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Provisional text

JUDGMENT OF THE COURT (First Chamber)

14 December 2023 (*)

(Reference for a preliminary ruling – Protection of the safety and health of workers – Organisation of working time – Article 31(2) of the Charter of Fundamental Rights of the European Union – Directive 2003/88/EC – Article 7 – Right to paid annual leave – SARS-Cov-2 virus – Quarantine measure – Impossible to carry over the paid annual leave granted for a period coinciding with a period of quarantine)

In Case C-206/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Arbeitsgericht Ludwigshafen am Rhein (Labour Court, Ludwigshafen am Rhein, Germany), made by decision of 14 February 2022, received at the Court on 17 March 2022, in the proceedings

TF

v

Sparkasse Südpfalz,

THE COURT (First Chamber),

composed of A. Arabadjiev, President of the Chamber, T. von Danwitz, P.G. Xuereb, A. Kumin and I. Ziemele (Rapporteur), Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Sparkasse Südpfalz, by K. Kapischke, M. Sprenger and K. Waterfeld,

- the Finnish Government, by M. Pere, acting as Agent,
- the European Commission, by B.-R. Killmann and D. Recchia, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 May 2023,

gives the following

Judgment

1 This request 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) and of Article 31(2) of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between TF and his employer, the Sparkasse Südpfalz, concerning the carry-over of days of paid annual leave granted to TF for a period coinciding with his quarantine following contact with a person infected with the SARS-Cov-2 virus.

Legal context

European Union law

3 Recitals 4 and 5 of Directive 2003/88 state:

'(4) The improvement of workers' safety, hygiene and health at work is an objective which should not be subordinated to purely economic considerations.

(5) All workers should have adequate rest periods. ...'

4 Article 7 of that directive, entitled 'Annual leave', provides, in paragraph 1 thereof:

'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.'

German law

5 Under Paragraph 7(3) of the Bundesurlaubsgesetz (Federal Law on Leave) of 8 January 1963 (BGBI. 1963, p. 2), in the version applicable to the dispute in the main proceedings ('the BUrlG'):

'Leave must be granted and taken in the course of the current calendar year. The carrying-over of leave to the next calendar year shall be permitted only if justified on compelling operational grounds or for reasons personal to the employee. If leave is carried over, it must be granted and taken during the first three months of the following calendar year. ...'

6 Paragraph 28(1) of the Gesetz zur Verhütung und Bekämpfung von Infektionskrankheiten beim Menschen (Infektionsschutzgesetz) (Law on the prevention and control of infectious diseases in humans) ('the IfSG') provides:

‘If sick people, those suspected of being sick, those suspected of being infected or carriers of the virus are identified ..., the competent authority shall take the necessary protective measures ... to the extent and for as long as is necessary to prevent the spread of transmissible diseases; the competent authority may in particular require persons not to leave the place where they are located or to do so only under certain conditions, or not to enter certain places or public places or to do so only under certain conditions. ...’

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

7 TF, who has been employed by the Sparkasse Südpfalz since 2003, was granted paid annual leave for the period from 3 to 11 December 2020.

8 On 2 December 2020, the Kreisverwaltung Germersheim (Germersheim District Authority, Germany), ordered TF to quarantine, pursuant to Paragraph 28 of the IfSG, for the period from 2 to 11 December 2020, on the ground that he had been in contact with an individual infected with the SARS-Cov-2 virus.

9 On 4 March 2021, TF requested that the days of paid annual leave granted for the period coinciding with the period of enforced quarantine be carried over.

10 After that carry-over was refused by the Sparkasse Südpfalz, TF brought an action before the Arbeitsgericht Ludwigshafen am Rhein (Labour Court, Ludwigshafen am Rhein, Germany), the referring court, seeking that the paid annual leave not be off-set against the period of quarantine ordered by the public authorities.

11 That court states that, according to the case-law of the Bundesarbeitsgericht (Federal Labour Court, Germany), the sole purpose of the right to paid annual leave is to release workers from their obligation to work while ensuring that their leave will be paid. The employer is not, however, responsible for the conditions under which leave is taken.

12 According to the referring court, the provisions of the BUrlG require the employer to carry over the days of leave granted only where workers can demonstrate incapacity for work occurring during the period of leave. The German courts have ruled that mere quarantine does not amount to incapacity for work.

13 That said, the referring court is uncertain whether that case-law is compatible with Article 7(1) of Directive 2003/88.

14 First, referring to the judgment of 14 October 2010, *Union syndicale Solidaires Isère* (C-428/09, EU:C:2010:612), that court states that derogations from the right to paid annual leave must be interpreted strictly.

15 Second, having regard to the purpose of paid annual leave, that is to say, to enable workers to rest and enjoy a period of relaxation and leisure, the referring court is uncertain whether a period of quarantine amounts to a period of actual rest.

16 Third, the referring court states that the Court of Justice has held, as set out in the judgment of 29 November 2017, *King* (C-214/16, EU:C:2017:914), that the right to paid annual leave cannot be lost at the end of the reference period, namely the period during which annual leave must be taken, where workers were prevented from exercising that right. Quarantine could, in that respect, be regarded as such a prevention.

17 In those circumstances, the Arbeitsgericht Ludwigshafen am Rhein (Labour Court, Ludwigshafen am Rhein) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must Article 7(1) of Directive [2003/88] and the right to an annual period of paid leave set out in Article 31(2) of [the Charter] be interpreted as precluding national legislation or practice on the granting of annual leave to workers under which the obligation to grant an entitlement to leave is fulfilled even if the worker is affected by an unforeseeable event during an authorised period of leave, such as, in the present case, government-ordered quarantine, and is therefore prevented from exercising that entitlement in full?’

Consideration of the question referred

Admissibility

18 The Sparkasse Südpfalz contends that the question referred for a preliminary ruling is formulated in too general a manner and that it prejudices the answer to be given. It is therefore hypothetical and inadmissible.

19 According to settled case-law, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court, which enjoy a presumption of relevance. Therefore, since the question referred concerns the interpretation or validity of a rule of EU law, the Court is, in principle, required to give a ruling, unless it is quite obvious that the interpretation sought bears no relation to the actual facts of the main action, it is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (order of 27 April 2023, *Ministero della Giustizia (Competition for notarial posts)*, C-495/22, EU:C:2023:405, paragraph 40 and the case-law cited).

20 Furthermore, it is equally settled case-law that, if questions have been improperly formulated or if they go beyond the scope of the powers conferred on the Court by Article 267 TFEU, the Court is free to extract from all the information provided by the referring court and, in particular, from the statement of grounds in the order for reference the elements of EU law which, having regard to the subject matter of the dispute, require interpretation. To that end, the Court may have to reformulate the questions referred to it (judgment of 13 February 2014, *Crono Service and Others*, C-419/12 and C-420/12, EU:C:2014:81, paragraph 28 and the case-law cited).

21 In the present case, by its question, as worded in the order for reference, the referring court, by seeking an interpretation of Article 7(1) of Directive 2003/88 and Article 31(2) of the Charter, wishes to know whether an unforeseeable event that occurs during the period of annual leave, such as quarantine ordered by the public authorities, enables workers to have their leave days carried over. In so doing, it states the reasons why the Court’s answer to the question referred is necessary for the purpose of resolving the dispute in the main proceedings.

22 In that regard, first, the order for reference contains all the relevant information enabling the Court to provide a useful answer to the question referred for a preliminary ruling.

23 Second, as the Sparkasse Südpfalz submits, the concept of ‘unforeseeable event’ covers other unforeseeable events besides quarantine, which is what is at issue in the present case. That said,

it is apparent both from the clarification ‘such as quarantine’ in the wording of the question referred for a preliminary ruling and from the content of the order for reference that the referring court is in fact seeking an interpretation of the relevant provisions of EU law solely as regards the impact of quarantine on the entitlement to annual leave.

24 It follows that the question referred is admissible.

Substance

25 By its question, the referring court asks, in essence, whether Article 7(1) of Directive 2003/88 and Article 31(2) of the Charter must be interpreted as precluding national legislation or practice that does not permit the carry-over of days of paid annual leave which were granted to a worker who is not sick in respect of a period coinciding with a period of quarantine ordered by a public authority on account of that worker having been in contact with a person infected with a virus.

26 In the first place, it should be recalled that, as is clear from the very wording of Article 7(1) of Directive 2003/88, every worker is entitled to paid annual leave of at least four weeks. That right to paid annual leave must be regarded as a particularly important principle of EU social law, the implementation of which by the competent national authorities must be confined within the limits expressly laid down by Directive 2003/88 itself (judgment of 22 September 2022, *Fraport and St. Vincenz-Krankenhaus*, C-518/20 and C-727/20, EU:C:2022:707, paragraph 24 and the case-law cited).

27 The right to paid annual leave is, as a principle of EU social law, particularly important, as is apparent from the fact that it is expressly enshrined in Article 31(2) of the Charter. It should be recalled that Article 7(1) of Directive 2003/88 reflects and gives concrete expression to that fundamental right to an annual period of paid leave, as enshrined in the Charter. While Article 31(2) of the Charter guarantees the right of every worker to an annual period of paid leave, Article 7(1) of Directive 2003/88 implements that principle by fixing the duration of that period (see, to that effect, judgment of 22 September 2022, *Fraport and St. Vincenz-Krankenhaus*, C-518/20 and C-727/20, EU:C:2022:707, paragraph 26 and the case-law cited).

28 In the second place, the Court has held, in that context, that the right to paid annual leave cannot be interpreted restrictively (see, to that effect, judgment of 30 June 2016, *Sobczyszyn*, C-178/15, EU:C:2016:502, paragraph 21).

29 In the third place, as regards the objective referred to in Article 7(1) of Directive 2003/88 and Article 31(2) of the Charter, it should be recalled that, according to settled case-law, the right to paid annual leave has the dual purpose of enabling the worker both to rest from carrying out the work he or she is required to do under his or her contract of employment and to enjoy a period of relaxation and leisure (judgment of 25 June 2020, *Varhoven kasatsionensadna Republika Bulgaria and Iccrea Banca*, C-762/18 and C-37/19, EU:C:2020:504, paragraph 57 and the case-law cited).

30 In that regard, workers must be able to have the actual benefit of the minimum paid annual leave provided for in Article 7 of Directive 2003/88, and of the other minimum rest periods provided for by that directive (see, to that effect, judgments of 6 November 2018, *Kreuziger* C-619/16, EU:C:2018:872, paragraph 49, and of 4 June 2020, *Fetico and Others*, C-588/18, EU:C:2020:420, paragraph 32).

31 In particular, the Court has held that the purpose of the right to paid annual leave, which is to enable the worker to rest and to enjoy a period of relaxation and leisure, is different from that of the

right to sickleave, which is to enable the worker to recover from an illness (judgment of 30 June 2016, *Sobczyszyn*, C-178/15, EU:C:2016:502, paragraph 25).

32 In the light of those differing purposes of the two types of leave, the Court has concluded that a worker who is on sickleave during a period of previously scheduled annual leave has the right, at his or her request and in order that he or she may actually use his or her annual leave, to take that leave during a period which does not coincide with the period of sickleave (judgment of 30 June 2016, *Sobczyszyn*, C-178/15, EU:C:2016:502, paragraph 26 and the case-law cited).

33 In the latter case, first, incapacity for work is, as a rule, not foreseeable and beyond the worker's control (judgment of 4 October 2018, *Dicu*, C-12/17, EU:C:2018:799, paragraph 32).

34 Second, the worker on sickleave is subject to physical or psychological constraints caused by an illness (see, to that effect, judgment of 4 October 2018, *Dicu*, C-12/17, EU:C:2018:799, paragraph 33).

35 Furthermore, during the minimum rest periods provided for by Directive 2003/88, workers must not be subject to any obligation vis-à-vis their employers which may prevent them from pursuing freely and without interruption their own interests in order to neutralise the effects of work on their safety or health (see, to that effect, judgment of 9 September 2003, *Jaeger*, C-151/02, EU:C:2003:437, paragraph 94).

36 It is in the light of those principles, as given concrete expression in the case-law of the Court, that the question referred for a preliminary ruling must be examined.

37 It is apparent from the order for reference that TF was granted leave days in respect of a period coinciding with the period of quarantine ordered by the competent public authorities, on the basis of Paragraph 28 of the IfSG, as a public health measure intended to prevent the spread of a contagious illness, since he had been in contact with an infected person. The referring court states, in that regard, that, according to the case-law of the German courts on the relevant provisions of the BUrtG, quarantine that does not entail incapacity for work, as in the present case, does not give rise to the right to carry over days of paid annual leave.

38 In that regard, it must be noted, first, that the purpose of that quarantine measure, seeking to prevent the spread of a contagious illness by way of isolation on the part of persons likely to develop symptoms, differs from the purposes of paid annual leave, recalled in paragraph 29 above.

39 Second, it is true that it is common ground that a quarantine measure is, like incapacity for work on account of illness, an unforeseeable event beyond the control of the person subject to it.

40 That being so, it is apparent from the file before the Court that a public authority ordered the applicant in the main proceedings to quarantine on the ground that he had been in contact with a person infected with the SARS-Cov-2 virus.

41 That worker was not, during the period concerned, in a situation of incapacity for work as evidenced by a medical certificate.

42 Thus, that worker is in a situation that is different from that of a worker on sickleave, who is subject to physical or psychological constraints caused by the illness.

43 It cannot therefore be found that the purpose of quarantine is, as a matter of principle, comparable to that of sick leave, within the meaning of the case-law referred to in paragraph 31 above. Accordingly, a period of quarantine cannot, in itself, present an obstacle to the attainment of the purpose of paid annual leave, which is intended to enable workers to rest from carrying out the work they are required to do under their contract of employment and to enjoy a period of relaxation and leisure (see, to that effect, judgment of 6 November 2018, *Bauer and Willmeroth*, C-569/16 and C-570/16, EU:C:2018:871, paragraph 41 and the case-law cited).

44 Third, as the Advocate General observed in points 52 to 56 of his Opinion, although quarantine is likely to affect the conditions under which workers enjoy their free time, it cannot be considered that it undermines in itself those workers' right to have the actual benefit of their paid annual leave. During the period of annual leave, workers cannot be made subject, by their employer, to any obligation which may prevent them from pursuing freely and without interruption their own interests in order to neutralise the effects of work on their safety or health.

45 Consequently, provided that the employers satisfy those obligations, it cannot be required to compensate for the disadvantages arising from an unforeseeable event, such as quarantine ordered by a public authority, that would prevent its employees from taking full advantage of their right to paid annual leave. Directive 2003/88, the principles of which have been recalled in paragraphs 26 to 35 above, is not intended to ensure that any event capable of preventing workers from enjoying fully and in the manner they wish a period of rest or relaxation is a reason for granting workers additional leave so as to ensure that the purpose of annual leave is attained.

46 Having regard to the foregoing considerations, the answer to the question referred is that Article 7(1) of Directive 2003/88 and Article 31(2) of the Charter must be interpreted as not precluding national legislation or practice that does not permit the carry-over of days of paid annual leave which were granted to a worker who is not sick in respect of a period coinciding with a period of quarantine ordered by a public authority on account of that worker having been in contact with a person infected with a virus.

Costs

47 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (First 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 and Article 31(2) of the Charter of Fundamental Rights of the European Union

must be interpreted as not precluding national legislation or practice that does not permit the carry-over of days of paid annual leave which were granted to a worker who is not sick in respect of a period coinciding with a period of quarantine ordered by a public authority on account of that worker having been in contact with a person infected with a virus.

[Signatures]

* Language of the case: German.