

Experiences as a Consultant in the Field of Labour Law in Vietnam

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I. The general framework

The Socialist Republic of Vietnam recognises the right to strike. The Labour Code amended in 2002, 2006 and 2007 contains a chapter entitled “Strikes and strike settlement” (Ministry of Labour Social Affairs and Invalids 2007). The trade union in the enterprise is the only one who is entitled to raise demands, negotiate with the employer and organise a strike.¹ If the demands are not accepted, a conciliation procedure starts within the enterprise. If the problem cannot be solved, an arbitration procedure has to take place; during one week, it must lead to a decision. If this decision is not accepted by the employer or the union, a strike can be prepared. In this moment, the demands must be presented in a written form. 75 % of the employees working in the enterprise shall give their support in a consultation procedure or in a referendum. There must be at least five days between the presentation of the demands and the beginning of the strike.

To give further details or to interpret the rules seems to be superfluous. During the period between 2001 and 2011, about 4,000 strikes occurred in Vietnam, the average number of participants being about 800.² None of these collective actions observed the legal rules (Fincher 2011); in many countries one would call them wildcat strikes. They were obviously illegal but supported by the local authorities and the press. In the beginning, the strikers demanded the fulfilment of contractual and legal obligations; unpaid wages and insufficient health protection were the objects of the protests. In the meantime the demands have shifted from legal conflicts to

1 The structure of the unions is described in other contributions to this volume; cf. Dong Thi Thuong.

2 See the table for the years 1995 to 2009 at Pringle/Clarke (2011: 67) and Chan/Siu in this volume, Figure 1 (comprising the period from 2000 to 2011). Tran Ngo Dien, a representative of the ministry of labour, mentions 4,170 strikes which occurred between 1995 and 2011; see his contribution in this volume.

interest conflicts as workers want to have higher wages and better meals (Clarke/Lee/Chi 2006). Normally, the strikes were successful in the sense that the workers got a wage increase which was not too far from what they had demanded. No cases are reported in which the strike broke down the workers going back to their workplace without any success. 75 % of all strikes occurred in Foreign Direct Investment (FDI) Enterprises, 22 % in Vietnamese enterprises with private owner and only 3 % in state owned enterprises (Chan/Siu in this volume).

In 2006, the labour ministry decided to start the reform of the Labour Code. A German foundation having a good standing at the Vietnamese authorities asked me to come as a so-called short-term expert to give advice to the labour ministry,³ to the trade unions and to the parliamentary commission on social affairs which would have an important saying as to the reform of labour law.

II. The project

Illegal strikes are nothing really irregular in labour law. Even in Germany they happen from time to time. In order to avoid the risk to be dismissed, workers normally prefer 'hidden' forms of illegal or semi-legal strikes like an assembly of all employees organised by the works council which is possible according to the works council act and which can take several days.⁴ But the situation changes if all strikes are organised in an unofficial way; in such a case, something goes wrong with the legal rules. My mission was to develop a set of legal provisions which would give the workers a fair chance to realise their interests without breaking the rules. Another problem was how to establish a trade union in private enterprises – Vietnamese and foreign-owned ones; some of the partners were impressed by the German works council system and wanted to realise it in this part of the economy. There were other important questions like the minimum wage, but also technical improvements of the existing Labour Code. Another point was whether, according to Soviet tradition, one should keep a 'Code' comprising all important questions or whether one should create

3 Official title: Ministry of Labour, Invalids and Social Affairs, often abbreviated MOLISA.

4 See as an example the 'information assembly' at Opel Bochum in 2004 taking six days; its exceptional character is described at Gester/Hajek (2005).

specific acts for each part of labour law like in Germany and in a lot of other countries.

The ministry had elaborated a draft for the new Labour Code which did not really tackle the problem of ‘wildcat strikes’. The only ‘improvement’ was to organise the conciliation procedure outside the enterprise what should make it more efficient and less open to the relationship of power within the enterprise. If there would be no trade union group in an enterprise, the union should have the right to design a representative who would be entitled to collective bargaining and to building up the trade union group.

III. Discussions in seminars

The foundation organised several seminars with the three partners, in the beginning especially with the ministry and the unions. During the official discussions, the strikes played a certain role; it was the common opinion that one should take them ‘seriously’. In informal talks their importance was much higher, many union officials condemning them in a very harsh way: The strikers are uneducated migrant workers coming from the countryside and having no idea about industrial work even not knowing their rights. A “stupid mob”, said one of them, “they even do not know how to clean their ass”.

Such a prejudice creates curiosity. We tried to get some more information about the trade union in the enterprise. A ‘committee’ is elected by the union members whose chairman or chairwoman is normally the most important representative of the workers, though the election has “more or less formal character” as a deputy from Parliament told us. Sometimes it is just the local organisation of the unions who designs the chairman. In many cases he or she is a manager, the vice-president of the company or the human resources director. It seems not very probable that he or she will be opposed to any management decision and organise a strike against his colleagues. So the problem of an efficient right to strike is not only the complicated procedure but also the monopoly given to the union on the level of the enterprise: Even if they were legally entitled to tell their workers “Go on strike tomorrow”, they would not do it. This situation is not a misuse of legal structures but a consequence of a specific trade union concept: It is not an organisation defending and improving workers’ rights but a kind of mediation agency which tries to come to compromises when a

conflict breaks up. In a socialist economy, this may be a reasonable concept, but in Vietnam there is a growing private sector following capitalistic principles where workers can realise some of their interests only by exercising pressure. The role of the union has to change – but changing the own structure is nowhere a special quality of unions.

As to the enterprises without trade unionists, the union advocated the solution of a special representative being designed by the higher level. The Committee for Social Affairs of the Parliament supported the idea of works councils whose mandate would automatically end if a trade union group would be established. The ministry did not take position.

The minimum wage had played an important role in the strike 2006. During eight years it had not been increased despite a yearly inflation rate between 5 and 15 %. Its level was an equivalent to 40 Euros a month which does not permit to have a decent life.⁵ When the labour ministry intended to adjust the amount, foreign-owned companies lobbied in order to postpone the date.⁶ Another problem was that the minimum wage was not the same for the whole country, being different in specific areas which had been defined years ago by the World Bank. Much more important is probably the fact that the salaries in the whole public service are based on the minimum wage: A secretary will earn three times the minimum wage, a director six times etc. By this way, an increase does not only cover the low-paid workers but changes the remunerations in a big part of the country. The foreign enterprises normally paid 10 to 15 % more than the minimum wage. This was obviously not sufficient for the workers so they made a lot of overtime hours giving them an additional payment of 50 %. ‘Overtime’ means to work longer than 48 hours a week.

IV. Going to see the reality

The information you get in seminars and during a lot of conversations may refer only to a small part of the reality. Having three different counterparts

5 Cf. the data given by Chan/Siu in this volume, indicating that consuming foods had decreased leaving people hungry and undernourished.

6 Do Quynh Chi (2011: 196): “In the meantime, some major foreign-owned companies and their associations lobbied MOLISA (= ministry of labour) and the Prime Minister to delay the effective date of minimum wage adjustment so that they had more time to prepare for increased input costs.”

(the unions, MOLISA and the Commission for Social Affairs of the Parliament) who did not have necessarily identical interests, there was a high probability to find the truth if the three gave the same evaluation. But it was the perspective of the apparatus which prevailed; we never had the chance to speak to strikers. In Ho Chi Minh City we were lucky to find Vietnamese social scientists who had made interviews with strikers in 20 enterprises going to their hostels in the evening. What we heard in our confidential talks supported in a certain way what we had read elsewhere before.

Normally strikes started in the morning, the workers remaining outside the factory. Spokesmen did not exist, but some banners with demands had found their way to the entrance of the factory. The management informed the local and sometimes the provincial unions and the labour administration. After one or two hours, a trade union official came in order to negotiate with the employer. The negotiations took normally one or two days. If a result was reached, it was written on banners, and workers were asked to go back to their workplaces. If they did not, the negotiations had to go on. In many cases the police came but never acted against the strikers. On the contrary, they were considered as a protection against attempts of the employer to hire a group of strong-arm men attacking the strikers.

Who were the strike-leaders, we asked. The social scientists told us that they wanted to know it, too, but could not find it out. The social intelligence of the 'uncultivated peasants' was highly developed. As the workers often came from the same region or even the same village, one can presume the existence of opinion leaders whose authority was respected. Strike breakers nearly never appeared: Workers who would not go on strike would isolate themselves which can have unforeseeable consequences. As the strike was a surprise for the employer, he could not find other people to replace the striking workers.

Which were the demands? The wages were the most important point everywhere; sometimes possible limits to overtime work and problems of health protection played a certain role, too. If the strikers had reached a success in one enterprise, after some days workers of other enterprises situated nearby followed. By this way, the strikes spread over the whole industrial zones near Ho Chi Minh City, Da Nang, Hanoi and Haiphong.⁷

7 Eight case studies made by Tran Ngoc Angie (2013: 203f.) confirm what was described here but give more details about the preparation.

Another conversation was possible with the union in Vungtau, a medium-sized city at the coastal areas of the South of Vietnam. The local trade unionists told us that a strike had occurred in an enterprise, the strikers demanding a wage increase from 40 to 60 Euros and better meals in the canteen. The management had phoned and asked the union to come. They negotiated about the demands for the rest of the day but without any result. In the evening, the union asked the strikers to end the strike the next day; they would try to reach the necessary improvement of the situation by conciliation and arbitration, i.e. by the official way. The management had promised that the meals would become better immediately. This was accepted by the workers.

At the moment of our conversation, three weeks were passed and the union was involved in the arbitration procedure. They told us that the owner of the factory – a Korean investor – had expressed his thanks to them which made obviously feel them proud. The quality of the meals had improved only for three days; afterwards it fell back to the bad quality it had before. We would create in such a case in Germany a ‘canteen committee’ with representatives of both sides which would supervise which meals are offered. This was a quite new idea for them and easily accepted. Yet their main problem was arbitration about wages. The employer had presented papers showing that he had a very narrow economic space for acting. What to do in such a situation? Nobody had a balance sheet, and if it existed: Would it really give a correct view of the economic situation of the company? Is there an accountant who could give more information? – I wanted to know. The accountants did not strike, was the answer, but of course they would be on the side of the workers. Would it not be reasonable to speak to one of them outside the enterprise just to get some new facts? The proposal seemed quite new to them and in a certain way embarrassing, but they accepted.

What will be the outcome of the arbitration? To get an increase from 40 to 50 Euro would be quite difficult, probably 48 can be reached. Would it not have been better to continue to strike for 60 Euros and to get perhaps 54 or 55? They were honest enough to admit that the strikers would have probably reached much more than 48, but “we have to show that we exist and that we do something for the workers”. We did not get to know what eventually the result was. If it were a good one for the workers, newspapers would have reported about it because it would have been the first case in which workers got considerable advantages within the official framework.

V. The elaboration of a concept

A system of fair representation of workers' interests requires a much enhanced possibility of legal strikes. To meet this condition two points seem to be essential.

The first one is the existence of an independent workers' representation on enterprise level acting independently from management. According to national traditions, that only can be a trade union, not a works council (an institution imported from Germany) which would never be accepted by the unions. How to get rid of the actual chairmen of the trade union committees? One solution is that they should not earn more than 150 % of the average wages in the enterprise. The existing officials would have the choice between this new position and the existing one, i.e. remaining a member of management and giving up the trade union position. There would be very few ones not to leave the position of a union spokesman ... To be independent requires a well elaborated protection against dismissal. In this case, the German solution may be welcome: dismissal only in case of grave misconduct (or the closure of the plant) and with the consent of the trade union committee or the court. As long as the consent is not reached, the person continues to work in the factory with full rights of a workers' representative. The existence of such a trade union structure would open the way for an effective grievance mechanism, too.

The second condition is that the union should be able to organise a strike without a long procedure of conciliation and arbitration. It should be its own decision whether it wants to follow the traditional way or whether it organises a strike at once.

If both conditions are fulfilled, the real strike leaders would perhaps be ready to be candidates to the trade union committees.

But is this concept not in contradiction to the leading role of the communist party? In the seminars the point was never touched, but in reality it is of a very high importance. The fact that the strikes were tolerated by the police and the press indicates that the party does not consider the strikes as an attack to the socialist system. In an article (Do Quynh Chi 2008: 15) two party statements are described which merit some attention. In 2007, the communist party of Vietnam had stated in a resolution about the working class (the following quotations Do Quynh Chi 2008: 15):

“Since the launch of the economic reform ... a large part of the working class has not benefited from the fruits of economic growth as they should deserve

... this is partly attributed to the insufficient attention of the Party towards upholding the position of the working class in the new era.”

Immediately pertinent to the problem of strike are some remarks in the keynote speech made by President Truong Tan Sang:

“During a long time we paid attention only to economic growth and did not care about the establishment of party groups in the enterprises which make the strong side of our Party ... To cope with strikes is not only up to the unions. The whole political system has to deal with this problem and find ways for a break-through: Either we ourselves will lead strikes or we solve the problems without strikes by means of negotiations so that other people cannot benefit from the conflicts.”

This is an interesting accent. The Party on the side of the strikers? This presupposes a specific understanding, in a certain way a step ‘back to the roots’: the party defending the economic interests of workers in a capitalist market economy.

If we do not go so far (considering it only as the opinion of a certain group within the Party), there is still another way of arguing. The Party has given a lot of decision making power to enterprises without seeing any contradiction to its leading role. If the union defends the economic interests of the workers against the employers, it participates in this autonomy which will as such remain the same. The influence of the Party will not be diminished; on the contrary, its steering role will be facilitated if there is a system of countervailing powers.

Finally, collective bargaining and strikes could serve as means of stabilising the society. With the exception of minimum wages, the exact living standard will no more be the responsibility of the government. If workers are dissatisfied, they may criticise the employers for seeking too much profit or the unions for being too indulgent with the other side. Take the example of Germany: between 2000 and 2009, the average net wages fell back by 2.5 %. If the Government had decided to reduce the salaries to such an extent, mass protests would have been inevitable. But as the social partners were responsible, there was no visible protest movement. By referring to the social partners, the government will be in a very comfortable position.

On the other hand: If the strikes go on, there can and will probably be one day coordinated actions in many enterprises and even political protests. Rules which are regularly broken lose their authority and become obsolete after some time. Is this a perspective which the ministry of labour, the trade union leaders and the Parliament could accept?

All this had been told to the Vietnamese partners in the years 2007, 2008 and 2009 when I spent four weeks in the country every year. The counterparts were very open-minded. Even a publication in the Vietnamese press became possible, containing all the arguments mentioned above (Däubler 2008).

VI. The Draft Labour Code 2009

In the beginning of September 2009, the Labour Ministry presented a new draft. As to the strike question, the only proposal remained to put the conciliation procedure out of the enterprise. Taking up the proposal of the union, it should have the right to send a representative to the enterprises where no trade union group was established. The yearly maximum number of overtime hours should increase from 200 to 480. Also some other proposed modifications were much welcomed by the employers' side. The text of the new draft was distributed at a conference with a lot of senior dignitaries like former ministers and former judges at the central court. All of them appreciated the draft. One of them underlined that Vietnamese workers are lazy by nature and should therefore be governed by stronger rules. Criticising the absence of strike-related rules, I said that all enemies of Vietnam would be happy to read this draft – for some of the participants these remarks were beyond the limits of polite (and therefore acceptable) criticism. The vice-minister of Labour had told me some time ago that the working conditions in the textile factories were so bad that nearly everybody left before the age of 30. One of the reasons was the extremely long working time – from seven in the morning to ten in the evening. Now the same person hailed the extension of the legal overtime work to 480 hours a year.

Some weeks later I got in contact with an official of the International Labour Organisation (ILO) who knows Vietnam very well. He gave me the idea that probably a group of investors had paid some money in order to modify the draft in their interest. Combined with other information I had received before, this was convincing to a certain degree. In Vietnam, everybody who has a better standing than a normal worker tries to improve his income in different ways. Teachers give private lessons which deal with the matters of the exam to be passed afterwards. University professors do not want to live from their salary of 200 or 300 Euros a month and sell exams, at least the grade a student will obtain. In Hanoi, you will

find very few judges living in an old cottage and accepting no bribes – these judges have a high moral reputation among the population. With the majority it is different: As a claimant you get a date for a hearing only if you had a friendly meeting with the judge before. You will bring a bouquet of flowers with a red envelope containing a certain amount of money.⁸ What can a ministry of labour sell? The labour inspection which is part of the ministry can be very generous, but the money will be collected at a decentralised level. For the collaborators of the ministry, some payment for the modification of a draft law is extremely welcome.

VII. Arguments do not help

Without giving specific reasons, in March 2011 another draft was presented by MOLISA. The investors were still more privileged. A new sanction was provided for wildcat strikes. According to the traditional rule, participating in an illegal strike would oblige the workers to pay damages. If a person earns 40 or 50 Euros a month, this is no realistic sanction. The draft provided therefore that the hours not worked because of the strike were ‘postponed’ in the sense that the strikers had to deliver unpaid work during the next two weeks. They lost their salary during the strike time and they lost it a second time when they worked again⁹ – if a strike would break down, that could be a real sanction. There is no offer to workers to bring in their interests into the official system – on the contrary they are threatened by a higher degree of repression. Brave new world of socialism! The overtime work was now limited per week; the yearly amount could even be higher than the 480 hours in the previous draft.

What is the attitude of trade unions to such a kind of legislation? We had the chance of a personal conversation with a trade union leader having the reputation of being an important strategist. Let us call him S.

We proposed that the union should be able to organise a legal strike without being obliged to go through the long procedure of conciliation and arbitration. “The circumstances” would not permit such a solution, was his

8 Some time ago, the Mayor of Hanoi collected all the red envelopes he had received during a year, published the total sum and gave the money to a non-profit organisation.

9 In the actual situation, management is often obliged to pay the strike time; see Chan/Siu in this volume.

answer. As our personal relationship with S. was not bad, we could insist in repeating certain questions. Which are “the circumstances”? He told us that he had met the Prime Minister some time ago. “If I would be a worker, I would have gone to strike much earlier and more often”, the Prime Minister had said to him. “That is a good ally”, was our answer. Nevertheless, there are “very high obstacles” against a right of the unions to choose whether they prefer the bureaucratic procedure of conciliation and arbitration or whether they choose a direct action. “Very high obstacles”? What does it mean? A decision of the politbureau of the Party? No, nothing of this kind. Only very few members of the Parliament are at the same time members of the union, and even they do not always support the position of the union. S stressed the fact that the union is not only a representation of the workers but has to bear in mind the good functioning of the economy and a good climate for investors. We replied that we could accept such a role of the union in the state-owned sector but not in the private one, especially in FDI-enterprises. They function according to capitalistic principles – and it is the task of the union to establish a counterbalance to the owners in order to get reasonable compromises. Marx has outlined it in a very convincing way.

“Well,” was the answer, “we live in a market economy with socialist orientation; this makes a big difference.” “No,” we replied, “the socialist orientation has no effect on the lives of the workers. If they work earning the minimum wage of 50 Euro plus 10 %, this is traditional exploitation. Couldn’t be the behaviour and the role of the union different in the state sector and in the private sector?” “Yes, good question, you are right,” he replied, “but we are not so far ahead now. A representation of workers showing solidarity is not possible in Vietnam.” He made a joke. “If you put ten Chinese into a prison and one of them escapes, he would try everything to bring the other ones in freedom, too. If ten Vietnamese are in prison and one of them wants to escape, the others would try to prevent him from doing so.” When the laughter was over, we argued that the Vietnam War could not have been won without solidarity. “Yes, but that is another field.” Really? In a war, the risk is much higher than in a strike – would it not be possible that people steal away leaving the task to fight for the country to other people? And were the real strikes not a sign of a well-functioning solidarity?

We wanted to know what happened to the three organisers of strikes whom we had heard about. In three different enterprises they had called the workers to go on strike; the three were arrested by the police and went

to prison afterwards. S. told us that they were sent by a committee for the protection of workers from Poland; Walesa had been one of the founders of this committee. The three people got a special preparation how to organise a strike in Malaysia and Thailand; probably this had been financed by the CIA. Two of them got nine years of prison, one got seven years. S. did not know which statutory rule was the basis of the judgement. They had exploited the dissatisfaction of workers, he said. Let us try to avoid dissatisfaction, this would be the best answer to this kind of people – our idea was not very innovative. But there was no chance to get more information about the three people.

The following days we had seminars with the unions and the Commission for Social Affairs of the Parliament. There were no arguments which were not already mentioned by S. The discussions were not always characterised by a logical structure. During a dinner, the chairman of the Committee of Social Affairs tried to convince me that works councils should be established in all enterprises without union – but the following day the idea was completely forgotten and I had to speak about other subjects. Provocative words (“This is not a market economy with socialist orientation but a market economy like in early capitalism”) did not disturb the atmosphere; on the contrary, many participants nodded in agreement. But nobody spoke about consequences.

VIII. And the outcome?

On the January 1, 2013, the new Labour Code came into effect as well as the new Trade Union Law. The 11th National Trade Union Congress which took place at the end of July 2013 described it as a big success for the unions. As there is an English translation,¹⁰ a first evaluation is possible.

The problem of the wildcat strikes is not directly dealt with. There is still the long procedure before coming to a legal strike – conciliation and arbitration take place outside the enterprise on local or provincial level. The special sanctions against workers participating in an illegal strike

10 www.talentnet.vn/information-center/enewsletter/vietnam (Vietnam Labour Law Update December 2012); the Trade Union Law can be found at <http://luatkhaiphong.com/Van-ban-Tieng-Anh/Law-No.-12/2012/QH13>.

were dropped. The only provision concerning sanctions is now Article 178 § 2 stating:

“Any person who prevents the exercise of the right of strike, who forces others to strike, who takes unlawful acts during the strike, who refuses to comply with the decision of the Prime Minister¹¹ or of the People’s Court, shall, depending on the extent of the offense, indemnify any damages, be subject to administrative sanctions or investigated for penal liability.”

The participation in a strike which is not organised by the union and which does not observe the procedure of conciliation and arbitration is not mentioned. Article 176 defines ‘unlawful strikes’:

- (1) “The following strikes are unlawful:
 - a/ The strike does not proceed from a collective labour dispute, or which exceeds the scope of labour relations;
 - b/ The strike exceeds the domain of the business; and
 - c/ The strike violates the provisions of Items 1 and 2, Article 173, and Article 174, of this Code.
- (2) The determination of whether a strike is lawful or unlawful comes under the jurisdiction of the People’s Court.”

Article 177 adds:

“The decision of the People’s Court on the strikes and collective labour disputes shall be final.”

Two main limits for the strikes can be derived from these rules: Article 176 § 1 lit. a prohibits the political strike because it does not proceed from a collective labour dispute and exceeds the scope of labour relations. Article 176 § 1 lit. b means the strike comprising more than one enterprise. A strike paralysing a whole sector of the economy would be unacceptable. In these cases the organisers will face the sanctions provided for in Article 178 § 2 if the illegality has been stated by the People’s Court.

What about the real strikes in Vietnam, breaking out in one enterprise spreading afterwards to other enterprises? They are obviously not covered by the notion of ‘illegal strike’ and by the rule providing for sanctions. But this does not mean that these strikes are recognised as being legal: The workers refuse to fulfil their duties deriving from the labour contract and therefore could be dismissed. Such an individual sanction remains possi-

11 Article 175 provides: “If the strike is judged to constitute a serious danger to the national economy or to public safety, the Prime Minister is entitled to order the postponement or cessation of the strike.”

ble but cannot be used if the strikers practice solidarity and continue their action in case that one of them would be dismissed or discriminated against because of his participation in the strike. As far as we know, the blue-collar workers always acted in common; there was no chance for the employers to dismiss anybody. The legal situation of these strikes can be compared to the situation under English law before the legislation on industrial relations was passed during the seventies of the last century.¹²

In comparison to what was discussed in the years since 2006, the new Labour Code brings a relatively reasonable solution. This is underlined by the fact that its Article 69 limits overtime work: 200 hours a year. The demand to admit 480 hours was denied due to an explicit decision of Parliament (cf. Chan/Siu in this volume) which had discussed the question before. The trade union proposal to send organisers to enterprises without a trade union group was accepted (Article 153 § 1).

Who were the decision makers? Where is the logic of the discussion? What was the role of the 2011 draft with all its repressive provisions? At that time, Taiwanese and Korean investors had intervened and asked for a more efficient prohibition of strikes (Chan/Siu in this volume). Did they pay a lot to Vietnamese authorities or was the reaction of the ministry just a provisional act of compliance to their demands? Were the drafts just the result of a strategy to get some money? Afterwards, the ministry could always pretend that ‘unfortunately’ the Parliament had decided in another way. Why all the discussion about works councils in enterprises without unions? It is difficult to detect the reasons without referring to pure speculation.

The objective consequence is that the strikes can go on. They may be even less risky than before. The government can tell the investors that it is up to them to get to good terms with their workers. Obviously, the strikes are tolerated. One of the reasons may be that more of the economic values created in Vietnam will remain there (cf. Artus in this volume) – why should the government be opposed to it? Nevertheless the strikes are limited at the same time: A political strike using the example of Walesa would be repressed. The same is the case if organisers going from one factory to the other call people to go on strike: The behaviour of the three ‘organisers’ put in prison will be illegal in the future, too. It is a kind of ‘embedded’ autonomy given to the workers.

12 As to the English situation see Wedderburn (1986: 512ff.).

As these ‘Vietnamese strikes’ have existed since nearly twenty years, one could easily come to the conclusion that the right to participate in such collective actions is now based on customary law. But is it not a quite European way of thinking? Vietnam has its own rules.

Small epilogue

In 2014 and 2015, two events happened which may change the situation in quite a fundamental way.

In autumn 2014, strikes broke out simultaneously in different enterprises in many parts of the country. Workers protested against ‘the Chinese’ who claim some islands situated south of Vietnam. Such a kind of political strike was quite new and transcended the demands strikers had raised before. The fact that the ‘adversary’ was a state which pretends to be socialist in the same way as Vietnam is another important point. But these were not the only ones. In the industrial zones surrounding Ho Chi Minh City and at other places, young workers came on motor-bikes equipped with iron rods on which they had put Vietnamese flags. They asked the workers to participate in the demonstrations against China and sometimes distributed some money. When the workers had joined the people going to the demonstration, the young motor-cyclists went back to the factories destroying whatever they could find. Some buildings owned by foreign firms were burnt down. Nobody could be arrested, the offenders disappeared completely. The Government was shocked and paid compensation to the investors.

Another illegal strike happened in 2015. The reason was a change in the social security system. According to a long-time practice, migrant workers returning to their villages could get back the contributions which had been paid to the social security system during their period of work. This sum of money was used to improve their situations, e.g. renovating their houses or buying some cows or a motor-car. The Vietnamese Parliament decided that the contributions could no more be paid back before the worker had reached the retirement age. In the interest of the financial stability of the social security system, this was a reasonable decision, but it disturbed the life planning of many workers. Most of them did not accept it; more than 150,000 went on strike. After some days, the Government gave in and promised to go back to the old rule. Many workers did not really believe it: As the new rule, object of the protests, would take effect only in the be-

ginning of the year 2016, many workers threaten to resign before the end of 2015 in order to get their money back.

Despite these events, it would be wrong to call the Government a weak one, but it has lost a lot of its authority. In foreign politics, Vietnam wants to join the Transpacific Partnership (TPP) getting even more foreign investments by this way. The relationship with the U.S. improved a lot because the U.S. is considered to be a natural ally against China. As a spin-off effect, Vietnam wants to ratify the ILO-Conventions No. 87, 98 and 105 and establish by this way the right to have trade union pluralism. The new Labour Code will not have a long life.

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