

SUMMARY

**ECJ 12 June 2014, case C-118/13
(Gülay Bollacke - v - K + K Klaas
& Kock B.V. & Co KG),
Working time and leave, Paid leave**

Facts

Mr Bollacke died in 2010. On the date of his death he had 140.5 days of annual leave outstanding. His widow, who was his sole beneficiary, asked her late husband's employer to pay her the value of the 140.5 days. The employer refused, arguing that there was no inheritable entitlement.

National proceedings

Mr Bollacke applied to the court, which referred three questions to the ECJ for a preliminary ruling.

ECJ's findings

1. When an employment relationship has terminated and, therefore, it is 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, even in pecuniary form, being lost. In *Schulz-Hof* (C-350/06), the ECJ interpreted Article 7(2) as precluding national legislation or practices which provide that, on termination of employment, no allowance in lieu of paid annual leave is to be paid to a worker who has been unable to exercise his right to paid annual leave on account of long-term sick leave (§ 17-18).

2. Article 7(2) of Directive 2003/88, as interpreted by the ECJ, lays down no condition for entitlement to an allowance in lieu other than that relating to the fact that, first, the employment relationship has ended and, secondly, the worker has not taken all leave to which

he was entitled (§ 23).

3. Receipt of financial compensation if the employment relationship has ended by reason of a worker's death is essential to ensure the effectiveness of the entitlement to paid annual leave. 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 (§ 24-25).

4. Since Article 7(2) of Directive 2003/88 does not impose any condition for entitlement to an allowance in lieu other than 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 (§ 27).

Ruling

Article 7(2) 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 must not be dependent on a prior application by the interested party.

Creator: European Court of Justice (ECJ)

Verdict at: 2014-06-12

Case number: C-118/13