

SUMMARY

**ECJ 21 June 2012, case C-78/11
(Asociación Nacional de
Grandes Empresas de
Distribución (ANGED) - v -
Federación de Asociaciones
Sindicales (FASGA) et. al.), Working
time and leave, Paid leave**

Facts

Several Spanish trade unions, including FASGA, filed a collective suit against ANGED, a Spanish employers' association, seeking a declaration that workers covered by the collective agreement for department stores are entitled to paid annual leave, even where such leave coincides with periods when they are absent from work on account of temporary incapacity to work. According to Article 38 of Royal Decree 1/1995 it is not possible to interrupt paid leave because of incapacity to work and then to continue the paid leave after recovery. The only exception to this is if the incapacity to work occurs at the beginning of the paid leave. The question was, could this legislation be regarded as compatible with Article 7(1) of Directive 2003/88?

National proceedings

In its first instance judgment dated 23 November 2009 the *Audiencia Nacional* (National High Court) upheld the asserted claim of FASGA in full. ANGED appealed against this decision to the *Tribunal Supremo* (Supreme Court). That court considered it necessary to stay proceedings to ask the ECJ whether said Article 38 of the royal decree was compatible with Article 7(1) of

Directive 2003/88.

ECJ's findings

Even if an employee becomes unfit for work during and not at the beginning of his holidays, his holiday claim is not extinguished by his incapacity to work. Holidays for employees are an important social principle of EU law. One purpose of holidays is to rest. The second purpose is to grant the employee a period of self-determined free time. The second purpose in particular differs from sick leave. Sick leave is granted to the employee to enable him to recover from an illness that has caused him to be unable to work (§19).

Because of the purpose of paid leave it is not possible to restrict the employees' right to it, even if it coincides with incapacity to work. Consequently, a worker who is sick (or becomes sick) during prebooked paid annual leave remains entitled to his paid annual leave at a date following his recovery. The point at which the employee became unfit for work is irrelevant. If the claim to paid leave were only to be granted if the employee becomes unfit for work at the beginning of his paid leave the purpose of paid leave could not be achieved (§ 20-22).

Ruling

Article 7(1) of Directive 2003/88 [...] must be interpreted as precluding national provisions by which a worker who becomes unfit for work during a period of paid annual leave is not entitled subsequently to the paid annual leave which coincided with the period of unfitness for work.

Creator: European Court of Justice (ECJ)

Verdict at: 2012-06-21

Case number: C-78/11