

Working Sheet – Too young for reduced working hours?

Facts of the Case

Ms Karina Korali is 47 years of age and has been working for a telecommunication company for 15 years. The legal situation in her country of residence, an EU member state, is such that companies are entitled to offer their staff aged 55 and more a reduction of their working time. The salaries are cut respectively, but the state acknowledges the months worked under these conditions as full working time for the calculation of the pension.

The respective legislation aims on the one hand at opening the labour market for young people and on the other it constitutes a reaction to statistics that show higher rates of long-term illnesses of older workers. The possibility to work with a lower intensity should constitute a preventive factor in this regard.

Ms Korali's husband is terminally ill, and she would like to reduce her working hours in order to take care of him. She refers to the legislation in place and asks for a reduction of working hours for an indeterminate period of time. According to her opinion, her situation is comparable to a worker aged 55 or more, and she doesn't see the point, why in her case a reduction of working hours should not be possible.

The employer refuses. According to the company representative in charge, people working with reduced working hours always do constitute a disadvantage for the company, as they are not available all the time. Also having to search for another employee to cover those parts of Ms Korali's duties she would have to give up, especially if this is for an indeterminate period of time, would be unreasonable.

The national court submits the case to the CJEU for a preliminary ruling asking, if the national provision as such was in line with the EU acquis.

Questions to be discussed

- *Would you consider the refusal to reduce Ms. Korali's working time as discriminatory?*
- *Would you consider the national legislation as discriminatory?*
- *Is there any CJEU Case Law, which could be relevant in this case?*
- *Which Articles of the Charter might be of relevance?*
- *Does it make a difference, if you apply Charter rights and principles in assessing this case, as opposed to basing your case on domestic legislation?*
- *Discuss potential conflicts between different rights/principles and how they could be solved.*

It might be interesting also to refer to national case law on similar issues in the discussion, if such is existent.

Alternative situation:

Mr Favili is working for the same company. He is 59 years of age and has been working for the company for 7 years. He is working in the accounting department, and has always been a very reliable member of staff.

Shortly after his 59th birthday however, he starts to have severe health problems. He had an accident with his bicycle and broke his ankle. In principle, and from a physiological point of view, everything is ok again, but Mr Favili is still suffering pain and is limping. The whole accident and its consequences mainly however have thrown him into a state of crisis and depression. He is still coming to work and does his job, but he is not very reliable anymore. When he subsequently comes late to important meetings and nearly ruins the negotiations for a big contract, he is told that he should take the opportunity to work part-time from now on.

For such cases - when there is a long-term illness diagnosed - the state does not only take over the contribution to the pension system, but also pays a share of the salary. In concrete, it takes over the percentage of a fictional unemployment benefit for the part of the working time that is not worked anymore.

Mr Favili himself is convinced that his status is such that it is only a temporary one and is not ready to accept the proposal.

Questions to be discussed

- *Would you consider it as discriminatory to force Mr Favili to work part time?*
- *Would you consider the national legislation as discriminatory?*
- *Is there any CJEU Case Law, which could be relevant in this case?*
- *Which Articles of the Charter might be of relevance?*
- *Does it make a difference, if you apply Charter rights and principles in assessing this case?*
- *Discuss potential conflicts between different rights/principles and how they could be solved.*

It might be interesting also to refer to national case law on similar issues in the discussion, if such is existent.

Directive 2000/78/EC – Article 6

Justification of differences of treatment on grounds of age

1. Notwithstanding Article 2(2), Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

Such differences of treatment may include, among others:

(a) the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;

(b) the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;

(c) the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.

2. Notwithstanding Article 2(2), Member States may provide that the fixing for occupational social security schemes of ages for admission or entitlement to retirement or invalidity benefits, including the fixing under those schemes of different ages for employees or groups or categories of employees, and the use, in the context of such schemes, of age criteria in actuarial calculations, does not constitute discrimination on the grounds of age, provided this does not result in discrimination on the grounds of sex.