



Viking-Laval-Rüffert: Economic freedoms versus fundamental social rights – where does the balance lie?

Debate organised by *Notre Europe* and the *European Trade Union Institute*

Rocking the boat - again

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Rocking the boat – again

How to balance the application of the European Union's free movement rules - in particular, the right to work and provide services in another member state - with the maintenance of different national social systems?

In particular, how will these freedoms affect trade union rights such as the right to collective action and collective bargaining?

These questions are the object of much debate, following three recent rulings adopted by the European Court of Justice.

The ETUI and Notre Europe have therefore decided to launch this forum, in which users will find information on the different cases and analysis offered by a variety of experts.

The European Court of Justice rocks the boat. Ten years ago the Court ruled in the *Kohl* and *Decker* cases that the principles of free movement of goods and services apply in the health sector. Patient's mobility financed by national authorities has been further expanded in subsequent Court rulings, most recently the *Watts* case from 2006. In attempts to expand the social rights of EU citizens the Court has, paradoxically, intensified pressures on national social policy. At least EU regulations and their interpretations lie at the heart of anxieties voiced about health tourism.

In 2008 the turn has come to the regulation of the labour market. Again the principles of free competition and free movement are set up against a set of principles that are new for the Court, this time the right to undertake collective action and regulation of the labour market. And again, the Court judges that the new set principles are fundamental but that their applicability has to meet some proportionality tests related to the market.

Thus, social partners are sovereign to make collective agreements, but supremacy is given to market considerations.

This practice of the Court undermines popular support for the European Union. Having a vote on the Euro later this year, the Danish government and the social partners fear that the rulings undermine popular support to the European project. For that reason, the Government sat down a so-called Laval Commission to investigate the implications of the Laval case and to give recommendations on how to preserve the Danish labour market model based on collective agreements. The Danish Laval Commission is due to announce its analysis and recommendations later in June 2008. Depending on the results the view of some Danish trade unions may turn more EU sceptic.

But the boomerang effect is already visible in other European countries like Sweden and Germany. The most recent and perhaps most dramatic example of how recent Court rulings backfire on the EU project is given by some Irish trade unions arguing for a No to the EU Treaty in the Irish referendum 12 June 2008. “Judges at the European Court of Justice will continue to favour the right of big business over the right of working people,” said Jimmy Kelly, Irish regional Secretary of Unite, the second largest trade union, addressing members in Dublin a week before the election.

The day after the election, Jack O’Connor, President of SIPTU, said that workers have been concerned about the direction of Europe in the last three or four years.

Indeed, the EU speaks with two tongues when it comes to the Social Europe. The European Commission and the European Council wants to revitalise the European Social Model as indicated by the strategies of Jobs and Growth as well as Sustainability. Adopting Danish style flexicurity policies makes up an important part of those strategies. In turn, Danish style flexicurity

rests on the social partners finding flexible solutions regarding wage and working conditions. But the Court is potentially undermining such efforts.

To prevent the Court from rocking the boat in the future there is a need for a political agreement in the EU. No legal charter will stop the Court from its strategy of gradually expanding the logic of the (internal) market into the core spheres of the national welfare state whether in the social and health services or in labour market regulation. Politics must be taken away from the Court and given back to elected politicians. Clearly such a shift reduces the speed of market expansion, but seemingly a slower speed may be just what the vast part of the populace of the EU wants. Nobody wants to be in a boat that rocks.



July 2008