SUMMARY

ECJ 7 April 2011, case C-151/10 (Dai Cugini NV – v – Rijksdienst voor Sociale Zekerheid), Part time work

<p>Clause 4 of the Framework Agreement on Part-Time Work does not prohibit national legislation that obligates employers to maintain for inspection the employment contracts and work schedules of part-time workers if that legislation does not cause part-time workers to be treated less favourably than full-time workers in a comparable situation or if such difference in treatment is objectively justified. It is for the national courts to determine whether this is the case. If those courts find the legislation to be incompatible with Clause 4 then it is also incompatible with Clause 5.</p>

Facts

Dai Cugini is the name of a restaurant. In 2003 it was inspected by the Belgian Social Insurance Authority Rijksdienst voor Sociale Zekerheid (RSZ). It found that the restaurant violated certain rules in respect of four of its employees. These rules included an obligation to maintain in its place of business, for inspection purposes, a signed copy of the employment contracts of all its employees, specifying their working times and, in the event of variable working time, their working times for the coming five working days, such specifications to be kept on file for no less than one year. Article 22ter of an Act dated 27 June 1969 ("Article 22ter") provided that absence of the documents evidencing compliance with these obligations shall create a rebuttable presumption that any employees classified as part-time employees are in fact employed on a full-time basis. Accordingly, the RSZ re-assessed the restaurant's social insurance contributions and demanded payment of additional contributions. Dai Cugini

objected and applied to the court.

National proceedings

The court of first instance found in favour of the RSZ. Dai Cugini appealed, offering to produce evidence that the four employees in question were truly part-time workers.

The Court of Appeal, although noting that the presumption pursuant to Article 22ter was not relevant in this case, nevertheless referred questions to the ECJ. It did so because Dai Cugini argued that the Belgian legislation burdens employers of part-time staff with such detailed administrative rules, breach whereof is so heavily penalised, that it is incompatible with Directive 97/81 implementing the Framework Agreement on Part-Time Work (the "Framework Agreement"), in particular Clause 5(1)(a) of that Agreement, which provides that the Member States, in the context of the principle of non-discrimination between part-time and full-time workers, shall "identify and review obstacles of a legal or administrative nature which can limit the opportunities for part-time work and, where appropriate, eliminate them".

ECJ's ruling

1. The ECJ declared the questions to be receivable (§ 23-31).

2. The ECJ's ruling focuses mainly, not on Clause 5(1)(a) but on Clause 4 of the Framework Agreement, which provides that "part-time workers shall not be treated in a less favourable manner than comparable full-time workers solely because they work part time unless different treatment is justified on objective grounds". This prohibition merely gives expression to the general principle of non-discrimination, which forms part of the EU's fundamental principles and which may therefore not be construed restrictively (§ 33-36).

3. It is the national court's prerogative to determine whether a rule of domestic law leads to less favourable treatment of part-time workers as compared to comparable full-time workers (§ 37-40).

4. The Belgian government argues that, in order to determine whether part-time workers such as those at issue are comparable to full-time workers, it is necessary to distinguish between workers with a fixed working schedule and those with variable working hours. Within the former category, part-timers are not comparable to full-time workers, who can work overtime but cannot deviate from their schedule. As for workers with variable working hours, Belgian law makes no distinction between full-time and part-time workers. Given these distinctions, the referring court will need (i) to compare full-time workers with fixed working hours to

part-time workers with fixed working hours and (ii) to compare full-time workers with variable working hours with part-time workers with variable working hours. If such a comparison evidences less favourable treatment of part-time workers, then that treatment constitutes differential treatment. However, it may still be compatible with Clause 4 if it is objectively justified (§ 41-46).

5. The referring court observes that the administrative rules in question are aimed at combating illegal work. The Belgian government points out that those rules aim primarily at promoting "flexicurity". Both objectives can justify the differential treatment of full-time and part-time employees at issue, provided they meet the proportionality test. It is up to the national courts to determine whether this is the case (§ 42-52).

6. If the national rules at issue are incompatible with Clause 4 of the Framework Agreement, they are also incompatible with Clause 5(1).

Ruling

Clause 4 of the Framework Agreement on Part-Time Work does not prohibit national legislation that obligates employers to maintain for inspection the employment contracts and work schedules of part-time workers if that legislation does not cause part-time workers to be treated less favourably than full-time workers in a comparable situation or if such difference in treatment is objectively justified. It is for the national courts to determine whether this is the case. If those courts find the legislation to be incompatible with Clause 4 then it is also incompatible with Clause 5.

Creator: European Court of Justice (ECJ)
Verdict at: 2011-04-07
Case number: C-151/10