Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

19 September 2013*

(Review of the judgment of the General Court in Case T-268/11 P — Civil service — Commission decision refusing to carry over paid annual leave not taken by an official during the reference period because of long term sick leave — Article 1e(2) of the Staff Regulations of Officials of the European Union — Article 4 of Annex V to those Regulations — Directive 2003/88/EC — Article 7 — Right to paid annual leave — Principle of the social law of the European Union — Article 31(2) of the Charter of Fundamental Rights of the European Union — Effect on the unity and consistency of European Union law)

In Case C-579/12 RX-II,

REVIEW under the second subparagraph of Article 256(2) TFEU of the judgment of the General Court of the European Union in Case T-268/11 P *Commission* v *Strack*, in the proceedings

European Commission,

v

Guido Strack, former official of the European Commission, residing in Cologne (Germany),

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Chamber, J. Malenovský, U. Lõhmus, M. Safjan and A. Prechal (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Mr Strack, by H. Tettenborn, Rechtsanwalt,

— the European Commission, by B. Eggers, J. Curall and H. Kraemer, acting as Agents,

— the Council of the European Union, by P. Plaza Garcia, M. Bauer and J. Hermann, acting as Agents,

having regard to Article 62a and 62b, first paragraph, of the Statute of the Court of Justice of the European Union,

* Language of the case: German.

after hearing the Advocate General,

gives the following

Judgment

1 The purpose of these proceedings is to review the judgment of the General Court of the European Union (Appeal Chamber) of 8 November 2012 in Case T-268/11 P *Commission* v *Strack* [2012] ECR ('the judgment of 8 November 2012'), by which the General Court set aside the judgment of the European Union Civil Service Tribunal of 15 March 2011 in Case F-120/07 *Strack* v *Commission* [2011] ECR-SC I-A-1-0000 and II-A-1-0000, which annulled the decision of the Commission of 15 March 2007 limiting to 12 the number of days of unused annual leave for 2004 which Mr Strack was allowed to carry over ('the contested decision').

2 The review concerns the questions whether – having regard to the case-law of the Court of Justice relating to the entitlement to paid annual leave as a principle of European Union social law, which is also expressly affirmed in Article 31(2) of the Charter of Fundamental Rights of the European Union ('the Charter') and is referred to in particular by 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) – the judgment of the General Court of the European Union of 8 November 2012 adversely affects the unity or consistency of European Union law inasmuch as the General Court, as an appeal court:

— interpreted Article 1e(2) of the Staff Regulations of Officials of the European Union to the effect that it does not include the requirements relating to the organisation of working time contained in Directive 2003/88, in particular, paid annual leave, and

— consequently, interpreted Article 4 of Annex V to those Regulations as implying that the right to carry over annual leave exceeding the limit laid down in that provision may be granted only where the official has been unable to take leave for reasons connected with his activity as an official and the duties he has thus been required to perform.

Legal context

The Charter

3 Under the heading 'Fair and just working conditions', Article 31 of the Charter provides:

'1. Every worker has the right to working conditions which respect his or her health, safety and dignity.

2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.'

Staff Regulations

4 Article 1e(2) in Title 1 of the Staff Regulations, headed 'General provisions' provides:

'Officials in active employment shall be accorded working conditions complying with appropriate health and safety standards at least equivalent to the minimum requirements applicable under measures adopted in these areas pursuant to the Treaties.'

5 The first paragraph of Article 57 of the Staff Regulations provides:

'Officials shall be entitled to annual leave of not less than 24 working days nor more than 30 working days per calendar year, in accordance with rules to be laid down by common accord of the institutions of the Communities, after consulting the Staff Regulations Committee.'

6 Article 4 of Annex V to the Staff Regulations provides:

'Where an official, for reasons other than the requirements of the service, has not used up all his annual leave before the end of the current calendar year, the amount of leave which may be carried over to the following year shall not exceed 12 days.

Where an official at the time of leaving the service has not used up all his annual leave, he shall be paid compensation equal to one thirtieth of his monthly remuneration at the time of leaving the service for each day's leave due to him.

...'

Directive 2003/88

7 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 shall apply to:

(a) minimum periods of … annual leave …

...'

8 Article 7 of that directive 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.'

Background to the case subject to review

Facts

9 Mr Strack is a former Commission official. From 1 March 2004 until he was retired on grounds of invalidity with effect from 1 April 2005 he was on sick leave.

10 On 27 December 2004 the applicant requested that 38.5 days of leave not taken in 2004 be carried over to 2005, stating that he had been unable to take those days of leave, inter alia, because of his occupational disease. The request was refused by decision of 30 May 2005 in so far as it related to the 26.5 days in excess of the 12 days automatically carried over under Article 4 of Annex V to the Staff Regulations. Following a complaint by the applicant that decision was upheld by decision of

25 October 2005, which, however, reserved the possibility of subsequently submitting a new request for the balance of the applicant's leave for 2004 to be carried over in the event that the occupational origin of the applicant's disease was recognised.

11 On 22 November 2006 Mr Strack submitted a new request for the balance of the days of leave for 2004 to be carried over, which was refused by the contested decision.

The judgment in Strack v Commission

12 On 22 October 2007 Mr Strack brought an action before the Civil Service Tribunal seeking inter alia the annulment of the contested decision in so far as it limited to 12 days the amount of annual leave carried over as days not taken in 2004 and limited accordingly the sum paid by way of compensation for those days upon his leaving the service.

13 In support of that action, Mr Strack raised a single plea, alleging breach of the first and second paragraphs of Article 4 of Annex V to the Staff Regulations. At the hearing he also relied on the judgment in Joined Cases C-350/06 and C-520/06 *Schultz-Hoff and Others* [2009] ECR I-179, which had in the meantime been delivered by the Court of Justice.

14 In paragraphs 55 to 58 of the judgment in *Strack* v *Commission* the Civil Service Tribunal held, first, that it was for the Commission, in the application and interpretation of the rules of the Staff Regulations relating to annual leave, and, in particular, of the first and second paragraphs of Article 4 of Annex V to the Staff Regulations, to ensure compliance with the minimum safety and health requirements for the organisation of working time contained in Directive 2003/88 and, in particular, Article 7 thereof relating to the right to paid annual leave.

15 It appears, next, from paragraphs 59 to 69 of that judgment that the Civil Service Tribunal found, first, that for almost the whole of 2004 Mr Strack was unable, for medical reasons, to exercise his right to paid annual leave. Second, it held, referring specifically to paragraphs 22, 23, 25, 41, 45, 50 and 61 of the judgment in *Schultz-Hoff*, that it follows from Article 7 of Directive 2003/88 that the right to paid annual leave – a right which, moreover, constitutes a particularly important principle of Union social law which is also affirmed in Article 31(2) of the Charter – implies that Mr Strack cannot, in the present case, be deprived of the possibility of receiving an allowance in lieu of annual leave which was not taken.

16 Finally, in paragraphs 70 to 78 of *Strack* v *Commission*, the Civil Service Tribunal held, essentially, that the first paragraph of Article 4 of Annex V to the Staff Regulations does not govern the question whether days of annual leave should be carried over where an official was unable to take his days of annual leave for reasons outside his control, such as medical reasons. The Tribunal held that the minimum health and safety requirements referred to in Article 1e of the Staff Regulations, and in particular the provisions of Article 7 of Directive 2003/88, supplement the provisions on leave in the Staff Regulations themselves and that the interpretation given by the Court of Justice in the judgment in *Schultz-Hoff* of Article 7 should therefore be transposed, in the present case, by the application of Article 1e in conjunction with Article 57 of the Staff Regulations.

17 Therefore, the Civil Service Tribunal held, in paragraph 79 of that judgment, that the Commission, by refusing, in the circumstances of the present case, by application of the first paragraph of Article 4 of Annex V to the Staff Regulations, to allow the carry-over of the days of annual leave in excess of the 12 days automatically carried over, which had not been taken by the applicant owing to long-term sick leave, failed to have regard to the scope of that provision. Consequently, it annulled the contested decision.

Judgment of 8 November 2012

18 On appeal by the Commission against the judgment in *Strack* v *Commission*, the General Court, in its judgment of 8 November 2012, first, rejected the third plea of the appeal, alleging a procedural defect.

19 The General Court then upheld the first plea and the first part of the second plea, respectively alleging the infringement of Article 4 of Annex V to the Staff Regulations and Article 1e(2) thereof, ruling as follows in paragraphs 38 to 56 of that judgment:

'38 … [the Civil Service Tribunal] has held that Article 1e(2) of the Staff Regulations … required that the provisions laid down by the Staff Regulations on the organisation of working time and, in particular, annual leave should comply with or at least be equivalent to the minimum requirements laid down by Article 7(1) of Directive 2003/88, as interpreted by the case-law of the Court and, in particular, the judgment in *Schultz-Hoff and Others*.

...

40 It must be observed, however, that directives are addressed to the Member States and not to the institutions of the Union. The provisions of Directive 2003/88 cannot, therefore, be treated as imposing any obligations as such on the institutions in their relations with their staff. ...

…

42 However, the fact that a directive does not bind the institutions as such and that it cannot form the basis for a plea of illegality of a provision of the Staff Regulations cannot preclude the rules or principles laid down in those directives from being relied on against the institutions when they themselves simply appear to be the specific expression of fundamental rules of the [EC] Treaty and of general principles which are directly applicable to those institutions (see, to that effect, Case C-25/02 *Rinke* [2003] ECR I-8349, paragraphs 25 to 28 ...).

43 Similarly, a directive may also be binding on an institution where the latter, within the scope of its organisational autonomy and within the limits of the Staff Regulations, has sought to carry out a specific obligation laid down by a directive or in the specific instance where an internal measure of general application itself expressly refers to measures laid down by the Union legislature pursuant to the Treaties ([Case F-65/07] *Aayhan and Others* v *Parliament* [[2009] ECR-SC I-A-1-1054 and II-A-1-567], paragraph 116).

…

45 However, the above exceptions, under which the provisions of a directive may indirectly bind an institution in certain circumstances ... do not apply in this case.

46 In that regard, it must be observed, first, … that the entitlement of every worker to paid annual leave under Article 7 of Directive 2003/88 must be regarded as a particularly important principle of European Union social law from which there can be no derogations and whose implementation by the competent national authorities must be confined within the limits expressly laid down by the directive itself (Case C-282/10 *Domonguez* [2012] ECR, paragraph 16 and the case-law cited).

47 It should be noted, secondly, that the right to paid annual leave is expressly laid down in Article 31(2) of the [Charter], which Article 6(1) TEU recognises as having the same legal value as the Treaties (see, to that effect, Case C-214/10 *KHS* [2011] ECR I-11757, paragraph 37; Case C-337/10 *Neidel* [2012] ECR, paragraph 40, and Case C-78/11 *ANGED* [2012] ECR, paragraph 17).

48 Thirdly, the right to paid annual leave cannot be interpreted restrictively (see *ANGED*, paragraph 18 and the case-law cited).

49 However, even if the right to annual leave can be seen as a general principle of law within the meaning of the case-law set out in paragraph 42 above, which applies directly to the institutions and in the light of which the legality of their acts may be assessed, it cannot, in any event, be considered that Article 4 of Annex V to the Staff Regulations deprived Mr Strack of the exercise of that right.

50 That article merely defines the arrangements for carrying over and compensating for days of unused annual leave, by authorising the automatic carry-over to the following year of 12 days of unused annual leave and by providing for the possibility of carrying over the days in excess of that threshold where the failure to use all the annual leave entitlement is due to the requirements of the service. Thus, it cannot be considered that Article 4 of Annex V to the Staff Regulations makes the grant or exercise of the right to annual leave dependent on a condition which deprives it of all substance or that it is incompatible with the structure and purpose of Article 7 of Directive 2003/88. Moreover, the requirement that the carry-over and compensation of unused annual leave be subject to certain conditions appears justified both by the need to prevent unlimited amounts of unused leave building up and by the need to protect the financial interests of the European Union.

…

52 Finally, it must be pointed out that, the wording of Article 1e(2) of the Staff Regulations does not permit a reading to the effect that this article corresponds to the situation described in paragraph 43 above, in which the institutions intended, by inserting it into the Staff Regulations, to fulfil a particular obligation laid down by Directive 2003/88, or that the reference contained in that article to health and safety standards at least equivalent to the minimum requirements applicable under measures adopted in these areas pursuant to the Treaties is a reference to Article 7(1) of that directive, since that article has a different subject-matter from that of Article 1e of the Staff Regulations.

53 First, it must be observed that Article 1e of the Staff Regulations, which forms part of the general provisions of Title I of those regulations, refers to the compliance of the working conditions of officials in active employment with 'appropriate health and safety standards', which appears to refer to the minimum technical standards for the protection of the health and safety of workers at their place of work which are not governed by other provisions of the Staff Regulations, and not to minimum health and safety requirements in general, including those relating to the organisation of working time covered by Directive 2003/88 and annual leave in particular. As the Commission points out, such a wide interpretation of Article 1e(2) of the Staff Regulations is at odds with the autonomy of the European Union legislature as regards the civil service, affirmed by Article 336 TFEU.

54 Secondly, the Staff Regulations contain specific provisions on the organisation of working time and leave in Title IV and Annex V. The question raised in the present case, concerning the arrangements for the carry-over to the following year of, or compensation for, unused annual leave is specifically governed by Article 4 of Annex V to the Staff Regulations. Since that provision sets out a clear and precise rule, limiting the right to carry over and receive compensation for annual leave in respect of the number of unused days of leave, no use may be made, arguing, by analogy from the judgment in *Schultz-Hoff and Others*, of the provisions of Directive 2003/88 by relying on another provision of the Staff Regulations, such as Article 1e, as a rule of general application allowing a derogation from the specific rules of the Staff Regulations in this area. That would result in an interpretation *contra legem* of the Staff Regulations, as the Commission correctly argued before the Civil Service Tribunal.

55 It follows that the Civil Service Tribunal erred in applying Article 1e(2) of the Staff Regulations rather than basing its decision on Article 4 of Annex V to those regulations.

56 Therefore, it must be held that the Civil Service Tribunal made a twofold error of law by applying Article 7 of Directive 2003/88 to Mr Strack's situation, on the basis of Article 1e(2) of the Staff Regulations, despite the restrictions contained in Article 4 of Annex V to the Staff Regulations, and in taking the view that that article did not govern the question raised in the present case.'

20 In the light of the foregoing considerations, the General Court held that the judgment in *Strack* v *Commission* should be set aside, without it being necessary, moreover, to rule on the second part of the second plea, by which the Commission argued that the Civil Service Tribunal, in breach of its duty to state reasons, had failed to consider the question it had raised of the scope of Article 1e(2) of the Staff Regulations.

21 Finally, ruling on the first instance action of Mr Strack, the General Court dismissed it, holding as follows in paragraphs 65 to 67 of the judgment of 8 November 2012:

'65 … the words "requirements of the service" used in the first paragraph of Article 4 of Annex V to the Staff Regulations must be interpreted as referring to professional activities preventing the official, because of the duties incumbent upon him, from taking the annual leave to which he is entitled ([Case T-80/04 *Castets* v *Commission* [2005] ECR-SC I-A-161 and II-729], paragraph 29). Thus, although it must be accepted that the word "service" used in the expression "requirements of the service" refers to "work done in the service of the Community administration", an official is only entitled to sick leave if he "provides evidence of incapacity to perform his duties". It follows that, where an official is on sick leave, he is, by definition, relieved of his duties and is therefore not in service as provided for in the first paragraph of Article 4 of Annex V to the Staff Regulations (see Case T-368/04 *Verheyden* v *Commission* [2007] ECR-SC I-A-2-93 and II-A-2-665, paragraph 61 and the case-law cited).

66 The requirements of the service mentioned in Article 4 of Annex V to the Staff Regulations are reasons liable to prevent an official from taking leave because he must continue to work to carry out the tasks required by the institution for which he works. Those requirements may be short term or permanent but must necessarily relate to activity in the service of the institution. Conversely, sick leave allows an official's absence to be excused for a valid reason. Because of his state of health, the official is not required to work for the institution. Consequently the expression "requirements of the service" cannot be interpreted as covering a situation where the official has been placed on sick leave, even in the event of prolonged illness (*Castets* v *Commission*, paragraph 33). An official on sick leave cannot be deemed to be working in the service of the institution given that he has been relieved of precisely that requirement (*Verheyden* v *Commission*, paragraphs 62 and 63).

67 Having regard to the particularly strict interpretation of the expression "requirements of the service" by the case-law mentioned in paragraphs 65 and 66 above, it follows that, contrary to Mr Strack's contention, the right to carry over annual leave in excess of the threshold of 12 days must derive necessarily from his being prevented from taking leave for work-related reasons arising from the performance of his duties and cannot be granted by reason of an illness which has prevented him from carrying out those duties, even where the occupational origin of that illness has been established.'

Procedure before the Court

22 Following the proposal of the first advocate general to review the judgment of 8 November 2012, the review chamber held, by decision of 11 December 2012 in Case C-57/12 RX *Review Commission* v *Strack*, adopted under the second paragraph of Article 62 of the Statute of the Court of Justice of the European Union and Article 193(4) of the Rules of Procedure of the Court, that it was necessary to review that judgment to determine whether it adversely affects the unity or consistency of European Union law.

23 The questions which, according to the terms of that decision, the review is to concern are set out in paragraph 2 of the present judgment.

Review

24 As follows from the above decision of 11 December 2012 in *Review Commission* v *Strack* and from paragraph 2 of the present judgment, the Court has essentially to examine, initially, whether, having regard, inter alia, to its case-law relating to the entitlement to paid annual leave, the interpretations given by the General Court in its judgment of 8 November 2012 as regards Article 1e(2) of the Staff Regulations and Article 4 of Annex V to those regulations contain any errors of law.

25 If it had to be held that the judgment of 8 November 2012 is vitiated by an error of law, it would be necessary then to examine whether that judgment adversely affects the unity or consistency of European Union law.

The case-law of the Court of Justice concerning the carry-over of paid annual leave which could not be taken because of long-term sick leave

26 As a preliminary point, it must be recalled that, according to the settled case-law of the Court, developed, first, in relation to Article 7 of Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (OJ 1993 L 307, p. 18) and, subsequently, Article 7 of Directive 2003/88, the entitlement of every worker to paid annual leave must be regarded as a particularly important principle of European Union social law, affirmed by Article 31(2) of the Charter, which the first subparagraph of Article 6(1) TEU recognises as having the same legal value as the Treaties (see Case C-173/99 *BECTU* [2001] ECR I-4881, paragraph 43; Case C-124/05 *Federatie Nederlandse Vakbeweging* [2006] ECR I-3423, paragraph 28; *Schultz-Hoff and Others*, paragraph 22; Case C-155/10 *Williams and Others* [2011] ECR I-8409, paragraphs 17 and 18; *KHS*, paragraph 37; *Neidel*, paragraph 40; *ANGED*, paragraph 17; and Joined Cases C-229/11 and C-230/11 *Heimann and Toltschin* [2012] ECR, paragraph 22).

27 According to the explanations relating to Article 31 of the Charter, which, under the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, must be taken into account in the interpretation of the Charter, Article 31(2) of the Charter is based on Directive 93/104 and on Article 2 of the European Social Charter, signed in Turin on 18 October 1961 and revised in Strasbourg on 3 May 1996, and on point 8 of the Community Charter of the Fundamental Social Rights of Workers, adopted at the meeting of the European Council in Strasbourg on 9 December 1989.

28 As is apparent from the first recital in the preamble to Directive 2003/88, the directive codifies Directive 93/104. Article 7 of Directive 2003/88 concerning the right to paid annual leave reproduces the terms of Article 7 of Directive 93/104 exactly.

29 Moreover, according to the case-law of the Court, the right to paid annual leave cannot be interpreted restrictively (*ANGED*, paragraph 18, and *Heimann and Toltschin*, paragraph 23).

30 As regards situations in which a worker was unable to take his days of paid annual leave because of sick leave, the Court has held, inter alia that although 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, including even the loss of that right at the end of a reference period or of a carry-over period, that finding is subject to the condition that a worker who has lost his right to paid annual leave must have actually had the opportunity to exercise the right conferred on him by that directive (see *Schultz-Hoff and Others*, paragraph 43, and *KHS*, paragraph 26).

31 In that connection, the Court has thus held that Article 7(1) of Directive 2003/88 must be interpreted as meaning that it precludes national legislation or practices which provide that 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 even where the worker has been on sick leave for the whole year and where his incapacity for work persisted until the end of his employment relationship, which was the reason why he could not exercise his right to paid annual leave (*Schultz-Hoff and Others*, paragraph 52).

32 To accept that, in the specific circumstances of incapacity for work, the national provisions laying down the carry-over period, can provide for the loss of the worker's right to paid annual leave, without the worker actually having the opportunity to exercise that right, would undermine the substance of the social right directly conferred by Article 7 of the directive on every worker (see, to that effect, *BECTU*, paragraphs 48 and 49, and *Schultz-Hoff and Others*, paragraphs 44, 45, 47 and 48).

33 In those circumstances, the allowance in lieu to which the worker is entitled must be calculated so that the worker is put in a position comparable to that he would have been in had he exercised that right during his employment relationship. It follows that the worker's normal remuneration, which is that which must be maintained during the rest period corresponding to the paid annual leave, is also decisive as regards the calculation of the allowance in lieu of annual leave not taken by the end of the employment relationship (*Schultz-Hoff and Others*, paragraphs 61 and 62, and *Heimann and Toltschin*, paragraph 25). The entitlement to annual leave and to a payment on that account must be considered to be two aspects of a single right (see, inter alia, *Schultz-Hoff and Others*, paragraph 60 and the case-law cited).

34 Under the case-law set out above it cannot be accepted that a worker's right to a minimum paid annual leave, guaranteed by European Union law, may be reduced where the worker could not fulfil his obligation to work during the reference period due to an illness (*Heimann and Toltschin*, paragraph 26).

35 Admittedly, as the Council of the European Union and the Commission point out, the Court has also made clear that, given the dual purpose of enabling the worker both 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, the right to paid annual leave acquired by a worker who is unfit for work for several consecutive reference periods can reflect both the aspects of its purpose, as set out in paragraph 31 above, only in so far as the carry-over does not exceed a certain temporal limit (*KHS*, paragraphs 31 and 33).

36 However, the Court has equally clearly expressed the view, in that regard, referring expressly to the fact that the right to paid annual leave is a principle of European Union social law of particular importance expressly affirmed by Article 31(2) of the Charter, that to uphold that right, the objective of which is the protection of workers, any carry-over period must be substantially longer than the reference period in respect of which it is granted (*KHS*, paragraphs 37 and 38, and *Neidel*, paragraphs 40 and 41).

37 The Court concluded, inter alia, that a carry-over period of nine months is insufficient since it is shorter than the reference period (*Neidel*, paragraphs 42 and 43), holding, rather, that it may reasonably be considered that a carry-over period of 15 months is not contrary to the purpose of the right to paid annual leave (*KHS*, paragraph 43).

The interpretation of Article 1e(2) of the Staff Regulations and Article 4 of Annex V thereto

38 It must be examined whether, in the light, in particular, of the case-law of the Court regarding the right to paid annual leave set out above, the interpretations which the General Court gave, in its judgment of 8 November 2012, regarding Article 1e(2) of the Staff Regulations and Article 4 of Annex V thereto contain any errors of law.

39 In that regard, it must be observed, as a preliminary point, that, according to Article 51(1) of the Charter, its provisions are addressed, inter alia, to the institutions of the Union, which are, therefore, required to respect the rights enshrined in it. These include the right to paid annual leave as a principle of the social law of the European Union affirmed by Article 31(2) of the Charter, a provision which is itself based, as stated in paragraph 27 of the present judgment, inter alia on Directive 93/104, which was subsequently replaced and codified by Directive 2003/88.

40 It must also be borne in mind that, under a general principle of interpretation, a European Union measure must be interpreted, as far as possible, in such a way as not to affect its validity and in conformity with primary law as a whole and, in particular, with the provisions of the Charter (see, to that effect, Case C-12/11 *McDonagh* [2013] ECR, paragraph 44 and the case-law cited).

41 Accordingly, it is in the particular light of that general principle of interpretation that the question whether the General Court made any errors of law in the interpretation of Article 1e(2) of the Staff Regulations and Article 4 of Annex V thereto must be considered.

42 As regards, first, Article 1e(2) of the Staff Regulations, it is apparent from paragraphs 52 and 53 of the judgment of 8 November 2012 that the General Court considered that the reference contained in that article to health and safety standards at least equivalent to the minimum requirements applicable under measures adopted in these areas pursuant to the Treaties is simply a reference to the minimum technical standards for the protection of the health and safety of workers at their place of work, and not to minimum health and safety requirements in general, with the result that that provision does not cover the requirements relating to the organisation of working time such as those included in Directive 2003/88.

43 On that point, it must be held, first, that the wording of Article 1e(2) of the Staff Regulations does not in any way reflect the distinction thus made by the General Court. Rather, in so far as it refers to 'minimum requirements applicable under measures adopted … pursuant to the Treaties' in the 'areas' of 'health and safety' and relating to working conditions, that wording contemplates rules such as those contained in Directive 2003/88, since that directive is intended, as is apparent from Article 1(1) thereof, to lay down 'minimum safety and health requirements for the organisation of working time' which include minimum periods of annual leave.

44 Next, it should be pointed out that the interpretation given by the General Court and the distinction on which it is based do not take any account of the conclusions deriving inter alia from paragraphs 36 to 39 and 59 of the judgment in Case C-84/94 *United Kingdom* v *Council* [1996] ECR I-5755, in which the Court of Justice held that the measures on the organisation of working time which form the subject-matter of the directive, and in particular those contained in Article 7 of that directive, contribute directly to the improvement of health and safety protection for workers within the meaning of Article 118a of the EC Treaty and the evolution of social legislation at both national and international level confirms the existence of a link between measures relating to working time and the

health and safety of workers. Thus, the Court pointed out in particular, in that regard, in paragraph 15 of that judgment that such an interpretation of the words 'safety' and 'health' derives support in particular from the preamble to the Constitution of the World Health Organisation to which all the Member States belong. Health is there defined as a state of complete physical, mental and social well-being that does not consist only in the absence of illness or infirmity.

45 Finally, it must be held that the interpretation given by the General Court disregards the general principle of interpretation set out in paragraph 40 of the present judgment.

46 Under that principle, the General Court should have favoured an interpretation of Article 1e(2) of the Staff Regulations which ensured the consistency of that provision with the right to paid annual leave as a principle of the social law of the European Union now affirmed by Article 31(2) of the Charter. That required an interpretation of Article 1e(2) to the effect that it allows the inclusion in the Staff Regulations of the substance of Article 7 of Directive 2003/88 as a rule of minimum protection which could, as necessary, supplement the other provisions of the Staff Regulations dealing with the right to paid annual leave and, in particular, Article 4 of Annex V to those regulations.

47 Having regard to the foregoing observations, it must be held that the General Court made an error of law in not giving an interpretation of Article 1e(2) of the Staff Regulations to the effect that that provision refers inter alia to Article 7 of Directive 2003/88 as regards paid annual leave, contrary to the ruling of the Civil Service Tribunal in its judgment in *Strack* v *Commission*.

48 As regards, second, Article 4 of Annex V to the Staff Regulations, the General Court took the view, as is apparent inter alia from paragraph 67 of the judgment of 8 November 2012, that that article must be interpreted as meaning that it rules out any carry-over of paid annual leave which could not be taken because of long term sick leave in excess of the 12 days which can be carried over automatically.

49 In so doing the General Court also erred in law.

50 It must be observed, first of all, that the wording of Article 4 of Annex V to the Staff Regulations does not contain any express reference to the specific situation of an official who is unable to take paid annual leave during the reference period because of long term sick leave.

51 Next, it must be observed that, as a result of the error of law made by the General Court as regards the interpretation of Article 1e(2) of the Staff Regulations, that court did not take account, either, of the fact that it follows from the general legislative context in which Article 4 of Annex V to the Staff Regulations appears that, under another provision thereof, precisely the requirements following from Article 7 of Directive 2003/88 as regards the right to paid annual leave are an integral part of the Staff Regulations as minimum requirements which must be applied to officials on a supplementary basis and without prejudice to the more favourable provisions contained in those regulations.

52 Finally, it must be pointed out that the General Court has, in those circumstances, disregarded the general principle of interpretation recalled in paragraph 40 of the present judgment. Rather than favouring an interpretation of Article 4 of Annex V to the Staff Regulations, read in conjunction with Article 1e(2) thereof, which ensured the consistency of those regulations with the right to paid annual leave as a principle of the social law of the Union now expressly affirmed in Article 31(2) of the Charter and referred to, inter alia, in Article 7 of Directive 2003/88, the General Court gave an interpretation of Article 4 which does not ensure the consistency of those provisions with one another and which it itself describes as 'particularly strict' in paragraph 67 of the judgment of 8 November 2012.

53 It must be held that it is as a result of various errors in law that the General Court held, in paragraphs 49 to 51 of the judgment of 8 November 2012, that the interpretation it gave in that judgment as regards Article 4 of Annex V to the Staff Regulations did not result in a breach of that right to paid annual leave.

54 As is apparent from the case-law set out in paragraphs 30 to 37 of the present judgment, respect for the essential content of the right to paid annual leave entails, in particular, that any worker who is deprived of the opportunity to exercise it because of long term sick leave may be allowed to carry over that right, without its being reduced, and the carry-over period must exceed substantially the duration of the reference period for which it is granted, without any obstacle being posed by the considerations based on the need to prevent the unlimited build-up of leave not taken to which the General Court refers in paragraph 50 of the judgment of 8 November 2012.

55 As regards the considerations based on the need to protect the financial interests of the Union, also mentioned in paragraph 50, suffice it to observe that such considerations cannot, in any event, be relied on to justify an adverse effect on that right to paid annual leave.

56 It follows from all the foregoing that the General Court should have interpreted Article 4 of Annex V to the Staff Regulations, as the Civil Service Tribunal did in its judgment in *Strack* v *Commission*, as meaning that it does not deal with the question of the carry-over of paid annual leave which could not be taken by the official during the reference period because of long term sick leave, so that the requirements arising in that respect from Article 1e(2) of the Staff Regulations and, in this case, more specifically from Article 7 of Directive 2003/88 must be taken into account as the minimum requirements applicable without prejudice to the more favourable provisions in the Staff Regulations.

Adverse effect on the unity or consistency of European Union law

57 The errors of law vitiating the judgment of 8 November 2012 as identified in paragraphs 47 and 56 of the present judgment are such as to adversely affect the unity and consistency of European Union law.

58 By dismissing, in its interpretation of the provisions of the Staff Regulations, the notion of the right of every worker to paid annual leave as a principle of the social law of the European Union now affirmed by Article 31(2) of the Charter and referred to, inter alia, in Article 7 of Directive 2003/88, as interpreted by the settled case-law of the Court of Justice, the General Court caused an adverse effect, in particular, on the unity of European Union law since a provision such as the above mentioned provision of the Charter, has the same legal value, pursuant to the first subparagraph of Article 6(1) TEU, as the provisions of the treaties and the Union legislature is required to observe it both when it adopts a measure such as the Staff Regulations on the basis of Article 336 TFEU and when it adopts other measures of European Union law under the legislative power invested in it under other provisions of the treaties and, moreover, in the Member States when they implement such measures.

59 Furthermore, by ruling, in the context of the interpretation of Article 1e(2) of the Staff Regulations, that the reference contained in that provision to the minimum requirements applicable under measures adopted as regards working conditions pursuant to the Treaties in the areas of the health and safety of workers does not cover provisions such as those concerning the organisation of working time referred to by Directive 2003/88, in particular those concerning paid annual leave, the General Court adversely affected the consistency of European Union law. As is apparent from the case-law set out in paragraph 44 of the present judgment, the Court has already held that such measures contribute directly to the improvement of health and safety protection for workers within the meaning of Article 118a of the EC Treaty and, therefore, of Article 137 EC and Article 153 TFEU which have subsequently replaced Article 118a of the EC Treaty, pointing out, in addition, in that regard, that the link between measures relating to working time and the health and safety of workers was also confirmed by the evolution of social legislation at both national and international level.

60 Against that background, it must be held that the judgment of 8 November 2012 adversely affects the unity and consistency of European Union law inasmuch as the General Court, as an appeal court, disregarding the right to paid annual leave as a principle of the social law of the European Union also expressly affirmed by Article 31(2) of the Charter and, in particular, referred to by Directive 2003/88 as interpreted by the case-law of the Court:

— interpreted Article 1e(2) of the Staff Regulations to the effect that it does not include the requirements relating to the organisation of working time contained in Directive 2003/88, in particular, paid annual leave, and,

— consequently, interpreted Article 4 of Annex V to those regulations as implying that the right to carry over annual leave exceeding the limit laid down in that provision may be granted only where the official has been unable to take leave for reasons connected with his activity as an official and the duties he has thus been required to perform.

Conclusions to be drawn from the review

61 The first paragraph of Article 62b of the Statute of the Court of Justice of the European Union provides that if the Court of Justice finds that the decision of the General Court affects the consistency of European Union law, it is to refer the case back to the General Court, which is to be bound by the points of law decided by the Court of Justice. In referring the case back, the Court of Justice may also state which of the effects of the decision of the General Court are to be considered definitive in respect of the parties to the litigation. In exceptional cases, the Court of Justice can itself give final judgment if, having regard to the result of the review, the outcome of the proceedings flows from the findings of fact on which the decision of the General Court was based.

62 It follows that the Court cannot confine itself to finding that the unity or consistency of European Union law is affected without stating the implications of that finding as regards the dispute in question (Case C-334/12 RX-II *Review Arango Jaramillo and Others* v *EIB* [2013] ECR, paragraph 57).

63 In the present case, it is appropriate, in the first place, and on the ground given in paragraph 60 of this judgment, to set aside the judgment of 8 November 2012 in so far as that judgment upheld the first plea and the first part of the second plea in support of the Commission's appeal and, consequently, set aside the judgment in *Strack* v *Commission* and dismissed Mr Strack's action at first instance.

64 In the second place, as regards the decision to be made on the Commission's appeal, it must be pointed out, first, that the third plea in law relied on by the Commission was rejected by the General Court in its judgment of 8 November 2012 and that that rejection must be considered definitive in the absence of any review of that point.

65 Next, as regards the second part of the second plea in support of the Commission's appeal, alleging that the Civil Service Tribunal breached the obligation to state reasons by failing to examine the question of the scope of Article 1e(2) of the Staff Regulations, it must be held that, although that part was not examined by the General Court in the judgment of 8 November 2012, it must clearly be rejected. As is clear, in particular, from paragraphs 55 to 57 of *Strack* v *Commission*, the Civil Service Tribunal gave a clear ruling on the scope, holding that, in the light of its wording, that provision must be understood as referring to the minimum health and safety requirements applicable under measures adopted in these areas pursuant to the Treaties, which include the minimum health and safety requirements for the organisation of working time contained in Directive 2003/88.

66 Finally, it must be pointed out that, although the judgment of 8 November 2012 does not mention it, the Commission also relied, in its second plea in support of its appeal, in the alternative, on the argument that the Civil Service Tribunal transposed and applied erroneously the requirements

deriving from the case-law resulting from *Schultz-Hoff and Others*. Thus, the Commission argues that the present case does not concern exclusively the right to carry over annual leave but also an allowance in lieu thereof, that this does not entail the loss of the right to annual leave in its entirety but only of a part of it and that it covers not only the unused days of leave in respect of the period immediately preceding the year employment ended but also the days of leave which were already carried over from the year before that preceding year. Moreover, according to the Commission, the Civil Service Tribunal failed to take account of the fact that Article 7 of Directive 2003/88 guarantees the carry-over of paid annual leave only in respect of the minimum four weeks referred to by that provision.

67 In that regard, it must, however, be pointed out that, as is apparent from the case-law of the Court set out in paragraphs 30 to 37 of the present judgment, distinctions such as those which the Commission seeks to make, first, between the right to carry over paid annual leave which has not been taken because of long term illness and the receipt of an allowance in lieu in the event of termination of employment and, second, between the partial loss and total loss of the right to annual leave which could not be taken because of long term illness, are irrelevant and cannot be upheld.

68 Moreover, the Civil Service Tribunal was also right to hold, in paragraph 77 of the judgment in *Strack* v *Commission*, that, as the European Union legislature fixed the annual leave for officials at 24 days, the interpretation given by the Court of Justice in the judgment in *Schultz-Hoff* of Article 7 of Directive 2003/88 can, in the absence of other relevant provisions in the Staff Regulations as regards the carry-over of paid annual leave which is not taken because of long term illness, be transposed in full to the total annual leave as fixed by the Staff Regulations, by the application of Article 1e in conjunction with Article 57 of the Staff Regulations.

69 Having regard to all the foregoing considerations and, as the adverse effect on the unity and consistency of European law is the result, in the present case, of an erroneous interpretation of Article 1e(2) of the Staff Regulations and Article 4 of Annex V thereto, and as a correct interpretation of those provisions, namely, essentially that which the Civil Service Tribunal gave in its judgment in *Strack* v *Commission*, entailed, as is apparent inter alia, from paragraphs 47 and 56 of the present judgment, the rejection of the first and second pleas relied on by the Commission in support of its appeal and, therefore, the dismissal of the appeal in its entirety, it is appropriate for the Court to give final judgment in this dispute by dismissing that appeal.

Costs

70 Under Article 195(6) of the Rules of Procedure of the Court of Justice, where the decision of the General Court which is subject to review was given under Article 256(2) TFEU, the Court of Justice is to make a decision as to costs.

71 Since there are no specific rules governing orders for costs in the case of review proceedings and since the Commission, as a result of the setting aside of the judgment of the General Court of 8 November 2012 and the final dismissal of the appeal which it brought against the judgment in *Strack* v *Commission*, has been unsuccessful in its appeal, it must, in the present case, be ordered to pay the costs incurred by Mr Strack both in the course of the proceedings before the General Court and in the present review proceedings.

72 The Council, which submitted written observations to the Court on the questions subject to review, should bear its own costs incurred in these proceedings.

On those grounds, the Court (Fourth Chamber) hereby:

1. **Declares that the judgment of the General Court of the European Union (Appeal Chamber) of 8 November 2012 in Case T-268/11 P *Commission* v *Strack* adversely affects the unity and consistency of European Union law inasmuch as the General Court, as an appeal court, disregarding the right to paid annual leave as a principle of the social law of the European Union also expressly affirmed by Article 31(2) of the Charter of Fundamental Rights of the European Union and, in particular, referred to by 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, as interpreted by the case-law of the Court of Justice of the European Union:**

   — **interpreted Article 1e(2) of the Staff Regulations to the effect that it does not include the requirements relating to the organisation of working time contained in Directive 2003/88, in particular, paid annual leave, and**

   — **consequently, interpreted Article 4 of Annex V to those regulations as implying that the right to carry over annual leave exceeding the limit laid down in that provision may be granted only where the official has been unable to take leave for reasons connected with his activity as an official and the duties he has thus been required to perform.**

2. **Sets aside that judgment of the General Court of the European Union.**

3. **Dismisses the appeal brought by the European Commission against the judgment of the European Union Civil Service Tribunal of 15 March 2011 in Case F-120/07 *Strack* v *Commission.***

4. **Orders the European Commission to pay the costs which Mr Strack incurred both in the review proceedings and in the proceedings before the General Court of the European Union.**

5. **Declares that the Council of the European Union and the European Commission shall bear their own costs incurred in the review proceedings.**

6. **Declares that the European Commission shall bear its own costs incurred in the proceedings before the General Court of the European Union.**

[Signatures]