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Judgment of the Court of Justice in Case C-341/05

Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet and Others

THE COURT RULES ON WHETHER COLLECTIVE ACTION BY WHICH A TRADE UNION ATTEMPTS TO FORCE A FOREIGN SERVICE PROVIDER TO ENTER INTO NEGOTIATIONS ON PAY AND TO SIGN A COLLECIVE AGREEMENT IS CONSISTENT WITH COMMUNITY LAW

Such action in the form of a blockade ('blockad') of sites constitutes a restriction on the freedom to provide services, which, in this case, is not justified with regard to the public interest of protecting workers

Directive 96/71 concerning the posting of workers [1] provides that the terms and conditions of employment guaranteed to workers posted to the host Member State are to be laid down by law, regulation or administrative provision and/or, in the construction sector, by collective agreements or arbitration awards which have been declared universally applicable.

The Swedish Law on the posting of workers sets out the terms and conditions of employment falling within the matters listed in Directive 96/71, save for minimum rates of pay. The Law is silent on remuneration, the determination of which in Sweden is traditionally entrusted to labour and management by way of collective negotiations. Under Swedish law, trade unions are entitled to have recourse to collective action, under certain conditions, which is aimed at forcing any employer both to enter into negotiations on pay and to sign a collective agreement.

In May 2004, Laval un Partneri Ltd, a Latvian company, posted workers from Latvia to work on building sites in Sweden. The work was carried out by a subsidiary, L&P Baltic Bygg AB, and 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, began negotiations with a view to determining the rates of pay for the posted workers and to Laval's signing the collective agreement for the building sector. However, the parties were unable to reach an agreement. In September and October, Laval signed collective agreements with the Latvian building sector trade union, to which 65% of the posters workers were affiliated.

[1] Directive 96/71/EC 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.

On 2 November 2004, Byggnadsarbetareförbundet began collective action in the form of a blockade ('blockad') of all Laval's sites in Sweden. The Swedish electricians' trade union joined in with a sympathy action, the effect of which was to prevent electricians from providing services to Laval. None of the members of those trade unions were employed by Laval. After work had stopped for a certain period, Baltic Bygg was declared bankrupt and the posted workers returned to Latvia.

The Arbetsdomstolen, before which Laval brought proceedings, inter alia, for a declaration as to the lawfulness of the collective action and for compensation for the damage suffered, asked the Court of Justice of the European Communities if Community law precludes trade unions from taking collective action in the circumstances described above.

The Court points out, first of all, that Directive 96/71 does not allow the host Member State to make the provision of services in its territory conditional on the observance of terms and conditions of employment which go beyond the mandatory rules for minimum protection. As regards the matters referred to in Directive 96/71, the latter expressly lays down the degree of protection which undertakings established in other Member States must guarantee, in the host Member State, to the workers posted to the territory of the latter.

The Court then accepts that **the right to take collective action must be recognised as a fundamental right which forms** an integral part of the general principles of Community law the observance of which the Court ensures, but states that the exercise of that right may be subject to certain restrictions. **The fundamental nature** of the right to take collective action **is not such as to render Community law inapplicable to such action**, taken against an undertaking established in another Member State which posts workers in the framework of the transnational provision of services.

In this case, the Court points out that the **right of trade unions of a Member State to take collective action** by which undertakings established in other Member States may be forced into negotiations with the trade unions of unspecified duration in order to ascertain minimum wage rates and to sign a collective agreement – the terms of which go beyond the minimum protection guaranteed by Directive 96/71 – **is liable to make it less attractive, or more difficult, for such undertakings to carry out construction work in Sweden, and therefore constitutes a restriction on the freedom to provide services**.

A restriction on the freedom to provide services may be justified only if it pursues a legitimate objective compatible with the Treaty and is justified by overriding reasons of public interest; if that is the case, it must be suitable for securing the attainment of the objective which it pursues and not go beyond what is necessary in order to attain it.

In that regard, the Court points out that **the right to take collective action for the protection of the workers of the host State against possible social dumping may constitute an overriding reason of public interest**. In that context, **the blockading** of sites by a trade union of the host Member State which is aimed at ensuring that workers posted in the framework of a transnational provision of services have their terms and conditions of employment fixed at a certain level**, falls within the objective of protecting workers**.

However, as regards the specific obligations, linked to signature of the collective agreement for the building sector which the trade unions seek to impose on undertakings established in other Member States by way of collective action, **the obstacle which that action forms cannot be justified with regard to such an objective**. With regard to workers posted in the framework of a transnational provision of services, **their employer is required, as a result of the**

coordination achieved by Directive 96/71, to observe a nucleus of mandatory rules for minimum protection in the host Member State.

As regards **the negotiations on pay** which the trade unions seek to impose, by way of collective action, on undertakings established in another Member State which post workers temporarily to their territory, the Court emphasises that **Community law does not prohibit Member States from requiring such undertakings to comply with their rules on minimum pay by appropriate means**.

However, **collective action cannot be justified with regard to the public interest objective of protecting workers where the negotiations on pay** which that action seeks to require an undertaking established in another Member State to enter into **form part of a national context characterised by a lack of provisions**, of any kind, which are sufficiently precise and accessible that they do not render it impossible or excessively difficult in practice for such an undertaking to determine the obligations with which it is required to comply as regards minimum pay.

Finally, the Court states that that national rules which fail to take into account, irrespective of their content, collective agreements to which undertakings that post workers to Sweden are already bound in the Member State in which they are established, give rise to discrimination against such undertakings, in so far as under those national rules they are treated in the same way as national undertakings which have not concluded a collective agreement.

It follows from the Treaty that such discriminatory rules may be justified only on grounds of public policy, public security or public health.

The application of those rules to foreign undertakings which are bound by collective agreements to which Swedish law does not directly apply is intended, first, to allow trade unions to take action to ensure that all employers active on the Swedish labour market pay wages and apply other terms and conditions of employment in line with those usual in Sweden, and secondly, to create a climate of fair competition, on an equal basis, between Swedish employers and entrepreneurs from other Member States.

Since none of the considerations constitute grounds of public policy, public security or public health, such discrimination cannot be justified.

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