



Transfer Allowance: Breakthrough for Personnel Returning from Abroad

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In recent years, the issue of the **transfer allowance** for military personnel employed abroad and then returning home has been at the center of numerous disputes. The main issue concerned the interpretation of art. 1 of Law March 29, 2001, no. 86, after the repeal of paragraph 4 by Law December 23, 2014, no. 190 (2015 Stability Law).

For a long time, this repeal was interpreted by the Administration as a sort of cancellation of the right to the allowance upon returning from abroad, even in cases where the military, upon repatriation, was assigned to a new service location. This led to numerous appeals before administrative and accounting judges.

The New Jurisprudential Orientation

The most recent rulings by judges have overturned this approach:

- **No allowance** is due when the military, returning from abroad, goes back to the **same location** as before, or to another location **located in the same Municipality** or in any case **less than 10 km** from the original one;
- **The transfer allowance is instead due** when, upon returning to Italy, the Administration orders the **transfer by authority to a different location**, situated in **another Municipality** and **more than 10 km** from the one previously held at home.

In these cases, the judges have considered that the now repealed paragraph 4 of art. 1 of Law no. 86/2001 does not apply, but rather **paragraph 1 of the same article**, that is, the general regulation of transfer by authority, which entails the right to the allowance.

The Decisive Role of the State Attorney General

The **State Attorney General** also expressed this view, consulted by the Ministry of Defense to definitively resolve the issue, both in relation to the **administrative requests** of the personnel and with respect to the **numerous pending disputes**.

The Attorney General, based on a normative, systematic, teleological, and constitutional analysis, as well as the now consolidated jurisprudence, clearly stated that:

*the transfer allowance **must be recognized** to the military who, at the end of service abroad, is assigned to a location at home **different from the one of origin**.*

According to the Attorney General:

- the repeal of paragraph 4 of art. 1 of L. no. 86/2001 has **eliminated the special rule** dedicated to returns from abroad,
- but **did not** introduce any provision that excludes the application of the **general** regulation on transfers by authority,
- therefore, when the return from abroad results in a **new transfer by authority** to a different location, the right to the **transfer allowance ex art. 1, paragraph 1, L. 86/2001** arises.

The Attorney General also invited the Administration to **not insist** on denying the allowance in court, but to **align with the favorable jurisprudential orientation**, recognizing the benefit during the course of the case, also to avoid the costs resulting from a probable defeat.

The Persomil Circular: Right Recognized Even for Those Returning to a Different Location

In light of these opinions and judicial rulings, the **General Directorate for Military Personnel (Persomil)** issued a general circular, directed to all competent branches of the Armed Forces and the Carabinieri Corps.

With this act, Persomil:

- **acknowledges** the now prevailing jurisprudential orientation;
- **adopts** the indications of the State Attorney General;
- **establishes** that the transfer allowance **must be recognized** to military personnel who, returning from abroad, are assigned to a location at home **different from the one occupied before departure**, provided it is a different location in another Municipality and more than 10 km away from the previous one;
- invites the **Armed Forces Administrative Services and the General Command of the Carabinieri Corps** to give **precise application** to these interpretative guidelines in the management of cases and in the resolution of disputes.

In essence, the principle is formalized – with general application value – that:

the military who returns from a multi-year mandate abroad and is assigned to a different location from the starting one has the right to the transfer allowance, according to the ordinary rules of transfer by authority.

What Changes in Practice for Personnel

For the personnel concerned, this clarification has very concrete effects:

- Those who, after serving abroad, have been or will be **transferred by authority to a different location** from the original one, located in **another Municipality** and at a

distance **greater than 10 km**, will be able to **claim the transfer allowance** ex art. 1, paragraph 1, L. 86/2001.

- The peripheral administrations will be required to **re-examine and decide** the requests submitted by the personnel in light of the new guidelines provided by Persomil.
- In ongoing disputes, the Administration is inclined to **comply with the favorable jurisprudence**, recognizing the right to the allowance and thus limiting further procedural costs.

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