

SUMMARY

ECJ 20 July 2016, case C-341/15 (Maschek), Paid leave

<p>The fact that a worker retires voluntarily does not deprive him of the right to payment in lieu of paid annual leave he was unable to use up on account of sickness.</p>

Summary

The fact that a worker retires voluntarily does not deprive him of the right to payment in lieu of paid annual leave he was unable to use up on account of sickness.

Facts

Mr Maschek was employed by the City of Vienna. He was unwell from 15 November to 31 December 2010. Subsequently, he was placed on paid garden leave for the remainder of his term of employment. Initially, it was agreed that he would retire early on 30 September 2011 at age 62. Later his early retirement date was moved to 30 June 2012, when he was 63. Shortly before he retired (the date is not revealed), he became sick again. He took the position that this fact made it impossible for him to take leave. He claimed payment in lieu. His employer declined, basing its refusal on a provision of law providing (i) that, upon termination of employment, the employee is entitled to payment in lieu “where he did not, by his own actions, use up his entitlement to annual leave” and (ii) that the employee shall be responsible for not having used up his entitlement to annual leave where he leaves as a result of retirement at his request.

National proceedings

The Administrative Court of Vienna, in which Mr Maschek lodged his claim, referred three questions to the ECJ on the interpretation of Article 7 of Directive 2003/88: “Member States shall take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks in accordance with the conditions for entitlement to, and granting of,

such leave laid down by national legislation and/or practice”.

ECJ’s findings

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The fact that a worker terminates his employment relationship at his own request has no bearing on his entitlement to receive, where appropriate, an allowance in lieu of paid annual leave, which he has not been able to use up before the end of his employment relationship. Article 7(2) of Directive 2003/88 must therefore be interpreted as precluding national legislation such as that at issue, which deprives the worker, whose employment relationship was terminated following his request for retirement, of an allowance in lieu of paid annual leave not taken and who has not been able to use up his entitlement to paid annual leave before the end of that employment relationship (§ 25-29).

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Article 7(2) of Directive 2003/88 precludes national legislation which provides that, on termination of the employment relationship, no allowance in lieu of paid annual leave not taken is to be paid to a worker who has been on sick leave for the whole or part of the leave year and/or of a carry-over period, which was the reason why he could not exercise his right to paid annual leave (see ECJ’s judgments in Schultz-Hoff and Neidel). It follows that, as regards the period between 15 November and 31 December 2010, in which it is established that Mr Maschek was on sick leave and was not able, for that reason, to use up, during that period, his entitlement to the annual paid leave which he had acquired, he was entitled to an allowance in lieu of paid annual leave not taken (§ 30-33).

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In order to ensure the effectiveness of the right to annual leave, it must be held that a worker whose employment relationship has ended and who, pursuant to an agreement with his employer, while continuing to receive his salary, was required not to report to his place of work during a specified period preceding his retirement, is not entitled to an allowance in lieu of paid annual leave not taken during this period, unless he was not able to use up that entitlement due to illness (§ 34- 37).

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Although the purpose of Directive 2003/88 is to lay down minimum health and safety requirements for the organisation of working time, which Member States must respect, they have the right to introduce more favourable provisions for workers. Thus, Directive 2003/88 does not preclude domestic provisions giving entitlement to more than the minimum period of four weeks' paid annual leave, granted under the conditions for entitlement to, and granting of, the right to paid annual leave laid down by national law. In that case, the Member States may grant to a worker who, because of illness, could not use up all of his additional paid annual leave before the end of his employment relationship, an entitlement to an allowance in lieu of that additional period. It is, on the other hand, for Member States to determine the conditions for granting that entitlement (§ 38-39).

Judgment

Article 7(2) of Directive 2003/88 [...] must be interpreted:

as precluding national legislation such as that at issue in the main proceedings, which deprives the worker, whose employment relationship was terminated following his request for retirement, of an allowance in lieu of paid annual leave not taken and who has not been able to use up his rights to paid annual leave before the end of that employment relationship;

as meaning that a worker is entitled, on retirement, to an allowance in lieu of paid annual leave not taken because he was prevented from working by sickness;

as meaning that a worker whose employment relationship has ended and who, pursuant to an agreement with his employer, while continuing to receive his salary, was required not to report to his place of work during a specified period preceding his retirement, is not entitled to an allowance in lieu of paid annual leave not taken during this period, unless he was not able to use up that entitlement due to illness;

as meaning that it is, on the one hand, for Member States to decide whether to grant workers additional paid leave in addition to the minimum annual paid leave of four weeks provided for in Article 7 of Directive 2003/88. In that case, the Member States may grant to a worker who, because of illness, could not use up all of his additional paid annual leave before the end of his employment relationship, an entitlement to an allowance in lieu of that additional period. It is, on the other hand, for the Member States to determine the conditions for granting that entitlement.

Creator: European Court of Justice (ECJ)

Verdict at: 2016-07-20

Case number: C-341/15 (Maschek)