

provided that those clauses are justified and are proved to be proportionate to the objective pursued and comply with the principle of transparency, which is for the national court to determine in the light of the guidance set out in the present judgment.

<sup>(1)</sup> OJ C 330, 2.10.2017.

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**Judgment of the Court (Fourth Chamber) of 13 December 2018 (request for a preliminary ruling from the Arbeitsgericht Verden — Germany) — Torsten Hein v Albert Holzkamm GmbH & Co.**

(Case C-385/17) <sup>(1)</sup>

**(Reference for a preliminary ruling — Social policy — Organisation of working time — Directive 2003/88/EC — Right to paid annual leave — Article 7(1) — Legislation of a Member State under which collective agreements may provide for account to be taken of periods of short-time working when calculating remuneration to be paid in respect of annual leave — Temporal effects of judgments ruling on interpretation)**

(2019/C 65/11)

Language of the case: German

**Referring court**

Arbeitsgericht Verden

**Parties to the main proceedings**

Applicant: Torsten Hein

Defendant: Albert Holzkamm GmbH & Co.

**Operative part of the judgment**

1. 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 and Article 31(2) of the Charter of Fundamental Rights of the European Union must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which, for the purpose of calculating remuneration for annual leave, allows collective agreements to provide for account to be taken of reductions in earnings resulting from the fact that during the reference period there were days when no work was actually performed owing to short-time working, with the consequence that the worker receives, for the duration of the minimum period of annual leave to which he is entitled under Article 7(1) of the directive, remuneration for annual leave that is lower than the normal remuneration which he receives during periods of work. It is for the referring court to interpret the national legislation, so far as possible, in the light of the wording and the purpose of Directive 2003/88, in such a way that the remuneration for annual leave paid to workers in respect of the minimum annual leave provided for in Article 7(1) is not less than the average of the normal remuneration received by those workers during periods of actual work.
2. It is not appropriate to limit the temporal effects of the present judgment and EU law must be interpreted as precluding national courts from protecting, on the basis of national law, the legitimate expectation of employers that the case-law of the highest national courts, which confirmed the lawfulness of the provisions concerning paid annual leave in the Bundesrahmentarifvertrag für das Baugewerbe (Federal collective framework agreement for the construction industry), will continue to apply.

<sup>(1)</sup> OJ C 318, 25.9.2017.