# Court of Justice of the European Communities

## While the Advocate-General Finds Eurojust's Language Rules for Job Applicants Partly Contrary to Union Law, the Court Dismisses Case for Lack of Standing. Decision of 15 March 2005 in Case C-160/03, *Kingdom of Spain* v. *Eurojust*

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As a result of the 2004 enlargement there are now twenty languages that are accorded official, and theoretically equal, status in the institutions of the European Union.[1] With the expansion of the Union's linguistic landscape some Union bodies, while allowing the use of more and more languages, have paradoxically limited the circumstances under which most of them may be used. To put it mildly, these efforts, as Advocate-General Poiares Maduro said in his opinion in Case C-160/03, *Kingdom of Spain* v. *Eurojust*, 2005 ECR I-2077, have been 'a matter of some controversy'.[2] This understatement came in a case which marked an opportunity for the European Court of Justice to revisit the legality of the Union's linguistic limitation efforts which it had first addressed in Case C-361/01, *Estate of Christina Kik* v. *Office for Harmonisation in the Internal Market*, 2003 ECR I-8283.[3] In that case, the Court had upheld the legitimacy of a language regime in the Community's trademark office that favoured the use of five Union languages, namely English, French, German, Spanish and Italian. The Court rejected a challenge by a Dutch trademark agent and held that there was no 'general principle of Community law that confers a right on every citizen to have a version of anything that might affect his interests drawn up in his language in all circumstances.' In order to promote efficiency and administrative economy, the Court ruled in *Kik*,

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[1] This is so provided in Regulation No. 1 of 15 Apr. 1958, [1958] *OJ* 017/385, as amended by the 2003 Act of Accession, Art. 58.

[2] The opinion of Advocate-General Maduro was delivered on 16 December 2004; the ECJ issued its opinion on 15 March 2005.

[3] The ECJ affirmed the opinion of the Court of First Instance issued in Case T-120/99, *Kik* v. *Office for Harmonisation in the Internal Market*, 2001 ECR II-2235.

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the trademark office's 'choice to limit the languages to those which are most widely known in the European Community is appropriate and proportionate.'

In *Eurojust*, language requirements for job candidates were under attack. In 2003 Eurojust, which had been established the previous year in order to improve the co-operation of member states in law enforcement matters, had published calls for job applications for a number of positions. Most of these positions included language requirements which generally favoured a knowledge of English and, to a lesser extent, of French. For example, positions of legal officer and data protection officer required 'an excellent knowledge of English and French', and an ability to work in other European Community languages was described as an 'asset'. For the position of accounting officer, there was a requirement of a 'thorough knowledge' of one Union language and a 'satisfactory knowledge of another', with an additional requirement that there be a 'satisfactory knowledge of English'. A secretarial position required 'a thorough knowledge of English and French', with knowledge of another language being considered as an 'asset'. A position for a librarian/archivist was the only one which did not include any express language requirements. In addition, there was a language requirement for the job application process which was independent of the language requirements for any particular position: all applicants were obligated to submit application forms, a CV, and a letter of motivation in English.

Spain, with the support of Finland, brought an action for annulment of the job announcements under Article 230 of the EC Treaty, contending, *inter alia*, that the language requirements failed to comply with the European Union's language rules and amounted to unlawful discrimination on the basis of nationality. Before its claims could be addressed, however, Spain needed to overcome a serious challenge to the admissibility of the action. Eurojust argued that Spain lacked standing to bring the action under Article 230, which provides the Court of Justice with power to review actions brought by a member state concerning 'the legality of acts adopted jointly by the European Parliament and the Council, of acts of the Council, of the Commission and of the [European Central Bank], other than recommendations and opinions, and of acts of the European Parliament intended to produce legal effects vis-à-vis third parties.' An action undertaken by Eurojust was none of these, however, and the Advocate-General ruled that admissibility could not be based on Article 230.

Nonetheless, Maduro was reluctant to accept what he viewed as such a 'simple solution' and, because he wished to avoid a result which would deprive 'a member state of an opportunity to contest a measure which might undermine a fundamental principle of Union law', he strained to find some basis to hold the case admissible. In fifteen tortured paragraphs of jurisdictional alchemy, the Advocate-General laboured to support the admissibility of the case, which he ultimately

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grounded in the shadows of Articles 34 and 35 of the EU Treaty. Even though he recognized that by their terms these articles appeared limited to the review of decisions and framework decisions adopted by the Council, he announced that jurisdiction should nonetheless be extended to Eurojust measures. He explained his expansionist view of jurisdiction as follows:

> If Eurojust measures do not expressly appear in Article 35 EU, that […] is because they emanate from a body which was not created until after the original version of that provision was drafted. It cannot therefore be inferred from that omission that its measures enjoy immunity.

Having dispensed with the standing problem, the Advocate-General turned to the merits of the case. Given the lengths that he went through to find some nail on which to hook the admissibility of the case, one might have thought that he was motivated by a felt need to modify the applicable law as set forth in *Kik*. However, Maduro essentially re-affirmed *Kik*, stating that respect for linguistic diversity, while a matter of 'fundamental importance', was not something that could 'be regarded as absolute'. He explained that

> It is necessary to accept restrictions in practice, in order to reconcile observance of that principle with the imperatives of institutional and administrative life. But those restrictions must be limited and justified. In any event, they cannot undermine the substance of the principle whereby the institutions must respect and use all the official languages of the Union.

Applying this standard to the case at hand, Maduro indicated that to the extent that knowledge of a body's working languages was necessary for internal communication (which is a matter separate from the situation in which knowledge of particular languages may be necessary in order to perform specific work duties), an organization that chose to have more than one working language could not require that an employee know more than one of them. '[T]o require knowledge of *any one* of those languages would appear sufficient', Maduro explained, and 'the *cumulative* requirement of knowledge of several languages cannot be justified by internal communication needs and can only be indicative of a wish to afford a privileged status to certain Union languages.' As a result, the requirement that certain positions be filled by people conversant in both English and French, to the degree that this was justified by reasons of internal communication needs, was 'clearly disproportionate'. With regard to language requirements that Eurojust sought to justify by reference to the nature of the job duties to be performed, the Advocate-General stated that the linguistic requirements must 'display a necessary and direct connection with the proposed duties'. There was, however, no

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evidence to indicate that this was not the case. Finally, Maduro examined the legality of the requirement that documents relating to job applications be submitted in English regardless of the underlying linguistic requirements for the job. For jobs which required knowledge of English, such a requirement was permissible, he concluded, as it could be viewed as an appropriate measure that allowed candidates to demonstrate that they had skills relevant to the posts to which they were applying. The English application requirement was invalid, on the other hand, as applied to the position of librarian/archivist, which had no particular linguistic requirements. The Advocate-General accordingly recommended that the Court annul the call for applications for the librarian/archivist post to the extent it called for the submission of materials in English, but otherwise he proposed that the Court dismiss the action.

The Court of Justice decided to dismiss the entire action. Embracing what Maduro had derided as the 'simple solution' of ruling the action inadmissible, it declined to entertain the Advocate-General's analysis of the legitimacy of Eurojust's linguistic requirements. The Court stated that none of the acts challenged by Spain were within the scope of Article 230 of the EC Treaty, and the Court rejected Madrid's attempts to pin jurisdiction on various other legal grounds. The action had been brought under Article 230, and it was not, the Court stated, the role of 'the Community judicature itself to choose the most appropriate legal basis' of the action. The Court did not comment on the Advocate-General's creative attempt to find an implicit grant of jurisdiction in Articles 34 and 35 of the EU Treaty, and the Court was dismissive of Spain's argument, which had won favour with the Advocate-General, that review in this case was appropriate because Union measures should, in a system based on the rule of law, be subject to judicial oversight. The acts complained of were not immune from judicial review, the Court pointed out; although Spain may lack standing to bring a challenge to Eurojust's language rules, job candidates for the positions at issue were free to do so:

> As regards the right to effective judicial protection in a community based on the rule of law which, in the view of the Kingdom of Spain, requires that all decisions of a body with legal personality subject to Community law be amenable to judicial review, it must be observed that the acts contested in this case are not exempt from judicial review. … Eurojust staff are to be subject to the rules and regulations applicable to officials and other servants of the European Communities. It follows that, in accordance with the consistent case-law, the main parties concerned, namely the candidates for the various positions in the contested calls for applications, had access to the Community Courts under the conditions laid down in … the Staff Regulations.

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Moreover, the Court indicated that there would even be an opportunity for a member state to interject itself into an action brought by a job candidate: 'In the event of such an action, Member States would be entitled to intervene in the proceedings in accordance with Article 40 of the Statute of the Court of Justice and could, where appropriate, … appeal against the judgment of the Court of First Instance.'[4]

The Court's disposition of the case indicates that *Eurojust*'s significance may lie more in its strict adherence to jurisdictional protocol than to its contribution to the contentious issue of language policy in the European Union. This certainly, however, will not be the last time that the Court is called on to address linguistic rights in the robustly polyglot Union.

[4] *Eurojust* mirrors the standing situation in Case C-263/02P, *Commission* v. *Jégo-Quéré & Cie SA*, 2004 ECR I-3425 and Case C-51/00, *Unión de Pequeños Agricultores* v. *Council*, 2002 ECR I-6677, in which the individuals who attacked Community rules did not have standing to bring their actions but member states would have been able to do so.

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