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The Laval inquiry – a death-blow to the Swedish model

The right of the trade unions to take strike/blockade actions against a foreign company, which occasionally have workers posted in Sweden should be constrained. This is one of the proposals in the Laval inquiry set up by the Swedish government. Last year in December the European Court of Justice in a judgment concluded that the Swedish Construction and Electrician trade unions were wrong, when they by a blockade in the town of Vaxholm in 2004 would enforce the Latvian construction company Laval to sign a Swedish collective agreement.

The government investigator, Claes Stråht, also the director of the Labour Arbitration Institute, presented 12 December his proposal of legislation changes, which need to be addressed after the Laval judgement. The government had asked for a solution which fully respects the EU legislation, but at the same time would imply that the Swedish labour market model should be possible to apply on posted workers, who work occasionally in Sweden.

The Stråth proposal means that the trade unions chances to take strike/blockade actions against a foreign company posted in Sweden will be heavily constrained. The unions are only allowed to claim minimum wage and minimum conditions from foreign companies, and no other benefits negotiated in Swedish collective agreements. If the posted workers have any form of agreement from the country of origin, which are comparable with the conditions in Sweden, then a Swedish trade union has no right to enforce the foreign company to sign a Swedish collective agreement by using strike actions.

" The constraint of the right to take industrial actions is when the employees have provisions which are as good or better than the provisions which are approved in the country of origin", says Claes Stråth.

The trade unions position have been that only Swedish collective agreements should be valid in Sweden. " We have the right to request Swedish collective agreements by all companies making business on the Swedish labour market, and we have the right to take industrial actions in the case the employer says no" the president of the LO Wanja Lundby-Wedin has stated.

This is no longer the case and Lundby-Wedin, who earlier claimed that the impacts of the Laval judgment could be solved by changing the Swedish legislation now after the Stråth inquiry has been presented says that the "Laval judgment is a serious restriction of fundamental trade union rights. This is a European problem, which only can be solved by changes in the EU legislation". Her compatriot in the ETUC Board, the Swedish president of the TCO union (central union of white collar unions) thinks it will be difficult for trade unions to judge which actual conditions posted workers in fact have. " It is one thing what is written on the paper, but what are the real facts. If we do not have clear evidences that people working in Sweden are maltreated we will not be able to fight for better conditions", he says.

Ingemar Hamskär and Claes Mikael Jonsson, who are lawyers at LO and TCO and who have participated in the Stråth inquiry, say that the inquiry proposes loop-holes for foreign companies, when they should present proofs that their employment contracts satisfy the minimum conditions. This view is shared by the social democrat spokesman Sven-Erik Österberg, who says that "the proposal of the

inquiry opens for wage dumping. This is precisely what we wanted to avoid. The inquiry creates loop-holes for scrupulous employers with false contracts".

But this is disputed by Claes Stråth. "We propose a far-reaching obligation for the employer to make proof of the conditions under which the employees are working. They should be able to show employment contracts, wage and payment information. If the trade union will find shortcomings in the account of the company, it can take industrial action" says Stråth.

It is up to the partners of the labour market in negotiations to decide what is an acceptable minimum wage level. If this will not work the trade union has according to the proposal a possibility to vindicate what is the level by referring to the actual agreements of the branch concerned. "The trade union can vindicate a suitable wage level and take action, but under conditions of responsibility and lastly the question might be settled in the Swedish Labour Court" says Claes Stråth.

Lars Gellner, the Swedish Industry representative in the inquiry, means that the proposal by Stråth is incomplete in relation to the EU legislation. "Changes in the Swedish legislation must be compatible with the EU legislation. This prerequisite is not fulfilled by the Laval inquiry, which is worrying for the free movement of services", he says. As an example Gellner mentions that an employer from an EU country should be able to anticipate the salary costs when he/she makes a tender on a work in Sweden. "The proposed solutions make it in most situations difficult to anticipate the costs. For instance there are overlapping collective agreements. How could an employer ahead know which agreement and from this which salary to pay?"

He continues by saying that "the mission has been difficult. It is favourable that the inquiry has not adopted the proposal of far-reaching trade union rights, which the trade unions have put forward".

The Laval inquiry will be sent for hearing. Thereafter, the government will make its position and propose changes in the Posting of Workers Act and the Employment Act ("Lex Britannia"). The changes are expected to take force in April 2010.

The Peoples Movement No to the EU is of the opinion that the Laval inquiry implies a death-blow against the Swedish model concerning collective agreements and the right to take strike actions.

"If the proposals are accepted we will have a legalised competition by low wages on the labour market and at the same time the trade unions chances to fight wage dumping is gone", says Jan-Erik Gustafsson the president of the Movement. "The inquiry confirms that the promises of keeping collective agreements and the right to take industrial actions given by the Swedish power elite before the referendum 1994 was just inventions, which were to deceive the employees and trade union activists to vote with the power elite", he says.

The Peoples Movement No to the EU requests that the Laval inquiry is thrown in the dust bin , and that the Swedish government, parliament and the Swedish Court refuse to apply the ECJ anti-trade union judgement in the Laval case. On one hand the judgement is in contradiction to the Swedish legislation decided democratically by the elected parliament, and on the other hand the judgment is the opposite of the guarantees given to safeguard the Swedish labour market model, which the prime minister Carl Bildt as well as the opposition leader Ingvar Carlsson claimed that Sweden had achieved in the accession negotiations before the referendum 1994.

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