

The Transfer of undertakings, outsourcing and protection of employees

Abstract

The subject of this thesis is the analysis of labor issues due to transfers of undertakings. The discipline is included in art. 2112 of the civil code which, differently to the general discipline concerning contract transfers, provides for employment relations to automatically continue with the new enterprise owner, regardless of the single employees' consent.

The first section includes an analysis of the objectives variation of art. 2112 c.c., following a retracement of the evolution of the transfer of undertakings discipline, together with the different techniques used by the Italian legislator, also with reference to European Union Law.

The manner in which the Italian legislator identified a specific and labor law notion of transfer of undertaking has also been emphasized.

Successively, the transfer of undertakings (and especially the transfer of a part of undertaking) has been analyzed within the scope of the more general phenomenon of outsourcing and disarticulation of productive processes.

There is also an assessment concerning the safeguarding of the employees involved in the transfer. Moreover, careful attention has been given to the most recent judicial issues concerning the transfer of undertakings, in particular in relation to the "interesse ad agire", the accepting of the transfer "*per facta concludentia*", the transfer of undertakings in fraud of the law, and to the hypothesis in which a collective dismissal occurs during a collective dismissal.

Furthermore, there is a brief analysis of the procedures that must precede transfers of undertakings, disciplined by art. 47 of law 428/90 – which also introduced procedural limits to the powers of employers in the transfer of undertakings field – and to the problems related to the transfer of undertakings in an economic crisis, especially in relation to the issues concerning the implementation of European Directives and the statements of the Court of Justice, which sanctioned Italy due to contrasts between its national law and European regulations.

Finally, the last chapter refers to the Spanish discipline of the transfer of undertakings, together with its comparison to Italian discipline.