JUDGMENT OF THE COURT (Second Chamber)
4 March 2004 *

In Joined Cases C-19/01, C-50/01 and C-84/01,

REFERENCES to the Court under Article 234 EC by, respectively, the Tribunale di Pisa (Italy), the Tribunale di Siena (Italy) and the Corte Suprema di Cassazione (Italy) for preliminary rulings in the proceedings pending before those courts between

Istituto nazionale della previdenza sociale (INPS)

and

Alberto Barsotti and Others (C-19/01),

and between

Milena Castellani

and

Istituto nazionale della previdenza sociale (INPS) (C-50/01),

* Language of the case: Italian.

and between

Istituto nazionale della previdenza sociale (INPS)

and

Anna Maria Venturi (C-84/01),

on the interpretation of Council 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 (OJ 1980 L 283, p. 23),

THE COURT (Second Chamber),

composed of: V. Skouris, acting for the President of the Second Chamber, R. Schintgen and N. Colneric (Rapporteur), Judges,

Advocate General: C. Stix-Hackl,
Registrar: L. Hewlett, Principal Administrator,

after considering the written observations submitted on behalf of:

— Mr Barsotti, by G. Giraudo, avvocato,

— Ms Castellani, by F. Mancuso, avvocato,

— Ms Venturi, by A. Piccinini, avvocato,

— the Istituto nazionale della previdenza sociale (INPS), by A. Todaro and P. Spadafora, avvocati,

— the Italian Government, by I.M. Braguglia, acting as Agent, assisted by D. Del Gaizo, avvocato dello Stato,

— the French Government, by G. de Bergues and C. Bergeot-Nunes, acting as Agents,

— the Commission of the European Communities, by A. Aresu, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the Istituto nazionale della previdenza sociale (INPS), represented by A. Todaro, of Mrs Venturi, represented by A. Piccinini, of the French Government, represented by C. Lemaire, acting as Agent, and of the Commission, represented by A. Aresu, at the hearing on 30 January 2003,

after hearing the Opinion of the Advocate General at the sitting on 15 May 2003,

gives the following

Judgment

1 By orders of 19 December 2000, 26 January 2001 and 18 January 2001, received at the Court on 15 January 2001, 5 February and 19 February 2001 respectively, the Tribunale de Pisa (District Court, Pisa), the Tribunale di Siena (District Court, Siena) and the Corte Suprema di Cassazione (Supreme Court of Cassation) referred to the Court for preliminary rulings under Article 234 EC several questions on the interpretation of Council 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 (OJ 1980 L 283, p. 23, hereinafter 'the directive').

2 Those questions were raised in the course of proceedings between the Istituto nazionale della previdenza sociale (National Social Welfare Institution, hereinafter 'the INPS') and Mr Barsotti and Others (C-19/01) and Ms Venturi (C-84/01), and between Ms Castellani and the INPS (C-50/01), on the payment of employees' outstanding claims arising from contracts of employment or employment relationships.

Legal background

Community legislation

3 The first recital in the preamble to the directive states, '[w]hereas it is necessary to provide for the protection of employees in the event of the insolvency of their employer, in particular in order to guarantee payment of their outstanding claims, while taking account of the need for balanced economic and social development in the Community'.

4 Article 1(1) of the directive provides:

'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).'

5 Article 3 of the directive provides:

'1. 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 and relating to pay for the period prior to a given date.

2. At the choice of the Member States, the date referred to in paragraph 1 shall be:

— ...

— ...

— or that of the onset of the employer's insolvency or that on which the contract of employment or the employment relationship with the employee concerned was discontinued on account of the employer's insolvency.'

6 Article 4 of the directive reads as follows:

'1. Member States shall have the option to limit the liability of guarantee institutions, referred to in Article 3.

2. When Member States exercise the option referred to in paragraph 1, they shall:

— ...

— ...

— in the case referred to in Article 3(2), third indent, ensure the payment of outstanding claims relating to pay for the last 18 months of the contract of employment or employment relationship preceding the date of the onset of the employer's insolvency or the date on which the contract of employment or the employment relationship with the employee was discontinued on account of the employer's insolvency. In this case, Member States may limit the liability to make payment to pay corresponding to a period of eight weeks or to several shorter periods totalling eight weeks.

3. However, in order to avoid the payment of sums going beyond the social objective of this Directive, Member States may set a ceiling to the liability for employees' outstanding claims.

...'

7 Under Article 10(a) thereof, the directive shall not affect the option of Member States 'to take the measures necessary to avoid abuses'.

National legislation

8 Articles 1 and 2 of Legislative Decree No 80 of 27 January 1992 transposing Directive 80/987/EEC on the protection of employees in the event of the insolvency of their employer (GURI of 13 February 1992, general supplement No 36, p. 26, hereinafter 'Legislative Decree No 80/92'), govern the guarantee of employment claims and the activation of the Guarantee Fund (hereinafter 'the Fund'), which is managed by the INPS.

9 Article 1(1) of Legislative Decree No 80/92 provides, under the heading 'Guarantee of employment claims':

'Where the employer is the subject of insolvency proceedings, composition with creditors, involuntary liquidation or the extraordinary administration procedure ... , its employees or the persons entitled under them may, on application, obtain payment, chargeable to the Guarantee Fund ... of their outstanding employment claims, in accordance with Article 2.'

10 Article 2(1), (2) and (4) of Legislative Decree No 80/92 provide:

'1. Payment by the Guarantee Fund under Article 1 of this decree covers employment claims, other than those relating to severance pay, appertaining to the last three months of the employment relationship falling within the 12 months preceding: (a) the date of the measure deciding upon the initiation of one of the procedures mentioned in Article 1(1); (b) the date of the commencement of enforcement proceedings; (c) the date of the decision to go into liquidation or to terminate the provisional process or the authorisation to carry on the undertaking's business, for employees who have continued to pursue their professional activity, or the date of cessation of the employment relationship if that has occurred while the undertaking was carrying on its business.

2. Payment effected by the Fund under paragraph 1 of this article may not exceed a sum equal to three times the ceiling of the special supplementary monthly pay net of deductions concerning social security.

...

4. A payment referred to in paragraph 1 of this article may not be aggregated, up to the said amounts: (a) with the special allowance paid as a supplement to the salary, received during the 12 months mentioned in paragraph 1 above; (b) with the remuneration paid to the employee in the course of the period of three months mentioned in paragraph 1 above; (c) with job-seeker's allowance granted pursuant to Law No 223 of 23 July 1991 during the three months following the termination of the employment relationship.'

11 The special allowance paid as a salary supplement is a benefit paid by the INPS, in specific circumstances, to employees suspended or working reduced hours for economic reasons, including a crisis in the undertaking concerned.

The main proceedings

12 Mr Barsotti and Others, Ms Castellani and Ms Venturi are owed part of their remuneration relating to the final period of their employment contract or employment relationship. They claimed payment of the balance thereof from the Fund. The INPS rejected those claims, either in part or in whole.

13 In Case C-19/01, wherein the statement of facts relates only to Mr Barsotti although the case also concerns 11 other employees, the INPS was ordered, by the Tribunale de Pisa, to pay Mr Barsotti the sum of ITL 4 027 377, together with an amount to compensate currency devaluation, statutory interest and costs. According to the referring court, that sum corresponds to the difference between the claims which had accrued in respect of the final three months of Mr Barsotti's remuneration, in the 12 months immediately preceding the employer's insolvency, and that which was actually received by the applicant by way of advances and part payments, within the ceiling of ITL 4 027 377 provided for by the Fund's guarantee. The INPS, on behalf of the Fund, lodged an objection to the order to pay, seeking its revocation and contending that it was not obliged to pay anything, since the applicant, because of the payments he had received, had obtained the maximum sum to which he was entitled and that, in that regard, it was irrelevant that it was the employer which had made payment. The Tribunale di Pisa, before which the case was brought, decided to stay proceedings and make a reference to the Court for a preliminary ruling.

14 In Case C-50/01, Ms Castellani sought judgment against the INPS for a sum equal to her claim for salary in respect of her remuneration for the three-month period preceding the cessation of the employment relationship during the year preceding the declaration of insolvency, after deduction of the net amount of the sums received and subject to the maximum amount provided for by Legislative Decree No 80/92. That claim was upheld in part by the INPS, which, however, deducted from such maximum the sums paid to Ms Castellani by her employer during the three final months of the said employment relationship. The INPS contended that the Italian legislature, by making the monthly ceiling coincide with the net special allowance paid as a salary supplement, had impliedly established the non-agregable nature of the maximum allowable amount with the sums paid to the employee during the three-month reference period. Consequently, in its view, it was appropriate to deduct those sums from that maximum amount. The Tribunale di Siena, before which the case was brought, decided to stay proceedings and make a reference to the Court for a preliminary ruling.

15 In Case C-84/01, Ms Venturi received from her employer the remuneration which was due to her for two of the three final months of her employment and she sought payment from the INPS of an amount corresponding to the salary for the third month. The INPS did not pay that sum to Ms Venturi on the ground that she had correctly received her remuneration for two of the three months covered by the guarantee and that she had thus received an amount greater than the minimum income provided for by the law. The Tribunale di Bologna (Italy), before which the action was brought, upheld Ms Venturi's claim by a judgment of 28 May 1997. That court accepted Ms Venturi's argument that whatever was paid by the employer on account must first be deducted from the remuneration actually due.

16 The INPS appealed on a point of law against that judgment. In support of that appeal, it argued that the payment on account of the three final months' salary must be deducted from the ceiling of the guarantee by the Fund. The Corte Suprema di Cassazione decided to stay proceedings and make a reference to the Court for a preliminary ruling.

The orders for reference and the questions referred for a preliminary ruling

17 In its order for reference, the Corte Suprema di Cassazione starts from the premiss that it is clear that, if the INPS's interpretation of the national legislation were upheld, employees whose remuneration was greater than the ceiling guaranteed by the Fund would obtain nothing or, at the very most, partial satisfaction of their claim (if the part payment received from the employer was equal to or greater than the said ceiling), with the result that they would receive either no money or less than full satisfaction. Conversely, employees whose remuneration was less than the ceiling could obtain payment of their entire claim, partly by the employer and partly by the Fund.

18 The Corte Suprema di Cassazione states that its case-law, after inclining initially in the opposite direction, has accepted that Article 2 of Legislative Decree No 80/92 is to be interpreted as meaning that the Fund is liable for payment of the sum which remains due, as the case may be, after deduction from the ceiling of the payments actually received on account of remuneration (see judgments of 11 August 1999, No 8607; of 19 February 2000, No 1937; and of 2 October 2000, No 13939, not yet reported). That court considers that such interpretation is in accordance with the 'social objective' of the directive, as it emerges from Article 4 (3) thereof, by which the employees' needs are protected within limits compatible with the financial resources provided (see judgment of 2 October 2000, No 13939, cited above).

19 However, the Corte Suprema di Cassazione observes that, by comparing Article 4 (3) of the directive with the directive's other principles, doubts arise as to the correctness of the interpretation it has adopted. Indeed, it is clear from Articles 1 and 4 of the directive that both the definition of its scope and the determination of the limits which the Member States may place on the payment obligation are set out, in any event, subject to 'employees' claims resulting from employment contracts'.

20 It is in those circumstances that the Corte Suprema di Cassazione decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Is it permissible under Article 4(3) of Directive 80/987/EEC of 20 October 1980 — which provides that, in order to avoid the payment of sums going beyond the social objective of the directive, Member States may set a ceiling to the liability for employees' outstanding claims in respect of the last three months of the employment relationship — to require sacrifice of part of the claims of those who received pay in excess of the ceiling and have received in the last three months of their employment relationship advances equal to or in excess of that ceiling, whereas those who received pay below the ceiling may then, through aggregation of any advances paid by the employer with the payments made by the public body, secure full satisfaction of their claims (or of a higher percentage thereof)?'

21 The Tribunale di Pisa does not approve of the new case-law of the Corte Suprema di Cassazione. In its view, that case-law tends to regard recourse to the Fund as lawful only if the payments on account of remuneration are less than the ceiling of the Fund's guarantee and up to a maximum of the difference between the amount of that ceiling and that of the said part payments. The Tribunale di Pisa considers that the current interpretation of Article 2(4)(b) of Legislative Decree No 80/92 introduces a disparity in the protection of the interests of employees, protection whose uniformity the directive and the Court of Justice, in Case C-373/95 *Maso and Others* [1997] ECR I-4051, sought, on the contrary, to guarantee.

22 According to the Tribunale di Pisa's explanation, it is Legislative Decree No 80/92 itself which diverges from the directive.

23 The Italian legislature has, in essence, created a system of novation, in which the subject-matter of the employee's right is the benefit granted by the Fund, which passes from being a measure of the liability to becoming the content of the obligation and of the right which results therefrom, thus freeing itself of any link with the initial subjective legal situation. That is clear from Article 2(4) and (1) in conjunction with Article 1 of Legislative Decree No 80/92.

24 It is in those circumstances that the Tribunale di Pisa decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'May Directive 80/987/EEC and the judgments relating to it (judgments in Joined Cases C-6/90 and C-9/90 *Francovich and Others* [1991] ECR I-5357, and Case C-373/95 *Maso and Others* [1995] ECR I-4051) be interpreted as meaning that, subject to the ceiling imposed, it is lawful to prohibit aggregation of the compensation awarded by the Guarantee Fund and part of the wages paid by the employer in the last three months only as regards the amount exceeding that represented by the level of the *indennità di mobilità* (job-seeker's allowance) provided for, *ratione temporis*, in respect of the same period, in view of the fact that the said advances appear, like the job-seeker's allowance and up to the same amount, to be intended to cover the primary needs of the dismissed worker?'

25 The Tribunale di Siena doubts whether the Corte Suprema di Cassazione's new case-law is compatible with Community law.

26 According to that court, the wording of Article 2 of Legislative Decree No 80/92 seems ambiguous, because of both the arrangement of the various subparagraphs of that provision and the nature of the prescribed ceiling, from which an incorporative reference can be inferred.

27 The Corte Suprema di Cassazione's new case-law relating to the ceiling of the Fund's guarantee refers to Italian social security legislation, without taking account of the divergence between that legislation and the social objective on which the directive is based. The Tribunale di Siena expresses doubts as regards the fact that the ambiguity of Article 2 of Legislative Decree No 80/92 may be raised as a ground for a reduction or — in most cases — the complete loss, of the employees' rights to receive outstanding salary actually due but not received, in spite of the fact that the acquisition of such rights is guaranteed by the directive.

28 It is in those circumstances that the Tribunale di Siena decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'Is the rule precluding aggregation of the accounting value of the special supplementary pay with the payments made to a worker in the reference period (Article 2(4) of Legislative Decree No 80/92) compatible — inter alia in the light of past rulings of the Court of Justice concerning that decree — with EEC Directive 80/987, and in particular:

(a) can that non-aggregability be regarded as conforming with the purpose of the directive which appears (Article 3(1)) to be to ensure the payment of outstanding claims in respect of wages arising within a specified time span (Article 3(2)) and in respect of a certain period (Article 4(1) and (2))? or

(b) does that non-aggregability reflect a rule concerning assistance, not conforming with the social criterion on which Directive 80/987 is based?

(c) Does that non-aggregability render the directive inoperative or result in its partial disapplication?

(d) Can that non-aggregability be allowed in the context of the power of the Member States to impose a ceiling on the guarantee of payment of workers' claims (Article [4(3)]), having regard to the fact that the Italian legislature has already imposed a ceiling by means of Article 2(2) of the legislative decree at issue?

(e) Consequently, must the reference to the "maximum amount of the special supplementary pay" in the said Article 2(2) be regarded as being made merely for formal or accounting purposes or is it an incorporative reference (with the consequent inclusion in Legislative Decree No 80/92 of the provisions giving effect to the special wage supplement, including the so-called non-aggregability rule)?

(f) Finally, may non-aggregability be regarded as allowed in the context of the power of the Member States to adopt the measures necessary to avoid abuses (Article 10(a))?'

29 By order of the President of the Court of 8 March 2001, Cases C-19/01, C-50/01 and C-84/01 were joined for the purposes of the written procedure, the oral procedure and the judgment.

The questions referred

30 As a preliminary point, it is appropriate to note that, in the context of Article 234 EC, the Court has no jurisdiction to rule either on the interpretation of provisions of national laws or regulations or on their conformity with Community law. It may, however, supply the national court with an interpretation of Community law that will enable that court to resolve the legal problem before it (see, particularly, Case C-107/98 *Teckal* [1999] ECR I-8121, paragraph 33, and Case C-57/01 *Makedoniko Metro and Michaniki* [2003] ECR I-1091, paragraph 55).

31 It is therefore in the light of that case-law that the questions referred must be answered.

32 Those questions, which should be considered together, must be understood as asking, in essence, whether Article 3(1) and the first subparagraph of Article 4(3) of the directive are to be interpreted as meaning that they allow a Member State to limit the liability of the guarantee institutions to a sum which covers the basic needs of the employees concerned and from which are to be deducted payments made by the employer during the period covered by the guarantee.

33 Under Article 3(1) of the directive, the Member States are to take the measures necessary to ensure that guarantee institutions guarantee, subject to Article 4 of the directive, payment of employees' outstanding claims resulting from contracts of employment or employment relationships and relating to pay for the period prior to a given date.

34 The first subparagraph of Article 4(3) of the directive provides the Member States with an option to set a ceiling to the liability for employees' outstanding claims in order to avoid the payment of sums going beyond the directive's social objective.

35 That social objective is to guarantee employees a minimum level of Community protection 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 (*Maso and Others*, cited above, paragraph 56; Case C-125/97 *Regeling* [1998] ECR I-4493, paragraph 20; Case C-441/99 *Gharehveran* [2001] ECR I-7687, paragraph 26, and Case C-201/01 *Walcher* [2003] ECR I-8827, paragraph 38).

36 While the Member States are entitled to set a ceiling to the liability for outstanding claims, they are bound to ensure, within the limit of that ceiling, the payment of all the outstanding claims in question.

37 Any part payments received on account by the employees concerned on their claims in respect of the guarantee period must be deducted therefrom in order to determine the extent to which they are outstanding.

38 On the other hand, a rule against aggregation according to which remuneration paid to the said employees during the period covered by the guarantee must be deducted from the ceiling set by the Member State to the liability for outstanding claims directly undermines the minimum protection guaranteed by the directive.

39 In addition, while Article 10 of the directive enables the Member States to take the measures necessary to avoid abuses, the contents of the case-files include no arguments tending to establish the existence of such abuse which the rule against aggregation at issue in the main proceedings is intended to prevent.

40 In the light of the foregoing considerations, the reply to the question referred must be that Article 3(1) and the first subparagraph of Article 4(3) of the directive are to be interpreted as meaning that they do not allow a Member State to limit the liability of the guarantee institutions to a sum which covers the basic needs of the employees concerned and from which are to be deducted payments made by the employer during the period covered by the guarantee.

Costs

41 The costs incurred by the Italian and French Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the questions referred to it by the Tribunale di Pisa, by order of 19 December 2000, the Tribunale di Siena, by order of 26 January 2001, and the Corte Suprema di Cassazione, by order of 18 January 2001, hereby rules:

Article 3(1) and the first subparagraph of Article 4(3) of Council 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 are to be interpreted as meaning that they do not allow a Member State to limit the liability of the guarantee institutions to a sum which covers the basic needs of the employees concerned and from which are to be deducted payments made by the employer during the period covered by the guarantee.

Skouris Schintgen Colneric

Delivered in open court in Luxembourg on 4 March 2004.

R. Grass

Registrar

V. Skouris

President