EELA EUROPEAN EMPLOYMENT LAWYERS ASSOCIATION

SUMMARY

2012/17: Lithuanian Supreme Court interprets domestic law in line with the Acquired Rights Directive (LT)

<p>Lithuania transposed the Acquired Rights Directive 2001/23 in 2002 without, however, providing for the automatic transfer of employment in the event an undertaking is transferred. The Labour Code merely prohibits dismissals in such an event. In this first ever case in Lithuania on the transfer of undertakings, the Supreme Court fills in the gap left open by the legislator.</p>

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Facts

Mr X was employed by *UAB Šnipiškių ūkis*. This is a limited liability company, the shares of which are owned by the Vilnius municipality. Originally, *Šnipiškių ūkis* was responsible, inter alia, for the operation of the Vilnius central market. X held the position of Market Inspector.

On 6 May 2009 the municipality decided to split *Šnipiškių ūkis* into two limited liability companies, the existing *Šnipiškių ūkis* and a newly incorporated company called *UAB Kalvarijų turgus,* and to transfer to this new company the activities, assets, rights and obligations relating to the market.

Šnipiški ų ūkis, which no longer operated the market and therefore had no use for a market

inspector, dismissed X. The new company *Kalvarijų turgus* did not offer employment to X, who now found himself without a job. He took both *Šnipiškių ūkis* and *Kalvarijų turgus* to court, arguing that the transfer of market activities and assets from the first defendant to the second defendant constituted a transfer of undertaking and that he had therefore become an employee of *Kalvarijų turgus*. He asked the court to confirm this and to order *Snipškių ūkis* to pay him salary until the date of the judgment.

Kalvarijų turgus' defence was that the Labour Code does not provide for automatic transfer from one employer to anothyer and that therefore any claim (for unfair dismissal) could only be against *Šnipiškių ūkis*. The latter's defence is not known.

The court of first instance found in favour of X. It confirmed that X had retained his previous position at *Šnipiškių ūkis* and ordered *Kalvarijų turgus* to offer X employment. This judgment was overturned on appeal, whereupon X brought the matter to the Supreme Court.

Judgment

The Supreme Court, interpreting the Labour Code in line with the Acquired Rights Directive 2001/23, which Lithuania transposed in 2002, and with the ECJ's case law on that directive, held that where activities, assets, rights and obligations are transferred from one company to another, the employees involved in those activities transfer automatically to the transferee, even though Lithuanian law does not stipulate this expressly. If the transferee has an economic, technical or operational (ETO) reason for dismissing one or more of the employees so transferred, and if the domestic law allows for such a dismissal (which Lithuanian law does), then the transferee may proceed to dismiss such employees, but only after having taken them on as its employees. The upshot of the case was that the claim against *Šnipiškių ūkis* was rejected and that *Kalvarijų turgus* was recognised as X's employer and was ordered to offer him employment on unchanged terms with effect from 6 May 2009.

Commentary

This is the first time the Lithuanian Supreme Court has explicitly recognised the rules on transfer of undertakings. The judgment shows that the Supreme Court is willing to fill in a gap the legislature left unfilled when it transposed – incompletely – the Acquired Rights Directive and to apply the principles formulated by the ECJ.

Unfortunately the published documents leave certain crucial questions of fact and of law unanswered. For example it is not known whether *Šnipiškių ūkis* employed other individuals for its market activities. In addition, the court did not consider whether those activities were capital-intensive or labour-intensive.

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Subject: transfer of undertaking

Parties: G.J. - v - WAB "Šnipiškių ūkis" and UAB "Kalvarijų turgus"

Court: Lietuvos Aukšciausiasis Teismas (Supreme Court)

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