EFTA Court
- Registry -
1 Rue du Fort Thüngen
L-1499 Luxembourg
Luxembourg

9 June 2022

Court of Appeal Case No 748/2020 – the Association of Chartered Engineers in Iceland (Verkfræðingafélag Íslands), the Computer Scientists' Union (Stéttarfélag tölvunarfræðinga) and the Pharmaceutical Society of Iceland (Lyfjafræðingafélag Íslands) versus the Icelandic State: Request for an advisory opinion

1. INTRODUCTION

(1) With reference to Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, Iceland's Court of Appeal (Landsréttur) requests an advisory opinion from the EFTA Court in connection with Court of Appeal Case No 748/2020 — the Association of Chartered Engineers in Iceland (Verkfræðingafélag Íslands), the Computer Scientists' Union (Stéttarfélag tölvunarfræðinga) and the Pharmaceutical Society of Iceland (Lyfjafræðingafélag Íslands) versus the Icelandic State. The Association of Chartered Engineers in Iceland, the Computer Scientists' Union and the Pharmaceutical Society of Iceland are the appellants in this case and the Icelandic State is the defendant.

(2) The dispute between the parties concerns whether the termination, in February 2020, by the defendant of the fixed-wage contracts of the appellants' members constituted a collective redundancy in the sense of the Collective Redundancies Act No 63/2000. In its judgment, the District Court did not accept that the Collective Redundancies Act No 63/2000 applied to the termination or amendment of part of the terms of workers' employment without the employment relationship itself being fully terminated.

(3) This case raises questions 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 substance of the predecessor Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies, was given effect in Icelandic law by the Collective Redundancies Act No 95/1992 of 2 December 1992. Directive 98/59/EC was incorporated into Annex XVIII to the EEA Agreement by the Decision of the EEA Joint Committee of [26 March] 1999. The Collective Redundancies Act No 63/2000 of 19 May 2000 then brought Icelandic legislation up to date in the light of the legislative amendments necessitated by Directive 98/59/EC.

(4) The Court of Appeal now requests an advisory opinion from the EFTA Court regarding the scope of the Directive, and specifically whether its rules cover situations in which an employer terminates the contracts of a group of workers as regards fixed overtime.

2. PARTIES TO THE CASE

(5) The parties to the case before the Court of Appeal are:

(6) Appellants: Verkfræðingafélag Íslands
Stéttarfélag tölvunarfræðinga
Lyfjafræðingafélag Íslands

Counsel: Halldór Kr. Þorsteinsson
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(7) Defendant: the Icelandic State

Counsel: Fanney Rós Þorsteinsdóttir
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3. FACTS OF THE CASE

(8) The appeal lodged with the Court of Appeal by the Association of Chartered Engineers in Iceland (Verkfræðingafélag Íslands), the Computer Scientists' Union (Stéttarfélag tölvunarfræðinga) and the Pharmaceutical Society of Iceland (Lyfjafræðingafélag Íslands) concerns the judgment by the Reykjavík District Court in Case No E-3257/2020 of 14 December 2020.

(9) The parties are in agreement regarding the facts of the case. In the aforementioned District Court judgment, the facts of the case were described as follows:

> "The plaintiffs are the unions of chartered engineers, computer scientists and pharmacists in Iceland. Members of all these unions are among the workers of the technical support units of Landspítali (the National and University Hospital, hereinafter referred to as 'LSH').
>
> Contracts covering regular overtime were terminated with three months' notice by a letter from LSH dated 14 February 2020. Instead, workers were offered new, temporary, contracts covering regular overtime.
>
> On 20 February 2020, workers in the technical support units at LSH were informed of measures that were being planned by LSH which would mean that contracts covering regular overtime would be reviewed and would, from then on, be temporary. This change would result in a reduction of the wages of workers in the technical support departments of as much as 3.5%; nevertheless, this change would be executed in such a manner that workers who received under ISK 700,000 in monthly wages would not incur wage reductions, while the reduction applied to other workers would take into account the amount of wages they received. It was stated, in this 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.
>
> These measures planned by LSH, which were part of the hospital's spending cuts, applied to 319 workers, irrespective of the unions to which they belonged, and the

number of overtime hours was reduced in the case of 113 workers. Of the 319 workers, the measures affected 26 members of the plaintiff, the Association of Chartered Engineers in Iceland. Overtime hours were reduced for 14 of these 26 workers. The measures affected four members of the plaintiff, the Computer Scientists' Union. Overtime hours were reduced for three of these four workers. The measures affected two members of the plaintiff, the Pharmaceutical Society of Iceland. Both had their overtime hours reduced.

On 25 February 2020, the plaintiffs sent an enquiry to LSH requesting information concerning the terminations, and whether the defendant regarded them as falling under the provisions of the Collective Redundancies Act No 63/2000. In its reply of 26 February 2020, LSH stated that, in its view, no termination of the workers' employment contracts was involved. Consequently, the Collective Redundancies Act No 63/2000 did not apply. What was proposed was 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. The reply furthermore stated that in practice, state institutions were allowed to terminate contracts covering payments going beyond the terms stipulated 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 a termination of the employment contract. Finally, the hospital stated in its reply that other institutions had previously been obliged to take similar measures without complaints having been voiced that the provisions of Act No 63/2000 had been violated.

On 11 March 2020, the plaintiffs sent the Director of LSH and the Ministry of Health a letter outlining their view that the measures involved collective redundancies in the sense of Act No 63/2000. Consequently (in the plaintiffs' view), the defendant was obliged to follow the procedural rules laid down in the Act, including those of Section III regarding notifications to be submitted to the Directorate of Labour. As stated in the first paragraph of Article 8 of the Act, collective redundancies shall only take effect 30 days after the receipt of such a notification by the Directorate of Labour. The plaintiffs conceded that the defendant 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.

A reply was received from LSH on 31 March 2020, reiterating its views. It argued that contracts covering regular overtime did not constitute part of workers' employment contracts as such. Therefore (it argued), termination of regular overtime did not constitute termination of the employment contracts themselves. In the letter, reference was made to the fact that these measures were nothing new. It was stated that workers had generally shown understanding regarding such measures and had therefore not voiced complaints regarding them. Moreover, so few workers' contracts covering regular overtime had been terminated that the Collective Redundancies Act did not apply. With reference to these arguments, the defendant's view was that the Collective Redundancies Act did not apply to the measures."

(10) Attention should be drawn to the fact that there is no indication that any of the 319 workers affected by LSH's measures stopped working as a result of these measures.

(11) In its judgment, the District Court took the view that the Collective Redundancies Act No 63/2000 only applied when the employment relationship between employer and worker had been fully terminated; consequently, the Icelandic State was completely acquitted.

(12) An appeal against the judgment was submitted to the Court of Appeal on 28 December 2020. It should be noted that the case was originally scheduled on the programme of the Court of Appeal in 2021 but was postponed due to the illness of the appellants' counsel. On 25 March 2022, the appellants' counsel requested that questions, set out in detail below, be submitted to the EFTA Court with a request for an advisory opinion. The Court granted this request on the same date.

4. APPLICABLE LAW

4.1. Icelandic legislation invoked by the parties

(13) The scope of the Collective Redundancies Act No 63/2000 is defined as follows:

Article 1. 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.

Article 2. This Act does not apply to 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.

Article 3. The provisions of Article 7 and of the first paragraph of Article 8 shall not apply when the operations of an enterprise are stopped by the ruling of a court of law. Nevertheless, the employer shall send the Directorate of Labour a notification in accordance with Article 7 if the Directorate of Labour so requests.

Article 4. 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 the collective redundancies was taken.

(14) Neither in the Act itself nor in the preparatory works accompanying the bill is there any specific definition of collective redundancy; nor is the scope of the Act defined in further detail than is stated above.

4.2. Council Directive 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies

(15) Article 1 of Section I of the Directive 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); […]

(16) Recital 8 of the Directive states moreover that, in order to calculate the number of redundancies provided for in the definition of collective redundancies within the meaning of the Directive, other forms of termination of employment contracts on the initiative of the employer should be equated to redundancies, provided that there are at least five redundancies.

4.3. Case law of the European Court of Justice

(17) Amongst other points at issue in Case C-55/02, of 12 October 2004, *Commission* v *Portugal*, was the definition of 'redundancy' as used in Directive 98/59/EC. The Court's conclusion was that, by restricting the concept of collective redundancies to redundancies for structural, technological or cyclical reasons, and by failing to extend the concept to dismissals for any reason not related to the individual workers concerned, the Portuguese Republic had failed to fulfil its obligations under the Directive.

(18) Amongst other points at issue in Case C-383/92, of 8 June 1994, *Commission* v *United Kingdom*, was whether the definition of 'collective redundancy' in the then applicable UK legislation, the Employment Protection Act 1975, was compatible with Directive 75/129/EEC. The Court's conclusion was that the Act was not compatible with the Directive as it did not cover cases where dismissals were related to the adoption of new working arrangements. The Court pointed out that as the scope of the Directive had not been limited in this way, Member States were not permitted to provide for such limitations in legislation.

(19) In the European Court of Justice preliminary ruling in Case C-422/14 of 11 November 2015, *Pujante Rivera*, its conclusion was that Directive 98/59/EC was to be interpreted as meaning that, when an employer unilaterally and to the detriment of the employee made significant changes to essential elements of his employment contract for reasons not related to the individual employee concerned, this falls within the definition of redundancy for the purpose of the Directive.

5. REASON FOR THE REQUEST FOR AN ADVISORY OPINION

(20) In its judgment, the District Court held that the Collective Redundancies Act No 63/2000 applied only to cases where the employment relationship between employer and workers had been fully terminated; consequently, the Icelandic State was acquitted in full.

(21) An appeal was lodged with the Court of Appeal on 28 December 2020. In the notice of appeal, the appellants state their view that the District Court's judgment represented a departure from what is considered to constitute redundancy in Icelandic labour law. From the wording of Act No 63/2000 (the appellants argue), it can be deduced that the legislator did not intend to restrict the scope of the Act to situations in which the employment relationship was fully terminated, since the Act used the term redundancies (*uppsagnir*) and not terminations of employment (*ráðningarslit*). Furthermore (the appellants argue) the case law of the European Court of Justice indicates that the Directive on which Act No 63/2000 was based covers situations in which terms of employment were reduced by means of terminations [of contracts], even though the employment relationship was not fully terminated.

(22) By a ruling on 25 March this year, the Court of Appeal agreed that there was reason to seek an advisory opinion from the EFTA Court regarding whether the Directive covered the termination of the contracts of a group of workers covering specific terms of employment when the employment relationship was not fully terminated.

(23) It should be noted that while public employees do not come within the scope of Directive 98/59/EC, Act No 63/2000 applies to both public-sector and private-sector employees.

6. THE PARTIES' PLEAS

6.1. The Association of Chartered Engineers in Iceland, the Computer Scientists' Union and the Pharmaceutical Society of Iceland

(24) The pleas cited by the Association of Chartered Engineers in Iceland the Computer Scientists' Union and the Pharmaceutical Society of Iceland are as follows:

"The judgment against which this appeal is made is based on the view that a group of workers must lose their jobs, i.e. the employment relationship between the employer and the workers must be fully terminated, in order for Act No 63/2000 to be seen as applicable. In this view, it is not sufficient that parts of their terms of employment are terminated or amended [...]. The District Court supports this view by referring to provisions of the Act and the preparatory works of the Act [...], but at no point does it specify which provisions of the Act, or which parts of the preparatory works relating to the Act, give rise to this conclusion. On the other hand, the District Court ignores the fact that the termination of employment contracts need not necessarily result in the employment relationship being fully terminated. The appellants reject this interpretation. They consider that the District Court's conclusion, as it is reasoned, is compatible neither with Act No 63/2000, based on a textual interpretation, nor with the judgments of the European Court of Justice that have been delivered regarding the interpretation of Council Directive 98/59/EC; Act No 63/2000 was enacted to implement this Directive.

A contract of employment can be terminated without this automatically resulting in the employment relationship being fully terminated

As is stated in the judgment against which this appeal is brought […] the Collective Redundancies Act No 63/2000 admittedly does not state clearly whether it applies only when the employment relationship between employer and worker is fully terminated, i.e. when the employment relationship is fully terminated following the termination [of a contract]. Thus, the Act must be interpreted with reference to other sources of law, such as general legal principles and tradition. When the main principles of labour law are borne in mind, it is clear that termination [of a contract] need not result in the employment relationship being fully terminated. If the worker accepts such an offer, then the employment relationship will not be fully terminated, even though the employment contract has been terminated. This principle has been invoked for decades, and references to it are to be found in many places, e.g. the Icelandic Supreme Court's judgment of 22 October 1987 in Case No 287/1986, its judgment of 24 November 1994 in Case No 127/1993 and its judgment of 10 November 2011 in Case No 700/2010.

The appellants argue that if the legislator had intended to restrict the scope of Act No 63/2000 to cases in which the employment relationship is fully terminated, then it would have been perfectly simple for it to have expressed this specifically in words in the Act and used the term 'termination of employment' (*ráðningarslit*) or 'end of employment' (*starfslok*) instead of 'redundancy' (*uppsögn*). This was not done. There is therefore no reason to interpret the provisions of Act No 63/2000 in such a manner as to limit their scope to instances where the employment relationship is fully terminated after terminations, as is done in the judgment against which the appeal has been brought. As the occasion has arisen, it should be reiterated that the measures taken by the defendant were not supported by a reference to Article 19 of Act No 70/1996 [...]. Consequently, authorisation available to the State under that provision does not come into consideration in this case.

The judgment against which the appeal has been brought represents a departure from what has been considered redundancy in Icelandic labour law. Thus, the District Court took the view that redundancy in the sense of Act No 63/2000 only occurs if a group of workers lose their jobs with the result that the employment relationship is fully terminated [...]. This obliterates the distinction between redundancy and termination of employment, contrary to case law and the principles of labour law. With reference to the principle set forth above, which is confirmed in case law, the appellants consider that this interpretative approach is not valid.

Furthermore, the appellants consider that the preparatory works for Act No 63/2000, reference to which is made in the judgment against which this appeal has been brought [...] indicates that the legislator's view is that redundancy is one thing while the end of employment is another. This may be seen, for example, from the fact that the preparatory works for Article 6 of the bill, which became Act No 63/2000, refers to special payments which could be made when workers ended their employment. If the legislator had not intended to draw a distinction between redundancy, on the one hand, and the end of employment on the other, there would have been no need to refer to the end of employment by using that specific term; the legislator could have used the term 'redundancies' as is done elsewhere in the commentary. This was not done, which indicates unequivocally that the legislator took the view that redundancies and the end of employment are not necessarily equivalent.

The judgment against which the appeal has been brought is incompatible with the case law of the European Court of Justice

By referring in a general way to Act No 63/2000, which the District Court admits is not clear as to whether its scope is limited to cases in which termination of employment [occurs as a result][1] of redundancy, and to the preparatory works of that Act, the District Court ignores a source of law that provide far clearer guidance on the interpretation of the Act, specifically the case law of the European Court of Justice.

As is noted in Article 14 of Act No 63/2000, the Act was passed in order to transpose into Icelandic law 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. Under Directive 98/59/EC, workers

[1] These words, or their equivalent, are missing in the original text. [Translator's note.]

employed by public administrative bodies are exempt from its provisions, but this exemption was not transposed into Act No 63/2000. Thus, the Act applies equally to workers in the private and public sectors in Iceland.

The appellants point out that in several of its judgments, the European Court of Justice has specifically stated that Directive 98/59/EC, which Act No 63/2000 implements into Icelandic law, covers situations in which terms of employment are reduced through redundancies even though the employment relationship is not subsequently fully terminated. A point at issue in the European Court of Justice's judgment in Case C-383/92, which the European Commission brought against the United Kingdom was whether UK legislation, which limited the legal effect of collective redundancy to situations where dismissals were effected due to cessation or reduction of operations, and did not cover changes in terms of employment resulting from changes in working arrangements, was compatible with Directive 98/59/EC. In its conclusion, the Court stated (see paragraph 32) that the interpretation in UK law was narrower than what was provided for in the Directive. The Court stated that the concept of 'redundancy' in the sense of the Directive covered all cases where workers were dismissed due to circumstances not related to the individual workers concerned. In short, the Court considered that the UK could not interpret the concept of redundancy in such a narrow manner.

In its conclusion in Case No C-422/14, which concerned a situation in which the employer reduced workers' wages unilaterally, the Court said that even though Directive 98/59/EC did not provide an express definition for the concept of redundancy, it was nevertheless necessary to consider the purpose and context of the Directive when interpreting the concept. Individual Member States were not permitted to interpret the concept more narrowly. Instead, the concept of redundancy must be interpreted in such a manner as to encompass any termination of an employment contract not sought by the worker, and therefore without his consent. Furthermore, the Court stated that a distinction had to be made between 'redundancies' and 'terminations of the contract of employment' ('[I]t is the Court's case-law that redundancies are to be distinguished from terminations of the contract of employment.') If the employer unilaterally made significant changes to an employment contract, this would be regarded as entailing the termination of the previous contract of employment, even though employment was not terminated directly afterwards. This last point is relevant to the present case, where the defendant unilaterally announced changes to the workers' contracts of employment which involved reductions of their terms of employment. According to the interpretation of the European Court of Justice, Directive 98/59/EC therefore also applies to circumstances in which terminations of employment do not follow on from redundancies.

Furthermore, the European Court of Justice has stated that Member States are not permitted to interpret Directive 98/59/EC more narrowly with the result that workers' rights are reduced. The objectives of the Directive would not be attained in full if Member States were permitted to exclude its application in cases where external circumstances called for redundancies and other measures (*cf.* paragraph 53 in the European Court of Justice's judgment in Case C-55/02, *Commission* v *Portugal*, and the aforementioned judgment of the European Court of Justice in Case C-383/92).

The District Court judgment, against which this appeal has been brought, runs directly contrary to the aforementioned conclusions of the European Court of Justice. The

interpretation in the judgment is such as to reduce the rights of workers in Iceland compared with the situation elsewhere in the European Economic Area. The appellants consider this to be unacceptable. By applying this narrower interpretation, Iceland is violating its obligations under the EEA Agreement.

Aim of the requirement concerning consultation in Article 5 of the Collective Redundancies Act No 63/2000

The judgment against which the appeal is made states that the appellants submitted no arguments whatsoever as to the purpose that holding consultations with the representative of a trade union prior to the terminations would have served (*cf.* Article 5 of the Collective Redundancies Act). Furthermore (it is stated) no arguments whatsoever were submitted as to the role that the Directorate of Employment was supposed to play in the case of the appellants' members [...].

The appellants cannot see why it should be incumbent on them to provide reasons to account for the role of the Directorate of Labour in collective redundancies under these specific circumstances, or to explain why it should be important to consult workers' representatives in the workplace when it is planned to reduce the workers' terms of employment. The appellants state that it is not up to the parties in a private action to provide an account of the justifications for the legal provisions they invoke, but merely to base their case on valid laws and regulations, so that the court can resolve the matters in dispute in accordance with the law. Nevertheless, the appellants consider that these statements in the reasoning of the District Court judgment give them a particular reason to discuss the purpose and aim of the Collective Redundancies Act No 63/2000.

The appellants point out that the consultation obligation provided for in Article 5 of Act No 63/2000 serves the purpose of bringing about communication between the employer and the workers in the period prior to the streamlining measures so that the employer, the workers' representatives and the State can collaborate on mitigating the negative impact of necessary measures, whether or not such measures result in terminations of employment. As stated in the third paragraph of Article 5 of the Act, in the course of consultation, means are to be sought to avoid collective redundancies or reduce the number of workers affected by such redundancies and mitigate the consequences thereof by recourse to social measures aimed, among other things, at facilitating their placement in other jobs or rehabilitating workers whom it is planned to make redundant. Only by notifying workers' representatives of the proposed measures is it possible (the appellants argue) to secure consultation: otherwise, preparing austerity measures is completely in the hands of the employer. Collaboration between employers and workers' representatives is the cornerstone of Directive 98/59/EC: without consultation, the Directive would serve little purpose. The same can be said of Act No 63/2000. If no conversation takes place between the employer and the workers' representatives, then the Collective Redundancies Act is not needed, as it would then provide no protection for workers.

The role of the Directorate of Labour in this process is to prevent collective redundancies from occurring for no reason where it is possible to avoid them, to ensure appropriate assistance for workers so that they can continue to actively participate in the labour market, and also to promote a better balance between supply and demand for labour in the country. The third paragraph of Article 5 of the Collective Redundancies Act, as referred to above, states that attempts are to be made to avoid collective

redundancies, or to reduce the number of workers affected by such redundancies, and to mitigate their consequences by recourse to social measures. The Directorate of Labour is an important participant in this process. If the Directorate is not informed of measures that the employer intends to take, then it is impossible for it to perform this role in the application of the Act.

Other pleas

In addition to the foregoing, the appellants refer to the pleas set out in the statement of claim initiating their action before the District Court […]."

6.2. The Icelandic State

(25) The Icelandic State's pleas are as follows:

"Regarding the facts of the case, reference is made to the judgment against which the appeal has been brought and to the defendant's pleas before the District Court. There is no material dispute regarding the facts of the case, which centres mainly on legal questions, taking account of the defendant's observations [...]. The defendant bases its case on the same pleas and legal arguments as were stated in its observations before the District Court […].

The case is correctly delineated in the District Court judgment: amongst other things, there is no dispute regarding the fact that Landspítali's measures did not involve the full termination of the employment relationships of the persons involved. The judgment discusses the provisions of the Collective Redundancies Act No 63/2000 in further detail in connection with the dispute between the parties and the protection of the interests involved, including as regards the role of the Directorate of Labour under the Act.

The premise of the judgment against which this appeal has been brought is that Act No 63/2000 is to be interpreted as meaning that a group of workers must lose their jobs, i.e. that the employment relationship between employer and worker must be fully terminated, for the Act to apply. According to this view, it is not sufficient that the terms of employment have been terminated or amended. It is not possible to endorse the appellants' view that the District Court ignored points in this connection, i.e. that termination [of contracts] need not result in terminations of employment. The judgment emphasises that, in order to invoke Act No 6[3]/2000, termination [of contracts] must result in termination of employment. The case law cited by the appellants does not refute this.

The defendant based its arguments on this interpretation in its observations to the District Court, pointing out that the fact that Landspítali's letter of 14 February 2020 was wrongly worded as a notice of termination (*uppsögn*). As is stated in the District Court judgment, the appellants did not oppose the view that the defendant was entitled to launch the measures as part of an extensive programme of cutbacks in its operations.

The appellants argue that, had the legislator's intention been that the Act was to apply only to terminations entailing that the employment relationship is fully terminated, it would have stated this [explicitly]. The defendant submits that it is obvious, in the light of the Act, and also of the preparatory works relating to it, that the Act only applies

when the entire employment relationship has been fully terminated. Contrary to the appellants' claim, this judgment does not constitute a departure from the definition of what is considered redundancy in Icelandic labour law. The point at issue in this case is only whether the measures constitute collective redundancies in the sense in which this term is used in the Collective Redundancies Act.

In the preparatory works of the Collective Redundancies Act (Icelandic Parliamentary Reports 1999-2000, parliamentary document No 748), for example in the comments on Articles 2 and 3, reference is made to a situation in which 'workers lose their jobs', and there can be no doubt that this refers to what happens as a result of collective redundancies under the Act. In the defendant's view, there is no doubt that the Act applies to the actual termination of the employment contract and the end of employment (*cf.* the wording of Article 1, and of Articles 5-9 of the Act).

The appellants argue that the judgment against which the appeal has been brought is incompatible with the case law of the European Court of Justice; in particular, they refer to Directive 98/59/EEC.

Firstly, neither the abovementioned Directive nor the case law of the European Court of Justice was cited in the statement of claim initiating the action before the District Court. References to these matters as pleas are therefore time-barred. Secondly, it is not in any way possible to see that the District Court judgment is inconsistent with the judgments which the appellants cite from the field of European law.

The European Court of Justice's judgment in Case C-383/92 can only be understood as having been about an actual redundancy and the termination of an employment contract, with the reasons for this termination being in dispute. In the case of the appellants' members, no terminations of employment were applied with a view to enforcing changes to the terms of employment. Such plans or terminations are, in fact, terminations which lead to the termination of employment, with the concomitant legal effects. The judgment also appears to cover other points and problems apart from those under examination here. The second judgment, in Case C-422/14, also appears to concern a situation which eventually resulted in the termination of the employment contract. Nor can it be seen that the conclusion in Case C-55/02 supports the claims being made by the appellants.

It is not evident that the judgment against which the appeal has been made is contrary to the case law of the European Court of Justice. In their action, the appellants based their arguments solely on Act No 6[3]/2000, and the District Court rejected the claim that the Act be interpreted in the manner the appellants sought. The view must be taken that this unequivocal and obvious interpretation of Icelandic law should prevail here.

The defendant then argues, notwithstanding the foregoing, that under no circumstances can the measures taken by Landspítali be seen as involving major amendments to employment contracts. What was involved was merely the review of overtime, which the employer is authorised to decide (*cf.* the provisions of Act No 70/1996). This point is discussed in the defendant's observations to the District Court […]. Also, the defendant reiterates that when overtime is worked, or the number of overtime hours, it does not constitute part of the terms of service prescribed in law or in collective agreements. The announcement – which was inappropriately termed a notice of termination (*uppsögn*) – of the reduction of overtime hours cannot, in the defendant's

view, be covered by Act No 63/2000. Also, for these reasons (*cf.* Articles 17 and 19 of Act No 70/1996), the case law of the European Court of Justice to which the appellants refer is of limited value. A decision that can be based on these sources does not involve the termination of an employment contract, even if allowance is made for the notice period stated in the employment contract. These sources do not in any way infringe Directive 98/59/EC. What was involved was merely a reassessment of the overtime hours of specific workers.

It was stated in the judgment against which this appeal has been brought that the appellants had not submitted reasoning regarding the role of the Directorate of Labour or the involvement of the workers' representatives in this case. This is a natural observation on the part of the District Court, particularly in view of the nature of the measures taken by Landspítali and in the light of the protection of the interests addressed by the Collective Redundancies Act. Thus, the appellants' ideas regarding the role of the Directorate of Labour or the workers' representatives in this context are not relevant. As a general rule, that institution and workers' representatives are only involved, in accordance with the Collective Redundancies Act No 63/2000, when an actual termination of jobs and termination of employment takes place.

In all respects not addressed above, the appellants' pleas in their observations to the Court of Appeal are rejected."

7. QUESTIONS TO THE EFTA COURT

(26) 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?

(27) 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?

(28) 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?

Símon Sigvaldason

Judge of the Court of Appeal