

Case C-246/06

Josefa Velasco Navarro

v

Fondo de Garantía Salarial (Fogasa)

(Reference for a preliminary ruling
from the Juzgado de lo Social Único de Algeciras)

(Social policy — Protection of workers in the event of insolvency of their employer — Directive 80/987/EEC amended by Directive 2002/74/EC — Direct effect — Compensation for unfair dismissal agreed under a judicial conciliation settlement — Payment guaranteed by the guarantee institution — Payment conditional upon the adoption of a judicial decision)

Judgment of the Court (Fourth Chamber), 17 January 2008 I - 107

Summary of the Judgment

1. *Social policy — Approximation of laws — Protection of workers in the event of insolvency of their employer — Directive 2002/74 amending Directive 80/987*
(Council Directive 80/987, as amended by Directive 2002/74, Art. 3, first para.)

2. *Social policy — Approximation of laws — Protection of workers in the event of insolvency of their employer — Directive 2002/74 amending Directive 80/987 (Council Directive 80/987, as amended by Directive 2002/74)*

1. Where Directive 2002/74 amending Directive 80/987 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 has not been transposed into national law by the deadline for its transposition, the possible direct effect of the first paragraph of Article 3 of Directive 80/987 cannot be relied upon in relation to a state of insolvency which occurred before that date.

(see para. 30, operative part 1)

2. Where rules of national law fall within the scope of Directive 80/987, relating to the protection of employees in the event of the insolvency of their employer, as amended by Directive 2002/74, the national courts are bound, as regards a state of insolvency occurring between the date of the entry into force of Directive 2002/74 and the deadline for transposition of that directive into national law, to ensure that the application of

those rules of national law is consistent with the principle of non-discrimination, as recognised by the Community legal order, in accordance with which comparable situations must not be treated differently unless such difference in treatment is objectively justified.

In that regard, workers who have been unfairly dismissed are in a comparable situation in so far as they are entitled to compensation in the event that they are not reinstated. Therefore, rules of national law which exclude from the responsibilities of the guarantee institutions claims corresponding to compensation for unfair dismissal established by conciliation procedure, are contrary to that principle of equal treatment, unless a difference in treatment for those claims as compared to claims for unfair dismissal, awarded by judgment, or administrative decision, may be objectively justified.

(see paras 36, 37, 39, operative part 2)