

SUMMARY

ECJ 21 February 2013, case C-194/12 (Concepción Maestre García - v - Centros Comerciales Carrefour SA), Working time and leave, Paid leave

Facts

Ms Maestre Garcia was on sick leave from 4 November 2010 to 20 June 2011. Her employer Carrefour had scheduled her annual summer vacation, lasting 21 days, within that period. She requested her employer to reschedule her summer vacation to dates after 20 June 2011. The request was rejected on grounds of organisational and human-resource problems.

National proceedings

Ms Maestre Garcia brought an action before the Juzgado de lo Social in Benidorm seeking, primarily, an order that Carrefour grant her the 21 days of paid leave that she had been unable to take or, alternatively, an allowance in lieu. The court referred three questions to the ECJ. ECJ's findings

1. Given that the answer to the questions referred may be clearly deduced from existing case-law, the ECJ gives its decision by order, rather than by judgment (§ 13).
2. The entitlement to paid annual leave is a particularly important principle of EU law, expressly laid down in the Charter. Its purpose is to enable the worker to rest and enjoy a period of relaxation and leisure. This purpose is different from that of sick leave, which is to recover from an illness. Accordingly, the ECJ has held that a worker who is on sick leave

during a period of previously scheduled annual leave has the right to take that leave at a later time. He may request such replacement leave not only prior to the scheduled period of leave but also afterwards, thereby expressing his disagreement with the period allocated to him. Any provision resulting from an agreement between the undertaking and its workers' representatives which denies him that right is irrelevant. Consequently, although Directive 2003/88 does not prohibit a worker from taking paid annual leave during a period of sick leave, where a worker does not wish to do so, his employer must allow him to take annual leave during a different period (§ 15-21).

3. So far as concerns the scheduling of that new period of annual leave, it is subject to the rules and procedures of national law, taking into account the various interests involved, including overriding reasons relating to the undertaking's interests. If those interests preclude acceptance of the worker's request for a new period of annual leave, the employer is obliged to grant the worker a different period of leave proposed by him which is compatible with those interests, without excluding in advance the possibility that that period may fall outside the reference period (§ 22-23).

4. As Ms Maestre Garcia's employment with Carrefour has not ended, an allowance in lieu is prohibited pursuant to Article 7 of Directive 2003/88.

Ruling

1. Article 7(1) of Directive 2003/88 [...] must be interpreted as precluding an interpretation of the national legislation according to which a worker who is on sick leave during a period of annual leave scheduled unilaterally in the annual leave planning schedule of the undertaking which employs him does not have the right, following the end of his sick leave, to take his annual leave at a time other than that originally scheduled, if necessary outside the corresponding reference period, for reasons connected with production or organisation of the undertaking.

2. Article 7 of Directive 2003/88 must be interpreted as precluding an interpretation of the national legislation that permits, while the contract of employment is in force, the payment of an allowance in lieu of the period of annual leave which the worker was not able to take as a result of work incapacity.

Creator: European Court of Justice (ECJ)

Verdict at: 2013-02-21

Case number: C-194/12