ECJ 15 December 2022, case C-311/21, (TimePartner Personalmanagement), Temporary agency work

CM – v – TimePartner Personalmanagement GmbH, German case

Summary

A collective agreement which offers lower pay to temporary agency workers compared to workers recruited directly must provide for countervailing benefits and must be able to be reviewed by the judiciary. The ECJ's summary of the judgment is available on: https://curia.europa.eu/juris/document/document.jsf?text=&docid=270389&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=140902.

Questions

1. Must Article 5(3) of Directive 2008/104 be interpreted as requiring, by its reference to the concept of 'overall protection of temporary agency workers', that account 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?
2. Must Article 5(3) of Directive 2008/104 be interpreted as meaning that compliance with the obligation to respect the overall protection of temporary agency workers must be assessed in abstract terms, in the light of a collective agreement authorising a difference in treatment, or in concrete terms, by comparing the basic working and employment conditions applicable to comparable workers recruited directly by the user undertaking?
3. Must Article 5(3) of Directive 2008/104 be interpreted as meaning that the obligation to respect the overall protection of temporary agency workers requires the temporary agency worker concerned to have a permanent contract of employment with a temporary-work agency?
4. Must Article 5(3) of Directive 2008/104 be interpreted as meaning that the national legislature is required to lay down the conditions and criteria designed to respect the overall protection of temporary agency workers, within the meaning of that provision, where the Member State concerned gives the social partners the option of upholding or concluding collective agreements which authorise differences in treatment with regard to basic working and employment conditions to the detriment of those workers?
5. Must Article 5(3) of Directive 2008/104 be interpreted as meaning that collective agreements which authorise, under that provision, differences in treatment with regard to basic working and employment conditions to the detriment of temporary agency workers are amenable to effective judicial review in order to determine whether the social partners have complied with their obligation to respect the overall protection of those workers?

Ruling

1. Article 5(3) of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work must be interpreted as meaning that that provision, by its reference 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 advantages in terms of basic working and employment conditions which are such as to compensate for the difference in treatment they suffer.
2. Article 5(3) of Directive 2008/104 must be interpreted as meaning that compliance with the obligation to respect the overall protection of temporary agency workers must be assessed, in concrete terms, by comparing, for a given job, the basic working and

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employment conditions applicable to workers recruited directly by the user undertaking with those applicable to temporary agency workers, in order 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.

3. Article 5(3) of Directive 2008/104 must be interpreted as meaning that the 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 a temporary-work agency.
4. Article 5(3) of Directive 2008/104 must be interpreted as meaning that the national legislature is not required to lay down the conditions and criteria designed to respect the overall protection of temporary agency workers, within the meaning of that provision, where the Member State concerned gives the social partners the option of upholding or concluding collective agreements which authorise differences in treatment with regard to basic working and employment conditions to the detriment of those workers.
5. Article 5(3) of Directive 2008/104 must be interpreted as meaning that collective agreements which authorise, under that provision, differences in treatment with regard to basic working and employment conditions to the detriment of temporary agency workers must be amenable to effective judicial review in order to determine whether the social partners have complied with their obligation to respect the overall protection of those workers.

ECJ 29 September 2022, case C-3/21 (Chief Appeals Officer and Others), Social insurance

FS – v – The Chief Appeals Officer, the Social Welfare Appeals Office, the Minister for Employment Affairs and the Minister for Social Protection, Irish case

Summary

The concept of 'claim' in Article 81 of Regulation No 883/2004 refers only to an application made by a person who has exercised his or her right to freedom of movement to the authorities of a Member State which is not competent under the conflict rules laid down by that regulation and EU law, in particular the principle of effectiveness, does not preclude the application of national legislation which makes the retroactive effect of an application for child benefit subject to a limitation period of 12 months.

Questions

1. Must Article 81 of Regulation No 883/2004 be interpreted as meaning that the concept of 'claim' within the meaning of that article refers only to an initial application made under the legislation of a Member State by a person who has subsequently exercised his or her right to freedom of movement, or whether it also covers an 'ongoing' application, occurring at the time of the periodic payment, by the competent authorities of that Member State, of a benefit normally payable at the time of the payment of that benefit by another Member state?
2. Does EU law, and in particular the principle of effectiveness, precludes the application of national legislation which makes the retroactive effect of an application for child benefit subject to a limitation period of 12 months?

Ruling

1. The concept of 'claim' in Article 81 of Regulation No 883/2004 refers only to an application made by a person who has exercised his or her right to freedom of movement to the authorities of a Member State which is not competent under the conflict rules laid down by that regulation. Therefore, that concept does not include either the initial application made under the legislation of a Member State by a person who has not yet exercised his or her right to freedom of movement or the periodic payment, by the authorities of that Member State, of a benefit normally payable, at the time of that payment, by another Member State.
2. EU law, and in particular the principle of effectiveness, does not preclude the application of national legislation which makes the retroactive effect of an application for child benefit subject to a limitation period of 12 months, since that period does not render practically impossible or excessively difficult the exercise by the migrant workers concerned of the rights conferred by Regulation No 883/2004.

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