

SUMMARY

ECJ 25 November 2020, case C-799/19 (Sociálna poisťovňa), Insolvency

NI, OJ, PK - v - Sociálna poisťovňa, Slovak case

Summary

An employer cannot be deemed to be in a 'state of insolvency' where an action for enforcement has been brought against him in connection with a judicially recognised claim for compensation, but the claim is deemed irrecoverable in the enforcement proceedings on account of that employer's informal insolvency.

Questions

Must Article 2(1) of Directive 2008/94 be interpreted as meaning that an employer may be deemed to be in a 'state of insolvency' where an action for enforcement has been brought against that employer in connection with a judicially recognised claim for compensation, but the claim is deemed irrecoverable in the enforcement proceedings on account of that employer's informal state of insolvency?

Must Article 1(1) and Article 3 of Directive 2008/94 be interpreted as meaning that compensation due from an employer to surviving close relatives for non-material damage suffered as a result of the death of an employee caused by an accident at work may be regarded as constituting 'employees' claims arising from contracts of employment or employment relationships' within the meaning of Article 1(1) of that directive?

Ruling

Article 2(1) 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 an employer cannot be deemed to be in a 'state of

insolvency' where an action for enforcement has been brought against that employer in connection with a judicially recognised claim for compensation, but the claim is deemed irrecoverable in the enforcement proceedings on account of that employer's informal insolvency. It is, however, for the referring court to ascertain whether, in accordance with Article 2(4) of Directive 2008/94, the Member State concerned has decided to extend employee protection as provided for under that directive to such a situation of insolvency, established by proceedings which are different from those mentioned in Article 2(1) and which are provided for under national law.

Article 1(1) and Article 3 of Directive 2008/94 must be interpreted as meaning that compensation due from an employer to surviving close relatives for non-material damage suffered as a result of the death of an employee caused by an accident at work may only be regarded as constituting 'employees' claims arising from contracts of employment or employment relationships' within the meaning of Article 1(1) of that directive where it is covered by the concept of 'pay' as defined under national law, that being a matter for the national court to determine.

Creator: European Court of Justice (ECJ)

Verdict at: 2020-11-25

Case number: C-799/19