

Judgment of the Court (Second Chamber) of 9 September 2015 (request for a preliminary ruling from the Varas Cíveis de Lisboa — Portugal) — João Filipe Ferreira da Silva e Brito and Others v Estado português

(Case C-160/14) ⁽¹⁾

(Reference for a preliminary ruling — Approximation of laws — Safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses — Meaning of 'transfer of a business' — Obligation to make a request for a preliminary ruling under the third paragraph of Article 267 TFEU — Alleged infringement of EU law attributable to a court of a Member State against whose decisions there is no judicial remedy under national law — Rule of national law which makes the right to reparation for the loss or damage sustained as a result of such an infringement conditional on the prior setting aside of the decision that caused that loss or damage)

(2015/C 363/16)

Language of the case: Portuguese

Referring court

Varas Cíveis de Lisboa

Parties to the main proceedings

Applicants: João Filipe Ferreira da Silva e Brito and Others

Defendant: Estado português

Operative part of the judgment

1. Article 1(1) of 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 must be interpreted as meaning that the concept of a 'transfer of a business' encompasses a situation in which an undertaking active on the charter flights market is wound up by its majority shareholder, which is itself an air transport undertaking, and the latter undertaking then takes the place of the undertaking that has been wound up by taking over aircraft leasing contracts and ongoing charter flight contracts, carries on activities previously carried on by the undertaking that has been wound up, reinstates some employees that have hitherto been seconded to that undertaking, assigning them tasks identical to those previously performed, and takes over small items of equipment from the undertaking that has been wound up.
2. In circumstances such as those of the case in the main proceedings, which are characterised both by the fact that there are conflicting decisions of lower courts or tribunals regarding the interpretation of the concept of a 'transfer of a business' within the meaning of Article 1(1) of Directive 2001/23 and by the fact that that concept frequently gives rise to difficulties of interpretation in the various Member States, the third paragraph of Article 267 TFEU must be construed as meaning that a court or tribunal against whose decisions there is no judicial remedy under national law is obliged to make a reference to the Court for a preliminary ruling concerning the interpretation of that concept.
3. EU law and, in particular, the principles laid down by the Court with regard to State liability for loss or damage caused to individuals as a result of an infringement of EU law by a court or tribunal against whose decisions there is no judicial remedy under national law must be interpreted as precluding a provision of national law which requires, as a precondition, the setting aside of the decision given by that court or tribunal which caused the loss or damage, when such setting aside is, in practice, impossible.

⁽¹⁾ OJ C 175, 10.6.2014.