JUDGMENT OF THE COURT (First Chamber)

11 November 2015 (*)

(Reference for a preliminary ruling — Social policy — Collective redundancies — Directive 98/59/EC — Article 1(1)(a), first subparagraph — Concept of workers 'normally employed' at the establishment concerned — Article 1(1), second subparagraph — Concepts of 'redundancy' and 'terminations of employment contracts that may be assimilated to redundancies' — Method of calculating the number of workers made redundant)

In Case C-422/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Social No 33 de Barcelona (Labour Court No 33, Barcelona, Spain), made by decision of 1 September 2014, received at the Court on 12 September 2014, in the proceedings

Cristian Pujante Rivera

v

Gestora Clubs Dir, SL,

Fondo de Garantía Salarial,

THE COURT (First Chamber),

composed of A. Tizzano, Vice-President of the Court, acting as President of the First Chamber, F. Biltgen (Rapporteur), A. Borg Barthet, E. Levits and M. Berger, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Mr Pujante Rivera, by V. Aragonés Chicharro, abogado,

– Gestora Clubs Dir, SL, by L. Airas Barreal, abogado,

– the Spanish Government, by J. García-Valdecasas Dorrego, acting as Agent,

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, by R. Vidal Puig, M. Kellerbauer and J. Enegren, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 3 September 2015,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 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 (OJ 1998 L 225, p. 16).

2 The request has been made in proceedings between Mr. Pujante Rivera and his employer, Gestora Clubs Dir, SL ('Gestora'), and the Fondo de Garantía Salarial (Employees Guarantee Fund) concerning whether his redundancy was lawful.

Legal context

EU law

3 Recitals 2 and 8 in the preamble to Directive 98/59 are worded as follows:

'(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;

…

(8) Whereas, in order to calculate the number of redundancies provided for in the definition of collective redundancies within the meaning of this Directive, 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.'

4 Article 1 of Directive 98/59, entitled 'Definitions and scope', provides 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, 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.

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;

…'

5 Article 5 of Directive 98/59 is worded as follows:

'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.'

Spanish law

6 Directive 98/59 was transposed into Spanish law by Article 51 of the Law on the Workers' Statute (Ley del Estatuto de los Trabajadores) of 24 March 1995 ((BOE No 75 of 29 March 1995, p. 9654) ('ET').

7 Article 41(1) and (3) ET, which concerns substantial changes to working conditions, provides as follows:

'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. Changes shall be deemed to be such where they relate to competitiveness, productivity or technical or labour organisation. Substantial changes in working conditions shall be deemed to be, among others, those that affect the following matters:

…

(d) pay schemes and rates of pay;

…

3. … In the cases specified in subparagraphs (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 claim damages equal to 20 days' pay per year of service, periods of less than one year being calculated pro rata on a monthly basis up to a maximum of nine months.'

8 Under Article 50 ET, substantial changes in working conditions which are made by the employer without due regard for the provisions of Article 41 ET and have the consequence of adversely affecting the dignity of the worker constitute valid grounds on which the worker may request the termination of the contract. In such a case, the worker will be entitled to the compensation provided for in the event of unfair dismissal.

9 Article 51(1) and (2) ET provides as follows:

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

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

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

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

…

"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.

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 workers concerned which are different from the grounds provided for in Article 49(1)(c) of this Law shall also be taken into account, provided that at least five employees are affected.

When, in successive periods of 90 days and in order to circumvent the requirements of this article, an undertaking terminates contracts under Article 52(c) of this Law, the number of terminations being lower than the thresholds indicated, and when there are no new grounds justifying such action, those new terminations shall be deemed to be effected in circumvention of the law and shall be declared null and void.

2. Collective redundancy must be preceded by a period of consultation with the workers' legal representatives for a maximum period of 30 calendar days or 15 days in the case of undertakings with fewer than 50 workers. The consultation with the workers' legal representatives must deal, at the very least, with the possibility of avoiding or reducing the number of collective redundancies and of alleviating their effects through accompanying social measures, such as outplacement and vocational training or retraining to improve employment prospects.

…'

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

10 Gestora forms part of the Dir Group, whose principle business is the operation of sports facilities, such as gymnasiums and fitness centres. Gestora provides services to the various entities managing those facilities, including staff, promotions and marketing services.

11 Mr Pujante Rivera was engaged by Gestora on 15 May 2008 on the basis of a fixed-term six-month contract. After a number of extensions, that contract was converted into a permanent contract on 14 May 2009.

12 As at 3 September 2013, Gestora had 126 employees, of whom 114 were employed on a permanent basis and 12 on fixed-term contracts.

13 Between 16 and 26 September 2013, Gestora terminated the contracts of 10 of its employees on objective grounds. One of the persons dismissed was Mr Pujante Rivera, who, on 17 September 2013, received notification that his contract was to be terminated for economic and production reasons.

14 During the 90-day period preceding that last of those redundancies on objective grounds, which took place on 26 September 2013, the following contracts were terminated:

– 17 on the ground that the agreed contract term had expired (contract of less than 4 weeks' duration);

– 1 on the ground that the task forming the subject of the services contract had been completed;

– 2 voluntary redundancies;

– 1 dismissal for disciplinary reasons, recognised as ‘unfair’ for the purpose of ET and made the subject of an award of damages; and

– 1 contract terminated at the worker’s request under Article 50 ET.

15 The worker referred to above who requested that her contract be terminated received notification on 15 September 2013, in accordance with Article 41 ET, of a change to her working conditions, namely a 25% reduction of her salary, on the same objective grounds as those relied on in the various other terminations that occurred between 16 and 26 September 2013. Five days later, the worker concerned agreed to enter into a contract terminating the employment relationship. However, in a subsequent administrative conciliation procedure, Gestora recognised that the change to her employment contract, of which the employee had been given notification, exceeded the limits laid down in Article 41 ET and agreed to a termination of that contract on the basis of Article 50 ET, with compensation being payable.

16 During the 90-day period following the last of those redundancies on objective grounds, there were five further contract terminations in consequence of the expiry of fixed-term contracts of less than four weeks’ duration and three voluntary redundancies.

17 On 29 October 2013, Mr Pujante Rivera brought proceedings against Gestora and the Employees Guarantee Fund before the referring Court, the Juzgado de lo Social No 33 de Barcelona (Labour Court No 33, Barcelona). He challenges his redundancy on objective grounds, claiming that it is invalid because Gestora should have applied the collective redundancy procedure under Article 51 ET. According to Mr Pujante Rivera, if account is taken of the number of contract terminations which occurred in the 90-day periods before and after his own redundancy, the numerical threshold set out in Article 51(1)(b) ET was reached, given that, apart from the five voluntary redundancies, all the other employment contract terminations constitute redundancies or contract terminations that may be equated to redundancies.

18 In those circumstances, the Juzgado de lo Social No 33 de Barcelona decided to stay proceedings and refer the following questions to the Court of Justice 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, 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 at an establishment (or, in Spain, an undertaking) 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 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?'

Admissibility of the request for a preliminary ruling

19 In its written observations, Gestora claims that the request for a preliminary ruling is inadmissible on the ground that the provisions of Directive 98/59 in respect of which an interpretation is sought and the relevant provisions of national law are clear and not contradictory. Gestora maintains that the referring court is using the preliminary ruling procedure with the sole aim of confirming its own interpretation. However, it is not the task of the Court of Justice to settle differences of opinion regarding the interpretation or application of rules of national law.

20 It must be borne in mind in that regard that, according to the Court's settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining and the accuracy of which is not a matter for the Court to determine enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, inter alia, judgments in *Budějovický Budvar*, C-478/07, EU:C:2009:521, paragraph 63; *Zanotti*, C-56/09, EU:C:2010:288, paragraph 15, and *Melki and Abdeli*, C-188/10 and C-189/10, EU:C:2010:363, paragraph 27).

21 That is not the case here.

22 It is apparent from the order for reference that an interpretation of Directive 98/59, in particular Article 1(1) and (2), is necessary for the resolution of the dispute before the referring court, in particular for the purpose of determining whether or not the facts of the dispute give rise to collective redundancy within the meaning of the directive.

23 The reference for a preliminary ruling is therefore admissible.

Consideration of the questions referred

Question 1

24 By its first question, the referring court seeks to ascertain, in essence, whether the first subparagraph of Article 1(1)(a) of Directive 98/59 is to be interpreted as meaning that workers employed under a contract concluded for a fixed term or a specific task must be regarded as forming part of the workers 'normally' employed, within the meaning of that provision, at the establishment concerned.

25 In answering that question, it is appropriate to point out, first, that in paragraph 67 of its judgment in *Rabal Cañas* (C-392/13, EU:C:2015:318), the Court held that Article 1(1) of Directive 98/59 must be interpreted as meaning that, for the purposes of establishing whether 'collective redundancies', within the meaning of that provision, have been effected, there is no need to take into account individual terminations of contracts of employment concluded for limited periods of time or for specific tasks, when those terminations take place on the date of expiry of the contract or the date on which the task was completed.

26 It follows that workers whose contracts are terminated on the lawful ground that they are temporary are not to be taken into account in determining whether there is a 'collective redundancy' within the meaning of Directive 98/59.

27 Accordingly, the only question remaining is whether workers employed under a contract concluded for a fixed term or a specific task must be regarded as forming part of the workers 'normally' employed in the establishment concerned within the meaning of Article 1(1)(a) of Directive 98/59.

28 It should be noted in that regard, first, that the term 'worker' in that provision cannot be defined by reference to the legislation of the Member States but must be given an autonomous and uniform meaning in the EU legal order (judgment in *Balkaya*, C-229/14, EU:C:2015:455, paragraph 33).

29 Next, the Court has consistently held that the term 'worker' must be defined in accordance with the objective criteria which characterise the employment relationship, taking into account the rights and duties of the persons concerned, the essential characteristic of the employment relationship being 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 (see, inter alia, judgment in *Commission* v *Italy*, C-596/12, EU:C:2014:77, paragraph 17, and *Balkaya*, EU:C:2015:455, paragraph 34).

30 Since, in the present case, it is not disputed that the employment contracts concluded for a fixed term or a specific task fulfil the essential requirements of that

definition, the persons who are employed under such contracts must be regarded as 'workers' within the meaning of Article 1(1) of Directive 98/59.

31 Lastly, as regards whether, for the purpose of calculating the thresholds laid down in Article 1(1)(a) (i) and (ii) of Directive 98/59, such workers may be regarded as 'normally' employed at the establishment concerned within the meaning of that provision, it should be noted that that directive cannot be interpreted as meaning that the methods of calculating those thresholds, and therefore the thresholds themselves, are within the discretion of the Member States, as such an interpretation would allow the latter to alter the scope of that directive and thus to deprive it of its full effect (judgment in *Confédération générale du travail and Others*, C-385/05, EU:C:2007:37, paragraph 47).

32 It should be added that, as it refers to 'establishments normally employing' a given number of workers, the first subparagraph of Article 1(1)(a) of Directive 98/59 does not make any distinction on the basis of the length of time for which such workers are employed.

33 Thus, it cannot be concluded at the outset that persons employed under a contract concluded for a fixed term or a specific task cannot be regarded as workers 'normally' employed by the establishment concerned.

34 Support is found for that conclusion in the Court's case-law which states that the first subparagraph of Article 1(1)(a) of Directive 98/59 must be interpreted as precluding national legislation which excludes, even temporarily, a specific category of workers from the calculation of staff numbers set out in that provision. Indeed, as such a national provision is liable to deprive, even temporarily, all workers employed by establishments normally employing more than 20 workers of the rights which they derive from Directive 98/59, it undermines effectiveness of the directive (see, to that effect, judgment in *Confédération générale du travail and Others*, C-385/05, EU:C:2007:37, paragraph 48).

35 Any interpretation of the first subparagraph of Article 1(1)(a) of Directive 98/59 to the effect that workers employed under a contract concluded for a fixed term or a specific task are not workers 'normally' employed by the establishment concerned is liable to deprive all the workers employed by that establishment of the rights conferred on them by the directive and thus undermine its effectiveness.

36 Accordingly, in the main proceedings, the 17 workers whose contracts expired in July 2013 must be regarded as 'normally' employed at the establishment concerned since, as the referring court observed, those workers had been employed each year for a specific task.

37 It should also be added that the conclusion set out in paragraph 35 above is not called into question by the argument put forward by the referring court that it would be contradictory if workers whose contracts have been terminated on the lawful ground that those contracts are temporary were not afforded the protection guaranteed by Directive

98/59 and, at the same time, those workers were taken into account for the purpose of determining the number of staff ‘normally’ employed by an establishment.

38 As the Advocate General observed at points 31 and 32 of her Opinion, the reason for that difference is to be found in the different purposes pursued by the EU legislature.

39 Thus, first, the EU legislature considered that persons employed under a contract concluded for fixed term or a specific task and whose contracts end in due course with the expiry of the fixed period or the completion of the task do not need the same protection as that enjoyed by permanent employees. Article 1(2)(a) of Directive 98/59 none the less provides that the first category of employees may enjoy the same protection as that conferred on workers employed on a permanent basis if they are in an analogous position, that is, if the employment relationship is terminated before the expiry of the term stipulated in the contract or before the task for which they were employed is completed.

40 Second, by making the application of the rights conferred on workers by the first subparagraph of Article 1(1)(a) of Directive 98/59 subject to quantitative criteria, the EU legislature intended to take account of the overall number of employees of the establishments in question in order to avoid imposing an excessive burden on employers that is disproportionate to the size of their establishment. However, for the purpose of calculating the number of employees of an establishment as regards the application of Directive 98/59, the nature of the employment relationship is irrelevant (see, to that effect, judgment in *Balkaya*, C-229/14, EU:C:2015:455, paragraphs 35 and 36).

41 In the light of the foregoing considerations, the answer to Question 1 is that the first subparagraph of Article 1(1)(a) of Directive 98/59 must be interpreted as meaning that workers employed under a contract concluded for a fixed term or a specific task must be regarded as forming part of the workers ‘normally’ employed, within the meaning of that provision, at the establishment concerned.

Question 2

42 By its second question, the referring court seeks to ascertain, in essence, whether, in order to establish whether there is a ‘collective redundancy’, within the meaning of the first subparagraph of Article 1(1)(a) of Directive 98/59, thus giving rise to the application of the directive, the condition laid down in the second subparagraph of that provision that ‘there [be] at least five redundancies’ must be interpreted as relating solely to redundancies or as covering terminations of employment contracts that may be assimilated to redundancies.

43 In that regard, it is sufficient to note, as observed by the Advocate General at point 40 of her Opinion, that it is absolutely clear from the wording of Article 1(1) of Directive 98/59 that the conditions laid down in the second subparagraph of that provision concerns only ‘redundancies’, not contract terminations which may be assimilated to redundancies.

44 As the second subparagraph Article 1(1) of Directive 98/59 sets out the method of calculating 'redundancies' as defined in the first subparagraph of Article 1(1)(a) and the latter provision establishes the 'redundancy' thresholds below which the directive is not applicable, any other reading which has the effect of extending or restricting the scope of the directive would deprive the condition in question, namely that 'there [be] at least five redundancies', of any effectiveness.

45 Moreover, that interpretation is confirmed by the purpose of Directive 98/59, as is clear from its preamble. Recital 8 in the preamble states that, in order to calculate the number of redundancies provided for in the definition of collective redundancies, 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'. As observed by the Advocate General at point 43 of her Opinion, it is those 'true' redundancies which the EU legislature intended to cover by the adoption of provisions relating to collective redundancies.

46 In the light of the foregoing considerations, the answer to Question 2 is that, in order to establish whether there is a 'collective redundancy', within the meaning of the first subparagraph of Article 1(1)(a) of Directive 98/59, thus giving rise to the application of the directive, the condition laid down in the second subparagraph of that provision that 'there [be] at least five redundancies' must be interpreted as relating not to terminations of employment contracts that may be assimilated to redundancies but only to redundancies *sensu stricto*.

Question 3

47 By its third question, the referring court seeks to ascertain, in essence, whether Directive 98/59 must be interpreted as meaning that the fact that an employer — unilaterally and to the detriment of the employee — makes significant changes to essential elements of his employment contract, for reasons not related to the individual employee concerned, falls within the definition of 'redundancy' in the first subparagraph of Article 1(1)(a) of the directive or constitutes the termination of an employment contract that may be assimilated to such a redundancy for the purpose of the second subparagraph of Article 1(1) of the directive.

48 It should be noted in that regard that Directive 98/59 does not give an express definition of the concept of 'redundancy'. None the less, in the light of the aim pursued by the directive and the context of the first subparagraph of Article 1(1)(a) thereof, it must be regarded as a concept of EU law which cannot be defined by reference to the laws of the Member States. In the present case, that concept must be interpreted as encompassing any termination of an employment contract not sought by the worker, and therefore without his consent (judgments in *Commission* v *Portugal*, C-55/02, EU:C:2004:605, paragraphs 49 to 51, and *Agorastoudis and Others*, C-187/05 to C-190/05, EU:C:2006:535, paragraph 28).

49 Moreover, it is the Court's case-law that redundancies are to be distinguished from terminations of the contract of employment which, on the conditions set out in the second paragraph of Article 1(1) of Directive 98/59, are assimilated to redundancies for want of the worker's consent (judgment in *Commission* v *Portugal*, C-55/02, EU:C:2004:605, paragraphs 56).

50 With regard to the main proceedings, given that it is the worker who sought the termination of her employment contract on the basis of Article 50 ET, she may, prima facie, be regarded as having consented to the termination. However, the fact none the less remains that, as the Advocate General observed at points 54 and 55 of her Opinion, the termination of that employment relationship arises from the change made unilaterally by her employer to an essential element of the employment contract for reasons not related to that individual worker.

51 First, having regard to the objective of Directive 98/59, which is, as is apparent from recital 2 in the preamble thereto, inter alia, to afford greater protection to workers in the event of collective redundancies, a narrow definition cannot be given to the concepts that define the scope of that directive, including the concept of 'redundancy' in the first subparagraph of Article 1(1)(a) thereof (see, to that effect, *Balkaya*, C-229/14, EU:C:2015:455, paragraph 44).

52 It is clear from the order for reference that the remuneration of the worker in question was reduced unilaterally by the employer for economic and production reasons and, as the person concerned did not accept the reduction, that resulted in the termination of the employment contract and the payment of damages calculated on the same basis as damages awarded in the case of unfair dismissal.

53 Second, according to the Court's case-law, by harmonising the rules applicable to collective redundancies, the EU legislature intended both to ensure comparable protection for employees' rights in the different Member States and to harmonise the costs which such protective rules entail for EU undertakings (judgments in *Commission* v *United Kingdom*, C-383/92, EU:C:1994:234, paragraph 15, and *Commission* v *Portugal*, C 55/02, EU:C:2004:605, paragraph 48).

54 As follows from paragraphs 43 to 45 above, the concept of 'redundancy' in the first subparagraph of Article 1(1)(a) of Directive 98/59 directly determines the scope of the protection and the rights conferred on workers under that directive. That concept therefore has an immediate bearing on the costs which such protection entails. Accordingly, any national legislative provision or any interpretation of that concept to the effect that, in a situation such as that in the main proceedings, the termination of an employment contract is not a 'redundancy' for the purpose of Directive 98/59 would alter the scope of the directive and thus to deprive it of its full effect (see, to that effect, judgment in *Confédération générale du travail and Others*, C-385/05, EU:C:2007:37, paragraph 47).

55 In the light of the foregoing considerations, the answer to Question 3 is that Directive 98/59 must be interpreted as meaning that the fact that an employer — unilaterally and to the detriment of the employee — makes significant changes to essential elements of his employment contract for reasons not related to the individual employee concerned falls within the definition of 'redundancy' for the purpose of the first subparagraph of Article 1(1)(a) of the directive.

Costs

56 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 (First Chamber) hereby rules:

1. **The first subparagraph of Article 1(1)(a) 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 meaning that workers employed under a contract concluded for a fixed term or a specific task must be regarded as forming part of the workers 'normally' employed, within the meaning of that provision, at the establishment concerned.**

2. **In order to establish whether there is a 'collective redundancy', within the meaning of the first subparagraph of Article 1(1)(a) of Directive 98/59, thus giving rise to the application of the directive, the condition laid down in the second subparagraph of that provision that 'there [be] at least five redundancies' must be interpreted as relating not to terminations of employment contracts that may be assimilated to redundancies but only to redundancies *sensu stricto*.**

3. **Directive 98/59 must be interpreted as meaning that the fact that an employer — unilaterally and to the detriment of the employee — makes significant changes to essential elements of his employment contract for reasons not related to the individual employee concerned falls within the definition of 'redundancy' for the purpose of the first subparagraph of Article 1(1)(a) of the directive.**

[Signatures]

---

* Language of the case: Spanish.