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Onderwerp: Economic freedoms vs Fundamental rights – the dark series continues

**ECONOMIC FREEDOMS vs
FUNDAMENTAL RIGHTS – THE DARK
SERIES CONTINUES**

23/07/2010

In a judgment dated 15 July 2010, the European Court of Justice has condemned Germany over the practice of local authority employers to award contracts for pension services on the basis of a selection laid down in collective agreements. Relying extensively on the Viking and Laval case law, the Court ruled that although the right to collective bargaining is a fundamental right, the European public procurement rules should prevail.

In Germany, employees have the right to convert part of their gross earnings in favour of future pension rights. This possibility was designed by the German legislator in order to encourage social partners to organise occupational pension schemes in order to compensate for the future reductions of statutory pensions. The European Commission decided to refer Germany to the European Court of Justice, considering that the award of contracts for pension services by public authority employers should be conducted with the tendering procedures required by EU public procurement law.

In its 15 July judgment (case Commission vs Germany, C-271/08), the European Court of Justice followed the reasoning of the Commission. It held that above a certain threshold, the social partners in the public sector cannot on their own accord award directly service contracts for occupational old age pensions. In accordance with the public procurement Directives, a call for tender must be advertised at EU level.

John Monks, General Secretary of the European Trade Union Confederation (ETUC) said: "This is another damaging judgement for social Europe. The application of economic freedoms makes no sense at a time where, more than ever, practical solutions need to be found for the sustainability of pensions throughout Europe. This judgment ignores the public authorities' independence when they are acting as employers. More worryingly, it also confirms the supremacy of economic freedoms over fundamental social rights. The dark series initiated by the Viking and Laval cases is far from being over. The ETUC renews its calls for urgent action by the European authorities to confirm that the EU is not just an economic project but has as its main objective the improvement of living and working conditions of its populations, and that the concept of social progress is of fundamental importance for keeping the support of Europe's citizens and workers for the European project. The ETUC is pressing the case for a social progress clause in the EU Treaties to underline this point."

Links:

ECJ case (EN): <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&newform=newform&jurcdj=jurcdj&docj=docj&typeord=ALL&allcommjo=allcommjo&affint=affint&affclose=affclose&numaff=271%2F08&ddatefs=&mdatefs=&ydatefs=&ddatefe=&mdatefe=&ydatefe=&nomusuel=&domaine=&mots=&resmax=100&Submit=Submit>

FR: <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=fr&newform=newform&jurcdj=jurcdj&alldocrec=alldocrec&docj=docj&docor=docor&docop=docop&docav=docav&docsom=docsom&docinf=docinf&alldocnorec=alldocnorec&docnoj=docnoj&docnoor=docnoor&radtypeord=on&typeord=ALL&docnodecision=docnodecision&allcommjo=allcommjo&affint=affint&affclose=affclose&numaff=271%2F08&ddatefs=&mdatefs=&ydatefs=&ddatefe=&mdatefe=&ydatefe=&nomusuel=&domaine=&mots=&resmax=100&Submit=Rechercher>



European Trade Union Confederation [ETUC]
 Confédération européenne des syndicats [CES]

ETUC Proposal for a Social Progress Clause: <http://www.etuc.org/a/5175>

The ETUC exists to speak with a single voice, on behalf of the common interests of workers, at European level. Founded in 1973, it now represents 82 trade union organisations in 36 European countries, plus 12 industry-based federations.

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