

EU court attacks trade union rights - again

In December 2007, the European Court of Justice (ECJ) ruled that a trade union campaign to stop a Latvian firm paying poverty 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 Finnish ferry company Viking Line, which in 2003 attempted to re-flag one of its ships to Estonia and replace Finnish seafarers with cheaper Estonian labour.

Protesting against this clear case of social dumping, the UK-based International Transport Workers Federation instructed its affiliates not to negotiate with the Finnish ferry line. Viking then began legal proceedings against the ITF and the ECJ sat on the case for over three years. It has now declared that EU rules on free movement of goods, services, capital and labour gives private firms protection against trade unions in the interests of 'freedom of establishment'. However, the ECJ also solemnly declared that the right to take industrial action is a 'fundamental right'.

The European Commission similarly claimed the Viking judgment 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'. But, on the other hand, any industrial action must be for reasons of 'over-riding public interest' as well as being 'suitable and proportionate'. So what fundamental rights do trade unionists have?

Clearly, the Viking ruling means that the right to take industrial action is not recognised as a fundamental right by the ECJ. This is reflected in the commission's declaration that 'freedom of establishment' is 'a cornerstone of the EU's internal market', but the right to take collective action is not accorded the same status.

In an earlier judgment the court itself also ruled: '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 C292/97 par. 45). So, in the opinion of the ECJ, human rights such as trade union rights are subordinate to the good of the 'market'.

Paragraph 44 of the Viking judgment similarly assumes that exercising the right to strike action is 'subject to certain restrictions', where the strike is 'prohibited under national law or European Community law' or is '*contra bonos mores*' (contrary to good morals).

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

Article 28 of the Charter of Fundamental Rights, appended to the renamed EU constitution, states that workers may 'take collective action to defend their interests, including strike action'. But an Explanation in Declaration 12 qualifies this by stating that 'the limits for the exercise of collective action, including strike action, come under national laws and practices'.

Moreover, the provisions of the Charter can be suspended at any time to protect the 'general interests' of the EU or where it interferes with 'the smooth operation of the market'. This means that draconian labour legislation already existing in a member state can be preserved while, on the other hand, Brussels can limit trade union rights in order to satisfy 'objectives of general interest' of the EU.

The renamed EU Constitution provides that the Charter of Fundamental Rights would be made binding in EU law and become superior to national law in the event of any conflict. However, 'fundamental rights' that can be removed on a whim in the interests of the 'market' and in the 'general interest' of EU institutions are not 'fundamental' at all.

Add to this the fact that the European Court of Justice is itself an EU institution committed to its neo-liberal rules and the expansion of its own remit, and the scales of justice in Luxembourg can be seen to be leaning heavily on the side of corporate power. It is no accident that both the Viking and Vaxholm cases attack trade union collective bargaining rights in Scandinavian countries, where they are enshrined in law and the national constitutions. This is the social model which is most at odds with the EU for which the 'smooth operation of the market' overrides any other rights or considerations.

In the meantime, EU leaders have just signed the renamed EU constitution, which proposes to massively extend the powers of the ECJ. This privateer's charter must now be ratified by all 27 member states and it currently appears that Ireland will be the only country where the people will have an opportunity block its ratification, as it requires unanimity to enter into force.

The People's Movement believes that we now have an historic opportunity to halt this elite project in its tracks and to force the EU and its peoples into a serious period of reflection about the direction it is taking. It is of the utmost importance that trade union members are fully informed about the issues involved in the months leading up to the referendum.