

JUDGMENT OF THE COURT (Third Chamber)

15 October 2014 (*)

(Reference for a preliminary ruling — Social policy — Directive 97/81/EC — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Conversion of part-time employment relationship to full-time employment relationship without the worker's consent)

In Case C-221/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale ordinario di Trento (Italy), made by decision of 11 April 2013, received at the Court on 25 April 2013, in the proceedings

Teresa Mascellani

v

Ministero della Giustizia,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, A. Ó Caoimh, C. Toader and E. Jarašiūnas (Rapporteur) and C.G. Fernlund, Judges,

Advocate General: N. Wahl,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 20 March 2014,

after considering the observations submitted on behalf of:

- Ms Mascellani, by F. Valcanover, avvocato,
- the Italian Government, by G. Palmieri, acting as Agent, and M. Russo and G. Fiengo, avvocati dello Stato,
- the Czech Government, by M. Smolek, acting as Agent,
- the European Commission, by C. Cattabriga and D. Martin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 22 May 2014,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of the 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 The request has been made in proceedings between Ms Mascellani and the Ministero della Giustizia (Ministry of Justice) concerning a decision ordering the conversion of her part-time employment relationship into a full-time employment relationship.

Legal context

EU law

- 3 Article 1 of Directive 97/81 states that its purpose is to implement the Framework Agreement between the general cross-industry organisations, namely the Union of Industrial and Employers' Confederations (UNICE), the European Centre of Enterprises with Public Participation (CEEP) and the European Trades Union Confederation (ETUC), as it appears in the annex to that directive.

- 4 According to the second paragraph in the preamble to the Framework Agreement:

‘Recognising the diversity of situations in Member States and acknowledging that part-time work is a feature of employment in certain sectors and activities, this Agreement sets out the general principles and minimum requirements relating to part-time work. It illustrates the willingness of the social partners to establish a general framework for the elimination of discrimination against part-time workers and to assist the development of opportunities for part-time working on a basis acceptable to employers and workers.’

- 5 Clause 1 of that agreement provides:

‘The purpose of this framework agreement is:

to provide for the removal of discrimination against part-time workers and to improve the quality of part-time work;

to facilitate the development of part-time work on a voluntary basis and to contribute to the flexible organisation of working time in a manner which takes into account the needs of employers and workers.’

- 6 Clause 3 of the Framework Agreement states:

‘For the purposes of this Agreement

...

- (2) The term “comparable full-time worker” means a full-time worker in the same establishment having the same type of employment contract or relationship, who is engaged in the same or a similar work/occupation, due regard being given to other considerations which may include seniority and qualification/skills.

Where there is no comparable full-time worker in the same establishment, the comparison shall be made by reference to the applicable collective agreement or, where there is no applicable collective agreement, in accordance with national law, collective agreements or practice.’

7 Clause 4 of the Framework Agreement, entitled ‘Principle of non-discrimination’, provides:
‘In respect of employment conditions, 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.’

8 Under Clause 5.2 of the Framework Agreement:

‘A worker’s refusal to transfer from full-time to part-time work or vice-versa should not in itself constitute a valid reason for termination of employment, without prejudice to termination in accordance with national law, collective agreements and practice, for other reasons such as may arise from the operational requirements of the establishment concerned.’

Italian law

9 Article 16 of Law No 183 delegating powers to the Government regarding heavy and arduous work, reorganisation of entities, leave, availability and authorised absences, social protection measures, employment services, measures on employment incentives, training and the employment of women, measures to combat undeclared work and provisions regarding employment in the public sector and labour disputes, (Legge No 183 — Delegha al Governo in materia di lavori usuranti, di riorganizzazione di enti, di congedi, aspettative e permessi, di ammortizzatori sociali, di servizi per l’impiego, di incentivi all’occupazione, di apprendistato, di occupazione femminile, nonché misure contro il lavoro sommerso e disposizioni in tema di lavoro pubblico e di controversie di lavoro, of 4 November 2010 (Ordinary Supplement to GURI No 262 of 9 November 2010 (‘Law No 183/2010’) provides that, upon initial application of the provisions introduced by Article 73 of Decree-Law No 112 of 25 June 2008 (Ordinary Supplement to GURI No 147 of 25 June 2008), the public administration referred to in Article 1(2) of Legislative Decree No 165 of 30 March 2001, as subsequently amended, may, within 180 days of the entry into force of Law No 183/2010 and subject to the principles of fairness and good faith, re-evaluate decisions permitting the conversion of full-time employment relationships into part-time employment relationships where such decisions were adopted prior to the entry into force of the abovementioned Decree-Law No 112 of 2008, converted, after amendment, by Law No 133 of 2008 (Ordinary Supplement to GURI No 195, of 21 August 2008).

The dispute in the main proceedings and the questions referred for a preliminary ruling

10 The applicant in the main proceedings is an employee of the Ministero della Giustizia, working at the referring court on a part-time basis. Since 28 October 2000 she has worked part-time, spread over 3 days a week.

11 Following the entry into force of Law No 183/2010, the Ministero della Giustizia, by decision No 20384 of 8 February 2011, re-examined the part-time arrangements granted to the applicant in the main proceedings and, in accordance with Article 16 of that law, unilaterally terminated that arrangement by imposing a full-time working arrangement, spread over six days, with effect from 1 April 2011.

12 On 16 March 2011, the applicant in the main proceedings informed the Ministero della Giustizia that she opposed the conversion of the part-time arrangement into a full-time employment. By decision No 1882 of 21 March 2011, the Director of Administration of the

Tribunale ordinario di Trento (District Court, Trento), ordered the applicant in the main proceedings to comply with the new working arrangements.

- 13 The applicant in the main proceedings brought an action before the referring court seeking the annulment of the decisions of the Ministero della Giustizia and the Director of Administration. She states that working part-time has enabled her to use her free time to care for her family and to undertake vocational training. She takes the view that Directive 97/81 establishes a principle according to which part-time work cannot be converted into full-time work without the worker's consent and, consequently, that Article 16 of Law No 183/2010 is incompatible with that directive.
- 14 The Ministero della Giustizia submits that Article 16 of Law No 183/2010 is not incompatible with Directive 97/81.
- 15 Like the applicant in the main proceedings, the referring court considers that Article 16, by allowing an employer to convert a part-time employment relationship into a full-time employment relationship without the worker's consent, is contrary to Directive 97/81, in so far as that article is discriminatory with regard to part-time workers who, unlike full-time workers, are subject to the power enjoyed by public-authority employers unilaterally to alter their working hours. According to the referring court, such a measure does not contribute to the development of opportunities for part-time work for employers or employees. It also considers that that national provision is contrary to Clause 5.2 of the Framework Agreement which, taking account of the prohibition on termination of employment for which it provides, requires the consent of the worker if such a change to the employment relationship is contemplated by the employer.
- 16 It is in those circumstances that the Tribunale ordinario di Trento, decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
 - '(1) Must Clause 5.2 of the [Framework]Agreement implemented by [Directive 97/81] be construed as meaning that provision may not be made in the legislation of Member States for employers to be able to convert a part-time employment relationship into a full-time employment relationship even where the employee does not consent?
 - (2) Does Directive 97/81 ... preclude a provision of national law (such as Article 16 of Law [No 183/2010]) under which employers may convert a part-time employment relationship into a full-time employment relationship even where the employee does not consent?'

The questions referred for a preliminary ruling

- 17 Since the referring court mentions Directive 97/81 in its second question, it must be observed, as a preliminary point, that according to Article 1 thereof, its purpose is to implement the Framework Agreement. In the present case, it is clear from the order for reference that that court asks whether the conversion of a part-time employment relationship into a full-time employment relationship in accordance with Article 16 of Law No 183/2010, without Ms Mascellani's consent, is contrary to the provisions of the Framework Agreement.
- 18 Therefore, it must be held that, by its questions, the referring court asks essentially if the Framework Agreement, in particular Clause 5.2 thereof, must be interpreted as meaning that it precludes national legislation, such as that at issue in the main proceedings, pursuant to

which the employer may order the conversion of a part-time employment relationship into a full-time employment relationship without the consent of the employee concerned.

- 19 It must be recalled that the objective of Directive 97/81 and the Framework Agreement is, first, to promote part-time work and, second, to eliminate discrimination between part-time workers and full-time workers (see, to that effect, judgments *in Bruno and Others*, C-395/08 and C-396/08, EU:C:2010:329, paragraphs 24 and 77, and *Michaeler and Others*, C-55/07 and C-56/07, EU:C:2008:248, paragraph 21).
- 20 Recital 5 of Directive 97/81 states that ‘the conclusions of the Essen European Council stressed the need to take measures to promote employment and equal opportunities for women and men, and called for measures with a view to increasing the employment-intensiveness of growth, in particular by a more flexible organisation of work in a way which fulfils both the wishes of employees and the requirements of competition’. It also follows from recital 11 in the preamble to that directive and the second paragraph in the preamble to the Framework Agreement that the latter illustrates the willingness of the social partners to contribute to developing the potential for part-time work on a basis which is acceptable for employers and workers alike.
- 21 To that end, recital 14 in the preamble to Directive 97/81 states that the Framework Agreement binds the Member States as to the result to be achieved, whilst leaving national authorities the choice of form and methods. It is also clear from the second paragraph in the preamble to the Framework Agreement that the latter sets out the general principles and minimum requirements relating to part-time work. According to recital 6 in the preamble to the Framework Agreement, it refers back to Member States and social partners for the arrangements for the application of these general principles, minimum requirements and provisions, in order to take account of the situation in each Member State.
- 22 Among those minimum requirements is that set out in Clause 5.2 of the Framework Agreement, according to which ‘[a] worker's refusal to transfer from full-time to part-time work or vice-versa should not in itself constitute a valid reason for termination of employment, without prejudice to termination ... for other reasons such as may arise from the operational requirements of the establishment concerned.’
- 23 It is clear from that clause that it does not require the Member States to adopt rules making the conversion of a worker's part-time employment relationship to a full-time employment relationship subject to his consent. That provision seeks merely to exclude the refusal of a worker, as regards such a conversion of his employment relationship, from being the only reason for the termination of his employment in the absence of other objective reasons.
- 24 It follows that Clause 5.2 of the Framework Agreement does not preclude legislation which allows an employer to order, for such reasons, the conversion of a part-time employment relationship into a full-time employment relationship without the consent of the worker concerned.
- 25 Furthermore, such legislation must be consistent with the purpose of the Framework Agreement which consists, in particular, as stated in Clause 1(b) thereof, to facilitate the development of part-time work on a voluntary basis and to contribute to the flexible organisation of working time in a manner which takes into account the needs of employers and workers.
- 26 In so far as the referring court considers that the possibility of converting a part-time employment relationship into a full-time employment relationship without the worker's consent is discriminatory, it should be recalled that, in accordance with the objective of

eliminating discrimination between part-time workers and full-time workers, Clause 4 of the Framework Agreement provides that, in respect of employment conditions, part-time workers are not to 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 (judgment in *Bruno and Others*, EU:C:2010:329, paragraph 25).

- 27 In the present case, it must be held, as the Advocate General noted in point 51 of his Opinion, that a situation in which a part-time employment relationship is converted into a full-time employment relationship without the consent of the worker concerned and a situation in which a worker has his full-time employment relationship converted into a part-time employment relationship contrary to his wishes cannot be regarded as comparable because the reduction of working time does not involve the same consequences as an increase, in particular, as regards the worker's remuneration, which constitutes consideration for the work carried out.
- 28 Having regard to all of the foregoing considerations, the answer to the questions referred is that the Framework Agreement, in particular Clause 5.2 thereof, must be interpreted as meaning that, in circumstances such as those in the main proceedings, it does not preclude national legislation pursuant to which the employer may order the conversion of a part-time employment relationship into a full-time employment relationship without the consent of the worker concerned.

Costs

- 29 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

The Framework Agreement on part-time work concluded on 6 June 1997 which is annexed to Council Directive 1997/81/EC of 15 December 1997, concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, in particular Clause 5.2 thereof, must be interpreted as meaning that, in circumstances such as those in the main proceedings, it does not preclude national legislation pursuant to which the employer may order the conversion of a part-time employment relationship into a full-time employment relationship without the consent of the worker concerned.

[Signatures]

* Language of the case: Italian.