

SUMMARY

ECJ 28 June 2018, C-57/17 (Checa Honrado), Insolvency

Eva Soraya Checa Honrado – v – Fondo de Garantía Salarial

Legal background

Directive 2008/94/EC aims to protect employees whose employer has become insolvent. Article 3 provides that Member States must take the measures necessary to ensure that the various guarantee institutions pay outstanding claims by employees based on their employment relationships, including severance pay on termination of the employment contract, where this is provided for by national law. This is subject to the limits described in Article 4.

Spain has implemented the Directive by means of a Royal Decree. This guarantees employees a severance payment based on Articles 50 to 52 of the Spanish Worker's Statute. These Articles cover various forms of termination of the employment contract (by the employee for serious cause, collective redundancies and individual dismissals) that may entitle the employee to some form of severance pay.

Article 40(1) of the Worker's Statute provides: "The transfer of workers who have not been recruited specifically to work in companies with mobile or itinerant workplaces to a different workplace of the same company which necessitates changes of residence will have to be justified on economic, technical, organisational or production grounds. Grounds shall be deemed to be such if they relate to competitiveness, productivity or technical or labour organisation, and also recruitment relating to the business. [...] Once notified of the transfer decision, the worker will have the right to choose between the transfer, recovery of compensation for transport costs or the termination of his contract, in which case he will receive severance pay of 20 days' salary for every year worked, periods shorter than a year being calculated pro rata on a monthly basis up to a maximum of 12 monthly payments."

However, the Royal Decree does not mention this Article.

Facts and national proceedings

Ms Checa Honredo was a cleaner in a theme park in Alicante, Spain. After her employer transferred her work to Madrid, 450 kilometres away, she opted to terminate her employment contract. She was therefore entitled to a severance payment. Her employer did not pay it in full, even after various proceedings, and ultimately became insolvent.

Ms Checa Honredo then claimed compensation from the Spanish Guarantee Fund (*Fogasa*), which refused to pay, as it did not normally compensate for unpaid severance based on Article 40 of the Worker's Statute. Ms Checa Honredo's claim in first instance was dismissed, after which she appealed to the High Court of Justice of the Community Valencia. This court doubted the correctness of the applicable Article of the Royal Decree, as it excluded certain forms of severance payments, with the risk that this could lead to unequal treatment. It therefore decided to stay proceedings and ask a preliminary question.

Question

Must the first paragraph of Article 3 of Directive 2008/94 be interpreted as meaning that, where, according to the national legislation in question, some forms of statutory compensation payable on termination of a contract of employment at the worker's request and that payable in the case of dismissals on objective grounds, such as that envisaged by the referring court, fall within the concept of 'severance pay on termination of employment relationships', within the meaning of that provision, statutory compensation payable on termination of a contract of employment at the worker's request on account of a transfer of workplace by the employer, obliging the worker to change residence, must also fall within that concept?

Consideration

After explaining the framework, the ECJ pointed out that Article 2 of the Directive provides that the Directive is without prejudice to national law as regards the definition of 'pay'. A combined reading of the applicable provisions implies that national law may specify which forms of compensation are guaranteed.

However, as repeatedly held by the ECJ (Robledillo Núñez, C-498/06, par. 30), the ability of Member States to specify applicable benefits is limited by the general principles of equality and non-discrimination. This implies that comparable situations should not be treated differently unless this is objectively justified.

In this case, the Worker's Statute provides for severance pay based on Articles 50 to 52 but not Article 40. The types of termination of employment covered by Articles 50 to 52 are based on collective redundancy or objective grounds, including economic, technical, organisational or production grounds - but, in fact, Article 40 is also based on these grounds, leaving open the possibility the comparable situations could end up being treated differently. The question was whether, in this case, there was an objective justification.

The Spanish government argued that for Article 40 to apply, this would require an active choice being made by the employee. In this case, there was no active choice, because she was reacting to the employer's decision to relocate. However, in the Court's view, the Spanish government had not given any reasons to justify this exclusion. The Court felt that this approach was not compatible with the social objective of the Directive. Last but not least, none of the exemption grounds apply.

Ruling

The first paragraph of Article 3 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 must be interpreted as meaning that, where, according to the national legislation in question, some forms of statutory compensation payable on termination of a contract of employment at the worker's request and those payable in the case of dismissals on objective grounds, such as those envisaged by the referring court, fall within the concept of 'severance pay on termination of employment relationships', within the meaning of that provision, statutory compensation payable on termination of a contract of employment at the worker's request on account of a transfer of workplace by the employer, obliging the worker to change residence, must also fall within that concept.

Creator: European Court of Justice (ECJ)

Verdict at: 2018-06-28

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