

JUDGMENT OF THE COURT (Fifth Chamber)

21 June 2012 (*)

(Directive 2003/88/EC – Organisation of working time – Entitlement to paid annual leave – Sick leave – Annual leave coinciding with sick leave – Entitlement to take paid annual leave at another time)

In Case C-78/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Tribunal Supremo (Spain), made by decision of 26 January 2011, received at the Court on 22 February 2011, in the proceedings

Asociación Nacional de Grandes Empresas de Distribución (ANGED)

v

Federación de Asociaciones Sindicales (FASGA),

Federación de Trabajadores Independientes de Comercio (Fetico),

Federación Estatal de Trabajadores de Comercio, Hostelería, Turismo y Juego de UGT,

Federación del Comercio, Hostelería y Turismo de CC.OO.,

THE COURT (Fifth Chamber),

composed of M. Safjan, President of the Chamber, M. Ilešič and E. Levits (Rapporteur), Judges,

Advocate General: V. Trstenjak,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 29 March 2012,

after considering the observations submitted on behalf of:

- the Federación de Asociaciones Sindicales (FASGA), by J. Caballero Ramos, abogado,
- the Federación Estatal de Trabajadores de Comercio, Hostelería, Turismo y Juego de UGT, by J. Jiménez de Eugenio, abogado,
- the Federación de Comercio, Hostelería y Turismo de CC.OO., by A. Martín Aguado and J. Jiménez de Eugenio, abogados,
- the Spanish Government, by A. Rubio González, acting as Agent,
- the Italian Government, by G. Palmieri, acting as Agent, and G. Palatiello, avvocato dello Stato,

– the European Commission, by S. Pardo Quintillán and M. van Beek, acting as Agents, having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of 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 (OJ 2003 L 299, p. 9) ('Directive 2003/88').
- 2 The reference was made in proceedings between the Asociación Nacional de Grandes Empresas de Distribución ('ANGED'), the applicant in the main proceedings, and the Federación de Asociaciones Sindicales, Federación de Trabajadores Independientes de Comercio (Fetico), the Federación Estatal de Trabajadores de Comercio, Hostelería, Turismo y Juego de UGT and the Federación del Comercio, Hostelería y Turismo de CC.OO. ('FASGA and Others'), which are trade unions representing workers, concerning collective actions brought by those trade unions for recognition of the right of certain workers to paid annual leave, even where such leave coincides with periods of sick leave owing to temporary incapacity for work.

Legal context

European Union legislation

- 3 Article 1 of Directive 2003/88, entitled 'Purpose and scope', is worded as follows:

'1. This Directive lays down minimum safety and health requirements for the organisation of working time.

2. This Directive applies to:

(a) minimum periods of ... annual leave ...

...'
- 4 Article 7 of Directive 2003/88, entitled 'Annual leave', provides as follows:

'1. 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.

2. The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.'
- 5 Article 17 of Directive 2003/88 provides that Member States may derogate from certain provisions of that directive. No derogation is allowed with regard to Article 7 of the directive.

National legislation

6 Royal Legislative Decree No 1/1995 approving the amended text of the Workers' Statute (Real Decreto Legislativo 1/1995, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores) of 24 March 1995 (BOE No 75 of 29 March 1995, p. 9654), as amended by Framework Law No 3/2007 for effective equality as between women and men (Ley orgánica 3/2007 para la igualdad efectiva de mujeres y hombres) of 22 March 2007 (BOE No 71 of 23 March 2007, p. 12611) ('the Statute'), governs inter alia matters relating to paid annual leave and temporary incapacity for work.

7 Article 38 of the Statute provides as follows:

'1. The period of paid annual leave, which may not be replaced by an allowance in lieu, shall be that agreed in collective agreements or individual contracts. In no circumstances shall the period of leave be less than 30 calendar days.

2. The period or periods during which leave may be taken shall be scheduled by mutual consent between the employer and the employees, in accordance, where appropriate, with the provisions of the collective agreements on the annual planning of leave.

In the case of disagreement between the parties, the competent court shall set the dates of the leave to be allocated and its decision shall be final. The proceedings shall be summary and dealt with as a matter of priority.

3. Each undertaking shall establish a leave schedule. Employees shall be made aware of the days to which they are entitled, at the latest, two months in advance of the start of their leave.

When the period of leave set out in the undertaking's leave schedule to which the previous paragraph refers coincides with a period of temporary disability resulting from pregnancy, labour or breastfeeding or with the period of suspension of the contract of employment laid down in Article 48.4 of this Law, employees shall be entitled to take the leave, at a different point in time from that period of temporary disability or other period of leave, to which they are entitled under the ... provision [cited above] following the period of suspension, even if the calendar year to which that leave relates has ended.'

8 Article 37 of the Collective Agreement for Department Stores 2009–2010 contains a provision similar to that of the last paragraph of Article 38 of the Statute.

9 Article 48.4 of the Statute governs the situations in which a contract of employment is suspended on account of child birth, death of the mother after child birth, premature birth, hospitalisation of a premature baby, adoption or fostering.

The dispute in the main proceedings and the question referred for a preliminary ruling

10 By separate applications, which were joined, FASGA and Others initiated a collective dispute settlement procedure 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 disability.

11 The ANGED considers that workers affected by a temporary incapacity for work before starting a pre-arranged period of leave, or who are thus affected during that period of leave,

are not entitled to take leave at a later date, after the period during which they were unfit for work has ended, except in situations expressly provided for in the collective agreement, that is to say those cases covered by Article 48.4 of the Statute.

- 12 By judgment of 23 November 2009, the Audiencia Nacional (National High Court) upheld FASGA and Others' claim in full.
- 13 ANGED then brought an appeal in cassation before the Tribunal Supremo against that judgment.
- 14 The Tribunal Supremo has referred to the Court's case-law but nevertheless considers it necessary – in so far as the appeal relates to the situation in which the incapacity for work arises after the period of paid annual leave has commenced – to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Does Article 7(1) of Directive 2003/88 ... preclude an interpretation of national legislation which does not permit interruption of a period of leave so that the full period – or the remaining period – can be taken at a later time if a worker is temporarily incapacitated when he is on leave?'

Consideration of the question referred

- 15 By its question, the Tribunal Supremo asks, in essence, whether Article 7(1) of Directive 2003/88 must be interpreted as precluding national provisions under 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.
- 16 In that regard, it should be noted first of all that, according to settled case-law, the entitlement of every worker to paid annual leave must be regarded as a particularly important principle of European Union social law from which there can be no derogations and whose implementation by the competent national authorities must be confined within the limits expressly laid down by Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (OJ 1993 L 307, p. 18) itself, a directive now codified by Directive 2003/88 (Case C-214/10 *KHS* [2011] ECR I-0000, paragraph 23 and the case-law cited).
- 17 Second, it should be recalled that the right to paid annual leave is, as a principle of European Union social law, not only particularly important, but is also expressly laid down in Article 31(2) of the Charter of Fundamental Rights of the European Union, which Article 6(1) TEU recognises as having the same legal value as the Treaties (*KHS*, paragraph 37, and Case C-337/10 *Neidel* [2012] ECR I-0000, paragraph 40).
- 18 Third, the right to paid annual leave cannot be interpreted restrictively (see Case C-486/08 *Zentralbetriebsrat der Landeskrankenhäuser Tirols* [2010] ECR I-3527, paragraph 29).
- 19 It is, moreover, common ground that the purpose of entitlement to paid annual leave is to enable the worker to rest and to enjoy a period of relaxation and leisure. The purpose of entitlement to sick leave is different. It is given to the worker so that he can recover from an illness that has caused him to be unfit for work (see Case C-277/08 *Vicente Pereda* [2009] ECR I-8405, paragraph 21).
- 20 Accordingly, the Court has already held that it follows in particular from the purpose of entitlement to paid annual leave 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 (see *Vicente Pereda*, paragraph 22).

- 21 It follows from the case-law cited above, which concerns a worker who is unfit for work before a period of paid annual leave commences, that the point at which that temporary incapacity arose is irrelevant. Consequently, the worker is entitled to take paid annual leave which coincides with a period of sick leave at a later point in time, irrespective of the point at which the incapacity for work arose.
- 22 It would be arbitrary and contrary to the purpose of entitlement to paid annual leave referred to at paragraph 19 above to grant the worker that right only if he is already unfit for work when the period of paid annual leave commences.
- 23 In that context, the Court has already held that the new period of annual leave – corresponding to the duration of the overlap between the period of annual leave initially scheduled and the period of sick leave – to which the worker is entitled after he has recovered may be scheduled, if necessary, outside the corresponding reference period for annual leave (see, to that effect, *Vicente Pereda*, paragraph 23 and the operative part of the judgment).
- 24 In the light of all the foregoing, the answer to the question referred is that Article 7(1) of Directive 2003/88 must be interpreted as precluding national provisions under 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.

Costs

- 25 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

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 precluding national provisions under 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.

[Signatures]

* Language of the case: Spanish.