LABOUR LAW: MULTINATIONALS CAN BE LIABLE FOR DEBTS OF COMPANIES BASED IN PORTUGAL

The Court has ruled unconstitutional the joined interpretation of the rules contained in articles 334 of the CT and 481 of the CSC.

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Through Decision nº. 272/2021, the Portuguese Constitutional Court held that companies with headquarters outside Portugal who hold, control or have a group relationship with a Portuguese company, are jointly liable for debts arising from the employment relationship established with the latter, or from its termination, that have been overdue for more than three months, the same way that Portuguese companies who are based in Portugal and belong to same group are both liable.

The interpretation in question is based on the Portuguese Labor Code (article 334), Portuguese the Commercial Companies Code (article 481), and the principle of equality.

It is relevant to highlight the essentials of the legal provisions under analysis:

(i) Article 334 of the CT

This article provides on the guarantees of the employee's credits in the event of breach of the employment contract, establishing as a rule of law–the joint liability of the Employer and the company "that is in a relationship of reciprocal participation, dominium or group, under the terms foreseen in articles 481 and following of the Commercial Companies Code".

(ii) Article 481 of the CSC

It defines the scope of application of the legal regime of related companies, provided in articles 481 to 508-F, subordinating it to the cumulative verification of two assumptions: (i) legal form of the subjects intervening in the relationship of affiliation and (ii) with the spatial scope of application of the rules enshrined in Title VI of the same Code.

Essentially, the Court decided that just as an employee can sue two related companies who belong to the same group for labor claims when both are based in Portugal, he/she can also do so even when one of them is based outside Portugal. If he could not do so, that is, if he could only sue them when both are based in Portugal but could not do so when one of them is based abroad, we would be violating the principle of equality (article 13.º of the Portuguese Constitution).

The Court considered such a differentiation not to be "reasonable, rational and objectively founded" as well as contrary to the Portuguese Constitution.

In its reasoning, the Court stated that attracting foreign investment is not a sufficiently strong and weighty reason to justify, within the scope of the law applicable to the coalition of companies, an unequal treatment that would derive from the attribution of different guarantees for labor

claims to employees of controlled, dependent, or grouped companies, depending on whether the company with which it is related had its head office located abroad or in national territory.

In conclusion: the interpretation of the law declared unconstitutional is based on the impossibility of applying the regime of joint and several liability of a company that is in a relationship of reciprocal participation, dominion, or group, when it is headquartered outside national territory, for credits arising from an employment contract, or from its breach or termination, that are overdue for more than three months.

The scope and the reasoning of the decision only involves labour credits, which means that it is not expectable that the Constitutional Court would rule in similar terms for other type of credits.