

Court of Justice ruling on Italy's carcinogen laws. A result

The long-awaited judgement handed down by the Court of Justice in the *IP v Borsana* case on 17 December 1998 (see *TUTB Newsletter*, N° 9 and 10) bolsters one of the fundamental principles of article 118A. The provision allows Member States to maintain or introduce rules giving better protection to workers than the minimum requirements laid down by Community Directives. An Italian firm, *Italiana Petroli*, argued that this power was limited in particular by the proportionality principle and subject to review by the EC Court of Justice. Advocate General Mischo's submissions fell largely in line with the employer's case. The Court's ruling rebuffs this in no uncertain terms, and reasserts that Member States have every right to improve on the minimum provisions of occupational health Directives.

Most importantly, the ruling makes it crystal clear that where governments are exercising their national powers to maintain or introduce tougher laws to protect workers, the Court of Justice has no powers of scrutiny under the proportionality principle (ground 40 of the judgement).

On every other point at issue, the Court of Justice throws out the employers' submissions and Advocate General Mischo's arguments. It also rejects the Commission's half-way position that the Italian rules were in line with Community law on the preventive measures to be taken against carcinogens, but that the proportionality principle might still be invoked to limit Member States' powers. The Court implicitly rejects this approach, and seems clearly to consider that the main yardstick is that national measures must be non-discriminatory and not hinder the exercise of the fundamental freedoms of movement (ground 38 of the judgement).

While the ruling itself can only be welcomed, the lack of interest shown by the Member States is disquieting. Only France sent representation to the hearing to submit observations (which

were not on the principles of interpretation of article 118A). Italy's passivity is particularly alarming. Neither of the two Ministers of Labour who held office during the procedure (Mr Treu and Mr Bassolino) made any attempt to uphold the Italian carcinogens legislation. And the proceedings themselves were brought by an Italian public corporation (*Italiana Petroli*) whose sponsoring department is the Ministry of Industry! ■

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Seminar on the Mobile Construction Sites Directive

The European Federation of Building and Woodworkers called a seminar on 26 and 27 March 1999 to review initial experiences with application of Mobile and Temporary Construction Sites Directive 92/57/EEC. The seminar was for national union health and safety officers, and union activists on European Works Councils in a number of major civil engineering firms. Nearly a dozen countries were represented.

Pierre Lorent (SEFMEP, Belgium) reviewed the state of play on incorporating the Directive in the different EU countries. One key problem appeared to be the lack of detailed rules on who could act as a coordinator. Eligibility requirements as regards initial training, specialized training, continuing training, vetting abilities, etc., vary widely from one country to another. Also, the relation between coordinators and workers' representatives seemed to be an important consideration in improving prevention. What role do trade unions have in training and overseeing authorized coordinators? How are workers consulted on the choice of coordinators and the different stages of their activities?

Relevant tools for assessing the risks involved in simultaneous or successive activities are also a priority. Here, the seminar stressed the value of the risk assessment

method worked out in Lisbon in 1996 in the social dialogue between building industry unions and employers.

The TUTB analysed key issues for the trade unions. Among the most significant were:

- the need to ensure that coordination and planning of prevention on construction sites does not focus only on the most visible risks (accidents) but includes workers' demands on other aspects of occupational health (musculoskeletal disorders, stress and mental health, etc.). That requires a trade union policy capable of influencing the work pace, deadlines, use of subcontractors, etc.;
- one of the Directive's biggest fault lines relates to employee representatives. The different levels of representation must be interconnected and tasks allocated between them. This would include the European Works Councils of large civil engineering contractors; site committees of workers' representatives from the different firms working on the same site and district reps to cover the vast network of small and medium-sized building contractors. So far, only a handful of countries have this kind of provision. ■

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