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FINAL REPORT

Topic 2: Protection of workers in case of enterprise reorganization and restructuring of work processes

International Labour Organization

Labour Law Reform and Access to Labour Justice Team

Social dialogue, Labour relations and Governance of Work Branch

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Introduction

The European Labour Court Judges Meetings

Labour disputes—both individual and collective—are an inevitable feature of the world of work. Efficient and accessible labour dispute prevention and resolution systems are essential to strengthening harmonious industrial relations and ensuring access to labour justice for all. The judiciary is central to resolving labour disputes, enforcing labour laws and implementing international labour standards. While judicial systems vary in structure and procedure, many countries have established specialized labour courts or industrial tribunals to address the unique nature of labour and employment conflicts.

The ILO supports the professional development of labour court judges and staff through training, capacity building, institutional strengthening, and by fostering networks and partnerships. It also facilitates the organization of annual meetings of European Labour Court Judges to discuss shared concerns and examine developments in labour law through key judicial decisions.

Information on the judges' meetings is available here.

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The protection of workers in case of enterprise reorganization and restructuring of work processes

The reorganisation or restructuring of work processes involves a complex interplay between legal requirements, business needs and protection of workers' rights. Reorganisation or restructuring of operations may be prompted by various reasons related to financial constraints, technological advancements, or other operational requirements, particularly in the context of globalization, trade liberalization and economic or social developments. These processes are also often related to issues such as the transfer of undertakings, insolvency, relocation and offshoring.

The reorganisation or restructuring of work processes may result in work redistribution or proposals for redeployment, redundancy or collective dismissals. Given the significant impact that these processes can have on workers, most countries have established a range of legal requirements to safeguard workers' rights, strengthen their involvement in restructuring operations, prevent unnecessary job losses and mitigate any negative effects.

Relevant ILO instruments

- Termination of Employment Convention, 1982 (No. 158)

This instrument sets forth the principle that the employment of a worker should not be terminated unless there is a valid reason for such termination connected with the worker's capacity or conduct, or based on the operational requirements of the enterprise, establishment or service. Reasons for dismissal not considered valid include those based on union membership or participation in union activities, the filing of a complaint against an employer, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, temporary absence due to illness, or absence from work during maternity leave. The Convention also provides that in cases of collective dismissals, governments should encourage employers to consult workers' representatives and develop alternatives to mass lay-offs (such a hiring freezes or working time reductions). In addition, the Convention covers matters related to severance pay, the period of notice, appeal procedures against dismissal, unemployment insurance and the advance warning to be given to the authorities in cases of mass dismissals.[1]

- Termination of Employment Recommendation, 1982 (No. 166)

This Recommendation recalls that all parties concerned should seek to avert or minimise as far as possible termination of employment for reasons of an economic, technological, structural or similar nature, without prejudice to the efficient operation of the undertaking, establishment or service, and to mitigate the adverse effects of any termination of employment for these reasons on the workers concerned. It adds that, where appropriate, the competent authority should assist the parties in seeking solutions to the problems raised by the terminations contemplated (para 19). It also emphasises the importance of consultations on major changes in the undertaking (para 20) and lists examples of measures to avert or minimise termination, including rehiring priorities and training or retraining measures (paras. 21-26).

- Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169)

This Recommendation recalls the importance for member States to adopt policies and take measures that should (a) facilitate adjustment to structural change at the global, sectoral and enterprise levels and the re-employment of workers who have lost their jobs as a result of structural and technological changes; and (b) safeguard the employment or facilitate the re-employment of workers affected in the case of sale, transfer, closure or relocation of a company, establishment or equipment (para. 10). It also provides that the methods of giving effect to employment policies might include negotiating collective

[1] This introduction is excerpted from: *Rules of the game: An introduction to the standards-related work of the International Labour Organization*, International Labour Office, Geneva, 2019.

See ILO, Final report: Tripartite Meeting of Experts to Examine the Termination of Employment Convention, 1982 (No. 158), and the Termination of Employment Recommendation, 1982 (No. 166), Geneva, 18–21 April 2011; and Report and outcome of the Tripartite Meeting of Experts to Examine the Termination of Employment Convention, 1982 (No. 158) and the Termination of Employment Recommendation, 1982 (No. 166), Governing Body, 312th Session, November 2011, GB.312/ LILS/6 agreements on questions having a bearing on employment such as (a) the promotion and safeguarding of employment; (b) the economic and social consequences of restructuring and rationalisation of branches of economic activity and undertakings; (c) the reorganisation and reduction of working time; (d) the protection of particular groups; and (e) information on economic, financial and employment issues (para 11).

This discussion aims to address the challenges, trends and developments relating to the protection of workers in case of enterprise reorganization and restructuring of work processes. It will focus on relevant legal provisions and judicial decisions that have significantly impacted this area.

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Contents

AUSTRIA

Respondent: Gerhard Kuras, Supreme Court Judge

1. **General** – Is the notion of "restructuring" defined at the national level? In your country, what are the basic rules and requirements applicable to enterprise reorganization and restructuring of operations?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

There are several statutory provisions dealing with restructuring and the possibility to terminate employment contracts.

I - Regarding termination it is necessary to start with preliminary remarks : A contract of employment without fixed time limit can be terminated by giving a notice which terminates the contract at a certain date after expiry of a certain period. The period of notice varies for different employee groups. In most cases the period of notice increases with the duration of the employment. For industrial workers there are a lot of regulations in collective agreements. For private employees the period of notice results from § 20 Higher Workers Act (White Collar). The employer is bound up to 2 years of employment to a period of 6 weeks, increasing after 2 years to 2 month, 5 years to 3 month, 15 years to 4 month and over 25 years to 5 month.

In an undertaking where a works council has to be constituted (five or more employees Section 105 of the Works Constitution Act) a notice can be challenged because it is socially unjustified, when the contract of employment has lasted longer than 6 months and substantial interests of the employee are harmed by the termination of the employment contract. Then the employer has to give reasons, one might be that reorganization or restructuring of the work process makes the termination unavoidable. In these undertakings it is also possible to contest a notice if there are certain unlawful motives. For example a notice can be challenged if the notice was motivated by the fact, that the employee is a member of trade union or an election committee for workers council or his activities in trade unions or as a former member of works…….. This is an action altering the legal state of affairs. If the works council or the employee wins the suit the notice is cancelled by the judgement- this means re engagement for the employee.

II - Section 109 of the Works Constitution Act Section 109 of the Works Constitution Act also stipulates that the owner of the business is obliged to inform the works council of **planned operational changes** at a time, in a manner, and with content that enables the works council to thoroughly assess the possible effects of the planned measure and to issue a statement on the planned measure; at the request of the works council, the owner of the establishment must consult with it on the design of the measure. Operational changes include, in particular

1. the restriction or closure of the entire establishment or parts;

1a the termination of employment relationships that triggers a reporting obligation under Section 45a (1) (1) to (3) of the Labor Market Promotion Act,

2. the relocation of the entire business or parts;

3. the merger with other businesses;

4. changes to the purpose of the business, the business facilities, the work and business organization, and the branch organization;

5. the introduction of new working methods;

6. the introduction of rationalization and automation measures of considerable significance;

This could be understood as a hint of the legislator what kind of reorganization or restructuring is important.

2. **Consultation and information rights and notification to public authorities –** In your country, what are the basic rules and requirements regarding consultation and information rights and notification to public authorities in the event of enterprise reorganisation or restructuring of work processes? Have any issues been raised recently in this regard, or are there any new or interesting developments?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

I Section 109 of the Works Constitution Act stipulates that the owner of the business is obliged to inform the works council of planned operational changes at a time, in a manner, and with content that enables the works council to thoroughly assess the possible effects of the planned measure and to issue a statement on the planned measure; at the request of the works council, the owner of the establishment must consult with it on the design of the measure. Operational changes include, in particular

1. the restriction or closure of the entire establishment or parts thereof;

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2. the relocation of the entire business or parts thereof;

3. the merger with other businesses;

4. changes to the purpose of the business, the business facilities, the work and business organization, and the branch organization;

5. the introduction of new working methods;

6. the introduction of rationalization and automation measures of considerable significance;

In the event of a planned operational change pursuant to paragraph 1(1a), the information pursuant to paragraph 1, first sentence, shall in any case include

1. the reasons for the measure,

2. the number and occupation of the employees likely to be affected, their qualifications and length of service, and the criteria for selecting these employees,

3. the number and employment status of regularly employed employees,

4. the period during which the planned measure is to be implemented,

5. any accompanying measures planned to avoid adverse consequences for the employees affected.

The works council may consult experts during the consultation.

The works council may make proposals to prevent, eliminate, or mitigate the adverse consequences of measures pursuant

If a change in operations entails significant disadvantages for all or a substantial part of the workforce, measures to prevent, eliminate, or mitigate these consequences may be regulated by works agreement in companies that permanently employ at least 20 employees. If the business owner and the works council cannot reach an agreement on the conclusion, amendment, or termination of such a works agreement, the arbitration board shall decide at the request of one of the parties to the dispute, unless there is a provision in a collective agreement or statutes. When making its decision, the arbitration board shall take into account any delayed or inadequate information provided to the works council when determining measures in favor of the employees in such a way that any disadvantages suffered by the employees as a result of the delayed or inadequate information are additionally compensated.

In addition due to Section 45a (1) (1) to (3) of the Labor Market Promotion Act, business owners must notify the labor market administration if they intend to terminate the employment of at least five employees in companies with generally more than 20 and fewer than 100 employees, or at least five percent of employees in companies with 100 to 600 employees, or at least 30 employees in companies with generally more than 600 employees, or at least five employees who have reached the age of 50, within a period of 30 days.

This notification must be given at least 30 days before the first declaration of termination of an employment relationship. The notification must contain information on the reasons for the intended termination of the employment relationships and the period in which this is to be carried out, the number and use of regularly employed workers, the number and use of workers likely to be affected by the intended termination of employment relationships, the age, gender, qualifications, and length of service of the employees likely to be affected, other criteria relevant to the selection of the employees affected, and the accompanying social measures.

Terminations that constitute a termination of employment are legally invalid if they are given before the notification is submitted or after the notification is submitted within the 30-day period without the prior consent of the state office.

3. **Insolvency Proceedings –** What are the main issues that have been raised in insolvency proceedings before judicial courts regarding the protection of workers' rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

A complex issue in insolvency cases is the extent to which other companies within a group that are not insolvent are required to take on the employees. The Supreme Court has ruled in favor of this in some cases.

4. **Transfer of undertaking –** What are the main issues that have been raised before judicial courts regarding the transfer of undertakings and the protection of workers' rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

One issue that has already been clarified to a large extent by case law is the invalidity of dismissals "due to a transfer of business." There is no detailed legal regulation on this matter. Case law is based on the general civil law provision that legal transactions (and thus also dismissals) that violate the objective of a law are invalid. Since the objective of the provisions governing transfers of undertakings is to ensure an orderly transition for employees to the new owner of the undertaking, the Supreme Court has declared both dismissals by the transferor and by the transferee that are based on the fact that the employees were not integrated into the new structure of the undertaking to be legally invalid.

5. **Cross-border restructuring –** What are the main issues that have been raised before judicial courts regarding cross-border restructuring and the protection of workers' rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Difficult questions repeatedly arise in connection with protection against dismissal. Most recently, the Supreme Court had to decide whether the provisions of Austrian protection against dismissal also apply if an employee working in Austria is employed by a company based abroad (Supreme Court 9 ObA 94/24z).

The plaintiff had been employed by the defendant as “Country Manager Austria.” The plaintiff performed his work for the defendant permanently from Austria and predominantly and usually from his secondary residence in Vienna, while he was organizationally and hierarchically integrated into the defendant's business located in Germany. The defendant has no business in Austria.

The plaintiff sought to have the termination of his employment relationship declared legally invalid. He argued that the termination was based on a reprehensible motive within the meaning of Section 105(3)(1)(i) of the Labor Constitution Act (ArbVG) and was also socially unacceptable within the meaning of Section 105 (3) (2) ArbVG. According to the Rome I Regulation, Austrian law and thus the ArbVG is applicable to the employment relationship.

The Supreme Court affirmed the application of Austrian law but dismissed the action because there is no business in Austria.

6. **Adequate notice and severance pay –** What are the basic rules and requirements regarding adequate notice and severance pay in cases of collective redundancies related to enterprise reorganization and restructuring of operations? Have any issues been raised recently in this regard, or are there any new or interesting developments?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

See Answer Question 1.

7. **Others –** Have any other interesting issues relating to these matters been raised before the courts (e.g. compliance, sanctions and penalties, collective bargaining safeguards, non-discrimination, rights of temporary agency workers during restructuring, sectoral specificities…)? Are there any new or interesting developments in this area that you would like to refer to?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

See Answer Question 5

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▶ BELGIUM

Respondent: Koen Mestdagh, Honorary section president, Court of Cassation

1. **General –** Is the notion of "restructuring" defined at the national level? In your country, what are the basic rules and requirements applicable to enterprise reorganization and restructuring of operations?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer:

The notion of "restructuring" as such isn't defined in Belgian labour law. The notion of "enterprise in restructuring" is used in several laws and decrees providing in measures to promote the re-employment of the workers who are made redundant in the context of a collective dismissal.

The notion of "collective dismissal" is defined in the CLA nr. 24 of 2 October 1975, concluded in the National Labour Council, which implements Council Directive 98/95/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies.

CLA nr. 24 defines "collective dismissal" as every dismissal for one or more reasons not related to the person of the concerned worker that hits upon over a period of 60 days a number of workers of at least:

- 10, in enterprises that employed on average more than 20 but less than 100 workers during the calendar year prior to the dismissal;
- 10 % of the number of workers, in enterprises that employed on average at least 100 but less than 300 workers during the calendar year prior to the dismissal;
- 30, in enterprises that employed on average at least 300 workers during the calendar year prior to the dismissal.

Beside the requirements regarding information and consultation of the workers and notification to public authorities, which are described hereafter in the response to question 2, an employer who wants to proceed to collective dismissal is prior to it required to conduct a so called "activating policy" aimed at the re-employment of the dismissed workers (articles 31 to 41 of the 23 December 2005 Act concerning the generation pact; Royal Decree of 9 March 2006 concerning the activating policy in restructurings).

The notion of "collective dismissal" is in this context extended to the dismissal of: at least 6 workers if the enterprise employs more than 11 but less than 21 workers; at least half of the number of workers if the employer employs less than 12 workers [article 3 RD 9 March 2005].

The enterprise in restructuring that employs more than 20 workers has to create an employment cell (= a partnership involving at least 1 enterprise in restructuring and 1 representative trade union and, if existing, the sectoral training fund, plus the regional employment agency). The employment cell has to make every dismissed worker who has registered at the cell an outplacement offer. If the worker has at least a seniority of 1 year when the intention of the collective dismissal is announced, he is entitled to an "activation compensation" which replaces, entirely or partially, the normal severance pay.

2. **Consultation and information rights and notification to public authorities –** In your country, what are the basic rules and requirements regarding consultation and information rights and notification to public authorities in the event of enterprise reorganisation or restructuring of work processes? Have any issues been raised recently in this regard, or are there any new or interesting developments?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer:

The employer is obliged to inform and consult the workers representatives before deciding to proceed to a collective dismissal, when he is just contemplating it [article 6, al. 1 & 2, CLA nr. 24; article 2.1 Council Directive 98/95/EC]. The obligation applies regardless if the decision is taken by the employer or by an undertaking controlling the employer.

The consultation is organised collectively: it takes place in the work council of the enterprise or, in absence of a work council, with the trade union delegation, or, in absence of both work council and trade union delegation, in the comity for prevention and protection at the workplace. If such a comity is also lacking, the information and consultation is carried out with the personnel as a whole ore with its representatives.

The consultation should cover the possibilities to prevent or reduce the collective dismissal, as well as mitigating its consequences by recourse to accompanying social measures aimed at aid for redeploying or retraining of workers made redundant [article 6, al. 3, CLA nr. 24; article 2.2 Council Directive 98/95/EC].

The requirements of information and consultation are further more reiterated in article 66 of the Act of 13 February 1998 holding measures promoting the employment, the so called "Renault Act", and the Royal Decree of 24 May 1976 concerning collective dismissal, which instruments further hold the requirements of notification to the public authorities.

When an employer contemplating a collective dismissal informs the workers representatives in application of CLA nr. 24, he has to send a copy of this information by registered letter to the director of the subregional employment agency. A copy of this also has to be sent to the president of the board of the Federal Public Service (= the Ministry) of Employment, Labour and Social dialogue. The notification needs to mention, inter alia, the number of workers, the reason for the dismissal, the number of workers that are in the running for the dismissal, classified by gender, age group, job category and department, the period over which the dismissals will be carried out. The employer has to send a copy of the notification to the director of the subregional employment agency to the workers representatives. [article 66, § 2, al. 1 & 2, Renault Act and articles 6 to 8 RD of 24 May 1976]

As far as I know no issues have been raised recently in this regard.

3. **Insolvency Proceedings** – What are the main issues that have been raised in insolvency proceedings before judicial courts regarding the protection of workers' rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer:

An issue that has risen in insolvency proceedings concerns the possibility to reduce workers' debt claims by means of a by the majority of creditors accepted reorganisation plan in the context of an 'public judicial reorganisation procedure by collective agreement'.

The first years after a major reform in 2009 it apparently regularly happened that an employer contemplating to seek the protection of a judicial reorganisation procedure, dismissed workers without notice shortly before submitting the petition. Since the severance pay due originated before the opening of the procedure, the debt was considered as a debt 'in suspension'. Subsequently the severance pay was included as debt 'in suspension' in the reorganisation plan and was not infrequently substantially reduced.

In a particular case, a Commercial Court refused to homologate such a reorganisation plan, considering the employer was not acting in good faith but was making abuse of the procedure (Kh. Mechelen, 25 Octobre 2010, *Soc.Kron.* 2012, 132).

In an attempt to stop this practice, the legislator adopted in 2013 a provision determining that the reorganisation plan shall not provide in the reduction or quittance of a debt 'in suspension' originating from work performance [now article XX.73 (al. 4) of the Economic Rights Codex]. However, since the severance pay due doesn't originate from work performance but from an irregular termination of the employment relationship, legal doctrine came to the conclusion that the legislator missed the target.

The Constitutional Court judged that the possibility to reduce a debt 'in suspension' that finds its origine in an employment contract is in itself not unconstitutional but that the reduction of the debt shall not be of such a degree that the employee's subsistence security is endangered (CC, 2 June 2016, nr. 81/2016).

[source: Peeters, J., *Positie van de werknemers*, in X., Faillissement & Reorganisatie, Wolters Kluwer 2018, p. 6.E-34 e.v.]

I have no information whether that practice was continued since the aforementioned amendment to the law and, if so, how the Commercial Courts have ruled.

4. **Transfer of undertaking –** What are the main issues that have been raised before judicial courts regarding the transfer of undertakings and the protection of workers' rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer:

The protection of workers' rights in case of the transfer of undertakings is in the first place ruled by Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses. Directive 2001/23/EC is implemented by the CLA nr. 32*bis* of 7 June 1985, concluded in the National Labour Council, concerning the preservation of workers' rights in the event of a change of employer as a result of a transfer of undertaking under agreement and to regulate the rights of workers taken over by a takeover of assets after bankruptcy.

As appears from its title, unlike Directive 2001/23/EC the CLA nr. 32*bis* contains some rules concerning the preservation of some workers' rights in case of the transfer of a bankrupt undertaking [chapter III]. In addition, CLA nr. 102 of 5 October 2011, concluded in the National Labour Council, concerning the preservation of workers' rights in the event of a change of employer as a result of a transfer of undertaking under judicial authority, regulates the rights of workers taken over on the occasion of a transfer of undertaking in the context of an insolvency procedure as organised by title V/II of book XX of het Economic Rights Codex.

Most case law, especially of the Court of Justice of the EU, concerns the notion of and criteria for transfer of undertakings or part of undertakings.

An important issue that has risen in our country concerns the benefits under supplementary pension schemes.

As allowed by article 3.4 of Council Directive 2001/23/EC, the CLA nr. 32*bis* and the CLA nr. 102 don't regulate the transfer of the workers' rights arising from old-age, invalidity or survivors' benefits under supplementary company or intercompany pension schemes [article 4 CLA nr. 32*bis* and article 3 CLA nr. 102].

Our Court decided that as a result of this exclusion, the transferee isn't obliged to continue such schemes existing in the transferors' company (ECLI:BE:CASS:2016:ARR.20161114.2).

5. **Cross-border restructuring** – What are the main issues that have been raised before judicial courts regarding cross-border restructuring and the protection of workers' rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Although most restructurings that get attention in the media can be qualified as "cross-border restructuring", there is no evidence that cross-border restructuring causes the rise of specific issues before judicial courts.

Obviously, the normal rules concerning transfer of undertaking or collective dismissal have to be applied. In practice cross-border restructuring will always lead to collective dismissal, even when the criteria of a transfer of undertaking are fulfilled.

In this context it is interesting to mention that the aforementioned "Renault Act" was adopted as a result of the outrage caused by the sudden closure of the Renault plant in Vilvoorde near Brussels in 1997. Note that the stricter obligations concerning information and consultation of the workers and notification to the public authorities didn't prevent Ford to close its plant in Genk in 2014 and Audi to close its plant in Brussels recently.

6. **Adequate notice and severance pay –** What are the basic rules and requirements regarding adequate notice and severance pay in cases of collective redundancies related to enterprise reorganization and restructuring of operations? Have any issues been raised recently in this regard, or are there any new or interesting developments?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Adequate notice and severance pay in cases of collective redundancies are the same as in case of an individual dismissal.

The employer isn't allowed to give notice to the workers who are in the running for the intended collective dismissal before the expiration of a term of 30 days starting the day of the notification of the intention to the director of the subregional unemployment agency (see Q2); this doesn't apply in the case of a closure of the undertaking as result of a judicial decision [article 9 of the aforementioned Royal Decree of 24 May 1976]. The director of the subregional unemployment agency can both shorten or lengthen this term [article 10 RD 24 May 1976]. A notice given before the expiration of the term doesn't make the dismissal null though.

Workers made redundant in a case of collective dismissal receiving unemployment benefits are entitled to an additional compensation, a so called 'collective dismissal indemnity' [article 6 of the CLA nr. 10 of 8 May 1973, concluded in the National Labour Council, concerning the collective dismissal]. Some workers not receiving unemployment benefits are for this purpose assimilated, e.g. workers with a new employment in which they earn a lesser wage [article 7 CLA nr. 10].

The collective dismissal indemnity for a worker receiving unemployment benefits amounts to half of the difference between the net reference wage (= gross monthly wage, limited to € 4.151,47 as per 1 May 2024, minus the personal social security contribution and the tax withholding) and the unemployment benefits he is receiving [articles 8 & 9 CLA nr. 10]. The indemnity is due during a period of 4 months, starting the day after the termination of the employment or after the end of the period covered by the severance pay; if the term of notice or the period covered by severance pay exceeds 3 months, the period of 4 months is reduced with the exceeding part [article 11 CLA nr. 10].

Workers victim of the closure of the undertaking or an assimilated restructuring are entitled to a so called 'closure indemnity' [articles 10, 11 & 18 of the Act of 26 June 2002 concerning the closure of undertakings].

Closure of the undertaking is defined as the definitive shutdown of the principal activity of an undertaking or the reduction of the number of workers beneath ¼ of the number employed on average during the 4 trimesters preceding the trimester during which the closure took place [article 3 Act of 26 June 2002 and articles 2 &3 of the Royal Decree of 23 March 2007 to execute the act of 26 June 2002 concerning the closure of undertakings].

The closure indemnity is in principle owed to workers employed in undertakings that employed on average at least 20 workers during the 4 trimesters preceding the trimester in which the definitive shutdown of the principal activity took place or in case of closure following bankruptcy.

As per 1 May 2024 the closure indemnity amounts to € 198,95 per year of seniority in the undertaking, with a maximum of 20 years, plus a surcharge of € 198,95 per age year above 45 that the worker was employed in the undertaking, with a maximum of 19 years [article 23 Act of 26 June 2002].

The closure indemnity is due by the employer, but is in default of the employer paid by the so called 'Closure Fund' [articles 18 & 33 Act of 26 June 2002].

The aforementioned collective dismissal indemnity isn't due if the worker in entitled to the closure indemnity [article 12 CLA nr. 10].

7. **Others –** Have any other interesting issues relating to these matters been raised before the courts (e.g. compliance, sanctions and penalties, collective bargaining safeguards, non-discrimination, rights of temporary agency workers during restructuring, sectoral specificities…)? Are there any new or interesting developments in this area that you would like to refer to?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

> Answer:
>
> I haven't encountered any other interesting issues or new developments in this area.

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FINLAND

Respondent: Outi Anttila, Chairperson, Labour Court

1. **General** – Is the notion of "restructuring" defined at the national level? In your country, what are the basic rules and requirements applicable to enterprise reorganization and restructuring of operations?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer: The notion is not defined in legislation.

The Act on Co-operation within Undertakings regulates the employer's obligation

- to engage in regular *dialogue* with the personnel representative in order to develop the operations of the undertaking or corporation and to develop the workplace community in matters falling within the scope of the Act. Dialogue refers to the handling of matters by the employer and the personnel representative, which promotes the sufficient and timely flow of information between employer and employees, along with the opportunity of personnel to influence matters concerning their work, working conditions or position. Such meetings shall be held at least once every quarter unless otherwise agreed between the employer and the personnel representative. The employer and the personnel representative shall engage in regular dialogue on, e.g., the development prospects and financial situation of the undertaking or corporation; the rules, practices and policies applied at the workplace; the use of personnel and the personnel structure; the competence requirements of personnel and the development of competence; the maintenance and promotion of well-being at work, to the extent that the matter is not dealt with in other legislation. (Chapter 2)
- to initiate *change negotiations* when considering the dismissal, lay-off, reduction to part-time employment or unilateral modification of an essential term in the employment contract of one or more employees for financial or production-related grounds. The obligation to negotiate on changes also includes significant changes in duties, working methods or arrangements related to work, work premises or regular working hours falling within the scope of the employer's power of management, when these are caused by, e.g., the closure of the undertaking or corporation or any part thereof, its transfer to another location, or the expansion or reduction of its operations; acquisitions of machinery and equipment or the introduction of new technology; changes in the organisation or arrangements of work; changes in service

production or the product range; the introduction of external labour or changes in its use. (Chapter 3)

The amendments to the Co-operation Act were among the current Government's labour market reforms. The aim was to reduce the administrative burden caused by legislation, especially in companies with fewer than 50 employees. Previously, the Co-operation Act has applied to companies, corporations and branches that regularly employ at least 20 people. From 1 July 2025, the Co-operation Act applies primarily to companies, corporations and branches that regularly employ at least 50 employees. However, the Act will lay down certain obligations for employers that regularly employ 20–49 people (lighter procedure of continuous dialogue; change negotiations only in situations where the employer is considering measures to reduce the use of labour affecting at least 20 employees over a 90–day period).

The Act on Cooperation within Government Agencies and Public Services applies to offices or public services.

There are also **collective agreements** on co-operation in many sectors (e.g. municipal sector).

According to **the Employment Contract Act**, Chapter 7, Section 3 the employer may terminate the employment contract if the work to be offered has diminished substantially and permanently for financial or production-related reasons or for reasons arising from reorganisation of the employer's operations. The employment contract shall not be terminated, however, if the employee can be placed in or trained for other duties. At least the following shall not constitute grounds for termination: 1) either before termination or thereafter the employer has employed a new employee for similar duties even though the employer's operating conditions have not changed during the equivalent period; or 2) no actual reduction of work has taken place as a result of work reorganisation.

According to the Employment Contract Act, Chapter 7, Section 1, the employer shall not terminate an indefinitely valid employment contract *without proper and weighty reason*. This general provision concerning grounds for termination must be taken into account when assessing the appropriateness and weight of the termination grounds in each individual case. The evaluation of the appropriateness and weight of the grounds for termination depends on whether the reason is related to the employee or based on economic or production-related grounds. Regardless of the type of reason used, the required appropriateness and weight of the grounds generally means, among other things, that the grounds must not be discriminatory. Appropriateness and weight also mean that the grounds for termination must not conflict with the employer's duty of loyalty arising from the employment contract. (Gov. prop 157/2000.) The Supreme Court has in its judgement KKO 2016:15 stated, that since the grounds for dismissal must be objective even when the dismissal is based on financial and production reasons, the criteria used when selecting those to be dismissed must not be discriminatory or otherwise inappropriate.

In the established case law of the Supreme Court, it has consistently been held that an employer *may not unilaterally change the essential terms of the employment relationship or employment contract* (see Supreme Court decisions KKO 2016:80, KKO 2021:76, and KKO 2023:76). Unilateral changes to such terms require, among other things, compliance with the notice period and the existence of grounds equivalent to those required for termination. For instance, in the case KKO 2023:76 the employer had unilaterally changed the working hours system for the employees, resulting in the addition of a 30-minute unpaid lunch break to the workday, whereas previously, employees had been allowed to eat quickly during working hours. The Supreme Court held that the majority of the employment contracts included a binding term regarding the form of working hours, which the employer was not entitled to unilaterally change.

In the case KKO 2016:80, following the co-operation negotiations, the employer had informed its employees that the workplace would be closed and that the employees would be transferred to work at another company location in a different city. An employee whose employment contract specified the old location as the place of work did not report to the new location after the announced relocation date. The company considered the employee to be absent from work without justification and terminated the employment contract.

The Supreme Court held that, as an alternative to dismissal, an employer may unilaterally change an essential term of the employment contract if the employer clearly informs the employee of the grounds for dismissal, the term being changed, the date the change takes effect, and the consequences should the employee not accept the new term. The company had, in principle, had the right to terminate the employment contract due to changes in its operations, or alternatively, to change the contractual term concerning the place of work by observing the notice period. However, because the company failed to properly invoke the grounds for dismissal and terminated the employment contract before the end of the notice period, the employee was entitled to compensation for the unjustified termination of the employment contract as well as salary for the notice period.

2. **Consultation and information rights and notification to public authorities –** In your country, what are the basic rules and requirements regarding consultation and information rights and notification to public authorities in the event of enterprise reorganisation or restructuring of work processes? Have any issues been raised recently in this regard, or are there any new or interesting developments?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer: See above question 1 on the employer´s duty to initiate *change negotiations* in the event of, e.g., enterprise reorganisation or restructuring of work processes. Change negotiations shall be initiated when the employer is considering measures which may lead to the dismissal, lay-off, reduction to part-time employment or unilateral amendment of an essential term of the employment contract of one or more employees for financial or production-related grounds (The Act on Co-operation within Undertakings, Section 17).

Change negotiations on changes shall be conducted between the employer and the personnel representative representing the employees affected by the negotiations. If the employees do not have a representative, the change negotiations shall be conducted with all of the employees affected by the negotiations. If the measure being considered by the employer concerns an individual employee or individual employees, the negotiations may be conducted between the employer and the employee or employees concerned. In this case, however, the employee or employees have the right to demand that the negotiations be attended by a personnel representative or be conducted between the employer and the personnel representative. (Section 18)

Before initiating change negotiations, the employer shall submit a written negotiation proposal, which shall indicate at least the starting time and place of the change negotiations and a proposal of the main points to be discussed in the negotiations. If the change negotiations concern the dismissal, lay-off, reduction to part-time employment or unilateral amendment of an essential term of the employment contract of one or more employees, the negotiation proposal shall be submitted at least five days before the start of the negotiations. The negotiation proposal shall indicate: 1) the planned measures and their grounds; 2) a preliminary estimate of the number of employees affected by the measures, broken down by personnel group and measure; 3) a description of the principles according to which the workers affected by the measure will be determined 4) an estimate of the schedule for implementing the measures.

The negotiation proposal shall also be submitted to the Employment and Economic Development Office no later than at the start of the negotiations on changes. (Section 19)

The change negotiations shall address at least the grounds and impact of and alternatives for the measures targeting the personnel. (Section 20)

A personnel representative or an employee participating in the negotiations shall have the right to submit written proposals and alternative solutions for consideration in the change negotiations. A proposal or alternative solution shall be submitted well in advance of the meeting at which the matter is to be discussed. If the employer does not consider the proposal or alternative solution to be appropriate or feasible, it shall provide a written justification of sufficient length for its views during the negotiations. (Section 22)

After the negotiations concerning the dismissal, lay-off, reduction to part-time employment or unilateral amendment of an essential term of the employment contract of the employees, the employer shall, within a reasonable time, provide the parties to the negotiations with an assessment of the following matters: 1) the content of the decision being considered by the employer; 2) the number of employees subject to the dismissal, lay-off, reduction to part-time employment or unilateral change of an essential term of the employment contract by personnel group or function; 3) the duration of any lay-offs; and 4) the period within which the employer intends to implement its decision. (Section 25)

Personnel representatives are entitled to consult the experts of the operational unit concerned and, as far as possible, other experts within the undertaking and request information from them when preparing for a dialogue on the development of the operations of the undertaking and the workplace community, and for preparing for negotiations on changes and during the negotiations themselves when necessary with regard to the matter being discussed. (Section 36)

The employer is not obligated to provide the employees or personnel representatives with information if its dissemination would, in an objective assessment, cause significant damage or harm to the undertaking or its operations. (Section 41)

To the extent necessary, the employer shall inform the personnel of *the matters discussed in the dialogue* and the measures found necessary based on the dialogue. The employer and the personnel representative shall endeavour to agree on the principles for informing the personnel. The nature and scope of the matter discussed in the dialogue, as well as the significance of the matter to the personnel, shall be taken into account in informing the personnel. (Section 15)

The employer must notify the employment authorities without delay of any dismissals of employees if the number of employees to be dismissed on financial or production-related grounds, is at least ten. The notification must include the number of employees to be dismissed, their places of residence, occupations or job duties, and the dates on which their employment relationships will end. (The Employment Contracts Act, Chapter 9, Section 3 a)

3. **Insolvency Proceedings** – What are the main issues that have been raised in insolvency proceedings before judicial courts regarding the protection of workers' rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer: According to the Employment Contract Act, Chapter 7, Section 3 the employer may terminate the employment contract if the work to be offered has diminished substantially and permanently *for financial* or production-related *reasons* or for reasons arising from reorganisation of the employer's operations.

Termination for financial reasons requires both a deterioration in the employer company's economic operating conditions and a genuine cost saving achieved by the measure. The unprofitability must be foreseeable at the time of termination. Without sufficient and credible evidence of the employer's financial situation, an economic ground for termination cannot be established. The assessment of an economic ground for termination is based on the evaluation and anticipation of the company's or organization's insufficient profitability. This profitability assessment may rely on both the company's own and competitors' comparable financial statements, as well as on other reports, statistics, expert opinions, and documents relating to the company's financial condition.

The requirement for a *genuine ground* for termination means that even an employer operating at a loss is not entitled to terminate employees (if no production-related grounds exist either) if the resulting cost savings do not contribute to improving the company's or organization's financial condition. The conditions for termination are not met if the termination has no real effects.

The employer must demonstrate that its operations have become sustainably and sufficiently unprofitable to justify the economic ground. Even if the company experiences significant monthly fluctuations in results and production volume, the situation can usually only be assessed over a period of at least one financial year. Profitability must be monitored over a sufficiently long period, taking into account the nature of the business. The necessity of cost savings must be proven when invoking an economic ground for termination, even if the company is operating at a loss. No reliable assessment of the adequacy of the grounds for termination can be made from financial indicators over a short period. The unprofitability must not be temporary, and the overall assessment must also consider the company's level of solvency, earnings history, and future expectations over a longer time frame.

If the employer achieves the necessary savings through other means (e.g., layoffs, voluntary resignations, or similar measures), dismissals can no longer be relied upon. A significant and permanent reduction in the need for savings at the time of termination prevents later dismissals and obliges the employer to cancel any already issued terminations. (On the obligation to cancel terminations, see e.g., Supreme Court decisions KKO 1993:97, KKO 2018:26, and Labour Court decisions TT 2011:37 and TT 2019:48.)

An employer also has the right to terminate employees in order to prevent profitable operations from becoming unprofitable, but the prerequisites for termination are assessed more strictly in companies that are still profitable. The company does not have to be operating at a loss before the right to terminate arises - a realistic and genuine threat to the viability of business operations is sufficient. The less profitable the operations are, the easier it is to convince the court of the necessity of the management decision and the subsequent terminations. Correspondingly, proving the grounds becomes more difficult the more profitable the company is. The situation does not need to amount to insolvency or bankruptcy; a sufficient risk of losing market share (KKO 2005:29) or weakened prospects (TT 2010:49) is enough. Grounds may also include more efficient allocation of resources (KKO 2013:48) or the need to improve profitability or achieve cost savings to secure the continuity of operations (KKO 1995:141). According to the legal principle expressed in the Supreme Court precedent KKO 1990:122, an employer may not terminate an employee on the basis of economic or production-related factors that the employer should have known at the time the employment contract was concluded.

However, the employer has, under its managerial authority, the right to decide on the scope and organization of its business operations. The employer may, on business management grounds, reorganize the company and implement changes that reduce the need for labor.

The employer is also entitled to lay off an employee if the employer has a financial or production-related reason for terminating the employment contract (ECA, Chapter 5).

The employer is entitled to terminate the employment contract of *a shop steward* or an elected representative on financial or production-related reasons or for reasons arising from reorganisation of the employer's operations only if the work of the shop steward or the elected representative ceases completely and the employer is unable to arrange work that corresponds to the person's professional skill or is otherwise suitable, or to train the person for some other work.

When terminating employees for economic and production-related reasons, the employer has the right to choose which employees will be dismissed. However, in making this selection, the employer must not act in an improper or discriminatory manner. Furthermore, many collective agreements contain provisions on the order of workforce reductions.

In assessing the appropriateness of the selection criteria used by the employer, case law has considered both the employer’s operational needs and the employees’ suitability (see KKO 1995:20), as well as the obligation to act impartially and the prohibition of discrimination (see KKO 1998:130). The mere fact that the employer, in the course of dismissing an employee on economic and production-related grounds, has violated a collective agreement provision concerning the order of workforce reductions has not, in itself, been considered sufficient to render the termination unjustified or to entitle the employee to compensation on that basis.

4. **Transfer of undertaking –** What are the main issues that have been raised before judicial courts regarding the transfer of undertakings and the protection of workers’ rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer: The Transfer of Undertakings is regulated in Chapter 1, Section 10 of the Employment Contracts Act, which in part implements the Council Directive 77/187/EEC as well as its amending Directive 98/50/EC, which have since been codified into Council Directive 2001/23/EC (Transfer of Undertakings Directive).

Provisions on informing personnel representatives are laid down in Section 26 of the Co-operation Act.

In the Supreme Court decision **KKO 2018:64,** a city and Association B had agreed on organizing after-school activities for schoolchildren. Person A had worked as an after-school group instructor employed by Association B. After Association B ceased organizing the after-school activities, the city entered into an agreement with Association C to take over the service, and Association B terminated A's employment contract. The Supreme Court held that this constituted a transfer of undertaking and that Association C was liable to compensate A for the unjustified termination of the employment contract.

The Supreme Court stated that the after-school activities in question were primarily labor-intensive but also required suitable premises and furnishings. Association C began providing the after-school services in the same premises and using the same furnishings as Association B, and the client base had transferred from B to C. The activity remained identical both before and after the change in operator and had not been interrupted in any way relevant to the legal decision. On the other hand, most of B's personnel did not transfer to C, and apart from the premises and furnishings, no other tangible or intangible assets were transferred. However, considering all the relevant facts characterizing the transaction, and taking into account the nature of the undertaking or business involved, the Court found that the unit engaged in after-school activities had retained its identity to such an extent that a transfer of undertaking had occurred.

In the Supreme Court case **KKO 2018:65**, Company X had provided enhanced service housing services under a service purchase agreement with a joint municipal authority, operating in premises rented by the authority. Person A had worked in the service facility employed by Company X. The municipal authority notified the company of the termination of the service agreement and announced that it would take over the operations conducted at the facility. Company X terminated A's employment contract to coincide with the termination of the service agreement. The Supreme Court held that this was a transfer of undertaking, and that the municipal authority was liable to compensate A for the unjustified termination of the employment contract.

The Supreme Court found that the municipal authority had continued providing the enhanced service housing in the same premises and using the same equipment as Company X had used, and the client base remained unchanged. The activity remained the same before and after the change in operator, with no interruption. On the other hand, Company X transferred only minimal tangible and intangible assets to the municipal authority, and none of X's personnel had transferred to the authority. The Supreme Court stated that enhanced service housing requires purpose-designed buildings, specialized aids, and equipment. Thus, this was not a labor-intensive economic entity whose identity is primarily based on its workforce. Consequently, the fact that most of Company X's staff were not hired by the municipal authority was not decisive. The Supreme Court, assessing the totality of the circumstances, and considering the nature of the business, concluded that the transferred unit had retained such similarity that a transfer of undertaking had taken place.

In the Supreme Court case **KKO 2018:66**, Company X had been responsible, based on an agreement with the city, for organizing enhanced elderly care and catering services in a municipal service home. Subsequently, the agreement was amended so that Company X was responsible only for part of the service home's operations, while the city assumed responsibility for the rest, following changes in the services provided. Eventually, the city took over the entire service home, with the enhanced care and catering services continuing unchanged in content. The employment contracts of A, B, and C, who had worked for Company X in enhanced elderly care roles, were terminated. It was concluded that this was a transfer of undertaking, and the city was liable to compensate A, B, and C for the unjustified termination of their employment contracts.

In the Supreme Court case KKO 2020:8 employee A had worked as a truck driver for Company B Ltd, being the only external employee**.** During the employment relationship, B Ltd had failed to pay A certain outstanding wages. Subsequently, B Ltd sold the truck that A had been driving to Company C Ltd, where A continued to work immediately after the sale, again as the only external employee, driving the same truck and performing deliveries for the same customer as during his employment with B Ltd. The Supreme Court held that this constituted a transfer of undertaking, even though B Ltd's transport license had not been transferred to C Ltd. Therefore, C Ltd was jointly liable with B Ltd to pay A the outstanding wages he had claimed.

According to Section 5 of the Act on Collective Agreements, if the holder of a business has been a party to or otherwise bound by a collective agreement, all the rights and obligations arising from that agreement transfer to their successor.

In its decision **TT 2021:85**, the Labour Court held that the provision concerns solely the protection of employees transferred in connection with a transfer of undertaking. The obligations related to the collective agreement applied in the transferred business did not extend to employees other than those who were transferred, as far as the transferee referred to in the provision is concerned.

5. **Cross-border restructuring –** What are the main issues that have been raised before judicial courts regarding cross-border restructuring and the protection of workers' rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer: **The Act on Co-operation within Finnish and Community-wide Groups of Undertakings** lays down provisions on the co-operation procedures between the undertaking's management and personnel of both Finnish and community-wide groups of undertakings utilised to ensure the exchange of opinions and dialogue between the employees' representatives and undertaking's management concerned.

The purpose of **The Act on Employee Involvement in European Companies and European Cooperative Societies as well as on Employer Obligations and Employee Involvement in Cross-Border Restructuring of Companies** is to provide for the arrangement of employee involvement in European companies, European cooperative societies and cross-border mergers, divisions and transfers of registered offices of limited liability companies, as well as to ensure that employees are informed and consulted about cross-border restructurings of companies planned by the employer and to safeguard the position of employees in such restructurings.

There is no case law on these matters.

6. **Adequate notice and severance pay –** What are the basic rules and requirements regarding adequate notice and severance pay in cases of collective redundancies related to enterprise reorganization and restructuring of operations? Have any issues been raised recently in this regard, or are there any new or interesting developments?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer:

1) Adequate notice: After the negotiations on changes concerning the dismissal, lay-off, reduction to part-time employment or unilateral amendment of an essential term of the employment contract of the employees, the employer shall, within a reasonable time, provide the parties to the negotiations with an assessment of, e.g., the content of the decision being considered by the employer; the number of employees subject to the dismissal, lay-off, reduction to part-time employment or unilateral change of an essential term of the employment contract by personnel group or function; the duration of any lay-offs; and the period within which the employer intends to implement its decision. (The Co-operation Act, Section 25)

   An employment contract which has been concluded for an indefinite period or is otherwise valid for an indefinite period is terminated by giving notice to the other contracting party.

   If the employer is not obliged to negotiate the grounds for dismissal with the employees or their representatives, the employer must explain the grounds for dismissal and the alternatives to the employee being dismissed. (The Employment Contracts Act, Chapter 9, Section 3)

   The employer is obligated to inform any employee who, at the time of dismissal, is at least 55 years old and whose employment relationship has lasted for at least five years either continuously or with interruptions of no more than 30 days in total, of their right to transition training, as well as to transition allowance as provided in the Unemployment Security Act. The employer is also obligated to inform the employee of their right to an employment plan as defined in the Act on Public Employment and Business Service. (The Employment Contracts Act, Chapter 9, Section 3 b)

   A notice on termination of an employment contract shall be delivered to the employer or its representative, or to the employee, in person. If this is not possible, the notice may be delivered by letter or electronically. The notice is then deemed to have been received by the recipient at the latest on the seventh day after the notice was sent. If the employee is on annual vacation or on a holiday of at least two weeks given in order to balance out working hours, termination of the employment relationship based on a notice delivered by letter or electronically shall not be regarded as delivered until the date following the end of the vacation or holiday at the earliest. (The Employment Contracts Act, Chapter 9, Section 4)

At the employee's request, the employer shall notify the employee without delay in writing of the date of termination of the employment contract and of the grounds for termination or cancellation known by the employer to have caused the termination. (The Employment Contracts Act, Chapter 9, Section 5)

Unless otherwise agreed, the notice periods to be observed by the employer are the following if the employment relationship has continued uninterruptedly: 1) 14 days, if the employment relationship has continued for up to one year; 2) one month, if the employment relationship has continued for more than one year but no more than four years; 3) two months, if the employment relationship has continued for more than four years but no more than eight years; 4) four months, if the employment relationship has continued for more than eight years but no more than 12 years; 5) six months, if the employment relationship has continued for more than 12 years. (The Employment Contracts Act, Chapter 6, Section 3)

2) Severance pay: An employer which terminates an employment contract without observing the notice period shall pay the employee full pay for a period equivalent to the notice period as compensation. (The Employment Contracts Act, Chapter 6, Section 4)

   The employee is entitled to fully paid leave in order to participate during his or her period of notice in the preparation of an employment plan, in labour market training or related practical training or on-the-job learning, or to engage in jobseeking and attend job interviews on his or her own initiative or at the initiative of the authorities, or to attend re-assignment coaching. (The Employment Contracts Act, Chapter 7, Section 12)

   The employer is obligated to offer an employee the opportunity to take part in employer-funded coaching or training to further the prospects of finding employment if: 1) the employer regularly employs at least 30 people; and 2) the employee has been employed by the employer for an uninterrupted period of at least five years before the termination of the employment relationship. (The Employment Contracts Act, Chapter 7, Section 13)

   Severance packages offered by the employer can include additional benefits, such as training assistance.

   If the employer has terminated an employment contract contrary to the grounds laid down in the Employment Contracts Act, it must be ordered to pay compensation for unjustified termination of the employment contract. The exclusive compensation must be equivalent to the pay due for a minimum of three months or a maximum of

24 months. Nevertheless, the maximum amount due to be paid to shop stewards elected on the basis of a collective agreement or to elected representatives is equivalent to the pay due for 30 months.

Collective agreements also generally contain provisions on the matters described above.

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▶ GERMANY

Respondent: Claudia Wemheuer, Federal Labour Court Judge

1. **General –** Is the notion of “restructuring” defined at the national level? In your country, what are the basic rules and requirements applicable to enterprise reorganization and restructuring of operations?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer:

The term 'restructuring' is not defined in German law. Instead, it encompasses various measures taken by employers at company level (so-called *Umwandlungen*) or at operational level (so-called *Betriebsänderungen*). According to case law from the Federal Labour Court, *Betriebsänderungen* essentially refer to any actual change in operational organisation, structure, area of activity, working methods, production or location (e.g. Federal Labour Court decision of 22 March 2016, ref. 1 ABR 12/14). Whether and which participation rights of works councils or individual employee protection provisions are triggered by a restructuring measure depends on whether it takes place exclusively at company level, at plant level, or at both.

1. The possible forms of *Umwandlungen* are governed by the Transformation Act (hereinafter *Umwandlungsgesetz*), specifically Sections 1, 2, 123, 174 and 190. These include mergers, divisions, asset transfers and changes of legal form. Any *Umwandlung* that deviates from this is only possible if expressly permitted by another federal or state law.

2. *Betriebsänderungen* are governed by Section 111 of the Works Constitution Act (hereinafter *Betriebsverfassungsgesetz*). Such changes include the restriction of operations (including through staff reductions), closure of the entire business or significant parts thereof, relocation of the entire business or significant parts thereof, merger with or division of other businesses, fundamental changes to the business organisation, purpose or facilities, and introduction of new working methods and production processes. The provision does not contain a legal definition of the term *Betriebsänderung*, but merely lists examples in Section 111 (3). This list is not exhaustive. In the event of a dispute, labour courts must assess whether a restructuring measure not covered by the list constitutes a *Betriebsänderung* within the meaning of this provision, based on the circumstances of the individual case (e.g. Federal Labour Court decisions of 22 March 2016 and 18 March 2008, ref. 1 ABR 12/14 and 1 ABR 77/06).

3. Some laws refer to Section 111 of the *Betriebsverfassungsgesetz* when addressing the question of when a *Betriebsänderung* has occurred. Examples include the Insolvency Code (hereinafter *Insolvenzordnung*), and the Executives’ Committee Act (hereinafter

Sprecherausschussgesetz) in Section 32 (2). Other laws use the terminology of Section 111 of the *Betriebsverfassungsgesetz*, such as the European Works Councils Act (hereinafter *Europäisches Betriebsräte-Gesetz*), in Section 29.

4. According to Section 613a of the German Civil Code (hereinafter *Bürgerliches Gesetzbuch*), the mere transfer of business (in German *Betriebsübergang*) as a whole does not constitute a change in operations within the meaning of Section 111 of the *Betriebsverfassungsgesetz*, because it merely involves a change of employer (Federal Labour Court decision of 15 December 2011, ref. 8 AZR 692/10). However, a transfer of business may be accompanied by restructuring measures, which constitute operational changes within the meaning of Section 111 of the *Betriebsverfassungsgesetz*, triggering participation rights for the works council, as well as individual legal consequences for employees affected by the transfer. The transfer of one or more parts of a business is usually associated with the division of the operation, and consequently with an operational change pursuant to Section 111.

5. Operational changes and their consequences may also be covered by collective agreements, such as rationalisation protection agreements.

2. **Consultation and information rights and notification to public authorities –** In your country, what are the basic rules and requirements regarding consultation and information rights and notification to public authorities in the event of enterprise reorganisation or restructuring of work processes? Have any issues been raised recently in this regard, or are there any new or interesting developments?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer

1. *Umwandlungen* trigger information rights for the works council/general works council. These rights are particularly regulated in Sections 5 (3), 126 (3) and 194 (2) of the *Umwandlungsgesetz*. According to these provisions, the respective transformation agreements or their drafts concerning the planned transformation measure must be submitted to the relevant works council/general works council at least one month before the resolution on the transformation agreement is made. These agreements must detail the consequences for employees and their representatives, as well as the planned measures (Sections 5 (1) No. 9, 126 (1) No. 11 and 194 (1) No. 7).

2. Planned *Betriebsänderungen* trigger the works council's co-determination rights. The legal basis for this is found in Sections 111 to 113 of the *Betriebsverfassungsgesetz*. However, the works council's co-determination rights are limited when it comes to whether and how the employer implements a *Betriebsänderung*. The works council cannot prevent a *Betriebsänderung* against the employer's will or enforce an alternative implementation. The

employer is only obliged to inform the works council of the planned change and consult with them. The purpose of this consultation is to reach a reconciliation of interests (in German *Interessenausgleich*) in accordance with Section 112 (1). The *Interessenausgleich* serves to reach an agreement between the works council and the employer on how, when and whether the planned change is to be implemented (e.g. Federal Labour Court decision of 3 Mai 2006, ref. 1 ABR 15/05). However, participation rights under Section 111 et seq. require that the company has more than twenty employees with voting rights. Smaller companies shall be protected from excessive financial burdens, such as those arising from the implementation of a social compensation plan (in German *Sozialplan*) under Sections 112 and 112a (e.g. Federal Labour Court decision of 9 November 2010, ref. 1 AZR 708/09). For more information on the purpose and content of social compensation plans, see question 6, no. 2 (a). In companies with fewer than twenty employees with voting rights, the works council has no participation rights in the event of *Betriebsänderungen* as defined in Sections 111 et seq.

3. In companies with normally more than one hundred permanent employees, the works council is required to establish an finance committee (in German *Wirtschaftsausschuss*, Section 106 of the *Betriebsverfassungsgesetz*). Responsible for discussing economic matters such as the introduction of new working methods, the restriction, closure or relocation of businesses or parts of businesses, the merger or division of companies and businesses, and changes to the business organisation or purpose, the *Wirtschaftsausschuss* informs the works council of the outcome of these discussions with the employer.

4. If the *Betriebsänderung* results in mass dismissals as defined in Section 17 of the Protection Against Dismissal Act (hereinafter *Kündigungsschutzgesetz*), the employer must notify the employment agency in accordance with Sections 17 (1) and (3) (in German so-called *Anzeigeverfahren*) and inform the works council in accordance with Section 17 (2) (in German so-called *Konsultationsverfahren*). These notification and consultation procedures serve to implement Council Directive 98/59/EC.

5. In addition to the above provisions, numerous other laws include consultation and information rights, as well as notification obligations, in relation to restructuring. These include, in particular, the following:

a) The *Sprecherausschutzgesetz* regulates the right of executive employees to be informed about economic matters and planned operational changes (Section 32). These employees have been assigned significant employer responsibilities, including the independent dismissal of employees. Due to potential conflicts of interest, they are excluded from the personal scope of the *Betriebsverfassungsgesetz*. The role of the executives committee is primarily to provide information and advice. the S*precherausschutzgesetz* does not confer any participation or co-determination rights.

b) The Co-determination Act (hereinafter *Mitbestimmungsgesetz*) respecting employees' co-management requires companies of over 2000 employees to have half the supervisory board of directors as representatives of workers. It applies to all German capital companies, including public companies *(Aktiengesellschaften)*, cooperatives *(eingetragene*

Genossenschaften), private limited companies *(Gesellschaften mit beschränkter Haftung)* and partnerships *(Kommanditgesellschaften auf Aktien)* if they have more than 2000 employees.

c) The *Europäische Betriebsräte-Gesetz* implements Council Directive 94/45/EC, which establishes a European Works Council or a procedure for informing and consulting employees in Community-scale undertakings and groups of undertakings. The Act establishes the conditions necessary to ensure and enhance the information and consultation rights of employees in such undertakings across national borders (Sections 1, 29 et seq., 36 et seq.).

d) Since 29 December 2004, companies based in Germany have had access to a new type of company: the European Company. This legal form requires a cross-border connection. Employee participation in a European Company is governed by German law through the Act on Employee Participation in a European Company *(Gesetz über die Beteiligung der Arbeitnehmer an einer Europäischen Gesellschaft, hereinafter SEBG)*. This Act transposes Council Directive 2001/86/EC into German law. Its purpose is to protect employees' right to participate in corporate decision-making within the European Company. This is primarily achieved through an agreement on employee participation in the European company. The aim is to ensure that the qualitative elements of the previous co-determination system are maintained. This will be determined on the basis of the relevant national law. These components include the proportion of employees on the supervisory board, the number of employee representatives, and the participation of external trade union and senior executive representatives. If no such agreement is reached, employee participation in the European Company is ensured by a statutory fallback solution (Section 1 (2)). In this case, employee co-determination on the supervisory or administrative board is generally based on the proportion of employee representatives from the founding companies that is highest. A works council composed of employees of the company and its subsidiaries must be established in the European company (Section 22). For example, the works council of the European Company is responsible for matters concerning the company itself, one of its subsidiaries, or one of its establishments in another Member State. Participation rights are structured as either information and consultation rights (Sections 28 and 29) or co-determination rights for employee representatives delegated by the works council to the European Company's supervisory or administrative body (Sections 34 to 38).

e) The Act on Employee Participation in the Event of Cross-Border Mergers *(Gesetz über die Mitbestimmung der Arbeitnehmer bei einer grenzüberschreitenden Verschmelzung, hereinafter MgVG)*, regulates employee participation in the corporate bodies of a company resulting from a cross-border merger. Since 31 January 2023, the co-determination requirements of Directive (EU) 2019/2121 as they relate to cross-border conversions, mergers and divisions, have been incorporated into German law through the *MgVG* and the Act on Employee Participation in the Event of Cross-Border Changes of Legal Form and Cross-Border Splits *(Gesetz über die Mitbestimmung der Arbeitnehmer bei grenzüberschreitendem Formwechsel und grenzüberschreitender Spaltung, hereinafter MgFSG)*. While the *MgVG* sets out the co-determination standards for cross-border mergers, the *MgFSG* applies to corporate co-determination in cross-border divisions and changes of legal form within Germany. Disputes arising from the *MgVG* and *MgFSG* are decided by the labour court in a judicial process known as the *Beschlussverfahren* (Section 2a of the Labour Court Act, hereinafter *Arbeitsgerichtsgesetz*).

3. **Insolvency Proceedings** – What are the main issues that have been raised in insolvency proceedings before judicial courts regarding the protection of workers' rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer:

With regard to employee rights in insolvency, particular reference should be made to the following decisions of the Federal Labour Court. These decisions deal with the insolvency administrator's right of termination and the reduced protection against dismissal (Sections 113 and 125 of the *Insolvenzordnung*).

1. According to case law from the Federal Labour Court (c.f. decisions of 25 May 2022, ref. 6 AZR 224/21, and 23 February 2017, ref. 6 AZR 665/15), insolvency itself is not grounds for dismissing an employee. In the event of dismissal for operational reasons, the insolvency administrator must generally comply with the same legal provisions as an employer outside of insolvency proceedings.

2. However, pursuant to Section 113 of the *Insolvenzordnung*, an insolvency administrator may terminate an employment relationship without regard for a contractually agreed term or exclusion of ordinary termination, provided that three months' notice is given by the end of the month and there is a reason for termination.

The Federal Labour Court has ruled that this right of termination cannot be excluded by an employment contract, collective agreement or similar (decisions of 16 May 2019, ref. 6 AZR 329/18 and 8 November 2022, ref. 6 AZR 15/22). The situation is different if there is a statutory prohibition on dismissal. For example, members of the works council are granted special protection against dismissal under Section 15 of the *Kündigungsschutzgesetz*, including in cases of insolvency (Federal Labour Court, 17 November 2005, ref. 6 AZR 118/05).

3. In principle, an employment contract cannot be terminated before the agreed start date unless the parties to the contract have expressly agreed to this, or unless it is clear from the circumstances. However, according to case law from the Federal Labour Court, this rule does not apply in the event of insolvency. The provisions of Section 113 of the *Insolvenzordnung* also apply to terminations before the start of the employment relationship (Federal Labour Court decision of 23 February 2017, ref. 6 AZR 665/15).

4. In its decision of 17 August 2023 (ref. 6 AZR 56/23) the Federal Labour Court has clarified that an *Interessenausgleich* (for the *Interessenausgleich* see question 2, no. 2) agreed between the insolvency administrator and the works council under Section 111 of the

Betriebsverfassungsgesetz, relating to a planned operational change and containing a list of employees to be dismissed as a result, suggests that these employees are no longer required. The prerequisite is that the insolvency administrator and the works council have effectively concluded the *Interessenausgleich*. If this condition is met, it is the employee bringing the action who must rebut the legal presumption regarding loss of employment in the event of a dispute over dismissal.

5. If an employer wishes to dismiss an employee covered by the *Kündigungsschutzgesetz* due to compelling operational requirements, he must carry out a social selection (in German *Sozialauswahl*) in accordance with Section 1 (3) of the Act. This means that he must consider which employees are particularly worthy of protection due to factors such as seniority, age, duties to support dependents, and severe disability. In its decision of 16 May 2019 (ref. 6 AZR 329/18), the Federal Labour Court decided that an employee's severe disability could not be considered in their favour in the event of insolvency. The purpose of Section 125 (1) No. 2 of the *Insolvenzordnung* is to promote the successful restructuring of insolvent companies and to facilitate dismissals. However, this can result in a deterioration in the legal position of severely disabled employees in the event of redundancies for operational reasons during insolvency.

6. According to the Federal Labour Court's established case law, employees dismissed for operational reasons are entitled to reinstatement if it becomes apparent before the end of their notice period that their services are still required. However, this does not apply if a company becomes insolvent (Federal Labour Court decision of 25 May 2022, ref. 6 AZR 224/21). As insolvency proceedings are intended to preserve jobs and satisfy creditors as far as possible, the insolvency administrator is not required to reinstate the employee.

4. **Transfer of undertaking –** What are the main issues that have been raised before judicial courts regarding the transfer of undertakings and the protection of workers' rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

The legal consequences of a *Betriebsübergang* are regulated by Section 613a of the *Bürgerliches Gesetzbuch*. Section 613a applies independently of the *Betriebsverfassungsgesetz*. Its application is not dependent on the existence of a works council. The provision applies to all sectors of the economy. It also covers the liberal professions. Special provisions may apply to the public sector. Section 613a, as it currently stands, is based on EU law (Directive 2001/23/EC).

The Federal Labour Court has recently addressed the following issues in particular:

1. Section 613a of the *Bürgerliches Gesetzbuch* only applies to the transfer of employment relationships. This includes employment relationships involving senior executives and

trainees, but not freelance service contracts. Similarly, commercial law powers of attorney and managing director positions are not transferred (Federal Labour Court decision of 20 July 2023, ref. 6 AZR 228/22).

2. According to Section 613a of the *Bürgerliches Gesetzbuch*, a change of ownership is required for the transfer of a business. However, this is not the case if there is only a change of shareholders, as this does not affect the company's identity as an employer and entrepreneur. Therefore, the acquisition of company shares does not lead to a change of ownership or a transfer of business (Federal Labour Court decision of 11 May 2023, ref. 6 AZR 121/22 (A)).

3. If several companies establish a joint operation, this does not constitute a transfer of business if they remain independent and only use their operating resources for a uniform purpose. In this case, the employer status of the companies involved does not change (Federal Labour Court decision of 11 May 2023, ref. 6 AZR 121/22 (A)).

4. A transfer of business pursuant to Section 613a of the *Bürgerliches Gesetzbuch* requires that the transferred business or part of a business already existed at the transferor's premises prior to the transfer. However, as in EU law, German law does not specify a time limit for the duration of its existence. The only prohibition is on the transferor engaging in abusive practices. In its decision of 21 March 2024 (ref. 2 AZR 79/23), the Federal Labour Court considered the formation of a part of the business by the transferor approximately one month before the planned transfer of the part of the business to be effective, without any additional circumstances indicating abusive behaviour.

5. For an employment relationship to be transferred to the transferee of the business, the employee in question must have been assigned to the transferred part of the business prior to the transfer. Such an assignment made specifically with a view to the planned transfer is not detrimental. According to the Federal Labour Court's decision on 21 March 2024 (ref. 2 AZR 79/23), employees are sufficiently protected against unwanted changes of employer by their right to object to the transfer of their employment relationship to the transferee under Section 613a (6) of the *Bürgerliches Gesetzbuch* (see no. 8 below for details of this right).

6. In its decisions of 21 March 2024 (ref. 2 AZR 79/23) and 11 May 2023 (ref. 6 AZR 267/22), the Federal Labour Court ruled that employees may not be assigned to a transferred part of the business in accordance with the principles of social selection under Section 1 (3) of the *Kündigungsschutzgesetz*. The transferor may not use social selection to determine which employees are most deserving of social protection and shall be transferred to the transferee. Section 613a of the *Bürgerliches Gesetzbuch* aims to ensure the continuation of employment relationships that have already been effectively assigned to the transferred part of the business, rather than to provide social protection.

7. An employee who claims that his dismissal violates the prohibition of dismissal under Section 613a (4) of the *Bürgerliches Gesetzbuch* bears the burden of proof and the burden of presentation for the transfer of business(Federal Labour Court decision of 11 May 2023, ref. 6 AZR 121/22 (A))

8. According to Section 613a (6) of the *Bürgerliches Gesetzbuch*, employees have the right to object to their employment relationship being transferred to the transferee of the business. Therefore, either the previous employer or the new owner of the business is to notify employees affected by a transfer in text form about the date or planned date, reason, legal, economic and social consequences of transfer, and intended measures with regard to employees (Section 613a (5)). The level of detail in the information provided depends on the transferor's or transferee's knowledge at the time of notification. There is no obligation to provide comprehensive legal advice. In its decision of 21 March 2024 (ref. 2 AZR 79/23), the Federal Labour Court ruled that an information letter does not need to be free of legal errors in order to be considered effective, provided that it provides information on the legal consequences of the business transfer. This ruling represents a departure from the court's previous case law. The employee must declare their objection within one month of receiving the correct notification. However, even if the information is missing or incorrect, the employee may lose their right to object if they do not exercise this right for a long period of time, during which their behaviour gives the impression that they no longer wish to assert it (Federal Labour Court decision of 22 July 2021, ref. 2 AZR 6/21).

In the event of a dispute, the labour court will review whether employees were properly informed in accordance with Section 613a (5). If the information provided is clearly incorrect (e.g. if the employee was not informed of the transferee's identity), further evidence is not required in labour court proceedings. However, if the information is not obviously incorrect, the employee must first explain what they believe to be the error. Only then does the transferor or transferee have the burden of proof for properly fulfilling the duty to inform (Federal Labour Court decision of 21 March 2024, ref. 2 AZR 79/23).

5. **Cross-border restructuring** – What are the main issues that have been raised before judicial courts regarding cross-border restructuring and the protection of workers' rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

The Federal Labour Court has recently dealt with the following issues in connection with employee participation in an European Company:

1. In the legal disputes underlying the Federal Labour Court's decisions of 26 November 2024 (ref. 1 ABR 3/23, 1 ABR 37/20 and 1 ABR 6/23), the respective employee and employer representatives disputed whether the negotiations on employee participation could be made up for. The Federal Labour Court decided that the provisions of the *SEBG* do not oblige a company to restart negotiations on employee participation if the founding companies of an European Company do not employ any employees and the company is registered in a European Union Member State. According to the court, this does not constitute an abuse of the law.

2. In the legal dispute underlying the 23 March 2023 decision (ref. 1 ABR 43/18), the European Company's Works Council and the employer disputed the validity of certain provisions in an Employee Participation Agreement. The Federal Labour Court decided that the Employee Participation Agreement between the European Company's works council and the employer was partly in violation of Section 21 (6) of the *SEBG*, as it did not ensure the same level of employee participation as in the founding company, rendering it partly ineffective.

6. **Adequate notice and severance pay –** What are the basic rules and requirements regarding adequate notice and severance pay in cases of collective redundancies related to enterprise reorganization and restructuring of operations? Have any issues been raised recently in this regard, or are there any new or interesting developments?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

1. <u>Notice periods:</u>

a) In principle, the same contractual, collective or statutory notice periods apply to mass redundancies under Sections 17 et seq. of the *Kündigungsschutzgesetz* as to other terminations of employment. However, in the case of mass redundancies in insolvency, Section 113 of the *Insolvenzordnung* takes precedence (see question 3, point 2).

b) However, the notification required in the event of mass redundancies, as set out in question 2, no. 4, triggers a one-month blocking period upon receipt by the employment agency, in accordance with Section 18 (1) of the *Kündigungsschutzgesetz*. Therefore, an effective termination before the end of the blocking period can terminate the employment relationship at the earliest upon the expiration of the blocking period. If an employee's notice period is longer than the blocking period, the blocking period is irrelevant. According to Section 18 (1) and (2), the employment agency may waive compliance with the blocking period, shorten it, or extend it to a maximum of two months.

c) The employer must declare any intended dismissals within 90 days after the end of the blocking period (Section 18 (4)). If the employer misses this period, they must notify the employment agency again in accordance with Section 17 (1). This ensures that the employment agency can plan its placement activities effectively. The employment agency cannot extend or shorten this period.

2. <u>Severance payments:</u>

a) If a mass dismissal constitutes a *Betriebsänderung* pursuant to Section 111 of the *Betriebsverfassungsgesetz*, the works council and employer are required to draw up a *Sozialplan* in accordance with Section 112 of the Act. This serves to compensate for or mitigate the economic disadvantages that employees may face as a result of the planned change in operations. In addition to various compensation payments, such as wage compensation, travel expense reimbursements, bridging payments, and subsidies for retraining measures, the *Sozialplan* can also address severance payments in the event of job loss. However, a *Sozialplan* can only be established if there is a works council in the company. According to a January 2025 analysis by the German Economic Institute, this is only the case in 7% of companies.

b) If the planned *Betriebsänderung* consists solely of dismissing employees, the works council can only enforce a *Sozialplan* if the number of employees to be dismissed reaches the thresholds specified in Section 112a (1) of the *Betriebsverfassungsgesetz*. Pursuant to Section 14 (2) of the Act on Temporary Agency Work (hereinafter *Arbeitnehmerüberlassungsgesetz*), temporary workers are not to be included in the calculation. The figures and percentages set out in Section 112a (1) of the *Betriebsverfassungsgesetz* exceed the thresholds set out in Section 17 of the *Kündigungsschutzgesetz*, which regulates what constitutes a mass dismissal in the event of a reduction of staff. Consequently, if the thresholds of Section 17 of the *Kündigungsschutzgesetz* are exceeded in the event of a reduction of staff, but the thresholds of Section 112a (1) of the *Betriebsverfassungsgesetz* are not reached, the works council cannot force the conclusion of a *Sozialplan*.

c) If a new company is founded, the works council cannot enforce a *Sozialplan* for the first four years of business operations, regardless of the type of the *Betriebsänderung* (Section 112a (2) of the *Betriebsverfassungsgesetz*). This provision is intended to ease the company's difficult start-up phase.

d) According to Sections 111 and 112 (1) of the *Betriebsverfassungsgesetz*, the employer and the works council are obliged to try to reach an agreement on the planned *Betriebsänderung* through the *Interessenausgleich* (see question 2, no. 2). If the employer implements a *Betriebsänderung* pursuant to Section 111 without attempting to reach an *Interessenausgleich* with the works council, or if the employer deviates from such an *Interessenausgleich* without compelling reasons, those employees who are dismissed or suffer other economic disadvantages as a result may bring an action for payment of severance pay (Section 113). According to the decision of the Federal Labour Court of 12 February 2019 (ref. 1 AZR 279/17), severance pay under a *Sozialplan* must be offset against compensation for disadvantages pursuant to Section 113.

7. **Others –** Have any other interesting issues relating to these matters been raised before the courts (e.g. compliance, sanctions and penalties, collective bargaining safeguards, non-discrimination, rights of temporary agency workers during restructuring, sectoral specificities…)? Are there any new or interesting developments in this area that you would like to refer to?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

1. Council Directive 98/59/EC has been implemented in German law through Sections 17 to 22 of the *Kündigungsschutzgesetz*. The procedure for mass redundancies, as set out in these provisions, includes the *Konsultationsverfahren* with the works council (Section 17 (2)) and the *Anzeigeverfahren* (Section 17(3)), initiated by submitting a mass redundancy notification to the employment agency (see question 2, no. 4). The two procedures are partly linked. According to Directive 98/59/EC, national legislators are responsible for determining sanctions for errors made by employers in these two procedures. However, the German legislator has not imposed any sanctions for errors in the mass dismissal procedure in Sections 17 et seq. Until such a regulation is enacted, it is therefore the responsibility of the labour courts to determine appropriate sanctions.

2. According to the Federal Labour Court's schedule of responsibilities, the Second Senate is responsible for interpreting Sections 17 et seq. of the *Kündigungsschutzgesetz* in accordance with EU law outside of insolvency proceedings. This includes deciding what sanctions result from errors in mass dismissal proceedings. However, the Sixth Senate is responsible for dismissals by the insolvency administrator. Both senates have held the view that errors in the *Konsultationsverfahren* and the *Anzeigeverfahren* result in the invalidity of dismissals. With regard to the *Anzeigeverfahren*, the Sixth Senate has now expressed doubts as to whether the system of sanctions developed by case law is proportionate (decisions of 11 May 2023 (ref. 6 AZR 157/22 (A) and 6 AZR 121/22 (A)). So, the Sixth Senate asked the Second Senate whether it still believes that errors in the *Anzeigeverfahren* render the dismissals invalid. Since then, both senates have agreed that errors in the *Anzeigeverfahren* should no longer invalidate dismissals, as this would be an excessive sanction given the purpose of the procedure. However, both senates hold different views on the following issues:

a) Is it necessary to impose a sanction at all if the employment agency does not object to the errors in the notification?

b) Can an incorrect or omitted notification be catch up on?

c) Could the blocking period set out in Sections 18 (1) and (2) of the *Kündigungsschutzgesetz* (see question 6, no. 1 (b)) be an appropriate sanction?

In accordance with Article 267 TFEU, both senates have presented their respective opinions and concepts on these issues to the European Court of Justice (Second Senate decision of 1 February 2024, ref. 2 AS 22/23 (A), Sixth Senate decision of 23 May 2024, ref. 6 AZR 152/22 (A)).

The Opinion of Advocate General Norkus in the preliminary ruling requested by the Second Senate was announced on 27 February 2025 (ref. C-134/24).

It remains to be seen whether the European Court of Justice will consider either of the two concepts compatible with Directive 98/59/EC, or if it will propose an alternative solution.

Until these issues have been clarified, employers and insolvency administrators must assume that the dismissals may be invalid as a sanction for failure to notify or incorrect notification to the employment agency.

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▶ HUNGARY

Respondents: Anna Csorba, Bálint Rózsavölgyi, Annamária Fürjes, Szilvia Halmos

1. **General** – Is the notion of "restructuring" defined at the national level? In your country, what are the basic rules and requirements applicable to enterprise reorganization and restructuring of operations?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

There is no definition in the Hungarian jurisdiction for the notion 'restructuring'. We can meet the phenomenon reconstruction in labour disputes where the reason of the termination is restructuring.

The most important object or requirement is that the decision about any reconstruction must affect the job description of the terminated employee.

The employers have the right in their business life to transform their activity, their structure. This business decision cannot be debated in a legal dispute. The rationality of this business decision is out of the scope of the competence of any labour court.

In case the reason of the termination is restructuring the court must examine whether it affected the employee's activity and his or her job description. According to this business decision the employee will be redundant.

According to the LC in par. 66 we can find the reasons of a termination:

(2) An employee may be dismissed only for reasons in connection with his/her behaviour in relation to the employment relationship, with his/her ability or in connection with the employer's operations.

The Hungarian Supreme Court case law analysis group defined and grouped the terminations reasons relying on the restructuring as follows:

changes in the employer's organizational structure

changes in work organization

termination of employment.

Sometimes there are two reasons in the termination: restructuring and stuff reduction.

In case of staff reduction, it is enough to prove that the number of the employees has decreased. The earlier number must be decreased by one or more.

Using the reasons restructuring and stuff reduction is mainly successful. In these cases employers can prove this before the court.

2. **Consultation and information rights and notification to public authorities –** In your country, what are the basic rules and requirements regarding consultation and information rights and notification to public authorities in the event of enterprise reorganisation or restructuring of work processes? Have any issues been raised recently in this regard, or are there any new or interesting developments?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

The forms of the workers participation by the employer can be the works council or the trade unions.

Works councils shall monitor compliance with the provisions of employment regulations.

According to the LC: works councils shall be entitled to request information and to initiate negotiations, with the reason indicated, which the employer may not refuse.

The employer shall notify the works council semi-annually regarding:

a) the issues affecting the employer's economic standing.

b) changes in wages, liquidity related to the payment of wages, the characteristic features of employment, utilization of working time, and the characteristics of working conditions.

c) the number of employees in employment and the description of the jobs they perform.

(4) The works council shall inform the employees concerning its activities semi-annually.

Employers shall consult the works council prior to passing a decision in respect of any plans for actions and adopting regulations affecting a large number of employees. Employer's actions shall, in particular, mean:

a) proposals for the employer's reorganization, transformation, the conversion of a strategic business unit into an independent organization.

Trade unions take part of the life of the employers.

Trade unions may request information from employers on all issues related to the economic interests and social welfare of employees in connection with their employment.

Trade unions shall be entitled to express their position and opinion to the employer concerning any employer actions (decisions), or the draft of such decision, and to initiate talks in connection with such actions.

The employer, if planning to carry out collective redundancies, shall initiate consultations with the works council.

According to Paragraph 71 (1) 'Collective redundancy' shall mean when an employer, based on the average statistical workforce for the preceding six-month period, intends to terminate the employment relationship:

a) of at least ten employees, when employing more than twenty and less than one hundred employees,

b) of 10 per cent of the employees, when employing one hundred or more, but less than three hundred employees,

c) of at least thirty employees, when employing three hundred or more employees, In accordance with Subsection (3), inside a period of thirty days, for reasons in connection with its operations.

To be honest this regulation cannot be seen as a strong legal tool and cannot prevent the execution of the employer's decision.

In case of restructuring there is no similar legal tools in the hand of the works councils and the trade unions.

3. **Insolvency Proceedings** – What are the main issues that have been raised in insolvency proceedings before judicial courts regarding the protection of workers' rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

According to CCP the court shall hear actions for reinstating an employment relationship which has been terminated and actions for the substitution of the employer's statement of consent under Subsection (6) of Section 61 of the Labor Code, and for determining claims laid against an employer undergoing liquidation, in priority proceedings.

Where an employer is undergoing liquidation, an employee shall be able to enforce his pecuniary claim against such employer, based on a labor-law claim relating to assets to be liquidated, which are disputed by the liquidator, from the time of the opening of the liquidation proceedings. The statement of claim shall be lodged against the employer undergoing liquidation within thirty days from the date of the liquidator's notice on the contested claim; in accordance with this Act justification shall be accepted upon failure to meet the above deadline. The deadline for lodging the statement of claim shall be considered met if the submission addressed to the court is dispatched by registered post to the court on or before the last day of the deadline. If the party introduced a change of action, presenting the motion for the change of action shall not exempt the party from the obligation of notification of any pecuniary claim based on other labor-law claims as a creditor's claim.

The so-called Wage Guarantee Fund is a legal instrument to ensure the legally enforceable claims of the employee's.

With the help of wage guarantee support, the following outstanding payments can be advanced:

a) Wage arrears owed by a business entity that is undergoing liquidation or compulsory dissolution and is unable to settle them with its employees.

b) Fees owed by a borrower undergoing liquidation to the lender in connection with the employment of a temporary worker.

c) Service fees owed by an organization undergoing liquidation to a school cooperative, a cooperative for parents with young children, or a pensioners' cooperative.

d) Wages owed by sole proprietors who are natural persons undergoing debt settlement proceedings to their employees.

The maximum sum is approximately 3 million Ft.

Problematic by this legal instrument is that the possibility is there only for unpaid wages. Thet means that any compensations in connection with work accidents are out of the scope of any payment.

4. **Transfer of undertaking –** What are the main issues that have been raised before judicial courts regarding the transfer of undertakings and the protection of workers' rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

As in Hungary we do not have special rules regarding cross-border restructuring, there are not any known court decisions in connection with issues that specially have been raised.

According to LC Section 66 paragraph (1) and (2) employers are required to justify their dismissals. An employee may be dismissed only for reasons in connection with his/her behaviour in relation to the employment relationship, with his/her ability or in connection with the employer's operations.

In justifying the termination, the employer may also refer to reasons related to its operations, such as reorganization or job cuts. According to Hungarian case law, a lawful termination cannot be invalidated on the basis of circumstances that fall outside the scope of the labor dispute (e.g., that the reorganization of the company, or the restructuring of work processes was not expedient). In the event of termination of employment, an employee cannot successfully argue that the employer's action on which the termination was based was impractical or uneconomical.

5. **Cross-border restructuring** – What are the main issues that have been raised before judicial courts regarding cross-border restructuring and the protection of workers' rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Under the Labour Code (section 36-40) in case of transfer of enterprise the most important rule is that the rights and obligations arising from employment relationships, existing at the time of transfer of an economic entity (organized grouping of material or other resources) by way of a legal transaction are transferred to the transferee employer. Before the time of transfer the transferring, employer shall inform the receiving employer concerning the employment relationships involved, and on the rights and obligations arising from non-competition agreements and study contracts. Failure to provide the information shall have no bearing as to the enforcement of rights arising from such covenants on the receiving employer's part. On the day of transfer, the receiving employer shall inform in writing the employees affected concerning the transfer of employment upon the transfer of enterprise, disclosing the employer's identification data, and on changes in main working conditions. If the transferring employer has no works council - due to lacking the number of employees - and no shop steward had been elected either, the transferring or - if so agreed by the employers - the receiving employer shall inform in writing the employees concerned not more than fifteen days before the date of transfer the date or proposed date of the transfer; the reason for the transfer; the legal, economic and social implications of the transfer for the employees; and any measures envisaged in relation to the employees.

The transferring and the receiving employer shall be jointly and severally liable in respect of obligations towards employees which arose before the date of transfer, if the employee submits the claim within one year from the date of transfer. The rules of severance pay and the rules of exemption from work shall apply mutatis mutandis if the employee terminates his employment relationship by giving notice because the transfer of employment upon the transfer of enterprise involves a substantial change in working conditions to the detriment of the employee, and in consequence maintaining the employment relationship would entail unreasonable disadvantage or would be impossible. Employees may exercise the right of notice within thirty days from the date of transfer of employment upon the transfer of enterprise and must initiate the termination.

The Kúria before the entry into force of the legal provisions concerning transferring, confirmed in its resolution No. 154. that legal succession in the person of the employer has no effect on employment. Considering this, employment created with a legal predecessor continues to exist unchanged with the legal successor. These periods spent in employment must be taken into consideration together, especially with regard to notice period and severance pay.

One of the most important issue that have been raised before judicial courts regarding the transfer of undertakings is the interpretation of „transfer". The Kúria considered (EBH

2014.M6.) that in examining the labour law succession, it is necessary to assess the nature of the transferred service provider's activities, including the necessity of utilizing significant assets and personnel. In other decision the Kúria referred the practice of the European Court of Justice, where the condition for the change of employer to materialize is the transfer of an economic unit that preserves its identity from the predecessor to the successor. The succession occurs already with the transfer of resources, and its legal consequences are not tied to the continued employment of the workers. This determination can be made based on specific criteria (C-24/85 Spijkers case). The activities of the transferor should be assessed depending on whether the continuation of the given economic activity fundamentally relies on human resources or represents asset-dependent activity (C-13/95 Süzen; C-229/96 and C-74/97 Hernandez Vidal and others, C-172/99 Oy Liikenne, C-340/1 Abler; C-51/00 Temco cases). The mere similarity or identity of the activities performed does not allow for the determination of the preservation of the identity of the economic unit. The identity of a workforce-based economic unit cannot be preserved in a case where the transfer of employees does not occur (C-463/09. Cleace SA case). The Kúria stated in this decision that the fact that the plaintiffs negotiated with the second defendant, and that the plaintiffs assisted in the training of the second defendant's employees during their employment relationship with the first defendant, is not suitable for establishing the continuity of their legal relationship. Also touching upon this issue, the Kúria determined that the transfer of a business could be realized through a transaction involving three parties. The decisive factor is whether a change of control over the economic unit has occurred, which results in a change in the person of the employer entitled to manage the employees (BH2003. 435.). In the case of a change of employer - based on rules of Labor Code, - the obligations regarding the settlement and transfer of the job position cannot arise in connection with the transfer, as the employment relationship does not terminate with the transfer.

The Kúria regarding the joint responsibility of the transferor and the transferee, considered that the transferor is only liable for claims arising before the transfer (BH2007. 99.).

Further questions have arisen regarding the amendment of employment contracts, where (EBH2002. 686.), the Kúria stated that the place of work can only be modified by mutual agreement of the parties even in the case of transfer. In the absence of such agreement, if the employee does not comply with an instruction from the employer that qualifies as a unilateral modification of the employment contract, their behaviour does not constitute a breach of obligation that justifies extraordinary dismissal [Labor Code, Sections 82, 106, 96].

The Kúria interpreted the concept of working conditions in relation to the employee's right to terminate (EBH2000. 349.) and established, that the working conditions include not only the personal and material conditions for work performance, but also all provisions of the collective agreement related to the rights and obligations of the employee arising from the employment relationship – including remuneration – are included [Labour Code § 40/A, § 102].

6. **Adequate notice and severance pay –** What are the basic rules and requirements regarding adequate notice and severance pay in cases of collective redundancies related to enterprise reorganization and restructuring of operations? Have any issues been raised recently in this regard, or are there any new or interesting developments?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Under the Labor Code there are special provisions relating to collective redundancies (Section 71-76). Collective redundancy' shall mean when an employer, based on the average statistical workforce for the preceding six-month period, intends to terminate the employment relationship: of at least ten employees, when employing more than twenty and less than one hundred employees, of 10 per cent of the employees, when employing one hundred or more, but less than three hundred employees, of at least thirty employees, when employing three hundred or more employees, inside a period of thirty days, for reasons in connection with its operations. Compliance with these requirements shall be ascertained, where applicable, separately for each place of business; however, the number of employees employed at various locations, but within the jurisdiction of the same greater county (Budapest) shall be calculated on the aggregate. The employee shall be accounted at the location where he/she works in the position registered at the time when the decision on collective redundancy was adopted.

The employer, if planning to carry out collective redundancies, shall initiate consultations with the works council. At least seven days before the consultation, the employer shall inform the works council in writing the reasons for the projected collective redundancies; the number of employees to be made redundant broken down by categories; or the number of employees employed during the period specified in LC; the period over which the projected redundancies are to be effected, and the timetable for their implementation; the criteria proposed for the selection of the employees to be made redundant; and the conditions for and the extent of benefits provided in connection with the termination of employment relationships, other than what is prescribed in employment regulations. The employer's obligation of consultation shall apply until the conclusion of an agreement or failing this for a period of fifteen days after the beginning of negotiations. In order to reach an agreement, the negotiations shall, at least, cover:

a) the possible ways and means of avoiding collective redundancies;

b) the principles of redundancies;

c) the means of mitigating the consequences; and

d) the reduction of the number of employees affected.

The agreement concluded in the course of negotiations shall be made out in writing, a copy of which shall be sent to the government employment agency.

The employer shall notify the government employment agency of its intention regarding collective redundancies, and of the details and aspects defined in LC, and shall supply a copy thereof to the works council.

The employer shall notify in writing the employees affected of its decision regarding collective redundancies at least thirty days prior to delivering the notice of dismissal or the dismissal without notice defined in LC. The notice of dismissal or the dismissal without notice may be delivered after thirty days following the time of notification.

The general rules apply regarding severance pay even in the case of a collective redundancies.

The number of lawsuits related to the collective redundancies is low, mainly concerning the determination of workforce and place of business, where the text of the LC contains a clear provision, there is no significant legal interpretation problem. There are no new or interesting developments in this area.

7. **Others –** Have any other interesting issues relating to these matters been raised before the courts (e.g. compliance, sanctions and penalties, collective bargaining safeguards, non-discrimination, rights of temporary agency workers during restructuring, sectoral specificities…)? Are there any new or interesting developments in this area that you would like to refer to?

In the recent years, Hungarian labour judiciary has had to encounter with many disputes arising from restructurings of major public employers operating in the form of business associations under civil law, but controlled or owned by the State, any organ of the State, the Capital's municipal government or other public bodies (e.g. railway companies or public service providers). Acts of transformation (mergers, demergers etc.) of such entities resulted in transfer of employment relationships of thousands of workers.

More cases concerned the eligibility of trade unions represented within transforming public employers to participate in collective bargaining after the transformation. As LC stipulates, a trade union is entitled to conclude a collective agreement if its membership of employees at the employer reaches 10 % of all employees ("representative trade union").[2] However, in case of merger of employers, a specific trade union, which used to hold a representative status, and concluded the collective agreement before the transformation, may fall under this representativity threshold, and may lose this status, while other trade unions, which had not been parties of the collective agreement, may meet the aforementioned representativity criteria upon the transformation. More cases concerned the question, which trade union is entitled to enter collective negotiations and conclude the modification of the collective agreement in such a situation. According to the earlier applicable rule of the LC[3], any trade union that met the representativity criteria after the conclusion of the collective agreement,

[2] LC, sec. 276 paragraph 2 a

[3] LC, sec 276, paragraph 8

could request an amendment of the collective agreement, and to participate in the negotiations relating to the amendment in an advisory capacity. In a concrete case before the Budapest-Metropolitan Court, the court initiated the constitutionality review of this rule. The Constitutional Court found the initiative of the court well-founded, and deleted the term "in an advisory capacity" from the text.[4] As a result, in cases of major mergers of public bodies, the eligibility of trade unions representing a high number workers to enter into collective negotiations has been confirmed.

Another hot topic issue related to transfer of undertakings concerns the remuneration and the extra benefits of the employees. As an interesting example from the recent case law, we could cite the following case,[5] in which the Kúria (the Supreme Court of Hungary) outlined its position about certain important aspects of this question. The transferring employer was subject to a collective agreement laying down that the employer operates a "Cafeteria scheme" [fringe benefits], in which the eligibility criteria for the benefits shall be determined by the employer. This transferring employer actually adopted its policy on the Cafeteria scheme, which set out the detailed rules on the available Cafeteria benefits. After the transfer of the undertaking, the receiving employer applied its own Cafeteria policy, which was less favourable for the employees compared to the scheme operated by the tranferring employer. According to the applicable provision of the LC, upon the transfer of enterprise the receiving employer is required to maintain the working conditions specified in the collective agreement covering the employment relationship existing at the time of transfer for a period of one year after the date of transfer.[6] This provision implements the Article 3, section 3 of the EC Directive 2001/23/EC on transfer of undertakings. The question to be decided by the court was, whether the Cafeteria benefits ensured by the transferring employer, claimed by the employees, had to be considered as "working conditions specified in a collective agreement". The Kúria, overruling the final decision, established that the right of the employees to Cafeteria benefits was not based on any collective agreement. On the grounds of the collective agreement, the employer was only obliged to adopt a Cafeteria scheme. This provision gives rise to claims for the trade union as the other party of the collective agreement for the adoption of the applicable policy, but does not establish any right for the employees. The receiving employer could freely shape its own terms and conditions for ensuring Cafeteria benefits. Hence, the employees could not succesfully assert their rights for benefits based on the transferring company's Cafeteria scheme with reference to the obligation of the receiving employer to maintain the working conditions specified in the collective agreement.

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[4] Decision of the Constitutional Court no. 22/2023. (X.4.) AB. The amendment is effective from 5 October 2023.

[5] Kúria, no. Mfv.I.10123/2024/5.. The anonymised decision is available at https://eakta.birosag.hu/anonimizalt-hatarozat-pdf/?birosagName=K%C3%BAria&ugyszam=Mfv.10123/2024/5&azonosito=ce46d2f4-80d8-4b97-86bf-2123ecfa04e3 (in Hungarian)

[6] LC, sec. 282 paragraph 1.

IRELAND

Respondent: Louise O'Donnell, Chairman, Labour Court

1. **General** – Is the notion of "restructuring" defined at the national level? In your country, what are the basic rules and requirements applicable to enterprise reorganization and restructuring of operations?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

There is not a single statutory definition of restructuring in Irish law. The *Companies Act 2014* ("2014 Act") is the main Irish legislation to deal with corporate matters. It refers to restructuring tools such as examinership and schemes of arrangement. The 2014 Act was also amended to reflect the *EU Preventive Restructuring Directive (2019/1023).* The Irish restructuring regime lends itself towards company rescue where appropriate.

2. **Consultation and information rights and notification to public authorities** – In your country, what are the basic rules and requirements regarding consultation and information rights and notification to public authorities in the event of enterprise reorganisation or restructuring of work processes? Have any issues been raised recently in this regard, or are there any new or interesting developments?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

The *Protection of Employment Act 1977* at *Part 11* ("The Act") refers to consultation and notification requirements relating to collective redundancies. Under Section 10 of the Act the employer or responsible person concerned shall supply the employees' representatives with all relevant information relating to proposed redundancies in the company. There is a list of information to be supplied at section 10(2) of the Act. An employer or a responsible person shall as soon as possible also supply the relevant government Minister (the Minister for Enterprise, Trade and Employment) with copies of this information.

A recent judgment of the Irish High Court, *Debenhams Retail Ireland Limited [In Liquidation] v Crowe [2025] IEHC 141* dealt with an appeal by Debenhams Retail Ireland Limited (in liquidation) from a Labour Court decision regarding collective redundancies. The key issues revolved around the timing and nature of the consultation process required under the *Protection of Employment Act 1977* and EU Directive 98/59/EC. The High Court allowed the appeal on two grounds: the date consultation began and the compensation award. It found that the Labour Court had erred in law on these points. The court emphasised that the consultation process can begin with the provision of information, not necessarily with the first meeting.

3. **Insolvency Proceedings** – What are the main issues that have been raised in insolvency proceedings before judicial courts regarding the protection of workers' rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

A Supreme Court decision *Glegola v Minister for Social Protection [2018] IESC 65* identified a lacuna in the law. The applicant in the case had been awarded a total of 16,818.75 following a successful claim under, the *Organisation of Working Time Act 1997*, which remained unpaid because her employer had ceased trading and had no assets. She could not recover the award from the social insurance fund, however, because no liquidator had been appointed and no winding-up order had been made. The Supreme Court determined in addressing "informal insolvencies", Ireland had failed to adequately transpose Article 2 of Directive 2008/94 EC and awarded the sum claimed as Francovich damages against the Minister.

A bill (No 28. of 2025) to amend the *Protection of Employees (Employers' Insolvency) Act 1984* has been published and when enacted, will enable employees whose employer has ceased trading without formally winding up the business to recover compensation awards, and other capital owed, from the Social Insurance Fund established under the 1984 Act.

4. **Transfer of undertaking –** What are the main issues that have been raised before judicial courts regarding the transfer of undertakings and the protection of workers' rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Exception to employee protection on insolvency

A recent CJEU case C-431/23 Wibra Belgie, concerns the interpretation of Article 5(1) of Council Directive 2001/23/EC, which deals with the safeguarding of employees' rights during business transfers. The key issue was whether the derogation from employee protection provisions could apply where judicial restructuring proceedings were followed by insolvency proceedings. The case originated from Belgium and involved questions about the interaction between different types of proceedings and their impact on employee rights. The key issue was whether the exception to employee protection, outlined in Article 5(1) for bankruptcy proceedings, applied when the transfer was prepared during judicial restructuring but finalized after the declaration of insolvency.

In Ireland Art 5.1 of Directive 2001/23/EC has been transposed into Irish law by Regulation 6(1) of the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003. Regulations 3 (Application) and 4 (Rights and Obligations) do not apply to any transfer of an undertaking, business or part of an undertaking or business "where the transferor is the subject of bankruptcy proceedings or insolvency proceedings."

The meaning of "bankruptcy" and "insolvency" proceedings is set out in Regulations 6(2).

Regulation 6(1) and the case law thereon, clarify that Regulations 3 and 4 do not apply to a transfer where the transferor, if a company , is (i) the subject of a compulsory court ordered winding up; ii) has been judged insolvent; and iii) the undertaking or business, or part thereof in question formed part of the assets of the insolvent transferor.

Regulation 3 and 4, however, will apply to transfers effected during procedures prior to the initiation of High Court winding-up proceedings such as transfers effected by an examiner, a provisional liquidator or a receiver.

Consequently, the recent CJEU decision does not require any adjustments to the interpretation or application of Regulation 6(1) in Ireland.

5. **Cross-border restructuring** – What are the main issues that have been raised before judicial courts regarding cross-border restructuring and the protection of workers' rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

A recent case involved a UK retailer with a subsidiary company in Ireland. The parent company informed the Respondent that it could no longer provide funding. The Board of the Irish company held an emergency meeting and recommended to their shareholder to take immediate steps to petition the Irish High Court to wind up the Company and to have a liquidator appointed. The complainant in the Workplace Relations Commission (first instance tribunal) claimed that the consultation with employees provision under the *Protection of Employment Act 1977* (the Act) had not been complied with. Section 9 of the Act provides that where an employer proposes to create collective redundancies, the employer shall, with a view to reaching agreement, initiate consultations with employees' representatives.

The first instance tribunal decided that Section 9 of the *Protection of Employment Act 1977* (the Act) had not been complied with. The company appealed the case to the Labour Court and considered three key issues in relation to a breach of section 9 of the Act:

i) When did the consultation commence?

(ii) Did the consultation start 'in good time'/earliest opportunity, as required by the Directive/ Act.

(iii) When should the consultation have commenced.

The Labour court in decision PED241 found that the Respondent company did engage in consultation for thirty days prior to the notice of redundancy issuing, they failed to hold meaningful consultations in good time and that in waiting until the liquidator was appointed the available options had narrowed significantly. The Court found that it constituted a breach of s9 of the Act.

Debenhams retail appealed the matter to the High Court which took a different view of what the Directive and the Act say about the consultation period.

It found that the Labour Court had erred in law on when the consultation began and on the compensation awarded. The court emphasised that the consultation process can begin with the provision of information, not necessarily with the first meeting. It also stated that compensation under the Act must be based on actual loss or injury, not used as a penalty.

The decision has not been appealed.

6. **Adequate notice and severance pay –** What are the basic rules and requirements regarding adequate notice and severance pay in cases of collective redundancies related to enterprise reorganization and restructuring of operations? Have any issues been raised recently in this regard, or are there any new or interesting developments?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

The ***Protection of Employment Act 1977-2024 ("POE Act")*** protects employees during collective redundancies and applies where there are more than 20 employees in an establishment, regardless of their length of service with the employer. The POE Act sets out the definition of collective redundancies[7].

Part 11 of the POE Act sets out the consultation and notification requirements, the obligation of the employer to consult with employee's representatives and the obligation to supply certain information, the penalty for failure to comply with those sections and the recourse to the WRC (first instance tribunal) and to the Labour Court on appeal. Part 11 also sets out the

[7] **Meaning of collective redundancies**

S**6.**—(1) For the purpose of this Act, "collective redundancies" means dismissals effected by an employer for one or more reasons not related to the individual concerned where in any period of 30 consecutive days the number of such dismissals is —
(*a*) at least 5 in an establishment normally employing more than 20 and less than 50 employees,
(*b*) at least 10 in an establishment normally employing at least 50 but less than 100 employees,
(*c*) at least ten per cent of the number of employees in an establishment normally employing at least 100 but less than 300 employees, and

(*d*) at least 30 in an establishment normally employing 300 or more employees requirement to notify the Minister for Enterprise, Trade and Employment of the proposed redundancies and the penalty for failure to do so.

Employers must notify the Minister for Enterprise, Tourism and Employment at least 30 days before the first dismissal takes effect. Employers must consult with employee representatives (e.g., trade unions) for at least 30 days before issuing any redundancy notices. This consultation should cover the reasons for the redundancies, the number and categories of employees affected, and measures to avoid or minimize the redundancies

In 2024, the *Employment (Collective Redundancies and Miscellaneous Provisions) and Companies (Amendment) Act 2024 (14/2024), introduced a new legal concept of a* ***"responsible person"*** *into the Protection of Employment Acts 1977–2014). This is part of a broader effort to strengthen protections for employees in insolvency situations, especially during collective redundancies*

The Act extends collective redundancy obligations to insolvency practitioners such as liquidators, receivers, and court-appointed officers. These **"responsible persons"** must now:

- Consult with employee representatives
- Notify the Minister at least 30 days before dismissals
- Provide relevant information to employees and the Minister
- Avoid dismissals before the 30-day notification period ends

It will be a defence for a responsible person to show that, having exercised all reasonable professional care and skill, they had reasonable grounds for believing that the employer had complied with its information, consultation obligations and obligation to notify the Minister.

An employee will be entitled to take a claim to the Workplace Relations Commission where they are dismissed prior to the expiry of the 30 day period following the notification to the Minister.

The *Minimum Notice and Terms of Employment Acts 1973-2005* sets out the minimum statutory notice periods employers must give when ending employment, depending on the employee's service length. The *Redundancy Payment Acts* set out who qualifies for redundancy pay and how much. The amount of redundancy payment is calculated based on years of service, and the notice period is determined by the length of employment. The employment contract can specify longer notice periods than the statutory minimum. Employers are not legally obligated to provide severance pay in addition to statutory redundancy payment.

7. **Others –** Have any other interesting issues relating to these matters been raised before the courts (e.g. compliance, sanctions and penalties, collective bargaining safeguards, non-discrimination, rights of temporary agency workers during restructuring, sectoral specificities…)? Are there any new or interesting developments in this area that you would like to refer to?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

The Employment (Collective Redundancies and Miscellaneous Provisions) and Companies (Amendment) Act 2024 (14/2024) provides for the establishment of an Employment Law Review Group. The Review Group will monitor, review and advise the Minister on matters concerning—

(a) the implementation, amendment and consolidation of employment enactments,

(b) legislative proposals and the introduction of new legislation relating to the employment of persons and redundancy practices in the State,

(c) the Rules of the Superior Courts and judgments of courts which relate to the operation of employment enactments,

(d) the State's membership of the European Union in so far as it is relevant to the operation of employment enactments,

(e) international developments in employment and redundancy law in so far as they represent best practice and may provide a model for developments in the State,

(f) emerging trends in the workplace or changes to the way employment and redundancy matters operate, and

(g) other related matters.

(2) In advising the Minister, the Review Group shall promote the modernisation and efficacy of legislation relating to the employment of persons and redundancy practices.

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ISRAEL

Respondent: Miron Schwartz, President, Regional Labour Court of Nazareth

1. **General** – Is the notion of "restructuring" defined at the national level? In your country, what are the basic rules and requirements applicable to enterprise reorganization and restructuring of operations?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer:

In Israeli legislation, there is no explicit definition of the term "restructuring". The term primarily appears in practice and economic discourse, rather than in statutory law. However, the Labor Courts in Israel have recognized it in various contexts, mainly where substantial structural changes occur in the workplace, such as company mergers, demergers, privatizations, outsourcing of activities, departmental closures, or large scale downsizing, emphasizing that the process is conducted with transparency and good faith. The central focus is on protecting employees' rights throughout the process.

Employer obligations toward employees include:

A. Good faith and transparency – fundamental obligations under Israeli labor law, according to the Contracts Law and the Collective Agreements Law, Employers must inform employees or their labor organization of planned changes and refrain from taking unilateral measures that infringe upon their rights without consultation.

B. Consultation with the representative labor organization – if a union or representative labor organization exists, the employer is obligated to conduct collective bargaining in good faith before implementing measures such as layoffs or structural changes.

C. Prior notice and severance pay – when restructuring involves employee terminations, the provisions of the Advance Notice of Termination and Resignation Law, and the Severance Pay Law, apply.

D. Transfer of the workplace to another employer – in cases such as mergers or acquisitions, employees' rights transfer with the workplace. Continuity of rights must be maintained, and the new employer "steps into the shoes" of the previous employer.

According to Israeli case law, The approach is that, regarding rights under protective labor law and collective labor law, the workplace should be regarded not merely as an object of ownership, but also as an object of rights, so that continuity of rights and working conditions is maintained for the workforce at that workplace.

2. **Consultation and information rights and notification to public authorities** – In your country, what are the basic rules and requirements regarding consultation and information rights and notification to public authorities in the event of enterprise reorganisation or restructuring of work processes? Have any issues been raised recently in this regard, or are there any new or interesting developments?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer:

In Israel, there is no comprehensive general law regulating the employer's obligation to consult with and provide information to employees in the context of restructuring or substantial changes to work processes. However, Israeli case law has established clear rules requiring employers to act with transparency and in good faith, as noted in the answer to Question 1 above.

Regarding the obligation to notify public authorities, Israeli law does not impose any general requirement to inform authorities of a restructuring.

3. **Insolvency Proceedings** – What are the main issues that have been raised in insolvency proceedings before judicial courts regarding the protection of workers' rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer:

The Insolvency and Economic Rehabilitation Law regulates the insolvency proceedings of individuals and corporations and grants priority to employees' rights, particularly regarding severance pay and other social benefits.

The legislature sought to protect employees who find themselves in a situation where their employer becomes insolvent. Accordingly, the National Insurance Law provides that an employee who is dismissed due to the liquidation of their employing company or the bankruptcy of their employer is entitled to receive compensation from the National Insurance Institute.

The labour Courts do not conduct the insolvency proceedings themselves. Rather, they are authorized to hear employees' claims against an insolvent employer regarding violations of their rights (for example, unpaid wages, severance pay, and other social benefits) and to enforce the priority of employees' claims over other creditors in the insolvency process.

The labour Courts provide a framework to ensure protection of employees' social rights and to guarantee that these rights are realized even if the employer becomes bankrupt. Employees' rights are given high priority in insolvency proceedings, taking precedence over other debts of the employer, even where the new employer is another corporation or a public entity.

4. **Transfer of undertaking –** What are the main issues that have been raised before judicial courts regarding the transfer of undertakings and the protection of workers' rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer:

Israeli case law, as noted above in Question 1, adheres to the principle of continuity of employees' rights, meaning that rights are preserved and are not nullified due to a change in ownership. Accordingly, the transfer of employees must ensure that accrued rights—such as pension benefits, provident funds, and other social entitlements—are maintained with the new employer.

If the transfer results in a deterioration of working conditions (for example, a reduction in salary, change of workplace location, or loss of certain benefits), the employee may be deemed to have resigned for a justified reason and thus be entitled to severance pay.

The Severance Pay Law provides protection to employees in cases where dismissal or changes in working conditions constitute a substantial deterioration of terms of employment.

5. **Cross-border restructuring –** What are the main issues that have been raised before judicial courts regarding cross-border restructuring and the protection of workers' rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer:

Key issues arising in the context of cross-border restructuring primarily involve the application of the principle of continuity of employees' social rights, even in cross-border scenarios.

One potential claim in such cases is deterioration of working conditions, whereby an employee may assert entitlement to severance pay or additional compensation if the restructuring adversely affects their existing terms of employment.

If the changes affect employees in Israel, the employer is required to conduct collective bargaining with a representative labour organization in Israel.

6. **Adequate notice and severance pay –** What are the basic rules and requirements regarding adequate notice and severance pay in cases of collective redundancies related to enterprise reorganization and restructuring of operations? Have any issues been raised recently in this regard, or are there any new or interesting developments?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer:

The Advance Notice of Termination Law establishes an employee's right to receive prior notice before dismissal, entitling employees to a notice period according to their seniority.

The Severance Pay Law determines who is entitled to severance pay- any employee who is dismissed or leaves the workplace for reasons other than voluntary resignation.

The Severance Pay Law provides that if the employer fails to give the required advance notice, the employee is entitled to compensation for the lack of notice, which is added to the severance pay.

The combination of the Severance Pay Law, the Advance Notice Law, and the employer's obligation to engage in collective bargaining under collective agreements ensures that employees affected by restructuring receive full severance pay, along with a framework for advance notice and consultation with a labour organization.

It is recognized that in matters of restructuring or structural changes, within the scope of managerial prerogative, which is a right granted to the employer- the employer may operate

the business or enterprise at their discretion and determine internal conditions, including hiring, transfers, dismissals, and organizational changes, as necessary for the management of the workplace, while safeguarding employees' rights, fundamental laws, collective agreements, or individual contracts.

7. **Others –** Have any other interesting issues relating to these matters been raised before the courts (e.g. compliance, sanctions and penalties, collective bargaining safeguards, non-discrimination, rights of temporary agency workers during restructuring, sectoral specificities…)? Are there any new or interesting developments in this area that you would like to refer to?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer:

The National labour Court recently issued a precedent-setting decision (case number 66963-05-24), and ruled for the first time that a CEO may be dismissed due to a change in shareholding and the new shareholder's desire to appoint a new CEO on their behalf.

In such circumstances, it is not necessary to point to any personal, professional, or business deficiency to justify the dismissal. The new shareholders' intention to appoint a CEO who aligns with their organizational culture reflects their business interests and the managerial discretion granted to them. This is particularly the case where the outgoing CEO is closely associated with the interests of the previous shareholder.

The Court further held that negotiations toward an employment agreement with the new CEO may commence even before the completion of the hearing process for the outgoing CEO. During the period between considering the dismissal of a CEO and reaching a final decision, any reasonable company must prepare for the possibility that the dismissal will be confirmed, and accordingly, it may need to appoint a replacement CEO within a short timeframe.

This ruling is significant regarding the termination of senior executives and the appointment of top management, and it affirms the right of new shareholders to shape senior leadership in line with their business interests. At the same time, the Court emphasized the importance of conducting a fair and respectful hearing for the outgoing CEO, in accordance with fundamental principles of transparency and fairness in decision-making processes.

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NORWAY

Respondent: Tron Løkken Sundet, Labour Court of Norway

1. **General –** Is the notion of "restructuring" defined at the national level? In your country, what are the basic rules and requirements applicable to enterprise reorganization and restructuring of operations?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer:

The notion of restructuring is not defined at the national level, but:

The general rules on employees' and shop stewards' right to information and consultation will apply. According to Section 8-1 of the Working Environment Act, employers in businesses that regularly employ at least 50 employees must inform about and consult with shop stewards on issues of importance to the employees' employment relationships. The duty to inform and discuss under Section 8-1 includes:

- information about the current and expected development of the business's activities and financial situation,

- information about and discussion on the current and expected staffing situation in the business, including any reductions and the measures the employer is considering in this connection,

- information about and discussion on decisions that may lead to significant changes in work organization or employment relationships.

Collective agreements also have rules on the duty of information and consultation on issues of restructuring. According to the Basic Agreement between the Norwegian Federation of Trade Unions (LO) and the Norwegian Employers Association (NHO) section 9-4 management of the enterprise shall discuss the following with the shop stewards (the executive committee) as early as possible:

- reorganizing of importance for the employees and their working conditions, including important changes in production systems and methods,

- employment matters, including plans for expansion or reduction.

The Basic Agreement does not cover all employees in the private sector, but similar provisions may be found also in other collective agreements in the private sector.

Section 15-2 of the Working Environment Act also sets out further requirements for information and consultation in the event of mass dismissals. This provision implements Directive 98/59/EC. The Norwegian provision has a somewhat wider scope but does not introduce more extensive rights than the minimum requirements under the directive. Mass dismissals are dismissals of at least 10 employees within a period of 30 days, (excluding dismissals based on the circumstances of the individual employees). Other forms of termination of employment contracts that are not justified by the circumstances of the individual employees shall be included in the calculation, provided that at least five employees are dismissed. Here too, the requirement applies that consultations shall be initiated as early as possible.

2. **Consultation and information rights and notification to public authorities –** In your country, what are the basic rules and requirements regarding consultation and information rights and notification to public authorities in the event of enterprise reorganisation or restructuring of work processes? Have any issues been raised recently in this regard, or are there any new or interesting developments?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer:

The basic rules and requirements on information and consultation are set out in our answer to question 1 above.

An employer who is considering mass dismissals, shall, as soon as possible and at the latest at the same time as the employer calls for consultations with the shop stewards, notify the Norwegian Labour and Welfare Administration. Planned mass dismissals shall take effect no earlier than 30 days after the Labour and Welfare Administration has been notified.

The provision on information and consultation has not been the subject of major disputes before the courts.

3. **Insolvency Proceedings –** What are the main issues that have been raised in insolvency proceedings before judicial courts regarding the protection of workers’ rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

We are not aware of any judicial insolvency proceedings where such issues have been raised.

4. **Transfer of undertaking –** What are the main issues that have been raised before judicial courts regarding the transfer of undertakings and the protection of workers' rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer:

The Norwegian rules on employees' rights in connection with transfer of undertakings are incorporated into the Working Environment Act chapter 16. This is an implementation of Directive 2001/23/EF and was a continuation of similar regulation based on the previous directives. The first provisions on transfer of undertakings were implemented in Norwegian law with effect from 1. January 1994.

Most cases before the courts have raised issues on whether the provisions are applicable, i.e. whether there has been a transfer of an undertaking. In recent case law the topic has also been the legal effects of the transfer for the individual employment contract, in particular to what extent rights and obligations arising from the contract of employment are transferred to the new employer. In one case, cleaning operations was transferred from a government entity ("Forsvarsbygg", in charge of the Armed Forces' buildings) to ISS Facility Services AS (ISS). In Norway, employment contracts in the civil service are governed by the Civil Service Act, which have provisions on notice periods more favourable to the employee than the Working Environment Act. The employment contracts referred to the notice periods in the Civil Service Act. The Supreme Court found that the reference to the Civil Service Act's notice periods in the cleaners' employment contracts were legally binding contractual terms and were therefore covered by the transfer of rights to ISS pursuant to section 16-2 of the Working Environment Act.

If there is a transfer of undertaking, the employment contract is as a main rule transferred to the new employer. According to the Working Environment Act section 16-3 an employee may object to the transfer of the employment relationship to the new employer. If so, the employment contract ceases to exist. However, the Norwegian Supreme Court has also stated that an employee under Norwegian law has a right to choose to uphold the employment relationship with the transferor if the transfer of the undertaking results in "not insignificant negative changes" to the employment relationship.

5. **Cross-border restructuring** – What are the main issues that have been raised before judicial courts regarding cross-border restructuring and the protection of workers' rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer:

We are not aware of any judicial proceedings where such issues have been raised.

6. **Adequate notice and severance pay –** What are the basic rules and requirements regarding adequate notice and severance pay in cases of collective redundancies related to enterprise reorganization and restructuring of operations? Have any issues been raised recently in this regard, or are there any new or interesting developments?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer:

There are no general rules on severance pay. An employment contract may be terminated if this is objectively justified, cf the Working Environment Act section 15-7. The notice period will as a general rule be one month, cf the Working Environment Act section 15-3. If a dismissal is justified, the employment relationship will cease at the end of the notice period, without the right to any additional compensation.

Although there are no rules on severance pay, such compensation is often included in voluntary termination agreements. In addition, the Working Environment Act imposes a duty on the employer to assess whether there is other suitable work in the company. If the employer belongs to a group of companies, a dismissal will not be justified if there is other suitable work to offer the employee in other companies in the group.

7. **Others –** Have any other interesting issues relating to these matters been raised before the courts (e.g. compliance, sanctions and penalties, collective bargaining safeguards, non-discrimination, rights of temporary agency workers during restructuring, sectoral specificities...)? Are there any new or interesting developments in this area that you would like to refer to?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer:

There are not any new developments or case law in Norway concerning these issues.

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▶ SLOVENIA

Respondent: Marijan Debelak, Senior Supreme Court Judge

1. **General** – Is the notion of "restructuring" defined at the national level? In your country, what are the basic rules and requirements applicable to enterprise reorganization and restructuring of operations?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

The Financial Operations, Insolvency Proceedings and Compulsory Winding-Up Act defines financial restructuring as a set of financial and business measures that are implemented in order for the debtor to eliminate imminent insolvency or become solvent in the short and long term, and may include:

1. reducing and postponing the maturity of the debtor's liabilities,

2. in the case of a capital company: increasing the share capital with new contributions in kind, the subject of which are creditors' claims against the debtor, or with new cash contributions, and

3. other measures, the implementation of which, in accordance with the rules of the business and financial profession, enables the elimination of the causes of the debtor's imminent insolvency or the debtor's insolvency and ensures that the debtor becomes solvent in the short and long term.

The same Act also provides for preventive restructuring procedures. This procedure is conducted with the aim of enabling a debtor who is likely to become insolvent within a period of one year to implement, on the basis of a financial restructuring agreement, appropriate measures to restructure his financial obligations and other financial restructuring measures necessary to eliminate the causes that could lead to his becoming insolvent. The court decides on the initiation of preventive restructuring procedures upon the proposal of an eligible applicant. In such procedures, a financial restructuring agreement may be concluded with creditors. The financial restructuring agreement shall enter into force upon the finality of the decision on the confirmation of this agreement. The agreement shall be effective for the claims of all creditors who have agreed to the conclusion of the agreement, and, with exceptions, also for the claims of other creditors.

This Act does not expressly regulate the position of employees and the possible termination of employment contracts for business (economical, organizational, stuctural etc.) reasons (for a larger number of employees) together with financial restructuring procedures. This does not mean that the employer will not be able to conduct other procedures for terminating employment contracts in the context of financial restructuring.

These procedures are explicitly regulated by the Employment Relations Act (ERA-1), which itself does not specifically define the concept of reorganization or restructuring. It only provides for the termination of an employment contract for a business reason, which is defined as the cessation of the employee's need for work under the terms of the employment contract (as a reason on the employer's part) due to economic, organizational, technological, structural and similar reasons.

In legal proceedings for the assessment of the legality of the termination of an employment contract for business reasons, economic and organizational reasons are often cited as grounds for termination, but these may or may not be directly related to major reorganizations or restructurings of the company. Reorganizations are often also minor and are not related to the restructuring of the entire or most of the company.

2. **Consultation and information rights and notification to public authorities –** In your country, what are the basic rules and requirements regarding consultation and information rights and notification to public authorities in the event of enterprise reorganisation or restructuring of work processes? Have any issues been raised recently in this regard, or are there any new or interesting developments?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Special financial restructuring procedures are conducted by a regular court, but these procedures do not involve employees per se. However, in such procedures,

the employer may also decide to terminate the employment contract of a larger or smaller number of employees for business reasons. In the event of dismissal of a larger number of employees (collective redundancies), he must adopt a special redundancy program and a list of redundant employees, and before that, he must also consult with the trade unions (with a view to reaching an agreement) and inform the Public Employment Service about this.

Our employment law should be in line with Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, but this is not entirely the case. Nevertheless, the jurisprudence takes into account the interpretation of the Court of Justice of the European Union in relation to the concepts of company, workers and the concept of collective redundancies.

In the past and still today, our courts deal with many cases of disputes about the legality of termination of employment contracts. In practically none of the disputes did the issue of failure to notify the trade union in cases of collective dismissals or failure to notify the public employment service appear as important. In quite a few disputes, however, it was found that the employer did not even initiate the collective dismissal procedure, although he should have - taking into account workers whose employment contracts were actually terminated and workers with whom he had previously signed agreements on the termination of employment contracts or agreements on the continuation of work in other jobs, because their work at the previous workplace was no longer needed.

3. proceedings before judicial courts regarding the protection of workers' rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Our Employment Act stipulates that the bankruptcy administrator may terminate the employment contract of those workers whose work has become unnecessary due to the initiation of the layoff procedure within 15 days. The bankruptcy administrator must also consult with the members of the trade union in the event of collective dismissals. Our regulation is therefore in accordance with international documents according to which the initiation of bankruptcy proceedings does not have the immediate consequence of terminating the employment contracts of workers. There are no legal disputes regarding the legality of these procedures in practice.

4. **Transfer of undertaking –** What are the main issues that have been raised before judicial courts regarding the transfer of undertakings and the protection of workers' rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area

The Transfer of undertaking institute is adopted in our country by Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses. The Employment Relations Act regulates this institute in Articles 75 and 76. We did not have a lot of disputes regarding the transfer of undertaking in the Supreme Court in the last five years.

In our case before the Court of the European Union C-194/18 it was decided that Article 1(1) of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, must be interpreted as meaning that the transfer, to a second undertaking, of financial instruments and other assets of the clients of a first undertaking, following the cessation of the first undertaking's activity, under a contract the conclusion of which is required by national legislation, even though the first undertaking's clients remain free not to entrust the management of their stock market securities to the second undertaking, may constitute a transfer of an undertaking or of part of an undertaking if it is established that there was a transfer of clients, that being a matter for the referring court to determine. In that context, the number of clients actually transferred, even if very high, is not, in itself, decisive

as regards classification as a 'transfer' and the fact that the first undertaking cooperates with the second undertaking as a dependent stock-exchange intermediary, is, in principle, irrelevant.

A brief summary from one of the cases (VIII Ips 51/2015, 25. 5. 2015) - it was a case of temporary transfer: First, it must be considered that if, after the expiration of the temporary transfer period, the activity that is the subject of the transfer is contractually taken over in its entirety by another transferee, the rights and obligations of the employees employed in this activity are transferred to the new transferee. Therefore, the rights and obligations from the employment relationships of these employees are transferred to the transferor again only if there is no new transferee or if the transferee does not take over the entire activity, which would also condition the takeover of all employees. Second, the provisions of the eighth paragraph of Article 75 of the ERA-1 must be interpreted in such a way that the rights and obligations in connection with the transfer of rights and obligations from the employment relationship are not exhausted with the first expiration of the contractual transfer of the company or activity, but that these legal provisions also apply in subsequent time-related contractual transfers of activities to the same or other transferees. In this regard, it must be considered that subsequent contractual transfers of activities also constitute a transfer within the meaning of Article 75 of the ERA-1, if the content of the contractual transfer has not changed significantly from the perspective of the work of the employees compared to the first transferer.

5. **Cross-border restructuring –** What are the main issues that have been raised before judicial courts regarding cross-border restructuring and the protection of workers' rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer:

No cases

6. **Adequate notice and severance pay –** What are the basic rules and requirements regarding adequate notice and severance pay in cases of collective redundancies related to enterprise reorganization and restructuring of operations? Have any issues been raised recently in this regard, or are there any new or interesting developments?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer:

According to our current law, in the case of dismissal for business reasons, the employer is not obliged to inform the individual employee about the intended dismissal. He must only send him a written notice of termination of the employment contract with a reasonable explanation of the business reason. As stated, it is different in the case of collective redundancies, since in these cases the union (if there is no union, then the workers) must be informed in advance and consulted with them.

The amount of severance pay is determined in the Employment Relations Act, but it can be determined even more favorably in collective agreements. The basis for severance pay is the average salary that the employee received in the three months before the termination. It amounts to 1/5 of the base if the employee was employed by the employer for one to ten years, 1/4 of the base if he was employed for more than 10 years and less than 20 years and 1/3 of the base if he was employed by the same employer for more than 20 years. The maximum statutory severance pay is 10 times the base, unless the collective agreement provides otherwise.

I do not know of any interesting case law on this topic. The legal provisions are very clear.

7. **Others –** Have any other interesting issues relating to these matters been raised before the courts (e.g. compliance, sanctions and penalties, collective bargaining safeguards, non-discrimination, rights of temporary agency workers during restructuring, sectoral specificities...)? Are there any new or interesting developments in this area that you would like to refer to?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer:

Example of a Supreme Court decision in case VIII Ips 8/2024, 27 March 2024:

The employer began the process of dismissing a large number of workers in the second half of 2021 and intended to designate 225 workers as redundant workers out of 340 workers on slot machines. After negotiations, at the end of 2021, it concluded employment contracts with 149 workers, of whom 95 were croupiers, with a reduced working time of 30 hours and a validity period of three or four years.

At that time, the employer stopped the process of dismissing redundant workers, but after only three months in 2022, it found that the full effects had not been achieved and therefore intended to terminate the employment contracts of some more workers (including 30 croupiers).

The employer's management was informed of the need for additional staff reductions on 14 April 2022, and on 12 September 2022, a redundancy programme was adopted in accordance with the planned procedure. In this new procedure, the employees (croupiers) whose employment contracts the employer would decide to terminate no longer included those with whom it had concluded a short-time work agreement at the time of the first planned reduction in the number of employees. The employees whose employment contracts it would terminate were therefore determined only among those who had not previously signed a short-time work agreement for a period of three or four years.

The Supreme Court ruled that such a formation of a group of comparable employees, from which redundant employees would then be determined, was unlawful. The croupiers (including the plaintiff) were employed in the same job, with the same description of work and tasks. The only difference between them that influenced the formation of the category of comparable employees was the employment contract for full-time or part-time work. 95 croupiers had signed an employment contract with the employer for an indefinite and part-time working time of 30 hours more than half a year earlier (for a period of three or four years), while other workers did not sign these contracts and were still working full-time.

This does not mean that the workers were not comparable to each other due to this circumstance alone and that only the need for work of those workers who had not previously signed part-time employment contracts (otherwise for a temporary period of three or four years) could have ceased. From the perspective of forming a category of comparable workers, the division into those who are employed full-time or part-time is unfounded. The cessation of the need to perform certain work under the conditions of the employment contract (such as the definition in Article 89 of the ERA-11) must not be based on a distinction between full-time and part-time workers in the same workplace, as this establishes a distinction based on an inappropriate criterion of comparability or incomparability. The criterion must be based on the cessation of work requirements, but in the same workplace, the cessation of work requirements cannot be justified by the fact that only the work of those workers who are employed full-time has become unnecessary, but not the others. It is true that one of the essential components of an employment contract is also full-time or part-time work (Article 31 of the ERA-1), but in relation to the cessation of work requirements, the distinction according to this criterion is not appropriate. By excluding some workers from the comparison in this way, an unfounded distinction is created between workers who otherwise do the same work and are completely interchangeable. Therefore, the conclusion about the cessation of work requirements cannot be limited to only some workers in the same workplace and thus establish two different situations.

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▶ SWEDEN

Respondents: Sören Öman & Catharina Nordlander, Labour Court

1. **General** – Is the notion of "restructuring" defined at the national level? In your country, what are the basic rules and requirements applicable to enterprise reorganization and restructuring of operations?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer: No, in Sweden there is no legal definition of restructuring.

Consultation and notification requirements before restructuring are dealt with in the answer to question no. 2.

The employer may, after the consultation and notification requirements are fulfilled, unilaterally decide on a reorganisation or restructuring of the enterprise. The court cannot, in principle, review the employer's decision, even when it results in redundancies. One exception is if the termination of employment is challenged on grounds of discrimination or freedom of association.

2. **Consultation and information rights and notification to public authorities** – In your country, what are the basic rules and requirements regarding consultation and information rights and notification to public authorities in the event of enterprise reorganisation or restructuring of work processes? Have any issues been raised recently in this regard, or are there any new or interesting developments?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer: An employer contemplating a reorganisation or restructuring is required to take up negotiations with all concerned trade unions with a collective agreement binding the employer. If unity about the measure to take is not achieved during the negotiations at local level, each party can request negotiations at central level. (Sect. 11 and 14 of the Co-determination Act.)

If the employer is not bound by any collective agreement and contemplates redundancies, the employer must initiate negotiations with all concerned trade unions and provide them certain information. (Sect. 13 and 15 of the Co-determination Act.)

If the employer considers making five or more workers redundant, the employer must inform the Employment Agency at least two months in advance and provide certain information. (Sect. 1–2 a of the Act on certain employment promotion measures.)

3. **Insolvency Proceedings** – What are the main issues that have been raised in insolvency proceedings before judicial courts regarding the protection of workers' rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer: The rules described in the answer to question no. 2 are applicable also during insolvency proceedings. If the employee performs work during insolvency proceedings, there is a priority right to payment from the bankruptcy estate. Payment during the statutory notice period, if the employment is terminated, is guaranteed by the state.

4. **Transfer of undertaking –** What are the main issues that have been raised before judicial courts regarding the transfer of undertakings and the protection of workers' rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer: The main issue in court cases concerning the transfer of undertakings or businesses, has typically been whether the undertaking has preserved its autonomy in such a way that the status and function of the employees affected by the transfer shall be preserved. This is decided on the basis of the relevant circumstances in each separate case and according to the so-called *Spijkers criteria*. These can be summed up as the nature of the business being transferred, whether significant assets like buildings or equipment are transferred, the value of transferred assets such as customer lists or intellectual property, whether the majority of the workforce is taken on by the new employer, whether the new employer takes over the previous business's customer base, the degree to which the activities carried out before and after the transfer are the same and the duration of the period where the business activities were suspended.

The transfer of undertakings or businesses is regulated in Article 6 b § in the Employment Protection Act (lagen om anställningsskydd), which in turn implements the Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses. There is a substantial amount of relevant case law from the Swedish Labour Court (Arbetsdomstolen); see for instance AD 2014 nr 28 and there indicated cases.

The protection of worker's rights are safe-guarded by such measures as, for instance, having access to the court system and the right to be represented by one's labour organization.

5. **Cross-border restructuring** – What are the main issues that have been raised before judicial courts regarding cross-border restructuring and the protection of workers' rights? How have courts decided upon these issues?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer: The Swedish Labour Court has a couple of cases where the actions of a parent company situated abroad are alleged to have bearing on such things as, for instance, the duties of a Swedish subsidiary to negotiate with a labour organization according to the Employment (Co-Determination in the Workplace) Act (lagen om medbestämmande i arbetslivet). These cases have yet to be decided upon by the court.

6. **Adequate notice and severance pay –** What are the basic rules and requirements regarding adequate notice and severance pay in cases of collective redundancies related to enterprise reorganization and restructuring of operations? Have any issues been raised recently in this regard, or are there any new or interesting developments?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer:

<u>Adequate notice</u>

An employer that intends to dismiss one or more employees for organizational reasons, is obliged by law to negotiate in advance with the relevant labour organizations(s). Such dismissals cannot be decided and enforced before negotiations are completed, unless exceptional circumstances apply.

For more details, see Article 11-17 in the Employment (Co-Determination in the Workplace) Act (lagen om medbestämmande i arbetslivet).

Deviations from what the law stipulates can in some regards be made through collective agreements. Such deviations may not entail less advantageous terms for employees than what would follow from Council Directive 98/59/EC concerning collective redundancies or from the abovementioned directive concerning transfers of undertakings et al. See Article 4 § in the Employment (Co-Determination in the Workplace) Act.

<u>Severance pay</u>

When terminating an employment, the Employment Protection Act differentiates between terminations with a notice period and such terminations that take effect immediately (and are typically caused by grave misconduct on the employee's side). For the former, there is a legally stipulated minimum notice period of one month. In cases where the employment has been terminated by the employer, the notice period extends further based on the duration of the employment, up to six months if this duration has been more than ten years. The employee is normally entitled to full pay during this notice period. If the employer has freed the employee from the obligation to work during the notice period, the employee has an obligation to deduct income he or she has received, or could reasonably have received, from other employment.

For more details, see Article 11-13 in the Employment Protection Act. Deviations from what the law stipulates can in some regards be made through collective agreements; again with a safeguard for minimum employee rights according to relevant EC law. See Article 2 b § in the Employment Protection Act.

7. **Others –** Have any other interesting issues relating to these matters been raised before the courts (e.g. compliance, sanctions and penalties, collective bargaining safeguards, non-discrimination, rights of temporary agency workers during restructuring, sectoral specificities…)? Are there any new or interesting developments in this area that you would like to refer to?

Please refer to the relevant legal basis and explain, including references to applicable case law that may have significantly impacted this area.

Answer: –

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