

Determination of the Reference Period for a Collective Redundancy



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In a judgment of 11 November 2020, the Court of Justice of the European Union (hereinafter, the "CJEU") interpreted Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (hereinafter, the "Directive"). The Directive aims to afford greater protection to workers in the event of a collective redundancy. However, it only applies when certain conditions are met, one of which concerns the number of dismissals that take place over a reference period of 30 or 90 days.

The judgment establishes how this reference period should be determined.

The case concerned a dispute regarding the legality of an individual dismissal, brought before a Spanish court. The dismissed employee considered his dismissal to form part of a collective redundancy since after he was dismissed, the employer made redundant more than 30 employees over a period of 90 days. However, according to established case law of the Spanish Supreme Court, only terminations of employment contracts taking place within 90 days prior to the individual dismissal should be taken into account.

Due to this lack of clarity, the Spanish court referred a request for a preliminary ruling to the CJEU on determination of the reference period for a collective redundancy. The CJEU declared that it would be contrary to the Directive to find that the reference period to be taken into account falls exclusively before or after the individual dismissal. Consequently, the CJEU held that to determine whether an individual dismissal forms part of a collective redundancy, the reference period is the period of 30 or 90 consecutive days

- which includes the individual dismissal of the employee at issue and
- during which the largest number of dismissals by the employer takes place, for one or more reasons unrelated to the individual employee.

Under Belgian law, a reference period of 60 days is used to determine the existence of a collective redundancy. Based on the CJEU's judgment, this reference period should be considered a 60-day rolling period including the date of the individual dismissal at issue.