

Report on the European workers delegation to the European Commission (Brussels – September 12th, 2008)

On Friday, 12 September 2008 in Brussels, an international labour delegation comprising labour activists and trade unionists from Germany, Belgium, Denmark, Spain, France, Hungary, Ireland and Sweden was received by Stéphane Ouaki a representative of Vladimir Spidla, European Commissioner responsible for Employment, Social Affairs and Equal Opportunities. The delegation had been mandated by the Stockholm Conference (25 May 2008), on the following mandate: “reversal of the European Court of Justice rulings in the Laval, Viking, Ruffert cases; We deny the institutions of the European Union the right to put into question the rights and guarantees won by the organisations of the working class in Sweden and in whatever country ».

Straightaway, the delegation put two questions to Mr Spidla’s representative:

“We have come to see you to ask for the overturning of the Laval, Viking and Ruffert rulings by the European Court of Justice”.

To which he most notably replied that *“The European Commission has to respect the rulings of the European Court of Justice. We are in a delicate situation, one that is uncommon, in that the rulings were not received in the same way in each country. We cannot overturn these decisions; it is not up to us. The task of the European Court of Justice is to base itself on the Treaties. It has to interpret the body of legislation that the Treaties and directives represent, and give its opinion. These opinions set precedents and are binding on all European institutions. It therefore does not come under the European Commission’s prerogatives to overturn a decision of the Court.”*

“Do you contest the fact that, as applied in the Ruffert case (Germany) workers – in this instance Polish workers – are being deprived of their collective agreement, contrary to what is laid down in the Land law? Do you contest the fact that workers are being hired at 46% of the agreed wage?”¹

To which the reply was *“I agree, 46 percent is only half the wages covered by agreements. But this is not a question of social dumping. There is no discrimination.”*

The delegation underlined the fact that the ECJ rulings rely on Articles 43CE and 49CE of the existing treaties as well as on European Directives (see box).

We now decide to publish these answers. We submit them to the labour movement throughout Europe so that everyone can see that they are not acceptable.

In the name of what exactly should the labour movement give up what class struggle has won in each country? In the name of what exactly should we give up the collective agreements, recognised job-grades. Labour Codes and social legislation that the labour movement has built up?

In the name of what exactly should we accept that workers should be paid 46% of the agreed wage for the same job?

In the name of what exactly should the labour organisations participate in putting into question rights that have been won through struggle in each one of the nations of Europe?

For our part, and whatever our point of view on the legitimacy of the institutions of the European Union – we deny the right of the European Union and its institutions (European Commission, Court of Justice, Central Bank, European Parliament) to put into question any gain whatsoever in whichever of our countries. We state that, faced with the rulings of the European Court of Justice, faced with the European treaties which form its basis (Maastricht, Amsterdam, restated in the draft Lisbon Treaty...), the labour movement has the legitimate right to counterpose the defending, maintaining and winning back of all the rights, guarantees and gains won through class struggle in each country.

Overturn the European Court of Justice rulings!

We deny the institutions of the European Union the right to put any gain whatsoever into question!

We deny our governments the right to transpose those rulings into national law!

Reject all supranational legislation that puts our rights into question!

Defend and win back all our rights, gains and guarantees!

Defend the independence of our organisations!

¹ The delegation noted that these rulings were in contradiction with International Labour Organisation (ILO) Convention 94, which stipulates: *“Contracts (...) shall include clauses ensuring to the workers concerned wages (including allowances), hours of work and other conditions of labour which are not less favourable than those established for work of the same character in the trade or industry concerned in the district where the work is carried on”.*

We, labour activists of every tendency, who support a Free Union of the Free Peoples and Nations of Europe, and who are not competing with any existing labour organisation, hereby decide to continue and broaden the campaign for the reversal of the ECJ rulings and to call on this basis a European Workers' Conference, in February 2009, which will be open to all activists and organisations on these slogans.

Regarding the Rüffert case (Germany) : *“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, interpreted in the light of Article 49 EC, precludes an authority of a Member State, in a situation such as that at issue in the main proceedings, from adopting a measure of a legislative nature requiring the contracting authority to designate as contractors for public works contracts only those undertakings which, when submitting their tenders, agree in writing to pay their employees, in return for performance of the services concerned, at least the remuneration prescribed by the collective agreement the minimum wage in force at the place where those services are performed.”*²

Regarding the Laval case (Sweden) : *“Article 49 EC and Article 3 of 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 are to be interpreted as precluding a trade union, in a Member State in which the terms and conditions of employment covering the matters referred to in Article 3(1), first subparagraph, (a) to (g) of that directive are contained in legislative provisions, save for minimum rates of pay, from attempting, by means of collective action in the form of a blockade ('blockad') of sites such as that at issue in the main proceedings, to force a provider of services established in another Member State to enter into negotiations with it on the rates of pay for posted workers and to sign a collective agreement the terms of which lay down, as regards some of those matters, more favourable conditions than those resulting from the relevant legislative provisions, while other terms relate to matters not referred to in Article 3 of the directive”*.³

Regarding the Viking Line case (Finland) : *“Article 43 EC is to be interpreted to the effect that collective action such as that at issue in the main proceedings, which seeks to induce a private undertaking whose registered office is in a given Member State to enter into a collective work agreement with a trade union established in that State and to apply the terms set out in that agreement to the employees of a subsidiary of that undertaking established in another Member State, constitutes a restriction within the meaning of that article.”*⁴

We hereby decide to constitute ourselves into the conference's organizing committee:

Paul Paternoga (Chair Siegburg District SPD Workers commission , Chair IG Metal Union at Humboldt Wedag factory workers council Kolhn Germany), **Mirco Kischkat** (Chair youth and trainees representatives mining sector social security , SPD's workers commission Germany), **H.W. Schuster** (trade unionist Ver.di, Düsseldorf district workers commission board member , Germany), **Heinrich Becker** (Frankfort Teachers Union local branch , Germany), **Henri-Jean Ruttiens** (former official SETCa BHV industrial sector , Belgium), **Philippe Larsimont** (coordinator Workers defense Movement , Belgium), **Per Sorensen** (Building Workers Union executive committee member , Denmark), **Eva Hallum** (Popular Movement Against the EU , Denmark), **Blas Ortega** (UGT Public services federation Spain), **Jean-Pierre Barrois** (European Workers Liaison Committee , France), **Dominique Vincenot** (European Workers Liaison Committee , France), **Christel Keiser** (Independent Workers Party, European Workers Liaison Committee, France), **Claude Viscuso** (Independent Workers Party , France), **Jean-Paul Barbier** (Trade Unionist education sector , France), **Judit Somi** (labour activist , Hungary), **Niall Irwin** (General Secretary Plasterers Union OPATSI, Irlande), **John Swords** (Plasterers Union OPATSI, Ireland), **Eamon Devoy** (Member ICTU Executive Council, General Secretary TEEU Ireland), **Ian McDonnell** Regional Secretary TEEU Ireland, **Jan-Erik Gustafsson** (Member National Board The Civil Service Union for Universities, Président Movement No to the EU Sweden)., **Martin Viredius** (co-President Transport Union affiliated to LO - Pers Cap - Sweden), **Johan Lindholm** (Building Workers Union affiliated to LO , Member National executive Committee, President Stockholm region, Sweden).

I endorse this appeal

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Position:

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² Official Journal of the European Union, 24 May 2008.

³ Official Journal of the European Union, 23 February 2008.

⁴ Official Journal of the European Union, 23 February 2008.