

 LO Norge	
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The Holship case in the ECHR: Clarifying and important judgment.

The right to strike and the right to organize take precedence over economic rights

The European Court of Human Rights (ECHR) today ruled that the right to strike and the four freedoms are not equal rights. The decision is an instruction to national courts on how to assess interference with the right to organize. The European Court of Human Rights, in contrast to the Norwegian Supreme Court, states that economic freedoms in themselves cannot justify interference with the right to organize. This is an important decision for the entire European trade union movement.

The ECHR has today handed down a ruling in the Holship case, which was brought in by The Norwegian Federation of Trade Union (LO). The ECtHR has ruled that the Supreme Court did not violate workers' rights, as it found that the boycott in the port of Drammen was illegal. However, the Court emphasized that the freedoms in the EEA (and EU) cannot be seen as equal rights to the freedom of association in the ECHR. Thus, it rejected both the case law of both the Supreme Court and the European Court of Justice in this area. The ruling is at this point an important victory for the Norwegian and European trade union movement, which has always claimed that trade union rights cannot be subordinated to the economic freedoms of EU law.

For LO and the European trade union movement, the most important thing in this case was that the EMD states that there is a hierarchy where the right to organize takes precedence over economic rights such as the four freedoms in the EEA/EU



agreement. This has long been a contentious issue within EU law, following the European Court of Justice's judgments in the Viking and Laval cases, which the EMD has now clarified for the first time.

It has thus been established that Norway cannot use EEA law as an argument for not fulfilling the obligations in the ECHR. EEA law is not a system that protects fundamental rights in line with EU law. This has the meaning that Norwegian courts must interpret the Constitution independently and not adapt the interpretation of EU fundamental law by the European Court of Justice and the EFTA Court.

When the Court came to the conclusion that there was no violation of Article 11 of the ECHR, this is partly due to the fact that the nation states have a wide margin of discretion, and partly due to special circumstances in the collective agreement requirement. The original collective bargaining demand was aimed, among other things, at Holship, and not at the dockworkers' employer. In addition, the court points out that the parties agreed on a new and different collective agreement for the dock workers.

The Court also rules that boycotts are part of the right to strike and are protected by the right to organize in Article 11.