LAKSHMAN KADIRGAMAR INSTITUTE
OF INTERNATIONAL RELATIONS AND STRATEGIC STUDIES

POLICY BRIEFS

2026/03

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Freedom of Association and its Effective Implementation under the EU GSP+ Scheme:

Assessing Sri Lanka's Compliance with ILO Convention No. 87

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March 2026

Abstract: *The Generalized Scheme of Preferences Plus (GSP+) of The European Union provides tariff preferences to beneficiary states that ratify and effectively implement 27 international conventions, including core labour standards. Focused on this framework of conditionality, "effective implementation" takes a prominent role extending beyond formalities of ratification to include enforcement, sustained compliance and practice within institutions. Among the labour conventions, ILO convention No. 87 on Freedom of Association holds a key position within the EU monitoring process as a result of its relevance to labour relations and governance. The study examines how the European Union assesses effective implementation under GSP+, focusing on freedom of association in Sri Lanka. EU GSP+ monitoring reports, findings of the ILO supervisory bodies alongside the reports of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), were analyzed to identify patterns within evaluative language concerning enforcement and effective implementation. A domestic case study is used to illustrate the difference between constitutional recognition of freedom of association and the limitations encountered in judicial enforcement. The study finds that the EU's assessment framework places prominent weight on the concerns that persist over time and the nature of responsiveness from institutions rather than the mere existence of isolated legislative reforms. Within this context, gaps in enforcement under the GSP+ conditionality framework may generate compliance issues, even with the existence of formal legal guarantees.*

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Abbreviations

CA	Court of Appeal
CA87	Convention No.87
CEACR	Committee of Experts on the Application of Conventions & Recommendations
CFA	Committee on Freedom of Association
EC	European Commission
EPZs	Export Processing Zones
EU	European Union
FoA	Freedom of Association
FTZ	Free Trade Zone
GSEU	General Services Employees Union
GSP	Generalized Scheme of Preferences
HRCSL	Human Rights Commission of Sri Lanka
IDA	Industrial Disputes Act
ILO	International Labour Organization
ITUC	International Trade Union Confederation
SWD	European Commission *Joint Staff Working Document*
TUO	Trade Unions Ordinance
ULP	Unfair Labour Practices
UN	United Nations

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1.0 Introduction

1.1 Background: GSP+, Conditionality and Labour rights

The EU's Generalized Scheme of Preferences (GSP) is a unilateral trade preference arrangement designed to reduce or remove import duties for products entering the EU market from vulnerable developing countries, with the broader aim of supporting poverty reduction and job creation while encouraging adherence to "international values and principles" (including labour rights) (European Commission, n.d.).

Within this framework, the GSP+ operates as the EU's "special incentive arrangement for sustainable development and good governance". It offers an enhanced level of tariff preference in return for the "effective implementation" of a defined set of international conventions. In practical terms, the arrangement is presented as a structured exchange: eligible countries must implement 27 international conventions across human rights, labour rights, environmental protection, and good governance, and in return the EU reduces duties to 0% on more than two-thirds of tariff lines. (European Commission, n.d.).

This conditionality is not framed as a one-off entry test. Both the EU's own descriptions of GSP+ and its official reporting emphasize continuing compliance and ongoing monitoring, with specific attention to whether treaty obligations are being implemented "effectively" in practice. The European Commission describes a continuous monitoring model involving information exchanges, dialogue, and country visits, and explicitly notes that it involves a range of stakeholders, including civil society. It further situates monitoring as an evidence-based process, supported by biennial reporting on the progress of beneficiary countries in implementing the relevant conventions. (European Commission, n.d.).

The operational detail of this monitoring approach is also set out in the EU's public guidance for GSP+, which explains that post-grant monitoring focuses on whether the country remains party to the covered conventions, implements them effectively, complies with reporting requirements, accepts monitoring under the conventions, and cooperates with the European Commission in providing information. This guidance further indicates that the EU's "scorecard" for each beneficiary draws on information from multiple channels, including international monitoring bodies, civil society, trade unions, businesses, and EU institutions, and that regular monitoring visits are used to engage stakeholders and test whether serious efforts are being made to address identified issues. (European Commission, n.d.).

A complementary picture emerges from the Council of the European Union's reporting on GSP (covering the 2020–2022 period). That report highlights that compliance under GSP+ is linked to cooperation with, and reporting obligations to, UN and ILO monitoring bodies, and describes monitoring missions as mechanisms to collect evidence "on the ground". It also makes explicit that EU engagement is shaped by issues and recommendations raised by UN and ILO supervisory mechanisms, reinforcing the central role of international supervisory findings in the EU's own compliance assessment. (Council of the European Union, 2023).

Sri Lanka re-entered GSP+ in 2017. In announcing the reintroduction, the EU stated that tariff preferences would apply in exchange for the country's commitment to effectively implement 27 ratified conventions and noted that preferences included wide product coverage such as textiles. The EU also described monitoring as "rigorous" and framed GSP+ as an incentive arrangement that supports continued progress rather than a declaration that implementation is already fully satisfactory. (European Commission, 2017).

The apparel sector is central to understanding how these trade–labour linkages operate in practice. Beyond its direct relevance to EU market access under GSP+, apparel continues to function as a key export sector and foreign-exchange earner. Recent reporting quotes industry data indicating worldwide apparel exports of approximately US$4.8 billion (with the sector described as the country's third-largest source of foreign currency), and highlights the role of the Joint Apparel Associations Forum in representing major firms. While this reporting is oriented to the US market, it underscores the economic and social stakes attached to labour governance in apparel value chains, including questions of workplace voice and representation. (Reuters, 2025).

1.2 Research Problem

The legal and institutional question at the core of this study arises from the gap that can exist between "formal recognition" of freedom of association and the "effective ability" of workers to organize and act collectively in particular sectors. Domestically, freedom of association is recognized as a constitutionally protected freedom. The Constitution guarantees "the freedom of association" within its catalogue of fundamental rights and separately recognizes "the freedom to form and join a trade union". However, the exercise of freedom of association is expressly subject to constitutionally permitted limitations, including restrictions "as may be prescribed by law" in the interests of racial and religious harmony or the national economy. (Constitution of Sri Lanka, 1978).

Against that constitutional baseline, the international legal benchmark for the study is ILO Convention No. 87. Convention No. 87 sets out a protective framework for workers' and employers' right to organize: it guarantees the right to establish and join organizations of one's own choosing without previous authorization (Article 2); affirms organizational autonomy, including the right to elect representatives freely and to organize administration and activities without interference from public authorities (Article 3); prohibits dissolution or suspension of organizations by administrative authority (Article 4); requires that domestic law must not impair, nor be applied to impair, the guarantees provided by the Convention (Article 8); and places an overarching obligation on States to take necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organize (Article 11). (International Labour Organization, 1948).

Whether these international obligations are "met" is not only a matter of reproducing the Convention's text in domestic law. The jurisprudence of ILO supervisory mechanisms has long stressed that certain violations have especially high structural significance because they can disable worker representation. For example, the ILO's compilation of decisions of the Committee on Freedom of Association (CFA) emphasizes that dissolution of a union has serious consequences for occupational representation and should be treated as a last resort after less severe measures have been exhausted, and further underlines that administrative dissolution is a clear violation of Article 4. It also treats cancellation of registration by administrative authorities as tantamount to dissolution, because it can functionally extinguish the organization's legal standing and capacity to act. (International Labour Organization, 2018).

This interpretive emphasis on "practical effect" is particularly relevant under GSP+. The EU's country monitoring for Sri Lanka covering 2020–2022 acknowledges incremental progress in implementation and enforcement of freedom of association and collective bargaining rights, including strengthened enforcement capacities of labour inspection services and awareness-raising initiatives. Yet, it simultaneously flags continuing challenges across sectors, including "a significant number of reports of anti-union practices" and impeded social dialogue, and

notes that outstanding issues raised over many years by the ILO's supervisory system persist. Importantly for the present study's framing, the EU report highlights that national legislation, "particularly the Industrial Disputes Act and Trade Union Ordinance", remains in need of further alignment with ILO Conventions No. 87 and No. 98. (European Commission & High Representative, 2023).

The research problem therefore concerns the extent to which domestic law and sectoral practice jointly satisfy the freedom of association obligations under ILO Convention No. 87, in a context where the EU's GSP+ compliance assessment foregrounds effective implementation, enforcement outcomes, and responsiveness to supervisory findings over successive monitoring cycles. (European Commission, n.d.; Council of the European Union, 2023; European Commission & High Representative, 2023).

1.3 Research Question

To what extent does Sri Lanka's domestic law and practice in the apparel sector meet the freedom of association obligations under ILO Convention No. 87 for the purposes of GSP+ compliance?

1.4 Objectives of the Study

The study pursues five interrelated objectives. First, it clarifies the freedom of association standards under ILO Convention No. 87, including the Convention text and the interpretive principles developed through ILO supervisory practice, and explains why these standards matter in a trade-conditionality context. (International Labour Organization, 1948; International Labour Organization, 2018).

Second, it analyzes Sri Lanka's domestic legal framework governing freedom of association, beginning with constitutional protections and limitations, and then examining the legislative and institutional architecture that shapes trade union formation, autonomy, protection from interference, and remedies. (Constitution of Sri Lanka, 1978; European Commission & High Representative, 2023).

Third, it evaluates how freedom of association rights are implemented and enforced in practice within the apparel sector, recognizing that apparel workplaces operate under competitive commercial pressures and that the sector's export significance raises the stakes of employer–worker relations and conflict resolution. (Reuters, 2025; European Commission, 2017).

Fourth, it assesses the extent of compliance with ILO Convention No. 87 through the lens of EU GSP+ conditionality, using EU monitoring criteria that emphasize effective implementation, engagement with monitoring mechanisms, and responsiveness to internationally identified concerns. (European Commission, n.d.; Council of the European Union, 2023; European Commission & High Representative, 2023).

Finally, it develops targeted reform recommendations aimed at closing the gap between law-on-the-books and freedom of association in practice, with the goal of aligning domestic rules, enforcement institutions, and accessible remedies with Convention No. 87's requirements and with GSP+ compliance expectations. (International Labour Organization, 1948; European Commission & High Representative, 2023).

1.5 Methodology and Scope

Methodologically, this research is primarily a desk-based socio-legal study combining doctrinal legal analysis with structured assessment of implementation evidence. The doctrinal

component establishes the applicable international standard by analyzing Convention No. 87's text and the interpretive principles developed through ILO supervisory practice. This approach treats supervisory jurisprudence as essential for translating broad treaty guarantees, such as organizational autonomy and protection from administrative dissolution, into operational compliance criteria. (International Labour Organization, 1948; International Labour Organization, 2018).

The study also analyzes the EU's GSP+ compliance logic as a governance framework that links trade benefits to demonstrable implementation of international conventions. It therefore draws on publicly available EU materials describing GSP+ conditionality and monitoring, including: (i) formal explanations of GSP+ criteria and monitoring practice (including the use of scorecards and multi-stakeholder information channels); (ii) official reporting emphasizing the use of monitoring missions and reliance on UN and ILO supervisory mechanisms; and (iii) country-specific assessments of Sri Lanka that identify labour-rights progress and persistent compliance concerns relevant to freedom of association. (European Commission, n.d.; Council of the European Union, 2023; European Commission & High Representative, 2023).

In scope, the study focuses on the apparel sector as the primary site for assessing law and practice alignment. This choice is justified by the sector's export significance and its relevance to trade preference benefits, as reflected in the EU's communications about Sri Lanka's GSP+ product coverage and in recent reporting on the industry's continuing role in export earnings. (European Commission, 2017; Reuters, 2025).

Temporally, the compliance analysis is anchored to the EU monitoring cycle covering 2020–2022, while also drawing on more recent sources where relevant to clarify the trajectory of identified concerns and the practical functioning of monitoring processes. This mirrors the EU's own approach, which frames compliance as cumulative and responsive across monitoring cycles rather than as a one-time assessment. (European Commission, n.d.; European Commission & High Representative, 2023).

1.6 Structure of the Study

The study is organized to move from standards to law, to practice, and then to reform recommendations. Following this introduction, the preceding chapter sets out the normative framework by analyzing freedom of association obligations under ILO Convention No. 87 and the EU's approach to GSP+ conditionality and effective implementation. (International Labour Organization, 1948; European Commission, n.d.).

Subsequent chapters examine Sri Lanka's domestic legal framework for freedom of association and then assess implementation and enforcement in the apparel sector, including the real-world availability of remedies and the practical conditions for union organizing and activity. The final chapter sets out targeted reforms aimed at addressing identified gaps in law, enforcement, and remedy design. (European Commission & High Representative, 2023; Council of the European Union, 2023).

2.0 Freedom of Association under ILO Convention No. 87

2.1 Historical Context and Adoption

Freedom of association (FoA) sits at the centre of the post-war labour governance project that the International Labour Organization was trying to consolidate after 1945. Two "constitutional" reference points matter for understanding why Convention No. 87 took the

shape it did. First, the International Labour Conference adopted the *Declaration of Philadelphia* in 1944, explicitly reaffirming that "freedom of expression and of association" is "essential to sustained progress", and linking that to social justice and democratic decision-making in labour governance. (International Labour Organization, 1944).

Second, Convention No. 87's own preamble makes it unusually clear that the instrument is not just a technical labour standard but part of a broader international settlement. It grounds the Convention in: (i) the ILO Constitution's commitment to the "recognition of the principle of freedom of association" as a means of improving conditions of labour and establishing peace; (ii) the Declaration of Philadelphia; and (iii) an explicit request from the United Nations General Assembly (Second Session) that the ILO continue its efforts so that one or more international conventions could be adopted on the topic. (International Labour Organization, 1948).

Convention No. 87 was adopted at the 31st session of the International Labour Conference in San Francisco on 9 July 1948 and entered into force on 4 July 1950. (International Labour Organization, 1948). In contemporary ILO classification it is treated as a "fundamental convention", meaning it is part of the ILO's core set of instruments associated with fundamental principles and rights at work. (International Labour Organization, 1948).

Historical accounts also emphasize why Convention No. 87 became a flagship instrument. Harold Dunning's (1998) account, written for the 50th anniversary of the convention, highlights that the Convention's practical importance lies not only in affirming a right to "join" a union, but in protecting the institutional conditions for unions (and employers' organizations) to exist and function democratically: drawing up constitutions and rules, electing representatives, formulating programmes, and operating without public-authority interference. (Dunning, 1998).

Finally, Convention No. 87's status as a "core" international labour benchmark is reinforced by the ILO Declaration on Fundamental Principles and Rights at Work (1998, amended 2022). That Declaration affirms that freedom of association and the effective recognition of collective bargaining are fundamental principles and that all ILO members, by virtue of membership, have an obligation to respect, promote and realize these principles in good faith. (International Labour Organization, 1998/2022).

2.2 Core Obligations Under Convention No. 87

Convention No. 87 is structured to do two things at once: (i) confer rights on workers and employers (and their organizations), and (ii) constrain the state so that these rights are not hollowed out through authorization regimes, administrative control, or legal restrictions that neutralize organizing in practice. The Convention text is concise; however, the "real" compliance content emerges when the provisions are read alongside the supervisory jurisprudence discussed later in this chapter. (International Labour Organization, 1948; International Labour Organization, 2018).

2.2.1 Article 2 – Right to Establish and Join Organizations

Article 2 is the Convention's entry point: workers and employers "without distinction whatsoever" must have the right to establish and join organizations "of their own choosing" "without previous authorization". (International Labour Organization, 1948). The emphasis on "without previous authorization" targets legal designs that turn association into a privilege

dependent on discretionary approval, rather than a right presumptively enjoyed. It also signals that states may regulate, but not in ways that function as a permission system.

ILO supervisory jurisprudence treats barriers to forming an organization as a direct FoA problem, even when framed as "neutral" administrative conditions. For example, the CFA (Committee on Freedom of Association) compilation notes that minimum membership thresholds are not automatically incompatible with Convention No. 87, but the number must be reasonable so as not to hinder establishment of organizations—particularly in contexts with many small enterprises. (International Labour Organization, 2018). This matters for sectoral analysis (such as apparel) because factory size, subcontracting, and workforce fragmentation can turn "threshold" rules into practical exclusion.

2.2.2 Article 3 – Organizational Autonomy

Article 3 protects what is often described as the autonomy or self-governance of organizations. It gives workers' and employers' organizations the right to: draw up constitutions and rules, elect representatives "in full freedom", organize administration and activities, and formulate programmes. Article 3(2) then states a strong negative duty: public authorities must refrain from any interference that would restrict these rights or impede their lawful exercise. (International Labour Organization, 1948).

Autonomy here is not an abstract ideal; it is the mechanism that makes "organizations of one's own choosing" meaningful. If the state controls officer eligibility, internal rules, elections, agendas, or the capacity to operate and speak, then workers may technically "associate" while lacking an independent organization capable of representing them. Dunning's historical framing makes this point bluntly: freedom to form and join organisations would have limited value if organisations were subject to external control over internal administration. (Dunning, 1998).

Supervisory principles treat state "outside control" as exceptional. The CFA compilation cautions that ongoing control risks limiting the Article 3 right to organize administration and activities without interference. (International Labour Organization, 2018).

2.2.3 Article 4 – Protection from administrative dissolution

Article 4 provides an especially stringent guarantee: organizations "shall not be liable to be dissolved or suspended by administrative authority". (International Labour Organization, 1948). The core idea is that administrative bodies (ministries, registrars, commissioners) should not be able to extinguish unions through executive decision-making, precisely because such power invites arbitrariness and strategic disabling of worker organization.

The CFA compilation treats this as a "serious infringement" zone. It explicitly states that administrative suspension or dissolution of trade union organizations constitutes a serious infringement, and that administrative dissolution is a clear violation of Article 4. (International Labour Organization, 2018). The compilation also makes an analytically important move: cancellation of registration or removal from a register by a registrar is treated as *tantamount to dissolution by administrative authority*, because it produces the same disabling effect in practice. (International Labour Organization, 2018).

In addition, the CFA emphasizes proportionality and institutional restraint: because dissolution has severe consequences for workers' occupational representation, it should be used only as a last resort after exhausting less serious measures. (International Labour Organization, 2018). This "last resort" framing is a key benchmark when assessing whether domestic regimes that

permit cancellation, suspension, or functional disabling are compatible with Convention No. 87.

2.2.4 Article 8 – Limits on Permissible Restrictions

Article 8 is often where domestic legal systems try to justify constraints on union activity (for example, public order, economic stability or national security). The provision is carefully balanced. Article 8(1) recognizes that workers and employers (and their organizations) must respect the law of the land. But Article 8(2) immediately qualifies this: the law must not be such as to impair, *nor be applied so as to impair*, the Convention's guarantees. (International Labour Organization, 1948). In other words, general legality and "rule of law" arguments cannot be used as a cover for rights-stripping.

In supervisory practice, this balance shows up as a legitimacy test: unions may be required to comply with general laws applicable to everyone, but legal frameworks and policing practices must not become a route to suppress lawful union activity. For example, the CFA compilation notes that union meetings are essential, but organizations must observe general public meeting provisions applicable to all (reflecting Article 8(1)). Yet it also emphasizes that unions should be able to organize meetings freely, and public authorities must refrain from interference that restricts union rights (reflecting Article 3 and Article 8(2)). (International Labour Organization, 2018).

The same logic appears in the CFA's treatment of "public order" rationales. The compilation recognizes that unions should respect legal provisions intended to ensure maintenance of public order and abstain from violence in demonstrations, but it also stresses that police intervention should be proportionate and limited to genuine threats—so that public order policing does not become a mechanism for arbitrary arrests or strike-breaking. (International Labour Organization, 2018).

2.2.5 Article 11 – Positive Obligation to Ensure Effective Exercise

Article 11 is the Convention's "implementation engine". It requires each member for which the Convention is in force to take "all necessary and appropriate measures" to ensure that workers and employers may exercise freely the right to organize. (International Labour Organization, 1948).

This moves the Convention beyond a purely negative duty ("don't ban unions") towards a governance obligation: states must maintain conditions where FoA can be exercised in practice. Depending on context, "necessary and appropriate measures" can include: accessible legal personality routes that do not operate as prior authorisation; remedies against anti-union discrimination and interference; protection of union leaders and members against intimidation; and institutions capable of investigating and addressing violations promptly enough that organizing is not chilled. The supervisory machinery's focus on "law and practice" (explained below) is essentially the operational expression of Article 11's positive obligation. (International Labour Organization, 1948; International Labour Organization, 2018).

2.3 Interpretation by ILO Supervisory Bodies

2.3.1 Committee of Experts

The Committee of Experts on the Application of Conventions and Recommendations supervises the application of ratified ILO conventions through the regular reporting system. A widely cited description in the Committee's report explains that it is an independent body of legal experts examining how ILO conventions are applied by member states, producing

observations (typically for more serious or long-standing cases) and direct requests (often technical or information-seeking), and also issuing general surveys on themes selected by the Governing Body. (International Organization of Employers, 2015).

Institutionally, the CEACR process is built around *evaluating conformity between national law/practice and ratified standards*. The report describes the CEACR as examining annual reports under Article 22 of the ILO Constitution on measures taken to give effect to conventions, and drawing conclusions about whether legislation and practice are in conformity with ratified instruments. (International Organization of Employers, 2015). This is important for Convention No. 87 analysis because it means the CEACR's "compliance" lens is not restricted to black-letter law: it explicitly includes how the law operates in practice.

There is also a structured relationship between CEACR findings and tripartite review. The CEACR report itself frames the Committee's work (independent technical examination) as feeding into the Conference Committee on the Application of Standards, which considers selected cases in a tripartite setting. (International Organization of Employers, 2015). For trade conditionality contexts (like GSP+), this matters because state responses to CEACR comments often become the measurable "trail" of implementation over time.

2.3.2 Committee on Freedom of Association

The Committee on Freedom of Association is a special supervisory mechanism focused on alleged infringements of freedom of association principles. The ILO describes it as a Governing Body committee with an independent chair and tripartite membership (government, employer and worker representatives), which establishes facts in dialogue with the government concerned, and can make recommendations. (International Labour Organization, n.d.-a).

The CFA's institutional "reach" is also distinctive. It was created by the ILO Governing Body in 1951, and the CFA complaint procedure is designed not primarily to punish, but to promote respect for trade union rights through constructive tripartite dialogue and follow-up in law and practice. (International Labour Organization, 2018). Importantly, ILO materials also highlight that the CFA can examine complaints in ILO member states regardless of whether the state has ratified the freedom of association conventions. (International Labour Organization, n.d.-b).

Substantively, the CFA's decisions and principles are where Convention No. 87 becomes "operational" for evaluating domestic systems. The compilation includes detailed principles on administrative dissolution and cancellation of registration, treating registrar-led cancellation as equivalent in effect to administrative dissolution (and thus incompatible with Article 4), and emphasizing that dissolution has severe representational impacts and should be a last resort. (International Labour Organization, 2018). It also provides interpretive guidance for Article 8 contexts, recognizing the legitimacy of public order laws while warning against disproportionate policing and restrictions that impair trade union rights. (International Labour Organization, 2018).

2.3.3 Effective Exercise in Law and in Practice

The phrase "effective exercise" captures the ILO's consistent warning that FoA can be defeated without formal prohibition. A country may constitutionally recognize association and permit registration of unions, yet still fail Convention No. 87 if workers cannot, in practice, form and run independent organizations free of interference, or if remedies are too weak or too slow to prevent chilling effects.

Three connected elements explain how "effective exercise" works as a compliance concept.

First, it is embedded in the ILO supervisory design. The ILO's overview of its supervisory machinery states that it supervises the application of conventions and recommendations "in law and practice". That choice of words is deliberate: the supervisory system is mandated to test whether ratified standards are realized in real-world conditions, not just transposed into statute. (International Labour Organization, n.d.-c).

Second, it is explicit in the working methods of the CEACR. The CEACR report explains that the Committee indicates the extent to which each member state's "legislation and practice" are in conformity with ratified conventions, and that its entire reporting structure (observations, direct requests, general surveys) is oriented to that combined inquiry. (International Organization of Employers, 2015).

Third, it is central to CFA reasoning. The CFA compilation describes the complaint procedure as aiming "to promote respect for trade union rights in law and practice", and the compilation explicitly treats obstacles affecting effective exercise—such as constraints on organizing among subcontracted workers—as within its competence. (International Labour Organization, 2018).

For Convention No. 87 specifically, "effective exercise" is best understood as an interaction between (i) enabling legal rules (no prior authorization, genuine choice of organization, autonomy protections), (ii) disabling risks (administrative dissolution/cancellation, interference in internal governance, restrictive laws applied to impede union action), and (iii) protection/enforcement capacity (institutions and remedies that deter, correct, and redress infringements quickly enough that workers are not deterred from organizing). This is exactly why Article 11 is so important: it requires "necessary and appropriate measures" to ensure free exercise, which pushes analysis beyond formal rights to the practical architecture of enforcement. (International Labour Organization, 1948; International Labour Organization, 2018).

3.0 Sri Lanka's Domestic Legal Framework on Freedom of Association

Sri Lanka's legal framework contains an express constitutional guarantee of freedom of association and an explicit freedom to form and join trade unions, but these guarantees sit within relatively broad restriction clauses and a remedies architecture that primarily targets infringements by "executive or administrative action", not private employers. (Democratic Socialist Republic of Sri Lanka, 1978).

At the statutory level, the Trade Unions Ordinance (TUO) creates a registration-centred model in which legal status and practical industrial capacity are strongly tied to the discretion of the Registrar; failure to register (or loss of registration) formally renders a union an "unlawful association" and removes the ability to participate in trade disputes or promote strike action. This design is difficult to square with the ILO's "no prior authorization" principle where registration operates as an enabling condition for effective union functioning. (Department of Labour (Sri Lanka), n.d.-a; International Labour Organization, 2018).

The Industrial Disputes Act (IDA) provides the central institutional machinery for conciliation, arbitration, industrial courts and labour tribunals, and includes a statutory prohibition of employer unfair labour practices (ULPs) that are directly relevant to anti-union discrimination. In practice, however, enforcement design choices (notably prosecution gatekeeping through the Commissioner's written sanction, and slow court outcomes) undermine the "effective exercise" requirement that sits at the heart of Convention 87 compliance analysis. (Department of Labour (Sri Lanka), n.d.-b; ILO, 2023; European Commission, 2023).

Within export processing zones (EPZs) that host a substantial part of the apparel workforce, international supervisory commentary and stakeholder reporting converge on a familiar pattern: employees' councils frequently outnumber independent unions, collective agreements cover a small minority of workers, and anti-union practices continue to be reported. This matters for GSP+ "effective implementation", because the EU's monitoring logic (as reflected in its Sri Lanka joint Staff Working Document - SWD) treats persistent enforcement and remedy gaps as a continuing compliance concern rather than a purely legislative one. (International Labour Organization, 2023; European Commission, 2023; International Trade Union Confederation, 2011).

Assumptions and limits: this is a desk-based legal and practice assessment relying on publicly available primary legal texts and authoritative monitoring and reporting (ILO, EU, courts, and reputable labour-rights reporting). No primary field interviews were conducted. Practice evidence is prioritized for 2010–2025, with a focus on the apparel/EPZ context where sources permit.

3.1 Constitutional Protection of Freedom of Association

3.1.1 Constitutional Text and Restriction Clauses

Sri Lanka's constitutional architecture recognizes (i) "the freedom of association" and (ii) "the freedom to form and join a trade union" as fundamental rights of citizens. (Democratic Socialist Republic of Sri Lanka, 1978).

However, the express limitation clause applicable to freedom of association permits statutory restrictions "in the interests of racial and religious harmony or national economy". This formulation is not uniquely broad by comparative constitutional standards, but it is notably open-textured in a way that gives domestic lawmakers and courts substantial room to frame limitations on associational activity through economic or public order rationales. (Democratic Socialist Republic of Sri Lanka, 1978).

For ILO Convention 87 purposes, the key constitutional point is not merely that rights are recognized, but that Convention 87 expects legal conditions that make organizing practically possible without undue interference. Constitutional recognition therefore functions as a baseline, while the compliance question turns on whether ordinary legislation and enforcement practices operationalize the right. (International Labour Organization, 2018; International Labour Organization, 2023).

3.1.2 Limitations and Absence of Institutional Safeguards

Convention 87's core content includes organizational autonomy (internal governance, elections, administration) and protection from administrative dissolution, alongside a positive duty on the state to ensure rights are effective in practice. Sri Lanka's Constitution does not spell out these institutional safeguards in the way some constitutions do; the operational details are pushed into ordinary labour legislation and the design of enforcement institutions. (Democratic Socialist Republic of Sri Lanka, 1978; International Labour Organization, 2018).

A further structural limit is the constitutional remedies channel for fundamental rights. The Constitution vests the Supreme Court with jurisdiction over alleged infringement (or imminent infringement) of fundamental rights by "executive or administrative action", and requires applications to be filed "within one month". As a result, workplace anti-union practices by private employers typically require statutory labour routes (labour tribunals, industrial disputes mechanisms, or criminal/administrative enforcement), unless state action is directly

implicated. (Democratic Socialist Republic of Sri Lanka, 1978).

3.2 Trade Union Registration and Governance Under the Trade Unions Ordinance

3.2.1 Registration, Legal Personality and Registrar Powers

The Trade Unions Ordinance establishes a Registrar of Trade Unions and a formal register, and requires newly established unions to apply for registration within a defined time window. (Department of Labour (Sri Lanka), n.d.-a).

Registration is conditional: the Registrar "shall register" only if satisfied that the union has complied with the Ordinance and that its objects, rules and constitution do not conflict with statutory requirements and are not unlawful; the Registrar also has an express power to call for further information and a power to refuse registration. (Department of Labour (Sri Lanka), n.d.-a). Two design consequences are especially relevant for Convention 87 analysis.

First, the Ordinance links practical trade-union functioning to registration status. Where registration is refused, withdrawn or cancelled, the union is legally "deemed to be an unlawful association" and is prohibited (including through its officers or agents) from taking part in trade disputes or promoting, organizing or financing strikes or lock-outs. (Department of Labour (Sri Lanka), n.d.-a).

Secondly, the appeals structure exists, but it is downstream of an administrative gatekeeping decision. A refusal or cancellation decision can be appealed to the District Court within 30 days, with a further appeal to the Court of Appeal of Sri Lanka (Human Rights Commission of Sri Lanka, 2024; Department of Labour (Sri Lanka), n.d.-a).

From a Convention 87 perspective, formal registration systems are not per se prohibited, but the ILO supervisory approach treats "prior authorization" concerns as arising where registration is discretionary, burdensome, or functions as a filter that prevents workers from forming organizations of their own choosing in practice. A regime in which legal capacity for collective activity is stripped in the event of non-registration or cancellation creates strong incentives for administrative control over union formation and survival. (International Labour Organization, 2018).

3.2.2 Organizational Regulation and Officer Restrictions

The Ordinance regulates internal union governance in several specific ways that engage Convention 87 autonomy principles.

It sets age-related rules for membership and for eligibility to serve on the executive or as a trustee (for example, permitting membership for persons over sixteen but restricting executive/trustee roles). (Department of Labour (Sri Lanka), n.d.-a).

It also imposes officer composition requirements: at least one-half of officers must be persons "actually engaged or employed" in the industry or occupation with which the union is connected, unless the Minister grants an exemption by Gazette order. (Department of Labour (Sri Lanka), n.d.-a).

In addition, the Ordinance mandates the content of union rules: the rules "shall provide" for all matters specified in a schedule, and amendments to rules must be sent to the Registrar within a short period. (Department of Labour (Sri Lanka), n.d.-a).

ILO supervisory jurisprudence generally treats detailed statutory regulation of internal union

administration and leadership eligibility as suspect, because it can become a vehicle for public authority interference. Sri Lanka's model combines mandated rule content, notification requirements, and officer eligibility restrictions, which cumulatively narrow the sphere of union self-governance that Convention 87 seeks to protect. (International Labour Organization, 2018).

This autonomy concern is amplified in EPZ/apparel contexts where, as multiple sources have noted over time, employers can exploit worker vulnerability and fragmentation (including high shares of young women workers and precarious staffing) to discourage independent organizing and to favour alternative representation structures. (International Trade Union Confederation, 2011; International Labour Organization, 2023).

3.2.3 Cancellation of registration and Judicial Oversight

The Registrar has statutory authority to withdraw or cancel a certificate of registration on specified grounds, with notice and an opportunity for the union to show cause. (Department of Labour (Sri Lanka), n.d.-a).

A particularly coercive feature is the legal consequence of cancellation: once registration is withdrawn or cancelled, the union becomes an "unlawful association" and is legally barred from participating in trade disputes and strike-related activity. (Department of Labour (Sri Lanka), n.d.-a).

From a Convention 87 standpoint, the protection against dissolution or suspension by administrative authority is a central safeguard. In the Sri Lanka context, the CEACR has specifically engaged with the issue and requested that cancellation/withdrawal should not take effect until a final judicial decision; the Government response, as recorded by the CEACR, asserts that enforcement before final judicial decision would amount to contempt of court. (International Labour Organization, 2023).

There are also special rules for certain public sector unions. For unions within the scope of the relevant Part of the Ordinance, the Registrar "shall not register" unless rules restrict eligibility to particular departments or categories of public officers; and, crucially, unions of "peace officers" or "Government staff officers" must declare they will not affiliate, amalgamate, or federate with any other trade union and will not have political objects or funds. (Department of Labour (Sri Lanka), n.d.-a).

The CEACR has treated these affiliation restrictions as incompatible with the rights of public servants' organizations to establish and join federations/confederations of their own choosing, repeatedly urging amendment. (International Labour Organization, 2023).

3.3 Industrial Relations Framework Under the Industrial Disputes Act

3.3.1 Collective Bargaining and Recognition Architecture

The Industrial Disputes Act defines "collective agreement" as an agreement between employers and workmen and/or trade unions, relating to terms and conditions of employment and related matters. (Department of Labour (Sri Lanka), n.d.-b).

Collective agreements, settlement memoranda and awards can be incorporated into enforceable arrangements through publication and binding effect mechanisms, and the Act embeds a state-centric dispute resolution model that channels disputes into conciliation, arbitration, labour tribunals and industrial courts. (Department of Labour (Sri Lanka), n.d.-b).

In the EPZ/apparel context, the most policy-relevant empirical picture in the CEACR record is the limited diffusion of collective agreements. The Government's data reported to the CEACR indicates (as of April 2022) 14 EPZs with 275 enterprises and 147,683 workers; 107 operational employees' councils and 40 trade unions; and only 5 collective agreements covering 2,098 workers (1.4% of EPZ workers). It also reports 88,480 employees in the clothing and textile sectors. (International Labour Organization, 2023).

Even if one treats collective bargaining primarily as Convention 98 territory, this pattern matters for Convention 87 because organizational rights are hollow if workers cannot practically translate membership into collective representation and negotiated outcomes, particularly in a sector central to GSP+ exposure. (European Commission, 2023; International Labour Organization, 2023).

3.3.2 Ministerial and Commissioner Powers and their Effects on Union Activity

The Act gives the Commissioner of Labour broad functions to inquire into disputes and promote settlements. (Department of Labour (Sri Lanka), n.d.-b).

It also empowers the Minister to refer disputes to arbitration or an industrial court, including in some circumstances without party consent. (Department of Labour (Sri Lanka), n.d.-b).

The CEACR has criticised the use of compulsory arbitration to end strikes outside tightly limited categories, recalling that compulsory arbitration to end a strike is permissible only for (i) public servants exercising authority in the name of the state, (ii) essential services in the strict sense, or (iii) acute national or local crises. It has urged amendment of the relevant ministerial referral provisions accordingly. (International Labour Organization, 2023).

This goes directly to Convention 87 "activities" protection and permissible restriction analysis: broad compulsory arbitration powers can chill strikes and collective action, particularly where workers already face structural barriers to organizing in EPZ/apparel workplaces. (International Trade Union Confederation, 2011; International Labour Organization, 2023).

3.3.3 Unfair Labour Practices and Remedies

A key formal protection is the statutory prohibition of employer unfair labour practices. The Industrial Disputes Act prohibits, among other conduct, requiring a workman to join or refrain from joining a union as a condition of employment; dismissing a workman solely due to union membership or union activity; interfering with union activities; and preventing the formation of a trade union or support for a trade union. (Department of Labour (Sri Lanka), n.d.-b).

These are directly aligned with Convention 87's concern to prevent employer interference and anti-union discrimination as a practical condition of freedom of association.

The central implementation weakness is the enforcement pathway. Breach of the ULP prohibition is criminalized through fines, but prosecutions for offences under the Act may not be instituted except with the written sanction of the Commissioner. (Department of Labour (Sri Lanka), n.d.-b).

The CEACR, echoed by the EU's monitoring assessment, has repeatedly pressed Sri Lanka to amend the Industrial Disputes Act so that victims of anti-union practices can lodge complaints in court and unions can bring anti-union discrimination cases on behalf of their members, noting persistent delays and the absence of decisions in cases already before courts. (International Labour Organization, 2023; European Commission, 2023).

A domestic illustration of the legal significance of Commissioner sanction can be seen in litigation concerning the Commissioner's duty in relation to offences under the Industrial Disputes Act and the prosecution framework. In a writ application, the court reproduces the statutory "no prosecution without sanction" requirement and the associated submissions about legal obligation to prosecute offences, underscoring how the sanction design concentrates gatekeeping power within the labour administration. (Ceylon Bank Employees Union v Hatton National Bank, Court of Appeal of Sri Lanka, 2020).

3.4 Enforcement Mechanisms and Access to Remedies

Sri Lanka's labour enforcement landscape is institutionally plural: labour officers and the labour administration (including investigative divisions) sit alongside labour tribunals, industrial courts, arbitration mechanisms, and criminal (Magistrate's Court) enforcement for statutory offences. (Department of Labour (Sri Lanka), n.d.-b).

In principle, reinstatement and compensation remedies exist. The Industrial Disputes Act contemplates reinstatement through awards/orders (including labour tribunal orders) and provides sanction mechanisms for non-compliance, including daily fines following conviction where an employer fails to reinstate. (Department of Labour (Sri Lanka), n.d.-b).

Separately, the Termination of Employment of Workmen (Special Provisions) Act creates a protective approval regime for "scheduled employment": employers may not terminate without either employee consent or written approval of the Commissioner, and unlawful termination is "illegal, null and void". It also empowers the Commissioner to order continued employment and backpay-type remedies, and provides for union representation in Commissioner inquiries. (Department of Labour (Sri Lanka), n.d.-c).

For anti-union dismissals in the apparel sector, this approval-based regime can be relevant as a remedial route (particularly for factory closures or mass terminations), but practice evidence suggests that procedural complexity, information asymmetries, and enforcement delays weaken deterrence. The CEACR's concern about the absence of court decisions in anti-union discrimination cases over extended periods is consistent with this broader implementation challenge. (International Labour Organization, 2023).

In EPZ/apparel settings, stakeholder reporting has long highlighted (i) intimidation, assault, and dismissal of unionists; (ii) obstacles to union access to workers in zones; and (iii) reliance on employees' councils perceived as employer-influenced substitutes. For example, the ITUC's (International Trade Union Confederation) reporting includes specific incidents in garment and textile workplaces: dismissal of a union leader at Summit Industries (Pvt) Limited; intimidation in the Bratex (Pvt) Limited; assault of a union representative linked to organizing at Courtaulds Clothing (Pvt) Ltd (allegedly supplying entity ["company", "Marks & Spencer", "UK retailer"]); and persistent anti-union conduct at Wheel Work (Pvt) Ltd. (International Trade Union Confederation, 2011).

More recently, a joint labour-rights statement reports the abrupt closure of a unionized garment facility linked to NEXT in Katunayake in 2025, describing dismissal of over 1,400 workers via WhatsApp and framing the event as union-busting; the statement explicitly invokes the Termination of Employment of Workmen (Special Provisions) Act and the role of union representation in achieving improved working conditions. (Clean Clothes Campaign, 2025).

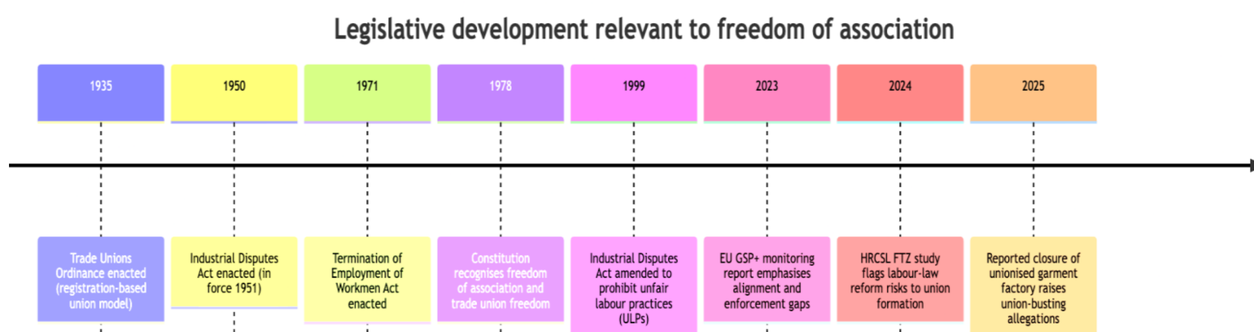
3.5 Legislative Development Timeline

Table 1 - Legislative Development Timeline

Year	Amendment/measure	Brief description	Relevance to freedom of association
1935	Trade Unions Ordinance enacted	Introduces registration model, Registrar authority, and legal framework for trade unions	Registration system shapes the “no prior authorization” question in practice (link to legal status and industrial activity)
1950 (in force 1951)	Industrial Disputes Act enacted	Establishes conciliation, arbitration, industrial courts and later labour tribunals	Dispute-settlement design affects union activity and strike regulation; provides enforcement channels
1948–1970	Trade Unions Ordinance amendments	Introduce and adjust special rules for certain public sector unions, including affiliation constraints for specific categories	Engages Convention 87 federation/affiliation rights and limitations on organizational choice
1956–1968	Early Industrial Disputes Act amendments	Expand and refine industrial courts/arbitration and related machinery (as reflected in consolidated amendment list)	Builds institutional architecture that can either support or constrain collective action
1971	Termination of Employment of Workmen Act enacted	Requires Commissioner approval for termination in scheduled employment (with listed exceptions)	Potentially important remedial pathway for anti-union dismissals and retaliatory termination patterns
1978	Constitution adopted	Recognises freedom of association and freedom to form and join a trade union; creates FR remedies focused on executive/administrative action	Establishes constitutional baseline but leaves institutional safeguards largely to ordinary law

1999	ULP prohibition added (Industrial Disputes Act)	Inserts statutory unfair labour practices prohibition and links to collective bargaining thresholds	Formal protection against anti-union discrimination; enforcement design remains central concern
2020–2021	Minimum age alignment and reform agenda	International monitoring notes increase of minimum working age and ongoing discussions to amend union membership age-related provisions	Illustrates incremental legislative responsiveness to supervisory comments
2023	EU GSP+ assessment (2020–2022)	EU notes “some progress” but emphasises persistence of anti-union practices and need to align Industrial Disputes Act and Trade Unions Ordinance	Frames enforcement and remedy deficits as GSP+ compliance concerns
2024	HRCSL FTZ study and labour law consolidation debate	HRCSL reports concerns that draft employment legislation may restrict union formation; notes labour governance issues affecting FTZ workers	Connects labour law reform trajectory with FoA risks in FTZ context
2025	Reported closure of a unionized garment facility	Labour-rights statement alleges union-busting linked to factory closure and mass dismissal	Practice evidence of contemporary anti-union risk in apparel supply chains

Table 2 - Mermaid Timeline Chart



3.6 Mapping Domestic Law against Convention 87 Obligations

Table 3 - Mapping Domestic Law against Convention 87

Convention 87 obligation	Supervisory interpretive criterion	Domestic provision(s)	Practical gap/evidence (with emphasis on apparel/EPZs)
Right to establish and join organisations	Workers must be able to form/join organisations of their choosing without prior authorization; formalities must not obstruct in practice	Constitution recognizes association and trade union freedom; Trade Unions Ordinance requires registration and empowers Registrar to refuse; non-registration/cancellation renders union “unlawful” and bars trade dispute/strike activity	Registration operates as an enabling condition for effective functioning; EPZ reporting shows barriers to organizing and substitution by employees’ councils (Democratic Socialist Republic of Sri Lanka, 1978; Department of Labour (Sri Lanka), n.d.-a; International Trade Union Confederation, 2011)
Organizational autonomy and non-interference	Unions must elect representatives and organize administration/activities freely; detailed state regulation of internal affairs risks interference	Trade Unions Ordinance officer composition requirement; mandated rule content and reporting of rule changes; public sector union registration constraints	Structural tilt towards administrative oversight; EPZ data shows unions outnumbered by employees’ councils; reported intimidation of organizers in garment workplaces (Department of Labour (Sri Lanka), n.d.-a; International Labour Organization, 2023; International Trade Union Confederation, 2011)
Protection from administrative dissolution/suspension	Dissolution should be by judicial authority; administrative cancellation should not be used as a control tool; cancellation should not take effect before final judicial decision	Registrar cancellation power with appeal to District Court and Court of Appeal; special cancellation pathway for some public unions	CEACR engagement indicates the issue remains live; loss of registration strips unions of practical industrial rights; legal design can exert chilling effect (Department of Labour (Sri Lanka), n.d.-a; International Labour Organization, 2023)

Limits on permissible restrictions	Restrictions must not impair the essence of FoA; compulsory arbitration and strike restrictions must be narrowly justified	Constitutional restriction clause for association; Industrial Disputes Act strike notice rules in essential industries and ministerial referral powers	CEACR urges limitation of compulsory arbitration to narrowly defined categories; ITUC reports excessive constraints and enforcement issues in EPZ environment (Democratic Socialist Republic of Sri Lanka, 1978; International Labour Organization, 2023; International Trade Union Confederation, 2011)
Positive duty to ensure effective exercise	State must ensure rights are established and respected in law and practice; effective remedies and timely enforcement are crucial	Industrial Disputes Act prohibits ULPs, but prosecutions require Commissioner sanction; labour tribunal and TEWA pathways exist; constitutional FR remedy limited to executive/administrative action	CEACR notes lack of decisions in anti-union discrimination cases and urges direct court access; EU echoes remedy concerns; apparel incidents include dismissal/assault of organizers and 2025 reported union-busting via closure (Department of Labour (Sri Lanka), n.d.-b; International Labour Organization, 2023; European Commission, 2023; International Trade Union Confederation, 2011; Clean Clothes Campaign, 2025)

4.0 Judicial Engagement with Freedom of Association

This section examines how Sri Lankan courts have engaged with freedom of association in labour disputes, especially in the garment sector, to gauge implications for ILO Convention No. 87 compliance under GSP+.

4.1 Case Selection Criteria

Cases or incidents since 2010 where union rights or anti-union action in the apparel/EPZ context were selected, including at least one appellate judgement and at least one labour tribunal/industrial dispute case or an unresolved incident. The rationale for the varied case selection is based on the study's intention to capture a range of remedies that were sought (reinstatement, deregistration, salary payments, etc.), along with the available sources (published judgments or credible reports) and their relevance to Convention 87 obligations (e.g. organizational autonomy, no prior authorization, protection from dissolution, enforcement). Further reported incidents where full judgments are unavailable are included, labelled as "unspecified reported incident".

4.1.1 Selected cases/incidents

(1) *HNB v Ceylon Bank Employees' Union* (Court of Appeal 2020, a writ petition) concerning prosecution for unfair labour practices and mandate to enforce union members' rights.

(2) *Insurance Agents Association v Registrar* (Court of Appeal 2023) on whether independent insurance agents count as "workmen" under the Trade Unions Ordinance.

(3) An unresolved industrial dispute at Global Star Logistics (Seeduwa FTZ, 2017) involving union formation and retaliatory suspensions (IndustriALL, 2017).

(4) An ongoing dispute at ATG Ceylon (Katunayake FTZ, 2019) where five union members were allegedly illegally dismissed, prompting a protracted strike (Labour Behind the Label, 2019).

(5) An industrial dispute at NEXT plc's Katunayake factory (2025) where 16 union members contest closure and suspended wages (Business & Human Rights Ctr., 2025).

An analysis is made on each case's facts, legal issues (constitutional vs statutory rights, procedural questions) and judicial reasoning in light of *C87* and CFA/CEACR guidance. Following which cross-cutting patterns are identified (e.g. administrative deference, sanction bottlenecks, remedial delays) and policy implications for enforcement and GSP+ conditionality.

Cases and incidents that directly involve union rights or anti-union practices were prioritized, especially in the garments/EPZ sectors which are critical for GSP+. The requirements were classified as:

(a) relevance to *C87* themes (e.g. right to organize, unlawful dissolution, enforcement),

(b) practical focus on apparel or export-processing zones (unionization challenges in FTZs),

(c) recency (2010–2025),

(d) availability of substantive information (full judgments or detailed credible reports),

(e) variety of remedies.

At least one Supreme Court or Court of Appeal judgment was utilized to reflect highest-level judicial reasoning, and at least one labour tribunal/industrial court decision or known industrial dispute was also chosen. In practice, labour tribunal awards are rarely published in Sri Lanka, thus well-documented disputes as proxies for unresolved or lower-court cases were utilized. Our final set (5 cases/incidents) meets these criteria.

Table 4 - Case Summary

Case/incident	**Court/Venue**	**Year**	**Key issue**	**Remedy/outcome**
HNB v Ceylon Bank Empl. Union	Court of Appeal (Colombo)	2020	Unfair labour practice prosecution (35A)	Appeal dismissed, enforcement issues unresolved
Insurance Agents Association v Registrar	Court of Appeal	2023	Scope of "workman" for union registration	Registration quashed; union deregistered

Global Star Logistics (FTZ)	Labour Dept. (Commissioner), unresolved	2017	Retaliatory suspensions of unionized workers	Pending; union complained to labour ministry
ATG Ceylon (Katunayake FTZ)	Incomplete – ongoing industrial dispute	2019	Dismissal of union members, strike action	Strike continued; advocacy via petition
NEXT plc (Katunayake factory)	Labour Dept. complaint (ongoing)	2025	Halted wages for union members after closure	Complaint filed; Commission found prima facie case

Table 5 - Remedies Sought vs Granted.

Case/Incident	**Remedy sought**	**Remedy actually granted**	**Time to resolution (approx.)**
HNB v. Union	Criminal sanction and action for ULP	Writ order to decide sanction	>3 years (2016–2020, case pending)
Insurance Agents	Deregistration of union	CA ordered union's deregistration	~2 years (2021–2023)
Global Star (FTZ)	Reinstatement & pay	None (conciliation failed)	Ongoing (2017–2025)
ATG Ceylon (FTZ)	Reinstatement & pay	None (strike only)	Ongoing (2019–2025)
NEXT plc factory	Wages & reinstatement	Commission's prima facie finding (inquiry)	Ongoing (2025–)

4.2 Case Overviews

4.2.1 Case 1: *Ceylon Bank Employees' Union v. HNB* (CA/WRIT/363/2016, Court of Appeal 2020)

The union had petitioned for fundamental rights enforcement and challenged the criminal prosecution framework for anti-union discrimination.

Case Facts

The petitioner union of Hatton National Bank employees alleged unfair dismissals and anti-union interference by the bank. They noted that Sri Lanka's Industrial Disputes Act makes such interference an offence but only the Labour Commissioner can sanction prosecutions. This is

consistent with Section 44(2) Industrial Disputes Act requiring the Commissioner's written consent for prosecution. The union argued this bottleneck denies employees effective remedies. The case reached the Court of Appeal by writ to compel sanction of a prosecution.

Legal issues

The key issues were

(i) Whether the statutory requirement of the Commissioner's sanction rendered the protection illusory (relating to *C87* Article 11 and CFA criterion on effective exercise).

(ii) Procedural delays: The union complained that applications for sanction were pending for years with no decision. They sought a court order compelling enforcement.

Judicial reasoning

The Court of Appeal observed that the Industrial Disputes Act vests exclusive prosecutorial discretion in the Commissioner (which echoes the Commission's supervisory remarks on sanction requirements). The court noted that the Commissioner had statutory duty to prosecute where there is *prima facie* evidence, referencing the labour department's own rules (the Commissioner had admitted such a duty). The CA held that by failing to prosecute or decide the sanction petition, the Commissioner was neglecting the statutory obligation. It cited basic administrative law principles requiring timely exercise of official duties. The court effectively ruled that once an unfair labour practice was alleged and evidence submitted, the Commissioner must formally decide sanction and, if warranted, prosecute. By contrast, it declined to expand any constitutional free association right, the petition was framed as a constitutional writ, but the court treated it as an administrative *mandamus* matter.

Implications

The decision underscores that Sri Lankan courts will enforce the statutory enforcement framework *via mandamus*, rather than reinterpret constitutional rights. It affirms the principle (aligned with CEACR's view) that employees must have access to redress in practice, not just in law. However, because the court could only direct a decision (not expedite reinstatement or compensate on its own), the actual effectiveness still depends on the Commissioner and subsequent courts. This case signals to GSP+ monitors that one avenue (prosecutorial gatekeeping) has been clarified as improper when abused, though it falls short of creating a new remedy for private workers outside the IDA's scheme.

4.2.2 Case 2: Registrar of Trade Unions v. Insurance Agents Association (CA/WRIT/628/2021, Court of Appeal 2023)

This case addressed whether self-employed insurance agents could form a registered trade union.

Case Facts

The Insurance Agents Association sought registration under the Trade Unions Ordinance, which is limited to "workmen" (Section 2 TUO). The Registrar initially approved the union (interpreting "workman" broadly) but later declined to cancel that decision when challenged. The Board of Insurance Agents (unrelated to the union) petitioned for *certiorari*, contending that independent contractors like agents do not fall under "workman" and so the union's registration was ultra vires.

Legal issues

The central issue was statutory interpretation of "workman" in TUO and overlap with the Industrial Disputes Act definition. There was no direct constitutional claim; the dispute was

framed as a writ under the Ordinance. Implicitly, it touches *C87* Article 2, since excluding categories of workers raises the question of "any worker" choosing to unionize.

Judicial reasoning

The Court of Appeal conducted a detailed contract analysis. It reviewed common law tests distinguishing employees (contract of service) from independent contractors (contract for service) and noted global trends in such classification (though none of this is *C87* law, it framed the context). It then examined Section 2 TUO's definition of "workman" (which explicitly mentions "contract of service" and similarly phrased contracts). The CA concluded that a "contract for service" (true independent contractor) falls outside that definition. Applying the *expressio unius exclusio alterius* principle, the court inferred that labeling someone a contractor placed them outside the TUO. The Registrar's approach (citing broad IDA precedent that insurance agents had been covered under labour law) was rejected: the CA insisted the Registrar should have independently assessed the nature of the agents' contracts, not rely on labour tribunal submissions. In summary, the CA held the agents were not "workmen" as defined, so the union should not have been registered. The court quashed the registration and instructed deregistration of the association.

Implications

This case highlights a tension between domestic statute and *C87*'s non-discrimination. By strictly construing "workman" to exclude contractors, the CA left agricultural/independent categories without union coverage, potentially conflicting with the Convention's spirit (which does not restrict union rights to employees). The CA did not engage with *C87* directly, focusing narrowly on Ordinance language. The outcome implies a gap where insurance agents (and possibly other gig workers) in Sri Lanka's apparel supply chains would lack the protection to organize. For GSP+ compliance, it points to a legal classification issue to watch as if law excludes categories of workers from association rights, ILO bodies would likely view that as a Convention 87 non-conformity (CEACR has urged amendment in analogous contexts).

4.2.3 Case 3: Global Star Logistics (Seeduwa FTZ, 2017), *unspecified industrial dispute* (IndustriALL, 2017)

The FTZ General Services Employees Union (GSEU) union organized workers at Global Star, a garment exporter, in September 2015.

Case Facts

Upon unionization, management retaliated, union leaders faced threats and alleged physical attacks. Workers sought assistance from the Labour Department, leading to a scheduled Commissioner intervention. On the eve of a conciliation meeting (January 2017), management cut workers' pay and incentives. Shortly after, the company posted a lock-out notice (January 13), excluding most workers and suspending them as "dangerous" (IndustriALL, 2017).

They effectively dismissed or suspended those workers without due process. When workers attempted to meet the Commissioner, management evaded the meeting. The union appealed to the Labour Minister. The dispute remains unresolved as of the report.

Legal issues

The issues are classic anti-union ULPs: penalizing workers for forming a union (IDA Act Sec 32A(f)-(ss)), unlawful lock-out and dismissal (Sections 32(1)(a)-(b) strike/lockout rules). The union presumably sought reinstatement, payment of withheld wages, and recognition of its

branch. Procedurally, it involved the Commissioner's intervention (IDA conciliation) and possibly a labour tribunal application.

Outcome

No court order was issued (the case seems to have stalled). Public reporting and union pressure were the only "remedies" sought.

Implications

This incident exemplifies enforcement gaps. The Commission's failure to convene or enforce a settlement (management simply postponed meetings) suggests weak administrative follow-through. The CA/SC cases above show the courts expect Commissions to act, but here even contacting the labour office required pressure. The union's call to the Labour Minister (and to EU/GSP+ stakeholders) underscores how domestic remedies (labour dept., tribunals) are often moot without enforcement. CEACR would see these as *C87* violations (unlawful retaliation for union formation) persisting in practice. The union's hope that GSP+ officials would intervene indicates how trade conditionality enters, but so far, no domestic resolution is reported.

4.2.4 Case 4: ATG Ceylon Pvt Ltd (Katunayake FTZ, 2019), *unspecified industrial dispute* (Labour Behind the Label, 2019)

In January 2019, dozens of women garment workers at ATG Ceylon (an apparel supplier) were dismissed or compelled to resign.

Case Facts

Five union members (FTZ-GSEU affiliates) were fired by ATG Ceylon for alleged disciplinary reasons. Workers report that management also harassed and expelled a female union activist (Labour Behind the Label, 2019). In response, hundreds of workers (under FTZ-GSEU) launched a protracted strike, eventually including a hunger strike by two workers. Advocates (NGOs and unions) petitioned the Sri Lankan government and even the EU, highlighting that ATG flouted local labour law.

Legal issues

Again, the core issue is anti-union retaliation, dismissing workers because of union membership or activity violates *C87* (Article 2 and 5) and is an unfair labour practice (Industrial Disputes Act Section 32A). The workers likely sought reinstatement and backpay through a labour tribunal. If a tribunal hearing took place, the company's actions would contravene Sections 32 and 32A. Constitutional claims are unlikely, since these are private employer acts (not state).

Outcome

No public record of a tribunal award is found. The dispute was ongoing as of the report, with union and civil society pressuring resolution. It's possible the workers filed a complaint with the Labour Commissioner or Ministry; that is not documented in the source.

Implications

The strike and petition illustrate recurring features where companies in FTZs sometimes use heavy-handed tactics to break union organizing, assuming limited legal pushback. The absence of published decisions suggests remedies were not effective or are unresolved. This aligns with the CEACR's observation (and EU's) that anti-union practices in the apparel sector "continue" despite legal prohibitions. For GSP+ compliance, the unresolved nature and international

advocacy suggest persistent enforcement gaps and the government's willingness to prosecute or arbitrate is questioned by stakeholders.

4.2.5 Case 5: NEXT plc (Katunayake factory, 2025), *unspecified reported incident* (Business & Human Rights Centre, 2025)

In May 2025 NEXT announced the closure of its Katunayake garment factory (the only one with a recognized union).

Case Facts

On closure, 1,416 workers were allegedly misled into resigning. Sixteen union members refused and filed complaints for "unlawful termination" with the Labour Commissioner. Shortly after, NEXT stopped paying the 16 union members' wages (on 20 August 2025), which union lawyers argue breaches the labour law requirement to pay wages through the dispute period. The union (FTZ-GSEU) claims the Commission found a prima facie case but enforcement has stalled and the company denies wrongdoing.

Legal issues

This involves wage theft and retaliatory dismissal of union members, again hitting *C87* (Article 2) and ULP law (32A). Key legal questions include whether the forced resignations amount to termination, and whether halting wages violates the *de facto* prohibition on dismissing for union activities. Procedurally, the workers have a complaint before the Labour Commissioner and have apparently initiated the ID Act inquiry (possibly to an Industrial Court).

Outcome

As of September 2025, the dispute is pending. Union officials report that the Commissioner found a prima facie case ("to answer") of unlawful termination. No final remedy has been implemented; the union is appealing for government intervention.

Implications

NEXT's actions illustrate a sophisticated form of union-busting (using "voluntary" letters and wage halting). The continuing inquiry (and reported prima facie finding) suggest that Sri Lanka's labour apparatus can identify violations, but as with earlier cases, enforcement delay is the critical issue. The union's framing of lost wages as an "unlawful termination" underscores reliance on the ID Act's provisions (Section 32A(q) forbids dismissals for union reasons, and Section 31-D allows reinstatement awards for ULPs). For GSP+, this is a cautionary example that even a global buyer's factory with profits can flout labour standards, requiring scrutiny of enforcement machinery. The EU report noted such cases ("a significant number of anti-union practices") remain ongoing, and this incident fits that pattern.

4.3 Comparative Synthesis

Across these examples, several patterns emerge. First, Sri Lankan courts have generally deferred to the letter of domestic law, in *Insurance Agents*, the Court of Appeal (CA) enforced the literal "workman" definition; in *HNB*, the CA upheld the sanction requirement but forced its exercise. There was no broad invocation of constitutional freedom of association beyond procedural rights (no domestic case to date has treated the right to strike or unionize as a fundamental right enforceable against private parties; indeed a Supreme Court judgment on strike rights suggests it is not a FR). In practice, plaintiffs rely on statutory schemes.

Second, administrative discretion remains a choke point. The sanction rule in the ID Act (seen in HNB) and the Registrar's gatekeeping power (seen in the insurance case) mean that on-the-ground union rights often hinge on bureaucratic decisions. Courts will review these (as in HNB compelling a sanction decision, and the CA requiring evidence for union registration), but such review is reactive.

Third, remedies have been narrow and slow. In the bank case, the CA could only order the Commissioner to act; it did not award damages or back wages. The emerging pattern is that remedies come largely through labour tribunals, e.g. FTZ unions repeatedly have to seek tribunal reinstatement or wages, but labour tribunals in practice have a huge backlog and limited enforcement capacity. The NEXT case shows even when a tribunal (or Commissioner) acknowledges a violation, actual payment is delayed.

Finally, embodied in many cases is the "last resort" nature of judicial relief. None of the incidents above show swift, full judicial relief (a few pay arrears or reinstatement orders); instead, the system relies heavily on conciliation, arbitration or tribunal awards that are then slow to enforce. This is consistent with the CEACR's emphasis that convention rights must be effective "in practice". So far, courts have nudged enforcement but not transformed systemic inertia.

In sum, Sri Lankan jurisprudence to date reflects a technical, law-based approach to FoA issues where courts ensure statutory rules are followed (*mandamus*, *certiorari*, deregistration, etc.) but generally leave substantive expansion of rights to the legislature or executive. For GSP+ monitoring, this means the "practice" dimension or enforcement outcomes is the critical barometer. The cases above (and consistent ILO findings) suggest that on the ground in the apparel sector, union rights remain under strain (refusal to bargain with unions, delays in sanctioning ULPs, and reliance on non-independent "employee councils"). Unless reforms occur to ensure prompt remedies (for example, enabling unions to sue directly or tightening oversight of sanction delays), these patterns will continue to be flagged in EU reports.

5. Conclusion

Sri Lanka formally recognizes freedom of association through its Constitution and labour legislation. However, the analysis in this study shows that these protections are not always realized in practice. In particular, enforcement gaps and restrictive regulatory mechanisms continue to affect workers' ability to organize freely. This is especially visible in sectors such as the apparel industry, where anti-union practices, procedural delays, and administrative barriers can make collective organisation difficult.

Recent EU GSP+ monitoring reports acknowledge certain improvements, including the expansion of labour inspection mechanisms and increased institutional attention to labour rights. Nevertheless, these reports also continue to highlight persistent structural concerns. Among the most significant are delays in legal remedies, discretionary controls within the trade union registration framework, and ongoing reports of anti-union conduct at the workplace level.

Taken together, these findings suggest that Sri Lanka's legal framework reflects a formal commitment to the principles embodied in ILO Convention No. 87, but that implementation remains uneven. Closing the gap between law and practice will therefore be critical. Meaningful progress will depend not only on legislative reform, but also on stronger enforcement mechanisms and more accessible remedies for workers whose rights are violated.

Addressing these issues is particularly important in the context of Sri Lanka's participation in the EU's GSP+ scheme. Continued access to these trade preferences is closely linked to the effective implementation of international labour standards. Strengthening the protection of freedom of association would therefore contribute both to improving labour governance domestically and to maintaining the credibility of Sri Lanka's commitments under the GSP+ framework.

References

Legislation

Democratic Socialist Republic of Sri Lanka (1978) *The Constitution of the Democratic Socialist Republic of Sri Lanka (as amended).* Colombo: Parliament of Sri Lanka.

Department of Labour (Sri Lanka) (n.d.-a) *Trade Unions Ordinance No. 14 of 1935 (Labour Code consolidated text).* Colombo: Department of Labour.

Department of Labour (Sri Lanka) (n.d.-b) *Industrial Disputes Act No. 43 of 1950 (as amended) (Labour Code consolidated text).* Colombo: Department of Labour.

Department of Labour (Sri Lanka) (n.d.-c) *Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971 (as amended) (Labour Code consolidated text).* Colombo: Department of Labour.

Cases

Court of Appeal of Sri Lanka (2020) *CA (Writ) Application No. 363/2016*, decided 20 July 2020. Colombo: Court of Appeal.

Court of Appeal of Sri Lanka (2021) *CA Writ Application No. 628/2021.* Available at: https://courtofappeal.lk/?melsta_doc_download=1&doc_id=ca33f2b6-3c2c-4fb6-a625-80368a2441b6&filename=ca%20writ%20628-2021.pdf (Accessed: 3 March 2026).

Supreme Court of Sri Lanka (2011) *SC FR Application No. 545/2011.* Available at: https://supremecourt.lk/wp-content/uploads/judgements/sc_fr_545_2011.pdf (Accessed: 3 March 2026).

International Instruments

International Labour Organization (1948) *Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87).* Adopted 9 July.

Institutional and Official Reports

Council of the European Union (2023) *Joint Report to the European Parliament and the Council on the Generalized Scheme of Preferences covering the period 2020–2022,* Council document ST 15996/23, 24 November.

European Commission (2023) *Joint Staff Working Document: The EU Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+) assessment of Sri Lanka covering the period 2020–2022 (SWD (2023) 366 final).* Brussels: European Commission.

European Commission and High Representative of the Union for Foreign Affairs and Security Policy (2023) *Joint Staff Working Document: The EU Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+) assessment of the Democratic Socialist Republic of Sri Lanka covering the period 2020–2022,* SWD (2023) 366 final, 21 November.

Human Rights Commission of Sri Lanka (2024) *The Status of Manpower Workers: A Study of the Katunayake and Biyagama Free Trade Zones.* Colombo: Human Rights Commission of Sri Lanka.

International Labour Organization (2018) *Freedom of Association: Compilation of Decisions of the Committee on Freedom of Association,* 6th edn. Geneva: International Labour Office.

International Labour Organization (2023) *Report of the Committee of Experts on the Application of Conventions and Recommendations,* Report III (Part A), International Labour Conference, 111th Session. Geneva: International Labour Office.

International Trade Union Confederation (2011) *2011 Annual Survey of Violations of Trade Union Rights: Sri Lanka,* 8 June. Brussels: ITUC.

Institutional and Organizational Sources

Clean Clothes Campaign (2025) *NEXT shuts down its only unionized factory in Sri Lanka after posting £1.08 billion profit forecast,* 2 June. Amsterdam: Clean Clothes Campaign.

IndustriALL Global Union (2017) *Sri Lanka: Workers protest arbitrary dismissals – Global Star Logistics, Seeduwa,* 11 January. Geneva: IndustriALL Global Union. Available at: https://www.industriall-union.org/sri-lanka-workers-protest-arbitrary-dismissals (Accessed: 3 March 2026).

Labour Behind the Label (2019) *Sri Lanka: Illegal dismissals prompt women worker strike,* 26 March. Bristol: Labour Behind the Label. Available at: https://labourbehindthelabel.org/sri-lanka-illegal-dismissals/ (Accessed: 3 March 2026).

Business & Human Rights Resource Centre (2025) *Sri Lanka: NEXT accused of illegally halting salary payments to union members contesting factory closure.* Available at: https://www.business-humanrights.org/en/latest-news/sri-lanka-next-accused-of-illegally-halting-salary-payments-to-union-members-contesting-factory-closure/ (Accessed: 3 March 2026).

Web Sources and News

European Commission (2017) *EU grants Sri Lanka improved access to its market as incentive for reform,* News article, 17 May.

European Commission (n.d.) *Generalized Scheme of Preferences.* Directorate-General for Trade and Economic Security. Available at: https://policy.trade.ec.europa.eu (Accessed: 3 March 2026).

European Commission (n.d.) *Generalized Scheme of Preferences Plus (GSP+).* Access2Markets portal. Available at: https://trade.ec.europa.eu/access-to-markets (Accessed: 3 March 2026).

Reuters (2025) 'Sri Lanka's apparel industry counts on cutting US tariff to compete with rivals', *Reuters,* 10 July.

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Acknowledgments

I would like to express my sincere gratitude to the following individuals for their support and guidance in the completion of this policy brief:

- Dr. Nishara Mendis – Executive Director, LKI
- Ms. Sulochana Wijayasinghe – Attorney-at-Law - Researcher, LKI
- Ms. Madhuka Rukmalgama - Researcher, LKI
- Mr. Aakil Riyaz
- Ms. Thevni Sendanayake
- Ms. Nabeela Jabir
- Mr. Aadhil Fareed
- Ms. Tharushi Rathnayake

I am especially grateful to Dr. Nishara Mendis for her guidance and for the feedback she provided throughout the research process, which was instrumental in shaping this study. I would also like to thank Ms. Sulochana Wijayasinghe and Ms. Madhuka Rukmalgama for their support and guidance during this time.

I am further thankful to my fellow interns for their support and for making my time at the Lakshman Kadirgamar Institute both productive and enjoyable. Their insights and feedback have contributed significantly to this study. Any errors or omissions remain my own.