Court of Justice of the European Union
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Press and Information

Judgment in Case C-392/13
Andrés Rabal Cañas v Nexea Gestión Documental SA, Fondo de Garantía Salarial

The definition of collective redundancy under Spanish law is contrary to EU law

Spanish legislation introduces the 'undertaking' as the sole reference unit, which may preclude the information and consultation procedure provided for by EU law, when the dismissals would have been considered to be 'collective redundancy' had the establishment been used as the reference unit

An EU directive[1] provides that where an employer is contemplating collective redundancies, he must begin consultations with the workers' representatives in good time with a view to reaching an agreement. 'Collective redundancies' means, inter alia, dismissals effected by an employer for one or more reasons not related to the individual workers concerned where the number of redundancies is, over a period of 90 days, at least 20, whatever the number of workers normally employed in the establishments in question. The directive does not apply to collective redundancies effected under contracts of employment concluded for limited periods of time or for specific tasks unless such redundancies take place before the date of expiry or the completion of such contracts.

From January 2008, Mr Andrés Rabal Cañas worked as a skilled employee for Nexea, a company in the Correos commercial group. Nexea's business consists in providing hybrid mail services. In July 2012, Nexea had two establishments, in Madrid and in Barcelona, employing 164 and 20 people. Between October and November 2012, five fixed-term employment contracts expired (namely, three at the establishment in Madrid and two at the establishment in Barcelona). Less than 90 days later, in December 2012, 13 more employees at the establishment in Barcelona (including Mr Rabal Cañas) were dismissed on economic grounds. Mr Rabal Cañas contested his dismissal before the Juzgado de lo Social No 33 de Barcelona (single judge sitting as Social Court No 33, Barcelona, Spain), on the ground that Nexea had fraudulently circumvented the application of the procedure relating to collective redundancies, which is mandatory under the directive.

Under Spanish law, a redundancy is considered to be 'collective' where contracts of employment are terminated on economic, technical or organisational grounds and where, over a period of 90 days, such termination affects at least 10% of the number of workers in undertakings employing between 100 and 300 workers (Nexea's situation if the aggregate number of members of staff at the establishments in Madrid and Barcelona are taken into account). The Spanish judge stated that if the five contracts of employment that came to an end in October and November 2012 because of their temporary nature were to be added to the 13 dismissals effected in December 2012, the total number of employment contract terminations would be 18 over a period of 90 days, which number represents more than 10% of the personnel required under Spanish legislation in order for these to be 'collective redundancies'.

In essence, the Spanish judge has asked (i) whether the directive precludes national legislation which defines the concept of 'collective redundancies' using the undertaking (in this case, Nexea, which consists of the establishments in both Madrid and Barcelona) and not the establishment (in

[1] Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ 1998 L 225, p. 16).

this case, the establishment in Barcelona) as the sole reference unit; (ii) whether, for the purposes of establishing whether collective redundancies have been effected, account has also to be taken of individual termination of contracts of employment concluded for limited periods of time or for specific tasks, when those terminations take place on the date of expiry of the contract or on the date on which the task was completed; and (iii) whether, for the purposes of establishing the existence of collective redundancies effected under contracts of employment concluded for limited periods of time or for specific tasks, it is necessary for the cause of such collective redundancies to derive from the same contractual framework for the same duration or the same task.

In today's judgment, the Court recalls, first of all, that where an undertaking comprises several entities, 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. Therefore, the number of dismissals effected in each distinct establishment of the undertaking must be taken into consideration.[2]

The Court declares that **national legislation that introduces the undertaking and not the establishment as the sole reference unit is contrary to the directive where the effect of the application of that criterion is to preclude the information and consultation procedure provided for in the directive, when the dismissals would have been considered 'collective redundancy' had the establishment been used as the reference unit**. Replacing the term 'establishment' by the term 'undertaking' can therefore be regarded as favourable to workers only if that element is additional and does not mean that the protection, which would have been afforded to workers had the number of dismissals required under the directive for the purposes of 'collective redundancies' using the concept of establishment been reached, is lost or reduced.

However, the Court points out that, in Mr Rabal Cañas' case, the dismissals did not reach the application threshold set, under Spanish law, at the level of the undertaking (Nexea). It adds that since the establishment in Barcelona did not employ more than 20 workers during the period concerned, the application threshold laid down in the directive was not reached either. Therefore, **the directive does not apply in the present case**.

As regards the question relating to whether **contracts concluded for limited periods of time or for specific tasks** are to be taken into consideration, the Court points out that it is clear from the wording and scheme of the directive that such contracts are excluded from its scope. Such contracts terminate, not on the initiative of the employer but pursuant to the clauses they contain or to the applicable law, on the date on which they expire or on which the task in question was completed. **Consequently, for the purposes of establishing whether 'collective redundancies', within the meaning of the directive, have been effected, there is no need to take into account individual terminations of such contracts**.

Lastly, as regards the question relating to the cause of the collective redundancies, the Court declares that, **for the purposes of establishing the existence of collective redundancies effected under contracts of employment concluded for limited periods of time or for specific tasks, it is not necessary for the cause of such collective redundancies to derive from the same collective contractual framework for the same duration or the same task.** The Court observes that the directive uses one qualitative criterion only (that the cause of the dismissal must 'not be related to the individual workers concerned'). The introduction of other requirements would restrict the scope of the directive and be liable to undermine the objective of the directive to protect workers in the event of collective redundancies.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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[2] Case C-182/13 *Lyttle and Others* and Case C-80/14 *USDAW and Wilson* see Press Release No. 47/15.

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