioned that the obligation to keep the industrial peace during the continuance of the wage agreement is not absolute; as far as conflicts of interests are concerned, labour peace is relative, since on more closely defined conditions, political demonstrations and sympathy actions can be held. As far as court disputes are concerned, however, the obligation to keep the industrial peace is absolute.

Further, the Industrial Disputes Act assumes that work stoppage (strike) or shutting workers out of the workplace (lockout) is started by termination of the individual working relationship with the agreed or legal notice of termination period, cf. Rt. 1934 p. 209 and § 29 item 1 of the Industrial Disputes Act.

Termination can be done by or of the individual employee, or by a union or employer organisation in accordance with a power of attorney given by the individual employees or employers, or by termination *en masse* by the union or employer's organisation in accordance with the wage agreement or other legal grounds between the organisations ("collective dismissals").

> Termination by the employee is in this context has the same status as termination by the employer, cf. § 1 item 7 of the Industrial Disputes Act, which defines termination of employment as "the workers' termination of their workplaces or employers' termination of employees with the intention of implementing a work stoppage or lockout". In practice, termination of certain employees will be given by employees, and for other employees by employers, such as ARD 1916-17 p. 13 illustrates.

Whether it is a question of collective or individual co-ordinated terminations, the formulation must be so clear as to eliminate any doubt about what the matter concerns; otherwise the conflict will be illegal and not according to contract, cf. ARD 1982 p. 135.

In accordance with § 56, subsection 2 of the Working Environment Act, the notice period for termination in such cases is normally 14 days for termination by or of the individual employee, at any rate in the case where a union itself is a party to the conflict or acts on behalf of the employees, cf. Supreme Court 1985 p.507. The notice period is thus considerably shorter than is the case stated in § 58of the Working Environment Act. The equivalent rule is not contained in the Seamen's Act; the individual notice periods must be adhered to here, cf. ARD 1992 p. 90.

In accordance with § 5 of the Seamen's Act, the mutual notice period is one month, but the seaman has been employed by the shipping company for a period of at least 5 consecutive years, there is a mutual notice period of at least two months, and at least three months must be given if the period of employment with the shipping company has lasted for at least 10 years. The master of a ship must be given a notice period of three months. It is expressly stated that the seaman is entitled to continue in the position during the notice period, § 5 item 5.

The right to start a conflict is based in principle on that the individual employment contract must be terminated in accordance with the current applicable rules; and the other conditions for termination of the working relationship must also be fulfilled. This means that the ship must be in port. However, it must also be noted that ports which are visited only for the purpose of bunkering, and/or setting sick and injured ashore cannot be regarded as the port of termination of a working relationship; neither can other unforeseen, short harbour visits because of consideration for the safety of those on board, the ship or the cargo, cf. § 6 of the Seamen's Act.

These requirements for termination of the individual working relationship mean that in practice in will be relatively difficult to implement a legal strike or lockout for employees on board ship which is at sea for any length of time, and relatively seldom makes harbour visits where vacation of position can occur.

In this context it is noted that the Seamen's Act includes anyone who carries out work on board, independent of which type of work is done, and independent of whether the work can be said to be of a nautical nature. For example, waiters on board passenger ships and production workers on board factory vessels fall under the rules of the Seamen's Act. It will also be difficult to implement legal strikes or lockouts for these groups of workers.

There is a common presumption that a union has power of attorney to terminate on behalf of its members, cf. Rt. 1934 p. 209 and ARD 1992 p. 90. Such termination must be accompanied by a list of names of the members of the individual employers, if the employers' association does not have a power of attorney to receive the termination of employment of their behalf, cf. ARD 1992, p. 90.

Wage agreements often provide the legal basis for collective notification of work stoppage exchanged between the organisation, cf. for example, § 3-1 item 1 of the Basic Agreement between the Norwegian Federation of Trade Unions (LO) and the Confederation of Norwegian Business and Industry (NHO) (2000). Such notice includes only the members of the organisation, and the other party is entitled to be informed as to which employees are covered by the notice, cf. Rt. 1934 p. 209, ARD 1962 p. 65, ARD 1976 p. 127, see also ARD 1980 p. 207 and ARD 1992 p. 90, and even ARD 1998 p. 289. This also applies to the extension of the work stoppage through further terminations, cf. ARD 1985 p. 81, which also discusses the employer's passive attitude with regard to having the list of names put forward.

A notice of termination which has been served cannot be recalled, in whole or in part, unless the other party consents, cf. ARD 1983 p. 176 and §§7 and 9 of the Contracts Act, see also ARD 1984 p. 118.

A notice of termination must as a rule be unconditional, and given as a termination with full work stoppage, such that it cannot be limited regarding which tasks it shall include or its length of time, unless the wage agreement in question provides the basis for it, or such limitations or conditions must be regarded as accepted by the other party, cf. ARD 1985 p. 76, ARD 1994 p. 182, ARD 1995 p. 214.

In the case of sympathy actions regarding conflicts concerning the right to belong to a union and the right to enter into a wage agreement may nevertheless be conditional, cf. § 3-6 item 5 of the Basic Agreement LO-NHO (2000) with Minutes entries, see also ARD 1995 p. 98 and ARD 1995 p. 129.

III.2 Sympathy strikes

The obligation to keep industrial peace which is contained in a wage agreement is no hindrance to initiating actions in support of another legal conflict (sympathy strike), because it is a question of a labour conflict concerning circumstances outside the parties' own wage agreement, cf. ARD 1926 p. 47, cf. also Rt. 1930 p. 1127. A sympathy action which in reality concerns circumstances pertaining to the parties' own wage agreement will

therefore be contrary to the obligation to keep industrial peace, cf.. ARD 1940 p. 8. A sympathy strike can also be initiated in support of a foreign conflict, cf. ARD 1924-25 p. 179, compare also ARD 1956-57 p. 16. No condition is made that the sympathy action has the potential of being a genuine support for one of the parties to the main conflict, or that it is reasonable to initiate a sympthy action (ARD 1927 p. 71 and ARD 1933 p. 82), and the extent of the sympathy action can in practice be greater than that of the main conflict. Neither is there a requirement that the sympathy strike must only last a short time (ARD 1985 p. 6), nor that the main conflict has led to a work stoppage (ARD 1927 p. 71).

> A sympathy strike will be contrary to the individual work agreements, however, if these are not terminated legally. See ARD 1976 p. 127 regarding the provisions governing collective dismissals, and notification to the State Mediator must also be taken into consideration. Similarly, § 3-6 of the Basic Agreement LO-NHO [1998] which lays down rules regarding collective dismissal is given equivalent application, cf. also ARD 1995 p. 26 and ARD 1995 p. 129. The wage agreement can also contain further limitations of the right to utilise sympathy actions, cf. for example ARD 1994 p. 237.

III.3 Political demonstration strikes

Since the obligation to keep the industrial peace contained in the wage agreement only concerns circumstances which must be regarded as agreed or presumed through the wage agreement, the obligation to keep the industrial peace does not prevent strikes as political demonstrations. Such strikes, however, must only last a short time, and notification must be given in advance. There must also exist a certain proportionality between the duration of the demonstration strike and its effects (a 12-hour political strike on oil installations in the North Sea is regarded as lasting a long time, cf. ARD 6 April 2001). Notification must contain both the reason for the action and its duration (ARD 1984 p. 85). Nevertheless, general deadlines or certain requirements as to form and content of the notification can hardly be required as regards the notification; a conditional advance notification must be taken into consideration in the evaluation of whether sufficient notice has been given for a subsequent concrete notification (ARD 11 June 2001; 36 hours notification in advance is regarded as sufficient). In addition, the purpose of the action must not be to change the agreed pay and work conditions, or to interfere in an on-going or imminent wage agreement.

III.4 The State Mediator

The job of the State Mediator is to try and bring the parties to agreement, and to ensure that the conflict of interest is attempted solved in a peaceful manner, without the use of a labour conflict. The State Mediator can therefore not start mediation on his own initiative, even though dismissals have not taken place. In order for the State Mediator to be able carry out the designated function, however, as already mentioned it is of practical importance that the notification is submitted to the State Mediator as soon as dismissals have taken place in connection with a labour dispute, cf. § 28 item 1 of the Industrial Disputes Act. Under no circumstances can a labour conflict be started before 4 working days have passed from when notification was submitted to the State Mediator, § 29 item 1. The State Mediator may prohibit a work stoppage until official mediation has been completed at the latest two days after such notification has been received "if he expects that the work stoppage, either because of the type of business, or because of its extent, will harm the public interest", § 29 item 2. Such prohibition will in practice normally take place. The parties must wait ten days after this prohibition is dispatched before the individual party may demand cessation of mediation, but mediation shall cease at the latest four days after such demand is made, § 36. A labour conflict may then subsequently be initiated. **See further addendum I.**

III.5 Voluntary and compulsory arbitration – National Wages Arbitration Board

If mediation in the dispute is not successful, the parties can jointly bring the dispute before the *National Wages Arbitration Board.* A decision by the National Wages Arbitration Board has the same effect as a wage agreement, cf. § 1 of the Act relating to wage boards in labour disputes of 19 December 1952 No. 7.

> The National Wages Arbitration Board consists of seven members, of whom three are neutral, two are from the employees and two are from the employers, but only five participate in voting, since one member from the employees and one member from the employers stand down.

The Act relating to wage boards is based on both parties being in agreement on taking the dispute to the National Wages Arbitration Board; such consideration by the wage board is voluntary. It is therefore not sufficient for only one party to demand it. The Wage Board Act itself does not allow the authorities to order that a dispute shall be resolved by a wage board.

By Act – or possibly provisional ordinance, which may be given by the King in Council when the Storting (the Norwegian Parliament) is not sitting – it

may be laid down that one or more stated disputes shall not be resolved by a labour dispute – possibly that an ongoing labour dispute shall cease – and that these disputes shall be resolved by the National Wages Arbitration Board or another arbitration tribunal.

> It is remarked that in connection with wage settlements, it is not unusual that resolution by compulsory wage boards is ordered by one or more special laws – possibly by provisional ordinance.

III.6 The right to organize and legal provisions etc. regarding use of compulsory wage boards.

This frequent use of compulsory arbitration is problematical in relation to the ILO Conventions Nos. 87, 98 and 154 and the practice which is attached to these conventions, as well as Art. 11 of the the European Convention on Human Rights regarding the right to organize, and further Article 6 (4) of the European Treaty on Social Security, which deals especially with the right to strike, and Art. 8 item 1 (d) of the UN Convention on Economic, Social and Cultural rights which deals especially with the right to strike, as well as Art. 22 of the UN Convention on civil and political rights regarding the right to belong to a union. **See further addendum II.**

> During the period 1953-1994, 50 special acts and 33 royal decrees were issued, ordering the dispute to be settled by compulsory arbitration, and further 20 other royal decrees issued by statute authority, of which 8 dealt with compulsory arbitration in the petroleum sector.

As far as the right to strike is concerned, it seems obvious to use a basis – such as the European Court of Justice points out in a decision dated 6 February 1976 (*Schmidt & Dahlström vs Sverige*) – that this is a right which can be derived from Art. 11 of EHRC regarding the right to belong to a union. In the interpretation of Art. 11 of EHRC, it seems that both the ILO Conventions and other conventions must be attached great importance – as the European Court of Human Rights has done in its practice - EMD has even attached importance to a unanimous recommendation cf. in this regard the European Court of Human Rights decision of 30 June 1993, *Sigurdjónsson vs. Island*, compare also the decision of the European Human Rights Court of 25 April 1996, *Gustafsson vs. Sweden.*

III.7 The right to organize and employment agreements with «yellow dog» clauses

§ 55 of the Working Environment Act lays down a prohibition – if a vacant position is advertised – against the employer including a requirement, either in the advertisement or by other means, that the applicants provide further specified information*, inter alia,* information as to whether the applicants are members of an employee organisation or not cannot be required. It is also prohibited for an employer to implement measures to gain such information by other means.

> The prohibition is not applicable, however, if such information is a part of the nature of the position, or if it is part of the purpose of the employer's activity to promote certain political, religious or cultural views and the position is of importance to the accomplishment of such purpose. In the case such information will be required, it must be stated in the advertisement for the vacant position. Contravention of this prohibition is punishable, cf. § 85 of the Working Environment Act, and Rt. 1980 p. 598.

There is no equivalent provision included in the Seamens Act.

Pursuant to the ILO Convention No. 98 (1949) Art. 2 (a) an employee shall be protected against a working relationship being made conditional by «the condition that he shall not join a union or shall relinquish trade union membership». The relationship with the other conventions which aim at protecting the right to belong to a union, and the presumption that Norwegian law is expected to be in accordance with international law, seems to entail that it will not be lawful for an employment contract for seamen – as a condition for employment – that a seaman shall not be a member of a union. It seems, therefore, that a «yellow dog» clause must be regarded as invalid.

> Cf. also HRD 16 Feb 2001 (Olderdalen Ambulanse as vs. Paul Mo), where a bidding round entailed that the activity Kåfjord Ambulanseservice as previously had carried out was taken over by Olderdalen Ambulanse as. The Supreme Court decided that no transfer of activity had taken place, but that the two employees had received an offer by Kåfjord Ambulanseservice as of employment in this company, conditional upon the fact that they were not members of a union. The employees accepted the offer within the deadline, but gave notification that they would be members of a union. The Supreme Court regarded the condition as illegal, and that the employees therefore were entitled to compensation in accordance with the law of torts. Each of them was awarded NOK 100 000. The condition – even though it was illegal – must however be regarded as an assumption for the offer, and therefore lead to the conclusion that no binding employment contract had been entered into. The circumstances occurred during the time before the Act relating to Human Rights, and the Supreme Court

emphasised that "the effects of the conditions regarding the right to belong to a union rest on the application of the presumption principle regarding the relationship to international law." The Supreme Court also referred to Article 11of EMK, Article 8 of the UN Convention on Economic, Social and Cultural Rights, and Article 22 of the the UN Convention on Civil and Political Rights, and especially to the ILO Convention No. 98 (1949) Art. 1 No. 2. Further, Supreme Court referred to the fact that the Committee for Municipal Affairs in Recommendation S No. 187 (1998-1999) had stated that they were in agreement that «both the positive and negative right to belong to a union is protected by Norwegian law through the Human Rights Act»; a bill that had been presented was therefore rejected as unnecessary.

IV. The right to organize - sympathy strikes and boycott

IV.1 The general basis

A consequence of case law is that, under further defined conditions, it will be justified to use a boycott and sympathy strike to force a wage agreement with a company which does not respect the employees' right to belong to a union. This view is also presupposed by the Norwegian Parliament (Ot.prp. 26/1992-93 s. 28, Innst. O. 98/1992-93 s. 9 and Ot.forh. 1992-93 s. 657). As an example, the transport workers' union could be justified in boycotting a ship where the crew does not belong to a union and the agreed wages are very low, in order to force an agreement with the employees on board. In such cases, notification of a sympathy action could be made conditional, cf. ARD 1924-25 p. 179.

IV.2 Boycott as a sympathy strike

A boycott by the transport workers would, in relation to their employer, entail a work stoppage, entirely or partly. In relation to their employer, however, it is a question of a sympathy strike, because the work stoppage does not concern their own pay and working conditions. Further, it is also a condition that the main conflict shall be "legal", which can cause difficulties where the main conflict refers to the relationship between a foreign registered ship and its crew.

Jurisdiction and choice of laws as regards boycott as a sympathy strike
The judgement of the legality of the conflict shall in principle take place in accordance with the law of the ship's home country. For ships flying the flag of convenience, however, it is doubtful whether the law of the country of registration would be regarded as decisive. Presumably, strong grounds could be given for using the owners' domicile as the basis for the choice of laws, such as is usually the case for the choice of laws in labour law situations. However, in that case there can be reason to make the

reservation that the conflict must be regarded as legal, if the law of the owners' country of domicile limits the employees' right to use a labour conflict to a greater degree than that which is allowed by international law, cf. especially the ILO Convention No. 98 Art. 4. This does not usually represent any substantial modification for countries which recognise the system of trade unions and collective bargaining for pay and working conditions. Perhaps another view can be taken of this: The sympathy action has been notified or implemented for Norwegian employees concerning their work in this country, and the judgement of the sympathy action otherwise shall take place in accordance with Norwegian laws and agreements. There can then be reason to judge the legality of the main conflict as though the parties to the main conflict were Norwegian. The question cannot be seen to have been considered in case law.

IV.3 The legality of boycott

On the other hand, as regards the ship (owners, charterers, etc.) the transport workers' work stoppage will be a boycott.

The Boycott Act of 1947 is based on the fact that boycott is allowed, if the boycott is kept within the limits described in § 2. A boycott is thus contrary to law when no reasonable advance notice has been given, or a full description given of the reason for the boycott. Use of a boycott which has an illegal purpose, or which cannot achieve its end without leading to a violation of law, is also illegal. The same concerns a boycott which is used or maintained by illegal means, as, for example, a threat of work stoppage against the provisions of the wage agreement. (Rt. 1967 p. 1073). Further, the boycott is illegal if it is carried out or maintained in an unnecessarily inflammatory or offensive manner, or by untrue or misleading information. Further, a boycott is illegal if there is "no reasonable relationship between the interest which is to be promoted by the boycott, and the harm it will cause". Here the Boycott Act is based on a proportionality principle, which requires a broad evaluation of both the parties' conflicting interests and possible effects on others (Rt. 1997 p. 334). Finally, a boycott is illegal if the boycott will appear "improper", or if it «will harm essential interests of society». Case law has attached little independent importance to these two latter alternatives beyond the proportionality principle (see for example, Rt. 1997 p. 334).

It can scarcely be required that the ship must have any special connection to Norwegian conditions for a boycott implemented by Norwegian trade unions to be a legal. A boycott could also be initiated against a ship in spot trade, and which only occasionally visits Norwegian ports.

On the other hand, "reasonable notice" must be given to the ship in advance; the ship's representatives must have been given individual and concrete notification (Rt. 1959 p. 1080). This requirement for notice is intended to prevent actions on a failing factual basis, and also opens for negotiations between the parties.

If the requirement is that a wage agreement is to be entered into, it must be assumed that a conditional boycott notice can be given to the ship such that the owners will know that the ship will be boycotted, for example, in Norwegian ports, if there is no agreement with ITF, and the signing on conditions etc. are not in accordance with ITF's minimum standards. After arrival at a Norwegian port, and after the actual facts are verified, a conditional notification may be converted to an unconditional notice. In that case, a shorter notification deadline could be used, even though notification is given after arrival in port.

A deadline of 14 days seems to be unimpeachable, but a considerably shorter deadline will presumably have to be accepted – in Rt. 1959 p. 1080 the premises give a clear impression that five days will be a sufficient deadline – at the same time, however, the premises also give a clear impression that such a long deadline will not be unconditionally necessary. Based on present conditions, where ships are often unloaded/ loaded during a day or two, a shorter deadline than five days must be acceptable. Beyond this, case law gives few certain points – but presumably it is not too ambitious to expect that a notification of 24 hours must be sufficient for the interests of both parties to be taken care of in a reasonable manner – while at the same time the availability of bringing the question before the Court of Execution and Enforcement for preliminary decision in accordance with § 3 of the Boycott Act will be intact.

Depending on the circumstances, changed conditions would justify shortening the deadline which was set in the original boycott notification.

Cf. the Oslo Court of Execution and Enforcement order dated 14. August 2000 (Case No. 00-1428D *ADG Shipmanagement GmbH vs. Norsk Sjømannsforbund et al.)* regarding a collection boycott. The shipping company was orginally giver 4 days´ notification to pay outstanding wages. This deadline expired on Monday at 12 noon. However, it was discovered that the ship would be unloaded during Monday morning. On Sunday evening, therefore, notification was given that a boycott would be started on Monday at 7 a.m. The Court based its decision on the view, that "because of the events that had taken place, there was nothing to indicate that the shipping company intended to undertake any more to meet ITF´s demands, while on the other hand it must be assumed that the unloading of the ship would be completed during Monday morning, such that a boycott starting at 12 noon would be ineffectual. The Court presumes that in this situation it could not be contrary to law to expedite the implementation of the boycott".

The requirement for a wage agreement will have to be limited to achive "normal conditions" (Rt. 1997 p. 334) for the seamen on board at any given time. Since the requirement for a wage agreement is a justified demand, it would also be justifiable to demand a negotiation solution which entails that one party to the negotiations - normally a trade union - would be able to assist with the implementation of the conditions which are negotiated in a wage agreement.

Cf. ND 1997 p. 367 Agder Court of Appeals, where the boycott action was diretcted towards a ship registered in Antigua, owned by a German shipping company, with German officers and Polish crew. No wage agreements had been concluded. The Court of Appeals remarked that the fact that none of the crew belonged to a union, nor had made any request for a wage agreement to be negotiated, could not rule out the use of a boycott. The shipping company had first been presented with a demand to sign ITF´s standard agreement (world wide), but during the negotiations with the shipping company, representatives of the Norwegian trade union presented the alternative proposal that the shipping company should obligate itself to negotiate with the German union. The Norwegian netotiatoors had no negotiation rights regarding the German shipping company. The shipping company´s counter proposal was to enter into a Polish TCC agreement. On this basis, the Court of Appeals found that the boycott was not unreasonable, *inter alia* because the crew, through an agreement which the shipping company wanted, would not have been assured any wage agreement with a parto to the negotiations which could assist with the implementation.

The requirement for membership of a trade union, however, will go further than that which is necessary to achieve a wage agreement, and will therefore not be legal (Rt. 1959 p. 1080); similarly, the requirement for "back pay" will be unlawful (ND 1981 p. 177); a requirement for a wage agreement is aimed at future conditions. Likewise, it will be unjustified to demand that one of the parties to a wage agreement (the trade union) unilaterally should be able to change the wage agreement; at any rate unless there is a question of marginal changes.

The demand for a tariff charge on the other hand, however, will be legal (ND 1989 p. 189), and the equivalent should be assumed as far as the demand for contributions to a welfare fund is concerned.

In ND 1989 p. 189 the majority of the Court of Appeals based its decision on the fact that the structure and administration of ITF's welfare fund was "of such a nature that it lay outside the legal content of the concept of working relationships as described in § 1 item 8 of the Industrial Disputes Act". It seems doubtful that this can be regarded as being the correct understanding of the legal provision in question.

Lawful boycott entails that illegal means cannot be employed. A boycott which assumes that agreements will be broken could therefore be contrary to law; this creates difficulties in relation to the wage agreements the owners might have entered into previously; the owners might have entered into a wage agreement with a seamen's organisation in the country in which most of the seamen are domiciled. The decisive here seems to be whether the foreign trade union fulfils the requirements of the ILO Convention No. 98 Art. 2, and can thus be characterised as "bona fide".

The deciding factor cannot just be which conditions the foreign wage agreement gives a legal basis for. On the other hand, there seems to be grounds to evaluate whether the foreign trade union fulfils the requirements which in an international context are fixed for trade union activity, cf. especially the ILO Convention No. 98, Art. 2:

«1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration
2. I particular, acts which are designed to promote the establishment of workers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.»

It must finally be expected that a "recovery boycott" will be legal, as long as the boycott aims at ensuring proper claims. For example, the ship has entered into a wage agreement - Special agreement – but has not met its obligations as regards the seamen on board.

The trade union should be able to implement such boycott, even though the crew on board may have waived their claims; the rule of invariability allows the trade union an independent interest in ensuring that the provisions of the wage agreement are adhered to.

Cf. the Oslo city court decision dated 28. June 2000 (Case No. 99-5514 A/34) *Georgi Maritime Ltd. vs. Norsk Sjømannsforbund et al.,* which explicitly expresses the view, that a "recovery boycott" must be considered a legal boycott. The same view is implicitly assumed in the illustrative Oslo Court of Execution and Enforcement order dated 14. August 2000 (Case No. 00-1428D *ADG Shipmanagement GmbH vs. Norsk Sjømannsforbund et al.).* The ship was owned by a company registered in Malta, with Russian owner interests, operated by a management company in Hamburg, and the crew were all Russians. in 1999 the management company entered into a "Special Agreement" through the Latvian Seamen´s Union, and was obligated to follow ITF´s "Standard Collective Agreement". During the ship´s visit to Oslo, ITF´s Norwegian inspector found indications that the agreement was not being followed. The crew seemed to be owed USD 207.000. Notification of boycott was given. Receipts were presented by the crew to the Court, but the Court found, after witness testimonies, that there were grounds to doubt the correctness of the statements. The payroll found on board did not show any such payments. It was striking that the shipping company had chosen to send a representative from Hamburg with USD 208.000 in cash, and that the amount was to have been divided among the crew. None of the crew were willing to show the money which should have been received the previous day. The Court decided, therefore, that the shipping company must provide security for the alleged demand in order for the boycott that was implemented to be be cancelled.

IV.4 Jurisdiction and choice of laws in cases of boycott
IV.4.1 Jurisdiction

In order for Norwegian courts to be able to hear a case, the facts of the case must contain points with sufficient relationship to Norwegian conditions.

The traditional maritime law assumption is that the working relationship on board ships falls under the courts in the ship's home country. A dispute on board – between ship and crew — is a matter which does not have such relationship with other countries that, for example, Norwegian courts can consider the question. If Norwegian courts are to hear such cases, special circumstances must be present – otherwise the case must be rejected. This basis has its counterpart in § 15 of the Seaman's Act, which lays down that a seaman can be dismissed if a dispute regarding employment conditions is brought before a foreign authority, and again builds on the desire to ensure that a Norwegian court be used in such dispute.

As a consequence of this assumption, the legitimacy of a labour conflict regarding pay and working conditions on board should also be referred by Norwegian courts for consideration by the courts of the ship's homeland. Such conclusion, however, has not been drawn in case law; if there are sufficient points related to Norway, the case has been brought before the Norwegian courts for decision on its merits.

> Cf. Rt. 1936 p. 900 where an English owner of ships registered in England had signed on several Norwegian fisherman for the 1934 Greenland fishing season. The fishermen were signed on in this country by the expedition leader, with contracts in Norwegian. Signing-on was accomplished while the ship was in the port at Ålesund by the British Consul there, and the Norwegian enrolment official. A contract in English was also signed by the fishermen, but this contract was not intended to supersede the previous individual contracts, which continued to be the basis for the legal relationship between the parties. In addition to the fishermen, the dory gangers, fishing workers, dory foremen, the fishing foreman, and the expedition leader were all Norwegian. After some time in the fishing grounds, a labour dispute arose between the fishermen and the shipowners, which resulted in that fishing was stopped. The shipowners brought an action against the fishermen. The District Court decided that the case could be heard on the basis of its many points of relationship to Norway [ND 1935 p. 33 Bergen], which was also the Supreme Court's implicit basis. - See also ARD 1993 p. 11 and ARD 1995 p. 214.

A case for damages because of the illegal boycott in a Norwegian port of a ship flying the flag of convenience must be able to be brought in Norway against the trade union which initiated the boycott action; there is no doubt regarding this in Norwegian case law, cf. *inter alia* Rt. 1959 p. 1080 and subsequent decisions by the lower courts and courts of appeal. It must be a sufficient relationship to Norway that the boycott action took place in a Norwegian port. The equivalent must apply if threats are made by the trade unions that such boycott will be initiated.

Similarly, it seems that an action to have a wage agreement declared invalid on the grounds of illegal boycott should be able to be raised against the trade union which is a party to the wage agreement in dispute. The question does not seem to have been discussed in case law.

Of practical importance is the protection against arrest. The seamens' demand for signing-on and other compensation because of their service on board the ship is the subject of a maritime lien (§ 51 of the Maritime Act), and the creditor having a secured claim on the ship can request an arrest order issued for the ship (§ 14-1, subsection 2 of the Enforcement Act). When an arrest order is issued for the ship, an action can be brought in the judicial district in which the arrest is made – this also concerns legal actions against those who have stood bail or surety for the claim (§ 31, subsection 2 of the Enforcement Act). If an arrest order is issued for the ship while it is in a Norwegian port, Norwegian jurisdiction will thus be established.

> The question of which claims will fall to the individual seaman depends not only on this individual's employment contract, but also by the wage agreement which includes them, and in accordance with the rule of invariability, the conditions of the employment contract will not take precedence over the conditions of the wage agreement. The right to bring a legal action based on the legal venue of the arrest is therefore of importance for the right to have the demands under a wage agreement fulfilled. In the case of a collection boycott, a trade union would be able to act on behalf of the crew on board by power of attorney, but the rule of invariability dictates that the trade union has independent interests in demanding that the conditions of the wage agreement are adhered to. Under a power of attorney a trade union will naturally be able to request an arrest order against the ship for unpaid claims; as far as that goes, the individual seamen are undoubtedly "creditors having claims which have fallen due for payment and which are secured in the ship". The question is, however, whether also a trade union, as a party to a wage agreement, can be regarded as a creditor in this relation. Presumably the question should be answered affirmatively, since a right for the trade union to act independently in this relation too would contribute to the efficiency of the enforcement of the conditions of the wage agreement, and it is in the public interest to encourage that pay and working conditions are regulated by wage agreement. The right to employ boycott measures to

achieve a wage agreement, even though the employer does not belong to a union and only employs people who do not belong to a union – if the company "only operates with underpaid workers who do not belong to a union" – must also be attached weight in this connection. In addition, the individual crew members on board each have a subordinate position in relation to their employer (the shipowners), and the fact cannot be ignored that they in practice would be exposed to perhaps considerable pressure in the direction of waiving their claims or withdrawing a previously notified power of attorney to the trade union.

Note should also be made of ND 1997 p. 239 Frostating, where there was *inter alia* a question of whether the legal venue of the arrest was waived by wage agreement (Special agreement) and / or by the individual working agreements for the crew on board. The Court of Appeals remarked *inter alia:* "The legal venue of the arrest is in any case in another position than the legal venues which can be waived in general, and the legal venues which can be waived specially, inasmuch as the legal venue of the arrest arises in connection with, and as a result of the fact that pursuing claims is initiated by a temporary injunction. Waiving of the legal venue of the arrest by agreement would in the isolated instance be of unilateral advantage to those who own or dispose over the ship and its cargo. The purpose of arrest and surety, pursuant to the rules contained in the Enforcement Act and the Maritime Act, is to provide creditors with an opportunity to use an actual situation to put the above-mentioned under pressure. An essential part of the point with the arrest institution will lapse, and the value of standing surety would be reduced, even taking § 96 of the Maritime Act into consideration, in a case such as that described above, if the claim could not be pursued further at the place of arrest based on the arrest or surety provided. Deviation from the legal venue of the arrest can thus in reality mean waiving the right to arrest the ship for claims against the owner, charterer etc. --- In the opinion of the Court of Appeals, in order for a waiver by agreement of the legal venue of the arrest to take effect, there must be equal contracting parties. In addition, the right to waive must be included in a business contract where unilateral waiving of an important seafaring right has a counterpart, or acts in a context which gives the contract balance, and makes the action of waiving explicable. Further, in the view of the Court of Appeals, it must be explicitly stated in the clause or be seen clearly by the context and balance of the contract that (also) the legal venue of the arrest is included in the waiver or limitation." On this background, the Court of Appeals found *inter alia* that the purpose of the legal venue of the arrest and the complex party situation of the defendant(s) indicated that there was a particularly distinctive requirement for the dispute to be decided by a Norwegian court, and issued an order for the case to proceed."

Some countries, *inter alia,* Russia, have not ratified the arrest convention. However, Russia has its own treaty with Norway on shipping, which lays down that the authorities in the countre shall not hear, or intervene, in a dispute regarding signing-on and employment contracts between the master and crew belonging to the other country.[1] In Rt. 1998 p. 1130 it is assumed that this treaty

[1] Treaty on shipping etc. dated March 18th, 1974, between Norway and the USSR, art. 14 No. 3.

"must be given a separate interpretation independent of what is contained in the Arrest Convention", and rejected the matter.

> The case concerned a request for the arrest of the trawler Severnaja Zvezda, which was owned by the shipping company of the same name in Murmansk. The crew were Russian. The Supreme Court Appeals Committee therefore did not allow the argument that the shipping treaty with Russia should be interpreted in the light of the Arrest Convention of 1952. The wages demand from a discharged crew member was not seen in a different light either. The purpose of the provision in the shipping treaty "must be that the contracting party, in this case Norway, shall not intervene in the internal affairs concering the operation of the ship".

In the case of a ship registered under the flag of convenience, the relationship between the owners and the country of registration generally assumed by maritime law are no longer present. The first question is then whether Norwegian courts are competent to consider a claim against the foreign owners. It is conceivable that the law of the country of registration lays down that legal actions against the owner may only be brought in the country of registration, and it is also conceivable that pursuant to the crew's signing-on contract the courts of the country of registration – or possibly of another country – shall have exclusive jurisdiction.

> As mentioned, according to § 50 of the Norwegian Seamens' Act, a dispute between the master and any of the crew regarding employment conditions must not be brought before a foreign authority; if this is done all the same, it provides grounds for dismissal in accordance with § 15 f); the assumptions of the Seamens' Act are that Norwegian courts shall have exclusive jurisdiction. As regards ships flying the flag of convenience, there are strong reasons for a case to be rejected by the Norwegian courts based on rules or signing-on contracts which state that the country of registration shall have exclusive jurisdiction. Beyond the formal registration the connection – for both owner and crew – is often of a purely formal nature, and it would therefore be quite unreasonable to refer the dispute for hearing in the country of registration; especially taking into consideration that the foreign seaman will often be confronted with such large practical difficulties – not least as regards expenses – that the seaman will often have to give up the cause. The question cannot be seen to have been brought before Norwegian courts, but the decision of the Industrial Court in Hamburg (Urteil Dec. 9., 1983 Heimthaler vs. Westfal-Larsen & Co. a/s) is illustrative. The court did not find that § 50 of the Norwegian Seamens' Act in any way prevented the German seaman, who signed on in Germany for service on board a Norwegian ship, from bringing an action in Germany for various claims in connection with the employment relationship, especially the employment settlement.
>
> The grounds were somewhat formal – the choice of laws was not agreed in writing between the seaman and the owners, and it was not sufficient that the signing-on contract assumed that Norwegian law – and thereby exclusive Norwegian jurisdiction

> – should be applied. The decision seems, however, to harmonise with the more general principle that the courts can set aside unreasonable limitations in the employee's right to have claims in connection with an employment relationship heard by a court («forum non conveniencis»). If this principle is used as the basis in regards to a ship genuinely registered in Norway, how much more must it be used as the basis regarding a ship registered under the flag of convenience.

In addition to the above, it must be noted, however, that the provisions of the Civil Procedure Act – including the provisions concerning legal venue – apply with the limitations which are recognised in international law or are a consequence of a treaty with a foreign state (§ 36 a of the Civil Procedure Act). Norway can thus, in agreement with other countries, determine that certain types of legal actions cannot be brought before Norwegian courts.

IV.4.2 Choice of law

Maritime law is based on the assumption that a working relationship on board is judged according to the law of the ship's homeland, and this assumption is also made in the case of a labour dispute on board, cf. Rt. 1936.900. See also ARD 1995 p. 214, and further ARD 1993 p. 11, which assumes that the Norwegian provisions regarding keeping the industrial peace contained in § 6 of the Industrial Disputes Act are invariable concerning the question of choice of law.

The maritime law assumption is based on the fact that the owner operates in the country where the ship is registered – the crew has also usually largely been domiciled in that country. As regards ships registered under the flag of convenience, these links between shipping company, ship and country of registration no longer exist, and this is also the case regarding the crew. Thus, there is no "genuine link" between the ship and the country of registration, and the question is then if this is sufficient to deviate from – or modify – the principle of the "law of the flag".

There do not seem to be any Norwegian court decisions concerning these questions.

Some of the difficulty lies in the fact that it is problematical to indicate which country's law is to be applied, if the law of the country of registration is not to be applied. It must be fairly clear that there can be no question of the application of the law of the home country of the individual crew member, *inter alia*, because the crew members can very well come from many different

countries, and the regulation of the crew's working conditions will have to be judged in accordance with the law of one – and not in accordance with the law of several – countries. This applies in particular in relation to the choice of law concerning the collective regulation of working conditions, including the legality of the use of labour conflict, and the actions which are linked to, or are a consequence of, such labour conflict – for example, the validity of a wage agreement which has been entered into. There may, however, be good reasons to choose the law of the country in which the collective agreement was concluded, or where the boycott or industrial action took place.

> Cf. the Oslo city court decision dated 28. June 2000 (Case No. 99-5514 A/34) *Georgi Maritime Ltd. vs. Norsk Sjømannsforbund et al.),* the Court - under some doubt - decided that the question regarding the legality of the agreement concluded, under threath that the ship would otherwise be boycotted, had to be decided according to Finnish law. Thus, the Court referred to the fact that the agreement had been concluded in Finland, with the Finnish Seamen´s Union as one of the parties to the agreement. Otherwise, the Court held, that when agreements on the collective level are negotiated, there is always a possibility that industrial action may take place, and that the preassure which the Finnish Union had notified - on the use of boycott etc. - was in principle not different from the normal situation.

The most obvious alternative to the law of the country of registration seems to be the law of the owner's homeland – the country in which the shipping company conducts operations – and if the ship is operated by two or more managers in different countries, it could be natural to apply the law of the country which was responsible for overseeing that the crew carried out their tasks. In that case, a particular problem arises if the shipping company changes from one management company to a management company in another country.

> Another, but related matter concerns the question of which country's circumstances shall be used as a basis, for example, with regard to the evaluation of whether the crew's conditions can be regarded as normal. In the «San Dimitris» decision (Rt. 1959 p. 1080) the Supreme Court seems to just disregard the circumstances of the country of registration – and at the same time the court lays no emphasis on where the ship was operated from (London). Presumably taking into consideration that the ship was Greek owned, the court stated *inter alia* «all individual hirings lay on a level which did not contravene the Greek National Agreement». The reality in this statement can be that the Greek owner in actual fact had adhered to the normal conditions for seamen in Greece, such that there was no case of underpayment of the crew, or any worse conditions otherwise. Seen in this way, as far as I can see, there is good conformity between the statement and the real circumstances behind the working relationship.

Equivalent difficulties arise if the choice of law should be agreed, and there are questions raised regarding the validity of such agreement; for example, the ship is registered in Cyprus, the crew's working conditions state that Philippino law shall be applied; just under half of the crew members come from the Philippines, and the remainder come from different countries in the Caribbean. The basic question is whether requirements can be stated as regards the existence of a justifiable link for such agreements concerning choice of law, and it is natural to answer the question in the affirmative; it seems to be reasonably unfair that an owner is able to find a country whose law gives the owner the best possible position in working relationships, without the owner having any close links with that country.

These considerations lead to the question of how far the traditional principle of *l'ordre public* reaches. In this context it seems that the fundamental starting point must be that the law of the foreign country will not be applicable, if it should entail that international human rights are not adhered to. As far as Norwegian courts are concerned, it must be sufficient to point out the provision contained in § 110 c of the (Norwegian) Constitution that it rests with the State authorities to respect and ensure human rights. The right to belong to a union – including the right to negotiate and enter into wage agreements – must therefore be respected.

> If the law of the country of registration lays down that a legally initiated boycott – legal according to both the law in the country where the boycott action was taken, and in relation to the international human rights conventions – and in that context a legally set up wage agreement would be invalid, for example, because of a prohibition in the law of the country of registration against the crew exercising the right to belong to a union, it would seem that Norwegian courts would have to disregard the law of the country of registration, and decide the matter based on international human rights.

V. The Norwegian International Ship Register

V.1 Overview

The Norwegian International Ship Register [NIS] was established by Act of 12 June 1978 No. 48. According to § 1 of the Act, it is a condition for registration in NIS that the owner satisfies the nationality requirements in § 1 of the Maritime Act, or that the operation of the ship is carried out by a Norwegian shipping company with its registered offices in Norway. Thus the Act is based on the fundamental principle that there shall be a "genuine link" between the

shipping company and Norwegian conditions, and NIS can therefore not be characterised as an "open register".

In § 3 of the Act it is stated that Norwegian law applies to any ship in the Norwegian International Ship Register, unless something else is expressly stated in the law or pursuant to law. Moreover, §§ 6, 7 and 8 give further provisions regarding pay and working conditions, and state several exemptions from the rules contained in the Seamen's Act and the Act governing working hours on board ship.

V.2 The right to organize and labour conflict

The NIS Act is based on the fact that Norwegian traditions for professional organisation are applicable – *inter alia* for this reason no provisions are given which expressly regulate the right to negotiate. It is therefore beyond doubt that the employees' right to belong to a union, and the right to conduct negotiations on pay and working conditions - as these apply in Norwegian law - are also applicable to NIS ships.

Further, it is expressly stated in § 6, subsection 2, that Norwegian trade unions have the right to participate in all negotiations regarding entry into wage agreements, and that wage agreements can be entered into with Norwegian and/or foreign trade unions.

The Act assumes that competitive wage agreements may exist – and also assumes that there can be several organisations with the right to negotiate However, it is also understood "that if there are several competitive agreements in existence, the parties will ensure that all employees in the same position on the individual ship have the same conditions."

According to § 6, first subsection, pay and working conditions and other working relationships on NIS ships will be regulated by a wage agreement which expressly indicates that it applies to such service. It is further stated that a wage agreement without such an indication does not apply to service on board ships entered in this register.

V.3 Jurisdiction regarding the right to negotiate and wage agreements, etc.

According to § 6, third subsection, a wage agreement for NIS ships shall expressly indicate that it is subject to the jurisdiction of Norwegian courts.

However, the provision allows the parties to deviate from the provisions of the Industrial Disputes Act regarding the Norwegian Industrial Court, and the State Mediator, etc. The condition is that the wage agreement expressly states

that disputes regarding the agreement shall be subject to the jurisdiction of the courts and procedural rules, including rules regarding mediation, in another country.

Practical considerations are given as the grounds for the provision, but the preparatory works emphasise that Norwegian courts in this context must also have the *l´ordre public* principle in view; the consideration of "fundamental principles of the Norwegian social order [would] in extreme cases ... be able to set aside an agreed legal venue and accept Norwegian jurisdiction."

> "Exemplified, that is expected to be the case if a Norwegian court finds it probable that the foreign court in question would disregard Norwegian substantive rules in favour of strongly deviating national rules or if the Norwegian court finds that the foreign court in question or its procedural rules do not conform to the minimum requirements with regard to protection in law which the Norwegian court is of the opinion must be made."

V.4 Choice of law regarding the right to negotiate and wage agreements, etc.

According to § 6, third subsection, the wage agreement for NIS ships shall expressly state that it is subject to Norwegian law.

In the same manner as § 3 of the Act, the provision must be understood such that in the reference to "Norwegian law" also lies a reference to Norwegian international choice of law rules.

V.5 Wage agreements regarding exemption from Norwegian provisions.

According to § 8 several provisions contained in the Seamen's Act can be waived by wage agreement.

> This applies to § 3 of the Seamen's Act except the requirement regarding written agreement, § 5 item 2-6, § 5A second and fourth subsections, §§ 7, 11, 14, § 19 item 1 from and including the third to and including the sixth subsections and item 2, §§ 20, 25 and 47.
>
> Moreover, § 7, fourth subsection, allows for several provisions in the Act governing working hours on board ship to be waived by wage agreement, subject to approval of the waiver by the Ministry. There can be reason to emphasise that such waiver may nevertheless not take place as regards the provisions of rest periods for crew who are part of bridge or engine room watches, cf. § 12 of the Act relating to working hours on board ship; the provision must be seen in conjunction with the STCW-95 Convention A-VIII/1.

V.6 The individual employment agreements
V.6.1 Jurisdiction

According to § 6, fourth subsection, the individual employment agreement for service on board ships entered into the NIS register, shall expressly state that the agreement is subject to the jurisdiction of the Norwegian courts, but so that a case against a shipping company concerning the employees' service on board the ship can be brought either before a Norwegian court or a court in the country where the employee is domiciled. Such agreement does not prevent a case being raised in another country where there is provision made for it in the Lugano Convention.

An agreement that courts in another country than the above-mentioned shall have jurisdiction is presumed not to be valid.

In this context also, consideration of the *l´ordre public* is expected to be taken.

V.6.2 Choice of law

According to § 6, fourth subsection, the individual employment agreement for service on board ships in the NIS register must expressly state that the agreement is subject to Norwegian law. In the same manner as with wage agreements, it seems that the provision must be understood such that in the reference to "Norwegian law" also lies a reference to Norwegian international choice of law rules.

Agreement that the law of another country shall be applicable is presumed not to be valid.

V.7.Termination in the case of transfer of a ship from NOR to NIS

According to § 19 item 1, third subsection, of the Seamen's Act, the registration of ships in the Norwegian International Ship Register gives justified grounds for termination, if the shipping company has no other suitable work to offer the seaman. The provision aims at ships which are registered in the ordinary Norwegian ship register (NOR).

V.8 Signing on

The Seamen's Employment Act of 18 June 1971 No. 90 is also applicable to NIS ships, see also § 2 of the Regulation of 25 Nov 1988 No. 940.

Expenses of employment and signing on shall be borne by the shipping company or other employer, cf. § 8, second subsection, of the Act relating to NIS.

V.9 Pension rights

National Insurance pension rights for seamen include Norwegian citizens and persons domiciled in Norway, employed on ships entered into the Norwegian Ship Register, cf. § 1 of the Act of 3 Dec 1948 No. 7. Employees on ships in the NIS register are therefore covered by the National Insurance pension rules.

> According to § 1 of the Seamens' Pension Act, ships entered in a foreign ship register are also included when employees on board are domiciled in Norway, cf. § 2-1 of the National Insurance Act.
>
> The same applies when employees who are Norwegian citizens or who are domiciled in Norway are covered pursuant to § 2-8 of the National Insurance (voluntary membership in the National Insurance scheme for persons outside Norway), and pension rights determine that the person concerned shall be covered by this pension scheme according to rules laid down by the Board.

Persons who are domiciled in the territory of an EEA country, and who carry on paid work on board a ship flying the flag of a member state, shall, pursuant to Council Directive (EEC) No. 1408/71 Art. 13 No. 2 c) be included in the laws of this state. They shall also be included in the Norwegian pension scheme for seamen.

V.10 National Insurance benefits

According to § 2-5 g of the National Insurance Act of 28 February 1997 No. 19) a person who is a Norwegian citizen and employee on a ship entered into the NIS register is an obligatory member of the National Insurance scheme.

> There is, however, one exemption contained in § 2-12 for persons employed in the hotel and restaurant business on board tourist ships entered into the NIS register. These persons are exempt from obligatory membership, and there is no provision for them to become voluntary members of the scheme.

Persons who are domiciled in the territory of an EEA country, and who carry out paid work on board a ship flying the flag of a member state, shall, according to the Council Directive (EEC) No. 1408/71 Art. 13 No. 2 c) be

covered under the law of that state. These employees shall therefore be full, obligatory members of the National Insurance scheme.

Foreign citizens domiciled abroad, and employed on board ships entered into the NIS register, are not members of the National Insurance scheme, and have no rights under it. It is expected that the employer will take out a private, approved insurance policy.

Addendum I - *The State Mediator*

> The deadlines stated are also applicable to sympathy strikes and sympathy lockouts, presumably with a reservation for the case where there is already a labour conflict taking place in a dispute where a work stoppage prohibition is in force, and mediation has ceased, cf. ARD 1985 p. 81, or where there is a question of a continued labour conflict in the same dispute, cf. ARD 1995 p. 214. See also ARD 1995 p. 98; a conditional sympathy strike must fulfil the requirements for collective dismissal, not the requirement that the action is connected to a main conflict which has resulted in work stoppage. Cf. also ARD 1995 p. 129.

In the time frame where a labour conflict is subssequently prohibited, the wage agreement and the pay and working conditions which governed at the time the dispute arose, will remain in force if the parties do not reach agreement on anything else, § 6 item 3 of the Labour Disputes Act.

The State Mediator has no right to order a ballot, even though the mediation authorities may be of the opinion that the proposal is likely to be accepted, cf. ARD 1982 p. 200. A mediation proposal may be presented "as an entity to several different organisations such that the decision of whether the proposals are accepted shall be made on the basis of the collective number of votes in the organisations which are joined in this manner, § 35 item 7 of the Labour Disputes Act.

> How the individual party will organise its ballot is by far an internal matter for the association, cf. ARD 1984 p. 124. Voting rules are often laid down in a wage agreement , cf. for example, the Basic Agreement LO-NHO (2000) §§ 3-4 and 3-5.
>
> A general practice has developed that the mediator in consultation with the parties fixes a deadline for reply as to when the ballot will take place, but the method of fixing a deadline for reply is not further regulated in legislation, cf. ARD 1984 p. 124.
>
> If the mediation proposal is forwarded for voting, there will presumably be agreement between the parties that the obligation to keep peace will be adhered to until the deadline for reply has expired, cf. ARD 1982 p. 200 and ARD 1984 p. 124.

Addendum II

The right to organize and legal provisions etc. regarding use of compulsory wage boards.

Further, there is reason to point out that Art. 8 item 3 of the UN Convention on Economic, Social and Cultural rights as well as Art. 22 item 3 of the UN Convention on civil and political rights have identical formulations and references to the ILO Convention NO. 87 [1948] regarding the right to belong to a union. In both UN conventions it is stated that nothing in the provisions in question (Art. 8, resp. Art. 22) "shall authorize State Parties ... to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice the guarantees provided for" in the ILO convention No. 87.

The practice which is available from ILO´s bodies demands in summary that official intervention in the right to use a labour conflict must be due to the fact that "essential services" otherwise would suffer. However, Norwegian law is based on the dualistic system, and both the Industrial Court (ARD 1990 p. 118) and the Supreme Court (Rt. 1997 p. 580) have based their decisions on that any such international law limitation cannot be asserted under Norwegian law as regards the validity of a prohibition against the use of labour conflicts, passed by law or provisional ordinance, towards a further defined dispute.

> The subject matter in *Rt. 1997 p. 580* was that LO and the Norwegian Oil Industry Association (OLF) in the spring of 1994 negotiated with the Federation of Oil Workers' Trade Unions (OFS) and the Leader Organisation for Executives for a new wage agreement from and including 1 July 1994. During the negotiations, several demands were presented – including a demand for a lower pension age. The negotiations were broken without reaching any conclusion.
>
> On 9 June 1994 OFS gave notification of collective dismissals of 106 of its members on the Gyda platform. On 15 June 1994, OLF gave notification of lockout for 3 600 members of OFS concerning all fixed installations on the Norwegian continental shelf. On 14 June 1994, the Leader Organisation for Executives gave notification of collective dismissals for all members, but such that in the first instance there would only be a question of 50 members leaving their positions on the Gullfaks B and Oseberg C platforms. On 24 June 1994 OLF gave notification of lockout for 821 members of the Leader Organisation for Executives who were included in the collective dismissals, but for whom no notification of leaving their positions was given.
>
> The State Mediator issued a prohibition against work stoppage and called the parties into mediation. The compulsory mediation was not successful. Cessation of mediation was requested for the Leader Organisation for Executives on 24 June 1994 and for OFS on the 26th of the same month. The deadline was Thursday 30 June 1994 at 0000 hours. The State Mediator was still not successful in bringing the parties to agreement,

and mediation ceased on 30 June 1994 at 2345 hours without conclusion. Work stoppage was implemented at the expiration of the deadline.

The parties were thereafter called to a joint meeting with the Minister of Local Government and Labour the next day at 0015 hours. The parties gave the Minister an orientation regarding the situation. The Minister referred to the serious consequences a full work stoppage would have, and informed them that at the Council of State that day he would advise the Government to issue a provisional ordinance regarding compulsory arbitration in the disputes. The provisional ordinance regarding compulsory arbitration in the labour disputes in the oil sector with a revision of the wage agreements dated 1 July 1994 was issued on 1 July 1994. Work was subsequently resumed at 1400 hours on the same day

The Supreme Court unanimously remarked that the "long practice of use of compulsory arbitration to resolve labour disputes when significant public interests dictate, is ... not contrary to general legal principles of constitutional character" (p. 587). "Even though the freedom to belong to a union and the right to use strikes are generally accepted in Norway, it is also generally accepted that the right to strike is not unlimited." Supreme Court remarked further, after having given an overview of decisions from the European Court of Human Rights and statements by the UN Committee on Human Rights and statements by ILO bodies: "The decisions available from EMD and statements by the UN Committee on Human Rights raise doubts about to what extent the right to strike is protected by EMK Art. 11 and the UN Convention on Civil and Political Rights, Article 22. I cannot see that there are any international law obligations for Norway to limit the use of compulsory arbitration according to the mentioned conventions and decisions by EMD and the UN Committee on Human Rights, when significant public interests dictate intervention in a labour conflict. In any case, neither the EMK and the UN Convention contain any detailed standard for the right of the State to limit the right to strike on the same lines as the limitations ILOs bodies have derived from the ILO Conventions Nos. 87 and 98 and the Philadelphia Declaration. Based on this, I cannot see that the provisional ordinance dated 1 July 1994 is contrary to the international law obligations Norway has assumed" (p. 592).

On this basis it was not necessary for Supreme Court to discuss the question of conflict between Norway's obligations under international law and Norwegian domestic law. Nevertheless, in a lengthy obiter dictum Supreme Court remarked *inter alia* "The appellant [the Federation of Oil Workers' Trade Unions) has argued that the rules of international law regarding the right to belong to a union, including the trade unions' right to strike, are fundamental human rights. It is stated in § 110 c of the (Norwegian) Constitution that Norwegian authorities must respect and ensure such rights, and that these rights are thereby protected against intervention by law or provisional ordinance. I am not in agreement with this understanding of § 110 c of the (Norwegian) Constitution" (p. 592). --- "If there is a clear conflict between the provisions of international law and the provisions of Norwegian law, the……starting point must be that domestic law takes precedence. --- It will be seen clearly from the discourse on the disputed provisional ordinance that the ordinance shall apply regardless [of what is contained in the provisions of international law] --- I find therefore that even in the cases where a strike prohibition would have been contrary to

provisions of international law regarding the right to strike, it would follow from Norwegian law that the provisional ordinance regarding compulsory wage board consideration was valid " (pp. 593-594).

Previously, the Industrial Court had handed down a decision in the same direction - *ARD 1990 p. 118* – this decision, however, was handed down before the enactment on 15 June 1994 of the constitutional provision (§ 110 c) that it "rests with the State authorities to respect and ensure human rights". In ARD 1990 p. 118 the matter at issue was that the King in Council had issued a provisional ordinance regarding use of compulsory arbitration, and it argued before the Industrial Court that the provisional ordinance was invalid because it was contrary to the right to belong to a union and the ILO Conventions Nos. 87, 98 and 154. The Industrial Court referred to the fact that it "appears from the discourse on the decree that the relationship to Norway's obligations under international law and the ILO Conventions have been evaluated in the issuance of the ordinance. ... It can be seen ... clearly from the discourse on the decree that the Government has found that the ordinance must be issued even though the intervention it represents may not be in accordance with the view ILO's bodies have used as a basis ... This must be decisive for the legal evaluation by Norwegian courts. In this regard, Norwegian provisions in the form of law have been adopted. This has been done in the full knowledge that it can be pointed out to the international organs that this is not in accordance with Norway's obligations under the conventions. The Industrial Court must then build on the provisions that have been adopted, and cannot set the ordinance aside on the basis that it is in conflict with international law."

There is continuous debate and development as far as the question of the relationship between Norwegian law and international law, and the question of the position of international human rights in Norwegian law are concerned. The Supreme Court's decision recorded in Rt. 1997 p. 580 (the OFS matter) is undoubtedly not the last word on this theme. In this manner, the Standing Committee on Justice emphasises in connection with the enactment of the Act relating to Human Rights of 21 May 1999 No. 30 that one of the purposes of incorporation is that it "will influence the development of law in Norway in the direction of listening to, and having an open relationship with, the practice of the Court of Justice at Strasbourg and other international enforcement bodies», and points out as "the superior goal that Norwegian legal practice to the largest possible degree will be in accordance with current international interpretation practice».

Of particular interest in the unanimous plenary decision by the Supreme Court – Rt. 2000 p. 996 – which concerned the question of whether the European Human Rights Convention (EHRC) applied in the case of increased surtax, including whether such tax is to be regarded as penalty. On the general level, the Supreme Court, *inter alia* , in relation to § 2 of the Human Rights Act, which lays down that EHRC shall "apply

as Norwegian law to the extent they are binding for Norway", and shall "in the event of a conflict of laws" take precedence over provisions in other legislation, cf. § 3:

"It is a consequence of the precedence provisions in § 3 of the Human Rights Act that if the interpretation result as a consequence of EHRC appears to be reasonably clear, Norwegian courts must use the provisions of the Convention as a basis even though this may entail that established Norwegian legislation or practice must be set aside.

In many cases, however, there can be good cause to doubt how EHRC is to be understood. This can be due, for example, to the fact that several of the provisions in EHRC are vague, and that the process of interpretation of the Conventions must include weighing up different interests or values based on a common European general understanding of the law or practice. Doubt can also be due to the fact that the EMD not only has the goal of clarifying what is a consequence of the Convention, but on many occasions has interpreted the provisions of the Convention as dynamic and law-making. EMD regards EMK as «a living instrument which ... must be interpreted in the light of present day conditions» --- .

Even though Norwegian courts in the application of EHRC are to use the same interpretation principles as EMD, it is EMD which is responsible in the first instance for developing the Convention. Norwegian courts must act in accordance with the text of the Convention, general considerations of objective, and the decisions made by the bodies of the Convention. When doubt arises regarding the extent of EMD decisions, it will be of consequence whether they are based on a matter which can actually and legally be compared with that which is before a Norwegian court for decision. To the extent there is a question of weighing up different interests or values against one another, Norwegian courts – using the method applied by EMD – must also be able to build on traditional Norwegian prioritizing of values. This applies in particular if the Norwegian legislator has evaluated the relationship to EHRC and based its evaluation on the fact that there is no conflict.

Norwegian courts do not have the same overview of the legislation, general understanding of law and practice in other European countries as does EMD. In that Norwegian courts when weighing up different interests and values can build on prioritising of values as the basis for our legislation and general opinion of law, Norwegian courts, however, could enter into an interaction with EMD and contribute to influencing EMD's practice. If Norwegian courts were to be just as dynamic in their interpretation of EHRC as EMD is, there would be a risk that Norwegian courts in some cases would go further than necessary in relation to EHRC. This could put unnecessary restrictions on the Norwegian legislative authority. This would be unfortunate considering the balance between the legislative authority and judiciary on which our system of government is based.

On this background, I am of the opionion that Norwegian courts in the cases where there is doubt as to how EHRC is to be understood, should not employ a too dynamic interpretation of the Convention. As a general rule, Norwegian courts, in the interpretation of EHRC, cannot build in safety margins against the judgment of Norway for breaches of the Convention. On the basis of the practice of the bodies of the Convention and the understanding of values and traditions which our society is based on, Norwegian courts must seek to find how the provisions of the Convention shall be understood."

In the opinion of the present writer, it is necessary to start with, and support the fundamental idea behind human rights, which is that each person has certain basic rights, and that these rights shall be respected, also by the legislative and judicial authorities. Some central human rights are specially mentioned in the Norwegian Constitution. Because of the development of law it appears as doubtless today that Norwegian courts neither can nor shall apply legislation which is in conflict with these rights. The development of law has also entailed an international regulation of human rights, which now covers a considerably wider spectrum. The same fundamental considerations lie behind both the traditional Norwegian human rights provisions and the international rules on human rights. Since § 110 c of the Constitution has been adopted, it is difficult to see that the attitude of the courts towards conflicting legislation should be different in principle. Weighty policy considerations speak for this solution, including the international efforts to strengthen respect for human rights. As I see it, the preparatory works to the constitutional provision in question can in no way speak decisively for another solution.

I find reason to emphasie that these fundamental problems will in principle not fall into any other position if legislation is passed which incorporates or transforms international human rights into Norwegian law; even though such legislation lays down, more or less unconditionally, that its provisions shall take precedence over other legislation, such the Human Rights Act and the EEA legislation lays down. An Act containing provisions of this nature does not give, and cannot give, the law another rank than any other and subsequent Act. It will therefore be deviated from to the extent the legislator finds expedient; in itself, the law therefore cannot be given other significance than to serve as guidelines for the legislator itself, and as an interpretation indicator of greater or lesser weight – dependent on the other source of law factors – for subsequent legislation. Such an Act will therefore not be able to give the individual any effective protection against the legislative power. The courts will thus still have a particular responsibility for ringing round the fundamental values which human rights represent, such that these values are attached decisive weight as a limit for the legislator, and which thereby will also be a support for the legislator toward forces which may require intervention in human rights.

The right to belong to a union as a human right, is not unconditional pursuant to Art. 11 of the European Human Rights Convention, but is limited as far as protection from intervention by the State is concerned – pursuant to the

second subsection of the provision. Intervention must be "necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others." This evaluation will necessarily have to give the individiual state a certain freedom of judgement – a margin of appreciation – but, with this reservation, there is a question of a legal limitation and ramification for the State legislative authority. It therefore falls under the jurisdiction of the courts to decide whether the State's legislative powers have kept within these ramifications.

Literature

Henning Jakhelln: Arbeidsrettslige studier [Studies on labour law] I-IV (Oslo, Universitetsforlaget 2000) contains a number of labour law articles - most of them are in Norwegian - including articles regarding seamen and boicotting of ships flying flags of convenience.

Henning Jakhelln: Oversikt over arbeidsretten [An overview of the Norwegian labour law] (Oslo, NKS-forlaget 1996)

Asbjørn Kjønstad [red.] Folketrygdloven [the National Insurance Act] med kommentarer (ad Notam Gyldendal 1998)

Tore Schei: Tvistemålsloven [the civil procedure act]med kommentarer (Oslo, Tano 1990)

Abbreviations

The following abbreviations should be observed:

Rt. (Norsk Retstidende) Norwegian Supreme Court Reports.

ARD (Dommer og kjennelser av Arbeidsretten) Norwegian Labour Court Reports.

ND (Nordiske Domme i Sjøfartsanliggender) Scandinavian Maritime Court Reports.

LO (Landsorganisasjonen i Norge) the Norwegian Confederation of Trade Unions; see also fn. 63.

NHO (Næringslivets Hovedorganisasjon) the Confederation of Norwegian Business and Industry; see also fn. 63.