Court of Justice of the European Union
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Press and Information

Judgment in Case C-422/14
Cristian Pujante Rivera v Gestora Clubs Dir, SL and Fondo de Garantía Salarial

The termination of an employment contract following the worker's refusal to accept a significant unilateral change to essential elements of the contract which operates to his detriment constitutes a redundancy for the purpose of the directive on collective redundancies

If the view were taken that a worker's refusal to accept a 25% reduction of his salary does not fall within the definition of redundancy, the directive would be deprived of its full effect and the protection of workers undermined

For the purpose of determining whether there is a collective redundancy, an EU directive[1] establishes that, when calculating the number of redundancies, terminations of an employment contract which occur on the employer's initiative for one or more reasons not related to the individual workers concerned are to be equated to redundancies, provided that there are at least five redundancies.

Under Spanish law, in undertakings employing between 100 and 300 workers, 'collective redundancy' means the termination of employment contracts on objective grounds where, over a period of 90 days, the termination affects at least 10% of the workers.

As at 3 September 2013, the company Gestora Clubs Dir, SL had 126 employees, of whom 114 were employed on a permanent basis and 12 on fixed-term contracts. Between 16 and 26 September 2013, Gestora carried out 10 individual redundancies on objective grounds, Mr Cristian Pujante Rivera being one of the employees affected. During the 90-day periods preceding and following the last of those redundancies on objective grounds, there were 27 further contract terminations for various reasons (such as, for instance, the expiry of the agreed contract term or the voluntary redundancy of the workers concerned). Those terminations included that of a worker who agreed to enter into a contract terminating the employment relationship after being informed of a change to her working conditions (namely, a 25% reduction of her salary on the basis of the same objective grounds relied on in the other contract terminations which occurred between 16 and 26 September 2013). Gestora subsequently acknowledged that the changes to her employment contract, of which the worker had been given notification, went beyond the significant changes to working conditions permitted under Spanish law and agreed to pay compensation to that worker.

Mr Pujante Rivera brought proceedings against Gestora and the Fondo de Garantía Salarial (Employees Guarantee Fund) before the Juzgado de lo Social No 33 de Barcelona (Labour Court No 33, Barcelona, Spain) because, in his view, that company should have applied the collective redundancy procedure. According to Mr Pujante Rivera, if account is taken of the number of contract terminations which occurred in the 90-day periods before and after his own redundancy, the numerical threshold laid down in Spanish law was reached, given that, apart from the voluntary redundancies (of which there were 5), all the other employment contract terminations constitute redundancies or contract terminations that may be equated to redundancies.

[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).

The national court has referred to the Court of Justice a number of questions on the interpretation of the directive.

By its judgment today, the Court finds that **workers employed under a contract concluded for a fixed term or a specific task must be regarded as forming part of the workers 'normally' employed, within the meaning of the directive, at the establishment concerned**. It if were otherwise, all the workers employed by that establishment might be deprived of the rights conferred on them by the directive, which would undermine the effectiveness of the directive. The Court none the less points out that workers whose contracts are terminated on the lawful ground that they are temporary are not to be taken into account in determining whether there is a 'collective redundancy' under the Directive[2].

The Court adds that, in order to establish whether there is a 'collective redundancy' within the meaning of the directive, the condition that there be at least five redundancies relates not to terminations of employment contracts that may be assimilated to redundancies but only to redundancies in the strict sense of the term. That is absolutely clear from the wording of the directive and any other reading which has the effect of extending or restricting the scope of the directive would deprive the condition in question, namely that 'there [be] at least five redundancies', of any effectiveness.

Lastly, the Court also finds that **the fact that an employer — unilaterally and to the detriment of the employee — makes significant changes to essential elements of his employment contract for reasons not related to the individual employee concerned falls within the definition of 'redundancy' for the purpose of the directive.** The Court observes that redundancies are characterised by the lack of the worker's consent. In the present case, the termination of the employment relationship of the worker who agreed to enter into a contract terminating that relationship arises from the change made unilaterally by her employer to an essential element of the employment contract for reasons not related to that individual worker. That termination therefore constitutes a redundancy. First, given that one of the objectives of the directive is to afford greater protection to workers in the event of collective redundancies, a narrow definition cannot be given to the concept of redundancy. Second, the aim of the harmonisation of the rules applicable to collective redundancies is to ensure comparable protection for employees' rights in the different Member States and to harmonise the costs which such protective rules entail for EU undertakings. The concept of redundancy directly determines the scope of the protection and the rights conferred on workers under the directive. That concept therefore has an immediate bearing on the costs which the protection of workers entails. Accordingly, any national legislative provision or any interpretation of that concept to the effect that, in a situation such as that in the main proceedings, the termination of an employment contract is not a 'redundancy' for the purpose of the directive would alter the scope of the directive and thus to deprive it of its full effect.

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 European Union 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] CaseC-392/13 *Rabal Cañas*. See also Press Release Nº 55/15