

SUMMARY

ECJ 8 September 2026, Case C-293/24 (João Filipe Ferreira da Silva e Brito and Others - v- Estado Português)

João Filipe Ferreira da Silva e Brito and Others - v- Estado Português, Portuguese case

Summary

A combination of errors in interpreting the EU rules on transfers of undertakings, failure by a court of last instance to comply with its obligation to make a preliminary reference under Article 267 TFEU, and awareness that the interpretative approach taken was already the subject of pending ECJ proceedings are circumstances that contribute to establishing a sufficiently serious breach of EU law. The final assessment of State liability and causation remains for the national court. Article 3(1) of Directives 77/187 and 2001/23 precludes national legislation under which an employee's receipt of statutory redundancy compensation automatically constitutes acceptance of the dismissal and prevents the employee from challenging it or relying on rights arising from a transfer of an undertaking.

Questions

In the light of the ECJ's case law as it stood on 25 February 2009, did the continuation of AIA's charter-flight activities by TAP, including its assumption of aircraft leases, flight contracts and equipment, constitute a transfer of an undertaking within the meaning of Article 1(1) of Directives 77/187 and 2001/23?

Did the Portuguese Supreme Court's 2009 ruling that no transfer had occurred constitute a sufficiently serious breach of EU law?

Did that Portuguese Supreme Court's failure, as a court of last instance, to request a preliminary ruling on the concept of a transfer of an undertaking constitute a sufficiently serious breach of EU law?

Does Article 3(1) of Directive 77/187 preclude national legislation under which receipt of statutory compensation following a collective redundancy constitutes acceptance of the dismissal, thereby preventing the employee from challenging it and invoking rights arising from the transfer?

Ruling

Regarding the first three questions, the ECJ rules as follows. The following circumstances contribute to establishing that the Portuguese Supreme Court committed a sufficiently serious breach of Article 1(1) of Directive 77/187: the combination of errors in its interpretation of EU law, assessed in the light of the ECJ case law that it could reasonably have been expected to consider in 2009; its failure to comply with the obligation to make a preliminary reference under Article 267 TFEU; and the fact that it could not have been unaware that the compatibility of its methodological approach with EU law was already the subject of pending preliminary-ruling proceedings. It remains for the national court to make the final assessment and determine whether there is a direct causal link with the harm suffered.

Article 3(1) of Directives 77/187 and 2001/23 must be interpreted as precluding national legislation under which receipt of statutory compensation following a collective redundancy constitutes acceptance of the dismissal, with the result that the employee loses the right to challenge that dismissal and seek protection of the rights conferred by those directives.

Creator: European Court of Justice (ECJ)

Verdict at: 2026-09-08

Case number: C/293/24 - ECLI:EU:C:2026:723