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Judgment of the Court in Joined Cases C-583/21 to C-586/21 | NC (Transfer of a Spanish notary's office)

A change in the holder of a Spanish notarial practice may constitute a transfer of an undertaking

Four employees of a notarial practice situated in Madrid (Spain) have requested a court in Madrid to declare that their dismissals by the new holder of that practice are unlawful. According to the Madrid court, the employees were uninterruptedly employed by the notaries who succeeded each other in the practice. The new notary justified their dismissal on the ground that they had not passed their probationary period.

The employees also request the court for their seniority to be calculated, for practical purposes, from the date on which they began working at the practice. The holding notary, on the other hand, takes the view that their seniority did not begin to run until the date on which the employment contracts were concluded with him.

The Madrid court asks the Court of Justice whether, in the light of the specificities of the Spanish notarial profession, the **Directive on the safeguarding of employees' rights in the event of transfers of undertakings**¹ is applicable to this situation.

The Court considers, subject to verification by the Madrid court, **that Spanish notaries, despite the fact that they are public officials, engage in an economic activity within the meaning of the directive.** They offer their services to clients in return for remuneration in conditions of competition. They cannot therefore be regarded as public administrative authorities.

As far as the existence of a transfer is concerned, the Court notes that the change in the holder of a notarial practice must be treated in the same way as a **change of employer**, a circumstance in which the directive protects employees by safeguarding their rights, and **despite inter alia the fact that Spanish notaries become the holders of a practice by reason of their appointment by the State.**

Moreover, a **change of holder does not necessarily involve a change in the identity of a notarial practice.** The retention of that identity is precisely the **decisive criterion** for establishing whether there is a **transfer** for the purposes of the directive.

The Court emphasises that **the activity of a notarial practice is based essentially on its manpower**, such that it is capable of **retaining its identity** after it has been transferred **if a major part of the workforce is taken over** by its new holder, enabling the new holder to continue the activities of the notarial practice. According to the Court, **that appears to be the case here**, since the new holder carries out the same activity as his predecessor and has taken over an essential part of the staff who were employed by him. He has also taken over the equipment and the premises of the practice, becoming the custodian of the documents which are stored there. **It is for the Madrid court to determine whether that is indeed the case.**

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the

validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text and, as the case may be, an abstract](#) of the judgment are published on the CURIA website on the day of delivery.

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1 [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.