2. *In those circumstances, the primacy of Community law obliges the national court to apply Community law and to refuse to apply conflicting provisions of national law, irrespective of the judgment of the national constitutional court which has deferred the date on which those provisions, held to be unconstitutional, are to lose their binding force.*

([1]) OJ C 247, 27.9.2008.

Judgment of the Court (Fourth Chamber) of 10 December 2009 (Reference for a preliminary ruling from the Tribunal Superior de Justicia de Madrid (Spain)) — Ovidio Rodríguez Mayor, Pilar Pérez Boto, Pedro Gallego Morzillo, Alfonso Francisco Pérez, Juan Marcelino Gabaldón Morales, Marta María Maestro Campo, Bartolomé Valera Huete v Unclaimed estate of Rafael de las Heras Dávila and Sagrario de las Heras Dávila

(Case C-323/08) ([1])

(Reference for a preliminary ruling — Protection of workers — Collective redundancies — Directive 98/59/EC — Termination of contracts of employment as a result of the death of the employer)

(2010/C 24/15)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Madrid

Parties to the main proceedings

Applicants: Ovidio Rodríguez Mayor, Pilar Pérez Boto, Pedro Gallego Morzillo, Alfonso Francisco Pérez, Juan Marcelino Gabaldón Morales, Marta María Maestro Campo and Bartolomé Valera Huete

Defendants: Unclaimed estate of Rafael de las Heras Dávila and Sagrario de las Heras Dávila

Re:

Reference for a preliminary ruling — Tribunal Superior de Justicia de Madrid — Interpretation of Articles 1, 2, 3, 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) — National legislation restricting the concept of redundancy solely to dismissals made on economic, technical, organisational or production grounds — Termination of contracts of employment by reason of the death, retirement or incapacity of the employer — Different compensation in the two cases — Whether compatible with the Charter of fundamental rights of the European Union and the Community Charter of the fundamental social rights of workers

Operative part of the judgment

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.*

([1]) OJ C 236, 13.9.2008.

Judgment of the Court (Third Chamber) of 10 December 2009 (Reference for a preliminary ruling from the Verwaltungsgericht Schwerin — Germany) — Krzysztof Peśla v Justizministerium Mecklenburg-Vorpommern

(Case C-345/08) ([1])

(Freedom of movement for workers — Article 39 EC — Refusal of access to serve as a legal trainee — Candidate who obtained his law diploma in another Member State — Criteria for assessment of the equivalence of knowledge acquired)

(2010/C 24/16)

Language of the case: German

Referring court

Verwaltungsgericht Schwerin

Parties to the main proceedings

Applicant: Krzysztof Peśla

Defendant: Justizministerium Mecklenburg-Vorpommern

Re:

Reference for a preliminary ruling — Verwaltungsgericht Schwerin — Interpretation of Article 39 EC — Decision refusing access to the period of preparatory legal training for the regulated legal professions addressed to a candidate who obtained his legal diploma in another Member State — Criteria for assessment of the equivalence of education and training.

Operative part of the judgment

1. *Article 39 EC must be interpreted as meaning that the knowledge to be taken as a reference point for the purposes of assessing the equivalence of training following an application for direct admission to a legal traineeship for the legal professions, without taking the exams he would otherwise have to sit, is that attested by the qualification required in the Member State in which the candidate seeks to be admitted to serve such a legal traineeship.*

2. *Article 39 EC must be interpreted as meaning that, where the competent authorities of a Member State consider an application of a national of another Member State to be admitted to serve a practical training period, such as a legal traineeship for the legal professions in Germany, with a view to exercising a regulated legal profession at a later date, that article does not of itself oblige those authorities to require from the candidate, in the examination of equivalence required by Community law, merely a level of legal knowledge which is lower than that attested by the qualification required in that Member State for access to such a period of practical training. However, Article 39 EC does not preclude a degree of flexibility as regards the qualification required. Moreover it is important that, in practice, the possibility of partial recognition of the knowledge attested by qualifications which the person concerned has obtained should be more than merely notional. That is a matter for the national court to determine.*

([1]) OJ C 260, 11.10.2008.

Judgment of the Court (Grand Chamber) of 2 December 2009 (Reference for a preliminary ruling from the House of Lords, United Kingdom) — Aventis Pasteur SA v OB

(Case C-358/08) ([1])

(Directive 85/374/EEC — Liability for defective products — Articles 3 and 11 — Mistake in the classification of 'producer' — Judicial proceedings — Application for substitution of the producer for the original defendant — Expiry of the limitation period)

(2010/C 24/17)

Language of the case: English

Referring court

House of Lords

Parties to the main proceedings

Applicant: Aventis Pasteur SA

Defendant: OB

Re:

Reference for a preliminary ruling — House of Lords — Interpretation of Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ 1985 L 210, p. 29) — Action brought against a company wrongly considered to be the producer of the allegedly defective product — Whether another party may be substituted for the defendant after the ten-year limitation period laid down in Article 11 of the Directive — Person designated as defendant in the proceedings brought during the ten-year period not a 'producer' as defined in Article 3 of the Directive

Operative part of the judgment

Article 11 of Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products must be interpreted as precluding national legislation, which allows the substitution of one defendant for another during proceedings, from being applied in a way which permits a 'producer', within the meaning of Article 3 of that directive, to be sued, after the expiry of the period prescribed by that article, as defendant in proceedings brought within that period against another person.

However, first, Article 11 must be interpreted as not precluding a national court from holding that, in the proceedings instituted within the period prescribed by that article against the wholly-owned subsidiary of the 'producer', within the meaning of Article 3(1) of Directive 85/374, that producer can be substituted for that subsidiary if that court finds that the putting into circulation of the product in question was, in fact, determined by that producer.

Second, Article 3(3) of Directive 85/374 must be interpreted as meaning that, where the person injured by an allegedly defective product was not reasonably able to identify the producer of that product before exercising his rights against the supplier of that product, that supplier must be treated as a 'producer' for the purposes, in particular, of the application of Article 11 of that directive, if it did not inform the injured person, on its own initiative and promptly, of the identity of the producer or its own supplier. That is for the national court to determine in the light of the circumstances of the case.

([1]) OJ C 260, 11.10.2008.