

Reference for a preliminary ruling from the Arbeitsgericht Passau (Germany) lodged on 16 May 2011 — Konstantin Toltschin v Kaiser GmbH

(Case C-230/11)

(2011/C 269/39)

Language of the case: German

Referring court

Arbeitsgericht Passau

Parties to the main proceedings

Applicant: Konstantin Toltschin

Defendant: Kaiser GmbH

Questions referred

1. Must Article 31(2) of the Charter of Fundamental Rights of the European Union of 12 December 2007 or Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time⁽¹⁾ be interpreted as meaning that they preclude national legislation or practice according to which, if there is a reduction in the days to be worked each week as a result of a lawful order specifying short-time working, the entitlement to paid annual leave of a worker on short-time working is adjusted pro rata to reflect the ratio between the number of working days each week during the period of short-time working and the number of working days each week for a full-time worker and, as a result, during the period of short-time working, the short-time worker accrues a correspondingly reduced entitlement to annual leave?
2. If the first question is answered in the affirmative:

Must Article 31(2) of the Charter of Fundamental Rights of the European Union of 12 December 2007 or Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time be interpreted as meaning that they preclude national legislation and practice according to which, if the number of days to be worked each week is reduced to zero as a result of a lawful order specifying 'zero hours short-time working', the entitlement to paid annual leave of a worker on short-time working is adjusted pro rata to nothing and, as a result, during the period of 'zero hours short-time working', the short-time worker does not accrue any entitlement to annual leave?

⁽¹⁾ OJ 2003 L 299, p. 9.

Reference for a preliminary ruling from the Asylgerichtshof (Austria) lodged on 23 May 2011 — K

(Case C-245/11)

(2011/C 269/40)

Language of the case: German

Referring court

Asylgerichtshof

Parties to the main proceedings

Applicant: K

Defendant: Bundesasylamt

Questions referred

1. Must Article 15 of Regulation No 343/2003⁽¹⁾ be interpreted as meaning that a Member State prima facie not responsible for examining the asylum claim of a person in accordance with the rules of Articles 6 to 14 of that regulation becomes automatically responsible if in that country the asylum-seeker has a daughter-in-law who is seriously ill and, on account of cultural factors, at risk or has grandchildren below the age of majority who, as a result of the daughter-in-law's illness, are in need of care and the asylum-seeker is both willing and able to support her daughter-in-law and grandchildren? Does the same apply even if the Member State prima facie responsible has not made a request in accordance with the second sentence of Article 15(1) of Regulation No 343/2003?
2. Must Article 3(2) of Regulation No 343/2003 be interpreted as meaning that in the circumstances mentioned in Question 1 the Member State prima facie not responsible becomes automatically responsible if the responsibility otherwise provided for by Regulation No 343/2003 will result in an infringement of Article 3 or Article 8 of the European Convention on Human Rights (ECHR) (Article 4 or Article 7 of the Charter of Fundamental Rights of the European Union)? In that case, in the accessory interpretation and application of Article 3 or Article 8 of the ECHR (Article 4 or Article 7 of the Charter), may more extensive notions of 'inhuman treatment' or 'family', at variance with the interpretation developed by the European Court of Human Rights, be applied?

⁽¹⁾ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 50, p. 1).