Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

16 April 2013 *

(Freedom of movement for workers — Article 45 TFEU — Company established in the Dutch-speaking region of the Kingdom of Belgium — Obligation to draft employment contracts in Dutch — Cross-border employment contract — Restriction — Disproportionate)

In Case C-202/11,

REQUEST for a preliminary ruling under Article 267 TFEU from the arbeidsrechtbank te Antwerpen (Belgium), made by decision of 18 January 2011, received at the Court on 28 April 2011, in the proceedings

Anton Las

v

PSA Antwerp NV,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, L. Bay Larsen, T. von Danwitz and J. Malenovský, Presidents of Chambers, U. Lõhmus, E. Levits, A. Ó Caoimh, J.-C. Bonichot, A. Arabadjiev, C. Toader, and D. Šváby (Rapporteur), Judges,

Advocate General: N. Jääskinen,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 17 April 2012,

after considering the observations submitted on behalf of:

— Mr Las, by C. Delporte, advocaat,

— PSA Antwerp NV, by C. Engels and M. Holvoet, advocaten,

— the Belgian Government, by M. Jacobs and C. Pochet, acting as Agents, assisted by J. Stuyck, advocaat,

— the Greek Government, by S. Vodina and G. Karipsiades, acting as Agents,

— the European Commission, by M. van Beek and G. Rozet, acting as Agents,

* Language of the case: Dutch.

— the EFTA Surveillance Authority, by X. Lewis, M. Moustakali and F. Simonetti, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 July 2012,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 45 TFEU.

2 The request has been made in proceedings between Mr Las and his former employer, PSA Antwerp NV ('PSA Antwerp'), concerning payment by the latter of various sums following his dismissal.

Legal context

Belgian law

3 Article 4 of the Constitution states:

'Belgium comprises four linguistic regions: the French-speaking region, the Dutch-speaking region, the bilingual region of Brussels-Capital and the German-speaking region.

Each municipality of the Kingdom forms part of one of these linguistic regions.

…'

4 The Decree of the Vlaamse Gemeenschap of 19 July 1973 on the use of languages in relations between employers and employees and also in company documents and papers that are required by law and by regulation (Belgisch Staatsblad of 6 September 1973, p. 10089 ; 'the Decree on Use of Languages') was adopted on the basis of Article 129(1)(3) of the Constitution, under which '[t]he Parliaments of the Flemish and French Communities, to the exclusion of the federal legislator, regulate by decree, each one as far as it is concerned, the use of languages for: … relations between employers and their staff, as well as company acts and documents required by the law and by regulations'.

5 Article 1 of that Decree provides as follows:

'This decree is applicable to natural and legal persons having a place of business in the Dutch-speaking region. It regulates use of languages in relations between employers and employees, as well as in company acts and documents required by the law.

…'

6 Article 2 of the Decree provides that 'the language to be used for relations between employers and employees, as well as for company acts and documents required by law, shall be Dutch'.

7 Article 5 of the Decree is worded as follows:

'All acts and documents required by law and all documents intended for their staff shall be drawn up by employers in the Dutch language.

However, if the staff composition so justifies and at the unanimous request of the workers' representatives on the works council or, if there is no works council, at the unanimous request of the trade union delegation or, in the absence of either of these, at the request of a delegate of a representative trade union, the employer must attach a translation in one or more languages to notices, communications, acts, certificates and forms intended for staff.

…'

8 Article 10 of the Decree on Use of Languages provides:

'Documents or acts that are contrary to the provisions of this Decree shall be null and void. The nullity shall be determined by the court of its own motion.

…

A finding of nullity cannot adversely affect the worker and is without prejudice to the rights of third parties. The employer shall be liable for any damage caused by his void documents or acts to the worker or third parties.

…'

The dispute in the main proceedings and the question referred for a preliminary ruling

9 On the basis of a 'Letter of Employment' dated 10 July 2004 and drafted in English ('the employment contract'), Mr Las, a Netherlands national resident in the Netherlands, was employed as Chief Financial Officer for an unlimited period by PSA Antwerp, a company established in Antwerp (Belgium) but part of a multinational group operating port terminals whose registered office is in Singapore. The contract of employment stipulated that Mr Las was to carry out his work in Belgium although some work was carried out from the Netherlands.

10 By letter dated 7 September 2009 and drafted in English, Mr Las was dismissed with immediate effect. Pursuant to Article 8 of the employment contract, PSA Antwerp paid to Mr Las an 'indemnity in lieu of notice' equal to three months' salary and an additional payment equal to six months' salary.

11 By letter of 26 October 2009, Mr Las's lawyer stated to PSA Antwerp that the employment contract and, in particular, Article 8 thereof concerning the severance payments payable to Mr Las, were not drafted in Dutch and should therefore be deemed null and void in accordance with the penalty provided for in Article 10 of the Decree on Use of Languages, since PSA Antwerp is an undertaking whose established place of business is located in the Dutch-speaking region of the Kingdom of Belgium. Mr Las' counsel concluded from this that the parties were not bound by the terms of Article 8 of the employment contract and that Mr Las was entitled to demand more substantial compensation from his former employer.

12 As PSA Antwerp and Mr Las failed to reach agreement on that matter, on 23 December 2009 Mr Las brought an action before the Arbeidsrechtbank te Antwerpen so that that court might determine the amount of the sums payable to him.

13 In support of his application, Mr Las repeats the argument that Article 8 of his contract of employment is null and void because it infringes the provisions of the Flemish Decree on Use of Languages. PSA Antwerp contends that the application of that decree must, in the present case, be rejected by the referring court since the employment contract concerns a person who has exercised his right to freedom of movement for workers. The application of that decree constitutes an obstacle to that fundamental freedom which cannot be justified by overriding reasons of general interest within

the meaning of case-law of the Court of Justice. PSA Antwerp adds that the employment contract must be respected since that contract is in accordance with the intentions of the parties, expressed in a language that each party could understand, namely English, particularly where the director of that company who signed it is a Singapore national who has no knowledge of Dutch.

14 In addition, it is apparent from the order for reference that the arbeidsrechtbank te Antwerpen has doubts as to whether any requirement arises from a ground of general interest that the employment contract be drafted in Dutch in a cross-border situation in which the parties – in this instance, a Dutch-speaking employee and a non-Dutch-speaking employer – clearly chose, in view of the importance of the post that was to be filled, to draft an employment contract in a language understood by both parties.

15 In those circumstances, the arbeidsrechtbank te Antwerpen decided to stay proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Does the [Decree on Use of Languages] infringe [Article 45 TFEU] concerning freedom of movement for workers within the European Union, in that it imposes an obligation on an undertaking established in the Dutch-speaking region when hiring a worker in the context of employment relations with an international character, to draft all documents relating to the employment relationship in Dutch, on pain of nullity?'

Consideration of the question referred for a preliminary ruling

16 By its question, the referring court asks, in essence, whether Article 45 TFEU must be interpreted as precluding legislation of a federated entity of a Member State, such as that in issue in the main proceedings, which requires all employers whose established place of business is located in that entity's territory to draft cross-border employment contracts exclusively in the official language of that federated entity, failing which the contracts are to be declared null and void by the national courts of their own motion.

17 It should be pointed out, first of all, that the employment contract at issue in the main proceedings falls within the scope of Article 45 TFEU, since it was concluded between a Netherlands national, resident in the Netherlands, and a company established in the territory of the Kingdom of Belgium.

18 In addition, contrary to what the applicant in the main proceedings claims, Article 45 TFEU may be relied on not only by workers themselves, but also by their employers. In order to be truly effective, the right of workers to be engaged and employed without discrimination necessarily entails as a corollary the employer's entitlement to engage them in accordance with the rules governing freedom of movement for workers (see, to that effect, Case C-208/05 *ITC* [2007] ECR I-181, paragraph 23, and Case C-379/11 *Caves Krier Frères* [2012] ECR, paragraph 28).

19 As regards the existence of a restriction, it must be pointed out that the provisions laid down in the FEU Treaty relating to freedom of movement for persons are intended to facilitate the pursuit by nationals of Member States of occupational activities of all kinds throughout the European Union, and preclude measures which might place those nationals at a disadvantage when they wish to pursue an economic activity in the territory of another Member State (Case C-461/11 *Radziejewski* [2012] ECR, paragraph 29 and the case-law cited).

20 Those provisions and, in particular, Article 45 TFEU thus preclude any national measure which, even though applicable without discrimination on grounds of nationality, is capable of hindering or rendering less attractive the exercise by Union nationals of the fundamental freedoms guaranteed by the Treaty (Case C-379/09 *Casteels* [2011] ECR I-1379, paragraph 22 and the case-law cited).

21 In that regard, it is apparent from the file sent to the Court and the information provided by the parties at the hearing that, in the drafting of cross-border employment contracts concluded by employers whose established place of business is located in the Dutch-speaking region of the Kingdom of Belgium, only the Dutch text is authentic.

22 However, such legislation is liable to have a dissuasive effect on non-Dutch-speaking employees and employers from other Member States and therefore constitutes a restriction on the freedom of movement for workers.

23 As regards the justification for such a restriction, according to well-established case-law, national measures capable of hindering the exercise of the fundamental freedoms guaranteed by the Treaty or of making it less attractive may be allowed only if they pursue a legitimate objective in the public interest, are appropriate to ensuring the attainment of that objective, and do not go beyond what is necessary to attain the objective pursued (see, inter alia, Case C-212/06 *Government of the French Community and Walloon Government* [2008] ECR I-1683, paragraph 55).

24 In that regard, the Belgian Government claims that the legislation at issue in the main proceedings addresses a three-fold need, first, to promote and encourage the use of one of its official languages, next, to ensure the protection of employees by enabling them to examine employment documents in their own language and to enjoy the effective protection of the workers' representative bodies and administrative and judicial bodies called upon to recognise those documents, and, finally, to ensure the efficacy of the checks and supervision of the employment inspectorate.

25 As regards the first objective invoked by the Belgian Government, it must be pointed out that the provisions of European Union law do not preclude the adoption of a policy for the protection and promotion of one or more official languages of a Member State (see, to that effect, Case C-379/87 *Groener* [1989] ECR 3967, paragraph 19, and Case C-391/09 *Runevič-Vardyn and Wardyn* [2011] ECR I-3787, paragraph 85).

26 According to the fourth subparagraph of Article 3(3) TEU and Article 22 of the Charter of Fundamental Rights of the European Union, the Union must respect its rich cultural and linguistic diversity. In accordance with Article 4(2) TEU, the Union must also respect the national identity of its Member States, which includes protection of the official language or languages of those States (see, to that effect, *Runevič-Vardyn and Wardyn*, paragraph 86).

27 Accordingly, the objective of promoting and encouraging the use of Dutch, which is one of the official languages of the Kingdom of Belgium, constitutes a legitimate interest which, in principle, justifies a restriction on the obligations imposed by Article 45 TFEU.

28 Concerning the second and third objectives invoked by the Belgian Government and based, respectively, on the social protection of employees and the facilitation of the related administrative controls, the Court has already acknowledged that those objectives are among the overriding reasons in the general interest capable of justifying such restrictions on the exercise of fundamental freedoms recognised in the Treaty (see, to that effect, Case C-490/04 *Commission* v *Germany* [2007] ECR I-6095, paragraphs 70 and 71, and Case C-515/08 *dos Santos Palhota and Others* [2010] ECR I-9133, paragraph 47 and the case-law cited).

29 However, in order to satisfy the requirements laid down by European Union law, legislation such as that in issue in the main proceedings must be proportionate to those objectives.

30 In the present case, it is apparent from that legislation that the penalty for breach of the obligation to draft in Dutch an employment contract concluded between a worker and an employer whose established place of business is located in the Dutch-speaking region of the Kingdom of Belgium is

the nullity of that contract, which must be declared by the national courts of their own motion provided that that decision does not adversely affect the worker and is without prejudice to the rights of third parties.

31 However, parties to a cross-border employment contract do not necessarily have knowledge of the official language of the Member State concerned. In such a situation, the establishment of free and informed consent between the parties requires those parties to be able to draft their contract in a language other than the official language of that Member State.

32 Moreover, legislation of a Member State which would not only require the use of the official language of that Member State for cross-border employment contracts, but which also, in addition, would permit the drafting of an authentic version of such contracts in a language known to all the parties concerned, would be less prejudicial to freedom of movement for workers than the legislation in issue in the main proceedings while being appropriate for securing the objectives pursued by that legislation.

33 In the light of the foregoing, it must be held that legislation such as that at issue in the main proceedings goes beyond what is strictly necessary to attain the objectives referred to in paragraph 24 of this judgment and cannot therefore be regarded as proportionate.

34 In those circumstances, the answer to the question is that Article 45 TFEU must be interpreted as precluding legislation of a federated entity of a Member State, such as that in issue in the main proceedings, which requires all employers whose established place of business is located in that entity's territory to draft cross-border employment contracts exclusively in the official language of that federated entity, failing which the contracts are to be declared null and void by the national courts of their own motion.

Costs

35 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Article 45 TFEU must be interpreted as precluding legislation of a federated entity of a Member State, such as that in issue in the main proceedings, which requires all employers whose established place of business is located in that entity's territory to draft cross-border employment contracts exclusively in the official language of that federated entity, failing which the contracts are to be declared null and void by the national courts of their own motion.

[Signatures]