Reports of Cases

OPINION OF ADVOCATE GENERAL
SAUGMANDSGAARD ØE
delivered on 12 December 2019[1]

Case C-588/18

Federación de Trabajadores Independientes de Comercio (Fetico),
Federación Estatal de Servicios, Movilidad y Consumo de la Unión General de Trabajadores (FESMC-UGT),
Federación de Servicios de Comisiones Obreras (CCOO)
v
Grupo de Empresas DIA SA,
Twins Alimentación SA

(Request for a preliminary ruling
from the Audiencia Nacional (National High Court, Spain))

(Reference for a preliminary ruling — Directive 2003/88/EC — Organisation of working time — Articles 5 and 7 — Weekly rest — Annual leave — Authorisation of leave of absence — Special paid leave — Purpose of special leave distinct from that of weekly rest period and annual leave — Overlapping of special leave with weekly rest period or annual leave)

I. Introduction

1. This request for a preliminary ruling concerns the interpretation of Articles 5 and 7 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.[2]

2. The request has been made in the context of judicial proceedings concerning collective agreements between, on the one hand, workers' trade unions, namely the Federación de Trabajadores Independientes de Comercio (Fetico), the Federación Estatal de Servicios, Movilidad y Consumo de la Unión General de Trabajadores (FESMC-UGT) and the Federación de Servicios de Comisiones Obreras (CCOO) ('the trade unions') and, on the other hand, Grupo de Empresas DIA SA, and Twins Alimentación SA ('the group of undertakings'), seeking to determine the conditions for implementing periods of special paid leave, provided for in Article 46 of the Convenio Colectivo del grupo de empresas Dia SA y Twins Alimentación SA (Collective agreement for the DIA SA and Twins Alimentación SA group of undertakings)[3] to enable workers to fulfil personal or family obligations when the event giving rise to that leave coincides with the weekly rest period or paid annual leave guaranteed by EU law.

1 Original language: French.

2 OJ 2003 L 299, p. 9.

3 This collective agreement was adopted by the Resolución de la Dirección General de Empleo, por la que se registra y publica el Convenio colectivo del grupo de empresas Dia SA y Twins Alimentación SA (Decision of the Directorate-General for Employment on the registration and publication of the collective agreement for the Dia SA and Twins Alimentación SA group of undertakings) of 22 August 2016 (BOE No 212 of 2 September 2016, p. 63357).

3. This case offers the Court an opportunity to recall, on the basis of the finding that special paid leave is intended not to protect the safety and health of workers, but only to offer them the option of applying in specific cases for authorisation to be absent during their working time, that Directive 2003/88 merely lays down minimum safety and health requirements for the organisation of working time, leaving the Member States free to adopt rules more favourable to workers in areas which are not covered by EU law.

4. Following my analysis, I shall propose that, primarily, the Court should conclude from this that national provisions, such as those at issue in the main proceedings, which are not liable to undermine the minimum requirements of Directive 2003/88, do not come within the scope of that directive.

5. In the alternative, I shall support the view that Articles 5 and 7 of Directive 2003/88 do not preclude national legislation and collective agreements which do not provide for the granting of special paid leave where the circumstances justifying entitlement to such leave arise on days which are not working days.

6. To that end, I shall first explain why, in my view, the scope of the Court's case-law on the overlapping of periods of leave, which is based on their difference in purpose with a view to identifying rules to protect the rights guaranteed by Directive 2003/88, must not be extended to cases in which the worker is not at the same time unable to work and to rest. Secondly, I shall emphasise the flexibility of the rules governing the weekly rest period, which is sufficient to justify the refusal to grant special paid leave during that period.

II. Legal framework

A. Directive 2003/88

7. Recital 5 of Directive 2003/88 is worded as follows:

'All workers should have adequate rest periods. The concept of "rest" must be expressed in units of time, i.e. in days, hours and/or fractions thereof. [EU] workers must be granted minimum daily, weekly and annual periods of rest and adequate breaks. It is also necessary in this context to place a maximum limit on weekly working hours.'

8. Article 1 of that directive, entitled 'Purpose and scope', provides, in paragraphs 1 and 2:

'1. This Directive lays down minimum safety and health requirements for the organisation of working time.

2. This Directive applies to:

(a) minimum periods of daily rest, weekly rest and annual leave, to breaks and maximum weekly working time; and

(b) certain aspects of night work, shift work and patterns of work.'

9. Article 2 of that directive, entitled 'Definitions', provides:

'For the purposes of this Directive, the following definitions shall apply:

1. "working time" means any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, in accordance with national laws and/or practice;

2. “rest period” means any period which is not working time;

…

9. “adequate rest” means that workers have regular rest periods, the duration of which is expressed in units of time and which are sufficiently long and continuous to ensure that, as a result of fatigue or other irregular working patterns, they do not cause injury to themselves, to fellow workers or to others and that they do not damage their health, either in the short term or in the longer term.’

10. Article 5 of Directive 2003/88, entitled ‘Weekly rest period’, provides:

‘Member States shall take the measures necessary to ensure that, per each seven-day period, every worker is entitled to a minimum uninterrupted rest period of 24 hours plus the 11 hours’ daily rest referred to in Article 3.

If objective, technical or work organisation conditions so justify, a minimum rest period of 24 hours may be applied.’

11. In accordance with Article 7 of Directive 2003/88, entitled ‘Annual leave’:

‘1. Member States shall take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks in accordance with the conditions for entitlement to, and granting of, such leave laid down by national legislation and/or practice.

2. The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.’

12. Article 15 of that directive provides:

‘This Directive shall not affect Member States’ right to apply or introduce laws, regulations or administrative provisions more favourable to the protection of the safety and health of workers or to facilitate or permit the application of collective agreements or agreements concluded between the two sides of industry which are more favourable to the protection of the safety and health of workers.’

13. Article 17 of that directive, entitled ‘Derogations’, provides, in paragraphs 1 and 2:

‘1. With due regard for the general principles of the protection of the safety and health of workers, Member States may derogate from Articles 3 to 6, 8 and 16 when, on account of the specific characteristics of the activity concerned, the duration of the working time is not measured and/or predetermined or can be determined by the workers themselves, and particularly in the case of:

(a) managing executives or other persons with autonomous decision-taking powers;

(b) family workers; or

(c) workers officiating at religious ceremonies in churches and religious communities.

2. Derogations provided for in paragraphs 3, 4 and 5 may be adopted by means of laws, regulations or administrative provisions or by means of collective agreements or agreements between the two sides of industry provided that the workers concerned are afforded equivalent periods of compensatory rest or that, in exceptional cases in which it is not possible, for objective reasons, to grant such equivalent periods of compensatory rest, the workers concerned are afforded appropriate protection.’

B. Spanish law

14. The Estatuto de los Trabajadores (Workers' Statute), in the version resulting from Real Decreto Legislativo 2/2015, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores (Royal Legislative Decree 2/2015 approving the consolidated text of the Workers' Statute),[4] of 23 October 2015 ('the Workers' Statute') provides in Article 37, entitled 'Weekly rest period, public holidays and leave':

'1. Workers are entitled to a minimum weekly rest period, which may be aggregated over periods of up to 14 days, of 1½ days without interruption which, as a general rule, shall include Saturday afternoon or, where appropriate, Monday morning, together with the entirety of Sunday. Minors under the age of 18 shall have a weekly uninterrupted rest period of at least 2 days.

…

3. A worker, after giving prior notice of his or her absence and the reasons for it, may take time off from work while retaining his or her right to remuneration, for the following reasons and for the period indicated:

(a) 15 calendar days in the event of marriage.

(b) 2 days for the birth of a child and for the death, serious accident or illness, or hospitalisation of family members up to the second degree of relationship by consanguinity or marriage or when such family members undergo outpatient surgery requiring home rest. When, for that purpose, the worker needs to travel, the period shall be 4 days.

(c) 1 day for moving out of his or her habitual residence.

(d) The time required to fulfil a public and personal duty, including the exercise of the right to vote. Where a specific period is laid down by a legislative or agreement-based provision, such provision shall be complied with as regards the period of absence and financial compensation.

…

(e) To carry out trade-union or personnel-representation functions under the terms established by law or by agreement.

(f) For the time required for pre-natal examinations and for attendance at childbirth preparation courses and, in the case of adoption, custody or fostering, in order to attend mandatory information and preparation sessions and to undergo mandatory psycho-social assessments prior to a declaration of suitability, provided in all cases that they must take place during working time.

…'

15. Article 38 of the Workers' Statute, entitled 'Paid annual leave', provides:

'1. The period of paid annual leave, which may not be replaced by an allowance in lieu, shall be that agreed in collective agreements or individual contracts. In no circumstances shall the period of leave be less than 30 calendar days.

4 BOE No 255 of 24 October 2015, p. 100224.

2. The period or periods during which leave may be taken shall be scheduled by mutual consent between the employer and the employee, in accordance, where appropriate, with the provisions of the collective agreements on the annual planning of leave.

In the case of disagreement between the parties, the social court shall set the dates of the leave to be allocated and its decision shall be final. The proceedings shall be summary and be dealt with as a matter of priority.

3. Each undertaking shall establish a leave schedule. Employees shall be made aware of the days to which they are entitled, at the latest, 2 months in advance of the start of their leave.

When the period of leave set out in the undertaking's leave schedule to which the previous paragraph refers coincides with a period of temporary disability resulting from pregnancy, labour or breastfeeding, or with the period of suspension of the contract of employment laid down in Article 48(4), (5) and (7) of this Law, employees shall be entitled to take the leave, at a different point in time from that period of temporary disability or other period of leave, to which they are entitled under the above provision following the period of suspension, even if the calendar year to which that leave relates has ended.

If the period of leave coincides with a temporary disability resulting from circumstances other than those indicated in the preceding paragraph and which wholly or partially prevents the employee from taking leave during the calendar year to which it relates, the employee may take the leave after his or her period of disability has ended, provided that no more than 18 months have passed since the end of the year in which the leave arose.'

16. Article 46 of the collective agreement for the group of undertakings reads as follows:

'I. A worker, after giving prior notice of his or her absence and the reasons for it, may take time off from work while retaining his or her right to remuneration, for the following reasons and for the period indicated:

A. 15 calendar days in the event of marriage, to be taken on the date of the event giving rise to the leave or the day immediately preceding it, at the option of the worker.

B. 3 days for the birth of a child or for the death, serious accident or illness, or hospitalisation of family members up to the second degree of relationship by marriage or consanguinity. In the event of the death of a spouse or child, this period shall be extended to 5 days. When, for that purpose, the worker needs to travel, this period shall be increased by 1 day.

C. 2 days for outpatient surgery requiring home rest for family members up to the second degree of relationship by consanguinity or marriage. When, for that purpose, the worker needs to travel, that period shall be 4 days.

D. 1 day for moving out of his or her habitual residence.

E. The time required to fulfil a public and personal duty, including the exercise of the right to vote.

F. To carry out trade-union or personnel-representation functions under the terms established by law or by the present collective agreement.

G. For the time required, and as justified by presentation of a medical certificate, when, because of illness, the worker needs to attend a medical consultation during his or her working hours.

H. The time required for workers to sit examinations following their studies or training, if they are pursuing studies of an official or academic nature. In such cases, they must provide the administrative documentation in support of their application.

I. Each year, workers may take up to 3 additional days of leave which may be added, individually, to any one of the periods of leave provided for in points (A), (B) and (D) above, or up to 2 days in the event of the death of a spouse, a civil partner or children or, also individually, with the exception of the leave provided for in paragraph (1), in the following cases:

(1) 1 day, or 8 hours per year, to accompany a child under the age of 16 attending a medical examination at a doctor's surgery during the working time of the worker, providing proof of the time taken by means of a doctor's authorisation.

(2) In the event of the marriage of family members up to the second degree of relationship by consanguinity or marriage.

(3) In the event of a driving test or the signing of the notarial deeds necessary for the worker's purchase or sale of a residential property, which has to be signed personally by the worker during his or her working time.

II. For the purposes of leave, except the leave provided for in point (A) of this Article, couples in civil partnership shall have the same rights, provided that they are duly entered in the appropriate official register and that the worker provides a certificate proving so, in accordance with the requirements set out in the applicable provisions of the Autonomous Communities.

III. The worker must both notify his or her immediate supervisor as soon as possible — so that the latter may take the necessary measures and grant the worker the relevant leave — and provide justification relating to the claimed reason for taking the leave granted or to be granted.

IV. For the purposes of this Article, "travel" shall mean a journey by the worker of at least 150 km from his or her place of habitual residence to the place of destination.'

17. The Código Civil (Civil Code) provides, first, in Article 4(3), that 'the provisions [of this] Code shall apply on a supplementary basis in matters governed by other laws' and, secondly, in Article 5(2), that 'the calculation of periods for civil-law purposes shall not exclude public holidays'.

III. The facts of the dispute in the main proceedings and the questions referred for a preliminary ruling

18. By three separate actions which were joined in a decision by the Audiencia Nacional (National High Court, Spain), three trade unions are asking the referring court to rule that the periods of special paid leave provided for in Article 46 of the collective agreement for the group of undertakings, with the exception of marriage leave, must be taken during a period when the worker concerned is required to work for the undertaking,[5] in respect of both the first day and all of the days of leave. In respect of marriage leave, the trade unions request that that leave should begin on a day on which the worker is required to work for the undertaking.

5 For the sake of clarity, in this Opinion I have chosen to use the expressions 'days on which the worker is required to work for the undertaking' or 'working days', which correspond to the referring court's definition of the expression 'working days' that it uses.

19. The referring court notes that weekly rest periods for workers and paid annual leave are governed by Article 37(1) and Article 38 of the Workers' Statute, which transpose the provisions of Directive 2003/88, under conditions which, in its view, exceed the minimum periods required by EU law. [6]

20. It states that Article 46 of the collective agreement for the group of undertakings implements, on more generous terms, Article 37(3) of the Workers' Statute, which recognises the right of workers to take special paid leave. That leave is intended to meet specific needs of workers, such as, inter alia, the birth of a child, hospitalisation, a surgical operation or the death of a close relative as well as the performance of trade-union-representation duties, which arise during the performance of the contract of employment and warrant entitlement to the right to be absent from work whilst maintaining their right to remuneration.

21. The referring court notes that, in Article 46 of that collective agreement, as in Article 37 of the Workers' Statute, it is stated that the duration of marriage leave is calculated in calendar days. Those provisions do not contain any details concerning the other types of special paid leave or the starting point of the marriage leave.

22. The referring court adds, however, that Article 5(2) of the Civil Code, which applies in the absence of special provisions, provides that the calculation of periods for civil law purposes does not exclude public holidays.

23. It states that the usual practice of the group of undertakings is for days of special paid leave to begin on the date on which the event giving rise to that leave occurs, irrespective of whether or not it is a working day, [7] and to be calculated in calendar days.

24. The referring court states that the trade unions base their action on a judgment of the Tribunal Supremo (Supreme Court, Spain) of 13 February 2018, No 145/2018, which does not constitute a binding precedent. That court held, in respect of the rules on special paid leave in a sectoral agreement [8] that, where the event giving rise to the special paid leave occurs on a non-working day, [9] which is treated as a public holiday, the start of the leave must be postponed to the first working day thereafter.

25. The referring court notes that if the action brought by the trade unions were to be dismissed, this would result in workers having to meet the needs for which the special paid leave is provided during the rest periods guaranteed by EU law.

26. Consequently, that court is unsure as to the scope of the interpretation of the right to weekly rest and to annual leave, set out in Articles 5 and 7 of Directive 2003/88, the purpose of which, as has been clarified by the case-law of the Court, is to protect effectively the health and safety of workers.

27. The referring court notes, in that regard, that the Court has already held that a period of leave guaranteed by EU law cannot affect the right to take another period of leave guaranteed by that law and that any derogation from the EU system for the organisation of working time put in place by Directive 2003/88 must be interpreted in such a way that its scope is limited to what is strictly necessary in order to safeguard the interests which that derogation protects.

6 The referring court states that 'those two provisions are more generous than the provisions in the European legislation since Article 37(1) fixes the weekly rest period, as a general rule, as a minimum uninterrupted period of 1½ days, and Article 38 provides for a minimum of 30 calendar days' annual leave'.

7 It is clear from the observations submitted by the group of undertakings that, where the event giving rise to that leave occurs during a weekly rest period, the worker cannot benefit from special paid leave as he or she is not working.

8 It was clarified at the hearing that that agreement differs from the agreement that applies in the present case.

9 This is a day on which the employee is not required to work.

28. That court observes, in addition, that the purpose of special paid leave, governed by Article 37(3) of the Workers' Statute, is to meet the personal or civic needs of workers, some of which are connected with freedom of association or the performance of family duties.

29. It accordingly takes the view that, if one of the needs listed in Article 37(3) of the Workers' Statute arises during a weekly rest period or a period of annual leave, two different purposes overlap. If it were to be accepted that, in those circumstances, it is not possible to postpone the period of special paid leave until a time other than during the rest period, that rest period would be nullified, since the workers would have to devote their weekly rest period or their holidays to resolving issues occasioned by a need which is intended to be met by the special paid leave.

30. The referring court consequently has doubts as to whether the refusal to grant workers the right to take the leave governed by Article 37(3) of the Workers' Statute and provided for in Article 46 of the collective agreement for the group of undertakings, where the need that it is intended to meet arises at the same time as the minimum weekly rest periods and the days of paid annual leave provided for in Directive 2003/88, is consistent with Articles 5 and 7 of that directive. It is also uncertain whether, where those needs arise at the same time, measures should be put in place to ensure that the minimum rest periods provided for by that directive are actually taken.

31. In those circumstances, the Audiencia Nacional (National High Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must Article 5 of Directive [2003/88] be interpreted as precluding national legislation under which the weekly rest period is permitted to overlap with [special] paid leave of absence intended to meet needs other than rest?

(2) Must Article 7 of Directive [2003/88] be interpreted as precluding national legislation under which annual leave is permitted to overlap with [special] paid leave of absence intended to meet needs other than rest, relaxation and leisure?'

32. The trade unions, the group of undertakings, the Spanish Government and the European Commission lodged written observations before the Court. Those parties presented oral argument at the hearing on 24 September 2019.

IV. Analysis

33. By its two questions, the referring court is asking the Court, in essence, whether Articles 5 and 7 of Directive 2003/88 must be interpreted as precluding national rules or collective agreements which do not provide for special paid leave to be granted where one of the needs which such leave is intended to meet arises during a weekly rest period or a period of annual leave.

34. The factors underpinning those questions merit emphasis, in my view. The referring court is asking, first, about the *overlap between rest periods* provided for in Directive 2003/88 and *events in the worker's personal life* which would have warranted, under the applicable national provisions, the taking of special paid leave, if those events had taken place during working time and, secondly, about which measures are necessary in order to ensure the effectiveness of the rest periods provided for in Directive 2003/88. [10]

10 See points 29 and 30 of this Opinion. I note that, although the request for interpretation from the trade unions is based on a decision by the Tribunal Supremo (Supreme Court) (see point 24 of this Opinion) in favour of *carrying over the start of that leave* to the next working day where the event giving rise to the granting of that leave occurs on a public holiday or a non-working day, those trade unions have maintained, in response to questions from the Court, that annual leave should be carried over where it coincides with circumstances which justify special paid leave being granted, by analogy, inter alia, with the solution adopted in the judgment of 21 June 2012, *ANGED* (C-78/11, EU:C:2012:372).

35. Consequently, I consider it necessary to clarify the subject matter of the questions referred for a preliminary ruling before setting out the responses that may be given to those questions.

A. The subject matter of the questions referred for a preliminary ruling

36. In setting out the reasons for its request for a preliminary ruling, the referring court refers to the risk of infringement of the *minimum*[11] rest periods guaranteed by EU law in so far as *the purposes* of special paid leave differ from those of annual leave and of weekly rest.[12] In support of its request, it refers to the case-law of the Court on the overlapping of rights to annual leave with, inter alia, the right to leave granted in the event of illness.[13]

37. However, that relationship with the case-law of the Court protecting the right to annual leave for reasons relating to the health of the worker and his or her ability to work, arising from the mere finding by the referring court of a difference in the purposes of the types of leave must, in my view, be the subject of discussion.

38. Moreover, I consider that new factors for consideration may be derived from the judgment of 19 November 2019, *TSN and AKT*,[14] which concerns the interpretation of Article 7(1) of Directive 2003/88 where there exist national rules and collective agreements which provide for the granting of days of paid annual leave over and above the minimum period of 4 weeks and yet exclude the right to carry over all or some of the days of additional leave in the event of the worker's illness.[15]

39. In those circumstances, I consider that it is necessary to determine whether special paid leave comes within the scope of Directive 2003/88 before examining whether the case-law of the Court, which draws conclusions from the different purposes served by the leave entitlements, may be transposed to the case of entitlements to special paid leave.

B. The scope of Directive 2003/88

40. It is clear, in particular, from the wording of Article 1 of Directive 2003/88 that that directive seeks to lay down minimum requirements for all workers in the Member States by approximating national provisions on limits on working time,[16] periods of daily and weekly rest, annual leave and additional protection for night workers.

41. That directive does not contain specific provisions with regard to authorised leave that may be granted during working time, without any loss of remuneration, for reasons other than those relating to the safety and health of the worker[17] that are correlated with successive periods of work for an employer.[18]

11 See, also, judgment of 19 November 2019, *TSN and AKT* (C-609/17 and C-610/17, EU:C:2019:981, paragraphs 35 to 37).

12 In this regard it may be recalled that the Spanish legislature established special paid leave in order to enable workers to *fulfil personal obligations* under the best possible conditions. Thus, a worker may be authorised to interrupt the performance of his or her work where events occur in his or her private or family life, such as, inter alia, marriage, the birth of a child, the death of a family member, the medical care of a close relative, and moving house and when he or she has to fulfil public duties, such as voting or representing workers. The collective agreement for the group of undertakings, which was negotiated on that legal basis, specified the starting point of the marriage leave, broadened the scope of some rights and provided for those rights to be granted in other circumstances, such as sitting academic examinations or taking a driving text, or even signing notarial deeds for the sale or purchase of a property.

13 See point 61 of this Opinion.

14 C-609/17 and C-610/17, EU:C:2019:981.

15 See paragraphs 39 and 40 of that judgment.

16 See, in that regard, judgment of 20 November 2018, *Sindicatul Familia Constanța and Others* (C-147/17, EU:C:2018:926, paragraph 39).

17 See judgment of 19 November 2019, *TSN and AKT* (C-609/17 and C-610/17, EU:C:2019:981, paragraphs 34, 47 and 48).

18 See judgments of 14 October 2010, *Union syndicale Solidaires Isère* (C-428/09, EU:C:2010:612, paragraph 37), and of 4 October 2018, *Dicu* (C-12/17, EU:C:2018:799, paragraph 28).

42. Article 15 of Directive 2003/88 gives the Member States the right to introduce provisions which are more favourable to workers that may be compared with those laid down by that directive with the objective of ensuring the protection of the safety and health of workers.[19] In the present case, this is the position under Spanish law in respect of weekly rest periods and periods of annual leave which, according to the referring court, exceed the minimum periods provided for by EU law, but not in respect of special paid leave.[20]

43. Although special paid leave is additional to the annual leave provided for by Directive 2003/88, it is different in nature and serves different purposes. I would point out that it is an *authorisation to interrupt the performance of the employment contract* for a period of a few hours to several days and that the aim of that authorisation is to reconcile better the worker's professional responsibilities with those relating to his or her private or family life, on the days on which he or she is required to work for the undertaking.

44. Thus, a worker is entitled to claim special paid leave, at his or her request, for reasons unrelated to his or her occupational activity.[21] It is clear from a comparison of those reasons with the requirements of Directive 2003/88 that special paid leave does not seek to protect the safety and health of the worker in relation to the performance of work.

45. Consequently, I consider, in the first place, that, in granting periods of special paid leave, the Spanish legislature has not exercised the power conferred on the Member States by Article 15 of Directive 2003/88.[22]

46. Therefore, by introducing, on its own initiative and in favour of workers, rights which pursue an objective other than that of the directive, the Spanish legislature has exercised its powers outside the scope of that directive.[23]

47. In that regard, account must be taken of the scope of the judgment of 19 November 2019, *TSN and AKT*,[24] concerning rights to paid annual leave exceeding the minimum period of 4 weeks laid down in Article 7(1) of Directive 2003/88. According to the Court, those rights, which are granted by the Member States or the social partners, in accordance with the power provided for in Article 15 of Directive 2003/88,[25] or the conditions for a possible carrying-over of those rights in the event of illness which has occurred during the leave, come within the exercise of the powers retained by the Member States, without being governed by that directive or coming within its scope.[26]

19 See judgments of 21 February 2018, *Matzak* (C-518/15, EU:C:2018:82, paragraphs 41 to 43), and of 19 November 2019, *TSN and AKT* (C-609/17 and C-610/17, EU:C:2019:981, paragraph 49 and the case-law cited).

20 See point 20 of this Opinion.

21 See footnote 70 and points 103 to 107 of this Opinion.

22 See, by analogy, judgment of 10 July 2014, *Julián Hernández and Others* (C-198/13, EU:C:2014:2055, paragraphs 39, 41, 44 and 45). To my knowledge, national rules which are similar (to varying degrees) exist in Belgium, Bulgaria, Germany, France, Croatia, Italy, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovenia, Slovakia and Finland. I note, with regard to the system of rights granted, that it may depend on the duration of the working time and the conditions for implementing the leave.

23 I note, moreover, that there is no suggestion that the Spanish legislation constitutes, in part, a transposition of clause 7 of the revised Framework Agreement on parental leave, concluded on 18 June 2009, which is contained in the annex to Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (OJ 2010 L 68, p. 13), in force until 1 August 2022, entitled 'Time off from work on grounds of force majeure'. That directive will be repealed with effect from 2 August 2022 by Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (OJ 2019 L 188, p. 79) (see Article 19(1) of Directive 2019/1158). Clause 7 of that framework agreement will be replaced by Article 7 of that directive, which, in essence, reproduces the same provisions.

24 C-609/17 and C-610/17, EU:C:2019:981. See point 38 of this Opinion.

25 See paragraphs 34 and 35 of that judgment.

26 See paragraph 52 of that judgment and the case-law cited.

48. I note that that judgment recalls clearly that, where the provisions of EU law in the area concerned do not govern an aspect of a given situation and do not impose any specific obligation on the Member States with regard thereto, the Member States remain free to exercise their powers.

49. Consequently, I take the view that the solution identified in that judgment with regard to the right to annual leave, as required by Directive 2003/88, may be applied a fortiori, since the provisions in question were adopted by the Member States or the social partners in a completely different field from that covered by EU law.

50. In the second place, with regard to the limits on the exercise by the Member States of their powers, which the Court recalled in the judgment of 19 November 2019, *TSN and AKT*,[27] namely a possible infringement of the minimum protection guaranteed by Article 7 of Directive 2003/88,[28] I consider that the right to special paid leave granted to a worker with a view to facilitating the relationship between his or her private life and its occupational constraints on his or her working time is not capable, in itself, of adversely affecting the ability to exercise his or her right to weekly or annual rest, which is the sole objective pursued by Directive 2003/88.[29] As no specific situations have been brought to the Court's attention, it is difficult to envisage how, in practice, the rights to *additional* leave, laid down by the national legislature, which are available to the worker *in addition to the minimum provided for in Directive 2003/88*,[30] could *infringe the rights to rest laid down in that directive*.[31]

51. Still in line with the judgment of 19 November 2019, *TSN and AKT*,[32] I note, also, that there is no adverse effect on the coherence of Directive 2003/88 or on the objectives which it pursues.[33] In that regard, if the national legislature had not introduced rights to special paid leave in order to allow a worker to take time off from work, at his or her request, when an event in his or her personal life occurs during working time, the question of the effectiveness of annual leave or of weekly rest, when that event occurs, would not arise under EU law.

52. To me, that finding highlights the fact that, in the present case, the adverse effect on the effectiveness of annual leave or weekly rest is conceivable only if it is assumed that any event which may prevent the worker from enjoying in full a period of rest or relaxation justifies his or her being granted additional leave so that the purpose of the annual leave is protected.[34]

53. That is not the objective of Directive 2003/88. The requirements in that directive stem from the desire to strike a fair balance between working time and minimum rest periods,[35] with a view to the pursuit of the worker's occupational activity.[36] Those requirements *confer* on the worker only the *right to demand that the employer* implement the *rest periods* guaranteed by that directive.

54. Moreover, the minimum protection guaranteed to the worker under Articles 5 and 7 of Directive 2003/88 cannot differ depending on whether or not Member States take the initiative to adopt special provisions similar to those that apply in Spain.

27 C-609/17 and C-610/17, EU:C:2019:981.

28 See paragraphs 35 and 51 of that judgment and the case-law cited.

29 The position would be different, in my view, if the worker had been forced to take annual leave in response to a request for special paid leave or if the duration of that leave was treated as annual leave. See, also, by analogy, the case-law cited in paragraph 35 of the judgment of 19 November 2019, *TSN and AKT* (C-609/17 and C-610/17, EU:C:2019:981), in which the Court recalled the restrictions imposed on the Member States in order to ensure the effectiveness of the minimum rest period of 4 weeks.

30 See point 42 of this Opinion.

31 See point 71 of this Opinion.

32 C-609/17 and C-610/17, EU:C:2019:981.

33 See paragraph 51 of that judgment.

34 See points 29 and 71 of this Opinion.

35 See, in that respect, a more detailed explanation in points 72 to 76 of this Opinion.

36 Judgment of 6 November 2018, *Bauer and Willmeroth* (C-569/16 and C-570/16, EU:C:2018:871, paragraph 47).

55. I infer from all of those considerations that the questions referred for a preliminary ruling must not prompt the Court to review the conditions for special paid leave entitlement, which is governed by the national legislature, since that entitlement is unrelated to the worker's ability to perform his or her work and, as such, cannot undermine the effectiveness of the right to a weekly rest period or to annual leave, guaranteed by Directive 2003/88, or the objective pursued by that directive.

56. I therefore propose that the Court should rule, primarily, that national rules and collective agreements which provide for the granting of special paid leave to enable workers to take time off on working days in order to fulfil their personal or family obligations do not come within the scope of Directive 2003/88.

57. However, should the Court not share that view and instead consider that it is sufficient for it to be claimed that there is a *risk that the purpose* of the *minimum* rest periods provided for in Directive 2003/88 *might be undermined* by the national provisions in question [37] and for it to be possible to eliminate that risk by carrying over the leave guaranteed by that directive, [38] I take the view that the Court will have to rule on whether its case-law on the difference in the purposes of types of leave, in the event that such leave overlaps, can be applied to special paid leave.

58. Accordingly, I shall now present the elements which I wish to put forward for assessment by the Court. In the absence of any case-law which concerns the overlapping of rights to leave and rights to weekly rest, I shall examine that situation after examining the situation in which a right to special paid leave coincides with annual leave.

C. The application of the Court's case-law in the case where two leave entitlements coincide

59. The question of principle to be resolved by the Court is, in my view, whether the examination of the purpose of leave, in the case where that leave coincides with the annual leave entitlement, must be extended to special paid leave — as the Court has ruled in relation to convalescence leave [39] — in order to determine whether the leave in question has the objective of improving the 'state of health of the workers', [40] which is preventing them from working. In other words, it is necessary to determine what justifies, in general, use of the criterion of the purpose of the leave entitlement when types of leave overlap in the context of performance of the employment contract. [41]

60. I shall therefore recall the main features of that case-law, in order to identify the principal criterion arising from it, before ascertaining whether it may be extended to the entitlement to special paid leave.

37 It is for the national court to ascertain whether that is the case.

38 See, in that regard, judgment of 19 November 2019, *TSN and AKT* (C-609/17 and C-610/17, EU:C:2019:981, paragraph 39).

39 See judgment of 30 June 2016, *Sobczyszyn* (C-178/15, EU:C:2016:502, paragraph 27).

40 That expression is taken from the judgment of 30 June 2016, *Sobczyszyn* (C-178/15, EU:C:2016:502, paragraph 30).

41 It is appropriate to highlight the importance of that condition relating to the performance of work, which enables a distinction to be drawn with parental leave. See, in that regard, judgment of 4 October 2018, *Dicu* (C-12/17, EU:C:2018:799, paragraph 35).

1. The criterion established in the Court's case-law relating to the differences in the purpose of leave entitlements

61. Since additional special paid leave was introduced by the national legislature in a field that is not governed by EU law,[42] reference must be made to the case-law of the Court relating to an analogous situation, that is to say, the overlap between annual leave and sick leave[43] or convalescence leave,[44] which are governed by national law. That case-law requires consideration of the purpose of the types of leave which overlap.

62. In that regard, in the judgment of 30 June 2016, *Sobczyszyn*,[45] the Court set out in clear terms the reasoning to be followed, which begins with the reminder that 'the purpose of the right to paid annual leave, which is to enable the worker to rest and to enjoy a period of relaxation and leisure, is different from that of the right to sick leave, which is to enable the worker to recover from an illness'.[46]

63. That reasoning continues with the consistent conclusion that, '*in the light of those differing purposes of the two types of leave*, … a worker who is on sick leave during a period of previously scheduled annual leave has the right, at his request and in order that he may *actually use his annual leave*, to take that leave during a period which does not coincide with the period of sick leave'.[47]

64. Consequently, according to the Court, it is appropriate to determine whether, having regard to the potentially different purposes of the two types of leave, the overlap between the types of leave in question is liable to preclude the annual leave acquired by the worker from being taken at a subsequent time.[48]

65. However, is it sufficient to find that types of leave serve different purposes in order to conclude that, in all cases, the rights to annual leave acquired by a worker may be adversely affected?

42 As a reminder, by contrast, where two rights are guaranteed by EU law, a period of leave guaranteed by EU law cannot, according to settled case-law, affect another right to take another period of leave which has a different purpose from the former. See, inter alia, judgment of 4 October 2018, *Dicu* (C-12/17, EU:C:2018:799, paragraph 37 and the case-law cited). That principle, which was established in a case where annual leave coincided with maternity leave (see judgment of 18 March 2004, *Merino Gómez* (C-342/01, EU:C:2004:160, paragraphs 33 and 41)), has been extended to cases where parental leave coincides with maternity leave (see judgments of 14 April 2005, *Commission* v *Luxembourg* (C-519/03, EU:C:2005:234, paragraph 33), and of 20 September 2007, *Kiiski* (C-116/06, EU:C:2007:536, paragraphs 56 and 57)). It does not apply when deciding whether or not a period of parental leave must be treated as a period of actual work for the purpose of determining paid annual leave entitlement (see judgment of 4 October 2018, *Dicu* (C-12/17, EU:C:2018:799, paragraphs 26 and 37)).

43 The Court has held that, 'by contrast with the rights to maternity leave or parental leave …, the right to sick leave and the conditions for exercise of that right are not, as [EU] law now stands, governed by that law' (judgment of 20 January 2009, *Schultz-Hoff and Others* (C-350/06 and C-520/06, EU:C:2009:18, paragraph 27)).
With regard to previous decisions relating to cases where periods of annual leave coincided with periods of sick leave, see judgment of 10 September 2009, *Vicente Pereda* (C-277/08, EU:C:2009:542). In that case, the worker was on sick leave during the period of annual leave set out in the undertaking's leave schedule.
See, also, for a parallel with the circumstances on which the second question referred for a preliminary ruling is based, judgment of 21 June 2012, *ANGED* (C-78/11, EU:C:2012:372), which concerned the case of a worker *becoming unfit for work during a period of annual leave* (paragraph 24 of that judgment). On that occasion, the Court stated that 'the point at which that temporary incapacity arose is irrelevant' (paragraph 21).
See, also, judgment of 19 November 2019, *TSN and AKT* (C-609/17 and C-610/17, EU:C:2019:981), with respect to the refusal to carry over the period of paid annual leave during which the worker had been ill, where not carrying over that leave did not reduce the actual duration of the paid annual leave to below 4 weeks.

44 See judgment of 30 June 2016, *Sobczyszyn* (C-178/15, EU:C:2016:502, paragraph 29).

45 C-178/15, EU:C:2016:502.

46 Judgment of 30 June 2016, *Sobczyszyn* (C-178/15, EU:C:2016:502, paragraph 25). In that paragraph, the Court refers to the judgment of 21 June 2012, *ANGED* (C-78/11, EU:C:2012:372, paragraph 19 and the case-law cited). The Court first made that finding in the judgment of 20 January 2009, *Schultz-Hoff and Others* (C-350/06 and C-520/06, EU:C:2009:18, paragraph 25), after having set it out in relation to maternity leave, which is intended, inter alia, to protect the worker's state of health (see judgments of 18 March 2004, *Merino Gómez* (C-342/01, EU:C:2004:160, paragraph 32), and of 20 September 2007, *Kiiski* (C-116/06, EU:C:2007:536, paragraph 30)). See, also, the case-law cited in point 69 of this Opinion.

47 Judgment of 30 June 2016, *Sobczyszyn* (C-178/15, EU:C:2016:502, paragraph 26). Emphasis added. The Court refers to the judgments of 10 September 2009, *Vicente Pereda* (C-277/08, EU:C:2009:542, paragraph 22), and of 21 June 2012, *ANGED* (C-78/11, EU:C:2012:372, paragraph 20).

48 See judgment of 30 June 2016, *Sobczyszyn* (C-178/15, EU:C:2016:502, paragraph 27).

66. I do not think so, since, quite apart from the finding that each of those leave entitlements serves a specific purpose, the worker's state of health, which justifies the interruption of performance of the employment contract,[49] forms the foundation of the case-law of the Court protecting the effectiveness of the annual leave[50] provided for in Directive 2003/88. That foundation rests on a number of established principles.

67. In the first place, the Court has taken account of the common objective of protecting the health of workers by means of two types of leave — annual leave and sick leave — which employers are bound to respect in the light of both Directive 2003/88 and Convention No 132 of the International Labour Organisation of 24 June 1970 concerning Annual Holidays with Pay (Revised).[51]

68. In the second place, the Court has emphasised the characteristics of sick leave which prevent the positive effect of paid annual leave entitlement for the safety and health of the worker from being deployed fully.[52] Those characteristics are immediate incapacity for work due to the state of health of the worker, the existence of physical or psychological constraints related to the illness,[53] the unpredictability of the occurrence of that incapacity for work, its nature as being beyond the worker's control[54] and the absence of suspension of the employment relationship.[55]

69. Specifically, there is no doubt that, in such circumstances, the sick worker is not only unable to work but is also unable to 'rest from carrying out the work he is required to do under his contract of employment and to enjoy a period of relaxation and leisure',[56] with a view to the future pursuit of that worker's occupational activity.[57]

70. Accordingly, I am of the view that the coexistence of two types of leave entitlements which are intended exclusively to protect the safety and health of the worker, by requiring him or her not to work, justified the Court in taking the view that they should be exercised independently of one another.

71. In the third place, the Court concluded from this that the annual leave had to be carried over so that the worker could 'actually use' it.[58] In that regard, it seems appropriate to clarify the meaning of that expression because of the justifications given for the order for reference.[59] Indeed, they reveal an assumption that, during the period of rest, the worker is required to rest.[60]

49 That criterion enables, inter alia, leave which is designed to restore the worker's state of health to be distinguished from parental leave, which is provided for by EU law and serves a specific purpose. See, in that regard, judgment of 4 October 2018, *Dicu* (C-12/17, EU:C:2018:799, paragraph 35).

50 See judgment of 30 June 2016, *Sobczyszyn* (C-178/15, EU:C:2016:502, paragraph 26).

51 See judgment of 20 January 2009, *Schultz-Hoff and Others* (C-350/06 and C-520/06, EU:C:2009:18, paragraphs 37 and 38). Article 5(4) of that convention provides that '… absence from work for such reasons beyond the control of the employed person concerned as illness, injury or maternity shall be counted as part of the period of service'. Aside from the fact that the Court's reference to that provision was necessary in order to address the question of the *conditions for granting* entitlement to annual leave (see judgment of 20 January 2009, *Schultz-Hoff and Others* (C-350/06 and C-520/06, EU:C:2009:18, paragraph 41)), it is interesting to note that that provision is limited to events concerning, and undergone by, the worker, in particular in the case of health risks which justify, as a matter of principle, not counting his absence against periods of actual work. See, also, judgments of 22 November 2011, *KHS* (C-214/10, EU:C:2011:761, paragraph 42); of 4 October 2018, *Dicu* (C-12/17, EU:C:2018:799, paragraph 32); and of 6 November 2018, *Bauer and Willmeroth* (C-569/16 and C-570/16, EU:C:2018:871, paragraph 81).

52 See judgment of 22 November 2011, *KHS* (C-214/10, EU:C:2011:761, paragraph 32).

53 See judgment of 4 October 2018, *Dicu* (C-12/17, EU:C:2018:799, paragraph 33, *a contrario*).

54 See judgment of 4 October 2018, *Dicu* (C-12/17, EU:C:2018:799, paragraph 32 and the case-law cited).

55 See judgment of 4 October 2018, *Dicu* (C-12/17, EU:C:2018:799, paragraph 35, *a contrario*).

56 Judgment of 6 November 2018, *Bauer and Willmeroth* (C-569/16 and C-570/16, EU:C:2018:871, paragraph 41 and the case-law cited).

57 See judgment of 6 November 2018, *Bauer and Willmeroth* (C-569/16 and C-570/16, EU:C:2018:871, paragraph 47). See, also, point 62 of this Opinion.

58 See point 63 of this Opinion.

59 See points 29 and 52 of this Opinion.

60 See, also, point 83 of this Opinion.

72. However, such an interpretation cannot be inferred from the provisions of Directive 2003/88, first, on account of the definitions of 'rest period' and 'adequate rest' contained in Article 2 of that directive, read in the light of recital 5. In that regard, the Court has stated that the concepts of 'working time' and 'rest period' are mutually exclusive.[61]

73. Secondly, it should be recalled that the objective of Article 7(2) of Directive 2003/88 is, inter alia, to ensure that workers are entitled to *actual rest*, with a view to ensuring effective protection of their health and safety by providing that the minimum period of paid annual leave may not be replaced by an allowance in lieu, except in the event of termination of the employment relationship.

74. Consequently, in order to ensure the effectiveness of the entitlement to leave provided for in that directive, it is sufficient that the measures adopted by the Member States[62] are implemented by the employer.[63] Specifically, only the worker's right to take time off from work for a period of annual leave is protected when, for reasons beyond his or her control, he or she is unable to exercise that right.[64]

75. In that regard, it is also possible to rely on the fact that a worker's acquired right to paid annual leave results, in the event of termination of the employment relationship, in financial compensation being payable in order to ensure that the very essence of that right is not undermined.[65] Thus, payment of an allowance in lieu where the worker has not been able to avail him or herself of that right[66] confirms that it is not a question of examining whether the rest has been *effective in the sense that it has actually produced beneficial effects*, or, in other words, whether the worker actually rested or relaxed during the period of annual leave.

76. It is sufficient that the worker has not been subject to any obligation *vis-à-vis his or her employer* which may prevent him or her from pursuing, freely and without interruption, his or her own interests.[67]

77. It is in the light of those considerations that I propose to continue the examination of the question whether that case-law can be extended to the right to special paid leave in the event of an overlap with annual leave.

2. Extension of the case-law relating to differences in the purpose of types of leave in cases where there are circumstances justifying the granting of special paid leave

78. It must again be recalled, first, that the general purpose of periods of special paid leave is to reconcile a person's working life with the circumstances of his or her private or public life which arise during working hours.

61 See judgment of 21 February 2018, *Matzak* (C-518/15, EU:C:2018:82, paragraph 55 and the case-law cited).

62 In that regard, it should be recalled that the very existence of the leave entitlements derives from EU law (see judgment of 20 January 2009, *Schultz-Hoff and Others* (C-350/06 and C-520/06, EU:C:2009:18, paragraph 28)) and that the conditions for the exercise and implementation of those entitlements are matters for the Member States, within the limits of the minimum protection guaranteed by the provisions of EU law (see judgment of 19 November 2019, *TSN and AKT* (C-609/17 and C-610/17, EU:C:2019:981, paragraph 35)).

63 See judgment of 29 November 2017, *King* (C-214/16, EU:C:2017:914, paragraph 63).

64 See judgment of 29 November 2017, *King* (C-214/16, EU:C:2017:914, paragraph 49).

65 See judgment of 6 November 2018, *Bauer and Willmeroth* (C-569/16 and C-570/16, EU:C:2018:871, paragraph 49).

66 See judgment of 29 November 2017, *King* (C-214/16, EU:C:2017:914, paragraph 52).

67 See judgment of 9 September 2003, *Jaeger* (C-151/02, EU:C:2003:437, paragraph 94).

79. Those periods of leave cannot be treated in the same way as sick leave, in view of the circumstances which justify the granting of those periods of leave. In fact, with the exception of medical consultations,[68] the events allowing a worker to benefit from them are not directly related to his or her state of health.

80. Secondly, the worker's ability to work is obviously not affected, since the special paid leave has been specifically set up to enable him or her to interrupt the performance of his or her employment contract.

81. Finally, the worker 'may take time off'[69] in many circumstances, varying in their degree of urgency or foreseeability,[70] for reasons the importance and impact of which on his or her private life he or she assesses, by contrast with sick leave.[71]

82. Consequently, since none of the grounds for granting special paid leave relates to the capacity for work of the person concerned, I am of the view that there is no justification for extending the Court's case-law drawing consequences from the dual purpose of types of leave, in the light of Directive 2003/88.

83. Only a broader understanding of the purpose of the leave, involving consideration of the absence of a hindrance to rest and a period of relaxation and leisure,[72] could justify the opposite solution. It would require the taking into consideration, for example, of serious personal-life events, such as the death or hospitalisation of a family member, which are just as unpredictable as an illness suffered by a worker, and their consequences for the purposes of the right to annual leave.

84. In such circumstances, as has been claimed by the trade unions in the main proceedings, the worker is subject to psychological and even physical constraints analogous to those which could be caused by an illness that would, for the safety or health of the worker, justify an interruption of the performance of his or her work for several days as a result of the granting of special paid leave. Similarly, since the purpose of some of those types of leave is to allow the worker to carry out physical tasks occasioned by the event which arises, the purpose of the period of annual leave, which is to rest and to enjoy a period of relaxation, would not be protected if the special paid leave were granted only during working time.

85. However, as I have already stated, in the light of Directive 2003/88, such an interpretation does not appear to me to be well founded.[73] Moreover, it would lead, in practice, to an assessment on a case-by-case basis as to whether, depending on the circumstances, the worker was *actually* able to rest or relax, whereas the only requirement arising from that directive is that the worker must not be subject to any obligation towards his or her employer during the period of annual leave.

68 This is the type of leave provided for in Article 46(I)(G) of the collective agreement for the group of undertakings. It allows the worker to have the 'time required' to 'attend a medical consultation during his or her working hours'. I note that that condition relating to working time is again referred to in that provision, which leads me to exclude it from my analysis.

69 This is the expression used in the national provisions in question.

70 In practice, in the vast majority of cases, the risk of undermining the minimum duration of annual leave should be very limited, given the circumstances in question or the duration of the authorisation to be absent or the organisation of work, for example, in fixed or variable schedules, which will be assessed by the national court on a case-by-case basis.
Thus, in my view, unforeseeable circumstances must be distinguished from those which are, in principle, foreseeable, such as marriage, moving house (see judgment of 20 September 2007, *Kiiski* (C-116/06, EU:C:2007:536 paragraphs 41 and 42)), elections, the exercise of a trade union mandate or participation in a judicial activity, for which the worker must be able to organise him or herself, either by choosing the period of annual leave, or by requesting that the dates of these be postponed if permitted by the applicable law and the organisation of work (see, on that last point, by way of illustration, judgment of 10 September 2009, *Vicente Pereda* (C-277/08, EU:C:2009:542, paragraph 11)).

71 Sick leave entitlement must be observed by the employer (see judgment of 29 November 2017, *King* (C-214/16, EU:C:2017:914, paragraph 61), on the ground that it is related to the worker's incapacity for work, as evidenced by a third person who is qualified to order that break from work (see judgment of 20 January 2009, *Schultz-Hoff and Others* (C-350/06 and C-520/06, EU:C:2009:18, paragraph 41)).

72 See point 69 of this Opinion.

73 See points 50 and 71 et seq. of this Opinion.

86. It is already possible to envisage the disadvantages of such a casuistic approach, which is, moreover, dependent on the personal assessment of each worker. For example, if a worker cares for his or her sick parent or sick child during his or her annual leave, is that freely exercised choice necessarily such as to undermine the enjoyment of that leave? Moreover, more generally, if the worker makes the choice not to rest for various reasons, what conclusions should be drawn from this?

87. Accordingly, I am of the view that that there is no justification either in the light of the provisions of Directive 2003/88, as interpreted by the Court, or in terms of expediency as regards its application, for contemplating the extension of the case-law of the Court to circumstances unrelated to the capacity for work of a person directly affected by an illness, solely on the basis of the finding of a difference in the purposes of the types of leave.

88. Moreover, it is also necessary to assess the deterrent effect which the Court's decision might have on whether Member States and, where appropriate, the social partners choose to grant more favourable rights to workers.[74]

89. I am of the view that such initiatives may have been taken in the light of three elements, that is to say, first, the objective, indeed pursued in the field of social policy but falling outside the scope of the protection of the safety and health of workers governed by Directive 2003/88; secondly, the conditions for the organisation of working time, taken as a whole, such as the duration of working time and the extension of the minimum periods of rest provided for by that directive;[75] and, thirdly, the contribution of collective bargaining.

90. In that regard, the Court has noted that the social partners are careful to strike a balance between their respective interests when exercising their fundamental right to collective bargaining recognised in Article 28 of the Charter of Fundamental Rights of the European Union ('the Charter').[76]

91. Accordingly, I take the view that the determination of the practical arrangements for the implementation of special paid leave unrelated to the worker's state of health requires an interpretation solely of the national provisions by the competent authorities in order to ensure that the special paid leave entitlements are not rendered meaningless.[77]

74 In that regard, it should be noted that, in many Member States, provisions similar to those at issue in the case in the main proceedings have been adopted; see footnote 22 of this Opinion.

75 See footnote 22 of this Opinion.

76 Judgment of 19 September 2018, *Bedi* (C-312/17, EU:C:2018:734, paragraph 68 and the case-law cited).

77 The national court may, indeed, take into account the diversity of the purposes of special leave, the situations of workers and the organisation of work in fixed or variable schedules, determine the appropriate starting point for such periods of leave or their postponement when, in particular, the event giving rise to the leave occurs during a period in which the worker is not required to work and it does not allow him or her to meet the obligations related to an unforeseeable event in his or her personal life, such as, for example, the necessary completion of formalities on a day when services are performed, in the event of death. See, in that connection, as regards national decisions, judgment of 16 December 1998, Social Chamber of the Cour de cassation (Court of Cassation, France), No 96-43.323 (according to the Cour de Cassation (Court of Cassation), the day of authorised absence need not necessarily be taken on the day of the event justifying it, but must be taken within a '*reasonable period*' of the date in respect of which it is granted: that case concerned leave for a child's marriage taken the day before the event. That solution applies to all leave for family events). See, also, exclusively in the case of death, by analogy with the judgment of 12 December 2001, of the Corte suprema di cassazione, Sezioni unite (Supreme Court of Cassation, Joined Chambers, Italy), No 14020/2001, concerning an overlap between sick leave and annual leave, Decision No 1167/2003 of 23 April 2003 of the Tribunale di Milano, Sezione lavoro (Court of Milan, Labour and Social Affairs Chamber, Italy), according to which a period of mourning during the worker's annual leave justifies the suspension of that annual leave. To the same effect, the Tribunale amministrativo regionale per l'Abruzzo, Sezione staccata di Pescara (Regional Administrative Court of Abruzzo, Separate Pescara Chamber, Italy), in its judgment No 532/2007 of 11 May 2007, ordered the conversion of annual leave days into days of absence on grounds of mourning. By contrast, see judgment of 8 December 2016, chambre sociale de la Cour de cassation (Social Chamber of the Cour de Cassation, France), No 13-27.913 (Bulletin 2016, V, No 243), criticising a judgment awarding a teacher, who was a staff representative, back pay for time spent on representation activities during the school holidays. Nor was it possible for him to carry over his paid leave entitlements. Likewise, so far as I am aware, there has not yet been any decision in Germany or in Poland to affect the principle that a worker may benefit from the statutory authorisation to be absent only if he or she is required to work for the undertaking.

92. Consequently, in the alternative, I propose that the Court should hold that Article 7 of Directive 2003/88 does not preclude national legislation and collective agreements which do not provide for the granting of special paid leave where the circumstances justifying entitlement to the leave arise on days which are not working days.

D. The case where the right to a weekly rest period coincides with special paid leave

93. With regard to the right to a weekly rest period, I would recall that the Court has not yet had the opportunity to rule on a case in which that right coincides with leave entitlements.

94. Therefore, I shall, first, set out the principles applicable to the implementation of weekly rest periods. Secondly, I shall highlight the specific nature of the rules governing that rest period which, in my view, allow the Court to rule that, when the rest period coincides with an event which would have justified the granting of special paid leave, if that event had occurred during working time, the worker cannot claim the benefit of that leave.

1. The principles applicable to weekly rest periods

95. In Article 2(2) of Directive 2003/88, 'rest period' is defined without any distinction as to whether that rest is daily, weekly or annual.

96. It follows from settled case-law of the Court that the principles applicable to weekly rest are, in essence, analogous to those relating to annual leave.

97. First, the right of every worker to a limitation of maximum working hours and to daily and weekly rest periods 'not only constitutes a rule of EU social law of particular importance, but is also expressly enshrined in Article 31(2) of the Charter, which Article 6(1) TEU recognises as having the same legal value as the Treaties'.[78]

98. Secondly, the harmonisation at European-Union level in relation to the organisation of working time 'is intended to guarantee better protection of the safety and health of workers by ensuring that they are entitled to minimum rest periods — particularly daily and weekly — as well as adequate breaks, and by providing for a ceiling on the duration of the working week'.[79]

99. Thirdly, in order to ensure that Directive 2003/88 is fully effective, the Member States must ensure that those minimum rest periods are observed and must prevent the maximum weekly working time from being exceeded.[80]

100. Fourthly, having regard to the essential objective pursued by that directive, which is to ensure the effective protection of the living and working conditions of workers and better protection of their safety and health, the Member States are required to ensure that the effectiveness of those rights is guaranteed in full, by ensuring that workers actually benefit from the minimum daily and weekly rest periods and the limitation on the duration of average weekly working time laid down in that directive.[81]

78 Judgment of 14 May 2019, *CCOO* (C-55/18, EU:C:2019:402, paragraph 30 and the case-law cited).

79 Judgment of 14 May 2019, *CCOO* (C-55/18, EU:C:2019:402, paragraph 37 and the case-law cited).

80 See judgment of 14 May 2019, *CCOO* (C-55/18, EU:C:2019:402, paragraph 40 and the case-law cited).

81 See judgment of 14 May 2019, *CCOO* (C-55/18, EU:C:2019:402, paragraph 42 and the case-law cited).

101. Fifthly, the arrangements made by the Member States to implement the requirements of Directive 2003/88 must not be liable to render nugatory the rights enshrined in Article 31(2) of the Charter and in Articles 3, 5 and 6(b) of that directive. [82]

2. The specific nature of the rules governing the weekly rest period

102. I am of the view that, in the event of an overlap of a period of leave and a weekly rest period, the specific nature of the rules governing the weekly rest period and a comparison with those governing annual leave should prompt the Court to prefer reasoning other than that which it used for annual leave and which is based on the finding of a difference in the purposes of the types of leave in question.

103. First, it follows from the Court's interpretation of Article 5 of Directive 2003/88 that the minimum uninterrupted weekly rest period of 24 hours, linked to a maximum work period of 48 hours, must be provided within each 7-day period, with no requirement that that minimum period must be provided no later than the day following a period of 6 consecutive working days. [83] The length of the rest period is thus strictly correlated to working time on the basis of reference periods which the Member States are free to determine in accordance with their chosen method, subject to respect for the objectives of that directive. [84] The worker must, in any event, enjoy the protection laid down in Directive 2003/88 concerning daily rest periods and the maximum weekly working time. [85]

104. Secondly, the purpose of that rest period is, inter alia, to dispel the fatigue accumulated from performing work having a maximum limit generally determined on a weekly basis. [86] This is why rest periods must, in principle, follow on immediately from the working time which they are supposed to counteract [87] and 'provision must as a general rule be made for a period of work regularly to alternate with a rest period'. [88] In that respect, it is important to emphasise the repeated nature over a short time-frame of the weekly rest period.

105. Thirdly, Article 17 of Directive 2003/88 permits derogations from the weekly rest period and not from annual leave. [89]

106. By comparison, the entitlement to annual leave has a mandatory duration, unrelated to a specific number of hours of actual work. It has its own underlying logic, which is based on the principle of the accumulation of entitlements in order to benefit from a longer rest period which will be determined in agreement with the employer. [90]

107. The option of carrying over annual leave, although subject to certain limits, [91] and the principle of financial compensation in the event of termination of the employment relationship confirm, in my view, that mechanism for the capitalisation of annual leave entitlement, which fundamentally differentiates it from the right to weekly rest.

82 See judgment of 14 May 2019, *CCOO* (C-55/18, EU:C:2019:402, paragraph 43 and the case-law cited).

83 See judgment of 9 November 2017, *Maio Marques da Rosa* (C-306/16, EU:C:2017:844, paragraph 51).

84 See judgment of 11 April 2019, *Syndicat des cadres de la sécurité intérieure* (C-254/18, EU:C:2019:318, paragraph 31).

85 See judgment of 9 November 2017, *Maio Marques da Rosa* (C-306/16, EU:C:2017:844, paragraph 48).

86 See judgment of 11 April 2019, *Syndicat des cadres de la sécurité intérieure* (C-254/18, EU:C:2019:318, paragraphs 32 to 34).

87 See judgment of 9 September 2003, *Jaeger* (C-151/02, EU:C:2003:437, paragraph 94).

88 See judgment of 9 September 2003, *Jaeger* (C-151/02, EU:C:2003:437, paragraph 95).

89 See judgments of 20 January 2009, *Schultz-Hoff and Others* (C-350/06 and C-520/06, EU:C:2009:18, paragraph 24), and of 20 November 2018, *Sindicatul Familia Constanța and Others* (C-147/17, EU:C:2018:926, paragraph 75).

90 See judgments of 18 March 2004, *Merino Gómez* (C-342/01, EU:C:2004:160, paragraphs 39 and 41); of 10 September 2009, *Vicente Pereda* (C-277/08, EU:C:2009:542, paragraph 23); and of 30 June 2016, *Sobczyszyn* (C-178/15, EU:C:2016:502, paragraph 32).
In that regard, the rules governing annual leave are different from those governing the weekly rest period, in that annual leave is not regular and repetitive in nature.

91 See judgment of 29 November 2017, *King* (C-214/16, EU:C:2017:914, paragraphs 54 and 55 and the case-law cited).

108. All of those elements lead me to take the view that, if an event giving rise to special paid leave coincides with a weekly rest period,[92] the flexibility with which Member States may implement the requirements of Directive 2003/88,[93] in accordance with the objectives pursued by it, renders ineffective any reasoning by analogy with that adopted by the Court in relation to annual leave and leave intended to restore the worker's state of health, in that it is based on the finding that those types of leave have different purposes.

109. Consequently, I propose that the Court should rule that, on account of the specific nature of the rules governing the weekly rest period, Article 5 of Directive 2003/88 must be interpreted to the same effect as Article 7 of that directive.

V. Conclusion

110. In the light of the foregoing considerations, I propose that the Court reply as follows to the questions referred for a preliminary ruling by the Audiencia Nacional (National High Court, Spain):

Primarily:

– national rules and collective agreements which provide for the granting of special paid leave to enable workers to take time off on working days in order to meet their personal or family obligations do not come within the scope 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.

In the alternative:

– Articles 5 and 7 of Directive 2003/88 do not preclude national rules and collective agreements which do not provide for the granting of special paid leave in cases where the circumstances justifying entitlement to the leave arise on days which are not working days.

92 Furthermore, I doubt whether such coincidence is likely in the case of foreseeable circumstances (see footnote 70 of this Opinion).

93 See judgment of 9 November 2017, *Maio Marques da Rosa* (C-306/16, EU:C:2017:844, paragraphs 46 to 48).