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Advocate General's Opinion in Case C-341/05

Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet and Others

ACCORDING TO ADVOCATE GENERAL MENGOZZI, TRADE UNIONS MAY, BY COLLECTIVE ACTION MOTIVATED BY OBJECTIVES WHICH ARE IN THE PUBLIC INTEREST AND ARE PROPORTIONATE, COMPEL A SERVICE PROVIDER FROM ANOTHER MEMBER STATE TO SUBSCRIBE TO A RATE OF PAY LAID DOWN IN A COLLECTIVE AGREEMENT

Directive 96/71 concerning the posting of workers¹ provides that the guarantees given to posted workers are to be laid down by law, regulation or administrative action and/or, in the building sector, by collective agreements or arbitration awards that have been declared universally applicable.

The Swedish Law on the posting of workers lays down the terms and conditions of employment applicable to posted workers, regardless of the law applicable to the contract of employment itself. In so doing, it refers to the terms and conditions of employment in relation to the matters listed in Directive 96/71, with the exception of that relating to the minimum rate of pay. The Law is silent regarding remuneration, which is traditionally governed in Sweden by collective agreements. On the other hand, Swedish law gives trade unions the right to take collective action, subject to certain conditions, with the aim of compelling an unaffiliated employer to sign a collective agreement.

In May 2004, Laval un Partneri Ltd, a Latvian company, posted workers from Latvia to work on Swedish building sites. The works were undertaken by a subsidiary company named L&P Baltic Bygg AB. The works included the renovation and extension of school premises in the town of Vaxholm.

In June 2004, Laval and Baltic Bygg, on the one hand, and the Swedish building and public works trade union, Svenska Byggnadsarbetareförbundet, on the other, commenced negotiations with a view to concluding a tie-in to the collective agreement for the building sector. However, no agreement was reached.

On 2 November 2004, Byggnadsarbetareförbundet started collective action in the form of a blockade at all Laval building sites. The Swedish electricians' trade union joined the movement

¹ Directive 96/71 of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ 1997 L 18, p. 1).

to express solidarity by stopping all electrical work being carried out on the Vaxholm work site. After the work on the site had been interrupted for some time, Baltic Bygg became the subject of liquidation proceedings. In the meantime, the Latvian workers posted by Laval to the Vaxholm site returned to Latvia.

The Arbetsdomstolen, before which Laval had brought proceedings relating inter alia to the legality of the collective action, asked the Court of Justice of the European Communities whether Community law precluded such collective action.

Mr Mengozzi first states that, in his opinion, **the exercise by trade unions of a Member State of their right to take collective action** in order to compel a foreign service provider to conclude a collective agreement in the Member State in which the service provider seeks to avail itself, in particular, of the freedom to provide services embodied in the Treaty, **falls within the scope of Community law.**

Next, he considers that **the fact that Sweden leaves it to both sides of industry to determine terms and conditions of employment**, in particular rules on pay, by means of collective agreements, **cannot in itself constitute inadequate implementation of Directive 96/71**, to such an extent that that Member State has waived the right to apply those terms and conditions to foreign service providers. In that regard, the Advocate General observes, in essence, that it is in particular by granting trade unions the right to take collective action to compel a service provider to subscribe to a rate of pay determined in accordance with a collective agreement which is applicable in practice to domestic undertakings in a similar situation, that the Kingdom of Sweden ensures that the objectives of the protection of workers and equal treatment between undertakings, to which Directive 96/71 refers, are achieved.

Lastly, having examined collective actions and certain conditions which are specific to the collective agreement in the building sector in the light of the freedom to provide services, Mr Mengozzi proposes that, where a Member State has no system for declaring collective agreements to be of universal application, Directive 96/71 and the freedom to provide services **do not prevent trade unions from attempting, by means of collective action in the form of a blockade and solidarity action, to compel a service provider of another Member State to subscribe to a rate of pay** determined in accordance with a collective agreement which is applicable in practice to domestic undertakings in the same sector that are in a similar situation and was concluded in the first Member State, to whose territory workers of the other Member State are posted. **Collective action must, however, be motivated by public-interest objectives, such as the protection of workers and the fight against social dumping**, and must not be carried out in a manner that is disproportionate to the attainment of those objectives.

When examining the proportionality of collective action, the Advocate General proposes that the national court should, in particular, verify whether **the terms and conditions of employment laid down in the collective agreement for the building sector involve a real advantage significantly contributing to the social protection of posted workers** and do not duplicate any identical or essentially comparable protection available to those workers under the legislation and/or collective agreement applicable to the service provider in the Member State in which it is established.

IMPORTANT: The Advocate General's Opinion is not binding on the Court. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court of Justice are now beginning their deliberations in this case. Judgment will be given at a later date.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: All

*The full text of the Opinion may be found on the Court's internet site
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-341/05>*

It can usually be consulted after midday (CET) on the day of delivery.

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*Pictures of the delivery of the Opinion are available on EbS "Europe by Satellite",
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