Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

25 February 2016*

(Reference for a preliminary ruling — Directive 80/987/EEC — Approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer — Scope — Outstanding wage claims of seamen working on board a vessel flying the flag of a non-member country — Employer whose registered office is located in the non-member country — Employment contract subject to the law of the non-member country — Employer declared insolvent in a Member State in which its actual head office is located — Article 1(2) — Annex, Section II, A — National legislation providing a guarantee in respect of the outstanding wage claims of seaman only if they are abandoned abroad — Level of protection not equivalent to that provided by Directive 80/987)

In Case C-292/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Simvoulio tis Epikratias (Council of State, Greece), made by decision of 5 May 2014, received at the Court on 13 June 2014, in the proceedings

Elliniko Dimosio

v

Stefanos Stroumpoulis,

Nikolaos Koumpanos,

Panagiotis Renieris,

Charalampos Renieris,

Ioannis Zacharias,

Dimitrios Lazarou,

Apostolos Chatzisotiriou,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Third Chamber, acting as President of the Fourth Chamber, J. Malenovský, M. Safjan, A. Prechal (Rapporteur) and K. Jürimäe, Judges,

Advocate General: P. Cruz Villalón,

Registrar: A. Calot Escobar,

* Language of the case: Greek.

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Greek Government, by X. Basakou, I. Kotsoni and K. Georgiadis, acting as Agents,

— the Italian Government, by G. Palmieri, acting as Agent, and B. Tidore, avvocato dello Stato,

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

after hearing the Opinion of the Advocate General at the sitting on 24 September 2015,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer (OJ 1980 L 283, p. 23).

2 The request has been made in proceedings between the Elliniko Dimosio (Greek State) and Mr Stroumpoulis, Mr Koumpanos, Mr P. Renieris, Mr C. Renieris, Mr Zacharias, Mr Lazarou and Mr Chatzisotiriou concerning the loss they claim to have suffered as a result of the failure to transpose Directive 80/987 correctly into national law.

Legal context

The UNCLOS

3 The United Nations Convention on the Law of the Sea, which was signed in Montego Bay on 10 December 1982 and entered into force on 16 November 1994 ('UNCLOS'), was ratified by the Republic of Malta and the Hellenic Republic on 20 May 1993 and 21 July 1995, respectively, and approved on behalf of the European Community by Council Decision 98/392/EC of 23 March 1998 concerning the conclusion by the European Community of the United Nations Convention of 10 December 1982 on the Law of the Sea and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof (OJ 1998 L 179, p. 1).

4 Article 91(1) UNCLOS states as follows:

'Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.'

5 Under the heading 'Status of ships, Article 92 UNCLOS provides, in paragraph 1 thereof, as follows:

'Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas. …'

6 Article 94 UNCLOS, headed ‘Duties of the flag State’, states as follows:

‘1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

2. In particular every State shall:

…

(b) assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.

…’

The Rome Convention

7 Article 3(1) of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations (OJ 1980 L 226, p. 1) (‘the Rome Convention’) is worded as follows:

‘A contract shall be governed by the law chosen by the parties. …’

8 Article 6 of the Rome Convention provides as follows:

‘1. Notwithstanding the provisions of Article 3, in a contract of employment a choice of law made by the parties shall not have the result of depriving the employee of the protection afforded to him by the mandatory rules of the law which would be applicable under paragraph 2 in the absence of choice.

2. Notwithstanding the provisions of Article 4, a contract of employment shall, in the absence of choice in accordance with Article 3, be governed:

(a) by the law of the country in which the employee habitually carries out his work in performance of his contract, even if he is temporarily employed in another country; or

(b) if the employee does not habitually carry out his work in any one country, by the law of the country in which the place of business through which he was engaged is situated,

unless it appears from the circumstances as a whole that the contract is more closely connected with another country, in which case the contract shall be governed by the law of that country.’

9 Under the heading ‘Scope of the applicable law’, Article 10 of the Rome Convention provides as follows:

‘The law applicable to a contract by virtue of Articles 3 to 6 and 12 of this Convention shall govern in particular:

(a) interpretation;

(b) performance;

(c) within the limits of the powers conferred on the court by its procedural law, the consequences of breach, including the assessment of damages in so far as it is governed by rules of law;

(d) the various ways of extinguishing obligations, and prescription and limitation of actions;

(e) the consequences of nullity of the contract.'

Directive 80/987

10 Bearing in mind the material time of the facts in the main proceedings, it is appropriate, as the referring court was correct to point out, to refer to the version of Directive 80/987 in force prior to the amendments brought about by Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 (OJ 2002 L 270, p. 1). In the meantime, Directive 80/987 has been repealed and replaced by 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).

11 The first to fourth recitals of Directive 80/987 were worded as follows:

'Whereas it is necessary to provide for the protection of employees in the event of the insolvency of their employer, in particular in order to guarantee payment of their outstanding claims, while taking account of the need for balanced economic and social development in the Community;

Whereas differences still remain between the Member States as regards the extent of the protection of employees in this respect; whereas efforts should be directed towards reducing these differences, which can have a direct effect on the functioning of the common market;

Whereas the approximation of laws in this field should, therefore, be promoted while the improvement within the meaning of Article 117 of the Treaty is maintained;

Whereas as a result of the geographical situation and the present job structures in that area, the labour market in Greenland is fundamentally different from that of the other areas of the Community'.

12 Article 1 of Directive 80/987 provided as follows:

'1. 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).

2. Member States may, by way of exception, exclude claims by certain categories of employee from the scope of this Directive, by virtue of the special nature of the employee's contract of employment or employment relationship or of the existence of other forms of guarantee offering the employee protection equivalent to that resulting from this Directive.

The categories of employee referred to in the first subparagraph are listed in the Annex.

3. This Directive shall not apply to Greenland. This exception shall be re-examined in the event of any development in the job structures in that region.'

13 The list in Section II of the Annex to Directive 80/987 referred to 'Employees covered by other forms of guarantee'. With regard to the Hellenic Republic, the list included 'the crews of sea-going vessels'.

14 Article 2 of Directive 8/0987 provided as follows:

‘1. For the purposes of this Directive, an employer shall be deemed to be in a state of insolvency:

(a) where a request has been made for the opening of proceedings involving the employer’s assets, as provided for under the laws, regulations and administrative provisions of the Member State concerned, to satisfy collectively the claims of creditors and which make it possible to take into consideration the claims referred to in Article 1(1),

and

(b) where the authority which is competent pursuant to the said laws, regulations and administrative provisions has:

— either decided to open the proceedings,

— or established that the employer’s undertaking or business has been definitively closed down and that the available assets are insufficient to warrant the opening of the proceedings.

2. This Directive is without prejudice to national law as regards the definition of the terms “employee”, “employer”, “pay”, ...’

15 Article 3(1) of Directive 80/987 stated that ‘Member States shall take the measures necessary to ensure that guarantee institutions guarantee … payment of employees’ outstanding claims resulting from contracts of employment or employment relationships and relating to pay for the period prior to a given date’.

16 Article 5 of Directive 80/987 provided as follows:

‘Member States shall lay down detailed rules for the organisation, financing and operation of the guarantee institutions, complying with the following principles in particular:

…

(b) employers shall contribute to financing, unless it is fully covered by the public authorities;

(c) the institutions’ liabilities shall not depend on whether or not obligations to contribute to financing have been fulfilled.’

Greek law

17 Law 1836/1989 and Presidential Decree 1/1990 (FEK A’ 1) implementing that law were intended to transpose Directive 80/987 into national law.

18 Article 29 of Law 1220/1981 supplementing and amending the legislation relating to the Piraeus port authority (FEK A' 296), provides as follows:

'1. In the event of abandonment abroad of Greek seamen employed on vessels flying the Greek flag or on foreign vessels which had entered into an agreement with the seaman's insurance fund ("the Naftiko Apomachiko Tameio"), if the owner of the vessel fails to comply with the provisions applicable to remuneration and meals:

(a) the seamen's insurance fund shall pay from its "Sickness and Unemployment Fund" a sum corresponding to up to three months' remuneration in respect of outstanding basic pay and benefits, as defined in the relevant collective agreements;

(b) the beneficiaries shall be repatriated with the assistance of the Seamen's Home in accordance with the provisions applicable and will receive basic travel expenses.

…

2. The procedure set out in paragraph 1 shall not be mandatory for any seaman who may prefer to continue with his contract; however, if he has been in receipt of repatriation funds or has accepted the travel ticket offered, his seaman's employment contract shall be terminated automatically "on the ground that the seaman has been abandoned abroad by the owner of the vessel" …

…

5. The payment of the benefit referred to in paragraph 1 shall have the effect of extinguishing the relevant claims arising under the employment relationship; any remaining balance due shall be paid to the beneficiaries by their employer or by those who share responsibility for the beneficiary with the employer.

…'

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

19 On 14 July 1994, the defendants in the main proceedings, who are Greek seamen living in Greece, concluded contracts in Piraeus (Greece) with Panagia Malta Ltd ('Panagia Malta'), a company with its registered office in Valetta (Malta), under which they were engaged to work on board a cruise ship flying the Maltese flag that was owned by that company. Those contracts contained a clause to the effect that the contracts were governed by Maltese law.

20 That ship had been detained in the port of Piraeus as a result of an attachment order since September 1992 and was to be chartered during the summer of 1994. As they did not receive their pay in the period following their engagement, during which they remained on board the ship pending the charter, which did not ultimately materialise, the defendants in the main proceedings terminated their contracts on 15 December 1994.

21 By decision 1636/1195, the Monomeles Protodikio Peireos (Court of First Instance (single judge), Piraeus) ordered Panagia Malta to pay to the defendants in the main proceedings the sums, plus interest, corresponding to their wages, expenses in respect of meals on board the ship, holiday pay and compensation on termination of employment.

22 Following further attachment orders, the vessel in question was sold at auction on 7 June 1995. During that year, Panagia Malta was declared insolvent by the Polimeles Protodikio Peireos (Court of First Instance, Piraeus). Although they submitted their claims, the defendants in the main proceedings were unable, due to lack of realisable assets, to receive any payment in connection with the insolvency.

23 The defendants then applied to the Employment Agency (Organismos Apascholisis Ergatikou Dynamikou) for the protection available to employees in the event of their employer's insolvency. They were refused that protection on the ground that, as seamen covered by other forms of guarantee, they fell outside the scope of Directive 80/987 and also that of Presidential Decree 1/1990.

24 On 11 October 1999, the defendants in the main proceedings applied to the Diikitiko Protodikio Athinon (Administrative Court of First Instance, Athens) with a view to establishing the liability of the Greek State as a result of its alleged failure to provide the crew of sea-going vessels with access to a guarantee institution, as required under Directive 80/987 or, in the absence thereof, with equivalent protection to that afforded by the directive.

25 As that court dismissed their application, the defendants in the main proceedings appealed against that decision. By judgment 1063/2005, the Diikitiko Efetio Athinon (Administrative Appeal Court, Athens) set aside that decision, finding, first, that Directive 80/987 was applicable to the case, as Panagia Malta had been operating in Greece, where its actual head office was located, and that the vessel in question had been flying a flag of convenience. Second, the appeal court considered that, when Directive 80/987 was transposed into national law, the Greek State had erred by failing to provide employees such as the defendants in the main proceedings with the protection afforded by the directive. In that regard, that court took the view, in particular, that, contrary to what was required under Article 1(2) of the directive, Article 29 of Law 1220/1981 did not provide the persons concerned with protection equivalent to that afforded by the directive.

26 The Greek State lodged an appeal in cassation before the Simvoulio tis Epikratias (Council of State).

27 In the view of the referring court, that appeal raises questions requiring interpretation of EU law. It refers in that connection to, inter alia, Articles 91, 92 and 94 UNCLOS and the international custom reflected in those provisions, and to the judgment in *Poulsen and Diva Navigation* (C-286/90, EU:C:1992:453), in which the Court found, inter alia, that under international law a vessel in principle has only one nationality, that of the State in which it is registered, so that a Member State cannot treat a vessel which is already registered in a non-member country as a vessel flying the flag of that Member State in reliance on the fact that the vessel has a genuine link with that Member State.

28 It is on that basis that the Simvoulio tis Epikratias (Council of State) decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Are the provisions of Directive [80/987] to be interpreted as meaning that seamen of a Member State who work as crew members on a vessel flying the flag of a country which is not a member of the European Union are subject, as regards their outstanding claims against the company that owned the vessel — which had its registered office in the non-member country but its actual head office in the Member State concerned, and was declared insolvent by a court of that Member State in accordance with its law, on the specific basis that that was where its actual head office was — to the protective provisions of that directive, in view of the purpose of the directive and irrespective of whether the relevant employment contracts were governed by the law of the non-member country, given that the Member State is unable to claim a contribution from the owner of the foreign vessel towards the financing of the guarantee institution?

(2) Are the provisions of Directive [80/987] to be interpreted as meaning that "equivalent protection" includes payment, pursuant to Article 29 of Law 1220/1981, by the Seamen's Insurance Fund of up to three months' wages, according to the rate of basic pay and benefits set out in the relevant

collective agreements, to Greek seamen employed as such on board vessels flying the Greek flag or foreign vessels which have entered into an agreement with that fund, in the circumstances referred to in that article, namely only if they are abandoned in a foreign country?'

Consideration of the questions referred

Question 1

29 By its first question, the referring court seeks to ascertain, in essence, whether Directive 80/987 is to be interpreted as meaning that, subject to the possible application of Article 1(2) of the directive, seamen living in a Member State who have been engaged in that State by a company that has its registered office in a non-member country but its actual head office in that Member State, to work as employees on board a cruise ship that is owned by that company and flies the flag of the non-member country, under an employment contract designating the law of that non-member country as the law applicable, must be eligible, after the company has been declared insolvent by a court of the Member State concerned in accordance with its law, for the protection afforded by the directive as regards their outstanding wage claims against the company.

30 It should be noted that it is settled case-law that Directive 80/987 has a social objective, which 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 (see, inter alia, judgments in *Maso and Others*, C-373/95, EU:C:1997:353, paragraph 56; *Walcher*, C-201/01, EU:C:2003:450, paragraph 38; and *Tümer*, C-311/13, EU:C:2014:2337, paragraph 42). In that context, the Court has on many an occasion observed that claims for salary are, by their very nature, of great importance to the individual concerned (see, inter alia, judgment in *Visciano*, C-69/08, EU:C:2009:468, paragraph 44 and the case-law cited).

31 In that connection, Directive 80/987 provides in particular for specific guarantees of payment of such unpaid claims (see judgment in *Francovich and Others*, C-6/90 and C-9/90, EU:C:1991:428, paragraph 3).

32 With regard to the identity of the persons entitled to such guarantees, it is to be noted that, according to Article 1(1) thereof, Directive 80/987 applies 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) of the directive. Article 2(2) of the directive refers to national law for the definition of the concepts of 'employee' and 'employer'. Finally, Article 1(2) provides that the Member States may, by way of exception and under certain conditions, exclude claims by certain categories of employees listed in the annex to the directive (judgment in *Francovich and Others*, C-6/90 and C-9/90, EU:C:1991:428, paragraph 13).

33 As the Court has held, it follows from those provisions that a person falls within the scope of Directive 80/987, first, if he is an employed person under national law and is not excluded on any of the grounds set out in Article 1(2) of the directive and, second, if the person's employer is in a state of insolvency within the meaning of Article 2 of the directive (see, to that effect, judgment in *Francovich and Others*, C-6/90 and C-9/90, EU:C:1991:428, paragraph 14).

34 With regard to the latter condition, it is apparent from Article 2(1) of Directive 80/987 that such a 'state of insolvency' requires, first, that the laws, regulations and administrative provisions of the Member State concerned establish a procedure to satisfy collectively the claims of creditors, second, that it is possible under that procedure to take into consideration employees' claims arising from contracts of employment or employment relationships, third, that an application has been made to

open the proceedings and, fourth, that the authority which is competent under the national provisions in question has either decided to open the proceedings or established that the employer's undertaking or business has been definitively closed down and that the available assets are insufficient to warrant the opening of the proceedings (see judgment in *Francovich*, C-479/93, EU:C:1995:372, paragraph 18).

35 Moreover, with regard to the status of employee, according to the Court's case-law, the first subparagraph of Article 2(2) of Directive 80/987 must be interpreted in the light of the social objective of the directive referred to in paragraph 30 above, so that Member States cannot define at will the term 'employee' in such a way as to undermine that objective, and the discretion they enjoy in that regard is circumscribed by that social objective, which the Member States are required to respect (judgment in *Tümer*, C-311/13, EU:C:2014:2337, paragraphs 42 and 43).

36 As regards the main proceedings, it should be noted, first, that it is not disputed that, under Greek law, seamen engaged under contract, such as the defendants in the main proceedings, are employees.

37 First, it is clear from the order for reference that Panagia Malta was declared insolvent by judgment of a Greek court. That order also refers to the fact that, although they were submitted in the proceedings that led to that company's insolvency, the wage claims of the defendants in the main proceedings could not be honoured due to lack of realisable assets.

38 In the light of the foregoing, it is established, subject to verification that employees such as the defendants in the main proceedings do not fall outside the scope of Directive 80/987 as employees covered by other forms of guarantee within the meaning of Article 1(2) of the directive (which forms the subject-matter of the second question submitted for a preliminary ruling), that the two other requirements referred to in paragraph 33 above that must be fulfilled under Directive 80/987 in order for a person to be eligible for the protection conferred by the directive are in fact fulfilled in the present case, so that those employees must, in principle, be able to benefit from that protection.

39 Contrary to the European Commission's contention, the guarantee covering wage claims established by Directive 80/987 must be provided irrespective of the maritime waters (the territorial sea or exclusive economic zone of a Member State or a non-member country or, indeed, the high seas) on which the vessel on which the defendants in the main proceedings worked ultimately sailed.

40 The Commission is incorrect in its belief that it is possible to infer from the judgments in *Mosbæk* (C-117/96, EU:C:1997:415) and *Everson and Barrass* (C-198/98, EU:C:1999:617) that that guarantee is available to employees in a situation such as that of the defendants in the main proceedings only if they pursue their activities on Greek territory.

41 Indeed, in the first of those judgments the Court held that in the case of the insolvency of an employer established in a Member State other than that in which the employer lives and was employed, the guarantee institution responsible for such an employee's wage claims is, in principle, that of the place of establishment of the employer, who, as a general rule, contributes to the financing of the institution (see, to that effect, judgment in *Mosbæk* (C-117/96, EU:C:1997:415, paragraphs 24 and 25). In the second judgment the Court stated that that was not the case, however, where the employer has several places of establishment in different Member States, in which case it is necessary, for the purpose of determining the competent guarantee institution, to refer, as an additional criterion, to the place in which the employees are employed (judgment in *Everson and Barrass*, C-198/98, EU:C:1999:617, paragraphs 22 and 23).

42 Those two judgments, which concern situations in which the guarantee institutions of two Member States appear, a priori, to be responsible for payment of employees' outstanding claims, cannot support the argument advocated by the Commission. The answers given by the Court in those judgments do not in any way prejudge the question whether, where an employer with its actual head office in a Member State has employed workers living in that State to work as employees on a vessel,

any outstanding wage claims those workers may have vis-à-vis the employer are covered, once the employer has been declared insolvent, by the protection provided for by Directive 80/987. In particular, that case-law does not allow of the conclusion that that protection must be limited depending on the status of the maritime areas in question under international law.

43 Moreover, it should be stated, in response to the issues raised by the referring court, that the assessment set out in paragraph 38 above is not affected by any of the particular circumstances mentioned by that court in its question, which relate, respectively, to the fact that the employment contracts at issue in the main proceedings are subject to the law of a non-member country, the fact that the vessel on which the defendants in the main proceedings were required to work flew the flag of that country, the fact that the employer's registered office was located in that country or the fact that the Member State concerned was not in a position to oblige such an employer to contribute to the financing of the guarantee institution referred to in Article 3(1) of Directive 80/987.

44 With regard, first, to the contract clause under which the contracts at issue in the main proceedings are subject to the law of a non-member country, it should be noted that a request made by an employee to a guarantee institution for payment of an amount equivalent to his outstanding wage claims must be distinguished from a request made by such an employee to an insolvent employer for payment of such claims (see, to that effect, judgment in *Visciano*, C-69/08, EU:C:2009:468, paragraph 41).

45 As the Commission was correct to observe, the purpose of legislation, such as that at issue in the main proceedings, which governs the conditions under which a Member State is to guarantee that liability will be assumed for outstanding wage claims following the insolvency of an employer, is not to regulate the contractual relationship between the employee and the employer.

46 It follows that, contrary to the Greek Government's contention, such conditions and such a request to a guarantees institution for payment do not fall within the scope of contract law for the purpose of Article 10 of the Rome Convention.

47 Second, as regards the fact that the vessel on which the defendants in the main proceedings were required to work flew the flag of a non-member country and that the employer's registered office was located in that country, it should be observed, first, that, as noted in paragraphs 32 and 33 above, the criteria laid down by Directive 80/987 for determining whether a person is eligible for the protections afforded by the directive relate, essentially, to whether that person has the status of employee and whether the employer has been subject to a procedure to satisfy collectively the claims of creditors in accordance with the provisions in force in a Member State.

48 On the other hand, no inference can be drawn from the provisions of Directive 80/987, in particular from Article 1, which defines its scope, that the place of the employer's registered office or the flag flown by the vessel on board which the workers are employed must constitute criteria on the basis of which that definition operates.

49 It is not possible to accept the argument put forward by the Greek Government to the effect that it may be inferred from Article 1(3) of Directive 80/987, which provides that the directive does not apply to Greenland, that the directive applies only in the case of employment relationships involving work carried out by employees in the territory of the EU and not where such work is done on a vessel flying the flag of a non-member country.

50 The fact that Directive 80/987 was not applicable is explained, as is apparent from the fourth recital of the directive, by the fact that, as a result of the geographical situation and the job structures in that area, the labour market in Greenland was fundamentally different at that time from that of other Community regions. However, that has no bearing on whether the situation of seamen living in a

Member State who were engaged in that State to work on a vessel flying the flag of a non-member country by a company whose actual head office was located in that Member State is encompassed by the labour market in the Member State.

51 Similarly, it is not possible the accept the argument put forward by the Italian Government that the fact that the first recital of Directive 80/987 refers to the need for balanced economic and social development in the Community makes it possible to conclude that the wage claims of such workers vis-à-vis such an employer should be excluded from the scope of the protection afforded by the directive. It is sufficient to note that, in the circumstances of the main proceedings set out in paragraph 50 above, it is not at all apparent how the grant of such protection would fail to contribute to the attainment of that economic and social development objective or be at odds with that objective.

52 Second, nor is it possible to accept the Greek Government's argument that the fact that the vessel in question flew the flag of a non-member country and that the employer's registered office was located in that country means that a situation such as that in the main proceedings does not fall, from a more general perspective, within the scope *ratione loci* of EU law, since EU law does not extend to non-member countries.

53 In that regard, it is settled case-law that the mere fact that an employee's activities are performed outside the territory of the European Union is not sufficient to exclude the application of the EU rules on the freedom of movement for workers, as long as the employment relationship retains a sufficiently close link with the territory of the European Union (see, inter alia, judgment in *Bakker*, C-106/11, EU:C:2012:328, paragraph 28 and the case-law cited).

54 With regard to the main proceedings, it should be noted that the employment relationship between the defendants and their employer has various links with the territory of the European Union. Those defendants concluded an employment contract in the territory of a Member State where they lived with an employer that was subsequently declared insolvent by a court of that Member State on the ground that the employer had been operating in that State and had its actual head office there.

55 As regards a guarantee such as that introduced by Directive 80/987, for which the Member States are given responsibility, and in the light, in particular, of the social objective of the directive referred to in paragraph 30 above, those circumstances indicate that there is a sufficiently close link between the employment relationships in question and the territory of the European Union.

56 Third, as the Simvoulio tis Epikratias (Council of State) referred in its order for reference to Articles 91, 92 and 94 UNCLOS and to the judgment in *Poulsen and Diva Navigation* (C-286/90, EU:C:1992:453) and the Greek Government contends that it follows from those provisions, read in the light of that case-law, that those provisions would be misconstrued if it were necessary to interpret Directive 80/987 as meaning that the protection afforded by the directive is available to workers employed by a company with its registered office in a non-member country to work on a vessel flying the flag of that country, it is appropriate to make the following observations.

57 Having stated, in paragraph 13 of the judgment in *Poulsen and Diva Navigation* (C-286/90, EU:C:1992:453), that under international law a vessel in principle has only one nationality, that of the State in which it is registered, the Court went on to find, in paragraph 16 of the judgment, that a vessel registered in a non-member country may not therefore be treated, for the purpose of Article 6(1)(b) of Council Regulation (EEC) No 3094/86 of 7 October 1986 laying down certain technical measures for the conservation of fishery resources (OJ 1986 L 288, p. 1), as a vessel with the nationality of a Member State on the ground that it has a genuine link with that Member State.

58 In that judgment, after stating that the law governing the crew's activities does not depend on the nationality of the crew members, but on the State in which the vessel is registered and, where appropriate, the sea area in which the boat is located, the Court also found that Article 6(1)(b) of that

regulation may not be applied to the master and other crew members on the sole basis that they are nationals of a Member State (see judgment in *Poulsen and Diva Navigation*, C-286/90, EU:C:1992:453, paragraphs 18 and 20).

59 Lastly, having stated that Article 6(1)(b) of Regulation 3094/86 may not be applied to a vessel registered in a non-member country: (i) where the vessel is on the high seas, since in principle such a vessel is governed there only by the law of its flag; (ii) where the vessel is sailing in the exclusive economic zone of a Member State, since that vessel enjoys freedom of navigation in that area; or (iii) where the vessel is crossing the territorial waters of a Member State, in so far as the vessel is exercising the right of innocent passage in so doing, the Court found that, conversely, such a provision may be applied to such a vessel when it sails in the inland waters or, more especially, is in a port of a Member State, where it is generally subject to the unlimited jurisdiction of that State (see judgment in *Poulsen and Diva Navigation*, C-286/90, EU:C:1992:453, paragraphs 22 to 29).

60 It should nevertheless be noted that Article 6(1)(b) of Regulation No 3094/86 provided, for certain fish species, that even when taken outside the waters under the sovereignty or jurisdiction of the Member States, they could not be retained on board or be transhipped, landed, transported, stored, sold, displayed or offered for sale, but had to be returned immediately to the sea when taken.

61 Unlike Regulation No 3094/86, Directive 80/987 is not intended to govern an activity performed on a vessel by the crew on board the vessel, such as the fishing, storage, landing or sale of fishery resources, but simply to place each Member State under an obligation to guarantee that the outstanding wage claims of employees, especially those who had previously been employed on board a vessel, will be satisfied after their employer has been declared insolvent in that Member State.

62 It is not apparent, in that regard, that international public law contains rules which have the effect of reserving solely to the State whose flag the vessel is flying the possibility of introducing such a guarantee mechanism by precluding such a possibility, inter alia, for a State on whose territory is located the actual head office of the employer which has been declared insolvent by a court of that State.

63 That is not the case, in particular, as regards Articles 92(1) and 94(1) and (2)(b) UNCLOS, to which the Simvoulio tis Epikratias (Council of State) refers, or the previous customary rules of which those provisions are, in some cases, a reflection.

64 Article 92(1) UNCLOS concerns the exclusive jurisdiction enjoyed ‘on the high seas’ by a State whose flag a vessel is flying.

65 Moreover, Article 94(1) and (2)(b) UNCLOS provides that every State is to effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag and that every State is to assume, in particular, jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.

66 It should be noted that the introduction of a mechanism such as that provided for by Directive 80/987 — under which a guarantee institution of a Member State is to pay the outstanding wage claims which seamen previously employed on a vessel are entitled to make against their employer who has been declared insolvent by a court of that Member State — does not prevent the State whose flag such a vessel is flying from effectively exercising its jurisdiction over that vessel or its crew as regards social matters concerning the vessel, as provided for by those UNCLOS provisions.

67 Third, with regard to the fact that, in the present case, the Greek State is not able to require the employer to pay contributions to the guarantee fund referred to in Article 3(1) of Directive 80/987, it should be noted, first of all, that the order for reference gives no explanation as to why that is not possible.

68 Next, it is apparent from Article 5(b) of Directive 80/987 that a contribution by employers to the financing of guarantee institutions is envisaged only where the financing is not fully covered by the public authorities, so that, under the very scheme of the directive, there does not have to be any link between the employer's obligation to contribute and mobilisation of the guarantee fund.

69 Lastly, it should be noted that, in the present case, as is apparent from the order for reference, it is because Panagia Malta's actual head office was located in Greece that it was possible for it to be declared insolvent by a court of that Member State in accordance with its legislation. As the Advocate General observed in point 60 of his Opinion, the simple fact that the Greek State has, as the case may be, either failed to provide in its legislation that such a company is under an obligation to make contributions or to ensure that that company complies with the obligation it is under by virtue of that legislation cannot have the effect of depriving the employees concerned of the protection afforded by Directive 80/987.

70 With regard to the latter point, it should be recalled that Article 5(c) of Directive 80/987 expressly provides that the institutions are under an obligation to pay irrespective of whether the obligation to contribute to the financing of the institution has been complied with.

71 In the light of all the foregoing, the answer to Question 1 is that Directive 80/987 must be interpreted as meaning that, subject to the possible application of Article 1(2) of the directive, seamen living in a Member State who were engaged in that State by a company with its registered office in a non-member country but its actual head office in that Member State to work as employees on board a cruise ship owned by the company and flying the flag of the non-member country under an employment contract designating the law of the non-member country as the law applicable must, after the company has been declared insolvent by a court of the Member State concerned in accordance with the law of that State, be eligible for the protection conferred by the directive as regards their outstanding wage claims against the company.

Question 2

72 By its second question, the referring court seeks to ascertain, in essence, whether Article 1(2) of Directive 80/987 is to be interpreted as meaning that, as regards employees in a situation such as that of the defendants in the main proceedings, protection such as that provided for in Article 29 of Law 1220/1981 in the event that the seamen are abandoned abroad constitutes 'protection equivalent to that resulting from [the] Directive' within the meaning of that provision.

73 In that connection, it should be recalled that Article 1(2) of Directive 80/987 provides that 'Member States may, by way of exception, exclude claims by certain categories of employee from the scope of this Directive, by virtue of the special nature of the employee's contract of employment or employment relationship or of the existence of other forms of guarantee offering the employee protection equivalent to that resulting from this Directive', the categories of employee concerned being listed in the Annex to the directive.

74 Section II of that list, which concerns 'employees covered by other forms of guarantee', includes, as regards the Hellenic Republic, the crews of sea-going vessels.

75 Moreover, as the Court has previously held, it is evident both from the purpose of Directive 80/987, which is to ensure a minimum of protection for all employees, and from the fact that exclusions under Article 1(2) of the directive are possible only by way of exception, that the only protection which may be regarded as 'equivalent' within the meaning of that provision is that which, while being based on a scheme whose detailed rules differ from those laid down by the directive, affords employees the essential guarantees set out in that directive (judgment in *Commission* v *Greece*, C-53/88, EU:C:1990:380, paragraph 19).

76 With regard to Article 29 of Law 1220/1981, it should be noted that, as pointed out by the referring court in its question, the protection afforded by that provision is available only where seamen are abandoned abroad and not, as required under Directive 80/987, as a result of the insolvency of the employer.

77 It should be borne in mind that an employer may be insolvent within the meaning of Directive 80/987 without the seamen employed by it being abandoned abroad in the circumstances specified in those national provisions.

78 It follows that in such a situation, which corresponds exactly to that of the workers in the main proceedings, those provisions do not provide for payment of employees' outstanding claims, which is nevertheless the essential objective of the directive, as is clear from the first recital thereof (see, to that effect, judgment in *Commission* v *Greece*, C-53/88, EU:C:1990:380, paragraph 20).

79 Accordingly, the national provision under consideration does not provide workers in a situation such as that of the defendants in the main proceedings with protection equivalent to that afforded by Directive 80/987.

80 As a consequence, the answer to Question 2 is that Article 1(2) of Directive 80/987 must be interpreted as meaning that, as regards employees in a situation such as that of the defendants in the main proceedings, protection such as that provided in Article 29 of Law 1220/1981 in the event that seamen are abandoned abroad does not constitute 'protection equivalent to that resulting from [the] Directive' within the meaning of that provision.

Costs

81 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 (Fourth Chamber) hereby rules:

1. **Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer must be interpreted as meaning that, subject to the possible application of Article 1(2) of the directive, seamen living in a Member State who were engaged in that State by a company with its registered office in a non-member country but its actual head office in that Member State to work as employees on board a cruise ship owned by the company and flying the flag of the non-member country under an employment contract designating the law of the non-member country as the law applicable must, after the company has been declared insolvent by a court of the Member State concerned in accordance with the law of that State, be eligible for the protection conferred by the directive as regards their outstanding wage claims against the company.**

2. **Article 1(2) of Directive 80/987 must be interpreted as meaning that, as regards employees in a situation such as that of the defendants in the main proceedings, protection such as that provided in Article 29 of Law 1220/1981 supplementing and amending the legislation relating to the Piraeus port authority in the event that seamen are abandoned abroad does not constitute 'protection equivalent to that resulting from [the] Directive' within the meaning of that provision.**

[Signatures]