

Case C-334/92

Teodoro Wagner Miret

v

Fondo de Garantía Salarial

(Reference for a preliminary ruling
from the Tribunal Superior de Justicia, Catalonia)

(Directive on the protection of employees in the event of the insolvency
of their employer — Scope of application — Guarantee institution)

Report for the Hearing	I - 6913
Opinion of Advocate General Lenz delivered on 15 July 1993	I - 6919
Judgment of the Court (Fifth Chamber), 16 December 1993	I - 6926

Summary of the Judgment

- 1. Social policy — Approximation of laws — Protection of employees in the event of the employer's insolvency — Directive 80/987 — Scope of application — Category of employees with the status of employees by reference to national law and not included in Section I of the Annex to the directive — Inclusion*
(Council Directive 80/987, Annex, Section I, as amended by Directive 87/164)
- 2. Acts of the institutions — Directives — Implementation by the Member States — Need to ensure effectiveness of directives — Obligations of national courts*
(EEC Treaty, Art. 189, third para.)

3. *Social policy — Approximation of laws — Protection of employees in the event of the employer's insolvency — Directive 80/987 — Obligation of Member States to establish a single institution for all categories of employee — None — National law not enabling higher management staff to obtain the benefit of the guarantee provided for by the directive — Right of those concerned to obtain reparation from the Member State in question for the loss and damage sustained as a result of the failure to implement the directive (Council Directive 80/987, Art. 3(1))*

1. Higher management staff may not be excluded from the scope of Council Directive 80/987/EEC 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, as amended by Council Directive 87/164/EEC, where they are classified under national law as employees and they are not listed in section I of the Annex to the directive.

2. When applying the provisions of national law which are intended to ensure the application of Directive 80/987, the national court called upon to interpret them is required to do so, so far as possible, in the light of the wording and the purpose of the directive in order to achieve the result pursued by the latter and thereby comply with the third paragraph of Article 189 of the Treaty.

That principle of interpretation in conformity with directives must be followed in particular where a national court consid-

ers that the pre-existing provisions of its national law meet the requirements of the directive concerned.

3. Higher management staff may not rely on Directive 80/987 in order to request the payment of amounts owing to them by way of salary from the guarantee institution established by national law for the other categories of employee. Article 3(1) of the directive requires the Member States to take the measures necessary to ensure that guarantee institutions guarantee payment of employees' outstanding claims, but does not oblige them to establish a single institution for all categories of employee.

In the event that, even when interpreted in the light of the aforementioned directive, national law does not enable higher management staff to obtain the benefit of the guarantees for which it provides, such staff are entitled to request the State concerned to make good the loss and damage sustained as a result of the failure to implement the directive in their respect.