Vastuvõtmise kuupäev : 31/07/2025

Anonymised version

Case C-369/25

Request for a preliminary ruling

Date lodged:

3 June 2025

Referring court:

Tribunale di Napoli (Italy)

Date of the decision to refer:

31 March 2025

Applicant:

LW

Defendants:

Trenitalia SpA

Istituto nazionale della previdenza sociale (INPS)

TRIBUNALE DI NAPOLI

III SEZIONE LAVORO (District Court, Naples, Third Employment Division)

The Tribunale di Napoli (District Court, Naples, Italy), sitting as the Giudice del Lavoro (Employment Division) […], in proceedings […] No 23216/24 […] concerning social security contributions

between

LW […]

APPLICANT

and

TRENITALIA S.P.A. […]

DEFENDANT

and

I.N.P.S., Istituto Nazionale della Previdenza Sociale, […]

DEFENDANT

has made the following

ORDER

The court […] [national proceedings]

MAKES THE FOLLOWING OBSERVATIONS

This court is seised of an action brought by LW, who obtained, by judgment, recognition that he had an employment relationship with Trenitalia S.p.a. since he worked for them unlawfully under an unlawful contract for the supply of labour, which was therefore also in breach of Directive 2008/104/EC. The applicant was therefore entitled to be classified at level E – now C1 – under the *contratto collettivo nazionale di lavoro* (national collective bargaining agreement; CCNL) with effect from May 2003. The [applicant] then obtained, by another judgment, an [order] that Trenitalia S.p.a. pay EUR 110 308.13, adjusted for inflation, together with statutory interest, on sums progressively adjusted from 31 July 2019 up to the time of payment, as back pay.

In the present case, [the applicant] is bringing an action for the payment of social security contributions on remuneration for the period from 1 May 2003 to December 2015, which remain unpaid by Trenitalia S.p.a. because they were held to be time-barred by the Istituto Nazionale della Previdenza Sociale (National Institute for Social Security, Italy; 'the INPS'). Trenitalia S.p.a put the applicant's social security position in good order within the limits of the five-year limitation period laid down in Article 3(9) of legge n.335/95 (Law No 335/95) ('*Compulsory social security and social welfare contributions shall be time-barred and may not be paid on expiry of the following periods*: *(a) ten years for contributions to the Fondo Pensioni Lavoratori Dipendenti (Employee Pension Fund) … With effect from 1 January 1996, that period shall be reduced to five years except in cases of a complaint made by the worker or his survivors')* and, therefore, paid contributions in respect of the period from 2016 to 2019.

Citing case-law of the Corte Suprema di Cassazione (Supreme Court of Cassation, Italy) in his favour, the applicant applied, in the alternative, for the establishment of a life annuity pursuant to Article 13 of legge 1338/1962 (Law No 1338/1962),

which provides as follows: '… an employer who has failed to make contributions to the compulsory invalidity, old-age and survivors' insurance schemes and who is no longer able to make such contributions by reason of the limitation period … may apply to the national social security agency for the establishment, in the cases provided for in the fourth paragraph, of a reversionary life annuity equal to the pension or part of the pension corresponding to the compulsory insurance which would be payable to the employee had the unpaid contributions been made.

[…]. [Paragraphs irrelevant to the questions referred for a preliminary ruling]

Where a worker is unable to obtain from his employer the establishment of the annuity under this article, he or she may take the place of the employer himself or herself, subject to the right to compensation for the loss suffered.

[…] [Paragraph irrelevant to the questions referred for a preliminary ruling]'.

In the further alternative, [the applicant] sought compensation under Article 2116[(2)] of the Italian codice civile (Civil Code) […] ('In cases in which, under those provisions, social security and insurance institutions, as a result of missing or incomplete contributions, are not obliged to pay out, in full or in part, the amounts owed, the employer shall be liable for the loss that the worker derives therefrom.').

The defendants opposed the claim. In particular, the INPS argued that, for the periods covered by the limitation period, the contributions were not payable under Article 3[(9)] of Law No 335/1995 and Article 55[(2)] of R.D.L. n. 1827 del 1935 (Royal Decree No 1827 of 1935). In other words, the employer will not be able to pay the time-barred contributions and since the principle of automatic payment of social security benefits under Article 27(II) of R.D.L. 14/4/1939 n. 636 (Royal Decree No 636 of 14 April 1939), as amended by Article 40 of legge n. 153/1969 (Law No 153/1969), is not applicable, the only solution possible will be the establishment of a life annuity.

The statements by the INPS appear to be in line with the settled case-law of the Court of Cassation.

[If] the Court of Justice answers the questions referred today in the affirmative, it could be concluded that there was no limitation period and that the applicant, who was entitled to receive from Trenitalia S.p.a. the document pursuant to which he was recruited referred to in Article 2 of Directive 91/533/EEC, [could] seek an order requiring Trenitalia S.p.a. to pay the contributions.

The present order starts from the premiss that (i) the pension of private employees could be regarded as deferred remuneration, (ii) Directive 91/533/EEC, and subsequently Directive 2019/1152, could protect not only the right to the document specifying the conditions under which an employee is recruited, provided for therein, but also the rights set out in that document and thus the right to the pension and the amount of that pension, (iii) the contributions paid, which

affect the right to a pension, could be covered by the protection provided for by the abovementioned directives, and (iv) the national legal system does not effectively protect the right to the correct payment of contributions and thus to the payment of deferred remuneration in the form of a pension.

The present order will set out the provisions of EU law for which an interpretation is sought, together with the decisions regarding the relevant legal concepts issued by the Court of Cassation. The following questions will then be asked:

- Does a contributory pension constitute deferred remuneration?

- Does its protection come within the scope of Directive 91/533/EEC, now Directive 2019/1152?

- Does the payment of contributions, which has a decisive influence on the right to a pension and the amount of that pension benefit, therefore also come within the scope of Directive 91/533/EEC, now Directive 2019/1152?

- Is the fact that the worker has very limited protection in the course of the employment relationship when the INPS is involved in court proceedings compatible with the abovementioned directives?

- What instruments are available to the referring court?

THE COURT'S OBSERVATIONS ON THE PLEADINGS

EUROPEAN LEGISLATION

1 Article 2 of Directive 91/533/EEC provides that '*an employer shall be obliged to notify an employee to whom this Directive applies, hereinafter referred to as the "employee", of the essential aspects of the contract or employment relationship. 2. The information referred to in paragraph 1 shall cover at least the following: [(h)] the initial basic amount, the other component elements and the frequency of payment of the remuneration to which the employee is entitled; ... 3. The information referred to in paragraph 2(f), (g), (h) and (i) may, where appropriate, be given in the form of a reference to the laws, regulations and administrative or statutory provisions or collective agreements governing those particular points.'*

2 The aim of the Directive is that '*Member States [...] guarantee that employees can claim the rights conferred on them by this Directive*'. Member States must '*at all times guarantee the results imposed by this Directive*' and must introduce (Article 8) *'such measures as are necessary to enable all employees who consider themselves wronged by failure to comply with the obligations arising from this Directive to pursue their claims by judicial process after possible recourse to other competent authorities'.*

3 There still remains interpretative doubt as to whether the obligations of the Member State are limited to the need to ensure the delivery of the document under which an employee is recruited, or whether the Member State must guarantee the protection of the rights set out or which must be set out in that recruitment document. The fact that Directive 1991/533/EEC appears to guarantee the rights arising from employment relationships (those rights which must be expressly set out in the written instrument, precisely for the specific purpose of protecting them) supports the latter view, and it should be inferred that the Member State must take all the measures necessary to ensure the effectiveness of the protected rights. That interpretation is borne out by the fact that Article 8 of Directive 1991/533 uses the term 'claims' and not 'claim' (to information). The intention therefore appears to be to protect the rights set out in the document under which an employee is recruited.

4 Directive 91/533/EEC was 'repealed with effect from 1 August 2022' by Directive 2019/1152, but Article 24 of the latter directive states that 'references to the repealed Directive shall be construed as references to this Directive'. Directive 2019/1152 made no changes in respect of the document pursuant to which an employee is recruited or remuneration (Article 4 and recital 20). In any event, the facts of the present dispute concern a period during which Directive 91/533/EEC was in force.

5 On the basis of the case-law of the Court of Justice, it seems necessary to conclude that a pension paid by a public body constitutes deferred remuneration where the benefit is a benefit of a given category and is calculated (solely or almost exclusively) on the basis of pay and the period of affiliation, thereby arising directly from the employment relationship and not constituting a payment by the State for social reasons; it is widely known that that is the criterion for calculating social security pensions in Italy […].

6 It should be noted that the present case concerns contributions relating to pensions in the private sector, for which the *res interpretata* in the judgment of 13 December 2008 of the Court of Justice in Case C-46/07 (*Commission* v *Italy*), concerning the pensions of civil servants, is of limited relevance; in that case, the Court ruled that where the pension concerned only a particular category of workers, the pension was directly related to the period of service rendered and the amount of that pension was calculated by reference to the civil servant's last salary, and was therefore deferred remuneration, it came within the category of occupational pension schemes.

7 The majority of pensions in Italy are those paid to employees in the private sector (known as compulsory general insurance), those paid to employees in the public sector, those in the self-employed sector, or those of specialised funds (surveyors, lawyers, notaries, accountants and so forth), so that it could be considered that they are benefits paid to a specific category of workers which could be regarded as a pension of a given category.

8 Such pensions appear to be deferred remuneration ([see,] in particular, judgment of 1 April 2008, *Maruko*, C-267/06) because the amount of the 'pension' is determined by reference to the period of insurance and the contributions paid, irrespective of whether the paying agency is a public body ([see] judgment of 17 April 1997, *Evrenopoulos*, C-147/95, paragraphs 16 and 23) and of whether membership of the pension scheme is compulsory ([see] judgment of 25 May 2000, *Podesta*, C-50/99, paragraph 32)[.]

9 The Italian pension depends on the years of contributions paid (minimum of five years' contributions for workers whose pensions are paid exclusively under the contributory system: Article 1(20) of Law No 335/95) and on the amounts paid calculated as a percentage of the monthly remuneration received [Law No 335/95, Article 1(6) *('The amount of the annual pension in the compulsory general insurance scheme and in its substitute and exclusive forms shall be determined in accordance with the contribution system by multiplying the individual amount of the contributions by the conversion coefficient set out in the annexed Table A for the age of the insured person at the time of retirement')*, (8) […] and (10) […] [specifications of the mechanism for calculating the pension].

10 The pension therefore depends on the payments made which are proportionate to the remuneration received for the years worked and is therefore determined almost exclusively by reference to the period of insurance and the contributions paid.

NATIONAL LEGISLATION

11 Article 2116 of the Civil Code provides that '*the benefits referred to in Article 2114 shall be payable to the worker, even where the employer has not duly paid the contributions payable to the social security and social welfare agencies, unless otherwise provided for by special laws*'. Article 2114 of the Civil Code refers to social security benefits, including pensions, and to contributions *(Special laws [and corporate rules] (l) determine the cases and forms of compulsory social security and social welfare schemes and the corresponding contributions and benefits).*

12 The most recent, and now settled, approach of the Court of Cassation has emphasised the reference in the legislation to benefits rather than to contributions, stating that the set of rules made no provision for any form of 'action by the insured person seeking an order that the social security agency put his position with regard to contributions in good order' […] [References to national case-law], even where the worker has informed the social security agency of the failure to pay contributions before the limitation period ended, but the social security agency did not bring an action against the employer, with the result that the limitation period has lapsed […].

13 It follows that the only possible action by the worker after the end of the limitation period is an action for compensation as referred to in the second paragraph of Article 2116 of the Civil Code […] [Reference to the national legislation set out

above] to be brought vis-à-vis the employer, that is to say, the possibility of substituting himself or herself for the employer for the purpose of establishing the life annuity referred to in Article 13(1) of Law No 1338/1962 […]. [Reference to the national legislation set out above]

14 However, that can happen only a long time after the failure to pay contributions, since the worker must wait until the loss resulting from the failure to pay contributions is realised, when he or she takes retirement. […] [Further explanation of the concept]

15 Current Italian law therefore denies workers the right to protect the crediting of contributions payable but unpaid by the employer, […] preventing workers from asserting against the INPS the right to contribution credit until they are entitled to the payment of a pension; the time interval between the date on which the right to have contributions credited accrues and the right to a pension results in those contributions being, as in the present case, time-barred, with immediate effects on the amount of the pension that the worker will subsequently be able to receive.

16 Moreover, a worker can never interrupt the running of the limitation period by seeking an order requiring the employer to pay the correct contributions (settled case-law of the Court of Cassation).

17 Nor can the worker (or his or her heirs) even avail himself or herself of the doubling of the five-year limitation period available when making a complaint to the social security agency about the failure to pay contributions (Article 3(9) of Law No 335/95: '*Compulsory social security and social welfare contributions shall be time-barred and may not be paid on expiry of the following periods: (a) ten years* […] *[identification of the contributions taken into account by the law] With effect from 1 January 1996, that period shall be reduced to five years* ***except in cases of a complaint made by the worker*** *or his or her survivors;*…') because the provision applies only to omissions which arose before the entry into force of the above provision […].

18 [T]he time-barring of contributions is not a potential event, but a certainty; it will occur after five years, because the period also runs during the course of the employment relationship […] and the worker cannot interrupt it, but is able to take legal action only by bringing a claim against the employer and the social security agency.

19 In the event of failure by the INPS to join the legal action, or to take responsibility for the payment of contributions or to initiate recovery proceedings, an Italian worker may find that the contributions become time-barred, even if he or she had had the capacity to take action – while working for the same employer – by bringing proceedings against the employer together with the INPS: it therefore appears that the worker is unable to take any action to avert such a detrimental outcome.

20 In Italy, pensions may therefore be awarded only where there is no failure to pay contributions (or omission to provide a life annuity) or in cases where the worker himself or herself pays to the INPS the sum necessary to make up the missing funding for a life annuity.

21 In comparison to such a legislative interpretation, which facilitates the time-barring of the crediting of contributions – with obvious effects on the right to and the amount of a pension that could be regarded as deferred remuneration, paid by the State through the INPS – the limitation period for ordinary remuneration claims is quite different. For such claims, in the private sector, the five-year limitation period does not begin to run during the course of the employment relationship.

22 The Court of Cassation has held, in a now firmly established line of case-law, that, for the duration of a private employment relationship, the limitation period for sums constituting employment-linked credits does not begin to run.

23 […] [Moreover, following judgment No 63 of the Corte costituzionale (Constitutional Court, Italy) of 10 June 1966, limitation is no longer permitted in the case of employment relationships with no real stability, given that the worker might refrain from bringing proceedings against the employer for fear of dismissal.]

24 […] [In that regard, in several judgments delivered in 2022, the Court of Cassation held that, as a result of the amendments made to the legislation on dismissals, an employment relationship of indefinite duration can no longer be regarded as genuinely stable, since it does not eliminate the fear of unfair dismissal on the part of a worker if he or she seeks to assert his or her rights against his or her employer.]

25 The rationale of the legislation is the situation of *metus* (that is to say, duress or fear) in which the worker finds himself or herself, during the course of the employment relationship, fearing dismissal and thereby being induced not to claim the remuneration: during the employment relationship, the limitation period is suspended and then resumes its normal course when the relationship ends […].

26 Thus, under the current domestic legal system, a worker may make claims for remuneration arising from the employment relationship within the five-year limitation period following the termination of the employment relationship and is not required to bring legal proceedings during the course of that relationship; by contrast, he or she must necessarily take legal action during the course of the employment relationship in order to obtain the payment of the contributions (but always on condition that the INPS participates in the proceedings and acknowledges the right to payment).

27 […]. [Reiteration of the situation of fear in which the worker may find himself or herself and which may lead him or her not to assert his or her rights to remuneration or contributions]

28 The situation in the present case is aggravated by the fact that the applicant obtained recognition that he had an employment relationship with Trenitalia S.p.a. by judgment No 4784/2018 of 31 October 2018 of the Corte d'Appello di Napoli (Court of Appeal, Naples, Italy), which found that there recurrent labour-only contracts had been concluded in breach of Article 27 of decreto legislativo n. 276/2003 (Legislative Decree No 276/2003) and that therefore there had been an unlawful supply of labour. Legislative Decree No 276/2003 was amended by Legislative Decree No 24 of 2 March 2012, which implemented Directive 2008/104/EC. At the time when the contributions went unpaid, the applicant was thus a worker in a particularly precarious employment situation because, at the time, *he was deprived of the protection which the provisions against dismissal offer to workers employed under a contract of an indefinite duration* with the user undertaking. *The Court has stressed that the benefit of stable employment ... constitutes a major element in the protection of workers' interests* (see, by analogy, Opinion of Advocate General Niilo Jääskinen delivered on 15 September 2011 in Case C-313/10, *Land Nordrhein-Westfalen* v *Sylvia Jansen*).

[…] [anticipation of the questions referred for a preliminary ruling set out below]

On those grounds,

Having regard to Article 19(3)(b) of the Treaty on European Union, Article 267 of the Treaty on the Functioning of the European Union and Article 295 of the Code of Civil Procedure, the Employment Division of the District Court, Naples, is requesting a preliminary ruling from the Court of Justice of the European Union on the following questions:

1. *Do the rights referred to in Article 8 of Directive 91/533/EEC, the protection of which must be ensured by a Member State, consist only of the right to receive the document pursuant to which a worker is recruited referred to in Article 2 of that directive, or also of the rights which must be set out in the document itself and, in particular, the right to remuneration?*

2. If the Court of Justice answers the first question in the affirmative, *does the pension which the applicant will receive, in the context described above, which is dependent on contributions paid in proportion to the remuneration received and the years of affiliation to the compulsory general insurance scheme, constitute, for members in the private sector, remuneration, within the meaning of Article 2 of Directive 91/533/EEC, that is deferred?*

3. If the answer to the first two questions is in the affirmative, *does the worker's right to the payment of contributions, which has a decisive influence on the right to and the amount of the pension benefit, also*

come within the scope of protection provided for in Article 8 of Directive 91/533/EEC?

4. If the answer to the questions above is in the affirmative, *does Article 8 of Directive 91/533/EEC preclude a worker from being required, in the course of the employment relationship, to bring proceedings against the employer, in addition to the INPS, to seek payment of contributions, in order to prevent his or her claims from becoming time-barred, where those claims depend exclusively on the willingness of the INPS to join the proceedings and to request payment of the amount owed, unlike in the case of ordinary remuneration, even where the worker does not have sufficient protection against unfair dismissal, thereby risking dismissal or non-continuation of the employment relationship protected by Directive 2008/104/EC?*

5. If the answer to the questions above is in the affirmative, *what instruments are available to the referring court and, in the present case, can the harmonisation of the rules on limitation periods for contributions and remuneration be regarded as a measure that is sufficient to discharge the obligations laid down in Article 8 of Directive 91/533/EEC?*

[…] [Stay of the national proceedings, instructions to the secretariat and transmission to the Court of Justice]

Naples […] 31 March 2025. […]