



## Reports of Cases

### JUDGMENT OF THE COURT (First Chamber)

12 June 2014\*

(Request for a preliminary ruling — Social policy — Directive 2003/88/EC — Organisation of working time — Paid annual leave — Allowance in lieu in the event of death)

In Case C-118/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landesarbeitsgericht Hamm (Germany), made by decision of 14 February 2013, received at the Court on 14 March 2013, in the proceedings

**Gülay Bollacke**

v

**K + K Klaas & Kock B.V. & Co. KG,**

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, E. Levits (Rapporteur), M. Berger, S. Rodin and F. Biltgen, Judges

Advocate General: M. Wathelet,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- K + K Klaas & Kock B.V. & Co. KG, by M. Scheier, Rechtsanwalt,
- the German Government, by T. Henze and J. Möller, acting as Agents,
- the Danish Government, by M. Wolff and V. Pasternak Jørgensen, acting as Agents,
- the Hungarian Government, by M. Fehér, K. Szijjártó and K. Molnár, acting as Agents,
- the United Kingdom Government, by L. Christie, acting as Agent, and by E. Dixon, Barrister,
- the European Commission, by M. van Beek and F. Schatz, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

\* Language of the case: German.

gives the following

### Judgment

- 1 This request for a preliminary ruling concerns the interpretation of 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 (OJ 2003 L 299, p. 9).
- 2 The reference has been made in proceedings between Mrs Bollacke and the former employer of her late husband, K + K Klaas & Kock B.V. & Co. KG ('K + K') concerning the interested party's right to receive an allowance in lieu of paid annual leave not taken by Mr Bollacke at the date of his death.

### Legal context

#### *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.'
- 4 Article 15 of Directive 2003/88, entitled 'More favourable provisions', provides that:  

'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.'
- 5 Article 17 of that directive provides that Member States may derogate from certain provisions of that directive. However, no derogation is allowed with regard to Article 7 thereof.

#### *German law*

- 6 Paragraph 7(4) of the Federal Law on Paid Leave (Bundesurlaubsgesetz) of 8 January 1963 (BGBl. 1963, p. 2), in the amended version of 7 May 2002 (BGBl. 2002 I, p. 1529), provides that:  

'If, because of the termination of the employment relationship, the leave can no longer be authorised in full or in part, an allowance in lieu thereof shall be paid.'
- 7 According to Paragraph 1922(1) of the Civil Code (Bürgerliches Gesetzbuch), upon the death of a person (devolution of an inheritance), that person's property (inheritance) passes as a whole to one or more than one other persons (heirs).

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

- 8 Mrs Bollacke is the wife and sole beneficiary of her late husband, who was employed by K + K from 1 August 1998 to 19 November 2010, the date of his death.
- 9 Mr Bollacke had been seriously ill since 2009. During that year he was unfit for work for more than eight months. He was again unable to work from 11 October 2010 until the date of his death.
- 10 It is not in dispute that, on the date of his death, Mr Bollacke was entitled to a minimum of 140.5 days of annual leave outstanding.
- 11 By letter of 31 January 2011, Mrs Bollacke submitted an application to K + K for an allowance in lieu of those days of leave outstanding. K + K rejected that application on the ground that there were doubts that an inheritable entitlement could exist.
- 12 The court of first instance, hearing that application by Mrs Bollacke, also rejected the application, on the ground that, under the case-law of the Bundesarbeitsgericht (Federal Labour Court), entitlement to an allowance in lieu of paid annual leave outstanding at the end of the employment relationship does not arise where that relationship is terminated by the death of the employee. That judgment being the subject of an appeal, the referring court raises the question of the validity of that national case-law in the light of the case-law of the Court relating to Article 7 of Directive 2003/88.
- 13 In those circumstances the Landesarbeitsgericht Hamm decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘1. Is Article 7(1) of Directive 2003/88/EC to be interpreted as precluding national legislation or practice according to which the entitlement to a minimum period of paid annual leave is lost in its entirety on the death of the worker, namely, not only the entitlement to release from the obligation to work, which can no longer be implemented, but also the entitlement to payment of remuneration in respect of annual leave?
  2. Is Article 7(2) of Directive 2003/88 to be interpreted as meaning that the entitlement to an allowance in lieu of a minimum period of paid annual leave on termination of the employment relationship attaches to the person of the worker in such a way that that entitlement accrues only to him, in order to enable him to realise at a later date the purposes of rest and leisure associated with the granting of paid annual leave?
  3. Is Article 7(1) of Directive 2003/88 to be interpreted as meaning that, having regard to the protection of the safety and health of workers, the employer is obliged, when organising working time, actually to grant the worker leave by the end of the calendar year or, at the latest, by the end of a carry-over period applicable to the employment relationship, regardless of whether or not the worker has submitted an application for leave?’

### **Consideration of the three questions referred**

- 14 By its three questions, which it is appropriate to consider together, the national court asks, in essence, whether Article 7 of Directive 2003/88 must be interpreted as precluding national legislation or practice, such as those at issue in the main proceedings, which provide that the entitlement to paid annual leave is lost without conferring entitlement to an allowance in lieu of leave outstanding, where the employment relationship is terminated by the death of the employee and, if so, whether receipt of such an allowance depends on a prior application by the applicant.

- 15 In that regard it should be noted, first, that, according to the Court's settled case-law, the entitlement of every worker to paid annual leave must be regarded as a particularly important principle of European Union social law from which there may be no derogations and whose implementation by the competent national authorities must be confined within the limits expressly laid down by Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (OJ 1993 L 307, p. 18) itself, that directive having been codified by Directive 2003/88 (see *Schultz-Hoff and Others*, C-350/06 and C-520/06, EU:C:2009:18, paragraph 22 ; *KHS*, C-214/10, EU:C:2011:761, paragraph 23; and *Dominguez*, C-282/10, EU:C:2012:33, paragraph 16).
- 16 Moreover, it must be noted, first, that Article 7 of Directive 2003/88 is not one of the provisions from which the directive expressly allows derogation (see *Schultz-Hoff and Others*, EU:C:2009:18, paragraph 24), and, second, that that directive treats entitlement to annual leave and to a payment on that account as being two aspects of a single right.
- 17 Finally, the Court has previously stated that when the employment relationship has terminated, and, therefore, it is in fact no longer possible to take paid annual leave, Article 7(2) of Directive 2003/88 provides that the worker is entitled to an allowance in lieu in order to prevent all enjoyment by the worker of that right to paid annual leave, even in pecuniary form, being lost because of that 'impossibility' (see, to that effect, *Schultz-Hoff and Others*, EU:C:2009:18, paragraph 56, and *Neidel*, C-337/10, EU:C:2012:263, point 29).
- 18 Consequently, the Court has held that Article 7(2) of Directive 2003/88 must be interpreted as precluding national legislation or practices which provide that, on termination of the employment relationship, no allowance in lieu of paid annual leave not taken is to be paid to a worker who has been on sick leave for the whole or part of the leave year and/or of a carry-over period, which was the reason why he could not exercise his right to paid annual leave (*Schultz-Hoff and Others*, EU:C:2009:18, paragraph 62).
- 19 It is in the light of that case-law that it must be established whether, when the event that terminated the employment relationship is the worker's death, such an event may preclude entitlement to paid annual leave being transformed into an entitlement to an allowance in lieu.
- 20 In that regard, it must be stated that the entitlement to paid annual leave constitutes only one of two aspects of an essential principle of EU social law and that that principle also includes the entitlement to a payment (see, to that effect, *Schultz-Hoff and Others*, EU:C:2009:18, paragraph 60 and the case-law cited).
- 21 In fact, the expression 'paid annual leave', used by the EU legislature, in, inter alia, Article 7 of Directive 2003/88, means that, for the duration of annual leave within the meaning of that directive, the worker's remuneration must be maintained. In other words, workers must continue to receive their normal remuneration throughout that period of rest and relaxation (see, *Robinson-Steele and Others*, C-131/04 and C-257/04, EU:C:2006:177, paragraph 50; *Schultz-Hoff and Others*, EU:C:2009:18, paragraph 58; and *Lock*, C-539/12, EU:C:2014:351, paragraph 16).
- 22 In order to ensure respect for that fundamental workers' right affirmed in EU law, the Court may not make a restrictive interpretation of Article 7(2) of Directive 2003/88 at the expense of the rights that workers derive from it (see, to that effect, inter alia, *Heimann and Toltshin*, C-229/11 and C-230/11, EU:C:2012:693, paragraph 23 and the case-law cited, and the order in *Brandes*, C 415/12, EU:C:2013:398, paragraph 29 and the case-law cited).

- 23 Next, it should be noted, as the Hungarian Government puts forward in its observations, that Article 7(2) of Directive 2003/88, as interpreted by the Court, lays down no condition for entitlement to an allowance in lieu other than that relating to the fact, first, that the employment relationship has ended and, secondly, that the worker has not taken all annual leave to which he was entitled on the date that that relationship ended.
- 24 Finally, it should be noted that receipt of financial compensation if the employment relationship has ended by reason of the worker's death is essential to ensure the effectiveness of the entitlement to paid annual leave granted to the worker under Directive 2003/88.
- 25 Indeed, if the obligation to pay annual leave were to cease with the end of the employment relationship because of the worker's death, the consequence of that circumstance would be an unintended occurrence, beyond the control of both the worker and the employer, retroactively leading to a total loss of the entitlement to paid annual leave itself, as affirmed in Article 7 of Directive 2003/88.
- 26 For all those reasons, that provision of Directive 2003/88 cannot therefore be interpreted as meaning that that entitlement may be lost because of the worker's death.
- 27 Moreover, since Article 7(2) of Directive 2003/88 does not impose any condition for entitlement to an allowance in lieu other than that relating to the fact that the employment relationship has ended, it must be held that receipt of such an allowance should not be made subject to the existence of a prior application for that purpose.
- 28 Indeed, on the one hand, that entitlement is conferred directly by the directive without the worker concerned having to take any steps in this regard and, secondly, that entitlement does not depend on conditions other than those which are explicitly provided in the directive, so that the fact that the worker has not previously applied for an allowance in lieu under Article 7(2) of that directive is entirely irrelevant.
- 29 It follows, first, that Article 7 of Directive 2003/88 is not to be interpreted as meaning that the death of a worker that ends the employment relationship relieves the deceased worker's employer of payment of the allowance in lieu to which that worker would ordinarily have been entitled by way of paid annual leave outstanding, and, secondly, that receipt of such an allowance cannot be made subject to the existence of a prior application for that purpose.
- 30 It follows from the foregoing considerations that the answer to the questions referred is that Article 7 of Directive 2003/88 must be interpreted as precluding national legislation or practice, such as those at issue in the main proceedings, which provide that the entitlement to paid annual leave is lost without conferring entitlement to an allowance in lieu of leave outstanding, where the employment relationship is terminated by the death of the worker. Receipt of such an allowance is not to be dependent on a prior application by the interested party.

### **Costs**

- 31 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

**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 must be interpreted as precluding national legislation or practice, such as those at issue in the main proceedings, which**

**provide that the entitlement to paid annual leave is lost without conferring entitlement to an allowance in lieu of leave outstanding, where the employment relationship is terminated by the death of the worker. Receipt of such an allowance is not to be dependent on a prior application by the interested party.**

[Signatures]