

SUMMARY

# **ECJ (Grand Chamber) 3 May 2012, case 337/10 (Georg Neidel - v - Stadt Frankfurt am Main), Working time and leave, Paid leave**

## **Facts**

Mr Neidel was a public servant in Frankfurt am Main. He held the positions of fireman and, subsequently, chief fireman. As of 12 June 2007, Mr Neidel was declared unfit for service on medical grounds. In August 2009, having reached the age of 60, he retired and was granted pension benefits. It was common ground between the parties in the main proceedings that Mr Neidel retained, over the years 2007 to 2009, an entitlement to 86 days of untaken leave. However, his request for payment in lieu of leave was rejected on the grounds that German law relating to civil servants makes no provision for financial compensation for unused leave. According to the defendant (Frankfurt), Article 7(2) of Directive 2003/88 does not apply to civil and public servants.

Furthermore, it maintained that retirement does not constitute a situation in which “the employment relationship is terminated” within the meaning of that provision.

## **National proceedings**

The *Verwaltungsgericht Frankfurt am Main* (Administrative Court, Frankfurt am Main), before which Mr Neidel brought an action against the refusal to compensate him for leave not taken, decided to stay the proceedings and to refer six questions to the ECJ for a preliminary ruling.

## **ECJ’s findings**

*Question 1*

1. The first question was whether Article 7 of Directive 2002/88 applies to a public servant carrying out the activities of a fireman in normal circumstances (§ 19).
2. According to Article 1(3) of Directive 2003/88, read in conjunction with Article 2 of Directive 89/391, to which it refers, those directives apply to all sectors of activity, both public and private. In *Simap* the ECJ held that Directive 89/391 must necessarily be broad in scope, with the result that Mr Neidel's activities fall within the scope of Directive 2003/88 (§ 20-22).
3. Next, the concept of "worker" within the meaning of Article 45 TFEU has, according to settled case law, a specific independent meaning and must not be interpreted narrowly. It is not relevant whether a worker is engaged as a workman [*ouvrier*], a clerk [*employé*] or an official [*fonctionnaire*], or even whether the terms on which he is employed come under public or private law (§ 23-25).

#### *Question 4*

4. As its fourth question, the national court asked whether Article 7(2) of Directive 2003/88 should be interpreted as meaning that a public servant is entitled, on retirement, to an allowance in lieu of paid annual leave not taken on account of the fact that he was prevented from working by sickness (§ 27).
5. In *Schultz-Hoff* the ECJ ruled that the right to paid annual leave, which must be regarded as a particularly important principle of EU social law, is granted to every worker, whatever his state of health. The ECJ also held in that judgement that on termination of the employment relationship, it is no longer possible to take paid annual leave, and that in order to prevent this impossibility leading to a situation in which the worker loses enjoyment of that right, even in pecuniary form, Article 7(2) of Directive 2003/88 provides that the worker is entitled to an allowance in lieu (§ 28-29).
6. Consequently, Article 7(2) of Directive 2003/88 must be interpreted as precluding national legislation or practices which provide that, on termination of the employment relationship, no allowance in lieu of unused paid annual leave is to be paid to a worker who has been on sick leave for the whole or part of the leave year and/or a carryover period, which was the reason why he could not exercise his right to paid annual leave. The retirement of Mr Neidel terminated his employment relationship and national law further provides that it terminated his status as a public servant (§ 30-31).

#### *Questions 2, 3 and 6*

7. In these questions the national court asked whether Article 7 of Directive 2003/88 should be

interpreted as precluding provisions of national law giving public servants an entitlement to additional paid leave on top of the minimum of four weeks per year, which do not provide for the payment of an allowance in lieu to a public servant retiree who has been unable to use that additional leave because he was prevented from working by sickness (§ 33).

8. In *Dominguez* the ECJ held that the purpose of Directive 2003/88 is simply to lay down minimum safety and health requirements for the organisation of working time and that the Directive does not affect Member States' right to apply provisions of national law more favourable to the protection of workers. Consequently, it is for the Member States to (1) decide whether to confer on public servant retirees an entitlement to additional paid leave and either to provide or not provide an entitlement to an allowance in lieu if that person had been unable to use the additional entitlement because of sickness and (2) to lay down the conditions for the granting of that entitlement (§ 35-36).

#### *Question 5*

9. In its fifth question, the national court asked whether Article 7(2) of Directive 2003/88 precludes a provision of national law which restricts, by means of a carry-over period of nine months following which the entitlement to paid leave lapses, the right of a public servant who is retiring to cumulate the allowances in lieu of paid annual leave not taken because he was unfit for service (§ 38).

10. In *KHS* the ECJ took the view that, with regard to the duration of the carry-over period, it is necessary to assess whether that period may reasonably be described as a period beyond which paid annual leave ceases to have a positive effect on the worker as a rest period. In that judgment the ECJ also held that the carry-over period must, inter alia, ensure that the worker can have rest periods, if need be. These may be staggered, planned in advance and available in the longer term and must be substantially longer than the reference period in respect of which they are granted (§ 39-41).

11. In the main proceedings, the carry-over period is nine months, that is to say a period shorter than the reference period to which it relates (§ 42). It is too short a period to be compatible with Directive 2003/88.

#### **Ruling**

Article 7 of Directive 2003/88/EC [...] must be interpreted as applying to a public servant carrying out the activities of a fireman in normal circumstances.

Article 7(2) of Directive 2003/88 must be interpreted as meaning that a public servant is

entitled, on retirement, to an allowance in lieu of paid annual leave not taken because he was prevented from working by sickness.

Article 7 of Directive 2003/88 must be interpreted as not precluding provisions of national law conferring on a public servant an entitlement to further paid leave in addition to the entitlement to a minimum paid annual leave of four weeks, which do not provide for the payment of an allowance in lieu if a public servant who is retiring has been unable to use that additional entitlement because he was prevented from working by sickness.

Article 7(2) of Directive 2003/88 must be interpreted as precluding a provision of national law which restricts, by means of a carryover period of nine months following which the entitlement to paid annual leave lapses, the right of a public servant who is retiring to cumulate the allowances in lieu of paid annual leave not taken because he was unfit for service.

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**Creator:** European Court of Justice (ECJ)

**Verdict at:** 2012-05-03

**Case number:** C-337/10