

SUMMARY

## **ECJ 2 March 2017, case C-97/16 (Perez Retamero), Employment status**

***&lt;p&gt;Based on a challenge to the dismissal of a transporter of goods, certain questions were referred to the ECJ under Directive 2002/15 on the organisation of working time for persons performing mobile road transport activities. However, the questions related, not to dismissal, but to how ‘mobile workers’ were defined in the Directive (as the worker sought to establish that he was employed and therefore entitled to full employment rights). The Court ruled that, as the Directive related to how working time is organised, rather than dismissal, the questions were inadmissible.&lt;/p&gt;***

### **Summary**

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### **Facts**

Mr Perez Retamero worked as a transporter of goods for TNT, with whom he had concluded a contract governing the provision of transport services. TNT entrusted him with the task of delivering goods in Catalonia, in Spain. The contract provided that TNT could unilaterally change the principles and rules applicable to transport services, either wholly or in part.

Under his contract, Mr Perez Retamero had to take out a transport insurance policy and assume responsibility for any loss or destruction of the goods or delivery delays. The initial term of the contract was six months but could be extended for successive periods of six months. He was to be paid a lump sum for each day covered and this was paid monthly. Further, the contract stipulated that the vehicle he used had to display the colours and advertising chosen by TNT. The vehicle which Mr Perez Retamero used was his own van, for which he carried a transport licence authorising him to carry out transport services.

As from January 2014, while Mr Perez Retamero still performed the same work, he began issuing invoices for his services to Sapirod, which was a company sub-contracted by TNT to deal with transport services. Mr Perez Retamero still performed the same work.

On the 17 February 2015, Sapirod informed Mr Perez Retamero that it could no longer offer him any work. That information was later confirmed by a letter of 6 March 2015.

### **National proceedings**

On 17 March 2015, Mr Perez Retamero brought an action before the Labour Court in Barcelona. He sought to establish that he was bound by an employment contract with Sapirod and that his dismissal was therefore unlawful. He claimed that all of the elements that characterize an employment relationship were fulfilled. In addition, he claimed against TNT for making workers available unlawfully and to that end, sought an order that the two companies were jointly and severally liable.

To support his first claim, he stated that the objective exclusion provided for by Article 1(3)(g) of the Workers' Statute is contrary to Directive 2002/15, to the effect that he could not be classified as a 'self-employed driver' within the meaning of Article 3(e) of that directive.

According to the Labour Court, although the object of Directive 2002/15 was not to define 'employed workers' and 'self-employed workers', it had become essential that these terms were defined, because of their effect on the labour market.

The referring court pointed out that if the objective of EU law in the transport sector consisted in harmonising the rules of competition, the concepts of 'mobile worker' and 'self-employed driver' in Article 3(d) and (e) of the directive, should be the same in all Member States. The Labour Court therefore decided to stay proceedings and refer two questions to the ECJ for a preliminary ruling.

### **Questions put to the ECJ**

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Must the definition of ‘mobile worker’ in Article 3(d) of Directive 2002/15 be interpreted as precluding domestic legal provisions such as Article 1.3 (g) of the Workers’ Statute, which provides that “persons providing a transport service by virtue of administrative authorisations of which they are the holders, carried out ... using vehicles ... of which ownership or a direct power of disposal is vested in them, cannot be regarded as ‘mobile workers’”?

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Must the second subparagraph of Article 3(e) of Directive 2002/15 be interpreted as meaning that, if none or only one of the criteria laid down for a person to be regarded as a ‘self-employed driver’ is fulfilled, the person concerned must be viewed as a ‘mobile worker’?

### **ECJ’s findings**

The admissibility of the questions referred for a preliminary ruling was contested by Sapirod, TNT, the Spanish Government and the European Commission, and so the Court first of all sought to rule on the admissibility of the questions.

The Court found that the referring court had sought guidance on how to interpret the concepts of ‘mobile worker’ and ‘self-employed driver’ in Article 3(d) and (e) of Directive 2002/15, but that any interpretation of these terms should not go beyond the scope of that directive. The directive concerned working time, whereas the dispute in the main proceedings was about dismissal. It related, not to the organisation of working time, but to whether the person concerned should be classified as a ‘mobile worker’ and therefore as an employed person for the purposes of the application of national labour law and, more particularly, the law on dismissals.

### **Ruling**

A dispute such as that in the main proceedings does not come within the scope of Directive 2002/15 and therefore the concepts articulated in Article 3(d) and (e) of that directive cannot apply to that dispute. Article 3(d) and (e) of Directive 2002/15 is therefore not necessary to resolve the dispute and the questions referred for a preliminary ruling by the Labour Court of Barcelona are inadmissible.

**Creator:** European Court of Justice (ECJ)

**Verdict at:** 2017-03-02

**Case number:** C-97/16 (Perez Retamero)