Cases C-184/22 and C-185/22, Gender Discrimination, Part Time Work

IK – v – KfH Kuratorium für Dialyse und Nierentransplantation e.V.; CM – v – KfH Kuratorium für Dialyse und Nierentransplantation e.V., reference lodged by the Bundesarbeitsgericht (Germany) on 10 March 2022

– Must Article 157 TFEU and Article 2(1)(b) and the first sentence of Article 4 of Regulation 2006/54/EC be interpreted as meaning that a provision in a national collective agreement to the effect that the payment of overtime supplements is available only for hours worked in excess of the standard working time of a full-time employee entails a difference in treatment as between full-time employees and part-time employees?
– In the event that the Court answers Question 1 in the affirmative:
  • Must Article 157 TFEU and Article 2(1)(b) and the first sentence of Article 4 of Directive 2006/54 be interpreted as meaning that, in such a case, a finding that the difference in treatment affects considerably more women than men is not sustained by the fact alone that the part-time employees are made up of considerably more women than men, but requires in addition that the full-time employees be made up of considerably more men or a significantly higher proportion of men?
  • Or does something different also follow, in the case of Article 157 TFEU and Directive 2006/54, from the findings of the Court of Justice in paragraphs 25 to 36 of the judgment Szpital Kliniczny im. dra J. Babińskiego Samodzielny Publiczny Zaktad Opieki Zdrowotnej w Krakowie, according to which a difference in treatment even within a group of persons with disabilities may be covered by the 'concept of "discrimination"' referred to in Article 2 of Directive 2000/78/EC?
  • In the event that the Court answers Question 1 in the affirmative and Questions 2(a) and 2(b) to the effect that, in a case such as that in the main proceedings, it may be found that the difference in treatment in respect of pay affects considerably more women than men:
  • Must Article 157 TFEU and Article 2(1)(b) and the first sentence of Article 4 of Directive 2006/54 be interpreted as meaning that, it may be a legitimate aim for the parties to a collective agreement, by means of a provision such as that referred to in Question 1, on the one hand, to pursue the aim of deterring the employer from mandating overtime and rewarding recourse to employees to an extent in excess of that contracted by means of an overtime supplement, but, on the other hand, also to pursue the aim of preventing full-time employees from being treated less favourably than part-time employees and to provide for that reason that supplements are payable only for overtime worked in excess of a full-time employee's working hours in a calendar month?
  • Must Clause 4(1) of the Framework Agreement on part-time work annexed to Directive 97/81/EC be interpreted as meaning that a provision in a national collective agreement to the effect that the payment of overtime supplements is available only for hours worked in excess of the normal working hours of a full-time employee entails a difference in treatment as between full-time employees and part-time employees?
  • In the event that the Court answers Question 4 in the affirmative, must Clause 4(1) of the Framework Agreement on part-time work be interpreted as meaning that there may be an objective ground for the parties to a collective agreement, by means of a provision such as that referred to in Question 4, on the one hand, to pursue the aim of deterring the employer from mandating overtime and rewarding recourse to employees to an extent in excess of that contracted by means of an overtime supplement, but, on the other hand, also to pursue the aim of preventing full-time employees from being treated less favourably than part-time employees and to provide for that reason that supplements are payable only for overtime worked in excess of a full-time employee's working hours in a calendar month?

Cases C-190/22, Fixed-Term Work

BL – v – Presidenza del Consiglio dei Ministri, reference lodged by the Ufficio del Giudice di pace di Rimini (Italy) on 7 March 2022

– Does EU law, and in particular Articles 15, 20, 30 and 47 of the Charter of Fundamental Rights of the European Union, clauses 2 and 4 of the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP and laid down in Directive 1999/70/EC of 28 June 1999, 1 and the fundamental principle of the independence and irremovability of European judges, as interpreted by the case-law of the Court of Justice in UX (EU:C:2020:572), preclude a national provision such as

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