Reports of Cases

OPINION OF ADVOCATE GENERAL
HOGAN
delivered on 8 July 2021 [1]

Case C-217/20

XXXX
v
Staatssecretaris van Financiën

(Request for a preliminary ruling from the Rechtbank Overijssel, zittingsplaats Zwolle (District Court, Overijssel, sitting in Zwolle, Netherlands))

(Reference for a preliminary ruling – Social policy – Protection of the health and safety of workers – Directive 2003/88/EC – Article 7(1) – Right to annual leave – Level of remuneration – Reduced remuneration due to unfitness for work)

I. Introduction

1. Over the years, the Court has been called upon on many occasions to interpret Article 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] One feature of Article 7 of that directive, however, that has not been scrutinised by the Court until now is the amount of remuneration due to a worker if that worker decides to take annual leave while he or she is on (long-term) sick leave. The consequences of such a ruling could vary greatly in the different Member States. As the Commission has pointed out in its written submissions, if there is a state-mandated provision for sick pay, the percentage of the monthly gross wage paid as sick pay varies between 25% and 100% in the different Member States and depends greatly on various factors, such as the duration of the employment contract, the worker's status, the existence of collective agreements and the type of injury/disease. [3]

2. That is, in essence, the issue addressed by the questions referred to the Court by the Rechtbank Overijssel, zittingsplaats Zwolle (District Court, Overijssel, sitting in Zwolle, Netherlands).

1 Original language: English.

2 OJ 2003 L 299, p. 9.

3 The Commission relies on the figures contained in the Spasova, S., Bouget, D., Belletti, C., Vanhercke, B., 'Sickness benefits in the EU: making sense of diversity', ETUI Policy Brief No 4/2020 of the European Trade Union Institute. In countries without state-mandated provisions, sick pay is at the discretion of the employer or stems from collective agreements. As the Commission further points out, in some Member States such payments are not made (or are, after a certain period of time, no longer made) by the employer itself but rather by the social security system concerned (these are referred to as 'sickness benefits'). As we are dealing with the amount of the remuneration due to a worker during paid annual leave rather than during sick leave, I will not go into any detail here. If one were to come to the conclusion that Article 7(1) of Directive 2003/88 allowed for a reduced remuneration during paid annual leave, further questions would arise as to what might be the basis of such a reduced remuneration in cases where a worker is entitled to sickness benefits at the time that he takes his annual leave.

II. Legal framework

A. EU law

3. Article 7 of Directive 2003/88, entitled 'Annual leave', is worded as follows:

'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.'

B. Netherlands law

4. According to Article 22(1) of the Algemeen Rijksambtenarenreglement (General Civil Service Regulations; 'the ARAR') civil servants are entitled to annual leave on full pay.

5. Article 37 of the ARAR provides in its first and fifth paragraphs:

'1. In the case of unfitness for work on account of illness, a civil servant shall be entitled to continued payment of his remuneration for a period of 52 weeks. In the event of continued unfitness, he is then entitled to continued payment of 70% of his remuneration.

…

5. By way of derogation from the first paragraph, the civil servant shall be entitled, even after the end of the period of 52 weeks referred to in the first paragraph, to continued payment of his remuneration for the number of hours performed or would have been performed by him had that work been offered to him.'

III. The facts of the main proceedings

6. The applicant is a civil servant, who has been employed by the Belastingdienst (Netherlands tax authorities) since 1 March 2002. Since 1 November 2014 he has been employed as an investigating officer. However, on 24 November 2015, he was declared and has since that date been partially unfit for work on a long-term basis due to illness. In July and August 2017, which is the relevant time period here, he took part in a reintegration programme.

7. Pursuant to Article 37(1) of the ARAR, the applicant was paid 100% of his usual remuneration for the first year of his illness. Since 24 November 2016, he has continued to be paid at the rate of 70% of that amount. Pursuant to Article 37(5) of the ARAR, the applicant was paid at the rate of 100% for the hours for which he was considered fit for and performed work. [4]

[4] As the Netherlands Government explained in its observations, an occupational health medical practitioner makes an individual assessment of the state of health of the civil servant concerned and then recommends the number of hours per week he or she is able to work.

8. The applicant took annual leave for the period from 25 July 2017 to 17 August 2017. According to the salary slips for the months of July and August 2017, the applicant was paid – as he had been during the time when he did not take his annual leave – at the rate of 70% for the hours for which he was unfit for work during the leave period and at the rate of 100% for the hours for which he was deemed fit for work (to the extent that he was able to work in the context of his reintegration).

9. The applicant raised an objection with regard to the amount of his remuneration during that period of annual leave. He believes that he is entitled to full remuneration during the leave taken, that is to say also for the hours during which he was unfit for work. By decision of 13 October 2017, the Netherlands tax authorities declared the applicant's objections unfounded. The applicant appealed against that decision before the referring court.

10. The applicant relies in that regard on the provisions of Article 22 of the ARAR, on Directive 2003/88 and on the case-law of the Court, in particular on the Court's findings in *Schultz-Hoff and Others*[5]. The applicant also refers to Article 31(2) of the Charter of Fundamental Rights of the European Union ('the Charter').

IV. The questions referred for a preliminary ruling and the procedure before the Court

11. That is the factual and legal context in which the referring court decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 7(1) of [Directive 2003/88] be interpreted as meaning that a worker does not lose his remuneration, or part thereof, because he [or she] exercises his [or her] right to annual leave? Or should that provision be interpreted as meaning that a worker retains [his or her] remuneration while exercising [his or her] right to annual leave, irrespective of the reason for not working during the leave period?

(2) Must Article 7(1) of [Directive 2003/88] be interpreted as precluding national provisions and practices whereby a worker who is incapacitated for work due to illness, when taking his [or her] annual leave, retains his [or her] remuneration at the level it was immediately prior to his [or her] taking annual leave, even if, on account of the long duration of his [or her]incapacity for work, that remuneration is lower than that paid in the event of full fitness for work?

(3) Must the entitlement of every worker to paid annual leave under Article 7 of [Directive 2003/88] and under settled EU case-law be interpreted as meaning that reducing that remuneration during leave taken during incapacity for work runs counter to that entitlement?'

12. Written observations were submitted by the Netherlands Government and by the European Commission.

V. Analysis

13. By its three questions the referring court wishes to know whether Article 7(1) of Directive 2003/88 must be interpreted as precluding national legislation that provides that a worker who is fully or partially unfit for work purposes and who takes his or her annual leave from being paid a

[5] Judgment of 20 January 2009 (C-350/06 and C-520/06, EU:C:2009:18).

reduced remuneration – at the same rate as that paid during long-term sick leave – during that period of annual leave.[6] All three questions may therefore conveniently be dealt with at the same time.

14. The wording of Article 7(1) of Directive 2003/88 does little to help answer that question. It merely states that 'every worker is entitled to *paid* annual leave of at least four weeks'.[7] There is, however, a well-developed case-law of the Court on Article 7 of Directive 2003/88 which describes the general working of that provision.

15. First, the Court has found that Article 7(1) of Directive 2003/88 – a provision from which that directive allows no derogation[8] – provides that every worker is entitled to paid annual leave of at least four weeks and that that right to paid annual leave must be regarded as a particularly important principle of EU social law.[9] It is, as a principle of EU social law, not only particularly important, but is also expressly recognised by Article 31(2) of the Charter, which Article 6(1) TEU recognises as having the same legal value as the Treaties.[10]

16. Second, according to the case-law of the Court, Directive 2003/88 treats the entitlement to annual leave and to a payment on that account as being two aspects of a single right. The purpose of the requirement of payment for that leave is to put the worker, during such leave, in a position which is, as regards remuneration, comparable to periods of work.[11]

17. There are therefore two strands to the case-law of the Court, one dealing with the entitlement to be granted annual leave and in particular its *duration* and the other dealing with the question of *remuneration*. Although the reference for a preliminary ruling addresses only the question of remuneration, I propose briefly to examine the strand regarding *duration* in order to compare the principles applied in both of these strands.

18. With regard to the first strand, the duration of annual leave granted according to Article 7(1) of Directive 2003/88, the Court has found that the entitlement to paid annual leave must, in principle, be calculated by reference to the periods of actual work completed under the employment contract.[12] The reason for that is that it is the purpose of the right to paid annual leave conferred on every worker by Article 7 of Directive 2003/88, to enable the worker both to

6 The reference for a preliminary ruling has not specified whether the period of annual leave taken concerns the minimum period guaranteed by Article 7(1) of Directive 2003/88. While Member States may grant a longer period of annual leave under national law, Article 7(1) of Directive 2003/88 does not govern such an additional period and my assessment is therefore confined to annual leave taken during this minimum period ('paid annual leave').

7 Emphasis added. It should also be pointed out that Directive 2003/88 also applies to civil servants, as, according to Article 1(3) of the directive, it 'shall apply to all sectors of activity, both public and private …'. Any reference to 'workers' in this Opinion therefore applies equally to civil servants.

8 See Article 17 of Directive 2003/88 allowing for derogations. That provision, however, allows no derogation in respect of Article 7 of that directive, as the Court has already found in its judgments of 26 June 2001, *BECTU* (C-173/99, EU:C:2001:356, paragraph 41), and of 24 January 2012, *Dominguez* (C-282/10, EU:C:2012:33, paragraph 35).

9 See, amongst others, judgments of 11 November 2015, *Greenfield* (C-219/14, EU:C:2015:745, paragraph 26); of 30 June 2016, *Sobczyszyn* (C-178/15, EU:C:2016:502, paragraph 19); and of 25 June 2020, *Varhoven kasatsionen sad na Republika Bulgaria and Iccrea Banca* (C-762/18 and C-37/19, EU:C:2020:504, paragraph 53).

10 Judgments of 11 November 2015, *Greenfield* (C-219/14, EU:C:2015:745, paragraph 27); of 30 June 2016, *Sobczyszyn* (C-178/15, EU:C:2016:502, paragraph 20); of 13 December 2018, *Hein* (C-385/17, EU:C:2018:1018, paragraph 23); and of 25 June 2020, *Varhoven kasatsionen sad na Republika Bulgaria and Iccrea Banca* (C-762/18 and C-37/19, EU:C:2020:504, paragraph 54). I will not consider Article 31(2) of the Charter. As Advocate General Bobek has already pointed out in his Opinion in *Hein* (C-385/17, EU:C:2018:666, point 57): 'That provision merely states, in a general and abstract way, that every worker has the right to … an annual period of paid leave. The Charter does not even state the minimum duration of guaranteed annual leave, let alone what rules govern the method of calculation of remuneration while on annual leave.'

11 Judgments of 20 January 2009, *Schultz-Hoff and Others* (C-350/06 and C-520/06, EU:C:2009:18, paragraph 60 and the case-law cited), and of 29 November 2017, *King* (C-214/16, EU:C:2017:914, paragraph 35).

12 Judgments of 13 December 2018, *Hein* (C-385/17, EU:C:2018:1018, paragraph 27).

rest from carrying out the work he or she is required to do under his or her contract of employment as well as to enjoy a period of relaxation and leisure.[13] Therefore, the Court has held that if a worker works only part time, any reduction of the duration of annual leave to be granted by comparison to that granted for a period of full-time employment according to the principle *pro rata temporis* is, in essence at least, objectively justifiable.[14]

19. These considerations do not, however, apply in the case of sick leave. It is clear from the Court's settled case-law that it considers that Directive 2003/88 does not make any distinction between workers who are absent from work on sick leave – whether short-term or long-term – during the leave year and those who have in fact worked in the course of that year. It follows, in turn, that with regard to workers on sick leave which has been duly granted, the right to paid annual leave conferred by Directive 2003/88 itself on all workers cannot be made subject by a Member State to a condition concerning the obligation actually to have worked during the leave year laid down by that State. Rather, with regard to entitlement to paid annual leave, workers who are absent from work on sick leave during the reference period are to be treated in the same way as those who have in fact worked during that period.[15]

20. Apart from the fact that Directive 2003/88 does not make any such distinction, the reasons for this are two-fold. First, the purposes of the entitlement to annual leave and of the entitlement to sick leave are different. Whereas annual leave aims to provide the worker with an opportunity to rest from the demands of work and to enjoy a period of relaxation and leisure, sick leave is given to the worker so that he or she can recover from an illness that has caused him or her to be unfit for work.[16] Second, unfitness for work owing to sickness is not foreseeable and is beyond the worker's control. That aspect is also included in Article 5(4) of Convention No 132 of the International Labour Organisation of 24 June 1970 concerning Annual Holidays with Pay, as revised, which counts absences on account of illness among absences from work 'for such reasons beyond the control of the employed person concerned' which must be 'counted as part of the period of service'.[17] As per recital 6 of Directive 2003/88, the principles of that Convention should be taken account of.

21. That means that, although the entitlement to paid annual leave according to Article 7(1) of Directive 2003/88 must generally be calculated with regard to periods of actual work completed under the employment contract, that is not the case if a person is on sick leave.

[13] See, inter alia, judgments of 20 January 2009, *Schultz-Hoff and Others* (C-350/06 and C-520/06, EU:C:2009:18, paragraph 25), and of 13 December 2018, *Hein* (C-385/17, EU:C:2018:1018, paragraph 26).

[14] See to that effect, judgment of 22 April 2010, *Zentralbetriebsrat der Landeskrankenhäuser Tirols* (C-486/08, EU:C:2010:215, paragraph 33), on the basis of Clause 4(2) of the framework agreement on part-time work, concluded on 6 June 1997, 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) as amended by Council Directive 98/23/EC of 7 April 1998 (OJ 1998 L 131, p. 10). The same rationale has been applied to cases where the working hours and days changed from week to week (judgment of 11 November 2015, *Greenfield* (C-219/14, EU:C:2015:745, paragraph 29), as well as to cases of 'short-time working' ('*Kurzarbeit*') (see judgment of 13 December 2018, *Hein* (C-385/17, EU:C:2018:1018, paragraphs 27 to 29), even to the extent of there being no entitlement to annual leave in the case of the application of 'zero hours short-time working' ('*Kurzarbeit Null*') in a case in which the worker's obligation to work is suspended in its entirety (see judgment of 8 November 2012, *Heimann and Toltschin* (C-229/11 and C-230/11, EU:C:2012:693, paragraph 36)). In the latter judgment, the Court, in paragraph 32, qualified workers on short-time working as 'temporary part-time workers'.

[15] See, inter alia, judgments of 20 January 2009, *Schultz-Hoff and Others* (C-350/06 and C-520/06, EU:C:2009:18, paragraphs 39 to 41); of 24 January 2012, *Dominguez* (C-282/10, EU:C:2012:33, paragraph 20 and 30); and of 4 October 2018, *Dicu* (C-12/17, EU:C:2018:799, paragraph 29).

[16] Judgment of 21 June 2012, *ANGED* (C-78/11, EU:C:2012:372, paragraph 19 and the case-law cited).

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

22. I will now turn to the second strand of the Court's case-law, namely the question of remuneration. As Advocate General Bobek has already pointed out in his Opinion in *Hein*, the principle *pro rata temporis* – and I would add, any pro rata principle – which is used to calculate the *duration* of annual leave, except if a person is on sick leave, has never been applied to the right to *remuneration* for annual leave by the Court.[18] That position remains unchanged after the Court's judgment in *Hein*.[19]

23. It is the settled case-law of the Court that the expression 'paid annual leave' in Article 7(1) of Directive 2003/88 means that, for the duration of annual leave within the meaning of that directive, remuneration must be maintained. That implies that workers must receive their normal remuneration for that period of rest.[20]

24. The Netherlands Government argues that Directive 2003/88 does not provide for any requirements regarding the structure of remuneration. Therefore, the Member States are free to determine such a structure. In that government's opinion, Article 7(1) of Directive 2003/88 merely means that the worker's remuneration (as it was prior to that worker's annual leave, according to the national rules) must be maintained.[21] As there is no separate way to calculate payment during sick leave according to Netherlands law and practice, the civil servant in the present case retains the amount of remuneration that he or she received prior to taking his or her annual leave. According to that government, maintaining the 'normal remuneration' means that there must be no causal link between the taking of annual leave and the reduction in remuneration and that the worker must, before, during and after his or her annual leave receive the remuneration that he or she would have received, had he or she not taken annual leave.

25. These arguments do not, I think, sufficiently take account of the Court's case-law. The Court has held in *Hein*, that, 'although the structure of the ordinary remuneration of a worker is determined, as such, by the provisions and practices governed by the law of the Member States, [such] structure cannot affect the worker's right to enjoy, during his period of rest and relaxation, economic conditions which are comparable to those *relating to the exercise of his employment*.'[22] It further held that the purpose of the requirement of payment for annual leave is to put the worker during such leave in a position which is, as regards remuneration, *comparable to periods of work*.[23] That second strand of the Court's case-law aims at ensuring that workers are in a position to take annual leave without having to fear financial loss.[24] The considerations made regarding the duration of paid annual leave, namely that the worker has to rest from work done, is not taken into account here.

18 C-385/17, EU:C:2018:666, point 47.

19 Judgment of 13 December 2018 (C-385/17, EU:C:2018:1018).

20 Judgment of 13 December 2018, *Hein* (C-385/17, EU:C:2018:1018, paragraph 32 and the case-law cited).

21 While the Dutch wording of Directive 2003/88 does appear to focus more on the 'maintenance' of the pay ('jaarlijkse vakantie met behoud van loon'), this is not generally the case with other language versions. The French ('congé annuel payé'), the German ('bezahlten Mindestjahresurlaub'), the Spanish ('vacaciones anuales retribuidas'), the Italian ('ferie annuali retribuite'), the Portuguese ('férias anuais remuneradas') and the Swedish version ('årlig betald semester') are no more specific in that respect than the English version which speaks of 'paid annual leave'. The consequences of that difference are limited, though, as the Court has held that 'paid annual leave' means that 'the remuneration must be maintained'. It specified further though, that that means that 'workers must receive their normal remuneration for that period of rest'. See point 23 of the present Opinion.

22 Judgment of 13 December 2018 (C-385/17, EU:C:2018:1018, paragraph 34 and the case-law cited). Emphasis added.

23 Ibid., paragraph 33.

24 For a calculation, see judgment of 15 September 2011, *Williams and Others* (C-155/10, EU:C:2011:588, paragraphs 24, 25 and 28) with respect to the components that have to be taken into account for the calculation if the salary consists of several components.

26. In order to guarantee that the worker receives remuneration comparable to periods of work, the reference point for the assessment of the remuneration is the time when the worker was actually working. The fact that the taking of paid annual leave is not the reason for the reduction in his or her remuneration cannot justify a remuneration lower than the one that he or she receives while he or she performs work. Contrary to what the Netherlands Government argues, its opinion that Article 7(1) of Directive 2003/88 only obliges Member States to prevent a decrease in remuneration as a result of the taking of annual leave cannot be reconciled with the Court's case-law.

27. This is in line with the purpose of Article 7 of Directive 2003/88. According to the Court's settled case-law, in order to ensure compliance with the fundamental workers' right to paid annual leave affirmed in EU law, Article 7 of Directive 2003/88 may not be interpreted restrictively at the expense of the rights that workers derive from it.[25] The Court has stressed that Article 7(1) of Directive 2003/88 is intended to enable the worker actually to take the leave to which he or she is entitled.[26] Accordingly, an allowance, the amount of which is just sufficient to ensure that there is no serious risk that the worker will not take his or her leave, will not satisfy the requirements of EU law.[27]

28. First, it might be argued that the fact that the remuneration is the same as the sick pay does not discourage that worker from taking his or her annual leave because he or she would not receive a higher remuneration if he or she did not take annual leave at that point in time. Indeed, if a worker wanted to prevent such a reduction in remuneration he or she would only have to wait and take his or her annual leave once that worker was once again fully fit to perform the work required. The worker does not risk to lose his or her right to paid annual leave if he or she postpones his or her annual leave as the case-law of the Court protects the worker's right to paid annual leave from being extinguished at the end of the leave year and/or of a carry-over period laid down by national law.[28]

29. In that respect, while accepting that the law must not deter a worker from taking annual leave, one might nonetheless argue there is no reason to provide for an encouragement in taking that leave during periods of full or partial unfitness for work either. This can be argued in the present case because the worker might receive a higher remuneration than the sick pay he would otherwise receive if he were not to take annual leave at that point in time.

30. With respect, however, I cannot agree with that argument. The Court has held that Article 7(1) of Directive 2003/88 does not, as a rule, preclude national legislation or practices according to which a worker on sick leave is not entitled to take paid annual leave during his or her sick leave, provided however that the worker in question has the opportunity to exercise the right conferred by that directive during another period.[29] The Netherlands law and practice evidently does not provide for such a rule, at least not for the civil servant concerned in the present

[25] Judgments of 12 June 2014, *Bollacke* (C-118/13, EU:C:2014:1755, paragraph 22), as well as of 6 November 2018, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften* (C-684/16, EU:C:2018:874, paragraph 31).

[26] Judgment of 6 November 2018, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften* (C-684/16, EU:C:2018:874, paragraph 31).

[27] Judgment of 15 September 2011, *Williams and Others* (C-155/10, EU:C:2011:588, paragraph 21), with reference to the Opinion of Advocate General Trstenjak in the same case (EU:C:2011:403, point 90).

[28] See, inter alia, judgments of 20 January 2009, *Schultz-Hoff and Others* (C-350/06 and C-520/06, EU:C:2009:18, paragraph 49), and of 25 June 2020, *Varhoven kasatsionen sad na Republika Bulgaria and Iccrea Banca* (C-762/18 and C-37/19, EU:C:2020:504, paragraph 63). Regarding the possibility of limiting that carry-over period, see judgment of 22 November 2011, *KHS* (C-214/10, EU:C:2011:761, paragraphs 34, 38 and 39).

[29] Judgment of 20 January 2009, *Schultz-Hoff and Others* (C-350/06 and C-520/06, EU:C:2009:18, paragraphs 28 and 29).

case.[30] In those cases where national law does allow for annual leave to be taken during the period of sick leave, there is, however, no justification for any variation of the remuneration during such a leave of absence.

31. While it is for the Member States to lay down, in their domestic legislation, conditions for the exercise and implementation of the right to paid annual leave, by prescribing the specific circumstances in which workers may exercise that right, they may not make the very existence of that right subject to any preconditions. That would, however, be the case if one were to interpret the term 'paid' in 'paid annual leave' in such a way as to allow for lower remuneration to be paid according to whether a worker exercises that right while he or she is (partially or fully) unfit for work or at another time. In other words, the 'value' of the right to paid annual leave cannot depend on when it is taken.

32. The Court in *Hein* did in fact consider a situation where a worker did not receive remuneration which corresponded to the normal remuneration that he received during periods of actual work. As this occurred in the context of a collective agreement, it could be argued that a lower remuneration during annual leave was compensated by other advantages arising from the collective agreement.[31] The Court rejected that argument. It found that that would undermine the right to paid annual leave, 'an integral part of which is the right for the worker to enjoy, during his period of rest and relaxation, economic conditions which are comparable to those relating to the exercise of his employment'.[32]

33. There is no valid reason why the assessment should be different in the case of sick leave where there are no such factors that might offset the negative effects of a decrease in the remuneration during the minimum paid annual leave guaranteed under Article 7(1) of Directive 2003/88.

34. In cases dealing with the first strand of the Court's case-law referred to above, regarding the duration of paid annual leave, the Court has found that 'workers who are absent from work on sick leave during the reference period are to be treated in the same way as those who have in fact worked during that period'.[33] As Directive 2003/88 treats entitlement to annual leave and to payment on that account as being two aspects of a single right, there is no basis for distinguishing between the entitlement and the payment when it comes to treating workers who are absent from work on sick leave in the same way as those who have in fact worked during that period. Therefore, it cannot make any difference whether the worker is fully or partially unfit for work at the time that he or she takes his or her paid annual leave and neither is it possible to apply a pro rata approach to the remuneration to be paid during periods of paid annual leave depending on whether a worker is fully or partially unfit for work.

[30] This is not precluded by Directive 2003/88 either. See, ibid., paragraph 31.

[31] This was broadly argued by the defendant and the German Government, see Opinion of Advocate General Bobek in *Hein* (C-385/17, EU:C:2018:666, point 55), as well as judgment of 13 December 2018, *Hein* (C-385/17, EU:C:2018:1018, paragraphs 38 to 40).

[32] Judgment of 13 December 2018, *Hein* (C-385/17, EU:C:2018:1018, paragraph 43).

[33] Judgments of 4 October 2018, *Dicu* (C-12/17, EU:C:2018:799, paragraph 29), and of 25 June 2020, *Varhoven kasatsionen sad na Republika Bulgaria and Iccrea Banca* (C-762/18 and C-37/19, EU:C:2020:504, paragraph 60).

VI. Conclusion

35. Accordingly, in the light of the foregoing considerations, I propose that the Court should answer the questions referred by the Rechtbank Overijssel, zittingsplaats Zwolle (District Court, Overijssel, sitting in Zwolle, Netherlands) as follows:

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 must be interpreted as precluding national provisions and practices, such as that at issue in the main proceedings, whereby the amount of a worker's remuneration during his or her paid annual leave which he or she takes while he or she is (fully or partially) unfit for work is reduced to the level of the remuneration that he or she would receive during such (full or partial) unfitness for work.