

ECJ, Sixth Chamber, Judgment of 28 January 2015.

The judgment resolves the prejudicial question submitted by a Mercantile Court concerning the maintenance of workers' rights in the event of the transfer of companies or part of them, and branches of business.

The following events triggered the European Court of Justice Judgment: in 2013, a company whose main activity was to manage a school, filed for a declaration opening the voluntary insolvency proceeding, which was declared by Barcelona Mercantile Court No. 3. The same court later adjudicated the school to a company incorporated by a group of teachers. That Court expressly stated that, except for the encumbrances linked to special preference claims, the transmission should cancel all existing encumbrances and charges on the school and the transferee shall not undertake the debts existing prior to the insolvency proceeding with regard to the Social Security General Treasury (SSGT). As a result, the SSGT and a group of former employees appealed against the abovementioned order arguing that it was in breach of the Workers' Statute.

The European Court of Justice argued its response using a general rule and its corresponding exception, so that, while the Community regulation (EU Directive 2001/23) provided that the rights and obligations of the transferor deriving from an employment contract or employment relationship that was valid when the transfer was made to the transferee (*rule*), said regulation also provided that when the company that transfers the business is subject to insolvency proceedings supervised by a public authority, national legislation may provide that the transferor's obligations are not transferred to the transferee (*exception*).

Consequently, the Court contended that the Community regulation is not contrary to Member States allowing, in the event of a transfer, the encumbrances to be transferred to the transferee, including those relating to the Social Security, but stated that such charges should be borne by the transferee if provided by national law.

Notwithstanding the foregoing, the European Court of Justice clarifies that the insolvency proceedings must guarantee employee's protection at least equivalent to the protection provided by EU Directive 80/987.

In conclusion, the European Court has stated through this judgment that European regulations are not opposed to a Member State allowing, in the framework of a transmission of a company when the transferor is undergoing insolvency proceedings, the encumbrances resulting from contracts or labour relations at the time of the transmission or the insolvency proceedings being transferred to the transferee, provided said proceedings guarantee a degree of protection of employees at least equivalent to the protection offered under European regulations. Moreover, in relation to the encumbrances of a transferor resulting from contracts or labour relations that had already been terminated prior to the transmission date, the Court indicated that, since the EU Directive does not establish any obligation in this connection, Member States may allow their transfer if their internal rules provide for it.