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Judgment of the Court in Case C-311/21 | TimePartner Personalmanagement

A collective agreement which reduces the pay of temporary agency workers compared to workers recruited directly must provide for countervailing benefits

Such a collective agreement must be amenable to effective judicial review

Between January and April 2017, TimePartner Personalmanagement GmbH, a temporary-work agency, employed CM as a temporary agency worker under a fixed-term contract. For the duration of her assignment, CM worked at a retail user undertaking as an order handler.

For that work she received a gross hourly wage of EUR 9.23, in accordance with the collective agreement applicable to temporary agency workers concluded between two trade unions, of which TimePartner Personalmanagement and CM were respectively members.

That collective agreement derogated from the principle of equal treatment recognised in German law, ¹ by establishing, for temporary agency workers, a lower pay than that granted to the workers of the user undertaking pursuant to the provisions of a collective agreement for retail workers in the Land of Bavaria (Germany), namely, a gross hourly wage of EUR 13.64.

CM brought a claim before the Arbeitsgericht Würzburg (Labour District Court, Würzburg, Germany) seeking additional pay of EUR 1 296.72, a sum equivalent to the difference in pay between the temporary agency workers and comparable workers recruited directly by the user undertaking. In that regard, she relied on a breach of the principle of equal treatment of temporary agency workers enshrined in Article 5 of Directive 2008/104. ² After that claim was rejected in the first instance and on appeal, CM lodged an appeal on a point of law before the Bundesarbeitsgericht (Labour Federal Court, Germany), which referred five questions to the Court of Justice for a preliminary ruling on the interpretation of that provision.

The Court defines the conditions to be met by a collective agreement concluded by the social partners in order to be able to derogate from the principle of equal treatment of temporary agency workers under Article 5(3) of Directive 2008/104. ³ It specifies, inter alia, the scope of the concept of 'overall protection of temporary agency workers', which collective agreements must respect in accordance with that provision, and provides criteria to assess whether that overall protection is effectively respected. The Court also concludes that such collective agreements must be

¹ For the time between January and March 2017, in the first sentence of Paragraph 10(4) of the Arbeitnehmerüberlassungsgesetz (Law on temporary agency work) of 3 February 1995 (BGBl. 1995 I, p. 158), in its version applicable until 31 March 2017 and, for April 2017, in Paragraph 8(1) of that law in its version applicable as from 1 April 2017.

² Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ 2008 L 327, p. 9).

³ Under that paragraph 3 Member States may give the social partners the option of upholding or concluding collective agreements which authorise differences in treatment with regard to basic working and employment conditions of temporary agency workers, provided that the overall protection of temporary agency workers is respected.

amenable to effective judicial review.

Findings of the Court

After recalling the dual objective of Directive 2008/104 to ensure the protection of temporary agency workers and respect for the diversity of labour markets, the Court states that Article 5(3) of that directive, by referring to the concept of 'overall protection of temporary agency workers', does not require any account to be taken of a level of protection specific to temporary agency workers that is greater than that laid down for workers in general by provisions on basic working and employment conditions under national and EU law.

However, **where the social partners, by means of a collective agreement, authorise differences in treatment with regard to basic working and employment conditions to the detriment of temporary agency workers, that collective agreement must, in order to respect the overall protection of the temporary agency workers concerned, afford them, in return, advantages in terms of basic work and employment conditions⁴ which are such as to compensate for the difference in treatment they suffer.**

If such an agreement serves only to weaken one or more of those basic conditions with regard to temporary agency workers, the overall protection of those workers would necessarily be diminished.

Moreover, pursuant to the derogation contained in Article 5(3) of Directive 2008/104 it is necessary to assess compliance with the obligation to respect the overall protection of temporary agency workers in concrete terms by comparing, for a given job, the basic working and employment conditions applicable to workers recruited directly by the user undertaking with those applicable to temporary agency workers, in order thus to be able to **determine whether the countervailing benefits afforded in respect of those basic conditions can counterbalance the effects of the difference in treatment suffered.**

That obligation to respect the overall protection of temporary agency workers does not require the temporary agency worker concerned to have a permanent contract of employment with the temporary-work agency since Article 5(3) of Directive 2008/104 allows derogation from the principle of equal treatment with regard to any temporary agency worker, irrespective of whether their contract of employment with a temporary-work agency is a fixed-term contract or a contract of indefinite duration.

In addition, that obligation does not require Member States to prescribe in detail the conditions and criteria with which collective agreements must comply.

That being said, while they enjoy a broad discretion in the negotiation and conclusion of collective agreements, the social partners must act in accordance with EU law in general and Directive 2008/104 in particular.

Thus, while the provisions of that directive do not require Member States to adopt specific legislation designed to respect the overall protection of temporary agency workers, within the meaning of Article 5(3) thereof, the fact remains that **the Member States, including their courts, must ensure that collective agreements which authorise differences in treatment with regard to basic working and employment conditions ensure, inter alia, the overall protection of temporary agency workers.**

Accordingly, those collective agreements must be amenable to effective judicial review in order to determine whether the social partners have complied with their obligation to respect that protection.

⁴ The basic working and employment conditions are defined in Article 3(1)(f) of Directive 2008/104. They concern the conditions relating to the duration of working time, overtime, breaks, rest periods, night work, holidays, public holidays and pay.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and the summary](#) of the judgment is published on the CURIA website on the day of delivery.

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