"THE PROTECTION OF THE EMPLOYEES

in the event of transfers of undertakings in European and Greek Labour Law"

- comparison between the two legal classes -

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Preface

The undertakings' transfer in different forms (e.g. buying out, incorporation, sucking out, merger, restore e.t.c) is one of the cases, where the enterprising action "creates" a field of intense risk concerning the interests of transferred firm's employees, and actually, on the sore point of the existence and the content of their individual labour relations.

The interest of the business's two bearers (businessmen – employers), the new and the previous one's, to "get rid of" the firm's employees' by dismissing them, or reducing the firm's expenses changing "harmful" against the work – force the existing work terms, consists a risk from which the employees must "arm" themselves.

This research addresses to scientists who are occupied with the study of the human relations at work (labour relations), and specifically with the business transfer consequences on the individual labour relations, the rights and obligations of employees and businessmen – employers. It also addresses to businessmen – employers, future businessmen – employers and employees of businesses.

It searches the labour terms that are valid in an economical unity (undertaking or business) – private or state – which employs employees and becomes merged, sold, re – organized or restored.

It was designed based on the fact, that in Greek and foreign bibliography there aren't any equivalents works to collect all the subjects that refer to the institution of the businessman's – employer's change or the business transfer, as an expression of him. This ascertainment has led to a gathering of these subjects in order to take place a systematic elaboration of this institution, as a special enterprising and legal phenomenon, so as to be collected, systematized and presented, as a total, the most important of the existed problems, and also, to be defined the position and the purpose of this concrete institution within the contemporary business environment.

Executive summary

The increased frequency of the references from both academics and practitioners, about the importance of human resources'- employees' in the development and competitiveness of the contemporary business, is not just a "new philosophy" of management. At a very first sight, the business' human resources are the work - force that is occupied with different types of labour's contracts. In fact, they constitute the total "human capital", which is a definite asset of the business. This non – tangible asset, which most of the time is not reported in academic reports, includes the talents, the knowledge, the abilities and the energy of its people - employees. They create and maintain the firm's image and value in the market [Storey, (1992), (1995]. In the last decade a plethora of examples concerning big, middle, and small business, show that the firm's human resources can make the positive difference on its efficiency and competitiveness [Bratton / Gold, (1999), Legge, (1995), Storey, (1992), (1995)]. In the concept of the "human resources", or according to another phrasing, the "human means" as business elements, it also includes the "depended" labour's relations, which connect the business with its employees, and the salaried persons' employment itself, as well [Douka, (1992), (1997), Lixouriotis, (1993)].

The maintenance or cancellation of the existing labour relations of the employees' in case that the undertaker – employer changes, due to the business's transfer, belongs to the fundamental issues of the labour law [Levendis (1989), (1993)], central concept of which is the "depended" labour that is offered by the employee to the service of another person, the employer's, who uses it and controls it within a particular lawful relation that is called labour contract. [Barnard (1996)].

Given that during the last years the undertakings transfers in different forms (e.g. buying out, incorporation, sucking out, merger, restore e.t.c), rise constantly, because of technology's changes and globalization's, the solution to this issue affects greatly the interests of the employees, mainly the protection of their working position and the safeguarding of its content, namely the terms of the labour contract. But it also, affects the employers' interests, such as the maintenance of the business' function in the event that its bearer (the undertaker – employer) changes, or the facilitation of the economical – technical alterations' application in the business by permitting in this way the immediate continuation of its function [Zerdelis (1996), Trandas (1999)]. The legal confrontation of similar situations is remarkably important. And this happens not only because of their frequency nowadays. The ultimate point, which characterizes the great importance of the problems, created in these cases, is the unfavorable position at which the employees may stand (therefore employees are regarded as a "weak" part). There are cases however, where the company itself, is the weak part, because the human resources – employees are regarded as a determinative point of the business. [De Groot (1993), Douka (1997), Iliopoulos (2000)].

The subject of the present research is the study, in the light of the European and Greek labour law, of the institution of the employer change in its most important manifestation, the undertaking's transfer. Furthermore, the present research examines the consequences of the existing legal framework on the individual labour relations, on the rights and obligations of the employees and the employers. Also, through the examination of the legislative regulations of national and European (or Communal) origin a comparative inspection of the two legitimate classes, the European and the Greek one's is attempted, with regard to all the partial issues that are connected with the subject of the employees' rights protection in the event of transfer of undertakings.

The research attempts to give answers to following research questions-objectives:

- 1. how it is legislatively defined by the European (or Communal) and Greek labour law the protection that is provided to the employees of the transferred firm;
- 2. when does the undertaking transfer and consequently the undertaker's employer's change

take place;

3. what are the rights and obligations of the employees and employers, in case that the undertaking is transferred;

Within this introduction and with regard to the complete understanding of the problem that comes up in similar cases, it isn't sufficient only to mention the facts of the Greek labour law. The European (or Communal) legislator's intervention makes, also needful the investigation of the contribution of the Communal lawful class to the examined issue. So, since economic trends are bringing in their wake, at both national and Community level, changes in the structure of undertakings, there is a need to provide for the protection employees in the event of a change of employer, and in particular to ensure that their rights are safeguarded. For this reason, the European Community, within its activity on the labour law field, regulated for the very first time in 1977 with the Directive 77/187 the issue of the employees' safeguarding in case that the undertaking or the business is transferred. In Greece, which in the meantime had become member of the European Communities since 1.1.1981, this Directive has been converted into internal law in 1988 with the Presidential Decree 572/1988 [(Travlos - Tzanetatos (1995)]. Basic principle of the existing legislative rules in Communal and national level as well, is that: the business' transfer does not constitute grounds for individual or massive dismissals, which may only take place for economic, technical or organizational reasons and the employer is regarded as having been responsible for termination of the employment of the work - force [Kamenopoulos (1996), (1998), Kravaritou -Manitaki (1990)].

During the research included:

- **I**. Investigation of relative legislation and the identification of the Communal Directive 77/187 and the Presidential Decree 572/1988 in order to provide answers to the first researching question: how it is legislatively defined by the European (or Communal) and Greek labour law the protection that is provided to the employees of the transferred firm;
- II. Examination of totally "124" judicial decisions (legitimate or nomology) and more specially on the inquisition of "37" judicial decisions of the European Communities' Court and "87" decisions of the Greek courts of every judicial level, which were pronounced between the years 1983 2001 and refer to the examined institution of the undertaking's transfer and the change of the businessman employer. The study of this data has given answers to the second and third researching questions in relation to: when does a business transfer take place; and, what are the rights and the obligations of the employees and the employers in case of business transfer;
- III.Collection of qualitative data through "face to face" structured interviews, which aimed to enrich more the research, and to examine in practice the functionality and effectiveness of the provided legislative protection to the employees of the transferred businesses in Greece. Four "experts" (two supreme judges, one full professor o the labour law in the Law School of the Trace University and one lawyer) gave their personal opinions and experiences to the common for all the asked persons "open" questions of the interviews.

The main results of the research can be collected as follows:

- Nowadays, it is really clear in relation to a many facets changing economy, that the social and economic concept of employment, acquires a whole new approach. The intense international competition and the constant reorganization of the enterprises, brigs out the need of the labour terms' "harmful" change against the employees. Fundamental expression of this fact is the consideration that business's transfers are a matter of legislative regulation in relation to the protection of the employees' rights.
- Main purpose of the relevant legislation is the safeguarding of the employees' position and their working terms in case that the undertaking is transferred. More specifically, the transfer of an undertaking, doesn't actually affect the labour relations of the employees within the

- transferred firm. The business protection doesn't consist a goal in existing legislation.
- More particularly, referring to the examined institution of the undertaking's transfer and the employer's change, we conclude that we talk about a business transfer, when the business is transferred by the previous employer to the new one as an organized total or partial elements (installations, technical means, personnel, unsettled contracts, customers, reputation, know how e.t.c.). The same term it refers the *outsourcing or contracting out*, as a special form of business transfer.
- In the event of transfers of undertakings the employees' representatives' intervention to the by the law predicted procedure of the deliberation, which consists part of the business transfer proceeding, should be essentially more powerful and effective. At the point that this procedure has as a main pursuit to find the best possible solution for the employees' protection issue in every special case where there are economical problems and technical reorganizing within the business, it should be given the employees' representatives the possibility and the means to contribute at this level. And this, because when the employees' participation to the enterprising decision making is enforced, they are controlled more effectively and they are also reduced the enterprising practices that lead to unfavorable consequences for the work force within the transferred undertakings.
- At the end, through the comparative examination of the European and Greek legislation they were gathered some remarks and conclusions:
- a. Aim of both regulations is the protection preservation of the employees' rights in the event of transfers of undertakings.
- b. The way of achieving this protection is the legal obligatory labour relation's transfer from the previous to the new employer.
- c. The rules that come from the European Community increase the protection provided by the national rules prohibiting the employee's dismissal for reasons connected to the business' transfer and expanding their regulations on subjects of collective labour relations and participation of the work force to the transfer's procedures, through the institution of deliberation between the social parts (employers and employees).

Recommendations for businessmen – employers, future businessmen – employers and employees of business - Proposals for future research

In the contemporary businesses it hasn't become understandable yet that the "simple" dismissals of the employees aren't the "easy solution" for the undertakings that move on to reorganizing, mergers, transfers, or even for those that face economic problems. In these cases the employers make their decisions aiming to strengthen the competitiveness of the business or its economical recovery. It is quite better, for the business to include the issue of saving the labour relations in this concrete schedule or re-organizing or transfer, rather than letting the option of the working positions' issue to consist a "by chance" or "occasional" problem which is faced "ad hoc" at the last moment having as a result the undermining of the attempt for the business recovery. In these cases the employees' representatives' intervention to the by the law predicted procedure of the deliberation, which consists part of the business transfer proceeding, should be essentially more powerful and effective. It is a matter of future research to be found in which practical way it is possible, firstly at a branches' level, and secondly at the firm's level, to avoid undesirable decisions for dismissals of their work – force. Questions, like: "is it better to have the State cover the training cost of the firms' work - force or to be subsidized the existed way of its operation and for how long;", or "with what criterions is approved the foundation and operation of a new business activity; It is adopted the State's role, according to the liberal perception, where the law of the offer and the demand shows the viable activities and these that really satisfy needs or it is adopted the State's role, as "Manager of the Information", that informs – doesn't prohibit – for the real offer and demand and the market's conditions, as these are formed within the internationalized economy.

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The views and reviews presented in the dissertation are mostly views and opinions of the researcher, based on personal research and professional experience and do not depict institutional or counties' views or views of the institutions that the researcher are associated with.

	LIST OF CONTENTS	
	P	ages
I	Preface	2
I	Executive summary	3
	PART ONE	
The posi	ition of the institution of the employees rights protection in the event of	f transfers of
unde	ertakings in European and Greek labour law, and in the contemporary	business
	environment	
	CHAPTER FIRST	
	The problem, its importance and its examination method	
	I. Introduction and literature review	
1.	Project background	13
2.	Aim of research	16
3.	Objectives of research	16
4.	Hypothesis of research	17
5.	Terminology of research	17
6.	Terminology of the Communal Directive 77/187: basic concepts	19
7.	Structure of dissertation	20
	II. Research's methodology	
1.	Introductory remarks	22
2.	Definition of researching tools	22
3.	Sample definition and process of researching data collection	23
3.1	The data	23
3.2	A critical review of the legislation and the legitimate or nomology, as	
	research approach and their link to the purpose of the present research	25
3.3	Qualitative data: the qualitative research interviews	26
3.3	.1 A critical review of the qualitative research interviews, as research	

approach and their link to the purpose of the present research

26

3.3.2	Type of interviews	28
3.3.3	Approach to recording the qualitative data – informations	28
3.3.4	The content of the questions	28
3.3.5	Using the existing theoretical framework as strategy for qualitative	
	analysis	29
3.4 M	lethodology of interpretation of the relevant legislative rules	29
4. Ad	dditional researching sources	29
5. Re	esearch design	30
	CHAPTER SECOND	
7	Transfers of undertakings – Alteration of the employment terms – Safegue	arding of
	employees' rights	
1 Int	troductory remarks. – Globalisation of the economy, international	
	mpetition and transfers of undertakings	32
	e contemporary business' physiognomy: the business as stockholder	32
	takeholder –community of interests between employers and employees?	33
	e firm's transfer and the labour terms' change	
	. The reduction of the working cost as a factor of changing the	37
3.1	employment terms'	40
	employment terms	10
	CHAPTER THIRD	
	The strategic importance of the human recourses – employees in the ent	erprise
1. A n	ew trend of management;	42
2. Wh	at's the Human Resources Management	42
3. "Of	ficial" and "Common" Human Resources Management	43
4. The	Human Resources Management in Big or Small Businesses	43
5. Hu	man Resources Management in a labour market that changes	44
6. Hu	man Resources Management: from minimum to maximum	45
7 Fin	al remarks	45

CHAPTER FOURTH

The aim pursued by the examined institution and the right of the enterprising action

The need of limiting the right

1. Aim: The working position's protection	
2. The business protection doesn't consist the examined institution's goal	,
3. The observed institution and the right of the enterprising action)
CHAPTER FIFTH	
The legislative regime of the rights' protection of the employees in case of a firm's transfe	r
1. The rules that compose the examined institution	l
2. The Communal law. – The history of the Communal regulations for the	
protection of the employees rights during the transfers of firms	1
3. The national law. – The Greek legislation of harmonization with the Directive	
77/187/EEC. – The Presidential Decree 572/1998	3
4. A first comparative inspection of the two lawful classes 54	1
CHAPTER SIXTH	
Field and presuppositions of application of the protective regulations the European a	nd
Greek labour law's in case of the firm's transfer, in favour of the employees	
1. The Directive 77/187/EEC: Basic concepts	55
2. The concept of "transfer"	55
3. The presupposition of the transfer or merger. Meaning – Cases	56
4. The preservation of the firm's "entity", as a term for the transfer's existence	56
5. The preservation of the firm's "identity" as a term for the transfer's existence	57
6. The Directive's application on the public sector – Cases of application	58
7. The "outsourcing" or "contracting out" as a form of business' transfer	59
7.1. The concept of the "outsourcing" or "contracting out" – Differentiations	59

CHAPTER SEVENTH

The consequences of the rules that govern the firm's transfer

The employees' rights and the previous and new businessman's – employer's obligations

2.	Protected employees by the Directive's 77/187/EEC regulations	62
3.	The meaning of the "dismissal" caused by the firm's transfer	63
	3.1. The dismissals for economical – technical reasons	66
4.	The security of the employees' existed claims	66
5.	The preservation of the employees' rights	67
	5.1. Preservation of rights arisen from the individual work contracts	67
	5.2. Cases of maintained rights	67
	5.3. The obligation of the rights' announcement	68
	5.4. The terms' maintenance of the collective labour contracts	69
6.	The principle of the equal treatment between the salaried persons of the transferred	
	business and the new employer's personnel	69
7.	Information and deliberation	70
	7.1. The employees' information obligation	70
	7.2. The information's obligation in case of the employees' representatives' absence	71
	7.3. The deliberation's procedure between employers and employees	71
	7.4. Information and deliberation in business groups	72
	7.5. Obligations' restriction only in enterprising units, where exists legal possibility	
	for labour representation	72
8.	Application's measures – Sanction	72
	CHAPTER EIGHTH	. 1
F.	An economical observation of the firms' transfer – co operation and the effects on the la relations	юои
1.	Introductive comments	74
2.	Forms of businesses' transfer – co operation	74
3.	How the economical theories interpret the phenomenon of the firms' transfer -	
	co operation	75

4.	It is efficient and necessary presupposition for the firms' transfer – co-operation	
	their will to maximize their profits, to bring the managers forward their personal	
	ambitions and form the market and all the above are valid, if the real subject of the	
	productive procedure of every firm corresponds to the market's real needs'	
	satisfaction	
5.	Conclusions	
	PART TWO	
	The protection of the employees' rights in the event of transfers of undertakings,	
	according to the Court's of the European Communities recent legitimate and the	
	legitimate of the Greek courts	
	CHAPTER NINTH	
	The cases: "Transfers of undertakings and outsourcing or contracting out"	
1.	Basic principles of the Communal and Greek legitimate in relation to the	
	examined institution	30
2.	The cases: "Transfers of undertakings and outsourcing or contracting out"	1
2.1	1 Introduction 8	31
2.2	2 Remarkable cases of outsourcing	31
2.2	2.1 The case of "functions' sequence"	31
2.2	2.2 The case of "assignments' sequence"	2
2.2	2.3. The "Albert Merchx" case	3
2.2	2.4. The 3404/1991 case about the transfer of know – how	5
3.	Deductive remarks	6
	CHAPTER TENTH	
	Comparison between the two lawful classes	
1.	Introductory remarks	8
2.	Innovation introduced into the Greek law by the Directive 77/187 through	
	the Presidential Decree 572/1988	8
3.	The favourable for the employees use of the Directive's distinctive facility	8

4. Conclusions from the comparative inspection between the two lawful classes
CHAPTER ELEVENTH
1. Final conclusions – Proposals for future research – Perspectives
2. Recommendations for businessmen – employers, future businessmen employers
and employees of businesses
3. Epilogue
CHAPTER TWELFTH
Reflection on learning
Bibliographical References
Additional Bibliography
LIST OF APPENDICES
Appendix I: The text of the Communal Directive 77/187
Appendix II: Table of decisions (nomology) of the European Community Court
in connection with the examined institution
Appendix III: Table of decisions (nomology) of the Greek Courts
in connection with the examined institution
Appendix IV: The qualitative research interviews
Appendix V: Publications of the European Commission in relation
to the examined institution
Appendix VI: Basic rudiments of the Greek firms that have realized massive
dismissals and the reasons that have imposed these dismissals,
according to the study of the National Labour Institute

PART ONE

The position of the institution of the employees rights protection in the event of transfers of undertakings in European and Greek labour law, and in the contemporary business environment

CHAPTER FIRST

The problem, its importance and its examination method

I. Introduction and literature review

1. Project background

In the contemporary market conditions, as they are formed within the internationalized economy, the undertaker's – employer's options on the field of his enterprising actions and the economical nature's result of the firm's course, affect directly the individual and collective working interests of the whole "human capital", namely the employees' who are occupied in the firm [Fama, (1998), Gower, (1998), McMullen, (1992)]. The effects on the business, in relation to its competitiveness, on the economical life and the balances in the social domain have since years now caused the drastic intervention of the legislation on a national and international level, as well [Karakatsanis, (1989)].

The regulations for the massive dismissals and the dismissals due to economical – technical reasons in the event of transfers of undertakings, the privileged classification of the employees' economical claims by the already worked salaries in the cases that the undertaker's – employer's creditors are satisfied in a compulsory way (bankruptcy, auction, e.t.c), and in general the employees' protection from the undertaker's – employer's insolvency are typically some of these interventions [Anderman, (1985), Blanpain / Koukiadis, (1993)].

Within the European Community the legislative action on this field is presented during the '70s decade with the publication of the Directive 75/129 for the approach between the States – Members concerning the massive dismissals, 77/187 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, 80/987 for the employees' protection in case of the employer's insolvency, 98/50 about the legislations of the States- Members approach in relation to the employees' rights'

preservation in case of undertakings' transfers, and 2001/23, by which were just codified in an unified text the two above Directives 77/187 and 98/50. The after the Maastricht European Union keeps everybody in a worrying pending about the future that "reserves" for the Labour's Communal Law and the European Social Law. The Amsterdam Convention about social and labour rights gives hope for the advancement of these rights's to a level of realization and "relish" in the future [Antonmattei, (1977), Barnard, (1996)].

The change of the businessmen - employer, especially in the form of the undertakings' or businesses' transfer, consists a daily phenomenon of the contemporary economical life [Manne, (1965), Spiropoulos, (2002)]. Terms like "buying out" of undertakings, "incorporation", "sucking up", "merger", "undertakings' reclassifications", "undertakings' reform or reorganization", are some of those that we "meet" daily and which define the most usual forms of businesses' transfer [De Groot, (1993), Douka, (1992), (1997)].

The firms' transfer is one of the cases, where the enterprising action "creates" a field of intense risk concerning the interests of transferred firm's employees, and actually, on the sore point of the existence and the content of their individual labour relations. The interest of the firm's two bearers (businessmen – employers), the new and the previous one's, to "get rid of" the firm's employees' by dismissing them or reducing the firm's expenses changing "harmful" against the work – force the existing work terms, consists a risk from which the employees must "arm" themselves [Douka, (1997), Zerdelis, (1996), Triantafyllakis, (1998)].

The maintenance or cancellation of the existing labour relations of the employees' in case that the undertaker – employer changes due to the undertaking's transfer, belongs to the fundamental issues of the labour law [Levendis (1989), (1993)], central concept of which is "depended" labour that is offered by the employee to the service of another person, the employer's, who uses it and controls it within a particular lawful relation that is called labour contract [Barnard (1996), Blanpain / Koudiadis (1993)].

Given that during the last years the undertakings transfers in different forms (e.g. buying out, incorporation, sucking out, merger e.t.c), rise constantly because of technology's changes and globalization's, the solution to this issue affects greatly the interests of the employees, mainly the protection of their working positions and the safeguarding of its content, namely the terms of the labour contract. But it also, affects the employers' interests, such as the maintenance of the

business' function in the event that its bearer (the undertaker – employer) changes, or the facilitation of the economical – technical alterations' application in the business by permitting in this way the immediate continuation of its function [Zerdelis (1996), Trandas (1999)].

The need of protecting the employees from this concrete "source" of risk has created within our national law a series of legislative regulations since 1920. Within the Communal labour law has led to the Directive's 77/187/European Economical Community formation. The Directive applies to the transfer of un undertaking or a business to another employer as a result of a transfer or merger, in so far as the undertaking or the business to be transferred is situated within the territorial scope of the European Commission Treaty. In Greece, which in the meantime had become member of the European Communities since 1.1.1981, this Directive has been converted into internal law in 1988 with the Presidential Decree 572/1988 [Kamenopoulos, (1996), (1998)].

In a level of political options the legislation of these regulations consists of social policy against unemployment. In a law level it is enrolled to the regulations' field for the working position's protection. The European (or Communal) and national law's regulations was the base of the legitimate, which formed one of the labour law's institutions that provide drastic protection to the employees' working position [Delors, (1999), Kravaritou – Manitaki, (1990), Levendis, (1992)].

The institution is defined by the terms "transfers of undertakings" or "change of the employer", which are enrolled to the Greek and European or Communal terminology about the labour law in order to define the cases, in which, when changes the bearer of an activity but not the unit to which this activity develops, its new bearer takes obligatory the place of the employees' employer, who are occupied there, and he is obliged to keep unchangeable the working terms of its manpower, as these terms are formed till then. Simultaneously, the same term defines and the fact itself of the entrance of the new bearer in place of the old one [Papadimitriou, (2003), Pararas, (1979)].

Within the national and Communal law, the institution of the employer's change, which is followingly referred as the "examined institution", consists exclusive creation of the legitimate, namely the whole of the concrete solutions given by the courts to legal problems during the justice's conferral, and also considerable example of the law – creative power that the judge owns, a power which is mostly revealed through the analysis and specification of the indefinite (legal) meanings / terms used by the legislator [Travlos / Tzanetatos, (1995), Trantas, (1999)]. In the research which is

16

presented as follows, the legitimate consists one of the searching tools, with which is attempted to

be given an answer to the researching questions that set hereafter.

Despite the intense theoretical interest expressed by these matters study and the rising

importance that is given to them by the practice in the contemporary economy, only recently have

started to be a subject for the Greek and international bibliography. Pioneer in the Greek domain

was Alexandros Sakellaropoulos, whose the especially remarkable, in relation to the time that was

published (1943), assignment with the title "Employer's change" consisted of the only work on this

subject till recently [Levendis, (2004)]. The present research comes to cover this deficiency to some

degree.

2. Aim of research

The aim of the present research is to examine, in the light of the European and Greek labour

law, the institution of the undertaker's – employer's change in its most important manifestation, the

transfer of undertakings, and to study the consequences of the transferred undertaking on the

individual labour relations, the rights and obligations of the employees and the employers.

Essentially, the problems that come up, are all the problems with which the labour law must cope,

and which must examined through the fact that the undertaking's bearer changes. It wouldn't be

exaggerated to be said that the volume, the variety and the quality of the subjects and the problems

that come up, render the examined institution a labour law in miniature.

The main state - hypothesis, on which is based the research, appears on its whole and

concern all the thoughts included in it is that: the working positions of the employees that belong to

the transferred business must be preserved or kept unaffected as possible from the change of the

undertaking's bearer, namely the undertaker – employer.

The essential point of reference consists the change of the employer which follows the

undertaking's transfer. However, whatever is referred is valid in every case that the employer

changes, apart from the reason that causes this change or in the way that happens. Among the

research's objectives are not included the rights and obligations connected to the systems of

compulsory, conventional or professional insurance of the employees of the transferred business,

since thy escape from the subject's examination in the light of the labour law where it is developed.

3. Objectives of research

The firm's transfer is the most usual and with the greatest social – economical importance

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case of the employer change. It isn't exaggerated to be said that daily the legitimate, Greek and international, has to do with disagreements, as result from firms' transfers in relation to working issues, by facing disputes between the undertakings (of the employer side) and the employees [Spiropoulos, (2002)]. The constantly rising density of firm's transfers, result of the capitals' "movement" within the contemporary economy, renders as phenomenon of the daily practice these disagreements [Rodric, (1997)], which are mainly focused on the following subjects which are also consist the research's objectives. The research attempts to give answers to following researching questions in relation to:

- 1. how it is legislatively defined by the European (or Communal) and Greek labour law the protection that is provided to the employees of the transferred firm;
- 2. when does the undertaking transfer and consequently the undertaker's employer's change take place;
- 3. what are the rights and obligations of the employees and employers, in case that the undertaking, or the business is transferred;

4. Hypothesis of research

The hypothesis of research is based on the aspects that the labour relations consist inseparable part of the firm's economical unity and the succession of the firm's bearer must not affect them. According to the European and Greek labour law the most important consequences of this aspect are the following:

- the labour relations' transfer to the new businessmen employer of the firm consists of automatic and inevitable consequence of the firm's transfer,
- the labour relations are transferred apart from the validity, the duration and the other special features and characteristics they have,
- the labour relation are transferred with the content they have during the transfer's time,
- the economical technical changes that happen to the transferred business consist of a fact independent from the transfer itself, which justifies the dismissals for economical technical reasons and the labour term's change, as well. This last view forms, by legal side, the consistent application of the examined institution's purpose, which isolates the fact of the firm's transfer and makes it "without consequences" for the employees' occupation, and from the out of legal options' side the realistic confrontation of the question whether the bearer of the transferred firm can face its economical problems and the problems of operation providing its reorganization.

All the above combined with the changes that brought to the Greek law regime after the 1988 the Presidential Decree 572/1988 render necessary the systematical study of all the problems, which are caused within the institution of the employer's change due to the undertaking's transfer.

5. Terminology of research

From the terminology's aspect within the present research the term "labour law" refers to the total of the regulations of the Greek and European or Communal law, which adjust, in an unified for all the States – Members of the Community way, the relations between employers and employees.

Central concept of labour law is the "depended labour" that is offered by the employee to the service of another person, the employer's, who uses it and controls it within a particular lawful relation that is called labour contract. Exactly the relation of depended labour, where the labour isn't ruled by its bearer but by somebody else (the employer), is the labour law's objective which first of all examines the relation of the depended labour itself: how it is established, how it is works in the time passing, what is the part's position (employee – employer) in it, their rights and obligations, the grants they deserve, the changes that take place and, in general, the development of their relation and its termination, as well. In its modern developed form the labour law has been finally rendered the law of the employee's personality and dignity and the two productive procedure's factors', the capitals and the employment's, social balance [Nikolakopoulou – Stefanou, (1999)]

Nowadays, the labour law has been internationalized. The labour problem's organizing and facing happens according to unified principles in an international level, as the problems that confront the working persons in their relations with the employers were and still are, actually, the same in almost every country, despite the eventual differences that exist due to the economical and social development each one of them. Thus, for the European Community's States – Members it is formed an over – international labour law which mainly pursues to harmonize the States' – Members' legislations, so as to be created an unified labour law within the domain of the European Community, which will have as a result to be achieved an equalization on the burdens imposed by the labour law, among the different national economies of the States – Members in order to be carried out the competition with equal terms [Spiropoulos, (2002), Javillier, (1981)]

The term "institution" or "examined institution" defines the institutions of the firm's transfer and the change of the employer. With the term "labour relation" is defined the human relations at work. The same term is defined the valid and invalid contract of dependent labour, as

well. When the distinction is necessary, they are correlatively used the terms "labour relation" in order to be defined the invalid contract and "labour contract" in order to be defined the valid contract.

As "law of national origin" is defined the total of the Greek labour legislation and the presidential degree 572/1988, as well, while the 77/187 Directive is defined as "law of Communal origin". With the term "firm's transfer" is also meant the transfer of business or part of business. When the transfer of installation or part of installation consists special field of preoccupation (outsourcing or contracting out, operations' sequence, assignments' sequence), takes place a special reference.

In the "frame" of the examined institution with the term "undertaker or businessman – employer" is defined the firm's bearer, namely the person in charge of the direction, the organization and operation, the person, with whose ideas and actions is created and formed the business as an object quite different from the total of the parts that compose it, the bearer of the "enterprizing idea". In relation to the firm's personnel has the right to demand the labour "supply" for the satisfaction of his interests. At the same time, is the bearer who has the power to form the working terms, he's also the person who has the right to direct as a result of the authority of the firm's direction. With these qualities the firm's bearer is the employer of its personnel, the power's bearer and also the bearer of the responsibility for everything has to do with it (the personnel). From the above it is concluded that within the present assignment, for the employees working for a firm, in relation to the employer, is valid the form: "Businessman = bearer of the firm = employer". At the end, the terms "firm's transfer" and "employer's change" are used as equivalent despite the fact that the defined meanings are subjected the first one to the second.

6. Terminology of the Communal Directive 77/187/: basic concepts

For the purpose of this Directive:

"Undertaking or Firm or Business": According to the Directive, the transfer presupposes the existence of an undertaking or a firm or a business. As an undertaking, firm or business is regarded every economical unit permanently organized, namely an organized "total" of people and elements that makes possible the economical activity and pursues the same goal. This meaning is independent from the legal regime of the economical unit and the way of its financing. To the Directive are subjected firms either private or public. They are, also, subjected firms with profiteering or non – profiteering economical activity. Consequently, a person may act economically and is regarded as a "firm" despite the fact that not pursuing a profiteering character doesn't annul the economical character of this action. Under the Directive's meaning firms are meant to be not only the

independent, but also the businesses which belong to the same group, given that they are regarded as an unified economical unit, too.

"Transferor": Every natural or legal person that loses the employer's characteristic in the undertaking or the business, because of the transfer.

"Transferee": Every natural or legal person that becomes employer of the undertaking or the business because of the transfer.

"Representatives of the employees": The employees' representatives anticipated by the legislations or the States' – Members' practices.

- In Greece the law attributes the relevant authority to the "employees' councils" that are formed and function based on the Law 1767/1988.

"Employee or Salaried": Every person that is protected as an employee through the Communal and Greek labour legislation.

7. Structure of Dissertation

The Dissertation is structured in two parts.

In the first one, which consists of eighth chapters, it will be briefly presented the European and Greek legislative regime that rules the examined institution. Also, they will be developed the consequences, which according to this rules occur to the individuals' labour relations of the employees, who are occupied in the transferred firm, and to the employers' rights and obligations, as well, within the contemporary enterprizing environment.

To be exact:

In the first chapter it presented already the problem and its importance. In the following paragraphs it will be described its examination methodology. Namely, data requirements, methods for data collection, method for data interpretation – analysis, methodological review, and research design.

In the second chapter there will be introductory remarks in relation to the unfavorable change of the labour terms due to the undertaking's transfer and the need of the protecting the employees' rights in this case.

The third chapter will consist of a brief reference on the strategic importance of the employees or the human resources for the contemporary enterprise.

In the fourth chapter it will be examined the purpose that is pursued by the examined institution, which is the protection of the working position in connection with the right of the undertaker's – employer's enterprising action and to the need of restricting this right.

In the fifth chapter it will be presented the Communal and the Greek legislative frame of the employees' protection in the event of transfers of undertakings and there will be a first comparative

observation of the European and the Greek lawful classes relatively to this subject.

In the sixth chapter it will be referred the application's field of the protection in favor of the employees regulations of the European and Greek labour law in case that the firm is transferred. In this chapter there will be an examination of the demanded presuppositions for the existence of an undertaking's transfer, according to the Communal and Greek legislation, and the outsourcing or contracting out as a form of business transfer.

In the seventh chapter there will be a study of the consequences of the legislative rules that "govern" the undertaking's transfer on the rights and obligations of the employees and the employers.

At the end, in the eighth chapter it will be examined the phenomenon of the undertakings' transfer and its implications on the labour relations, through the aspect of the economic science.

In the second part, which consists of four chapters, there will be presented the study of four cases, in connection to the undertakings transfers and the effects on the labour relations, through the recent nomology of the European Communities' Court and the Greek Courts, correlatively. Also, there will be compared the two lawful "classes", the Communal and the Greek one, on the partial issues, which belong to the most essential issue of the employees' protection in the event that the undertaking is transferred, and at the end, there will be a presentation of the final researching conclusions.

More specifically:

In the ninth chapter there will be a presentation of the basic principles of the Communal and Greek legitimate with reference to the examined institution. It will be examined four considerable cases of outsourcing and the subjection of them to the Communal Directive 77/187/ "about the firm's transfer" and their consequences on the labour relations through the recent legitimate of the European Community Court and the Greek courts too.

In the tenth chapter there will be the comparative inspection of the two lawful classes, the European and the Greek ones, referring to the issue of protecting the employees in the event that the firm is transferred. Also in this chapter, there will be referred some conclusions from the comparison between the two lawful classes.

In the eleventh chapter there will be a presentation of the final researching conclusions and some recommendations for businessmen – employers, future businessmen - employers and for employees of business, some proposals for future research, and a brief epilogue.

At the end, in the twelfth chapter it will be shortly presented the final part of the Dissertation with title "*Reflection on learning*", where there will be referred the entire personal experience of carrying out and completing this Dissertation since submitting the research proposal.

II. Research's methodology

1. Introductory remarks

In the following paragraphs there will be justified and described each one of the researching data in depth. More specifically, it will be defined the researching tools, the sample and the process of researching data collection. It will be presented a methodological review of the legislative texts, the legitimate or nomology, and the qualitative interviews as research approach, and their link with the purpose of the present research. Also, it will be presented the strategy for qualitative analysis. Furthermore, it will be described the methodology of interpretation of the relevant legislative rules. At the end, there will be referred some additional researching sources and the research design with the study of four cases' and with topic: "Transfers of undertakings and outsourcing or contracting out".

2. Definition of researching tools

In order to be given answers to the three above researching questions-objectives they were gathered and combined data according to the following researching tools:

a. The existing legislative texts (laws) of the European and Greek labour law, which refer to the examined institution. Specifically, the Communal Directive 77/187 and the Presidential Decree 572/1988 with which the Directive was incorporated to the Greek lawful class becoming national law, as according to the article 189 paragraph 3 of the European Union's convention "the Communal Directives bind each State-Member to which address in relation to the pursued result, leaving though the choice of the type and the means on the national authorities' responsibility".

The legislative texts are written rules, are set by the State and contain commands or prohibitions, or create compulsory rights and obligations for a total of people or at least for an indefinite number of citizens, e.g. the employees of transferred undertakings. Main characteristic of these laws is that their application is *obligatory* [Margaritis / Antoniou / Paraskevopoulos, (2004]. The study of these concrete law rules will give an answer to the first researching question.

b. The relevant with the examined institution, recent legitimate of the European Communities' Court and the Greek courts, in order to be given an answer to the second and third researching question.

Let's clarify here that the term "legitimate or nomology" commit to the total of the judicial decisions which solve a doubtful legal issue, namely a legal problem, or make clear a vague point of

23

the law. Consequently, an isolated judicial decision that solves or clarifies an issue doesn't consist

by itself legitimate or nomology and therefore, can't work as a "source" of law. The legitimate

contributes greatly to the law's formation and advancement either by interpreting the laws'

regulation, either by showing to the legislator what are the prevailed perceptions and ideas of the

society [Margaritis / Antoniou / Paraskevopoulos (2004)].

c. The qualitative researching "face to face" structured interviews with four "open" questions

in combination with the research's questions - objectives. The interviews aim to enrich the present

research with qualitative data, and to examine in practice the functionality and the effectiveness of

the legislative protection provided to the employees of the transferred undertakings in Greece.

3. Sample definition and process of researching data collection

3.1 The data

The use of the following data could help the researcher of the present research in order to

provide answers for the above research questions and to meet the research objectives as well.

More specifically:

The legislative texts

The examined institution of the undertaking transfer's or the businessman's – employer's

change is legislatively form on basis of two legislative regulations with which is pursued the

materialization of its goals in European or Communal and national level.

In a Communal law level the legislative intervention was expressed with the enactment of

the Directive 77/187, the goals of which are summed up to the protection of the employees when the

business transfer takes place during the market's function with the interested parts' free agreement.

The Directive's aims and the formation of its content with the legitimate of the European

Communities' Court consist one of the factors that explain the national law on the subjects to which

the national law is orientated to the Communal Directive.

In the level of internal – national law the legislative intervention for the examined

institution's formation was expressed in two time periods. The first one in 1920 with the law

2112/1920 and the second one in 1988 with the publication of the Presidential Decree 572/1988 for

the harmonization between the Greek legislation and the Directive 77/187.

The complete text of the Directive is cited in the *Appendix I* and has been published in the

Institutional Repository - Library & Information Centre - University of Thessaly

Official Journal of the European Communities L 61/26 of the 5.3.1977 [Douka, (1992), (1998), Levendis, (2004), Lixouriotis, (1993)]. Also is available on the web – site http://europa.eu.int./infonet./library/i/77187ce/en.htm. The Presidential Decree 572/1988 was published in Government's Journal Number 269 A / 6.12.1988 [Douka, (1992), (1998), Levendis, (2004), Lixouriotis, (1993)].

The legitimate or nomology

The sample of the research is totally consisted by "124" judicial decisions (legitimate or nomology) of the European Communities' Court and the Greek courts of all the judicial levels (Supreme Court, Courts of Appeal, Courts of First Instance and Magistrate Courts).

The decisions of the European Community Court were published between the years 1983 – 1998, after the publication of the Directive 77/187 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings

The decisions of the Greek courts were published between the years 1982 - 2001, after the official publication of the Presidential Decree 572/1988 for the harmonization between the Greek legislation and the Directive 77/187.

All the above European and Greek judicial decisions are relatives to the examined institution of the transferred business and the change of the businessman – employer.

More specifically they were examined:

- 37 decisions of the European Communities' Court from 1983 to 1998,
- 43 decisions of the Greek Supreme Court from 1982 to 1998,
- 24 decisions of the Greek Appeal Courts from 1983 to 1998,
- 15 decisions of the Greek First Instance Courts from 1984 to 1998, and
- 5 decisions of the Greek Magistrate Courts from 1995 to 2001.

At this point it should be clarified that the number of the sample must not be regarded as a small one. And this happens because, from one hand within the Communities' States – Members have been realized businesses' transfers that haven't bothered the courts given that the involved parts (transferred business, new business and employees) had adjusted their relations with enterprising agreements. On the other hand, the citizens of the European Communities' States must firstly use up all the legal means predicted by their countries' law in order to address to the European Communities' Court [Iliopoulos, (2002)].

In this special case they were used judicial decisions which solved labour issues had showed up after businesses transfer either had clarified or interpreted relevant concepts, as for example the concept of "undertaking transfer", repeatedly and in an uniform way (*solid nomology*), as only these contain "crystallized" the courts' opinion for the probable doubtful legal issues or for the real sense of a term [Venizelos, (1990), Margaritis / Antoniou / Paraskevopoulos, (2004)]

The European Communities' Court's decisions classified per year can be found in the records of the Supreme Greek Court published in the official publication of the European Community in the Greek language. In addition, they are presented in a chronological order of edition and publication on the table of *Appendix II*.

The Greek courts' decisions and the eminent legal magazines where these have published are cited on the table of *Appendix III* in a chronological order of edition and publication per judicial level. The collection and codification of these decisions took place from May 2005 to September of the same year mutually with Mr. Euripides Antoniou, Vice – President of the Supreme Greek Court who's diligent of the legislation's and nomology's reports that are published by the Supreme Court's Nomology's Office.

3.2 A critical review of the legislation and the legitimate or nomology, as research approach and their link to the purpose of the present research

As it was mentioned above, the research of the problems that come up during the examined institution's application happened based on the legislative texts and the "rich" material of the legitimate or nomology.

Relatively to this research method, the absolute argument which someone can call upon for its foundation on the legislation and the legitimate is, first of all, the obligation that the Communal legislation must be applied within the national lawful classes of the European Communities' States – Members, consequently the Greek one's, too.

Furthermore, it should be observed the Europeans Community's States' – Members' courts are obliged to interpret their national law in a way that approaches the Communal Directive as much as possible. Based, consequently, on this principle that agrees totally with the interpretative European Communal law, the courts should follow the conclusions made by the European Communities' Court under the interpretation of the Directive 77/187, when they apply the regulations which are harmonized the national legitimates of the States – Members in relation to this Directive [Antonmattei, (1977), Iliopoulos, (2002),].

Specifically, in relation to the examined institution it should be emphasized that within the European Communities' Court's nomology it has been faced a series of problems of great practical

importance, with which, contrary to this, the Greek nomology hasn't been occupied. These problems concern not the transfer of the whole firm, but transfer of activities (outsourcing or contracting out) and in what point similar cases consist, or not, business transfer. So that to cause the coming the beneficial for the employees, relevant legislative regulations [Kamenopoulos, (1998), Kartaltzis, (2004)]

Also, the complete development of the function that has to do with the protective for the employees' legislative regulations has been very early achieved in the greater possible expanse with the determinative contribution of the legitimate. Actually, this nomology has formed and consolidated the institution of the employer's change, which substantially consists an exclusive creation of her [De Groot, (1993), Douka, (1992), (1997), Kamenopoulos, (1992), (1998), Levendis, (1989), (1992), (2004), Lixouriotis, (1993)).

Based on the determinative interpretation of the pre-mentioned legislative regulations, the legitimate has decided – *and this is its solid view till today*– that the goal of the regulations mentioned above and applied generally is the employee's insuring and the un-obstructed function of the labour contract, when for any cause or reason the businessman – employer changes and their application involves the by right entanglement of the new employer to all the obligations that derive from the labour contract which in the rest remains unchangeable [Levendis, (1989), (1992)]

3.3 Qualitative data: the qualitative research interviews

The qualitative data that set hereafter based on meanings expressed through words. In order to be able to capture the richness and fullness associated with the following data they cannot be collected in a standardized way. There are a number of aids that someone might use through the process of qualitative analysis, including interview, observation, document, interim summaries, self – memos and maintaining a researcher's diary [Saunders / Lewis / Thornhill, (2003)]. In this special case the use of interviews regarded as the most suitable in order to examine someone the practical application of the examined institution of the firm's transfer and the change of the employer in Greece.

3.3.1 A critical review of the qualitative interviews as research approach and their link to the purpose of the present research

In general, an interview is a purposeful discussion between two or more people. The use of interviews can help to gather valid and reliable data that are relevant to the research questions and objectives [Saunders / Lewis / Thornhill, (2003)].

In this case main pursuit of the "face to face" structured interviews presented in *Appendix IV* is to examine in practice the functionality and the effectiveness of the legislative protection that is provided to the employees of the transferred businesses in Greece, through the recording of four specialized persons' personal opinions and experiences. These persons due to their professional capacity are directly connected with the examined institution and for this reason the conclusions of the qualitative interviews are important for the research.

The interviews based on a predetermined and standardised or identical four "open" questions in combination with the research questions and objectives, and common for all the questioned persons. The use of "open" questions allowed to the participants to define and describe a situation or event, as for example the event of transfers of undertakings. Furthermore, the "open" questions are choosed in order to encourage the interviewers to provide external and developmental answers, and may be used to reveal attitudes or obtain facts [Healey / Rawlinson, (1993), (1994)].

It was regarded that the answers would be one – sided, if they were apply only to businessmen – employers or only to representatives of employees – syndicalists. And this, because usually within the enterprise between employers and employees the conflict of interests is inevitable with result the restricted optical dimension of the problem,

The first "team" of employers, based on the economical interest of the business, thinks that the existing legislative regulations intend to limit the businessman's freedom to adjust the work – force that owns to the eventual needs of the competitive environment developed by his / her enterprising activity. The second "team" of representatives of employees – syndicalists believes that the insuring of the working posts' substance and content in the event of transfers of undertakings, and the protection of the existence and function of the employees' representatives in these cases, must be the main purpose of the legislative interventions.

The "experts" that were chosen to answer are the judges: Euripides Antoniou, Vice – President of the Supreme Greek Court and George Apostolakis, President of the Courts' of Appeal Judges in the Court of Appeal of Larissa, who with the capacity of judge have made from time to time decisions about labour issues related to businesses' transfers.

They were also given answers by: the labour law's professor in the Law School of the University of Trace and collaborator of the National Labour Institute, Dr. Yiannis Lixouriotis, and the Lawyer Antonis Margaritis, who, with the capacities mentioned above, took part into the negotiations that concerned the labour contracts of the employees in the Banks "Chios" and "Macedonia – Thrace" that in 2000 were mergered by Piraeus Bank.

Their specialized opinion on the examined institution and their possibility to contribute really substantially, due to their professional post, to finding of the most suitable, in every special case, solution on the matter of the employees' protection in case that the economical problems and the technological reorganizations of the business, render the recording of their experiences necessary.

3.3.2 Type of interviews

The interviews took place from 20.3.2006 to 28.3.2006 in the cities of Larissa, Athens, Thessaloniki and Karditsa, where the above persons have their professional activities.

The chosen type of interviews related to the form of interaction that is established between the researcher and those who participate in this process [Easterby – Smith et al., (2002) in Saunders / Lewis / Thornhill, (2003]. Consequently, these interviews conducted on a "one to one" basis, between the researcher and a single participant each time, namely, by meeting the each participant "face to face".

3.3.3 Approach to recording the qualitative data - informations

The need to create a full record of the interviews soon after their occurrence is one of the means to control bias and to produce reliable data. This particular ascertainment looks briefly at the need to develop the researcher the skill of making notes or evaluates the use of tapes recorder [Healey / Rawlinson, (1994)]. During these interviews the questioned persons' answers were recorded, *with their permission*, with a tape – recorder and then each one of them they were written down on a standardised schedule in order to be analyzed these data and extracted the conclusions.

3.3.4 The content of the questions

The participants were asked to:

- 1. mention the presuppositions of the businessman's employer's change, according to the Greek legitimate,
- 2. define the consequences for employees and employers through the business transfer, according to the Greek legitimate,
- 3. express their opinion about the practical achievement or not of the Presidential Decree's goal, which is the working position's protection, and
- 4. make proposals for the improvement of the legislative protection provided to the employees of the transferred businesses in Greece.

3.3.5 Using the existing theoretical framework as strategy for qualitative analysis

The existing theoretical or descriptive framework that presented here after is the basis for the analysis of qualitative data from a deductive position [Yin, (1994) in Saunders / Lewis / Thornhill, (2003)] in order to be given answers to the researching questions - objectives.

3.4 Methodology of interpretation of the relevant legislative rules

They have been developed many theories about the way the law regulations (laws) are interpreted. Each theory regards as dominant a different interpreting criterion. Thus, for example, the so called "grammatic interpretation" insists on the grammatic meaning of the legal speech, the "historical or logical interpretation" on the meaning given to the legal speech by his / her writer, the "teleological interpretation" searches the purpose of the legislative rule, while the "systematic interpretation" believes that the meaning of this concrete legislative rule results from the position that has this special rule in this system. A jurist trying to penetrate into the content of a concrete legislative act (law) will use either one only of these methods or more by combining them [Douka, (1992), (1997)].

The most important methods that interpret scientifically the legislative rules are:

- 1. The Grammatic one,
- 2. The Logical (and historical) one,
- 3. The Teleological one [Barnard, (1996), Nikolakopoulou Stefanou (1999)].

In this case, for the presentation and analysis of the various problems and the finding of the applied legislative rules, it was used the "teleological interpretation" which is based on the searching of the law's "purpose». As a consequence, the examined Communal and Greek legislative regulations are interpreted based on the generally protective for the employees' function of the labour law with concentration to the goals pursued by the examined institution and in a way that isn't opposed to them or doesn't conflict with them by inserting terms or principles formed on other institutions. At the point that the national law's regulations adopt the regulations of the 77/187 Directive, their interpretation follows the decisions of the European Communities' Court (nomology), in order to be achieved the Directive's goal which is the harmonization of the States' – Members' law for the insuring of a minimal but common protection level that concerns the employees rights in case of business transfer.

4. Additional researching sources

The publications of the Appendix V that concern the perspectives and the general strategy of

the employment in the European Union according to "Agenda 2000" publications are available on the web site www.europa.eu.int of the European Commission which is responsible for the social policy and the employment in Europe.

For the research of the material presented in *Appendix VI* in relation to the massive dismissals which were realized by the Greek firms of specific branches during the year 1990 – 1998 and to the reasons that forced these firms to make such a movement. Unfortunately, during the searching of the inquiring material, it was ascertained that the Greek Organization of the Work Force Occupation doesn't have any clues from which can result some useful information for the formation of a graphical representation, so as to be observed the phenomenon of the massive dismissals during the pre-mentioned years. The main source of our study was the National Labour Institute

At the end, the bibliography which accompany the text of dissertation "use up" the limited Greek and international bibliography in connection to the examined institution of the employees' protection in the event of transfers of undertakings and cover the total of Greek and international legitimate about this subject. They consist, though, indicative references to foreign writers and to subjects who aren't directly accessed to the pre – mentioned institution.

5. Research design

As research design, will happen the presentation of an interesting side of the business transfer institution, the one of outsourcing or contracting out, in the light of the recent Communal and Greek legitimate. Referring to the outsourcing, it is about a method that has to do with the economical improvement of the structures which concern the functionality and the internal procedures of a business [Levendis, (2004)], given that the latest years within the contemporary economical life, the conversation about these issues is rendered especially opportune.

Here comes up, then, the question: whether the cases, in which the business isn't totally or partly transferred, assigns though to another business one only or some of its activities (outsourcing or contracting out), consists business transfer, according to the Communal and Greek existing legislation; The European Communities' Court from 1983 to 2001 has judged three characteristic cases of outsourcing and has given *an affirmative answer* to this question.

These three cases of "outsourcing" from the legitimate of the European Communities' Court and the one (the only one that had to do with similar issues) from the Greek nomology which concerns the transfer of the work – force with special qualifications (know – how), are the subject of the research design. In Greece, of course, they have been realized transfers or assignments of activities (outsourcing), (e.g. the break away of the Olympics Airways flying activity and the

creation of the New Olympics Airways), which in their plurality, though, didn't bother the Greek courts, as the involved parts adjusted their relations with agreements.

So, the research design includes the following cases:

- the case of "functions' sequence" as a special occasion of transfer,
- the case of "assignments' sequence" as a special occasion of transfer, and
- the "Albert Merckx" case, from the European nomology, and
- the case 3404/1991 from the Greek nomology, about the transfer of employees with special qualifications (know how).

As a general criterion for these cases' choice was regarded the wideness with which in this case were interpreted by the European Communities' Court the rules of "transfer" and the severe criticisms of the German, French and Italian legitimate which are continued till today. And this happens, because these countries had formed a quite different view relatively to the presuppositions of the Communal Directive's 77/187 application, regarding that without restrictions assimilation of the activities transfer to the business transfer, could limit the economical action and development [Zerdelis, (1996)]. In fact, if every activity transfer is faced as a business transfer, even when this activity isn't transferred as an organized total (e.g. it isn't accompanied with the transfer of other material or immaterial goods), then these kinds of transactions will be restricted. This will become a fact harmful for the businesses' development and for the economy's development as well within the European Communities' States – Members.

Through the study of the above cases' they were briefly ascertained the following:

- 1. The view that firm transfer takes place in every case in the form of the outsourcing, presupposes a total estimation of all the transferred elements (installations, technical means, movable stuff, reputation, know how, customers, undertaking or not of the work force's main part e.t.c.) and also what emphasis will be laid on each one of these elements in relation to the type of the business.
- 2. Outsourcing or contracting out has exactly the same lawful consequences as the business transfer.
- 3. The only thing that has to be ascertained in the future is what will be the attitude of the Greek Courts' legitimate, when they will be occupied with it extensively. On the other hand, whether the European Communities Court will keep following the tendency to interpret in an expansive way the concept of business transfer and cover with this way the outsourcing, as a special occasion of business transfer.

CHAPTER SECOND

Transfers of undertakings – Alteration of the employment terms – Safeguarding of employees' rights

1. Introductory remarks. Globalisation of the economy, international competition and transfers of undertakings

The undertaking transfer which appears either with the forms of buying out of, incorporation, of merger, of reclassification, e.t.c, are some of those that we "meet" daily and which define the most usual forms of undertakings' transfer. Furthermore, finds itself nowadays at the focal point of the interest not only in Greece but also in most of the countries. This happens due to the economy's globalisation and the intense international competition. Indeed, the globalization's effects are enormous, extended to the economical, social and political sector. More visible and defining are the globalization's effects on economy. The setting free of the capital activity and the exchange market in combination with the telecommunications' technological evolutions have offered new perspectives to the international dealings' realization. [Spiropoulos, G. (2002)].

Nevertheless, mostly the globalization has imposed widely the free product trading. The world – wide Organization of Trade (succeeded GATT which means General Agreement of Tariffs and Trade) enforces constantly the tariff obstacles' abrogation. The tarriffs' abrogation has added new dimensions to the international competition. Enterprises compete mercilessly in all over the world in our days. Therefore, they are obliged to reduce the production's cost using every possible mean. For this reason, they are under continuous modernization and reorganization, insert new technological equipment, are incorporated with businesses of the same sort, settle in countries where the work payment is less or there is no protective working legislation, powerful syndicalistic movement or organized and expensive system of social defense. [Blanpain, R. / Koukiadis J. (1993)].

The production's automation, the intense capital investments, the mergers, the redemptions and the constant reorganizations lead firmly to the personnel's reduction, the working positions extinguishments, and the salaried work's substitution by the independent work or work consignment to other independent professionals (outsourcing or contracting out). Namely, the business' traditional co – ordination is split and entire phases of the production's process (as for example, the product's trading, the business guarding and cleaning, also other departments, like marketing and the

construction of the departments for the product) are assigned to third persons or ex – employees who, though, are now occupied with work contracts. [Levendis, G. (1989)].

At the same time, the enterprises intending to the cost reduction demand even more flexibility during the regulation of the labour terms. Due to the work's cycle fluctuation businesses demand flexibility, firstly, during the regulation of the working time, which means that they want to employ their work – force only when they need it and for the time they decide. This kind of flexibility may be realized in many ways:

- a) with contraction of labour for fixed time,
- b) with contraction of part time labour or with the transformation of the contraction of full time labour to contraction of part time labour,
- c) with the adjustment of the working hours in a way that the weekly working time of the paid persons can increase in high seasons or decrease in an opposite case. In addition, businesses demand also flexibility during the payment's regulation and other labour conditions, namely, they try to change the labour terms and make them more unfavorable for the employees especially in periods that the works' cycle is reduced, for example, they try to reduce the salaries, cut the bonus, the premiums or other grants, overtimes, e.t.c. [Levendis, G. (1992)].

The pre – mentioned demands satisfaction has led gradually to the so called "de- regulation" of the labour law, which means the "loosening" of some traditional protective regulations refered to the labour legislation. For example, the by law institution of the possibility to arrange the working time in a way that it will increase the daily and weekly working time for another following period, consists unquestionably "inclination" from the strict meaning of the daily legal working hours, the over – working and the overtimes of the Greek labour law (law 2639/1998). Also, the possibility to be contracted agreements of labour law's traditional principle that the contract of labour for fixed period is allowed only exceptionally every time that is imposed by the nature of the offered job or business, the employee's interest or the business' general benefit. [Lixouriotis, J. (1993)].

2. The contemporary business' physiognomy: the business as stockholder or stakeholder – community of interests between employers and employees?

The contemporary business with many shareholders consists a field of co-operation, conflict and completion of many interests which are: the shareholders interest to maximize their profits as soon as possible, the technocratical administration's interest to advance successfully the company's

products conquering greater share in the market as presupposition to gain even more in the future, the employees' interest to reach the best possible wages (short – term goal) and the ensuring of their working position (long – term goal), their creditors' interest to retain and increase the company's property and finally, the clients' interest (consumers, suppliers) to cover their needs with products, e.t.c. Beyond the above, the big businesses' preservation and operation become more and more important to the public interest given that the production and offer of the goods or the services supply tend to become public functions that concern supply, tend to become public functions that concern directly the social and economical system. [Triantafillakis, G. (1998)].

The interest's collision among the different parts (shareholders, work – force, e.t.c.) is inevitable, as it will be analyzed extensively hereafter:

the company's permanent shareholders or businessmen (shareholders or not) interest is quite different from the employees' interest within the enterprise, who pursue to increase their wages and ensure their working position which may be threatened by the new technological applications that promise the profits' maximization.[Gower, J. (1988)].

The various pressure teams' (inside or outside the business) power correlation determines the participation of each of them to the enterprize's willing formation, to the interest and the methodical handling of its realization. [Jensen, / Warner, (1998) & Gordon, / Pound, (1993)].

In fact, businesses show a ruling interest beyond their own benefits for the employees' benefits within the business. The work – force's profits consist an especially crucial parameter (of the cost) for an enterprize, if it is also taken into consideration that they are an important factor for the business' added value.¹

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^{1.} Empirical researches have shown that the highest percent of one business' added value comes from their personnel's wages. Typical is the case of Siemens, in which the 83, 9 % of the added value was spare on the employees' wages, the 6,9 % was given to the state as taxes, the 4 % to the creditors for rates and amortization – funds, the 3 % was retained by the business for the reserve's formation and just the 2,2 % was shared out as partition to the shareholders [Huppert, W. (1978)].

35

Therefore, the eventual short – term interests and the goals of the employees (long – term

consists regularly for the employees their working position's ensuring, the satisfaction through their

work object e.t.c.) provoke conflicts in every business and need "moderation".

Starting point for this relevant preoccupation was the shareholders' – employers' of a big business

with thousands of people as staff realization that are able to transfer or even close the company

without any agreement with the personnel, a fact that formed an unimaginable legal anachronism

which disregarded rudimentary human and social values and the business nature, as well, that

consists an organized composition of two productive factors: capital and work. [Pochet, P. (1994)].

The traditional one – dimensional perception that regards the enterprize as a matter of the

capital owners and only which with the individual hiring contracts of the employees subjected the

work by including it in its goals, is an outcome of a real social – economical correlation of powers

that belong to the two crucial for the business composition bearers of the productive factors.

[Karakatsanis, K. (1969)].

The employees' subjection to the capital's dominion - it is already imposed with the

individual contract's setting up by the two fundamental legal principles of our social – economical

system, by the contracts' freedom and the individual will's autonomy – is the result of an unfair

negotiation. The change of the powers' correlation and the prevalence of new social – political

principles lead to adjustments that limit a lot the capital's power to exploit, prepare the ground for

the work's autonomy against capital and its treatment as an equivalent business factor. In this way,

the work with its participation to the business removes the external productive factor's character and

is joined practically with it, consisting an integral element of the business, part of its identity,

exactly as the capital. [Karakatsanis, K. (1969)].

This employees' organic and practical relation to "their" enterprize renders absolutely

necessary the working factor's admission as equivalent to the capital and has already inflicted the

concession by legislations of rights to the employees for their participation to the business will -

power formation. The contemporary business stops gradually to consist exclusively matter of the

capital's ownership and becomes also a matter of the employees who attach to it some of their vital

interests dedicating to it many work – hours with devotion and services offer that were always

remarkable for the enthusiasm, the skills and the talent of their creators.

The transfer of the companies' administration (and to a point also of the authorities) from the

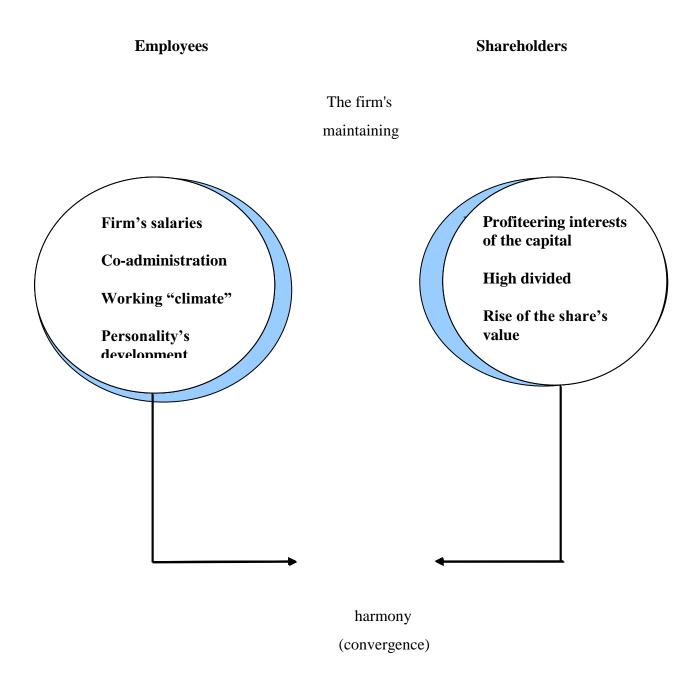
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capital's owners to the business' technocratical handling makes clear that the organizing connection of these two factors (capital – work) gives life to the business, as long as it is worked out for an economical goal's achievement. Finally, even this concrete fact, that the bearer's (bearers') change doesn't alter the enterprize's entity or the labour relations, confirms the labour's autonomy and equality against the capital. [De Groot, (1993)].

Even if the interests' autonomy and equality are recognized, however, there won't be any difference without the employees' participation to the company's "instruments" and, consequently to the enterprizing decision making. In other words, the employees participation means that the decisions aren't made only by the businessman – employer, but it is also demanded the work – force's agreement, which is able then to affect the business decisions that concern them. [Kravaritou – Manitaki (1990)].

Nowadays, the company's interest is redefined and extended so as to conclude the by the law imposed interests – rights of the employees. The business become an "interests' community" for all who take part in it. This community is called stakeholder model in contrast to the stockholder model: the last one recognizes only the shareholder, the stocks' owner. On the contrary, the first one treats the employees as real partners with their own stake. [Fama, E. (1988)].

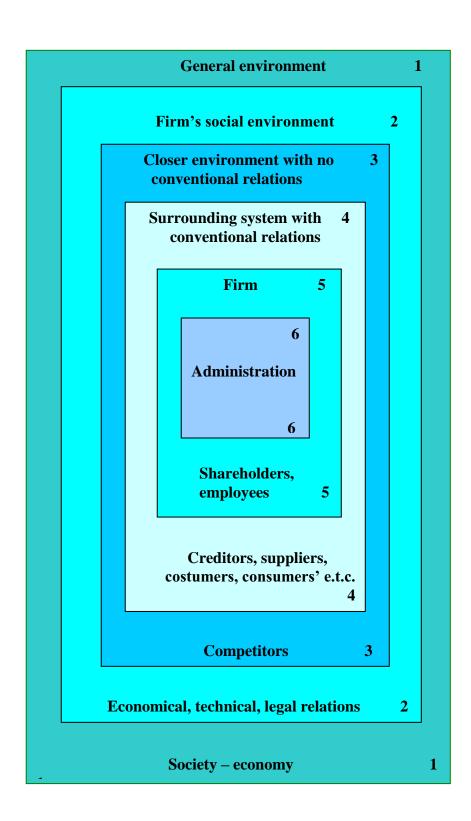
Schematic representation 1: The firm's maintaining as a resultant of common interests.



conflict due to the interests' contradiction

♣ Source: Triantafyllakis, G. (1998) "The firm's interest as rule of behavior of the corporation organs", Ant. N. Sakkoulas Publishers, Athens – Komotini, p. 362.

♣ Schematic representation 2: The firm's social sub – system.



♣ Source: **Manne, H. E.** (1965), "Mergers and the market for corporate control"; Journal of Political Economy, vol. 73, No 2, April, p.115.

3. The firm's transfer and the labour terms' change

As it was mentioned above, the passages of title referring to the constant reorganizations of the contemporary firms have caused the need of flexibility and change of the labour terms. First of all, this isn't unusual for the labour relation, which is a durable relation. Its basic feature is that functions usually for a long period of definite or indefinite duration. It is, then, well understood that during the labour relation's function comes up the need the labour terms to be adapted to the changing conditions. The common thing, certainly, is that during the procedure of the labour relation its terms become more favorable for the employee, the employee's experience and training for example justify his/her placing to a higher position, the increase of his/her wages e.t.c. Until recently, the course of the labour law and the labour relations was really the most favorable regulation that improves the protection, the working terms and the employees' living level.

Nowadays, though, with the economy's globalization, the intense international competition and the constant reorganization of the enterprises has become noticeable the need of the labour terms' "harmful" change against the work – force.

It is obvious that during the firm's conveyance, the employee has no reason to accept any harmful change of the labour terms by the new bearer of the firm, which is partly imposed and, without having the right, by forcing the paid – person's individual contract of labour, unless by the harmful change's acceptance depends, finally, the occupation's continuation, namely depends the working place, accepts a harmful change of the labour terms, for example the placing to an inferior position, change of the offered work, extinguishment of prim or bonus, e.t.c. [Douka, (1997)]

However, the working place's preservation, even under unfavorable terms, isn't always possible. The firm's transfer or other economical – technical reasons that have directly to do with the transfer often impose the annulment of working places and the personnel's reduction. In these cases the dismissals are really inevitable. And when the dismissals are isolated or concern a small number of employees in comparison to the whole personnel of the conveyed business, the general protection that provides the right of the labour for fixed or indefinite time contract rescission (for example, the payment to the dismissed persons). But when the dismissals happen in groups, namely concern, at the same time or in a short period for the same reason, a great number of employees in the conveyed firms, then comes up the need of special measures in order to be dulled the unaffordable consequences of the dismissals. [Iliopoulos, (2000)].

So, when it takes place the business' transfer, which is usually combined with buying out,

incorporation, merger or other form of transfer, the new employer undertakes and is obliged to

discharge all the obligations that arise from the labour relation (e.g. the kind of the offered work by

the paid – person, the working post, the wages, the bonus, other grants, e.t.c.). In addition, the new

employer of the transferred firm, provided that he will do isolated or in groups dismissals during

one of the pre – mentioned forms of business' conveyance, ought to keep the regulations and the

dismissals' legal procedure, which among others consists of his obligation to be present to

deliberations with the employees' representative.

The deliberations intend to examine how possible it is to be avoided or reduced the

dismissals of their unfavorable consequences. In most of the European Union's countries are widely

used the deliberations, which often end to important measures taking, as for example the high

payment to the dismissed persons, the re-training and placing of the employees to other positions,

the re-adjustment of important labour terms, e.t.c. On the contrary, in our country, regularly, doesn't

happen recourse to the deliberations' procedure with result to miss the conveyed firms' work – force

the chance to participate to crucial decision making, which aim either to avoid or reduce the

dismissals or dull their unfavorable consequences. [Zerdelis, (1996)]

The legislated Inclined from the Communal Directive 77/187 ability of the administration

(the Prefect or the Minister of Employment) to intervene in case of deliberations' failure, has rather

"undermined" the deliberations' institution, as, finally, deducts the parts' responsibility for its

ending, a fact that decreases the parts' faith in them. [Douka, (1992), (1997)].

3.1 The reduction of the working cost as a factor of changing the terms of the employment

The labour cost, as it is defined by the collective labour contracts, is often discouraging for

the new employer of the conveyed business, who, in order to avoid the dismissals' unpleasant

solution, would be eventually willing to keep occupied the employees yet with wages lower than the

predicted by the employment law. Supposed that the people, who work for the conveyed firm, in

order to keep their working places, would be willing to be occupied with less money. In other

words, the possibility of lower wages for the work-force is considered to be a motive for the firm to

keep the already existed work contracts with the employees. [Papdimitriou, (2003)].

However, employers and cycles of neo-liberalism claim that the Labour Law in the way that

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"works" today is a factor of cost for the business, exactly because of its "un – elasticity". The "excessively" protective regulations in favor of the employees don't allow the manpower's adoption to the firms with regard to be competitive and viable to reduce occupation with investments, which annul working places and increase the capital's tension. [Lyon Caen / Pelissier, (1998)].

CHAPTER THIRD

The strategic importance of the human resources – employees' in the enterprise

1. A new trend of management?

The increased frequency of the references from both academics and practitioners about the importance of human resources'- employees' in the development and competitiveness of the contemporary business is not just a "new philosophy" of management. At a very first sight, the business' human resources are the work - force that is occupied with different types of labour's contracts. In fact, they constitute the total "human capital", which is a definite asset of the business. This non – tangible asset, which most of the time, is not reported in academic reports includes the talents, the knowledge, the abilities and the energy of its people - employees. They create and maintain the firm's image and value in the market [Storey, (1992), (1995]. In the last decade a plethora of examples concerning big, middle, and small business, which show that the firm's human resources can make the positive difference on its efficiency and competitiveness. Nowadays, as competitive is regarded the firm that disposes a competitive advantage, namely the market prefers and chooses its products or its services in an increased degree. One of its practical measures is the increase of the works' cycle and for big firms the market's share.

The market's competitiveness is continuous and, therefore, the competitive advantage must be viable. The creation of a competitive advantage depends on factors, like the firm's investments, the product and the innovations, the adoption of contemporary technologies and administrative methods. The firms pursue to build constant and viable competitive advantages through the business strategy. The business strategy way exists either in a systematic form or in an emerged form, a form of priorities and goals. Crucial factor for the creation and maintenance of the competitive advantage and the business strategy's application is the existence of the necessary human resources – employees for this strategy's or the business priorities and goals realization. [Bratton /Gold, (1999)]

2. What's the Human Resources Management?

What are exactly the business' human resources? At a very first sight, they are the personnel that is occupied with different types of labour's contracts. In fact, they are the total "human capital" that owns. That means the talents, the knowledge, the abilities and the energy of its people - employees. They create and maintain the firm's image and value in the market. The Human Resources Management

concerns all the activities, which the firm can use pursuing the positive influence and improvement of the occupied employees' behaviors and efficiency. The way that motivates and organizes their talents, their

knowledge, their abilities and their energy, for the mutual profit of the firm and the employees, as well.

[Legge, (1995)]

Although the competitive advantage of the firm is not only depended on the human resources, the

Human Resources Management is first measure for the creation and preservation of its competitive

advantage, e.g through the:

- attraction, hiring, keeping, mobilization of the suitable "chosen" employees,

- maximization of the employees' added value,

- development of a business working and organizing "morals" that can't be copied by the

competitors.

3. "Official" and "Common" Human Resources Management

The activities of the Human Resources Management include "official", e.g expressly outlined

enterprising options and policies. For example, the business option to reward its personnel with wages

higher than the lowest limits defined by the collective labour's contracts or to pay correspondly to its

leader position within its branch, namely payments higher than its competitors e.t.c.

The "official" and explicit policies form the firm's image as employer, create expectations and

ambitions. They also include the traditional operations of every firm, as the attraction, the choice and

hiring of the employees, the payments' and additional grants' policies, when this need becomes

discernible, the plan and programming of the business' human resources development. At the same time,

though, next to the "official", explicit policies exist also the "common practices" of the firm in relation to

the Human Resources Management, in which is formed and which condense the business labourious and

organizing morals.

Every firm has and follows a practice on the Human Resources Management which is a mixture

of "official" and "common" policies, a mixture that develops and influences the business' efficiency and,

therefore, needs evaluation improvements. The "extent" of the cost and the improvement can be that

important, so as to concern even the 10% of a firm's works. [Armstrong, (1999)].

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4. The Human Resources Management in Big and Small Businesses

The Human Resources Management concerns not only the big firms, from which regularly come the theories, the bibliography, the cases' study, the main examples, its "instruments" e.t.c. Although big firms, like Volkswagen (with 110.000 employees) don't exist in Greece and the big firms with over 500 employees are quite few, the Human Resources Management concern the middle and small firms, as well. [Storey, (1995)]

As the big firms, the small and middle ones confront the challenges of the labour's market and their man – power utilization at contributes to the value's creation and to the business' goals achievement. Talking about big, middle and small firms, is useful for the classifications, the comparison and the analysis of the European definition for these. The definition of the Small and Middle Business (S.M.B.) has consisted, from time to time, a subject of revisions due to its correlation to the investing motives, the Communal programmes and the state reinforcements. The European Commission with its Introduction on (2003/361/EC) the 6th of May in 2003 reexamined the SMBs' definition which was edited in 1996 (Introduction 96/280/EC) revising the criterions of the labours' cycle and the total balance sheet by maintaining the criterion of the employees number, as it was. According to the above Introduction (which is valid from 1.1.2005) the firms are classified as following:

Table 2.1: The firms' classification

Firms' category	Number of employees (fixed)	Labours cycle	or	Total balance sheet
Big	> 250	> 50 million euro		> 43 million euro
Middle	< 250	150 million euro		43 million euro
Small	< 50	10 million euro		10 million euro
Quite small	< 10	2 million euro		2 million euro

Source: BUSINESS, corporate action – taxation –accounting – labour and social security, 5 September 2005, p. 717

The Greek economy is mainly consisted of small firms and this justifies the fact that in the business organizing and operation the Human Resources Management isn't always to be discerned within their organogram. However, despite the fact that a multitude of firms are family firms, which act balancing between professional and family management, the human resources management remains for them a crucial business operation. [BUSINESS, corporate action – taxation –accounting – labour and social

5. Human Resources Management in a labour market that changes

Even with the present conditions of high unemployment and offer of work-force, the working market operates and the employees' mobility is increased in working markets of law and high specialization, as well. In the working market, also, operates either on "traditional" professions with high mobility and constant demand, e.g accountants and sales' executive cadres or on new professions, e.g. specialized executive cadres in the mobile phones branch with mobility of old and new executive cadres among competitors, with withdrawal also for the wider public sector and the public, in general, e.t.c.

The mobility within the working market, despite the observed economical retardation of the recent economical period, indicates that the employees show an increased interest for basic parameters of the Human Resources Management, like the salaries, the wages and the rest grants, the working conditions quality, their career and its evolution. Among the practical issues of the working market are included the effects of the globalization, with the expansion of the Greeks' occupation to European Greek businesses, e.g. in Balkans, and the remarkable increase of foreign employees in Greece and the official working market. These are phenomena that render the Greek working market similar to the american of previous decades. [Storey, (1995)]

6. Human Resources Management: from minimum to maximum

The Human Resources Management activities include, of course, the minimum, namely the conformity with the valid legal "frame" for the working market and the labour relations, which in Greece remains still complicated and bureaucratic causing administrative "weight" to the firms. They include, though, additional – non obligatory – policies for the business goals accomplishment, the formation and preservation of the competitive advantage. Next to the traditional issues of the Human Resources Management exist, nowadays, new issues which need handling and confrontation. Such an issue is the management of the changes within the business environment and the firms.

7. Final remarks

It is about the big changes in the business environment and the contemporary trends in the work's organizing, which elevate the need of the systematic Human Resources Management in the firm and

create the new "trend".

In an ideal model the Human Resources Management attributes effectively for firms of high efficiency through the synergy of three business' factors:

- a. the specialists on issues of Human Resources Management,
- b. the higher executive cadres and the "first line" managers, and
- **c.** the employees.

In the case of small and middle firms the strategy of the Human Resources Management, that at first sight seems to be a "luxury", is an instrument for the administration's and business' skills with the enrichment of traditional enterprising activities concerning their economical and administrative services.

CHAPTER FOURTH

The aim pursued by the examined institution and the right for enterprising action.

The need of limiting the right

1. Aim: The working position's protection

The goal that is pursued by the examined institution is easily understood that consists a necessary and absolutely important presupposition for the development of the issues which belong to the present research. Actually, that's true given that it will take place the option of the "goal" explanation as the most suitable mean for the examination of the content and the function not only of the institution's rules, but also of the institution itself as a special unit of the labour law.

Aim of the examined institution is the employee's protection with the form of protecting his/her occupation as ensuring a concrete working position and, especially, the concrete position that owns in the transferred firm during the transfer's time. More specifically, as relatively mentions the Court of the European Communities (C.E.C.), "the aim is to prevent the firm's reorganization in the common market's internal part to happen against the employees of the "familiar" businesses. The more particular "frame", where the 77/187 Directive develops its beneficial effects, is the free undertakings' and businesses' "market", while intends to restrict the negative consequences that inevitably bring the relevant dealings for their employees. At the same time, it makes, partly, easy the firms' transfer by allowing the direct, unobstructed continuation of their operation". [Douka, (1992].

The goal, namely, is to be preserved the substance and the content of the employees' labour relations, who are occupied in the transferred firm, to be rendered the employer's change in general and the firm's transfer in particular, as fact indifferent for the already existed working relations that can't do any harm to the work – force. With the definition of such a goal is revealed the social – political function of the institution, which is the preservation of the employee's political and social position trough the maintenance of his /her working place and the "no – falsification" of the working terms because of the business' transfer. Simultaneously, it is, also, revealed the orientation to this goal that must have the interpretation of the rules which compose the examine institution's base.

The means, by which is pursued the employees' protection on communal or national level of labour law consist of the regime's preservation, to which was subject the employee without being allowed its alteration. It doesn't happen, that is to say, neither the new employer's – bearer's of the

firm relief from the previous one's obligations nor aggravation with new due to the firm's transfer. [Trantas, (1999)].

2. The business protection doesn't consist of the examined institution's goal

In this case, the question that comes up is whether the institution's goal to protect the employees' rights in case that the firm is transferred expands to the protection of other persons or other goals and interests, and the pre-mentioned, as well. More particularly, whether it expands to the employers' or the business' itself protection.

Within the examined institution's "frame" the firm's new bearer's arrival to the labour relations that already exist, provides indisputably a great advantage to the firm: the chance to be continued in an unobstructed way its function with a personnel that has knowledge and experience on this specific subject and the specific needs of its function to the business' interests, the eventual employer's and generally the economy's the protection through of these interests consists a profit for them, which comes indirectly without being directly pursued by the labour's law. Based on these facts, it would be inconsistent to be sustained that the examined institution contains also the protection's "supply" to the side that is the source of the dangers, from which is pursued the employee's protection through the examined institution, namely, the firm and its bearer.

Despite all these facts, the existence of contrasting opinions, which claim that the Directive's 77/187 main goal and regulations affect the enterprising freedom, deter the agreements between the firm and the employees for the transfer's details and the number of the transferred paid persons and, finally, impede or even avert the firm's transfer, were mainly developed in Germany due to the communal adjustment for the new employer's responsibility. The support of such "positions" however, consists a real eventuality, especially in the contemporary economical environment, where competition takes place with countries, the legal classes of which provide the slightest or even no protection at all to the employees and, in this way, the production's cost is reduced, while provides to the established there firms raised pledges of viability and flexibility compared with the European field's firms. [McMullen, (1992)].

A point of view like this can't be an argument in order to be expanded the examined institution's goals directed to the protection of the business' bearer's – employer's or the business' itself, with corresponding protection's minimizing, aimed to be offered to the work – force. That the

examined institution's social mission on behalf of the salaried – persons consists the one and only destination and determines its goal, is proved by the fact that none of its legislative regulations is connected or, in any way, attached with the firm's economical condition. In any of its rules isn't set any element that concerns the firm, e.g. economical difficulty, economical problems, the need of reducing its expenses, e.t.c. The only term – restriction that is set in relation with the firm is the aspect stated in the nomology, which claims that it should be continued the economical unit, which used the salaried work, is, also, continued the labour relation that connects the employee with it and

3. The observed institution and the right of enterprising action

not the need of being provided to the business economical help. [Trantas, (1999)].

The businessman's – employer's freedom from the enterprising action consists demonstration on the personality's free development with his/her participation to the economical life, much more though, when the businessman – employer, is, at the same time, owner of the business' real estates. The restrictions allowed to be imposed on these individual rights of the businessman – employer can't surpass the limits set by the others' rights, the moral principles, the freedom, the human dignity and the absence of harming the national economy and the general interest, as it is defined by the useful destination of the elements that concludes the enterprising real – estate property. [Pararas, (1979)].

Nevertheless, the labour's right protection, whether it's individual or social, causes equivalent limitations to the businessman's – employer's enterprising action and to his/her ownership right, when he/she is, at the same time, owner of the properties used for the enterprising activity. The labour's right, as a factor that limits the businessman's – employer's rights, "works" as an opponent individual right and as one of the functions that contribute to the formation of the human dignity's and general interest's senses. [Travlos – Janetatos, (1995)].

In the contemporary enterprising environment the quantitative and qualitative extent of the protection that refers to the salaried – person's and employers' individual rights is defined (and must be redefined) mostly by the balance which creates the constant dialog that is caused by their collation and their continual redefinition imposed by the continuously changing enterprising, social and economical facts.

Indisputably, within the today's economical reality the wider social interest is served, when

keep function firms, which create economical values with efficient terms and join in an harmonic totality more relevant to property elements, the added value of which is inferior of the organized total's value (synergies effect). At the same time, the reinforcement and preservation of the firms at the point that is allowed by the legislation, may be imposed for reasons of the social peace's consolidation (e.g. prevention of massive unemployment), and also for the general interest's protection, in the presence of which without even the absolute right of the economical freedom that can't work against it. In addition, the competition's nature itself – which pursues to hinder the creation of monopolistic situations in the economy and, thus, the restriction of the alternative facilities and the option's possibilities of the consumers and the other participants to the market – favors the competitive condition of more businesses, especially within the "few – sales" market. [Triantafillakis, (1998)].

By the above results that the general interest (economical development, working positions e.t.c.) and the firm's interest, as well, is composed of its maintenance and prosperity. This conclusion, though, shouldn't lead to the wrong perception that there is one and only interest for the firm, independent from the interests of different persons that complete the firm. In the meaning of "persons" or, according to another phrasing, "human means" that consist the business' parts are also concluded the relations of dependent labour, which join the business and its work – force, and the work – force's labour itself, as well. [Williamson, (]1970)].

The benefit from the firm's maintenance may be justified only at the point that consists the common resultant of the parted interests, firstly, the firm's internal factors (shareholders, creditors, suppliers, consumers e.t.c.), and also the general interest's itself, which although is an indefinite sense and may appear with various types, so as not to be easily values as a standard, even indirectly, is connected with the request of the firm's preservation due to the enterprising action's positive contribution to the values' production and occupation. [Venizelos, (1990)].

CHAPTER FIFTH

The legislative regime of the rights' protection of the employees in the event of transfers of undertakings

1. The rules that compose the examined institution

The institution of rights' protection of the employees in case that the firm is transferred is consolidated legislatively on a "nexus" of adjustments through which is pursued the materialization of its goals. The study of the consequences that causes to the labour relations the examined institution, presupposes the notion of the rules that form it within the Communal and Greek labour law.

2. The Communal law – the history of the communal regulations for the protection of employees' rights during the transfers of undertakings

1977 The Directive 77/187/EEC of the Council of the 14th of February in 1977

This is one of the first communal directive in the field of the labour law, with which was attempted to be faced the impetuous enterprising reorganizations that followed the petroleum oil's crisis in 1973 and, also, to be set a common legislative "frame" for all the states-members of the European Community so as not to be adulterated the competition between them. This Directive was published based on the article 100 of the EEC Composition which provided the right of publishing Directions intending to the approach of the states-members' legislations on subjects with direct effect on the common market's establishment and function. Special problem had been created by the fact that, those years, while France and Germany were already ensuring with their internal legislations the employee's change, other laws, as these of the United Kingdom and Belgium, didn't provide any relevant "foresight" so as to be distorted as a result the competition within the common market. The contracted States - Members supported their expectations for improving the employees' living and working terms, firstly, on the automatic, in a way, result that could bring the Common Market's function. Especially, the free handling of the production's factors "capital" and "work" was regarded that would allow the employees to look for work there, where the working conditions would be more favorable for them, thing that would have as result the gradual equalization of the income and the working conditions within the European Community. Besides, the free trading of merchandises and services and, also, the creation of a pure competition's system between the firms, would lead to the withdrawal of the artificial differences of one and only product's price in the diverse countries, thing that would have as a consequence the improvement of the living terms for the Community's whole population.[Nikolakopoulou - Stefanou, (1993)].

The 11 States-Members indicate in the Instruction's text that within the unified internal market should be given to this market's social sides the same importance with the economical, and that these two sides should develop with balance. At the end, they think that the development of the unified market's social dimension, because of the beneficial effects in favor of the employees, will create social assent which will contribute to the strengthening of the firms' competitiveness. The Directive that just means the enactment of the "slightest" protection of the paid – persons, is applied on "conveyance of firms, installations or parts of installations to another businessman, which arise after a conventional assignation or incorporation". In these cases, as the article 3 paragraph 1 of the directive anticipates "the rights and obligations created for the assignor by a labour contract or relation, which exists during the conveyance date, are transferred to the assignee because of the transfer". This transfer happens, actually, with full right, meaning that the rights' or obligations' transfer by the labour contract or relation is a direct result of the firm's transfer without being demanded the employees' agreement. All the above are valid for all the employees who work for the firm with a labour contract or relation during the time that the firm was being transferred.

Among others, the Directive adds, also, that the firm's conveyance itself doesn't consist a reason for dismissal (article 4, paragraph 1), it doesn't, though, exclude work-force's dismissals for economical, technical or organizing reasons that presuppose changes on the occupation's level. [Delors, (1999)].

1998 The Directive 98/50/ EC of the Council of the 29th of June in 1998

Main "targets" of this new directive is to be adapted the initial regulations of the directive 77/187/EEC, so as to be "aligned" to the developed by the European Communities' Court relevant nomology and more specific:

- a) to be clarified expanded based on this nomology the meaning of transfers,
- **b**) to be, expressly, anticipated that the directive 77/187 must be applied on the private and public firms, which work out economical activities and are either profiteering or not,

c) to be allowed some deviations from the above direction's general adjustments in cases of conveyances realized with procedures of insolvency, taken also into consideration the legislation's tendencies of the States – Members concerning the salvage of firms which face economical difficulties (problematic firms). [Illiopoulos, (2000)].

2001 The Directive 2001/23/EC of the Council of the 12th of the March in 2001

With this Directive were just codified the two previous directives 77/187 and 98/50 in an unified text.

3. The national law – The Greek legislation of harmonization with the Directive 77/187 – The Presidential Decree 572/1988

In Greece the rule that preserves the employees' rights in case of the firm's transfer has been established with the article 6 paragraph 1 of the law 2112/1920 long before the enactment of the Direction 77/187/EEC. This concrete Directive turned into internal law with the Presidential Decree (P. D.) 572/1988, through which the Greek legislator adopted all the regulations of the Directive (in fact, the PD's text consists in its greater part revision of the Directive's text), thing which means that through the communal law was, first of all, consolidated, expressly, the rule of the, by right, transfer of the labour relations to the new employer and the preservation of the labour terms, so as to be unalterable. Besides, with the P.D. are adopted for the g reek legal class friendly to the employees regulations of the European Labour Law, which till then were unknown in Greece (e.g. the deliberation's obligation), it is made use of the distinctive facility of the Directive's article 7 and in some sectors it is introduced level protection of the employees' rights higher than the Directive's one and, finally, it is introduced the new employer's responsibility for the previous employer's debts to the employees. [Kamenopoulos, (1997)].

In conclusion, the P. D. 572/1988 turns the Directive 77/187/EEC into national law in a complete, sufficient way, given that adapts the labour's national law to the Directive (where it is necessary) in a satisfying way by introducing new adjustments, while from the other side, preserves the already acquired for the employees by the traditional national labour law.

In a Communal and in a national level there aren't any recent legislative regulations in connection to the examined institution till today.

4. A first comparative inspection between the two lawful classes

Through the comparative examination of the national and communal origin's regulations that were pre-mentioned with regard to the examined Directive are gathered some remarks:

- 1. Aim of both regulations is the protection preservation of the employees' rights in case of a firm's or a business's transfer.
- 2. The way of achieving this protection is the legal obligatory labour relation's transfer from the previous to the new employer.

CHAPTER SIXTH

Field and presuppositions of application of the protective regulations the European and Greek labour law's in case of the firm's transfers, in favor of the employees'

1. Presuppositions of undertaking or business transfer according to the European and Greek labour law

During the control of the applications' presuppositions in relation to the above legislative regulations are examined the following:

- a. the existence of an undertaking or a business,
- b. their transfer.

2. The concept of "transfer"

First of all, in order to be applied the Directive should exist a transfer by a businessman – employer to another:

- either of a whole undertaking or business in the pre-mentioned meaning,
- or of a concrete exploitation or installation, namely the coordination of the personal and material means or immaterial goods, with which is constantly pursued a special work technical goal or, according to an other phrasing, a productive goal. In other words, we're restricted to define the "technical mean", by which is pursued the final goal of the firm, the so called direct result, and is pursued with the materials and immaterial elements that uses the firm. The exploitation consists the passage through which and its result, the business materializes its goal,
- or of a firm's part or part of installation. The point is about subdivisions either of the whole business or of an installation to the point that are seen by space's and organizing aspect are to be discerned and seek after a more special technical goal (e.g. the sector of a business' or installation's "cleaning") [Douka, (1992), (1997)].

Within the Directive's application field "fall into" only transfers or mergers, namely. The Directive is applied in all of the cases of change within conventional relations, the responsible for the firm's exploitation natural or legal person, who conventionally undertakes the employer's obligations against the firm's employees. The extended Greek harmonization adopted an already existed older foresight defines that "the Presidential Decree's 572/1988 regulations are applied on any conventional

or by the law transfer of firms, installations or parts of installations to another businessman".

3. The presupposition of the transfer or merger.

Meaning - Cases

A transfer may be the result of selling out, buying off, soaking up, reorganization, sanitation, donation, hereditary succession, auction – sale or even can be imposed with legal adjustment. The Directive's protection refers to the cases of *transfer or merger*.

"Merger" is the joining of two or more properties or companies without liquidation, in a way that at least one of these stops to exist, while the disappeared one's shareholders participate from now on to the remained companies or to the new established company. The merger may be realized with soaking up, when one or more companies (soaked up) convey to another company (soaking up) their property as a whole (energetic and passive). The merger may also happen with the foundation of a new company. [Weston, (1970)].

Indicatively, in the Directive's application field and in case that an organization of local self – administration stops to finance a foundation with result to be caused definite and complete pause of its activities in order to convey these activities to an other foundation with similar goal. Finally, to the Directive's protection are also enrolled the cases that the transfer of a concrete enterprising activity takes place in two successive phases and especially when the firm is transferred initially by the person to whom at first had been conceded the exploitation, to the owner of this business, who, after a while, convey it to a new person. It is, also, acceptable that it isn't necessary to exist direct conventional relations between the assigner and the assignee, given that the assignation may be realized in two phases with the interference of a third person, the owner's of the lessor's. With this state are covered mostly cases of firms' transfers in the form of "successive assignments" that will be examined hereafter.

4. The preservation of the firm's "entity", as a term for the transfer's existence

In order to exist firm's transfer must be, also, examined basic points that prove the preservation of its "entity", as it is:

- the firm's form no matter whether the firm's goal is profiteering or not. Consequently, they are also subjected to the Directive the transfers done by no – profiteering firms, which means

public enterprises and organizations of local self – administration,

- if the transfer concludes, additionally, transfer of the material elements of the firm, like the buildings, and the transfer of the immaterial elements, as well. (e.g the firm's reputation),
- the value of the immaterial elements during the transfer's period,
- if the employees' majority keeps working for the new employer,
- if during the transfer the consumers are transferred too,
- the similarity's degree among the firm's activities before and after the transfer,
- the business' activities interruption period before the transfer, in case, of course, that had already happened a pause of the activities. [Levendis, (1989)]

5. The preservation of the firm's "identity" as a term for the transfer's existence

The new employer's arrival at the previous one's position presupposes that the firm continues, even under the new bearer, the same economical activity maintaining its "identity" as economical unity. The term "economical unity" refers to an organizing – operating total by people and things for the durable accomplishment of an economical activity with similar (self – sufficient) "target" – settings. The firm's identity results from the conduced activity, the personnel, the employees in charge, the organizing, operating and productive methods of the firm, and finally, from the existed materials and immaterial productive elements of the firm. Actually, these standards have different seriousness commensurate with the firm's kind. Thus, the no – transfer of material or immaterial elements of the business doesn't exclude a "business transfer". In addition, the fact of the title or form change (e.g. conversion of the personal firm into company) doesn't affect its identity's maintenance.

Based on the above facts it is concluded that in order to exist the firm itself before and after the transfer it is necessary:

- to maintain its identity under the new bearer,
- to be continued its function under the new bearer.

It is, also, concluded that indifferent are the elements which compose the outside image of the business, like the title or its form. However, judgment's measure for the preservation or not of the transferred firm's identity consists definitely the following: whether the successor businessman – employer continues this activity, and whether the necessary for the firm's function parts, like material (store's stock, tools), immaterial (consumers, reputation) and personnel were transferred to the new employer. It's essential to be present the possibility to be continued an as similar as possible

activity after the firm's transfer. Very important, at this point, it is regarded to be, whether the new employer has undertaken the labour's organizing and its methods. In conclusion, instead of a definition, it could be stated that the maintenance of the firm's identity happens when, first of all, the employees themselves accomplish, at the same place and with the same terms and conditions, the same works, while simultaneously, the successor – employer is able with the business to cover, with exactly the same way, the employees' in the firm salaries. Nevertheless, especially in cases, where a firm's activity is mainly based on the work – force, like the case of cleaning or guarding the business' installations, this means that an organized totality of employees who are specially and steadily orientated to a common activity, may correspond to an economical unit, when other productive factors are absent.[Rhodes, (1992)].

6. The Directive's application on the public sector – Cases of application

It isn't regarded as a business transfer, according to the Directive's 77/187 meaning, the administrative reorganization of public administrative authorities or the public duties' conveyance among public administrative authorities. Goal of the Directive is the employees' protection from the negative consequences that is likely to bring them the structuring changes of the firms that follow due to the economical development in a national and communal level, and are realized, among others, with transfers of undertakings to other businessmen after assignation or merger. Consequently, it doesn't consist "business' transfer", under the Directive's meaning, the structuring reorganization of the public administration of the conveyance of administrative responsibilities. Therefore, if doesn't belong to the conveyance's meaning in this concrete directive the conveyance from a municipality to municipalities or communities union, administrative responsibilities of a municipality referred to the public authority.

However, the Directive applies:

In the case that a public organization is converted into an anonymous company which belongs totally to the State, as long as at the moment of the conveyance the employees were getting protection as employees according to the national law. Also, the Directive is valid in case that a municipality, legal entity of public law which acts within the administrative law's special rules, undertakes advertising and informative activities related to the services which till then belonged to a non – profiteering union in favor of this municipality's interest, a union that consists legal entity private law, as long as the transferred unit maintains its identity.

7. The "outsourcing" or "contracting out" as a form of businesses transfer

7.1 The concept of the "outsourcing" or "contracting out"- Differentiations

In the contemporary economical life the sense of the firm's, the installation's (or part's of it) conveyance tends to acquire a new meaning, as even more show up new dealing practices according to which the firm isn't totally or partly conveyed, but assigns to another provider company only one of some of its activities (services of procedures) that till now were developed within the business. "Make or buy" on your own. That's the question through which is often confronted the issue of outsourcing in the firms. This quite "tight" confrontation reveals that the basis of the outsourcing is the clearly economical – enterprising plan of the employer.

The term outsourcing is artificial, originates from the American terminology of the economists and is composed by the terms "outside", "resource", "using". To be expressed in a free way, it is possible to call the outsourcing as "external powers' use" or "sources transfer to the responsibility of third firms". Additionally, it can be interpreted as a method that can improve the function of the structures and the internal procedures of a business. This improvement happens with the use of external firms that provide services or directly through the products trading intending to their further alteration and promotion to the market and, at the same time, the pause of the internal enterprising powers use, which almost till now, executed these works. [Stewart & all, (1984)].

The outsourcing phenomenon, a flexible form of a firm's transfer, given that it's about a vivid form of the market, may take shapes. In general, though, it could be discerned in two very important categories, the internal and the external outsourcing.

The external outsourcing which is often characterized as "original", takes usually place through the some sources' conveyance or the business' production to a completely strange third person. In that case are conveyed, at the same time, the foundation and the labour relations to the legally and economically self – sufficient third (person). Within the external outsourcing is, also, possible the pause of installations' function and the clearly assignment of the orders to third – persons (classical outsourcing). The classic outsourcing may be partial or total, concerning namely the business' totality. An other type of the external or original outsourcing is the so called Management – Buy – Out. In this case undertake some partners, mainly employees in charge, a specific productive sector of the business, they undertake actually its essential exploitation as employers. This method tries to apply in our country the latest years the State in businesses of the wider public sector (Public Businesses of Common Benefit

e.t.c.) intending to their restoration and dynamic impulse in the free market. [Kartaltzis, (2004)].

Especially, though, in groups of businesses very common practice is the internal outsourcing. Here is conveyed a self – sufficient legal companies' entity within this concrete group of businesses. And even when the supply's offer continues to be supplied at the same place, as before the conveyance, we keep talking about internal outsourcing, as long as this productive activity, even if it isn't transferred topically, is provided by an independent of a company formation, part, though, of the group. Another discrimination of the outsourcing is between Inhouse and Outhouse outsourcing. This criterion is quite topic and may appear in the external and the internal outsourcing, as well. In the Inhouse outsourcing the supply's place or / and the productive activity's place remains the same. On the contrary, in the Outhouse outsourcing are used completely different installations and places of productive function than those used by the previous employer. [Kamenopoulos, (1998)].

The reasons that often lead the firms or / and the isolated employers to the outsourcing option as a concrete enterprising decision, are regularly economical reasons. It is a way in so as to be reduced the mass of the used by them work. The increased economical pressure, which is mainly caused, due to the globalization's phenomenon, by the liberated market's created dynamics, is, according to empirical studies, the initial reason for removing and conveying an employer's works, productive functions and procedures, structures to third firms, external – third, or even internal, members of the businesses group that belongs.

The most usual activities that the outsourcing covers are:

- the payments,
- the firms' accountancy (book keeping),
- the company's informative support,
- the services for the sales promotion,
- the restorations,
- the legal and tax cover of the firm,
- the personnel's training,
- the hirings and, generally, the personnel's handling. [http://www.outsoucing.com].

According to the recent survey in the U.S.A by "The Outsourcing Institute" were concluded the following estimations in relation to the percentages that have recourse to this method per activity:

Table 5.1

Manpower	84%
Accountancy	52%
Information Technology	51%
Legal and Tax Support	44%
Production	38%
Marketing – Sales	34%

★ <u>Source</u>: **Kamenopoulos, Th**. (1998), "The activities' conveyance in the recent nomology of the Court of the Europeans' Communities'", Inspection of the Labour Law 57, p.1105 -1106.

At the same time, though, it is likely the employer, in combination with the above reasons, through the outsourcing's mechanism, to pursue to be released from a valid collective labour contract (C.C.L.). This issue got special dimensions in Germany through the pursuit of many firms to have resource to the so called Tarifflucht, which actually means "escape from a valid C.C.L". In fact, they try to escape from the application of an enterprising collective labour's contract, as usually through these are consolidated more flexible, but more expensive too, labor relations. On the contrary, the firms "aspire" to be "chained" by C.C.L of the some branch or profession, which "secure" lower payments and avoid intense reactions of the employees' associations. Namely, in this case a business, even after outsourcing procedures, pursues and finally succeeds in changing an "expensive" to a "cheap" collective regulation of the labour relations. [Antonmattei, P. H. (1977)]

In conclusion, the above ascertainments related to the outsourcing case "enforce" the businessman – employer to know "in depth" this phenomenon's all sides, so as to be able to work out secure a long – term business plan. The outsourcing cases' confrontation within the Greek business life is still "poor". Despite all these, the contemporary economical – business environment has already imposed the outsourcing as an essential business movement, necessary for the maintenance of flexibility, competitiveness and, maybe, the economical "forms" viability.

CHAPTER SEVENTH

The consequences of the rules that govern the firm's transfer

The employees' rights and the previous and new businessman's – employer's obligations

1. The rule of the existed labour relations in case of business' transfer

The transfer of an undertaking doesn't consist dismissal's reason for the assignor or the assignee. However, the Directive doesn't hinder dismissals for economical, technical or organizing reasons which lead to the work – force's changes. Therefore, in case that the employer changes, the labour relations aren't cancelled because of the conveyance, oppositely, though, the new businessman – employer "ipso iure" is involved to the rights and obligations that come from the labour relations that exist during the conveyance time (date).

If the labour contract of the labour relation is denounced, as the transfer means essential change of the working terms against the employee, the labour contract's or the labour relation's denunciation is regarded to have happened because of the employer. As long as at the moment of conveyance were occupied employees with a relation of "borrowed labour", if it doesn't result something different through the borrowing contract, these relations keep existing regularly for the successor – employer.

The Directive doesn't forbid the continuation of the contract or the labour relation between the assignee and the employee who is occupied during the firm's conveyance time by the assigner, even if the employee is opposed to the relation's continuation with the new employer. In addition, the Directive's application doesn't hinder the employee, who was occupied in the conveyor's business during the business' conveyance time, to oppose to the assignee for the undertaking of his/her contract of labour relation, under the presupposition that the relevant decision will make free himself/herself. Finally, in case that the employee decides free not to maintain the contract or the labour relation with the successor – employer, it is up to the states – members to define the following consequences concerning the contract of the labour relation.

2. Protected employees by the Directive's 77/187/EEC regulations

To the Directive's protective regulations are subjected all the persons regarded as "employees" within the valid, in every state-member of the European Community, labour nomology, and had been during the transfer time "employer" the one who conveys the business. Actually, it is about employees

who are bid with the businessman – employer with a "dependent labour's contract". This means that aren't subjected to the relative protection the persons connected with the business with an other type of relation (work contract, independent services, administration's persons) or those were occupied in the business at the transfer's point, but are connected with labour relation with a third employer who has lent then to the conveyed business based on the Directive of lending employees among the firms.

They can't be, also, subjected to the Directive's protection employees, who had abandoned the firm during the transfer's period, or employees who had resigned the same period or employees who weren't occupied in the firm's part that was transferred or employees who were hired after the conveyance. At this point, it should be indicated that the national nomology can defines, in a free way, the meaning of the labour relation or the labour contract, it can't exclude, though, from the Directive's application field labor relations based on the number of the realized working hours or these that must be realized (namely, the contracts of part – time occupation can't be excluded) labour relations given that they are fixed – time labour contracts in the Directive's 91/383/EEC sense, as the labour relations of temporary occupation, too.

3. The meaning of the "dismissal caused by the firm's transfer"

As it was pre-mentioned, through the examined institution is aspired the secure of the salaried person's working place from the probable "threat" that consists the firm's conveyance. As dismissal owed to the firm's conveyance should be considered every deprival of the working place that, directly or indirectly, depends on transfer and is owed to the employer's initiative. This "cause" relation exists in any case that the transfer consists the evident or hidden reason for the denunciation, when, namely, the conveyance itself functions either as an external excuse or as the real motive and prop of the dismissal.

Typical cases, where the firm's transfer consists a reason for dismissals, are the following:

- The dismissals that realizes the firm's transferor in order to make the conveyance more facile reducing its expenses or to enable, in the same way, the conveyance to a specific person, so as not to be obliged to make dismissals.
- The dismissals realized by the successor- employer in order to be released from the employees that "undertook" through the transfer intending either to restrict the expenses for the firm's function or for any other reason.
- The dismissal owed to the firm's transfer abroad, without previously being proposed to the employees to be occupied there.

- The dismissal realized by the firm's conveyor, as he/she interrupts, definitely, its function right after, though, the dismissal moves on to the business' parts conveyance and their new bearer sets again the firm in function at once. The firm's immediate re-function abrogates its function's "interruption", and creates application field for the examined institution given that in this case the firm's continuation doesn't justify the working places' deprival anymore, as it directly joins the dismissals with the firm's conveyance. If this point of view isn't acceptable, it is obvious that it could be "violated" the protection provided by the examined institution, as the by excuse interruption of the firm's function would consist an "absolutely legal" and "beloved" methodical handling in order to be surpassed the dismissals' prohibition due to the conveyance and in order to be conveyed the firm without its personnel, as well. But when from the business' function interruption to its re-function intervenes a long time, then, the time-distance interrupts the relation cause effect between the conveyance and the dismissals and, as it is followingly refered, the dismissal's legality isn't affected by the conveyance.
- Every dismissal owed to reasons that service the businessman's employer's, assignor's or assignee's self-interest. [Archer & all (1996)]

The business' transfer, in any of its forms, can't consist a legal reason for the working positions deprival. On the contrary, dismissals, with no relation cause-effect to the firm's transfer are those owed to another reason. Typically are referred the following:

- Those owed to reasons connected with the employee and those that could result apart from the transfer, e.g. dismissal of an employee who was stealing materials from the firm or was constantly absent from his work.
- Those owed to the fact that the new bearer interrupts permanently the firm's function. If the firm falls to a new bearer who sets it from the start in function after a long while, the dismissal's character isn't altered.
- Those owed to reasons connected with the business itself and not with its transfer e.g. (owed to) the economical, technical or organizing "nature's" measures' taking which are often caused by the re-organizing or "sanitation" of the business which the examined institution doesn't intend to stop or hinder.

These measures' taking is likely to cause an emergency to the firm that imposes the immediate dismissal of the personnel.

However, in any case, the economical-technical reclassifications shouldn't be a kind of pretence, namely, happen with the intention of supplying to the businessman – employer a



². The Greek courts' nomology has decided that the taking of such measures doesn't consist practicing of the enterprising freedom, when they are taken exclusively in order to "offend" the employees' rights. Decisions made by the businessman-employer based on this consist right's practice contrary to the Civil Code's article 281 (indicative the decisions of Athens' Court of Appeal: 2840/1987, 8714/1987, 11108/1995). [Douka, (1997)]

3.1 The dismissals for economical-technical reasons

In the Directive's application field the power to fire for economical, technical or organizing reasons has the assignor businessman – employer and the assignee, as well. In this present case, the working places' menace originates not from the transfer itself which doesn't influence neither the places nor the working terms, as it was mentioned above, but from the economical-technical reclassifications that is usually expected to follow after the transfer (incorporation, absorption, restore e.t.c.).

When the undertaking's transfer lead to its incorporation to an other, the question that comes up is whether the economical – technical reasons caused by the new organizing needs born by the firm's incorporation, threat the working positions and the employees, of the firm where the incorporation takes place. The businesses' incorporation has as a consequence that the business which derives from it, owns as personnel the employees' totality, which till then were occupied by the incorporated firms. The organizing reclassifications born by the amalgamation concern the new firm, either in general or in the part which is mostly affected by the incorporation in correspondence, the working positions threatened are those of the firm's employees, which belong to the successor-employer, in general, or in the part where they are occupied in the under reformation department. And certainly they are positions of the conveyed firm's employees.

The economical-technical reasons joined with the firm's transfer provide the essential base for dismissals, the dismissals' legality, though, which will finally happen, demands, also, the right choice of the dismissed persons that should be made based on the criterion formed by the labour law, when they don't lead to massive dismissals, presupposes always the correlated nomology's preservation, as well. Whatever has been mentioned is valid, also, in the case of the conveyed firm's absorption by another, as in any other "unification" of many firms into one. [Anderman & all (1985)]

4. The securing of the employees' existed claims

The states members <u>are able</u> to foresee that, after the conveyance's date, the assignor and the assignee continue to be "jointly" and "totally" responsible for the obligations born before the conveyance and derived by the labour contract of the labour relation, which existed during the transfer's time.

5. The preservation of the employees' existing rights

5.1 Preservation of rights arisen from the individual work contract

The transferor's rights and obligations that result from the labour's contract or the labour's relation existed during the transfer's time, are transferred by this transfer to the transferee. In other words, the working relations are transferred "ipso facto" to the successor – employer with their complete contents without being necessary to be signed a new labour's contract or to be demanded the employees' consent or other formality provided the "transfer" to have been accomplished. The transferred employee is obliged to accept the employer's change, unless the applied national law supplies different adjustment.

5.2 Cases of maintained rights.

- Payments' issues.
- Other benefits participating to the total earnings formation (like the car's supply, mobile phone, credit cards, e.t.c.), as long as, they certainly, under the allowance's conditions, aren't considered to concern the satisfaction of the firm's operating needs.
- Issues of professional ascension or career concerning the personnel (place in hierarchy, promotions, transpositions / displacements, disciplinary law, e.t.c.), as these have been already regulated and formed within the internal regalement of labour duties and claims valid into the previous employer's firm.
- Rights related to the labour's contract's termination.
- Institutional issues' forms, like holidays, working hours, consideration of recognized former working experience, e.t.c.
- Working terms formed with the "exploitation's method".
- Rights that result from existed systems of professional or inter-professional insurance, which
 have the form either of the insurance's team programme in an insurance company or the form
 of an account that work in the business' "frame" (these rights' maintenance is specially
 regulated by the Directive).
- The rights connected with dismissal or premature retirement after agreement with the employer, belong to the "rights' and obligations" meaning included to the article 3, paragraph 1 of the Directive 77/187.
- Former working experience: in order to be estimated the economical nature's rights at the assignee's service, related to employees' former working experience, like the pay for the

labour's contract termination or the salaries' increase, the assignee ought to take into consideration the amount of the years completed in his/her firm of the service of the person who conveys the personnel subjected to him because of the transfer as far as this obligation derived by the labour relation which connected that personnel with the transferor and according to the terms agreed within this relation.

- The article 3 of the Directive 77/187 prohibits the new employer to suggest to the employees of a transferred unit terms less favorable than those applied by the transferor for the premature retirement, and to these employees to accept the above terms, when these terms are just aligned with the terms applied to the rest of the employees with the terms applied to the rest of the employees of the person to whom directs the transfer, during the transfer time, unless the more favorable terms applied previously by the transferor resulted by a collective contract which legally has no application to the employees of the transferred unit anymore.
- The obligations which are valid in case of an employee's dismissal, and result from a labour contract, labour relation or collective contract that binds the conveyor against this employee, are transferred to the person to whom directs the conveyance under the presuppositions and the restrictions foreseen by this article, apart from the fact that the above obligations are based on actions of the public authorities or started to "produce" their results after such actions and apart from the relative details of application.
- However, the Directive doesn't prohibit the person to who directs the transfer to modify the terms of this concrete labour relation to the point that the national law permits this modification except for the firm's transfer case.

5.3 The obligation of the rights' announcement

The states – members <u>are able</u> to take the appropriate measures in order to be ensured that the assignor announces to the assignee the conveyed rights and obligations, according to the Directive, to the point that these are or should be know to the assignor during the transfer's time. The assignor's omission to inform the assignee for these concrete rights and obligations, doesn't offend these rights' and obligations' transfer, nor the employee's rights against the assignee or /and the transferor in relation to these rights or obligations.

5.4 The terms' maintenance of the collective labour contract

According to the Directive, after the transfer, the assignee is obliged to keep the agreed with

collective labour contract terms, as these are applied against the assignor, too, according to the contract,

until the date of denunciation or termination of the collective contract or start of the validity or

application of an other collective contract. The states - members are able with their internal law to

restrict the period of these concrete terms maintenance under the approval that this period can't be shorter

than a year.

It is self-evident that, after the transfer, employer and employees are able, with a new collective

contract, to alter the terms of the collective contract that was valid before the transfer. It should be made

clear that the maintenance of the collective labour contract's terms is a quite different thing from the

continuation of the validity the collective labour contract's itself. It isn't excluded, after the conveyance,

the employees not to be subjected to the same collective labour contract anymore, because the new

employer isn't bid by the collective labour contract, by which was bid the previous employer.

Besides, an enterprising collective labour contract can, after the transfer, stop being valid, as it has

already stopped to exist the enterprise, maintenance of salaries' rights and comparison with the salaries'

regime which is valid within the new exploitation. The salaries' rights are preserved as "gained", only

when they are more favorable than those which are valid in the successor's employer's business. In this

case, the most favorable salaries' supplies are maintained as an additional "personal salary" until this

extra amount of money to be absorbed one day by the total paid wages to the new employer's employees.

If in the new exploitation exists a more favorable salary regime, then the transferred employees are

enrolled to this new regime and is, also, set the issue of maintaining the favorable rights. The issues of

the rights related to the personnel's professional arise, as these have been regulated and formed by

internal labour Regulation valid in the previous employer's business. A case, where it doesn't exist for

the successor – employer a corresponding internal labour Regulation or the existed to be of different

structure from this to whom were subjected the transferred employees. [Antonmattei, (1977)]

6. The principle of the "equal treatment" between the salaried persons of the transferred

business and the new employer's personnel

The field, where the principle of the equal treatment is applied, is the business and its "object" is

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extended to the labour's terms that the employer forms using his/her directing right. Namely, the equal

treatment's principle presupposes self - willing, voluntary and not obligatory behavior of the

businessman – employer. [Koukiadis, (1993)].

In cases, where the firm's conveyance is followed by incorporation, either with absorption of a new

firm's foundation, the personnel of the new final firm is consisted by employees' groups with different

labour terms, because of the fact that they come from different firms. The subjection of all these

employees to the new, common for all now, employer's directing power, raises the question, whether it's

born the obligation to him for equal treatment of this dissimilar amount of employees that consists the

new firm's personnel, under the presupposition, of course, that the reference applies to those employees

occupied under the same conditions. Lest perhaps, namely, the new employer is obliged to form a new

working regime, common for all the employees of his firm, which will compose choosing by each of the

employees' groups of by each employee individually, the most favorable, per object, terms transferred by

the origin firms. It is, also, raised the question if those more favorable terms should be, based on the

equal treatment's principle foreseen by all the Communal Directives concerning working issues and the

national law, as well, extended to the salaried, too, who will be hired by the new firm.

The business practice in the European space has proved that all of the pre-mentioned consequence is

that the firm's policy referring to the labour relations suggests the labour terms' assimilation for the

personnel's totality in order to be preserved the working peace within the exploitation, this assimilation,

though, consists the new employer's choice and not a legal obligation.

Finally, it is obvious that the new employer has the right, in the field of his/her directing authority, to

form a new regime of working terms, after the firm's conveyance, for those who followed the transferred

firm and those who will be hired, after the conveyance, following a policy of assimilating the working

terms. [Diamantopoulou Anna, European Commissioner responsible for Employment and Social Affair,

PORTUGAL Community Support Framework III (2000/2006) Signature of the Operational programmes.

"Employment, Training & Social Development" and "Education" Lisbon, 13 July 2000, in

www.europa.eu.int].

7. Information and deliberation

7.1 The employees' information obligation

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Bearers of the information's obligation.

The obligation concerns the assignor and the transferee employer, as well.

Information's receivers.

The transferor's employees' representatives, as much as the representatives of the transferee's – employer's employees.

Information's object.

- The date or suggested date of the firm's transfer.
- The transfer's reasons.
- The legal, economical and social consequences of the transfer for the employees.

Information's time.

The transferor is obliged to announce these informations to his employees' representatives, in time, before the transfer's realization. The transferee is obliged to announce these informations to his employees' representatives, in time, and definitely, before his employees is affected directly by the transfer, with regard to the occupation's and labour's conditions.

7.2 The information's obligation in case of the employees' representatives absence

When within a business or installation hadn't been any representatives of the employees, for reasons apart from the last ones' will, the states-members should have predicted that the employees must be individually informed previously:

- for the date or the suggested date of transfer,
- for the business transfer's reasons,
- for the legal, economical and social consequences of the transfer,
- for the transferred firm's employees,
- for the foreseen measures referring to the work force.

7.3 The deliberation's procedure between employers and employees

When the assignor or the assignee intend to take measures referring to these concrete employees are obliged to advance, in time, to deliberations for these measures with the employees' representatives in order to be achieved an agreement.

The presupposition for the deliberation's obligation creation.

To be certain, either the assignor or the assignee, to take measures that will affect the employees (namely, measures that worsen the working regime).

The deliberation's realization time.

In time, before the employer's measures are completed. The deliberations can be done apart, but nothing prevents their realization in an unified way between the transferor, the transferee and their employees representatives.

The deliberation's purpose.

The agreement's achievement.

- With this agreement it is still likely some, valid until the transfer, working terms to become unfavorable.
- This agreement's legal nature depends on the valid ones within the national legislation.
- However, it is self evident that the obligation is "consumed" during the deliberation and it isn't necessary to be, finally, achieved the agreement. [Lixouriotis, (1993)]

7.4 Information and deliberation in business groups.

The information's and deliberation's obligations are valid apart from the fact that the decision which ends to transfer, has been made by the employer of the firm that controls the employer. During the denunciations examination for violations of information's and deliberation's demands, which are predicted by the present Directive, isn't acceptable, as an excuse, an argument based on the fact that the information wasn't supplied by a firm which controls the employer. [Hopkins, (1987)]

7.5 Obligations' restriction only in enterprising units, where exists legal possibility for labour representation

The states – members are able to limit the information's and deliberation's obligations in businesses or installations, which, referring to the number of the employees that occupy, fulfill the presuppositions for the "election" or the appointment of a collective "instrument" for the employees' representation.

8. Application's measures – Sanction

The Directive imposes on the states-members to insert to their national legal order the measures demanded, so as all the employees and their representatives, who believe they are harmed because of the breach of the obligations resulting from the Directive, to be able to claim their rights through the judicial way, eventually, after a previous appeal to other authorities in charge.

In case of the labour relation's termination because of the conveyance either by the assignor of the assignee without that being owed to economical, technical or organizing reasons, then the dismissal is illegal and the employee is entitled to be compensated with on amount calculated according to the years of work and the working terms which were valid in the assignor's business.

CHAPTER EIGHTH

An economical observation of the firms' transfer – cooperation and the effects on the labour relations

1. Introductory comments

Till recently the enterprising decisions were concerning mostly the economists, the firm's analysts, the tax consultants and the firm's lawyers, as economical phenomenon. Nowadays, the enterpizing decisions examined by the internationalized economy have not only economical, but also social dimension. In a new economical system, the thing we're supposed to examine is the best use of the available productive factors. The economical issues are social issues, too, as the owners of the production's factors are the world-wide societies. In order to understand better the multi-lateral enterprising decisions and their effects on society, we should comprehend those parameters that regularly lead to positive and negative social-economical results, e.g. reduction of the productive factor's efficiency, cause of unemployment, e.t.c. [European Commission, (1994). in www.europa,eu.int]

At this point, we will try to examine the "frame" of the firms' function by isolating an enterprising decision: "the firms' transfer-cooperation" and a social dimension "occupation". Intending to create a concrete and clear "picture" for the effect, or not, of the enterprising decisions, with the pre-mentioned forms, on the occupation of the conveyed-cooperated companies before and after their transfer-cooperation, we will follow this structure:

- Definitions and distinctions between the various possible forms of firms' transfer-cooperation.
- Short reference of the economical theories which justify interpret the phenomenon of the firm's transfer co-operation.
- Conclusions.

2. Forms of businesses' transfer – cooperation

The use of a specialized terminology by every scientific field created, on the one hand, conditions for better and faster communication between scientists of every scientific field, on the other hand, though, hindered the contact between scientists, who work for the social whole's benefit each one of them from a different gnostic object. At this point, the creation of some popularized definitions about

the forms of businesses' co-operation aims only, to the creation of a "climate" of the firms' phenomenon "transfer – co-operation "multidisciplinary" analysis. [Scherer, (1986)]

When, for example, we've got firm "A" and firm "B", which have related sizes, act decide to collaborate establishing a new firm-legal person "C', this form of conveyance – co-operation we define as "Incorporation or Unification" (Merger). [Aaronovitch & Sawyer, Hannah and Kay, (1977)]. Nevertheless, when a firm "A", certainly bigger than an other firm "B", moves on to the buying off of the majority or the whole control of the "B", then this type of conveyance-co-operation is called "Acquisition", as long as each one of them preserves its regime. If the firm's "B" acquisitions by the "A" leads to the complete absorption of the legal person "B" by the "A", then we consider the conveyance as "Takeover". Finally, if the firm's "B" acquisition by the "A" happens through acquisition's procedures concerning a "packet" of shares, which meets the rest of the shares' resistance and if the absorption is completed, the form of transfer is characterized as "Hostile Takeover". [Hopkins, (1987)].

Beyond the pre-mentioned forms of the transfer concerning transfers-co-operations of legal person, someone could register, also, other forms which lead to the change of a firm's ownership's regime, resulting either from the "Managers" (Management Buy – Out) or from the "Lenders" (Leverage Buy-Out). [Williamson, (1970)]. According to Berle & Means in 1932 "exists and should exist in the "contemporary" businesses a clear distinction between the ownership's regime and the Management – Administration of a business". [Berle / Means (1932)]. When the Administration of a business, for reasons that we're going to explain right after, makes an offer and buys out the shares' "packet" controlling the company, this is the form that we define as Management Buy-Out. When the Manager's place take a company's creditors undertaking its control and administration, then we refer to "Buy – Out by creditors" (Leverage Buy – Out). [Reinganum / Smith (1983)].

3. How the economical theories interpret the phenomenon of the firms' transfer – cooperation

As it is represented in Diagram 8.1, almost the whole academic research on the issue of the firms' conveyances-co-operations by micro and macro – economical approach, forms two wide Groups of Theoretical Approaches.

Group A regards that the firms' transfers are "vehicles – means" for the achievement of the long-term enterprising goals.

Group B regards that the firms' transfer-co-operations are "instruments" in order to

correspond the firms to "out of business" changes.

For the complete understanding of these general theories in relation to the purpose for which are used the firms conveyances by the last ones, we will consult the micro-economical theories that correspondly support the theoretical base of each Group.

Group "A" [Co-operations – Means for the long – term enterprising goals achievement] is theoretically supported:

- a) by the Neoclassical Theory (Group A1), and
- **b**) by the Managerial Theory (Group A2).

The Neoclassicals proposing as ultimate goal of the firm's function the profit's maximization support that the firms' conveyances – c- -operations cause increase of the co-operated companies' productive factors' effectiveness – management. Namely, they support according to: Ansoff (1965), Archer and Faerber (1966), Weston (1970), Williamson (1970), Scherer et al (1986) Financial Synergies of the Firms. Other researchers, as Teece (1980), Stewart et al (1984), Hopkins (1987), of the same economical theory (Neoclassicals), support that the motives of the firms' co-operations are "operational synergies" or "managerial synergies", Manne (1965). Apart from the motives supported by the various researchers of Group A1 it is converged that the companies' co-operations – conveyances create or aspire to scale's economies. The Group's A2 researchers who adopt the principles of the "managerial theory of the firm" claim that the companies' co-operations happen in order to "reduce the enterprising risk" (Risk Reduction). Especially, Hambrick and McMillan (1985), Porter (1985), Gupta and Govindarajam (1986) claim that synergies to the "enterprising risk's differentiation" and, consequently, contribute to the firms' profiteering.

However, the Group's A2 researchers support that the companies' conveyances contribute to the enterprising risk's reduction and to the increase of the occupied productive factors' effectiveness (Risk Reduction / Efficiency Studies). The Group's B researchers (Conveyances-Businesses' Gooperations-Enterprizing instruments corresponding to external changes], like Aaronovitch and Sawyer (1975), Prais (1976), Hannah an Kay (1977), Reinganun and Smith (1983), mention that the companies' conveyances intend to form a higher negotiating power (Market Power) either through the market's share concentration or through the higher efficiency. In other words, according to the researchers of the Latest Micro-economical Theories (Agency-Disturbance Theories) the companies' co-operations intend to form within the market conditions that are affected by the firm's comparative position and, therefore, gains some special privileges.

4. It is efficient and necessary presupposition for the firms' transfer – co-operation their will to maximize their profits, to bring the managers forward their personal ambitions and form the market and all the above are valid, if the real subject of the productive procedure of every firm corresponds to the market's real needs' satisfaction

Generation of economists and, especially, executive cadres, in charge of firms, were ardent supporters of the Neoclassical Micro-economical Theory, which sets as main principles the maximizations of the product for the achievement of an increased price against the competition. If the Neoclassical formula concerning the firm's aim and operation is powerful, then for what reason exists the phenomenon of the bankrupted and with economical problems firms apart from the branch or the country where they are activated. It is, finally, necessary, as many researchers suggest, to reconsider the micro-economical theory, which is, also, applied to the phenomenon's interpretation of the firm's trnasfers.

In the following paragraphs are, concisely, "sketched" the basic points of a new aspect of the micro-economical theory, which is, also, applied to the interpretation of the firm's conveyances – cooperations' phenomenon. For the better understanding of the suggested suppositions about the issue is cited the Diagram 2, two are the main "players" of the economical circuit:

- a. the "CITIZEN" who expresses the Demand,
- **b.** the "LEGAL PERSONS" (included the "STATES") who express the Offer.

The CITIZEN'S role in the economical circuit is defined by his/her three qualities'

- a. sole owner of the productive factors,
- **b.** sole the one who decides,
- \mathbf{c} . sole the one who has needs and desires.

The three above qualities of the "CITIZEN" define his/her behavior as assignor of the productive factors and as consumer, too.

The "LEGAL PERSONS", in contradistinction, are presented directly dependant on the "CITIZEN"s qualifications for the insurance of the demanded productive factors and for their production – offer, as well.

By examining the economical system's operations, analytically, it is made sure that the CITIZEN disposes the Production's Factors (P. F.) Land, Work, Capital, Enterprizing and INFORMATION. In order to satisfy his/her needs and desires assignees part or the total of the P.F.'s through the circle of the P.F.'s apportionment to the Legal Persons and instead of this assignment expects to collect "Rent" for the

Land, "Salary" for the Work, "Interest" for the Capital, "Profit" for the Enterprizing and "Payment" for the Information. The creation of Relative Values through the P. F.'s assignment gives him/her the chance as "consumer" to ask for those products/services which will greatly satisfy his/her needs and desires. The prepayment of the expected profit and the satisfaction of the needs and desires is expressed through the satisfaction circuit and, especially, through the price paid for each good/service. The price, in repeated markets (rapid recycled goods) or in constant consuming goods, on the one hand, expresses the identification of the production with the demand and, on the other hand, gives the chance to the firm (Legal Person) to compensate all the production's factors that had occupied for its operation.

Supposed that the Legal Persons operating in a non-monopolistic environment and based on the profit's maximization (namely, the maximization of the efficiency only of the enterprising factor) produced goods-services which didn't satisfy long-view the CITIZEN'S needs and desires, with his qualification as consumer, could achieve their goal that means the profit's maximization. The answer has been given by the market affirming, with the thousands of firms which close or, long-view, shrunk, that the satisfaction of the CITIZEN'S – CONSUMER'S needs and desires is a pre-demanded convention for the compensation's possibility for each occupied production's factor included the enterprising activity with the profit. And so be it that the firm produces those goods which correspond to the consumers' needs, but the compensation of the occupied productive factors happens with an apportionment that doesn't declare the contribution of each factor to the final result. It is set the question whether this Legal Person (firm) will be able long-term to find the production's factors that needs and, consequently, to produce the goods that satisfy its costumers/consumers. In addition, the answer has been given by the market either with the form of strikes or the capitals' removal, or even with the absence of land and information.

In conclusion, the firms-legal persons operate intending to satisfy for years the dynamic needs of the consumers. Provided that this main presupposition is fulfilled and each occupied factor receives total compensation that satisfies him, can be, also, long-term achieved the maximization of the enterprising factor's efficiency of the profit's. The internationalization of the markets, the available technologies, the training/education and the experiences of the CITIZENS, the access to the INFORMATION render the neoclassical and the contemporary micro-economical theories unable to interpret contemporary business phenomenon, as the one of the firms' transfer – co-operation. [Prais, (1976)]

5. Conclusions

The concentration and study of all the above facts for a series of firms which consist of representative sample of different business branches are proved the following:

- 1. Firms, whose productive activity doesn't correspond to the market's dynamic demand, can not survive for years apart from the business movements that can be realized (e.g. transfers with incorporations or buying out) lengthening for a while their operation.

 According to Diagram 8.2 is proved that the motive lever of every enterprising activity is the demand for these natural persons who consist of the market aim for every firm. Consequently, long goal of each firm's operation is the satisfaction of the consumers' CITIZEN's needs. The profit's maximization, according to the neoclassical consideration of the operation's aim of each enterprising unit, is a result and not a goal.
- 2. The firms' buying out, merger, incorporation or reconstruction can cause, through the most logical use of the production's factors, reduction of the factor "work", too. However, it doesn't consist of the personnel's reduction phenomenon of dismissals, but re-distribution of the factor "work" occupied units. [Kambis, (2001)].
- 3. The phenomenon of the employees' dismissals expresses the firms' or / and branches' weakness to correspond to the markets' dynamic demand, necessary pre-supposition, as it was pre-mentioned, for the long term operation of the businesses. Students of other scientific objects could evaluate the social cost-profit of a regime of "subsidy" of the productive units that don't correspond to the demand as a total mix of Marketing. Nevertheless, the issue of the dismissals is clearly economical phenomenon that declares the firm's weakness to correspond to the conventional commitments towards its employees. [Saint Paul, (1996)].

PART TWO

The protection of the employees' rights in the event of transfers of undertakings according to the recent legitimate of the European Communities

Court's and the Greek Courts too

CHAPTER NINTH

1. Basic principles of the Communal and Greek legitimate in relation to the examined institution

First of all, it should be observed the Europeans Community's States' – Members' courts are obliged to interpret their national law in a way that approaches the Communal Directive as much as possible. Based, consequently, on this principle that agrees totally with the interpretative European Communal law, the courts should follow the conclusions made by the European Communities' Court under the interpretation of the Directive 77/187, when they apply the regulations which are harmonized the national legitimates of the States – Members in relation to this Directive.

The Communal and, then, the Greek legitimate have followed some common basic principles in relation to the interpretation and application of the Instruction's 77/187/EEC regulations.

More specific:

They have characterized the undertaking, the business and the part of a business as an economical unity or entity, which is formed by an organized total of persons and objects that, always as a total, are active and pursue an economical activity with their own economical goal. On the other hand, the terms "firm or undertaking", "business or a part of business" must be just considered as specification of the term "economical entity".

Undertakings transfer happens only when this economical entity has maintained its identity after the transfer. During the observation, whether the transfer happens for real, must be examined the whole of the parts which characterize this procedure. Among these are mostly included the type of the firm, the transfer or not of the material asset, like buildings or movable objects (machines, e.t.c.), the value of its immaterial asset during the transfer's time, the transfer or not of the costumers, as the activity's resemblance or not, which undertakes/continues the new employer.

All these "elements" can not be examined isolated, they consist of, through, indications of a total examination which must do the States' – Members' courts and declare if, in their opinion, every time, happens undertakings, businesses or part of them transfer or not.

2. The Cases: "Transfers of Undertakings and Outsourcing or Contracting out"

2.1 Introduction

In the contemporary economical life, the concept of the business transfer tends to obtain a new meaning, as even more often new exchanging practices make their appearance, according to which the firm isn't transferred totally or partly, on the other hand, it entrusts to another business one or some of its activities.

This method that has to do with the assignment of the activities and is especially known in the U.S.A., in Europe and other countries, is called by bibliography "outsourcing" or "contracting out" [Kamenopoulos, (1998), Levendis, (2004)].

Taking into consideration the recent decisions of the European Communities' Court in relation to the application of the Directive 77/187, comes up the question whether the cases, where the business isn't totally or partly transferred, but assigns to another only one or just some of its activities (outsourcing), consists, according to the existing legislative rules a business transfer.

2.2 Remarkable cases of outsourcing and subjection of them to the Communal Directive 77/187/ "about the undertakings transfers"

2.2.1 The case of "functions' sequence" as a special occasion of transfer

The assignment of a work to a third (person) for the very first time of "functions' sequence" consists the classic case of the In-house – Outsourcing. [In-house – Outsourcing = the place, where the new employer supplies his / her services remaining within the firm that gives the order] [Kartaltzis, (2004)].

Activities, executed till now by a firm's employees, (e.g. conservation of the information's system, legal department, cleaning works, and transports) are transferred to a self – sufficient firm. If the presuppositions for the firm's transfer occur, then the labour relations are transferred to the third (person) that undertakes the work. This case is connected with firms, where the work – force is the main

characteristic. It doesn't make a difference for the existence of the firm's conveyance presuppositions the fact that the for the first time transferred works continue to be performed within the exploitation / business (In-house Outsourcing) or out of it (Out-house Outsourcing or contracting - out) [Zerdelis, (1996)].

A classical case of outsourcing judged the Court of the European Communities (E.C.C.) in 1992 with its decision of the 12th.11.1992 for the case Rs C-209/9 "Anne Watsen" Slg. 1992. Specifically, it was about the conveyance of the firm's canteen, of which "Philips A/S Kopenhagen" took advantage on its own in a third, strange firm (contracting – out). However, this external employer believed that there wasn't firm's conveyance under the Communal Directive's 77/187/EEC meaning, as he/she wasn't conceded by "Philips" the entire responsibility and autonomy to "form" on his/her own the prices and the costumers "circle" was strictly limited, as they were just the "Philips" employees, also for the reason that it hadn't been predicted the he/she could have bought again the necessary asset for the canteen's function. Therefore, according to the firm's contractor – assignee, the canteen's conveyance and consequently the canteen itself didn't really matter, as its function within the whole firm of "Philips", too, so it didn't "consist self – sufficient, independent entity".

The Court of the European Communities, first of all, reported that the responsibility's conveyance for an installation's function, like the canteen, and the contracting of the employer's obligations in front of the employees, occupied there, belongs to the application's field of the Communal Directive 77/187. It's not that important the fact that in this particular occasion the "firms" activity was of second importance for the "Philips" installations and had absolutely no relation to the aspired by it enterprising goal. In addition, it was really indifferent for the Directive's application the fact that the contract between the previous and the new businessman concerned basically services' supply, while it is annually paid counter value for the canteen's exploitation concession. Consequently, the E.C.C ended up that the canteen's conveyance is subject to the application's field of the Directive.

2.2.2 The case of "assignments' sequence" as a special occasion of transfer

To this category don't belong genuine cases of outsourcing, but the general preoccupation refered to the presuppositions of the firm's transfer, is in the assignments' sequence cases similar to the "functions' sequence". [Antonmattei, (1997)].

In particular, the Directive is applied to the following case, too: an employer (business A), assigns with a "contracting contract" a service (e.g. his firm's installations' cleaning) to the business B, which executes this contract through hyper – contracting which assigns to the business C. Then, business

A denounces (cancels) the contract with business B and makes, in order to execute the same works, a new contract with business D. After that, business D, to which business A had assigned these work's execution, hires, according to the collective labor contract's application, part of the business' C personnel (that were fired by it after the first contractor ship's contract had been denounced), without, though, being given any element of the last one's asset, which still exists and keeps pursuing its goal of the company. Consequently, it is possible with the above conditions to exist "trnasfer" under the Directive's 77/187 meaning, even when there is no assignation of the asset's parts, incorporated or not, between the initial business, the new business just rehires, due to the labour's collective contract, part of the hyper – contracted working business' personnel, under the presupposition that the personnel's rehiring concerns a great part referring to the number and qualifications of the personnel that was being used by the hyper – contracted working business for the hyper – contractor ship accomplishment. [Barnard, (1996)]

The E.C.C, with the decision C - 298/1994 about the case "Annete Henke", which concerned the case of conveying the cleaning procedures of a university's foundation, emphasized that the previous employer had created, with the continuous use of the employees in the university, a labour's organizing intensely orientated to this concrete object, which is quite different from other works. This organizing unit was essentially characterized by the personnel and the activities assigned to each one of the employees. On the contrary, minor importance has the material parts of the business, like cleaning equipment and spends materials.

In this present case, it is, also, necessary to be "underlined" that the personnel's specialization on a working field isn't demanded, in any case, meaning the "possession" of some typical qualification. Even a lower level of knowledge is enough, when, despite the lack of typical qualification, the work itself and the employee's occupation with this object is characterized by a particularly long duration's firmness, so as by the employees' totality, each one of who performs an activity, to be created a "labour's organizing" of such degree that to the function and execution of the assigned order of cleaning to be incorporated a high level empirical knowledge.

2.2.3 The "Albert Merchx" case, about the outsourcing in the "assignments' sequence" form

In the "Albert Merchx" case – an outsourcing case in the "assignments' sequence" form – the European Community Court should have declared whether the undertaking (transfer) of the "commercial representation" for concrete cars, was or wasn't a firm's transfer.

The review of the problem:

The claimant (Albert Merchx) worked for the company "Anfo Motors" as a car salesman, selling as commercial representative of the "Ford Motors Company Belgium S.A" (defendant) its cars in the wider region of Brussels. The defendant was the basic shareholder of the Anfo Company. In October of 1987 Anfo informed its claimant – employee that would completely stop its activities on 31.12.1987. From 1.11.1987 the defendant, namely the Ford Motors Company Belgium S.A, would co-operate in the regions where till then were serviced by Anfo, with a new, independent commercial representative, the "Novarobel S.A". The last one would also undertake the labour relations of the 14 or the 64 employees of Anfo, among who the claimant's, too. The working position, the total occupation's duration and other conventional rights would remain unchangeable according to the, with number 32a, collective labour contract of Belgium, through which was introduced to the "local" law the Communal Directive 77/187. Anfo sent a document to its clients, with which informed them for its works pause and recommended them a new commercial representative.

The grounds of the Court:

Through the above real events, firstly, results that, as Anfo economically belong to the defendant's Group, it was about a form of external of original outsourcing (contracting out). Contrary to most of the cases which are led to judicial judgment, in this present case the claimant didn't agree with the conveyance of his labor relation. He supported, also, that it didn't exist "firm's conveyance" in the meaning of the Directive 77/187, but pause of the firm's operation and, therefore, had recoursed to the courts demanding the payment due to dismissal and additional payment because of the firm's operation's pause. The defendant supported the aspect that the salesman labour relation was conveyed within the firm's conveyance.

The Belgian court found that Anfo fired more than the ³/₄ of its employees and that paid them as it was foreseen for the firm's operation pause. Also, it didn't convey material elements of the firm to Novarobel S.A nor was proved that had transferred to it its costumers.

On the contrary, the European Community Court accepted that the presuppositions of a "firm's conveyance" were fulfilled. Actually, the fact that a constructor stops the co-operation with a commercial representative and conveys the representation's relation to a "third" company, can't by itself lead to the conclusion that a firm's conveyance is really existed according to the Communal Directive 77/187. However, as essential for the "transfer's" existence in the "Merchx" case was regarded by C.E.C the fact that the defendant through the transfer of the commercial representation's rights to Novarobel

S.A transferred, actually, the business and economical risk of this activity to a firm which doesn't belong to this Group of firms. In addition, (that) Novarobel continues the Anfo's activity "non-stop", in the same region and with the same terms (that) undertook part of its personnel and, in fact, "was advertised" to Anfo's old clients.

The pronouncement of the court:

The claimant's allegation that the Communal Directive isn't applicable, as the greatest part of the personnel was dismissed, was rejected by the C.E.C, as, eventually, there were, for the labour contracts' denunciation, economical, technical or organizing reasons according to the article 4, number 1, of the Directive 77/187 (dismissals for economical – technical reasons), and, additionally, even a breach of these regulations, wouldn't be able to regard as doubtful the application of this Directive. Also, to the claimant's argument that in this case weren't conveyed neither material nor immaterial elements of the business asset, the C.E.C contrasts that with regard to the activity's kind, the transfer of the asset's elements isn't crucial for the question if the present unit maintained its economical identity. The activity of the exclusive representation for selling cars – vehicles of a concrete firm in a defined sector, remains unchangeable, even if happens with different name, in different installations and with different equipment. It, also, doesn't really matter the fact that the exploitation's seat is located in a different place of the same region, as long as the region to which refers the sales' representation remains the same. In addition, the pursued by the Directive 77/187 employees' protection would be neglected if its application was excluded only by the fact that the transferred firm stops its activity the moment of the transfer and, after that, is set under "liquidation". If this firm's activity is continued by another firm, then these occasions, are the appropriate to confirm the existence of a transfer in the Directive's meaning.

2.2.4 The 3404/1991 case, about the transfer of employees with special know -how

Although it isn't exactly about genuine outsourcing, they should be referred the cases where it is transferred only the work – force of the firm or a part of it and not its properties. Of this kind are the cases of firms, where are occupied employees with special qualifications (know – how), whose techno – knowledge is very important for a firm's operation. It can't be excluded, in that way, the case, where an "X" company undertakes the B, C, D, employees working in the information's department of firm "A" after an agreement with the last one. Similar cases haven't "bothered" especially the Greek theory and legitimate. The only decision that refered to such cases in Greece is the decision 3404/1991 of the Athens' Single Court of first instance.

The review of the problem:

In this case, the claimant (Ch. F.) worked as an employee with the title "Sales supervisor" in "F.E. A.C" company. On 13.3.1989 the above company with its document announced to the claimant that this office's activities were also conceded with a co-operation's contract to the defendant company "Z. L. A.C." With the perspective of this co-operation, the "F.E. A. C." secured the absorption of this office's personnel, among who was the claimant, too, by the defendant. After that, between the "Z. L. A.C", legal representatives and the defendant was signed an agreement, with which the last one accepted to withdraw willingly from the first company "F. E. A.C" and be hired by the "Z.L. A.C.", while the new employer maintained the rights that the employee had gained by the previous one. Also, it was referred that the defendant would respect, on the new duties assignment, the hierarchical position in "F. E. A.C" and it wouldn't be allowed any discrimination between the "old" personnel and the claimant.

The grounds and the pronouncement of the Court:

From all the above real facts, first of all, results that the Communal Directive 77/187 can't be applied, as long as the conveyance of the Piraeus F.E. A.C abolished office to the "Z.L. A.C" didn't take place in the sense of the Directive, but between the two companies was realized co-operation on this specific kind of trading which was the ships' supply with fuel. The claimant's claim that deserves payment, because of the "F.E. A.C"'s conveyance to "Z.L. A.C" the working terms were because unfavorable contrary to what was foreseen by the Directive, was rejected, as the claimant who willingly withdrew from the previous company and, at the same time, was hired by the new co-operated company without protesting neither orally nor in writing, was occupied in the defendant as "fuel's salesman" in petrol points. Consequently, he accepted silently but expressly the unfavorable change of his working terms and the, by this way, modification of the agreement which had been signed in relation to terms of the labour supply, a fact that excludes, at the present, the application of the Communal Directive's 77/187 regulations in favor of the employees.

3. Deductive remarks

- 1. The wideness with which the European Communities' Court interprets the rules of the firm transfer has led to the following tendency: these concrete regulations cover also the contemporary phenomenon that has to do with the "outsourcing or contracting out".
- 2. The view that firm transfer takes place in every case in the form of the outsourcing, presupposes a total estimation of all the transferred elements (installations, technical means, movable stuff, reputation, know how, customers, undertaking or not of the work force's

- main part e.t.c.) and also what emphasis will be laid on each one of these elements in relation to the type of the business.
- 3. Outsourcing has exactly the same lawful consequences as the business transfer. Namely, the outsourcing or contracting out doesn't "offend" the employees' rights and obligations with regard to the labour relations, which are transferred *with full right* by the previous to the new undertaker employer, who is chargeable from now on.
- 4. The only thing that has to be ascertained then is what will be the attitude of the Greek Courts' legitimate, when they will be occupied with it extensively. On the other hand, whether the European Communities Court will keep following the tendency that interprets in an expansive way the concept of business transfer.

CHAPTER TENTH

Comparison between the two lawful classes

1. Introductory commends

The Presidential Decree's 572/1988 application's field is wider than the Directive's one as long as the Presidential Decree is applied not only in cases of conventional assignment and co-operation of firms, but in any case of transfer based on a legislative regulation, as in case of hereditary succession, lease, foundation of a legal person, joint-venture, transfer with the lowest bid competition, bankruptcy knock down during an auctionsale, compulsory or of free will, e.t.c.

2. Innovations introduced into the Greek labour Law by the Directive 77/187 through the Presidential Decree 572/1988

The Communal Directive through the Presidential Decree introduces the following regulations which till then were completely unknown to the Greek labour law:

- 1. It is introduced the new employer's obligation to respect not only the labor's terms contained in a collective labour contract, as the Directive foresees, but also those contained in an arbitration's decision, work's regulation or individual labour contract.
- 2. The employees' rights are adjusted in details by existed systems of professional insurance either with the form of a group programme in an insurance company or with the form of an account operating within the business.
- 3. They are regulated the existed rights of expectations for periodical or once only grants of the employees, whose labour relation was terminated during the firm's conveyance time.
- 4. It is introduced the right of the employees' information and deliberation in case of probable firm's transfer to a new employer.

3. The favorable for the employees' use of the Directive's distinctive facility

The Presidential Decree makes use of the distinctive facility which provides the article 7, as other regulations of the Directive, and introduces or maintains a higher protection level for the employees on the following three sectors:

1. according to the Directive, the States – Members have the possibility to limit the duration of the labour term's maintenance with the cautiousness that this won't be less than a year.

- The Presidential Decree didn't make use of this distinctive facility and didn't limit the new employer's obligations which result from a collective labour contract,
- 2. based on the Directive's article 4, the States Members have the distinctive facility to limit the employees' right, namely they are able to predict whether the firm's conveyance consists itself a reason for the employee's dismissal by the previous or the new employer. The Presidential Decree didn't use this distinctive facility preserving in that way, the protection's level of the traditional Greek Labor Law for all the employees' categories without exception,
- 3. in order to secure better the employees' information's and deliberation's right in case of probable firm's transfer to a new employer, the Presidential Decree not only introduced expressly this right to the Greek legal class, but also predicted penalties (administrative fines from 180 Euro to 1500 Euro) for the previous and the new employer, as well.

4. Conclusions from the comparative inspection between the two lawful classes

Through the comparative examination of the national and communal origin's regulations that were pre-mentioned with regard to the examined Directive are gathered some remarks and conclusions:

- 1. Aim of both regulations is the protection preservation of the employees' rights in case of a firm's or a business's transfer.
- 2. The way of achieving this protection is the legal obligatory labour relation's transfer from the previous to the new employer.
- 3. The rules that come from the European Community increase the protection provided by the national rules prohibiting the employee's dismissal for reasons connected to the business' transfer and expanding their regulations on subjects of collective labour relations and participation of the work force to the transfer's procedures through the institution of deliberation.

CHAPTER ELEVENTH

1. Final conclusions - Proposals for future research - Perspectives

The concentration, the study, and combination of the above data, namely, the existing bibliography's, the European (or Communal) and Greek legislative text's and the nomology's, and the qualitative research interview's, leads to the following ascertainments, with reference to the researching questions - objectives:

- 1. In an environment where the capital is intensely removed, especially when the economical coincidence causes limitation in the work's market, the possibility to be secured the continuation of a salaried person's occupation with the maintenance of the position that already possesses and the as possible ensuring that the working terms and conditions won't get worse, is distinguished as one of the most important manifestations that can take the concretizing of the grants provided by the labour's social right by contributing, at the same time, to the materialization of the labour's right's protection as individual right.
- 2. The protection of the work's position and content after the employer's imposition, in general, and in the special case of the firm's transfer, consists a concrete expression of this protection and main goal of the labour law.
- 3. One of the most important Communal Directives that concern the maintenance of the labour relations' is the 77/187 Directive, that was incorporated to the Greek law with the 572/88 Presidential Decree. These concrete legislative texts adjust the ending of the labour relations' rights and obligations in the event of business transfer.
- 4. Main principle of the existing legislation in European (or Communal) and national level is: "during a business transfer, the rights and the obligations connected to the labour relation are transferred *with full right* and *with the same content* to the successive employer".
- 5. The philosophy and the purpose of these concrete legislative texts are that: the transfer, the merger, the re-organizing or the concentration of the undertaking within the unified European market shouldn't affect the work force's working position. The business' transfer does not constitute grounds for individual or massive dismissals, which may only take place foe

economic, technical or organizational reasons and the employer is regarded as having been responsible for termination of the employment of the work – force. In other words, given that the undertaking is transferred and changes, as an organized unit, bearer, namely employer, the working positions should be preserved. They should be also preserved all the employees' rights that come from any "source", namely individual or collective labour contract, enterprising regulation or enterprising habit. The business protection doesn't consist a goal in existing legislation.

6. Basic concept for the application of the existing legislation is the undertaking transfer.

As "transfer" in the meaning of the legislative texts is regarded the transfer of an economical unity (private or state), which keeps its identity and is meant as an organized total of resources that intend to undertake a basic or secondary economical activity. In fact, as it becomes acceptable by the legitimate, that the undertaking or the business are organized totals of parted elements, namely persons, technical means, installations, reputation, clients, know – how, e.t.c., that all pursue the realization of a technical – labour purpose or an extra economical goal. The transfer one or some only of the elements that compose this organic unity (e.g. the transfer of some isolated technical means) doesn't consists business transfer, as the organized total isn't transferred itself.

- 7. In order to exist business transfer they should be transferred so many partial elements and in such way that the transferred elements will be able to keep their organic unity under the new employer, as well. This means that the new employer must have undertaken the partial elements as an organized total so as to be said that this whole continues to operate and manage the same business (*preservation of the business identity*).
- 8. The opinion whether in every special case takes place business transfer presupposes a total estimation of all the transferred elements and the conditions of this concrete case.
- 9. According to the Greek legitimate and the European Communities' Court's legitimate too, it should be also taken into consideration what elements were transferred and what was their importance in that case. Namely, it must be taken into consideration if they were transferred material elements (installations, technical means, movable stuff, e.t.c.), immaterial (e.g. reputation, know how, brand, e.t.c.,) if the new employer has undertaken to execute the unsettled contracts, too, if he / she has undertaken part of the work force and specifically

what specialties, if the new employer's activity is similar (or how much similar) to the executed before the change activity, e.t.c.

- 10. The question what emphasis will be laid on each one of the transferred elements, will be estimated in every special case taking into consideration the type of the transferred business, as well. For example, in the industrial businesses or in the businesses that produce goods the installations, the technical equipment, the machines, the tools come first. While in the undertakings that provide services greater importance is given to the know how, the clients, the professional relationships with third persons, the work force with know how, e.t.c.
- 11. The balance of the "gravity" between the material means and the immaterial elements should be based on a general estimation of all the factors that are connected with the operation and the object of the transferred business.
- 12. The wideness with which the nomology interprets the rules of the firm transfer has led to the following tendency" these concrete regulations cover also the contemporary phenomenon that has to do with the "outsourcing or contracting out". Outsourcing has exactly the same lawful consequences as the business transfer. Namely, the outsourcing doesn't "offend" the employees' rights and obligations with regard to the labour relations, which are transferred with full right by the previous to the new undertaker employer who is chargeable from now on.
- 13. Through the comparative examination of the national and communal origin's regulations that were pre-mentioned with regard to the examined Directive are gathered some remarks and conclusions:
- a. Aim of both regulations is the protection preservation of the employees' rights in case of a firm's transfer.
- b. The way of achieving this protection is the legal obligatory labour relation's transfer from the previous to the new employer.
- c. The rules that come from the European Community increase the protection provided by the national rules prohibiting the employee's dismissal for reasons connected to the business' transfer and expanding their regulations on subjects of collective labour relations and participation of the work force to the transfer's procedures through the institution of deliberation between the social parts (employers and employees).

16. The real "essence" of the business transfer institution is the deliberations among the social parts (employees and employers) and through these, the attempt to be limited the individual or the massive dismissals of the work – force or, at least, their un-pleasure consequences. In Greece, it doesn't happen regularly recourse to the deliberations procedure and because of this the employees lose the chance to take part in the crucial decision making which aspire to the avoidance or reduction of the dismissals or even the "dulling" of their unfavorable consequences. Therefore, the wide use of the deliberation that often tend to taking important measures', as the re-training and placement of the employees in other positions, the re-adjustment of essential working terms, e.t.c. So, the employees' representatives' intervention to the by the law predicted procedure of the deliberation, which consists part of the business transfer proceeding, should be essentially more powerful and effective. At the point that this procedure has as a main pursuit to find the best possible solution for the employees' protection issue in every special case where there are economical problems and technical re-organizing within the business, it should be given the employees' representatives the possibility and the means to contribute at this level

17. In general referring to the employee, the fact that in many case the concept, according to which is provided protection to the salaried, is based on the argument that the labour relations consist parts of the business, doesn't express social or legal disdaining to the salaried person and doesn't "downgrade each employee to a simple operating factor of the economy", neither consists downgrading of his / her personality nor denial of his / her conventional freedom of the individual right of his / her personality's protection. The confrontation of the labour relations as parts of the firm consists of the utilization as legal argument that encourages the need to be ensured the salaried person's interests, the contemporary economical reality, where the salaried who is occupied in a business, operates within (the business) as a bearer of the production's factor that is called "labour", and with this quality consists "vital" part of the firm's existence and operation. The interpretation of the labour relations, under this concept, "shields" the salaried person's legal position, as disconnects the evaluation for his / her rights' satisfaction by the personal and selfish interests of the employer as the opponent part of the labour relation and also, connects it to the objective needs for the firm's existence and operation, within which is exploited his / her work. The objection to these "positions", even when it is explicitly stated, is the general interest's appeal as need of the economy's "recovery" through the firms' "relief" from the commitments and the burdens that entails the labour legislation's application. Actually, the economical recovery shouldn't be based on the ascribing of the negative consequences that causes the enterprising action on the persons, who don't take part to the "incision" and application of the business policy. The salaried persons, though, consist of a social group, the peculiarities of which impose their more favorable confrontation compared to the rest creditors of the firms.

- 18. Also, referring to the persons of the firm's bearers as employers, the examined institution is followed by a freedom's limitation on the labour regime's change and the personnel's dismissal because of the firm's transfer. More specially, with regard to the firm's new bearer's person, follows the limitation of his freedom for the free choice of the persons, with who wishes to make a contract, and for the formation of the content of the labour contracts, of which becomes part. All these limitations are connected exclusively to the special case of the firm's transfer, and with regard to the general interest that service it should be acceptable that they don't affect the "main body" of the employers' corresponding rights.
- 19. Furthermore, as a general conclusion could be mentioned that: the phenomenon of the employees' dismissals expresses the firms' or / and branches' weakness to correspond to the markets' dynamic demand, necessary pre-supposition, for the long term operation of the businesses. Other scientific objects could evaluate the social cost-profit of a regime of "subsidy" of the productive units that don't correspond to the demand as a total mix of Marketing. Nevertheless, the issue of the dismissals is clearly economical phenomenon that declares the firm's weakness to correspond to the conventional commitments towards its employees.
- 20. More specifically, in the event of transfers of undertaking the individual or massive dismissals of the employees is a phenomenon with economical and social extensions, as well. Their various predictable solutions, as the reduction of the production's cost, the new forms of labour relations the employees' training and the social dialogue demand the intensiveness of their application. The analysis of the branch has also the chance to facilitate the right measures taking. Consequently, the catalytic conclusion of this research study on the massive dismissals in order to obtain a complete "picture", is that it is needed a multi parametric analysis which will cover the economical and socioeconomic dimensions of the phenomenon (social cost benefit analysis). The experience of other countries may help the "development" of "tools" which will contribute to the reduction of "real unemployment".

21. At the end, it is a matter of future research to be found in what practical way it is possible, firstly on a branches' level, and secondly on the firm's level, to be avoided undesirable decisions for dismissals in the event of transfers of undertakings. Questions, like: "is it better to be covered by the State the training cost of the firms' work - force or to be subsidized the existed way of its operation and for how long", or "with what criterions is approved the foundation and operation of a new business activity. It is adopted the State's role, according to the liberal perception, where the law of the offer and the demand shows the viable activities and these that really satisfy needs or it is adopted the State's role, as "Manager of the Information", that informs – doesn't prohibit – for the real offer and demand and the market's conditions, as these are formed within the internationalized economy.

2. Recommendations for businessmen – employers, future businessmen – employers, and employees of businesses

In the contemporary businesses it hasn't become understandable yet that the "simple" dismissals of the employees aren't the "easy solution" for the undertakings, that move on to reorganizing, mergers, transfers, or even for those that face economic problems. In these cases the employers make their decisions aiming to strengthen the competitiveness of the business or its economical recovery. It is quite better, for the business to include the issue of saving the labour relations in this concrete schedule or re-organizing or transfer, rather than letting the option of the working positions' issue to consist a "by chance" or "occasional" problem which is faced "ad hoc" at the last moment having as a result the undermining of the attempt for the business recovery.

A more particular issue-proposal to which is worth for someone to be orientated so as to evaluate the functionality of the examined institution, is the effective informative and deliberating procedure between the employer and the employees' representatives, as a defensive attitude of the working persons against the employer's plans to reduce the work – force in the transferred undertakings. I would suggest the upgrading of the deliberations' procedure among the social partners (employees and employers), which takes place before the business transfer. And this, because when the employees' participation to the enterprising decision making is enforced, they are controlled more effectively and they are also reduced the enterprising practices that lead to unfavorable consequences for the work – force within the transferred undertakings.

4. Epilogue

As a "refrain" could be mentioned the ascertainment of the International Labour Conference in 1996. According to this "the improvement of the working conditions of the employees should be continued in loosening periods and in periods of economical development, as well. And that the insurance provided by the laws acquires its real value in periods, when come up problems and so it is "called" to prove its effectiveness, or for greater accuracy, in such periods they are proved the endurances of the social structures, which are based on its rules".

The attack to the labour law and to the employees' rights through the "ideology" of elasticity consists a new expression of the interest collision between employers and employees, which have led to its creation ("birth").

CHAPTER TWELFTH

Reflection on learning

The procedure of the concentration and study of the whole researching material leads me to some intentional thoughts - remarks which are, in fact, the base of the preceded ideas: nowadays, it is really clear in relation to a many facets changing economy, that the social and economic concept of employment, acquires a whole new approach. The intense international competition and the constant reorganization of the enterprises, brigs out the need of the labour terms' "harmful" change against the employees. Fundamental expression of this fact is the consideration that business's transfers are a matter of legislative regulation in relation to the protection of the employees' rights.

According to the application's field and the purpose of the European (or Communal) and Greek legislation, in the event of transfers of undertakings the rights and obligations are created for the transferor through an agreement or contract of labour, which takes place during the transfer, to the transferee. Actually, the rights' and obligations' transfer through the agreement of the labourious contract is an immediate result of the firm's transfer, without to be required the employees' assent. Furthermore, the business transfer itself isn't, according to the existing legislation a cause for individuals or massive dismissals. It doesn't excludes though dismissals for economical, technical or organizing reasons, which presuppose employment changes.

In case of business transfer the employees' and the employers' representatives should move on to deliberations in order to be restricted the unfavourable consequences for the employees, which may derive from the transfer. So, the real "essence" of the business transfer institution are the deliberations among the parts (employees and employers) and through these, the attempt to be limited the dismissals of the work – force or, at least, their unpleasure consequences. In Greece it doesn't happen regularly recourse to the deliberations procedure and because of this the employees lose the chance to take part in the crucial decision making which aspire to the avoidance or reduction of the dismissals or even the "dulling" of their unfavorable consequences. Therefore, the wide use of the deliberation that often tend to taking important measures', as the re-training and placement of the employees in other positions, the readjustment of essential working terms, e.t.c.

With regard to the problem that concerns the business transfer and its meaning for the employees' position, if it could be summed up, that the European and Greek Labour Law as well, adopted both the law solution on the issue of the work – force protection in case that the employer's changes, since the already existed labour relations pursuing through the concrete law adjustments not only the independent employees' protection, but also the competitiveness, the viability and the economical peace among the contemporary business, as well.

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APPENDIX II

Decisions' table of the European Community Court

Number/Year of decision	Plaintiff Vo	olume/Year of publication
1. 135/1983	Abels	Collection 1985, 496
2. 19/1983	Wendelboe	Collection 1985, 462
3. 179/1983	Industriebond	Collection 1985, 514
4. 189/1983	Botzen	Collection 1985, 519
5. 105/1984	Danmols Inventar	Collection 1985, 2639
6. 24/1985	Spijkers	Collection 1986, 1125
7. 237/1984	European Community	Collection 1986, 1247
8. 235/1984	European Community	Collection 1986, 2296
9. 287/1986	Ny Molle Kro	Collection 1987,5479
10. 324/1986	Daddy's Dance Hall	Collection 1988, 749
11. 144/1987 &	Berg & Busschers	Collection 1988, 2577
12. 145/1987	<< << << <<	<< << << <<
13. 101/1987	Bork International	Collection 1988, 3057
14. C-362/1989	D' Urso	Collection 1991, I-4139
15. C-29/1991	Redmond Stichting	Collection 1992, I-3212
16. C-209/1991	Watson Rask	Collection 1992, I-5773
17. C-132/1991	Katsikas/Konstantinidis	Collection 1992, I-6600
18. C-138/1991 &	<< << << <<	<< << << <<
19. C-139/1991	<< << <<	<< << << <<
20. C-392/1992	Schmidt	Collection 1994, I-1321
21. C-382/1992	European Communities	Collection 1994, I-2461
22. C-48/1994	Rygaard	Collection 1995, I-2758
23. C-472/1993	Spano	Collection 1995, I-4338
24. C-171/1994 &	Albert Merkx	Collection 1996, I-1253
25. C-172/1994	<< << <<	<< << << << <<
26. C-298/1994	Annete Henke	Collection 1996, I-4989
27. C-305/1994	Rotsart de Hertaing	Collection 1996, I-5939
28. 13/1995	Ayse Suzen	Collection 1997, I-1259
29. C-336/1995	Burdalo Trevejo	Collection 1997, I-2115
30. C-319/1994	Dethier	Collection 1998, I-1079

31.	127/1996	Hernandez Vidal	Collection 1998, I-8179
32.	C-229/1996 &	<< << << <<	<< << << << <<
33.	C-74/1997	<< << << <<	<< << << << <<
34.	C-399/1996	Europieces	Collection 1998, I-6965
35.	C-173/1996 &	Sanchez Hidalgo	Collection 1998, I-8237
36.	C-247/1996	<< << <<	<< << << << <<
37.	C-234/1998	G. C. Allen	Unpublished

APPENDIX III

Decisions' table of the Greek courts per judicial level

HIGH COURT OF APPEAL

Number of decision	Legal magazine/Year of publication/ Pages
1. 602/1982	Labour law Inspection, 1982, 534-535
2. 650/1982	Labour law Inspection, 1982, 647-649
3. 690/1982	Labour law Inspection, 1982, 818-820
4. 842/1983	Labour law Inspection, 1984, 268-269
5. 2101/1983	Labour law Inspection, 1984, 473-475
6. 1042/1983	Greek Justice, 1984, 260-261
7. 1394/1985	Greek Justice, 1986, 766-767
8. 584/1986	Labour law Inspection, 1989, 76-77
9. 310/1986	Labour law Inspection, 1987, 263-265
10. 202/1986	Greek Justice, 1986, 834-835
11. 3/1987	Greek Justice, 1987, 933
12. 121/1987	Greek Justice, 1987, 1061-1062
13. 633/1987	Greek Justice, 1988, 167-169
14. 759/1987	Labour law Inspection, 1988, 596-598
15. 1113/1987	Labour law Inspection, 1988, 307-309
16. 1510/1987	Labour law Inspection, 1988, 988-990
17. 1794/1987	Labour law Inspection, 1989, 115-116
18. 1867/1987	Labour law Inspection, 1989, 65-67
19. 1872/1987	Labour law Inspection, 1989, 68-70
20. 1900/1987	Labour law Inspection, 1989, 67-68
21. 939/1988	Labour law Inspection, 1989, 793-794
22. 416/1989	Labour law Inspection, 1990, 339-342
23. 1340/1989	Labour law Inspection, 1990, 1249
24. 193/1990	Labour law Inspection, 1990, 720-722
25. 227/1990	Labour law Inspection, 1990, 722
26. 229/1990	Labour law Inspection, 1990,723-724
27. 530/1990	Labour law Inspection, 1990,724-726
28. 1184/1990	Greek Justice, 1991, 988

29. 1209/1990	Labour law Inspection, 1992, 480-482
30. 18/1991	Labour law Inspection, 1992, 125-126
31. 610/1991	Labour law Inspection, 1992, 136-137
32. 469/1992	Labour law Inspection, 1993, 452-454
33. 889/1992	Labour law Inspection, 1993, 456-457
34. 891/1992	Labour law Inspection, 1993, 454-456
35. 1481/1992	Labour law Inspection, 1993, 459-460
36. 471/1993	Labour law Inspection, 1993, 994
37. 5/1994	Labour law Inspection, 1994, 844
38. 364/1995	Greek Justice, 1996, 676
39. 1181/1995	Greek Justice, 1997, 1329
40. 988/1996	Greek Justice, 1997, 1121
41. 652/1997	Labour law Inspection, 1997, 1801
42. 318/1998	Labour law Inspection, 1999, 355
43. 1154/1998	Labour law Inspection, 1998, 1572

COURTS OF APPEAL

Number of decision	Legal magazine/Year of publication/ Pages
1. 199/1983	Labour law Inspection, 1983, 351
2. 577/1984	Labour law Inspection, 1985, 85-88
3. 106/1984	Labour law Inspection, 1984, 586-591
4. 683/1986	Labour law Inspection, 1986, 1085-1087
5. 3253/1986	Labour law Inspection, 1987, 28-36
6. 131/1986	Labour law Inspection, 1986, 296-298
7. 326/1987	Greek Justice, 1987, 422-426
8. 945/1987	Greek Justice, 1988, 369-371
9. 9846/1988	Armenopoulos, 1989, 399-403
10. 1577/1988	Armenopoulos, 1989, 500-503
11. 2093/1988	Greek Justice, 1989, 24-25
12. 61/1988	Labour law Inspection, 1989, 11-14
13. 6944/1989	Labour law Inspection, 1989, 45-48
14. 420/1989	Labour law Inspection, 1990, 34
15. 797/1989	Labour law Inspection, 1990, 67-69

16. 4719/1992	Labour law Inspection, 1992, 23-26
17. 2964/1994	Greek Justice, 1994, 234-235
18. 4612/1995	Greek Justice, 1995, 56-58
19. 1499/1996	Greek Justice, 1996, 234
20. 647/1996	Greek Justice, 1997, 17-20
21. 5460/1998	Armenopoulos, 1998, 324-326
22. 7156/1998	Armenopoulos, 1998, 330-332
23. 903/1998	Greek Justice, 1999, 67-68
24. 452/1998	Labour law Inspection, 1999, 51-51

COURTS OF FIRST INSTANCE

Number of decision	Legal magazine/Year of publication/ Pages
1. 1448/1984	Labour law Inspection, 1984, 780
2. 5174/1988	Armenopoulos, 1989, 999-1001
3. 364/1989	Labour law Inspection, 1989,455-457
4. 3404/1991	Labour law Inspection, 1991, 779-782
5. 181/1991	Greek Justice, 1991, 231-232
6. 7153/1993	Greek Justice, 1993, 21-23
7. 72/1994	Labour law Inspection, 1994, 211-212
8. 2385/1994	Labour law Inspection, 1994, 115-117
9. 109/1994	Armenopoulos, 1994, 43-44
10. 213/1995	Greek Justice, 1995, 62-63
11. 543/1995	Greek Justice, 1995, 76-77
12. 297/1995	Armenopoulos, 1995, 17
13. 24/1997	Armenopoulos, 1997, 32-33
14. 499/1997	Greek Justice, 1997, 12-13
15. 7862/1998	Labour law Inspection, 1998, 567-568

COURTS OF JUSTICE

Number of decision	Legal magazine/Year of publication/ Pages				
1. 134/1995	Labour law Inspection, 1996, 543-544				
2. 346/1998	Greek Justice, 1999, 32-33				

3. 435/2000	Greek Justice, 2000, 899-901
4. 876/2001	Greek Justice, 2001, 67-68
5. 345/2001	Labour law Inspection, 2001, 124-126

APPENDIX IV

The qualitative research interviews

GEORGE APOSTOLAKIS

Larissa, 20.3.2005

President of Judges of Courts of Appeal of Larissa

Question

What are the necessary presuppositions, according to the Greek legitimate, so as to take place business transfer and, consequently, change of the businessman – employer;

Answer

According to the Greek nomology which mostly follows the conclusions of the European Community Court, in order to take place business transfer, consequence of which is the businessman's – employer's change, it is necessary the existence of two presuppositions:

a) the transfer must concern an economical unity, namely an undertaking. Within the Greek law, business is the total of rights and obligations, lawful relations, things and immaterial goods or real situations (clients, course in the market, know – how, reputation, e.t.c.) that have been organized by a natural person (the businessman) into and economical unity for the aspiration of a farther economical-profitable goals, beyond the direct and concrete laborious-technical – productive goals.

It is also acceptable by the nomology that for the application of the relevant legislative regulations it isn't absolutely necessary the existence of a business in the way that is meant by the economic science.

b) Whether the relevant economical unity preserves its identity before and after the transfer. The most specific criterion that is taken into consideration for this goal are the type of the business, the transfer of material or immaterial goods, their value, the undertaking of the work-force's main part, the clients' transfer, e.t.c.

Question

What are, according to the Greek nomology, the consequences for the employees and the employers through the business transfer?

Answer

The nomology defines as main consequence of the existing legislation in relation to the business transfer is that: during the transfer the merger, the re-organizing or the concentration of the undertaking within the unified European market shouldn't affect the work force's working position. In other words, given that the undertaking is transferred and changes, as an organized unit, bearer,

namely employer, the working positions should be preserved. They should be also preserved all the employees' rights that come from any "source", namely individual or collective labour contract, enterprising regulation or enterprising habit.

Question

What is your opinion about the success or not in practice of the Presidential Decree 572/1988 purpose which is the working position's protection in the event of transfers of undertakings?

Answer

In my opinion, the Presidential Decree consists the crucial institutional frame that insures the employees' rights in case that the business is transferred. The judicial experience has proved me that in most of the cases the main purpose of the legislative regulation which is the preservation of the work-force's working positions in the transferred business succeeded.

Question

What ways would you suggest for the improvement of the legislative protection that is provided to the employees of the transferred undertakings in Greece?

Answer

According to the existing legislation, in case of business transfer the employees' and the employers' representatives should move on to deliberations in order to be restricted the unfavourable consequences for the employees, which may derive from the transfer.

So, I strongly believe that the real essence of the business transfer institution are the deliberations among the parts (employees and employers) and through these, the attempt to be limited the dismissals of the work – force or, at least, their unpleasure consequences.

In Greece it doesn't happen regularly recourse to the deliberations procedure and because of this the employees lose the chance to take part in the crucial decision making which aspire to the avoidance or reduction of the dismissals or even the "dulling" of their unfavorable consequences.

Therefore, I suggest, the wide use of the deliberation that often tend to taking important measures', as the re-training and placement of the employees in other positions, the re-adjustment of essential working terms, e.t.c.

EURIPIDES ANTONIOU

Vice - President of the Greek Supreme Court

Question

What are the necessary presuppositions, according to the Greek legitimate, so as to take place business transfer and, consequently, change of the businessman – employer;

Answer

Referring to the institution of the business transfer it was formed through the legitimate of the European Communities Court. The Court through a series of important decisions made clear the concept of "transfer", "business" and the consequences for the employees, as well.

The Greek nomology following the directions of the European Court on this subject recognizes the existence of two presuppositions so as to take place business transfer:

- a) the control, whether the elements that compose the business as an economical unity are transferred,
- b) the realization that the same business exists before and after the transfer (preservation of the business identity). This happens when: the same economical unity exists before and after the transfer and, when the business continues its operation under the new businessman employer, as well.

Ouestion

What are, according to the Greek nomology, the consequences for the employees and the employers through the business transfer?

Answer

In these cases nomology has decided that the employees' working posts in the transferred business are the same in relation to their type and content while they are transferred with full right to the new businessman – employer. In this case, the question that comes up is whether the institution's goal to protect the employees' rights in case that the firm is transferred expands to the protection of other persons or other goals and interests, and the pre-mentioned, as well. More particularly, whether it expands to the employers' or the protection of the business' itself. The existing legislative regulations don't concern the protection of the undertaking

Question

What is your opinion about the success or not in practice of the Presidential Decree 572/1988 purpose which is the working position's protection in the event of transfers of undertakings?

Answer

From my experience in the courts in similar case I conclude that: In Greece, as the employers expect the on-time announcement to the employees about their intention to re – organize or transfer their business, will have as a result to "start a war", they will avoid to reveal their intentions and they will try to escape their obligations with various practices, legal, almost legal or just illegal.

At this point the legislation's contribution is determinative succeeding greatly in practice its goal which is the protection of the working post of the work – force in the transferred businesses.

Question

What ways would you suggest for the improvement of the legislative protection that is provided to the employees of the transferred undertakings in Greece?

Answer

In my opinion, the employees' representatives' intervention to the by the law predicted procedure of the deliberation, which consists part of the business transfer proceeding, should be essentially more powerful and effective.

At the point that this procedure has as a main pursuit to find the best possible solution for the employees' protection issue in every special case where there are economical problems and technical re-organizing within the business, it should be given the employees' representatives the possibility and the means to contribute at this level.

Dr. YIANNIS LIXOURIOTIS

Full Professor of the Labour law in the Law School of Trace's University

Question

What are the necessary presuppositions, according to the Greek legitimate, so as to take place business transfer and, consequently, change of the businessman – employer;

Answer

The necessary presuppositions for the Greek nomology which keeps pace with the corresponding Communal nomology, are: first, the transfer of an economical unity, namely a business, in the way that is meant this term by the labour law and not by the economic science, and second, the preservation of the business identity before and after the transfer, something that derives from the fact that the transferred business continues the same or similar economical activities with the new businessman – employer, as well.

Ouestion

What are, according to the Greek nomology, the consequences for the employees and the employers through the business transfer?

Answer

In these cases the rights and obligations, transfer through the agreement or the labour contract to the new employer. This is an immediate result of the undertaking's transfer, without to be required the employees assent. All the above are valid for all the employees, who are employed in the undertaking during its transfer.

Ouestion

What is your opinion about the success or not in practice of the Presidential Decree 572/1988 purpose which is the working position's protection in the event of transfers of undertakings?

Answer

The achievement of the goal pursued by the Presidential Decree demands the selection of the appropriate means and methods for its practical realization. The selected method in a national and Communal level, as well, is the preservation of the existed labour relations and their continuation with person that is rendered the undertaking's bearer. The mean that was regarded as suitable and capable was the businessman's – employer's placement to the previous one's position in a way that he/she becomes bearer of all the rights and obligations "against" the employees' actually without the

salaried person's agreement. Though these regulations, then, it is also achieved the Presidential Decree's pursued goal.

Question

What ways would you suggest for the improvement of the legislative protection that is provided to the employees of the transferred undertakings in Greece?

Answer

I strongly believe that in the contemporary businesses it hasn't become understandable yet that the "simple" dismissals aren't the "easy solution" for the undertakings that move on to reorganizing, transfers, or even for those that face economical problems. In these cases the employers make the decisions in order the business to strengthen its competitiveness or its economical recovery, it is quite better, in my opinion, for the business to include the issue of saving the labour relations in this concrete schedule or re-organizing or transfer rather than the option the working posts' issue to consist a "by chance" or "occasional" problem which is faced "warmly" at the last moment having as a result the undermining of the attempt for the business recovery.

Among the above thoughts, a more particular issue-proposal to which is worth for someone to be orientated so as to evaluate the functionality of the present legislation, is the effective informative and deliberating procedure between the employer and the employees' representatives as a defensive attitude of the working persons against the employer's plans to reduce the work – force in the transferred undertakings

ANTONIS MARGARITIS

Lawyer

Question

What are the necessary presuppositions, according to the Greek legitimate, so as to take place business transfer and, consequently, change of the businessman – employer;

Answer

Two are the necessary presuppositions of the nomology for the existence of business transfer and the businessman's – employer's change: the transfer of an economical unity that pursues a profitable goal, namely a business, and the preservation of the transferred business identity, namely the constitution of its function under the new employer, as well.

Question

What are, according to the Greek nomology, the consequences for the employees and the employers through the business transfer?

Answer

In these cases nomology has decided that the employees' working posts in the transferred business are the same in relation to their type and content while they are transferred with full right to the new businessman – employer. The existed legislative regulations don't concern the protection of the undertaking or the businessman's – employer's rights.

Ouestion

What is your opinion about the success or not in practice of the Presidential Decree 572/1988 purpose which is the working position's protection in the event of transfers of undertakings?

Answer

From my professional experience, I conclude that in similar cases of transfer or businesses reorganizing the employers try to reduce the operating cost of their undertakings by reducing the personnel. Under this thought, then, they move on very often to employees' dismissals which could be avoided if the employers wanted it. At this point, the Presidential Decree's 572/1988 contribution "shields" the labour interests and protects the employees from the businessman's – employer's immoral enterprising practices, succeeding greatly in the goal for which it was set, namely the working posts' protection.

Question

What ways would you suggest for the improvement of the legislative protection that is provided to the employees of the transferred undertakings in Greece?

Answer

I would suggest the upgrading of the deliberations' procedure among the social partners (employees and employers), which takes place before the business transfer. And all this, because I believe that, when the employees' participation to the enterprising decision making is enforced, they are controlled more effectively and they are also reduced the enterprising practices that lead to unfavorable consequences for the work – force within the transferred undertakings.

Conclusions

The concentration, study and combination with the researching questions – objectives of the above qualitative data lead to the following conclusions:

- 1. According to the Greek nomology which mostly follows the conclusions of the European Community Court, in order to take place business transfer, consequence of which is the businessman's employer's change, it is necessary the existence of two presuppositions:
 - a) the transfer must concern an economical unity, namely an undertaking,
 - b) whether the relevant economical unity preserves its identity before and after the transfer.
- 2. In these cases nomology has decided that the employees' working posts in the transferred business are the same in relation to their type and content while they are transferred with full right to the new businessman employer. The existed legislative regulations don't concern the protection of the business.
- 3. In the event of transfer of undertaking the legislation's contribution is determinative succeeding greatly in practice its goal which is the protection of the working post of the work force in the transferred businesses.
- 4. A more particular issue-proposal to which is worth for someone to be orientated so as to evaluate the functionality of the present legislation, is the effective informative and deliberating procedure between the employer and the employees' representatives as a defensive attitude of the working persons against the employer's plans to reduce the work force in the transferred undertakings. At the point that this procedure has as a main pursuit to find the best possible solution for the employees' protection issue in every special case where there are economical problems and technical re-organizing within the business, it should be given the employees' representatives the possibility and the means to contribute at this level.

APPENDIX V

Publications of the European Commission in relation to the examined institution

The following publications are available on the web site www.europa.eu.int of the European

Commission which is responsible for the social policy and the employment in Europe.

"Agenda 2000".

- Benchmarking National Labour Market performance: a radar chat approach. Final Report by

Hugh Mosley and Antje Mayer.

- Commission adopts new Social Policy Agenda.

- Diamantopoulou Anna, European Commissioner responsible for Employment and Social

Affair, PORTUGAL Community Support Framework III (2000/2006) Signature of the

Operational programmes. "Employment, Training & Social Development" and "Education"

Lisbon, 13 July 2000].

Employment Package I: Commission adopts draft report on Member States employment

policies.

- European Social Fund: Commission approves the EQUAL, programme aimed at boosting

equality in the European Labour Market.

- European Social Fund: the Commission adopts a programme for employment and training in

Wallonia and Brussels over the next seven years.

- European Social Fund: Commission approves a series of measures to promote employment

in the Brussels Region for the next seven years.

- Speech by Padraig Flynn, European Commissioner with responsibility for Employment and

Social Affairs, Flanders "Island of Ireland Conference" Ypres, 10 November 1998.

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APPENDIX VI

BASIC RUDIMENTS OF THE GREEK FIRMS THAT HAVE REALIZED MASSIVE DISMISSALS AND THE REASONS THAT HAVE IMPOSED THESE DISMISSALS ACCORDING TO THE STUDY OF THE NATIONAL LABOUR INSTITUTE

The present study refers to the massive dismissals which were realized by the Greek firms of specific branches during the year 1990 – 1998 and to the reasons that forced these firms to make such a movement. Unfortunately, during the searching of the inquiring material, it was ascertained that the Organization of the Work Force Occupation doesn't have any clues from which can result some useful information for the formation of a graphical representation, so as to be observed the phenomenon of the massive dismissals during the pre-mentioned years. The main source of our study was the Labour Institute.

As massive dismissal is regarded the dismissal of a large number of salaried persons at the same time or within a short period for the same reason. The firms, in order to make massive dismissals must occupy more than twenty (20) salaried persons the legal percentage of the massive dismissals is limited to the 2% of their personnel per month. The massive dismissals consist a phenomenon with considerable social "dimensions". Therefore, it demands special use, as causes unemployment to groups of salaried persons, which is also followed by social problems and the negative influence of the working market. On the other side, the massive dismissals, when are due to technical – economical and organizing reasons (e.g incorporations, buying out), don't aspire only the firm's restoration and economical survival, but also the preservation of the working places, which belong to the salaried persons who aren't included among the dismissed.

All the firms have the right to move on to massive dismissals, apart from legal form, namely personal companies (co- partnership, joint – stock company) or companies of limited responsibility or anonymous companies. Through this present study it was ascertained the most firms that realized massive dismissals during the years 1990-1998, are anonymous companies, while fare is the phenomenon of massive dismissals by personal companies. Also, firms of the public sector (e.g Organization of Civil Transports, in 1992), firms that consist subsidiaries of international business groups (e.g. PIRELLI HELLAS, in 1990) and firms that consist parts of business groups with national validity (AGET HERCULES, in the years 1993 – 1995) have made massive dismissals. (Even the "size" of the firms that have made massive dismissals were in their plurality – de jure – wide).

After an attentive elaboration of the relevant study of the National Labour Institute we ended up to the conclusion that the main branches of businesses that are "struck" by massive dismissals are the following:

- 2. The Spinnery Branch,
- 3. The Fur Trade Trade of Leather Branch,
- 4. The Metallurgy Branch,
- 5. The Tourism Branch.

In order to be formed a better "image" of the massive dismissals' phenomenon in the years 1990 -1998 is placed a table that presents the multitude of the massive dismissals per branch and per year.

A. The Spinnery Branch.

Whereas the previous decades of '60, '70 and the middle of the '80's decade the branch was flourishing, since 1990 – 1996 the firms of textile commodities have started to close th one after another and since then this branch has taken a stable, falling course. As example of firms which stopped to operate that period we mention indicatively the "Peraiki Patraiki", the firm "Globe", "Hatzis", "Katsamba", "Athena", e.t.c.

The most serious reason was the failing of the textile commodities' branch to be adopted to the evolutions of the international trade, the international competition, with exception some units, and to attend (follow) the technological modernization, which had been already adopted by rival companies in other countries. Thus, a large number of employees were massively dismissed by these firms because of the total closing. According to the table, we have 13 total massive dismissals of the branch for the period 1990 – 1998, three of which were realized due to the firm's incorporation. More specifically, the "Nausa's Textile – Factories" bought out "Colvan" in 1995, the "Macedonian Textile – Factories" the "St. Tottis" in 1996 and the "Naupaktos' Textile – Factories" the "G. Polyhronos". Since the middle of 1996 and after the branch has presented a remarkable recovery, as most of the spinnery firms were converted from labour force in to capital force. Namely, their firm credit in relation to their "circulating credit". Consequently, these firms' property became stable.

B. The Fur Trade - Trade of Leather Branch.

The fur trade – trade of leathers branch, during the period of our study, was remarkably

122

"struck" by collective dismissals. Specifically, it was observed a real "subsidence", mostly in a local level, as for instance, in the region of Kastoria, where in a total of 4.475 firms that were closed, the 2.855 of them were fur factories and the 153, firms of fur and leather trade. The falling course of the branch is, mainly, owed to the change of the consuming models. In the beginning of '90's fur, contrary to the '70's and '80's, stopped to "attract" the buyers' interest with result its demand to be considerably restricted. Fur was replaced by the synthetic (ecological) fur.

C. The Metallurgy Branch.

The branch is characterized by an "exaltation" of massive dismissals during the years 1990 – 1996. On the table, it can be observed that this branch had the most cases of massive dismissals (17 in total), while in 1993 the number of the dismissals became greater (6). The most important reason for the crisis of the branch in this concrete period is the internationalization of the markets, combined with the "upright", sudden fall of the constructive activity. Since 1997, and then though, the branch has regained its power. This could be ascertained by the negotiation of many firm's shares of the branch in the Stock Exchange of Athens.

D. The Shipbuilding Branch.

The course of the shipbuilding firms' branch is really strange, as the fall that had presented in the examined period, hadn't as a result the "blow – up" of massive dismissals. As we also observe on the table, there was only one case of massive dismissal, actually in 1993, in the shipyards of "Salamina", which, wasn't though owed to incorporation. The "withered" course of the branch is rendered to the international competition's pressure and to the general crisis of the Greek shipping (navigation), that supports the shipbuilding industry. In the rest of the Greek shipyards (Siros, Eleusina) there weren't any cases of massive dismissals.

E. The Tourism Branch.

The branch of the tourist businesses presents a peculiarity, as its main characteristic is the periodical increase and decrease of the personnel due to the seasonal occupation. The branch was influenced by international external facts, the most important of which were the war in Persian Gulf in 1991 and the conflict in Yugoslavia in 1993, with result the extremely reduced arrival of tourists in Greece. As it is ascertained through the table, too, massive dismissals in the hotel businesses mostly

took place in the years 1994 – 1997. During those years the branch was characterized by many problematic firms which caused intensive seasonal unemployment. In 1998 there weren't any massive dismissals and this proves the recovery of the branch. It's also worth to be mentioned that in the recent months the branch of the hotel businesses participates "strongly" in the Stock Exchange of Athens (e.g HYATT REGENCY, LAMPSA, e.t.c.) showing its favorable perspectives.

F. The Transports Branch.

The transports' branch, especially in the field of airlines, was seriously affected on the occupation's level during the examined period. A lot of airlines that have branches in our country realized massive dismissals. Thus, "AIR FRANCE" for instance, reduced its personnel in Greece in 1990 because of the Balkan conflict, especially in the region of ex – Yugoslavia, which had as a consequence the number of the flights from and to our country to be reduced. Finally, in the case of "SAS", "SABENA", "PAKISTAN AIRLINES", airlines, we have concession of the clients' service department in Greece to "OLYMPICS AIRLINES" (case of outsourcing with the form of functions' sequence). The field of the civil transports presented in 1992 (E.A.S.) and in 1993 (D.E.P.O.S.) phenomena of massive dismissals, mostly because of the stable economical problems that led to the urgent application of a general recovery system.

G. The Branch of non – Metallurgical Businesses.

The branch of the non – metallurgical businesses has as a main feature the periodical "exaltation" of massive dismissals. More specially, considerable problems were presented in pottery businesses and in businesses of tiles and structural materials. These problems are caused by the crisis which periodically comes up in the field of technical works and construction' works. Remarkable are the massive dismissals in the cement industry "AGET HERCULES" in 1993. On the board we observe that in 1991 "took place" the largest number of massive dismissals (4) in the table.

G. The Branch of Petroleum Production.

The branch of petroleum and coal production was mainly affected by the war in Persian Gulf (1991). This fact had as a result the impulse of the petroleum's price at a high rate with consequence the dramatic reduction of the petroleum's demand in Greece. After 1991, slowly but firmly was "restored" the crisis on this branch and step – by – step was followed by a rising course. It's worth,

though, to be also mentioned the case of incorporation of "PETROLINA Ltd." with "EKO" in 1997, where the change of the possession's regime caused massive dismissals. However, in the case of the European cooperation of the "BP" and "MOBIL" groups in 1997 there wasn't any issue of reducing the personnel, as simultaneously with the "outsourcing" was also transferred the personnel of the two companies.

Conclusion

The concentration and study of all the above facts leads to the conclusion that the massive dismissals are a phenomenon with economical and social extensions, as well. Their various predictable solutions, as the reduction of the production's cost, the new forms of labour relations the employees' training and the social dialogue demand the intensiveness of their application. The analysis of the branch has also the chance to facilitate the right measures taking. Consequently, the catalytic conclusion of this research on the massive dismissals in order to obtain a complete "picture", is that it is needed a multi – parametric analysis which will cover the economical and socioeconomical dimensions of the phenomenon (social – cost benefit analysis). The experience of other countries may help the "development" of "tools" which will contribute to the reduction of "real unemployment".

TABLE OF PRESENTATION OF MANY MASSIVE DISMISSALS PER BRANCH / PER YEAR

YEAR /	SUPPLY	SPINN.	PRINT.	CLOTHING	METALL.	TRANSPOR.	HOTEL	NON META.L.	CHEM. PROD.
BRANCHES									
1990	3	2	2	1	1	0	0	1	1
1991	0	3	0	0	2	0	1	4	2
1992	0	0	1	0	1	0	0	0	0
1993	0	2	0	2	6	1	2	3	5
1994	3	0	1	3	1	1	2	3	3
1995	0	0	1	0	1	0	1	0	0
1996	0	4	1	4	3	0	2	1	2
1997	2	2	0	2	1	3	1	1	2
1998	1	0	0	0	1	0	0	0	0
TOTALS	9	13	6	12	17	5	9	13	15

Source: National Labour Institute, Athens, (2002).