



Article 27 of the EU Charter of Fundamental Rights on the right of workers to information and consultation does not by itself suffice to confer on individuals a right which may be invoked in order to disapply a national provision that is contrary to EU law

The more specific expression of that right in provisions of EU law or national law does not in any way alter that assessment

Article 27 of the EU Charter of Fundamental Rights governs the right of workers to information and consultation. Directive 2002/14¹ gives that right more specific expression by fixing minimum requirements. Thus, when an undertaking reaches a certain threshold of employees, staff representatives must be elected or a union representative must be designated and a works council created. France implemented that directive by providing inter alia that certain categories of employees (such as apprentices, holders of an employment-initiative contract, etc.) should be excluded from the calculation of the staff numbers of an undertaking.

The Association de médiation sociale (AMS) disputes the designation of a union representative within that association on the ground that, having regard to the exclusions provided for by the French legislation, its staff numbers are lower than the minimum threshold laid down in France for the designation of staff representatives. Mr Laboubi (the designated union representative) and the trade unions submit that the exclusion provided for by French law is not in conformity with EU law. Adjudicating on an appeal brought by AMS, the Cour de Cassation (France) has referred a question to the Court of Justice seeking to ascertain whether Article 27 of the Charter, as given more specific expression in the provisions of Directive 2002/14, can be relied upon in a dispute between individuals in order to preclude the application of the national implementing measure which is contrary to EU law.

In today's judgment, the Court confirms that the provisions of Directive 2002/14 prohibit the exclusion of certain categories of employees from the calculation of the staff numbers of an undertaking. Such an exclusion results in depriving employees of the rights granted under Directive 2002/14 and renders that directive ineffective.

The Court next examines whether Directive 2002/14 can be relied upon by the trade unions to challenge the incorrect implementation of that directive. To that end the Court points out that a directive has direct effect whenever the relevant provisions are, so far as concerns their subject-matter, unconditional and sufficiently precise. The Court notes that this is the case here, since Directive 2002/14 prescribes that the Member States cannot exclude certain categories of employees from the calculation of staff numbers. The Court however observes that the dispute is between private parties so that the trade unions cannot rely on the provisions of Directive 2002/14 as such against AMS and that, furthermore, the national statute cannot be interpreted in conformity with the Directive.

Accordingly, the Court goes on to examine whether Article 27 of the Charter, alone or in conjunction with the provisions of Directive 2002/14, can be relied upon in a dispute between

¹ Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community .

individuals in order to conclude that a national provision which is not in conformity with the Directive should be disapplied. While Article 27 is applicable in the case at issue, the Court observes that that article must be given more specific expression by provisions of EU law or national law to be fully effective. A prohibition on excluding from the calculation of the staff numbers of an undertaking a particular category of employees cannot be inferred, as a directly applicable rule of law, from the wording of Article 27 of the Charter. In other words, Article 27 of the Charter does not by itself suffice to confer on individuals a right which they may invoke as such. The Court concludes from this that it is necessary to reach the same assessment where that article is considered in conjunction with the provisions of Directive 2002/14.

Lastly, the Court points out that a party injured as a result of domestic law not being in conformity with EU law can obtain, if appropriate, compensation for the loss sustained.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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