

SUMMARY

ECJ 15 October 2014, case C-221/13 (Teresa Mascellani – v – Ministero della Giustizia), Working time and leave, Part time work

Facts

Ms Mascellani was employed part-time, working three days per week. On 4 November 2010, the Italian legislature adopted Law No 183/2010. Article 16 allows the State, as employer, subject to the principles of fairness and good faith, to re-evaluate decisions adopted before Law 183/2010 came into force, permitting the conversion of full-time employment relationships into part-time ones. Based on this law, Ms Mascellani’s employer – the Justice Department – converted her employment contract into a full-time, six day per week contract.

National proceedings

Ms Mascellani applied to the *Tribunale ordinario de Trento*, seeking annulment of the conversion. She stated that working part-time enabled her to care for her family and to undertake vocational training. She took the view that Article 16 of Law 183/2010, inasmuch as it allows part-time work to be converted into full-time work without the worker’s consent, is incompatible with Directive 97/81. That directive implements the Framework Agreement on part-time work, of which Clause 5.2 provides:

“A worker’s refusal to transfer from full-time to part-time work or vice- versa should not in itself constitute a valid reason for termination of employment [...].”

The court considered Article 16 of Law 183/2010 to be contrary to Clause 5.2 and also discriminatory with regard to part-time workers who, unlike full-time workers, are subject to

the power enjoyed by public-authority employers unilaterally to alter their working hours. The court referred questions to the ECJ.

ECJ's findings

1. The objective of Directive 97/81 is (i) to promote part-time work and (ii) to eliminate discrimination between part-time and full-time workers. The Framework Agreement merely sets out the general principles which aim to achieve this objective, leaving it up to Member States to decide how to achieve the objective (§ 19-22).

2. Clause 5.2 of the Framework Agreement does not require Member States to adopt rules making the conversion of a worker's part-time employment relationship to a full-time employment relationship subject to his consent. The provision seeks merely to prevent the refusal of a worker to transfer from part-time to full-time work or vice versa from being the only reason for the termination of his employment. It follows that Clause 5.2 of the Framework Agreement does not preclude legislation that allows an employer to order the conversion of a part-time employment relationship into a full-time employment relationship for objective reasons without the consent of the worker concerned (§ 23-24).

3. The argument regarding discrimination must be rejected, because a situation in which a part-time employment relationship is converted into a full-time employment relationship without the consent of the worker concerned and a situation in which a worker has his full-time employment relationship converted into a part-time employment relationship contrary to his wishes cannot be regarded as comparable. This is because the reduction of working time does not involve the same consequences as an increase, in particular, as regards the worker's remuneration (which constitutes consideration for the work carried out) (§ 26-27).

Ruling

The Framework Agreement [...], in particular Clause 5.2 thereof, must be interpreted as meaning that, in circumstances such as those in the main proceedings, it does not preclude national legislation pursuant to which the employer may order the conversion of a part-time employment relationship into a full-time employment relationship without the consent of the worker concerned.

Creator: European Court of Justice (ECJ)

Verdict at: 2014-10-15

Case number: C-221/13