ECJ Strikes Down Mandatory Use of Language in Contracts

On the basis of a 'Letter of Employment' dated 10 July 2004 and drafted in English, Mr Las, a Netherlands national resident in the Netherlands, was employed as Chief Financial Officer for an unlimited period by PSA Antwerp, a company established in Antwerp (Belgium) but part of a multinational group operating port terminals whose registered office is in Singapore. The contract of employment stipulated that Mr Las was to carry out his work in Belgium although some work was carried out from the Netherlands.

When he was dismissed, Mr Las challenged the validity of the Letter of Employment on the ground of a 1973 Belgian Decree on Use of Languages, which provides:

> *Article 1 – This decree is applicable to natural and legal persons having a place of business in the Dutch-speaking region. It regulates use of languages in relations between employers and employees, as well as in company acts and documents required by the law.*
>
> *Article 2 – The language to be used for relations between employers and employees, as well as for company acts and documents required by law, shall be Dutch.*
>
> *Article 10 – Documents or acts that are contrary to the provisions of this Decree shall be null and void. The nullity shall be determined by the court of its own motion. (…) A finding of nullity cannot adversely affect the worker and is without prejudice to the rights of third parties. The employer shall be liable for any damage caused by his void documents or acts to the worker or third parties.*

Is this Belgian Decree contrary to the freedom of movement of workers in the European Union?

Yes it is, the Grand Chamber of the European Court held on April 16th in Anton Las v. PSA Antwerp NV (case C 202/11).

This is because "*such legislation is liable to have a dissuasive effect on non Dutch speaking employees and employers from other Member States and therefore constitutes a restriction on the freedom of movement for workers*."

Of course, the Court held, the "*objective of promoting and encouraging the use of Dutch, which is one of the official languages of the Kingdom of Belgium, constitutes a legitimate interest which, in principle, justifies a restriction on the obligations imposed by Article 45 TFEU.*"

But this legislation is not proportionate to those objectives. " *[P]arties to a cross-border employment contract do not necessarily have knowledge of the official language of the Member State concerned. In such a situation, the establishment of free and informed consent between the parties requires those parties to be able to draft their contract in a language other than the official language of that Member State*."

Ruling:

> *Article 45 TFEU must be interpreted as precluding legislation of a federated entity of a Member State, such as that in issue in the main proceedings, which requires all employers whose established place of business is located in that entity's territory to draft cross-border employment contracts exclusively in the official language of that federated entity, failing which the contracts are to be declared null and void by the national courts of their own motion.*