EELA EUROPEAN EMPLOYMENT LAWYERS ASSOCIATION

SUMMARY

ECJ (Grand Chamber) 16 April 2013, case C-202/11 (Anton Las - v - PSA Antwerp NV), Other forms of free movement

Facts

Mr Las, a Dutch national, was employed as Chief Financial Officer by PSA Antwerp, a Belgian company belonging to a multinational group headquartered in Singapore. His employment contract was drafted in the English language. Most of Mr Las' work was carried on in Belgium.Mr Las was dismissed. In accordance with Article 8 of his employment contract he was paid a certain severance compensation. His lawyer informed PSA that Article 8 was null and void, given that the Belgian Decree on Use of Languages provides that employment contracts where the employer is established in the Dutch-speaking part of Belgium ("Flanders") must be drafted in the Dutch language, on pain of nullity. Arguing that he was therefore not bound by Article 8, Mr Las brought an action before the local Arbeidsrechtbank, claiming additional compensation.

National proceedings

Mr Las' claim was based on the contention that said Article 8 was invalid because his employment contract had not been drafted in Dutch. PSA countered that the Belgian law requiring employment contracts to be written in Dutch where the employer is established in Flanders, should be set aside, as it violates Article 45 TFEU (freedom of movement of workers). The court referred the following question to the ECJ: "Does the [Decree on Use of Languages] infringe [Article 45 TFEU] ..... 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?"

ECJ's findings

• The employment contract at issue 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 Belgium (§ 17).

• Article 45 may be relied on, not only by workers, 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 (§ 18)

• Article 45 TFEU precludes 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. Legislation such as the Degree on Use of Languages 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 (§ 19-22).

• Such national measures 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 obtain the objective pursued (§ 23).

• The Belgian government claims that the Decree on Use of Languages addresses a threefold need: (1) to encourage the use of one of Belgium's official languages, (2) to enable employees to examine employment documents in their own language and (3) to ensure the efficacy of the checks and supervision of the employment inspectorate. All of these objectives are legitimate. The issue is thus whether the Decree on Use of Languages is proportionate to those objectives (§ 24-29).

• 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 them to be able to draft their contract in another language. In the light of this fact, legislation declaring a contract not drafted in the official language to be invalid goes beyond what is strictly necessary to obtain the said objectives (§ 30-32).

Ruling

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.

Creator: European Court of Justice (ECJ)
Verdict at: 2013-04-16
Case number: C-202/11