European Court of Justice supports cheap wages and limits the right to strike

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The European Court of Justice recently ruled that the assignment of public sector contracts should not be linked to the payment of wages at locally agreed union rates of pay. The judgement is an important means for pushing through cheap wages throughout Europe.

The court decision in Luxembourg concerns a dispute about the construction of a correctional facility in Göttingen, Lower Saxony. The city had decided on the new building, and the contractor Objekt und Bauregie won the public tender, worth some €8.5 million. In doing so, it had to commit to paying its employees in accordance with the locally valid collective agreement, about €15.24 gross per hour.

However, a Polish subcontractor subsequently paid his 53 construction workers less than half this amount. The city thereupon demanded a contractual penalty of almost €85,000 from Objekt und Bauregie, approximately 1 percent of the contract price, citing the Lower Saxony Tariftreuegesetz (state law governing contract agreements).

The European Court of Justice has now adjudicated against this approach. The building industry collective agreement was declared to be generally nonbinding, and is valid only regionally. This court decision affects the application of the contract law in eight of Germany's states.

Some months ago, two judgements by the European Court of Justice concerning industrial disputes had led to uproar and protests, when the Luxemburg judges limited the ability of the trade unions to conduct industrial disputes against "wage dumping." This concerned the case of *Laval*.

The Latvian building firm "Laval un Partneri" had won a contract to recondition school buildings from the Swedish municipality of Vaxholm. When it became known that Laval paid its employees extremely low wages, Swedish trade unionists blockaded the building site and insisted that the Latvian company pay its workers the minimum wage that is customary for building workers in Sweden.

The EU judges ruled last year that although trade unions may in principle blockade a building site in order to seek payment of minimum wages for the workers there, they may not use such means to try and enforce terms that go beyond the existing national laws. Since Sweden—like Germany—does not have a legal minimum wage, the court declared that the blockade in Vaxholm was disproportionate. The EU's "freedom of goods and services" regulations had been obstructed; the union protests were therefore incompatible with EU laws, the court found.

Shortly before this, the Court of Justice had reached a judgement in the *Viking Line* case. The Finnish shipping company Viking Line, whose ships operate between Scandinavia and the Baltic states, wanted to sail one of its ferries under the Estonian flag, enabling the company to replace the Finnish crew with considerably lower paid sailors from Estonia. The European Court of Justice rejected the protests and complaints of the Finnish sailors' union and the International Transport Workers Federation, which it declared also contravened EU law.

These three decisions by the European Court of Justice are an attack on fundamental democratic rights and social gains. They clearly show the character of the EU and the European institutions. A completely undemocratic body—full of unelected judges—makes decisions that limit the right to strike and push through "wage dumping," which exclusively serve to boost the profits of the European financial elite.

Judge Christiaan Willem Anton Timmermans, who acted as chamber president and legal secretary in the recent case against the Tariftreuegesetz, is a typical representative of the EU bureaucracy in Brussels, which is working systematically to liberalise the European job

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market and reduce social standards.

This Dutch lawyer began his career in the mid-1960s as an advisor to the European Court of Justice. He then functioned as an official of the European Commission (1969-1977) and finally became a deputy general manager in the legal service of the European Commission. He is also a professor for European law at the University of Amsterdam and maintains close relations with European industry.

It should be noted that another prominent lawyer at the European Court of Justice, the Frenchman Yves Bot, who appeared in the case mentioned as general attorney, came to the opposite conclusion. In September last year, Bot had submitted his final pleas in the case, in which he had presented the view that the Landesvergabegesetz (German state law on the award of public contracts) under debate did not contradict European guidelines over the sending of employees to work in other EU states, since this guideline permits member states to go beyond European regulations. A restriction on the freedom of goods and services is justified by reason of employee protection, Bot explained in his function as general attorney.

The court is not bound by a preliminary decision of the general attorney, whose conclusion is based on a detailed evaluation of the available briefs and submissions. But while it has so far adhered to their view in two thirds of all cases, in this case it has not.

The decisions of the Luxemburg judges have been heavily criticized by many politicians, the media and trade unions. Under the headline, "Unfair competition in Europe," the *Frankfurter Rundschau* commented, "This has nothing to with freedom. Rather, the Luxemburg judges are opening the door for abuse and exploitation. At the same time, punishing those businesses that keep to collective agreements and pay their employees the appropriate wage."

"After two judgements against the right to strike, Luxembourg has now issued a most disconcerting ruling," according to the *Süddeutsche Zeitung*. "It reads as if the EU is an economic union and nothing else." The recent judgement from Luxembourg is "an affront against those politicians who say that the spirit of the EU treaties is also a social one," the newspaper wrote.

Several union representatives warned of the consequences of this decision and pointed to the "Monti clause," named after former EU Commissioner Mario Monti. Under pressure from the European Trade Union Federation (ETUC), Monti had added the following passage into EU legislation concerning the free movement of goods: "In addition, the Directive should not be interpreted as affecting in any way the exercise of fundamental rights as recognised in the Member States and by the Charter of fundamental rights of the European Union, including the right to take industrial action." Deputy ETUC Secretary-General Reiner Hoffmann complained that the "European Court of Justice had not considered the Monti clause at all."

In Germany, trade unionists, the Social Democrats and the Left Party have called the court decisions a "danger for a social Europe." They fear a sharpening of social conflicts and address their appeals to the government. Some emphasize that the Luxemburg ruling contradicts the authority of Germany's Federal Constitutional Court, which in 2006 upheld the Tariftreuegesetz, citing the example of the Berlin state law on the award of public contracts.

But it is a false hope to believe that the federal government or the Federal Constitutional Court could provide assistance against the anti-social decisions of the European Court of Justice. In reality, such a view stands things on their head. The EU institutions were created by the European governments, and the judges of the European Court of Justice are appointed by the national governments—without parliamentary approval.

For years, particularly in the west of Europe, governments have met with resistance to their efforts to destroy the existing social welfare systems in the interests of finance capital and big business. This is why they hide behind the European institutions and devolve ever more tasks to the European Union, so that it is the EU that organizes the destruction of social conditions, creating the conditions for the big corporations to utilise the cheap wages in Eastern Europe and to lower wages in the West.

The function of the institutions such as the European Court is to enable the political and economic elite of Europe to implement their interests against those of working people. The struggle against the reactionary decisions of the Luxemburg judges and all other EU measures to attack social conditions requires a common political struggle by European workers on the basis of a socialist program and perspective.

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