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International Labour Organization
Committee on Freedom of Association
Office of the Director-General
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CH-1211 Geneva 22
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also by e-mail cabinet@ilo.org

Haarlem, 22 February 2008

Subject: complaint against the government of the Netherlands (Minister of Social Affairs and Employment) on violation of
1) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
2) Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
3) Collective Bargaining Convention, 1981 (no. 154)
Reference: 12340-00/pp AV
Your reference:

Dear members of the Committee,

The undersigned, Han Vallenduuk, lawyer, acting on behalf of (1) organisation of employers Altro Via and (2) organisation of workers LBV, submits to your Committee a complaint against the Dutch government (Minister of Social Affairs and Employment) on his direct act(s) that declare collective legally and voluntary bargained labour agreements (CLA) void.

Altro Via (Algemene trendsettende ondernemersvereniging via internet aanmelding) is a employers organisation legally established as private body by act of a public notary on 6 October 2004 and registered in the Amsterdam Chamber of Commerce under no. 34214357. It is established at Soendaplein 2022BA Haarlem. Under the regulations in its charter Altro Via may bargain CLA's as is required under Dutch law.

LBV (Landelijke Bedrijfsorganisatie Verkeer) is a workers' organisation, registered as a private body in the Rotterdam Chamber of Commerce under no. 40.34296. Its charter was established on 3 March 1969. It is established at Strevelsweg 700/612

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3083 AS Rotterdam. Under the regulations in its charter LBV may bargain in CLA's as is required under Dutch law.

1. The collective bargaining process is governed by the 1927 Collective Labour Agreements Act or CLA Act (*Wet op de collectieve arbeidsovereenkomst*) and the 1937 Collective Labour Agreements Declaration of Universally Binding and Non-binding Status Act (*Wet op het algemeen verbindend en onverbindend verklaren van bepalingen van collectieve arbeidsovereenkomsten*) being referred to as AVV Act. Exemption of universally binding CLA's is granted by the Minister of Social Affairs and Employment. The policy of the Minister since the nineties in the last century is that dispensation is granted if an employer or sub-sector is already bound to a company CLA or sub sector CLA. In 2003 dispensation was only refused, when the Minister concluded that one of the contracting parties was not an independent trade union. Because of many granted exemptions in the past union LBV that support this complaint, lack of independence is not at stake in this discussion. Moreover a thorough investigation by the government was done in 2003/2004.

2. The Dutch government (the Minister of Social Affairs and Employment) has issued by decree a modified Reference Framework for Declaring CLA Provisions to be Generally Binding. In this decree, published on 20 November 2006 (**Annex 1**, under 7 Dispensatie, rule 16 page 4) and effective from January 1, 2007, the Minister outlines his power of attorney in granting exemptions.

3. The modification was the outcome of a questionnaire send by the Ministry of Social Affairs to unions and employers' organizations in the Netherlands, united in the Labour Foundation (*Stichting van de Arbeid*). This cooperative and statutory body of the national workers and employers' organizations is the advisory body of the government on social affairs. After a letter of protest from Altro Via that the Minister of Social Affairs and Employment did not gather views from social parties not united in the Labour Foundation, the Minister indicated that he was interested in the view of third parties, like Altro Via. Altro Via and LBV have protested by a letter of 27 April 2006. They were amongst many more organizations that have launched protests against the announced measures. The Minister was reproached that seeking advise at the Labour Foundation was merely asking the monopolists to reach out arguments to strengthen their monopoly. Alleged was that the process of differentiation in labour conditions well on his way since 1990 could not be abolished by a simple reference to an explanatory phrase from 70 years earlier.

4. The intentions of the Minister of Social Affairs and Employment to restrict dispensation of universally binding CLA's where based on the parliamentary history of 1937 when the AAV Act was on the agenda in the Dutch Parliament. In the explanatory message of the government¹ reference was made to the phrase '*although*

¹ "*Artikel 2, eerste lid, geeft den Minister de bevoegdheid om op de verbindendverklaring uitzonderingen te treffen. Dit kan noodig zijn om te voorkomen,*

certain companies will encounter founded objections, because the situations differ completely from those companies, which are bound by collective labour agreement. From this explanatory note the Minister has introduced the words '*specific characteristics of a company*' in the Reference Framework. **So whenever a smaller union contracts with a smaller employers organization a legally perfect CLA, at a date that the CLA that will apply for the general binding status is yet to be contracted, dispensation is refused for the company or the companies in a sub sector CLA that have the same *specific characteristics* as the companies in the universally binding CLA. Thus the company or sub sector CLA is declared void by a unilateral decision of the government.**

5. The normal procedure is still that any social party can be engaged in voluntary negotiations to contract a new CLA. The signed CLA agreements are send to the Ministry of Social Affairs for registration. They receive a letter from the Ministry of Social Affairs (called *Kennisgeving van Ontvangst*, KVO) which makes the CLA legally binding for the social partners and the workers in the companies which are members of the employers' organization. Since January 2007 however the contract can be wiped out by government decision, when the exemption is refused. This decision of the Minister of Social Affairs and Employment declares these smaller CLA's literally void.

6. Parties take the Altro Via Login-CAO voor Transportbedrijven (**Annex 2**) as an example. The CLA has been contracted between Altro Via as employers' organization and LBV as workers union. This CLA in the road transport sector starting on 1 January 2007 and expiring on 31 December 2008 comprises 40 companies. From 2003 on the Ministry of Social Affairs has exempted some 10 or more CLA's contracted between both parties among those the CLA for transport companies. The first exemptions were give after thorough investigation in the independence of the parties.

dat arbeidsovereenkomsten onder verschillende verbindend verklaarde regelingen zouden vallen of onder een collectief contract en een verbindend verklaarde regeling, dien niet in overeenstemming met elkaar zijn. Eigenlijk dient rekening gehouden te worden met de mogelijkheid, dat de verbindendverklaring in het algemeen wel gemotiveerd is, doch voor bepaalde ondernemingen op gegronde bezwaren zou stuiten, omdat de toestanden daarin geheel verschillen van die in de ondernemingen, welke onder de collectieve arbeidsovereenkomst vallen."

(unauthorized translation: Article 2, first paragraph, attributes competence to the Minister to allow exceptions on the universally binding effect. This can be necessary to prevent that employment contracts will be bound by different binding regulations or would fall in the scope of a collective contract and a binding regulation, which are not in conformity with each other. In fact one should taken into account the possibility, that the binding effect is motivated in general, although certain companies will encounter founded objections, because the situations differ completely from those companies, which are bound by collective labour agreement.)

7. Like before the negotiations have found place in freedom and the written CLA was sent to the Minister of Social Affairs and Employment which gave his consent (KVO) on 3 May 2007. Companies and their workers have lived by this CLA, some of them since April 2003. At the time that was applied for the universally binding status of the national CLA (CAO Beroepsgoederenvervoer over de weg en de verhuur van Mobiele kranen) Altro Via c.s. have applied for exemption on 25 July 2007. The Minister of Social Affairs and Employment rejected the request on the 10th of October 2007. The argument was that the activities of the companies that should apply the Altro Via CLA where no different from those companies that are to apply the national CLA (**Annex 3**). This rejection means in practice that the members of Altro Via have to apply the national collective agreement from October 10, 2007. Altro Via has protested through an administrative procedure on 20 November 2007.

8. The complaints formulated by Altro Via c.s. are that the government has violated the freedom of concluding contracts and the freedom of association. In a first reaction the government has pointed out that those rights are guaranteed in the periods that there is no general binding agreement. The Minister persisted in his decision to refuse exemption.

9. Although the administrative procedure to contest the decision of the Minister of Social Affairs is still under way, Altro Via c.s. launch this complaint as there is a flagrant violation of their rights prescribed in three conventions: ILO Conventions nr. 87, 98 en 154.

10. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

art 3 par. 2 : *The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.*

Allegation: Since 2007 the Minister of Social Affairs and Employment refuses exemption and or dispensation as the applicants for dispensation do not have companies with specific characteristics that are different from the general binding CLA.

Violation: The CLA is impeded by interference of the government to the effect that the CLA from Altro Via is void since 10 October 2007.

art 8 par. 2. *The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.*

Allegation: The Reference Framework and the criteria for ‘specific characteristics’ deny the rights of new and smaller unions and employers organizations at the detriment of the established parties.

Violation: Dutch law impairs the guarantees provided by this convention, in fact the right guaranteed in article 2 *Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.* Impeding of CLA's which is the purpose of the organisation will end in destruction of the organization.

11. Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Article 2 par 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*

Allegation: The Reference Framework and the criteria for 'specific characteristics' allows the government to refuse exemption and or dispensation as the applicants for dispensation do not have companies with specific characteristics that are different from the general binding CLA.

Violation: 'Any act' can also be an act of the government. The act to refuse dispensation causes the CLA void, so this act interferes with the establishment of the small union/ organization.

Article 4 : *Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.*

Allegation: Dutch government hampers instead of encourages and promotes full development of machinery for voluntary negotiations between employers' organisations and workers' organisations. At least the encouragement and promotion is limited to the established unions and employers' organisations.

Violation: Instead of the duty of the government to promote and encourage voluntary negotiation, measures are issued to discourage the creating of collective agreements.

12. Collective Bargaining Convention, 1981 (no. 154)

Article 5: *1. Measures adapted to national conditions shall be taken to promote collective bargaining.*

2. The aims of the measures referred to in paragraph 1 of this Article shall be the following:

(a) collective bargaining should be made possible for all employers and all groups of workers in the branches of activity covered by this Convention;

(...)

(d) collective bargaining should not be hampered by the absence of rules governing the procedure to be used or by the inadequacy or inappropriateness of such rules;

Allegation sub 2a: The measures in the Reference Framework and the criteria for ‘specific characteristics’ do not make it possible to encourage collective bargaining for all employers and groups of employers.

Violation sub 2a: Measures which refuse exemption and or dispensation of CLA’s breaks collective bargaining down and thus is in direct violation with this rule, as they deny collective bargaining for some employers and some groups, amongst them the employer, being member of Altro Via and the workers being member of LBV.

Allegation sub 2d: The measures in the Reference Framework and the criteria for ‘specific characteristics’ as mentioned above are if not inadequate, certainly inappropriate.

Violation sub 2d: The right of collective bargaining is hampered for certain groups in the Netherlands by the inappropriateness of the rules.

Article 8: *The measures taken with a view to promoting collective bargaining shall not be so conceived or applied as to hamper the freedom of collective bargaining.*

Allegation: Dutch government promotes the AVV act as a support of the collective bargaining process in the Netherlands. However enforcing in the way they do since 2007 it hampers the freedom of collective bargaining of certain groups.

Violation : The measures in the Reference Framework and the criteria for ‘specific characteristics’ is a violation of the right of collective bargaining for certain groups in the Netherlands.

Conclusion

12. It is therefore that Altro Via and LBV launch this complaint against the Dutch government (the Minister of Social Affairs and Employment) as he denies the rights of free and voluntary negotiating and the right of association. Altro Via c.s. like to refer to 1996 Digest, para. 867 where it is said that *‘that the public authorities should refrain from any interference which would restrict this right (collective bargaining, JV) or impede the lawful exercise thereof, and that the law of the land should not be such as to impair or be so applied as to impair the enjoyment of such right.’*

Yours truly,

on behalf of Altro Via and LBV


Han Vallenduuk