

Court Agreements in favour of Third States (still on aff. C-154/11)

The contract of employment between Mr. Mahamdia and the Ministry of Foreign Affairs of the People's Democratic Republic of Algeria (see previous post) contained an agreement on jurisdiction which read as follows:

'VI. Settlement of disputes

In the event of differences of opinion or disputes arising from this contract, the Algerian courts alone shall have jurisdiction.'

As already said in the previous post, Mr. Mahamdia appealed against the judgment of the Arbeitsgericht Berlin (2 July 2008) to the Landesarbeitsgericht Berlin-Brandenburg (Higher Labour Court, Berlin and Brandenburg). By its judgment of 14 January 2009 the Landesarbeitsgericht Berlin-Brandenburg rejected the agreement on jurisdiction, considering that it did not satisfy the conditions laid down in Article 21 of Regulation 44/2001, as it had been concluded before the dispute arose and referred the employee to the Algerian courts exclusively.

The People's Democratic Republic of Algeria appealed to the Bundesarbeitsgericht (Federal Labour Court). By judgment of 1 July 2010, the Bundesarbeitsgericht set aside the judgment appealed against and remitted the case to the Landesarbeitsgericht Berlin-Brandenburg. The second question referred to the ECJ for a preliminary ruling by this national court was as follows

2. (...) Can an agreement on jurisdiction, reached before the dispute arises, confer jurisdiction on a court outside the scope of Regulation 44/2001, if, by virtue of the agreement on jurisdiction, the jurisdiction conferred under Articles 18 and 19 of Regulation 44/2001 would not apply?'

To which the ECJ (Grand Chamber), stretching out once again the impact of the Regulation, said that

"Article 21(2) of Regulation 44/2001 must be interpreted as meaning that an agreement on jurisdiction concluded before a dispute arises falls within that

provision in so far as it gives the employee the possibility of bringing proceedings, not only before the courts ordinarily having jurisdiction under the special rules in Articles 18 and 19 of that regulation, but also before other courts, which may include courts outside the European Union.”

(Click here for the whole text).