Case C-496/22

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

22 July 2022

Referring court:

Curtea de Apel București (Romania)

Date of the decision to refer:

22 June 2022

Appellant:

EI

Respondent:

SC Brink's Cash Solutions SRL

Subject matter of the main proceedings

Appeal brought by EI requesting that the judgment of the Tribunalul București, Secția conflicte de muncă și asigurări sociale (Regional Court, Bucharest, Division for Labour Disputes and Social Insurance, Romania) be set aside and that the notice by which the respondent terminated EI's individual employment contract, in the context of a collective redundancy procedure, be declared unlawful and unfounded

Subject matter and legal basis of the request

An interpretation of Article 1(1)(b) and Article 6 of Directive 98/59 is sought pursuant to Article 267 TFEU

Questions referred for a preliminary ruling

(1) Do [the first subparagraph of] Article 1[(1)(b)] and Article 6 of Council Directive 98/59/EC on the approximation of the laws of the Member States

relating to collective redundancies, read in the light of recitals 2 and 6 of the preamble to that directive, preclude national legislation which allows an employer not to consult the workers affected by a collective redundancy procedure since they have neither appointed representatives nor a legal obligation to appoint them?

(2) Are [the first subparagraph of] Article 1[(1)(b)] and Article 6 of Council Directive 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies, read in the light of recitals 2 and 6 of the preamble to that directive, to be interpreted as meaning that, in the circumstances described above, the employer is required to inform and consult all the employees affected by the collective redundancy procedure?

Provisions of European Union law relied on

Council Directive 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies (OJ L 225, p. 16), recitals 2, 6 and 12, the first subparagraph of Article 1(1)(b), Article 2(3), and Article 6

Provisions of national law relied on

Legea nr. 53/2003 privind Codul muncii (Law No 53/2003 establishing the Labour Code), in particular Article 69, which provides, inter alia, that an employer which intends to carry out collective redundancies is required to enter into consultations with the trade union or, as the case may be, the workers' representatives; Article 71, under which the trade union or, as the case may be, the workers' representatives may propose to the employer measures to avoid the redundancies or reduce the number of employees made redundant; Article 221, under which, in the case of employers with more than 20 employees and with which no representative trade union organisations have been established in accordance with the law, the workers' interests may be promoted and protected by their representatives, elected and appointed precisely for that purpose.

Succinct presentation of the facts and procedure in the main proceedings

1 SC Brink's Cash Solutions SRL is a company belonging to the Brink's Global Services group, a leader in the market for cash management and the transportation of valuable goods and related services – specialising in the provision of cash transportation and handling services and ATM feeding and maintenance services. It has around 2 700 employees nationally.

2 On 14 August 2014, an individual contract of employment was concluded between the appellant, as an employee, and the respondent, as the employer.

3 In the context of the outbreak of the SARS COV 2 pandemic and the establishment of the state of emergency in Romania between 16 March 2020 and

15 May 2020, the company's activity nationally saw a significant reduction which was reflected in the profits that it achieved. In this particular context, in order to remain competitive on the relevant market the company began cutting back on staff and initiated, on 12 May 2020, a collective redundancy procedure; it eliminated 128 posts nationally, taking as a basis the criterion of the result of periodic professional appraisals.

4 At the time the collective redundancy procedure was initiated, the term of office of the representatives of the company's workers had already expired, on 23 April 2020, and had not been renewed.

5 The employer notified its intention to carry out collective redundancy only to the major entities in the sector, without also giving such notice to the employees, which would have been addressed either to the representatives previously appointed whose term of office had expired or individually to each employee affected by the redundancy. In the absence of the appointment of new workers' representatives, the company omitted the information and consultation stage, claiming that it was objectively impossible to carry it out and that there was no fault on its part. The collective redundancy procedure was initiated during the state of emergency, a period during which the exercise of several civil rights was limited, and this made it unlikely that the employees would have been able to successfully initiate a process to appoint their representatives nationally.

6 In the context of the collective redundancy procedure, EI's letter of dismissal was issued on 2 July 2020, which the latter challenged before the Tribunalul București, Secția conflicte de muncă și asigurări sociale (Regional Court, Bucharest, Division for Labour Disputes and Social Insurance).

7 EI argued that the employer had a mandatory obligation, under Article 69 of the Labour Code, to carry out that worker consultation and information stage, even if the workers were not union members or had not appointed representatives who would protect their interests. He pointed out that it was for the employer to inform workers of the need to appoint new representatives precisely for that stage and that the rights of the workers who were unable to propose ways and means of avoiding collective redundancy or reducing the number of workers who would be made redundant, were seriously infringed.

8 In its defence, the company argued that the term of office of workers' representatives had expired before the initiation of the collective redundancy procedure and that that term of office had not been extended on account of the lack of coordination by the employees. The employee information and consultation could not have taken place and, since the law lays down an obligation to carry out the procedure with the trade union or the employees' representatives, but not with the workers individually, it considered that it was exempt from that obligation and continued the collective redundancy procedure.

9 Various employees made redundant challenged the legality of the redundancy procedure before the courts and a number of final judgments have been given to date. The courts have held that the redundancy decisions were made lawfully and that the collective redundancy procedure complied with the stages laid down by law, even though the employee information and consultation stage had not taken place.

10 This conclusion was also reached by the Tribunalul București (Regional Court, Bucharest), which dismissed the action brought by EI. EI lodged an appeal against that dismissal before the Curtea de Apel București (Court of Appeal, Bucharest, Romania), which decided of its own motion to refer a question to the Court of Justice for a preliminary ruling.

Succinct presentation of the reasoning in the request for a preliminary ruling

11 The referring court considers, in the light of recitals 2, 6 and 12 and Article 2(3) of Directive 98/59, that one of the objectives of that directive is to guarantee the participation of workers in the collective redundancy procedure, the purpose for which that directive imposed on employers the obligation to inform and consult workers – through their representatives – in advance, at an early stage of the collective redundancy procedure.

12 The information must relate to the essential aspects of the restructuring planned by the employer, which have consequences for the employees, thus enabling the latter to react in order to reduce or counteract the negative impact of the redundancies, and thus balance the power between the employer and the employees.

13 The fact that the text of the directive, in determining the beneficiaries of that obligation, refers to the workers' representatives, but not to each worker or to all workers, making reference to the legislation of each Member State, does not allow the conclusion to be drawn that, in the absence of a mandatory national mechanism for appointing those representatives, the obligation to inform and consult is meaningless.

14 From the interpretation of those provisions of the directive and Article 6 thereof, which refers to the right of the workers as an alternative to that of their representatives, the Curtea de Apel București (Court of Appeal, Bucharest) deduces that the worker information and consultation stage (in the absence of their representatives) is mandatory in the collective redundancy procedure, even where it does not actually change the restructuring plan envisaged by the employer.

15 Other national appeal courts have arrived at the opposite view, relying on a literal interpretation of the directive, which provides that the beneficiaries of the information and consultation obligation are the 'worker's representatives', in the absence of whom the employer is exempt from the information and consultation stage. This different interpretation gives rise to contrasting views on the

lawfulness of a collective redundancy procedure and the referring court finds that it needs an answer from the Court of Justice to be able to apply EU law correctly.

16 Consequently, the Curtea de Apel București (Court of Appeal, Bucharest) considers that the national legislature failed correctly to transpose the provisions of Directive 98/59 in order to ensure the effectiveness of the rules thereof since it did not make mandatory a mechanism for appointing representatives of an employer's workers.

17 The provisions of EU law to which the questions referred to the Court of Justice by the present reference relate have not yet been the subject of interpretation as requested by the Curtea de Apel București (Court of Appeal, Bucharest), which, in its request for a preliminary ruling, refers to the judgment of 16 July 2009, *Mono Car Styling* (C-12/08), and the judgment of 8 June 1994, *Commission* v *United Kingdom* (C-382/92).

18 In the first of those judgments, the Court of Justice held that the right to information and consultation provided for in Directive 98/59, in particular by Article 2 thereof, is intended to benefit workers as a collective group and is therefore collective in nature. The Court of Justice analysed the level of protection of that right only in the light of Article 6. However, in the present case the referring court considers that it is necessary to determine whether the employer has an obligation to inform and consult if the workers cannot be considered, from a legal point of view, to be a collective in the national legal order.

19 As regards the second judgment of the Court of Justice which is mentioned, the referring court refers to paragraphs 18 and 24, in which the Court of Justice examined a provision of Directive 77/187/EEC which defined 'employees' [workers'] representatives' in terms identical to those of Directive 98/59.

20 The referring court notes, however, that the case-law cited does not allow it to draw the conclusion that there is an *acte éclairé* and that the correct application of EU law in the present case is so obvious as to leave no scope for any reasonable doubt.

21 In employment disputes, the decisions given by the referring court are not subject to any legal remedy under national law and therefore that court is required, under the second paragraph of Article 267 TFEU, to refer the questions to the Court of Justice for a preliminary ruling.