JUDGMENT OF THE COURT (Fourth Chamber)

16 July 2009 (*)

(Reference for a preliminary ruling – Directive 98/59/EC – Articles 2 and 6 – Procedure for informing and consulting employees in the case of collective redundancy – Employer's obligations – Workers' right of action – Obligation to interpret national law in conformity with Community law)

In Case C-12/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Cour du travail de Liège (Belgium), made by decision of 3 January 2008, received at the Court on 11 January 2008, in the proceedings

Mono Car Styling SA, in liquidation,

v

Dervis Odemis and Others,

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Chamber, T. von Danwitz, R. Silva de Lapuerta (Rapporteur), E. Juhász and J. Malenovský, Judges,

Advocate General: P. Mengozzi,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 6 November 2008,

after considering the observations submitted on behalf of:

– Mono Car Styling SA, in liquidation, by P. Cavenaile and F. Ligot, avocats,

– Mr Odemis and Others, by H. Deckers, avocat,

– the Belgian Government, by L. Van den Broeck, acting as Agent, assisted by G. Demez, avocat,

– the United Kingdom Government, by I. Rao, acting as Agent, assisted by K. Smith, Barrister,

– the Commission of the European Communities, by M. Van Hoof and J. Enegren, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 21 January 2009,

gives the following

Judgment

1 This reference for a preliminary ruling relates to the interpretation of Articles 2 and 6 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 reference has been made in the course of proceedings between Mono Car Styling SA ('Mono Car'), a company in liquidation, and certain of its former employees in regard to their collective redundancy.

Legal framework

The European Convention for the Protection of Human Rights and Fundamental Freedoms

3 Under the title 'Right to a fair trial', Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('ECHR') provides that:

'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. …'

Community law

4 Directive 98/59 consolidated Directive 75/129/EC on the approximation of the laws of the Member States relating to collective redundancies (OJ 1998 L 48, p. 29).

5 According to recitals 2, 6, 10 and 12 in Directive 98/59:

'(2) … it is important that greater protection should be afforded to workers in the event of collective redundancies while taking into account the need for balanced economic and social development within the Community;

…

(6) … the Community Charter of the fundamental social rights of workers, adopted at the European Council meeting held in Strasbourg on 9 December 1989 by the Heads of State or Government of 11 Member States, states, inter alia, in point 7, first paragraph, first sentence, and second paragraph; in point 17, first paragraph; and in point 18, third indent:

"7. The completion of the internal market must lead to an improvement in the living and working conditions of workers in the European Community …

The improvement must cover, where necessary, the development of certain aspects of employment regulations such as procedures for collective redundancies and those regarding bankruptcies.

…

17. Information, consultation and participation for workers must be developed along appropriate lines, taking account of the practices in force in the various Member States.

…

18. Such information, consultation and participation must be implemented in due time, particularly in the following cases:

…

…

– in cases of collective redundancy procedures;

…”;

…

(10) … the Member States should be given the option of stipulating that workers’ representatives may call on experts on grounds of the technical complexity of the matters which are likely to be the subject of the informing and consulting;

…

(12) … Member States should ensure that workers’ representatives and/or workers have at their disposal administrative and/or judicial procedures in order to ensure that the obligations laid down in this Directive are fulfilled’.

6 Article 2 of Directive 98/59 provides as follows:

‘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.

Member States may provide that the workers’ representatives may call on the services of experts in accordance with national legislation and/or practice.

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 of 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).

4. The obligations laid down in paragraphs 1, 2 and 3 shall apply irrespective of whether the decision regarding collective redundancies is being taken by the employer or by an undertaking controlling the employer.

In considering alleged breaches of the information, consultation and notification requirements laid down by this Directive, account shall not be taken of any defence on the part of the employer on the ground that the necessary information has not been provided to the employer by the undertaking which took the decision leading to collective redundancies.'

7 Article 3 of Directive 98/59 states that:

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

…

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.'

8 According to Article 5 of Directive 98/59:

'This Directive 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.'

9 Article 6 of Directive 98/59 provides as follows:

'Member States shall ensure that judicial and/or administrative procedures for the enforcement of obligations under this Directive are available to the workers' representatives and/or workers.'

National law

10 Directive 75/129 was transposed into Belgian law by Collective Labour Agreement No 24 of 2 October 1975 concerning the procedure for informing and consulting employees in regard to collective redundancies, given the force of law by Royal Decree of 21 January 1976 (*Moniteur belge* of 17 February 1976, p. 1716), as amended by Collective Labour Agreement No 24 *quater* of 21 December 1993, given the force of law by Royal Decree of 28 February 1994 (*Moniteur belge* of 15 March 1994, p. 6345, 'Collective Agreement No 24').

11 According to Article 6 of Collective Agreement No 24:

'Where an employer contemplates collective redundancies he shall first inform workers' representatives and consult them; that information shall be given within the works council or, where no such council exists, to the union delegation …

Information must be given to the staff or their representatives, where there is no works council or union delegation.

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

For that purpose the employer shall supply to the workers' representatives all relevant information and, in any event, communicate to them in writing, the reasons for the projected redundancies, the criteria proposed for the selection of the workers to be made redundant, the number and categories of workers to be made redundant and the method for calculating any redundancy payments other than those arising out of national law or a collective labour agreement, the period over which the redundancies are to be effected, to enable the workers' representatives to make observations and proposals in order that they may be taken into account.'

12 The Belgian Law of 13 February 1998 on measures in favour of employment (*Moniteur belge* of 19 February 1998, p. 4643, 'the 1998 Law') includes Chapter VII entitled 'collective redundancies'. According to Article 66 of that law:

'1. An employer who intends to proceed with collective redundancies shall observe the procedure for informing and consulting provided for in the event of collective redundancies, as laid down in a collective labour agreement concluded by the National Labour Council.

In that regard, the employer must fulfil the following conditions:

1° he must present to the works council or, where no such council exists, to the union delegation or, where no such delegation exists, to the workers, a written report in which he announces his intention to proceed with collective redundancies;

2° he must be able to provide evidence that, as regards his intention to proceed with collective redundancies, he has assembled the works council or, where no such council exists, that he has met with the union delegation or, where no such delegation exists, with the workers;

3° he must allow staff representatives within the works council or, where no such council exists, members of the union delegation or, where no such delegation exists, the workers, to ask questions regarding the collective redundancies contemplated and to put forward arguments or make counter-proposals on that issue;

4° he must have examined the questions, arguments and counter-proposals referred to in 3° and have replied to them.

The employer must provide evidence that he has satisfied the conditions referred to in the previous subparagraph.

2. The employer must notify the official appointed by the King of the intention to proceed with collective redundancies. That notification must confirm that the conditions referred to in the second subparagraph of Article 66(1) have been fulfilled.

On the date when the notification is sent to the official referred to in the first subparagraph, a copy of that notification shall be sent to the works council or, where no such council exists, to the union delegation, and shall be displayed in the workplace. In addition, a copy shall be sent, by recorded delivery, on the day the notification is displayed, to those workers who are affected by the collective redundancies and whose employment contracts have already expired on the day the notice is displayed.'

13 Article 67 of the 1998 Law provides as follows:

'A redundant worker may challenge due observance of the procedure for informing and consulting only on the ground that the employer has not satisfied one of the four conditions set out in the second subparagraph of Article 66(1).

A redundant worker may no longer challenge due observance of the procedure for informing and consulting if the staff representatives within the works council or, where no such council exists, the members of the union delegation or, where no such delegation exists, the workers

who were to be informed and consulted, have not notified the employer of any objections in respect of satisfaction of one or more of the conditions provided for in the second subparagraph of Article 66(1), within a period of 30 days from the display of the notice referred to in the second subparagraph of Article 66(2).

Within a period of 30 days from the date of being made redundant or from the date on which the redundancies became collective redundancies, a redundant worker must inform the employer, in a letter sent by recorded delivery, that he challenges the due observance of the procedure for informing and consulting.'

14 Where a redundant worker challenges observance of the procedure for informing and consulting, and if that challenge is justified, Articles 68 and 69 of the 1998 Law provide for the suspension of the notice period or the reinstatement of the worker.

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

15 Mono Car appealed to the court making the reference against a judgment in an action between the parties to the main proceedings delivered by the Tribunal du travail de Liège on 3 February 2006. Mr Odemis and the parties acting with him brought a cross-appeal against that judgment.

16 Mono Car, a subsidiary of Mono International, manufactured parts, decorative accessories and interior trim for various vehicle manufacturers. In 2004, following large losses, the board of directors of Mono Car decided to study the possibility of either a voluntary liquidation of the company or a substantial reduction in staff.

17 It informed the works council of the financial situation and of the possibility of collective redundancies. Later, it signed a draft written agreement concerning a social plan with all the union representatives, later ratified by a collective labour agreement, which fixed the detailed arrangements for restructuring the business and the conditions for collective redundancies, among which were the absence of notice and factors for calculating compensation for dismissal and for non-material damage. The collective agreement stated that the procedure for information and consultation in cases of collective dismissal had been observed by Mono Car.

18 A general meeting of the staff of Mono Car adopted the social plan and the works council ratified the vote taken at that meeting.

19 On 14 June 2004, Mono Car sent to the competent public authority the list of the 30 workers made redundant and the criteria used to select them, and made those workers redundant with effect from 21 June 2004. The staff representatives on the works council raised no objection concerning observance of one or more of the conditions laid down in Article 66 of the 1998 Law.

20 On 15 June 2004, the competent public authority granted a reduction in the waiting period prior to dismissal to one day and stated that the information and consultation procedure had been complied with.

21 None the less, following a meeting between Mono Car and the redundant workers, 21 of them challenged the regularity of that procedure before the Tribunal du travail de Liège on the basis of the third paragraph of Article 67 of the 1998 Law and applied, first, for reinstatement in the company and payment of earnings lost from the date on which their contracts were terminated and, secondly, compensation for the material and non-material loss suffered.

22 By judgment of 3 February 2006, the Tribunal du travail de Liège declared the action admissible and partly granted the relief applied for, ordering Mono Car to pay damages for

material loss arising from its failure to comply with the information and consultation procedure. That court noted as failings the lack of a written report and discussion in the works council, the failure to observe the waiting period prior to dismissal and the carrying-on of the social consultation procedure outside of the works council.

23 Mono Car appealed against that judgment to the Cour du travail de Liège, seeking that the judgment be completely set aside. The respondent workers cross-appealed, seeking an increase in the amounts of damages for material loss and a declaration that they had suffered non-material loss.

24 It was in that context that the Cour du travail de Liège, after declaring the appeal and the cross-appeal admissible, decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

‘(1) …

Should Article 6 of [Directive 98/59] be interpreted as precluding a provision of national law, such as Article 67 of the [1998 Law] …, in so far as it provides that a worker can no longer challenge compliance with the procedure for informing and consulting, except on the ground that the employer has not complied with the conditions referred to in the second subparagraph of Article 66(1) of that law and to the extent that the staff representatives within the Works Council or, where no such council exists, the members of the union delegation or, where no such delegation exists, those workers who should be informed and consulted, have notified the employer of objections, in respect of compliance with one or more of the conditions referred to in the second subparagraph of Article 66(1) within 30 days of the display referred to in the second subparagraph of Article 66(2), and where the worker made redundant has informed the employer, in a letter sent by recorded delivery (within 30 days from the date of redundancy) or from the date on which the redundancies acquired their status as collective redundancies, that he was challenging compliance with the procedure for informing and consulting and he was seeking to be reinstated in his post?

(2) …

Assuming that Article 6 of [Directive 98/59] may be interpreted as allowing Member States to adopt provisions of national law such as Article 67 of the [1998 Law], is such a system compatible with the fundamental rights of the individual which form an integral part of the general principles of law – respect for which is ensured by the Community judicature – and more particularly with Article 6 of the [ECHR]?

(3) …

Can a national court seised of a dispute between two individuals – in the present case a worker and his former employer – disapply a provision of national law which is contrary to the provisions of a Community directive, such as Article 67 of the [1998 Law], in order to give effect to other provisions of national law which transpose, apparently correctly, a Community directive, such as the provisions contained in Collective Labour Agreement No 24 …, whose effective application is frustrated by the provision of national law which is contrary to a Community directive, in the present case Article 67 of the [1998 Law]?

(4) …

(a) Must Article 2 of [Directive 98/59], particularly paragraphs (1), (2) and (3) thereof, be interpreted as precluding a provision of national law, such as Article 66(1) of the [1998 Law], in so far as it provides that an employer who intends to satisfy his obligations in the context of collective redundancies is only bound to provide evidence that he has fulfilled the following conditions:

1° he must present to the Works Council or, where no such council exists, to

the union delegation or, where no such delegation exists, to the workers, a written report in which he indicates his intention to proceed with collective redundancies;

2° he must be able to provide evidence, in respect of the intention to proceed with collective redundancies, that he has assembled the Works Council or, where no such council exists, that he has met with the union delegation or, where no such delegation exists, with the workers;

3° he must have allowed the staff representatives within the Works Council or, where no such council exists, the members of the union delegation or, where no such delegation exits, the workers, to raise questions regarding the collective redundancies contemplated and to make arguments or submit counter-proposals on that issue;

4° he must have examined those questions, arguments and counter-proposals referred to in 3 and have replied to them?

(b) Must that same provision [of Directive 98/59] be interpreted as precluding a provision of national law, such as Article 67(2) of the [1998 Law], in so far as it provides that a worker made redundant can challenge compliance with the procedure for informing and consulting only on the ground that the employer has not complied with the conditions referred to in the second subparagraph of Article 66(1) at issue in point (a) above?'

The questions referred to the Court

Admissibility

25 The Belgian Government raises a plea of inadmissibility in regard to the questions referred by the national court. It claims, first, that the provisions of the 1998 Law do not apply to the main proceedings, since that law covers only applications for reinstatement or suspension of the notice period referred to in Articles 68 and 69 thereof and no such applications were presented in the appeal procedure. Secondly, it maintains that Directive 98/59 does not harmonise the forms of action in regard to collective redundancies.

26 The Belgian Government also considers that the order for reference is inadmissible because it deals with the interpretation of national law and because the national court did not correctly set out the scope of applicable Belgian law.

27 In that regard, it must be recalled that, in proceedings under Article 234 EC, 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 submits to the Court. Consequently, where the questions submitted concern the interpretation of Community law, the Court is in principle bound to give a ruling (see, inter alia, Case C-119/05 *Lucchini* [2007] ECR I-6199, paragraph 43, and Case C-414/07 *Magoora* [2008] ECR I-0000, paragraph 22).

28 Thus, the Court may reject a request for a preliminary ruling submitted by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose, 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 (see, inter alia, Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 39; Joined Cases C-94/04 and C-202/94 *Cipolla and Others* [2006] ECR I-11421, paragraph 25; and *Magoora*, paragraph 23).

29 With regard to the present reference for a preliminary ruling, it must be stated, first of all, that the order for reference contains a detailed statement of the factual and legal framework of the

main proceedings and the reasons why the national court considered that an answer to the questions referred was necessary to enable it to give judgment.

30 Secondly, although it is true that the order for reference notes differences in national case-law in regard to the scope of the applicable national law, the fact remains that the questions submitted concern the interpretation of Community law and such an interpretation appears to be necessary in order to resolve the dispute in the main proceedings.

31 Consequently, the reference for a preliminary ruling must be declared admissible.

The first question and the second part of the fourth question

32 By these questions, which it is appropriate to consider together, the national court is asking, in essence, whether Article 6 of Directive 98/59, read in conjunction with Article 2(1) to (3) thereof, precludes a national provision such as Article 67 of the 1998 Law, which, where workers acting individually challenge compliance by the employer with the information and consultation procedure laid down in that directive, first, limits the complaints which may be raised to failure to comply with the obligations laid down in a provision such as the second subparagraph of Article 66(1) of that law and, secondly, makes the admissibility of such a challenge subject to the giving of prior notice to the employer, by the representatives of the staff in the works council, of objections concerning compliance with those obligations and subject to the worker concerned providing the employer with prior information of the fact that he challenges compliance with the information and consultation procedure.

33 According to Article 6 of Directive 98/59, Member States are to ensure that judicial and/or administrative procedures for the enforcement of obligations under the directive are available to the workers' representatives and/or workers.

34 It is clear therefore from the terms of that provision that the Member States are required to introduce procedures to ensure compliance with the obligations laid down in Directive 98/59. On the other hand, and in so far as the directive does not develop that obligation further, it is for the Member States to lay down detailed arrangements for those procedures.

35 However, it should be pointed out that, although it is true that Directive 98/59 merely carries out a partial harmonisation of the rules for the protection of workers in the event of collective redundancies, it is also true that the limited character of such harmonisation cannot deprive the provisions of the directive of useful effect (see, in regard to Directive 75/129, Case C-383/92 *Commission* v *United Kingdom* [1994] ECR I-2479, paragraph 25).

36 Consequently, although it is for the Member States to introduce procedures to ensure compliance with the obligations laid down in Directive 98/59, such procedures must not deprive the provisions of the directive of useful effect.

37 In this instance, it is common ground that the Belgian legislation gives workers' representatives a right of challenge which, first, is not limited in regard to the complaints which may be raised and, secondly, is not subject to specific conditions, other than those relating to the general conditions of admissibility of legal proceedings in domestic law. Similarly, it is common ground that Article 67 of the 1998 Law gives workers an individual right of challenge, although it is limited in regard to the complaints which may be raised and subject to the conditions that workers' representatives should first have raised objections and that the worker concerned has informed the employer in advance of his intention to challenge compliance with the information and consultation procedure. The question therefore arises whether such a limitation of workers' individual right of challenge or such a condition placed on the exercise of that right could deprive the provisions of Directive 98/59 of their effectiveness or, as Mr Odemis and his fellow applicants claim, limit the protection of workers provided for in that directive.

38 In that regard, it is clear, first of all, from the text and scheme of Directive 98/59 that the right

to information and consultation which it lays down is intended for workers' representatives and not for workers individually.

39 Thus, recital 10 and the second subparagraph of Article 2(2) of Directive 98/59 refer to experts on whose services workers' representatives may call on grounds of the technical complexity of the matters which are likely to be the subject of the informing and consulting. Also, Article 1(1) of the directive, which contains definitions for the purposes thereof, defines the expression 'workers' representatives' but not 'workers'. Similarly, Article 2 of the directive sets out the employer's obligations and the right to information and consultation but refers only to workers' representatives. In the same manner, Article 3 of the directive requires that notice be given to the competent public authority of any projected collective redundancies with all relevant information concerning those redundancies and the consultations with workers' representatives, to whom the employer is to forward a copy of the notification and who may send any comments they may have to the public authority concerned, but such possibilities are not open to workers.

40 Secondly, the collective nature of the right to information and consultation also flows from a teleological interpretation of Directive 98/59. In so far as the information and consultation provided for in the directive are intended, in particular, to permit, first, the formulation of constructive proposals covering, at least, ways and means of avoiding collective redundancies or reducing the number of workers affected, and of mitigating the consequences of such redundancies and, secondly, the possible submission of comments to the competent public authority, workers' representatives are best placed to achieve the objective which the directive seeks to attain.

41 Finally, the Court has already had occasion to rule that the right to information and consultation, previously provided for in an identical manner by Directive 75/129, is exercised through workers' representatives (see, to that effect, *Commission* v *United Kingdom*, paragraphs 17 and 23, and Case C-385/05 *Confédération générale du travail and Others* [2007] ECR I-611, paragraph 48).

42 It must therefore be held that the right to information and consultation provided for in Directive 98/59, in particular by Article 2 thereof, is intended to benefit workers as a collective group and is therefore collective in nature.

43 The level of protection of that collective right required by Article 6 of the directive is reached in a context such as that of the main proceedings, since the applicable national rules give workers' representatives a right to act which, as was pointed out in paragraph 37 of the present judgment, is not limited by specific conditions.

44 Consequently, and without prejudice to remedies in domestic law intended to ensure protection of the individual rights of workers in the case of improper dismissal, it cannot reasonably be argued that the protection of workers is restricted or that the useful effect of Directive 98/59 is affected by the fact that, in the framework of the procedures permitting workers to act individually in order to ensure compliance with the information and consultation obligations laid down in that directive, the complaints which may be raised by them are limited or that their right of action is subject to the conditions that workers' representatives should first have raised objections and that the worker concerned has informed the employer in advance of his intention to challenge compliance with the information and consultation procedure.

45 In the light of the foregoing, the answer to the first question and the second part of the fourth question must be that Article 6 of Directive 98/59, read in conjunction with Article 2 thereof, is to be interpreted as not precluding national rules which introduce procedures intended to permit both workers' representatives and the workers themselves as individuals to ensure compliance with the obligations laid down in that directive, but which limit the individual right of action of workers in regard to the complaints which may be raised and makes that right subject to the requirement that workers' representatives should first have raised objections with the employer and that the worker concerned has informed the employer in advance of his

intention to query whether the information and consultation procedure has been complied with.

The second question

46 By its second question the referring court asks whether, bearing in mind the answer to the first question and the second part of the fourth question, a system such as that considered in the framework of these questions, in which the right of workers to act individually in order to ensure compliance with the obligations to inform and consult laid down in that directive is limited in regard to the complaints which may be raised and is subject to the conditions that workers' representatives should first have raised objections and that the worker concerned has informed the employer in advance of his intention to challenge compliance with the information and consultation procedure, is compatible with fundamental rights, in particular with the right to effective judicial protection enshrined in Article 6 of the ECHR.

47 It is to be noted at the outset that, according to settled case-law, the principle of effective judicial protection is a general principle of Community law stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the ECHR and which has also been reaffirmed by Article 47 of the Charter of fundamental rights of the European Union, proclaimed on 7 December 2000 in Nice (OJ 2000 C 364, p. 1) (see, in particular, Case C-432/05 *Unibet* [2007] ECR I-2271, paragraph 37, and Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation* v *Council and Commission* [2008] ECR I-0000, paragraph 335).

48 Moreover, the Court has consistently held that, in the absence of Community rules governing the matter, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from Community law but the Member States, however, are responsible for ensuring that those rights are effectively protected in each case (Case C-268/06 *Impact* [2008] ECR I-2483, paragraphs 44 and 45 and the case-law cited therein).

49 Thus, whilst it is, in principle, for national law to determine an individual's standing and legal interest in bringing proceedings, Community law nevertheless requires, in addition to observance of the principles of equivalence and effectiveness, that the national legislation does not undermine the right to effective judicial protection (see, to that effect, Joined Cases C-87/90 to C-89/90 *Verholen and Others* [1991] ECR I-3757, paragraph 24; Case C-13/01 *Safalero* [2003] ECR I-8679, paragraph 50; and *Unibet*, paragraph 42).

50 With regard to the right of information and consultation laid down in Directive 98/59, it should be pointed out that, as is clear from paragraphs 38 to 42 of the present judgment, that right is intended to benefit workers collectively and is therefore collective in nature. The fact that Article 6 of Directive 98/59 permits the Member States to establish procedures in favour of workers individually does not change the collective nature of the right.

51 Under those circumstances, a national system such as that at issue in the main proceedings which provides a procedure whereby workers' representatives can ensure compliance by the employer with all the information and consultation obligations set out in Directive 98/59 and which also grants an individual right of action to workers, subject to limits and specific conditions, is of such a nature as to ensure effective judicial protection of the collective information and consultation rights enshrined in the directive.

52 Having regard to the foregoing, the answer to the second question must be that the fact that national rules, establishing procedures which permit workers' representatives to ensure that the employer has complied with all the information and consultation obligations set out in Directive 98/59, impose limits and conditions on the individual right of action which it also grants to every worker affected by collective redundancy is not of such a nature as to infringe the principle of effective judicial protection.

The third question

53 In view of the answers given to the first and second questions, it is unnecessary to reply to the third question since the latter was put forward by the national court for the situation in which Directive 98/59 precluded a national provision such as Article 67 of the 1998 Law.

The first part of the fourth question

54 By this question, the national court is asking whether Article 2 of Directive 98/59 precludes a provision such as the first subparagraph of Article 66(1) of the 1998 Law, in so far as it reduces the obligations of an employer who intends to proceed with collective redundancies.

55 It should be pointed out, as the Advocate General has done in point 73 of his Opinion, that there is no doubt but that the obligations imposed on employers in the second subparagraph of Article 66(1) of the 1998 Law do not include the totality of those prescribed by Article 2 of Directive 98/59.

56 Consequently, Article 2 of Directive 98/59 must be interpreted as precluding a national provision which, like the second subparagraph of Article 66(1) of the 1998 Law, taken in isolation, reduces the information and consultation obligations of an employer who intends to proceed with collective redundancies, as compared with the obligations laid down in Article 2 of the directive.

57 It must be pointed out, however, that it is apparent from the first subparagraph of Article 66(1) of the 1998 Law that an employer who intends to proceed with collective redundancies must observe the procedure for informing and consulting provided for in the event of collective redundancies, as laid down in the applicable collective labour agreements. According to the information provided by the national court, Collective Agreement No 24 reproduces in their entirety the obligations which Article 2 of Directive 98/59 requires to be imposed on such an employer.

58 Under those circumstances, it is for the national court to assess whether the second subparagraph of Article 66(1) of the 1998 Law is, in the light of the subparagraph which precedes it, capable of being interpreted as meaning, in so far as it refers to Collective Agreement No 24, that such an employer is not dispensed from complying with all the obligations laid down in Article 2 of Directive 98/59.

59 It is certainly true that, according to settled case-law, a directive cannot of itself impose obligations on an individual and cannot therefore be relied upon as such against an individual, so that even a clear, precise and unconditional provision of a directive seeking to confer rights or impose obligations on individuals cannot of itself apply in proceedings exclusively between private parties (see, to that effect, Joined Cases C-397/01 to C-403/01 *Pfeiffer and Others* [2004] ECR I-8835, paragraphs 108 and 109).

60 However, when it applies domestic law, a national court is bound to interpret that law, 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 249 EC (see, to that effect, *Pfeiffer and Others*, paragraph 113).

61 That obligation to interpret national law in conformity with Community law concerns all the provisions of national law and is limited by the general principles of law, particularly those of legal certainty and non-retroactivity, and that obligation cannot serve as the basis for an interpretation of national law *contra legem* (see, to that effect, Case 80/86 *Kolpinghuis Nijmegen* [1987] ECR 3969, paragraph 13; Case C-212/04 *Adeneler and Others* [2006] ECR I-6057, paragraph 110; *Impact*, paragraph 100; and Case C-378/07 *Angelidaki and Others* [2009] ECR I-0000, paragraph 199).

62 The principle of interpreting national law in conformity with Community law thus imposed by

Community law requires the national court to consider national law as a whole in order to assess to what extent it may be applied so as not to produce a result contrary to that sought by the directive at issue (see, to that effect, *Pfeiffer and Others*, paragraph 115).

63 If the application of interpretive methods recognised by national law enables, in certain circumstances, a provision of domestic law to be construed in such a way as to avoid conflict with another rule of domestic law or the scope of that provision to be restricted to that end by applying it only in so far as it is compatible with the rule concerned, the national court is bound to use those methods in order to achieve the result sought by the directive at issue (see, to that effect, *Pfeiffer and Others*, paragraph 116).

64 In this instance, that principle thus requires the referring court to do whatever lies within its jurisdiction, having regard to the whole body of rules of national law, to ensure that Directive 98/59 is fully effective so as to avoid the obligations binding an employer who intends to proceed with collective redundancies being reduced below those laid down in Article 2 of that directive.

65 In the light of the foregoing, the answer to the first part of the fourth question must be that Article 2 of Directive 98/59 is to be interpreted as precluding national rules which reduce the obligations of an employer who intends to proceed with collective redundancies below those laid down in Article 2 of that directive. In applying domestic law, the national court is required, applying the principle of interpreting national law in conformity with Community law, to consider all the rules of national law and to interpret them, so far as possible, in the light of the wording and purpose of Directive 98/59 in order to achieve an outcome consistent with the objective pursued by the directive. Consequently, it must ensure, within the limits of its jurisdiction, that the obligations binding such an employer are not reduced below those laid down in Article 2 of that directive.

Costs

66 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Fourth Chamber) hereby rules:

1. **Article 6 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 in conjunction with Article 2 thereof, is to be interpreted as not precluding national rules which introduce procedures intended to permit both workers' representatives and the workers themselves as individuals to ensure compliance with the obligations laid down in that directive, but which limit the individual right of action of workers in regard to the complaints which may be raised and makes that right subject to the requirement that workers' representatives should first have raised objections with the employer and that the worker concerned has informed the employer in advance of his intention to query whether the information and consultation procedure has been complied with.**

2. **The fact that national rules, establishing procedures which permit workers' representatives to ensure that the employer has complied with all the information and consultation obligations set out in Directive 98/59, impose limits and conditions on the individual right of action which it also grants to every worker affected by collective redundancy is not of such a nature as to infringe the principle of effective judicial protection.**

3. Article 2 of Directive 98/59 must be interpreted as precluding national rules which reduce the obligations of an employer who intends to proceed with collective redundancies below those laid down in Article 2 of that directive. In applying domestic law, the national court is required, applying the principle of interpreting national law in conformity with Community law, to consider all the rules of national law and to interpret them, so far as possible, in the light of the wording and purpose of Directive 98/59 in order to achieve an outcome consistent with the objective pursued by the directive. Consequently, it must ensure, within the limits of its jurisdiction, that the obligations binding such an employer are not reduced below those laid down in Article 2 of that directive.

[Signatures]

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* Language of the case: French.