

participation in a selection procedure for posts of commissioner in the career bracket of State Police officers?

Case C-311/21, Temporary Agency Work

CM – v – TimePartner Personalmanagement GmbH, reference lodged by the Bundesarbeitsgericht (Germany) on 18 May 2021

1. How is the concept of ‘overall protection of temporary agency workers’ in Article 5(3) of Directive 2008/104/EC to be defined, and, in particular, does it encompass more than what is provided for in the mandatory provisions on protection for all workers under national and EU law?
2. What conditions and criteria must be met for the presumption that arrangements concerning the working and employment conditions of temporary agency workers in a collective agreement which derogate from the principle of equal treatment laid down in Article 5(1) of Directive 2008/104 have been established while respecting the overall protection of temporary agency workers?
3. Is the assessment of respect for overall protection to be based – in the abstract – on the collectively agreed working conditions of the temporary agency workers covered by such a collective agreement or is it necessary to carry out an evaluative analysis comparing the collectively agreed working conditions with the working conditions existing in the undertaking to which the temporary agency workers are assigned (user undertaking)?
4. In the case of a derogation from the principle of equal treatment with regard to pay, does the respect for overall protection prescribed in Article 5(3) of Directive 2008/104 require the existence of an employment relationship of indefinite duration between the temporary employment agency and the temporary worker?
5. Must the national legislature prescribe the conditions and criteria under which the social partners must respect the overall protection of temporary agency workers within the meaning of Article 5(3) of Directive 2008/104 where the national legislature gives the social partners the option of concluding collective agreements which establish arrangements concerning the working and employment conditions of temporary agency workers which derogate from the principle of equal treatment, and the national collective bargaining system provides for requirements which can be presumed to ensure an appropriate balance of interests between the parties to collective agreements (‘presumption of fairness of collective agreements’)?
6. If the third question is answered in the affirmative: Is respect for the overall protection of temporary agency workers within the meaning of Article 5(3) of Directive 2008/104 ensured by statutory rules which, like the version of the Arbeitnehmerüberlassungsgesetz (Law on the supply of temporary workers) in force since 1 April 2017, provide for a minimum wage floor for temporary workers, for a maximum duration of assignment to the same user undertaking, for a time limit on the derogation from the principle of equal treatment with regard to pay, for the non-application of a collectively agreed arrangement derogating from the principle of equal treatment to temporary workers who, in the six months preceding the assignment to the user undertaking, left the employ of that user undertaking or an employer forming a group with that user undertaking within the meaning of Paragraph 18 of the Aktiengesetz (Law on public limited companies) and for an obligation of the user undertaking to grant temporary workers access to collective facilities or services (such as, in particular, childcare facilities, collective catering and transport) in principle under the same conditions as those applicable to permanent workers?
7. If that question is answered in the affirmative: Does this also apply if the relevant statutory rules, such as those in the version of the Law on the supply of temporary workers in force until 31 March 2017, do not provide for a time limit on derogations from the principle of equal treatment with regard to pay or a specific time frame for the requirement that the assignment may only be ‘temporary’?
8. If the third question is answered in the negative: In the case of arrangements concerning the working and employment conditions of temporary agency workers which derogate from the principle of equal treatment through collective agreements in accordance with Article 5(3) of Directive 2008/104, may the national courts review such collective agreements without restriction with a view to determining whether the derogations have been established while respecting the overall protection of temporary agency workers, or does Article 28 of the Charter of Fundamental Rights and/or the reference to the ‘autonomy of the social partners’ in recital 19 of Directive 2008/104 grant the parties to collective agreements a margin of assessment with regard to respect for the overall protection of temporary agency workers that is subject to only limited judicial review and – if so – how far does that margin extend?