Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

22 February 2024*

(Reference for a preliminary ruling – Social policy – Protection of employees in the event of the insolvency of their employer – Directive 2008/94/EC – Employees' outstanding salary claims resulting from contracts of employment or employment relationships taken over by guarantee institutions – Exclusion in the event of a declaration terminating the employment contract by the employee)

In Case C-125/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the cour d'appel d'Aix-en-Provence (Court of Appeal, Aix-en-Provence, France), made by decision of 24 February 2023, received at the Court on 1 March 2023, in the proceedings

Association Unedic délégation AGS de Marseille

v

V,

W,

X,

Y,

Z,

Liquidator of company K,

THE COURT (Seventh Chamber),

composed of F. Biltgen, President of the Chamber, N. Wahl and M.L. Arastey Sahún (Rapporteur), Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: French.

after considering the observations submitted on behalf of:

– association Unedic délégation AGS de Marseille, by I. Piquet-Maurin, avocate,

– the French Government, by R. Bénard and T. Lechevallier, acting as Agents,

– the European Commission, by F. Clotuche-Duvieusart and F. van Schaik, acting as Agents,

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation 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).

2 This request has been made in proceedings between the association Unedic délégation AGS de Marseille ('the AGS de Marseille'), on the one hand, and V, W, X, Y and Z ('the employees in question') and the liquidator of company K, on the other hand, concerning the payment of outstanding claims of those employees following the judicial liquidation of that company.

Legal context

European Union law

3 Recitals 3 and 7 of Directive 2008/94 state:

'(3) It is necessary to provide for the protection of employees in the event of the insolvency of their employer and to ensure a minimum degree of protection, 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. To this end, the Member States should establish a body which guarantees payment of the outstanding claims of the employees concerned.

…

(7) Member States may set limitations on the responsibility of the guarantee institutions. Those limitations must be compatible with the social objective of the Directive and may take into account the different levels of claims.'

4 Article 1 of that directive provides:

'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 existence of other forms of guarantee if it is established that these offer the persons concerned a degree of protection equivalent to that resulting from this Directive.

…'

5 Article 2 of that directive provides:

'1. For the purposes of this Directive, an employer shall be deemed to be in a state of insolvency where a request has been made for the opening of collective proceedings based on insolvency of the employer, as provided for under the laws, regulations and administrative provisions of a Member State, and involving the partial or total divestment of the employer's assets and the appointment of a liquidator or a person performing a similar task, and the authority which is competent pursuant to the said provisions has:

(a) either decided to open the proceedings; or

(b) 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", "right conferring immediate entitlement" and "right conferring prospective entitlement".

…'

6 According to Article 3 of the same directive:

'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.'

7 Article 4 of Directive 2008/94 is worded as follows:

'1. Member States shall have the option to limit the liability of the 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.'

8 Article 11 of that directive provides:

'This Directive shall not affect the option of Member States to apply or introduce laws, regulations or administrative provisions which are more favourable to employees.

Implementation of this Directive shall not under any circumstances be sufficient grounds for a regression in relation to the current situation in the Member States and in relation to the general level of protection of employees in the area covered by it.'

9 Article 12 of that directive provides:

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

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

…'

French law

10 Article L. 3253-6 of the code du travail ('the Labour Code'), in the version thereof applicable to the dispute in the main proceedings, provides:

'All employers governed by private law shall insure their employees, including those on secondment abroad or the expatriates referred to in Article L. 5422-13, against the risk of non-payment of amounts owed to them in performance of the contract of employment, in the event of rescue, recovery or judicial liquidation proceedings.'

11 Article L. 3253-8 of that code provides:

'The insurance referred to in Article L. 3253-6 shall cover:

1° Amounts owed to employees on the date of the decision to open any recovery or judicial liquidation proceedings, as well as contributions owed by the employer under the professional security contract;

2° Claims arising from the termination of contracts of employment occurring:

(a) during the observation period;

(b) within the month following the judgment adopting the rescue, recovery or disposal plan;

(c) within 15 days following the liquidation judgment, or 21 days where an employment protection plan is drawn up;

(d) during the temporary continuation of operations authorised by the judicial liquidation judgment and within 15 days following the end of that continuation of operations, or 21 days where an employment protection plan is drawn up;

…'

12 Under Article L. 3253-14 of that code:

'The insurance provided for in Article L. 3253-6 shall be implemented by an association set up by representative national professional employers' organisations and approved by the administrative authority.

That association shall enter into a management agreement with the body managing the unemployment insurance scheme and with the Agence centrale des organismes de sécurité sociale (Central Agency of Social Security Organisations) for the recovery of the contributions referred to in Article L. 3253-18.

…

That association and the abovementioned body shall constitute the guarantee institutions against the risk of non-payment.'

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

13 During September and October 2017, the employees in question were recruited by the company K under fixed-term part-time contracts.

14 On 26 June 2018, the company K was the subject of a court-supervised recovery scheme.

15 On 9 July 2018, the employees in question made declarations terminating their contracts of employment.

16 By judgment of 24 July 2018, the tribunal de commerce (Commercial Court, France) ordered the judicial liquidation of the company K.

17 On 31 July 2018, the employees in question brought an action before the conseil de prud'hommes de Draguignan, (Labour Tribunal, Draguignan, France) for registration of their claims in the list of liabilities for the judicial liquidation of the company K, on the basis of breaches by that company which those employees consider are sufficiently serious.

18 By judgments of 2 July 2020, that court stated, first, that the declarations by the employees in question terminating their contracts of employment produced the effects of a dismissal without genuine and serious grounds, second, registered their claims in the list of liabilities for the judicial liquidation of the company K, in respect of, inter alia, back pay, paid leave, the compensatory allowance in lieu of notice, the allowance for dismissal without genuine and

serious grounds and, third, declared that the joint ruling was enforceable against the AGS de Marseille, which is subject to a guarantee obligation in respect of the amounts which were the subject of those claims.

19 On 28 July 2020, the AGS de Marseille applied to the conseil de prud'hommes de Draguignan (Labour Tribunal, Draguignan) for failure to give a ruling.

20 By judgments of 23 September 2021, that court held that there was no need to rectify the judgments of 2 July 2020.

21 In those circumstances, the AGS de Marseille brought an appeal against the judgments of 23 September 2021 before the cour d'appel d'Aix-en-Provence (Court of Appeal, Aix-en-Provence, France), the referring court.

22 As is apparent from the order for reference, under French law, a declaration terminating a contract of employment is a unilateral method of termination of that contract, available to employees only, by which an employee decides to terminate that contract on the ground that there have been such serious breaches on the part of the employer that continuation of the contract of employment has been rendered impossible. At the precise time when the employee makes a declaration terminating the contract of employment, the contract immediately ceases to be of any effect.

23 Moreover, the referring court states that, if a court before which the matter is brought by one of the parties to the contract of employment considers that the facts relied on by the employee justify that declaration being made, the termination of the contract of employment produces the effects of a dismissal without genuine and serious grounds. Consequently, the employer is required to pay compensation related to that dismissal, namely a compensatory allowance in lieu of notice and paid leave, statutory or contractual severance pay and damages for dismissal without genuine and serious grounds.

24 In France, all employers governed by private law are required to insure their employees with the Salary Guarantee Association ('the AGS') against the risk of non-payment of amounts owed to them in performance of the contract of employment, in the event of rescue, recovery or judicial liquidation proceedings.

25 However, in accordance with the settled case-law of the Cour de cassation (Court of Cassation, France), as regards a termination of a contract of employment which occurred during the periods referred to in Article L. 3253-8 2° of the Labour Code, the AGS guarantee covers only claims resulting from such a termination occurring at the initiative of the court-appointed administrator, liquidator or employer concerned. Consequently, that guarantee is excluded where an employee makes a declaration terminating the contract of employment, retires, or has the contract of employment terminated by a court of law.

26 It is apparent from the order for reference that, in a judgment of 10 July 2019, the Cour de cassation (Court of Cassation) decided not to refer to the Conseil constitutionnel (Constitutional Council, France) a priority question of constitutionality on the effective scope of the interpretation by the Cour de cassation of Article L. 3253-8 2° of the Labour Code, on the grounds, first, that the purpose of the guarantee provided for in that provision is the advance payment by the AGS of claims resulting from terminations of contracts of employment occurring so as to allow the undertaking to carry on its business, to save jobs and to settle liabilities and,

second, that the national legislation at issue, as consistently interpreted by the Cour de cassation (Court of Cassation), excluding the AGS's guarantee in the case of contract terminations not deriving from the initiative of the court-appointed administrator, liquidator or employer concerned, establishes a difference in treatment based on a difference in circumstances directly related to the purpose of that legislation.

27 However, the referring court states that, in the event of termination of the contract of employment when the employer is in a state of insolvency, Directive 2008/94 does not appear to make the intervention of the guarantee institution, in respect of severance pay on termination of the employment relationship, dependent on the party responsible for the termination of the employment relationship.

28 That interpretation is supported by the judgment of 17 January 2008, *Velasco Navarro* (C-246/06, EU:C:2008:19, paragraphs 35 and 36), according to which the national legislation implementing EU law must be interpreted in accordance with the principle of equal treatment.

29 In those circumstances the cour d'appel d'Aix-en-Provence (Court of Appeal, Aix-en-Provence) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Can Directive [2008/94] be interpreted as allowing the guarantee institution to be precluded from taking over the guarantee of severance pay on termination of employment relationships where an employee declares the termination of his or her contract of employment after insolvency proceedings have been initiated?

(2) Is such an interpretation consistent with the wording and the purpose of that directive, and does it enable the results specified therein to be achieved?

(3) Does such an interpretation, based on the person who terminated the contract of employment during the period of insolvency, entail a difference in treatment between employees?

(4) If such a difference in treatment exists, is it objectively justified?'

The jurisdiction of the Court

30 The AGS de Marseille submits, in its written observations, that, since the Court does not have jurisdiction to interpret national law and, in the present case, Article L. 3253-8 of the Labour Code, it cannot have jurisdiction to answer the questions referred.

31 In that regard, it should be noted that in the context of the procedure established by Article 267 TFEU, the Court has no jurisdiction to rule on the interpretation of provisions of national laws or regulations or on their conformity with EU law. It is settled case-law that, in a request for a preliminary ruling pursuant to Article 267 TFEU, the Court may interpret EU law only within the parameters of the jurisdiction conferred on the European Union (judgment of 14 December 2023, *Getin Noble Bank (Limitation period for actions for restitution)*, C-28/22, EU:C:2023:992, paragraph 53 and the case-law cited).

32 In the present case, it is apparent from the order for reference that the questions referred expressly concern the interpretation of Directive 2008/94.

33 Accordingly, it cannot be accepted that the questions concern the interpretation of French law; hence the AGS de Marseille's argument based on the lack of jurisdiction of the Court must be rejected.

Consideration of the questions referred

Admissibility

34 Without formally putting forward a plea of inadmissibility of the questions referred for a preliminary ruling, the French Government submits in its written observations that it is true that the exclusion of employees' guaranteed claims, referred to in the first question, is laid down, as is apparent from the request for a preliminary ruling, in Article L. 3253-8 2° of the Labour Code, as interpreted by the Cour de cassation (Court of Cassation). However, according to that government, where an employee makes a declaration terminating the contract of employment after insolvency proceedings have commenced, the guarantee institution is required, in any event, to guarantee the salary claims owed to the employee in question on that date, in accordance with Article L. 3253-8 1° of the Labour Code.

35 In that regard, it should be borne in mind that it is solely for the national court before which the dispute in the main proceedings has been brought to assess the need for a preliminary ruling and the relevance of the questions which it submits to the Court, which enjoy a presumption of relevance. Thus, the Court is, in principle, bound to give a ruling where the question submitted concerns the interpretation or the validity of a rule of EU law, unless it is quite obvious that the interpretation sought bears no relation to the actual facts of the main proceedings or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to that question (judgment of 15 June 2023, *Getin Noble Bank (Suspension of the performance of a loan agreement)*, C-287/22, EU:C:2023:491, paragraph 26 and the case-law cited).

36 In the present case, first, the dispute in the main proceedings concerns the consequences, as regards the payment of employees' claims by a guarantee institution, of recourse to a method of termination of a contract of employment at the initiative of the employee, in circumstances in which the employer is in a state of insolvency. It is therefore established that such a situation comes within the scope of Directive 2008/94. Second, the referring court states that it is faced with a difficulty in interpreting that directive, since it does not appear to make the intervention of the guarantee institution, in respect of severance pay on termination of the employment relationship, dependent on the party responsible for the termination of the employment relationship.

37 Accordingly, the questions referred for a preliminary ruling are admissible.

Substance

38 By its four questions, which it is appropriate to examine together, the referring court asks, in essence, whether Directive 2008/94 must be interpreted as precluding national legislation which provides for employees' outstanding claims resulting from contracts of employment or employment relationships to be covered by the scheme ensuring the payment of employees' claims by a guarantee institution established in accordance with Article 3 of that directive, where the termination of the contract of employment is at the initiative of the court-appointed administrator, liquidator or employer concerned, but excludes the coverage of such claims by that guarantee institution where the employee in question makes a declaration terminating his or her contract of employment due to such serious breaches on the part of his or her employer that continuation of that contract has been rendered impossible and a national court has held that declaration to be justified.

39 In order to answer those questions, it should first be noted that, in accordance with Article 1(1) of Directive 2008/94, that directive applies to employees' claims resulting 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 that directive.

40 The first paragraph of Article 3 of that directive provides that Member States are to take the measures necessary to ensure that guarantee institutions guarantee, subject to Article 4 thereof, 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.

41 Under Article 4 of Directive 2008/94, where Member States limit the liability of the guarantee institutions, they are to specify the length of the period for which outstanding claims are to be met by those institutions. They may also set ceilings on the payments made by those institutions.

42 Secondly, as is apparent from the order for reference, Article L. 3253-6 of the Labour Code requires employers governed by private law to insure their employees against the risk of non-payment of 'amounts due to them in performance of their contract of employment'.

43 In that regard, the Court finds, as noted by the Commission in its written observations, that claims resulting from a termination of a contract of employment such as that at issue in the main proceedings constitute claims for severance pay on termination of the employment relationship within the meaning of Article 3 of Directive 2008/94.

44 Thirdly, it should be noted that there is nothing in the wording of that directive to support the conclusion that the guarantee of employees' claims by a guarantee institution may be excluded by a Member State where the termination of the contract of employment is at the initiative of that employee due to breach on the part of the employer. Directive 2008/94 makes no distinction as regards the coverage of those claims by that institution depending on whether or not the party responsible for the termination of the contract of employment is the employee.

45 It is true that it is for each Member State, within the framework of national law, to specify which forms of compensation fall within the scope of the first paragraph of Article 3 of Directive 2008/94 (judgment of 28 June 2018, *Checa Honrado*, C-57/17, EU:C:2018:512, paragraph 30 and the case-law cited).

46 However, the discretionary power conferred on Member States by that directive to specify the benefits payable by the guarantee institution is conditional upon the requirements flowing from the general principle of equality and non-discrimination. That principle requires that comparable situations should not be treated differently unless such difference in treatment is objectively justified (judgment of 28 June 2018, *Checa Honrado*, C-57/17, EU:C:2018:512, paragraphs 31 and 32 and the case-law cited).

47 In that regard, it should be noted that the termination of the contract of employment following the declaration terminating that contract by the employee due to such serious breaches on the part of the employer that continuation of that contract has been rendered impossible, held by a national court to be justified, cannot be regarded as resulting from the will of the employee, since it is, in reality, the consequence of those breaches on the part of the employer.

48 Therefore, in a situation such as that at issue in the main proceedings, the Court finds that employees who make a declaration terminating their contract of employment are in a situation comparable to that of employees whose employment relationships terminate at the initiative of the court-appointed administrator, liquidator or employer concerned (see, by analogy, judgment of 28 June 2018, *Checa Honrado*, C-57/17, EU:C:2018:512, paragraph 39).

49 In its written observations, the French Government submits that the difference in treatment resulting from Article L. 3253-8 2° of the Labour Code, as interpreted by the Cour de cassation (Court of Cassation), depending on whether or not the party responsible for the termination of the contract of employment is the employee, is justified for the purposes of allowing the undertaking to carry on its business, to save jobs and to settle liabilities. According to that government, terminations of contracts of employment at the employee's initiative, such as a declaration terminating that contract, which take place after the date on which insolvency proceedings were initiated, are not consistent with those purposes.

50 In that regard, it should be noted that, in addition to the fact that the termination of a contract of employment by way of a declaration terminating that contract by the employee cannot be regarded as resulting from the will of that employee where, in reality, it is the consequence of the breaches on the part of the employer, as referred to in paragraph 47 of the present judgment, those purposes cannot obscure the social objective of Directive 2008/94.

51 That social purpose is, as follows from Article 1(1) of that directive, read in conjunction with recital 3 thereof, to guarantee all 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 (judgment of 28 June 2018, *Checa Honrado*, C-57/17, EU:C:2018:512, paragraph 46).

52 In the light of all the foregoing considerations, the answer to the questions referred is that Directive 2008/94 must be interpreted as precluding national legislation which provides for employees' outstanding claims resulting from contracts of employment or employment relationships to be covered by the national scheme ensuring the payment of employees' claims by a guarantee institution established in accordance with Article 3 of that directive, where the termination of the contract of employment is at the initiative of the court-appointed administrator, liquidator or employer concerned, but excludes the coverage of such claims by that guarantee institution where the employee in question makes a declaration terminating his or

her contract of employment due to such serious breaches on the part of his or her employer that continuation of that contract has been rendered impossible and a national court has held that declaration to be justified.

Costs

53 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 precluding national legislation which provides for employees' outstanding claims resulting from contracts of employment or employment relationships to be covered by the national scheme ensuring the payment of employees' claims by a guarantee institution established in accordance with Article 3 of that directive, where the termination of the contract of employment is at the initiative of the court-appointed administrator, liquidator or employer concerned, but excludes the coverage of such claims by that guarantee institution where the employee in question makes a declaration terminating his or her contract of employment due to such serious breaches on the part of his or her employer that continuation of that contract has been rendered impossible and a national court has held that declaration to be justified.

[Signatures]