EELA EUROPEAN EMPLOYMENT LAWYERS ASSOCIATION

SUMMARY

2014/25 Employer liable for invalid collective agreement (SK)

<p>A collective agreement concluded with a works council entitled redundant employees to certain benefits. An employee claimed those benefits. In response, the employer argued that the collective agreement was non-existent, having been concluded on behalf of the employer by an internal unit that lacked legal capacity. The Slovak Labour Code provides that an employer cannot invoke the invalidity of a ‘legal act’ to the detriment of an employee unless the employee caused the invalidity himself. The issue in this case was whether the conclusion of a collective agreement qualified as a ‘legal act’ and whether an employee was eligible for damages for loss incurred due to a collective agreement being invalid. The answer was yes.</p>

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Facts

The defendant in this case was an employer that had concluded a collective agreement with its works council. The agreement entitled redundant staff to certain benefits (the 'additional benefits') over and above the statutory unemployment benefits provided for by the Labour Code. The plaintiff was an employee who was dismissed. She did not contest her dismissal but did contest the fact that her former employer refused to pay her the additional benefits to which the collective agreement entitled her. In 2003, she brought proceedings, seeking payment of those additional benefits.

In 2005, in the course of its defence, the defendant initiated separate proceedings (the 'separate proceedings') in which it asked the court to declare the collective agreement void. The defendant argued that that agreement had been concluded by an entity (an office within the organisation) that lacked legal capacity and therefore lacked the legal authority to represent the employer for the purpose of concluding a collective agreement. The court accepted this argument and declared the collective agreement invalid. Following this judgment, which was not appealed, the original proceedings in respect of the claim for payment of the additional benefits (which had been suspended pending the outcome of the separate proceedings) continued. According to the defendant, there was no collective agreement and hence no obligation to pay the plaintiff additional benefits. This argument was based on the Civil Code, which provides that a legal act performed by a person who lacks legal capacity is void and has no legal effect. The employee, on the other hand, took the position that, if the collective agreement was invalid, as the court had held in the separate proceedings, then she was entitled to compensation equal to the additional benefits based on Article 17(3) of the Labour Code, which overrules the provision in the Civil Code and which provides:

"Invalidity of a legal act where such invalidity was not caused by the employee must not be to the prejudice of the employee. If the employee incurs a loss as a result of an invalid legal act, the employer shall be required to compensate the loss."

In 2008, after five years of litigation, the court of first instance ruled in the defendant's favour. It declared the collective agreement to be void, reasoning that, had the defendant paid the plaintiff additional benefits in spite of this invalidity, this would have enriched her unjustly. The plaintiff appealed.

The Court of Appeal noted that the defendant must have known that the collective agreement was defective at the time it was signed. What is more, the defendant informed the entire staff that the agreement had been signed and it applied the agreement to other employees. Thus, the plaintiff had no reason to doubt the validity of the collective agreement. In other words, its

invalidity could not be blamed on the employee within the meaning of Article 17(3) and the plaintiff was therefore entitled to compensation of the loss she incurred due to the invalidity. For this reason, in a judgment delivered later in 2008, the Court of Appeal overturned the lower court's judgment and awarded the plaintiff's claim. The defendant appealed to the Supreme Court.

Supreme Court judgment

The debate at the Supreme Court level focused on the concept of 'legal act' within the meaning of Article 17(3) of the Labour Code. The employer argued that a collective agreement is not an agreement between an employer and an employee and that, therefore, its conclusion does not qualify as a legal act. A collective agreement has a legal status akin to that of a law. It binds not only the parties to the agreement (the employer and the union(s) or works council) but also the employer and each of its employees. Thus, like a law, a collective agreement has a 'normative' character. Therefore, according to the employer, there was no invalid legal act by the employer but a non-existent collective agreement. Something that does not exist cannot form the basis of an obligation to compensate.

The Supreme Court did not subscribe to this argument. It observed that the conclusion of a collective agreement is a bilateral legal act by parties that have autonomous status and exercise the principle of contractual freedom. A collective agreement establishes rights and obligations just like any other agreement. The Supreme Court therefore concluded that the act of entering into a collective agreement is a legal act and that, hence, the provisions of the Labour Code regarding (in)validity of legal acts applied. The invalidity of the collective agreement could not be to the detriment of the employee, since she had not caused its invalidity. The end result, therefore, was that the employer had to compensate the employee. For this reason the Supreme Court, in 2010, upheld the Court of Appeal's judgment.

Constitutional Court

The employer brought proceedings before the Constitutional Court, alleging that its constitutional right to a fair trial had been violated. It argued that the Supreme Court's judgment was arbitrary and unreasonable. This argument failed. The Constitutional Court did not find that any constitutional right had been violated. It added that, in view of the employee-protective function of the Labour Code, there is no room for a distinction between legal acts that are 'invalid' and legal acts that are 'non-existent'.

Thus, the end of the story was that, after nine years of litigation, the employee got her additional benefits.

Commentary

Article 17(3) of the Labour Code is but one of the many examples in Slovak employment legislation of provisions that aim to protect the employee, who is deemed to be the weaker party in the contractual relationship. Protection of the weaker party remains the primary and most important aim of Slovak employment law. A claim by an employer that a representation (legal act) on which the employee reasonably relied was invalid and ineffective is something against which employees need to be protected. It is not fair to contest the validity of a legal act when the employee seeks payment of the benefits to which he or she is entitled according to that legal act, let alone to intentionally conclude invalid legal acts with the idea of challenging them later. Such conduct is in serious conflict with the principle that rights and obligations arising from labour relationships must be exercised in good faith. It also goes against the prohibition against abusing rights to the detriment of another party.

We entirely agree with the conclusions of the Supreme Court and the Constitutional Court. In our opinion, employers should consider carefully what they are willing to accept when negotiating a collective agreement rather than conceding more than they really want to concede and then, if and when they are confronted with undesired results, attempting to avoid liability by disputing the validity of the collective agreement they have signed up to.

Comments from other jurisdictions

Austria (Martin Risak/Manuel Schallar): In Austria there are two ways for individuals to obtain legal capacity to negotiate and conclude collective bargaining agreements. Firstly, there is the legal capacity "ex lege", which is given to the statutory representation of both employers and employees (the so called "chambers"). Secondly, every union or employer's association has this legal capacity if they meet specific criteria (certain sphere of action, representative commercial relevance, etc.). Until this capacity is granted to them by a tri-partite administrative body, unions and employer associations cannot conclude collective agreements. Therefore groups, who have not been granted this legal capacity, cannot conclude collective agreements; they would be null and void.

As Austrian law does not include a provision like the Slovak law that forbids the employer to invoke the invalidity of a "legal act" to the detriment of an employee unless the employee caused the invalidity himself, another line of argument would need to be construed to achieve the same result. In the light of long-standing jurisprudence on the binding character of employment practices and so called "free works agreements", it is very likely that the courts would accept the following reasoning: Because the employer informed the entire staff about the conclusion of the "collective agreement" and because he even applied it to other

employees, the claimant could trust that the employer wanted to be bound by it. Therefore his actions have to be interpreted that (in the absence of the "normative" character of the collective agreement) he offered to amend the individual contracts. Thus, the worker could base his claim on his individual contract which has been amended tacitly, now including the content of the invalid collective agreement.

Luxembourg (Michel Molitor): In Luxembourg, collective agreements can be negotiated at different levels. In most cases, employees are submitted to a collective agreement that is declared of general obligation. This type of agreement is negotiated by trade unions on the national level in a particular branch of a sector, even for companies that were not initially signatories. A statutory act then declares the rules and rights contained in the agreement to be mandatory applied to the entire sector in question. However, within big companies, the collective agreement is often directly negotiated between the employer and the employees' trade unions, and applied on the company level. Under those circumstances, a matter such as the one that occurred in the Slovak case could have thus theoretically happened in Luxembourg as well.

There is no specific provision in the Luxemburgish Labour Code regulating the invalidity of legal acts in labour matters. However, the general civil law principles, among which the "apparent mandate" and the "ratification", would have certainly led the judges in Luxembourg to agree with the Slovakian Court. They would have considered that the employer tacitly ratified the agreement and that it should therefore be applied to him, regardless of the invalidity of the collective agreement.

Subject: Miscellaneous, employer liability

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Court: Ústavný súd (Constitutional Court)

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