Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

25 July 2018 *

(Reference for a preliminary ruling — Social policy — Protection of employees in the event of employer's insolvency — Directive 2008/94/EC — Articles 3 and 4 — Employees' claims borne by guarantee institutions — Limitation on the liability of guarantee institutions — Exclusion of wage claims arising over three months prior to the entry in the commercial register of the judicial decision initiating insolvency proceedings)

In Case C-338/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria), made by decision of 31 May 2017, received at the Court on 7 June 2017, in the proceedings

Virginie Marie Gabriel Guigo

v

'Garantirani vzemania na rabotnitsite i sluzhitelite' Fund,

THE COURT (Seventh Chamber),

composed of A. Rosas, President of the Chamber, C. Toader and E. Jarašiūnas (Rapporteur), Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Ms Guigo, by H. Hristev, advokat,

– the Bulgarian Government, by L. Zaharieva and E. Petranova, acting as Agents,

– the European Commission, by M. Kellerbauer, Y. Marinova and P. Mihaylova, acting as Agents,

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

gives the following

* Language of the case: Bulgarian.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 151 and 153 TFEU, Article 20 of the Charter of Fundamental Rights of the European Union ('the Charter'), Articles 3, 4, 11 and 12 of Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (OJ 2008 L 283, p. 36), and the principles of procedural autonomy, equivalence, effectiveness and proportionality.

2 The request has been made in proceedings between Virginie Marie Gabrielle Guigo and the 'Garantirani vzemania na rabotnitsite i sluzhitelite' Fund (Employees' Guaranteed Entitlements Fund, Bulgaria) of the Natsionalen osiguritelen institut (National Insurance Institute, Bulgaria) ('the Guarantee Fund'), concerning the refusal to guarantee the payment of outstanding wage claims.

Legal context

EU law

3 Directive 2008/94 codified and repealed Council Directive 80/987/EEC of 20 October 1980 on the protection of employees in the event of the insolvency of their employer (OJ 1980 L 283, p. 23), as last amended by Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 (OJ 2002 L 270, p. 10).

4 Article 1(1) of Directive 2008/94 is worded as follows:

'This Directive shall apply to employees' claims arising from contracts of employment or employment relationships and existing against employers who are in a state of insolvency within the meaning of Article 2(1).'

5 Article 3 of that directive provides:

'Member States shall take the measures necessary to ensure that guarantee institutions guarantee, subject to Article 4, payment of employees' outstanding claims resulting from contracts of employment or employment relationships, including, where provided for by national law, severance pay on termination of employment relationships.

The claims taken over by the guarantee institution shall be the outstanding pay claims relating to a period prior to and/or, as applicable, after a given date determined by the Member States.'

6 Article 4 of that directive is worded as follows:

'(1) Member States shall have the option to limit the liability of guarantee institutions referred to in Article 3.

(2) If Member States exercise the option referred to in paragraph 1, they shall specify the length of the period for which outstanding claims are to be met by the guarantee institution. However, this may not be shorter than a period covering the remuneration of the last three months of the employment relationship prior to and/or after the date referred to in the second paragraph of Article 3.

Member States may include this minimum period of three months in a reference period with a duration of not less than six months.

Member States having a reference period of not less than 18 months may limit the period for which outstanding claims are met by the guarantee institution to eight weeks. In this case, those periods which are most favourable to the employee shall be used for the calculation of the minimum period.

(3) Member States may set ceilings on the payments made by the guarantee institution. These ceilings must not fall below a level which is socially compatible with the social objective of this Directive.

If Member States exercise this option, they shall inform the Commission of the methods used to set the ceiling.'

7 Article 12 of the directive provides:

'This Directive shall not affect the option of Member States:

(a) to take the measures necessary to avoid abuses;

(b) to refuse or reduce the liability referred to in the first paragraph of Article 3 or the guarantee obligation referred to in Article 7 if it appears that fulfilment of the obligation is unjustifiable because of the existence of special links between the employee and the employer and of common interests resulting in collusion between them;

(c) to refuse or reduce the liability referred to in the first paragraph of Article 3 or the guarantee obligation referred to in Article 7 in cases where the employee, on his or her own or together with his or her close relatives, was the owner of an essential part of the employer's undertaking or business and had a considerable influence on its activities.'

Bulgarian law

8 Article 4(1) of the Zakon za garantiranite vzemania na rabotnitsite i sluzhitelite pri nesastoyatelnost na rabotodatelia (Law on employees' guaranteed claims in the event of the employer's insolvency; 'Law on employees' guaranteed claims') provides:

'Employees who have had or continue to have an employment relationship with the employer referred to in Article 2 are eligible for guaranteed claims within the meaning of the present law, whatever the duration and working hours of that employment relationship were or are, provided that that relationship:

1. has not ended as at the date of the entry in the commercial register of the judicial decision referred to in Article 6;

2. has ended in the last three months preceding the entry in the commercial register of the judicial decision referred to in Article 6.'

9 Article 6 of that law provides:

'The right of employees to guaranteed claims, referred to in Article 4(1), shall arise on the date of the entry of the judicial decision in the commercial register declaring that:

(1) the insolvency proceedings are opened;

(2) the insolvency proceedings are opened and cessation of payments is simultaneously declared;

(3) the insolvency proceedings are opened, the termination of the undertaking's activity is ordered, the debtor is declared to be insolvent and the proceedings are discontinued because the assets do not suffice to cover the costs thereof.'

10 Article 25 of that law is worded as follows:

'Guaranteed claims within the meaning of the present Law shall be granted on the basis of a declaration form completed in accordance with the template provided for that purpose, sent by the employee to the local branch of the National Insurance Institute situated closest to the employer's principal place of business no later than two months from the date of the entry in the commercial register of the judicial decision referred to in Article 6, or from the date on which the employees are informed by the Bulgarian employer that insolvency proceedings have been initiated in accordance with the legislation of another State.'

11 Article 358 of the Kodeks na truda (Employment Code) provides:

'(1) Actions concerning labour disputes shall be brought within the following periods:

…

3. within three years for all other labour disputes.

(2) The periods referred to in the preceding paragraph shall run:

…

2. for all other actions, as from the date on which the entitlement falls due or the day on which it becomes enforceable. With regard to debts of money, the due date is assumed to be the date on which the payment of the claim would have been due to be made as a matter of course.

…'

The dispute in the main proceedings and the questions referred for a preliminary ruling

12 From 29 June 2007 to 14 May 2012, Ms Guigo worked for Evrosilex OOD, a company established in Varna (Bulgaria).

13 By judicial decision of 26 June 2013, the Rayonen sad Varna (Varna District Court, Bulgaria) ordered Evrosilex to pay Ms Guigo certain claims corresponding to the net remuneration in respect of paid annual leave taken in March, April and May 2012, remuneration of work for May 2012, and a settlement on account of termination of contract without notice, together with statutory interest on each claim.

14 By judicial decision of 18 December 2013 of the Okrazhen sad Varna (Varna Regional Court, Bulgaria), insolvency proceedings were initiated in respect of Evrosilex and the company was declared insolvent. On the same date, that decision was entered on the commercial register.

15 On 3 August 2016, Ms Guigo applied to the Guarantee Fund for payment of the claims corresponding to the remunerations which remained unpaid by Evrosilex. That application was based on the Law on employees' guaranteed claims, the judicial decision of the Rayonen sad Varna (Varna District Court) of 26 June 2013, and the writ of execution issued on the basis of that judicial decision. Since the Guarantee Fund failed to respond within the statutory period, Ms Guigo contested that implicit refusal before the Administrativen sad Varna (Varna Administrative Court, Bulgaria).

16 By decision of 13 September 2016, the Guarantee Fund ultimately refused Ms Guigo's application expressly, on the basis of Article 4(1)(2) and Article 25 of the Law on employees' guaranteed claims. Ms Guigo brought an action against that decision before the Administrativen sad Varna (Varna Administrative Court).

17 By judicial decision of 7 December 2016, that court dismissed both actions brought by Ms Guigo, holding that (i) the conditions concerning the termination of the contract of employment, laid down in Article 4(1) of the Law on employees' guaranteed claims, had not been met; and (ii) it was apparent from the judgment of 18 April 2013, *Mustafa* (C-247/12, EU:C:2013:256), that, under EU law, Member States can make provision for a period of three months, such as that at issue in the main proceedings, without unduly restricting the scope of Directive 2008/94.

18 Ms Guigo brought an appeal on a point of law against that judicial decision before the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria), the referring court.

19 That court notes that the dispute in the main proceedings raises the question whether, in circumstances such as those in the main proceedings, Article 4(1) of the Law on employees' guaranteed claims negates the full effect of Articles 151 and 153 TFEU, together with Articles 3 and 4 of Directive 2008/94, inasmuch as that national provision could be considered to constitute an obstacle to an employee entitled to guaranteed claims being able to benefit from a minimum level of protection.

20 It raises the question, more specifically, whether EU law allows the adoption of a provision, such as Article 4(1) of the Law on employees' guaranteed claims which, where the employer is declared insolvent, excludes from the entitlement to minimum protection of guaranteed claims those arising from an employment relationship terminated, automatically and absolutely, more than three months previously. The referring court points out that Directive 2008/94 makes no provision for the option of restricting the category of persons who have standing as employees and outstanding wage claims against the insolvent employer, with the exception of the specific category of persons excluded from protection by virtue of the presumption under Article 12 of that directive.

21 Furthermore, the referring court queries whether the period of two months in which applications for payment of guaranteed claims may be made, provided for by Article 25 of the Law on employees' guaranteed claims, and which begins to run from the date of entry in the commercial register of the judicial decision initiating insolvency proceedings, ensures a sufficient level of protection for employees, and whether that period excessively restricts the exercise of the rights which those employees derive from Directive 2008/94. The referring court states, in that regard, that the Employment Code provides for a period of three years in which an action for payment of wage claims may be brought, a period which runs from the date on which that debt ought to have been discharged by the employer; and that, although those two national laws govern situations that are different in nature, they nevertheless pursue a common objective, namely the protection of employees' wage claims.

22 The referring court is unsure, moreover, as to the compatibility of Article 25 of the Law on employees' guaranteed claims with Articles 3 and 4 of Directive 2008/94 and the principles of proportionality and effectiveness, on account of the fact that that provision is automatically applicable without any possibility of an individual assessment of the relevant factors.

23 Lastly, the referring court states that it entertains doubts as to the compatibility with Article 20 of the Charter of the difference in treatment of employees who are entitled to the protection of their outstanding claims, depending on whether Article 358(1)(3) of the Employment Code or Article 4(1) of the Law on employees' guaranteed claims applies, and depending on whether or not the employer is solvent.

24 In those circumstances, the Varhoven administrativen sad (Supreme Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

(1) Are Articles 151 and 153 TFEU and Articles 3, 4, 11 and 12 of Directive [2008/94] to be interpreted as permitting a national provision such as Article 4(1) of the [Law on employees' guaranteed claims], under which persons whose employment was terminated prior to the three-month period provided for before registration of the decision initiating insolvency proceedings in respect of the employer are excluded from the protection of outstanding wage claims?

(2) If the first question is answered affirmatively, is the procedural autonomy of the Member States, in the light of the principles of equivalence, effectiveness and proportionality in the context of the social objective underpinning Articles 151 and 153 TFEU and Directive 2008/94, to be construed as permitting a national measure, such as Article 25 of the [Law on employees' guaranteed claims], which provides that, on expiry of a period of two months from the date of registration of the judicial decision initiating insolvency proceedings, the rights to assert and obtain satisfaction of guaranteed claims are extinguished if the domestic law of the Member State contains a provision, such as Article 358(1)(3) of the Employment Code, under which the period for asserting outstanding wage claims is three years from the date on which the claim ought to have been met and payments made after expiry of this period are not deemed to have been made without a legal basis?

(3) Is Article 20 of the [Charter] to be interpreted as permitting such a distinction to be made, on the one hand, between employees with outstanding claims whose employment was terminated before the three-month period before registration of the judicial decision initiating insolvency proceedings in respect of the employer and employees whose employment was terminated during the three-month period laid down and, on the other hand, between those employees and employees who, under Article 358(1)(3) of the Employment Code, are entitled on the termination of their employment to protection of their outstanding claims during a period of three years commencing at the time when the claim ought to have been met?

(4) Is Article 4, read with Article 3, of Directive 2008/94 and with the principle of proportionality, to be interpreted as permitting a provision, such as Article 25 of the [Law on employees' guaranteed claims], under which the rights to assert and to obtain satisfaction of guaranteed claims are automatically extinguished, without any possibility of an individual assessment of the relevant factors, on expiry of a two-month period from the date of registration of the judicial decision initiating insolvency proceedings?'

Consideration of the questions referred

The first question

25 As a preliminary point, it should be noted that, inasmuch as Directive 2008/94 is based on Article 137(2) EC, now Article 153 TFEU, and was adopted for the purpose of achieving the objectives referred to in Article 151 TFEU, the interpretation of the provisions of that directive alone is necessary in order to answer the first question.

26 Thus, the Court considers that, by its first question, the referring court is asking, in essence, whether Directive 2008/94 must be interpreted as precluding national legislation, such as Article 4(1) of the Law on employees' guaranteed claims, which does not guarantee the wage claims of employees whose employment relationship ended more than three months prior to the entry in the commercial register the judicial decision initiating insolvency proceedings in respect of their employer.

27 Pursuant to Article 1(1) of Directive 2008/94, the latter is to apply to employees' claims arising from contracts of employment or employment relationships and existing against employers who are in a state of insolvency.

28 According to the Court's well-established case-law, the social objective of that directive is to guarantee employees a minimum of protection at EU level in the event of the employer's insolvency through payment of outstanding claims resulting from contracts of employment or employment relationships and relating to pay for a specific period (judgments of 28 November 2013, *Gomes Viana Novo and Others*, C-309/12, EU:C:2013:774, paragraph 20, and of 2 March 2017, *Eschenbrenner*, C-496/15, EU:C:2017:152, paragraph 52 and the case-law cited).

29 It is in the light of that objective that Article 3 of the directive requires Member States to take the measures necessary to ensure that national guarantee institutions guarantee payment of employees' outstanding claims.

30 However, as the Court has already noted, Directive 2008/94 confers on the Member States the power to limit the payment obligation by fixing a reference period or a guarantee period and/or setting ceilings on payments (see, by analogy with Directive 80/987, judgment of 28 November 2013, *Gomes Viana Novo and Others*, C-309/12, EU:C:2013:774, paragraph 22, and order of 10 April 2014, *Macedo Maia and Others*, C-511/12, not published, EU:C:2014:268, paragraph 21).

31 According to the case-law of the Court, the provisions of Directive 2008/94 concerning the power available to Member States to limit their guarantee demonstrate that the system established by that directive takes account of the financial capacity of those Member States and seeks to preserve the financial stability of their guarantee institutions (see, by analogy, judgment of 28 November 2013, *Gomes Viana Novo and Others*, C-309/12, EU:C:2013:774, paragraph 29, and order of 10 April 2014, *Macedo Maia and Others*, C-511/12, not published, EU:C:2014:268, paragraph 21).

32 Thus, on the one hand, the second paragraph of Article 3 of Directive 2008/94 provides that the claims taken over by the guarantee institution are to be the outstanding pay claims relating to a period prior to and/or, as applicable, after a given date determined by the Member States.

33 On the other hand, under Article 4(1) of Directive 2008/94, the Member States are to have the option to limit the liability of the guarantee institutions referred to in Article 3. According to Article 4(2) of the same directive, if Member States exercise that option, they are to specify the length of the period for which outstanding claims are to be met by the guarantee institution, which may not be shorter than a period covering the remuneration of the last three months of the employment relationship prior to and/or after the date referred to in the second paragraph of Article 3. Those provisions also give Member States the option of including that minimum period of three months in reference period which may not be shorter than six months, and of providing for a minimum guarantee limited to eight weeks, provided that that eight-week period is within a longer reference period of at least 18 months (see, by analogy, judgment of 28 November 2013, *Gomes Viana Novo and Others*, C-309/12, EU:C:2013:774, paragraph 26).

34 It should be noted that the cases in which it is permitted to limit the payment obligation of the guarantee institutions, as laid down in Article 4 of Directive 2008/94, must be interpreted strictly (see, by analogy, judgments of 17 November 2011, *van Ardennen*, C-435/10, EU:C:2011:751, paragraph 34, and of 28 November 2013, *Gomes Viana Novo and Others*, C-309/12, EU:C:2013:774, paragraph 31).

However, such a restrictive interpretation cannot deprive of its effectiveness the option expressly conferred on Member States to limit that payment obligation (see, to that effect, judgment of 28 November 2013, *Gomes Viana Novo and Others*, C-309/12, EU:C:2013:774, paragraph 32).

35 In the present case, in accordance with the second paragraph of Article 3 of Directive 2008/94 that Article 6 of the Law on employees' guaranteed claims fixed as the reference date the date of entry in the commercial register of the judicial decision initiating insolvency proceedings. Furthermore, it is not apparent from the file available to the Court that the Republic of Bulgaria has exercised the option provided for in the second and third subparagraphs of Article 4(2) of that directive to fix a reference period, for the purposes of that provision.

36 Under Article 4(1) and the first subparagraph of Article 4(2) of the same directive, the Member States have the option to limit the liability of the guarantee institutions, where the employment relationship ended prior to that reference date, by covering only employees whose employment relationship ended in the three months preceding that date, as provided for under Article 4(1) of the Law on employees' guaranteed claims. The exclusion of employees whose employment relationship ended prior to that period does not infringe the minimum protection provided for in the first subparagraph of Article 4(2) of Directive 2008/94, since those employees do not have, in connection to the insolvent employer, any outstanding claims resulting from their employment contract or employment relationship arising over the course of the three months preceding that reference date.

37 In the light of the foregoing, the answer to the first question is that Directive 2008/94 must be interpreted as not precluding national legislation, such as Article 4(1) of the Law on employees' guaranteed claims, which does not guarantee the wage claims of employees whose employment relationship ended more than three months prior to the entry in the commercial register of the judicial decision initiating insolvency proceedings in respect of their employer.

The second, third and fourth questions

38 Having regard to the answer given to the first question, there is no need to reply to the second, third and fourth questions.

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 (Seventh Chamber) hereby rules:

Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer must be interpreted as not precluding national legislation, such as Article 4(1) of the Zakon za garantiranite vzemania na rabotnitsite i sluzhitelite pri nesastoyatelnost na rabotodatelia (Law on employees' guaranteed claims in the event of the employer's insolvency), which does not guarantee the wage claims of employees whose employment relationship ended more than three months prior to the entry in the commercial register of the judicial decision initiating insolvency proceedings in respect of their employer.

[Signatures]