JUDGMENT OF THE COURT (First Chamber)

15 February 2007 *

In Case C-270/05,

REFERENCE for a preliminary ruling under Article 234 EC by the Arios Pagos (Greece), made by decision of 9 June 2005, received at the Court on 1 July 2005, in the proceedings

Athinaïki Chartopoiïa AE

v

L. Panagiotidis and Others,

third party:

Geniki Sinomospondia Ergaton Elladas (GSEE),

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, E. Juhász (Rapporteur), J.N. Cunha Rodrigues, K. Schiemann and E. Levits, Judges,

* Language of the case: Greek.

Advocate General: M. Poiares Maduro,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 26 October 2006,

after considering the observations submitted on behalf of:

— Athinaïki Chartopoïïa AE, by I.-D. Filiotis, K. Keramefs, M. Merola and C. Santacroce, dikigori,

— L. Panagiotidis and Others, by A. Vagias and E. Divanidou-Vraka, dikigori,

— Geniki Sinomospondia Ergaton Elladas (GSEE), by A. Kazakos, dikigoros,

— the Commission of the European Communities, by M. Patakia and J. Enegren, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of the concept of 'establishment' found in, inter alia, Article 1(1)(a) of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ 1998 L 225, p. 16).

2 The reference was made in the context of proceedings between employees who had been dismissed and their former employer Athinaïki Chartopoiïa AE ('the company') concerning the lawfulness of their collective redundancy which followed the termination of the activities of one of that company's production units by a decision of the company.

Legal framework

Community legislation

3 According to the first recital in the preamble to Directive 98/59, for reasons of clarity and rationality, that directive consolidated Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to

collective redundancies (OJ 1975 L 48, p. 29), as amended by Council Directive 92/56/EEC of 24 June 1992 (OJ 1992 L 245, p. 3). According to the second recital in the preamble thereto, Directive 98/59 states as an objective that 'greater protection should be afforded to workers in the event of collective redundancies while taking into account the need for balanced economic and social development within the Community'.

4 Article 1(1) of Directive 98/59 determines the directive's scope as follows:

'1. For the purposes of this Directive:

(a) "collective redundancies" means dismissals effected by an employer for one or more reasons not related to the individual workers concerned where, according to the choice of the Member States, the number of redundancies is:

(i) either, over a period of 30 days:

— at least 10 in establishments normally employing more than 20 and less than 100 workers,

— at least 10% of the number of workers in establishments normally employing at least 100 but less than 300 workers,

— at least 30 in establishments normally employing 300 workers or more,

(ii) or, over a period of 90 days, at least 20, whatever the number of workers normally employed in the establishments in question;

...'

5 Article 1(2) of Directive 98/59 lists the cases to which that directive does not apply. Under Directive 75/129, Article 1(2)(d) provided that that directive did not apply to 'workers affected by the termination of an establishment's activities where that is the result of a judicial decision'. Letter (d) was repealed by Directive 92/56 and was not reproduced in Directive 98/59.

6 Article 2(1), (2) and (3) of Directive 98/59 imposes certain obligations on an employer contemplating collective redundancies. First of all, the employer is required to enter into consultations with the workers' representatives which must, at least, cover ways and means of avoiding collective redundancies or reducing the number of workers affected, and mitigating the consequences. The employer must also notify them in writing of the reasons for the redundancies, the number and categories of workers to be made redundant, the number of workers normally employed, the period over which the redundancies are to be effected, the criteria the employer plans to use in the selection of workers to be made redundant, and the planned method for calculating any compensation.

7 Article 3(1) of Directive 98/59 provides that the employer is required to notify the competent public authority in writing of any projected collective redundancies and to provide it with all the information which must be made available to the workers. The second paragraph of that provision provides:

'However, Member States may provide that in the case of planned collective redundancies arising from termination of the establishment's activities as a result of a judicial decision, the employer shall be obliged to notify the competent public authority in writing only if the latter so requests.'

8 Article 4 of Directive 98/59 provides:

'1. Projected collective redundancies notified to the competent public authority shall take effect not earlier than 30 days after the notification referred to in Article 3(1) ...

...

2. The period provided for in paragraph 1 shall be used by the competent public authority to seek solutions to the problems raised by the projected collective redundancies.

3. Where the initial period provided for in paragraph 1 is shorter than 60 days, Member States may grant the competent public authority the power to extend the

initial period to 60 days following notification where the problems raised by the projected collective redundancies are not likely to be solved within the initial period.

Member States may grant the competent public authority wider powers of extension.

The employer must be informed of the extension and the grounds for it before expiry of the initial period provided for in paragraph 1.

4. Member States need not apply this Article to collective redundancies arising from termination of the establishment's activities where this is the result of a judicial decision.'

9 Lastly, Article 5 of Directive 98/59 provides that it 'shall not affect the right of Member States to apply or to introduce laws, regulations or administrative provisions which are more favourable to workers or to promote or to allow the application of collective agreements more favourable to workers'.

National legislation

10 Directive 75/129 had been transposed into Greek law by Law 1387/1983. The amendments introduced by Directive 92/56 and the consolidated version introduced by Directive 98/59 were transposed into Greek law when Law 1387/1983 was

amended by Laws 2736/1999 and 2874/2000 ('Law 1387/1983'). Under Article 3 of Law 1387/1983, the employer must supply the workers with all relevant information in writing on the collective redundancies contemplated, enter into consultations with workers' representatives, and notify and supply information to the competent public authority.

11 Article 1(1) of Law 1387/1983 provides:

'Collective redundancies are dismissals effected by establishments or operating units employing more than 20 workers, for reasons that do not relate to the individual workers dismissed, and which in the course of each calendar month exceed the limits laid down in the following paragraph.'

12 Article 5(2) to (4) of Law 1387/1983 provides that if there is an agreement between the workers and the employer within the statutory 20 days provided for negotiations between those parties, the collective redundancies are to be effected in accordance with the content of that agreement and are to take effect 10 days after the minutes recording the agreement are provided to the prefect or the Minister for Labour. If there is no agreement of the parties, the prefect or the Minister for Labour may, after examining the information in the file and assessing the information relating to the labour market, the establishment's situation and the national economic interest, extend the consultations for 20 further days or not give approval for all or some of the proposed redundancies. The employer may effect collective redundancies to the extent determined by the decision of the prefect or Minister for Labour.

13 Under Article 5(5) of that law:

'Paragraphs 2, 3 and 4 of this article shall not apply to collective redundancies arising from termination of an establishment's or operating unit's activities following a judicial decision.'

14 Lastly, Article 6(1) of Law 1387/1983 provides that collective redundancies effected in breach of the provisions of that law are invalid.

The main proceedings and the questions referred for a preliminary ruling

15 The order for reference states that the company has three separate production units in three different locations: a unit for the manufacture of writing paper, printing paper, mechanical pulp, chip-board and aluminium sulphate with a staff of 420 people; a second unit for the manufacture of soft kitchen paper, toilet paper, bags and so forth; and a third unit for the processing of soft paper.

16 Each of those production units has distinct equipment and a specialised workforce, and also a chief production officer who ensures that the work is carried out properly, is responsible for supervision of the entire operation of the unit's installations and ensures that technical questions are solved. The operation of each production unit is not affected by that of the others. Also, decisions concerning their operating

expenditure, the purchase of materials and the costing of products are taken, on the basis of information forwarded by the units in question, at the company's headquarters, where a joint accounts office is set up for salary payment, invoices and the drawing up of a single balance sheet.

17 On 18 July 2002, the board of the company decided to terminate the operation of the first production unit due to losses and to dismiss almost all of the workers of that unit. By letter of 22 July 2002, it invited the workers' representatives to enter into the statutory consultations and notified that invitation to the prefect and the competent Labour Inspectorate. However, it did not give the workers' representatives the balance sheets and all the company's general company information that showed the need to cease operation of the unit, but merely the loss-making results of that factory of the last three financial years, namely 1999 to 2001.

18 At that stage, since the consultations had not given rise to an agreement within the deadline, the Minister for Labour extended the consultations for 20 further days. The company did not attend those negotiations, however, and proceeded to give notice of termination of the employment contracts of indefinite duration, paying those workers the statutory compensation.

19 The workers' actions against the redundancies were successful at first instance. In the appeal brought by the company, the Efetio Thrakis (Thrace Court of Appeal) held, first, that the production unit in question which terminated its activities did not constitute, vis-à-vis the company, an independent unit and so did not fall within the exception in Article 5(5) of Law 1387/1983. Although, according to its wording, it concerns only cases where a termination of activities follows a judicial decision, that provision has in fact been interpreted by national courts as applying also where that termination is the result of a unilateral decision by the employer.

20 The Efetio Thrakis held next that:

— the appellant company had infringed its obligation under Article 3 of the abovementioned law concerning the informing of workers, and

— it had given notice of termination of the employment contracts during the extended consultation period, thereby infringing Article 5(3) of Law 1837/1983. Consequently, the notice of termination of the employment contracts was invalid under Article 6(1) of the law in question.

21 In the appeal on a point of law brought by the company, the Arios Pagos (Supreme Court of Cassation), considering that a question of interpretation of an act of a Community institution had been raised and that there was no judicial remedy against its decision under national law, decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Do the foregoing facts found by the Efetio Thrakis fall within the meaning of the Community term "establishment", for the purpose of applying the Council directives referred to in the grounds of this decision and Law 1387/1983 concerning "control of collective redundancies and other provisions"?'

On the question referred for a preliminary ruling

22 By its question, the national court refers to the judgment of the Efetio Thrakis, according to which the production unit at issue in the main proceedings was not independent from the company, and asks essentially whether such a production unit comes within the concept of 'establishment' for the purposes of the application of Directive 98/59.

23 According to the Court's case-law, the concept of 'establishment', which is not defined in that directive, is a term of Community law and cannot be defined by reference to the laws of the Member States (Case C-449/93 *Rockfon* [1995] ECR I-4291, paragraphs 23 and 25). It must, accordingly, be interpreted in an autonomous and uniform manner in the Community legal order.

24 The Court has also held that the terms used in the various language versions of Directive 98/59 to refer to the concept of 'establishment' are somewhat different and have different connotations, signifying, according to the version in question, establishment, undertaking, work centre, local unit or place of work (see *Rockfon*, paragraphs 26 and 27).

25 In the light of those considerations and the purpose of that directive which, as evidenced by the second recital in the preamble thereto, seeks inter alia to promote greater protection for workers in the event of collective redundancies, the Court has interpreted the concept of 'establishment' in Directive 98/59, in particular in Article 1(1)(a), as designating, depending on the circumstances, the unit to which the workers made redundant are assigned to carry out their duties (*Rockfon*, paragraphs 31 and 32, and case-law cited).

26 In so doing, the Court has defined the term 'establishment' very broadly, in order to limit as far as possible cases of collective redundancies which are not subject to Directive 98/59 because of the legal definition of that term at national level (see, inter alia, Joined Cases C-187/05 to C-190/05 *Agorastoudis and Others* [2006] ECR I-7775, paragraph 37). However, given the general nature of that definition, it cannot by itself be decisive for the appraisal of the specific circumstances of the case at issue in the main proceedings.

27 Thus, for the purposes of the application of Directive 98/59, an 'establishment', in the context of an undertaking, may consist of a distinct entity, having a certain degree of permanence and stability, which is assigned to perform one or more given tasks and which has a workforce, technical means and a certain organisational structure allowing for the accomplishment of those tasks.

28 Given that the objective pursued by Directive 98/59 concerns, in particular, the socio-economic effects which collective redundancies may have in a given local context and social environment, the entity in question need not have any legal autonomy, nor need it have economic, financial, administrative or technological autonomy, in order to be regarded as an 'establishment'.

29 It is, moreover, in this spirit that the Court has held that it is not essential, in order for there to be an 'establishment', for the unit in question to be endowed with a management which can independently effect collective redundancies (*Rockfon*, paragraph 34, and point 2 of the operative part). Nor must there be a geographical separation from the other units and facilities of the undertaking.

30 In the light of those considerations, the Court finds, first of all, that the fact that Greek Law 1387/1983 uses the terms 'establishment' and 'operating unit' interchangeably is not in itself contrary to Directive 98/59, provided that the interpretation given by the Court of the concept of 'establishment' is followed and the use of two terms cannot lead to the exclusion of categories of workers from the protection intended by that directive.

31 Next, regarding the nature of the production unit at issue in the main proceedings, the information in the case-file indicates that that unit is one of three separate production units held by the company; it employs 420 workers; it has distinct equipment and a specialised workforce; its operation is not affected by that of the other units; and it has a chief production officer who ensures that the work is carried out properly, is responsible for supervision of the entire operation of the unit's installations and ensures that technical questions are solved.

32 Those factors clearly give such a unit the air of an 'establishment' for the purposes of the application of Directive 98/59, in accordance with the considerations set out by the Court in paragraphs 27 to 29 of the present judgment, and bring the unit in question within the scope of this Community concept. The fact that decisions concerning the operating expenditure of each of those units, the purchase of materials and the costing of products are taken at the company's headquarters, where a joint accounts office is set up, is irrelevant in this regard.

33 In order to give to give an answer that will be of use to the national court, the Court notes further that, as evidenced by the case-file, the Efetio Thrakis held that since the production unit at issue in the main proceedings was not independent from the

company, it was not an 'establishment' and therefore did not come within the scope of the exception provided for in Article 5(5) of Law 1387/1983, which transposes into national law the derogation laid down in Article 4(4) of Directive 98/59.

34 In other words, according to that court's view of the matter, if that production unit were autonomous and constituted an 'establishment', the abovementioned derogation would apply because the termination of that unit's activities was solely of the employer's own volition.

35 That position is part of the same approach in the national case-law which was behind the judgment in *Agorastoudis and Others*, and has no foundation in Directive 98/59. It is therefore necessary to clarify on this point, as rightly pointed out by the Commission of the European Communities, that, even if the unit in question in the main proceedings were found to be autonomous and did constitute an 'establishment', the abovementioned derogation would not apply.

36 For the same reasons as set out in paragraphs 25 to 45 of *Agorastoudis and Others*, the derogation in question is applicable solely when the termination of the activities of an undertaking or an operating unit follows a judicial decision. In all other cases, and particularly when the termination of the establishment's activities is solely of the employer's volition, the employer has the obligation to pursue consultations with the workers during a supplementary period before the competent pubic authority.

37 Lastly, the Court notes that, in the context of proceedings before the Court, the issue of the compatibility of the intervention by the national public authorities, namely the prefect or the Minister for Labour, as provided for in Article 5(3) of Law 1387/1983, with Directive 98/59 and Article 43 EC has been raised with some insistence. That question was not, however, the subject of the present reference for a preliminary ruling.

38 In the light of the foregoing considerations, the answer to the question referred must be that Directive 98/59, in particular Article 1(1)(a), is to be interpreted as meaning that a production unit such as that at issue in the main proceedings comes within the concept of 'establishment' for the purposes of the application of that directive.

Costs

39 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, in particular Article 1(1)(a), is to be interpreted as meaning that a production unit such as that at issue in the main proceedings comes within the concept of 'establishment' for the purposes of the application of that directive.

[Signatures]