

# The EU attacks workers' rights —yet again

**The latest ruling (19 June 2008) by the European Court of Justice has found yet again that the rights of business to do what it wants, when it wants, override trade union rights.**

In this latest case the ECJ in Luxembourg has, ironically, found against its host country in a case brought by the European Commission. The ECJ upheld the Commission's complaint regarding the method through which Luxembourg has implemented the Posting of Workers Directive. It has ruled that Luxembourg's national labour laws protecting foreign workers are an obstacle to the free provision of cross-border services.

The seriousness of this ruling was underlined by very frank comments from John Monks, general secretary of the European Trade Union Confederation. When Mr Monks says that the Luxembourg judgement is "another hugely problematic judgement by the ECJ, asserting the primacy of the economic freedoms over fundamental rights and respect for national labour law and collective agreements," we should be worried.

He went on to state clearly that the Posting of Workers Directive is being used not as an instrument for protecting workers and labour markets against unfair competition on wages and working conditions but as an "aggressive internal market tool."

This is an important statement, confirming that the Posting of Workers Directive was designed to remove obstacles to the freedom of firms to operate and not to protect vulnerable foreign workers, as has been widely claimed by trade union leaders in the past.

In the ECJ Vaxholm case (December 2007) a Latvian building company, Laval, justified using lower-paid Latvian workers by quoting the Posting of Workers Directive (article 3.1.C). According to Laval, this implies that member-states must ensure that a minimum rate of pay is laid down in national legislation or in a generally applicable collective agreement. The company invoked article 12 (prohibiting discrimination on the grounds of nationality) and article 49 (prohibiting restrictions on freedom to provide services in respect of nationals of member-states established in a state of the Community other than that of the recipient of services) of the EU Treaty.

Cases such as Vaxholm imply that countries with well-functioning collective bargaining arrangements could be forced to change these to meet the requirements of EU legislation. In particular, they sound a timely

warning to those Irish unions that rely on registered employment agreements as a means of fixing wages and conditions in particular sectors.

As Sweden had not introduced a statutory minimum wage, the company claimed there was no obligation on an employer to pay the minimum wage collectively bargained for in the building industry.

In the latest Luxembourg case of June 2008, the EU court agreed with the European Commission that the country's labour laws obstruct the free provision of services. In this case, the ECJ does not recognise the autonomous right of Luxembourg to define national public policy provisions in order to counter unfair competition in the wages and working conditions of workers by cross-border service providers.

This latest ECJ judgement is likely to have an enormous impact, far beyond the borders of Luxembourg, and increases for all workers the spectre of social dumping. It effectually challenges the scope for member-states to secure decent wages for all workers in their territory, to demand respect for collective agreements, and to devise effective mechanisms for monitoring and enforcing workers' rights.

The European court is saying, in effect, that any national laws that block free movement within the European Union must be struck down, as they conflict with EU rules on the free movement of goods and services. In effect it is slowly imposing, through case law, the "country of origin" principle, supposedly removed from the Services Directive in 2005.

**An unelected EU Commission is now actively operating against the interests of workers in Ireland and throughout the European Union. The Irish people's stance in defending democracy and workers' rights by voting No in the recent referendum on the Lisbon Treaty has been proved to be the correct decision and is clearly vindicated by the Luxembourg judgement delivered less than a week later.**

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