



Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

25 November 2021 *

(Reference for a preliminary ruling – Social policy – Directive 2003/88/EC – Protection of the safety and health of workers – Article 7(1) – Right to an allowance in lieu of paid annual leave not taken before the end of the employment relationship – Early termination of the employment relationship by the employee)

In Case C-233/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberster Gerichtshof (Supreme Court, Austria), made by decision of 29 April 2020, received at the Court on 4 June 2020, in the proceedings

WD

v

job-medium GmbH, in liquidation,

THE COURT (Seventh Chamber),

composed of I. Ziemele (Rapporteur), President of the Sixth Chamber, acting as President of the Seventh Chamber, T. von Danwitz and A. Kumin, Judges,

Advocate General: G. Hogan,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- WD, by G. Storch and R. Storch, Rechtsanwälte,
- job-medium GmbH, in liquidation, by F. Marhold, Rechtsanwalt,
- the Austrian Government, by A. Posch, J. Schmoll and C. Leeb, acting as Agents,
- the European Commission, by B.-R. Killmann and C. Valero, acting as Agents,

* Language of the case: German.

after hearing the Opinion of the Advocate General at the sitting on 15 April 2021,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of 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 (OJ 2003 L 299, p. 9), and of Article 31 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The request has been made in proceedings between WD and his former employer, job-medium GmbH, in liquidation, concerning the latter's refusal to pay WD an allowance in lieu of annual leave not taken before the end of the employment relationship.

Legal context

EU law

- 3 Recitals 4 and 5 of Directive 2003/88 state:

'(4) The improvement of workers' safety, hygiene and health at work is an objective which should not be subordinated to purely economic considerations.

(5) 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. Community 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.'
- 4 Article 1 of that directive, entitled 'Purpose and scope', provides:

'1. This Directive lays down minimum safety and health requirements for the organisation of working time. ...'
- 5 Article 7 of that directive, entitled 'Annual leave', states:

'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.'
- 6 Article 23 of that directive, entitled 'Level of Protection', is worded as follows:

'Without prejudice to the right of Member States to develop, in the light of changing circumstances, different legislative, regulatory or contractual provisions in the field of working time, as long as the minimum requirements provided for in this Directive are complied with, implementation of this

Directive shall not constitute valid grounds for reducing the general level of protection afforded to workers.’

Austrian law

- 7 Under Article 10 of the Urlaubsgesetz (Law on annual leave) of 7 July 1976 (BGBl. I, 3/2013):

‘1. On the date of termination of the employment relationship, the worker shall be entitled, for the reference year in which the employment relationship is terminated, to a compensatory indemnity as compensation for leave corresponding to the duration of employment during the reference year in relation to the entire reference year. Leave already taken shall be deducted from the annual leave due pro rata temporis ...

2. No compensatory indemnity shall be due if the worker terminates the employment relationship prematurely without cause.

3. With regard to unused leave in respect of previous reference years, the worker is entitled, instead of the allowance for paid leave still due, to an allowance corresponding to the full amount of the allowance for paid leave still due, since the entitlement to leave is not time-barred. ...’.

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

- 8 WD was employed by job-medium from 25 June 2018 to 9 October 2018, the date on which WD terminated the employment relationship by premature and unjustified withdrawal. During the period of employment, WD acquired a right to paid annual leave corresponding to 7.33 days of which 4 days were taken during the period of employment. On the date on which the employment relationship ended, WD still had a leave entitlement of 3.33 days. Relying on Article 10(2) of the Law on annual leave, job-medium refused to pay him an allowance in lieu of those days not taken, equivalent to EUR 322.06.
- 9 Taking the view that that provision is contrary to EU law, WD brought an action seeking payment of that allowance.
- 10 His action was dismissed at first instance and on appeal, on the basis of Article 10(2) of the Law on annual leave.
- 11 Hearing an appeal on a point of law against the decision given on appeal, the Oberster Gerichtshof (Supreme Court, Austria) states that the loss of the right to payment of the allowance in lieu of annual leave not taken, provided for in Article 10(2) of the Law on annual leave, is limited to a situation where the worker withdraws without cause during the employment relationship. In that context, any circumstance in which the worker cannot reasonably be expected to continue the employment relationship constitutes a ‘cause’.
- 12 That court states that the objective of that provision is, on the one hand, to provide an incentive, in so far as it discourages a worker from terminating the employment relationship early without cause and, on the other hand, economic in nature, since it is intended to financially relieve the employer faced with the unforeseeable loss of one of its employees.

- 13 However, that court has doubts as to whether Article 10(2) of the Law on annual leave is compatible with Article 7 of Directive 2003/88, as interpreted by the Court of Justice, and with Article 31(2) of the Charter.
- 14 In those circumstances, the Oberster Gerichtshof (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘1. Is a provision of national law under which no allowance in lieu of paid annual leave is payable in respect of the current last working year, where the worker unilaterally terminates (“withdraws from”) the employment relationship early without cause, compatible with Article 31(2) of the [Charter] and Article 7 of [Directive 2003/88]?
2. If the answer to that question is in the negative:
- Is it necessary to verify additionally if the worker was unable to use up his or her annual leave?
- If so, what are the criteria for that verification?’

Consideration of the questions referred for a preliminary ruling

Admissibility

- 15 Job-medium submits that the questions referred for a preliminary ruling are inadmissible on the ground that the referring court was not required to make a reference to the Court of Justice, since the outcome of the dispute in the main proceedings is obvious in the light of EU law and the existing case-law.
- 16 As a preliminary point, it should be noted that, in the light of the Rules of Procedure of the Court of Justice, the fact that a national court is not required to make a reference to the Court of Justice or that the answer to a request for a preliminary ruling is supposedly obvious in the light of EU law has no bearing on the admissibility of such a request.
- 17 Furthermore, in accordance with the Court’s settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle required to give a ruling (judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)*, C-510/19, EU:C:2020:953, paragraph 25 and the case-law cited).
- 18 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)*, C-510/19, EU:C:2020:953, paragraph 26).

- 19 According to the referring court, WD was refused payment of the allowance in lieu of leave not taken at the end of his employment relationship with job-medium on the basis of Paragraph 10(2) of the Law on annual leave, because he terminated that employment relationship early without cause.
- 20 In the light of those circumstances, the referring court has doubts as to whether that provision is compatible with Article 7(2) of Directive 2003/88 and with Article 31(2) of the Charter.
- 21 It is, consequently, obvious that the questions submitted concern the interpretation of EU law and that the answer to those questions is useful and relevant to the outcome of the dispute before the referring court.
- 22 It follows that the questions referred are admissible.

Substance

The first question

- 23 By its first question, the referring court asks, in essence, whether Article 7 of Directive 2003/88, read in the light of Article 31(2) of the Charter, must be interpreted as precluding a provision of national law under which no allowance in lieu of paid annual leave not taken is payable in respect of the current last year of employment, where the worker unilaterally terminates the employment relationship early without cause.
- 24 As a preliminary point, it must be noted 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 EU 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 Directive 2003/88 (see, to that effect, judgment of 12 June 2014, *Bollacke*, C-118/13, EU:C:2014:1755, paragraph 15 and the case-law cited).
- 25 Article 7(1) of Directive 2003/88 reflects and gives effect to the fundamental right to an annual period of paid leave, enshrined in Article 31(2) of the Charter (see, to that effect, judgment of 8 September 2020, *Commission and Council v Carreras Sequeros and Others*, C-119/19 P and C-126/19 P, EU:C:2020:676, paragraph 115).
- 26 It follows that the right to paid annual leave may not be interpreted restrictively (judgments of 8 November 2012, *Heimann and Toltschin*, C-229/11 and C-230/11, EU:C:2012:693, paragraph 23, and of 25 June 2020, *Varhoven kasatsionen sad na Republika Bulgaria and Iccrea Banca SpA*, C-762/18 and C-37/19, EU:C:2020:504, paragraph 55 and the case-law cited).
- 27 Furthermore, it is clear from the terms of Directive 2003/88 and the Court's case-law that, although it is for the Member States to lay down the conditions for the exercise and implementation of the right to paid annual leave, they must not make the very existence of that right, which derives directly from that directive, subject to any preconditions whatsoever (judgment of 25 June 2020, *Varhoven kasatsionen sad na Republika Bulgaria and Iccrea Banca SpA*, C-762/18 and C-37/19, EU:C:2020:504, paragraph 56 and the case-law cited).

- 28 In that regard, it should be noted that the purpose of the right to paid annual leave, conferred on every worker under Article 7 of Directive 2003/88 is to enable the worker both to rest from carrying out the work he or she is required to do under his or her contract of employment and to enjoy a period of relaxation and leisure. That purpose, which distinguishes entitlement to paid annual leave from other types of leave having different purposes, is based on the premiss that the worker actually worked during the reference period (judgments of 4 October 2018, *Dicu*, C-12/17, EU:C:2018:799, paragraphs 27 and 28, and of 25 June 2020, *Varhoven kasatsionen sad na Republika Bulgaria and Iccrea Banca SpA*, C-762/18 and C-37/19, EU:C:2020:504, paragraphs 57 and 58).
- 29 It should be borne in mind that the right to annual leave constitutes only one of two aspects of the right to paid annual leave as a fundamental principle of EU social law. That fundamental right also includes, as a right which is consubstantial with the right to ‘paid’ annual leave, the right to an allowance in lieu of annual leave not taken upon termination of the employment relationship (judgment of 25 June 2020, *Varhoven kasatsionen sad na Republika Bulgaria and Iccrea Banca SpA*, C-762/18 and C-37/19, EU:C:2020:504, paragraph 83 and the case-law cited).
- 30 On termination of the employment relationship, it is in fact no longer possible to take paid annual leave. In order to avoid that, as a result, the right in question cannot be enjoyed by the worker, even in pecuniary form, Article 7(2) of Directive 2003/88 provides that the worker is entitled to an allowance in lieu (judgment of 20 January 2009, *Schultz-Hoff and Others*, C-350/06 and C-520/06, EU:C:2009:18, paragraph 56).
- 31 It is also apparent from settled case-law that Article 7(2) of Directive 2003/88 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 the annual leave to which he or she was entitled on the date that that relationship ended (judgments of 6 November 2018, *Bauer and Willmeroth*, C-569/16 and C-570/16, EU:C:2018:871, paragraph 44, and of 25 June 2020, *Varhoven kasatsionen sad na Republika Bulgaria and Iccrea Banca SpA*, C-762/18 and C-37/19, EU:C:2020:504, paragraph 84 and the case-law cited).
- 32 Thus, the reason for which the employment relationship has ended is not relevant as regards the entitlement to an allowance in lieu provided for in Article 7(2) of Directive 2003/88 (see, to that effect, judgment of 20 July 2016, *Maschek*, C-341/15, EU:C:2016:576, paragraph 28).
- 33 In the present case, according to the referring court, the worker actually worked during the reference period. He thus acquired a right to paid annual leave, a proportion of which had not yet been used when the employment relationship ended. He was refused the allowance in lieu of annual leave not taken on the sole ground that he terminated the employment relationship early without cause.
- 34 As noted in paragraph 32 of the present judgment, the fact that a worker terminates, of his or her own initiative, the employment relationship has no bearing on their entitlement to receive, where appropriate, an allowance in lieu of paid annual leave which they have not been able to use up before the end of their employment relationship.

- 35 In the light of the foregoing considerations, the answer to the first question is that Article 7 of Directive 2003/88, read in the light of Article 31(2) of the Charter, must be interpreted as precluding a provision of national law under which no allowance is payable in lieu of paid annual leave not taken in respect of the current and last year of employment, where the worker unilaterally terminates the employment relationship early and without cause.

The second question

- 36 By its second question, on which the Court is asked to rule in the event that the first question is answered in the negative, as set out in paragraph 14 of the present judgment, the referring court asks, in essence, to what extent and according to which criteria it is for that court to verify whether the worker was unable to take his or her paid leave.
- 37 Since it follows from paragraphs 30 to 32, 34 and 35 of the present judgment that, in any event, the worker is entitled to an allowance for paid leave not taken, irrespective of why he or she was unable to take that leave, it is not necessary for the national court to verify whether that worker was unable to take that paid leave.

Costs

- 38 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 (Seventh Chamber) hereby rules:

1. **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, read in the light of Article 31(2) of the Charter of Fundamental Rights of the European Union must be interpreted as precluding a provision of national law under which no allowance is payable in lieu of paid annual leave not taken in respect of the current and last year of employment, where the worker unilaterally terminates the employment relationship early and without cause.**
2. **It is not necessary for the national court to verify whether the worker was unable to take the leave to which he or she was entitled.**

[Signatures]