EELA EUROPEAN EMPLOYMENT LAWYERS ASSOCIATION

SUMMARY

# ECJ 18 October 2012, case C-583/10 (United States of America - v - Christine Nolan), Collective redundancies

**Facts**

Christine Nolan was one of about 200 civilian employees of the US government who worked on the 'RSA Hythe' US Army base near Southampton, UK. On or before 13 March 2006, the Secretary of the US Army decided to close down the base at the end of September 2006. On 21 April 2006 the decision was reported in the media and three days later the commanding officer of the base called a meeting of the workforce in order to explain the decision to close the base and to apologise for the way in which the news about the closure had been made public. On 9 May 2006, the UK government was formally notified of the closure. On 5 June 2006, the US authorities gave the representatives of the civilian workforce at the military basis a memorandum stating that all civilian personnel would be made redundant. On 14 June 2006 the US authorities met with the representatives of the civilian personnel, who were informed that the US government considered 5 June 2006 as the starting date for the consultations provided in the Trade Union and Labour Relations (Consolidation) Act 1992, which transposed the Collective Redundancies Directive 98/59. On 30 June 2006, dismissal notices were issued specifying termination of employment on 30 September 2006.

Ms Nolan, who was one of the personnel representatives, brought liability proceedings against the US government, arguing that the US government had neglected to consult the workers' representatives in good time. The Employment Tribunal upheld Ms Nolan's claim. The Employment Appeal Tribunal dismissed the appeal brought by the US government, which then appealed to the Court of Appeal.

**National proceedings**

The US government, although not claiming state immunity, argued that there was an implied

exemption from the consultation obligation for a sovereign foreign power carrying out an act such as the closure of a military base. While the case was ongoing, the ECJ delivered its September 2009 judgment in the Akava - v - Fujitsu case (case C-44/08).

The Court of Appeal rejected the US government's argument in respect of an implied exemption, but it felt that Akava [Editor: a judgment which it described, diplomatically, as not being "straightforward"] raised certain issues regarding the interpretation of Directive 98/59. It therefore referred the following questions to the ECJ for a preliminary ruling: Does the employer's obligation to consult about collective redundancies, pursuant to Directive 98/59/EC, arise (i) when the employer is proposing, but has not yet made, a strategic business or operational decision that will foreseeably or inevitably lead to collective redundancies; or (iii) only when that decision has actually been made and he is then proposing consequential redundancies?

**ECJ's findings**

1. By virtue of Article 1(2)(b) of Directive 98/59, the latter does not apply to workers employed by public administrative bodies or by establishments governed by public law. On the face of it, a dismissal by a State does not therefore fall within the scope of the Directive. However, Ms Nolan considered that the ECJ has jurisdiction to interpret the Directive, even if her situation is not directly governed by EU law, given that the UK legislature, when it transposed the directive into national law, chose to align its domestic legislation with EU law. The US government, on the other hand, invoked the principle of ius imperii (§ 20-25).

2. Directive 98/59 forms part of the legislation concerning the internal market. Whilst the size and functioning of the armed forces does have an influence on the employment situation in a given Member State, considerations concerning the internal market or competition between undertakings do not apply to it. Therefore, it must be held that, by virtue of the exclusion laid down by Article 1(2)(b) of Directive 98/59, the dismissal of staff of a military base does not fall within the scope of that directive (§ 32-43).

3. The ECJ has repeatedly held that it has jurisdiction to give preliminary rulings on questions concerning EU provisions in situations where the facts of the case being considered by the national courts were outside the scope of EU law but where those provisions of EU law had been rendered applicable by domestic law due to a reference made by that law to the content of those provisions. However, this is only the case where EU provisions have been made applicable in a direct and conditional way. This is not the case here (§ 44-56).

**Ruling**

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The ECJ lacks jurisdiction.

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**Creator**: European Court of Justice (ECJ)
**Verdict at**: 2012-10-18
**Case number**: C-583/10