ESI Preprints **Not Peer-reviewed**

Transfers of Employees in Albanian Legislation in a Comparative Perspective

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Doi: 10.19044/esipreprint.8.2024.p24

Approved: 05 August 2024
Posted: 08 August 2024

Cite As:
Kau R. & Gjika J. (2024). *Transfers of Employees in Albanian Legislation in a Comparative Perspective.* ESI Preprints. https://doi.org/10.19044/esipreprint.8.2024.p24

Abstract

Employee transfer is an important phenomenon that affects both the public and private sectors worldwide. It is one of the most important managerial and productive instruments that a company can use. Even though it is widely used in practice, it is not a well-regulated institution in Albania according to European standards. Albanian labor legislation only recognizes the internal transfer of one category of workers, the civil servants. In this context, there arises an urgent need for the immediate regulation of this institution for the category of workers in the private sector as well. This would ensure effective protection of employees in line with the European legislations, as the lack of such regulation may turn transfers into a tool in the hands of employers.

Keywords: Employee transfer, Albanian labour legislation, private and public sectors, European Countries legislations

1. Introduction

Transfer and dismissal of employees are important legal institutes related to the freedoms and economic rights of employees, with their constitutional guarantees within the framework of employment in both the public and private sectors. In our democratic society, "employees have the right to social protection of work" (Article 49/2 of the Constitution of the Republic of Albania). The Albanian Labor Code and all Albanian labor

legislation have been designed to align with the best contemporary laws of the European Union member states. It is based on the Constitution of the Republic of Albania, general principles, conventions and other norms of international law, accepted and ratified by the Albanian state.

In this paper, our main focus will be on the theoretical-legal definition of transfer, the types and methods of its implementation in Albania, the perspectives throughout the historical development of the state and Albanian labor legislation, along with a comparative analysis with the legislation of some other European countries within the framework of Albania's integration into the EU. Also, in this paper, we will try to highlight whether the legal guarantees for the protection of employees' rights are sufficient or need to be improved and strengthened. We will examine where shortcomings exist, whether in the formulation of laws, their implementation, or in both of these elements collectively.

Transfer is an important and valid instrument for both the employer and the employee if it is applied in the right way. If the transfer, on the one hand, is a tool that "saves" the company in cases where it is necessary for its needs, on the other hand, the transfer of employees within the departments of a company can improve their knowledge (Fockler, 2019). Also, the transfer of workers, especially qualified workers, plays an important role in improving the survival of new establishments (Tavares, M. F. F., 2020).

The transfer causes the change of the necessary conditions of the work agreement (contract), while the dismissal leads to its final solution. Disregarding or violating these institutions infringes upon one of the most fundamental rights of citizens, undermining the guarantees of the right to work, which is the primary source of livelihood for employees, and often their sole means of support.

In modern legal systems, the primary duty of the law is to protect parties that are in weaker positions relative to their counterparts (Kayıhan, Ş., & Turanlı, H., 2023). Material security is inseparable from political and legal security. In a politically stable country with consolidated democracy and modern legislation, with strong and well-organized trade unions, the possibility of violations of employees' rights through employer arbitrariness, whether in the public or private sector, would be very difficult, if not impossible.

In Albania, unfortunately, the rotation of political leaders in power often leads to numerous arbitrary movements of employees within the state administration. These movements constitute flagrant violations of constitutional principles and labor legislation, disregarding employees' contractual rights. This is one of the reasons why we will focus on the institution of employee transfers in this article.

2. Historical overview

The institutions of job transfer and dismissal, as well as the right itself, have undergone changes during different periods of the evolution of the Albanian state. Albanian labor legislation has evolved regarding their content and implementation rules, as well as the extension of the category of employees subjected to them. This evolution has been influenced by the ideological and political perspectives of the respective periods, which we will discuss in this section of the historical overview of this topic.

During the feudal-bourgeois state under Zog's rule, labor relations between workers and employers were categorized as legal-civil relationships. Meanwhile, labor interactions with various state entities were considered legal-administrative relationships. The Albanian Civil Code of 1928, comprising just 10 articles on employment contracts, stipulated that one party (the employee) was obligated to perform services under the direction of the other party (the employer) in exchange for compensation, which the employer was required to provide (Articles 1631–1640 of the Albanian Civil Code of 1928).

Conceptualized as a legal relationship focused on the sale and purchase of labor power, it lacked provisions for working hours, protection of workers' lives and health, permits, social insurance, and other rights. Consequently, it did not address aspects like job transfer and dismissal, which often led to the de facto exploitation of employees by employers. The employment contract, whether fixed-term or indefinite, included provisions for termination and premature resolution, similar to other legal-civil contracts. The institution of employee transfer was not addressed in this Code; instead, transfers were implemented through the stipulation of a new employment contract.

During that period, there were generally comprehensive and detailed regulations governing the employment relations of employees within the state apparatus, both at the central and local levels, which were regarded as administrative legal relations.

In addition to determining the methods of appointing or assigning employees to state duties, regulations at the time also addressed cases of transfer and dismissal. For example, according to the Organic Law of the Ministry of Internal Affairs approved in 1928 (Article 16), the Ministry's Council had the authority to appoint, classify, dismiss, transfer, and discipline all employees of the state administration.

The legislation of that period was further supplemented after the issuance of the Fundamental Statute in 1929. Based on this statute, laws and regulations were enacted that also addressed the circumstances and reasons for employee transfers and dismissals. For instance, education laws (Article 111 and 137) stipulated that the transfer of teachers could be conducted to

meet the state's needs, as well as a disciplinary measure that could result in relocation or dismissal.

From the examination of legal provisions in Albania before the country's Liberation, it is clear that the transfer of employees within the state apparatus occurred in two forms - moving employees from one location to another and from one position to another, sometimes with the employee's consent and at other times without it. Transfers without the employee's consent, justified by the "needs of the state," often led to arbitrariness and deprived employees of their right to defend themselves in practice.

The institutions of employee transfer and dismissal were included in the labor legislation of the monist state of Albania from 1944 to 1991. During this period, numerous articles, monographs, and extensive judicial practices emerged to interpret and implement these institutions. In the early years after Liberation, laws were enacted to quickly mobilize specialists since their numbers were scarce at that time, aiming to reconstruct the country devastated by war (Law No. 22, dated 15.12.1944, to the Presidency of the National Liberation Anti-Fascist Council, on the civil mobilization of specialists and Law No. 48, dated 13.04.1945, on the extension of the provisions of civil mobilization to all persons who were called to the service of the state). Although the term "transfer" was not explicitly mentioned in these two laws, the mobilization of specialists from one location to another under these conditions constituted a form of compulsory transfer, even without the specialist's consent.

The first law that broadly regulated employment relationships, specifying that employers could not dismiss employees from their jobs without justification and prior agreements with trade unions, was issued in July 1945. It also outlined mechanisms for resolving disputes, with trade unions playing a crucial and consistent role in safeguarding the interests of employees (Law No. 82, dated 09.07.1945, of KANÇ, "On service time, protection and remuneration of work", with additions and changes made by decree-law No. 237, dated 20.02.1946, of the Presidium of the People's Assembly). Two years later, the People's Assembly approved the Labor Code (Law No. 527, dated 25.08.1947), which is the first code enacted in our country after Liberation. It regulated the employment relationships of employees in both the public and private sectors, with particular emphasis on the procedures for transfers and dismissals from employment. Articles 31 and 32 of this Code addressed the institution of transfer, which generally required the employee's consent before being implemented. However, amendments and supplements by the Presidium of the People's Assembly introduced rules allowing for mandatory transfers and imposing restrictions on the dismissal of employees without authorization from the institution, enterprise, or organization (Decree-Law No. 726, dated 17.07.1949, on the

recruitment of specialists, the prohibition of dismissal without permission of workers and employees, and the mandatory transfer from one enterprise or institution to another, and Decree No. 1187, dated 05.12.1950).

Then, during the period of the one-party socialist state, three more labor codes were introduced, accompanied by corresponding amendments and additions. These were the Labor Code of the People's Republic of Albania, approved by Law No. 22250 on 03.04.1956; the Labor Code of the People's Republic of Albania, approved by Law No. 4147 on 12.09.1966 and the Labor Code of the Socialist People's Republic of Albania, approved by Law No. 6200 on 27.06.1980, which came into force on 1 October 1980. According to these codes and other provisions issued in their implementation, employees and qualified workers (Category 4 and above) could be transferred for essential needs even without their consent, with their profession or skill preserved. However, other workers, except in special cases stipulated by the code, could not be transferred without their consent.

In the 1980 Labor Code, which is the last Albanian Code of the monist state, the institutions of transfers and dismissals from employment were regulated in Chapter XI (Articles 94-97 for transfers and 98-99 for dismissals). Transfers were categorized into two groups in the 1980 Labor Code: indefinite or permanent transfers, which included transfers for essential needs and the employment of disabled individuals and temporary transfers, which encompassed transfers for job interruptions, production needs, health conditions, disciplinary penalties, and the assignment of qualified workers in categories (4-four) and above to agricultural cooperatives. Transfers for the job placement of disabled individuals and due to health conditions had a humanitarian nature and were mandatory for enterprises, institutions, or social organizations. These transfers aimed to assist the disabled and to relocate employees to more suitable positions if they became unable to perform their previous jobs due to illness (or for women due to pregnancy), for a period as specified in the medical report.

3. The transfer of workers according to current Albanian legislation

Throughout history, societies have consistently faced and continue to face the imperative need to meet the essential requirements and advance the economic, cultural, and social development of their countries. This progress is impossible without the dedication and involvement of professionals and specialists from diverse fields. One of the means for achieving these objectives is through the institution of employee transfers, whether voluntary or involuntary, which establishes the legal foundation for these movements. Every movement (transfer) must be made in accordance with the law, in order to respect and guarantee each individual's constitutional right to choose

their profession and place of work, and to avoid arbitrary changes or unjustified alterations of profession, specialty, or workplace by employers.

Article 49/1 of the Constitution of the Republic of Albania provides: "Everyone has the right to earn his livelihood through legal work that they have chosen or accepted. They are free to choose their profession, workplace, as well as their personal qualification system". Therefore, every transfer must be conducted in accordance with the law to uphold and safeguard everyone's constitutional right to choose their profession and workplace. This approach helps prevent arbitrary actions and unjustified changes in profession, specialization, or workplace by employers.

In current Albanian labor legislation, there are no detailed provisions regarding employee transfers, although in practice it is common for employees to be transferred to different workplaces from where they typically perform their duties. The Labor Code of the Republic of Albania, Law No. 7961, dated 12.07.1995, as amended, contains few provisions regarding the transfer of employees. Also, transfer is provided for in Law No. 152/2013, "On the Civil Servant," as amended, as well as the bylaws issued for the implementation of this law.

3.1. The transfer of workers according to the Labor Code of the Republic of Albania, law no. 7961, dated 12.07.1995, as amended

Referring to Article 137 of the Labor Code, the employer cannot assign an employee to another employer without the employee's consent. In such cases, the original contract between the employer and the employee remains in effect. When an employer assigns their employee to another employer, the initial employer must ensure that the employee receives the same working conditions as those provided by the second employer to their own employees performing the same work. The employer to whom the employee is assigned has the same responsibilities for ensuring health, safety, and hygiene as they do for their own employees. If an employer fails to fulfill their obligations towards an employee assigned to another employer, the latter is jointly liable with the initial employer for meeting those obligations towards the employee.

Therefore, the Labor Code does not contain specific provisions regarding the transfer of employees. This absence has also been noted in Albanian judicial practice. Concerning the transfer of the claimant to another position, the court of appeals has argued that the provisions of the Labor Code do not recognize the transfer of employees (Unifying Decision of the Joint Colleges of the High Court of Albania, No. 7, dated 01.06.2011). If we had specific provisions regarding the transfer of employees, such situations would not cause confusion for the courts, enabling timely resolution of disputes related to employee transfers.

Similar to European and other national legislations, the Albanian Labor Code likely includes provisions for the automatic transfer of employment contracts from the old employer to the new employer in the event of a transfer of undertakings. The Labor Code includes provisions aimed at protecting the rights of employees during transfers and changes in employer structure. It specifically addresses the transfer of undertakings or businesses, delineating the rights and obligations of both employers and employees in such circumstances.

Referring to Article 138 of the Albanian Labor Code, it states that generally, the transfer of enterprises does not affect contracts with employees, especially those with fixed-term agreements, until their specified terms expire. During this period, employees retain their rights and responsibilities. The Labor Code ensures that employees' working conditions, including salary, working hours, and benefits, remain unchanged after the transfer. Enterprise transfer involves the comprehensive relocation of assets, workforce, rights, and obligations from one employer to another. Dismissals solely due to the transfer are likely to be deemed unfair or unjustified, except in cases of necessary workforce adjustments prompted by economic, technological, or structural reasons.

According to Article 139 of the Labor Code, when a partial or complete transfer is imminent, employers are typically required to inform and consult with employee representatives. If there are no representatives, employers must directly consult with the affected employees. This process ensures transparency and employee involvement in decision-making. Employers must provide this notification at least 30 days before the scheduled transfer. This notification must be made at least 30 days before the scheduled transfer and should also outline the measures that have been or will be taken to address the treatment of the company's employees. Failure to comply with the notification procedure and the dismissal of employees through the termination of the employment contract, thereby harming the employee, is subject to compensation. Compensation can be claimed by the employees personally or collectively by the trade union. Additionally, the union can request that the Labor and Social Services Inspectorate impose other sanctions provided for under Article 203, point 2 of the Labor Code. These sanctions can be as high as 30 times the minimum wage.

Also, the Labor Code includes a provision under Article 139/1, stating that if the employee terminates the employment contract due to a transfer that involves substantial changes to their working conditions to their detriment, it is considered an unjustified termination of the employment contract by the employer. The employee notifies the employer in writing of the termination of the contract within 30 days from the date of transfer, providing reasons for the termination as well.

This legal vacuum allows the parties to regulate the transfer process through individual or collective labor contracts. Therefore, trade unions and employees should exercise caution when signing individual or collective employment contracts with companies that operate across different countries. The individual or collective employment contract must specify the circumstances under which the employer can request the transfer of an employee, as well as the procedures for conducting such transfers. There should also be a clear determination of the timeframe for the transfer of the employee. When an employee must relocate from one city to another due to a transfer, and the distances involved make it impractical for the employee to commute from their residence, the individual or collective labor contract should specify the amount and procedure for additional payments (Milkani, L., (n.d)).

3.2. The transfer of workers according to law no. 152/2013, "On the Civil Servant," as amended, as well as the bylaws issued for the implementation of this law

Under current Albanian legislation, transfers apply exclusively to certain civil servants, specifically those governed by the Civil Service Law. This situation sparks theoretical debates on whether transfers should be considered a labor law institute, an administrative law institute, or a hybrid institute encompassing both legal disciplines. Chapter VIII, "Transfer in Civil Service," of Law No. 152/2013 on civil servants outlines two forms of transfers within the civil service: Temporary Transfer and Permanent Transfer. According to Article 48 on Temporary Transfers a civil servant can be temporarily transferred to another civil service position of the same category for the institution’s interest, to enhance the civil servant’s performance, for temporary health reasons or during pregnancy. Transfers can occur within the institution where the civil servant is appointed, including its territorial branches; to a subordinate institution of the one where the civil servant is appointed or to another civil service institution. A civil servant may refuse the transfer if their health condition, certified by a medical report, makes the transfer impossible or if the transfer location is more than 45 km from the civil servant’s residence. At the end of the transfer period, the civil servant returns to his previous position. During the transfer period, the civil servant receives the higher salary between his previous position and the one to which he is transferred. Additionally, if applicable, the civil servant receives the work condition allowance of the position he is transferred to. A civil servant may also be temporarily assigned to an international organization or institution, where the Republic of Albania is a member, to meet the needs of the institution or the state. Through a request, a customs officer claimed that his temporary transfer for institutional needs to

the position of customs officer in another customs branch was carried out in violation of the civil servant law, as he was a civil servant in a probationary period. Regarding this, the Commissioner for the Supervision of the Civil Service decided to return the employee to the position where he had a regular appointment, given that the maximum 6-month transfer period had been completed, in accordance with letter 'a', point 7, of Article 15, of Law No. 102/2014, 'Customs Code of the Republic of Albania', as amended (Civil Decision No. 68, dated 10.06.2021 of the Commissioner for the Oversight Civil Service).

Meanwhile, article 49 defines the Permanent Transfer. Permanent Transfer is the mandatory assignment of a civil servant to another position within the civil service: due to a health condition that renders the civil servant unable to perform the duties of his previous position; to avoid a continuous conflict of interest; at the end of the suspension period or when the reason for the suspension ceases. According to Article 50, Transfer in the Event of Closure and Restructuring of the Institution, if the position of a civil servant no longer exists due to the closure or restructuring of the institution, the civil servant is transferred to another civil service position of the same category. The civil servant can refuse the transfer only when their health condition, confirmed by a medical certificate, makes the transfer impossible or if the location to which they are transferred is more than 45 km away from the civil servant's place of residence. Refusal of the transfer for other reasons constitutes grounds for dismissal from the civil service. Termination of employment in the civil service due to the restructuring or closure of an institution is not allowed, except when, as a result of these procedures, there is a reduction in the overall number of civil servants, and the transfer, according to point 2 of this article, is impossible. Civil servants belonging to the institution that is to be restructured or closed are notified 1 month in advance about the start of this procedure. The civil servant who is dismissed has the right to compensation, in accordance with their tenure. Civil servants who have been dismissed from the civil service due to the restructuring or closure of the institution have the right, within a 2-year period after the termination of their civil service relationship, to compete as civil servants in parallel movement or promotion procedures, to be temporarily appointed by the responsible unit, with their consent, to civil service positions.

According to Article 51, Transfer for Health Reasons, in the event of a health condition that renders a civil servant unable to perform the duties of their previous position, as certified by the competent medical commission according to the law, the civil servant may be transferred to another position where they are capable of performing the duties. The decision for the transfer is made by the responsible unit, at the request of the direct supervisor or the civil servant themselves. According Article 52, Transfer to Avoid Conflict of

Interest if a civil servant is in a continuous conflict of interest situation, as declared by themselves or according to other conflict of interest cases provided by the current law, the civil servant is transferred to another civil service position if the conflict can be avoided through the transfer. The decision for the transfer is made by the responsible unit, at the request of the direct supervisor or the civil servant themselves. In accordance with Law No. 152/2013 on Civil Servants, the Decision of the Council of Ministers No. 125, dated 17.02.2016, on Temporary and Permanent Transfers of Civil Servants, regulates the procedures for both permanent and temporary transfers of civil servants for executive, lower, and middle managerial levels.

4. The transfer of workers according to the French, German and Italian legislations

In this paragraph, we will analyze the institution of worker transfer according to the legislation of some EU countries. The countries analyzed are France, Germany, and Italy, as they are the primary references for the Albanian legislator in drafting domestic legislation.

France: Internal transfers within a company in France, involving the relocation of employees to different positions, departments, or locations, are governed by specific regulations designed to safeguard employees' rights. These transfers are primarily governed by the French Labour Code and collective agreements. Additionally, French legislation includes specific provisions concerning the transfer of undertakings, commonly known as the "TUPE" regulations, to regulate the transfers of workers.

The French Labour Code (Code du Travail) addresses various aspects of employment, including internal transfers. Some of the key provisions and principles from the French Labour Code related to the internal transfer of workers include the mobility clause, the modification of the employment contact, the collective agreements and company policies etc. According to Article L1222-6 if the employment contract contains a mobility clause, the employee must accept transfers within the geographical limits specified by the clause. The clause must be precise and not give the employer excessive discretion. Article L1222-1 highlights the principle of good faith in the performance of the employment contract. It implies that any significant change in the employee's role, working hours, or location should be justified by the employer's operational needs and carried out in good faith. If we refer to Article L1222-2, if the employer wishes to make significant changes to the employee's contract that affect essential terms (e.g., duties, location, working hours), they must obtain the employee's consent. If the employee refuses, the employer cannot unilaterally impose the changes. Article L2261-2 allows for collective agreements to establish specific conditions and procedures for internal transfers. Collective agreements may detail the rights and obligations

of both the employer and the employee concerning transfers, including notice periods, compensation, and relocation assistance. According to Article L2312-8, employers must inform and consult with the Works Council (Comité Social et Economique, CSE) about any major changes affecting employees, including internal transfers. The consultation aims to ensure that employee representatives can provide their input on the proposed changes. Article L1233-3 pertains to redundancies and economic layoffs but is relevant in the context of internal transfers. If a transfer is part of broader organizational changes due to economic or technological reasons, the employer must demonstrate that the changes are justified by the company's operational needs. Employees who believe that their internal transfer is unjustified or negatively impacts their working conditions can seek legal remedies. This may involve filing a complaint with the labor inspectorate (Inspection du travail) or bringing a case before the labor courts (Conseil de prud'hommes).

Also, The French Labor Code (Code du travail) includes provisions regarding the transfer of undertakings (L. 1224-1- L. 1224-4 Code du travail). Provisions related to worker transfers may also be found in collective bargaining agreements negotiated between employers and trade unions. These agreements can further define the conditions and procedures for transfers. The transfer of undertakings typically occurs when there is a change in the employer or the legal structure of the employer, resulting in the transfer of economic entities (undertakings) from one employer to another. Before any transfer, the employer is required to inform and consult with employee representatives or, if such representatives are not present, directly with the employees.

This process aims to ensure that workers are adequately informed about the transfer and its implications. When a business is transferred, employees assigned to that business are automatically transferred to the new owner by operation of law. This occurs simultaneously with the business transfer, and the employees' existing terms and conditions of employment remain unchanged. The transferee becomes the new employer, inheriting all rights and obligations from the employment contracts of the transferred employees and the broader employment relationships.

French labor law provides protection against unjustified transfers. Employees have the right to challenge transfers they consider unfair or lacking a legitimate economic, technical, or organizational reason.

Germany: In Germany, the transfer of employees within a company is regulated by the German Civil Code (Bürgerliches Gesetzbuch, BGB), the Works Constitution Act (Betriebsverfassungsgesetz, BetrVG), and relevant collective bargaining agreements. Many employment contracts include a mobility clause that allows the employer to transfer the employee within the

company. The validity of such a clause depends on its clarity and reasonableness. According to Section 106 of the GewO (Trade, Commerce and Industry Regulation Act), employers have the right to determine the content, place, and time of work performance, provided there is no contrary agreement, collective bargaining agreement, or provision in the employment contract. This right must be exercised reasonably. According to Section 99 of the Betriebsverfassungsgesetz-BetrVG (Works Constitution Act), before making any personnel changes, including transfers, the employer must inform and consult with the Works Council (Betriebsrat).The Works Council has the right to object to a transfer under specific circumstances, such as if the transfer violates laws, collective agreements, or company agreements, or if it causes undue hardship to the employee. If the employment contract does not contain a mobility clause, significant changes to the employee's duties, work location, or other essential terms of employment require the employee's consent. An internal transfer that significantly alters the employment contract without such consent is not permissible. Internal transfers must be reasonable and justified by legitimate business needs. Employers must consider the impact on the employee and ensure that the transfer does not disproportionately disadvantage them. Collective agreements (Tarifverträge) or company agreements (Betriebsvereinbarungen) often provide specific procedures and conditions for internal transfers. These agreements may outline the rights and obligations of both the employer and the employee, including notice periods and relocation assistance. Employees who believe their internal transfer is unjustified or adversely affects their working conditions may seek legal remedies. They can file a complaint with the labor courts (Arbeitsgericht) to challenge the transfer's legality and seek protection against unfair treatment.

In German legislation, the transfer of employees is governed by the Law on the Transfer of Undertakings (Betriebsverfassungsgesetz - BetrVG) and the provisions of the German Civil Code (Bürgerliches Gesetzbuch - BGB) Section 613a. Employees' rights and obligations under their existing employment contracts automatically transfer to the new employer. This includes all terms and conditions, such as salary, working hours, and benefits. According to Section 613a (5) BGB, both the old and new employers must inform employees about the transfer, including the date, reasons, legal, economic, and social consequences, and any measures planned regarding employees. This must be done in writing before the transfer takes place. Referring to, Section 111 BetrVG, the Works Council must be informed and consulted if significant changes in the business's structure, such as a transfer, affect the workforce. This is to ensure employee representatives can discuss and negotiate the terms and conditions of the transfer. The new employer must maintain the terms and conditions of

employment as they were before the transfer. Any changes require mutual agreement, and the employer cannot unilaterally alter the contracts. As per Section 613a (6) BGB, employees have the right to object to the transfer of their employment contract to the new employer. This objection must be made in writing within one month of receiving the information about the transfer. If an employee objects, their employment with the transferring entity typically ends. Employees who believe their rights have been violated during a transfer can seek legal remedies through the labor courts (Arbeitsgericht). They can challenge the transfer's legality, seek compensation for any losses, or claim reinstatement if they believe their dismissal was unjust.

In Italy, transfers at work are regulated by various legal provisions. The legislation for the transfer of employees aims to protect the position of the employee, to prevent the employer as a strong party from carrying out discriminatory or arbitrary transfers not based on actual technical, organizational and production reasons. Legislation regarding the transfer of workers is contained mainly in paragraph 8 of Article 2103 of the Italian Civil Code (Codice Civile), in the Workers' Statute (Statuto dei Lavoratori) and in collective agreements.

According to Italian legislation, employee transfer refers to the movement of an employee between different offices of the same company, without changing the duties assigned to the employee. Although the transfer can also be initiated by the employee, it is primarily a tool in the hands of the employer to meet the company's needs through the redistribution of personnel.

According to paragraph 8 of Article 2103 of the Civil Code, an employee cannot be transferred from one production unit to another except for justified technical, organizational, and production reasons, with reference to both the place of origin and the destination. This can occur, for example, when the presence of an employee is no longer beneficial in the initial unit but is needed in another sector, always considering his qualifications and abilities (Cardarello, 2000).

Regarding the transfer procedures, a written form is not necessary, as the transfer can also be communicated orally or through any other means. Additionally, generally, there is no requirement to disclose the reasons for the employee transfer, nor is there a specified deadline. Nevertheless, some collective agreements may require a written form for the transfer letter and a notice period. The absence of prior notice for the transfer does not invalidate it but gives the employee the right to seek compensation in the event of harm resulting from the disruption of employment.

The transfer rules that apply to the private sector are also applicable to the public sector, except where otherwise specified. In the public sector,

transfers play a role in optimizing human resources employed in various offices and meeting the administrative needs. For instance, when it is not feasible to wait for the development of a public competition, a public entity may relocate employees from one office to another to fulfill a specific personnel need. Transfers of public jobs "with authority" are regulated by Article 30 of Legislative Decree no. 165/2001 (Legislative Decree of March 30, 2001, No. 165**,** General Rules on the Organization of Work in the Public Administration). This article provides that "employees may be transferred within the same administration or, through agreement between different administrations, to another administration. These transfers may be carried out in offices located in the territory of the same municipality or at a distance of no greater than fifty kilometers from the headquarters for which they are used". Different situations are related to the topic of mobility. Among these we can mention the direct transfer of personnel between different administrations, staff redundancies, collective mobility, exchange of officials belonging to different countries, transfer of employees due to transfer of activities, or the simple transfer of duty or due to environmental incompatibility).

The labor law provides for special provisions for special categories of workers, such as the case of the transfer of a working mother and the transfer of a disabled worker. According to article 56, point 1, of the Legislative Decree no. 151/2001 (Decreto Legislativo 26 marzo 2001, n.151, Testo unico delle disposizioni legislative in material di tutela e sostegno della maternita e della paternita, a norma dell'articolo 15 della legge 8 marzo 2000, n. 53), the working mother has the right to keep her job even after the end of the maternity period, unless she gives it up. She has the right to return with the same duties and to the same production unit where she was employed before the pregnancy or to another one, provided that it is in the same municipality. Also, the law prohibits the transfer of a working mother until her child is 1 year old.

The worker with limited skills, even if employed on the basis of recruitment from protected categories, in general, except for some exceptional cases, can be transferred only if he gives his consent.

The transfer of a company is one of the company events that most affects the continuation of the employment relationship between the employer and the employee 2112. In these cases, the legislator guarantees the continuation of the employment relationship, leaving the salary and classification of the employee unchanged within the new work reality. The employment relationship with the transferor continues with the transferee and the employee retains all rights derived from it and all previously acquired rights. Therefore, the transfer of a company cannot be a direct cause of dismissal of employees. Even in relation to job transfers, Article 2103 of

the Italian Civil Code continues to apply and therefore the transfer of employees is legal only for important and effective technical, organizational and production reasons. It may happen that the transferred worker does not intend to move to the new place of work, for example, when he is too far away from the place of residence. In the majority of cases where the relocation of the workplace is refused, the company may proceed with termination for just cause due to the unjustified absence of the employee at the workplace. Another perspective, however, asserts that an employee may legitimately refuse the job transfer when the employer's decision appears to lack the required legal grounds (Italian Supreme Court of Cassation Judgement no. 11180/2019). Finally, the Italian legislation outlines the conditions and procedures for challenging the relocation of an employee.

Conclusions

Albanian legislation regarding employee transfers has experienced numerous changes over time. Although the transfer of employees was previously regulated, we now see a regression in this area when the legislation should be more comprehensive and refined. The current legislation only provides for the internal transfer of civil servants, excluding private sector employees from this provision.

We should have a specific regulation in the Labor Code for the institution of internal transfers of employees, both in the private and public sectors. As observed earlier, in the legislations of the analyzed countries, there is regulation not only for external transfers but also for internal transfers of employees, without making a distinction between public and private sector employees.

Limits on employee transfers must be established. Transfers can only occur in the presence of proven technical, organizational, and production-related reasons. In this context, it is important to adhere to the criteria of fairness and good faith. Transfers should not be allowed if they aim to discriminate against an employee for reasons related to trade union, political, religious, racial, sexual, or linguistic factors. Additionally, transfers should not be permitted if they are made solely to exert unfair pressure to force the acceptance of early retirement or to induce resignation, or because there is a vacancy in the destination production unit. Transfers should be carried out to distribute personnel based on the criterion of production functionality and individual skills, with the aim of achieving the most satisfactory performance of the company's services.

In relation to transfers, it is important to assess the personal conditions of the employee. The employer must take into account the employee's personal and family circumstances before the transfer, such as

seniority, family responsibilities, and health issues. In such cases, the employee's reasons should prevail.

Specific situations should be defined in which the employee has the right to request a transfer. For example, a parent or family member who is employed in the public or private sector and continuously cares for a relative or acquaintance up to the third degree with disabilities and living with them, has the right to choose, when possible, the workplace closest to their residence. Additionally, in the case of a transfer, their consent must be obtained.

It is also important to consider cases of 'disciplinary transfers,' where there is a substantial mismatch between the employee requesting the transfer and their colleagues

In the case of a transfer, it is important for the employer to communicate the reasons for the transfer to the employee being transferred.
Albanian current legislation does not provide for career development transfers at the employee's request. Employees can acquire knowledge and qualifications beyond the opportunities offered by their current job as part of personal progress. However, none of the current legal provisions consider qualifications, progress, or various licenses for facilitating transfers to redistribute skills and capacities of human resources. Instead, transfers are viewed more as a tool for the employer rather than the employee.

Conflict of Interest: The authors reported no conflict of interest.

Data Availability: All data are included in the content of the paper.

Funding Statement: The authors did not obtain any funding for this research.

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