



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

27 March 2014*

(Request for a preliminary ruling — Charter of Fundamental Rights of the European Union — Article 47 — Right to an effective remedy — Judicial fees and deposits required for lodging appeals in employment law cases — Failure to implement European Union law — Scope of European Union law — Lack of jurisdiction of the Court)

In Case C-265/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Social No 2 de Terrassa (Spain), made by decision of 3 May 2013, received at the Court on 15 May 2013, in the proceedings

Emiliano Torralbo Marcos

v

Korota SA,

Fondo de Garantía Salarial,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, K. Lenaerts (Rapporteur), Vice-President of the Court, J.L. da Cruz Vilaça, J.-C. Bonichot and A. Arabadjiev, Judges,

Advocate General: N. Jääskinen,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Spanish Government, by S. Centeno Huerta, acting as Agent,
- the European Commission, by I. Martínez del Peral and H. Krämer, acting as Agents,

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

gives the following

* Language of the case: Spanish.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The request has been made in proceedings between Mr Torralbo Marcos and Korota SA ('Korota') and the Wages Guarantee Fund ('the Fogasa') concerning payment of the compensation due to Mr Torralbo Marco following his dismissal by Korota, which is subject to court-supervised administration proceedings.

Legal context

European Union law

- 3 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 (OJ 2008 L 283, p. 36) provides, in Article 1(1):

'This Directive shall apply to employees' claims arising from contracts of employment or employment relationships and existing against employers who are in a state of insolvency within the meaning of Article 2(1).'

- 4 Under Article 2(1) of that directive:

'For the purposes of this Directive, an employer shall be deemed to be in a state of insolvency where a request has been made for the opening of collective proceedings based on insolvency of the employer, as provided for under the laws, regulations and administrative provisions of a Member State, and involving the partial or total divestment of the employer's assets and the appointment of a liquidator or a person performing a similar task, and the authority which is competent pursuant to the said provisions has:

- (a) either decided to open the proceedings, or
- (b) established that the employer's undertaking or business has been definitively closed down and that the available assets are insufficient to warrant the opening of the proceedings.'

- 5 Under the first paragraph of Article 3 of the directive:

'Member States shall take the measures necessary to ensure that guarantee institutions guarantee, subject to Article 4, payment of employees' outstanding claims resulting from contracts of employment or employment relationships, including, where provided for by national law, severance pay on termination of employment relationships.'

Spanish law

- 6 Article 2 of Law 1/1996 of 10 January 1996 on legal aid (Ley 1/1996, de 10 de enero 1996, de asistencia jurídica gratuita) of 10 January 1996 (BOE No 11, 12 January 1996, p. 793; ‘Law 1/1996’), entitled ‘Scope *ratione personae*’, provides:

‘The following persons shall be entitled to legal aid, on the terms and within the ambit of this law and of the relevant treaties and international conventions [Or. 9] to which Spain is a party:

...

(d) additionally, in employment cases, workers and beneficiaries of the social security system, both for the purpose of representation in court proceedings and for the purpose of bringing actions to enforce their employment rights in insolvency proceedings.’

- 7 Article 6 of Law 1/1996, entitled ‘Substantive content of the right’, is worded as follows:

‘The right to legal aid includes the following benefits:

...

5. Exemption from the payment of judicial fees and from the payment of deposits required for lodging appeals.’

- 8 Under the heading ‘Ambit of the fee in respect of the exercise of judicial powers in civil, administrative and employment matters’, Article 1 of Law No 10/2012 of 20 November 2012 regulating certain fees relating to the administration of justice and to the National Institute of Toxicology and Forensic Science (Ley 10/2012, de 20 de noviembre 2012, por la que se regulan determinadas tasas en el ámbito de la Administración de Justicia y del Instituto Nacional de Toxicología y Ciencias Forenses, BOE No 280, 21 November 2012, p. 80820; ‘Law 10/2012’), provides:

‘The fee in respect of the exercise of judicial powers in civil, administrative and employment matters is a State fee and shall be chargeable in the same way throughout the [Or. 4] national territory in the circumstances referred to herein. ...’

- 9 Article 2 of that Law, entitled ‘Event giving rise to the fee’, reads as follows:

‘The fee shall be chargeable upon the exercise of judicial powers ensuing from the following procedural steps:

...

(f) The lodging of appeals (recursos de suplicación) and appeals on a point of law in employment cases.’

- 10 Article 3 of that Law, entitled ‘Person liable to pay the fee’, provides, in paragraph 1 thereof:

‘Any person who seeks the exercise of judicial powers and takes the step constituting the chargeable event shall be liable to pay the fee.’

11 Article 4(2) and (3) of that Law, which deals with the exemption from the fee, states:

‘2. The following persons are in any event exempt from paying the fee:

(a) Persons entitled to receive legal aid who can show that they meet the conditions to do so in accordance with the legislation applicable.

...

3. In employment cases, self-employed and employed workers shall be exempt from paying 60% of the amount of the fee payable in respect of lodging appeals and appeals on a point of law.’

12 Article 5(3) of Law 10/2012, dealing with payment of the fee, provides:

‘In employment cases, the fee shall become due at the time the appeal or the appeal on a point of law is lodged.’

13 The basis of assessment is defined in Article 6 of that Law. Article 7 thereof, which concerns the determination of the amount of the fee, sets it, in principle, at EUR 500 for lodging an appeal in ‘suplicación’ in employment law. A sum corresponding to 0.1% of the amount of the basis of assessment is added to that amount with a ceiling of EUR 2 000 when the person liable to pay the fee is a natural person. Article 8 of that Law deals with the system for ‘[s]elf-assessment’ and payment of the fee.

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

14 Korota has been subject to court-supervised administration proceedings since 16 June 2008.

15 On 16 June 2010, the Juzgado de lo Mercantil No 4 de Barcelona (Commercial Court 4, Barcelona), issued a judgment, the operative part of which states:

‘The court endorses the arrangement proposed by Korota on 9 April 2010 and accepted by the creditors, and requires Korota to report to the court every six months concerning the company’s compliance with this arrangement. The insolvency administration shall be discontinued as from the date of the judgment.’

16 A conciliation settlement between Mr Torralbo Marcos and Korota, confirmed by the Registry of the referring court on 25 June 2012 (‘the conciliation settlement’) states:

‘1. [Korota] reaffirms the reasons for the dismissal and, for the purposes of reaching a settlement only, acknowledges that the dismissal was unfair and offers the sum of EUR 14 090 as compensation, together with EUR 992.66 in lieu of notice, together with EUR 6 563 as net amounts claimed in this litigation.

2. [Mr Torralbo Marcos accepts those sums and the parties agree that the employment contract between them shall be deemed to have been terminated with effect from 27 February 2012.’

...’

17 On 3 October 2012, Mr Torralbo Marcos applied to the referring court for enforcement of the conciliation settlement on the ground that Korota had failed to meet its obligations with its terms.

- 18 On 13 November 2012 the referring court ordered the enforcement of the conciliation settlement against Korota. On the same day, however, it stayed the enforcement proceedings on the ground that Korota was insolvent and no assets belonging to it had been seized before the insolvency procedure.
- 19 By a decision of the same date of the Registry of the referring court, Mr Torralbo Marcos was informed that he could appear before the competent Juzgado de lo Mercantil to enforce his rights against Korota.
- 20 Mr Torralbo Marcos lodged an appeal against that order on the grounds that, the Juzgado de lo Mercantil No 4 de Barcelona having endorsed the arrangement with creditors and ordered that the insolvency administration be discontinued, enforcement must proceed in accordance with Article 239 of the Law governing employment courts (Ley Reguladora de la Jurisdicción Social).
- 21 By order of 3 January 2013, the referring court dismissed the appeal, holding that the order of 13 November 2012 remained effective in the absence of any order bringing the insolvency proceedings to an end.
- 22 Mr Torralbo Marcos indicated his intention of lodging an appeal (recurso de suplicación) against the order of 3 January 2013 before the Tribunal Superior de Justicia de Cataluña (High Court of Justice, Catalonia).
- 23 Since he had not supplied a certificate from the tax administration to prove payment of the judicial fees required under Law 10/2012, Mr Torralbo Marcos was requested, by a decision of 13 March 2013, to produce that certificate within five days.
- 24 On 22 March 2013, Mr Torralbo Marcos lodged an appeal (recurso de reposición) against that decision, arguing, essentially, that he was not liable to pay the judicial fees because, firstly, he should be granted legal aid in his capacity as a worker and beneficiary of the social security scheme, in accordance with Article 2(d) of Law 1/1996 and, secondly, Law 10/2012 was incompatible with Article 47 of the Charter in that it constitutes a disproportionate obstacle, contrary to the fundamental right to an effective remedy guaranteed by that article.
- 25 The referring court asks whether national legislation, such as that at issue in the main proceedings, is consistent with Article 47 of the Charter to where it requires employees to pay a judicial fee for lodging an appeal in enforcement proceedings with a view to obtaining a legal declaration of the insolvency of the employer in order to allow access to the competent guarantee institution, in accordance with Directive 2008/94.
- 26 In those circumstances, the Juzgado de lo Social No 2 de Terrassa (Labour Court No 2, Terrassa) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Are Articles 1, 2(f), 3(1), 4(2)(a), 4(3), 5(3), 6, 7 and 8(1) and 8(2) of [Law 10/2012] contrary to Article 47 of the Charter of Fundamental Rights of the European Union in that they do not, firstly, permit a national court to adjust judicial fees or to assess reasons of proportionality (relating to the basis for charging the fees on the part of the State or to their amount as constituting an obstacle to obtaining an effective remedy) for the purposes of exemption; secondly, have regard to the principle of effectiveness in the application of provisions of Union law; or, thirdly, assess the importance of the proceedings to the parties in the light of the circumstances when payment of judicial fees is a prerequisite to obtaining leave to proceed with the appeal lodged?’

- (2) Are Articles 1, 2(f), 3(1), 4(2)(a), 4(3), 5(3), 6, 7 and 8(1) and 8(2) of [Law 10/2012] contrary to Article 47 of the Charter of Fundamental Rights of the European Union in that the latter applies to special procedures, as in the case of an employment court or tribunal, in which Union law is commonly applied as a fundamental aspect of balanced economic and social development in the [European Union]?
- (3) In connection with the foregoing questions, is it open to a court such as the referring court to refrain from applying legislation such as the legislation at issue which does not permit a national court, firstly, to adjust judicial fees or to assess reasons of proportionality (relating to the basis for charging the fees on the part of the State or to their amount as constituting an obstacle to obtaining an effective remedy) for the purposes of exemption; secondly, to have regard to the principle of effectiveness in the application of provisions of Union law; or, thirdly, assess the importance of the proceedings to the parties in the light of the circumstances when payment of judicial fees is a prerequisite to obtaining leave to proceed with the appeal in ‘suplicación’ lodged?’

The jurisdiction of the Court of Justice

- 27 According to the established case-law of the Court, in the context of a request for a preliminary ruling under Article 267 TFEU, the Court may interpret Union law only within the limits of the powers conferred upon it (see Case C-400/10 PPU *McB* EU:C:2010:582, paragraph 51, and orders in Case C-14/13 *Cholakova* EU:C:2013:374, paragraph 21, and Case C-371/13 *Schuster & Co Ecologic* EU:C:2013:748, paragraph 14).
- 28 In this regard, it should be recalled that the Charter’s scope so far as concerns action of the Member States is defined in Article 51(1) thereof, according to which the provisions of the Charter are addressed to Member States only when they are implementing European Union law (Case C-617/10 *Åkerberg Fransson* EU:C:2013:105, paragraph 17).
- 29 Article 51(1) of the Charter confirms the Court’s settled case-law, which states that the fundamental rights guaranteed in the legal order of the European Union are applicable in all situations governed by European Union law, but not outside such situations (see *Åkerberg Fransson* EU:C:2013:105, paragraph 19, and the order in Case C-258/13 *Sociedade Agrícola e Imobiliária da Quinta de S. Paio*, EU:C:2013:810, paragraph 19).
- 30 Where a legal situation does not fall within the scope of Union law, the Court has no jurisdiction to rule on it and any Charter provisions relied upon cannot, of themselves, form the basis for such jurisdiction (see, to that effect, *Åkerberg Fransson* EU:C:2013:105, paragraph 22; and the orders in *Sociedade Agrícola e Imobiliária da Quinta de S. Paio* EU:C:2013:810, paragraph 20; Joined Cases C-614/12 and C-10/13 *Dutka and Sajtos* EU:C:2014:30, paragraph 15; and Case C-332/13 *Weigl* EU:C:2014:31, paragraph 14).
- 31 In consequence, it is necessary to consider whether the legal situation which gave rise to the main proceedings falls within the scope of European Union law.
- 32 In the context of the present request for a preliminary ruling, the national legislation at issue in the main proceedings governs, in general, certain fees connected with the administration of justice. It is not intended to implement provisions of European Union law. In addition, European Union law does not contain any specific rules in that area or any which are likely to affect that national legislation.
- 33 Furthermore, the objective of the main proceedings does not concern the interpretation or application of a rule of Union law other than those set out in the Charter (see, by analogy, the order in *Sociedade Agrícola e Imobiliária da Quinta de S. Paio* EU:C:2013:810, paragraph 21).

- 34 In addition, unlike the matter which gave rise to the judgment in Case *C-279/09 DEB* EU:C:2010:811, referred to by the referring court, which concerned an application for legal aid in proceedings involving State responsibility brought under European Union law, it is apparent from the order for reference that the judicial fees and deposits required for lodging appeals in the main proceedings concern the lodging of an appeal in ‘suplicación’ against the order of 3 January 2013, by which the referring court rejecting the application for enforcement of the conciliation settlement, brought by Mr Torralbo Marcos on the basis of national law, namely Article 239 of the Law governing employment courts.
- 35 The referring court does indeed state that the final objective of the legal steps taken by Mr Torralbo Marcos is to obtain the intervention of the Fogasa in Korota’s insolvency, in accordance with Article 3 of Directive 2008/94.
- 36 However, it must be noted that, at the present stage of the main proceedings, the situation at issue does not fall within the scope of that directive or, in general, of the scope of European Union law.
- 37 As the European Commission has noted, it follows from the terms of Article 2(1) of Directive 2008/94 that whether or not an employer must be deemed to be in a state of insolvency, for the purposes of that directive, is a matter of the national law and of a decision or finding of the competent national authority.
- 38 Although it is true that, on the basis of the information in the order for reference, Korota was made subject to court-supervised administration proceedings in June 2008, that order does not, however, contain any concrete information permitting the view to be taken that the undertaking is, at the present stage of the main proceedings, insolvent as regards the relevant provisions of Spanish law.
- 39 On the contrary, it follows from the statement of the referring court, namely that the purpose of the appeal lodged by Mr Torralbo Marcos seeking the enforcement of the conciliation settlement is to have a legal finding of Korota’s insolvency, that that undertaking is not, at this stage, deemed to be insolvent under Spanish law.
- 40 The fact that, by the steps he has taken, Mr Torralbo Marcos is seeking, according to the statements of the referring court, to obtain such a declaration of insolvency in order to benefit from the Fogasa’s intervention in accordance with Article 3 of Directive 2008/94 is not sufficient to allow the view to be taken that the situation at issue in the main proceedings, at their present stage, falls within the scope of the directive and, consequently, of European Union law.
- 41 It must also be pointed out that, according to the information supplied by the referring court, in its order of 3 January 2013, which has been the subject of the appeal in ‘suplicación’ brought by Mr Torralbo Marcos, that court refused to grant his application for enforcement of the conciliation settlement on the ground, in essence, that that enforcement must be pursued on the basis of a decision of the competent commercial court, before which Mr Torralbo Marcos was requested to pursue his claim.
- 42 That order does not prejudice the question of Korota’s insolvency, nor any right Mr Torralbo Marcos may have to have the competent guarantee institution pay the unpaid social debt of the undertaking, in accordance with Directive 2008/94, should Korota be declared insolvent pursuant to the relevant national provisions.
- 43 It follows from all those considerations that the legal situation which gave rise to the main proceedings does not fall within the scope of European Union law. The Court therefore has no jurisdiction to answer the questions referred by the Juzgado de lo Social No 2 de Terrassa.

Costs

- 44 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 (Second Chamber) hereby rules:

The Court of Justice of the European Union has no jurisdiction to answer the questions referred for a preliminary ruling by the Juzgado de la Social No 2 de Terrassa (Spain).

[Signatures]