Court of Justice of the European Union
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Press and Information

Judgment in Case C-108/10
Ivana Scattolon v Ministero dell'Istruzione, dell'Università e della Ricerca

The Court of Justice defines the scope of the protection of workers' rights in the event of transfer to a new employer

EU law can prevent transferred workers, even those employed by a public authority of a Member State and taken over by another public authority, from suffering a substantial reduction in salary by reason only of the transfer

According to EU legislation on maintaining the rights of workers in the event of the transfer of an undertaking[1], the transferor's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer are transferred to the transferee. In addition, the transferee must continue to observe the terms and conditions agreed in any collective agreement on the same terms applicable to the transferor under that agreement, until the date of termination or expiry of the collective agreement or the entry into force or application of another collective agreement.

Between 1980 and 1999, Ms Scattolon, employed by the municipality of Scorzè (Italy) as a cleaner in State schools, carried out that task as a member of the administrative, technical and auxiliary (ATA) staff of the local authority. As from 2000, she was transferred onto the list of State ATA employees and placed on a salary scale corresponding, on that list, to nine years of service.

Having failed to obtain from the Ministero dell'Istruzione, dell'Università e della Ricerca (Ministry of Eductation, Universities and Research; "the Ministero") recognition of her service of about 20 years with the municipality of Scorzè and considering that she had thus suffered a considerable reduction in her remuneration, Ms Scattolon brought an action before the Tribunale di Venezia (Italy) seeking recognition of the whole of that length of service.

The Tribunale di Venezia asks the Court of Justice whether EU legislation on the maintenance of workers' rights in the event of the transfer of an undertaking applies to the takeover, by a public authority of a Member State, of staff employed by another public authority. Should that question be answered in the affirmative, the Italian court also asks whether, in order to calculate the remuneration of transferred workers, the transferee must take those workers' length of service with the transferor into account.

The Court of Justice finds, first, that the takeover by a public authority of a Member State of staff employed by another public authority and entrusted with the supply to schools of auxiliary services such as maintenance and administrative assistance constitutes a transfer of an undertaking where that staff consists in a structured group of employees who are protected as workers by virtue of the domestic law of that Member State.

Concerning, next, the calculation of the remuneration of transferred workers, the Court considers that, whilst it is permissible for the transferee to apply, from the date of transfer, the working conditions laid down by the collective agreement in force with the transferee, including those

[1] Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (OJ 1977 L 61, p. 26), and Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ 2001 L 82, p. 16).

concerning remuneration, **the arrangements chosen for salary integration of the transferred workers must be in conformity with the aim of EU legislation on protection of the rights of transferred workers, which consists, in essence, of preventing those workers from being placed in a less favourable position than before solely as a result of the transfer.**

The Court emphasises that, in this case, rather than recognising that length of service as such and in its entirety, the Ministero calculated a 'notional' length of service for each transferred worker, which played a decisive role in fixing the conditions of remuneration henceforth applicable to the staff transferred. Since the tasks carried out before the transfer in State schools by local authority ATA staff were similar, or even identical, to those carried out by the ATA staff employed by the Ministero, the length of service completed with the transferor by a transferred staff member could have been classified as equivalent to that completed by an ATA staff member having the same profile and employed, before the transfer, by the Ministero.

The Court of Justice therefore concludes that, **where a transfer leads to the immediate application to the transferred workers of the collective agreement in force with the transferee**, and where the conditions for remuneration are linked in particular to length of service, **EU law precludes the transferred workers from suffering**, in comparison with their situation immediately before the transfer, **a substantial loss of salary** by reason of the fact that their length of service with the transferor, equivalent to that completed by workers in the service of the transferee, is not taken into account when determining their starting salary position with the latter. **It is for the national court to examine whether, at the time of the transfer at issue, there was such a loss of salary.**

Since the transfer at issue had, in cases brought by colleagues of Ms Scattolon, led to judgments of the Corte suprema di cassazione (Supreme Court of Cassation) and, subsequently, to a law prescribing, for all workers subject to that transfer, arrangements for the latter in a manner different from that set out in the said judgments, the Tribunale di Venezia also asked a question as to the compatibility of such a law with general legal principles, such as the principle of effective judicial protection and the principle of legal certainty.

That question, which has in the meantime been considered by the European Court of Human Rights (Judgment of 7 June 2011, Agrati and Others v Italy), has not been answered by the Court of Justice. The latter has held that, having regard to the answers given to the other questions referred, there is no longer any need to examine the case from the angle of general principles of law.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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