Europe loses when it legitimises low wages

By Wanja Lundby-Wedin and John Monks

Published: March 2 2008 18:58 | Last updated: March 2 2008 18:58

Decision-makers in ancient civilisations sought answers from an oracle, an infallible authority who gave wise counsel. The most important, the Delphic oracle, reputedly fell into a trance and spoke in riddles, which were interpreted by priests. In the modern European Union the oracle is the European Court of Justice. National courts seek its wise counsel, but sometimes it appears to work in unfathomable ways.

Last December the court struck a heavy blow against "social Europe" – the concept of a Europe that treats its workers and poorer citizens fairly – in a landmark judgment on the so-called Laval case, concerning Latvian workers on a Swedish building site.

The court found that Swedish unions were not justified in blockading the site, at a Stockholm school being refurbished by Laval un Partneri. The Latvian company had refused to sign the Swedish building industry's collective agreement and used Latvian workers at lower rates. Laval sued the unions, claiming the blockade violated companies' freedom to provide services across the EU. The court ruled that trade union action could be justified only in defence of a minimum wage: an element seldom defined in Swedish collective agreements.

This ruling delivered a serious setback to one of Europe's most successful social models. Sweden and Denmark, which has a similar system, are a source of inspiration for both the Lisbon strategy, which aims to make Europe a global leader in innovation, and the "flexicurity" approach, which assists the process of change while providing a safety net for workers.

There are different ways of combating social dumping – the use of foreign labour to undercut wages – within the EU. Legal minimum wages and collective agreements that are made generally binding are two means of providing fair conditions on the labour market. However, Sweden and Denmark use a different method: autonomous collective bargaining between employers and unions.

European Union law does not require member states to have minimum wages or generally binding collective agreements. But the Laval judgment, with its requirements for legal certainty and predictability regarding wage rates and standards, minimises trade unions' bargaining power when facing foreign service providers.

This is in stark contrast to the freedom of collective bargaining provided by both the International Labour Organisation and the EU Charter of Fundamental Rights. Problems created by the Laval judgment can be resolved in Sweden and Denmark by discussion, but not without tensions. The wage-setting process in these countries and the labour market flexibility it provides are likely to be severely shaken.

In fighting the case, the unions drew on the principle of equal pay for equal work. The ECJ rejected this formula and substituted its own: “minimum pay for equal work”. The consequences of such an approach are far-reaching. The ECJ has lit a fuse, which is burning in workplaces in Bonn, Paris, Stockholm and elsewhere. It will flare into anger when workers find their wages and working conditions undercut by foreign workers on minimum standards legitimised by the ECJ.

The conflagration could push governments and workers towards protectionist policies and put the EU’s whole mobility agenda in danger, together with further enlargement. Minimum pay for equal work risks causing tensions between EU citizens and provoking xenophobia. Some make a link with the Lisbon Treaty, suggesting the fall-out may even threaten the current ratification process in some countries.

Among the measures needed in response to this ruling, we must reflect on the case for strengthening the posted workers’ directive, which covers staff sent to work in other EU countries. In the past the directive was regarded as providing a floor of minimum working conditions, with states free to apply better standards if they wished. But the ECJ appears to have turned the floor into a ceiling.

Now the court is to rule in a second case. In the Rüffert case it will have the chance to undo some of the damage by rowing back from the minimum pay for equal work principle it established in the Laval case. This German case considers whether it is an unjustified restriction on freedom to provide services if a public authority is required by statute to award building services contracts only to companies that pledge to pay employees at least the rates stipulated in the relevant collective agreement.

For the EU’s future, it is crucial in this case for the ECJ to issue a ruling that is better balanced between companies’ freedom to provide services and the right of workers to equal pay. If the window is closed and competition on minimum wages becomes the EU strategy, alarm bells should ring not only for trade unions and the left but for all who believe in the European project.

The writers are, respectively, president and general secretary of the European Trade Union Confederation