

The Laval and the Viking cases

Presentation January 2008 by
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The Viking Case

- Judgement 11 December 2007
- Case C-438/05

Between who?

- International Transport Worker´s Federation (ITF) and Finnish Seamen´s Union (FSU) ./.
- Viking Line ABP (Viking) and its subsidiary OÜ Viking Line Eesti (Viking Eesti)

Background

- Viking is a large ferry operator, under Finnish law
- The vessel Rosella plies the route between Tallinn in Estonia and Helsinki in Finland
- Rosella is registered under Finnish flag
- The crew are members of FSU
- FSU is a member of ITF

International Transport Worker's Federation (ITF)

- Flag of Convenience Policy (FOC)
 - Only unions established in the State of beneficial ownership have the right to conclude collective agreements covering the vessel concerned
 - A ship is registered under a flag of convenience if the beneficial ownership and control of the vessel lies in another State than the State of the flag

What happened?

- Viking wanted to change the State of flag for Rosella, from Finland to Estonia
- The Finnish wages are higher than the Estonian wages

The FSU and ITF reactions

- FSU got information from Viking, and asked ITF to react
- ITF sent a circular to its affiliates: refrain from entering into negotiations with Viking and Viking Eesti
- FSU gave notice of a strike

The dispute was solved, but.....

- Viking accepted the FSU demands 2 Dec 2003
- Promised also not to reflag prior to 28 Feb 2005

BUT

- ITF's circular was never withdrawn

The Court in UK

- Viking wanted the court to declare:
 - The action taken by ITF and FSU was contrary to article 43 EC, and freedom of establishment
 - Alternatively: unlawful restrictions on freedom of movement for workers and freedom to provide services

The judgement - principles

- The right to collective action, including the right to strike (and right to sympathy action?) is a **FUNDAMENTAL RIGHT**
- Fundamental rights can violate the freedom of establishment under certain conditions

The judgement - principles

- Violation of the freedom of establishment?
 - Yes
- Legitimate aim of public interest?
 - Yes, Protection of workers
- Suitable? – The national court's decision
- Not beyond what is necessary (proportionality)? – The national court's decision

The Laval Case

- Judgement 18 December 2007
- Case C-341/05

Between who?

- Laval un Partneri Ltd

./.

- Svenska Byggnadsarbetareförbundet
- Svenska Byggnadsarbetareförbundets avd 1, Byggettan
- Svenska Elektrikerförbundet

Background

- Laval is a company under Latvian law
- Posted 35 workers May-Dec 2004 in Sweden
- Byggnads wanted a Swedish collective agreement and started negotiations i June 2004
- During the negotiations Laval concluded a Latvian collective agreement (14 Sep 2004)

Background

- Notice of collective action was given in Oct 2004
- Blockading 2 Nov 2004
- Sympathy action 3 Dec 2004

The Swedish implementation of the posting directive

Legal "problems"

- Sweden has no minimum wages in law
- The Swedish minimum wages are agreed in collective agreements
- There is no Swedish system for making collective agreements declared universally applicable
- The implementation of the directive uses the traditional Swedish system for agreeing on minimum wages

Lex Britannia

- Lex Britannia
 - If a Swedish collective agreement is valid – no collective action is allowed
 - If a foreign collective agreement is valid – actions to get a Swedish collective agreement are allowed

The judgement – Lex Britannia

- Lex Britannia is discriminating
- Justified only if reasons of public policy, public security or public health
- Aim to establish equal terms and conditions of employment, and a fair competition, is not that kind of reasons

Byggnad's collective agreement

- More favorable than the law in some ways
- The collective agreement also related to some matters that are not included in the posting directive
- The wages had to be negotiated after the signing of the collective agreement = unclarity

The judgement - principles

- The right to collective action, including the right to strike (and the right to sympathy action?) is a **FUNDAMENTAL RIGHT**
- Fundamental rights can violate the freedom to provide services under certain conditions

The judgements - principles

- Violation of the freedom to provide services?
 - Yes (collective agreement with more favorable and wider content than the posting directive and not transparent enough)
- Legitimate aim of public interest (protection of workers)?
 - No (because of the necessity to negotiate wages in a situation where there were no transparent rules concerning minimum wages)

Conclusions

- Collective action is a fundamental right
 - Strike, blockads and perhaps sympathy action
- Protection of workers is not always an enough reason when a threat against some "freedom"
- The Swedish minimum wage model perhaps has to change – law or system for universally applicable collective agreements?
- How do we avoid social dumping?