Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

2 March 2017*

(Reference for a preliminary ruling — Social policy — Directive 2002/15/EC — Protection of the safety and health of workers — Organisation of working time — Road transport — Mobile worker — Self-employed driver — Concept — Inadmissibility)

In Case C-97/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Social No 3 de Barcelona (Labour Court, Barcelona, Spain), made by decision of 2 February 2016, received at the Court on 17 February 2016, in the proceedings

José María Pérez Retamero

v

TNT Express Worldwide Spain S.L.,

Last Mile Courier S.L., formerly Transportes Sapirod S.L.,

Fondo de Garantía Salarial (Fogasa),

THE COURT (Tenth Chamber),

composed of M. Berger, President of the Chamber, E. Levits and F. Biltgen (Rapporteur), Judges,

Advocate General : E. Sharpston,

Registrar: A. Calot Escobar,

after considering the observations submitted on behalf of:

— Mr Pérez Retamero, by J. Juan Monreal, abogado,

— TNT Express Worldwide Spain S.L., by D. Fernández de Lis Alonso, abogado,

— Last Mile Courier S.L., formerly Transportes Sapirod S.L., by V. Domènech Huertas, abogado,

— the Spanish Government, by V. Ester Casas, acting as Agent,

— the European Commission, by J. Hottiaux and J. Rius Riu, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

* Language of the case: Spanish.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 3(d) and (e) of Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (OJ 2002 L 80, p. 35).

2 The request has been made in proceedings between Mr José María Pérez Retamero, on the one hand, and Last Mile Courier S.L., formerly Transportes Sapirod S.L. ('Sapirod') and TNT Express Worldwide Spain S.L. ('TNT'), on the other hand, concerning his dismissal by Sapirod.

Legal context

European Union law

3 Recitals 4, 9 and 10 of Directive 2002/15 are worded as follows:

'(4) It is therefore necessary to lay down a series of more specific provisions concerning the hours of work in road transport intended to ensure the safety of transport and the health and safety of the persons involved.

…

(9) The definitions used in this Directive are not to constitute a precedent for other Community regulations on working time.

(10) In order to improve road safety, prevent the distortion of competition and guarantee the safety and health of the mobile workers covered by this Directive, the latter should know exactly which periods devoted to road transport activities constitute working time and which do not and are thus deemed to be break times, rest times or periods of availability. These workers should be granted minimum daily and weekly periods of rest, and adequate breaks. It is also necessary to place a maximum limit on the number of weekly working hours.'

4 Article 1 of Directive 2002/15, entitled 'Purpose', provides:

'The purpose of this Directive shall be to establish minimum requirements in relation to the organisation of working time in order to improve the health and safety protection of persons performing mobile road transport activities and to improve road safety and align conditions of competition.'

5 Article 2(1) of that directive limits the scope of application of that directive to 'mobile workers employed by undertakings established in a Member State, participating in road transport activities covered by Council Regulation (EEC) No 3820/85 [of 20 December 1985 on the harmonisation of certain social legislation relating to road transport (OJ 1985 L 370, p. 1)] or, failing that, by the [European Agreement concerning the work of crews of vehicles engaged in international road transport (AETR)]' and, since 23 March 2009, to 'self-employed drivers' involved in those transport activities.

6 Article 3 of Directive 2002/15 provides:

‘For the purposes of this Directive:

…

(d) “mobile worker” shall mean any worker forming part of the travelling staff, including trainees and apprentices, who is in the service of an undertaking which operates transport services for passengers or goods by road for hire or reward or on its own account;

(e) “self-employed driver” shall mean anyone whose main occupation is to transport passengers or goods by road for hire or reward within the meaning of Community legislation under cover of a Community licence or any other professional authorisation to carry out the aforementioned transport, who is entitled to work for himself and who is not tied to an employer by an employment contract or by any other type of working hierarchical relationship, who is free to organise the relevant working activities, whose income depends directly on the profits made and who has the freedom to, individually or through a cooperation between self-employed drivers, have commercial relations with several customers.

For the purposes of this Directive, those drivers who do not satisfy these criteria shall be subject to the same obligations and benefit from the same rights as those provided for mobile workers by this Directive;

…’

Spanish law

7 Under Article 1 of the consolidated text of the Ley del Estatuto de los Trabajadores (Law on the Workers’ Statute), approved by the Real Decreto Legislativo 1/1995 (Royal Legislative Decree 1/1995), of 24 March 1995 (BOE No 75, of 29 March 1995, p. 9654), in the version applicable at the time of the facts at issue in the main proceedings (‘Workers’ Statute’):

‘(1) This Law shall apply to workers who voluntarily offer their services in return for payment by another within an organisation and under the direction of a natural or legal person, known as the employer or undertaking.

…

(3) The following shall be excluded from the scope of this Law:

…

(g) in general, any activity performed outside the scope of paragraph 1 of this article.

To that end, the following shall be excluded from employment relations: activities carried out by persons providing transport services by virtue of administrative authorisations held by them, which are carried out in return for the corresponding price, using commercial vehicles designed to fulfil transport activities covered by specific rules and which are owned by those persons or in whom a direct power of disposal is vested, even if those services are provided continuously to the same shipper or trader.

…’

The dispute in the main proceedings and the questions referred for a preliminary ruling

8 On 2 June 2008, Mr Pérez Retamero concluded with TNT a 'contract governing the provision of transport services'. In accordance with that contract, TNT entrusted to Mr Pérez Retamero the task of delivering goods on the territory of Catalonia (Spain), processing documents for customs clearance (in accordance with precise instructions), loading, stowing, unloading, and offloading the goods carried and, finally, arranging for the collection of amounts payable for dispatches. That contract provided furthermore that TNT could change, wholly or partly, and unilaterally, the principles and rules applicable to transport services. A mobile phone equipped with a card supplied by Vodafone was provided to Mr Pérez Retamero so that he could perform his work. Also in accordance with that contract, Mr Pérez Retamero had to take out a transport insurance policy and, in any event, assume responsibility for loss or destruction of the goods and for delivery delays. The initial term of the contract was fixed at six months. However, that contract could be extended for successive periods of six months. The remuneration for services provided by the interested party consisted of a lump sum amount payable for each day covered and paid monthly. The contract at issue stipulated that the vehicle used had to display the colours and advertising chosen by TNT. Mr Pérez Retamero also declared that he was licenced to carry on a transport activity. Annex I to that contract provided that the carrier would have a supervisor.

9 That contract was extended or others were subsequently concluded, but the contents of those contracts remained, essentially, the same.

10 From January 2014, while still performing the same work, Mr Pérez Retamero began issuing invoices for the services supplied to Sapirod, contracted by TNT to ensure the transport services concerned. The cards for access to TNT premises were directly issued by the latter to the carriers. On that card, Mr Pérez Retamero was identified as an 'employed driver'.

11 Mr Pérez Retamero was the owner of a van with a maximum load capacity of 2 590 kg and for which he carried a transport licence authorising him to carry out transport services.

12 On 17 February 2015, Sapirod informed Mr Pérez Retamero orally that it could no longer offer him any transport services. That information was confirmed by letter of 6 March 2015.

13 On 17 March 2015, Mr Pérez Retamero brought an action before the Juzgado de lo Social No 3 de Barcelona (Labour Court, Barcelona, Spain) seeking to establish that he was bound by an employment contract with Sapirod and that his dismissal was, therefore, unlawful. In addition to that claim, he challenged TNT for unlawfully making workers available and, therefore, he sought an order finding those two companies jointly and severally liable.

14 In support of his action, Mr Pérez Retamero claimed that all of the criteria or elements which characterise an employment relationship, such as subordination, that the work is carried out under the direction of another and inclusion within the organisation of an undertaking, were fulfilled, so that, in this case, it had to be concluded that there was not a commercial relationship, but indeed an employment contract. The objective exclusion provided for by Article 1(3)(g) of the Workers' Statute is contrary to Directive 2002/15, so that he cannot be classified as a 'self-employed driver', within the meaning of Article 3(e) of that directive.

15 Before the referring court, Sapirod claimed, in particular, that there was no contradiction between Article 1(3)(g) of the Workers' Statute and Article 3 of Directive 2002/15, since, in both of those provisions, the holding of a 'licence or an administrative authorisation' authorising the provision of road transport services is the decisive criterion excluding the existence of an employment relationship. The fact that that provision of EU law does not expressly refer to the fact that the interested party is the owner of the vehicle or has a power of disposal over it is not relevant.

16 Before the referring court, TNT contended, in particular, that it follows from recital 5 of Directive 2002/15 that the latter must not exceed what is necessary to achieve the objectives set out in Article 1 thereof and that that directive is therefore not a valid legislative instrument in order to make a distinction between the exercise of the activity of a carrier in the context of an employment relationship and the exercise of that activity as a self-employed driver.

17 According to the referring court, although the object of Directive 2002/15 does not consist in defining the concepts of 'employed worker' and 'self-employed worker', the classification at issue becomes essential due to the system of responsibility it involves. If the objective of EU law in the field of transport consisted in harmonising the rules of competition, the respective concepts of 'mobile worker' and 'self-employed driver', in Article 3(d) and (e) of that directive, should be the same in all the Member States.

18 In those circumstances, the Juzgado de lo Social No 3 de Barcelona (Labour Court, Barcelona) decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must the definition of "mobile worker" given in Article 3(d) of Directive 2002/15 … be interpreted as precluding domestic legal provisions such as Article 1.3(g) of the Workers' Statute, which provides that "persons providing a transport service by virtue of administrative authorisations of which they are the holders, carried out … using vehicles … of which ownership or a direct power of disposal is vested in them cannot be regarded as 'mobile workers'"?

(2) Must the second subparagraph of Article 3(e) of Directive 2002/15 … be interpreted as meaning that, if none or only one of the criteria laid down for a person to be regarded as a "self-employed driver" is fulfilled, the view must be taken that the person concerned is a "mobile worker"?'

Admissibility of the questions referred for a preliminary ruling

19 The admissibility of the questions referred for a preliminary ruling was contested by Sapirod, TNT, the Spanish Government and the European Commission, in their respective written observations, particularly on the ground that the dispute at issue in the main proceedings does not fall within the scope of application of Directive 2002/15 and that the interpretation of that directive is therefore not necessary for the resolution of that dispute.

20 According to settled case-law, the procedure provided for in Article 267 TFEU is a means of cooperation between the Court of Justice and national courts. It follows that it is for the national courts alone which are seised of the case and are responsible for the judgment to be delivered to determine, in view of the special features of each case, both the need for a preliminary ruling in order to enable them to give their judgment and the relevance of the questions which they put to the Court (see, inter alia, judgments of 17 July 1997, *Leur-Bloem*, C-28/95, EU:C:1997:369 paragraph 24, and of 7 July 2011, *Agafiței and Others*, C-310/10, EU:C:2011:467, paragraph 25).

21 Consequently, where questions submitted by national courts concern the interpretation of a provision of European Union law, the Court is, in principle, obliged to give a ruling (see, inter alia, judgments of 17 July 1997, *Leur-Bloem*, C-28/95, EU:C:1997:369 paragraph 25, and of 7 July 2011, *Agafiței and Others*, C-310/10, EU:C:2011:467, paragraph 26).

22 Nevertheless, the Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of European Union law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to enable it to give a

useful answer to the questions submitted to it (see, inter alia, judgments of 11 July 2006, *Chacón Navas*, C-13/05, EU:C:2006:456, paragraph 33, and of 7 July 2011, *Agafiței and Others*, C-310/10, EU:C:2011:467, paragraph 27).

23 It is therefore apparent from settled case-law that a reference by a national court can be rejected if, inter alia, it is obvious that European Union law cannot be applied, either directly or indirectly, to the circumstances of the case (judgment of 7 July 2011, *Agafiței and Others*, C-310/10, EU:C:2011:467, paragraph 28).

24 In this case, it should be noted that the referring court seeks guidance from the Court on the interpretation of Directive 2002/15 without having established that a situation such as that at issue in the main proceedings comes within the scope of that directive.

25 In that regard, it must be noted, first, that it follows from Article 1 of Directive 2002/15 that its purpose is to lay down minimum requirements on the organisation of working time, in order to improve the health and safety protection of persons performing mobile road transport activities, to improve road safety and to align conditions of competition.

26 Secondly, in accordance with Article 3 of Directive 2002/15, the definitions provided for therein are established '[f]or the purposes of this Directive'. Therefore, the interpretation of the concepts of 'mobile worker' and 'self-employed driver', defined in Article 3(d) and (e) of that directive, cannot go beyond the scope of that directive.

27 It must be noted that the dispute in the main proceedings, which pertains to an action challenging a dismissal, relates not to a question about the organisation of working time, but to whether the person concerned must be classified as a 'mobile worker' and therefore as an employed person for the purposes of the application of national labour legislation and, more particularly, legislation on dismissals.

28 Therefore, it must be concluded that a dispute such as that in the main proceedings does not come within the scope of Directive 2002/15 and that the concepts in Article 3(d) and (e) of that directive, consequently, cannot apply to that dispute.

29 It follows that Article 3(d) and (e) of Directive 2002/15 is not necessary for the resolution of the dispute in the main proceedings.

30 It must, therefore, be held that the questions referred for a preliminary ruling by the Juzgado de lo Social No 3 de Barcelona (Labour Court, Barcelona) are inadmissible.

Costs

31 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Tenth Chamber) hereby rules:

The request for a preliminary ruling made by the Juzgado de lo Social No 3 de Barcelona (Labour Court, Barcelona, Spain) is inadmissible.

[Signatures]