



UvA-DARE (Digital Academic Repository)

Newsletter Jean Monnet Project EUSOCP – European Labour Law Perspectives – July/August 2018

Ramos Martin, N.E.

Publication date

2018

Document Version

Final published version

License

CC0

[Link to publication](#)

Citation for published version (APA):

Ramos Martin, N. E. (Author). (2018). Newsletter Jean Monnet Project EUSOCP – European Labour Law Perspectives – July/August 2018. Web publication/site, Amsterdams Instituut voor Arbeidsstudies - Hugo Sinzheimer Instituut (AIAS-HSI), Universiteit van Amsterdam. <https://aias-hsi.uva.nl/en/projects-a-z/jean-monnet-eusocp/newsletters/newsletter.html>

General rights

It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations

If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: <https://uba.uva.nl/en/contact>, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.

Newsletter EUSOCP project

Issues VII & VIII – July/August 2018



UNIVERSITY OF AMSTERDAM

Erasmus+ Jean Monnet Action

European Labour Law Perspectives - Enhancing the Social Pillar

Project Reference: 587919-EPP-1-2017-1-NL-EPPJMO-PROJECT

Coordinator/Editor: University of Amsterdam – AIAS/HSI

Dr. N. E. Ramos Martín - N.E.RamosMartin@uva.nl

Partner institution: University Carlos III - Madrid

Prof. Dr. J. Mercader Uguina - jesus.mercader@uc3m.es

Dr. A. B. Muñoz - anabelen.munoz@uc3m.es

Within the Jean Monnet action EUSOCP, the Labour Law Departments at the University of Amsterdam and the University Carlos III-Madrid are issuing a monthly newsletter summarizing the development of the EU Pillar of Social Rights and including comments on EU legislation and case law in the field of Labour and Social Security Law. The newsletter is available via the following links:

- <https://aias-hsi.uva.nl/en/projects-a-z/jean-monnet-eusocp/european-labour-law-perspectives.html>

The European Pillar of Social Rights is divided into three main categories in the field of employment and social policies. Each of these categories contains a number of policy domains, to which different principles are attached. The three categories are:

- Equal opportunities and access to the labour market;
- Fair working conditions (adequate and reliable balance of rights and obligations between workers and employers);
- And adequate and sustainable social protection.

For a further description of the pillar see:

EN: https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_en

NL: https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_nl

ES: https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_es

European Pillar of Social Rights

ECB publishes updated wage data

August 22, 2018

The ECB signals in its economic bulletin that wages in the Euro-area are on the rise. Collective wages rose 2.2% in the 2nd quarter of 2018, the highest increase since 2012. The bulletin provides economic charts with data that point to a continued upward shift from a trough in the 2nd quarter of 2016. Growth in compensation per employee increased from 1.8% in the 4th quarter of 2017 to 2.0% in the 1st quarter of 2018, confirming the recent upward trend. Growth in negotiated wages increased from 1.5% in the 4th quarter of 2017 to 1.8% in the 1st quarter of 2018. Recent wage agreements and the broadening of wage growth across sectors support the expectation of a further pick-up in wage growth. The developed wage growth follows the direction of improving labour market conditions.

Read on: <https://www.bloomberg.com/news/articles/2018-08-22/euro-area-wages-bring-good-news-to-ecb-on-road-to-policy-exit>

EU Member States have reached agreement on key legislative files for a more social Europe

June 26, 2018

In the Employment, Social Policy, Health and Consumers Council (EPSCO) meeting in June 2018, the EU Member States have reached an agreement on three legislative files which are a cornerstone of building a stronger social Europe.

The agreement reached at the EPSCO meeting concerns the revision of the rules governing:

- social security coordination
- a new work-life balance directive
- and a directive on transparent and predictable working conditions

The Council reached an agreement on three Commission proposals to protect European citizens in a world of changing social and economic realities, in line with the European Pillar of Social Rights. The agreement concerns the revision of the social security coordination rules, on the directive on transparent and predictable working conditions, I had advocated for a more ambitious approach. With our proposal we wanted to ensure that in a fast-changing world of work, all workers are covered by basic rights. Today's agreement can only be a first step and I will work for a balanced compromise in the upcoming negotiations with the European Parliament. The same is true for Work-Life Balance, where I hope ultimately that we can establish a real game changer for many couples and families who face the daily challenge of combining work and family life".

The European Union provides rules on the coordination of social security systems to determine which system a mobile citizen is subject to. The rules prevent a person from being left without social protection, or having double coverage in a cross-border situation. On 13 December 2016, the Commission proposed to update the legislation to facilitate free movement of workers and protect their rights, while reinforcing the tools for national authorities to fight risks of abuse or fraud. The Commission's proposal for a European Labour Authority will complement and facilitate the implementation of the rules on social security coordination to ensure fair labour mobility.

The Commission put forward a proposal for a new directive on work-life balance for parents and carers on 26 April 2017. As one of the key deliverables of the European Pillar of Social Rights, this initiative sets a number of new or higher minimum standards for parental, paternity and carer's leave.

The proposal for a new directive for more transparent and predictable working conditions across the EU, adopted on 21 December 2017, is also part of the follow-up to the European Pillar of Social Rights. The proposal complements and modernises existing obligations to inform all workers of their working conditions.

Read on:

<http://ec.europa.eu/social/main.jsp?langId=en&catId=1226&newsId=9110&furtherNews=yes>

The Council officially confirm the agreement on the rules of posting of workers, ensuring equal pay for equal work at the same place

June 21, 2018

In June 2018, the Employment, Social Policy, Health and Consumers Council, EU Member States reached an agreement on three legislative files which are a cornerstone of building a stronger social Europe: the revision of the rules governing social security coordination, a new work-life balance directive and a directive on transparent and predictable working conditions.

The European Union provides rules on the coordination of social security systems to determine which system a mobile citizen is subject to. The rules prevent a person from being left without social protection, or having double coverage in a cross-border situation. On 13 December 2016, the Commission proposed to update the legislation to facilitate free movement of workers and protect their rights, while reinforcing the tools for national authorities to fight risks of abuse or fraud. The proposal makes a closer link between the place where contributions are paid and where benefits are claimed, ensuring a fair financial distribution of burden between Member States. It updates EU rules in five areas: unemployment benefits, long-term care benefits, access of economically inactive citizens to social benefits and social security coordination for posted workers, as well as family benefits. The Commission's proposal for a European Labour Authority will complement and facilitate the implementation of the rules on social security coordination to ensure fair labour mobility.

The Commission put forward a proposal for a new directive on work-life balance for parents and carers on 26 April 2017. As one of the key deliverables of the European Pillar of Social Rights, this initiative sets a number of new or higher minimum standards for parental, paternity and carer's leave. It follows the withdrawal in 2015 of the Commission proposal for

a revision of Directive 92/85/EEC on maternity leave and takes a broader perspective to improve the lives of working parents and carers.

The proposal for a new directive for more transparent and predictable working conditions across the EU, adopted on 21 December 2017, is also part of the follow-up to the European Pillar of Social Rights. The proposal complements and modernises existing obligations to inform all workers of their working conditions. In addition, the proposal creates new minimum standards to ensure that all workers, including those on atypical contracts, benefit from more predictability and clarity as regards their working conditions. The proposal updates and replaces the 1991 Written Statement Directive (91/533/EEC), which no longer captures changing labour market realities, in particular the new forms of work that have developed in recent years.

Read on: https://europa.eu/rapid/press-release_STATEMENT-18-4222_en.htm

European Reports/Studies

Education and Training 2020 Working group on adult learning publishes final report *August 6, 2018*

Over the last two years, a working group of Member State experts, facilitated by the Commission, has been addressing these topic as part of the Strategic Framework for cooperation on education and training (ET 2020). The role of the Education and Training Working Group on Adult Learning 2016-2018 was to identify policies that promote and support workplace learning of adults. The final report presents the outcomes of its work on areas such as: adults struggling with reading, writing, making simple calculations and using digital tools and adults with medium skills in need of up skilling. This final report identifies key messages for policy development along with case studies to inspire new thinking.

Changing and increasing skills demands, coupled with economic, demographic and technological developments are making it more important than ever for Member States to have in place modern adult learning systems.

All adults, regardless of their level of education or qualifications, need opportunities and incentives to continue learning throughout life, whether it be for maintaining their employability, for fuller participation in our digital society, or for personal fulfilment.

Read on:

<http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=9169&furtherNews=yes>

ILO report on practices in social dialogue in public services in several EU countries

July 19, 2018

The ILO published a report that analyses the regulation and practice of social dialogue in public services within a group of European Union countries. The selection of practices of social dialogue shows how the principles of ILO Convention No. 151 that concerns the protection of the right to organise, and procedures for determining conditions of employment in the public service have been implemented through legislation and/or collective bargaining. According to the introduction of the report, dialogue and bargaining can and should be key contributors to public sector efficiency, performance and equity.

Read on: https://www.ilo.org/sector/Resources/publications/WCMS_634857/lang--en/index.htm

Research on the functioning of decentralized bargaining

July 19, 2018

A critical contribution to Social Europe assesses the mainstream idea shared by international economic institutions that collective bargaining should take place at the level of individual companies. The author concludes that what matters for good labour market performance is not whether collective bargaining takes place at company level but whether there is coordination. Employment rates are significantly higher when trade unions and employer federations manage to align the bargaining agendas of the different negotiating parties upon common objectives (Belgium, Nordics, Germany, Austria and the Netherlands). Also striking is that predominantly centralised collective bargaining systems, even if only weakly coordinated, also show relatively better employment outcomes compared to fully decentralised bargaining.

Read on: <https://www.socialeurope.eu/decentralised-collective-bargaining-oversold>

Comparative report on collective bargaining in the metal sector

July 5, 2018

The SUNI (Smart Unions for New Industry) project intended to explore similarities and differences in the role that trade unions, as relevant stakeholders in industrial innovation and socio-economic transition, are playing in influencing the development of the industry in the countries. A comparative report and four case studies were published, dedicated to the metal trade unions in Germany, Italy, Spain and Sweden, including their bargaining tradition. It is said that the unions' awareness of this era of change and the willingness to proactively participate are a good start, but more effort is needed to integrate their initiatives into a broader framework of co-designed and co-implemented development paths at national, regional and workplace level.

Read on: http://suniproject.adapt.it/wp-content/uploads/2018/07/comparative_report.pdf

ILO report on the extension of collective agreements

July 4, 2018

The ILO published a basic volume on the extension of collective agreements. The different chapters in this volume are about the extension of collective agreements as an act of public policy. According to the authors, many countries make provision for the Minister of Labour, a public agency or the court to extend a collective agreement to all employers and employees that fall within its scope. This is usually demarcated by sector or occupation; sometimes,

especially in respect of non-wage issues, agreements are extended nationwide across sectors. The extension generalises the terms and conditions of employment, agreed between organised firms and workers, represented through their association(s) and union(s), to the non-organised firms within a sector, occupation or territory. It creates a level playing field for firms operating in similar markets. Specific chapters are dedicated to Germany, Portugal, the Nordic Countries, Switzerland and the Netherlands.

Read on: https://www.ilo.org/travail/areasofwork/WCMS_633672/lang--en/index.htm

The labour market in 2017

June 12, 2018

The Eurofound Yearbook 2017 Living and working in Europe has several interesting sections based on the agency's research activities over the course of 2017. The agency sees positive trends in employment, with rising numbers in work and a continued expansion of employment. However, challenges remain with labour markets beset by long-term unemployment, underemployment and high levels of inactivity, and quality of life that in many dimensions is poor within certain population groups. The first chapter (on labour market changes) reiterates that in-work poverty increased during the crisis – 8% of workers were estimated to be at risk in 2007, 2 percentage points lower than in 2014. Depressed wages, cuts in working hours and job losses among earners in a household all exacerbated financial hardship.

Read on:

https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef18007en.pdf

Social dialogue, a 'blind spot'

June 12, 2018

In an overview of corporate social responsibility practices, it is concluded that even though social dialogue is a fundamental right enshrined and promoted by international standards, it still appears as a corporate social responsibility 'blind spot'. This is due to a global lack of company commitment on this issue, as revealed by the overall average score of 25/100 achieved by 2,400 companies under review. Companies headquartered in Europe perform only slightly better than their peers on social dialogue, with an average score of 38/100. The subjects most often addressed in collective bargaining are employee salaries (72% of companies listed in Europe), health and safety conditions (70% of companies listed in Europe), and working hours (64%).

Read on: http://www.vigeo-eiris.com/wp-content/uploads/2018/06/20180612_SF_Dialogue-Social-.pdf?x91198

Pay trends in the public sector

June 10, 2018

A report commissioned by EPSU from the Labour Research Department (LRD) provides an overview of trends in over 40 countries. The main findings of the report cluster countries in five main categories: comparable pay growth interrupted by the crisis (10 countries); lower public service pay growth made worse by the crisis (4 countries); lower public service pay

growth not clearly linked to crisis (3 countries); similar pay growth across the two sectors (12 countries); and faster pay growth in public services (11 countries) - leaving three countries that were hard to classify. The analysis included 24 EU countries and 18 non-EU countries, with several excluded because of lack of data.

Read on:

<https://www.epsu.org/sites/default/files/article/files/LRD%20Public%20private%20pay%20trends.pdf>

Food delivery workers' mobilisations on the rise across Europe

June 9, 2018

Although companies like Deliveroo or Foodora refuse even to recognise them as employees, food delivery riders have taken a lead in organising workers in the European gig economy. Following an extensive overview of different European initiatives in mobilising food delivery workers Jacobin authors argue that the riders' visibility and recognisability allows many precarious workers, whose mechanisms of exploitation and subordination are far less visible, to identify with them thus empowering them as well.

Read on: <https://www.jacobinmag.com/2018/06/deliveroo-riders-strike-italy-labor-organizing>

EU Case Law

Social policy - framework agreement on fixed-term work - non-permanent workers in the public sector - disciplinary dismissal

July 25, 2018

Judgment of the Court of Justice of 25 July 2018, C-96/17, Gardenia Vernaza Ayovi v Consorci Sanitari de Terrassa

Facts

Ms Gardenia Vernaza Ayovi was a nurse and worked for the Consorci Sanitari de Terrassa (Health Consortium, Terrassa, Spain) under a non-permanent employment contract. In July 2011 she was granted leave on personal grounds. When she asked to be reinstated, the Consorci Sanitari de Terrassa offered her a part-time job. Refusing to accept any job that was not a full-time position, she did not turn up for work and was the subject of a disciplinary dismissal on that ground in July 2016. Ms Vernaza Ayovi there upon brought proceedings before the Juzgado de lo Social n.º 2 de Terrassa (Social Court No 2, Terrassa, Spain) seeking a declaration that her dismissal was wrongful and an order requiring her employer either to reinstate her or to pay her the maximum amount of compensation available in law for wrongful dismissal. In this regard Ms Vernaza Ayovi relies on ordinary employment law. However, by virtue of a distinction made in Spanish legislation, when the disciplinary dismissal of a permanent worker (permanent contract agent) in the service of a public authority, who does not have the status of an official, is declared to be wrongful, the worker in question must be reinstated, whereas, in the same situation, a non-permanent worker (an employee employed under a non-permanent contract of indefinite duration or a temporary contract) performing the same duties as that permanent worker need not be reinstated but instead may receive compensation. The

Spanish court asks the Court of Justice whether EU law, and, in particular, the framework agreement on fixed-term work, precludes that legislation. In respect of employment conditions, the framework agreement provides that fixed-term workers must not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation, unless different treatment is justified on objective grounds.

Considerations European Court of Justice

By this judgment, the Court holds that the framework agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, does not preclude the Spanish legislation at issue. The Court finds that there is a difference between the treatment of permanent workers and that of non-permanent workers with regard to the consequences arising from possible wrongful dismissal. Therefore, it is necessary to ascertain whether there is an objective ground justifying that difference in treatment. In that regard, the Court notes that the general rule applicable in Spain in the event of wrongful or unlawful dismissal provides that the employer choose between reinstating the worker in question and granting that worker compensation. By way of exception to that general rule, permanent workers in the service of the public authorities whose disciplinary dismissal has been declared wrongful must be reinstated. The Court takes the view that such a difference in treatment cannot be justified by the public interest which attaches, in itself, to the methods of recruitment of permanent workers. However, the Court finds that considerations based on the characteristics of the law governing the national civil service, such as impartiality, efficiency and independence of the administration, which imply a certain permanence and stability of employment are capable of justifying such a difference in treatment. Those considerations, which have no counterpart in ordinary employment law, explain and justify the limitations on the power of public employers to terminate employment contracts unilaterally and, as a consequence, the national legislature's decision not to grant them the right to choose between reinstatement and compensation for harm suffered by reason of wrongful dismissal. Consequently, the Court finds that the automatic reinstatement of permanent workers takes place in a significantly different context, from a factual and legal point of view, to that in which non-permanent workers find themselves. The Court concludes from this that the unequal treatment found to exist is thus justified by the existence of precise and specific factors, characterising the employment condition to which it relates, in the particular context in which it occurs, and on the basis of objective and transparent criteria.

The framework agreement on fixed-term work does not mean that non-permanent workers in the Spanish public sector must be guaranteed reinstatement in the event that their disciplinary dismissal is found to be wrongful. In accordance with ordinary law, the employer may in such a case choose between reinstating and compensating the worker. The different treatment accorded to permanent workers, who must be reinstated, is justified by the guarantee of permanence of employment that permanent workers alone enjoy under the national law governing the civil service.

Ruling

Clause 4(1) of the framework agreement on fixed-term work concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, according to which, when the disciplinary dismissal of a permanent worker in the service of a public authority is declared wrongful, the worker in question must be reinstated, whereas, in the same situation, a worker employed under a temporary contract or a

temporary contract of indefinite duration performing the same duties as that permanent worker need not be reinstated but instead may receive compensation.

Read full text on:

<http://curia.europa.eu/juris/document/document.jsf?jsessionid=F2C5E4C2D6B17F30E8898E06E36C806D?text=&docid=204393&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4750191>

Transfers of undertakings — Safeguarding of employees’ rights — Prohibition of dismissal by reason of transfer — Exception — Dismissal for economic, technical or organisational reasons entailing changes in the workforce

August 7, 2018

Judgment of the Court of Justice of 21 March 2018, Case C-472/16, Jorge Luís Colino Sigüenza v Ayuntamiento de Valladolid and Others

Facts and the questions referred for a preliminary ruling

This request for a preliminary ruling concerns the interpretation of Article 1(1) and Article 4(1) of Council Directive 2001/23/EC 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 and of Article 16 of the Charter of Fundamental Rights of the European Union. The request has been made in proceedings between Mr Jorge Luís Colino Sigüenza and the Ayuntamiento de Valladolid (municipal administration of Valladolid, Spain), In-pulso Musical SC, Mr Miguel del Real Llorente, Administrador Concursal de Músicos y Escuela SL, and Fondo de Garantía Salarial (Fogasa) (Wages Guarantee Fund), concerning the lawfulness of Mr Colino Sigüenza’s dismissal under a collective dismissal procedure.

Mr Colino Sigüenza was employed as a music teacher at the Municipal Music School of Valladolid (Spain) (‘the School’) from 11 November 1996. Originally, that school was directly managed by the municipal administration of Valladolid and Mr Colino Sigüenza was initially employed by the administration. From 1997, the municipal administration of Valladolid stopped managing the School directly and put out a series of calls for tenders for its management. The contractor designated after those successive procedures was, without interruption from that time until 31 August 2013, Músicos y Escuela, which carried on the business of the School, managing the premises, facilities and instruments necessary to the provision of that service. Músicos y Escuela also took over some of the workers who had been employed by the municipal administration, including Mr Colino Sigüenza. That activity continued to be regarded as a service offered to citizens by the municipal administration of Valladolid as the Municipal School of Music.

Due to a reduction in the number of students of the Valladolid Municipal Academy of Music in the 2012-2013 school year, the sums paid by students for that service were no longer commensurate with the amounts to be paid by the municipal administration of Valladolid under the contract concluded with Músicos y Escuela, which led the latter to claim the sum of EUR 58 403.73 in respect of the first term of that school year and EUR 48 592.74 in respect of the second term thereof from the administration.

Since the municipal administration of Valladolid refused to pay those sums, on 19 February 2013 Músicos y Escuela requested the termination of the service contract on the ground of the administration’s non-performance and claimed corresponding damages. In response, in

August 2013, the municipal administration terminated the contract, alleging wrongful conduct by Músicos y Escuela as it had ceased its activities before the contractual end-date. The case was brought before the Sala de lo Contencioso-Administrativo of the Tribunal Superior de Justicia de Castilla y León (Administrative Chamber of the High Court of Justice, Castilla y León, Spain), which, by a number of final judgments delivered during 2014 and 2015, decided, firstly, that the municipal administration of Valladolid had breached the contract concluded with Músicos y Escuela, in so far as it provided for a guaranteed income irrespective of the number of students enrolled and that, by failing to comply therewith, the municipal administration had itself prevented Músicos y Escuela from continuing its activities, thus justifying the termination of that contract on the grounds of the wrongful conduct of the municipal administration. Secondly, since Músicos y Escuela has not fulfilled its obligations by having decided unilaterally to cease its activities on 31 March 2013, the damages which it sought were refused.

In the meantime, on 4 March 2013, Músicos y Escuela had commenced the negotiation and consultation period necessary to the collective dismissal of its entire staff due to the economic situation resulting from the conflict with the municipal administration of Valladolid. On 27 March 2013, in the absence of any agreement with the employees' representatives, Músicos y Escuela took the decision collectively to dismiss all the staff. On 31 March 2013, Músicos y Escuela ceased its activity and, on 1 April, returned the premises, instruments and facilities for the operation of the Municipal School of Music, the management of which had been entrusted to it, to the municipal administration of Valladolid. On 4 April 2013, Músicos y Escuela sent a letter of dismissal to all its staff, including Mr Colino Sigüenza, with effect from 8 April 2013. That company was declared insolvent on 30 July 2013.

Since the representatives of the Músicos y Escuela workers are alone permitted, under the Law on the organisation of labour and social courts, to bring an action in respect of a collective dismissal, they appealed against the collective dismissal decision before the Sala de lo Social de Valladolid of the Tribunal Superior de Justicia de Castilla y León in Valladolid (Valladolid Social Chamber of the High Court of Justice, Castilla y León, Spain) which, by decision of 19 June 2013, dismissed the appeal. The workers' representatives appealed against that decision before the Tribunal Supremo (Supreme Court), which, by a judgment of 17 November 2014, also dismissed their appeal.

In the meantime, in August 2013, the municipal administration of Valladolid assigned the management of the Municipal Music School to In-pulso Musical and gave it, as it had done with Músicos y Escuela, the use of the premises, instruments and equipment necessary to that end. In-pulso Musical started its activities in September 2013 for the 2013-2014 school year. Following a new tendering procedure, the municipal administration of Valladolid again awarded that contract to In-pulso Musical for the 2014-2015 and 2015-2016 academic years. That company has not hired any of the employees who previously worked in the Municipal School of Music and who were collectively dismissed by Músicos y Escuela.

Mr Colino Sigüenza brought an individual action before the Juzgado de lo Social No 4 de Valladolid (Social Court No 4, Valladolid, Spain) against Músicos y Escuela, the municipal administration of Valladolid and In-pulso Musical to challenge his dismissal. By a judgment of 30 September 2015, that court dismissed the action brought by Mr Colino Sigüenza on the ground that the authority of res judicata attaching to the judgment of the Tribunal Supremo (Supreme Court) of 17 November 2014, which dismissed the action against the collective dismissal brought by the workers' representatives, binds it as regards the individual action

brought by the person concerned against his dismissal, despite the fact that he was not, as an individual, a party to the proceedings which gave rise to that judgment. In addition, the Juzgado de lo Social No 4 de Valladolid (Social Court No 4, Valladolid) considered that In-pulso Musical had not succeeded Músicos y Escuela as Mr Colino Sigüenza's employer, since nearly five months had elapsed between his dismissal and In-pulso Musical's taking over the management of the Municipal School of Music. Mr Colino Sigüenza appealed against that decision before the referring court, the Tribunal Superior de Justicia de Castilla y León (High Court of Justice of Castile-Leon). That court is doubtful, firstly, as to whether the temporary interruption, by Músicos y Escuela, of its services between 1 April 2013 and early September 2013, the date at which the management of the Municipal School of Music was taken over by In-pulso Musical, precludes the establishment of a 'transfer' of undertaking or business within the meaning of Article 1 of Directive 2001/23 and, secondly, whether, in a situation such as that before it, the application of the national legislation on the force of res judicata has the effect of infringing Mr Colino Sigüenza's right to an effective remedy.

In those circumstances, the Tribunal Superior de Justicia de Castilla y León (High Court of Justice of Castile-Leon) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) 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 Municipal Music School, which receives all the material resources from that Municipality (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 2012/13, 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 Municipality (premises, instruments, classrooms, furniture)?

(2) If the answer to the first 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 Municipality) 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 employees 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?

(3) If the reply to the second 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 an employee who challenges his dismissal in an individual action, as part of a collective dismissal, in order to defend the rights deriving from 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 statutory representatives of the employees were able or could have been to be parties?’

Ruling

Article 1(1) of Council Directive 2001/23/EC 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 a situation, such as that at issue in the main proceedings, where the successful tenderer for a service contract for the management of a municipal school of music, to which the municipal administration had supplied all the means necessary for the exercise of that activity, ceases that activity two months before the end of the current academic year, proceeding to dismiss the staff and returning those material resources to that municipal administration, which conducts a new tendering procedure solely for the following academic year and provides the new contractor with the same material resources, is capable of coming within the scope of that directive.

It should be noted, first of all, that in a situation such as that at issue in the main proceedings, the material resources, such as musical instruments, facilities and premises, appear to be essential to the conduct of the economic activity in question, relating to the management of a School of Music. In the present case, it is common ground that the municipal administration of Valladolid has made available to the new contractor all the material resources which it had assigned to the former contractor.

It follows that an interpretation of Article 1(1)(b) of Directive 2001/23 which excludes from the scope of that directive a situation in which the tangible assets essential to the performance of the activity in question have always been owned by the transferor (the local authority of Valladolid) would deprive that directive of part of its effectiveness (see judgment of 26 November 2015, *Aira Pascual and Algeposa Terminales Ferroviarios*, C-509/14, EU:C:2015:781, paragraph 40).

Furthermore, it is clear from the case-law of the Court that a temporary suspension, of only a few months, of the undertaking’s activities cannot preclude the possibility that the economic entity at issue in the main proceedings retained its identity and that there was therefore a transfer of undertaking within the meaning of that directive (see, to that effect, judgment of 9 September 2015, *Ferreira da Silva e Brito and Others*, C-160/14, EU:C:2015:565, paragraph 31).

3. Article 4(1) of Directive 2001/23 must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, where the successful tenderer for a service contract for the management of a municipal school of music ceases that activity two months before the end of the current academic year, proceeding to dismiss the staff, the new contractor taking over the activity at the beginning of the next academic year, it appears that the dismissal of the employees was made for ‘economic, technical or organisational reasons entailing changes in the workforce’, within the meaning of that provision, provided that the circumstances which gave rise to the dismissal of all the employees and the delayed appointment of a new service provider are not a deliberate measure intended to deprive those employees of the rights conferred on them by Directive 2001/23, which it will be for the referring court to ascertain.

Read the full judgment on:

Events of the Project

- **The seminar: *European Labour Law Perspectives – Enhancing the Social Pillar***, took place at the University Carlos III-Madrid on 18 & 19 January 2018, Madrid, Spain. The recordings of the presentations at this Jean Monet Seminar are available at the following links:

-
1. https://arcamm.uc3m.es/arcamm_3/item/show/5fd5d75416103ff3185db4aab0b7c357
 2. https://arcamm.uc3m.es/arcamm_3/item/show/a7262a469e9bff226605a8bc26a9b6b0
 3. https://arcamm.uc3m.es/arcamm_3/item/show/ea080356e304ed054ce60a231b0d7006
 4. https://arcamm.uc3m.es/arcamm_3/item/show/fb3050d315154d8ffe923d28d8107e18
 5. https://arcamm.uc3m.es/arcamm_3/item/show/6220166b54f76e83283bdfd1985bdc04
-

- **The summer Course: *European Labour Law Perspectives – Enhancing the Social Pillar***, was held on 20-22 June 2018 at the Law Faculty - University of Amsterdam, the Netherlands. Venue: Nieuwe Achtergracht 166, 1018 WV, Amsterdam.

This course aimed at keeping employment specialists and labour law practitioners up -to -date by providing an overview of the latest policy developments, legislative initiatives and case law in the field of EU labour law.

Key topics discussed

The European Pillar of Social Rights

Workers protection in insolvency proceedings

Labour law and the on-demand economy

EU social security law

Update on the revision of the Posting of Workers legislation

Temporary agency work and flexible employment

Working time Directive

Workers involvement in the undertaking

EU Antidiscrimination Law and protection of atypical workers (fixed-term contracts, part-time workers), discrimination on grounds of gender, religion and age at work, etc.

Other recent legislative and policy developments at EU level: work -life balance and proposal on a Directive on transparent and predictable working conditions.

This conference is aimed at academics, lawyers specialised in employment and labour law, and other legal practitioners.

Keynote speakers

Prof. dr. Catherine Barnard

Prof. dr. Anthony Kerr

Prof. dr. Frank Hendrickx

Prof. dr. Manfred Weiss

Prof. dr. Jaap van Slooten

Prof. dr. Evert Verhulp

Prof. dr. Mies Westerveld

Prof. dr. Auke van Hoek

The recordings of the presentations at this Jean Monet Summer School are available at the following link: <https://aias-hsi.uva.nl/en/projects-a-z/jean-monnet-eusocp/multimedia/multimedia.html>

Disclaimer excluding Commission responsibility

This communication related to the Jean Monnet action EUSOCP is made by the beneficiaries and it reflects only the author's view. The Commission is not responsible for any use that may be made of the information it contains.