Social Europe

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European social dialogue—can it be revived?

by Darragh Golden on 25th October 2021

The European Court of Justice has affirmed that agreements arising from European social dialogue need not be implemented by the EU institutions.

Tilting the scales? The ECJ ruling reduces labour's weight as a countervailing power (corgarashu/shutterstock.com)

A two-decade-long tradition of European social dialogue is close to becoming an historical artefact, following a verdict last month by the European Court of Justice in favour of the European Commission, which denies almost 10 million workers their rights.

The ECJ rejected an appeal by the Federation of European Public Service Unions (EPSU) against an earlier ruling by the General Court. The latter had judged that the European Union institutions were under no obligation to act upon a joint request from social partners to implement an agreement at which they had arrived.

'Not an empty slogan'

The phrase 'social dialogue' was coined by Jacques Delors as commission president. In his inaugural speech in 1985, he promised that 'the European collective agreement is not an empty slogan'. Despite encountering difficulties, not least from the employers' organisation, UNICE (BusinessEurope today), Delors was able to deliver on his promise—primarily by threatening to enact social legislation where the social partners *failed* to conclude an agreement. Rather than being a rule-taker, UNICE engaged with its counterpart, the European Trade Union Confederation (ETUC), so as to influence outcomes.

A succession of agreements eventuated, including on parental leave (1996), part-time work (1997) and fixed-term contracts (1999). European social dialogue was successful in providing solutions to questions that had been blocked for years, notably European works councils.

After Delors' influence had faded, the emphasis shifted to the sectoral level, with the establishment of sectoral social dialogue committees (SSDCs) an 'institutional landmark'. Sectoral labour federations, such as the European Transport Workers' Federation and the EPSU, came to play a more prominent role within the EU,

alongside their employer counterparts. Throughout the 2000s SSDCs proliferated, producing a slew of agreements.

For instance, regulation of flying time for pilots in civil aviation was hammered out between the sectoral social partners. Without this piece of legislation, the Ryanair strikes of 2017 would never have materialised. By 2010, over 145 million workers were covered by 40 SSDCs 'in sectors of crucial importance', such as railways, telecommunications, construction and chemicals.

Public-sector workers

Building on a successful agreement in the hospital sector, which became legally binding in 2010, the EPSU (and the European Confederation of Independent Trade Unions) entered dialogue with European Public Administration Employers (EUAPE). Bear in mind that, in the context of the European semester and country-specific recommendations from the commission, restructuring of public administrations was commonplace. Amid such reform, the aim was an agreement which would strengthen the rights to information and consultation of almost 10 million public-sector workers.

After almost two years of negotiations, in December 2015 the social partners finally reached agreement. Initially, the then commission president, Jean-Claude Juncker, welcomed it as a 'contribution to a modern and high-quality public service across Europe'. Yet the commission sat on its hands for two years and then refused point-blank to forward the agreement to the Council of the EU for enactment.

The commission's refusal rendered the agreement stillborn and constituted a worrisome precedent for European social dialogue. Were such an act of defiance to occur in the national setting, there would be wide coverage and possibly even mass mobilisations by the unions. With neither media attention nor mobilisation a real prospect at the European level, the EPSU had little choice but to pursue a protracted legal response.

No obligation

Engaging the Court of Justice of the EU was always going to be risky. It has no role in European collective bargaining, just as the judiciary is not involved at the national level. It manifested a neoliberal bias in the notorious *Viking* and *Laval* judgments by the ECJ in 2007—ruling in favour of employers' 'freedom of movement' against the unions—and it has an enduring tendency to side with the commission.

The General Court ruled in 2019 that the commission was under no obligation to forward collective agreements to the council but it did divide the costs of the action between the commission and the EPSU. The latter interpreted this as an admittance that the commission could be somewhat blameworthy and decided to up the ante by appealing to the ECJ.

Here, the advocate general, a national judge seconded to the court, delivers an opinion, which the ECJ accepts or rejects. The AG delivered his opinion at the start of 2021. Based on a very literal interpretation of EU law, this failed to grasp the dynamics of social dialogue and its significance in improving conditions for workers across the EU, claiming that it 'merely involves the social partners in the process of adopting certain non-legislative acts'. Which begs the question as to why the social partners would bother to negotiate an agreement if it were to remain in limbo and have no concrete impact on workers' lives.

Legal blindspot

Many hoped that the AG's inability to grasp the logic of collective bargaining was down to his hailing from Estonia —a country with one of the lowest rates of coverage by collective agreements (18.6 per cent) in Europe—and in light of this blindspot the ECJ would reject his reasoning. But in September the court ruled that the commission had 'a discretion when deciding whether it is appropriate to submit a proposal to the Council'.

Yet this is to negate the function of social dialogue which, as one scholar puts it, is to 'empower the social partners … to co-legislate with the institutions of the EU'. As legitimate representatives, the social partners, such as the EPSU and EUPAE, have the expertise and tacit knowledge to draft effective policies that seek to improve the working conditions of those in their sector.

The alternative implies that the commission has the monopoly to propose what is good for the market and good for the worker. Despite the current commission president, Ursula von der Leyen, having declared 2021 the year of European collective bargaining, the ECJ has just sounded its death knell.

'Deeply disappointing'

The ETUC deputy general secretary, Esther Lynch, described the judgment as 'deeply disappointing', asserting that it did 'nothing to help the European Commission convince working people that it is on their side'. If the commission is to 'fix this mess of its own making', then it will have to regain the trust of the unions. And if von der Leyen is to live up to her words, clarification on the future of social dialogue is needed—but, so far, the silence has been deafening.

Against the backdrop of a once-in-a-lifetime pandemic, workers' rights have been brought into sharp focus. The objective of social dialogue is not to usurp power but, rather, to decommodify labour. And the time for it is now, more than ever.

Darragh Golden

Darragh Golden is a postdoctoral researcher on the project Labour Politics and the EU's New Economic Governance Regime at the Geary Institute, University College Dublin. The author acknowledges funding from the European Research Council (ERC) under the Horizon 2020 research programme (grant agreement 725240).