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reduction of this nature should be regarded as a 'significant change' in the light of all the circumstances of the case.

However, the Court judged that even if the Polish Supreme Court decided that the notice of amendment was not effectively a dismissal, termination of the contract followed by the employee's refusal to accept the amendment must be regarded as 'a termination of an employment contract which occurs on the employer's initiative for one or more reasons not related to the individual workers concerned', and therefore falls within the meaning of the second subparagraph of Article 1(1) of Directive 98/59.

Second question

As regards whether an employer is required to carry out the consultations provided for in Article of Directive 98/59, the Court decided that the Hospital had made some economic decisions that were not directly aimed at terminating the employment relationship, but nevertheless had an effect on the employment relationship with Ciupa and her colleagues. Given the nature of the proposed changes and the possible termination of employees' contracts, the Hospital should have taken into account that some employees might not accept the amended terms of employment. This meant that, the Hospital needed to carry out the consultations provided for in Article 2 of Directive 98/59. The Court felt that this conclusion was all the more necessary because the purpose of consultation is to try to avoid or to reduce the number of terminations and to mitigate their consequences – and the aim of the amendment to the contracts was also to try to avoid individual redundancies. Thus, the two aims coincided to a large extent.

Ruling

In light of the above, Article 1(1) of Directive 98/59 must be interpreted as meaning that a unilateral amendment of conditions of pay by the employer, to the detriment of the employees, which, in the event of an employee's refusal, entails the termination of the contract of employment is capable of being regarded as a 'redundancy' within the meaning of that provision, and that Article 2 of that directive must be interpreted as meaning that an employer is required to carry out the consultations provided for in Article 2 where it contemplates effecting such a unilateral amendment of the conditions of pay, insofar as the conditions laid down in Article 1 of the directive are satisfied, which is for the referring court to ascertain.

ECJ 21 September 2017, case C-149/16 (Halina Socha v. Szpital Specjalistyczny), Collective redundancies

Halina Socha, Dorota Olejnik and Anna Skomra – v – Szpital Specjalistyczny im. A. Falkiewicza we Wrocławiu

Summary

A unilateral amendment of employment conditions qualifies as 'redundancy' within Directive 98/59 on collective redundancies, if the employee's refusal entails the termination of the employment contract.

Facts

Halina Socha, Dorota Olejnik and Anna Skomra were employed by A. Falkiewicz Specialist Hospital under indefinite contracts. In August 2015, the hospital notified the employees of some amendments to their pay and conditions, in particular to the period for obtaining a length of service award. The hospital made it clear that failure to accept the amendment could result in the termination of their employment. The underlying reason for the amendments was that the hospital had been operating at a loss for several years. The amendments were intended to save the hospital from liquidation. The three employees refused to accept the changes and so their employment contracts were terminated. In doing this, the hospital failed to apply the procedure set out in the Law of 2003 (the '2003 Law').

Questions put to the ECJ

The District Court for Wrocław City Centre was unclear whether the hospital had genuinely intended to amend the employment contracts or to terminate them while avoiding being subject to the provisions of Directive 98/59. The court was also uncertain whether the unilateral amendment of the contractual terms constituted a 'redundancy' within the meaning of Article 1 of Directive 98/59. In these circumstances, the court decided to refer the following question to the Court of Justice:

> "Must Articles 1(1) and 2 of Directive 98/59, read in conjunction with the principle of the effectiveness of law, be interpreted as meaning that an employer who

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on account of a difficult financial situation issues notices of amendment of pay and working conditions in relation to employment contracts (notice of amendment) only as regards conditions of remuneration is required to apply the procedure arising from that directive, and also to consult on those notices with company trade union organisations, even though national law — Articles 1, 2, 3, 4, 5 and 6 of the 2003 Law — contains no rules on notices of amendment of employment contract conditions?'

ECJ's findings

As a preliminary point, the Court noted that Article 1(2)(b) of Directive 98/59 does not apply to 'workers employed by public administrative bodies or by establishments governed by public law'. In this case it is not clear from the question that the Polish legislature intended to extend the application of the rights recognised by Directive 98/59 to workers in the public sector. Therefore, the Court asked the District Court to explain the reasons why an interpretation of Directive 98/59 was needed. The District Court explained that the 2003 Law – which is designed to transpose Directive 98/59 to into Polish law – applies to 'workers' within the meaning of Article 2 of the Labour Code and it is wider than Directive 98/59. Employees of A. Falkiewicz have the same status as employees in the private and are not covered by civil service law.

The Court found that an employer is required to engage in the consultations provided for in Article 2 of the Directive if it wants to reduce employees' pay unilaterally and terminate their contracts if they refuse. The Court recalled that Article 1(1) makes a distinction between 'redundancies' and 'terminations of an employment contract which occur on the employer's initiative for one or more reasons not related to the individual workers concerned'. In an earlier ruling, the Court had ruled that unilateral, substantive and disadvantageous amendments to the essential elements of an employment contract for reasons not related to the employee personally falls within the term 'redundancy' (*Pujante Rivera,* C-422/14, EU:C:2015:743). In the case at hand, the hospital was of the view that it needed to amend the terms in order to prevent decisions that would lead to termination of the employment contracts. But the hospital should have taken into account that some employees would not accept the change, and therefore their employment contract would be terminated. The Court found that the hospital should have commenced a consultation procedure, as laid down in Article 2 of Directive 98/59 when it was considering the changes (cf. *Akavan Erityisalojen Keskusliitto AEK et al*., C-44/08). The Court felt that consultation was particularly important because its purpose was to try to avoid termination or at least mitigate their consequences. Meanwhile, the purpose of the notices of amendments was to help prevent liquidation – and these two purposes overlapped to a considerable extent.

Ruling

Articles 1(1) and 2 of Directive 98/59 must be interpreted as meaning that an employer is required to engage in the consultations provided for in Article 2 when it intends, to the detriment of the employees, to make a unilateral amendment to the terms of remuneration which, if refused by the employees, will result in termination of the employment relationship, to the extent that the conditions laid down in Article 1(1) of that directive are fulfilled, which is for the referring court to determine.

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