be consulted on the Internet, (ii) the fact that notice is published in an official journal of the intention to start the procedure for extending such an addendum and (iii) the fact that any interested party has an opportunity to submit observations following that publication. Indeed, interested parties have only 15 days within which to submit their observations, an appreciably shorter time than the periods laid down, except in urgent cases, in Articles 38, 59 and 65 of Directive 2004/18 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, which is not applicable in the present case but which may serve as a reference point in this regard. Furthermore, according to the observations made by the French Government at the hearing before the Court, the competent Minister merely conducts a review of legality. It thus appears to be the case that the fact that a more advantageous offer exists and that an interested party has informed the Minister about it cannot prevent the extension of that agreement, this being a matter which the referring court must determine (§ 45).

9. In the specific circumstances of the cases in the main proceedings, it must be held that the effects of the present judgment will not concern the collective agreements under which a single body was appointed to manage a supplementary social insurance scheme and which a public authority has, before the date of delivery of the present judgment, made binding on all employers and employees within a sector, without prejudice to legal proceedings brought before that date (§ 53).

Ruling (judgment)

The obligation of transparency, which flows from Article 56 TFEU, precludes the extension by a Member State, to all employers and employees within a sector, of a collective agreement concluded by the employers' and employees' respective representatives for a sector, under which a single economic operator, chosen by the social partners, is entrusted with the management of a compulsory social insurance scheme established for employees, where the national rules do not provide for publicity sufficient to enable the competent public authority to take full account of information which has been submitted concerning the existence of a more favourable offer.
The effects of the present judgment do not concern the collective agreements under which a single body was appointed to manage a supplementary social insurance scheme and which a public authority has, before the date of delivery of the present judgment, made binding on all employers and employees within a sector, without prejudice to legal proceedings brought before that date.

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

Elleniko Dimosio –v– Stefanos Stroumpoulis and six others, Greek case

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. The 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.

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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

1. 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).
2. 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).
3. 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).
4. 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).
5. 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).
6. Interpreting Directive 80/987 as providing protection ins a situation such as that at issue does not conflict with the UN Convention on the Law of the Sea (UNCLOS) (§ 56-65).
7. 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).
8. 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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9. 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)

1. 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.
2. 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.

ECJ 3 March 2016, case C-12/14. Free Movement – Social Insurance

European Commission –v– Republic of Malta

Summary

Some retired Maltese citizens receive both a Maltese retirement pension and a UK supplementary civil-service pension. The Maltese government deducts the amounts received under the UK pension scheme from the old-age pension. In the opinion of the European Commission, the Maltese government does not comply with the rules on ''overlapping benefits of the same kind'' as stated in Regulation 883/2004 and the Commission brings action against Malta. The ECJ dismisses the action.

Facts

Regulation 883/2004 (which in 2009 replaced Regulation 1408/71) (both regulations jointly: the "Regulation") contains rules on "overlapping benefits of the same kind", that is to say, benefits "calculated on the basis of periods of insurance and/or residence completed by the same person". The competent institution of a Member State may take such benefits into account subject to certain rules and limitations. The rules on overlapping benefits only apply to benefits within the meaning of the Regulation, such as State pensions. They do not apply to supplementary pensions. The Regulation provides that each Member State shall inform the European Commission, by means of a formal "declaration" which benefits under its own law it considers to fall within the scope of the Regulation. The UK has not made such a declaration in respect of three types of old-age pension. These are the pensions payable under the National Health Pension Scheme, the Principal Civil Service Pension Scheme and the Armed Forces Pension Scheme 1975 (together: the "UK pension schemes"). The UK considers these pensions to be supplementary pensions and therefore excluded from the Regulation's scope. Pursuant to Article 56 of the Maltese Social Security Act, Malta deducts the amounts received under the UK pension schemes from Maltese State pensions. This impacts many retired Maltese citizens who, as they had worked for the British services in Malta prior to 31 March 1979 – the date on which the last British forces left the island – receive both a Maltese retirement pension and a 'supplementary' civil-service pension from the United Kingdom, which, under a provision against overlapping contained in Maltese legislation, is deducted from the Maltese old-age pension.

The action

In 2010, prompted by petitions by Maltese citizens, the European Commission sent the Maltese government a formal notice that it considered said Article 56 to be incompatible with the Regulation. In the Commission's opinion, the amounts paid under the UK pension schemes are benefits covered by the Regulation. The Maltese government contested the Commission's opinion, arguing that the amounts paid under the UK pension schemes are not old-age benefits within the meaning of the Regulation. The Commission brought an

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