

SUMMARY

Case C-472/16. Transfer of undertakings

Should it be considered that there is a transfer for the purposes of Directive 2001/23/EC where the holder of a concession of a Council Music School, which receives all the material resources from that Council (premises, instruments, classrooms, furniture), has engaged its own staff and provides its services during the academic year, ceases that activity on 1 April 2013, two months before the end of the academic year, returning all the material resources to the Council, which does not resume the activity for the remainder of the academic year 2012-2013, but awards a new concession to a new contractor, which resumes the activity in September 2013, at the beginning of the new academic year 2013-14, transferring to the new contractor for that purpose the necessary material resources previously made available to the former contractor by the Council (premises, instruments, classrooms, furniture)?

If the answer to the previous question is in the affirmative, is it to be understood for the purposes of Article 4(1) of Directive 2001/23/EC that, in the circumstances described, – in which the failure of the main undertaking (the Council) to fulfil its obligations obliges the first contractor to cease its activity and to dismiss all its staff and immediately afterwards that main undertaking transfers the material resources to a second contractor, which continues with the same activity –, the dismissal of the first contractor’s workers has occurred for ‘economic, technical or organisational reasons entailing changes in the workforce’ or has it been caused by ‘the transfer of the undertaking, business or part of the undertaking or business’, a cause prohibited by that article?

If the reply to the previous question is that the dismissal has been caused by the transfer and is therefore contrary to Directive 2001/23/EC, is Article 47 of the Charter of the Fundamental Rights of the European Union to be interpreted as meaning that it precludes national legislation prohibiting a court from ruling on the substance of the claims of a worker who contests in an individual action the decision to dismiss him, as part of a collective dismissal, in order to defend the rights deriving from Council Directive 2001/23/EC [...] and Council

Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, owing to the fact that final judgment has already been given on the collective dismissal in proceedings to which the worker was unable to be a party, although the unions established in the undertaking and all the collective legal representatives of the workers were or were able to be parties?

Creator: European Court of Justice (ECJ)

Verdict at: 2016-08-24

Case number: C-472/16