

SUMMARY

ECJ 19 November 2019, joined cases C-609/17 and C-610/17 (TSN), Paid leave

Terveys- ja sosiaalialan neuvottelujärjestö (TSN) ry – v – Hyvinvointialan liitto ry; Auto- ja Kuljetusalan Työntekijäliitto AKT ry – v – Satamaoperaattorit ry, Finnish cases

Legal background

Article 7(1) of Directive 2003/88/EC stipulates that employees are entitled to at least four weeks of paid leave. Article 15 gives Member States the right to apply laws more favourable to the protection of the safety and health of workers. The right to paid leave is enshrined in Article 31(2) of the Charter of Fundamental Rights of the European Union as well. The applicable Finnish law provides that days of paid leave during sickness are carried over only partly, but this may not reduce the worker's entitlement to four weeks' annual leave.

Facts

Both cases concerned employees whose period of leave coincided with sick leave. Their employers refused to carry over all overlapping days. The employees (and their unions) claimed that this was contrary to Directive 2003/88 and Article 31(2) of the Charter. The employers (and their representative organisations) asserted that this was not the case, as the minimum leave was not affected. In both cases, the Finnish labour court asked preliminary questions.

Questions

Is Article 7(1) of Directive 2003/88 to be interpreted as precluding national rules or collective agreements which provide for the granting of days of paid annual leave which exceed the minimum period of four weeks laid down in that provision, and yet exclude the carrying over of those days of leave on the grounds of illness?

Is Article 31(2) of the Charter to be interpreted as precluding national rules or collective agreements which provide for the granting of days of paid annual leave which exceed the minimum period of four weeks laid down in Article 7(1) of Directive 2003/88, and yet exclude the carrying over of those days of leave on the grounds of illness?

Consideration

First question

Directive 2003/88/EC does not preclude domestic provisions granting paid annual leave for more than four weeks under the conditions laid down by national law (*Dominguez*, C-282/10, para. 47; *Neidel*, C-337/10, para. 34; *Maschek*, C-341/15, para. 38; *Hein*, C-385/17, para. 31). It is apparent from the wording of the Directive that its purpose is to lay down minimum safety and health requirements for the organisation of working time. Member States can apply provisions more favourable to workers. The rights granted beyond the minimum are not governed by the Directive but by national law, although such rights cannot compensate for possible infringements elsewhere (*Hein*, C-385/17, paras. 42–43; *Julián Hernández and Others*, C-198/13, paras. 43–44). Member States can thus decide to grant additional rights and the conditions thereof.

The Court has held that Member States can limit the accrual of paid leave during illness, provided that the entitlement is at least four weeks (*Dominguez*, C-282/10, para. 49) or that no allowance in lieu is due for the excess leave above four weeks, which was not taken due to sickness (*Neidel*, C-337/10, para. 36; *Maschek*, C-341/15, para. 39). A similar solution must prevail where a Member State excludes the right to carry over days of paid leave which exceed that minimum period.

Second question

Article 51(1) defines the scope of the Charter: the provisions thereof are addressed to the Member States only when they are implementing EU law (*Florescu and Others*, C-258/14, para. 44 and the case law cited). According to Article 51(2), the Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task, or modify powers and tasks as defined in the Treaties.

Fundamental rights guaranteed in the legal order of the EU are applicable in all situations governed by EU law (*Bauer*, C-569/16, para. 52 and the case law cited). In this case, it is not apparent that the dispute concerns the interpretation or application of other EU provisions than Directive 2003/88 and Article 31(2) of the Charter. It must therefore be determined whether paid annual leave exceeding the minimum period of four weeks and the exclusion to

carry over those days are to be regarded as implementing Directive 2003/88 for the purposes of Article 51(1) of the Charter, so that Article 31(2) applies.

The mere fact that domestic measures come within an area in which the EU has powers cannot bring those measures within the scope of EU law (*Julián Hernández and Others*, C-198/13, para. 36 and the case law cited). In the area of social policy, the EU and Member States have a shared competence (Article 4(2)(b) TFEU). As specified in Article 153(1) TFEU and recalled in recital 2 of Directive 2003/88, the Union is to support and complement Member States' activities in this area. The Directive simply aims to impose minimum requirements, but Member States can impose more stringent measures that are compatible with the Treaties, provided that those do not undermine the coherence of EU action (*IP*, C-2/97, paras. 35, 37 and 40).

Article 15 of Directive 2003/88 does not grant Member States an option of legislating by virtue of EU law, but merely recognizes their power to provide for more favourable provisions outside the framework of the Directive (by analogy: *Julián Hernández and Others*, C-198/13, para. 44). This situation is different, compared to situations where Member States have the freedom to choose between various ways of implementation, where they have a margin of discretion or where they adopt specific measures to achieve an objective (*N.S. and Others*, C-411/10, paras. 64–68; *C.K. and Others*, C-578/16 PPU, para. 53; *Milkova*, C-406/15, paras. 46, 47, 52 and 53 and the case law cited; *Florescu and Others*, C-258/14, para. 48).

Lastly, the Finnish rules at issue are not capable of affecting the minimum protection of Article 7(1) of Directive 2003/88 (by analogy: *Julián Hernández and Others*, C-198/13, para. 43) or any other rules.

It follows from all the foregoing that rights which exceed the minimum period of four weeks of leave as defined in Article 7(1) of Directive 2003/88 fall within the powers of Member States without being governed by the Directive or falling within its scope (by analogy: *Julián Hernández and Others*, C-198/13, para. 45). As EU law does not govern this situation, the latter also falls outside the scope of the Charter and therefore cannot be assessed in light of its provisions (*Julián Hernández and Others*, C-198/13, para. 35; *Miravittles Ciurana and Others*, C-243/16, para. 34; *Consorzio Italian Management and Catania Multiservizi*, C-152/17, paras. 34–35).

Ruling

Article 7(1) of 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 must be

interpreted as not precluding national rules or collective agreements which provide for the granting of days of paid annual leave which exceed the minimum period of four weeks laid down in that provision, and yet exclude the carrying over of those days of leave on the grounds of illness.

Article 31(2) of the Charter of Fundamental Rights of the European Union, read in conjunction with Article 51(1) thereof, must be interpreted as meaning that it is not intended to apply where such national rules or collective agreements exist.

Creator: European Court of Justice (ECJ)

Verdict at: 2019-11-19

Case number: C-609/17 and C-610/17