



## Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

5 February 2015 \*

(Failure of a Member State to fulfil obligations — Article 45 TFEU — Regulation (EU) No 492/2011 — Freedom of movement for workers — Access to employment — Local public service — Linguistic knowledge — Means of proof)

In Case C-317/14,

ACTION under Article 258 TFEU for failure to fulfil obligations, brought on 2 July 2014,

**European Commission**, represented by J. Enegren and D. Martin, acting as Agents, with an address for service in Luxembourg,

applicant,

v

**Kingdom of Belgium**, represented by L. Van den Broeck, J. Van Holm and M. Jacobs, acting as Agents,

defendant,

THE COURT (Sixth Chamber),

composed of S. Rodin, President of the Chamber, A. Borg Barthet and M. Berger (Rapporteur), Judges,

Advocate General: P. Cruz Villalón,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

### Judgment

- 1 By its application, the European Commission asks the Court to declare that, by requiring candidates for posts in the local services established in the French-speaking or German-speaking regions, whose diplomas or certificates do not show that they carried out their studies in the language concerned, to obtain the certificate issued by the selection office of the Federal Public Staff and Organisation Service

\* Language of the case: French.

(SELOR), after passing the examination conducted by that body, and by making that certificate the only way in which those persons can prove that they have the language skills needed in order to access those posts, the Kingdom of Belgium has failed to fulfil its obligations under Article 45 TFEU and Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ 2011 L 141, p. 1).

## Law

### *EU law*

- 2 Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475), referred to in the letter of formal notice and in the reasoned opinion issued by the Commission in the context of the present case, was repealed and replaced by Regulation No 492/2011 as from 16 June 2011, subsequent to the expiry of the period referred to in the reasoned opinion. Nevertheless, the wording of Article 3(1) of Regulation No 492/2011 is identical to that of Article 3 of Regulation No 1612/68 and provides:

‘Under this Regulation, provisions laid down by law, regulation or administrative action or administrative practices of a Member State shall not apply:

- (a) where they limit application for and offers of employment, or the right of foreign nationals to take up and pursue employment or subject these to conditions not applicable in respect of their own nationals; or
- (b) where, though applicable irrespective of nationality, their exclusive or principal aim or effect is to keep nationals of other Member States away from the employment offered.

The first subparagraph shall not apply to conditions relating to linguistic knowledge required by reason of the nature of the post to be filled.’

### *Belgian law*

- 3 The Belgian Constitution defines four linguistic regions, that is to say, four different parts of the national territory in which uniform rules are applied as regards the use of languages, particularly in relation to administrative matters: the French-speaking region, the Dutch-speaking region, the German-speaking region and the bi-lingual Brussels-Capital region.
- 4 The provisions laid down in Chapter III of the consolidated laws on the use of languages in administrative matters (lois coordonnées sur l’emploi des langues en matière administrative) of 18 July 1966 (*Moniteur belge*, 2 August 1966, p. 7799, ‘the consolidated laws’), subsequently amended, govern inter alia the use of languages in local services, which are defined in Articles 1(2) and 9 of those laws as natural or legal persons which are concessionaires managing a public service or which are charged with a task in the public interest entrusted to them by law or by the public authorities, the scope of which is limited to one locality.
- 5 Section II of the consolidated laws concerns their application to the French-speaking, Dutch-speaking and German-speaking regions. In that respect, Article 15(1) of those laws provides:

‘In the local services established in the French-speaking, Dutch-speaking or German-speaking regions, no person may be appointed or promoted to an office or post if he does not know the language of the region.

The admission and promotion examinations shall be conducted in the same language.

The candidate shall be allowed to sit the examination only if it can be seen from the required diplomas or educational certificates that he has studied in the aforementioned language. In the absence of such a diploma or certificate, knowledge of the language must first be established by an examination.

If the office or post is to be filled without an admission examination, the requisite language skills shall be established by means of the evidence referred to in that respect in the third subparagraph.'

- 6 In Chapter VI of the consolidated laws, on specific provisions, Article 53 provided, at the date of expiry of the period laid down in the reasoned opinion:

'The Permanent Secretary of Recruitment is solely responsible for granting certificates for the purpose of certifying the language skills required under the law of 2 August 1963.'

- 7 It can be seen from the file submitted to the Court that the Permanent Secretary of Recruitment has been replaced by SELOR, which is the only entity empowered to grant the aforementioned certificates to candidates which have successfully passed the examinations that it conducts in Brussels.

### **Pre-litigation procedure**

- 8 On 22 March 2010, the Commission sent a letter of formal notice to the Kingdom of Belgium, in which it indicated that the requirement of one particular means of proving the linguistic knowledge, set out in the Belgian legislation as a pre-condition for access to posts in the local services in the French-speaking, Dutch-speaking or German-speaking regions, constitutes discrimination prohibited by Article 45 TFEU and Regulation No 1612/68.
- 9 The authorities of the Flemish Community replied by letter of 19 July 2010, expressing their willingness to bring the Flemish legislation concerning the requirements of public employers into line with EU law.
- 10 By letter of 8 November 2010, the Commission's services asked the Kingdom of Belgium to send them a draft legislative amendment and a precise and detailed timetable for adoption. By note of 20 December 2010, the Flemish Community authorities sent a preliminary draft decree which was scheduled to be adopted in January 2011.
- 11 Having failed to obtain any other response from the Kingdom of Belgium, on 20 May 2011 the Commission sent it a reasoned opinion asking it to take the necessary measures in order to comply with that opinion within a period of two months from receipt of that opinion.
- 12 The Kingdom of Belgium replied by letter of 2 December 2011, in which it reaffirmed its willingness to bring Belgian law into line with EU law, but also referred to the complexity of the issue of language use in administrative matters within that Member State because of the existence of several linguistic regions and of particular circumstances linked to the allocation of competences between various federal entities.
- 13 By letters of 27 March, 13 July and 17 October 2012, the Commission sought additional information from the Kingdom of Belgium concerning the situation in each linguistic region.
- 14 In response to those requests, that Member State sent the Commission a draft implementing decision of the Flemish Community and a preliminary draft decree and a preliminary draft implementing decision of the French-speaking Community.

- 15 Subsequently, the decision implementing the decree of the Flemish Community was sent to the Commission. The French-speaking Community also sent the Commission a copy of the decree of 7 November 2013 on the proof of language skills required by the laws on the use of languages in administrative matters. However, that decree still needed to be completed by an implementing decision. Furthermore, the Commission did not receive any information concerning the German-speaking region.
- 16 In those circumstances, the Commission decided to bring the present action.
- 17 By letter of 18 December 2014, received at the Court on 22 December 2014, the Kingdom of Belgium informed the Court that it had sent the Commission the decision of the Government of the French-speaking Community of 22 October 2014, implementing the decree of 7 November 2013 referred to in paragraph 15 of the present judgment.

## **The action**

### *Arguments of the parties*

- 18 The Commission submits that, in accordance with Article 3(1) of Regulation No 492/2011, Member States may require that nationals of other Member States have the linguistic knowledge required by reason of the nature of the post to be filled.
- 19 The Commission emphasises however that, in accordance with the Court's case-law, the linguistic requirement must be implemented in a proportionate and non-discriminatory manner. It adds that, in its judgment in *Angonese* (C-281/98, EU:C:2000:296), the Court held that such was not the case where an employer required persons applying to take part in a recruitment competition to provide evidence of their linguistic knowledge exclusively by means of one particular diploma issued only in one particular province of a Member State.
- 20 The Commission submits that the case-law in question can be applied to the Belgian legislation, in so far as that legislation requires that a person applying to take part in a recruitment competition must provide evidence of his linguistic knowledge by means of one particular diploma issued only in Belgium.
- 21 The Kingdom of Belgium does not contest the substance of the action and merely refers to the progress of the legislative work undertaken in order to comply with the Commission's objections, explaining that the length of the delays is linked to the complex structure of that Member State.

### *Findings of the Court*

- 22 In accordance with the Court's settled case-law, all the provisions of the TFEU relating to freedom of movement for persons are intended to facilitate the pursuit by nationals of the Member States of occupational activities of all kinds throughout the European Union, and preclude measures which might place nationals of Member States at a disadvantage if they wish to pursue an economic activity in another Member State (see, inter alia, judgment in *Las*, C-202/11, EU:C:2013:239, paragraph 19 and the case-law cited).
- 23 Those provisions and, in particular, Article 45 TFEU thus preclude any measure which, albeit applicable without discrimination on grounds of nationality, is liable to hinder or render less attractive the exercise by European Union nationals of the fundamental freedoms guaranteed by the Treaty (judgment in *Las*, EU:C:2013:239, paragraph 20 and the case-law cited).

- 24 It is true that, under the second subparagraph of Article 3(1) of Regulation No 492/2011, Member States are entitled to lay down the conditions relating to the linguistic knowledge required by reason of the nature of the post to be filled.
- 25 However, the right to require a certain level of knowledge of a language in view of the nature of the post must not encroach upon the free movement of workers. The requirements under measures intended to implement that right must not in any circumstances be disproportionate to the aim pursued and the manner in which they are applied must not bring about discrimination against nationals of other Member States (see, to that effect, *Groener*, C-379/87, EU:C:1989:599, paragraph 19).
- 26 In the present case, it must be acknowledged that it may be legitimate to require a person applying to take part in a competition held in order to fill a post in a local service — that is to say in a concessionaire managing a public service or charged with a task carried out in the public interest in a municipality — to have knowledge of the language of the region in which that municipality is located of a standard commensurate with the nature of the post in question. It may be considered that a post in such a service requires an ability to communicate with the local administrative authorities and, as the case may be, with the public.
- 27 In such a case, the possession of a diploma certifying that the candidate has passed a language examination may constitute a criterion for assessing the required linguistic knowledge (see, to that effect, *Angonese*, EU:C:2000:296, paragraph 44).
- 28 However, to require — as the consolidated laws do — that a person applying to take part in a recruitment competition provide evidence of his linguistic knowledge exclusively by means of one particular type of certificate, issued only by one particular Belgian body tasked with conducting language examinations in Belgium for that purpose, appears, in view of the requirements of the freedom of movement for workers, disproportionate to the aim pursued.
- 29 That requirement precludes any consideration of the level of knowledge which a holder of a diploma obtained in another Member State can be assumed to possess on the evidence of that diploma, having regard to the nature and duration of the studies which it attests (see, to that effect, *Angonese*, EU:C:2000:296, paragraph 44).
- 30 Moreover, that requirement, although applicable to Belgian nationals and to those of other Member States alike, in practice puts nationals of other Member States wishing to apply for a post in a local service in Belgium at a disadvantage.
- 31 That requirement effectively forces interested persons residing in other Member States, for the most part nationals of those Member States, to travel to Belgium for the sole purpose of having their knowledge tested in an examination which is mandatory for the issuance of the certificate required for their application. The additional expenses which that requirement entails are liable to make it more difficult to gain access to the posts in question (see, to that effect, *Angonese*, EU:C:2000:296, paragraphs 38 and 39).
- 32 The Kingdom of Belgium has not invoked any objective which might be capable of justifying those effects.
- 33 In so far as the Kingdom of Belgium submits that legislative work has been undertaken in order to ensure that the national legislation at issue complies with the requirements of EU law, but that, because of the structure of that country, that work entails lengthy and complex procedures, it must be observed that the Court has consistently held that a Member State cannot plead provisions prevailing

in its domestic legal system, even its constitutional system, to justify failure to observe obligations arising under EU law (see, inter alia, *Commission v Hungary*, C-288/12, EU:C:2014:237, paragraph 35 and case-law cited).

- 34 It must be added that, in any event, the question whether a Member State has failed to fulfil obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion and the Court cannot take account of any subsequent changes (see, inter alia, *Commission v United Kingdom*, C-640/13, EU:C:2014:2457, paragraph 42 and the case-law cited).
- 35 In those circumstances, it must be held that, by requiring candidates for posts in the local services established in the French-speaking or German-speaking regions, whose diplomas or certificates do not show that they were educated in the language concerned, to provide evidence of their linguistic knowledge by means of one particular type of certificate, issued only by one particular Belgian body following an examination conducted by that body in Belgium, the Kingdom of Belgium has failed to fulfil its obligations under Article 45 TFEU and Regulation No 492/2011.

### Costs

- 36 Under Article 138(1) of the Rules of Procedure, the unsuccessful party must be ordered to pay the costs if they have been applied for in the other party's pleadings. Since the Commission has applied for costs and the Kingdom of Belgium has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds, the Court (Sixth Chamber) hereby:

- 1. Declares that by requiring candidates for posts in the local services established in the French-speaking or German-speaking regions, whose diplomas or certificates do not show that they were educated in the language concerned, to provide evidence of their linguistic knowledge by means of one particular type of certificate, issued only by one particular Belgian body following an examination conducted by that body in Belgium, the Kingdom of Belgium has failed to fulfil its obligations under Article 45 TFEU and Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union;**
- 2. Orders the Kingdom of the Belgium to pay the costs.**

[Signatures]