

SUMMARY

ECJ 29 July 2024, case C-184/22 and C-185/22 (KfH Kuratorium für Dialyse und Nierentransplantation), gender discrimination

IK, CM – v – KfH Kuratorium für Dialyse und Nierentransplantation eV, German case

Summary

National legislation which requires part-time workers to exceed the normal full-time hours before receiving overtime pay constitutes 'less favourable' treatment of part-time workers and indirect discrimination on grounds of sex. The ECJ's summary of the case can be found [here](#).

Questions

Must Clause 4(1) and (2) of the Framework Agreement on part-time work be interpreted as meaning that national legislation under which the payment of additional pay is provided for part-time workers only for hours worked in excess of the normal working hours laid down for full-time workers in a comparable situation, constitutes 'less favourable' treatment of part-time workers, within the meaning of Clause 4(1), and whether such treatment is capable of being justified by the pursuit, first, of the objective of deterring the employer from requiring workers to work overtime in excess of the hours individually agreed in their employment contract and, secondly, of the objective of preventing full-time workers from being treated less favourably than part-time workers?

Must Article 157 TFEU and Article 2(1)(b) and the first paragraph of Article 4 of Directive 2006/54 be interpreted as meaning, first, that national legislation under which the payment of overtime supplements is provided, for part-time workers, only for hours worked in excess of the normal working hours laid down for full-time workers in a comparable situation,

constitutes indirect discrimination on grounds of sex, even where there is a significantly higher proportion of women than men among full-time workers and, secondly, that such discrimination can be justified by the pursuit of the objective of deterring the employer from requiring workers to work overtime in excess of the hours individually agreed in their employment contracts and of the objective of preventing full-time workers from being treated less favourably than part-time workers?

Ruling

Clause 4(1) and (2) of the Framework Agreement on part-time work must be interpreted as meaning that national legislation under which the payment of overtime supplements is provided, for part-time workers, only for hours worked in excess of the normal working hours laid down for full-time workers in a comparable situation, constitutes 'less favourable' treatment of part-time workers, within the meaning of Clause 4(1), which is not capable of being justified by the pursuit, first, of the objective of deterring the employer from requiring workers to work overtime in excess of the hours individually agreed in their employment contracts and, secondly, of the objective of preventing full-time workers from being treated less favourably than part-time workers.

Article 157 TFEU and Article 2(1)(b) and the first paragraph of Article 4 of Directive 2006/54 must be interpreted as meaning, first, that national legislation under which the payment of overtime supplements is provided, for part-time workers, only for hours worked in excess of the normal working hours laid down for full-time workers in a comparable situation, constitutes indirect discrimination on grounds of sex if it is established that that legislation disadvantages a significantly higher proportion of women than men without it also being necessary for the group of workers which is not placed at a disadvantage by that legislation, namely full-time workers, to be made up of a considerably higher number of men than women and, secondly, that such discrimination cannot be justified by the pursuit of the objective of deterring the employer from requiring workers to work overtime in excess of the hours individually agreed in their employment contracts and of the objective of preventing full-time workers from being treated less favourably than part-time workers.

Creator: European Court of Justice (ECJ)

Verdict at: 2024-07-29

Case number: C-184/22 and C-185/22