

The EU attacks workers' rights – yet again

The latest ruling (19TH June 2008) by the European Court of Justice (ECJ) has shown yet again that the rights of business to do what it wants, when it likes, overrides 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 (ETUC). When Mr Monks says that the Luxembourg judgment 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 goes on to state clearly that the Posting of Workers Directive is being used as an instrument, not to protect 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), 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 implied that member states shall ensure a minimum rate of pay is laid down in national legislation or in a generally applicable collective agreement. The company invoked Articles 12 (prohibition of discrimination on the grounds of nationality) and 49 (which stipulates that restrictions on freedom to provide services shall be prohibited in respect of nationals of member states who are 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 and, in particular, sounds 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 for an employer to pay the minimum wage collectively bargained for in the building sector.

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

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

The court is effectively saying that any national laws that blocks 'free movement' within the EU 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 acting against the interests of workers in Ireland and throughout the EU. The Irish people's stance in defending democracy and workers rights by voting No in the recent Lisbon Treaty referendum has been proven to have been the correct decision.