SUMMARY

2011/12: Final word on the Goodyear case: Greek employees may rely on the Collective Redundancy Directive (GR)

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Facts

Goodyear Dunlop Tires Hellas SA ("Goodyear Hellas") had its administrative and commercial departments in Athens and its production facilities (a tyre factory) in Thessaloniki. On 19 July 1996, its American shareholder decided to close down the factory three days later. Accordingly, in the period between 22 July and 31 August 1996, management of Goodyear Hellas dismissed all 340 employees who were employed in the factory, with immediate effect. About 100 of these employees brought legal proceedings (the present case) and 220 more did so in other, similar cases. They claimed that their dismissal was void and that they were therefore entitled to continued payment of their salaries. They based their claim on the fact that Goodyear

Hellas had failed to give notice to the competent public body, to consult with employee representatives and to observe a one-month waiting period as provided in the Collective Redundancy Directive 75/129 and the Greek law transposing this Directive, Law 1387/1983. The court of first instance and the appellate court turned down the employees' claim. They did this on the basis of Article 2(2)(c) of Law 1387/1983, which provided, in line with the Directive, that "The provisions of this Law shall not apply to employees who are dismissed by reason of the termination of the undertaking's or establishment's activities following a first-instance judicial decision". Although the decision to close down the factory was made at management's discretion and was not taken "following a judicial decision", Greek case law as it stood at the time, held that a collective redundancy resulting from an employer's decision to close down a plant entirely was nevertheless exempt from the collective redundancy rules. The employees appealed to the Supreme Court, which in 2005[1] (almost nine years after the dismissals) referred to the ECJ the following question for a preliminary ruling: "Given that Greek (national) law does not provide for a prior judicial decision where an undertaking or establishment is closed down definitively of the employer's own volition, under Article 1(2)(d) of Council Directive 75/129/EEC does that directive apply to collective redundancies caused by the definitive termination of the operation of an undertaking or establishment which has been decided on by the employer of his own accord without a prior judicial decision on the matter?" The ECJ answered the question affirmatively[2]. Article 1(2)(d) of Directive 75/129 (as it stood in 1996[3]) concerns the Directive's inapplicability to redundancies caused by the termination of an establishment's activities "where that is the result of a judicial decision". An example of such a judicial decision is one ordering the compulsory liquidation or the winding-up of a company. "In all other cases", so the ECJ noted, "including where the definitive termination of the activities [...] is of the employer's own volition and where it is founded on assessments of an economic nature or of another kind, the employer's obligations, flowing from Directive 75/129, remain intact". In brief, the way the Greek courts had until that time interpreted Law 1387/1983 was incompatible with Directive 75/129. Following the ECJ's ruling, in 2007, the Greek Supreme Court determined that the appellate court had breached Greek and EU law. It referred the case back to the appellate court (now judging in a different composition)[4].

Judgment

This time round, the Court of Appeal found in favour of the employees[5]. In doing so, it rejected Goodyear Hellas' argument that it was entitled to rely on the Greek case law that existed in 1996. That case law was clear, exempting collective redundancies such as the one at issue from the scope of Law 1387/1983. There was no way, so Goodyear Hellas argued, that it could have predicted in 1996 that the Greek courts would change their interpretation of the law. The court did not accept this view, observing that a change in case law is always possible and does

not qualify as force majeure. The Court of Appeal's judgment, delivered in 2008, was not the end of the story. The case went up to the Supreme Court a second time and the Supreme Court, overturning the judgment on a minor point (Easter bonus)[6], referred the case back to the Court of Appeal, which will now, again in a different composition, try the case for the third time.

Commentary

The Court of Appeal's 2008 judgment in this long-standing dispute represents a total reversal of Greek case law on collective dismissals. The Supreme Court's 2007 judgment that paved the way for this reversal brought home to Greek employment lawyers how important EU law is for their day-to-day practice. Article 5(3) of Law 1387/1983 explicitly provides that the rules that normally govern collective dismissal situations do not apply where a company's activities are terminated following a judicial decision, as for example in the event of an insolvency. In other words, those rules do apply where a company's activities are terminated by management, in which case, upon completion of the consultation/information procedure, the public authority can prohibit the collective dismissals. Legal theory and authors have criticised this position, supporting the view that in the event that an undertaking's activities are terminated finally and permanently, completion of the consultation procedure should be sufficient, without approval of the dismissals by the public authority being required.

Comments from other jurisdictions

Germany (Paul Schreiner): From a German point of view, this decision seems rather strange. First of all, German law does not contain an exemption from the duty to consult with the works council in cases of a judicial decision. In accordance with s22 of the German Unfair Dismissal Protection Act, the only exemption from this duty applies to establishments that typically employ staff for no more than one season per year or for one specific project. As regards the protection of confidence in case law, many unusual situations have arisen in Germany: see my comment under the case reported in EELC 2011/13 ("Spanish Supreme Court follows Schultz-Hoff"), in which the courts found that an employer could not rely on existing case law following a change in the relevant European directives, even if this case law was continued after the Directive became effective.

The Netherlands (Peter Vas Nunes): Two aspects of this case strike me. The first is that I fail to understand how the Greek courts, until 2008, managed to construe Article 2(2)(c) of Greek Law 1387/1993, which seems clear to me ("... following a [...] judicial decision") as meaning the opposite of what it said. My second observation is that it feels somewhat unfair that Goodyear Hellas became the victim, 12 years after the collective redundancy, of a change in case law that

it had no way of predicting. A Dutch court would most likely have taken this into consideration when determining (the extent of) the workers' compensation.

Footnotes

1 Supreme Court, decision 25/2005.

2 ECJ 7 September 2006, joined cases C-187 through 190/05 (Agorastoudis et al – v – Goodyear Hellas).

3 Article 1(2)(d) was deleted in 1992 and replaced by the present Articles 3(1) and 4(4): see Directive 92/56.

4 Supreme Court, decision 38/2007.

5 Athens Court of Appeal, decision 5260/2008.

6 Supreme Court 4 May 2010, decision 1068/2000.

Subject: Collective redundancy

Parties: Agorastoudis and approximately 100 others – v – Goodyear Hellas

Court: Athens Court of Appeal

Date: 15 September 2008

Case number: 5260/2008

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Creator: Athens Court of Appeal
Verdict at: 2008-09-15
Case number: 5260/2008