

SUMMARY

ECJ 13 June 2019, case C-317/18 (Correia Moreira), transfer of undertakings, employees who transfer/refuse to transfer, employment terms

Cátia Correia Moreira – v – Município de Portimão, Portuguese case

Question

Must Directive 2001/23, in particular Article 2(1)(d), be interpreted as meaning that a person who has entered into a contract for a position of trust, within the meaning of the national legislation at issue in the main proceedings, with the transferor may be regarded as an 'employee' and thus benefit from the protection which that directive affords?

Must Directive 2001/23, read in conjunction with Article 4(2) TEU, be interpreted as meaning that it precludes national legislation which provides that, in the event of a transfer within the meaning of that directive and where the transferee is a municipality, the employees concerned must, first, undergo a public competitive selection procedure and, secondly, have a new relationship with the transferee?

Ruling

Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, in particular Article 2(1)(d), must be interpreted as meaning that a person who has entered into a contract for a position of trust, within the meaning of the national legislation at issue in the main proceedings, with the transferor may be regarded as an 'employee' and thus benefit from the protection which that directive affords, provided, however, that that person is protected as an employee by that

legislation and has a contract of employment at the date of transfer, which is a matter for the referring court to determine.

Directive 2001/23, read in conjunction with Article 4(2) TEU, must be interpreted as meaning that it precludes national legislation which provides that, in the event of a transfer within the meaning of that directive and where the transferee is a municipality, the employees concerned must, first, undergo a public competitive selection procedure and, secondly, have a new relationship with the transferee.

Creator: European Court of Justice (ECJ)

Verdict at: 2019-06-13

Case number: C-317/18