Court of Justice of the European Union
PRESS RELEASE No 15/21
Luxembourg, 11 February 2021

Press and Information

Judgment in Joined Cases C-407/19, Katoen Natie Bulk Terminals NV and General Services Antwerp NV v Belgische Staat and C-471/19, Middlegate Europe NV v Ministerraad

Legislation which reserves dock work to recognised workers may be compatible with EU law if it is aimed at ensuring safety in port areas and preventing workplace accidents.

However, the intervention of a joint administrative committee in the recognition of dockers is neither necessary nor appropriate for attaining the objective pursued

Under Belgian law, dock work is governed inter alia by the Law organising dock work, according to which dock work may be carried out only by recognised dockers. In 2014, the European Commission had sent Belgium a letter of formal notice, in which it informed it that its dock work legislation infringed the freedom of establishment (Article 49 TFEU). Following that letter, in 2016, that Member State had adopted a royal decree relating to the recognition of dockers in port areas, establishing the arrangements for the implementation of the Law organising dock work, which had led the Commission to close the infringement procedure against it.

In the case *Katoen Natie Bulk Terminals and General Services Antwerp* (C-407/19), the two eponymous companies, which carried out port operations in Belgium and abroad, requested the Raad van State (Council of State, Belgium) to annul that 2016 royal decree, being of the view that it impeded their freedom to engage dockers from Member States other than Belgium to work in Belgian port areas.

In the case *Middlegate Europe* (C-471/19), the company concerned had been ordered to pay a fine following the finding, by the Belgian police, of the infringement involving the carrying out of dock work by an unrecognised docker. In the context of proceedings brought before the referring court in that second case, namely the Grondwettelijk Hof (Constitutional Court, Belgium), that company was challenging the constitutionality of the Law organising dock work, being of the view that that legislation disregarded the freedom of trade and industry of undertakings. That court, noting that that freedom guaranteed by the Belgian Constitution was closely linked to a number of fundamental freedoms guaranteed by the FEU Treaty, such as the freedom to provide services (Article 56 TFEU) and the freedom of establishment (Article 49 TFEU), had decided to refer questions to the Court, just as the Raad van State (Council of State) had done in the first case, on the compatibility of those national rules, which maintain a special regime for the recruitment of dockers, with those two provisions. By those joined cases, in addition to the answer which it had to give to that question, the Court was asked to identify additional criteria enabling the conformity of the docker regime with EU law requirements to be clarified.

Findings of the Court

The Court states first of all that the legislation at issue, which obliges non-resident undertakings wishing to establish themselves in Belgium in order to carry out port activities there or which, without establishing themselves there, wish to provide port services there to have recourse only to dockers recognised as such in accordance with that legislation, prevents such undertakings from using its own staff or from recruiting other non-recognised workers. Therefore, that legislation, which may render less attractive the establishment of those undertakings in Belgium or their provision of services in that Member State, constitutes a restriction on both the freedom of establishment and the freedom to provide services, guaranteed by Articles 49 and 56 TFEU, respectively. The Court then recalls that such a restriction may be justified by an overriding reason

in the public interest, provided that it is suitable for securing the attaining of the objective pursued and does not go beyond what is necessary in order to attain it. In the case at hand, the Court notes that the legislation at issue cannot in itself be considered unsuitable or disproportionate for attaining the objective which it pursues, namely ensuring safety in port areas and preventing workplace accidents. Assessing the regime at issue globally, the Court finds that such legislation is compatible with Articles 49 and 56 TFEU, provided that the conditions and arrangements laid down pursuant to that legislation, first, are based on objective, non-discriminatory criteria known in advance and which allow dockers from other Member States to prove that they satisfy, in their State of origin, requirements equivalent to those applied to national dockers and, second, do not establish a limited quota of workers eligible for such recognition.

Next, examining the compatibility of the contested royal decree with the various freedoms of movement guaranteed by the FEU Treaty, the Court states that the national legislation at issue also constitutes a restriction on the freedom of movement for workers enshrined in Article 45 TFEU, in so far as it is liable to have a dissuasive effect on employers and workers from other Member States. The Court then assesses whether the various measures contained in that legislation are necessary and proportionate to the objective of ensuring safety in port areas and preventing workplace accidents.

In that regard, in the first place, the Court considers that the legislation at issue, according to which, in particular:

– the recognition of dockers is done by an administrative committee composed jointly of members designated by employers' organisations and by workers' organisations;

– that committee also decides, according to the need for labour, whether or not recognised workers must be included in a quota of dockers, it being understood that, for dockers not included in that quota, the duration of their recognition is limited to the duration of their employment contract, such that a fresh recognition procedure must be initiated for each new contract that they conclude;

– no maximum period within which that committee must act is prescribed,

in so far as it is neither necessary nor appropriate for attaining the objective pursued, is not compatible with the freedoms of movement enshrined in Articles 45, 49 and 56 TFEU.

In the second place, the Court examines the conditions for recognition of dockers. Under the legislation at issue, a worker must, unless he or she can show that he or she satisfies equivalent conditions in another Member State, meet requirements of medical fitness and successfully complete a psychological test and prior vocational training. According to the Court, those requirements are conditions appropriate for ensuring safety in port areas and proportionate to such an objective. Consequently, such measures are compatible with the freedoms of movement provided for in Articles 45, 49 and 56 TFEU. However, the Court considers that it is for the referring court to verify that the role conferred on the employers' organisation and, as the case may be, on the recognised dockers' unions in the designation of the bodies responsible for conducting those examinations or tests is not such as to call into question their transparent, objective and impartial nature.

In the third place, the Court finds that the legislation concerned, which provides for the maintenance of the recognition obtained by a docker under a previous statutory regime and for his or her inclusion in the quota of recognised dockers, does not appear to be inappropriate for attaining the objective pursued or disproportionate to that objective, such that, in that respect, it is also compatible with the freedoms enshrined in Articles 45, 49 and 56 TFEU.

In the fourth place, the Court considers that the legislation at issue, under which the transfer of a docker to the quota of workers of a port area other than that in which he or she obtained his or her recognition is subject to conditions and arrangements laid down by a collective labour agreement, complies with the freedoms of movement provided for in Articles 45, 49 and 56 TFEU. It is

nevertheless for the referring court to determine that those conditions and arrangements laid down are necessary and proportionate to the objective of ensuring security in each port area.

In the last place, the Court holds that legislation according to which logistics workers in port areas must hold a 'security certificate' whose issuance modalities are fixed by a collective labour agreement is not incompatible with the freedoms enshrined in Articles 45, 49 and 56 TFEU, provided that the conditions for the issue of such a certificate are necessary and proportionate to the objective of ensuring safety in port areas and the procedure prescribed for its obtainment does not impose unreasonable and disproportionate administrative burdens.

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: Jacques René Zammit ☎ (+352) 4303 3355