JUDGMENT OF THE COURT

19 April 2023[*]

(*Council Directive 98/59/EC – Collective redundancies – Obligation to initiate consultations with the workers' representatives – Obligation to notify the competent public authority – Contractual structure of the employment relationship*)

In Case E-9/22,

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 the Icelandic Court of Appeal (*Landsréttur*), in the case between

Verkfræðingafélag Íslands (*the Association of Chartered Engineers in Iceland*),

Stéttarfélag tölvunarfræðinga *(the Computer Scientists' Union)*, and

Lyfjafræðingafélag Íslands (*the Pharmaceutical Society of Iceland*)

and

the Icelandic State,

concerning the interpretation 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 Ola Mestad (ad hoc), Judges,

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

Registrar: Ólafur Jóhannes Einarsson,

having considered the written observations submitted on behalf of:

- Verkfræðingafélag Íslands ("the Association of Chartered Engineers in Iceland"), Stéttarfélag tölvunarfræðinga ("the Computer Scientists' Union") and Lyfjafræðingafélag Íslands ("the Pharmaceutical Society of Iceland") (collectively referred to as "the Unions"), represented by Halldór Kr. Þorsteinsson, advocate;

- the Icelandic Government, represented by Fanney Rós Þorsteinsdóttir, acting as Agent;

- the EFTA Surveillance Authority ("ESA"), represented by Melpo-Menie Joséphidès, Erlend Møinichen Leonhardsen, Kyrre Isaksen and Ingibjörg Ólöf Vilhjálmsdóttir, acting as Agents; and

- the European Commission ("the Commission"), represented by Bernd-Roland Killmann and Esther Eva Schmidt, acting as Agents;

having regard to the Report for the Hearing,

having heard oral argument of the Unions, represented by Halldór Kr. Þorsteinsson; the Icelandic Government, represented by Fanney Rós Þorsteinsdóttir; ESA, represented by Kyrre Isaksen and Ingibjörg Ólöf Vilhjálmsdóttir; and the Commission, represented by Bernd-Roland Killmann, at the hearing on 23 November 2022,

gives the following

Judgment

I Legal background

EEA law

1 Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies ("the Directive") (OJ 1998 L 225, p. 16, and Icelandic EEA Supplement 2000 No 46, p. 258) was incorporated into the Agreement on the European Economic Area ("the EEA Agreement" or "EEA") by Decision No 41/1999 of the EEA Joint Committee of 26 March 1999 (OJ 2000 L 266, p. 47, and Icelandic EEA Supplement 2000 No 46, p. 257) and 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.

The requirements were fulfilled by 19 May 2000 and the decision entered into force on 1 July 2000.

2 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 No 258/2018 of the EEA Joint Committee of 5 December 2018 (OJ 2021 L 337, p. 57, and Icelandic EEA Supplement 2021 No 62, p. 54) and is referred to at point 32m 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.

3 Recital 12 to the Directive reads:

> *Whereas Member States should ensure that workers' representatives and/or workers have at their disposal administrative and/or judicial procedures in order to ensure that the obligations laid down in this Directive are fulfilled;*

4 Article 1 of the Directive, entitled "Definitions and scope", reads, in extract:

> *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:*
>
> *...*
>
> *(b) ...*
>
> *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);

...

5 Article 2(1) and (2) of the Directive, entitled "Information and consultation", reads:

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.

2. These consultations shall, at least, cover ways and means of avoiding collective redundancies or reducing the number of workers affected, and of mitigating the consequences by recourse to accompanying social measures aimed, inter alia, at aid for redeploying or retraining workers made redundant.

Member States may provide that the workers' representatives may call on the services of experts in accordance with national legislation and/or practice.

6 The first and fourth subparagraphs of Article 3(1) of the Directive, in Section III entitled "Procedure for collective redundancies", read, in extract:

1. Employers shall notify the competent public authority in writing of any projected collective redundancies.

...

This notification shall contain all relevant information concerning the projected collective redundancies and the consultations with workers' representatives provided for in Article 2, and particularly the reasons for the redundancies, the number of workers to be made redundant, the number of workers normally employed and the period over which the redundancies are to be effected.

7 Article 4(1) of the Directive, in Section III entitled "Procedure for collective redundancies", reads, in extract:

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.

...

National law

8 The Directive has been implemented into Icelandic law through Act No 63/2000 on collective redundancies ("the Collective Redundancies Act").

9 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.*

10 Article 2 of the Collective Redundancies Act reads:

> *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,*
>
> *b. …*

II Facts and procedure

11 By letter of 14 February 2020 the National University Hospital (*Landspítali*) ("LSH") terminated, with three months' notice, the regular overtime contracts of its workers in its technical support units. The workers were offered new temporary contracts covering regular overtime instead.

12 On 20 February 2020, the workers in LSH's technical support units were informed of the measures planned by LSH, which would mean that contracts covering regular overtime would be reviewed and would, from then on, be temporary. The change would result in a reduction in the affected workers' wages by as much as 3.5%. However, this change would be executed in such a manner that workers who earned under ISK 700 000 per month would not have their wages reduced, while the reduction applied to other workers would take into account the amount of wages they received. It was stated in the announcement, that all fixed-wage contracts would be terminated. Instead, workers would be offered alternative employment contracts in which regular overtime arrangements would be valid for one year.

13 LSH's measures, which were part of the hospital's spending cuts, applied to 319 workers, and the number of overtime hours was reduced for 113 workers. Among the workers concerned are members of the Unions.

14 On 25 February 2020, the Unions sent an enquiry to LSH requesting information concerning the terminations, and whether LSH regarded them as falling under the provisions of the Collective Redundancies Act. In its reply of 26 February 2020, LSH stated that, in its view, the workers' employment contracts were not terminated and that consequently, the Collective Redundancies Act did not apply. A moderate reduction of regular overtime hours in the case of specific workers who had enjoyed terms of employment which were over and above the terms stipulated in their collective agreements was proposed. The reply furthermore stated that in practice, state institutions were allowed to terminate contracts covering payments going beyond the terms set out in the relevant collective agreements without this constituting a termination of the employment contract. It was also pointed out that under Article 19 of Act No 70/1996 on the Rights and Obligations of Public Employees, state institutions were authorised to make changes to jobs without this being considered to be termination of the employment contracts. Finally, LSH stated that other institutions had previously been obliged to take similar measures without complaints having been voiced that the provisions of the Collective Redundancies Act were being infringed.

15 On 11 March 2020, the Unions sent a letter to the Director of LSH and the Ministry of Health outlining their view that the measures involved collective redundancies in the sense of the Collective Redundancies Act. In the Unions' view, LSH was obliged to follow the procedural rules laid down in the Collective Redundancies Act, including those of Section III regarding notifications to be submitted to the Directorate of Labour. According to the request, as stated in the first paragraph of Article 8 of the Collective Redundancies Act, collective redundancies shall only take effect 30 days after the receipt of such a notification by the Directorate of Labour. The Unions acknowledged that LSH was free to make reductions in its personnel if it considered this necessary, but they pointed out that the way in which terminations were effected could not violate the legally prescribed rules of procedure.

16 In a reply of 31 March 2020, LSH reiterated its views. It argued that contracts covering regular overtime did not constitute part of workers' employment contracts as such. Therefore, termination of regular overtime did not constitute termination of the employment contracts themselves. Reference was made to the fact that these measures were nothing new. It was stated that LSH's workers had generally shown understanding regarding such measures and had therefore not voiced complaints. Moreover, so few workers' contracts covering regular overtime had been terminated that the Collective Redundancies Act did not apply. According to the request, there is no indication that any of the 319 workers affected by LSH's measures stopped working as a result of these measures.

17 In the judgment under appeal, Reykjavík District Court took the view that the Collective Redundancies Act was applicable only when the employment relationship between employer and worker had been fully terminated.

18 An appeal against the judgment of the District Court of 14 December 2020 was lodged by the Unions at the Court of Appeal on 28 December 2020. In the notice of appeal, the Unions state their view that the District Court's judgment represented a departure from what is considered to constitute redundancy in Icelandic employment law. The Unions argue, inter alia, that the legislature did not intend to restrict the scope of the Collective Redundancies Act to situations in which the employment relationship was fully terminated, since the Collective Redundancies Act used the term redundancies (*uppsagnir*) and not terminations of employment (*ráðningarslit*). According to the referring court, the Collective Redundancies Act applies to both public-sector and private-sector employees.

19 Against this background, the Court of Appeal decided to request an Advisory Opinion from the Court. The request, dated 9 June 2022, was registered at the Court on the same day. The Court of Appeal referred the following questions to the Court:

1. *Does it follow from Article 1(1) and Article 2 of Council Directive 98/59/EC, and also from the principle of effectiveness, that an employer who intends to terminate contracts with a group of workers covering fixed overtime is required to observe the procedural rules laid down in the Directive, including as regards consultation with workers' representatives under Article 2 of the Directive and notification of the competent public authority under Article 3 of the Directive?*

2. *If the answer to the first question is in the affirmative, does the employer's obligation cease to apply if termination of contracts covering fixed overtime does not subsequently result in the full termination of the workers' employment contracts?*

3. *Is it of significance for the answer to the first two questions whether the contracts covering fixed overtime which the employer terminates were specifically made in independent contracts that were additional to the workers' employment contracts?*

20 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

Admissibility

21 The Icelandic Government submits that the request is inadmissible because the case concerns workers of a state-run hospital, who would qualify as workers employed by public administrative bodies or by establishments governed by public law within the meaning of Article 1(2)(b) of the Directive, and who would therefore fall outside the scope of the Directive. Accordingly, the Icelandic Government submits, there is no EEA law matter at issue in the main proceedings and in the request.

22 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 Case E-11/20 *Sverrisson*, judgment of 15 July 2021, paragraph 33 and case law cited).

23 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 *Sverrisson*, cited above, paragraph 34 and case law cited).

24 The Court considers that none of the exceptions to the presumption of relevance are applicable in the present case. According to the request, the Directive was implemented into Icelandic law through the Collective Redundancies Act without providing for the exception in Article 1(2)(b) of the Directive for employees of an establishment governed by public law. The referring court states in its request, that the Collective Redundancies Act applies to both public and private-sector employees.

25 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 Case E-21/16 *Pascal Nobile* [2017] EFTA Ct. Rep. 554, paragraph 25 and case law cited).

26 In its request, the referring court considers the interpretation of the Directive to be relevant for the application of national law. 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, it is irrelevant that the Icelandic Government disputes the referring court's assessment that the Collective Redundancy Act is applicable to the workers concerned in the main proceedings. Any other conclusion would undermine the purpose of the judicial dialogue envisaged by Article 34 SCA and the presumption of relevance of the questions referred.

27 In the light of the foregoing, it must be held that the request is admissible.

Questions 1 – 3

28 By its first question, the referring court asks in essence whether an employer who intends to terminate contracts with a group of workers covering fixed overtime is required to observe the procedural rules laid down in the Directive, including the obligation to initiate consultations with workers' representatives and the notification of the competent public authority. If the answer to the first question is in the affirmative, the referring court enquires secondly whether the employer's obligation ceases to apply if the termination of contracts covering fixed overtime does not subsequently result in the full termination of the workers' employment contracts. By its third question, the referring court asks whether it is of significance whether the contracts covering fixed overtime were specifically made in independent contracts that were additional to the workers' employment contracts. The Court finds it appropriate to answer the questions together by first addressing the concept of collective redundancies, before turning to the obligations to initiate consultations and to notify the competent public authority.

29 Article 2(1) of the Directive requires that consultations be initiated with the workers' representatives in good time if an employer contemplates collective redundancies. Collective redundancies are defined in Article 1(1)(a) as dismissals effected by an employer for one or more reasons not related to the individual workers concerned and the number of redundancies exceeds the threshold defined in that provision.

30 According to settled case law, any termination of an employment contract not sought by the worker, and therefore without his consent, qualifies as redundancy within the meaning

of Article 1(1)(a) of the Directive (compare the judgment in *Pujante Rivera*, C-422/14, EU:C:2015:743, paragraph 48 and case law cited). Furthermore, there is also a redundancy within the meaning of Article 1(1)(a) where the employer — unilaterally and to the detriment of the employee — makes significant changes to essential elements of the employment contract for reasons not related to the individual employee concerned (compare the judgment in *Ciupa and Others*, C-429/16, EU:C:2017:711, paragraph 27 and case law cited).

31 By contrast, if the employer makes a non-significant change to an essential element, or a significant change to a non-essential element of the employment contract for reasons not related to the individual employee concerned, that does not qualify as redundancy within the meaning of Article 1(1)(a) of the Directive. However, the termination of an employment contract following the refusal by an employee to accept such a proposed change falls under the second subparagraph of Article 1(1) and is to be assimilated to redundancies for the purpose of calculating the number of redundancies provided for in Article 1(1)(a), provided that there are at least five redundancies (compare the judgment in *Ciupa and Others*, cited above, paragraphs 28 and 31).

32 In order to determine which elements of the employment contract are essential and what changes are significant, certain considerations should be taken into account. Remuneration is an essential element of the employment contract. When assessing the significance of any reduction of remuneration, both the percentage of the change and whether it is permanent or temporary must be considered (compare the judgment in *Ciupa and Others*, cited above, paragraph 29). Moreover, the overall level of the remuneration is a relevant factor when assessing the significance of the change. According to the request the proposed reduction was limited to workers who earn more than ISK 700 000 per month. In this context, the amount of the remuneration must be assessed in the light of the relevant economic data, such as the cost of living. In addition, the nature of the contract, whether permanent or of a fixed duration, must be taken into account. If the employer seeks to change the employment contract from permanent to a fixed duration, the significance of the reduction in the worker's rights must be assessed.

33 However, it is for the referring court, which has sole jurisdiction to assess the facts, to determine in the light of all the circumstances of the case whether the proposed changes at issue are to be regarded as significant.

34 According to Article 2(1) of the Directive the obligation to commence consultations with the workers' representatives in good time arises when an employer is contemplating or is compelled to contemplate collective redundancies. Article 2(1) does not require that collective redundancies are intended or effected. The obligation to consult arises prior to any decision by an employer to terminate employment contracts. The achievement of the objective, as set out in Article 2(2), of avoiding terminations of contracts of employment or reducing the number of such terminations would be jeopardised if the consultation of

workers' representatives were to be undertaken subsequent to an employer's decision to terminate those contracts of employment (compare the judgment in *Socha and Others*, C-149/16, EU:C:2017:708, paragraph 29 and case law cited).

35 Moreover, even economic decisions which are not directly concerned with the termination of specific employment contracts but which could, nevertheless, have repercussions on the employment of a number of employees, can give rise to the obligation to consult. Hence, the consultation procedure provided for in Article 2 of the Directive must be started by the employer once a strategic or commercial decision compels him to contemplate or to plan for collective redundancies (compare the judgment in *Socha and Others*, cited above, paragraphs 30 and 31 and case law cited).

36 Where a decision involving the amendment of conditions of employment could help to avoid collective redundancies, the consultation procedure provided for in Article 2 must begin once an employer intends to make such amendments (compare the judgment in *Socha and Others*, cited above, paragraph 34 and case law cited).

37 It is for the referring court to examine whether the termination of the overtime contracts and the subsequent offering of new contracts were considered in order to avoid decisions directly concerned with the termination of specific employment contracts.

38 In the light of the foregoing considerations, in circumstances such as those of the main proceedings, the obligation to initiate the consultation procedure pursuant to Article 2(1) arises if the termination of overtime contracts constitutes a significant change of an essential element in accordance with paragraph 30 of the present judgment, thus qualifying it as a redundancy, and the quantitative thresholds defined in Article 1(1)(a) are met. Even if the termination of overtime contracts does not constitute a redundancy within the meaning of Article 1(1)(a), the obligation to initiate consultations will also arise if a decision taken to terminate overtime contracts implies that an employer would have otherwise been compelled to consider collective redundancies within the meaning of Article 1(1)(a). In determining whether the relevant quantitative thresholds laid out in Article 1(1)(a) are reached, potential terminations of employment assimilated to redundancies in accordance with the second subparagraph of Article 1(1) must also be taken into account, provided there are, in any event, at least five potential redundancies within the meaning of Article (1)(1)(a).

39 For this assessment, it is irrelevant whether the conditions of employment are stipulated in one contract or spread over several contracts. A worker's conditions of employment must be viewed as a whole. The protection of the worker cannot be circumvented by subdividing a worker's conditions of employment into different contracts and thus purporting to artificially delimit certain conditions from the necessary assessment of the employment relationship.

40 Furthermore, the obligation of consultation cannot depend on subsequent events, such as whether any employment contracts are in fact terminated. The fact that any contemplated terminations of employment do not ultimately take place cannot justify a failure to undertake the preceding consultation procedure laid down in Article 2 of the Directive.

41 As Recital 12 to the Directive emphasises EEA States should ensure that workers' representatives and/or workers have at their disposal administrative and/or judicial procedures in order to ensure that the obligations laid down in the Directive are fulfilled. Therefore, as contended by the Commission, the effect sought by the Directive; namely to create a level playing field for enterprises when restructuring with regard to their workers, requires that enterprises may not avoid their obligations under the Directive.

42 The obligation of employers to notify the competent authority in writing of any projected collective redundancies is laid down in the first subparagraph of Article 3(1) of the Directive. According to the fourth subparagraph of that article, that notification must contain relevant information concerning the consultation with workers' representatives. Hence, this obligation arises at a later stage in the decision-making process than the obligation to initiate consultations with the workers' representatives. Furthermore, that obligation only concerns "projected collective redundancies" which means that a notification is only required if the employer already intends to make collective redundancies and not, as in Article 2, if he is only compelled to contemplate them.

43 These conditions must be assessed from an *ex ante* perspective as the first subparagraph of Article 3(1) of the Directive requires only projected and not effected collective redundancies. This conclusion is supported by the fact that pursuant to Article 4 projected collective redundancies shall take effect no earlier than 30 days after the notification. Legal certainty would be compromised if the notification requirement were dependent on whether contracts were terminated due to the non-acceptance of the proposed changes. Hence, it is irrelevant for the obligation to notify the competent public authority whether the proposed amendments subsequently result in the termination of the workers' employment relationships.

44 In the light of the above, the answers to the questions referred must be that the first subparagraph of Article 1(1)(a) of the Directive must be interpreted as meaning that the fact that an employer – unilaterally and to the detriment of the employee – makes significant changes to essential elements of his employment contract for reasons not related to the individual employee concerned falls within the definition of "redundancy". The second subparagraph of Article 1(1) must be interpreted as meaning that a notice of amendment which does not reach the threshold of constituting a "redundancy" for the purpose of the first subparagraph of Article 1(1)(a) is capable of being assimilated to a "redundancy" provided that the conditions laid down in the second subparagraph of Article 1(1) are fulfilled. The consultation procedure provided for in Article 2 must be initiated by the employer once a strategic or commercial decision compels him to contemplate or to

plan for collective redundancies. Where a decision involving the amendment of conditions of employment could help to avoid collective redundancies, the consultation procedure must begin once the employer intends to make such amendments. An employer is obliged to notify the competent public authority according to the first subparagraph of Article 3 of any projected collective redundancies. Such a notification must include anticipated redundancies within the meaning of the first subparagraph of Article 1(1)(a) and terminations of employment contracts assimilated to redundancies within the meaning of the second subparagraph of Article 1(1). In the assessment by the national court, it is irrelevant whether an employee's conditions of employment are stipulated in one contract or are spread over several contracts. The obligation to initiate the consultation procedure and to notify the competent public authority laid down in Articles 2 and 3 cannot depend on subsequent events, such as whether employment contracts are in fact terminated.

IV Costs

45 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 the Icelandic Court of Appeal hereby gives the following Advisory Opinion:

1. **The first subparagraph of Article 1(1)(a) of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies must be interpreted as meaning that the fact that an employer — unilaterally and to the detriment of the employee — makes significant changes to essential elements of his employment contract for reasons not related to the individual employee concerned falls within the definition of "redundancy".**

   The second subparagraph of Article 1(1) of Directive 98/59/EC must be interpreted as meaning that a notice of amendment which does not reach the threshold of constituting a "redundancy" for the purpose of the first subparagraph of Article 1(1)(a) of that directive is capable of being assimilated to a "redundancy" provided that the conditions laid down in the second subparagraph of Article 1(1) of that directive are fulfilled.

The consultation procedure provided for in Article 2 of Directive 98/59/EC must be initiated by the employer once a strategic or commercial decision compels him to contemplate or to plan for collective redundancies.

Where a decision involving the amendment of conditions of employment could help to avoid collective redundancies, the consultation procedure must begin once the employer intends to make such amendments.

An employer is obliged to notify the competent public authority according to the first subparagraph of Article 3 of Directive 98/59/EC of any projected collective redundancies. Such a notification must include anticipated redundancies within the meaning of the first subparagraph of Article 1(1)(a) of that directive and terminations of employment contracts assimilated to redundancies within the meaning of the second subparagraph of Article 1(1) of that directive.

2. **The obligation to initiate the consultation procedure and to notify the competent public authority laid down in Articles 2 and 3 of Directive 98/59/EC cannot depend on subsequent events, such as whether employment contracts are in fact terminated.**

3. **It is irrelevant whether an employee's conditions of employment are stipulated in one contract or are spread over several contracts.**

Páll Hreinsson Bernd Hammermann Ola Mestad

Delivered in open court in Luxembourg on 19 April 2023.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President