

SOCIAL RIGHTS IN THE CHARTER: CASE STUDIES

1. EMPLOYEE IN A REGISTERED CIVIL PARTNERSHIP

The facts

1.1 D, a Swedish national working at the EU Council as an official of the European Communities, registered a partnership with another Swedish national of the same sex in Sweden. He applied to the Council for his status as a registered partner to be treated as being equivalent to marriage for the purpose of obtaining the household allowance which, according to the Staff Regulations (Art.1(2) of Annex VII), would be granted to “a married official”. The Council rejected the application, taking the view that the Staff Regulations could not be construed as allowing a registered partnership to be treated as being equivalent to marriage. D brought an action before the General Court seeking to have the refusal to recognise the legal status of his partnership annulled and to obtain the remuneration to which he claimed entitlement.

The questions

1.2 What Charter rights arguments might be relevant here ?

2. TRADE UNIONS AND CHURCH EMPLOYEES

The facts

2.1 A group of clergymen and lay staff of the Romanian Orthodox Church held a general meeting at which they decided to form a trade union among whose aims are:

- (a) ensure respect for the fundamental rights of its members to work, dignity, social protection, safety at work, rest, social insurance, unemployment benefits, pension rights and other rights laid down in the legislation in force;
- (b) ensure that each of its members is provided with work corresponding to his professional training and skills;
- (c) ensure compliance with the statutory provisions concerning the duration of leave and days of rest;
- (d) promote initiative, competition and freedom of expression among its members;
- (e) ensure the implementation and strict observance of the statutory provisions concerning protection of employment and the rights deriving therefrom;
- (f) negotiate collective and individual labour agreements with their church employers
- (g) use petitions, demonstrations and strikes as means of defending its members' interests and protecting their dignity and fundamental rights;
- (h) take legal action against any individuals or other entities that disregard employment legislation, trade-union law, the provisions of any collective agreement or in employment contracts, if it has proved impossible to resolve the disputes in question by means of negotiation;
- (i) ensure the observance and implementation of statutory provisions relating to remuneration and guarantees of decent living conditions

2.2 The Romanian court refused to allow the union to be granted legal personality and entered in the register of trade unions in the face of opposition from the Church authorities based on claims that Article 29 of the Romanian Constitution guaranteed religious freedom and the autonomy of religious communities and that this principle

could not be overridden by freedom of association. It further submitted that any acknowledging of the trade union's existence would constitute unconstitutional interference by the civil courts with the traditional organisation of the Church, to the detriment of its autonomy.

The questions

2.3 Is this an issue which can be said to fall within the ambit of EU law ?

2.4 What if any Charter rights may be prayed in aid, either by the trade unionists or by the Church employers ?

3. INDUSTRIAL ACTION AND POSTED WORKERS

The facts

- 3.1 L was a company incorporated under Latvian law and had a registered office in Riga. It posted its workers to Sweden to work on building sites operated by “Baltic”, a company incorporated under Swedish law whose entire share capital was held by L, for the purposes of construction of school premises in Sweden.
- 3.2 Around 65 per cent of the Latvian workers concerned were members of the building workers’ trade union in their Member State of origin. In Latvia, L signed collective agreements with the Latvian building sector’s trade union, but it was not bound by any collective agreement with the local Swedish trade union, none of its members being employed by L.
- 3.3 Negotiations began between L and the local section of Swedish trade union, with a view to L signing the collective agreement for the building sector with regard to the construction site in Sweden. Being a party to the collective agreement for the building sector required the undertaking concerned to accept a number of pecuniary obligations to be paid to the Swedish trade union and an insurance company which provided various insurance contracts for workers. After signing the collective agreement, employers would be legally bound by all its terms. The negotiations fell through with the employer L refusing to sign the agreement, on the basis that it was impossible for it to know in advance what conditions could be imposed on it in relation to wages.
- 3.4 The Swedish trade union accordingly commenced industrial action, which was lawful under Swedish law, involving its members blockading the building site, preventing the delivery of goods onto the site, placing pickets and prohibiting the Latvian workers and vehicles from entering the site. Subsequently, another trade union initiated sympathy action with the effect of preventing Swedish undertakings belonging to the organisation of electricians’ employers from providing services to L. Other trade unions then announced sympathy actions, consisting of a boycott of all L’s sites in Sweden, with the

result that the undertaking was no longer able to carry out its activities in that Member State. The result of this concerted trade union action was that “Baltic” was declared bankrupt. L commenced proceedings before the Swedish court against the trade unions involved.

The questions

3.5 Can EU law – and specifically Charter rights - be prayed in aid in this case ?

3.6 If so, what EU law principles – and specifically Charter rights might be prayed in aid in this case:

- by the Latvian employer
- by the Swedish trade union
- by the Latvian workers

4. EMPLOYMENT PROTECTION AND THE TERRITORIAL REACH OF EU LAW

The facts

- 4.1 The claimant was a UK national of Indian ethnic origin who lived in Great Britain but travelled to and from his employment in Libya where he worked for 28 days at a time for a UK registered company based near Aberdeen. His employer was an associated company of a United States corporation and the employee worked in Libya for the benefit of another associated company having its registered office in Germany.
- 4.2 His employer paid his commuting costs, he was paid in pounds sterling and he paid UK income tax and national insurance. The claimant was assured by his employer that he had the full protection of UK employment law while he was working in Libya.
- 4.3 In 2006, a manager in Cairo, who was employed by another associated company, decided to make him redundant. The claimant invoked his employer's grievance procedure, and the grievance hearing, the redundancy consultations and an unsuccessful appeal against dismissal all took place in Aberdeen. The claimant brought a complaint that he had been unfairly dismissed and separately that his dismissal was tainted by race discrimination.
- 4.4 The employer argued that the UK courts had no jurisdiction to hear the claim that any claim he might have had against them had to be brought only in Libya.

The questions

- 4.5 Is this situation one which can be said to fall within the scope of EU law ?
- 4.6 On what basis ?
- 4.7 What Charter rights might be relevant to this case ?

5. EMPLOYMENT IN MEMBER STATE EMBASSIES

The facts

5.1 B, a Belgian national permanently resident in Algiers was a non-posted (local) employee in the passport office at the German embassy in Algiers. The terms and conditions of those employed in German embassies were dealt with by the German law governing the diplomatic service. It was provided that the conditions of local staff of German nationality would be governed by German law whilst the conditions of local staff not of German nationality would be determined by the law of the host company. B's contract was accordingly governed by Algerian law. She sought to receive the same treatment as local staff of German nationality and brought proceedings before the Labour Court in Bonn.

The questions

5.2 Did the German court have jurisdiction to consider this claim ?

5.3 What EU law principles – and specifically what Charter rights - might be relevant in this case.

5.4 Would it make any difference to any of the above answers if the employee was not a national of any Member State.

6. DEATH OF A LABOURER

The facts

6.1 A Portuguese labourer working for a German based company on a building site in Luxembourg is killed as a result of a wall collapsing on the site.

6.2 The Luxembourg authorities carry out a summary investigation of the matter and conclude that no criminal prosecutions or any form of public inquiry are warranted in this case.

6.3 The family of the labourer are concerned that the full facts concerning his death have not been brought out in the public forum. They consider that the preliminary investigation reports determined without the shadow of a doubt, that serious breaches had been committed of work safety legislation. These same reports sowed however enormous discrepancies concerning the question of the circumstances and the potential causes of the fatal accident. Under these conditions the family only an in-depth investigation could have established the truth as to the events that occurred. Yet no building expert was invited to the site to give a technical opinion. On the contrary the deputy public prosecutor rejected the offer made by ITM ('the Work and Mines Inspectorate') to appoint such an expert and decided to abandon the case.

6.4 The family want to initiate action in the courts to require the Luxembourg authorities to re-open their investigations and/or to order a public inquiry.

The questions

6.5 Are there any Charter rights which might be prayed in aid in this situation ?

6.6 If so, what are they and what are their implication for this case ?

7. E-MAIL MONITORING IN THE WORKPLACE

The facts

- 7.1 The applicant was employed in an administrative role at a college in the United Kingdom. She raised an internal grievance within the college alleging that she had been subject to sexual harassment and bullying by fellow employees.
- 7.2 The internal grievance was rejected and the employee raised proceedings against her employers before the UK Employment Tribunal on the basis of their alleged failure to prevent and protect her from the complained of sexual harassment.
- 7.3 Without advising the claimant the Deputy Principal of the College then ordered that her telephone, email and internet usage within the workplace were to be secretly monitored.

The questions

- 7.4 Does this matter fall within the ambit of EU law ?
- 7.5 If so what EU Charter rights might be prayed in aid by the parties in any proceedings ?

8. TONIC WINE – IS IT LAWFUL TO TALK OF ALCOHOL AS A *DIGESTIF* ?

The facts

8.1 A winegrowers' cooperative and the Government department responsible for supervising the marketing of alcoholic beverages in the Land of Rhineland-Palatinate are in dispute.

8.2 The issue is whether or not wine produced by the co-operative could properly be described as *bekömmlich* (translated as “easily digestible”) to indicate its reduced acidity levels.

8.3 The German administrative authorities considered (see Articles 2(2)(5) [*“health claim” means any claim that states, suggests or implies that a relationship exists between a food category, a food or one of its constituents and health;*”] and 4(3)(i) [*“Beverages containing more than 1,2 % by volume of alcohol shall not bear health claims. As far as nutrition claims are concerned, only nutrition claims referring to low alcohol levels, or the reduction of the alcohol content, or the reduction of the energy content for beverages containing more than 1,2 % by volume of alcohol, shall be permitted.”*]) of Regulation (EC) No 1924/2006).

8.4 The authorities therefore order the co-operative to remove this adjective when describing or advertising their wine.

The questions

8.5 What Charter rights might be at play in the above scenario ?

8.6 Is there any conflict among the potentially relevant Charter rights ?

8.7 If so, how would you resolve the conflict

8.8 Ultimately, what decision would you reach in the dispute