



Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

30 June 2016*

(Reference for a preliminary ruling — Organisation of working time — Directive 2003/88/EC — Right to paid annual leave — Teachers — Convalescence leave — Annual leave coinciding with convalescence leave — Right to take the annual leave in another period)

In Case C-178/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Rejonowy dla Wrocławia-Śródmieścia we Wrocławiu X Wydział Pracy i Ubezpieczeń Społecznych (District Court for Wrocław City Centre, Division No 10 for Labour and Social Security, Poland), made by decision of 1 April 2015, received at the Court on 20 April 2015, in the proceedings

Alicja Sobczyszyn

v

Szkoła Podstawowa w Rzeplinie,

THE COURT (Tenth Chamber),

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

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Polish Government, by B. Majczyna, acting as Agent,
- the European Commission, by K. Herbout-Borcza and M. van Beek, acting as Agents,

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

gives the following

* Language of the case: Polish.

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 That issue has been raised in proceedings between Alicja Sobczyszyn and Szkoła Podstawowa w Rzeplinie (Rzeplin Primary School, Poland), her employer, concerning her application to use her entitlement to paid annual leave in respect of a year in which she took convalescence leave.

Legal context

EU law

- 3 Article 1 of Directive 2003/88, headed ‘Purpose and scope’, provides:
 - ‘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 annual leave’
- 4 Article 7 of Directive 2003/88, headed ‘Annual leave’, provides:
 - ‘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.’
- 5 Article 17 of Directive 2003/88 provides that Member States may derogate from certain provisions of the directive. No derogation is allowed with regard to Article 7 of the directive.

Polish law

- 6 The adopted text of the Ustawa — Karta Nauczyciela (Law establishing the Teachers’ Charter) of 26 January 1982 (Dz. U. 2014, No 191, heading 1198; ‘the Teachers’ Charter’) constitutes a specific law laying down the rights and obligations of teachers. The Kodeks Pracy (Labour Code), adopted by the Law of 26 June 1974 (Dz.U. 1974, No 24, heading 141) and as amended, applies to teachers in a subsidiary manner only.
- 7 Article 64 of the Teachers’ Charter is worded as follows:
 - ‘1. Teachers employed in a school where, in the organisation of its work, summer and winter holidays are prescribed shall be entitled to annual leave of a duration corresponding to those holidays, which they shall take during the latter....

3. Teachers employed in schools where there are no prescribed school holidays shall be entitled to 35 working days' annual leave at a time specified in the leave roster.

...

5a. Teachers employed in a school where there are no prescribed school holidays shall, where an employment relationship is entered into or terminated during a calendar year, be entitled to annual leave pro rata to the period for which they have worked, in accordance with separate provisions.'

8 Article 73 of the Teachers' Charter provides:

'1. Teachers employed full-time for an indefinite duration shall, after they have worked in the school for at least seven years, be granted convalescence leave by the school principal in order to follow a course of treatment prescribed by a doctor, for a maximum period of a year on a one-off basis ...

...

5. During the period of convalescence leave, the teacher shall retain the right to his basic monthly salary and any seniority bonus and the right to other employment benefits, including the social benefits referred to in Article 54.

6. No later than two weeks before the end of the convalescence leave, the school principal shall request the teacher's presence for an examination in order to check that there are no contraindications against working in his post.

...

8. The teacher can be granted a further period of convalescence leave no earlier than one year after the date on which the previous period of convalescence leave ended. The total duration of convalescence leave taken by a teacher in his entire career shall not exceed three years.

...

10. The panel doctor treating the teacher shall decide on the need to grant him convalescence leave for the purpose of the prescribed treatment. An appeal against the decision referred to in the first sentence may be brought before the appellate body defined in the provisions adopted on the basis of paragraph 11, and in accordance with the procedure laid down in those provisions. ...'

9 Article 14 of the Labour Code is in Chapter II thereof, headed 'Fundamental rules of labour law'. It provides:

'A worker shall be entitled to rest in accordance with the rules applicable to working time, public holidays and annual leave.'

10 Article 152(1) of the Labour Code is worded as follows:

'A worker shall be entitled to an unbroken period of paid annual leave, hereinafter "leave".'

11 Article 165 of the Labour Code provides:

'If a worker is unable to commence his leave within the specified period for reasons justifying his absence from work, and in particular because of:

(1) temporary unfitness for work owing to illness,

- (2) isolation owing to an infectious/contagious disease,
- (3) call-up for military exercises or military training for a period of up to three months,
- (4) maternity leave,

the employer shall be obliged to postpone the leave until a subsequent date.'

12 Article 166 of the Labour Code states:

'Where days of leave have not been taken because of:

- (1) temporary unfitness for work owing to illness,
- (2) isolation owing to an infectious/contagious disease,
- (3) participation in military exercises or military training for a period of up to three months,
- (4) maternity leave,

the employer shall be obliged to grant them at a later date.'

The dispute in the main proceedings and the question referred for a preliminary ruling

13 Since 2008 Ms Sobczyszyn has been a teacher at the educational establishment Szkoła Podstawowa w Rzeplinie (Rzeplin Primary School), which is her employer.

14 On 1 January 2011 Ms Sobczyszyn acquired entitlement to 35 days' annual leave under Article 64(3) of the Teachers' Charter. From 28 March to 18 November 2011 she was granted convalescence leave by her employer, pursuant to Article 73 of the Teachers' Charter, in order to follow a course of treatment prescribed by a doctor.

15 On 27 April 2012 Ms Sobczyszyn claimed her entitlement to the days of annual leave acquired in respect of 2011 which she had not been able to take because of her convalescence leave. Her employer refused her that entitlement on the ground that, since, under the leave roster for 2011, she was to take her annual leave from 1 to 31 July 2011, her entitlement to annual leave for 2011 had been used up by the period of convalescence leave between those dates.

16 The referring court, before which Ms Sobczyszyn brought an action, has doubts as to whether the national provisions governing the right of teachers to annual leave comply with Article 7 of Directive 2003/88. It states in that regard that the Court of Justice has not yet had the opportunity to rule on the interpretation of that provision of EU law where a period of annual leave overlaps with a period of convalescence leave as provided for by Polish law.

17 In those circumstances, the Sąd Rejonowy dla Wrocławia-Śródmieścia we Wrocławiu X Wydział Pracy i Ubezpieczeń Społecznych (District Court for Wrocław City Centre, Division No 10 for Labour and Social Security, Poland) decided to stay proceedings and refer the following question to the Court for a preliminary ruling:

'Must Article 7 of Directive 2003/88, according to which Member States are to 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, be interpreted as meaning that a teacher who has taken convalescence

leave as provided for in the Teachers' Charter also obtains a right to the annual leave provided for in the general provisions of labour law in the year in which he exercised the right to convalescence leave?'

Consideration of the question referred

- 18 By its question, the referring court asks, in essence, whether Article 7 of Directive 2003/88 must be interpreted as precluding national legislation or a national practice, such as that at issue in the main proceedings, under which a worker who is on convalescence leave, granted in accordance with national law, during the period of annual leave scheduled in the leave roster of the establishment where he is employed may be refused, at the end of his convalescence leave, the right to take his annual leave in a subsequent period.
- 19 First, as is clear from the very wording of Article 7(1) of Directive 2003/88, a provision from which no derogation is permitted by that directive, every worker is entitled to paid annual leave of at least four weeks. That right to paid annual leave must be regarded as a particularly important principle of EU social law, the implementation of which by the competent national authorities must be confined within the limits expressly laid down by Directive 2003/88 itself (judgment of 10 September 2009 in *Vicente Pereda*, C-277/08, EU:C:2009:542, paragraph 18 and the case-law cited).
- 20 Secondly, the right to paid annual leave is, as a principle of EU social law, not only particularly important, but is also expressly laid down in Article 31(2) of the Charter of Fundamental Rights of the European Union, which Article 6(1) TEU recognises as having the same legal value as the Treaties (judgments of 22 November 2011 in *KHS*, C-214/10, EU:C:2011:761, paragraph 37, and of 3 May 2012 in *Neidel*, C-337/10, EU:C:2012:263, paragraph 40).
- 21 Thirdly, the right to paid annual leave cannot be interpreted restrictively (see judgment of 22 April 2010 in *Zentralbetriebsrat der Landeskrankenhäuser Tirols*, C-486/08, EU:C:2010:215, paragraph 29).
- 22 In addition, the Court has already held that Article 7(1) of Directive 2003/88 does not preclude, as a rule, national legislation which lays down conditions for the exercise of the right to paid annual leave expressly conferred by the directive that include even the loss of that right at the end of a leave year, provided, however, that the worker whose right to paid annual leave is lost has actually had the opportunity to exercise that right (judgment of 10 September 2009 in *Vicente Pereda*, C-277/08, EU:C:2009:542, paragraph 19 and the case-law cited).
- 23 It is also clear from the Court's case-law that the purpose of the right to paid annual leave is to enable the worker to rest and to enjoy a period of relaxation and leisure (see judgment of 20 January 2009 in *Schultz-Hoff and Others*, C-350/06 and C-520/06, EU:C:2009:18, paragraph 25).
- 24 The Court has inferred therefrom that, in the event of periods of annual leave and sick leave overlapping, Article 7(1) of Directive 2003/88 must be interpreted as precluding national legislation or practices under which the right to paid annual leave is extinguished at the end of the leave year and/or of a carry-over period laid down by national law where the worker has been on sick leave, for the whole or part of the leave year, and therefore has not actually had the opportunity to exercise that right (see, in particular, judgments of 20 January 2009 in *Schultz-Hoff and Others*, C-350/06 and C-520/06, EU:C:2009:18, paragraph 49, and of 10 September 2009 in *Vicente Pereda*, C-277/08, EU:C:2009:542, paragraph 19).
- 25 Indeed, the Court has held 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 (see, to this effect, judgment of 21 June 2012 in *ANGED*, C-78/11, EU:C:2012:372, paragraph 19 and the case-law cited).

- 26 In the light of those differing purposes of the two types of leave, the Court has concluded that 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 (see judgments of 10 September 2009 in *Vicente Pereda*, C-277/08, EU:C:2009:542, paragraph 22, and of 21 June 2012 in *ANGED*, C-78/11, EU:C:2012:372, paragraph 20).
- 27 It is in the light of those considerations, which are fully transposable to a situation such as that at issue in the main proceedings, in which convalescence leave overlaps with a period of previously scheduled annual leave, that it should be determined whether, having regard to the purpose of the two types of leave in question, which perhaps differs, that overlap is liable to prevent the annual leave acquired by the worker from being taken at a subsequent time.
- 28 In this connection, it should be borne in mind that, whilst it is ultimately for the national court, which alone has jurisdiction to interpret national legislation, to decide whether the purpose of convalescence leave is different from that of paid annual leave defined in Article 7 of Directive 2003/88, as interpreted by the Court, the latter, which is called upon to provide the national court with a useful answer for the purpose of deciding the case brought before it, may provide it, for this purpose, with guidance based on all the material supplied by it, and in particular on the grounds of the order for reference.
- 29 So far as concerns the purpose of the right to convalescence leave as laid down by Polish law, Article 73(1) of the Teachers' Charter states that convalescence leave is granted 'in order to follow a course of treatment prescribed by a doctor', for a maximum period of a year on a one-off basis. Under Article 73(10) thereof, it is the panel doctor treating the teacher who decides on the 'need to grant him convalescence leave for the purpose of the prescribed treatment'. Furthermore, Article 73(6) provides that, two weeks before the end of that leave, the teacher must go for an examination in order to check that there are no contraindications against his resuming work.
- 30 As the referring court has itself noted in its request for a preliminary ruling, the matters set out in the previous paragraph of the present judgment are such as to support the proposition that the convalescence leave at issue in the main proceedings has the objective of improving the state of health of the workers who are prescribed it and, unlike the paid annual leave laid down in Article 7(1) of Directive 2003/88, is not intended to grant those workers a period of relaxation and leisure since they must follow a course of treatment prescribed by a doctor.
- 31 It is in the light of this guidance and of all the factors governing, at national level, grant of the right to convalescence leave that the referring court has the task of determining whether the purpose of that right is different from the purpose of the right to paid annual leave defined in Article 7 of Directive 2003/88, as interpreted by the Court.
- 32 Should the referring court have to conclude that the purposes do differ, the national legislation must lay down an obligation on the employer to grant the worker concerned a different period of annual leave proposed by him which is compatible with any overriding reasons relating to the interests of the employer, without excluding in advance the possibility that that period may fall outside the reference period for the annual leave in question (see, to this effect, judgment of 10 September 2009 in *Vicente Pereda*, C-277/08, EU:C:2009:542, paragraphs 22 and 23).
- 33 As is clear from the Court's case-law, while the positive effect of paid annual leave for the safety and health of the worker is deployed fully if it is taken in the year prescribed for that purpose, namely the current year, the significance of that rest period in that regard remains if it is taken during a later period (see judgments of 6 April 2006 in *Federatie Nederlandse Vakbeweging*, C-124/05, EU:C:2006:244, paragraph 30, and of 20 January 2009 in *Schultz-Hoff and Others*, C-350/06 and C-520/06, EU:C:2009:18, paragraph 30).

- 34 In the light of the foregoing considerations, the answer to the question referred is that Article 7(1) of Directive 2003/88 must be interpreted as precluding national legislation or a national practice, such as that at issue in the main proceedings, under which a worker who is on convalescence leave, granted in accordance with national law, during the period of annual leave scheduled in the leave roster of the establishment where he is employed may be refused, at the end of his convalescence leave, the right to take his paid annual leave in a subsequent period, provided that the purpose of the right to convalescence leave is different from that of the right to annual leave, a matter which is for the national court to determine.

Costs

- 35 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Tenth Chamber) hereby rules:

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 legislation or a national practice, such as that at issue in the main proceedings, under which a worker who is on convalescence leave, granted in accordance with national law, during the period of annual leave scheduled in the leave roster of the establishment where he is employed may be refused, at the end of his convalescence leave, the right to take his paid annual leave in a subsequent period, provided that the purpose of the right to convalescence leave is different from that of the right to annual leave, a matter which is for the national court to determine.

[Signatures]