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Provisional text

JUDGMENT OF THE COURT (Second Chamber)

11 July 2024 (*)

(Reference for a preliminary ruling – Social policy – Directive 98/59/EC – Collective redha! undancies – Article 1(1)(a) and Article 2– Obligation to inform and consult workers' representatives – Scope – Termination of employment contracts on the ground of the employer's retirement – Articles 27 and 30 of the Charter of Fundamental Rights of the European Union)

In Case C-196/23 [Plamaro], (1)

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Superior de Justicia de Cataluña (High Court of Justice, Catalonia, Spain), made by decision of 20 January 2023, received at the Court on 24 March 2023, in the proceedings

CL,

GO,

GN,

VO,

TI,

HZ,

DN,

DL

v

DB, acting in the capacity of sole successor to FC,

Fondo de Garantía Salarial (Fogasa),

THE COURT (Second Chamber),

composed of A. Prechal (Rapporteur), President of the Chamber, F. Biltgen, N. Wahl, J. Passer and M.L. Arastey Sahún, Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– CL, GO, GN, VO, TI, HZ, DN and DL, by J.M. Moragues Martínez, abogado,

– DB, acting in the capacity of sole successor to FC, by L. Sánchez Frías, abogado,

– the Spanish Government, by M. Morales Puerta, acting as Agent,

– the European Commission, by F. Clotuche-Duvieusart and I. Galindo Martín, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ 1998 L 225, p. 16).

2 The request has been made in proceedings between CL, GO, GN, VO, TI, HZ, DN and DL, for the one part, and DB, acting in the capacity of sole successor of their former employer FC, and the Fondo de Garantía Salarial (Fogasa) (Wages Guarantee Fund (Fogasa), Spain), for the other part, concerning the termination of their employment contracts upon the retirement of FC.

Legal context

European Union law

3 In Section I, headed ‘Definitions and scope’, of Directive 98/59, Article 1(1) provides:

‘For the purposes of this Directive:

(a) “collective redundancies” means dismissals effected by an employer for one or more reasons not related to the individual workers concerned where, according to the choice of the Member States, the number of redundancies is:

(i) either, over a period of 30 days:

– at least 10 in establishments normally employing more than 20 and less than 100 workers,

– at least 10% of the number of workers in establishments normally employing at least 100 but less than 300 workers,

– at least 30 in establishments normally employing 300 workers or more,

(ii) or, over a period of 90 days, at least 20, whatever the number of workers normally employed in the establishments in question;

…

For the purpose of calculating the number of redundancies provided for in the first subparagraph of point (a), terminations of an employment contract which occur on the employer's initiative for one or more reasons not related to the individual workers concerned shall be assimilated to redundancies, provided that there are at least five redundancies.'

4 In Section II, headed 'Information and consultation', of that directive, Article 2 provides:

'1. Where an employer is contemplating collective redundancies, he shall begin consultations with the workers' representatives in good time with a view to reaching an agreement.

2. These consultations shall, at least, cover ways and means of avoiding collective redundancies or reducing the number of workers affected, and of mitigating the consequences by recourse to accompanying social measures aimed, inter alia, at aid for redeploying or retraining workers made redundant.

…

3. To enable workers' representatives to make constructive proposals, the employers shall in good time during the course of the consultations:

(a) supply them with all relevant information and

(b) in any event notify them in writing of:

(i) the reasons for the projected redundancies;

(ii) the number and categories of workers to be made redundant;

(iii) the number and categories of workers normally employed;

(iv) the period over which the projected redundancies are to be effected;

(v) the criteria proposed for the selection of the workers to be made redundant in so far as national legislation and/or practice confers the power therefor upon the employer;

(vi) the method for calculating any redundancy payments other than those arising out of national legislation and/or practice.

The employer shall forward to the competent public authority a copy of, at least, the elements of the written communication which are provided for in the first subparagraph, point (b), subpoints (i) to (v).

…'

5 In Section III, headed 'Procedure for collective redundancies' of Directive 98/59, Article 3 is worded as follows:

'1. Employers shall notify the competent public authority in writing of any projected collective redundancies.

However, Member States may provide that in the case of planned collective redundancies arising from termination of the establishment's activities as a result of a judicial decision, the employer shall be obliged to notify the competent public authority in writing only if the latter so requests.

This notification shall contain all relevant information concerning the projected collective redundancies and the consultations with workers' representatives provided for in Article 2, and particularly the reasons for the redundancies, the number of workers to be made redundant, the number of workers normally employed and the period over which the redundancies are to be effected.

2. Employers shall forward to the workers' representatives a copy of the notification provided for in paragraph 1.

The workers' representatives may send any comments they may have to the competent public authority.'

6 Article 4, which is also in Section III of the directive, provides:

'1. Projected collective redundancies notified to the competent public authority shall take effect not earlier than 30 days after the notification referred to in Article 3(1) without prejudice to any provisions governing individual rights with regard to notice of dismissal.

Member States may grant the competent public authority the power to reduce the period provided for in the preceding subparagraph.

…

4. Member States need not apply this Article to collective redundancies arising from termination of the establishment's activities where this is the result of a judicial decision.'

7 According to Article 5 of Directive 98/59, it 'shall not affect the right of Member States to apply or to introduce laws, regulations or administrative provisions which are more favourable to workers or to promote or to allow the application of collective agreements more favourable to workers'.

Spanish law

8 Article 49(1) of the Estatuto de los Trabajadores (Workers' Statute), in the version resulting from Real Decreto legislativo 2/2015, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores (Royal Legislative Decree 2/2015 approving the consolidated text of the Workers' Statute) of 23 October 2015 (BOE No 255 of 24 October 2015, p. 100224) ('the Workers' Statute'), that article being headed 'Termination of contract', provides:

'An employment contract shall be terminated upon the occurrence of any of the following events:

…

(g) the death, retirement in the cases provided for in the applicable social security provisions, or incapacity of the employer, without prejudice to Article 44, or by reason of the extinguishment of the legal personality of the contractor.

In cases of the death, retirement or incapacity of the employer, workers shall be entitled to payment of a sum equivalent to one month's remuneration.

In cases of the extinguishment of the legal personality of the contractor, the procedures laid down in Article 51 [of this statute] must be followed.

…

(i) Collective redundancy based on economic, technical, organisational or production grounds.

…'

9 Article 51 of the Workers' Statute provides:

'1. For the purposes [of this statute] "collective redundancy" shall mean the termination of employment contracts on economic, technical, organisational or production grounds, where, over a period of 90 days, the termination affects at least:

(a) 10 workers, in undertakings employing fewer than 100 workers;

(b) 10% of the number of workers in the undertaking in undertakings employing between 100 and 300 workers;

(c) 30 workers in undertakings employing 300 or more workers.

Economic grounds shall be deemed to have been established where a negative economic situation is apparent from the financial performance of the undertaking, in cases where losses are actually sustained or forecast or where there is a persistent reduction in the level of ordinary revenue or sales. In any event, a reduction shall be deemed to be persistent if, for three consecutive quarters, the level of ordinary revenue or sales in each quarter is lower than that recorded in the same quarter of the preceding year.

Technical grounds shall be deemed to be established where changes occur in, inter alia, the field of the means or tools of production; organisational grounds shall be deemed to have been established where changes occur, inter alia, in the field of staff working systems and methods or in the method of organising production; and production grounds shall be deemed to have been established where changes occur, inter alia, in the demand for the goods or services that the undertaking intends to place on the market.

Collective redundancy shall also mean a termination of employment contracts affecting the entire workforce of an undertaking, provided that the number of workers affected is greater than five, where the termination occurs as a result of the total cessation of the business activity of the undertaking on the grounds referred to above.

In order to calculate the number of terminations of contracts for the purposes of the first subparagraph of this paragraph, account shall also be taken of any other terminations which occurred within the reference period on the initiative of the employer, for other reasons not related to the individual workers concerned and different from the grounds provided for in Article 49(1)(c) of this statute, provided that the number of terminations is at least five.

Where, over successive periods of 90 days and for the purposes of avoiding the requirements [of this article], an undertaking terminates, under Article 52(c), contracts the number of which is lower than the thresholds indicated, in the absence of any new grounds justifying such action, those new terminations shall be deemed to be effected in circumvention of the law and shall be declared null and void.

2. Collective redundancy must be preceded by a period of consultation with the workers' legal representatives for a maximum period of 30 calendar days or 15 days in the case of undertakings with fewer than 50 workers. The consultation with the workers' legal representatives must deal, at the very least, with the possibility of avoiding or reducing the number of collective redundancies and of alleviating their effects through accompanying social measures, such as outplacement and vocational training or retraining to improve employment prospects. The consultation shall be conducted within a single negotiating committee, it being understood that, where there are several establishments, it is limited to the establishments involved in the procedure. The negotiating committee shall comprise a maximum of 13 members, representing each of the parties.

…'

The dispute in the main proceedings and the questions referred for a preliminary ruling

10 The applicants in the main proceedings were employed in one of the eight establishments belonging to FC's undertaking. On 17 June 2020, FC informed them that their employment contracts would be terminated with effect from 17 July 2020, owing to FC's retirement. FC's retirement, which took effect from 3 August 2020, resulted in the termination of 54 ongoing contracts of employment in those eight establishments, which included the eight employment contracts of the applicants in the main proceedings.

11 On 10 July 2020, the latter brought an action against FC and Fogasa before the Juzgado de lo Social de Barcelona (Social Court of Barcelona, Spain) in order to challenge the unlawful dismissal that they considered that they had been subject to. By judgment of 12 January 2022, that court dismissed that action.

12 Hearing an appeal against that judgment, the Tribunal Superior de Justicia de Cataluña (High Court of Justice, Catalonia, Spain) is, inter alia, required to rule on whether those terminations of the employment contracts of the applicants in the main proceedings must be held to be null and void due to the failure to comply with the procedure of consulting the workers' representatives, provided for in Article 51 of the Workers' Statute, even though those terminations were caused by FC's retirement.

13 That court states that in such a situation the provisions of Article 51 of the Workers' Statute concerning that consultation do not, in principle, apply, as is clear from the combined provisions, first, of the fifth subparagraph of Article 51(1), which permits account to be taken of the termination of an employment contract for reasons not related to the individual worker only to the extent that terminations on economic, organisational or production grounds, within the meaning of the first subparagraph of that same paragraph, also take place, and, secondly, of Article 49(1)(g) of that statute which provides that the consultation procedure laid down in Article 51 applies only where the termination of the employment contracts results from the extinguishment of the legal personality of the co-contractor, and not as a result of the retirement of the natural person employer.

14 That court wonders, however, whether the exclusion of that situation from the scope of the consultation procedure at issue complies with Directive 98/59 and, if not, whether the workers concerned may rely on that directive against their natural person employer, even though that directive had not been correctly implemented in domestic law. In that latter regard, it indicates that it is aware that, as a general rule, the provisions of a directive may not be given 'horizontal' direct effect in a dispute between private individuals. Nevertheless, as the Court has already permitted, in certain cases, exceptions to that rule where the law at issue was also enshrined in a general principle of EU law or in a provision of the Charter of Fundamental Rights of the European Union ('the Charter') whose specific implementation a directive ensures, that court wonders whether an analogous exception could not be found to apply, in the present case, having regard to Article 27 and/or 30 of the Charter.

15 In those circumstances, the Tribunal Superior de Justicia de Cataluña (High Court of Justice, Catalonia) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is legislation such as the Spanish legislation (Article 49(1)[(g)] of [the Workers' Statute], which does not establish a period of consultation in situations where contracts of employment in excess of the number laid down in Article 1 of [Directive 98/59] are terminated as a result of the retirement of the natural person employer, compatible with Article 2 of [that] directive?

(2) If the answer to the preceding question is in the negative, does Directive 98/59 have direct horizontal effect between individuals?'

Consideration of the questions referred

Admissibility

16 In view of the fact that the 54 workers employed by FC's undertaking were divided between the eight establishments belonging to it at the time of FC's retirement, the European Commission queries whether the thresholds relating to the number of workers that must be affected by a collective redundancy, as specified in Article 1(1)(a) of Directive 98/59, have been attained in the present case. That provision defines the scope of that directive by reference to the sole concept of 'establishment', in which at least 20 persons should be normally employed.

17 In that regard, it must be recalled that it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it refers to the Court. Consequently, since the question referred concerns the interpretation of a rule of EU law, the Court is in principle bound to give a ruling. It follows that questions referred for a preliminary ruling concerning EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of a rule of EU law that is sought bears no relation to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 29 May 2018, *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen and Others*, C-426/16, EU:C:2018:335, paragraphs 30 and 31 and the case-law cited).

18 In the present case, it must be held, first, that the order for reference does not contain any factual or legal indications as regards the characteristics of the establishments of FC's undertaking at the time of the terminations of the employment contracts at issue in the main proceedings. Secondly, by its questions, the referring court does not seek an interpretation relating to the quantitative thresholds set out in Article 1(1)(a) of Directive 98/59, or the scope of the concept of 'establishment' to which that provision refers. On the contrary, the wording of the first question referred indicates that it is specifically asked in relation to cases of terminations of contracts of employment 'in excess of the number laid down in Article 1 of [Directive 98/59]'.

19 In those circumstances, it is for the referring court, if necessary, in the light of the assistance given by the Court's case-law and, in particular, the judgment of 13 May 2015, *Rabal Cañas* (C-392/13, EU:C:2015:318), to assess and classify the facts in the main proceedings having regard to the concept of 'establishment', within the meaning of Article 1(1)(a) of Directive 98/59, and the quantitative thresholds laid down in that provision.

20 In that context, the referring court may, in addition, also be called upon to take account of the fact that, as is clear from the wording of Article 51(1) of the Workers' Statute and as the Court has already held in the same judgment of 13 May 2015, *Rabal Cañas* (C-392/13, EU:C:2015:318) and in the judgment of 10 December 2009, *Rodríguez Mayor and Others* (C-323/08, EU:C:2009:770), the Spanish legislature adopted, in reliance on Article 5 of Directive 98/59, a definition of the concept of 'collective redundancies' in which the reference unit for the calculation of the number of workers that must be affected by such terminations is taken to be that of the undertaking rather than that of the establishment.

21 Having regard to the foregoing considerations, it is not obvious that the interpretation of provisions of Directive 98/59 sought by the referring court does not bear any relation to the facts or object of the dispute in the main proceedings or that the issue raised by that court is hypothetical.

22 Accordingly, the questions referred for a preliminary ruling are admissible.

The first question

23 By its first question, the referring court asks, in essence, whether Article 1(1) and Article 2 of Directive 98/59, read together, must be interpreted as precluding a national law pursuant to which the termination of the employment contracts of a number of workers greater than that provided for in that Article 1(1), as a result of the retirement of the employer, is not classified as a 'collective redundancy' and does not give rise to the obligation to inform and consult the workers' representatives provided for in that Article 2.

24 Pursuant to Article 1(1)(a) of Directive 98/59, 'collective redundancies' means dismissals effected by an employer for one or more reasons not related to the individual workers concerned provided that certain

conditions concerning numbers and periods of time are satisfied (judgment of 12 October 2004, *Commission* v *Portugal*, C-55/02, EU:C:2004:605, paragraph 43).

25 In that regard, it should be noted that while Directive 98/59 does not give an express definition of the concept of 'redundancy', it is settled case-law that in the light of the aim pursued by that directive and the context of Article 1(1)(a) thereof, that concept must be regarded as an autonomous concept of EU law, which must be given a uniform interpretation and cannot be defined by reference to the laws of the Member States, and must be interpreted as encompassing any termination of an employment contract not sought by the worker, and therefore without his or her consent (see, to that effect, judgment of 11 November 2015, *Pujante Rivera*, C-422/14, EU:C:2015:743, paragraph 48 and the case-law cited).

26 The Court has also held, having regard to the objective of Directive 98/59, which, as recital 2 states, is, inter alia, to afford greater protection to workers in the event of collective redundancies, that concepts that define the scope of that directive, including the concept of 'redundancy' in Article 1(1)(a) thereof, cannot be given a narrow definition (see, to that effect, judgment of 11 November 2015, *Pujante Rivera*, C-422/14, EU:C:2015:743, paragraph 51 and the case-law cited).

27 In order to challenge that classification as regards the terminations of employment contracts at issue in the main proceedings, DB submits that an employer such as FC should, in the same way as a worker that he or she employs, legitimately be able to retire and end the employment contracts that he or she has concluded, which is moreover an event that is foreseeable for the worker engaged in that way under a permanent employment contract with a natural person. DB also considers that a consultation procedure such as the one provided for in Directive 98/59 would be irrelevant where the terminations of the employment contracts proposed are connected with the retirement of the employer who, as was the situation in the present case, made the dismissals concerned inevitable.

28 In that regard, it should however be recalled, first, that the concept of 'redundancy', within the meaning of Article 1(1)(a) of Directive 98/59, does not require inter alia that the underlying causes of the termination of the employment contract reflect the employer's wishes and, secondly, that a termination of a contract of employment cannot escape the application of the directive just because it depends on external circumstances not contingent on the employer's will (judgment of 12 October 2004, *Commission* v *Portugal*, C-55/02, EU:C:2004:605, paragraphs 50 and 60).

29 The Court has also stated that, even in some circumstances in which the definitive termination of the undertaking's activity is not contingent upon the employer's will and where full application of Directive 98/59 is impossible, it remains the case that the application of that directive is not to be excluded in its entirety (see, to that effect, judgment of 12 October 2004, *Commission* v *Portugal*, C-55/02, EU:C:2004:605, paragraph 57).

30 It should also be noted in particular that, in accordance with the first paragraph of Article 2(2) of Directive 98/59, the purpose of consulting the workers' representatives is not only to avoid collective redundancies or to reduce the number of workers affected, but also, inter alia, to mitigate the consequences of such redundancies by recourse to accompanying social measures aimed, in particular, at aid for redeploying or retraining workers made redundant (judgment of 12 October 2004, *Commission* v *Portugal*, C-55/02, EU:C:2004:605, paragraph 58). Those consultations therefore remain relevant where the foreseen terminations of contracts of employment are connected with the employer's retirement.

31 It is true that, in its judgment of 10 December 2009, *Rodríguez Mayor and Others* (C-323/08, EU:C:2009:770), which also concerned provisions of the Workers' Statute, the Court held that Article 1(1) of Directive 98/59 must be interpreted as not precluding national legislation according to which the terminations of the contracts of employment of a number of workers owing to the death of their employer

are not classified as ‘collective redundancies’ and are not subject to the national provisions implementing that directive.

32 However, it must be emphasised that the Court arrived at that interpretation only after having notably found, in paragraphs 34 to 41 of that judgment, that it resulted from the combination of the wording of Article 1(1) of Directive 98/59, the wording of the second subparagraph of Article 1(1), of Article 2(1) and (3) and of Article 3 of that directive, that the concept of ‘collective redundancies’, within the meaning of Article 1(1)(a) of that directive, presupposes the existence of an employer who has contemplated such redundancies and who is capable, first, to carry out, for that purpose, the acts referred to in Articles 2 and 3 of that directive and, second, to effect, where appropriate, such redundancies. In paragraph 42 of the same judgment, the Court found that those conditions were no longer satisfied in the case of the death of the employer running an undertaking as a natural person.

33 In that regard, the Court also pointed out, in paragraph 44 of that judgment of 10 December 2009, *Rodríguez Mayor and Others* (C-323/08, EU:C:2009:770), that the main objective of Directive 98/59, which is to make collective redundancies subject to prior consultation with the workers’ representatives and the notification of the competent public authority, cannot be fulfilled by classifying as a ‘collective redundancy’ the termination of contracts of employment of the entire staff of an undertaking run by a natural person as a result of the cessation of the activities of that undertaking resulting from the death of the employer, given that that consultation could not have taken place and that it was thus not possible to avoid or to reduce the terminations of contracts of employment or to mitigate the consequences.

34 Lastly, the Court recalled, in paragraph 48 of the judgment, that the obligations of consultation and notification imposed on the employer come into being prior to the employer’s decision to terminate employment contracts and found, in that regard, in paragraph 50 of the same judgment, that, in the event of the death of a natural person employer, there is no decision to terminate the contracts of employment, nor is there a prior intention to effect such a termination.

35 It must be held, however, that the particular circumstances of the situation in which the natural person employer has died, recalled in paragraphs 32 to 34 of the present judgment, are not present in the situation where the termination of the contracts of employment is the consequence of such an employer’s retirement.

36 In the latter situation, the employer contemplates those terminations of contracts of employment in the light of his or her retirement and, in principle, is capable of carrying out the acts referred to in Articles 2 and 3 of Directive 98/59 and, in that context, of conducting consultations seeking, inter alia, to avoid those terminations or to reduce their number or, in any event, to mitigate their consequences.

37 Furthermore, it matters little that situations such as those at issue in the main proceedings are not classified, in Spanish law, as redundancies but as the expiry by operation of law of the contracts of employment. They are in point of fact terminations of the contract of employment against the will of the worker, and are therefore redundancies for the purposes of the Directive 98/59 (see, by analogy, judgment of 12 October 2004, *Commission* v *Portugal*, C-55/02, EU:C:2004:605, paragraph 62).

38 Thus, any national legislation or interpretation thereof to the effect that the termination of the contracts of employment as a result of the retirement of a natural person employer cannot constitute a ‘redundancy’ within the meaning of Directive 98/59 would alter the scope of that directive and thus deprive it of its full effect (see, to that effect, judgment of 11 November 2015, *Pujante Rivera*, C-422/14, EU:C:2015:743, paragraph 54 and the case-law cited).

39 Having regard to all of the foregoing considerations, the answer to the first question is that Article 1(1) and Article 2 of Directive 98/59, read together, must be interpreted as precluding a national law pursuant to

which the termination of the employment contracts of a number of workers greater than that provided for in that Article 1(1), as a result of the retirement of the employer, is not classified as a 'collective redundancy' and does not give rise to the obligation to inform and consult the workers' representatives provided for in that Article 2.

The second question

40 By its second question, the referring court asks, in essence, whether EU law must be interpreted as requiring a national court, hearing proceedings between private individuals, to disapply a national law, such as that referred to in paragraph 39 of the present judgment, in the event that it is contrary to the provisions of Article 1(1) and Article 2 of Directive 98/59.

41 It should be borne in mind, first of all, that, in accordance with settled case-law, when national courts apply domestic law, they are bound to interpret it, so far as possible, in the light of the wording and the purpose of the directive concerned in order to achieve the result sought by the directive, and consequently comply with the third paragraph of Article 288 TFEU (judgment of 6 November 2018, *Bauer and Willmeroth*, C-569/16 and C-570/16, EU:C:2018:871, paragraph 66, and the case-law cited).

42 It should also be noted in that regard that the principle that national law must be interpreted in conformity with EU law requires national courts to do whatever lies within their jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by it, with a view to ensuring that the directive in question is fully effective and to achieving an outcome consistent with the objective pursued by it (judgment of 6 November 2018, *Bauer and Willmeroth*, C-569/16 and C-570/16, EU:C:2018:871, paragraph 67, and the case-law cited).

43 However, as the Court has repeatedly stated, the principle of consistent interpretation is subject to certain limits. Thus the obligation on a national court to refer to EU law when interpreting and applying the relevant rules of domestic law is limited by general principles of law and cannot serve as the basis for an interpretation of national law *contra legem* (judgment of 19 April 2016, *DI*, C-441/14, EU:C:2016:278, paragraph 32 and the case-law cited).

44 In the present case, DB and the Spanish Government have diverging opinions as to whether the legislation at issue in the main proceedings may, or may not, be given an interpretation such as to ensure compliance with the combined provisions of Article 1(1) and Article 2 of Directive 98/59. The former takes the view that the clear and precise terms in which Article 49(1)(g) of the Workers' Statute is drafted preclude that consistent interpretation, while the latter considers, conversely, that such an interpretation is possible and would not be *contra legem*.

45 However, it is not for the Court but only for national courts to rule on the interpretation of national law, such that it is for the referring court, if necessary, to decide whether the national law at issue in the main proceedings may, or may not, be interpreted in a manner that ensures compliance with Directive 98/59.

46 Next, it should be recalled that, according to settled case-law, a directive cannot of itself create obligations on the part of an individual and cannot therefore be invoked as such against him or her. If the possibility of relying on a provision of a directive that has not been transposed, or has been incorrectly transposed, were to be extended to the sphere of relations between individuals, that would amount to recognising a power in the European Union to enact obligations for individuals with immediate effect, whereas it has competence to do so only where it is empowered to adopt regulations (judgment of 6 November 2018, *Bauer and Willmeroth*, C-569/16 and C-570/16, EU:C:2018:871, paragraph 76, and the case-law cited).

47 It follows that the combined provisions of Article 1(1) and Article 2 of Directive 98/59 cannot, of themselves, be relied upon, in a dispute between individuals, such as that at issue in the main proceedings, in order to ensure the full effect of those provisions by disapplying a national law that is held to be contrary to them (see, by analogy, judgment of 6 November 2018, *Bauer and Willmeroth*, C-569/16 and C-570/16, EU:C:2018:871, paragraph 78).

48 Finally, it is necessary to examine the respective scopes of Article 27 and Article 30 of the Charter in order to determine, in accordance with the referring court's request in its order for reference, whether either or both of those provisions must be interpreted as meaning that they may be invoked, either on their own or together with Article 1(1) and Article 2 of Directive 98/59, in a dispute between individuals, such as that at issue in the main proceedings, so as to require a national court to set aside a national law that is held to be contrary to those provisions of that directive.

49 As regards, first, Article 27 of the Charter, entitled 'Workers' right to information and consultation within the undertaking', which provides that workers must, at the appropriate levels, be guaranteed information and consultation in the cases and under the conditions provided for by EU law and national laws and practices, it suffices, in the present case, to recall that the Court has held that it is clear from the wording of that provision that, for that article to be fully effective, it must be given more specific expression in European Union or national law (judgments of 15 January 2014, *Association de médiation sociale*, C-176/12, EU:C:2014:2, paragraphs 44 and 45, and of 6 November 2018, *Bauer and Willmeroth*, C-569/16 and C-570/16, EU:C:2018:871, paragraph 84).

50 In that regard, rules such as those contained in Article 1(1) and Article 2 of Directive 98/59, addressed to the Member States and defining the situations in which a procedure of information and consultation of workers' representatives must take place in the event of collective redundancies of those workers, as well as the substantive and procedural conditions that must be satisfied by that information and consultation, cannot be inferred, as directly applicable rules of law, from the wording of Article 27 of the Charter (see, by analogy, judgment of 15 January 2014, *Association de médiation sociale*, C-176/12, EU:C:2014:2, paragraph 46).

51 Accordingly, Article 27 of the Charter cannot, as such, be invoked in a dispute between individuals, such as that at issue in the main proceedings, in order to conclude that the national provisions which are not in conformity with Article 1(1) and Article 2 of Directive 98/59 should not be applied (see, by analogy, judgment of 15 January 2014, *Association de médiation sociale*, C-176/12, EU:C:2014:2, paragraph 48).

52 That finding cannot be called into question by considering Article 27 of the Charter in conjunction with Article 1(1) and Article 2 of Directive 98/59, given that, since that article by itself does not suffice to confer on individuals a right which they may invoke as such, it could not be otherwise if it is considered in conjunction with those provisions (see, to that effect, judgment of 15 January 2014, *Association de médiation sociale*, C-176/12, EU:C:2014:2, paragraph 49).

53 As regards, secondly, Article 30 of the Charter, which provides that every worker has the right to protection against unjustified dismissal, in accordance with EU law and national laws and practices, it must be held that the reasons set out in paragraphs 49 to 52 of the present judgment must, *mutatis mutandis*, lead to a conclusion analogous to that resulting from those paragraphs concerning Article 27 of the Charter.

54 In the same way as was recalled in paragraph 49 in respect of Article 27, it is clear from the wording of Article 30 of the Charter that, in order for that provision to be fully effective, it must be given more specific expression in European Union or national law.

55 Accordingly, irrespective of whether the failure to comply with the rules on information and consultation of workers' representatives in the event of collective redundancies, such as the rules provided

for in Article 1(1) and Article 2 of Directive 98/59, is capable of falling within the material scope of Article 30 of the Charter and the concept of 'unjustified dismissal' within the meaning of that provision, it suffices to find that such rules, which are addressed to the Member States and define the situations in which a procedure of information and consultation of workers' representatives must take place in the event of collective redundancies of those workers, as well as the substantive and procedural conditions that must be satisfied by that information and consultation, cannot be inferred, as directly applicable rules of law, from the wording of Article 30 of the Charter.

56 Therefore, and analogously with the reasoning set out in paragraphs 51 and 52 of the present judgment in respect of Article 27 of the Charter, Article 30 thereof cannot be invoked, either by itself or in conjunction with Article 1(1) and Article 2 of Directive 98/59, in a dispute between individuals, such as that at issue in the main proceedings, in order to conclude that the national provisions which are not in conformity with Directive 98/59 should not be applied.

57 In the light of the foregoing, the answer to the second question is that EU law must be interpreted as not requiring a national court, hearing proceedings between individuals, to disapply a national law, such as that referred to in paragraph 39 of the present judgment, in the event that it is contrary to the provisions of Article 1(1) and Article 2 of Directive 98/59.

Costs

58 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. **Article 1(1) and Article 2 of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, read together,**

must be interpreted as precluding a national law pursuant to which the termination of the employment contracts of a number of workers greater than that provided for in that Article 1(1), as a result of the retirement of the employer, is not classified as a 'collective redundancy' and does not give rise to the obligation to inform and consult the workers' representatives provided for in that Article 2.

2. **EU law must be interpreted as not requiring a national court, hearing proceedings between individuals, to disapply a national law, such as that referred to in point 1 of the present operative part, in the event that it is contrary to the provisions of Article 1(1) and Article 2 of Directive 98/59.**

[Signatures]

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* Language of the case: Spanish.

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1 The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.