C-281 98 roman angonese v cassa di risparmio di bolzano spa

Introduction

The case of C-281/98 Roman Angonese v Cassa di Risparmio di Bolzano SpA concerns the area of direct effect in regards to the free movement of persons within the European Union. The decision in Angonese[1]is not the first case to address the issue regarding linguistic knowledge as a national requirement for practicing in a certain position or holding a certain post[2]. Throughout this case note, I will further examine in much more extensive details the facts of the case, what legal issues the case has raised, the decision and ruling of the court and finally, I will analyse and critically assess the reasoning behind the decision.

The position of EU law before Angonese

Article 3 of Regulation 1612/68 is a provision of law on freedom of movement for workers which establishes a rule that prevents a Member State from engaging in direct discrimination of foreign nationals or from pursuing policies that result in indirect discrimination against foreign nationals who wish to get employed in that Member State[3]. This regulation is relevant to the case of Angonese as the national court had referred it to the European Court of Justice, however, it was held that the bank’s requirement only fell under Article 45 TFEU so therefore it was no longer relevant to the assertion made by the bank[4].

Article 45 TFEU is an instrument which allows workers to move freely within the territories of the EU but is also designed to protect workers from any form of discrimination based on their nationality. The reason why this is

relevant to this case is that the ECJ held the bank’s conduct to be a breach of this article.

One of the earlier cases prior to Angonese is (36/74) Walrave v Association Union Cycliste Internationale. This case involved two Dutch nationals who regularly took part as pacemakers. The Association changed the rules for international biking competitions that both motorbike and pedal bike had to be ridden by people of the same nationality. This led to both of the cyclists losing their jobs. The cyclists brought a claim as the rule was discriminatory, however, the court held that rules against discrimination against nationals do not extend to sports teams and discrimination on the ground of nationality in Article 7, 48 and 59 applies to acts of public authorities and rules governing paid employment or service[5].

Another case relevant to the free movement of persons is the case of C-379/87 Groener v Minister of Education. This case was similar in regards to the concern of Article 45 as it concerned a teacher who was refused a job post at a Dublin college due to the fact that she didn’t speak Irish. She argued that the refusal of the job affected her free movement of work under Article 45 TFEU. The court upheld the requirement of language was reasonable and also, they claimed that the principle of proportionality was applicable[6].

Facts and Judgement of Angonese

The Claimant (Roman Angonese) is an Italian national who had been studying in Austria when he applied to take part in a competition with the Defendant (Cassa di Risparmio di Bolzano SpA). The Defendant required that

the candidates should be bilingual and they should be able to provide a certificate of this in Italian and German via the public authorities of the province of Bolzano. The Claimant was not in possession of the certificate and his circumstances made it pretty much impossible for him to obtain the certificate in time for the competition. Regardless of the fact, that he gained a number of degrees in language studies from Vienna University. The Defendant refused to allow the Claimant to enter into the competition as he did not hold the certificate required. The Claimant claimed that the Defendant had a right to ensure that all staff were to be perfectly bilingual but the requirement to produce the certificate as the only acceptable evidence was contrary to Article 45 TFEU. The national court referred to the European Court of Justice a question on the compatibility of such a requirement with Article 45 and Regulation 1612/68 on the freedom of movement for workers in the Community[7].

The ECJ held that the action was in violation of the Treaty, which precludes obtaining a diploma only issued in a particular province of a member state, for this is a burden that may make participation difficult for citizens living outside the province[8]. Check the reference

The ECJ held that Art 3 of the Regulation 1612/68 was not applicable to the 1994 Collective Agreement. In summary, the Advocate General (AG) comes to the conclusion that he disagrees with the court as he does not think that unlawful discrimination was suffered by the claimant.

Views of the Advocate General on the legal issues of Angonese

The first legal issue raised by the AG is existence of the connecting factor with community law. The AG starts off by discussing a number of cases in which the Court has found a connection with community law or not. Furthermore, he goes onto mention the cases of Broekmeulen and Gullung and says " that these cases contain an intrinsic trans-frontier element which was directly connected to recognising educational qualifications or periods of employment"[9]. In addition, he mentions the cases of Krezmow and Werner and concludes that they do not fall within the scope of community law. However, he also gives an example of a case which falls within the scope of community law to distinguish the difference between the two and concludes that he does not think that the community law prohibition of indirect discrimination against migrant workers on nationality can be accepted[10].

The AG mentions that in order for graduates to establish a connecting factor with community law for the purpose of challenging rules there must be more of a connection between the studies and the profession they are looking to go into. He relates this to Angonese and ultimately concludes that there is no distinct connection between his studies and banking. Following on from that, the AG emphasises the fact that it is not necessary to judge Angonese based on that he has not completed his studies at the time of the competition because evidence of satisfactory performance can show that he has attained the equivalence of the national qualification. The AG outlines his opinion that there is no connecting factor with community law with regards to the case of Angonese[11].

The second issue raised by the AG is rules applicable to a private undertaking. The commission and the claimant argue that clause for

acquiring a certificate falls under Article 19 of the 1994 Collective Agreement as discriminatory criteria and is also incompatible with Article 7(4) of Regulation 1612/68. The AG gives his opinion that he does not agree that the clause falls under Article 19 so therefore Article 7(4) of Regulation 1612/68 cannot be legally binding. He also goes on to rule Article 3 out as the certificate is granted by a public body and this is sufficient but also Article 7(1) as conditions of employment is not confined in terms to public entities[12].

The final issue raised by the AG is unlawful discrimination suffered by claimant. The Claimant argued that the clause discriminates against individuals who do not live in Bolzano as they are less likely to receive the certificate but also the certificate has no relevance to banking. The AG outlines that he does not think the claimant has suffered any discrimination as the AG said it was necessary for the bank to ensure that evidence of bilingualism is given due to the linguistic regime in Bolzano[13].

Ruling of the Court on legal issues raised from Angonese

The first issue raised by the Court is whether the requirement to hold the certificate in order to provide evidence of linguistic knowledge is contrary to community law. The Court have held that it is far from clear that the interpretation of community law it seeks has no relation to the actual facts of the case. The next issue the Court raised is regarding Article 3(1) of the Regulation, The Court have held that Article 3(1) is not relevant in determining the lawfulness of a requirement not based on such provisions or practices[14].

The Court has to decide whether Article 7 of the Regulation is lawful or unlawful regarding the compatibility under Article 19 of the Collective Agreement. In which the Court held that Article 19 of the Collective Agreement does not authorise the institutions concerned to adopt discriminatory criteria in relation to workers who are nationals of other Member States as this would be incompatible with Article 7 of the Regulation so the question submitted for the preliminary ruling falls to be examined under Article 45 TFEU[15].

Finally, the Court has to decide there has been a violation of Article 45. The Court reaches the conclusion that Article 45 precludes an employer from requiring persons applying to take part in a recruitment competition to provide evidence of their linguistic knowledge exclusively by means of one particular diploma issued only in one particular province of a Member State[16].

Analysing and assessing the reasoning of the Advocate General and Court

The first issue the AG and Court deal with is whether there is a connecting factor with community law. The outcome which they both proceed to is that there is no connection, I believe they are correct because the AG outlines that there is no recognisable link with the course of study of the claimant and the banking job that he applied[17]. Hence, why I agree with the AG on his reasoning. With regards to future rulings, the case of Angonese acts as good case law in favour of the fact that there is no connection with community law because the case of Kremzow[18]makes it difficult to distinguish whether there is a connection with community law.

Another issue that the Court an AG deal with is whether the clause for acquiring a certificate falls under Article 19 of the 1994 Collective Agreement as discriminatory criteria[19]. The Court and AG reach the conclusion that the clause does not fall under Article 19 of the 1994 Collective Agreement as discriminatory criteria[20]. I agree with the Court on their reasoning because purely on the fact that I find the AG's reasoning misleading because the way the AG interprets it as he looks at it from one side on the assumption that the case has a connecting factor with community law. I find this to be biased as he only looks at the point of fact from one point of view. With regards to future, I hope another case is able to clarify this issue because it feels like the AG has not justified his view concerning the subject matter.

The final part of the case of which I feel is vital if not the most important issue of the case is whether there has been unlawful discrimination suffered by the claimant. The AG has his view on this that the claim has not suffered unlawful discrimination so therefore there cannot be a violation of Article 45. The reasoning behind the decision of the AG was that he cannot establish a connection between the claimant's course of study and the certificate which was required by the defendant as well as the fact that it was necessary for the bank to ensure that evidence of bilingualism is given due to the linguistic regime in Bolzano[21]

Whereas on the opposing side, the Court reaches the decision that there has been violation of Article 45 by the defendant. The Court reaches the decision of the violation of Article 45 after they consider the fact that it is impossible to submit proof of the required linguistic knowledge by any other means, in particular by equivalent qualifications obtained in other Member States, it

must therefore be considered to be disproportionate in relation to the aim in view[22].

I find the reasoning of the Court to be fair because of the fact the defendant should have taken appropriate measures to ensure equivalence of the qualification can be acquired from more than one means of particular diploma especially for individuals who are not of Italian nationality. In support of the AG's reasoning, I find his reasoning to be equally fair because of the fact there is no distinct relationship between the course of study and certificate. I favour the Court's reasoning over the AG because I find the reasoning of the AG quite narrow because being bilingual relates to the job position as the claimant would be able to speak in a number of different languages which would benefit the defendant in this case.

As of where I stand with regards, if there has been a violation of Article 45. I reach the conclusion that there has been a violation of Article 45 by looking at the case of Ugliola[23]as the facts of that case relate to the case of Angonese but also the decision in that case had involved indirect discrimination as Germany had created an unjustifiable restriction by indirectly introducing discrimination in favour of their own nationals which violates Article 45[24]. With concern to the future, I would like to see more case law regarding this specific area of indirect discrimination in order to allow the courts some discretion to deal with situations similar to this.

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[1]Case C-281/98 Roman Angonese v Cassa di Riparmio di Bolzano SpA [2000] ECR I-4139

[2]Iris Goldner Lang, ‘ Languages as a Barrier to Free Movement of Persons in the European Union’ (2009) pg10

[3]Ibid

[4]Case C-281/98 Roman Angonese v Cassa di Riparmio di Bolzano SpA [2000] ECR I-4139

[5]Case (36/74) Walrave v Association Union Cycliste Internationale [1975] 3 CMLR 720

[6]Case C379/87 Groener v Minister for Education and City of Dublin Vocational Education Committee [1989] ECR 3967

[7]Case C-281/98 Roman Angonese v Cassa di Riparmio di Bolzano SpA [2000] ECR I-4139

[8]Paul Craig and Gráinne De Búrca, *EU Law: Text, Cases, and Materials* (5th edn, OUP Oxford 2011)

[9]Case C-281/98 Roman Angonese v Cassa di Riparmio di Bolzano SpA [2000] ECR I-4139, Opinion of AG Fennelly 8

[10]Case C-281/98 Roman Angonese v Cassa di Riparmio di Bolzano SpA [2000] ECR I-4139, Opinion of AG Fennelly 10-11

[11]Case C-281/98 Roman Angonese v Cassa di Riparmio di Bolzano SpA [2000] ECR I-4139, Opinion of AG Fennelly 12

[12]Case C-281/98 Roman Angonese v Cassa di Riparmio di Bolzano SpA [2000] ECR I-4139, Opinion of AG Fennelly 16-17

[13]Ibid 18

[14]Case C-281/98 Roman Angonese v, Cassa di Riparmio di Bolzano SpA [2000] ECR I-4139 9-10

[15]Ibid 10-11

[16]Ibid 19

[17]AG Fennelly (n 11)

[18]Case C-299/95 Friedrich Kremzow v Austria [1997] 3 CMLR 1289

[19]AG Fennelly (n 12)

[20]Angonese (n 15)

[21]AG Fennelly (n 13)

[22]Case C-281/98 Roman Angonese v, Cassa di Riparmio di Bolzano SpA [2000] ECR I-4139 14-15

[24]Paul Craig and Gráinne De Búrca, *EU Law: Text, Cases, and Materials* (6th edn, OUP Oxford 2015) 759