

THE LUXEMBOURG JUDGEMENT

The EU attacks
workers' rights
yet again

People's Movement



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THE LUXEMBOURG JUDGEMENT

THE EU ATTACKS WORKERS' RIGHTS YET AGAIN



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▶ Introduction

The thrust of the judgements of the European Court of Justice in the Viking, Laval, Ruffert and Luxembourg cases is to subordinate workers' trade union rights to the European Union's internal market, while the effect of the Lisbon Treaty would be to copperfasten those judgements.

Commenting on the Laval judgement in a recent case taken by employers to break a registered employment agreement in the electrical contracting industry, the Labour Court stated that "*it seems reasonably if not absolutely clear to the Court that in the absence of a Registered Employment Agreement contractors from other Member States could exercise their freedom to provide services in this jurisdiction under the EC Treaty at the same rates and conditions of employment as apply in their country of origin. Depending on the country of origin this could seriously undermine the competitive position of Irish contractors*"¹—or, more likely, the wages of their employees! The employers are likely to pursue this case through the civil courts, with devastating results for workers if they are successful.

The European Trade Union Confederation, representing the majority of trade union congresses in the European Union, has published a document entitled "ETUC Proposal for a 'Social Progress' Protocol (Clause/Declaration)," which suggests that the redress sought could be achieved by one of three possible routes: a protocol, a declaration, or a "clause."

Only a protocol has legal status. A declaration has no legal force; and the concept of a "clause" has no relevance in this context. Declarations are not legally binding. They are merely political statements or promises; they set out what one party or more to a treaty understands a provision to mean, but they do not determine it. There are several such declarations already appended to the Lisbon Treaty. *These are not legally binding on the states that are party to the treaty.* There are also several protocols attached to the Lisbon Treaty. These are legally binding, in the same way as the main text of that treaty. It is clear, therefore, that the rulings can be overturned only by way of a protocol.

The European Court of Justice interprets EU treaties: in relation to any issue in dispute, an EU treaty means what the ECJ says it means. Political declarations cannot override the provisions of a treaty, and therefore they cannot bind the ECJ.

Yet the first sentence of the ETUC document states: "The following proposed text of a Protocol is based on the assumption of the entering into force of the Lisbon Treaty . . ." In other words, the Irish people will be expected to approve the Lisbon Treaty on the strength of "legal guarantees" that are not at that point guaranteed. Voters would face a huge risk in bringing the Lisbon

Treaty into force on the understanding that the necessary legal protections would be adopted, only for those protections to be vetoed by another member-state later on. At that point Ireland could not reverse its acceptance of the Lisbon Treaty. Even if the legal guarantees were eventually enacted, the process is likely to drag on, meaning that Ireland would be bound by the Lisbon Treaty for a significant period without the legal protection that the Irish people were promised.

Which brings us to the rejection of the Lisbon Treaty in June 2008. In a survey commissioned by the Government and carried out by Millward Brown after the referendum, respondents cited the protection of workers' rights as "very important"—more than any other issue relating to Ireland and the European Union. This confirmed the nearly 70 per cent No vote of workers who voted in the referendum. The Government has now committed itself to trying to overturn that democratic decision. To do that, it has to pretend that it is addressing issues of concern, such as "workers' rights."

At an EU Council meeting in December 2008 it was agreed that certain concerns would be addressed by way of "necessary legal guarantees," while other issues were recognised as being of "high importance." Workers' rights fall into the latter category. "Necessary legal guarantees" are likely to take the form of promises to introduce protocols into future EU treaties, such as the treaty that will accompany Croatia's eventual membership of the European Union—now very much on the long finger as a result of a virtual veto by Slovenia. But one thing is certain: they will not be by way of protocols to the Lisbon Treaty. These issues of "high importance," such as workers' rights, will be dealt with by a declaration, which will have more to do with the optics of repackaging the Lisbon Treaty in the hope that enough voters will be conned into believing that there has been a "renegotiation" of the treaty. This declaration will not redress the harm done by the ECJ rulings, nor will it force that court to stop subordinating trade union rights to the EU internal market, as it so blatantly did in the Luxembourg judgement.

The only way that the detrimental effects of these rulings can be addressed is if the Irish people refuse to be dragooned into voting Yes to the Lisbon Treaty in the second referendum, probably to be held in October. Such a vote would effectually finish the Lisbon Treaty, and would allow the European trade union movement to realistically campaign for a protocol in any treaty that might replace it.

Frank Keoghan
Secretary, People's Movement

▶ Another turn of the screw

In June 2008, exactly one week after the Irish electorate had rejected the Lisbon Treaty, the European Court of Justice in Luxembourg issued its judgement in a case brought by the European Commission.² The ECJ considered that the way in which Luxembourg had implemented the Posting of Workers Directive was an obstacle to the free provision of cross-border services. This ruling shows yet again that the right of business to do what it wants, when it wants, overrides trade union rights.³

This judgement, the latest in a series—Laval, Viking, Ruffert, and now Luxembourg—clearly demonstrates that the ECJ and the European Commission are consistently implementing a programme designed to narrow the scope of member-states to ensure a proper functioning of their labour markets in the context of foreign companies posting workers to their territory. It entrenches the ECJ's narrow interpretation of the Posting of Workers Directive, as in the previous cases, allowing for only a limited number of host-country rules to apply.

In this particular case the ECJ refused to recognise the autonomous right of Luxembourg to decide which of its 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 has ruled that Luxembourg's national labour laws protecting foreign workers are an obstacle to the free provision of cross-border services. The Confederation of European Business agrees, maintaining that Luxembourg had exercised an "overly wide interpretation of the PWD and unclear and unjustified control measures."⁴

This judgement will have an enormous impact,⁵ as it challenges the scope for all member-states, acting in the general interest, to secure decent wages for all workers on their territory, to demand respect for collective agreements, and to devise effective mechanisms for monitoring and enforcing the rights that it was believed were provided for in the Posting of Workers Directive.

John Monks, general secretary of the European Trade Union Confederation, stated: "*This is another hugely problematic judgement by the ECJ, asserting the primacy of the economic freedoms over fundamental rights⁶ and respect for national labour law and collective agreements. It turns*

the Posting Directive from an instrument that was intended to protect workers, companies and labour markets against unfair competition on wages and working conditions into an aggressive internal market tool. This is unacceptable and must be repaired as soon as possible by the European legislators, notably by a revision of the Posting Directive to clarify and safeguard its original meaning. In addition, the ETUC urges the European institutions to adopt a Social Progress protocol . . .”

The main points of the judgement

Interpretation of the notion of “public policy”

The ECJ acknowledged that a member-state may impose on foreign service-providers respect for terms and conditions of employment other than those contained in the exhaustive list in article 3.1 of the Posting of Workers Directive if they constitute public policy provisions.⁷

It noted that “public policy provisions” are those that are considered so crucial for the protection of the political, social or economic order as to require compliance by all persons present on the national territory, regardless of their nationality. It also noted that the public policy exception is a derogation from the fundamental principle of freedom to provide services, which must be interpreted strictly and cannot be determined unilaterally by the member-state. The ECJ therefore examined each provision that Luxembourg had classified as public policy.

(1) The requirement for a written contract or equivalent written document

As compliance with the requirements of the contested national provision was monitored in the member-state in which the undertaking wishing to post workers to Luxembourg was established, Luxembourg could not rely on the public policy exception of article 3 (10) of the Posting of Workers Directive to justify the national measure in question.

(2) The requirement of equal treatment for part-time workers and fixed-term workers

The ECJ pointed out that the Posting of Workers Directive, which seeks to guarantee compliance with a set of rules for the protection of workers, rendered the existence of such an additional obligation redundant. It found that the requirement was likely to dissuade undertakings established in another member-state from exercising their freedom to provide services and therefore that the requirement for a written contract did not comply with

article 3 (10) of the Posting of Workers Directive, in so far as it was not applied in compliance with the Treaty (Directive 91/533).

Because of existing Community law, the ECJ ruled that *both* these requirements are redundant, as posted workers enjoy the same protection in their country of origin as that offered by the Luxembourg requirement.⁸

(3) The requirement relating to the automatic indexing of wages to the cost of living

The ECJ considered that Luxembourg had failed to establish that a serious threat to a fundamental interest of society was at stake. Luxembourg cited the objective of protecting purchasing power and good labour relations, without providing evidence that mandatory indexing is necessary and proportional. The court ruled against Luxembourg on the grounds that such an indexation involved all wages, *including those that do not fall within the minimum wage category*, despite the fact that it is covered by the first subparagraph of article 3 (1) (c) of the Posting of Workers Directive.

(4) The requirement that Luxembourg's collective agreements be complied with by foreign service-providers

The court considered that it is the actual content of collective agreements that may be defined as public policy, as opposed to collective agreements *per se*, and went on to find that classification as public policy provisions can apply only to collective agreements that have been declared universally applicable.

(5) The requirement for monitoring arrangements

Luxembourg law requires service-providers to make available to labour inspectorates, on demand, basic information necessary for the monitoring of posted workers. The ECJ considered that this law is not sufficiently clear to secure legal certainty for foreign service-providers. It found that their rights and obligations were not clearly apparent, and that failure to comply with the legal obligations resulted in considerable penalties. As a result, Luxembourg law was ruled to be incompatible with article 49 of the Treaty Establishing the European Communities.⁹

(6) The requirement for an ad hoc agent residing in Luxembourg to retain the documents necessary for monitoring

The court found that this obligation created additional burdens for foreign service-providers, as the agent must reside in Luxembourg, and the period

for which documents must be retained is not defined. Quoting previous case law,¹⁰ the ECJ found that Luxembourg failed to establish that national authorities could not carry out their supervisory task unless the undertaking has designated an agent.

Furthermore, the retention of documents in the host member-state after the employer has ceased to employ workers there is superfluous, given the organised system of co-operation and exchange of information between member-states provided for in the Posting of Workers Directive. The court concluded that an obligation on the service-provider to provide these documents before work began constituted an obstacle to the freedom to provide services.

Intensified attack on workers' rights

A summary of the ECJ judgements in the Laval, Viking and Ruffert cases

In December 2007 the ECJ ruled that a trade union campaign to stop a Latvian firm paying low wages in the Swedish town of Vaxholm was in breach of EU rules. Earlier in the month the same court ruled that an international trade union campaign against “flag of convenience” shipping was also in breach of EU rules. The latter case involved the Finnish ferry company Viking Line, which in 2003 attempted to re-flag one of its ships as Estonian and replace Finnish seafarers with cheaper Estonian labour.

Protesting against this clear case of social dumping, the International Transport Workers' Federation (ITF) instructed its affiliates not to negotiate with the Finnish ferry line. Viking then began legal proceedings against the ITF. The ECJ sat on the case for more than three years; it then declared that EU rules on the free movement of goods, services, capital and labour give private firms protection against trade unions in the interests of “freedom of establishment.”

The European Commission claimed that the Viking judgement was “balanced” and had laid down specific principles, including the principle that collective action can in theory restrict “the freedom of establishment, a cornerstone of the EU’s internal market.” On the other hand, however, any industrial action must be for reasons of “over-riding public interest” as well as being “suitable and proportionate.”

The Viking ruling means, therefore, that the right to take industrial action

is not recognised as a fundamental right by the European Court of Justice. This is reflected in the Commission's declaration that "freedom of establishment" is "a cornerstone of the EU's internal market," while the right to take collective action is not accorded the same status.

In an earlier judgement the ECJ itself also ruled that "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" (*Kjell Karlson and Others*, case C-292/97, paragraph 45). In the opinion of the ECJ, therefore, civil rights, such as trade union rights, are subordinate to the good of the "market." The Viking judgement similarly states that the exercise of the right to strike is "subject to certain restrictions" where the strike is "prohibited under national law or European Community law" or is "*contra bonos mores*" (contrary to decent behaviour).

In summary, trade unionists have the right to strike unless it is illegal under any domestic or EU law, or affects the "operation of the market," or is "immoral." There are, of course, other EU restrictions on trade union rights in the offing if we accept the Lisbon Treaty in the forthcoming referendum.

It is no accident that both the Viking and the Vaxholm case attack trade union collective bargaining rights in Scandinavian countries, where they are enshrined in law and the national constitutions. This is the social model that is most at odds with the European Union, for which the "smooth operation of the market" overrides any other rights or considerations.

Following these landmark cases, the ECJ delivered a ruling in the so-called Ruffert case. This concerned a conflict between the German land (province) of Lower Saxony and the construction firm Objekt und Bauregie GmbH. The law of Lower Saxony states that, in tenders for public contracts, companies and their sub-contractors must pay employees the wages 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, PKZ, paid its fifty-three employees only 46.57 per cent of the fixed minimum salary. The ECJ, however, determined that the EU rules concerning the free exchange of services prevents local authorities demanding that posted workers from another EU state employed by an employer in the host state must be paid in accordance with current agreements in the area where they are now working.

With the Ruffert judgement the ECJ 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 area in question.



The EU in contempt of international conventions

The Laval, Viking, Ruffert and Luxembourg rulings break ILO conventions and endorse social dumping

The rulings of the European Court of Justice in the Laval, Ruffert and Luxembourg cases¹¹ will seriously affect the application of Convention 94 of the International Labour Organisation, the Labour Clauses (Public Contracts) Convention (1949), the aim of which is to avoid social dumping in public procurement.

Convention 94 requires bidders to be informed in advance, by means of standard labour clauses included in tender documents, that if their bid is successful they will have to observe wage and other labour conditions that are not less favourable than the highest minimum standards established locally by collective bargaining,¹² arbitration, or law.

The objectives of Convention 94 are twofold. Firstly, it aims to prevent wages, working time or working conditions being used as elements of competition among bidders for public contracts, through requiring all bidders to respect, as a minimum, certain locally established standards. It proposes a common “level playing-field” in labour standards through the promotion of fair competition and socially responsible procurement. Secondly, it aims to ensure that public contracts do not exert downward pressure on wages and working conditions, through the inclusion of a standard clause in public contracts to the effect that workers employed to carry out the contract will receive wages and enjoy working conditions that are no less favourable than those established by collective agreement, arbitration award or national laws and regulations for the same work in the area where the work is being carried out.

The ECJ judgements in the Viking, Laval and Luxembourg cases will similarly affect the application of two fundamental ILO conventions: Convention 87, the Freedom of Association and Protection of the Right to Organise Convention (1948), and Convention 98, the Right to Organise and Collective Bargaining Convention (1949).¹³

Convention 87 notably establishes the right of workers’ organisations to organise their administration and activities and to formulate their pro-

grammes with the aim of furthering and defending their interests. The ILO has frequently recalled that the right to strike is a fundamental right of workers and of their organisations. This right may be prohibited or restricted (a) in the public service only for public servants exercising authority in the name of the state or (b) in essential services, in the strict sense of the term—that is, services whose interruption would endanger the life, personal safety or health of the whole or part of the population.

Convention 98 requires states to take appropriate measures to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

All twenty-seven member-states of the European Union have ratified the eight fundamental ILO conventions, including Conventions 87 and 98. Furthermore, freedom of association and the right to collective bargaining and action are proclaimed in articles 12 and 28 of the Charter of Fundamental Rights of the European Union, which would become law if the Lisbon Treaty was to come into force. The ECJ's attitude to the ILO conventions should alert all workers to yet another inherent deficiency in that charter,¹⁴ the virtues of which have been promoted by senior trade unionists and the ICTU as a reason for supporting the Lisbon Treaty.

The salient points of the Luxembourg ruling

The case brought by the Commission

In July 2006 the Commission of the European Communities brought an action against Luxembourg, claiming that it had failed to fulfil its obligations under the Posting of Workers Directive and under articles 49 and 50 of the Treaty Establishing the European Communities concerning the freedom to provide services.¹⁵

The Commission claimed that Luxembourg—by wrongly describing national provisions as mandatory provisions falling under national public policy and by requiring undertakings that post workers to its territory to comply with them—imposed obligations on those undertakings that went beyond those laid down by the Posting of Workers Directive.

The judgement of the ECJ

In its judgement the ECJ first examined whether the national provisions could be considered mandatory provisions falling under the notion of public policy in article 3 (10) of the Posting of Workers Directive.¹⁶ Referring to its judgement in the Laval case, the court stated that the laws of the member-states must be co-ordinated in order to lay down mandatory rules for minimum protection to be observed in the host country by employers who post workers there. It noted that article 3 (1),¹⁷ therefore, sets out an exhaustive list of measures in respect of which priority may be given to the rules in force in the host state.

The court added that, according to article 3 (10), member-states are nevertheless authorised to apply, in a non-discriminatory manner, national terms and conditions of employment on matters other than those referred to in article 3 (1) *in the case of public policy provisions*. However, it stated that article 3 (10) constitutes a derogation from the exhaustive list set out in article 3 (1) of matters in which the host member-state may apply its legislation—and also a derogation from the fundamental principle of freedom to provide services. In the court's view article 3 (10) should therefore be interpreted strictly and *cannot be determined unilaterally by the member-state*.

Finally, the court noted that in any event article 3 (10) of the Posting of Workers Directive does not exempt the host state from complying with its obligations under the Treaty Establishing the European Communities and in particular those in article 49 relating to the freedom to provide services.

The court observed that there was no reason why provisions that encompass the drawing up and implementation of collective agreements should *as such* fall within the definition of public policy. It argued that such a finding must be made as regards the actual provisions of such collective agreements, which in their entirety—and for the simple reason that they derive from that type of measure—cannot fall within that definition either.

The ECJ found that the national provision did not refer to collective agreements *that have been declared universally applicable* but to mere collective labour agreements falling outside the scope of article 3 (10) of the Posting of Workers Directive (on public policy provisions). It concluded that the national provisions applied by the national authorities to undertakings that post workers to Luxembourg could not constitute public policy exceptions within the meaning of article 3 (10).

The salient details of the judgement

After its already restrictive judgements in the Laval and Rüffert cases, the ECJ has, in its judgement in the Luxembourg case, even further reduced the remaining possibility, provided for by article 3 (10) of the Posting of Workers Directive, of imposing national labour law standards on employers from other member-states posting workers to a host member-state.

The ECJ seized the opportunity to develop far-reaching preliminary observations in order to justify a very strict and narrow interpretation of article 3 (10).

The first indent of article 3 (10)¹⁸ constitutes a derogation from the principle that the grounds on which the host member-state may apply its legislation to undertakings that post workers to its territory are set out in an exhaustive list in the first sub-paragraph of article 3 (1).¹⁹ The first indent of article 3 (10) must therefore be interpreted strictly.

The “preparatory works” to the Posting of Workers Directive²⁰ (the existence of which the court refused to acknowledge in the Laval case) may in this case be relied on in support of a strict and narrow interpretation of the expression “public policy provisions.” According to the preparatory works, that directive *does not require member-states to introduce rules concerning minimum wages or to declare collective agreements universally applicable*. This follows explicitly from the common declaration given by the Council and the Commission on the adoption of the Posting of Workers Directive.²¹

The court ruled that, as employers are subject to European Communities labour law directives by virtue of the laws of the member-state in which they are established, compliance is ensured *by the member-state of origin* of the posted workers. So, any supplementary control *in the member-state where the work is carried out* is considered to be unacceptable, as it is likely to dissuade undertakings established in another member-state from exercising their freedom to provide services.

The ECJ has, in effect, reintroduced a version of the “country of origin” principle enshrined in the Services Directive.

It furthermore considered that, as regards pay, it was intended, by means of article 3 (1) (c) of the Posting of Workers Directive, to limit the possibility of member-states intervening to matters relating to minimum rates of pay only.

It further narrowed the freedom of action of member-states on the basis of article 3 (10) of the Posting of Workers Directive by introducing a new standard of judicial review. The reasons that may be invoked by a member-state to justify a derogation from the principle of freedom to provide services

must be accompanied by appropriate evidence or by *an analysis of the expediency and proportionality*²² of the restrictive measure and precise evidence enabling its arguments to be substantiated.

The ECJ excludes the application to posted workers of public policy provisions in collective agreements that have not been declared universally applicable. It establishes a principle that article 3 (10) relates exclusively to the terms and conditions of employment laid down in collective agreements *that have been declared universally applicable*. It does not accept that provisions concerning collective agreements, namely provisions that encompass their drawing up and implementation, should *per se* fall within the definition of public policy. Such a finding must, according to the court, be made as regards the actual provisions of such collective agreements, which in their entirety—and for the simple reason that they derive from that type of measure—cannot fall within that definition either.

There is disingenuous circular reasoning on the part of the court concerning public policy provisions under article 3 (10) of the Posting of Workers Directive. Article 3 (1) provides that member-states must ensure that the minimum conditions set out in paragraphs (a) to (g) are upheld whenever they are laid down in laws, regulations or administrative provisions or in universally applicable collective agreements. The purpose of article 3 (10) was to *extend* the possibilities of applying provisions that were not already covered by article 3 (1) or 3 (8).²³ However, the ECJ in the Luxembourg judgement, by restricting the application of article 3 (10) to provisions in universally applicable collective agreements, makes that article redundant.

This outcome is hardly surprising in the light of the ECJ's previous case law in the Laval, Rüffert and Viking cases. Through this judgement it has taken another step in the serial reinterpretation of the Posting of Workers Directive that it began with the Laval case. *It has fundamentally transformed the directive into an instrument for restricting the right to take action to ensure equal pay for equal work.*

This latest ECJ judgement is likely to have an enormous impact far beyond Luxembourg and increases the spectre of social dumping for all workers. 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 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. The ECJ is slowly imposing, through case

law, the “country of origin” principle supposedly removed from the Services Directive in 2005.

Abetted by the unelected EU Commission, the ECJ 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 rejecting the Lisbon Treaty in 2008 has, following the Luxembourg judgement, surely been vindicated.

► Notes

1. Labour Court determination no. REP091 (2009).

2. *Commission v. Luxembourg*, C-319/06.

3. The text of the judgement is available at <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&Submit=Rechercher&alldocs=alldocs&docj=docj&docop=docop&docor=docor&docjo=docjo&numaff=C-319/06&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100>.

4. 7 October 2008.

5. Particularly in France, Belgium, and Italy, which have an approach to public policy similar to that of Luxembourg.

6. The ECJ has already made it clear in at least two cases that “the fundamental rights recognized by the Court are not absolute, but must be considered in relation to their social function. Consequently, restrictions may be imposed on the exercise of those rights, in particular in the context of a common organization of the market . . .” (*Hubert Wachauf v. Bundesamt für Ernährung und Forstwirtschaft*, C-5/88, summary, para. 2, and grounds, para. 18). In a later case it stated that “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 . . .” (*Kjell Karlsson and Others*, C-292/97, grounds, para. 45).

7. Article 3 of the Posting of Workers Directive—Terms and conditions of employment:

“1. Member States shall ensure that, whatever the law applicable to the employment relationship, the undertakings referred to in Article 1 (1) guarantee workers posted to their territory the terms and conditions of employment covering the following matters which, in the Member State where the work is carried out, are laid down:

—by law, regulation or administrative provision, and/or by collective agreements or arbitration awards which have been declared universally applicable within the meaning of paragraph 8, insofar as they concern the activities referred to in the Annex:

(a) maximum work periods and minimum rest periods;

(b) minimum paid annual holidays;

(c) the minimum rates of pay, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;

(d) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;

(e) health, safety and hygiene at work;

(f) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;

(g) equality of treatment between men and women and other provisions on non-discrimination.

For the purposes of this Directive, the concept of minimum rates of pay referred to in paragraph 1 (c) is defined by the national law and/or practice of the Member State to whose territory the worker is posted.

8. Directive 91/533 obliges an employer to inform employees of the conditions applicable to the contract or employment relationship.

9. Article 49. “Within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be prohibited in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended.”

10. *Proceedings against Arblade and Others* [2001] ICR 434 (Cases C-369 and 376/96). The advocate-general in the Luxembourg case stated that it is standing case law (related to article 49 of the Treaty on European Union) that “all restrictions, even if these are mandatory for domestic service providers,” have to be abolished (Considerations 56, advocate-general, Luxembourg case). In line with this reasoning the court states that this type of national mandatory rules “hinders the free provision of services,” as these provisions are not “crucial for the protection of the political, social and economic order”—a wording that goes back to the *Arblade and Others* case (1999).

11. Details and commentary on these judgements may be found on the People’s Movement web site (www.people.ie).

12. In this context the convention refers to collective agreements covering “substantial proportions” of the employers and workers concerned (and not only those declared generally applicable).

13. The principles of freedom of association and the effective recognition of the right to collective bargaining are enshrined in the Constitution of the ILO. As recalled in the Declaration on Fundamental Principles and Rights at Work (1998), in freely joining the ILO all member-states have endorsed the principles and rights set out in the Constitution and in its Annex, the Declaration of Philadelphia (1944).

14. The People’s Movement pamphlet on the Charter of Fundamental Rights is available for downloading from our web site (www.people.ie). It outlines other deficiencies in the Charter.

15. Article 50. “A document which has been formally drawn up or registered as an authentic instrument and is enforceable in one Contracting State shall, in another Contracting State, have an order for its enforcement issued there, on application made in accordance with the procedures provided for in Article 31 *et seq.* The application may be refused only if enforcement of the instrument is contrary to public policy in the State in which enforcement is sought.”

16. The ECJ referred to a declaration made by the Council and the Commission according to which the expression “public policy provisions” is to be interpreted as covering those mandatory rules from which there can be no derogation and which, by their nature and objective, meet the imperative requirements of the public interest.

17. As outlined in note 4 above.

18. “. . . by law, regulation or administrative provision, and/or by collective agreements or arbitration awards which have been declared universally applicable . . .”

19. In note 6 above.

20. “These rules must be laid down by the legislations of the host country and/or by collective agreements or arbitration awards which have been declared universally

applicable in the case of activities in the building work sector, while Member States are left the choice of imposing such rules laid down by collective agreements in the case of activities other than building work. They may also, in compliance with the Treaty, impose the application of terms and conditions of employment on matters other than those referred to in the Directive in the case of public policy provisions.”

21. Declaration 10, which is referred to by the ECJ and which provides that public policy must be understood as those mandatory provisions that cannot be derogated from and that, by their nature and objectives, respond to imperative requirements of the public interest.

The advocate-general considered in her conclusions, published on 13 September 2007, that while national authorities do benefit from a certain margin of appreciation in defining what constitutes the public interest, the notion of public policy is an autonomous principle of Community law and can be monitored by the European judge accordingly. “The Advocate General concludes that national labour law as a whole cannot constitute public policy. In other words, a Member State cannot oblige foreign service providers to comply with the entire national labour law provisions. The public policy prerogatives should be examined on a case by case basis, having regard to what is indispensable for national legal orders.”

22. *Official Journal C 321 E*, 29/12/2006 P. 0308–0311 Protocol (No. 30) 2. “The application of the principles of subsidiarity and proportionality . . . shall not affect the principles developed by the Court of Justice regarding the relationship between national and Community law, and it should take into account Article 6 (4) of the Treaty on European Union, according to which ‘the Union shall provide itself with the means necessary to attain its objectives and carry through its policies.’”

23. “‘Collective agreements or arbitration awards which have been declared universally applicable’ means collective agreements or arbitration awards which must be observed by all undertakings in the geographical area and in the profession or industry concerned.

“In the absence of a system for declaring collective agreements or arbitration awards to be of universal application within the meaning of the first subparagraph, Member States may, if they so decide, base themselves on:

—collective agreements or arbitration awards which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or

—collective agreements which have been concluded by the most representative employers’ and labour organizations at national level and which are applied throughout national territory,

provided that their application to the undertakings referred to in Article 1 (1) ensures equality of treatment on matters listed in the first subparagraph of paragraph 1 of this Article between those undertakings and the other undertakings referred to in this subparagraph which are in a similar position.

“Equality of treatment, within the meaning of this Article, shall be deemed to exist where national undertakings in a similar position:

—are subject, in the place in question or in the sector concerned, to the same obligations as posting undertakings as regards the matters listed in the first subparagraph of paragraph 1, and

—are required to fulfil such obligations with the same effects.”

MANIFESTO

The People's Movement campaigns against any measures that further develop the European Union into a federal state and to defend and enhance popular sovereignty, democracy and social justice in Ireland.

Statement of aims

1. To defend and enhance Irish democracy and sovereignty and the primacy of Bunreacht na hÉireann and its institutions over EU supranational institutions and treaties.
2. To oppose the development of the EU into a federal superstate with its own institutions and constitution (or any proposed constitutional treaty giving the EU legal personality and primacy over Bunreacht na hÉireann).
3. To foster support in Ireland and abroad for the transformation of the EU into an international Europe-wide treaty-based association of nation-states co-operating in an open economic area and in other matters of common concern, while respecting the sovereignty and rights of member-states.
4. To advocate the reform of current EU institutions and the repatriation of powers to national parliaments and other national or local democratic institutions.
5. To develop and campaign for a policy of military neutrality and non-alignment to be inserted into Bunreacht na hÉireann. In addition, to maintain our current foreign policy regarding the primacy of the UN as the body empowered to resolve international diplomatic and humanitarian crises and the sole body for the deployment of our defence and security forces in such crises.
6. To advocate the fostering of co-operation with other non-aligned nation-states in Europe and throughout the world on UN operational matters and the reform of the UN Security Council and other UN institutions. Also to renegotiate the PFP so that all operations will be under joint command (i.e. non-aligned and NATO) and with UN approval.
7. To advocate reform of our laws, democratic institutions and constitution, where necessary, to maintain and extend civil liberties.
8. To inform and develop the knowledge and awareness of people on EU matters.
9. To maintain the position of being attached to no political party and to oppose all forms of sectarianism, racism, and sexism.

The People's Movement campaigns against any measures that further develop the European Union into a federal state and to defend and enhance popular sovereignty, democracy and social justice in Ireland.

Patrons: Robert Ballagh, Ald. Declan Bree, Cllr Neil Clarke, Cllr Catherine Connolly, Dr Raymond Deane, Cllr Betty Doran, Rev. Terence P. McCaughey, Finian McGrath TD, Prof. John Maguire, Cllr Bronwen Maher, Dervla Murphy, Joe Noonan, Cllr Seosamh Ó Cuaig, Cllr Chris O'Leary.