Court of Justice of the European Union
PRESS RELEASE No 21/11
Luxembourg, 15 March 2011

Press and Information

Judgment in Case C-29/10
Heiko Koelzsch v Luxembourg

Where an employee carries out his activities in more than one Member State, the law of the country where he performs the greater part of his professional obligations applies when resolving a dispute relating to his employment contract

The essential objective is to guarantee adequate protection for the employee as being the weaker party to the contract

The Rome Convention on the law applicable to contractual obligations [1] in civil and commercial situations provides that a contract of employment is, in principle, governed by the law chosen by the parties. That choice may not, however, have the result of depriving the employee of the minimum protection afforded to him by the mandatory rules of the law which would have been applicable in the absence of choice (Article 6). Thus, where the parties have not chosen the law to be applied, the contract of employment is governed by the law of the country in which the employee 'habitually carries out his work' or, in the alternative, if the employee does not habitually carry out his work in any one country, by the law of the country in which the place of business of the employer is situated. The contract may, exceptionally, be governed by the law of the country with which it is most closely connected.

Mr Heiko Koelzsch, who is domiciled in Germany, was engaged in 1998 as an international transport driver by Gasa Spedition Luxembourg S.A., a company established under Luxembourg law – subsequently taken over by Ove Ostergaard Luxembourg SA – specialising in the transport of flowers and other plants from Denmark to destinations situated mostly in Germany, but also in other European countries. Gasa's lorries were stationed in Germany, where the company did not have any corporate seat or offices. The lorries were registered in Luxembourg and the drivers were covered by Luxembourg social security. Mr Koelzsch's contract of employment, which was signed in 1998, provided that, in the event of dispute, Luxembourg law would apply.

Following the announcement of the restructuring of Gasa and a reduction in transport activities from Germany, the employees of that undertaking set up in Germany, in 2001, a works council ('Betriebsrat') which included Mr Koelzsch as an alternate member. By letter of 13 March 2001, the director of Gasa terminated Mr Koelzsch's contract of employment with effect from 15 May 2001.

After bringing the matter before the German courts, which declared that they lacked territorial jurisdiction, Mr Koelzsch instituted proceedings in 2002 before the Tribunal du travail de Luxembourg (Luxembourg Labour Court) against Ove Ostergaard Luxembourg SA, the successor to Gasa, seeking an order requiring that company to pay both damages for unfair dismissal and compensation in lieu of notice and arrears of salary. He argued that, although Luxembourg law was indeed applicable to the contract of employment, he could not be deprived, by virtue of the Rome Convention, of the protection afforded by the mandatory rules of German law prohibiting the dismissal of members of a works council, as the contract would have been governed by German law in the absence of choice by the parties. He accordingly contended that his dismissal was unlawful under the relevant German legislation and according to the case-law of the

[1] Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980 (OJ 1980 L 266, p. 1). The Rome Convention has been replaced by Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6). As Regulation No 593/2008 applies to contracts concluded after 17 December 2009, it is not applicable to the present case.

Bundesarbeitsgericht (German Federal Labour Court), which has extended the prohibition of dismissal to cover alternate members.

The Tribunal du travail de Luxembourg took the view that the dispute was subject exclusively to Luxembourg law, a ruling which was confirmed by the Cour d'appel (Court of Appeal) and the Cour de cassation (Court of Cassation).

Mr Koelzsch, in March 2007, accordingly brought an action before the Tribunal d'arrondissement de Luxembourg (District Court, Luxembourg) for damages against the Luxembourg State on grounds of misapplication, by the national courts, of the provisions of the Rome Convention.

On appeal by Mr Koelzsch, the Cour d'appel de Luxembourg decided to refer a question to the Court of Justice as to whether, in the situation where an employee carries out his work in more than one country but returns systematically to one of them, the law of that latter country is to be regarded as being applicable as 'the law of the country in which the employee habitually carries out his work' within the terms of the Rome Convention.

The Court of Justice points out, in its judgment delivered today, that Article 6 of the Rome Convention lays down special conflict-of-law rules in relation to individual contracts of employment. Those rules derogate from the rules relating respectively to the freedom of choice as to the law applicable and to the criteria for determining that law in the absence of such choice. Article 6 of the Rome Convention thus limits the freedom to choose the law applicable. It provides that the parties to the contract cannot, by their agreement, exclude the application of the mandatory rules of the law which would govern the contract in the absence of such a choice. That article further lays down specific connecting criteria, which are, first, that of the country in which the employee 'habitually carries out his work' and, second, in the absence of such a place, that of the country 'in which the place of business through which [the employee] was engaged is situated'.

The Court finds, in this regard, that the Rome Convention is designed to ensure adequate protection for employees. Consequently, **in the case where the employee carries out his activities in more than one Contracting State, the Convention must be construed as guaranteeing the applicability of the first criterion referring to the law of the State in which the employee,** in the performance of the contract, **performs the greater part of his obligations towards his employer and thus** to the law of the **place in which or from which the employee actually carries out his working activities and, in the absence of such a centre of activities, to the law of the place where the employee carries out the greater part of his activities.**

The applicable law is determined by the State in which the employee performs his economic and social duties, as the business and political environment affects employment activities. Consequently, compliance with the employment-protection rules provided for by the law of that country must, so far as is possible, be guaranteed.

This criterion of the place where the working activities are carried out must be given a broad interpretation and be applied, as in the present case, where the employee carries out his activities in more than one Contracting State, on condition that it is possible for the national court to determine the State with which the work has a significant connection.

It is thus for the Cour d'appel de Luxembourg to give a broad interpretation to that connecting criterion laid down by the Rome Convention in order to establish whether Mr Koelzsch habitually carried out his work in one of the Contracting States and, if do, to determine which one.

To that end, in the light of the nature of work in the international transport sector, the national court must take account of all the factors which characterise the activity of the employee.

It must, in particular, determine in which State is situated the place from which the employee carries out his transport tasks, receives instructions concerning his tasks and organises his work, and the place in which his work tools are situated. It must also determine the places where the

transport is principally carried out, where the goods are unloaded and the place to which the employee returns after completion of his tasks.

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.

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