OPINION OF ADVOCATE GENERAL

KOKOTT

delivered on 3 September 2015 (1)

Case C-422/14

Christian Pujante Rivera

v

Gestora Clubs Dir SL

and

Fondo de Garantía Salarial

(Request for a preliminary ruling from the Juzgado de lo Social de Barcelona (Spain))

(Directive 98/59/EC — Article 1 — Collective redundancies — Calculation of the numerical threshold for application of the directive — Taking into account of fixed-term workers — Terminations of employment contracts to be assimilated to redundancies)

I – Introduction

1. The circumstances in which Directive 98/59/EC on collective redundancies (2) is applicable continue to be the subject of litigation. (3) In the present preliminary ruling procedure, the Court must again consider the thresholds to be met before workers affected by collective redundancy come within the protection conferred by the directive. Ultimately, these guarantees flow from the basic right to protection against unjustified dismissal (see Article 30 of the Charter of Fundamental Rights of the European Union).

2. The background to these proceedings is a dispute concerning the dismissal on economic grounds of a Spanish employee, Mr Pujante Rivera, in 2013. Having regard to the number of terminations in various forms which were close in time to his own dismissal, he accuses his former employer of having wrongly disregarded the collective redundancy procedure required by Directive 98/59.

3. At issue is ultimately the continuation of Mr Pujante Rivera's employment relationship. This is because, while the directive does not by any means prevent an employer from making redundancies, where there is a collective redundancy the employer must comply with certain obligations as to information and consultation imposed by EU law. If it does not fulfil these obligations, this can have the consequence under Spanish law that individual redundancies are invalid.

4. Specifically, the first question in the present case is whether fixed-term workers also count in determining whether the threshold in Directive 98/59 for the application of the directive has been reached. Second, it is necessary to clarify the conditions under which certain means of terminating employment contracts, which are in principle assimilated to redundancy within the meaning of the directive, are to be taken into account in that threshold

calculation. Finally, it is necessary to determine how a termination at the request of the employee is to be categorised for the purposes of the directive, where the termination ultimately comes about in response to a previous substantial change in working conditions initiated unilaterally by the employer.

II – **Legal framework**

A – *EU law*

5. Directive 98/59 codified and repealed Directive 75/129/EEC (4) and Directive 92/56/EEC (5) which amended it.

6. The relevant provisions of Article 1 of Directive 98/59 are as follows:

'1. 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 … the number of redundancies is:

(i) … 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);

(b) …

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.

2. This Directive shall not apply to:

(a) collective redundancies effected under contracts of employment concluded for limited periods of time or for specific tasks except where such redundancies take place prior to the date of expiry or the completion of such contracts;

…'

B – *National law*

7. Article 41 of the Spanish Estatuto de los Trabajadores (6) ('Workers' Statute') provides:

'(1) The management of the undertaking may impose substantial changes in working conditions where there are proven economic, technical, organisational or production grounds for doing so… Substantial changes in working conditions shall be deemed to be, among others, those that affect the following matters:

a) Hours of work;

b) Working hours and distribution of working time;

c) Shift working;

d) Pay schemes and rates of pay;

e) The work and performance regime;

f) Duties …

(2) …

(3) … In the cases specified in letters (a), (b), (c), (d) and (f) of paragraph 1 of this Article, if the employee suffers loss in consequence of the significant change in working conditions he has the right to terminate his employment and a claim to damages …'

8. Article 50 of the Workers' Statute ('Termination at employee's request') states:

'(1) The following shall be valid grounds on which the worker may request the termination of the contract:

(a) Substantial changes in working conditions which are made without due regard for the provisions of Article 41 of this Law and which have the consequence of adversely affecting the dignity of the worker.

…'

9. Article 51 of the Workers' Statute ('Collective redundancies') provides inter alia:

'(1) For the purposes of this Law, 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 more than 300 workers.

…

For the purpose of calculating the number of contract terminations for the purposes of the first subparagraph of this paragraph, all other terminations of an employment contract during the period of reference which occur on the employer's initiative for other reasons not related to the individual worker concerned shall also be taken into account … provided that at least five employees are affected.

…'

10. Article 122(2)(b) of the Ley 36/2011 Reguladora de la Jurisdicción Social (7) states that a decision to terminate a contract shall be void if it has been effected in circumvention of the law, by avoiding the rules laid down for collective redundancies.

III – **Facts and questions referred**

11. Underlying the present reference for preliminary ruling is a dispute between Mr Pujante Rivera and his former employer, Gestora Clubs Dir ('Gestora').

12. At the beginning of September 2013, Gestora employed 126 employees, of whom 114 were permanent and 12 temporary.

13. Between 16 and 26 September 2013 Gestora terminated the contracts of 10 of its employees on objective grounds, including that of Mr Pujante Rivera. In each case, economic, production and organisational reasons were given. In the 90 days before and after 26 September 2013, there were in addition 31 further contract terminations. Of these, 23 were terminations in consequence of the expiry of the agreed contract term, five were voluntary redundancies, one was a dismissal for disciplinary reasons, which was later recognised as unfair and made the subject of an award of damages, one termination was during a probationary period, and finally there was one consensual termination under Article 50 of the Workers' Statute.

14. The employee affected by the lastmentioned termination received notification on 15 September 2013 of a change to her working terms consisting in a 25% reduction of her salary, which was based on Article 41 of the Workers' Statute and on the same objective grounds as those relied on in the individual terminations arising between 16 and 26 September 2013. Five days later, the employee in question agreed to enter into a contract terminating the employment relationship. However, in a subsequent administrative conciliation process, Gestora recognised that the changes to her employment contract which had been notified to the employee exceeded the limits set out in Article 41 of the Workers' Statute, and agreed to termination of that contract on the basis of Article 50 of the Workers' Statute, with compensation being payable.

15. For his part, Mr Pujante Rivera challenged the termination of his contract of employment. In his view, having regard to the total number of contract terminations which occurred in the 90-day periods before and after his redundancy, Gestora was under a duty to carry out a collective redundancy procedure. In his view, for the purposes of calculating the numerical threshold which applies for triggering that procedure, in addition to terminations on objective grounds there also had to be taken into account all other terminations which occurred in this period, except for the five voluntary ones.

16. For its part, Gestora argued that in order to calculate the numerical threshold there had to be taken into account, in addition to the 10 terminations on objective grounds, the dismissal on disciplinary grounds subsequently recognised as unfair, but not the other terminations. Accordingly, in its view there was no need to conduct a collective redundancy procedure.

17. In this connection, the Jugzado de lo Social de Barcelona, which is called upon to decide the dispute, has doubts as to the interpretation of Directive 98/59, and by order of 1 September 2014, lodged on 12 September 2014, referred the following three questions to the Court for a preliminary ruling:

1. If fixed-term workers, whose contracts have been terminated on the lawful ground that those contracts are temporary, are to be regarded as falling outside the scope and protection of Directive 98/59 on collective redundancies, by virtue of Article 1(2)(a) thereof, would it be consistent with the purpose of the directive if — conversely — such workers were taken into account for the purposes of determining the number of workers 'normally' employed in the

establishment in order to calculate the numerical threshold for collective redundancies (10% or 30 workers) laid down in Article 1(a)(i) of the directive?

2. The requirement under the second subparagraph of Article 1(1)(b) of Directive 98/59 that 'terminations' be 'assimilated' to 'redundancies' is made subject to the condition 'that there [be] at least five redundancies'. Must that condition be interpreted as relating to the 'redundancies' previously effected or brought about by the employer, as provided for in Article 1(1)(a) of the directive, and not to the minimum number of 'assimilable terminations' that must exist in order for such assimilation to take place?

3. Does the concept of 'terminations of an employment contract which occur on the employer's initiative for one or more reasons not related to the individual workers concerned', as referred to in the last subparagraph of Article 1(1) of Directive 98/59, cover the termination of a contract between the employer and the worker which, although initiated by the worker, comes about in response to a previous change in working conditions that was initiated by the employer on account of the critical difficulties being experienced by the undertaking and for which compensation is ultimately to be awarded in an amount equivalent to that payable for unfair dismissal?

18. In the preliminary ruling proceedings before the Court, Mr Pujante Rivera, Gestora, the Spanish Government, the Polish Government and the European Commission have lodged written observations.

IV – **Legal analysis**

A – *Admissibility*

19. Gestora disputes the admissibility of the reference for preliminary ruling, because it regards both the provisions of Directive 98/59 that are at issue and those of national law as being very clear and not contradictory, and therefore regards a reference to the Court as unnecessary.

20. In this regard it is to be observed that according to the Court's settled case-law, national courts may bring a matter before the Court pursuant to Article 267 TFEU if they consider it appropriate to do so and if questions arise in proceedings before them as regards the interpretation or validity of an EU provision. The fact that the provisions whose interpretation is sought have already been interpreted, or that there is reason to believe that there is no room for any reasonable doubt, does not deprive the Court of jurisdiction. (8)

21. The request for a preliminary ruling is therefore admissible.

B – *The first question*

22. By its first question the national court asks essentially whether, in calculating the numerical threshold of workers normally employed in an establishment for the purposes of Article 1(1)(a)(i) of Directive 98/59 there must also be taken into account fixed-term workers. All the parties to the proceedings except for Mr Pujante Rivera answer this question in the affirmative.

23. Article 1(1)(a)(i) of Directive 98/59 sets out the quantitative requirements for a collective redundancy. The three alternatives in this provision each refer to a minimum number of redundancies in an establishment and also to the number of *workers* normally employed in the establishment.

24. In order to answer the first question it is therefore necessary to consider whether fixed-term workers are to be regarded as workers for the purposes of this provision.

25. The EU legislature has not defined the concept of 'worker' for the purposes of Article 1(1)(a)(i) of Directive 98/59, nor has it referred for this purpose to the laws of the Member States. As the Court has repeatedly held, the concept of worker is to be given an autonomous and uniform meaning. (9) Otherwise, the means of calculating the thresholds set out in this provision, and therefore the thresholds themselves, would be at the discretion of the Member States, and this would enable them to change the scope of application of the directive and thus deprive it of its full effectiveness. (10)

26. It follows that the concept of a 'worker' for the purposes of Directive 98/59 must be defined according to objective criteria that characterise the employment relationship, taking into consideration the rights and responsibilities of the persons concerned. The essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person, in return for which he receives remuneration. (11)

27. It follows that the concept of 'worker' is to be given a broad interpretation, and is essentially defined by the power of direction which forms an inherent part of a remunerated activity. These requirements are also satisfied in the case of temporary employment contracts. Persons whose contracts of employment endure for a specified period or until completion of a specified task are therefore to be regarded as workers for the purposes of Directive 98/59, in so far as their working activity depends on receiving directions and they receive consideration in the form of remuneration.

28. It thus follows from the concept of 'worker' within the meaning of Article 1(1)(a)(i) of Directive 98/59 that, in order to calculate the number of workers normally employed in an establishment, persons employed under temporary contracts must also be taken into account. The existing case-law according to which particular groups of employees are not to be left out of account, even if only temporarily, in calculating the number of workers for the purposes of Article 1(1)(a)(i) of the directive also points in the same direction. (12)

29. Contrary to the views of the national court, this is not inconsistent with the fact that according to Article 1(2)(a) of Directive 98/59, the procedures laid down by the directive do not in principle apply to fixed-term workers, so that those workers are to that extent excluded from the 'scope of application of the Directive'.

30. First, it should be pointed out that the second part of Article 1(2)(a) shows that fixed-term workers employed are clearly within the scope of application of Directive 98/59 where their contracts of employment are terminated *before* expiry or completion.

31. Second, the personal exclusion of fixed-term workers on the one hand and the method laid down in the directive for calculating the threshold on the other must be considered in the light of their respective purposes. Article 1(2)(a) of Directive 98/59 removes fixed-term workers from the directive's scope of application only in cases in which their employment contracts end in due course with the expiry of the period or the completion of the task, where there is no need for the same protection as that conferred on permanent employees. For that reason, in the normal case the consultation and information obligations provided for by the directive do not apply to them.

32. By making the existence of a collective redundancy depend, in Article 1(1)(a)(i) of Directive 98/59, on both a minimum number of terminations and the number of workers normally employed in the establishment in question, the EU legislature has made it clear that the burden of implementing the procedure laid down under the directive is to be imposed on employers only if the establishment concerned is of a certain minimum size. The size of the establishment is to be determined by reference to the number of workers normally employed there, without the nature of their employment contracts being relevant. (13)

33. Furthermore, the point made by the national court that taking fixed-term workers into account in calculating the number of workers at an establishment creates an, 'effect, which is inconsistent with, and clearly contrary to, the objective of the directive', that is to say, of distorting the numerical threshold to the detriment of the workers, is not, in truth, a convincing one.

34. That argument is not persuasive, merely because such a detrimental effect for workers could arise only under the second alternative laid down in Article 1(1)(a)(i) of Directive 98/59. It is only in such a case that the minimum number of workers dismissed is calculated as a percentage of the number of persons employed. By contrast, this is precisely not the case as regards the other two alternatives laid down in the provision. In that context, the taking of fixed-term workers into account in calculating the number of workers is advantageous for workers and beneficial for their protection, because overall the threshold can be reached more easily. It is therefore consistent with the purposes of the directive. (14)

35. It follows that there are no compelling reasons based on systematic or teleological considerations requiring fixed-term workers to be left out of account in calculating the number of workers for the purposes of Article 1(1)(a)(i) of Directive 98/59, contrary to its wording.

36. For the sake of completeness, it must also be pointed out that all of the three alternatives in Article 1(1)(a)(i) of Directive 98/59 refer to workers *normally* employed in the establishment. It follows that the calculation of the number of workers at an establishment cannot depend on either a specific date or an average. Instead, the expression *normally* implies that the important factor is the number of workers employed in the usual course of business. This may have the consequence, for example, that workers temporarily employed to cover an increased workload during a period of high activity may be left out of account, as they are not workers *normally* employed in the establishment.

37. Accordingly, the answer to the first question is that fixed-term workers employed are to be taken into account in calculating the number of workers normally employed, that is to say, employed in the usual course of business, in an establishment within the meaning of Article 1(1)(a)(i) of Directive 98/59.

C – *The second question*

38. The second question referred for a preliminary ruling concerns the last subparagraph of Article 1(1) of Directive 98/59. It provides that, for the purpose of calculating the number of redundancies provided for in Article 1(1)(a) of the directive, certain other types of terminations of employment contracts are to be assimilated to redundancies. That assimilation requirement is subject to the condition that, 'there are at least five redundancies'.

39. The national court seeks clarification as to whether this condition refers to the number of dismissals effected by the employer under Article 1(1)(a) of Directive 98/59, or to the

number of terminations which are to be assimilated to those redundancies. On that point, the opinions of the parties to the proceedings are divided.

40. It clearly follows from the wording of the last subparagraph of Article 1(1) of Directive 98/59 that there must be a minimum number of five *redundancies*, but not five other contract terminations, for the assimilation requirement to apply. A glance at the other language versions of the directive confirms this. (15)

41. Moreover, this interpretation is supported by the eighth recital in the preamble to Directive 98/59, according to which in order to calculate the threshold number, certain other forms of termination of employment contracts on the initiative of the employer should be equated to redundancies, provided that there are *at least* five *redundancies*.

42. It may indeed be, as Gestora submits, that where there are no more than four 'true' redundancies a large number of assimilable terminations are to be left out of account and thus Directive 98/59 does not apply. However, it is to be assumed that the EU legislature deliberately accepted this consequence.

43. As may be inferred from the scheme of Directive 98/59, the main subject of the directive is 'true' redundancies within the meaning of Article 1(1)(a). Other contract terminations are to be assimilated to these only in certain circumstances. The legislative history of the directive shows that the EU legislature refrained from covering both types of termination by a single concept. (16)

44. Contrary to the submissions of the Polish Government, interpreting the last subparagraph of Article 1(1)(a) so that it refers to a minimum number of five 'true' redundancies does not give rise to any additional, unjustified threshold for the applicability of Directive 98/59. On the contrary, this means that — consistently with the purpose of Directive 98/59 (17) — it makes it easier for the conditions for the application of collective redundancy procedures to be met. While Article 1(1)(a) of Directive 98/59 in principle requires an absolute minimum of 10 true redundancies, that minimum number is in effect reduced to 5 to the extent that there are at the same time 5 assimilable terminations.

45. Finally, the submission of the Spanish Government must be rejected, according to which a national provision is compatible with Directive 98/59 even if, in order for the assimilation requirement to apply, it is not a minimum of five 'true' redundancies that are required but only a minimum of five assimilable terminations. In so far as the Spanish Government observes in this context that a number of terminations come within this concept under national law and the requirement is thus easy to meet, the facts in the present dispute prove precisely the opposite. Moreover, this divergence from the directive's requirements would not be more favourable to workers and thus not of such a kind that Article 5 would allow the Member States to introduce.

46. It follows that the answer to the second question is that the expression 'provided that there are at least five redundancies' in the last subparagraph of Article 1(1) of Directive 98/59 refers to the number of true redundancies which are effected by the employer within the meaning of Article 1(1)(a) of the directive.

D – *The third question*

47. The national court's third question seeks to ascertain whether an agreed termination which, although initiated by the worker, comes about in reality only in response to a change in

working conditions that was initiated by the employer and was ultimately compensated for by way of damages, is to be regarded as a termination of an employment contract which is to be assimilated to a redundancy within the meaning of the last subparagraph of Article 1(1) of Directive 98/59.

48. While this question is intended to clarify only whether the termination of a contract in the circumstances described may count as a *termination which is assimilable* to a redundancy, I consider it appropriate to analyse first whether a substantial change in working conditions effected by the employer is not itself to be seen as a *redundancy stricto sensu* for the purposes of Directive 98/59. It is only in this way that it is possible to give the national court a useful answer to its question. (18)

49. Whether there is a redundancy or merely a termination assimilable to a redundancy has significant practical consequences. This is because the protection in case of collective redundancy provided for by Directive 98/59 in favour of workers applies only for the former. By contrast, the latter are merely taken into account in calculating the threshold for the application of the directive, without the employees affected themselves receiving the benefit of the protection conferred by the directive.

50. According to the Court's case-law, the concept of 'redundancy' within the meaning of Directive 98/59 has to be construed in the context of EU law. It includes any termination of contract of employment not sought by the worker, and therefore without his consent. (19) For there to be a redundancy it is thus essential, first, that an existing contract of employment is terminated, and, second, that this termination is not consented to by the worker.

51. Spanish employment law is characterised by the fact that under Article 41 of the Workers' Statute an employer may *unilaterally* make certain substantial changes to his workers' working conditions if there exist objective reasons for doing so. If the worker suffers any detriment in consequence, however, he is entitled to give notice (right to leave) and has a right to compensation.

52. Thus, on a formal approach in such cases the employment contract of a worker who does not exercise that right to leave continues without interruption. Accordingly, on a superficial consideration in such a case there is also no 'true' redundancy within the meaning of Directive 98/59, as there is no termination of an employment contract.

53. However, such an approach does not go far enough, because there can be no doubt that the employment contract ends at least in the form in which it was originally entered into. The continuation is only on the conditions laid down and substantially amended by the employer unilaterally. (20)

54. However, in circumstances in which an employee is confronted with a substantial worsening of his working conditions without his cooperation or agreement, which affects the essential elements of his employment contract, he is no less needful of the protection conferred by the information and consultation obligations of an employer under Directive 98/59 than is a worker who is made redundant.

55. In addition, it should be observed that when considered against the background of certain fundamental principles of contract law Article 41 of the Workers' Statute is an exception. This is because strictly in accordance with the principle *pacta sunt servanda*, which is a general principle of Union law (21) and which is also established in Spanish civil law, (22) in

principle an employer cannot, without his employee's consent, unilaterally change the contractual relationship between them, unless the employment contract itself provides otherwise. As a general rule and in the absence of mutual agreement, it is open to an employer who desires to impose substantial amendments to an employment contract on an employee to do so only by means of notice plus amendment, that is to say, by means of a redundancy combined with a simultaneous offer to continue the employment contract on the amended conditions within the framework of a contract that has been modified to reflect the new arrangements.

56. There is no doubt that Member States are free to permit employers by statute to amend employment contracts unilaterally, by way of exception to the principle *pacta sunt servanda*, and to provide that employees who reject such amendments must do so expressly. However, this cannot lead to any diminution of the protection and the rights Directive 98/59 grants to employees. Any other solution would run counter to the fundamental purpose of the directive, which as has already been emphasised by the Court on many occasions is to ensure, in the case of collective redundancies, comparable protection for workers' rights in the whole of the European Union. (23) The strengthening of this protection is precisely the purpose of Directive 98/59. (24)

57. Therefore, if an employer makes a unilateral amendment to working conditions for reasons not related to the individual worker and this causes a substantial detriment to the worker affecting essential elements of his employment contract, this constitutes a redundancy within the meaning of Article 1(1)(a) of Directive 98/59. I agree with the Commission that such conduct may be described as 'indirect redundancy' for which, under Directive 98/59, the same protection for workers is to be conferred as that conferred on a redundancy which the employer effects expressly.

58. However, if, contrary to my analysis so far, the Court should find that there is no (indirect) redundancy in the context of this third question, it would fall to be observed that one would have to proceed in any event on the basis that there was a termination of an employment contract assimilable to a redundancy for the purposes of the last subparagraph of Article 1(1) of Directive 98/59.

59. This is because on its wording this provision encompasses terminations of employment contracts which are initiated by the employer and are not for reasons related to the individual worker. According to the Court's case-law, those types of termination are to be distinguished from redundancies by the fact that the latter occur without the worker's consent. (25) Thus, every contract termination which is initiated by the employer for objective reasons — that is to say, not for reasons related to the individual worker — and which takes effect with the consent of the worker affected is a termination of an employment contract which is to be assimilated to a redundancy for the purposes of the last subparagraph of Article 1(1) of Directive 98/59.

60. In a case such as the present one, involving a consensual contract termination which was initiated by the worker affected, but which ultimately came about in response to a substantial change to her working conditions effected unilaterally by her employer, there can be no doubt that the worker consented. In addition, the fact that the termination may be regarded as having been caused by the employer, as the changes to working conditions were originally initiated by it, does not cause any difficulty. In the absence of that conduct, it is to be assumed that the contract would not have been terminated. So far as it is possible to ascertain, the change had no basis in personal reasons relating to the worker.

61. Accordingly, the answer to the third question is that the concept of redundancy in Article 1(1)(a) of Directive 98/59 encompasses circumstances in which an employer unilaterally makes a substantial change to a worker's working conditions, for reasons not related to the individual worker, which cause him substantial detriment as regards essential elements of his employment contract.

V – **Conclusion**

62. In the light of the foregoing considerations, I propose that the Court's answer to the request for a preliminary ruling from the Jugzado de lo Social de Barcelona should be as follows:

Directive 98/59/EC must be interpreted as meaning that:

– fixed-term workers are to be taken into account in calculating the number of workers normally employed, that is to say, employed in the usual course of business, in an establishment within the meaning of Article 1(1)(a)(i) of Directive 98/59;

– the expression 'provided that there are at least five redundancies' in the last subparagraph of Article 1(1) of Directive 98/59 refers to the number of true redundancies which are effected by the employer within the meaning of Article 1(1)(a) of that directive;

– the concept of redundancy in Article 1(1)(a) of Directive 98/59 encompasses circumstances in which an employer unilaterally makes a substantial change to a worker's working conditions, for reasons not related to the individual worker, which cause him substantial detriment as regards essential elements of his employment contract.

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1 – Original language: German.

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2 – Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, 1998 OJ L 225, p. 16.

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3 – See, as regards this year alone, judgments in *USDAW and Wilson* (C-80/14, EU:C:2015:291); *Lyttle and others* (C-182/13, EU:C:2015:317); *Rabal Cañas* (C-392/13, EU:C:2015:318); and *Balkaya* (C-229/14, EU:C:2015:455).

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4 – 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).

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5 – 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).

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6 – Real Decreto Legislativo 1/1995 of 24 March 1995.

7 – Law 36/2011 governing the social courts.

8 – See judgments in *Cilfit and Others*, 283/81, EU:C:1982:335, paragraphs 13 to 15; *Boxus and Others*, C-128/09 to C-131/09, C-134/09 and C-135/09, EU:C:2011:667, paragraph 32; and *Torresi and Torresi*, C-58/13 and C-59/13, EU:C:2014:2088, paragraph 32.

9 – Judgments in *Commission* v *Italy* C-596/12, EU:C:2014:77, paragraph 16, and *Balkaya*, C-229/14, EU:C:2015:455, paragraph 33; see also judgment in *Commission* v *Portugal*, C-55/02, EU:C:2004:605, paragraph 49.

10 – Judgments in *CGT and others*, C-385/05, EU:C:2007:37, paragraph 47, and *Balkaya*, C-229,14, EU:C:2015:455, paragraph 33.

11 – Judgments in *Lawrie-Blum*, 66/85, EU:C:1986:284, paragraphs 16 and 17; *Allonby*, C-256/01, EU:C:2004:18, paragraph 67; *Kiiski*, C-116/06, EU:C:2007:536, paragraph 25; *Danosa*, C-232/09, EU:C:2010:674, paragraph 39; *Commission* v *Italy*, C-596/12, EU:C:2014:77, paragraph 17; and *Balkaya*, C-229/14, EU:C:2015:455, paragraph 34.

12 – See judgment in *Confédération générale du travail and Others*, C-385/05, EU:C:2007:37, paragraph 49.

13 – These considerations are underpinned by the legislative history of the directive. According to the Commission's original proposal for what was to become Directive 75/129/EEC, there was to be a collective redundancy in any case in which an employer, regardless of the size of its establishment, made more than 10 workers redundant (see Commission Proposal COM(72) 1400 final of 8 November 1972, p. 5). The structure of the threshold calculation which was eventually enacted and which still applies today under Article 1(1)(a)(i) of Directive 98/59 goes back to a suggestion by the Economic and Social Committee, which criticised having a, 'rigid minimum number of dismissals', because, 'the dismissal of 10 workers can be of varying significance depending on the total labour force of the undertaking' (see Consultation of the Economic and Social Committee of 27 June 1973, OJ 1973 C 100, pp. 13 and 14).

14 – See, in that regard, the second recital in the preamble to Directive 98/59, according to which greater protection should be afforded to workers in the event of collective redundancies.

15 – See in particular the Spanish ('siempre y cuando los despidos sean al menos 5'), English ('provided that there are at least five redundancies') and French language versions ('à

condition que les licenciements soient au moins au nombre de cinq') of the last subparagraph of Article 1(1) of Directive 98/59.

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16 – In its Proposal which led to Directive 92/56/EEC, the Commission wanted to define the concept of collective redundancy more broadly. A collective redundancy was to be *any termination of employment contracts initiated by an employer* for reasons not relating to the individual employee and which exceeded a certain numerical threshold (see Commission Proposal COM(1992) 127 final of 31 March 1992, p. 8). However, the legislature did not follow this proposal. Thus, the original definition (still applicable today) of collective redundancy under Article 1(1)(a) of the directive remained in force, but a last subparagraph referring to contract terminations assimilable to redundancies was inserted into Article 1(1).

17– On this point, again see the second recital in the preamble to Directive 98/59, according to which greater protection should be afforded to workers in the event of collective redundancies.

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18 – As regards the need to give a useful answer to the national court, see judgments in *SARPP*, C-241/89, EU:C:1990:459, paragraph 8; *Aventis Pasteur*, C-358/08, EU:C:2009:744, paragraph 50; *Fuß*, C-243/09, EU:C:2010:609, paragraph 39; and *Centre public d'action sociale d'Ottignies-Louvain-La-Neuve*, C-562/13, EU:C:2014:2453, paragraph 37.

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19 – See *Commission* v *Portugal*, C-55/02, EU:C:2004:605, paragraphs 49 and 50, and *Agorastoudis and others*, C-187/05 to C-190/05, EU:C:2006:535, paragraph 28.

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20 – Accordingly, Spanish law regards certain changes of working conditions as so serious that a worker affected by them is granted an exceptional right to give notice and a right to compensation.

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21 – See for example judgments in *Racke*, C-162/96, EU:C:1998:293, paragraph 49, and *Distilleria Palma* v *Commission*, T-154/01, EU:T:2004:154, paragraph 45.

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22 – See Article 1258 of the Spanish Civil Code.

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23 – See *Commission* v *United Kingdom*, C-383/92, EU:C:1994:234, paragraph 16; *Commission* v *Portugal*, C-55/02, EU:C:2004:605, paragraph 48; *Confédération générale du travail and Others*, C-385/05, EU:C:2007:37, paragraph 43; and *USDAW and Wilson*, C-80/14, EU:C:2015:291, paragraph 62.

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24 – See again the second recital to Directive 98/59.

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25 – See judgment in *Commission* v *Portugal*, C-55/02, EU:C:2004:605, paragraph 56.