Opinion of Advocate General Mengozzi delivered on 21 January 2009

Mono Car Styling SA, in liquidation v Dervis Odemis and Others

Reference for a preliminary ruling: Cour du travail de Liège - Belgium

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

Case C-12/08

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I – Introduction

1. This case offers the Court an opportunity to clarify some aspects of the Community legislation on collective redundancies. The main issue to be resolved is whether Directive 98/59/EC confers rights directly on workers and, if so, whether those rights are individual or collective. It has further to be determined whether the directive in question allows national rules to limit the cases in which collective redundancies may be challenged when there has been a breach of a requirement laid down by the directive itself. It will also be necessary, finally, to consider any restrictions that may arise in this domain from the general principles of Community law and, in particular, from the right to effective judicial protection.

2. The opportunity to provide those explanations is afforded by the Cour du Travail de Liege (Higher Labour Court, Liège) which, called upon to rule on a series of cases brought by workers affected by collective redundancy, has referred a number of questions to the Court for a preliminary ruling.

II – Legislative context

A – Relevant provisions of Community law

3. The Community rules concerned in this case are set out in Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies ('the Directive'). (2)

4. The first and second recitals of the Directive are worded as follows:

'(1) Whereas for reasons of clarity and rationality Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies should be consolidated;

(2) Whereas 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'.

5. Article 2 of the Directive 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.

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,

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).

...'

6. Articles 3 to 6 of the Directive provide:

'Article 3

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

...

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.

Article 4

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.

...

Article 5

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.

Article 6

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'.

B – Relevant provisions of national law

7. The provisions of Directive 72/129 (and, consequently, of Directive 98/59) were transposed into domestic law in Belgium by Collective Labour Agreement No 24 of 2 October 1975, given the force of law by Royal Decree of 21 January 1976 ('Collective Agreement No 24'). Article 6 of Collective Agreement No 24 provides:

'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'.

8. Further protection for workers in the case of collective redundancy is provided in Belgium by the Law of 13 February 1998 on measures in favour of employment, Articles 66 to 69 of which provide as follows:

'Article 66

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:

(i) 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;

(ii) 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;

(iii) 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;

(iv) he must have examined the questions, arguments and counter-proposals referred to in (iii) 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 1(ii) 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.

Article 67

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.

Article 68

1. If a notice period is running or has yet to start running for a redundant worker challenging observance of the procedure for informing and consulting, that notice period shall be suspended, if the challenge is well founded, as from the third working day following the sending of the letter by recorded delivery referred to in the third paragraph of Article 67.

...

Article 69

1. A redundant worker challenging observance of the procedure for informing and consulting whose contract of employment has already terminated must, in the letter sent by recorded delivery referred to in the third paragraph of Article 67, also request reinstatement.

...'.

III – Facts, procedure in the national court, and questions referred for a preliminary ruling

9. The facts giving rise to the dispute are set out in great detail in the lengthy order for reference. Without dwelling on an exposition of the details, the case may be summarised as follows.

10. In 2004, the company Mono Car Styling ('Mono Car'), active in the car parts manufacturing sector, went through a particularly difficult period as a result of a sharp decline in orders. Given those circumstances, the company decided to reduce its workforce by way of collective redundancies.

11. The company reached an agreement on the matter with its workers' representatives: the agreement fixed the number of redundancies at 30 and contained specific measures of compensation and support for the workers concerned. Both the workers' representatives and the local employment services acknowledged that the employer had observed the information and consultation procedures prescribed under the collective redundancies legislation.

12. The main proceedings arise from an action brought on an individual basis by 21 workers involved in the collective redundancy procedure. Their cause of action is an alleged failure by Mono Car to observe certain procedural requirements laid down in the collective redundancies legislation. I believe that the details of the claims put forward in the national court may be omitted here as they have no direct bearing on the questions on which the Court is called upon to rule.

13. In any event, the referring court has to decide on an appeal brought by Mono Car against a judgment of the court of prior instance awarding damages to the workers for harm suffered as a result of irregularities in the redundancies procedure.

14. Taking the view that the resolution of the dispute before it requires answers first to be obtained to a number of questions on the interpretation of Community law, the national court has referred the following questions to the Court for a preliminary ruling:

'(1) Must Article 6 of the Directive [98/59] … be interpreted as precluding a provision of national law, such as Article 67 of the Law of 13 February 1998, …

– in so far as it provides that a worker can no longer challenge observance of the procedure for informing and consulting except on the ground that the employer has not satisfied 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 ought to be informed and consulted, have notified the employer of objections, in respect of satisfaction of 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 challenged observance of the procedure for informing and consulting and sought reinstatement in his post?

(2) Assuming that Article 6 of the directive [98/59] may be interpreted as allowing Member States to adopt provisions of national law such as Article 67 of the Law of 13 February 1998 ..., in so far as it provides that a worker made redundant can no longer challenge compliance with the procedure for informing and consulting except on the ground that the employer has not fulfilled the conditions referred to in the second subparagraph of Article 66(1) of that law, and to the extent that 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 ought to be informed and consulted, have notified the employer of objections in respect of satisfaction of one or more of the conditions referred to in the second subparagraph of Article 66(1) within a period of 30 days from 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 challenged observance of the procedure for informing and consulting and sought to be reinstated in his post,

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

(3) May 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 Law of 13 February 1998 …, 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 of 2 October 1975 …, but 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 Law of 13 February 1998?

(4) (1) Must Article 2 of the 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 Law of 13 February 1998 …, in so far as it provides that an employer who intends to satisfy his obligations in the context of collective redundancies is bound only to provide evidence that he has fulfilled the following conditions:

(i) 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;

(ii) 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;

(iii) 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 exists, the workers, to raise questions regarding the collective redundancies contemplated and to make arguments or submit counter-proposals on that issue;

(iv) he must have examined those questions, arguments and counter-proposals referred to in (iii) and have replied to them?

(4) (2) Must that same provision [of the Directive] be interpreted as precluding a provision of national law, such as Article 67(2) of the Law of 13 February 1998 …, in so far as it provides that a worker made redundant may challenge observance of the procedure for informing and consulting only on the ground that the employer has not satisfied the conditions laid down in the second subparagraph of Article 66(1) and referred to in paragraph (1) of this question?'

IV – The interpretations of the national law and the admissibility of the questions referred

15. Before going on to examine the questions referred for a preliminary ruling, I find it necessary to consider the interpretation of the national law and the related issues as to the admissibility of the reference.

16. On the basis of the order for reference and the observations of the parties, Article 67 of the Law of 13 February 1998, which sets out a number of restrictions on the right of an individual worker to challenge a collective redundancy, admits of two radically different interpretations.

17. On the first interpretation, the restrictions imposed by Article 67 on an individual's right of action apply only to actions for the specific remedies provided for, in the case of an unlawful collective redundancy, by the 1998 Law: in other words, those restrictions apply only to actions for reinstatement of the worker made redundant or for suspension of the notice period, these being the remedies specific to the 1998 Law. (3)

18. The second interpretation, on the other hand, holds that the restrictions of an individual's right of action imposed by Article 67 of the 1998 Law apply not only to the specific remedies provided for under that law but also, more generally, to all individual actions brought by workers against collective redundancies for non-observance of the information and consultation procedure. In particular, according to this interpretation, the restrictions laid down by Article 67 would apply also, for example, to actions for damages brought by individual workers. While the referring court does not take a clear position on the matter, it does appear to lean towards this second interpretation.

19. Clearly, to follow the first interpretation would deprive these preliminary reference proceedings of all import. According to that interpretation, the restrictions imposed by Article 67 of the 1998 Law could at most prevent workers from seeking certain specific remedies but would not in any way prevent them from bringing legal proceedings challenging collective redundancies on the basis of legislation other than the 1998 Law and, if successful, from securing appropriate relief, by way of damages for example. It appears absolutely clear, therefore, that this interpretation leaves no room for possible conflicts either with Article 6 of Directive 98/59, or with the principle of effective judicial protection and the European Convention on Human Rights. What those provisions require is the guarantee of appropriate means of redress, not of one specific remedy.

20. Some at least of the Belgian case-law follows the first interpretation: including, for example, the decision of the court seised at first instance in the main proceedings, against which an appeal has been brought before the referring court. The Cour du Travail de Liège itself, in a different composition, gave judgment to such effect on 30 April 2007, observing in particular that the interpretation according to which the conditions set out in Article 67 of the 1998 Law would apply to all actions and not only to those for the specific additional remedies introduced by that law, 'would constitute … a massive retrenchment of the rights and remedies secured to workers under Collective Agreement No 24'. (4)

21. What is more, it appears from the case file and was confirmed at the hearing that before the referring court the question of the possible reinstatement of the workers in Mono Car was not even raised, which would, if the first interpretation were followed, render all the matters raised by the referring court doubly irrelevant.

22. While it is not for the Court of Justice to interpret national law, I must confess I find it hard to comprehend how the national court can prefer the more rigid interpretation of Article 67. Especially given the

fact, mentioned at the hearing also, that the 1998 Law containing that article was enacted, following a traumatic collective redundancy at a Renault plant, for the purpose of enhancing the protection of workers in the case of collective redundancy. For that reason alone, if for no other, it seems difficult to accept that a law born out of such circumstances should have ended up actually reducing, in practice, the rights of workers made redundant.

23. I would observe, furthermore, that Articles 68 and 69 of the 1998 Law provide only for the suspension of the notice period (Article 68) and for the worker's request for reinstatement (Article 69), respectively. Those two cases, in the scheme of the 1998 law, appear to constitute the sum total of the remedies contemplated by that law, which would confirm that the ambit of the 1998 Law is confined to those specific and exceptional remedies (suspension of the notice period and reinstatement). It may be noted that, under Article 68, suspension of the notice period is automatic and that if the conditions for its application are not met Article 69 falls to apply, requiring the worker to request reinstatement: 'A redundant worker must … also request reinstatement'.

24. The Belgian Government in particular, in its written observations, maintains that the reference is inadmissible on the ground that Article 67 of the 1998 Law has no application to the facts of the case.

25. It must be admitted that the logical argument of the referring court's decision to refer is not without flaws. In particular, the referring court, having suggested two possible interpretations of the national law, and without having clearly come down on the side of either, has sent the Court a series of questions which are meaningful only if one of those two interpretations is preferred. As a consequence, the Court is asked to rule on an issue which could become utterly irrelevant if the national court were ultimately to decide to opt for a different interpretation of its own domestic law.

26. All that notwithstanding, I still believe that this reference does not satisfy the conditions, which in truth are rather strict, that have been laid down in the Court's case-law as necessary in order for it to refuse an answer to questions referred by a national court.

27. For one thing, the Court has consistently taken the view that it is for the national court to judge the domestic legal context and the utility of a ruling by the Court of Justice for the purposes of the resolution of the dispute in the national proceedings. (5)

28. Secondly, I believe that the questions submitted by the Cour du Travail de Liège may in any case be construed as a general request to the Court of Justice to clarify certain aspects of Directive 98/59 in order to enable the national court to interpret its domestic law in a manner that is not contrary to Community law.

29. I am, therefore, of the opinion that the pleas of inadmissibility raised by the Kingdom of Belgium cannot be upheld.

V – Directive 98/59

30. Before going on to examine the individual questions referred for a ruling, I think it worthwhile to make some general points about Directive 98/59. In particular, once a number of aspects pertaining to the directive have been clarified it will be easier to give an answer to the questions.

A – Origins, purposes and characteristics of the Directive

31. The first Community legislation to deal with collective redundancies was Directive 75/129/EEC. (6) The key impetus for the adoption of that directive was the finding that the big industrial groups, when making collective redundancies, chose to lay off workers in those Member States of the Community where protection against dismissal was particularly weak.

32. From its inception, the Community legislation on redundancies has been characterised by its dual nature. On the one hand, the legislature noted at the outset that the Community system is based on social objectives, stating that it was necessary 'that greater protection should be afforded to workers' as the key impetus behind Directive 75/129. (7) On the other hand, however, the directive was adopted using the legal basis of the current Article 94 (formerly Article 100) of the Treaty, which provides for the issuing of directives to approximate such national rules 'as directly affect the establishment or functioning of the common market'.

33. That dual nature is readily apparent in the recitals to Directive 75/129. The first recital, as we have seen, affirms that it is necessary to reinforce the protection afforded to workers; the second notes the differences still remaining between the various Member States in the matter of collective redundancies; the third, finally, states that 'these differences can have a direct effect on the functioning of the common market'.

34. Directive 75/129 was amended for the first time by Directive 92/56. (8) While the legislation was not radically modified by this amendment, it did take on (at least in theory) a more 'social' character, as evidenced, inter alia, by the first recital in the preamble to the 1992 directive, which refers to the *Community Charter of the Fundamental Social Rights ofWorkers*, adopted in 1989.

35. Directive 98/59, as its first recital makes clear, essentially represents the consolidated text of Directive 75/129 as amended by Directive 92/56.

36. Directive 98/59 may therefore be regarded, to all intents and purposes, as the version currently in force of Directive 75/129. This makes it possible, in particular, to refer also to the case-law on the latter directive, which I will therefore cite, where timely, without repeating the fact that, strictly speaking, it concerns Directive 75/129.

37. The main purpose of Directive 98/59 is to lay down a number of constraints *of a procedural nature* in cases of collective redundancy. In other words, the directive does not set out to fetter, in substantive terms, the manner in which businesses choose to conduct their affairs. In particular, as the Court's case-law has made clear, the directive does not affect their freedom to make redundancies (9) and, in general, to order their affairs as they deem best. (10)

38. It is also clear, in particular from Article 5, that the Directive is conceived as a harmonisation measure which sets a minimum standard, leaving Member States free to introduce provisions which are more favourable

to workers. (11) Accordingly, the directive's harmonisation of the rules governing collective redundancies is of a partial and limited character. (12)

39. It is significant, moreover, that the Court's case-law on the Directive has been concerned above all with the question of its scope. In particular, the Court has had to consider the meaning of the terms 'establishment' (13) and 'dismissal', (14) and the applicability of the Directive in the case of the complete closure of a business (15) and to an employer whose business is non-profit-making. (16) Likewise, it has had to deal with the proper interpretation of the exceptions to the scope of the Directive, (17) the calculation of the thresholds for its application, (18) and the time at which redundancy is deemed to take effect. (19)

B – *Does the Directive confer rights?*

40. A specific issue that must be considered as a preliminary matter is whether Directive 98/59 confers rights and, if so, whether those rights are individual (i.e. belonging to the individual workers) or collective (i.e. belonging to the workers' representatives).

41. The workers who were made redundant argue, for reasons that are easy to divine, that the Directive accords rights to each individual worker affected by a collective redundancy. The Commission, on the other hand, submits that Directive 98/59 confers rights of a collective nature.

42. It is my view that the issue, as set forth in the observations of those parties, is framed in the wrong terms.

43. The Directive does not, per se, create or confer any rights, either individual or collective. It provides that Members States must establish a number of safeguards of a procedural nature in relation to collective redundancies. It further provides, by Article 6 in particular, that Member States must create appropriate mechanisms 'for the enforcement of *obligations* under this Directive' (emphasis added).

44. As can be seen, in the only article devoted to the means by which the practical effect of the Directive's provisions is to be secured, the Community legislature has avoided using the word 'rights', preferring to speak instead of 'obligations'. The approach, in other words, is not to bestow a series of rights on those affected by collective redundancies, but to impose a series of obligations on employers who decide to make such redundancies.

45. While the previous observation may indeed be indicative of the attitude of the legislature, which after all in an area such as collective redundancies, which is by definition a highly sensitive one characterised by widely diverging national traditions, has attempted to reconcile the most diverse positions, the fact none the less remains that, as a matter of logic, an obligation implies a corresponding right. Who is therefore the beneficiary, the party vested with a right, under Article 6 of the Directive?

46. In my view, that party is not identified in the directive itself, which leaves the matter to the Member States' discretion. It is well to consider here the wording of Article 6. This states that Member States must 'ensure that judicial and/or administrative procedures for the enforcement of obligations under this Directive are available to *'the workers' representatives and/or workers'* (emphasis added).

47. The wording of Article 6 is clear. Member States may, in full conformity with Article 6, provide for a right of action, in the event of collective redundancies, for: (a) the workers' representatives alone; (b) the individual workers alone; or (c) both the workers' representatives and the individual workers. (20)

48. I believe that the points made above concerning the origins and characteristics of Directive 98/59 fully justify a literal reading of Article 6. In particular, it seems to me entirely unwarranted, as well as unnecessary, to apply any other rules of construction so as to force the provision to say more than what the legislature intended. It is clear the Community legislature meant to leave the Member States a broad discretion in the matter: the legislature's concern was to ensure the availability, in the event of collective redundancies, of *effective* remedies, regardless of whether these were ultimately the result of the granting by the Member States of an individual, collective or mixed right of action.

49. Moreover, the Charter of Fundamental Rights of the European Union, proclaimed at Nice on 7 December 2000, (21) provides in Article 27 that '[*W*]*orkers or their representatives* must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices' (emphasis added). In that case too, therefore, the legislature confirmed, by the use of the conjunction 'or', that the right to information and consultation may be provided for at collective rather than individual level.

50. Along the same lines, Directive 2002/14, (22) which sets up a general framework for informing and consulting workers, but which, according to Article 9 thereof, does not affect the provisions of Directive 98/59, treats the workers' representatives as being the only parties actually involved in the information and consultation procedure and states in the 15th recital in the preamble thereto that '[t]his Directive is without prejudice to national systems regarding the exercise of this right in practice where those entitled to exercise it are required to indicate their wishes collectively'.

51. It should also be pointed out, finally, that all the argument in this Opinion applies solely to possible infringements of the only substantive right that can be regarded as flowing from Directive 98/59, i.e. the right to information and consultation. Any other right for workers and/or their representatives recognised in national legal orders is of no relevance to the case at hand.

52. Having clarified these preliminary matters, I now turn to consider the questions referred by the national court.

VI – The questions referred

A – The first and fourth questions

1. Whether the right is individual or collective (first part of first question)

53. By the first question, in substance, the referring court asks the Court to rule on the compatibility with Article 6 of Directive 98/59 of a national provision which makes the right of an individual worker to challenge a collective redundancy conditional:

(a) upon specified infringements being pleaded (failure to satisfy the conditions laid down by Article 66 of the Belgian law of 1998);

(b) in particular, upon the workers' representatives having formally complained to the employer regarding the alleged infringements in question.

54. In the discussion of the first question, the parties focused essentially on the issue described in the preceding paragraph under (b), i.e. whether the right to challenge a collective redundancy is individual or collective. Consequently, I shall deal with that aspect first of all. My discussion of the restrictions of rights of action, linked to the requirement to challenge only certain specific infringements (point (a) of the preceding paragraph), will be combined with my discussion of the fourth question referred.

a) (a) The positions of the parties

55. Odemis and Others, the workers who were made redundant, argue first and foremost that the interpretation of the Belgian law on collective redundancies relied upon by the referring court in drawing up the first question is very far from being universally followed. In particular, as I have already pointed out above, there is another interpretation, apparently more faithful to the spirit of the 1998 Law, which is that non-fulfilment of the conditions prescribed by Article 67 of the Law prevents individual workers only from seeking reinstatement or suspension of the notice period but does not by any means stop them from bringing an action in damages, for example, for prejudice suffered as a result of the failure to observe the information and consultation procedure. (23)

56. As a consequence, the answer that those parties propose for the first question referred is, in a certain sense, almost in the nature of an alternative claim, given that the workers' first line of defence, even if it cannot be relied upon directly before the Court of Justice, seems to be to contend for the above interpretation of the Belgian law. In any event, those parties submit that the Directive provides for a right to information and consultation which concerns the individual workers also and not only their representatives: as a result, Article 6 of the Directive requires the right of action to be given also to the workers individually.

57. The Kingdom of Belgium, which deals only in the alternative with the merits of the questions referred, having pleaded their inadmissibility, (24) considers that the choice of the means to give effect to the rights flowing from the Community rules falls, for want of more specific guidance in the directive, within the discretion allowed to each Member State. Consequently, so long as the remedies provided for make it possible to guarantee those rights effectively, the choice of remedies made by a Member State cannot be criticised. For that reason, since Belgian law makes available a set of remedies capable of ensuring proper observance of the provisions of Directive 98/59, there is no conflict between the Directive and the rules of Belgian law.

58. The Commission submits that Directive 98/59 accords rights of a collective and not of an individual nature: in consequence, in the Commission's view, there are no problems of compatibility with the directive in question.

59. For its part, finally, the United Kingdom emphasises that the disjunctive nature of the 'and/or' nexus in Article 6 of Directive 98/59 cannot be overridden by interpretation, among other reasons because, in the contrary case, the very operation of the scheme established by the directive would be considerably impeded.

b) (b) Assessment

60. The logical consequence of the points made above in relation to the general nature of Directive 98/59 (25) is the finding that the Directive does not, of itself, require individual workers to be given an autonomous individual right to challenge a collective redundancy in the event of a breach of the right to information and consultation.

61. In particular, that is made clear by the words used in Article 6 of the Directive, which requires Member States to provide the 'workers' representatives and/or workers' with appropriate judicial and/or administrative procedures for the enforcement of obligations arising under the Directive.

62. The Belgian Law of 1998, for its part, if interpreted as the referring court appears to intend, constitutes a peculiar model in which a right of action is retained for the individual worker, but made conditional upon a prior 'objection' to the collective redundancy having been made by the workers' representatives. In practice, the Belgian legislature appears here to have established a collective rather than an individual right. The fact that the action is none the less brought individually cannot disguise the fact that it is still the workers' representatives who have the power to take the fundamental decision whether or not to object to the redundancy. This is not contrary to Directive 98/59, which itself identifies the workers' representatives, rather than the individual workers, as the parties with whom an employer proposing a collective redundancy has to deal (see, for example, Article 2 of the Directive).

63. The Law does not therefore appear to be in conflict with Article 6 of the Directive, which allows the opportunity for a Member State to frame the right to information and consultation, in a case of collective redundancies, as a collective right.

64. The Court has previously, albeit with reference to a different specific question, declined to adopt a teleological interpretation of the Directive on collective redundancies, instead favouring a precise literal construction of its provisions. (26)

65. Moreover, a literal interpretation of Article 6 of Directive 98/59 seems to me to accord perfectly with the distinctive feature of the Directive, which is that it leads to compromise legislation intended to find a point of equilibrium both between the divergent interests of employers and employees and also between the various traditions of Member States of the Community in the sphere of industrial relations.

2. The compatibility with the Directive of a restriction of the right of action to cases of specific infringements (second part of first question, and fourth question)

66. With regard to the second matter raised by the first question, i.e. as to the compatibility with Article 6 of Directive 98/59 of national legislation restricting to certain specified infringements the cases in which it is possible to challenge a collective redundancy, this issue is linked to that raised by the fourth question, concerning the compatibility with Article 2 of Directive 98/59 of Articles 66 and 67 of the Belgian Law of 1998.

67. More specifically, what has to be determined is whether it can be compatible with Directive 98/59 (with both Article 2 and Article 6 thereof) for a system in effect to limit, in the event of collective redundancies, the employer's obligations to the satisfying of a number of specific conditions which do not, however, cover the full range of obligations prescribed by Directive 98/59. Likewise, it must be determined whether questions of compatibility with the Directive arise because an action against a collective redundancy lies only in the case of failure to satisfy those conditions.

68. In concrete terms, the problem is caused by the fact that, as described above, Articles 66 and 67 of the Belgian Law of 1998 comprise a system in which the employer is required to produce evidence only of having fulfilled the four conditions listed in the second subparagraph of Article 66(1): to have prepared a written report for the workers' representatives, to have arranged a meeting with those representatives, to have allowed them to ask questions and to put forward proposals, and to have replied to any such questions and proposals. Furthermore, under Article 67 of the Law, only an alleged infringement of those four conditions can form the basis for a challenge to the collective redundancy.

69. Here again, as in relation to the first question, I must repeat that the interpretation of national law which the referring court appears to favour seems frankly debatable. If, as the Belgian Government rightly points out in its observations on the fourth question, the judicial interpretation should be adopted that the rules restricting the right of action against collective redundancies contained in the 1998 Law concern only the remedies of reinstatement and suspension of the notice period, the issues as to the compatibility of Belgian law with Directive 98/59 would disappear, since it would still be possible to use all the other remedies provided for under Belgian employment law and, in particular, that of damages. (27)

70. It is common cause that all the obligations imposed on employers by Directive 98/59 were correctly transposed into Belgian law by Collective Agreement No 24. If, therefore, the 1998 law were construed as a mere instrument intended to strengthen the position of workers, it is clear that the provisions of Collective Agreement No 24, being still in force, would constitute a correct transposition of the Directive.

71. Yet here again leaving to the national court the task of interpreting the Member State's domestic law, we must proceed from the point of view of the interpretation apparently favoured by the referring court according to which the 1998 Law's restrictions of rights of action apply to all actions brought by the workers involved in collective redundancy alleging infringement of the information and consultation procedure.

72. Now, if it should be held that the 1998 Law had significantly reduced the employer's obligations and, accordingly, the workers' opportunities for redress, to only those obligations prescribed in the second subparagraph of Article 66(1) of the law, it seems clear to me that that would be incompatible with Community law.

73. There is no doubt but that the obligations set forth in the second subparagraph of Article 66(1) of the 1998 law do not include the totality of those prescribed by Directive 98/59. For example, as correctly observed by the workers, it is not expressly stated that the consultations between the employer and the workers' representatives must, in general, have at least the objective of reaching an agreement. It was precisely the absence of explicit words to that effect that led, in 1994, to the United Kingdom's being found to have failed to fulfil its obligations. (28) As a further example, Article 66 of the 1998 Law does not provide that the written notification by the employer must contain the details of the proposed redundancy listed in Article 2(3)(b) of the Directive.

74. Moreover, the Belgian Government itself implicitly acknowledges that the conditions imposed on employers under Article 66 of the 1998 law do not include the totality of those prescribed by Directive 98/59. It does emphasise, however, that the 1998 law does no more than provide a further level of protection for workers affected by collective redundancies, without in any way undermining the system established by Collective Agreement No 24. The Commission takes a similar view.

3. Conclusions on the first and fourth question

75. I therefore take the view that the first and fourth questions referred should be answered by declaring that Directive 98/59 does not preclude national rules which, in a case where the information and consultation procedure has not been observed, restrict to the workers' representatives alone the right to challenge collective redundancies, or which make the right of an individual worker to challenge collective redundancies conditional upon the workers' representatives having made an objection. The Directive does, however, preclude national rules which allow collective redundancies to be challenged only for certain specified breaches of the obligations prescribed by the Directive, and not for all breaches of those obligations.

B – The second question

1. Introduction

76. By the second question, which is framed in the alternative, the referring court asks, in substance, whether the provisions of national law referred to in the first question, if not incompatible with Directive 98/59, are not incompatible with fundamental rights and, more specifically, Article 6 of the European Convention on Human Rights.

77. Since, as just stated, I propose that the Court should find incompatibility with Directive 98/59 in respect of one of the two matters raised by the national court, that is to say, the restriction of possible causes of action, the issue as to compatibility with fundamental rights arises, in my view, in particular with regard to the requirement of a prior objection having been made by the workers' representatives in order for an individual action to be admissible.

78. I would point out, moreover, that a finding of unlawfulness with respect to the collective nature of the remedy could have repercussions on the lawfulness of Directive 98/59 itself for, as we have seen, Article 6 of the directive makes it possible, in general, for a right of action also to be accorded, in the event of failure to observe the information and consultation procedure, as a collective right only.

2. Arguments of the parties

79. Odemis and Others submit on this question that national legislation confining the right to challenge a collective redundancy to workers' representatives alone, thereby excluding any possibility for workers to bring individual actions, would, even if compatible with Directive 98/59, in any event offend against the principle of the right to effective judicial protection.

80. The Commission, persisting in its own interpretation that Directive 98/59 provides a collective, rather than individual, right, denies that there can possibly be any conflict whatsoever with the right to effective judicial protection or with the European Convention on Human Rights ('ECHR'). A substantially similar position is taken by the United Kingdom.

81. The Kingdom of Belgium, for its part, again starts from the premiss that the Belgian Law of 1998 did not in any way restrict the rights that had previously been conferred on workers by Collective Agreement No 24. Accordingly, the observations submitted by the Belgian Government go no further than noting that the fact of denying individual workers the opportunity to seek the specific remedy of reinstatement unless the workers' representatives have previously raised an objection does not constitute a breach of the fundamental right to effective judicial protection, given that individual workers still have many other remedies available to them.

3. Assessment

82. In this regard too, naturally, the question is meaningful only on the basis of an interpretation of the Belgian law of 1998 to the effect that its provisions ultimately represent a restriction of the rights accorded to workers by the pre-existing legislation, in particular by Collective Agreement No 24.

83. The Court has, as is well known, maintained that the right to effective judicial protection constitutes a fundamental principle of Community law, (29) stemming from the constitutional traditions common to the Member States and enshrined both in the ECHR, by Articles 6 and 13, and in the Charter of Fundamental Rights of the European Union.

84. That right means in the first place that those concerned can assert in their national courts, in such manner as Member States may prescribe, the rights conferred on them under Community law. (30)

85. The right to effective judicial protection, however, construed in its broader sense, applies not only to rights under Community law, but may also be viewed from a more general perspective with respect to all rights guaranteed in the domestic system of each Member State. That specific meaning given to the principle may be examined with particular reference to the ECHR.

86. As regards the specific provisions of the ECHR to be considered for these purposes, the referring court mentions – in my view correctly – only Article 6, which enshrines the right to a fair trial and hence also the right of access to a court, in both civil and criminal matters.

87. It would seem that Article 13, the provision explicitly devoted to the right to effective judicial protection, cannot be relied upon here, for it applies only in the case of an alleged infringement of a substantive right enshrined in the Convention itself. In the instant case, however, none of the parties argues that there has been a breach of a fundamental right laid down in the ECHR.

88. Article 6 of the ECHR, as is well known, provides that '[i]n 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'.

89. The European Court of Human Rights has, in its case-law, interpreted Article 6 of the ECHR as embodying, first and foremost, the 'right to a court': the right, that is, to have one's case heard by a court. (31) However, the Strasbourg case-law also holds that, if it is to be possible for the provision in question to apply, there must be a dispute in relation to a 'right' that it can reasonably be argued is recognised in the domestic law of the State concerned. (32)

90. As we have seen, however, Belgian law appears to provide for the right to information and consultation as a right that is not individual but collective. (33) At the same time, to that right are attached, in the 1998 Law, specific remedies which are, in effect, accorded to the workers' representatives.

91. The fact that Belgian law conceives that right as a collective right does not, of itself, give rise to any issue of conflict with the ECHR, since the right in question is not one provided for under the Convention.

92. If, however, the right can properly, in terms of the ECHR and fundamental rights in general, be a collective right, it appears wholly permissible for the associated remedy also to be collective, in that it requires action to be taken by the workers' representatives. Indeed, it seems to me that in this regard a principle of

symmetry between the holding of the substantive right and the opportunity to have it enforced may be regarded as essential. Following that principle, if a right is of a collective nature, its remedy too can be collective.

93. The reference made by Odemis and Others to the judgment of the European Court of Human Rights in *Philis*, in which that court held that a provision of Greek law reserving to a professional body the right to sue for fees due to a practitioner was contrary to Article 6 of the ECHR is of no relevance with regard to a collective right. (34) In that case, there was no question but that the practitioner had an individual right to be paid and there was thus an unjustified asymmetry between the holding of the right and the ability to enforce it in the courts. In the instant case, however, the collective nature of the remedy mirrors the collective nature of the right.

94. If, however, contrary to what the order for reference seems to suggest, it should be decided that Belgian law confers an individual right to information and consultation, for example on the basis of Article 23 of the Belgian Constitution, (35) the perspective would change radically and we would find ourselves with a case on all fours with that of the *Philis* judgment of the European Court of Human Rights. In such a situation, conflict with Article 6 of the ECHR would, in my view, be certain, for the provision of exclusively collective protection for an individual right is manifestly contrary to Article 6 of the ECHR. It is for the national courts, however, which alone are competent to interpret domestic law, to determine whether or not Belgian law confers an individual right to information and consultation.

95. One final specific aspect that has to be taken into account concerns the potential relevance to this case of Article 30 of the Charter of Fundamental Rights, according to which '[e]very worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices'.

96. It could be asked whether that article might play a part in the present proceedings, in particular by requiring an individual right of action to be provided in any case in the event of an employer's failing to observe the information and consultation procedure. I believe, however, that the answer would have to be in the negative.

97. We cannot disregard the decision made by declaring, in that article, that the protection should cover every worker against any 'unjustified' dismissal. That qualification makes clear that the protection is not provided, as a fundamental individual right, with respect to every kind of irregularity that a dismissal might involve. (36) It makes clear that there must be a serious irregularity, as might arise, for example, in relation to the actual merits of a decision to dismiss. Breaches of Directive 98/59, on the other hand, do not appear to be such as to justify reference to Article 30 of the Charter for, given the content of the directive, it is intended that the result of such breaches will be illegality of a formal/procedural kind.

98. In conclusion, there is not sufficient basis for finding that Directive 98/59 has been to any extent overtaken by subsequent developments in Community law, nor that it is unlawful, having regard to general principles, in so far as it allows the right to information and consultation to be framed as a collective right. In transposing the protection obligations laid down in Directive 98/59, Member States are, however, required, in conformity with the principle of effective judicial protection, to provide protection of the same kind as the substantive right for which they have provided, whether individual or collective.

99. I therefore propose that the Court should answer the second question referred by declaring that the principle of the right to effective judicial protection does not preclude legislation which, in the case of collective redundancies, frames the right to information and consultation as a collective right and consequently, in the event of infringement of that right, allows only the workers' representatives and not the individual workers to bring an action. If, however, the right to information and consultation is conceived as an individual right in national law, the principle of the right to effective judicial protection precludes legislation which allows that right to be asserted only by workers' representatives, or which makes individual action conditional upon a prior objection having been made by workers' representatives.

C – The third question

100. By the third question, the referring court asks, in substance, whether in a dispute between private parties a national court may disapply a provision of domestic law (here Article 67 of the 1998 Law) that is contrary to a Community directive. In this particular case, that would be so as to allow the national court to apply other national rules compatible with that directive (here Collective Agreement No 24 of 1975).

101. The question can, of course, be relevant only if the Court identifies a possible issue of compatibility between the Belgian legislation and Directive 98/59.

102. It seems to me, however, that stating the question in terms of possible disapplication, and hence in terms of the possible horizontal direct effect of a directive, represents an unnecessary complication of an issue that can be resolved much more simply.

103. As already discussed at length above, there is no doubt but that the national law can, in the case at hand, be interpreted in two different ways. On the first interpretation, which alone gives rise to questions of compatibility with Community law, the 1998 Law substantially reduced the protection afforded to individual workers in cases of collective redundancies. A second interpretation, on the other hand, holds that the 1998 Law did not in any way circumscribe the rights already conferred on workers under existing rules, and in particular under Collective Agreement No 24. That second interpretation gives rise to no potential issue of compatibility with Community law.

104. Consequently, since the potential points of incompatibility of the Belgian legislation with Community law relate to only one of the two possible interpretations of the national law, it is clear that a declaration of such incompatibility by the Court could, at most, oblige the national court to follow the second interpretation. In other words, it would be a matter not of disapplying a national provision but simply of interpreting national law in conformity with Community law, in accordance with the established case-law of the Court to that effect. (37)

105. I note that the parties to these proceedings, including the workers concerned, have in fact suggested to the Court an approach along the lines of what is proposed here. (38)

106. Therefore, since as stated above I consider the interpretation of the 1998 Law as imposing restrictions and conditions on all individual actions against collective redundancies (and not only on those seeking reinstatement or suspension of the notice period) to be contrary to Community law, it is my view that the referring court should follow the other interpretation, according to which the conditions mentioned in Article 67 of the 1998 law apply only to actions for the specific remedies introduced by that law.

107. As originally formulated, in terms of the possible disapplication of a provision of domestic law, the question referred by the national court should therefore not even receive a reply. But by rephrasing it in order none the less to provide useful guidance to the national court, I propose that the Court should declare that, where there are two possible interpretations of a national law, in this case the Law of 13 February 1998 on measures in favour of employment, one of which is in conflict with Community law, the national court is bound to follow the one which does not entail points of incompatibility with Community law.

VII – Conclusions

108. On the basis of the above considerations, I propose that the Court should answer the questions referred for a preliminary ruling by the Cour du Travail de Liège in the following terms:

Directive 98/59 does not preclude national rules which, in a case where the information and consultation procedure has not been observed, restrict to the workers' representatives alone the right to challenge collective redundancies, or which make the right of an individual worker to challenge collective redundancies conditional upon the workers' representatives having made an objection. The Directive does, however, preclude national rules which allow collective redundancies to be challenged only for certain specified breaches of the obligations prescribed by the Directive and not for all breaches of those obligations.

The principle of the right to effective judicial protection does not preclude legislation which, in the case of collective redundancies, frames the right to information and consultation as a collective right and consequently, in the event of a breach of that right, allows only the workers' representatives and not the individual workers to bring an action. If, however, the right to information and consultation is conceived as an individual right in national law, the principle of the right to effective judicial protection precludes legislation which allows that right to be asserted only by the workers' representatives, or which makes individual action conditional upon a prior objection having been made by the workers' representatives.

Where there are two possible interpretations of a national law, in this case the law of 13 February 1998 on measures in favour of employment, one of which is in conflict with Community law, the national court is bound to follow the one which does not entail points of incompatibility with Community law.

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1 – Original language: Italian

2 – OJ 1998 L 225, p. 16.

3 – I note in passing that even suspension of the notice period and reinstatement, which appear to constitute quite drastic measures, are actually intended only to prolong (or to revive) the employment relationship pending full compliance with the proper collective redundancy procedures. See order for reference, page 22.

4 – '[C]onstituerait … un vertigineux recul des droits et actions que les travailleurs puisent dans la C.C.T. n° 24': Cour du Travail de Liège, judgment of 30 April 2007, R.G. 32.872/04, p. 34.

5 – See, for example, Case C-500/06 *Corporación Dermoestética* [2008] ECR I-0000, paragraph 23, and the case-law cited there.

6 – Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies (OJ 1975 L 48, p. 29).

7 – First recital in the preamble to Directive 75/129.

8 – Council Directive 92/56/EEC of 24 June 1992 amending Directive 75/129/EEC on the approximation of the laws of the Member States relating to collective redundancies (OJ 1992 L 245, p. 3).

9 – Case 284/83 *Nielsen & Søn* [1985] ECR 553, paragraph 10, and Joined Cases C-187/05 to C-190/05 *Agorastoudis and Others* [2006] ECR I-7775, paragraph 35.

10 – Case C-449/93 *Rockfon* [1995] ECR I-4291, paragraph 21.

11 – See also Case 91/81 *Commission* v *Italy* [1982] ECR 2133, paragraph 11.

12 – See Case C-383/92 *Commission* v *United Kingdom* [1994] ECR I-2479, paragraph 25.

13 – *Rockfon*, cited in footnote 10, and Case C-270/05 *Athinaïki Chartopoïïa AE* [2007] ECR I-1499.

14 – *Nielsen & Søn*, cited in footnote 9, and Case C-55/02 *Commission* v *Portugal* [2004] ECR I-9387.

15 – Case 215/83 *Commission* v *Belgium* [1985] ECR 1039, and *Agorastoudis and Others*, cited in footnote 9.

16 – Case C-32/02 *Commission* v *Italy* [2003] ECR I-12063.

17 – Case C-250/97 *Lauge and Others* [1998] ECR I-8737, and *Agorastoudis and Others*, cited in footnote 9 (paragraph 29).

18 – Case C-385/05 *Confédération générale du travail and Others* [2007] ECR I-611.

19 – Case C-188/03 *Junk* [2005] ECR I-885.

20 – On this point, a comparison of the different language versions reveals no discrepancies between them. In particular, as regards the first part of the sentence, the most important in this context, consider, for example, the French 'les représentants des travailleurs et/ou les travailleurs', the English 'the workers' representatives and/or workers', the German 'Arbeitnehmervertreter … und/oder … Arbeitnehmer …', and the Dutch 'de vertegenwoordigers van de werknemers en/of de werknemers'. The exception is the Spanish version, which uses only the conjunction 'o' ['or'], and provides that the right is to be given to 'los representantes de los trabajadores o los trabajadores'. It is my view, however, that even on the basis of the Spanish version alone, according the right of action both to the individual workers and to their representatives should not give rise to difficulties: see Case C-304/02 *Commission* v *France* [2005] ECR I-6263, paragraph 83.

21– OJ 2000 C 364, p. 1.

22 – Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ 2002 L 80, p. 29).

23 – See paragraph 17 above.

24 – See paragraph 24 above.

25 – See paragraph 30 et seq. above.

26 – *Nielsen & Søn*, cited in footnote 9, paragraphs 8 to 10.

27 – See above, paragraph 19 et seq.

28 – *Commission* v *United Kingdom*, cited in footnote 12, paragraph 34 et seq.

29 – See, for example. Case 222/84 *Johnston* [1986] ECR 1651, paragraph 18; Case C-432/05 *Unibet* [2007] ECR I-2271, paragraph 37; and Case C-268/06 *Impact* [2008] ECR I-0000, paragraph 43).

30 – *Unibet*, cited in footnote 29, paragraphs 38 to 40.

31 – European Court of Human Rights, *Golderv.United Kingdom*, judgment of 21 February 1975, Series A No 18 (paragraph 35).

32 – European Court of Human Rights, *Zanderv.Sweden*, judgment of 25 November 1993, Series A No 279 B (paragraph 22 and the case-law there cited).

33 – See paragraph 62, above.

34 – European Court of Human Rights, *Philisv.Greece*, judgment of 27 August 1991, Series A No 209.

35 – Mentioned to that effect in the judgment of the national court cited in footnote 4, page 19. The Article 23 in question refers, among the fundamental rights possessed by everyone, the 'right to information, consultation and collective negotiation'.

36 – The different language versions of the Charter confirm this interpretation. Compare, for example, the French 'licenciement injustifié', the English 'unjustified dismissal', the German 'ungerechtfertigte Entlassung', the Spanish 'despido injustificado', the Dutch 'kennelijk onredelijk ontslag', and the Portuguese 'despedimentos sem justa causa'.

37 – See, for example, Case C-208/05 *ITC* [2007] ECR I-181, paragraph 68, and the case-law there cited.

38 – The Kingdom of Belgium, for its part, consistent with its position that the interpretation of Belgian law is more favourable to the employees is the only one possible, maintains that it is unnecessary to answer the question, there being no conflict whatsoever between the national and Community law.