JUDGMENT OF THE COURT

20 November 2024*

(*Labour law – Collective redundancies – Directive 98/59/EC – Article 1 – Notion of "worker" – Board members – Article 6 – Principles of equivalence and effectiveness – Compensation for infringements*)

In Case E-3/24,

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by Reykjavík District Court (*Héraðsdómur Reykjavíkur*), in the case between

Margrét Rósa Kristjánsdóttir

and

Icelandic Health Insurance (*Sjúkratryggingar Íslands*),

concerning the interpretation of Articles 1 and 6 of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies,

THE COURT,

composed of: Páll Hreinsson, President, Bernd Hammermann (Judge-Rapporteur) and Michael Reiertsen, Judges,

Registrar: Ólafur Jóhannes Einarsson,

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* Language of the request: Icelandic. Translations of national provisions are unofficial and based on those contained in the documents of the case.

having considered the written observations submitted on behalf of:

– Margrét Rósa Kristjánsdóttir, represented by Elías Karl Guðmundsson, attorney;

– the Icelandic Government, represented by Fanney Rós Þorsteinsdóttir and Jóhanna Katrín Magnúsdóttir, acting as Agents;

– the EFTA Surveillance Authority ("ESA"), represented by Kyrre Isaksen, Sigrún Ingibjörg Gísladóttir and Melpo-Menie Joséphidès, acting as Agents; and

– the European Commission ("the Commission"), represented by Sandrine Delaude and Freya van Schaik, acting as Agents,

having regard to the Report for the Hearing,

having heard the oral arguments of Margrét Rósa Kristjánsdóttir, represented by Elías Karl Guðmundsson, attorney; the Icelandic Government, represented by Jóhanna Katrín Magnusdóttir; ESA, represented by Kyrre Isaksen and Sigrún Ingibjörg Gísladóttir; and the Commission, represented by Sandrine Delaude, at the hearing on 3 July 2024,

gives the following

J U D G M E N T

I LEGAL BACKGROUND

EEA law

1 Article 3 of the Agreement on the European Economic Area ("the EEA Agreement" or "EEA") reads:

> *The Contracting Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Agreement.*
>
> *They shall abstain from any measure which could jeopardize the attainment of the objectives of this Agreement.*
>
> *Moreover, they shall facilitate cooperation within the framework of this Agreement.*

2 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; and Icelandic EEA Supplement 2000 No 46, p. 258) ("the Directive") was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 41/1999 of 26 March 1999 (OJ

2000 L 266, p. 47; and Icelandic EEA Supplement 2000 No 46, p. 257). The Directive is referred to at point 22 of Annex XVIII (Health and safety at work, labour law and equal treatment for men and women) to the EEA Agreement. Constitutional requirements were indicated by Iceland and fulfilled by 19 May 2000, and the decision entered into force on 1 July 2000.

3 The Directive was amended by Directive (EU) 2015/1794 of the European Parliament and of the Council of 6 October 2015 amending Directives 2008/94/EC, 2009/38/EC and 2002/14/EC of the European Parliament and of the Council, and Council Directives 98/59/EC and 2001/23/EC, as regards seafarers (OJ 2015 L 263, p. 1; and Icelandic EEA Supplement 2018 No 85, p. 133), which was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 258/2018 of 5 December 2018 (OJ 2021 L 337, p. 57; Icelandic EEA Supplement 2021 No 62, p. 53) and is referred to at point 22 of Annex XVIII to the EEA Agreement. Constitutional requirements were indicated by Iceland and Norway. The requirements were fulfilled by 18 June 2019 and the decision entered into force on 1 August 2019.

4 Recital 2 of the Directive reads:

> *Whereas it is important that greater protection should be afforded to workers in the event of collective redundancies while taking into account the need for balanced economic and social development within the Community;*

5 Article 1 of the Directive, in Section I entitled “Definitions and scope”, reads:

> *1. For the purposes of this Directive:*
>
> *(a) ‘collective redundancies’ means dismissals effected by an employer for one or more reasons not related to the individual workers concerned where, according to the choice of the Member States, the number of redundancies is:*
>
> *(i) either, over a period of 30 days:*
>
> *– at least 10 in establishments normally employing more than 20 and less than 100 workers,*
>
> *– at least 10 % of the number of workers in establishments normally employing at least 100 but less than 300 workers,*
>
> *– at least 30 in establishments normally employing 300 workers or more,*
>
> *(ii) or, over a period of 90 days, at least 20, whatever the number of workers normally employed in the establishments in question;*

(b) 'workers' representatives' means the workers' representatives provided for by the laws or practices of the Member States.

For the purpose of calculating the number of redundancies provided for in the first subparagraph of point (a), terminations of an employment contract which occur on the employer's initiative for one or more reasons not related to the individual workers concerned shall be assimilated to redundancies, provided that there are at least five redundancies.

2. This Directive shall not apply to:

(a) collective redundancies effected under contracts of employment concluded for limited periods of time or for specific tasks except where such redundancies take place prior to the date of expiry or the completion of such contracts;

(b) workers employed by public administrative bodies or by establishments governed by public law (or, in Member States where this concept is unknown, by equivalent bodies).

6 Article 2 of the Directive, in Section II entitled "Information and consultation", reads, in extract:

1. Where an employer is contemplating collective redundancies, he shall begin consultations with the workers' representatives in good time with a view to reaching an agreement.

...

3. To enable workers' representatives to make constructive proposals, the employers shall in good time during the course of the consultations:

(a) supply them with all relevant information and

(b) in any event notify them in writing of:

...

The employer shall forward to the competent public authority a copy of, at least, the elements of the written communication which are provided for in the first subparagraph, point (b), subpoints (i) to (v).

4. The obligations laid down in paragraphs 1, 2 and 3 shall apply irrespective of whether the decision regarding collective redundancies is being taken by the employer or by an undertaking controlling the employer.

In considering alleged breaches of the information, consultation and notification requirements laid down by this Directive, account shall not be taken of any defence on the part of the employer on the ground that the necessary information has not been provided to the employer by the undertaking which took the decision leading to collective redundancies.

7 Article 4 of the Directive, in Section III entitled "Procedure for collective redundancies", reads:

1. Projected collective redundancies notified to the competent public authority shall take effect not earlier than 30 days after the notification referred to in Article 3(1) without prejudice to any provisions governing individual rights with regard to notice of dismissal.

Member States may grant the competent public authority the power to reduce the period provided for in the preceding subparagraph.

2. The period provided for in paragraph 1 shall be used by the competent public authority to seek solutions to the problems raised by the projected collective redundancies.

3. Where the initial period provided for in paragraph 1 is shorter than 60 days, Member States may grant the competent public authority the power to extend the initial period to 60 days following notification where the problems raised by the projected collective redundancies are not likely to be solved within the initial period.

Member States may grant the competent public authority wider powers of extension.

The employer must be informed of the extension and the grounds for it before expiry of the initial period provided for in paragraph 1.

4. Member States need not apply this Article to collective redundancies arising from termination of the establishment's activities where this is the result of a judicial decision.

8 Article 5 of the Directive, in Section IV entitled "Final provisions", reads:

This Directive shall not affect the right of Member States to apply or to introduce laws, regulations or administrative provisions which are more favourable to workers or to promote or to allow the application of collective agreements more favourable to workers.

9 Article 6 of the Directive, in Section IV entitled "Final provisions", reads:

Member States shall ensure that judicial and/or administrative procedures for the enforcement of obligations under this Directive are available to the workers' representatives and/or workers.

National law

10 According to the request, the Directive has been implemented into Icelandic law by Act No 63/2000 on collective redundancies (*Lög um hópuppsagnir*) ("the Collective Redundancies Act").

11 Article 1 of the Collective Redundancies Act reads:

This Act applies to collective dismissals of workers by an employer for reasons not related to each individual worker where the number of workers dismissed in a 30-day period is:

a. at least 10 workers in enterprises normally employing more than 20 but fewer than 100 workers,

b. at least 10% of workers in enterprises normally employing at least 100 but fewer than 300 workers,

c. at least 30 workers in enterprises normally employing 300 workers or more.

When calculating the number of persons dismissed under the first paragraph, attention shall be given to terminations of the employment contracts of individual workers that are equivalent to collective dismissals provided that there are at least five such terminations.

12 Article 2 of the Collective Redundancies Act reads, in extract:

This Act does not apply to:

a. collective redundancies effected in accordance with employment contracts made for specific periods or to cover specific projects unless such redundancies occur before these contracts expire or before the projects are completed,

…

13 Article 4 of the Collective Redundancies Act reads:

The provisions of this Act shall apply irrespective of whether the decision on collective redundancies is taken by the employer or by an enterprise that is in a position of control with regard to the employer.

In the event of an allegation of a violation of requirements regarding information, consultation and notification under this Act, the employer may not maintain that he did not receive sufficient information from the enterprise where the decision on collective redundancies was taken.

14 Article 11 of the Collective Redundancies Act reads:

An employer who intentionally or negligently violates this Act is liable for damages according to general rules.

15 Article 12 of the Collective Redundancies Act reads:

Violations of Articles 5 to 7 of this Act may be subject to fines that shall go to the Treasury.

16 Article 4 of Act No 112/2008 of 16 September 2008 on Iceland Health Insurance (*Lög um sjúkratryggingar*) ("Health Insurance Act") reads:

The Minister is responsible for the central administration of health insurance and contracting for health services and other assistance under this Act, and the administration of the Health Insurance Administration.

17 Article 6 of the Health Insurance Act reads:

The Minister appoints five members to the board of Icelandic Health Insurance, one of whom shall be appointed chairman of the board and another vice chairman. An equal number of alternates shall be appointed. The chair of the board calls board meetings and chairs them, and the director attends board meetings with the right to speak and make proposals. The minister shall issue a letter of appointment to the Board of Directors and determine remuneration to Directors, which shall be paid from the operating budget of the Administration.

The board of governors of the Health Insurance Administration shall approve the organisation chart of the Administration, its annual program of operation and budget, and shall establish its long-term strategy. The board shall supervise the work of the Administration and the maintenance of its operations within the framework of the State Budget at any time.

The chairman of the board of the Health Insurance Administration shall report regularly to the Minister on the work of the Administration and notify the Minister if its activities and services are not in compliance with the provisions of law and if its operation is not in compliance with the State Budget.

18 Article 25 of Act No 70/1996 on the Rights and Obligations of Government Employees (*Lög um réttindi og skyldur starfsmanna ríkisins*) ("Government Employees Act") reads:

Now a person is appointed or placed in an office, and it should be considered that he should serve until one of the following events occurs:

1. *The official violates their duty in office, in a manner that warrants removal from office,*

2. *The official no longer meets the criteria for performing duties according to Article 6 of the same Act,*

3. *The official is released from their duties at their own request,*

4. *The official is released from their duties due to health reasons,*

5. *The official has reached 70 years of age,*

6. *The official's period of appointment has expired,*

7. *The official's ad hoc period of appointment has expired,*

8. *The official is transferred to another position within the government,*

9. *The official's position is abolished, or*

10. *The official and the government make a bilateral severance agreement.*

19 According to paragraph 1 of Article 26 of the Government Employees Act, the government entity that has appointed a government official may remove the official from office.

II FACTS AND PROCEDURE

20 Icelandic Health Insurance is a public administrative organisation, the main role of which is to ensure the rights of health insured persons in Iceland. Ms Kristjánsdóttir, a pharmacist, worked as a head of department at Icelandic Health Insurance. She was dismissed from Icelandic Health Insurance on 29 September 2020 along with 13 other managers as part of organisational changes at the institution. Shortly after her dismissal, subsequent to the completion of the notice period for her dismissal, Ms Kristjánsdóttir entered into a new contract of employment with Icelandic Health Insurance which entered into force on 1 February 2021. This new post involved a reduction in salary. Ms Kristjánsdóttir went on unpaid leave as of 1 August 2022 and has stopped working at Icelandic Health Insurance.

21 Three co-workers, who were also dismissed on the same grounds as Ms Kristjánsdóttir, submitted a complaint to the (parliamentary) Alþingi Ombudsman regarding, among other things, the claim that prior to the dismissal, Icelandic Health Insurance had not complied

with the procedural rules laid down in the Collective Redundancies Act, with respect, inter alia, to workers' rights to information, the obligation relating to consultation and the obligation relating to notification. An opinion from the Ombudsman in Case No 11320/2021, found, inter alia, that the dismissal of the 14 workers in question was to be categorised as a collective redundancy within the meaning of the Collective Redundancies Act and that because the Act's procedural rules governing the dismissal process should have been complied with, which had not been done, Icelandic Health Insurance was directed to make reparations to the workers concerned. At the same time, the Ombudsman noted that it was the remit of the courts to assess the legal consequences. In particular, the Ombudsman found the inclusion by Icelandic Health Insurance of the five board members of Icelandic Health Insurance within the number of workers normally employed not to be justified because they worked under the authority of the Minister, and hence it was incorrect to claim that the 10% threshold had not been reached.

22 Subsequently, Ms Kristjánsdóttir brought an application against Icelandic Health Insurance on 23 November 2022 which was filed with Reykjavík District Court on 1 December 2022. Ms Kristjánsdóttir claims damages in the amount of ISK 2 546 500 plus penalty interest, and claims compensation for non-pecuniary damage in the amount of ISK 2 000 000 plus further detailed interest and penalty interest, as well as legal costs. Icelandic Health Insurance claims that the action should be dismissed and that Ms Kristjánsdóttir should bear the costs, and, in the alternative, that her claims should be reduced and the legal costs for the parties waived.

23 Icelandic Health Insurance rejects the claim and refers, inter alia, to the fact that the Collective Redundancies Act was passed in order to transpose the Directive into Icelandic law, which does not apply to workers employed by the State. Icelandic Health Insurance claims further that it followed guidance from the Directorate of Labour and considers that Ms Kristjánsdóttir has not demonstrated any loss for which Icelandic Health Insurance would be liable.

24 Ms Kristjánsdóttir considers that Icelandic Health Insurance deviated from the conditions of point b of paragraph 1 of Article 1 of the Collective Redundancies Act, which prescribes that if, at the same time, more than 10% of workers at a workplace with 100–300 workers are dismissed, then the requirements of the Act apply. This provision, she submits, is based on point (i) of Article 1(1)(a) of the Directive. Icelandic Health Insurance deviated from the law by counting five salaried members of its board of directors, appointed by the Minister, as "workers" within the meaning of the Directive. As a result, the total number of workers was, according to the request, "143 instead of 139" [sic], and those who were dismissed were a total of 14. Ms Kristjánsdóttir emphasises that Article 6 of the Directive refers to EEA States having to ensure that workers' representatives and/or workers themselves have at their disposal administrative and/or judicial procedures in order to ensure that the obligations laid down in the Directive are met.

25 Icelandic Health Insurance contends that the Collective Redundancies Act, which is based on the Directive, prescribes in Article 1 that there needs to be a dismissal of a specific number and proportion of workers for a measure to be deemed a collective redundancy. It seems clear that the legislation is intended to comply with rules in point (i) of Article 1(1)(a) of the Directive on this issue.

26 The parties to the case agree that the provisions of the Directive with regard to "workers" need clear interpretation on the issue of whether Icelandic Health Insurance board members should have been included when counting the total number of staff. Unlike Ms Kristjánsdóttir, Icelandic Health Insurance considers it justifiable to include Icelandic Health Insurance board members as they receive salaries from Icelandic Health Insurance. Icelandic Health Insurance further submits that it is unclear whether the national legislation incorporating the Directive into Icelandic law actually covers public employees.

27 In light of the above, Reykjavík District Court decided to request an advisory opinion from the Court. By letter of 19 February 2024, registered at the Court on 20 February 2024, Reykjavík District Court has submitted the following questions to the Court:

> *1. Can board members of a legal entity that operates in the public interest fall within the concept of 'worker' within the meaning of Council Directive 98/59/EC, for deciding the number of workers deemed to be employed by such a legal entity, for the purpose of calculating the minimum for collective redundancy (10% or 30 workers), as stated in point (i)(a) of paragraph 1 of Article 1 of the Directive?*
>
> *2. Does Article 6 of Directive 98/59/EC, regarding that EEA States shall ensure that representatives of workers and/or workers themselves can have at their disposal administrative and/or judicial procedures in order to ensure that the obligations laid down in this Directive are fulfilled, entail other or further requirements than those that EEA States prescribe in general for liability for damages resulting from infringements of the rules inherent in the Directive?*

28 Reference is made to the Report for the Hearing for a fuller account of the legal framework, the facts, the procedure and the proposed answers submitted to the Court. Arguments of the parties are mentioned or discussed hereinafter only insofar as is necessary for the reasoning of the Court.

III ANSWER OF THE COURT

Question 1

29 By its first question, the referring court asks, in essence, whether a board member of a legal entity in circumstances such as those of the main proceedings may be considered a "worker" within the meaning of point (i) of Article 1(1)(a) of the Directive.

30 Article 1(2)(b) of the Directive provides that the Directive does not apply to workers employed by public administrative bodies or by establishments governed by public law or, in EEA States where this concept is unknown, by equivalent bodies. The employer in the case in the main proceedings, Icelandic Health Insurance, is a public administrative organisation.

31 Under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("SCA"), any court or tribunal in an EFTA State may refer questions on the interpretation of the EEA Agreement to the Court, if it considers an advisory opinion necessary to enable it to give judgment. The purpose of Article 34 SCA is to establish cooperation between the Court and the national courts and tribunals. It is intended to be a means of ensuring a homogenous interpretation of EEA law and to provide assistance to the courts and tribunals in the EFTA States in cases in which they have to apply provisions of EEA law (see the judgment of 19 April 2023, *Verkfræðingafélag Íslands, Stéttarfélag tölvunarfræðinga and Lyfjafræðingafélag Íslands* v *íslenska ríkið*, E-9/22, paragraph 22 and case law cited).

32 It is settled case law that questions on the interpretation of EEA law referred by a national court, in the factual and legislative context which that court is responsible for defining and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. Accordingly, the Court may only refuse to rule on a question referred by a national court where it is quite obvious that the interpretation of EEA law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see the judgment in *Verkfræðingafélag Íslands*, E-9/22, cited above, paragraph 23 and case law cited).

33 Further, it is settled case law that where domestic legislation, in regulating purely internal situations not governed by EEA law, adopts the same or similar solutions as those adopted in EEA law, it is in the interest of the EEA to forestall future differences of interpretation. Provisions or concepts taken from EEA law should thus be interpreted uniformly, irrespective of the circumstances in which they are to apply. However, as the jurisdiction of the Court is confined to considering and interpreting provisions of EEA law only, it is for the national court to assess the precise scope of that reference to EEA law in national law (see judgment in *Verkfræðingafélag Íslands*, E-9/22, cited above, paragraph 25 and case law cited).

34 In its request, the referring court considers the Directive to be relevant when interpreting the Collective Redundancy Act, which it considers could have a decisive impact for the outcome of the case. As it is for the referring court to interpret national law and to define and assess the accuracy of the factual and legislative context in the case before it, the Court considers that none of the exceptions to the presumption of relevance are applicable.

35 The Court recalls that the concept of a "worker", referred to in Article 1(1)(a) of the Directive, cannot be defined by reference to the legislation of the EEA States but must be given an autonomous and independent meaning in the EEA legal order. Otherwise, the methods for calculation of the thresholds laid down in that provision, and therefore the thresholds themselves, would be within the discretion of the EEA States, which would allow the latter to alter the scope of the Directive and thus to deprive it of its full effect (compare the judgment of 9 July 2015 in *Ender Balkaya* v *Kiesel Abbruch- und Recycling Technik GmbH*, C-229/14, EU:C:2015:455, paragraph 33 and case law cited).

36 It is settled case-law that the concept of a "worker" must be defined in accordance with objective criteria which distinguish the employment relationship by reference to the rights and duties of the persons concerned. In that regard, the essential feature of an employment relationship is that, for a certain period of time, a person performs services for and under the direction of another person, in return for which he or she receives remuneration (see the judgment of 13 May 2020 in *Campbell* v *the Norwegian Government*, E-4/19, paragraph 49 and case law cited, and compare the judgment in *Balkaya*, C-229/14, cited above, paragraph 34 and case law cited).

37 Furthermore, the nature of the employment relationship under national law is of no consequence as regards whether or not a person is a "worker" for the purposes of EEA law. Hence, provided that a person meets the conditions specified in paragraph 35 above, the nature of that person's legal relationship with the other party to the employment relationship has no bearing on the application of the Directive (compare the judgment in *Balkaya*, C-229/14, cited above, paragraphs 35 and 36 and case law cited). Therefore, Ms Kristjánsdóttir's submission that board members of the Icelandic Health Insurance cannot be considered to fall within the concept of a "worker", because they are not employed at the state agency in the traditional sense of the term, must be rejected.

38 In the present case, it is apparent from the request that board members of Icelandic Health Insurance perform services for a certain period of time, in return for which they receive remuneration. Therefore, at issue, in essence, is whether a relationship of subordination exists.

39 In so far as the referring court is unsure of the existence of a relationship of subordination, in accordance with the case law regarding the concept of a "worker", because the degree of dependency or subordination of a board member, such as the one in question in the main proceedings, in the exercise of his or her functions is of a lesser intensity than that of a

worker within the usual meaning under national law, it must be observed that whether such a relationship of subordination exists must, in each particular case, be assessed on the basis of all the factors and circumstances characterising the relationship between the parties (compare the judgment in *Balkaya*, C-229/14, cited above, paragraph 37 and case law cited).

40 In that regard, it has previously been held that the fact that a person is a member of the board of directors of a capital company is not enough in itself to rule out the possibility that that person is in a relationship of subordination to that company. It is necessary to consider the circumstances in which the board member was recruited; the nature of the duties entrusted to that person; the context in which those duties were performed; the scope of the person's powers and the extent to which he or she was supervised within the company; and the circumstances under which the person could be removed (compare the judgment in *Balkaya*, C-229/14, cited above, paragraph 38 and case law cited).

41 Even if board members enjoy a degree of latitude in the performance of their duties that exceeds, in particular, that of an employee who may be directed by the employer as to the specific tasks to be completed and the manner in which they must be carried out, they may be in a relationship of subordination vis-à-vis their employer (compare, to that effect, the judgment in *Balkaya*, C-229/14, cited above, paragraph 41 and case law cited).

42 While it cannot be ruled out that the members of a directorial body of a company, such as a board of directors, are not covered by the concept of a "worker" as defined above, in view of the specific duties entrusted to them, as well as the context in which those duties are performed and the manner in which they are performed, the fact remains that board members who, in return for remuneration, provide services to the company which has appointed them and of which they are an integral part, who carry out their activities under the direction or control of another body of that company and who can, at any time, be removed from their duties without such removal being subject to any restriction, satisfy, prima facie, the criteria for being treated as "workers" (compare the judgment in *Balkaya*, C-229/14, cited above, paragraph 39, and the judgment of 11 November 2010 in *Dita Danosa* v *LKB Līzings SIA*, C-232/09, EU:C:2010:674, paragraph 51).

43 Ms Kristjánsdóttir has submitted that the relevant aspects of the relationship between the board members and Icelandic Health Insurance can be found in Article 6 of the Health Insurance Act and Article 25 of the Government Employees Act. On the basis of these provisions, she contends that the board members are independent in their work, i.e. they do not carry out their services under the direction or control of any person within the institution, and they cannot be removed from their position at any given time, without restrictions.

44 The Icelandic Government, in turn, submitted that even though the members of Icelandic Health Insurance's board enjoy a margin of discretion in the performance of their duties

they are subject to the direction and supervision of the Minister of Health, who can be compared to a general meeting of shareholders or a supervisory board. The Icelandic Government claims that the members of the board can be removed from their post by the Minister of Health at any time. Hence, the Icelandic Government concludes, they are accountable to a body which they do not control; can be removed from their posts on grounds of loss of confidence alone and are therefore under a *de facto* obligation to take management decisions in accordance with the expectations of the Minister of Health, similar to a supervisory board and shareholders.

45 The Court recalls that it is for the referring court, which must assume responsibility for the subsequent judicial decision, to establish the relevant facts and interpret national law. When assessing in the main proceedings whether a relationship of subordination exists, the referring court must also have regard to the Directive's objectives which are, as is apparent from its recital 2, inter alia, to afford greater protection to workers in the event of collective redundancies. In accordance with that objective, a narrow definition cannot be given to the concepts that define the scope of the Directive, including the concept of a "worker" in Article 1(1)(a) of the Directive (compare the judgment in *Balkaya*, C-229/14, cited above, paragraph 44 and case law cited).

46 In this context, it must be considered whether there is anything to suggest, that an employee who is a board member, such as those at issue in the main proceedings, is necessarily in a different situation from that of other persons employed by the employer at issue as regards the need to mitigate the consequences of his or her dismissal, and inter alia, to alert, for that purpose, the competent public authority so that it is able to seek solutions to the problems raised by all the projected collective redundancies (compare the judgment in *Balkaya*, C-229/14, cited above, paragraph 46 and case law cited).

47 In light of the above, the answer to the first question must be that members of the board of a legal entity may be considered to be "workers" within the meaning of the Directive, if they perform for a certain period of time services for that legal entity in a relationship of subordination, in return for which they receive remuneration.

Question 2

48 By its second question, the referring court seeks guidance as to whether Article 6 of the Directive entails other or further requirements than those that EEA States prescribe, in general, for any liability for damages resulting from infringements of the Directive.

49 In its request, the referring court describes the legal context with regard to Ms Kristjánsdóttir's claim for damages under Article 11 of the Collective Redundancies Act. According to the request, the plaintiff's claim for damages is, inter alia, based on the difference between the salary she received prior to her dismissal and the one that she received subsequent to being re-appointed until the point in time when she took unpaid leave. The referring court further explains that the plaintiff contends that a level of

compensation lower than this, such as at the discretion of the referring court, does not constitute the minimum redress that must be provided.

50 Consequently, the referring court asks, in essence, whether Article 6 of the Directive requires that a claim for damages based on an infringement of the Directive must provide, as a minimum, compensation which amounts to the difference between the salary a worker received prior to the dismissal and the salary that the worker received following re-appointment.

51 Article 6 of the Directive provides that EEA States shall ensure that judicial and/or administrative procedures for the enforcement of obligations under that directive are available to the workers' representatives and/or workers. The Directive, however, does not develop that obligation any further (compare the judgment of 16 July 2009 in *Mono Car Styling SA* v *Dervis Odemis and Others*, C-12/08, EU:C:2009:466, paragraphs 33 and 34).

52 In that regard, the Court recalls that the main objective of the Directive is to make collective redundancies subject to prior consultation with the workers' representatives and prior notification to the competent public authority. Accordingly, the Directive provides for only a partial harmonisation of the rules for the protection of workers in the event of collective redundancies, that is to say, harmonisation of the procedure to be followed when such redundancies are to be made. Thus, that directive does not seek to establish a mechanism of general financial compensation at the EEA level in the event of loss of employment and nor does it harmonise the detailed rules governing the definitive termination of an undertaking's activities (compare the judgment of 17 March 2021 in *Consulmarketing*, C-652/19, EU:C:2021:208, paragraphs 40 and 41 and case law cited).

53 It is settled case law that in the absence of EEA rules governing the matter, in accordance with the principle of national procedural autonomy, it is for the domestic legal system of each EEA State to lay down the detailed procedural rules governing actions for safeguarding rights which individuals and economic operators derive from EEA law. Such rules must respect the principles of equivalence and effectiveness. This entails that the procedural rules governing actions for damages arising from infringement of the rules of the EEA Agreement must thus be no less favourable than those governing similar domestic actions (principle of equivalence) and must not be framed in such a way as to render impossible in practice or excessively difficult the exercise of rights conferred by EEA law (principle of effectiveness). It is for the referring court to assess whether the national rules in question respect the principles of equivalence and effectiveness. EEA law requires, in addition to observance of the principles of equivalence and effectiveness, that national legislation does not undermine the right to effective judicial protection (see the judgment of 8 August 2024 in *Låssenteret AS* v *Assa Abloy Opening Solutions Norway AS*, E-11/23, paragraph 44 and case law cited).

54 In order to establish whether the principle of equivalence has been complied with, it is for the national court, which alone has direct knowledge of the procedural rules governing actions in national law, to consider the purpose, cause of action and the essential characteristics of allegedly similar domestic actions. Moreover, every case in which the question arises as to whether a national provision is less favourable than those concerning similar domestic actions must be analysed by the national court by reference to the role of that provision in the procedure, its conduct and its special features, viewed as a whole, before the various national bodies (see the judgment of 13 June 2013 in *Koch and Others* v *Swiss Life (Liechtenstein) AG*, E-11/12, paragraphs 124 and 125 and case law cited and the judgment of 17 September 2018 in *Nye Kystlink AS* v *Color Group AS and Color Line AS*, E-10/17, paragraph 75 and case law cited).

55 The Court recalls that even if directives do not contain provisions addressing specific forms of sanctions for non-compliance and that the choice of these sanctions remain within the discretion of the EEA States, EEA States are nevertheless required under Article 3 EEA to take all measures necessary to guarantee the application and effectiveness of EEA law. It is not sufficient that these sanctions are analogous to sanctions for infringements of national law of a similar nature. They must also be effective, proportionate and dissuasive (see the judgment of 10 December 2010 in *Þór Kolbeinsson* v *The Icelandic State*, E-2/10, paragraphs 46, 47 and 49 and case law cited).

56 The assessment of what constitutes effective, proportionate and dissuasive sanctions must take into account the provisions with which the sanctions are meant to secure compliance. Thus, the conclusion in this regard may depend on the directive concerned (see the judgment in *Kolbeinsson*, E-2/10, cited above, paragraph 52).

57 It follows from the text and scheme of the Directive that the right to information and consultation which it lays down is intended for workers' representatives and not for workers individually. The right to information and consultation provided for in the Directive, in particular by Article 2 thereof, is intended to benefit workers as a collective group and is therefore collective in nature (compare the judgment in *Mono Car Styling*, C-12/08, cited above, paragraphs 38 and 42).

58 Furthermore, the second subparagraph of Article 2(3) of the Directive must be interpreted as meaning that the employer's obligation to forward to the competent public authority a copy of, at least, the elements of the written communication which are provided for in the first subparagraph of Article 2(3), point (b), subpoints (i) to (v) of that directive is not intended to confer individual protection on the workers affected by collective redundancies (compare the judgment of 13 July 2023 in *MO* v *SM as liquidator of G GmbH*, C-134/22, EU:C:2023:567, paragraph 41).

59 However, the Court observes that according to Article 4(1) of the Directive projected collective redundancies notified to the competent public authority shall take effect not

earlier than 30 days after the notification referred to in Article 3(1) without prejudice to any provisions governing individual rights with regard to notice of dismissal. A contract of employment may therefore be terminated only after the conclusion of the consultation procedure, that is to say, after the employer has complied with the obligations set out in Article 2 of the directive (compare the judgment of 27 January 2005 in *Junk* v *Kühnel*, C-188/03, EU:C:2005:59, paragraph 45). Hence, with regard to the notification requirement, the Directive provides for protection that affects the individual employment relationship.

60 Furthermore, Article 6 does not limit the obligation to provide procedures for the enforcement of obligations under the Directive to the workers' representatives but explicitly mentions "and/or workers". In addition, Article 5 provides that the Directive shall not affect the right of an EEA State to apply or to introduce laws, regulations or administrative provisions which are more favourable to workers or to promote or to allow the application of collective agreements more favourable to workers.

61 In conclusion, although Article 6 does not require EEA States to adopt a specific measure in the event of a failure to comply with the obligations laid down in the Directive, but leaves them free to choose between the different solutions suitable for achieving the objective pursued by the Directive, depending on the different situations which may arise, those measures must, however, ensure real and effective judicial protection and have a real deterrent effect (compare the judgment in *Consulmarketing*, C-652/19, cited above, paragraph 43 and case law cited).

62 In light of the above, the answer to the second question must be that it is for the EEA State concerned to lay down the detailed arrangements for the procedures pursuant to Article 6 of the Directive for enforcing the obligations under the Directive. Those procedures must, however, respect the principles of equivalence and effectiveness and provide effective, proportionate and dissuasive sanctions for infringements. It is for the referring court to determine whether the rules at issue in the main proceedings comply with those requirements.

IV COSTS

63 Since these proceedings are a step in the proceedings pending before the national court, any decision on costs for the parties to those proceedings is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds,

THE COURT

in answer to the questions referred to it by Reykjavík District Court hereby gives the following Advisory Opinion:

1. **Members of a board of a legal entity may be considered to be "workers" within the meaning of Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, if they perform for a certain period of time services for that legal entity in a relationship of subordination, in return for which they receive remuneration.**

2. **It is for the EEA State concerned to lay down the detailed arrangements for the procedures pursuant to Article 6 of Directive 98/59/EC for enforcing the obligations under that directive. Those procedures must, however, respect the principles of equivalence and effectiveness and provide effective, proportionate and dissuasive sanctions for infringements. It is for the referring court to determine whether the rules at issue in the main proceedings comply with those requirements.**

Páll Hreinsson Bernd Hammermann Michael Reiertsen

Delivered in open court in Luxembourg on 20 November 2024.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President