Case C-152/20

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

30 March 2020

Referring court:

Tribunalul Mureș (Romania)

Date of the decision to refer:

1 October 2019

Applicants:

DG

EH

Defendant:

SC Gruber Logistics SRL

Subject matter of the main proceedings

Action by which the applicants DG and EH, in their capacity as employees, request Tribunalul Mureș (Regional Court, Mureș, Romania) to order the defendant SC Gruber Logistics SRL, in in its capacity as employer, to pay certain sums by way of remuneration.

Subject matter of the request for a preliminary ruling

Interpretation of Articles 3 and 8 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).

Questions referred

1. Is Article 8 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 to be interpreted as meaning that the choice of law applicable to an individual employment contract excludes the application of the law of the country in which the employee has habitually carried out his or her work or as meaning that the fact that a choice of law has been made excludes the application of the second sentence of Article 8(1) of that regulation?

2. Is Article 8 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 to be interpreted as meaning that the minimum wage applicable in the country in which the employee has habitually carried out his or her work is a right that falls within the scope of 'provisions that cannot be derogated from by agreement under the law that, in the absence of choice, would have been applicable', within the meaning of the second sentence of Article 8(1) of the regulation?

3. Is Article 3 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 to be interpreted as meaning that the specification, in an individual employment contract, of the provisions of the Romanian Labour Code does not equate to a choice of Romanian law, in so far as, in Romania, it is well-known that there is a legal *obligation* to include such a choice-of-law clause in individual employment contracts? In other words, is Article 3 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 to be interpreted as precluding national rules and practices pursuant to which a clause specifying the choice of Romanian law must *necessarily* be included in individual employment contracts?

Provisions of EU law and case-law of the Court of Justice cited

Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), Article 3 (Freedom of choice) and Article 8 (Individual employment contracts)

Judgment of the Court of Justice of 15 March 2011, *Koelzsch* (C-29/10, ECLI:EU:C:2011:151)

Provisions of national law cited and relevant national case-law

Legea nr. 53/2003 privind Codul muncii (Law No 53/2003 establishing the Labour Code), Article 111, which defines working time, and Article 133, which defines rest periods

Legea nr. 344/2006 privind detașarea salariaților în cadrul prestării de servicii transnaționale (Law No 344/2006 concerning the posting of workers in the framework of transnational service provision)

Article 1

'This law shall apply:

…

(b) to undertakings established in Romania which, in the framework of the transnational provision of services, post to the territory of a Member State of the European Union, of the European Economic Area or of the Swiss Confederation, workers with whom they have entered into an employment relationship, on the conditions laid down in Article 4(2)'.

Article 4(2)

'This law shall apply to the extent that undertakings as referred to in Article 1(b) take any of the following transnational measures:

(a) the posting of workers from Romania on the account of those undertakings and under their direction, under a contract concluded between the undertaking making the posting and the party for whom the services are rendered, operating in the territory of a Member State of the European Union, of the European Economic Area or of the Swiss Confederation, provided that there is an employment relationship, during the period of posting, between the worker and the undertaking making the posting;

(b) the posting of workers from Romania to a branch or undertaking owned by the group of undertakings, located in the territory of a Member State of the European Union, of the European Economic Area or of the Swiss Confederation, provided that there is an employment relationship, during the period of posting, between the worker and the undertaking making the posting;

(c) the making available of a worker by a temporary employment agency to an undertaking established or operating in the territory of a Member State of the European Union, of the European Economic Area or of the Swiss Federation, provided that there is an employment relationship, during the period of posting, between the worker and the temporary employment agency.'

Article 7^1

'The provisions of Article 43 of [Law No 53/2003 establishing the Labour Code], as amended and supplemented, shall apply to the staff of employers established in Romania which carry out international transport operations, who are sent to work for a limited period in the territory of a Member State of the European Union, of the European Economic Area or of the Swiss Confederation, but who are not covered by one of the situations provided for by Article 4(2); such staff shall enjoy the rights provided for by Article 44(2) of that law.'

Ordinul ministrului muncii și protecției sociale nr. 64/2003 pentru aprobarea modelului-cadru al contractului individual de muncă (Order No 64/2003 of the Minister for Employment and Social Affairs approving the standard-form individual employment contract), which stipulates, under Section N of Annex I, that all individual employment contracts concluded in Romania must necessarily include the following clause: 'The provisions of this individual employment contract are supplemented by the provisions of Law No 53/2003 establishing the Labour Code'.

In so far as concerns judicial practice, reference is made to the civil judgment of 18 December 2018 of Tribunalul Mureș (Regional Court, Mureș), confirmed by the superior court, dismissing an applicant's action for an order requiring the company employing him to pay the difference between the minimum wage in Austria in the road transport sector, to which he would have been entitled under Regulation No 593/2008, and the wages actually paid. Tribunalul Mureș (Regional Court, Mureș) found that the parties had chosen Romanian law as the law governing the individual employment contract, that the employee's performance of his duties did not take place in any fixed place of work and that the employee was constantly travelling, that the employee had received a daily allowance in addition to his wages, and that the parties to the individual employment contract had intended that wages should be paid in Romanian Lei, not the minimum Austrian wage, paid in euros. That court also found that the fact that the 'work tools' (the lorries which the employee drove) were stationed at the company's premises in Austria, the fact that the place to which the applicant returned after completing his tasks was in Austria and the fact that the country in which the applicant habitually carried out his work in performance of the contract was Austria were not sufficient to exclude the choice of Romanian law as the law governing the individual employment contract.

Succinct presentation of the facts and the main proceedings

1 The originating application states that the applicants were employed by the defendant company as lorry drivers and that they carried out their work in the territory of the European Community. The individual employment contracts which they had concluded with the defendant stated: 'The provisions of this individual employment contract are supplemented by the provisions of Law No 53/2000 establishing the Labour Code and of the collective labour agreement applicable at unit/sectoral level' and that 'Disputes relating to the conclusion, performance, amendment, suspension or termination of this individual employment contract shall be resolved by the court having jurisdiction *ratione materiae* and *ratione loci*, in accordance with the law'.

2 As regards the applicants' place of work, the contracts stipulated that 'Work shall be carried out at the (section/workshop/office/service/department) of the garage of the registered office/place of business/other organised place of work in the municipality of Oradea [Romania] and in accordance with delegations/postings to

the offices or places of business of customers, of current and future suppliers, at any location in the country and abroad as may be requested, including the vehicle which the employee uses in the performance of his duties, and in any other place in which the employee carries out transport activities.'

3 The applicants' individual employment contracts were concluded in both Romanian and Italian (with parallel texts on each page).

4 By application lodged at Tribunalul Mureș (Regional Court, Mureș), the applicants sought an order requiring, in particular, the defendant to pay them their salary entitlements under Regulation (EC) No 593/2008 (Rome I), that is to say, the difference between the wages they actually received and the minimum wage applicable in Italy in the road transport sector, along with pay in respect of a 'thirteenth' and 'fourteenth' month, which would have been due to them under Regulation (EC) No 593/2008 (Rome I) in conjunction with the collective agreement for the logistics, road transport and freight forwarding sector in Italy; such sums were, it was claimed, to be indexed at the rate of inflation at the date of payment, and statutory interest paid from the monthly due date of each sum so calculated (for both applicants). In addition, for the applicant EH, payment was sought of the difference between the wages actually received and the minimum wage applicable in Germany under the same regulation, in respect of the period during which he was posted to Germany.

5 The defendant, SC Gruber Logistics SRL, lodged a defence in which it stated that the applicants were working for the defendant company in lorries registered in Romania and under transport licences issued in accordance with the applicable Romanian legislation, that all their instructions were issued by the company and that their work was organised in Romania.

6 In those circumstances, at the applicants' request, Tribunalul Mureș (Regional Court, Mureș) decided to refer to the Court of Justice of the European Union questions on the interpretation of Articles 3 and 8 of Regulation No 593/2008.

Principal arguments of the parties to the main proceedings

7 In support of their claim, the applicants submit that, although the individual employment contracts were registered in Romania, the country in which they habitually carried out their work in performance of the contracts is Italy and that they are, therefore, entitled to the minimum wage in Italy in the road transport sector, rather than to the minimum wage in Romania, which is what they were paid. They also rely on the judgment of the Court of 15 March 2011, *Koelzsch* (C-29/10, ECLI:EU:C:2011:151).

8 More specifically, the applicants state that the place from which they carried out their transport tasks and from which they received instructions was Italy, their 'work tools', in this case lorries, were stationed in Italy, the places where the transport was principally carried out and the places where the goods were

unloaded were in Italy and the place to which they returned after completing their tasks was in Italy.

9 The defendant opposed the reference to the Court of Justice on the ground that the conditions for requesting a preliminary ruling were not fulfilled.

Succinct presentation of the reasons for the request for a preliminary ruling

10 By its first question, the national court asks, in essence, for a decision on whether Article 8(1) of Regulation No 593/2008 is to be interpreted as meaning that, in the case where a worker habitually carries out the work which is the subject of his or her employment contract in a country other than the country whose laws have been expressly chosen by the parties, a national court may, on the basis of the last sentence of Article 8(1), override the parties' choice of law where it appears from all the circumstances that the contract is more closely connected with a different country.

11 By its second question, the referring court requests a decision on whether the minimum wage applicable in the country in which the employee has habitually carried out his or her work is a right falling within the scope of 'provisions that cannot be derogated from by agreement under the law that, in the absence of choice, would have been applicable', within the meaning of the second sentence of Article 8(1) of the regulation.

12 If that question is answered in the negative, the employee will be entitled to the national minimum wage in the country the law of which has been expressly chosen by the parties, even if the minimum wage under the law of the country with which the contract is more closely connected is higher, with the result that the worker will suffer a loss in that respect.

13 On the other hand, if the question is answered in the affirmative, that would mean that two different laws apply to the contract, that is, the law expressly chosen and the law which contains the 'provisions that cannot be derogated from by agreement under the law that, in the absence of choice, would have been applicable'.

14 The third question seeks a ruling on whether, where an employer uses a standard-form individual employment contract, one that has been pre-formulated in accordance with national legislation and must necessarily contain a clause specifying that the Romanian Labour Code applies, that equates to a choice of Romanian law.

15 Should the Court of Justice rule that such national legislation and practice is contrary to Article 3 of Regulation No 593/2008, the referring court will be able to remove from the contract that compulsory clause specifying the choice of the applicable law.