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Judgment in Case E-9/22 *Verkfræðingafélag Íslands (the Association of Chartered Engineers in Iceland), Stéttarfélag tölvunarfræðinga (the Computer Scientists' Union), and Lyfjafræðingafélag Íslands (the Pharmaceutical Society of Iceland)* v *the Icelandic State*

CONSULTATION AND NOTIFICATION REQUIRED ONCE COLLECTIVE REDUNDANCIES ARE ANTICIPATED

In a judgment delivered today, the Court answered questions referred to it by the Icelandic Court of Appeal (*Landsréttur*) regarding the interpretation of Directive 98/59/EC on the approximation of laws of the Member States relating to collective redundancies ("the Directive").

The main proceedings concern the termination by the National University Hospital (*Landspítali*) of the regular overtime contracts of its technical support unit workers, which were additional to the workers' employment contracts. The affected workers were offered new temporary contracts covering regular overtime instead. The parties in the main proceedings disagree whether the terminations of the overtime contracts constitute collective redundancies under the Icelandic Collective Redundancies Act.

By its first question, the referring court asked in essence whether an employer, who intends to terminate contracts with a group of workers covering fixed overtime, is required to consult with the workers' representatives and notify the competent public authority in accordance with the Directive. By its second question, the referring court essentially asked whether the employer's obligations cease if the termination of the contracts does not result in the full termination of the workers' employment contracts. By its third question, the referring court asked whether it is of significance for the answers to its first two questions whether the fixed overtime contracts were specifically made in independent contracts that were additional to the workers' employment contracts.

The Court held, first, that the first subparagraph of Article 1(1)(a) of the Directive must be interpreted as meaning that where an employer, unilaterally and to the detriment of the employee, makes significant changes to essential elements of an employment contract for reasons unrelated to the individual employee concerned, that falls within the definition of "redundancy". Second, the Court held that the second subparagraph of Article 1(1) of the Directive must be interpreted as meaning that a notice of amendment, which does not constitute a "redundancy", can be assimilated as such provided the conditions in the second subparagraph of Article 1(1) are met. Third, the consultation procedure under Article 2 of the Directive must be initiated once a strategic or commercial decision compels an employer to contemplate or plan for collective redundancies. Where the decision to amend the employment conditions could help avoid collective redundancies, consultations must begin once the employer intends to make such amendments. Fourth, the first subparagraph of Article 3 of the Directive obliges an employer to notify the competent public authority of any projected collective redundancies, including anticipated redundancies under the first subparagraph of Article 1(1)(a) of the Directive and those assimilated as such under the second subparagraph of Article 1(1) of the Directive.

The Court held that the employer's obligations to initiate the consultation procedure and to notify the competent public authority cannot depend on subsequent events such as whether the employment contracts are in fact terminated. Finally, the Court found that a worker's conditions of employment must be viewed as a whole. Thus, it is irrelevant whether an employee's conditions of employment are stipulated in one contract or over several contracts.

The full text of the judgment may be found on the Court's website: www.eftacourt.int.