

Case C-670/18, General Discrimination

CO – v – Comune di Gesturi, reference lodged by the Tribunale Amministrativo Regionale per la Sardegna (Italy) on 29 October 2018

Does the principle of non-discrimination referred to in Articles 1 and 2 of Council Directive 2000/78/EC of 27 November 2000 preclude the provision in Article 5(9) of Decree-Law No 95 of 6 July 2012 (converted, with amendments, by Law No 135 of 7 August 2012, in the version of the text amended by Article 6 of Decree-Law No 90 of 24 June 2014, converted by Law No 114 of 11 August 2014), prohibiting public administrative authorities from awarding analysis and consultancy roles to individuals who are already retired public or private employees?

Case C-674/18, Transfer of Undertakings, Pension

EM – v – TMD Friction GmbH, reference lodged by the Bundesarbeitsgericht (Germany) on 30 October 2018

1. Does Article 3(4) of 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 allow – in the event of a transfer of a business after the opening of insolvency proceedings regarding the assets of the transferor of the business under national law, which, in principle, also requires the application of Article 3(1) and (3) of Directive 2001/23/EC to employees' rights to old-age, invalidity or survivors' benefits under supplementary company or intercompany pension schemes – a restriction to the effect that the transferee is not liable for pension entitlements based on periods of service completed prior to the opening of the insolvency proceedings?
2. If the first question referred is answered in the affirmative: In the event of a transfer of business after insolvency proceedings regarding the assets of the transferor of the business have been opened, are the measures necessary pursuant to Article 3(4)(b) of Directive 2001/23/EC to protect the interests of employees in respect of rights conferring on them immediate or prospective entitlement to old-age benefits under supplementary company or intercompany pension schemes based on the level of protection required by Article 8 of Directive 2008/94/EC of the European Parliament and of the

Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer?

3. If the second question referred is answered in the negative: Is Article 3(4)(b) of Directive 2001/23/EC to be interpreted to mean that the measures necessary to protect the interests of employees in respect of rights conferring on them immediate or prospective entitlement to old-age benefits under supplementary company or intercompany pension schemes have been taken if the national law provides that
 - a. the obligation to provide the employee covered by the transfer of a business in insolvency proceedings with old-age benefits under supplementary company or intercompany pension schemes in the future is transferred to the transferee of the business,
 - b. the transferee of the business is liable for future pension entitlements to the extent that they are based on periods of service completed after insolvency proceedings are opened,
 - c. in that case, the insolvency insurance institution designated under national law does not have to assume responsibility for the part of the future pension entitlements that was acquired before the insolvency proceedings had been opened, and
 - d. the employee may assert, in the insolvency proceedings of the transferor, the value of the part of the future pension entitlements that was acquired before the insolvency proceedings had been opened?
4. If, in the event of a transfer of a business, the national law also requires the application of Article 3 and Article 4 of Directive 2001/23/EC during insolvency proceedings, is Article 5(2)(a) of Directive 2001/23/EC applicable to employees' pension entitlements under supplementary company or intercompany pension schemes that did arise before the insolvency proceedings had been opened, but do not lead to benefit entitlements on the part of the employee until the occurrence of the covered event and therefore not until a later point in time?
5. If the second or the fourth question referred is answered in the affirmative: Does the minimum level of protection to be provided by the Member States pursuant to Article 8 of Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer also cover the obligation to guarantee pension entitlements that were not yet statutorily vested under national law when the insolvency proceedings were opened and that are only statutorily vested in the first place because the employment relationship is not terminated in connection with the insolvency?
6. If the fifth question referred is answered in the affirmative: Under what circumstances can a former employee's losses suffered in respect of occupational