



Press and Information

Court of Justice of the European Union

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Judgment in Case C-201/15

Anonymi Geniki Etairia Tsimenton Iraklis (AGET Iraklis) v Ypourgos
Ergasias, Koinonikis Asfalis kai Koinonikis Allilengyis

EU law does not, in principle, prevent a Member State from opposing collective redundancies in certain circumstances in the interests of the protection of workers and of employment

However, under such national legislation, which must in that case seek to reconcile and strike a fair balance between, on the one hand, the protection of workers and of employment and, on the other, employers' freedom of establishment and their freedom to conduct a business, the legal criteria which the competent authority is to apply in order to be able to oppose projected collective redundancies cannot be formulated in general and imprecise terms

The Greek company AGET Iraklis, a cement producer whose principal shareholder is the French multinational Lafarge, contests the Ministry of Labour's decision not to authorise its collective redundancy plan (a plan which envisaged the closure of a plant in Chalkida on the island of Evia and the loss of 236 jobs). In Greece, when the parties do not reach agreement on a collective redundancy plan, the prefect or the Minister for Labour may, after assessing three criteria (namely the conditions in the labour market, the situation of the undertaking and the interests of the national economy), not authorise some or all of the projected redundancies. If the redundancy plan is not authorised, it cannot be implemented.

The Symvoulío tis Epikrateias (Greek Council of State), before which the case was brought, has asked the Court of Justice whether such prior administrative authorisation is consistent with the directive on collective redundancies¹ and with freedom of establishment as guaranteed by the Treaties (a freedom which the French multinational Lafarge exercises through the majority interest which it holds, in the present case, in the Greek company AGET Iraklis). If it is not, the Greek court has asked whether the Greek legislation may nonetheless be held compatible with EU law in the light of the fact that Greece is suffering an acute economic crisis and is faced with an extremely high unemployment rate.

In today's judgment, the Court first examines whether the Greek legislation is compatible with the directive. It holds that **the directive does not preclude, in principle, a national regime which confers upon a public authority the power to prevent collective redundancies** by a reasoned decision adopted after the documents in the file have been examined and predetermined substantive criteria have been taken into account, **unless such a regime deprives the directive of its practical effect**. The directive could, in particular, be deprived of practical effect if, in the light of the criteria applied by the national authority, any actual possibility for the employer to effect collective redundancies were, in practice, ruled out.

In this instance, AGET Iraklis asserts that the Greek authorities have systematically opposed projected collective redundancies of which they have been notified. The Greek court hearing the case will therefore have the task of determining whether, on account of the criteria applied by the Greek authorities, the directive is deprived of practical effect because employers do not have any actual possibility of effecting collective redundancies.

¹ Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ 1998 L 225, p. 16).

The Court examines next whether the Greek legislation is compatible with freedom of establishment. It holds in this regard that **the Greek legislation is liable to constitute a serious obstacle to the exercise of freedom of establishment in Greece**. That legislation is such as to render access to the Greek market less attractive and to reduce considerably, or even eliminate, the ability of any economic operator from another Member State – if it proposes to adapt its activity or give it up – to part, where appropriate, with the workers previously taken on. The Court thus concludes that there is a **restriction on freedom of establishment**.

The Court recalls that **such a restriction may be justified by overriding reasons in the public interest**, such as the protection of workers or the encouragement of employment and recruitment. The Court states in this regard that **the mere fact that a Member State provides that projected collective redundancies must first be notified to a national authority endowed with powers of review enabling it, in certain circumstances, to oppose the projected redundancies on grounds relating to the protection of workers and of employment cannot be considered contrary either to freedom of establishment or to the freedom to conduct a business** enshrined in the Charter of Fundamental Rights of the European Union. Such a regime does not have the consequence of excluding entirely, by its very nature, the ability to effect collective redundancies, but is designed solely to impose a framework on that ability in such a way as to strike a fair balance between the interests connected with the protection of workers and of employment (in particular protection against unjustified dismissal) and those relating to freedom of establishment. The Court concludes that such a regime is capable of satisfying the requirement of proportionality and, furthermore, does not affect the essence of the freedom to conduct a business.

The Court then examines the three criteria in the light of which the Greek authorities must examine projected collective redundancies. The Court holds that the first criterion (interests of the national economy) cannot be accepted, since economic aims cannot constitute a reason in the public interest that justifies a restriction on a freedom such as freedom of establishment. On the other hand, **the other two criteria (situation of the undertaking and conditions in the labour market) do appear prima facie to be capable of relating to the legitimate objectives in the public interest that are constituted by the protection of workers and of employment**.

The Court finds, however, that **those two criteria are formulated in very general and imprecise terms**. The employers concerned do not know in what specific objective circumstances the Greek authorities may oppose projected collective redundancies: the situations are potentially numerous, undetermined and indeterminable and the criteria leave the Greek authorities a broad discretion that is difficult to review. **Imprecise criteria of that kind which are not founded on objective, verifiable conditions go beyond what is necessary** in order to attain the objectives stated and therefore cannot satisfy the requirements of the principle of proportionality.

Finally, in answer to the second question asked by the Greek court, the Court states that **the fact that the context in a Member State may be one of acute economic crisis and a particularly high unemployment rate is not such as to affect the outcome reached by it**. Neither the directive nor the FEU Treaty provides for a derogation based on such a national context.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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