JUDGMENT OF THE COURT (Third Chamber)

3 March 2011 *

In Joined Cases C-235/10 to C-239/10,

REFERENCES for a preliminary ruling under Article 267 TFEU from the Cour de cassation (Luxembourg), made by decisions of 29 April 2010, received at the Court on 12 May 2010, in the proceedings

David Claes (C-235/10),

Sophie Jeanjean (C-236/10),

Miguel Rémy (C-237/10),

Volker Schneider (C-238/10),

* Language of the case: French.

Xuan-Mai Tran (C-239/10)

v

Landsbanki Luxembourg SA, in liquidation,

THE COURT (Third Chamber),

composed of K. Lenaerts, President of Chamber, E. Juhász (Rapporteur), G. Arestis, J. Malenovský, and T. von Danwitz, Judges,

Advocate General: V. Trstenjak,
Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Mr Claes, Mrs Jeanjean, Mr Rémy, Mr Schneider and Mrs Tran, by R. Michel, lawyer,

— Landsbanki Luxembourg SA, in liquidation, by C. Jungers, lawyer,

— the European Commission, by G. Rozet, acting as Agent,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 These references for a preliminary ruling relate to the interpretation of Articles 1 to 3 of 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).

2 The references were made in the course of proceedings between (i) Mr Claes, Mrs Jeanjean, Mr Rémy, Mr Schneider and Mrs Tran and (ii) Landsbanki Luxembourg SA ('Landsbanki'), in liquidation, concerning the immediate termination of their employment contracts following a judicial decision ordering the dissolution and winding up of Landsbanki.

Legal context

European Union law

3 Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies (OJ 1975 L 48 p. 29) provided in Article 1(2)(d), of its original version, that that directive did not apply to workers affected by the termination of an establishment's activities where that is the result of a judicial decision.

4 According to the third recital in the preamble to Directive 92/56/EEC of 24 June 1992, amending Directive 75/129 (OJ 1975 L 245 p. 3), Directive 75/129 should also apply in principle to collective redundancies arising where the establishment's activities are terminated as a result of a judicial decision.

5 Article 1 of Directive 92/56 deleted Article 1(2) (d) of Directive 75/129.

6 Recital 6 in the preamble to Directive 92/56 states that it is necessary to ensure that employers' obligations as regards information, consultation and notification apply irrespective of whether the decision on collective redundancies is being taken by the employer or by an undertaking which controls the employer.

7 Directive 75/129, as amended by Directive 92/56, was repealed and replaced by Directive 98/59.

8 According to the ninth recital in the preamble to Directive 98/59, consolidating Directive 75/129, as amended, that directive also applies in principle to collective redundancies arising where the establishment's activities are terminated as a result of a judicial decision.

9 Pursuant to Article 1(1)(a) of Directive 98/59, for the purposes of that directive, 'collective redundancies' means dismissals effected by an employer for one or more reasons not related to the individual workers concerned provided that certain conditions concerning numbers and periods of time are satisfied.

10 Article 1(2) of that directive states that it shall not apply to:

'(a) collective redundancies effected under contracts of employment concluded for limited periods of time or for specific tasks except where such redundancies take place prior to the date of expiry or the completion of such contracts;

(b) workers employed by public administrative bodies or by establishments governed by public law (or, in Member States where this concept is unknown, by equivalent bodies);

(c) the crews of seagoing vessels.'

11 Article 2 of the Directive provides:

‘1. Where an employer is contemplating collective redundancies, he shall begin consultations with the workers’ representatives in good time with a view to reaching an agreement.

2. These consultations shall, at least, cover ways and means of avoiding collective redundancies or reducing the number of workers affected, and of mitigating the consequences by recourse to accompanying social measures aimed, inter alia, at aid for redeploying or retraining workers made redundant.

Member States may provide that the workers’ representatives may call on the services of experts in accordance with national legislation and/or practice.

3. To enable workers’ representatives to make constructive proposals, the employers shall in good time during the course of the consultations:

(a) supply them with all relevant information and

(b) in any event notify them in writing of:

(i) the reasons for the projected redundancies;

(ii) the number and categories of workers to be made redundant;

(iii) the number and categories of workers normally employed;

(iv) the period over which the projected redundancies are to be effected;

(v) the criteria proposed for the selection of the workers to be made redundant in so far as national legislation and/or practice confers the power therefore upon the employer;

(vi) the method for calculating any redundancy payments other than those arising out of national legislation and/or practice.

The employer shall forward to the competent public authority a copy of, at least, the elements of the written communication which are provided for in the first subparagraph, point (b), subpoints (i) to (v).

4. The obligations laid down in paragraphs 1, 2 and 3 shall apply irrespective of whether the decision regarding collective redundancies is being taken by the employer or by an undertaking controlling the employer.

In considering alleged breaches of the information, consultation and notification requirements laid down by this Directive, account shall not be taken of any defence on the part of the employer on the ground that the necessary information has not been provided to the employer by the undertaking which took the decision leading to collective redundancies.'

12 Article 3 of Directive 98/59 is worded as follows:

‘1. Employers shall notify the competent public authority in writing of any projected collective redundancies.

However, Member States may provide that in the case of planned collective redundancies arising from termination of the establishment’s activities as a result of a judicial decision, the employer shall be obliged to notify the competent public authority in writing only if the latter so requests.

This notification shall contain all relevant information concerning the projected collective redundancies and the consultations with workers’ representatives provided for in Article 2, and particularly the reasons for the redundancies, the number of workers to be made redundant, the number of workers normally employed and the period over which the redundancies are to be effected.

2. Employers shall forward to the workers’ representatives a copy of the notification provided for in paragraph 1.

The workers’ representatives may send any comments they may have to the competent public authority.’

13 Under Article 4 of that directive:

‘1. Projected collective redundancies notified to the competent public authority shall take effect not earlier than 30 days after the notification referred to in Article 3(1) without prejudice to any provisions governing individual rights with regard to notice of dismissal.

Member States may grant the competent public authority the power to reduce the period provided for in the preceding subparagraph.

2. The period provided for in paragraph 1 shall be used by the competent public authority to seek solutions to the problems raised by the projected collective redundancies.

3. Where the initial period provided for in paragraph 1 is shorter than 60 days, Member States may grant the competent public authority the power to extend the initial period to 60 days following notification where the problems raised by the projected collective redundancies are not likely to be solved within the initial period.

Member States may grant the competent public authority wider powers of extension.

The employer must be informed of the extension and the grounds for it before expiry of the initial period provided for in paragraph 1.

4. Member States need not apply this Article to collective redundancies arising from termination of the establishment's activities where this is the result of a judicial decision.'

National law

14 Article L. 125-1(1) of the Luxembourg Code du travail (Labour Code) provides:

'Employment contracts shall be terminated with immediate effect in the event of the termination of activities due to the death, physical incapacity or declaration of insolvency of the employer. …

Except where activities are carried on by the administrator or the employer's successor, an employee shall be entitled to:

1. wages for the month when the event took place and the following month, and

2. compensation amounting to fifty percent of the monthly salary for the notice period to which the employee would have been entitled …

The wages and compensation allocated to the employee in accordance with the subparagraph above may not however exceed the total sum of the wages and compensation to which he or she would have been entitled in the event of dismissal with notice.'

15 Articles L. 166-1 to L. 166-5 of the code relate to collective redundancies and the employer's obligations in the event of such redundancies.

16 Article 61 of the Law of 5 April 1993 relating to the financial sector, in the version resulting from the Law of 19 March 2004 transposing Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions into the amended Law of 5 April 1993 relating to the financial sector (*Mémorial* A 2004, p. 708), provides:

'(1) Dissolution and winding up may come into effect where:

(a) It is clear that the suspension of payments scheme provided for in the preceding chapter does not allow the situation that justified it to be remedied;

(b) the financial situation of the institution has deteriorated to the point where it can no longer meet its commitments with respect to all holders of claims or subscription rights;

(c) the institution's authorisation has been withdrawn and that decision has become final.

(2) Only the Commission [de surveillance du secteur financier] ("the financial sector supervisory commission") or the State prosecutor, that Commission having been duly joined as a party to the proceedings, may ask the Court to declare the dissolution and winding up of an institution.

…

(7) In ordering a winding up, the Court shall appoint a bankruptcy judge and one or more liquidators. It shall determine the means of winding up. To the extent determined thereby, it may render the rules governing bankruptcy applicable. In this case it may fix the time payments were suspended at a date preceding the lodging of the

application referred to in Article 60-2(3) by no more than six months. The method of winding up may be altered subsequently, either on its own initiative or at the request of the liquidators or the financial sector supervisory commission.'

…'

The actions in the main proceedings and the questions referred for a preliminary ruling

17 Landsbanki is a credit institution established in Luxembourg.

18 By judgment of 8 October 2008, the Tribunal d'arrondissement de Luxembourg (Luxembourg District Court), upon application by Landsbanki, made Landsbanki subject to the suspension of payments procedure for a maximum duration of six months and appointed Deloitte SA as administrator to monitor the management of the assets.

19 By application of 27 November 2008, the State prosecutor of the Tribunal d'arrondissement de Luxembourg applied for the dissolution and winding up of Landsbanki. The financial sector supervisory commission also sought an order for the judicial winding up of Landsbanki.

20 By judgment of 12 December 2008, the Tribunal d'arrondissement de Luxembourg held that Landsbanki's situation could not be rectified and that it was not in a position to meet its commitments and ordered its dissolution. It also announced the winding up of Landsbanki and appointed two liquidators.

21 By letter of 15 December 2008, the liquidators informed the employees of Landsbanki of the dissolution and winding up of that institution and that their employment contracts had been terminated in accordance with Article L. 125-1 of the Luxembourg Code du travail.

22 On 19 December 2008, Landsbanki's banking authorisation was withdrawn.

23 By application of 24 December 2008, the applicants in the main proceedings sought from the President of the Tribunal du travail (Labour Court) 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. They applied for their immediate reinstatement.

24 By orders of 10 February 2009, the President of the Tribunal du travail dismissed the applications as unfounded, given the circumstances making that reinstatement literally impossible.

25 The applicants in the main proceedings appealed against those orders.

26 By orders of 4 June 2009, the President of the chamber of the Cour d'appel (Court of Appeal) having jurisdiction dismissed those appeals as unfounded and upheld the orders under appeal, on the ground that the reasons which had led the legislature to provide in Article L.125-1(1) of the Luxembourg Code du travail for the termination with immediate effect of employment contracts following a declaration of the employer's insolvency held good in this case. The termination of activities was the result

of a factual situation which was comparable to insolvency and so the judicial winding up can be compared to the insolvency referred to in Article L.125-1(1).

27 The applicants in the main proceedings appealed against the orders of 4 June 2009 to the Cour de Cassation which, finding that interpretation of Articles 1 to 3 of Directive 98/59 was necessary to enable it to give judgment in the cases of which it is seised, stayed the proceedings and referred to the Court the following questions for a preliminary ruling, which are worded identically in each of the three cases:

'(1) Are Articles 1, 2 and 3 of Directive 98/59 … to be interpreted as applying to a termination of activities as a result of a declaration that the employer is insolvent or a judicial decision ordering the dissolution and winding up, on grounds of insolvency, of the credit institution which is the employer on the basis of Article 61(1)(a) and (b) of the Law … of 5 April 1993 relating to the financial sector, [as amended by the Law of 19 March 2004], in respect of which termination national legislation provides for the termination of employment contracts with immediate effect?

(2) If the answer to the first question is in the affirmative, are Articles 1, 2 and 3 of Directive 98/59 to be interpreted as meaning that the administrator or liquidator is deemed to be in the same position as an employer who is contemplating collective redundancies and who is able to carry out, to that end, the acts referred to in Articles 2 and 3 of [that] directive and of effecting such redundancies (Case C-323/08 *Rodríguez Mayor and Others* [2009] ECR I-11621, paragraphs 39, 40 and 41)?'

28 By order of the President of the Court of 14 June 2010, Cases C-235/10 to C-239/10 were joined for the purposes of the written and oral procedure and of the judgment.

Consideration of the questions referred for a preliminary ruling

The first question

29 By its first question, the referring court asks whether Articles 1 to 3 of Directive 98/59 must be interpreted as applying to a termination of activities of an institution that is 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.

30 Under Directive 75/129, Article 1(2)(d) provided that that directive did not apply to workers affected by the termination of an establishment's activities where that is the result of a judicial decision. That provision allowed a derogation from the rule in Article 1(1)(a) of that directive, in which it was stated, in terms identical to those of the same provision in Directive 98/59, that, for the purposes of applying Directive 75/129, 'collective redundancies' means dismissals effected by an employer for one or more reasons not related to the individual workers concerned (Case C-55/02 *Commission* v *Portugal* [2004] ECR I-9387, paragraph 55).

31 Article 1(1)(b) of Directive 92/56 deleted Article 1(2)(d) of Directive 75/129.

32 That amendment was emphasised by the European Union legislator in the third recital in the preamble to Directive 92/56, which states that Directive 75/129 also applies in principle to collective redundancies arising where the establishment's activities are terminated as a result of a judicial decision.

33 The Court has held that since the amendment of Directive 75/129, in all cases of collective redundancy following the termination of an establishment's activities, even where their termination was the result of a judicial decision, employers are obliged to inform and consult workers (see, to that effect, Cases C-187/05 to C-190/05 *Agorastoudis and Others* [2006] ECR I-7775, paragraph 33).

34 It should also be noted that, in parallel to that extension of the scope of Directive 75/129, the European Union legislator added to it two provisions by means of Directive 92/56, namely Article 3(1), second subparagraph, and Article 4(4).

35 According to the second subparagraph of Article 3(1), Member States may provide that in the case of planned collective redundancies arising from termination of the establishment's activities as a result of a judicial decision, the employer shall be obliged to notify the competent public authority in writing only if the latter so requests. That provision relates only to the notification obligation in planned redundancies.

36 According to Article 4(4), Member States need not apply paragraphs 1 to 3 of that Article, relating to planned collective redundancies already notified to the competent public authority, to collective redundancies arising from termination of the establishment's activities where that is the result of a judicial decision. Paragraphs 1 to 3 of Article 4 concern the time limits within which collective redundancies which have been notified take effect.

37 Those two provisions, in Section III of Directive 75/129, as amended by Directive 92/56, relating to the procedure for collective redundancies, grant Member States certain powers. However, unlike the three derogations from application of the Directive under Article 1(2), they do not restrict its scope.

38 It follows that the scope of Directive 75/129, as amended by Directive 92/56, covers, subject to the three derogations in Article 1(2), collective redundancies arising from termination of an establishment's activities where that is the result of a judicial decision.

39 Directive 98/59 does not make any amendments to the provisions of Directive 75/129, as amended by Directive 92/56, that are relevant to the present case.

40 Firstly, the wording of the third recital in the preamble to Directive 92/56 is reproduced in the ninth recital in the preamble to Directive 98/59.

41 Secondly, Articles 3(1), second subparagraph, and 4(4) of Directive 98/59 reproduce, with identical wording, the corresponding provisions in Directive 75/129, as amended by Directive 92/56.

42 Thirdly, there are no provisions in Directive 98/59 relating to collective redundancies arising from termination of an establishment's activities where that is the result of a judicial decision that were not in Directive 75/129, as amended by Directive 92/56.

43 It must therefore be held that the scope of Directive 98/59 covers, subject to the three derogations in Article 1(2), collective redundancies arising from termination of an establishment's activities where that is the result of a judicial decision.

44 That finding is not affected, contrary to what Landsbanki claims, by *Rodríguez Mayor and Others*, nor by the particularities of the case in the main proceedings.

45 Firstly, the proceedings that gave rise to the judgment in *Rodríguez Mayor and Others* concerned the question of whether, under Directive 98/59, the termination of the employment contracts of several employees of an employer who was a natural person, following the death of that employer and where the business is not passed on to an heir, does not fall within the concept of collective redundancy.

46 However, it must be stated that there is a substantial difference between a situation involving the death of an employer who is a natural person, whose business is not passed on to anyone and that, such as in the main proceedings, where the dissolution and winding up of a corporate employer have been ordered by a judicial decision. Indeed, in the latter situation, the employer remains able, as long as its legal personality lasts, to carry out the acts referred to in Articles 2 and 3 of Directive 98/59 and, if necessary, to give effect to collective redundancies.

47 Secondly, as regards the particularities of the dispute in the main proceedings, Landsbanki wrongly argues that the dissolution and winding up of the institution, and the termination of employment contracts pursuant to national legislation, coincided so that it became literally impossible for Landsbanki to fulfil the obligations relating to consultation of employees' representatives.

48 In that connection, it should be noted that a legal situation resulting solely from the application of national law provisions cannot determine how a European Union regulation should be interpreted.

49 In those circumstances, the answer to the first question is that Articles 1 to 3 of Directive 98/59 must be interpreted as applying to a termination of the activities of an establishment that is 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.

The second question

50 The applicants in the main proceedings claim that Landsbanki, whilst in liquidation, remained the legal person employing them, the only difference being that its representative bodies had changed, since the liquidators had taken over all rights from the board of directors and the management. They add that the liquidators have acted as real representatives of the employer.

51 The European Commission observes that the Tribunal d'arrondissement de Luxembourg, when it announced Landsbanki's liquidation, appointed two liquidators and that those liquidators retained part of the staff and employed some people from outside to work at Landsbanki.

52 Further, it should be noted that it follows from the answer to the first question that, even if national legislation provides for the termination of employment contracts with immediate effect in the event of the termination of an establishment's activities as a result of a judicial decision ordering its dissolution and winding up on grounds of insolvency, such a collective redundancy falls within the scope of Directive 98/59.

53 In an insolvency, the legal personality of the establishment whose dissolution and winding up have been ordered by a judicial decision exists for limited purposes only, in particular for the requirements of that procedure and until the publication of the accounts for the closure of the liquidation procedure. Nevertheless, such an establishment has a duty, up until the moment when its legal personality definitively ceases to exist, to fulfil the obligations incumbent on employers under Articles 2 and 3 of Directive 98/59.

54 As long as the management of the establishment in question remains in place, even with limited powers of management, it must fulfil the obligations of employers under Articles 2 and 3 of Directive 98/59.

55 If, however, the management of the establishment in question is taken over in its entirety by a liquidator, it is the liquidator that must fulfil the obligations arising under Directive 98/59.

56 It should also be noted that the consultations provided for in Article 2 of Directive 98/59 are to cover not only ways and means of avoiding collective redundancies or reducing the number of workers affected, but also to mitigate the consequences by recourse to accompanying social measures aimed, inter alia, at aid for redeploying or retraining workers made redundant (see, to that effect, Case C-44/08 *Akavan Erityisalojen Keskusliitto AEK and Others* [2009] ECR I-8163, paragraph 64).

57 In the event that there is no person with responsibility for the obligations under Directive 98/59, the national judge is required to interpret national law, as far as possible, in the light of the wording and the objectives of Directive 98/59, so that the obligations set out in Articles 2 and 3 of that directive are properly carried out.

58 The answer to the second question, therefore, is that until the legal personality of an establishment whose dissolution and winding up have been ordered has ceased to exist, the obligations under Articles 2 and 3 of Directive 98/59 must be fulfilled. The employer's obligations pursuant to those provisions must be carried out by the management of the establishment in question, where it is still in place, even with limited powers of management over that establishment, or by its liquidator, where that establishment's management has been taken over in its entirety by the liquidator.

Costs

59 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

1. **Articles 1 to 3 of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies must be interpreted as applying to a termination of the activities of an employing establishment 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.**

2. Until the legal personality of an establishment whose dissolution and winding up have been ordered has ceased to exist, the obligations under Articles 2 and 3 of Directive 98/59 must be fulfilled. The employer's obligations pursuant to those provisions must be carried out by the management of the establishment in question, where it is still in place, even with limited powers of management over that establishment, or by its liquidator, where that establishment's management has been taken over in its entirety by the liquidator.

[Signatures]