

SUMMARY

ECJ 3 March 2011, cases C-235/10 to C-239/20 (David Claes et al – v – Landsbanki Luxembourg SA in liquidation), Collective redundancy

<p>The Directive applies to a termination of the activities of an employer as a result of a judicial decision ordering its dissolution and winding up on grounds of insolvency, even though, in the event of such a termination, national legislation provides for the termination of employment contracts with immediate effect. As long as the employer exists as a legal entity, its duty to consult with the staff’s representatives must be carried out by management or by its liquidator.</p>

Facts

Landsbanki is a credit institution established in Luxembourg. In October 2008, the District Court in Luxembourg made Landsbanki subject to the suspension of payments procedure. Subsequently, Landsbanki was dissolved. The court ordered its winding up and appointed two liquidators. They dismissed the employees in accordance with Luxembourg law, which allows immediate dismissal in such cases.

National Proceedings

The five plaintiffs turned to the Labour Court, seeking a declaration that their redundancies were of no effect, since, in four of the cases, they were staff representatives and, in one, a pregnant woman. The plaintiffs applied for their immediate reinstatement. The court of first instance denied the application, given that circumstances made reinstatement literally impossible. The Court of Appeal dismissed the appeals. The plaintiffs took the matter to the

Supreme Court. It referred two questions to the ECJ, both relating to Directive 98/59 on collective redundancies (“the Directive”). The first question was whether the Directive applies to a termination of activities as a result of a judicial decision ordering the dissolution and winding up of an insolvent credit institution. The second question was whether, if so, the employer’s duty to consult with the workers’ representatives falls on the liquidator(s).

ECJ’s ruling

1. The ECJ begins by summarising the Directive’s history. Its predecessor, Directive 25/129, originally provided that it did not apply to workers affected by the termination of an establishment’s activities where that is the result of a judicial decision. This exception was removed by Directive 92/56. The current Directive 98/59 retains Directive 92/56’s relevant provisions. Thus, the Directive’s scope covers collective redundancies arising from termination of an establishment’s activities where that is the result of a judicial decision (§ 30-43).
2. That finding is not affected by the ECJ’s ruling in the Rodríguez Mayor case (C-323/08), which concerned an employer who died without heirs. Such a situation, which does not fall within the concept of collective redundancy, is substantially different from that where a business is wound up following a judicial decision (§ 44-46).
3. In an insolvency case, the legal personality of an establishment, the dissolution and winding up of which have been ordered by a judicial decision, exists for limited purposes only. Nevertheless, it has a duty up until the moment when it definitively ceases to exist, to fulfil the requirements incumbent on employers under the Directive. If management has been taken over by a liquidator, it is he or she who must fulfil these duties, which include not only ways and means of avoiding redundancies or reducing the number of workers affected, but also to mitigate the consequences of redundancies, for example, through social measures aimed at redeploying or retraining the redundant workers (§ 53-56).

Ruling

The Directive applies to a termination of the activities of an employer as a result of a judicial decision ordering its dissolution and winding up on grounds of insolvency, even though, in the event of such a termination, national legislation provides for the termination of employment contracts with immediate effect. As long as the employer exists as a legal entity, its duty to consult with the staff’s representatives must be carried out by management or by its liquidator.

Creator: European Court of Justice (ECJ)

Verdict at: 2011-03-03

Case number: C-235/10 to C-239/20