

## SUMMARY

# ECJ 25 February 2016, case C-292/14. (Stroumpoulis), Insolvency

### Summary

Seamen living in a member state, engaged in that state by a company that has its registered office in a non-member country but its actual head office in that member state, who work as employees on board of a cruise ship that is owned by that company and flies under the flag of the non-member country, under the employment contract designating the law of the non-member country as the law applicable, must be eligible for the protection of Directive 80/987 as regards their outstanding wage claims against the company that has been declared insolvent.

### Facts

The defendants in this case were Greek seamen living in Greece. In 1994 they concluded contracts, in Greece, with a Maltese company having its registered office in Malta (at that time, not yet a Member State of the EU), under which they were engaged to work on board a cruise ship flying the Maltese flag. The contracts contained a clause to the effect that they were governed by Maltese law. At the time they were hired, the cruise ship was detained in the port of Piraeus (Greece) as a result of an attachment order. The ship was planned to set sail in the summer of 1994. In anticipation of this, the defendants remained on board the ship. However, the shipping company did not pay them any wages, and in December 1994, the defendants resigned. They brought a claim before the Greek court of first instance, which ordered the shipping company to pay them their wages and other items. The judgment could not be enforced, because the shipping company was declared insolvent in 1995. The defendants then applied to the Employment Agency for the protection available to employees in the event of their employer's insolvency. They were refused that protection on the ground that, as seamen covered by other forms of guarantee, they fell outside the scope of Directive 80/987 on the protection of employees in the event of the insolvency of their employer and

also that of the Greek law transposing that directive, Law 1220/1981 and Presidential Decree 1/1990.

### **National proceedings**

In 1999, the defendants applied to the Administrative Court of First Instance in Athens with a view to establishing the liability of the Greek State as a result of its alleged failure to provide the crew of sea-going vessels with access to a guarantee institution, as required under Directive 80/987 or, in the absence thereof, with equivalent protection to that afforded by the directive. Their application was dismissed. The defendants appealed. The Administrative Appeal Court set aside the first instance judgment. It found, first, that Directive 80/987 was applicable to the case, as the shipping company had been operating in Greece, where its actual head office was located, and that the vessel in question had been flying a flag of convenience. Second, the appeal court considered that, when Directive 80/987 was transposed into national law, the Greek State had erred by failing to provide employees such as the defendants in the main proceedings with the protection afforded by the directive. In that regard, that court took the view, in particular, that, contrary to what was required under Article 1(2) of the directive, Article 29 of Law 1220/1981 did not provide the persons concerned with protection equivalent to that afforded by the directive. The Greek State lodged an appeal in cassation before the Council of State. It decided to stay proceedings and to refer two questions to the ECJ for a preliminary ruling. The first was whether Directive 80/987 is to be interpreted as meaning that seamen living in a Member State who have been engaged in that State by a company that has its registered office in a non-member country but its actual head office in that Member State, to work as employees on board a cruise ship that is owned by that company and flies the flag of the non-member country, under an employment contract designating the law of that non-member country as the law applicable, must be eligible, after the company has been declared insolvent by a court of the Member State concerned in accordance with its law, for the protection afforded by the directive as regards their outstanding wage claims against the company. The second question related to the interpretation of Article 1(2) of the Directive, which allows Member States to exclude from the scope of the Directive claims by certain categories of employee in the event they have “equivalent protection”.

### **ECJ’s findings**

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It is settled case-law that Directive 80/987 has a social objective, which is to guarantee 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 and relating to pay for a specific period (§ 30-33).

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A person falls within the scope of Directive 80/987, first, if he is an employed person under national law and is not excluded on any of the grounds set out in Article 1(2) of the directive and, second, if the person's employer is in a state of insolvency within the meaning of Article 2 of the directive. In this case, the requirements in respect of being an employee employed by an insolvent employer have been satisfied (§ 34-38).

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Contrary to the European Commission's contention, the guarantee covering wage claims established by Directive 80/987 must be provided irrespective of the maritime waters (the territorial sea or exclusive economic zone of a Member State or a non-member country or, indeed, the high seas) on which the vessel on which the defendants in the main proceedings worked ultimately sailed. This assessment is not affected by any of the particular circumstances mentioned by that court in its question, which relate, respectively, to the fact that the employment contracts at issue in the main proceedings are subject to the law of a non-member country, the fact that the vessel on which the defendants in the main proceedings were required to work flew the flag of that country, the fact that the employer's registered office was located in that country or the fact that the Member State concerned was not in a position to oblige such an employer to contribute to the financing of the guarantee institution referred to in Article 3(1) of Directive 80/987 (§ 39-52).

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It is settled case-law that the mere fact that an employee's activities are performed outside the territory of the European Union is not sufficient to exclude the application of the EU rules on the freedom of movement for workers, as long as the employment relationship retains a sufficiently close link with the territory of the European Union (§ 53).

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The defendants concluded an employment contract in the territory of a Member State where they lived with an employer that was subsequently declared insolvent by a court of that

Member State on the ground that the employer had been operating in that State and had its actual head office. These circumstances indicate that there is a sufficiently close link between the employment relationships in question and the territory of the European Union (§54-55).

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Interpreting Directive 80/987 as providing protection in a situation such as that at issue does not conflict with the UN Convention on the Law of the Sea (UNCLOS) (§ 56-65).

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The introduction of a mechanism such as that provided for by Directive 80/987 does not prevent the State whose flag such a vessel is flying from effectively exercising its jurisdiction over that vessel or its crew as regards social matters concerning the vessel, as provided for by UNCLOS (§ 66).

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The fact that, in the present case, the Greek State is not able to require the employer to pay contributions to the guarantee fund, is not relevant (§ 67-70).

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Article 29 of Law 1220/1981, which provides seamen with a certain protection in the event that they are abandoned abroad, does not constitute 'protection equivalent to that resulting from [the] Directive', because the protection afforded by that provision is available only where seamen are abandoned abroad and not, as required under Directive 80/987, as a result of the insolvency of the employer (§ 72-79).

### **Ruling (judgment)**

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Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer must be interpreted as meaning that, subject to the possible application of Article 1(2) of the

directive, seamen living in a Member State who were engaged in that State by a company with its registered office in a non-member country but its actual head office in that Member State to work as employees on board a cruise ship owned by the company and flying the flag of the non-member country under an employment contract designating the law of the non-member country as the law applicable must, after the company has been declared insolvent by a court of the Member State concerned in accordance with the law of that State, be eligible for the protection conferred by the directive as regards their outstanding wage claims against the company.

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Article 1(2) of Directive 80/987 must be interpreted as meaning that, as regards employees in a situation such as that of the defendants in the main proceedings, protection such as that provided in Article 29 of Law 1220/1981 supplementing and amending the legislation relating to the Piraeus port authority in the event that seamen are abandoned abroad does not constitute 'protection equivalent to that resulting from [the] Directive' within the meaning of that provision.

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**Creator:** European Court of Justice (ECJ)

**Verdict at:** 2016-02-25

**Case number:** C-292/14