SUMMARY

ECJ 13 May 2015, case C-182/13 (Valerie Lyttle and others – v - Bluebird UK Bidco 2 Limited), Collective redundancies

Facts

The plaintiffs in this case were Ms Lyttle and three others. They were employed in Northern Ireland by a company called Bonmarché. This company operated a total of 394 stores across the UK, selling women's clothing. In Northern Ireland, Bonmarché had 20 stores, each employing fewer than 20 staff. One of the plaintiffs worked in a store in Belfast, one worked in Lurgan, one in Banbridge and one in Omagh. Each store was treated as an 'individual cost centre', whose budget was decided on by the head office in England.

Bonmarché became insolvent and was transferred to Bluebird. It began a restructuring process entailing the closure of many stores, including those in which the plaintiffs worked. The number of stores in Northern Ireland dropped from 20 to 8 and the number of staff employed in Northern Ireland was reduced from 180 to 75. The plaintiffs were among those who were dismissed. The dismissal process was not preceded by any consultation process as referred to in Directive 98/59 on the approximation of the laws of the Member States relating to collective redundancies. This Directive requires an employer who is contemplating collective redundancies to consult with the workers' representatives. In Article 1(i)(a), the Directive defines 'collective redundancies' as meaning dismissals effected by an employer where the number of redundancies, over a certain period, is – according to the choice of each Member State – either (i) at least a certain number of employees in 'establishments' normally employing more than a certain number of workers or (ii) over a period of 90 days, at least 20, whatever the number of workers normally employed in the establishments in question. The

UK has opted for system (ii). Accordingly, the consultation obligation applies "where an employer is proposing to dismiss 20 or more employees at one establishment within a period of 90 days or less".

National proceedings

The plaintiffs brought proceedings before the Industrial Tribunal (Northern Ireland). This court referred questions to the ECJ on the meaning of 'establishment' in the Directive. Does this expression have the same meaning in option (i) as in option (ii)? Does the Directive preclude national legislation that requires consultation in the event of the dismissal (within 90 days) of at least 20 workers from a particular establishment or where the aggregate number of dismissals across all or some of the establishments of the undertaking exceeds 20 workers?

ECJ's findings

The term 'establishment' is not defined in the Directive and must be interpreted in an autonomous manner (§ 26).
In Rockfon (C-449/93), the ECJ interpreted 'establishment' as designating the unit to which the redundant workers are assigned to carry out their duties, regardless whether that unit's management has the authority to independently effect collective redundancies.
In Athinaiki (C-270/05), the ECJ held that an 'establishment', in the context of an undertaking, may consist of a distinct entity, having a certain degree of permanence and stability, which is assigned to perform one or more given tasks and which has a workforce, technical means and a certain organisational structure allowing for the accomplishment of those tasks. By the use of the words 'distinct entity' and 'in the context of undertaking, the ECJ clarified that the terms 'undertaking' and 'establishment' are different and that an establishment normally constitutes a part of an undertaking. That does not, however, preclude the establishment being the same as the undertaking where the undertaking does not have several distinct units (§ 27-31).
In Athinaiki, the ECJ further held that since Directive 98/59 concerns the socio-economic effects that collective redundancies may have in a given local context and social environment, the entity in question need not have any legal autonomy, nor need it have economic, financial, administrative or technological autonomy, in order to be regarded as an 'establishment'. Consequently, where an 'undertaking' comprises several entities meeting the criteria set out above, it is the entity to which the workers made redundant are assigned to carry out their duties that constitutes the 'establishment' for the purposes of the Directive (§ 32-33)
The meaning of the terms 'establishment' or 'establishments' in Article 1(1)(a)(i) of the Directive is the same as that of the terms 'establishments' or 'establishments' in Article 1(1)(a)(ii). The option in Article 1(1)(a)(ii), with the exception of the difference in the periods over

which the redundancies are made, is a substantially equivalent alternative to the option in Article 1(1)(a)(i). There is nothing in the wording of Article 1(1) (a) to suggest that a different meaning is to be given to the terms 'establishment' or 'establishments' in the same subparagraph of that provision (§ 34-38).
Interpreting Article 1 (i) (a) (ii) so as to require account to be taken of the total number of redundancies across all the establishments of an undertaking would, admittedly, significantly increase the number of workers eligible for protection under Directive 98/59, which would correspond to one of the objectives of that directive. However, it should be recalled that the objective of that directive is not only to afford greater protection to workers in the event of collective redundancies, but also to ensure comparable protection for workers' rights in the different Member States and to harmonise the costs which such protective rules entail for EU undertakings (§ 42-43).
Interpreting 'establishment' so as to require account to be taken of the total number of redundancies across all the establishments of an undertaking would, first, be contrary to the objective of ensuring comparable protection for workers' rights in all Member States and, secondly, entail very different costs for the undertakings that have to satisfy the information and consultation obligations under Articles 2 to 4 of that directive in accordance with the choice of the Member State concerned - which would also go against the EU legislature's objective of rendering comparable the burden of those costs in all Member States. It should be added that that interpretation would bring within the scope of Directive 98/59 not only a group of workers affected by collective redundancy but also, in some circumstances, a single worker of an establishment — possibly of an establishment located in a town separate and distant from the other establishments of the same undertaking — which would be contrary to the ordinary meaning of the term 'collective redundancy'. In addition, the dismissal of that single worker could trigger the information and consultation procedures referred to in the provisions of Directive 98/59, provisions that are not appropriate in such an individual case (§ 44-45).
It follows from the foregoing that the definition in Article 1(1)(a)(i) and (a)(ii) of Directive 98/59 requires that account be taken of the dismissals effected in each establishment separately (§ 49).
In the present case, on the basis of the information available, it appears that each of the stores at issue in the main proceedings is a distinct entity that is ordinarily permanent, entrusted with performing specified tasks, namely primarily the sale of goods, and which has, to that end, several workers, technical means and an organisational structure in that the store is an individual cost centre managed by a manager. Accordingly, such a store is capable of qualifying as a separate 'establishment': this is, however, a matter for the referring tribunal to establish in the light of the specific circumstances of the dispute in the main proceedings (§

51-52).

Ruling

The term 'establishment' in Article 1(1)(a)(ii) of Council Directive 98/59 [.....] must be interpreted in the same way as the term in Article 1(1) (a)(i) of that Directive. Article 1(1)(a)(ii) of Directive 98/59 must be interpreted as not precluding national legislation that lays down an obligation to inform and consult workers in the event of the dismissal, within a period of 90 days, of at least 20 workers from a particular establishment of an undertaking and not where the aggregate number of dismissals across all of the establishments or across some of the establishments of an undertaking over the same period reaches or exceeds the threshold of 20 workers.

Creator: European Court of Justice (ECJ)
Verdict at: 2015-05-13
Case number: C-182/13