ECJ Rules on Law Applicable to Employment Contracts

On March 15, the European Court of Justice delivered its first ruling on Article 6 of the Rome Convention in *Koelzsch v. Luxembourg* (case C-29/10).

Mr Koelzsch was a heavy goods vehicle driver domiciled in Osnabrück (Germany). He was hired by the Luxemburgish subsidiary of Gasa, a Danish company in the business of transporting flowers from Danemark to various destinations in Germany and in other European states by means of lorries stationed in Germany. Gasa did not have a seat or offices in Germany. The lorries were registered in Luxembourg and the drivers were covered by Luxembourg social security. The employment contract of Mr Koelzsch provided for the application of Luxembourg law and the jurisdiction of its courts. In March 2001, Koelzsch was elected as a representative of employees of Gasa Luxembourg. He was fired a week later.

Koelzsch sued his Luxembourgish employer first in Germany, but the German court declined jurisdiction. He then sued in Luxembourg. Before the Luxembourg court, he argued that he was protected by mandatory rules of German labour law protecting employees' representatives. The Luxembourg courts held that, as he was not working in a single state, the mandatory rules protecting him pursuant to Article 6 (1) of the Rome Convention were those of the place where the business which had engaged him was situated, i.e. Luxembourg.

> ***Article 6 of the Rome Convention***
>
> *1. Notwithstanding the provisions of Article 3, in a contract of employment a choice of law made by the parties shall not have the result of depriving the employee of the protection afforded to him by the mandatory rules of the law which would be applicable under paragraph 2 in the absence of choice.*
>
> *2. Notwithstanding the provisions of Article 4, a contract of employment shall, in the absence of choice in accordance with Article 3, be governed:*
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> *(a) by the law of the country in which the employee habitually carries out his work in performance of the contract, even if he is temporarily employed in*

another country; or

(b) 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 through which he was engaged is situated;

unless it appears from the circumstances as a whole that the contract is more closely connected with another country, in which case the contract shall be governed by the law of that country.

Unsurprisingly given the Court's case law on jurisdiction, the ECJ held that "the criterion of the country in which the employee 'habitually carries out his work', set out in Article 6(2)(a) of the Rome Convention, must be given a broad interpretation". It further ruled:

44. It follows from the foregoing that the criterion in Article 6(2)(a) of the Rome Convention can apply also in a situation, such as that at issue in the main proceedings, where the employee carries out his activities in more than one Contracting State, if it is possible, for the court seised, to determine the State with which the work has a significant connection.

The Court, however, did not conclude and did not say whether Germany was the place where the work was habitually carried out. It instructed the national court to verify the following:

47 It follows from the foregoing that the referring court must give a broad interpretation to the connecting criterion laid down in Article 6(2)(a) of the Rome Convention in order to establish whether the appellant in the main proceedings habitually carried out his work in one of the Contracting States and, if so, to determine which one.

48 Accordingly, in the light of the nature of work in the international transport sector, such as that at issue in the main proceedings, the referring court must, as proposed by the Advocate General in points 93 to 96 of her Opinion, take account of all the factors which characterise the activity of the employee.

49 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 where 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.*

Final conclusion:

> *Article 6(2)(a) of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980, must be interpreted as meaning that, in a situation in which an employee carries out his activities in more than one Contracting State, the country in which the employee habitually carries out his work in performance of the contract, within the meaning of that provision, is that in which or from which, in the light of all the factors which characterise that activity, the employee performs the greater part of his obligations towards his employer.*

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