



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

16 November 2023*

(Reference for a preliminary ruling – Directive 2001/23/EC – Article 1(1) – Safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses – Transfer of a notarial practice – Declaration as to the nullity or unfairness of the dismissal of employees – Determination of seniority for the calculation of compensation – Applicability of the directive – Conditions)

In Joined Cases C-583/21 to C-586/21,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Social n. 1 de Madrid (Labour Court No 1, Madrid, Spain), made by decisions of 30 July 2021, received at the Court on 20 September 2021, in the proceedings

NC (C-583/21),

JD (C-584/21),

TA (C-585/21),

FZ (C-586/21)

v

BA,

DA,

DV,

CG,

THE COURT (Fourth Chamber),

composed of C. Lycourgos, President of the Chamber, O. Spineanu-Matei, J.-C. Bonichot, S. Rodin (Rapporteur) and L.S. Rossi, Judges,

Advocate General: G. Pitruzzella,

Registrar: L. Carrasco Marco, Administrator,

* Language of the case: Spanish.

having regard to the written procedure and further to the hearing on 9 November 2022,

after considering the observations submitted on behalf of:

- DA, CG, DV, BA, by C. Martínez Cebrián, abogado,
- NC, JD, TA and FZ, by F. Mancera Martínez and S.L. Moya Mata, abogados,
- the Spanish Government, by A. Gavela Llopis and J. Rodríguez de la Rúa Puig, acting as Agents,
- the German Government, by J. Möller and M. Hellmann, acting as Agents,
- the European Commission, by B.-R. Killmann and S. Pardo Quintillán, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 25 May 2023,

gives the following

Judgment

- 1 These requests for a preliminary ruling concern the interpretation of 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 (OJ 2001 L 82, p. 16).
- 2 The requests have been made in proceedings between NC, JD, TA and FZ (together, 'NC and others'), on the one hand, and the notaries BA, DA, DV and CG, on the other, concerning a declaration that the dismissal of the workers successively engaged by those notaries is void or unfair.

Legal context

European Union law

Directive 2001/23

- 3 Recital 3 of Directive 2001/23 states:

'It is necessary to provide for the protection of employees in the event of a change of employer, in particular, to ensure that their rights are safeguarded.'

- 4 Article 1(1) of Directive 2001/23 provides:

'(a) This Directive shall apply to any transfer of an undertaking, business, or part of an undertaking or business to another employer as a result of a legal transfer or merger.'

- (b) Subject to subparagraph (a) and the following provisions of this Article, there is a transfer within the meaning of this Directive where there is a transfer of an economic entity which retains its identity, meaning an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary.
- (c) This Directive shall apply to public and private undertakings engaged in economic activities whether or not they are operating for gain. An administrative reorganisation of public administrative authorities, or the transfer of administrative functions between public administrative authorities, is not a transfer within the meaning of this Directive.'

5 Article 3(1) of that directive states:

'The transferor's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer shall, by reason of such transfer, be transferred to the transferee.

Member States may provide that, after the date of transfer, the transferor and the transferee shall be jointly and severally liable in respect of obligations which arose before the date of transfer from a contract of employment or an employment relationship existing on the date of the transfer.'

6 Article 4 of the said directive reads as follows:

'1. The transfer of the undertaking, business or part of the undertaking or business shall not in itself constitute grounds for dismissal by the transferor or the transferee. This provision shall not stand in the way of dismissals that may take place for economic, technical or organisational reasons entailing changes in the workforce.

...

2. If the contract of employment or the employment relationship is terminated because the transfer involves a substantial change in working conditions to the detriment of the employee, the employer shall be regarded as having been responsible for termination of the contract of employment or of the employment relationship.'

Regulation (EU) No 650/2012

7 According to Article 3(2) of Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (OJ 2012 L 201, p. 107):

'For the purposes of this Regulation, the term "court" means any judicial authority and all other authorities and legal professionals with competence in matters of succession which exercise judicial functions or act pursuant to a delegation of power by a judicial authority or act under the control of a judicial authority, provided that such other authorities and legal professionals offer guarantees with regard to impartiality and the right of all parties to be heard and provided that their decisions under the law of the Member State in which they operate:

- (a) may be made the subject of an appeal to or review by a judicial authority; and

(b) have a similar force and effect as a decision of a judicial authority on the same matter.

...'

8 Article 62 of that regulation provides:

'1. This Regulation creates a European Certificate of Succession (hereinafter referred to as "the Certificate") which shall be issued for use in another Member State and shall produce the effects listed in Article 69.

2. The use of the Certificate shall not be mandatory.

3. The Certificate shall not take the place of internal documents used for similar purposes in the Member States. However, once issued for use in another Member State, the Certificate shall also produce the effects listed in Article 69 in the Member State whose authorities issued it in accordance with this Chapter.'

9 Article 64 of the said regulation provides:

'The Certificate shall be issued in the Member State whose courts have jurisdiction under Article 4, Article 7, Article 10 or Article 11. The issuing authority shall be:

(a) a court as defined in Article 3(2); or

(b) another authority which, under national law, has competence to deal with matters of succession.'

10 Article 67(1) of the same regulation states:

'The issuing authority shall issue the Certificate without delay in accordance with the procedure laid down in this Chapter when the elements to be certified have been established under the law applicable to the succession or under any other law applicable to specific elements. ...

The issuing authority shall not issue the Certificate in particular if:

(a) the elements to be certified are being challenged; or

(b) the Certificate would not be in conformity with a decision covering the same elements.'

Spanish law

11 Article 1 of the Ley Orgánica del Notariado (Organic Law on the notarial profession), of 28 May 1862 (*Gaceta de Madrid* No 149, of 29 May 1862, p. 1) defines a notary as 'a public official authorised to authenticate contracts and other extra-judicial documents, in accordance with the law' and adds that 'throughout the Kingdom there shall be a single class of such officials'.

- 12 Notaries are compulsorily affiliated to the Régimen Especial de la Seguridad Social de los Trabajadores por Cuenta propia o Autónomos (Special social security scheme for self-employed persons, or 'RETA') and are both public officials and employers of the persons in their service, with whom they freely enter into employment contracts subject to general employment law in its entirety and to EU employment law in its entirety.
- 13 In accordance with the general rules of Real Decreto Legislativo 2/2015, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores (Royal Legislative Decree 2/2015, approving the recast text of the Law on the Workers' Statute), of 23 October 2015 (BOE No 255, of 24 October 2015, p. 100224) ('Royal Legislative Decree 2/2015'), notaries negotiate collective agreements, local in scope until 2010 and national in scope since then.
- 14 Article 44(1) and (2) of Royal Legislative Decree 2/2015 provides:
- '1. The transfer of an undertaking, business or independent production unit of an undertaking shall not in itself terminate the employment relationship; the new employer shall take over the former employer's rights and obligations in respect of the employment contract and social security, including commitments as regards pensions, on the conditions laid down by the specific applicable legislation, and, in general, all obligations in the sphere of additional social protection that were borne by the transferor.
2. For the purposes of this article, there shall be a transfer of undertaking where there is a transfer of an economic entity which retains its identity, meaning an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary.'

The dispute in the main proceedings and the question referred for a preliminary ruling

- 15 NC and others were employed in a notarial practice in Madrid (Spain) on behalf of various notaries who succeeded each other in that practice. On 30 September 2019, DV, the notary who had been the holder of that practice since 31 January 2015, offered NC and others the possibility of working with him at his new practice – which was in another city – or of terminating their employment contracts. NC and others chose the second option and received compensation for economic dismissal on grounds of *force majeure*.
- 16 BA was appointed as notary holding the same notarial practice on 29 January 2020. He took over the staff employed by the previous notary holding that post, retained the same material structure and continued to carry out notarial activity at the same place of work as where the records defined by national legislation as constituting the set of public acts and other documents added to that set every year were kept. On 11 February 2020, BA and NC and others concluded employment contracts with a six-month probationary period.
- 17 On 15 March 2020, due to the COVID-19 pandemic, the Dirección General de Seguridad Jurídica y Fe Pública (Directorate-General for Legal Certainty and Public Attestation, Spain) of the Ministerio de Justicia (Ministry of Justice, Spain) adopted a decision stating that only urgent matters could be conducted, that notaries' practices would have to implement the authorities' recommendations on social distancing and that shifts would be introduced. The next day, NC,

TA and JD went to the notarial practice to ask BA to apply the abovementioned measures. BA refused and, on the same day, sent letters of dismissal to NC, TA and JD and, on 2 April 2020, to FZ, stating that they had not passed their probationary period.

- 18 NC and others have filed with the Juzgado de lo Social n. 1 de Madrid (Labour Court No 1, Madrid, Spain), which is the referring court in this case, a request for their dismissals to be declared void, if not unfair, and for their seniority to be calculated from the date on which they had begun working at the practice of a notary exercising functions in the same premises as BA prior to him. BA has objected to their requests, taking the view that their seniority must begin to run from 11 February 2020, the date of the conclusion of the contracts binding him to NC and others.
- 19 The referring court considers NC and others to have been uninterruptedly employed by the defendants in the main proceedings, who had been successively appointed as notaries in the same premises in Madrid until their dismissal in 2020.
- 20 Spanish notaries are public officials, who take up that post after having passed a nationwide competition periodically organised by the Directorate-General for Legal Certainty and Public Attestation of the Ministry of Justice. That competition is subject to special general rules and the last known notice of competition was intended to cover vacant posts caused by retirement, transfer, leave, death or absence of coverage of the post following the previous competition.
- 21 Where a notary ceases his or her activities due to transfer or retirement, the new notary who succeeds him or her – who may or may not be remaining on the same premises – is obliged to preserve his or her predecessor's archives for 25 years and to issue copies and extracts of the deeds received by that predecessor when requested to do so by the persons concerned, it being understood that it is usual, but not mandatory, for the new holder of the post to keep the set of human and material resources organised in order to meet the purpose of the notarial public function. The fate of staff in the event of dismissal is not regulated by any specific rule or by any contractual provision, except in cases of transfer or leave on personal grounds of the notary.
- 22 The referring court highlights that, in its judgment of 23 July 2010, the Tribunal Supremo (Supreme Court, Spain) held that the legal nature of the public office assumed by the notary 'does not exclude the notary's status as employer, since the criteria laid down by [Royal Legislative Decree 2/2015] are met, which means that he or she must perform the obligations imposed on the employer by employment legislation', and specified that 'the notary is not the owner of an organisation of human and material resources capable of creating a situation of transfer of undertakings when he or she conveys the practice in which he or she has assumed the public office incumbent on him or her, since his or her successive appointments and subsequent transfers depend on the government and since the fact of being appointed to a particular practice also does not make him or her the owner of organisational unit specific to that practice, but a mere custodian of its records and the visible and directing figure of the public mission – and not of the public service in the strict sense – which is performed there'.

- 23 In those circumstances, the Juzgado de lo Social n. 1 de Madrid (Labour Court No 1, Madrid) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Does Article 1(1)(a) of [Directive 2001/23], and consequently the contents of the directive, apply to a situation in which the notary in post in a notary’s office – who is both a public official and also the private-sector employer of the office’s employees, with the employment relationship being governed by general employment legislation and by a sectoral collective agreement – succeeds the outgoing post-holder, takes on the previous notary’s [records], continues to provide services at the same place of work using the same material facilities, and takes on the staff who had worked for the previous notary who had held that post?’

Consideration of the question referred

Admissibility

- 24 BA and the Spanish Government submit that the question referred for a preliminary ruling is inadmissible since, four months before the applicants had been employed by BA, their employment relationship with DV, the notary who preceded BA at the same premises, ceased in exchange for compensation. Thus, the rights and obligations which DV derived from the employment contracts concluded with NC and others no longer existed on the date of the transfer of the notarial practice and they were in any event compensated.
- 25 In that connection, it should be borne in mind that questions on the interpretation of EU law referred by a national court in the factual and legislative context which that national court is responsible for defining, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 17 May 2023, *BK and ZhP (Partial stay of the main proceedings)*, C-176/22, EU:C:2023:416, paragraph 19 and the case-law cited).
- 26 In that regard, it should be noted that, by virtue of Article 3(1) of Directive 2001/23, only the transferor’s rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer are, by reason of such transfer, to be transferred to the transferee. Moreover, according to settled case-law, that directive is not aimed at improving remuneration or other working conditions on the occasion of a transfer of an undertaking (see, to that effect, judgment of 26 March 2020, *ISS Facility Services*, C-344/18, EU:C:2020:239, paragraph 25 and the case-law cited).
- 27 Admittedly, it is apparent from the requests for a preliminary ruling that, following DV’s new posting, NC and others terminated their employment contracts on 30 September 2019 and, on 11 February 2020, signed their contracts with BA, the latter having been appointed as notary of the notarial practice of which DV had been holder.

- 28 That being so, the referring court states that NC and others have provided their services, uninterruptedly since 24 May 2004 and at the same place of work, to the various notaries successively appointed to that practice, to whom they have been bound by an ordinary employment relationship. It adds, in that regard, that applying Directive 2001/23 would result in retention of seniority since the beginning of their employment relationship with the said practice.
- 29 So far as concerns the argument of the Spanish Government that the question referred for a preliminary ruling is inadmissible given that NC and others have already obtained compensation on account of the cessation of their employment relationship, it is appropriate to point out that such a possibility results from national legislation which is not intended to transpose Directive 2001/23 and cannot therefore be relevant for the purposes of examining the admissibility of the question referred. It should, moreover, be pointed out that, according to the submissions made by NC and others at the hearing, and which it is for the referring court to verify, that compensation was reimbursed.
- 30 It follows from the foregoing that it is not obvious that the question referred for a preliminary ruling concerning the interpretation of Directive 2001/23 bears no relation to the actual facts of the main action or that the problem is hypothetical, within the meaning of the case-law referred to in paragraph 25 of the present judgment. In those circumstances, that question must be deemed admissible.

Substance

- 31 By its question, the referring court asks, in essence, whether Article 1(1) of Directive 2001/23 must be interpreted as meaning that that directive is applicable to a situation in which a notary, who is a public official and the private-sector employer of the employees in his or her service, succeeds the previous holder of a notarial practice, takes over his or her records and the staff who were employed by him or her and continues to carry out the same activity on the same premises with the same material resources.
- 32 Article 1(1)(a) of Directive 2001/23 provides that that directive is to apply to any transfer of an undertaking, business, or part of an undertaking or business to another employer as a result of a legal transfer or merger.
- 33 Under Article 1(1)(b) of that directive, there is a 'transfer' for the purposes of that directive where there is a transfer of an economic entity which retains its identity, meaning an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary. The term 'entity' refers to an organised grouping of persons and assets facilitating the exercise of an economic activity which pursues a specific objective (judgment of 27 February 2020, *Grafe and Pohle*, C-298/18, EU:C:2020:121, paragraph 22).
- 34 By virtue of the first sentence of Article 1(1)(c) of Directive 2001/23, that directive applies to public and private undertakings engaged in economic activities whether or not they are operating for gain. By contrast, according to the second sentence of that provision, an administrative reorganisation of public administrative authorities, or the transfer of administrative functions between public administrative authorities, is not a 'transfer' for the purposes of that directive.
- 35 Thus, before examining whether there is a transfer for the purposes of Article 1(1) of Directive 2001/23, it is necessary to examine whether activities such as those of Spanish notaries fall within the concept of 'economic activity' within the meaning of Article 1(1)(c) of that directive.

The existence of an 'economic activity' within the meaning of Directive 2001/23

- 36 The Court has made it clear that the concept of 'economic activity' encompasses any activity consisting in offering goods or services on a given market. However, activities which fall within the exercise of public powers are, in principle, excluded from classification as 'economic activity', it being understood that services which are in competition with those offered by operators who seek to make a profit may be classified as 'economic activities' for the purposes of Article 1(1)(c) of Directive 2001/23 (see, to that effect, judgment of 20 July 2017, *Piscarreta Ricardo*, C-416/16, EU:C:2017:574, paragraph 34 and the case-law cited).
- 37 It follows from the requests for a preliminary ruling that Spanish notaries offer their services on the market to clients in return for remuneration, those services consisting inter alia, in essence, in authenticating contracts and other extra-judicial documents. According to the submissions made by the European Commission at the hearing, those notaries assume the financial risks associated with the exercise of that activity.
- 38 Such an activity falls, in principle, as the Advocate General indicated, in essence, in point 37 of his Opinion, within the concept of 'economic activity' within the meaning of Article 1(1)(c) of Directive 2001/23.
- 39 It is nevertheless necessary to examine whether, by reason of certain other circumstances which emerge from the documents before the Court, activities such as those of Spanish notaries are directly and specifically connected with the exercise of official authority and must be regarded as falling within the exercise of public powers (see, by analogy, judgment of 24 May 2011, *Commission v Belgium*, C-47/08, EU:C:2011:334, paragraph 85 and the case-law cited).
- 40 It is important, in that regard, to note that, since it is an exception to the general rule of applicability of Directive 2001/23 provided for in Article 1(1) thereof, that exclusion must be interpreted strictly (see, to that effect, judgment of 7 September 2023, *KRI*, C-323/22, EU:C:2023:641, paragraph 49 and the case-law cited).
- 41 Thus, it is appropriate to observe, first, that Spanish notaries are public officials appointed by ministerial decree after a competition.
- 42 However, it is by reference to the activities themselves – and not by reference to the status of notaries in the Spanish legal order – that it must be ascertained whether they exercise public powers (see, by analogy, judgment of 24 May 2011, *Commission v Belgium*, C-47/08, EU:C:2011:334, paragraph 116).
- 43 Second, as the Spanish Government confirmed at the hearing, individuals are free to use the notary of their choice. In that regard, while notaries' fees are fixed by national legislation, the quality of the services they provide may nonetheless vary from one notary to another, depending in particular on their professional capabilities, notaries thus carrying out their activities in conditions of competition, which is not characteristic of the exercise of public powers (see, by analogy, judgment of 24 May 2011, *Commission v Belgium*, C-47/08, EU:C:2011:334, paragraph 117).
- 44 Third, regarding the functions exercised by Spanish notaries, the Spanish Government states that they, first, are competent, inter alia, to authenticate private law instruments, conduct marriages, dissolve them on grounds of divorce, pronounce separations and to host the presentation,

authentication, opening and deposit of wills closed in the records and, second, must refuse to perform their functions in situations provided for by Spanish legislation. It is apparent, in that regard, from Article 1 of the Reglamento de la organización y régimen del notariado (Regulation on the organisation and regime of the notarial profession), approved definitively by the Decreto por el que se aprueba con carácter definitivo el Reglamento de la organización y régimen del Notariado (Decree approving definitively the Regulation on the organisation and regime of the notarial profession), of 2 June 1944 (BOE No 189, of 7 July 1944, p. 5225) ('the Regulation on the notarial profession'), cited by the Spanish Government in its written observations, that, in his or her capacity as public official, the notary is vested with the power to confer notarial authenticity, which, in matters of law, establishes the authenticity and probative force of the expressions of will conveyed by the parties appearing in the authentic deed drawn up in accordance with the law.

- 45 As important as such activities in the public interest may be, Spanish notaries, since they carry on those activities in a competitive situation, cannot be regarded as being public administrative authorities within the meaning of Article 1(1)(c) of Directive 2001/23.
- 46 The fact that notaries act in pursuit of an objective in the public interest when they refuse to exercise their functions is not sufficient for their activity to be regarded as falling within the exercise of public powers. It is not disputed that activities carried out in the context of various regulated professions frequently, in the national legal systems, involve an obligation for the persons concerned to pursue such an objective, without falling within the exercise of public powers (see, by analogy, judgment of 24 May 2011, *Commission v Belgium*, C-47/08, EU:C:2011:334, paragraph 96).
- 47 Fourth, the Kingdom of Spain notified the Commission, pursuant to Article 3(2) of Regulation No 650/2012, of its choice to designate Spanish notaries like the other authorities or legal professionals referred to in the first subparagraph of that provision, which fall within the concept of 'court', within the meaning of the said provision, and may adopt European Certificates of Succession under Article 64 of that regulation.
- 48 It should be noted that that regulation concerns jurisdiction, applicable law, recognition and enforcement of decisions, acceptance and enforcement of authentic instruments in matters of succession and the creation of a European Certificate of Succession and does not therefore affect the interpretation of Article 1(1)(c) of Directive 2001/23 (see, by analogy, judgment of 15 March 2018, *Commission v Czech Republic*, C-575/16, EU:C:2018:186, paragraph 127 and the case-law cited).
- 49 Furthermore, the fact that the notaries of a Member State fall within the concept of 'court' within the meaning of Article 3(2) of Regulation No 650/2012 does not mean that they exercise public powers. According to the conditions imposed by that provision, the concept of 'court' covers not only an authority or legal professional with competence in matters of succession which exercises judicial functions or acts pursuant to a delegation of power by a judicial authority, but also an authority or legal professional which acts only under the control of a judicial authority.
- 50 The competence of Spanish notaries to issue European Certificates of Succession under Article 64 of Regulation No 650/2012 does not equate to the exercise of such powers, either. It is apparent, first, from Article 62 of that regulation that the use of those certificates is not obligatory and, second, from Article 67(1)(a) of the said regulation that the said certificates cannot be issued if the elements to be certified are being challenged.

51 In those circumstances, which it will be for the referring court to ascertain, it appears that Spanish notaries engage in an economic activity within the meaning of Article 1(1)(c) of Directive 2001/23.

The existence of an ‘undertaking’ within the meaning of Directive 2001/23

52 It should be noted, from the outset, that the aim of Directive 2001/23 is to ensure continuity of employment relationships within an economic entity, irrespective of any change of ownership. The decisive criterion for establishing whether there is a ‘transfer’ for the purposes of that directive is whether the entity in question retains its identity, as indicated, inter alia, by the fact that its operation is actually continued or resumed (see, to that effect, judgment of 16 February 2023, *Strong Charon*, C-675/21, EU:C:2023:108, paragraphs 37 and 38 and the case-law cited).

53 In the case at hand, BA, after having been appointed by the State as notary holding the notarial practice of the given geographical area, of which DV had been the holder, employed part of the staff, took over the equipment and the premises and became the custodian of that practice’s records.

54 In accordance with Article 1 of the Organic Law on the notarial profession, a notary is a public official authorised to authenticate contracts and other extra-judicial documents, in accordance with the law, whereas the notarial practice of which he or she is the holder constitutes, according to Article 69 of the Regulation on the notarial profession, a ‘public institution’, which is defined as ‘the set of human and material resources organised in order to meet [the] purpose [of the notarial public function]’.

55 In that regard, it should be held, in the first place, that the fact that a notary becomes the holder of a notarial practice by reason of his or her appointment by the State and not on the basis of a contract concluded with the previous holder cannot in itself preclude the existence of a transfer within the meaning of Directive 2001/23.

56 While the lack of a contractual link between the transferor and the transferee may point to the absence of a transfer within the meaning of Directive 2001/23, it cannot be conclusive in that regard (see, to that effect, judgment of 16 February 2023, *Strong Charon*, C-675/21, EU:C:2023:108, paragraph 39 and the case-law cited).

57 That directive is applicable whenever, in the context of contractual relations, there is a change in the natural or legal person responsible for carrying on the undertaking and entering into the obligations of an employer towards employees of the undertaking. There is thus no need, in order for that directive to be applicable, for there to be any direct contractual relationship between the transferor and the transferee, since the transfer may take place through the intermediary of a third party (see, to that effect, judgment of 16 February 2023, *Strong Charon*, C-675/21, EU:C:2023:108, paragraph 40 and the case-law cited).

58 Therefore, the fact that the transfer stems from unilateral decisions of public authorities and not from a meeting of minds does not rule out the application of Directive 2001/23 (see, to that effect, judgment of 16 February 2023, *Strong Charon*, C-675/21, EU:C:2023:108, paragraph 41 and the case-law cited).

59 In the second place, the fact that only notaries are authorised to exercise the notarial public function has no bearing on the applicability of that directive.

- 60 The transfer, within the meaning of Directive 2001/23, must relate to a stable economic entity whose activity is not limited to performing one specific works contract. Any organised grouping of persons and of assets enabling the exercise of an economic activity pursuing a specific objective, and which is sufficiently structured and autonomous, constitutes such an entity (judgment of 6 March 2014, *Amatori and Others*, C-458/12, EU:C:2014:124, paragraph 31 and the case-law cited).
- 61 As has been indicated in paragraph 54 of the present judgment, however, according to Article 69 of the Regulation on the notarial profession, a notarial practice constitutes a ‘public institution’, which is defined as being the set of human and material resources ‘organised’ in order to meet the purpose of the notarial public function. What is more, the Commission stated at the hearing – without being contradicted on that point by the other interested parties but subject to verification by the referring court – that it is apparent from Article 14 of the II Convenio Colectivo estatal de Notarios y Personal Empleado (Second Collective Agreement of national scope on the staff of notarial practices), of 24 July 2017 (BOE No 241, of 6 October 2017, p. 97369), that, although the notarial practice operates under the notary’s control, it performs, through its employees, tasks such as those relating to the organisation of the practice, the drafting of documents and communication with clients, particularly with regard to legal consultations, which make it an independent organisation.
- 62 In this case, even though a Spanish notarial practice necessarily acts under the notary’s control, the appointment by the State of its new holder entails the transfer of the same notarial public function, linked, inter alia, to the given geographical area, that its previous holder exercised. Such a change in the holder of a notarial practice must be regarded as constituting a change of employer, a circumstance in which, according to recital 3 thereof, Directive 2001/23 seeks to protect employees.
- 63 In the third place, a change in the holder of a notarial practice does not necessarily involve a change in the identity of that practice.
- 64 In order to determine whether the condition of retention of an undertaking’s identity is met, it is necessary to consider all the facts characterising the transaction concerned, including in particular the type of undertaking or business concerned, whether or not its tangible assets, such as buildings and movable property, are transferred, the value of its intangible assets at the time of the transfer, whether or not the majority of its employees are taken over by the new employer, whether or not its customers are transferred, the degree of similarity between the activities carried on before and after the transfer, and the period, if any, for which those activities were suspended. However, all those circumstances are merely single factors in the overall assessment which must be made and cannot therefore be considered in isolation (judgment of 16 February 2023, *Strong Charon*, C-675/21, EU:C:2023:108, paragraph 49 and the case-law cited).
- 65 It follows that the degree of importance to be attached to each criterion for determining whether or not there has been a ‘transfer’ within the meaning of Directive 2001/23 will necessarily vary according to the activity carried on, or indeed the production or operating methods employed in the relevant economic entity, business or part of a business (see, to that effect, judgment of 16 February 2023, *Strong Charon*, C-675/21, EU:C:2023:108, paragraph 50 and the case-law cited).

- 66 The Court has stated that an economic entity is able, in certain sectors, to function without any significant tangible or intangible assets, and therefore the retention of the identity of such an entity following the transaction affecting it cannot, logically, depend on the transfer of such assets (judgment of 16 February 2023, *Strong Charon*, C-675/21, EU:C:2023:108, paragraph 51 and the case-law cited).
- 67 In a sector where the activity is based essentially on manpower, which is in particular the case when an activity does not require specific tangible assets, the identity of an economic entity cannot be retained after the transaction concerned if the majority of the employees, in terms of their numbers and skills, are not taken over by the presumed transferee (see, to that effect, judgment of 16 February 2023, *Strong Charon*, C-675/21, EU:C:2023:108, paragraphs 52 and 53 and the case-law cited).
- 68 That analysis therefore implies the existence of a number of factual findings, that question having to be assessed *in concreto* by the national court in the light of the criteria laid down by the Court as well as the objectives pursued by Directive 2001/23, such as that of protecting employees in the event of a change of employer to ensure that their rights are safeguarded, as set out in recital 3 of that directive (see, to that effect, judgment of 16 February 2023, *Strong Charon*, C-675/21, EU:C:2023:108, paragraph 55 and the case-law cited).
- 69 In that regard, it is apparent from paragraph 54 of the present judgment that, in accordance with the Spanish legislation, the staff and facilities of the notarial practice constitute a ‘public institution’, which is defined as constituting the set of human and material resources organised in order to meet the purpose of the notarial public function.
- 70 The activity of such a notarial practice is based essentially on the manpower of that practice, such that it is capable of retaining its identity after it has been transferred if a major part of the workforce, in terms of number and skills, is taken over by its new holder, enabling the new holder to continue the activities of the notarial practice.
- 71 In the event that a notary appointed as the holder of a notarial practice has taken over an essential part of the staff employed by his or her predecessor and continued to entrust them with tasks such as those mentioned in paragraph 61 of the present judgment, it should be noted that the fact that he or she has become the holder of a notarial practice, in particular a given geographical area, has taken over the material resources and the premises of that practice and has become the custodian of the records indicates that that practice has retained its identity.
- 72 It follows from all the foregoing considerations that Article 1(1) of Directive 2001/23 must be interpreted as meaning that that directive is applicable to a situation in which a notary, who is a public official and the private-sector employer of the employees posted to his or her practice, succeeds the previous holder of such a practice, takes over his or her records and an essential part of the staff who were employed by him or her and continues to carry out the same activity on the same premises with the same material resources, provided that the identity of that practice is retained, which it is for the referring court to determine, taking into consideration all the relevant circumstances.

Costs

- 73 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

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 that directive is applicable to a situation in which a notary, who is a public official and the private-sector employer of the employees posted to his or her practice, succeeds the previous holder of such a practice, takes over his or her records and an essential part of the staff who were employed by him or her and continues to carry out the same activity on the same premises with the same material resources, provided that the identity of that practice is retained, which it is for the referring court to determine, taking into consideration all the relevant circumstances.

[Signatures]