

Case C-343/98

Renato Collino and Luisella Chiappero

v

Telecom Italia SpA

(Reference for a preliminary ruling
from the Pretore di Pinerolo)

(Directive 77/187/EEC — Safeguarding employees' rights in the event of transfers of undertakings — Transfer of an entity managed by a public body within the State administration to a private-law company whose capital is publicly owned — Definition of an employee — Taking into account of employees' total length of service by the transferee)

Opinion of Advocate General Alber delivered on 18 January 2000 I-6661

Judgment of the Court (Sixth Chamber), 14 September 2000 I-6691

Summary of the Judgment

1. *Social policy — Approximation of laws — Transfers of undertakings — Safeguarding of employees' rights — Directive 77/187 — Scope — Transfer of an entity managed by a public body within the State administration to a private-law company whose capital is publicly owned — Included — Condition — Persons concerned previously protected as workers under national law*
(Council Directive 77/187, Art. 1(1))

2. *Social policy — Approximation of laws — Transfers of undertakings — Safeguarding of employees' rights — Directive 77/187 — Obligation of the transferee to take into account the total length of service of employees in calculating the rights of a financial nature attached to length of service — Limit — Alteration of the contract of employment allowed by national law where there is no transfer*
(Council Directive 77/187, Art. 3(1))

1. Article 1(1) of 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, businesses or parts of businesses must be interpreted as meaning that that directive may apply to a situation in which an entity operating telecommunications services for public use and managed by a public body within the State administration is, following decisions of the public authorities, the subject of a transfer for value, in the form of an administrative concession, to a private-law company established by a public body which holds its entire capital. The persons concerned by such a transfer must, however, originally have been protected as employees under national employment law.
2. The first paragraph of Article 3(1) of 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, businesses or parts of businesses must be interpreted as meaning that, in calculating the rights of a financial nature attached, in the transferee's business, to employees' length of service, such as a termination payment or salary increases, the transferee must take into account the entire length of service, in both his employment and that of the transferor, of the employees transferred, in so far as his obligation to do so derives from the employment relationship between those employees and the transferor, and in accordance with the terms agreed in that relationship. Directive 77/187 does not, however, preclude the transferee from altering the terms of the employment relationship where national law allows such an alteration in situations other than the transfer of an undertaking.

(see para. 41 and operative part 1)

(see para. 53 and operative part 2)