



Reports of Cases

Case C-338/17

Virginie Marie Gabrielle Guigo

v

Fond 'Garantirani vzemania na rabotnitsite i sluzhitelite'

(Request for a preliminary ruling from the Varhoven administrativen sad)

(Reference for a preliminary ruling — Social policy — Protection of employees in the event of employer's insolvency — Directive 2008/94/EC — Articles 3 and 4 — Employees' claims borne by guarantee institutions — Limitation on the liability of guarantee institutions — Exclusion of wage claims arising over three months prior to the entry in the commercial register of the judicial decision initiating insolvency proceedings)

Summary — Judgment of the Court (Seventh Chamber), 25 July 2018

Social policy — Approximation of laws — Protection of employees in the event of the insolvency of their employer — Directive 2008/94 — Limitation on the payment obligation of the guarantee institution — National legislation excluding wage claims arising over three months prior to the entry in the commercial register of the judicial decision initiating insolvency proceedings — Lawfulness

(European Parliament and Council Directive 2008/94)

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 not precluding national legislation, such as Article 4(1) of the *Zakon za garantiranite vzemania na rabotnitsite i sluzhitelite pri nesastoyatelnost na rabotodatelia* (Law on employees' guaranteed claims in the event of the employer's insolvency), which does not guarantee the wage claims of employees whose employment relationship ended more than three months prior to the entry in the commercial register of the judicial decision initiating insolvency proceedings in respect of their employer.

It should be noted that the cases in which it is permitted to limit the payment obligation of the guarantee institutions, as laid down in Article 4 of Directive 2008/94, must be interpreted strictly (see, by analogy, judgments of 17 November 2011, *van Ardennen*, C-435/10, EU:C:2011:751, paragraph 34, and of 28 November 2013, *Gomes Viana Novo and Others*, C-309/12, EU:C:2013:774, paragraph 31). However, such a restrictive interpretation cannot deprive of its effectiveness the option expressly conferred on Member States to limit that payment obligation (see, to that effect, judgment of 28 November 2013, *Gomes Viana Novo and Others*, C-309/12, EU:C:2013:774, paragraph 32).

In the present case, it is in accordance with the second paragraph of Article 3 of Directive 2008/94 that Article 6 of the Law on employees' guaranteed claims fixed as the reference date the date of entry in the commercial register of the judicial decision initiating insolvency proceedings.

Under Article 4(1) and the first subparagraph of Article 4(2) of the same directive, the Member States have the option to limit the liability of the guarantee institutions, where the employment relationship ended prior to that reference date, by covering only employees whose employment relationship ended in the three months preceding that date, as provided for under Article 4(1) of the Law on employees' guaranteed claims. The exclusion of employees whose employment relationship ended prior to that period does not infringe the minimum protection provided for in the first subparagraph of Article 4(2) of Directive 2008/94, since those employees do not have, in connection to the insolvent employer, any outstanding claims resulting from their employment contract or employment relationship arising over the course of the three months preceding that reference date.

(see paras 34-37, operative part)