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European Social Forum

Collective agreements under threat!

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A number of high-profile judicial cases have recently sharpened the question of whether or not the European Union protects collective bargaining agreements on the job market. This issue might be especially relevant to the Nordic countries since the job markets here to a large extent are regulated according to collective agreements.

[https://www.internationalviewpoint.org/IMG/jpg/esfUnions.jpg]
Polish trade unionists at the ESF.

Let's stop here for a while to explain the relationship between a trade union and a collective agreement in simple terms. In a simplified manner we could say that a trade union is nothing but an organisation fighting for the conclusion of collective agreements for its members, in order to end the devastating competition that previously existed between workers, before the advent of trade unions. An agreement covering all union members makes it infinitely harder for employers to lower salaries and worsen working conditions.

Salaries and working conditions in the Nordic countries are, in general, regulated by central collective agreements covering whole trades, while laws upholding a minimum standard regulate labour market policies in central and southern Europe. These minimum laws are often the result of weak local collective agreements which have been transformed into law. If we look at the minimum wage determined through law in several European countries, we notice they are often very low and far from the wage levels the Nordic collective agreements uphold.

This reflects the fact that trade unions, both for blue and white collar workers, inhabit more central positions in the societies up North. The strength of our unions is a cause for extensive discussions, as is the unions' decline over the last decades, but it is a fact that, for example, the share of employees organised in trade unions is considerably larger up here. That is also a reason why the so-called Nordic model is more sensitive to the jurisprudence and legislation of the EU than the rest of Europe.

There is also a political basis behind the Nordic model, which is the close cooperation between large parts of the trade union movement and the, often in-government, social democratic parties of the Nordic countries. There has therefore not existed a great need to, for instance, protect the employees with minimum wage legislation. In a sense the possibility of getting support from the 'comrades' in the government, if the union road is closed, has almost been taken for granted.

When the EU intervenes, weakens and threatens collective agreements it creates a very sensitive and embarrassing situation for the Swedish trade union federation LO, led by the social democrats. Ever since the referendum on the membership of the European Union we have been told by the pro-European Union social democratic trade unions that the EU provides a protection of the interests of the employees. However alongside the various rulings of the EU's various institutions, which clearly show that the free capitalist market takes precedence over collective agreements and workers' interests, the leaders of these unions have been "forced" to tell lies in order to hide reality.

Four different judicial decisions from the Court of Justice of the European Communities from 2007 and 2008 should be highlighted in order to draw attention to where the EU is taking collective bargaining agreements:

– In the case which attracted most attention, the so-called Vaxholm case or Laval case, a Latvian construction company refused to sign a collective agreement with the Swedish construction workers' union (Svenska Byggnadsarbetareförbundet, Byggnads). The company was blockaded and thus brought suit to the Labour Court in order to have the blockade invalidated. The Labour Court then handed the matter over to the EU court to decide

whether or not the union's blockade to fight wage competition was in agreement with EU legislation. The decision of the EU court disallowed the union's blockade. The court also declared that the host country, Sweden, is only allowed to demand the minimum level regarding salaries and employment conditions from foreign companies. Important is that the Swedish trade unions have (or have had) a strong law in support, called Lex Britannia, which lays down the right to use legal union mechanisms to force foreign companies to sign Swedish collective agreements. This law will probably become a distant memory with this ruling, or at least it will be severely weakened.

– In the Viking case, a Finnish shipping company wanted to register one of its ships under a flag of convenience in Estonia, in order to cut costs by signing an Estonian collective agreement with considerably inferior salaries and employment conditions. The Finnish seamen's union gave notice of industrial action in order to prevent the registration. After a number of trials in various international legal instances, the EU court delivered its ruling that the Finnish union certainly had the right to resort to industrial action, but that the right of the company to free establishment took precedence over the right to strike. A few days before the case was brought up in yet another international instance, the two parties reached a settlement, but the verdict of the EU court is still standing: The right of establishment has precedence over the right to strike.

– In the so-called Rüffert case, the EU court decided that the German state of Lower Saxony could not demand that a foreign construction company follow the state's local collective agreements. The background was that the German state has a law prohibiting companies to pay workers below the agreed minimum wage of the state, and it demanded that a Polish construction company abide by the state legislation. Lower Saxony demanded that the Polish company pay a fine of 85 000 Euro since it broke the laws of the state, but the ruling of the EU court declared that Lower Saxon legislation is incompatible with the EU legislation; the state is not allowed to force a visiting company from another EU country to accept its wage levels if they are higher than the general collective agreement within the German construction sector.

– In a case concerning its legislation, Luxembourg had to concede its previous national legislation which demanded that visiting companies with their own employees had to pay a salary which would follow the automatic upgrading of living expenses for the employees in Luxembourg. The EU court considers the lowest possible salary in any given country to be applicable for visiting companies. This ruling is very similar to the Vaxholms case in this regard. According to rules in Luxembourg, visiting companies should apply the same legal rules as domestic companies, but even in this issue Luxembourg was defeated as the EU court ruled that this is a stricter demand than what is contained in its own placement directives. What distinguishes this case from the rest is that it is not a company approaching the EU court, it is the EU Commission itself which is trying the case in the court.

All these very important rulings clearly demonstrate that the inner market of the European Union is prioritised over the interests and rights of employees. All the talk about EU as a guarantor of workers and employees interests falls flat. It is not for nothing that the EU supporters in the trade unions lay low at the moment, and they are very quiet.

The leadership of the LO considers the proposal for a new constitution of the EU, the so-called Lisbon Treaty, a "last resort". A few months ago the LO vice president Erland Olausson wrote in the federation's newspaper: "In today's EU treaty there is no protection for the right to strike. In the proposal to a new treaty … there is such protection. If we had had this treaty in place the outcome of the [Vaxholms] case would have been different. It is important that the Lisbon Treaty is adopted as soon as possible."

In exactly the same way as when the LO leadership blatantly lied to the workers of Sweden before the referendum on the EU membership in 1994, they now apply the same cheap tactics and claim that the Lisbon Treaty would protect the collective agreements and the right to strike. They build their whole case on the charter of Fundamental Rights of the EU and claim it would save us. But neither the Lisbon Treaty nor the Charter of Fundamental Rights include any kind of guarantees for the integrity of collective agreements and national legislation, like the Lex Britannia. What is

absolutely clear is that it is the ruling of the EU court and the EU legislation that takes precedence over the collective agreements and legislation of the individual member countries. Everything else is nonsense.

The LO leadership knows better but does not hesitate to tell 'white lies'.
Concretely these four cases reflect a large and direct threat to national collective agreements, and imply that salaries can be pressed downwards through the rulings of the EU court stating that the lowest wage levels in the collective agreements must be applied as the norm. For our part, up here in the North, this includes an extra risk as we do not regulate our lowest level wage through law, but through collective agreements. The law makers in Luxembourg and Lower Saxony have been severely reprimanded, and know for future reference that in terms of collective agreements and labour law, the EU court has the last say. In Sweden the parliament will try to modify Lex Britannia in order to save what can be saved.

Considering that the trade union movement, with very few exceptions, around the world is in a defensive position and in many cases has been severely weakened, the rulings of the EU court have further undermined them. Add the continuous and daily rationalisation campaigns at our work places, and the future for employees and trade unions look bleak. As a trade union activist, one always wants to highlight the positive developments which can provide a glimmer of hope, but as long as workers and employees do not rise up and resist on a large scale, the future certainly looks dark.

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