

Lisbon restricts workers' rights

Summary

Recent rulings in the European Court of Justice (ECJ) have allowed for the restriction of fundamental workers' rights. These restrictions included:

banning a blockade held by Swedish workers against a contractor that had employed workers from a different country at wages below what was agreed in collective wage agreements (Laval case, Sweden),

stopping a local government from making sure a company from another country paid its workers in line with government contractual requirements (Rüffert case, Germany) and,

stopping a government from bringing in laws that made sure workers from other countries had to be paid and treated the same as local workers and weren't used to undercut the wages of workers in that country (Luxembourg case, Luxembourg).

- Lisbon will permanently make it legal for restrictions to be placed on fundamental rights as in the cases above as it includes the Charter of Fundamental Rights. The Charter would be used as a common set of rights for the whole of the EU and will be judged and interpreted by the European Court of Justice. At present the supreme court of each country decides what the rights are of the citizens in that country. However, rulings of the supreme courts will be second to rulings from the European Court of Justice in the area of rights (they are already second in many other areas) owing to the primacy or superiority of EU law over our constitution if Lisbon is passed.

- The Charter will make these restrictions permanently legal through Article 52 in the Charter and the explanations that go with it. In this article it says that restrictions on fundamental rights are acceptable if it allows the EU to reach its goals. The explanations (which section (7) of Article 52 says are to be considered in future judgements) includes the cases that have been ruled in already by the European Court of Justice and points out that rights can be restricted to allow for the organisation of the common market.

- For the Charter to make it legal to restrict fundamental human rights so as to allow the organisation of the common market means that the rights of people can be blocked or limited so as to allow companies to do business in the best way for them.

- To stop a situation appearing where companies can drive down wages in all sectors by bringing in workers from other countries and exploiting them by paying them less than acceptable wages we need to reject Lisbon and get a new treaty with a social progress protocol that guarantees the rights of people above business needs.

Full explanation

The Lisbon Treaty will copper fasten the unacceptable practice of restricting fundamental human rights which the European Court of Justice (ECJ) has allowed in some recent cases. Lisbon will also diminish within EU member states the power of the European Court of Human Rights which is separate from the EU and has been a powerful force in defining basic human rights for the countries that recognise it (Article 6.2 TEU).

The precedence for the restricting of fundamental rights can be best seen in the three ECJ cases - Laval, Rüffert and Luxembourg.

In the Laval case Swedish unions took action against a Latvian construction company (Laval) over the working conditions of Latvian workers refurbishing a school in the town of Vaxholm, Sweden. Laval refused to sign a collective agreement, and a blockade of the work place was initiated by the trade unions as a consequence. The Swedish Labour Court referred the case to the European Court of Justice (ECJ). The ECJ ruling, announced in December 2007, indicating that the right to strike is a fundamental right, but not as fundamental as the right of businesses to supply cross-border services.

The Rüffert case concerned a conflict between the German province of Lower Saxony and a construction firm. The state law of Lower Saxony requires that in tenders for public contracts, companies and their sub-contractors must pay their employees the salary fixed according to collective agreements.

This provision was incorporated in the contract between Lower Saxony and the firm but it was broken when a Polish sub-contractor of the latter – PKZ – only paid their employees 46.57% of the fixed minimum salary. The ECJ determined that the EU rules concerning free exchange of services prevents local authorities demanding that posted workers employed by an employer from another EU state must be paid according to the agreement in force in the area where they are currently working.

With the Rüffert-judgment the EU-court has rejected the principle that municipalities or other public authorities can demand that suppliers and sub-suppliers live up to current salary and working conditions in the geographic area in question.

In the Luxembourg case, exactly one week after the Irish electorate had rejected the Lisbon Treaty, the European Court of Justice (ECJ) issued its judgment in a case brought by the European Commission. The ECJ considered that the way in which Luxembourg had implemented the Posting Directive was an obstacle to the free provision of cross-border services.

The ECJ refused to recognize the autonomous right of Luxembourg to decide which national public policy provisions are so important that they should apply to both national and foreign service providers on an equal footing in order to counter unfair competition on wages and working

conditions by cross-border service providers. It ruled that Luxembourg's national labour laws protecting foreign workers were an obstacle to the free provision of cross-border services.

The legal obligations that the government of Luxembourg had put on foreign service providers which were dismissed by the ECJ were:

No 1. The requirement by Luxembourg for a written contract or equivalent written document for all employees.

No 2. Luxembourg's requirement of equal treatment for part-time and fixed-term workers.

No 3. The requirement relating to the automatic indexation of wages to the cost of living.

No 4. The requirement that Luxembourg's collective agreements are complied with by foreign service providers.

No 5. The requirement for monitoring arrangements between companies and labour inspectors.

No 6. The requirement for an ad-hoc agent of a foreign-service provider residing in Luxembourg to retain the documents necessary for monitoring.

The three ECJ rulings showed that workers rights and the right for a government to prevent exploitation of foreign workers and the undercutting of local workers could be restricted for market interests. Rather than the Charter of Fundamental Rights protecting workers from rulings like these it makes it permanently legally acceptable to continue restricting and limiting the rights of working people.

Article 52 of the Charter states:

“Article 52:
Scope and interpretation of rights and principles

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, **limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union** or the need to protect the rights and freedoms of others.

...

7. The explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the courts of the Union and of the Member States.

Explanation

The purpose of Article 52 is to set the scope of the rights guaranteed. Paragraph 1 deals with the arrangements for the limitation of rights. The wording is based on the case law of the Court of Justice: "**...it is well established in the case law of the Court that restrictions may be imposed on the exercise of fundamental rights, in particular in the context of a common organisation of the market**, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights" (judgment of 13 April 2000, Case C-292/97, paragraph 45 of the grounds). The reference to general interests recognised by the Union covers both the objectives mentioned in Article 2 and other interests protected by specific Treaty provisions such as Articles 30 or 39(3) of the EC Treaty.

It can be clearly seen that by passing Lisbon we would enshrine in law the ability for the ECJ to restrict our fundamental human rights for market interests. The key point here is that fundamental rights cannot be called fundamental if they can be restricted for such reasons.

The only solution for workers and citizens alike would be to achieve hard-law amendments, or protocols that prohibit the restrictions of rights as mentioned above instead of opting for soft-law declarations which are not legally binding. The evidence that declarations are not legally binding such as the declaration in support of worker's rights made by the heads of state in its assurances to the Irish electorate can be seen in Article 49B of the treaty on European union as found in the original Lisbon text. It states:

"The protocols and annexes to the Treaties shall form an integral part thereof"

The omission of declarations in the above article means that in general they do not carry a legal weight and can only be seen as an interpretation by the group who made it. The fact that the decision by the heads of state did not even include the possibility of adding the protection of workers rights in a future protocol is evidence that Lisbon does not and will not include such protection for workers and public services.

There is also a need to repeal Article 52 of the Charter of Fundamental Rights. Only through campaigning for and achieving these two urgent measures will worker's rights be vindicated.

These goals can only be achieved if we reject the Lisbon Treaty and force our government to negotiate the changes required, not just for the Irish people but for all the people of Europe.

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