# JUDGMENT OF THE COURT (Fourth Chamber)

10 December 2009 *

In Case C-323/08,

REFERENCE for a preliminary ruling under Article 234 EC, by the Tribunal Superior de Justicia de Madrid (Spain), made by decision of 14 July 2008, received at the Court on 16 July 2008, in the proceedings

**Ovidio Rodríguez Mayor and Others**

v

**Herencia yacente de Rafael de las Heras Dávila and Others,**

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Third Chamber, acting for the President of the Fourth Chamber, R. Silva de Lapuerta, E. Juhász (Rapporteur), G. Arestis and T. von Danwitz, Judges,

* Language of the case: Spanish.

Advocate General: P. Mengozzi,
Registrar: R. Grass,

after considering the observations submitted on behalf of:

— the Spanish Government, by B. Plaza Cruz, acting as Agent,

— the Hungarian Government, by R. Somssich, M. Fehér and K. Veres, acting as Agents,

— the United Kingdom Government, by I. Rao and T. de la Mare, acting as Agents,

— the European Commission, by J. Enegren and R. Vidal Puig, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 July 2009,

gives the following

## Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 1 to 4 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 context of proceedings between Mr Rodríguez Mayor and six other persons and the Herencia yacente de Rafael de las Heras Dávila (unclaimed estate of Rafael de las Heras Dávila), his heirs and the Fondo de Garantía Salarial (Wages Guarantee Fund) concerning the claim by the former for compensation for unfair collective dismissal.

### Legal context

*Community law*

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

'For the purposes of this Directive:

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

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

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

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

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

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

(b) "workers' representatives" means the workers' representatives provided for by the laws or practices of the Member States.

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

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

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

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

…

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

(a) supply them with all relevant information and

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

(i) the reasons for the projected redundancies;

(ii) the number 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).

…'

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

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

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

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

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

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

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

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

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

…

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

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

8 Article 6 of Directive 98/59 provides that '[t]he 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*

9 Article 49(1)(g) of the Workers' Statute (Estatuto de los Trabajadores), approved by Royal Legislative Decree 1/1995 of 24 March 1995 (*BOE* No 75 of 29 March 1995, p. 9654,'the Workers' Statute') provides that a contract of employment is terminated in the following situations:

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

In cases of the death, retirement or incapacity of the employer, workers shall be entitled to payment of a sum equivalent to one month's remuneration. In cases of the extinguishment of the legal personality of the contractor, the procedures laid down in Article 51 of this [statute] must be followed.'

10 Article 51 of the Workers' Statute provides:

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

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

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

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

The grounds referred to in this Article shall be deemed to have been established when the adoption of the proposed measures contributes to overcoming the negative economic situation of the undertaking, where the grounds relied on are economic, or to ensuring the future viability of the undertaking and of employment in that undertaking by means of a more appropriate organisation of resources, where the grounds relied on are technical, organisational or production-related.

Collective redundancy shall also mean a termination of employment contracts affecting the entire workforce of an undertaking, provided that the number of workers affected is

greater than five, where the termination occurs as a result of the total cessation of the business activity of the undertaking on the grounds referred to above.

In order to calculate the number of terminations of contracts for the purposes of paragraph 1 of this article, account shall also be taken of any other terminations which occurred within the reference period on the initiative of the employer, for other reasons not related to the individual workers concerned and different from the grounds provided for in Article 49(1)(c) of this Law, provided that the number of terminations is at least five. Where, over successive periods of 90 days and for the purposes of avoiding the requirements of this article, an undertaking terminates, under Article 52(c) of this [statute], contracts the number of which is lower than the thresholds indicated, in the absence of any new grounds justifying such action, those new terminations shall be deemed to be effected in circumvention of the law and shall be declared null and void.

2. An employer who intends to effect a collective redundancy must seek authorisation for the termination of employment contracts in accordance with the employment regulation procedure provided for in this [statute] and in its implementing provisions. The procedure shall be commenced by a request made to the competent employment authority and the simultaneous initiation of a period of consultation with the workers' legal representatives.

…

8. Workers whose contracts are terminated under this article shall be entitled to compensation of 20 days' remuneration for each year of service, periods shorter than a year being calculated pro rata on a monthly basis up to 12 monthly payments.

9. Workers may also request, through their representatives, the commencement of the [employment regulation] procedure where it is reasonably assumed that failure by the employer to commence the procedure might cause them losses that would be impossible or difficult to redress. In that case, the competent employment authority shall decide which action and reports are necessary to determine the outcome of the procedure, within the time-limits laid down in this article.

…

12. The existence of force majeure, as a reason for the termination of employment contracts, must be established by the employment authority, regardless of the number of workers affected, following [an employment regulation] procedure. The procedure shall be initiated by a request from the undertaking, attaching the evidence it deems necessary, and such request must be notified at the same time to the workers' legal representatives who will have the status of interested parties throughout the whole of the procedure. The decision of the employment authority shall be issued, following the necessary action and reports, within five days of the request and shall take effect from the date of the event giving rise to the force majeure.

The employment authority which establishes the existence of force majeure may rule that all or part of the compensation to which the workers affected are entitled must be paid by the Fondo de Garantía Salarial, without prejudice to the right of the latter to claim back the sums concerned from the employer.

13. With respect to matters not provided for in this [statute], the provisions of Ley 30/1992 de régimen jurídico de las administraciones públicas y del procedimiento administrativo común [Law 30/1992 on the legal rules governing public authorities and the common administrative procedure] of 26 November 1992 shall apply, in particular

in the field of resources. All action to be taken and notifications to be provided to workers shall be effected via the workers' legal representatives.'

11 The national court states that the effects of an unfair termination of a contract of employment on objective grounds are the same as in cases where a disciplinary dismissal is ruled unfair under Article 55 of the Workers' Statute. It states that Article 56(1) of that statute, in that regard, provides the following:

'Where the dismissal is held to be unfair, the employer, within five days of notification of the judgment, may choose either to reinstate the worker and pay "salarios de tramitación" (wages for the period between dismissal and the disposal of proceedings challenging that dismissal), as provided for in point (b) of the present subparagraph, or to pay the following sums, which must be determined by the judgment:

(a) compensation equivalent to 45 days' remuneration for each year of service, periods shorter than a year being calculated pro rata on a monthly basis up to 42 monthly payments;

(b) an amount equivalent to the remuneration payable with effect from the date of dismissal up to the date of notification of the judgment holding the dismissal to be unfair or up to the date on which the worker finds another job, if he is recruited before the delivery of the judgment and if the employer provides evidence of the sums paid so that they can be deducted from the "salarios de tramitación".'

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

12 The seven appellants in the main proceedings constitute the staff employed in the undertaking run by Mr de las Heras Dávila as a natural person, that undertaking therefore not having separate legal personality.

13 By application of 31 May 2004, they brought an action in the Juzgado de lo Social nº 25 de Madrid (Social Court No 25, Madrid) for unfair dismissal against the Herencia yacente de Rafael de las Heras Dávila and Others, claiming that they presented themselves at their workplace from 30 April 2004 to 5 May 2004, but it was closed, as a result of which they considered that they had been constructively dismissed.

14 It emerged that the employer had died on 1 May 2004, without leaving a will or determining the rights of his heirs. His heirs at law renounced succession by notarial acts of 15 June 2004 and 27 March 2007. It is clear from the order for reference that the undertaking ceased trading.

15 The Juzgado de lo Social nº 25, Madrid dismissed the action on the ground that the employment contracts of the appellants in the main proceedings were terminated as a result of the death of the employer without his being succeeded by another trader and that no dismissal had occurred.

16 The appellants in the main proceedings lodged an appeal against that decision in the national court. They claim that the decision to terminate is a formal act which must satisfy the conditions of Article 55(1) of the Workers' Statute and that the employer's heirs should have notified them of that decision. Accordingly, the appellants in the main proceedings seek a declaration of unfair dismissal and an order that the respondents must pay them compensation of 45 days' wages per year of service and wages from the date of dismissal until notification of the judgment holding the dismissal to be unfair or until such time as they are reinstated. In the alternative, the appellants seek a

declaration that the contracts were terminated in accordance with Article 49 of the Workers' Statute, as a result of the death of the employer, together with compensation under that provision.

17 The respondents in the main proceedings contend that there was no dismissal and that the present case concerns termination of an employment relationship following the death of the employer.

18 The Public Prosecutor's Office, having been requested by the national court to issue an opinion in the case in the main proceedings, considers that Article 49(1)(g) of the Workers' Statute may be incompatible with Community law.

19 The national court is of the view that there is an inequality in the way Spanish law treats the termination of employees' contracts by reason of the closure of a business, depending on the status of the employer. In such a case, workers employed by a legal person are in a better position than those employed by a natural person, even though the losses resulting from a dismissal or from the termination of a contract are the same.

20 In those circumstances, considering that an interpretation of the provisions of Directive 98/59 is necessary for its decision, the Tribunal Superior de Justicia de Madrid (High Court of Justice, Madrid) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. By restricting the definition of collective redundancies to dismissals on economic, technical, organisational or production grounds and by failing to extend the definition to dismissals for any reason not related to the individual workers concerned, does Article 51 of the Workers' Statute fail to fulfil the obligations imposed in [Directive 98/59]?

2. Is the legal rule in Article 49(1)(g) of the Workers' Statute, which establishes for workers who lose their jobs as a result of the death, retirement or incapacity of the employer compensation limited to one month's remuneration, excluding them from the scope of Article 51 of the Statute, also contrary to [Directive 98/59] in that it fails to comply with Articles 1, 2, 3, 4 and 6 thereof?

3. Does the Spanish legislation on collective redundancies, and specifically Articles 49(1)(g) and 51 of the Workers' Statute, infringe Article 30 of the Charter of Fundamental Rights of the European Union [proclaimed at Nice on 7 December 2000 (OJ 2000 C 364, p. 1)] and 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]?'

**The questions submitted for a preliminary ruling**

*Jurisdiction of the Court*

21 Following the Spanish and Hungarian Governments and the European Commission, it should be pointed out with regard to the first two questions that, at the moment of his death, Mr de las Heras Dávila employed seven workers, as a result of which, in principle, that situation falls outside the scope of Directive 98/59.

22 According to Article 1(1)(a)(ii) of that directive, for the latter to apply to a situation such as that at issue in the main proceedings the number of redundancies must be at least 20 over a period of 90 days.

23 Directive 98/59 provides, however, in Article 5 thereof, that it does 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.

24 It is apparent from the order for reference that such provisions exist in Spanish law, given that, under the first and third subparagraphs of Article 51(1) of the Workers' Statute, the concept 'collective redundancy' also covers termination of employment contracts affecting the entire workforce of an undertaking, provided that the number of workers affected is greater than five, where the termination occurs as a result of the total cessation of the business activity on technical, organisational or production-related grounds.

25 The national court points out that, in the case before it, the termination of employment contracts of the staff employed by Mr de las Heras Dávila as a result of the death of the latter should fall under the scope of the provisions mentioned in the preceding paragraph and must likewise be classified as collective redundancy. That court is of the view that, if this were not the case, a difference of treatment would exist contrary to Directive 98/59 and the concept of 'collective redundancies' defined therein.

26 In that regard, the request for a preliminary ruling concerns terminations of employment relationships the number of which does not pass the thresholds provided for by Article 1(1)(a) of Directive 98/59.

27 However, since the national legislature has chosen to include in the concept of collective redundancies within the meaning of that directive cases which do not fall within the scope of that directive, whilst excluding from that concept cases such as that

in the case in the main proceedings, it is clearly in the Community interest that, in order to forestall future differences of interpretation, that concept and the solutions taken from Community law connected thereto should be interpreted uniformly, irrespective of the circumstances in which they are relied on (see, to that effect, Case C-3/04 *Poseidon Chartering* [2006] ECR I-2505, paragraphs 16 and 17).

28 In such circumstances, it is appropriate to reply to the request for a preliminary ruling by starting from the premiss that certain types of termination of employment contracts concerning a number of workers not passing the thresholds provided for by Article 1 of Directive 98/59 are placed on the same footing, by the Spanish legislation, as collective redundancies within the meaning of that article, but that other types of termination of employment contracts which may concern the same number of workers, in particular the termination of employment contracts of an entire staff as a result of the death of the employer, do not fall, pursuant to the legislation, with the concept of collective redundancies.

*The first question*

29 By its first question, the national court expresses its uncertainty whether the Spanish legislation applicable to the case in the main proceedings, in which the concept of collective redundancy does not include all terminations of employment contracts for reasons not related to the individual workers concerned, is compatible with Article 1(1) of Directive 98/59.

30 A preliminary point to note is that the Court has no jurisdiction, in proceedings brought on the basis of Article 234 EC, to rule on the compatibility of rules of national law with Community law. On the other hand, the Court does have jurisdiction to provide the national court with all the guidance as to the interpretation of Community law

necessary to enable that court to rule on the compatibility of those rules of national law with Community law (see, inter alia, Case C-506/04 *Wilson* [2006] ECR I-8613, paragraphs 34 and 35 and Joined Cases C-338/04, C-359/04 and C-360/04 *Placanica and Others* [2007] ECR I-1891, paragraph 36).

31 It is common ground that the dispute in the main proceedings concerns the validity of the termination of employment contracts of an undertaking's entire staff as a result of the death of the employer.

32 Accordingly, in order to give a useful answer to the national court for the purpose of resolving the dispute pending before it, it is necessary to determine whether Article 1(1) of Directive 98/59 must be interpreted as precluding national legislation according to which the termination of contracts of employment of a number of workers whose employer is a natural person as a result of the death of that employer is not classified as collective redundancy.

33 First, it must be pointed out that it is not apparent from the wording of that directive that such a situation falls within its scope.

34 The Court has given a wide interpretation to the words 'reasons not related to the individual workers concerned' used in Article 1(1) of that directive (see, to that effect, Case C-55/02 *Commission* v *Portugal* [2004] ECR I-9387, paragraph 49, and Joined Cases C-187/05 to C-190/05 *Agorastoudis and Others* [2006] ECR I-7775, paragraph 28). Nevertheless, it follows from the text of that directive that the concept 'collective redundancies' within the meaning of that provision presupposes the existence both of an employer and of an act on his part.

35 In accordance with the definition which is given of it in the first subparagraph of Article 1(1)(a) of Directive 98/59, that concept refers to dismissals effected by an employer for one or more reasons not related to the individual workers concerned provided that certain conditions concerning numbers and periods of time are satisfied.

36 Under the second subparagraph of Article 1(1) of that directive, for the purpose of calculating the number of collective redundancies such as those provided for in the first subparagraph of Article 1(1)(a), terminations of an employment contract which occur on the employer's initiative for one or more reasons not related to the individual workers concerned are to be assimilated to redundancies, provided that there are at least five redundancies.

37 Under Article 2(1) of that directive, an employer who is contemplating collective redundancies is required to begin consultations with the workers' representatives in good time with a view to reaching an agreement. Article 2(3) thereof provides that the employer in good time during the course of the consultations is to supply the workers' representatives with all relevant information and to notify them in writing of the factors listed in Article 2(3)(b).

38 Article 3 of Directive 98/59 lays down that employers are to notify the competent public authority in writing of any projected collective redundancies and to forward a copy of the notification to the workers' representatives.

39 All the terms which appear in those provisions, in particular the expressions 'to contemplate collective redundancies', 'to begin consultations', 'to supply all relevant

information', 'to notify in writing of the factors', 'to notify in writing of all projected redundancies' and 'to forward a copy' show the need for an employer and certain acts on his part.

40 Moreover, it follows from the phrase 'dismissals effected by an employer', used in Article 1(1)(a) of Directive 98/59, that the concept of collective redundancies assumes, in principle, that the employer carries out or has the intention of carrying out such redundancies, although as the Advocate General has pointed out in point 81 of his Opinion, the phrase 'on the employer's initiative' used in the second subparagraph of Article 1(1) implies a direct manifestation of the will of the employer consisting in taking the initiative.

41 It follows from the foregoing that the concept of collective redundancies within the meaning of Article 1(1)(a) of Directive 98/59, presupposes the existence of an employer who contemplated such redundancies and who is capable, first, of carrying out, for that purpose, the acts referred to in Articles 2 and 3 of the Directive and, second, of effecting, where appropriate, such redundancies.

42 However, a situation such as that at issue in the main proceedings is characterised not only by the lack of an intention to effect collective redundancies, but also by the inexistence of an employer capable of being the party on whom are imposed the obligations arising from the provisions referred to in paragraphs 37 and 38 above to carry out acts provided for by those provisions and to effect, where appropriate, such redundancies.

43 Second, with regard to the main objective of Directive 98/59, it should be borne in mind that, on the one hand, under Article 2(2) thereof, consultations are to cover ways and means of avoiding collective redundancies or of 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. On the other hand, according to Articles 2(3) and 3(1) of that directive, employers are to notify the competent public authority in writing of any projected collective redundancies and to notify them of the factors and information mentioned in those provisions.

44 However, the main objective of Directive 98/59, which is to make collective redundancies subject to prior consultation with the workers' representatives and the notification of the competent public authority, cannot be fulfilled by classifying as a 'collective redundancy' the termination of contracts of employment of the entire staff of an undertaking run by a natural person as a result of the cessation of the activities of that undertaking resulting from the death of the employer, given that that consultation could not have taken place and that it was thus not possible to avoid or to limit terminations of contracts of employment or to attenuate the consequences.

45 Furthermore, Directive 98/59 does not seek to establish a mechanism of general financial compensation at Community level in the case of loss of employment.

46 Third, certain provisions of Directive 98/59 have already been interpreted by the Court.

47 Accordingly, the Court has already held that, under Article 2(1) and (3) as well as Article 3(1) and (2) of Directive 98/59, the only party on whom the obligations to inform, consult and notify are imposed is the employer (see Case C-44/08 *Akavan Erityisalojen Keskusliitto AEK and Others* [2009] ECR I-8163, paragraph 57).

48 The Court has also held that the obligations of consultation and notification imposed on the employer come into being prior to the employer's decision to terminate employment contracts (see, to that effect, Case C-188/03 *Junk* [2005] ECR I-885, paragraphs 36 and 37, and *Akavan Erityisalojen Keskusliitto AEK and Others*, above, paragraph 38).

49 Nevertheless, in a case such as that in the main proceedings, the death of the employer and the termination of the contracts of employment of the workers whom he employs coincide. Thus, as the Spanish Government contends, it was materially impossible to fulfil those obligations.

50 Moreover, in a case such as that in the main proceedings, there is no decision to terminate the contract of employment, nor is there a prior intention to effect such a termination.

51 It is clear from the case-law of the Court that Directive 98/59, like the earlier 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), carries out only a partial harmonisation of the rules for the protection of workers in the event of collective redundancies (see, as regards Directive 75/129, Case C-383/92 *Commission* v *United Kingdom* [1994] ECR I-2479, paragraph 25, and as regards Directive 98/59 *Akavan Erityisalojen Keskusliitto AEK and Others*, paragraph 60), and that it harmonises, not the detailed rules governing the definitive termination of an undertaking's activities, but the procedure to be followed when collective redundancies are to be made (see, concerning Directive 75/129, *Agorastoudis and Others* [2006], above, paragraph 36).

52 Lastly, it must be added that the interpretation according to which the concept of collective redundancies for the purposes of Directive 98/59 does not include terminations of contracts of employment of a number of workers whose employer is a natural person resulting from the death of that employer is not contradicted by the judgment in *Commission* v *Portugal*, above. That judgment was delivered in the context of a procedure for failure to fulfil obligations in which the terms 'reasons not related to the individual workers concerned' used in Article 1 of that directive were subject to an analysis, but without specifically considering a situation such as that in the main proceedings, characterised by the termination of contracts of employment as a result of the death of the natural person who is the employer and the lack of a natural or legal person on whom are imposed obligations laid down by that directive.

53 Having regard to the foregoing, the answer to the first question is that Article 1(1) of Directive 98/59 must be interpreted as not precluding national legislation according to which the termination of contracts of employment of a number of workers, whose employer is a natural person, as a result of the death of that employer is not classified as collective redundancy.

*The second question*

54 By its second question, the national court asks whether Directive 98/59 must be interpreted as precluding national legislation which provides for different compensation depending on whether the workers lost their jobs as a result of the death of the employer or as a result of a collective redundancy.

55 In that regard, first, it follows from the answer to the first question that the termination of contracts of employment linked to the death of an employer who is a natural person, occurring in circumstances such as those in the case in the main proceedings, do not fall within the scope of the concept of collective redundancies, within the meaning of Directive 98/59.

56 Second, as pointed out in paragraphs 45 and 51 above, the directive carries out only a partial harmonisation of the rules for the protection of workers in the event of collective redundancies and does not seek to establish a mechanism of general financial compensation at Community level in the case of loss of employment. In that context, the question of the extent of the compensation for workers in the case of termination of their work does not fall within the scope of Directive 98/59.

57 Consequently, the reply to the second question referred is that the directive does not preclude national legislation which provides for different compensation depending on whether the workers lost their jobs as a result of the death of the employer or as a result of a collective redundancy.

*The third question*

58 By its third question, the national court asks, essentially, whether Article 30 of the Charter of Fundamental Rights of the European Union and the Community Charter of the Fundamental Social Rights of Workers can be interpreted as precluding national legislation such as that at issue in the main proceedings.

59 However, as is clear from the findings relating to the first two questions, a situation such as that at issue in the dispute in the main proceedings does not fall within the scope of Directive 98/59, or, accordingly, within that of Community law. In those circumstances, it is not necessary to answer the third question.

## Costs

60 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 1(1) of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies must be interpreted as not precluding national legislation according to which the termination of contracts of employment of a number of workers, whose employer is a natural person, as a result of the death of that employer is not classified as collective redundancy;**

**2. Directive 98/59 does not preclude national legislation which provides for different compensation depending on whether the workers lost their jobs as a result of the death of the employer or as a result of a collective redundancy.**

[Signatures]