

SUMMARY

ECJ 13 February 2014, case C-596/12 (European Commission - v - Italian Republic), Collective redundancies

Facts

The Italian law on collective redundancies excludes certain managerial staff – the ‘*dirigenti*’ – from its scope.

Proceedings

The European Commission brought an action on the basis of Article 258 TFEU against Italy, alleging that it has failed to transpose Directive 98/59 properly. The Italian government denied the allegation, arguing that Article 5 of the Directive allows Member States to adopt legislation that is more favourable for employees and that its law is more favourable for *dirigenti*.

ECJ’s findings

The aim of Directive 98/59 is to ensure similar protection for employees throughout the EU and to bring the cost involved with that protection for employees in the different Member States closer to one another. Hence the notion of ‘employee’ in the directive may not be defined according to national law but must be defined autonomously (§ 16).

The essential characteristic of an employment relationship is the fact that an individual provides services to another party, under that party’s supervision, for a certain period of time for consideration in the form of remuneration (§ 17).

The Italian Supreme Court holds the view that Italian law and the collective agreements governing *dirigenti*, which guarantee them financial protection, afford them more favourable

protection than that provided in Article 5 of the Directive. This view cannot be accepted. The Directive obligates employers that contemplate collective redundancy to consult with the unions with a view, in particular, to discussing ways to avoid dismissal. The Directive would be rendered ineffective if certain categories of employees lacked such protection (§ 19-23).

Ruling

By excluding *dirigenti* from the scope of the procedure set out in Article 2 of Directive 98/59, the Italian Republic has failed to fulfil its obligations under that directive.

Creator: European Court of Justice (ECJ)

Verdict at: 2014-02-13

Case number: C-596/12