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Press and Information

Advocate General's Opinion in Case C-202/11
Anton Las v PSA Antwerp NV

According to Advocate General Jääskinen, the obligation to draft in the language of the region all documents relating to employment relations with an international character infringes the free movement of workers

In the particular context of an employment relationship with an international character, such an obligation constitutes an obstacle to the free movement for workers which is not justified by the protection of employees, effective supervision by the administrative and judicial authorities, or a policy of protection of a language

In Belgium, a decree of the Flemish Community requires the use of Dutch in respect of all employment relations between employees and employers, where the employer's established place of business is in the Dutch-language region. Non-compliance with that linguistic obligation results in the nullity of the employment contract, but without prejudice to the employee or to the rights of third parties.

Mr Anton Las, a Netherlands national resident in the Netherlands, was hired in 2004 as a Chief Financial Officer by PSA Antwerp, a company established in Antwerp (Belgium) but belonging to a multinational group whose registered office is in Singapore. The employment contract, drafted in English, stipulated that Mr Las was to carry out his work primarily in Belgium.

In 2009, by a letter drafted in English, Mr Kas was dismissed by PSA Antwerp, who paid him a severance allowance calculated on the basis of his employment contract. Mr Las brought an action before the Arbeidsrechtbank (Labour court, Belgium) claiming that the provisions of the employment contract were vitiated by nullity because they infringed the provisions of the Flemish Decree on Use of Languages. He sought a higher severance allowance and other amounts, in accordance with Belgian employment law.

The Belgian court asks the Court of Justice if the Flemish Decree on Use of Languages infringes the free movement of workers within the EU, in that it imposes an obligation on all undertakings situated in the Flemish language 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.

In his opinion delivered today, Advocate General Niilo Jääskinen notes that there is no harmonisation measure in EU law which is applicable to the use of languages in drafting employment documents. However, the Flemish Decree on Use of Languages is likely to have a dissuasive effect on non-Dutch speaking employees and employers, generally those from Member States other than Belgium and the Netherlands. Moreover, employers from other Member States established in the Dutch-speaking region of Belgium are induced to recruit only employees who understand Dutch, for whom it will be easier to converse in that language. In addition, those employers must cope with administrative complications and additional operating costs due to the obligatory use of Dutch.

For those reasons, the Advocate General concludes that there is an obstacle to the free movement of workers. Moreover, he considers that the obstacle cannot be justified by the three objectives put forward by the Belgian Government to justify the legislation at issue.

First, as regards the ground of justification concerning the protection of employees, the obligatory and exclusive use of Dutch can only in fact protect employees who are sufficiently familiar with that language. Effective protection of all categories of employee would, in contrast, require the employment contract to be accessible in a language that the employee can easily understand, so that his consent is fully informed rather than vitiated. The vehicular language is not necessarily the official language of the place where the work is principally performed, whether it be national or regional.

Secondly, as regards the effectiveness of administrative and judicial supervision, the Advocate General acknowledges that the intervention of the administrative authorities, such as the Employment Inspectorate, or the judicial authorities, is facilitated where the documents relating to the employment relationship are drafted in a language which the representatives of those authorities know. However, according to Advocate General Jääskinen, the extensive measure resorted to by the Flemish Decree on Use of Languages, in requiring the use of Dutch for all employment documents, is not essential in order to carry out the supervision in question, given the possibility of providing, if necessary, Dutch translations of documents drafted in another language.

Thirdly, as regards the argument concerning the defence of the official language, the Advocate General acknowledges that a policy of protection of an official language is a justification for a Member State having recourse to measures restricting freedom of movement. However, obligatory use of a Member State's language by nationals or undertakings of other Member States exercising their fundamental freedoms does not really meet that objective.

According to Advocate General Jääskinen, contractual freedom must be respected in that the employee may agree to use a language specific to his working environment which is different from his own and from that used locally, especially where the employment relationship takes place in an international context. The protection of an official language cannot be a valid justification for legislation such as that at issue in the main proceedings in that it does not allow account to be taken either of the will of the parties to the employment relationship or the fact that the employer forms part of an international group of undertakings.

In the view of the Advocate General, the interests which the Flemish Decree on Use of Languages seem to defend might be more appropriately protected by means other than a linguistic constraint which is so absolute and general in scope. Hence, a translation into Dutch of the main employment documents that are drafted in another language might be sufficient to attain the three aforementioned objectives.

Moreover, according to the Advocate General, the penalties provided for in the event of non-compliance go too far in relation to what is necessary. He considers that other, better suited, measures which are less restrictive of freedom of movement for workers could achieve the objectives that appear to be pursued by the Flemish Decree on Use of Languages.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355