



Reports of Cases

Joined Cases C-184/22 and C-185/22

IK

v

KfH Kuratorium für Dialyse und Nierentransplantation eV

(Request for a preliminary ruling from the Bundesarbeitsgericht)

Judgment of the Court (First Chamber) of 29 July 2024

(Reference for a preliminary ruling – Social policy – Article 157 TFEU – Equal treatment between men and women in matters of employment and occupation – Directive 2006/54/EC – Article 2(1)(b) and Article 4, first paragraph – Prohibition of indirect discrimination on grounds of sex – Part-time work – Directive 97/81/EC – Framework Agreement on part-time work – Clause 4 – Prohibition on treating part-time workers less favourably than comparable full-time workers – Payment of additional pay only for overtime worked by part-time workers in excess of the normal working hours set for full-time workers)

1. *Social policy – Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC – Directive 97/81 – Prohibition on discrimination against part-time workers – Male and female workers – Access to employment and working conditions – Equal treatment – Directive 2006/54 – National legislation providing for the payment of additional pay to part-time workers only for overtime worked in excess of the normal working hours laid down for full-time workers – Less favourable treatment of part-time workers – Justification – Absence*
(Art. 157 TFEU; Council Directive 97/81, Annex, Clause 4, point 1)

(see paragraphs 30-38, 40, 42-45, 47, 49-53, operative part 1)

2. *Social policy – Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC – Directive 97/81 – Prohibition on discrimination against part-time workers – Male and female workers – Access to employment and working conditions – Equal treatment – Directive 2006/54 – National legislation providing for the payment of additional pay to part-time workers only for overtime worked in excess of the normal working hours laid down for full-time workers – Part-time workers, mainly women – Indirect discrimination – Justification – Absence*
(Art. 157 TFEU; European Parliament and Council Directive 2006/54, Arts 2(1)(b) and 4, first para.)

(see paragraphs 56-61, 63-65, 67, 70-73, operative part 2)

Résumé

Following a reference for a preliminary ruling from the Bundesarbeitsgericht (Federal Labour Court, Germany), the Court of Justice has clarified the conditions under which the payment of additional pay for overtime, which, in the case of part-time workers, is provided for only in respect of hours worked in excess of the normal working hours laid down for full-time workers in a comparable situation, constitutes 'less favourable' treatment and indirect discrimination on grounds of sex.

IK (Case C-184/22) and CM (Case C-185/22) are employed as part-time care assistants by KfH Kuratorium für Dialyse und Nierentransplantation eV, a provider of out-patient dialysis services operating throughout the Federal Republic of Germany. Under their employment contracts, they are required to work 40% and 80% respectively of the normal working week for a full-time employee, which is set at 38.5 hours by the general collective agreement applicable in the sector concerned.

The applicants in the main proceedings brought an action before the Arbeitsgericht (Labour Court, Germany), seeking to obtain a time credit corresponding to the additional pay payable for overtime worked in excess of the working hours agreed in their employment contract, as well as compensation. They claimed that they were treated less favourably than full-time employees because they worked part-time and they suffered indirect discrimination on grounds of sex in so far as the defendant in the main proceedings predominantly employs women on a part-time basis.

Those actions having been dismissed, IK and CM brought an appeal before the Landesarbeitsgericht Hessen (Higher Labour Court of Hesse, Germany), which ordered the employer to credit their time-savings accounts, but dismissed the claim for payment of compensation.

Hearing an appeal on a point of law, the referring court decided to ask the Court whether IK and CM had been subject to 'less favourable' treatment as part-time workers within the meaning of Clause 4(1) of the Framework Agreement on part-time work¹ and indirect discrimination on grounds of sex, within the meaning of Directive 2006/54.²

Findings of the Court

In the first place, the Court finds that national legislation under which additional pay for overtime is payable to part-time workers only in respect of 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) of the Framework Agreement.

In this respect, it emphasises first of all that that clause must not be interpreted restrictively and that its purpose is to apply the principle of non-discrimination to part-time workers.

¹ Framework Agreement on part-time work, concluded on 6 June 1997 ('the Framework Agreement'), which is annexed to Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC (OJ 1998 L 14, p. 9).

² Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ 2006 L 204, p. 23).

Since the fact that the services performed by the applicants in the main proceedings are comparable to those performed by full-time workers does not appear to be disputed in the present case, the Court then turns to the question whether there is a difference in treatment between persons working as part-time care assistants and those working as full-time care assistants.

In that regard, it is apparent from the orders for reference that a person working as a part-time care assistant must work the same number of hours as a person working as a full-time care assistant in order to receive additional pay for overtime, regardless of the normal working hours agreed individually in that person's employment contract. Thus, persons working as full-time care assistants receive additional pay for overtime from the very first hour worked in excess of their normal working hours, i.e. 38.5 hours per week, while persons working as part-time care assistants do not receive additional pay for hours worked in excess of the normal working hours agreed in their employment contracts but below the normal working hours set for persons working as full-time care assistants.

As a result, it appears that persons working as part-time care assistants are subject to 'less favourable' treatment than persons working as full-time care assistants.

Finally, the Court provides the referring court with the necessary information to enable it to assess whether that difference in treatment may be regarded as justified on 'objective grounds' within the meaning of Clause 4(1) of the Framework Agreement.

In this respect, it points out that that concept of 'objective grounds' requires the difference in treatment found to exist to be justified by the presence of precise and specific factors, characterising the employment condition to which it relates, in the specific context in which it occurs and on the basis of objective and transparent criteria, in order to ensure that that difference in treatment in fact responds to a genuine need, is appropriate for achieving the objective pursued and is necessary for that purpose.

As regards the question whether the objective of deterring employers from requiring workers to work overtime in excess of the individually agreed working hours for those workers is capable of constituting 'objective grounds' within the meaning of Clause 4(1) of the Framework Agreement, setting a uniform threshold for part-time workers and full-time workers as regards the grant of additional pay for overtime is not, in the case of part-time workers, capable of achieving that objective.

Furthermore, with regard to the objective of avoiding unfavourable treatment of full-time workers compared to part-time workers, full-time workers would be treated in the same way as part-time workers with regard to overtime, subject to the application of the principle *pro rata temporis*. Thus, that second objective is also incapable of justifying the difference in treatment between part-time workers and full-time workers.

In the second place, the Court concludes that the national legislation at issue also constitutes indirect discrimination on grounds of sex within the meaning of Article 157 TFEU and Article 2(1)(b) and the first paragraph of Article 4 of Directive 2006/54.

Although this is an apparently neutral measure, it is apparent from the orders for reference that that measure places a significantly greater proportion of women at a disadvantage compared with male persons without it also being necessary for the group of workers who are not disadvantaged by that legislation, namely full-time workers, to be made up of a considerably higher number of

men than women. It is for the referring court to assess to what extent the information available to it concerning the situation of the workforce is valid and whether that information may be taken into account. The national court must also examine all the relevant factors of a qualitative nature in order to determine whether such a disadvantage exists by taking into consideration all the workers subject to the national legislation on which the difference in treatment in question is based.

Moreover, that indirect discrimination is not likely, any more than 'less favourable' treatment of part-time workers compared with full-time workers is, and for the same reasons, to be justified by the pursuit, first, of the objective of deterring employers from requiring workers to work overtime in excess of the working time agreed individually in their employment contracts and, secondly, of the objective of preventing full-time workers from being treated less favourably than part-time workers.