SUPREME COURT OF NORWAY

J U D G M E N T

given on 29 October 2019 by the Supreme Court composed of

Justice Hilde Indreberg
Justice Kristin Normann
Justice Per Erik Bergsjø
Justice Arne Ringnes
Justice Borgar Høgetveit Berg

HR-2019-1986-A (case no. 19-026350SIV-HRET)
Appeal against Frostating Court of Appeal's judgment 7 December 2018

Telenor Norge AS	(Counsel Sten Foyn)
Abelia (third-party intervener)	(Counsel Margrethe Meder)
v.	
A	(Counsel Karl Inge Rotmo – til prøve)
El og It Forbundet (third-party intervener)	(Counsel Rune Lium)

(1) Justice **Ringnes:** The case concerns the validity of a dismissal after a restructuring and downsizing process in Telenor Norge AS. The question is whether the selection pool was objectively justified.

(2) A, born in 1965, was dismissed on 24 January 2017 from her job as a sales consultant in Telenor Norge AS after having worked in the company for 32 years. The dismissal was a step in the downsizing process.

(3) Telenor Norge AS is a wholly owned subsidiary of Telenor ASA. The company's business activities are split into the following five divisions: Business, Fixed & TV, Technology, Mobile and Security, Wholesale and Regulatory. Each division has its own management and controls its own budget. A worked in the Business division, which, as of December 2016, counted 743 employees. The division is responsible for product development, sales and promotion to the Norwegian business market.

(4) Before the downsizing, the Business division's office in Trondheim – where A worked – had eleven employees, of whom one would soon retire. The others were nine sellers and A, who worked as a sales coordinator for the sellers.

(5) There were altogether 154 employees at Telenor Norge's office in Trondheim as of December 2016. Among these, 58 worked in the Fixed and TV division.

(6) Telenor Norge has carried out several restructuring and downsizing processes in recent years, including some 30 reorganisation processes within the divisions since 2006.

(7) Since 2005, redundant employees have been selected from pools determined based on the criteria division and geography. The justification for applying limited selection pools is given in a discussion memorandum from 2007:

> **"The administration finds that narrowing down of the selection area is objectively justified. The primary reason for not including the entire legal entity in the selection is the company's size, working environment and differences in fields of activities, qualifications and responsibilities. By limiting the selection pool, we avoid affecting the entire organisation. The opposite is assumed to have a negative effect on the working environment, as it, among other things, creates uncertainty for a larger group of workers. Also, if the selection pool is not narrowed down, the company will have more difficult and chaotic situation to deal with."**

(8) The geography criterion – which Telenor Norge refers to as location – entails that offices located at a natural commuting distance from each other can be seen as one. For example, Gjøvik, Lillehammer and Hamar are the same location. Location Mid-Norway comprised the office in Trondheim, but not Rørvik, which is a five-hour drive from Trondheim. In a written statement before the Supreme Court, negotiations leader in Telenor Norge, Helge Moen, has explained the use of limited selection pools:

> **The apparent motivation for using selection pools is the division of the company (Telenor Norge). The divisions have various tasks, various groups of employees with different qualifications, and restructuring is called for from time to time. Telenor Norge is in a constantly dynamic situation dealing with an ever-changing market due to the technologic development or competition conditions in the market. This has different effects in the different parts of the companies, which means that the restructuring processes must be implemented divisionally.**
>
> **The business market is a good example of this; the competition is intense and the products**

sold to the corporate customers differ from those demanded in the private market. For years, there have been more restructurings in this division than in the other divisions of the company.

The company is represented in many parts of the country, and it would have been unnatural not to limit the selections according to the general daily commuting distance.

(9) The restructuring process leading to A's dismissal was initiated in the autumn of 2016.

(10) EL og IT Forbundet – A's trade union – held that Telenor Norge's narrowing down of the selection pool was a breach of section 8-2 of the Basic Agreement. Negotiations were held in accordance with section 8-2 subsection 2 first sentence, which reads:

"If in connection with cutbacks in the workforce an enterprise finds reason to depart from the seniority principle, and the shop stewards consider that this is not justified, the matter may be submitted to the organisation for negotiation."

(11) In the minutes of the negotiation meeting of 25 January 2017, the following was written under the headline "EL og IT Forbundet's opinion":

"In connection with the downsizing process in Telenor Norge AS, the seniority principle has not been followed. According to section 8-2 of the Basic Agreement, the starting point is the enterprise itself. In this case, Telenor Norge AS. There must be justifiable reason for narrowing down the seniority area. It is not fair to narrow down the seniority area of each division. This implies that the principle of seniority must in fact be explained away.

The employees are qualified to work in several of the divisions. The constant moving of responsibilities and employees between the divisions shows how coincidental and flexible these dividing lines are. Until 2015, for instance, *Kystradioen* was part of the Business division. There is no tradition between the parties in Telenor to apply such a narrow selection pool as in these cases."

(12) The parties failed to reach an agreement, but the dispute was not brought before the Labour Court.

(13) On 16 November 2016, A was told there was no place for her in the new organisation. Two restructuring interviews were held, and she was offered a termination agreement with 18 months' salary, as well as a restructuring benefit. She was also offered a new position in Telenor's invoicing department in Rørvik. A did not accept the termination agreement, and due to personal circumstances, she turned down the offer of new employment in Rørvik. After a discussion meeting held 13 January 2017, she was, as mentioned, dismissed.

(14) On 9 May 2017, A brought an action before Sør-Trøndelag District Court claiming that the dismissal was unfair and that Telenor Norge AS was liable for damages as calculated by the court.

(15) On 15 March 2018, Sør-Trøndelag District Court gave judgment with the following conclusion:

"1. The dismissal of A is invalid.

2. Telenor Norge AS will pay damages to A of NOK 10 000 – tenthousand – within two weeks of service of this judgment, with the addition of default interest under section 3 subsection 1 first sentence of the Default Interest Act from the due date until payment is made.

3. Telenor Norge AS will cover A's costs of NOK 214 458 – twohundredandfourteenthousandfourhundredandfiftyeight – within two weeks of service of this judgment."

(16) The District Court sat with two lay judges with expertise on employment in accordance with section 17-7 of the Working Environment Act. A unified court found that the selection pool was justified and not in conflict with section 15-7 subsection 1 of the Working Environment Act and section 8-2 of the Basic Agreement. The majority – the two lay judges – found however that the dismissal was unfair after a weighing of interests, see section 15-7 subsection 2 of the Working Environment Act.

(17) Telenor Norge AS appealed to the Court of Appeal. On 7 December 2018, Frostating Court of Appeal gave judgment with the following conclusion:

"1. The appeal is dismissed.

2. Telenor Norge AS will pay A's costs of NOK 132 491 – onehundredandthirtytwothousandfourhundredandnineteen – within two weeks of service of this judgment."

(18) The majority, consisting of two professional judges and one lay judge, found that the selection pool was unjustified, because the way it was narrowed down entailed a weakening of the seniority principle under section 8-2 of the Basic Agreement. However, the minority considered the selection pool justified and emphasised in particular Telenor Norge's long-standing practice, and the company's wish to avoid overly burdensome restructuring processes.

(19) Telenor Norge AS has appealed to the Supreme Court against the Court of Appeal's application of law and findings of fact. The Supreme Court's Appeals Selection Committee has referred the appeal against the application of law to hearing.

(20) Abelia has declared third-party intervention in favour of Telenor Norge AS. EL og IT Forbundet has declared third-party intervention in favour A.

(21) The appellant – *Telenor Norge AS* – contends:

(22) The selection pool was objectively justified both under section 15-7 of the Working Environment Act and under 8-2 of the Basic Agreement.

(23) Telenor Norge cannot be imposed to carry out an overly burdensome restructuring process. The divisions are largely independent, with individual managements and business strategies. Different qualification requirements apply, and the restructuring processes are handled internally, within each division. Together with the geographical demarcation of the area in which the employees work, this is a natural group to select from. No rulings have been made by the Supreme Court or the Labour Court defining selection pools across the divisions.

(24) When assessing whether the selection pool was objectively justified, the Business division must be considered as a whole. The selection pool cannot be based on the disadvantages for one person, in this case A. It requires a general and overall assessment where the specific circumstances in Trondheim are not crucial. The Court of Appeal has disregarded the fact that Telenor Norge operates in an industry of frequent restructurings and intense competition and

thus has a recurring need for organisational change. The consideration of equality and predictability for the employees, based on clear and fixed selection criteria, must be emphasised. Telenor Norge has applied the same practice since 2005, and its processes are good and thorough. The Court of Appeal's result will create unmanageable processes, domino effects in other divisions and unrest among the employees.

(25) The Court of Appeal's majority has based its opinion on an incorrect perception of the significance of seniority and attributed too much importance to this factor. The application of law is not in accordance with the conclusions in the Supreme Court judgment HR-2019-424-A *Skanska* and the Labour Court judgment ARD-2018-18 *NRK Østlandssendingen*. The Court of Appeal's minority has made a correct assessment.

(26) There is also no basis for setting A's dismissal aside after the weighing of interests in accordance with section 15-7 subsection 2 second sentence of the Working Environment Act. There are no extraordinary circumstances justifying such a measure. A was not willing to take the offered position in Rørvik, and the employer has no duty to establish a new position.

(27) Telenor Norge AS has submitted this prayer for relief:

> **"1. Judgment is to be given in favour of Telenor Norge AS.**
>
> **2. Telenor Norge AS is to be awarded costs in the District Court, the Court of Appeal and in the Supreme Court."**

(28) The third-party intervener *Abelia* endorses Telenor Norge's contentions. Abelia has pointed out that the fairness of a selection pool must be determined on a general basis and not based on selection criteria related to each redundant person. This follows from the Labour Court's judgment in the case concerning *NRK Østlandssendingen*. The Court of Appeal's majority has also perceived the principle of seniority incorrectly when characterising it as "basic". Finally, Abelia contends that the nature of the business activities and type of workforce must be emphasised in the objectivity assessment.

(29) Abelia has submitted this prayer for relief:

> **"1. Judgment is to be given in favour of Telenor Norge AS.**
>
> **2. Abelia is to be awarded costs in the Supreme Court."**

(30) The respondent – *A* – contends:

(31) The Court of Appeal's majority has balanced the interests completely in line with the Labour Court's practice. Appropriate importance has been attributed to the seniority principle.

(32) There is a fundamental distinction between statutory employment protection and employment protection under collective bargaining agreements. Bound by the latter, Telenor Norge AS has assumed a special obligation to follow the rules on seniority.

(33) An organisation such as Telenor Norge must be expected to handle repeated restructuring and redundancy processes in line with the principle of company seniority.

(34) The selection criteria are not regulated by agreement. On the contrary, the trade unions have

consistently claimed that the selection pool must be the entire company. The company's use of fixed criteria also contravenes the requirement of a specific and individual assessment. The consequence of the narrow selection pool defined by Telenor Norge, was that A's 32 years in service had no relevance to the selection of redundant persons. The selection pool cannot be so narrow as to entail a considerable weakening of the seniority principle.

(35) In the alternative, A's dismissal is unfair after weighing of interests in section 15-7 section 2 second sentence of the Working Environment Act section 15-7 subsection 2 second sentence. A is a loyal and skilled employee, whose actual qualifications have been acquired in Telenor Norge. The company should have arranged for A to be able to fill the position in Rørvik through telework from Trondheim. The argument that this was not a commercially ideal solution to Telenor Norge cannot be heard considering the company's strong economy.

(36) A has submitted this prayer for relief:

> **"1. The appeal is to be dismissed.**
>
> **2. Telenor Norge AS is within two weeks to cover A's costs in the Supreme Court."**

(37) The third-party intervener, the trade union *EL og IT Forbundet,* endorses A's contentions. The union emphasises that the narrowing down of the selection pool had the effect that there was no one else in the pool with the same qualifications as A. The seniority principle is the fundament of the protection of employees under the collective agreement, and here, the Labour Court's practice differs from the Supreme Court's statements in HR-2017-561-A *Posten II*.

(38) Telenor Norge's practice cannot be decisive, as it has no support amongst the employees through their unions.

(39) EL og IT Forbundet has submitted this prayer for relief:

> **"EL og IT Forbundet are to be awarded costs in the Supreme Court."**

(40) *My view on the case*

(41) The parties agree that the workforce reduction leading to A's dismissal, was objectively justified. It is also undisputed that A was offered other suited employment, and that the condition in section 15-7 subsection 2 first sentence of the Working Environment Act was met.

(42) The issue at hand is whether narrowing the selection pool down to the business division in Trondheim is objectively justified. The selection pool is determined based on the criteria division and geographical location, which Telenor Norge has applied since 2005 to limit the selection pool in connection with restructurings.

(43) The legal starting point under section 15-7 of the Working Environment Act is that the entire company is a selection pool. The pool may however be narrowed down if there is justifiable reason for doing so, see the Supreme Court judgment in Rt-2015-1332 *Gresvig* paragraph 38. The general rule for not including the entire company in the selection pool is described as follows, see paragraph 43:

"However, when the legal starting point is that the entire company is a selection pool, importance must be attributed to the considerations implying that the starting point is departed from. On the other hand, the Working Environment Act cannot be interpreted to mean that organisations are forced to implement overly burdensome processes that will contribute to undermining the security for the remaining employees."

(44) Under an agreement regarding Telenor (*Overenskomst for Telenor*) between the Confederation of Norwegian Enterprise (NHO) and the Norwegian Confederation of Trade Unions (LO) and EL og IT Forbundet, Telenor Norge AS is bound by the Basic Agreement between LO and NHO. In addition to invoking section 15-7 of the Working Environment Act, A has invoked section 8-2 subsection 1 of the Basic Agreement as a supporting argument for her contention that the selection pool is not objectively justified. The provision reads:

"If notice of dismissal is given because of cutbacks or restructuring, the seniority principle may be departed from when there is justifiable reason for this."

(45) As for the significance of a collective agreement in disputes concerning dismissals before the courts, the following is stated in the Supreme Court judgment HR-2019-424-A *Skanska* paragraph 38:

"Here, I mention that the Labour Court has exclusive jurisdiction under section 33 of the Employment Dispute Act, cf. section 1, to resolve disputes between the parties to a collective agreement regarding the interpretation of the same agreement, see HR-2017-777-A paragraph 26. But this does not prevent each individual employee from invoking the collective agreement before the ordinary courts, as a basis for a claim against the employer bound by the collective agreement. In such cases, the ordinary courts must consider the implications of the collective agreement as a step in resolving the dispute, see HR-2018-1268-F paragraph 10. Any individual rights acquired under the collective agreement will thus be effectively protected. Another issue is that the ordinary courts' interpretation of the collective agreement does not bind the parties to it, not even when they – NHO and LO in this case – have acted as third-party interveners."

(46) In the case at hand, section 8-2 of the Basic Agreement is the main legal basis. The ordinary courts are thus bound by the Labour Court's interpretation of the collective agreement, see section 34 subsection 2 of the Labour Dispute Act and paragraph 39 of *Skanska*. The Labour Court's rulings are thus essential in this case.

(47) Firstly, whether or not the dismissal violates the seniority principle in the Basic Agreement is partially a question of the fairness of the group of people initially selected for the assessment and partially a question of the correctness of the individual seniority assessment of the employees. The seniority principle forms the basis for the individual selection of employees, and "[t]he assessment must in other words start there", see *Skanska* paragraph 45.

(48) The first judgment in which the Labour Court considered the *question of selection pool* in relation to section 8-2 subsection 1 of the Basic Agreement, was ARD-2016-151 *Nokas.* The case concerned the dismissal of three security guards at Sola helicopter terminal. Nokas limited the selection pool to Sola Heliport, while the employees found that it had to comprise all of Nokas's places of operation in the Stavanger district.

(49) The Labour Court assumed that the assessment of seniority had to be based on the entire organisation, but that, in large corporations and similar, it is natural to consider the part of the organisation for which the agreement is invoked, see paragraphs 67 and 68. In paragraph 70, it is stated that this interpretation is in accordance with the Supreme Court's conclusion in

Gresvig, paragraph 38.

(50) The Labour Court also supports the Supreme Court's formulation with regard to the threshold for not using the entire organisation as a selection pool, see *Gresvig* paragraph 43, which I have quoted. I refer to paragraph 77 in Nokas:

> **"In the Labour Court's view, the same starting point must apply in accordance with section 8-2 subsection 1 of the Basic Agreement. Both parties have referred to Rt-2015-1332 and find that the factors presented therein are relevant, although the specific dispute concerned non-statutory rules on seniority, since the organisation was not bound by a collective agreement. In the Labour Court's view, there is no reason why the norm for departing from using the organisation or the undertaking as a selection pool is different under section 8-2 subsection 1 of the Basic Agreement than under the non-statutory rules."**

(51) In paragraph 78, the Labour Court further supports the Supreme Court's listing of factors that may be relevant when assessing the objectivity.

> **"The Supreme Court points at several factors that should be included in an objectivity assessment. This applies in particular if the organisation practices an established system, if it concerns one single workforce reduction or a continuing adjustment to the market and the competition situation, and the organisation's economy. However, the Supreme Court emphasises in paragraph 42 that '[t]he question whether it is objectively justified to limit the selection pool must be assessed in each individual case, and this assessment must include a number of considerations."**

(52) Consequently, the legal starting points for the objectivity assessment and the factors included therein, are by far the same as those under section 15-7 of the Working Environment Act and section 8-2 of the Basic Agreement.

(53) However, when the organisation is bound by a collective agreement, *the seniority principle* will, as mentioned, have a different meaning. This is explained in *Nokas* paragraph 84:

> **"As a party to a collective agreement, Nokas has assumed a special obligation to comply with the seniority rules, unless it is objectively justifiable to depart from them."**

(54) The next Labour Court judgment dealing with the significance of the seniority principle when determining a selection pool, is ARD-2018-18 *NRK Østlandssendingen* – which I will refer to as *NRK*. The case concerned the seniority principle in section 36 in the Basic Agreement between Arbeidsgiverforeningen Spekter and Norsk Journalistlag, which has the same contents as section 8-2 of the Basic Agreement. In line with the quoted paragraph 84 in *Nokas*, it is stated in paragraph 40 that the wording in the Basic Agreement "is a legal standard making requirements to the employer's assessments beyond what follows from section 15-7 of the Working Environment Act".

(55) The Labour Court continues in paragraph 41:

> **"Section 36 of the Basic Agreement does not distinguish between determination of selection pool and selection within the pool. The wording only implies that exceptions from selection based on seniority must be objectively justified, and does not exclude that the provision applies to both determination of pool and application of selection criteria. The principle indirectly expressed is that seniority is the initial factor to consider in a redundancy or restructuring process. A selection pool excluding employees from the list of senior employees in other parts of the organisation will interfere with this and be an exception from the obligation to base the selection on seniority. The starting point must therefore be that the**

assessment of seniority relates to the organisation bound by the Basic Agreement. That means that company seniority is the starting point. The employer must have justifiable reason to depart from the principle that company seniority must form the basis for selection in a downsizing process."

(56) The question whether the selection criteria for redundant employees are relevant when determining the selection pool, was considered by the Supreme Court in HR-2017-561-A *Posten II*. There, it was argued that the pool had to be of a size securing sufficient representativeness for the employment category in question, see paragraph 65. The Supreme Court disagreed, and the justice delivering the leading opinion stated this in paragraph 66:

"I do not agree with such an approach. It is an objectively justified selection pool that defines who will be compete for the positions in connection with redundancy. When this selection is to be made, the selection criterion has no place. This applies whether it is seniority, qualifications, age or social conditions – or a combination thereof – that will decide who becomes redundant. As such, seniority is not in any exceptional position."

(57) In the same paragraph, it is mentioned that the Supreme Court – in *Gresvig* – has agreed that "even a division with one employee" qualifies as a selection pool.

(58) In *NRK*, the Labour Court modifies the clear distinction drawn by the Supreme Court between selection criteria and the assessment of whether a limited selection pool is objectively justified. In paragraph 49, the Labour Court says this about the mentioned statement *Posten II*:

"What is stated here does not concern the interpretation of section 36 of the Basic Agreement. Narrowing the pool to parts of an organisation may be crucial in the determination of whether the selection should be based on seniority, and thus for the protection enjoyed under the collective agreement. Which requirements the Basic Agreement sets out for the determination of the selection pool has no general answer. The question is whether the employer, after an individual assessment, has justifiable reason to depart the seniority principle. Here, a number of aspects may be relevant. The requirement that the limitation of the selection pool must be objectively justified means that the number of employees, and which, included in the selection is relevant when determining the selection pool. This assessment differs from the individual assessment of whether there are circumstances related to the individual employee that justify the exclusion of seniority as a selection criterion and the balancing between them."

(59) Thus, according to the Basic Agreement, seniority is a factor when defining the selection pool, because a limited pool "may be decisive for whether seniority may be used as a selection criterion, and thus for the employees' protection under the collective agreement". At the same time, the Labour Court holds that this assessment differs from the seniority assessment of the individual employee, which is made within the selection pool. Relevant here is "the individual assessment and balancing between seniority and other selection criteria, such as qualifications, suitability and social conditions", see paragraph 51.

(60) *NRK* concerned a restructuring process in Østlandssendingen. In its ruling, the Labour Court emphasised "the general significance of the pool in the selection process", see paragraph 62. In the selection pool decision, it was decided that "Østlandssendingen [was] a pool", and that "the journalists [were] a suited pool instead of all professional pools being measured against each other". Against that background, the following was stated in paragraph 62:

"The vast majority of the 63 employees in Østlandssendingen were journalists. The seniority principle has therefore not been considerably weakened although one departed from company seniority."

(61) The Labour Court's assessment seems to reflect the view that the selection pool was sufficiently large and well composed for using seniority as basis for selection within the pool. The central conclusion of *NRK* is therefore, as I see it, that *which or how many employees are included in the selection pool*, must be part of the objectively assessment if necessary to ensure that seniority becomes a selection criterion. When the statement in paragraph 49 is read in context, my perception is also that "which employees" does not mean that the individual employee's seniority and competence must be considered, but that other factors may be relevant, such as the composition of the selection pool with regard to type of employment.

(62) *In summary,* a selection pool may be objectively justified if the seniority principle "has completely lost its significance", see *Nokas* paragraph 86, or is "materially weakened", see *NRK* paragraph 62.

(63) I will now turn to my individual assessment. The question is whether Telenor had justifiable reason to narrow the selection pool down to the division in Trondheim. This is based on an overall evaluation of several conditions, see *NRK* paragraph 53.

(64) Telenor Norge is a large enterprise with thousands of employees and offices nationwide, and the company's activities belong to an industry characterised by constant innovation and intense competition, not least from foreign players. The need for repeated restructuring – as demonstrated by the company's history from 2006 – is genuine. The purpose of not imposing Telenor Norge with an overly burdensome process thus suggests that the selection pool may be limited to parts of the company.

(65) The fact that the company is split into separate divisions with separate business activities and individual managements, budgets and schedules, is also an argument in favour of such a limitation of the selection pool.

(66) Another argument is the consideration of reducing stress and insecurity for the employees. Generally, it must be held that the safety of the employees depends on the company's ability to adjust its business to the competition in the market. The fact that the restructurings take place within each division also suggests – as a general starting point – that it may have a negative effect on the employees' feeling of safety if a redundancy process in one division affects employees working in another.

(67) In this respect, it is also significant that the adjustments of the selection pool are rooted in a firm and long-standing practice in the company, see *Gresvig* paragraph 46 and *NRK* paragraph 59. This contributes to equality and predictability.

(68) I believe that the general conditions I have now presented indicate that Telenor Norge had justifiable reason to abandon the starting point that the entire organisation is a selection pool. Division and geographical location are in principle natural and objective selection criteria.

(69) However, the question at hand is not whether the company's selection pools, based on these criteria, are generally objectively justified. The objectivity assessment must be based on an individual assessment in each case, see *Nokas* paragraph 78 with reference to *Gresvig* paragraph 42.

(70) In this individual assessment, a balancing must be made between the general considerations I have mentioned and the consequences for the seniority principle when the selection pool is narrowed down to the business division in Trondheim.

(71) This selection pool consisted of a small number of persons – eleven in total – of whom nine were sellers. Within A's employment category – contracts and sales support – there were no other workers. The application of Telenor Norge's general selection criteria thus had the effect that there were no employees in comparable positions against whom A could compete.

(72) I take it that Telenor Norge, when determining the selection pool, did not make an individual assessment of whether the pool could be adjusted to the specific situation, for instance by extending it to other divisions at the Trondheim office. It is also set out in the Court of Appeal's judgment that A was only assessed against other employees in the business division stationed in Trondheim. The consequence for A's part is that her 32 years of service have lost all value as a selection criterion.

(73) Although "division" is an objectively justified and natural selection criteria in general, this does not rule out the possibility of departing from it after an individual assessment, see *Nokas* paragraph 88, where the Labour Court's majority states that the selection pool must not necessarily be defined divisionally.

(74) I find that Telenor Norge, when assessing the objectivity, should have considered which employees, or how many, were included in the selection pool. The disadvantages Telenor Norge might have incurred in doing so do not exceed what must reasonably be expected from a company of Telenor Norge's size and resources. I refer to *NRK* paragraph 53, where the Labour Court stated that "[c]ompany seniority may complicate the restructuring processes, but larger organisations must as a main rule be expected to handle major selection processes".

(75) Based on a general assessment of the number of employees and the composition of positions within the selection pool, I find that the relevance of seniority principle, here, must be considered materially weakened.

(76) Against this background, I conclude that the narrowing down of the selection pool contravenes the objectivity requirement in section 8-2 of the Basic Agreement. It follows from *Gresvig* paragraph 36 that "[u]nless it was clear that the outcome of such a broad assessment would in any case have been the dismissal of A, the lack of an assessment in itself must be sufficient to conclude that the dismissal was invalid".

(77) A has won the case, and is entitled to costs in the Supreme Court under section 20-2 subsection 1 of the Dispute Act. Telenor Norge and Abelia must also pay the costs of the third-party intervener – EL og IT Forbundets. A has claimed costs of NOK 670 148, of which NOK 630 000 are legal fees. EL og IT Forbundet has claimed NOK 261 648, of which NOK 247 500 are legal fees. The claims are accepted.

(78) I vote for this

J U D G M E N T :

1. The appeal is dismissed.

2. Telenor Norge AS and Abelia will jointly and severally pay costs in the Supreme Court of NOK 670 148 to A– sixhundredandseventythousandonehudredandfortyeight– within 2 – two – weeks of service of this judgment.

3. Telenor Norge AS and Abelia will jointly and severally pay costs in the Supreme Court of NOK 261 648 to EL og IT Forbundet – twohundredandsixtyonethousandsixhundredandfortyeight – within 2 – two – weeks of service of this judgment.

(79) Justice **Normann:** I agree with Justice Ringnes in all material respects and with his conclusion.

(80) Justice **Bergsjø:** Likewise.

(81) Justice **Høgetveit Berg:** Likewise.

(82) Justice **Indreberg:** Likewise.

(83) Following the voting, the Supreme Court gave this

J U D G M E N T :

1. The appeal is dismissed.

2. Telenor Norge AS and Abelia will jointly and severally pay costs in the Supreme Court of NOK 670 148 to A– sixhundredandseventythousandonehudredandfortyeight– within 2 – two – weeks of service of this judgment.

3. Telenor Norge AS and Abelia will jointly and severally pay costs in the Supreme Court of NOK 261 648 to EL og IT Forbundet – twohundredandsixtyonethousandsixhundredandfortyeight – within 2 – two – weeks of service of this judgment.