

SUMMARY

ECJ 30 June 2016, case C-178/15 (Sobczyszyn), Paid leave

<p>A worker who was unable to take paid annual leave on account of sick leave retains his right to annual leave.</p>

Summary

A worker who was unable to take paid annual leave on account of sick leave retains his right to annual leave.

Facts

Ms Sobczyszyn was employed as a primary school teacher. On 1 January 2011 she acquired 35 days of paid leave for the year 2011. In that year she was granted ‘convalescence leave’ for a period of almost eight months. The right to such leave is provided in Article 73(1) of the Teachers’ Charter: “Teachers employed full-time for an indefinite duration shall, after they have worked in the school for at least seven years, be granted convalescence leave by the school principal in order to follow a course of treatment prescribed by a doctor”.

On 27 April 2012 Ms Sobczyszyn claimed her entitlement to the days of annual leave acquired in respect of 2011, which she had not been able to take because of her convalescence leave. Her employer refused her that entitlement on the ground that, since, under the leave roster for 2011, she was to take her annual leave from 1 to 31 July 2011, her entitlement to annual leave for 2011 had been used up by the period of convalescence leave between those dates.

National proceedings

Ms Sobczyszyn brought proceedings before the local court. It referred a question to the ECJ on the interpretation of Article 7 of Directive 2003/88, which provides that Member States shall ensure that every worker is entitled to at least four weeks of paid leave. The question was whether this Article 7 precludes national legislation under which a worker who is on

convalescence leave, granted in accordance with national law, during the period of annual leave scheduled in the leave roster of the establishment where he is employed may be refused, at the end of his convalescence leave, the right to take his annual leave in a subsequent period.

ECJ's findings

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The right to paid annual leave is a particularly important principle of EU social law, laid down not only in Directive 2003/88 but also in the Charter, and it cannot be interpreted restrictively. Its purpose is to enable the worker to rest and enjoy a period of relaxation and leisure (§ 19-23).

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In the event periods of annual leave and sick leave overlap, Article 7(1) of Directive 2003/88 must be interpreted as precluding national legislation or practices under which the right to paid annual leave is extinguished at the end of the leave year (or of a carry-over period) where the worker has been on sick leave, for the whole or part of the leave year, and therefore has not actually had the opportunity to exercise that right (see Schulz-Hoff, C-350/06, and Pereda, C-277/08) (§ 24).

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The purpose of annual leave is different from that of the right to sick leave, which is to enable the worker to recover from an illness (see ANGED, C-78/11). In the light of those differing purposes of the two types of leave, the Court has concluded that a worker who is on sick leave during a period of previously scheduled annual leave has the right, at his request and in order that he may actually use his annual leave, to take that leave during a period which does not coincide with the period of sick leave (§ 25-26).

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The issue in this case, therefore, is whether, in a situation where a period of convalescence leave overlaps with a period of previously scheduled annual leave, that overlap is liable to prevent the worker from taking his acquired annual leave at a later time (§ 27).

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According to the referring court, convalescence leave has the objective of improving the state of health of workers who are prescribed it and, unlike annual leave, is not intended to grant those workers a period of relaxation and leisure since they must follow a course of treatment prescribed by a doctor (§ 28-31).

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Should the referring court conclude that the purposes of convalescence leave and annual leave differ, the national legislation must lay down an obligation on the employer to grant the worker concerned a different period of annual leave proposed by him which is compatible with any overriding reasons relating to the interests of the employer, without excluding in advance the possibility that that period may fall outside the reference period for the annual leave in question (§ 32).

Judgment

Article 7(1) of Directive 2003/88 [...] must be interpreted as precluding national legislation or a national practice, such as that at issue in the main proceedings, under which a worker who is on convalescence leave, granted in accordance with national law, during the period of annual leave scheduled in the leave roster of the establishment where he is employed may be refused, at the end of his convalescence leave, the right to take his paid annual leave in a subsequent period, provided that the purpose of the right to convalescence leave is different from that of the right to annual leave, a matter which is for the national court to determine.

Creator: European Court of Justice (ECJ)

Verdict at: 2016-06-30

Case number: C-178/15 (Sobczyszyn)