ECLI:EU:C:2023:770

Provisional text

JUDGMENT OF THE COURT (Sixth Chamber)

12 October 2023 (*)

(Reference for a preliminary ruling – Social policy – Protection of the safety and health of workers – Organisation of working time – Directive 2003/88/EC – Article 7(1) – Right to paid annual leave – Worker unlawfully dismissed and then reinstated in his or her employment by decision of a court – Exclusion from the right to paid annual leave not taken for the period between the dismissal and the reinstatement – Period between the date of dismissal and the date of the reinstatement)

In Case C-57/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Nejvyšší soud (Supreme Court, Czech Republic), made by decision of 6 December 2021, received at the Court on 28 January 2022, in the proceedings

YQ

v

Ředitelství silnic a dálnic ČR,

THE COURT (Sixth Chamber),

composed of P.G. Xuereb, acting as President of the Chamber, A. Kumin and I. Ziemele (Rapporteur), Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– YQ, by Z. Odehnal, advokát,

– the Ředitelství silnic a dálnic ČR, by L. Smejkal, advokát,

– the European Commission, by P. Němečková and D. Recchia, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

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).

2 The request has been made in the context of a dispute between YQ and the Ředitelství silnic a dálnic ČR (Road and Motorway Directorate of the Czech Republic; 'the ŘSD') concerning the refusal to grant her financial compensation for days of annual leave not taken.

Legal context

European Union law

3 Article 7 of Directive 2003/88, entitled 'Annual leave', states 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.'

Czech law

4 Paragraph 69 of zákon č. 262/2006 Sb., zákoník práce (Law No 262/2006 establishing the Labour Code), in the version applicable to the dispute in the main proceedings ('the Labour Code'), provides:

'(1) If the employer has given an invalid notice of termination to the employee, or if the employer has invalidly cancelled the employee's employment relationship with immediate effect or during the trial period, and provided that the employee has informed the employer without undue delay in writing that he [or she] insists on his [or her] employment being continued, his [or her] employment relationship carries on and the employer shall provide the employee with wage or salary compensation. Compensation pursuant to sentence one is due to the employee as the amount of his [or her] average earnings from the day on which the employee informed the employer that he [or she] insists on further employment until such time as the employer enables him [or her] to carry on in his [or her] work or until the employment relationship is terminated validly.

(2) Should the total period for which an employee should be entitled to wage or salary compensation exceed six months, a court may, at the employer's request, adequately reduce the employer's obligation to provide wage or salary compensation for any additional period; in its decision, the court shall in particular take into account whether the employee was employed elsewhere during that time, the type of work performed there, the amount of earnings attained, or the reason why he [or she] did not take up work.'

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

5 YQ, who was employed by the ŘSD under an employment contract concluded on 23 June 2009, was given a notice of dismissal on 23 October 2013.

6 Following the invalidation of that notice of dismissal by a judgment of the Krajský soud v Brně (Regional Court, Brno, Czech Republic) of 20 December 2016, which became final on 10 January 2017, YQ resumed her work at the ŘSD under her employment contract.

7 The referring court notes that, during the period between 1 January 2014 and 10 January 2017, YQ, who had notified her employer in writing of her wish to work, was not assigned any work by that employer.

8 Following her reinstatement, YQ applied to the ŘSD to request the possibility of taking, during the months of July to September 2017, her unused annual leave for the period from 1 January 2014 to 10 January 2017. The ŘSD refused to grant that request on the ground that YQ had not worked during that period. Despite that refusal, YQ did not appear at her workplace during the days of July 2017 in respect of which she had notified her request for leave. Consequently, her employer dismissed her on 9 August 2017 for impermissible absence.

9 YQ brought an action before the Městský soud v Brně (Brno City Court, Czech Republic) seeking an order that the ŘSD pay her the sum of 55 552 Czech koruny (CZK), together with default interest, by way of compensation for the days of leave for the period from 1 January 2014 to 10 January 2017. That action was dismissed by a decision of 4 October 2019. Following the appeal brought by YQ, the Krajský soud v Brně (Regional Court, Brno) upheld that decision by a judgment of 6 October 2020.

10 An appeal against that judgment is being heard by the referring court.

11 That court observes that, under the applicable national law, the period during which the employee's dismissal is subject to a challenge before the courts is governed by a special scheme set out in Paragraphs 69 to 72 of the Labour Code, from which it is apparent that, during the period in question, the employee is not entitled either to wage compensation in the event of an obstacle to work or to such compensation for leave not taken.

12 The referring court adds that, in the event that the termination of the employment relationship has been held to be invalid, it is apparent from national case-law that the employee is entitled to wage compensation, up to the amount of his or her average salary, throughout the duration of the legal proceedings on the validity of that termination, where the employee has notified the employer in writing of his or her intention to continue the employment relationship, without his or her being assigned any duties. After the expiry of a period of six months, the national court may reduce the wage compensation in accordance with the applicable law only if, after having assessed all the circumstances of the case, it may be concluded that the employee has started or could start work with another employer on essentially equivalent terms or even more favourable ones than those

from which he or she would have benefitted for the performance of his or her work under the contract of employment if the employer had fulfilled its obligation to assign him or her the agreed work.

13 The same court also states that it is apparent from settled national case-law that the employee is also entitled to compensation for the harm suffered as a result of the invalidation of the dismissal so that he or she may be placed, at least in terms of financial compensation, in a situation in which he or she would have been had the employment relationship not been interrupted. However, the employee not having actually worked during the period between the notification of his or her wish to work and the invalidation of his or her dismissal, he or she is not recognised as having the right to paid annual leave during that period.

14 According to the referring court, that national case-law appears, at first sight, to be at odds with the judgment of 25 June 2020, *Varhoven kasatsionen sad na Republika Bulgaria and Iccrea Banca* (C-762/18 and C-37/19, EU:C:2020:504), in which the Court held that Article 7 of Directive 2003/88 precludes national case-law under which a worker who has been unlawfully dismissed is not entitled to paid annual leave for the period between the date of the dismissal and that of his or her reinstatement in his or her employment.

15 However, the referring court notes that there are differences between the national legislation at issue in that judgment and the Czech legislation at issue in the main proceedings, such that the solution adopted in that judgment cannot be transposed to the dispute in the main proceedings. Whereas the Bulgarian legislation at issue in the judgment of 25 June 2020, *Varhoven kasatsionen sad na Republika Bulgaria and Iccrea Banca* (C-762/18 and C-37/19, EU:C:2020:504), provided, first, for the payment of gross remuneration for the work for a period of only six months and, second, for the payment only of the difference between the remuneration that the worker received during the period under consideration in another employment relationship and the remuneration due in the context of the employment relationship that was unlawfully terminated, the Czech legislation in principle grants that payment in full and for the entire period, subject to the limitations referred to in paragraph 12 above. Thus, according to the referring court, the application to the case in the main proceedings of the solution adopted in that judgment would have the effect of creating an imbalance to the detriment of the employer's interests.

16 It is in those circumstances that the Nejvyšší soud (Supreme Court, Czech Republic) 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] be interpreted as precluding national case-law by virtue of which a worker who was unlawfully dismissed then reinstated in his or her employment, in accordance with national law, following the annulment of the dismissal by a decision of a court, is not entitled to paid annual leave for the period between the date of the dismissal and that of the reinstatement in his or her employment on the ground that, during that period, that worker did not actually carry out work for the employer, also in cases when … the worker who has been unlawfully dismissed and who has without undue delay informed his or her employer in writing that he or she insists on being employed, is entitled to wage or salary compensation in the amount of average earnings from the date when he or she informed the employer that he or she insists on the continuation of his or her employment until such time as the employer allows him or her to carry on in his or her work or his or her employment relationship is validly terminated?'

The question referred for a preliminary ruling

Applicability of Directive 2003/88

17 As a preliminary point, the Commission expresses doubts as to the applicability *ratione materiae* of Directive 2003/88 to the dispute in the main proceedings on the ground that it is apparent from the presentation of the national legal framework that, even in the event that a judicial decision finds a dismissal unlawful, the period between the date of that dismissal and that of the reinstatement of the person concerned is not, however, regarded retroactively as forming part of that person's period of employment with the employer concerned.

18 In that regard, it is apparent from well-established case-law that the purpose of Directive 2003/88 is to lay down minimum requirements intended to improve the living and working conditions of workers through approximation of national provisions concerning, in particular, the duration of working time (judgment of 20 November 2018, *Sindicatul Familia Constanţa and Others*, C-147/17, EU:C:2018:926, paragraph 39 and the case-law cited).

19 Directive 2003/88 therefore being applicable only to workers, it must be established whether a natural person such as the applicant in the main proceedings may be considered a 'worker' within the meaning of that directive.

20 According to settled case-law, for the purpose of applying Directive 2003/88, the concept of 'worker' may not be interpreted differently according to the law of Member States but has an autonomous meaning specific to EU law. It must be defined in accordance with objective criteria which distinguish the employment relationship by reference to the rights and duties of the persons concerned. The essential feature of an employment relationship, however, is that for a certain period of time a person performs services for and under the direction of another person in return for which he or she receives remuneration (judgment of 20 November 2018, *Sindicatul Familia Constanţa and Others*, C-147/17, EU:C:2018:926, paragraph 41 and the case-law cited).

21 It follows that an employment relationship implies the existence of a hierarchical relationship between the worker and his or her employer. Whether such a relationship exists must, in each particular case, be assessed on the basis of all the factors and circumstances characterising the relationship between the parties (judgment of 20 November 2018, *Sindicatul Familia Constanţa and Others*, C-147/17, EU:C:2018:926, paragraph 42 and the case-law cited).

22 In the present case, first, it is apparent from the description of the national legal framework set out in the order for reference, in particular Paragraph 69(1) of the Labour Code, that, if an employer has invalidly dismissed an employee or has invalidly terminated the employment relationship with him or her, either immediately or during the probationary period, and the employee has notified the employer in writing, without unjustified delay, that he or she is insisting that the employer continue to employ him or her, his or her employment relationship continues.

23 Second, it follows from the factual background of the case in the main proceedings, as described in the order for reference, that YQ concluded a contract with the ŘSD on 23 June 2009 and that, following the invalidation, on 10 January 2017, of the notice of dismissal that had been notified to her on 23 October 2013, she resumed her work under the employment contract initially concluded.

24 In the light of those considerations, a natural person such as YQ must be regarded as a 'worker' within the meaning of Directive 2003/88, such that that directive is applicable to her.

Substance

25 By its question, the referring court asks, in essence, whether Article 7(1) of Directive 2003/88 must be interpreted as precluding national case-law by virtue of which a worker unlawfully dismissed and then reinstated in his or her employment, in accordance with national law, following the annulment of his or her dismissal by a decision of a court, is not entitled to paid annual leave for the period between the date of the dismissal and the date of his or her reinstatement in his or her employment, on the ground that, during that period, that worker did not actually carry out work for the employer as the latter did not assign him or her work and as he or she is already entitled, under national law, to wage compensation during that period.

26 It should be recalled that, according to the Court's settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 8 June 2023, *Fastweb and Others (Time frame for billing)*, C-468/20, EU:C:2023:447, paragraph 52 and the case-law cited).

27 In the first place, as regards the wording of Article 7(1) of Directive 2003/88, it states that every worker is to be 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).

28 In the second place, as regards the context of that provision, it should be noted, first of all, that the right to paid annual leave is, as a principle of EU social law, not only particularly important, but is also expressly enshrined 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 (judgment of 22 September 2022, *Fraport and St. Vincenz-Krankenhaus*, C-518/20 and C-727/20, EU:C:2022:707, paragraph 25 and the case-law cited).

29 Thus, Article 7(1) of Directive 2003/88 reflects and gives concrete expression to the fundamental right to an annual period of paid leave, enshrined in Article 31(2) of the Charter of Fundamental Rights. While the latter provision guarantees the right of every worker to an annual period of paid leave, the former provision implements that principle by fixing the duration of that period (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).

30 Next, as the Court has already held, the right to paid annual leave may not be interpreted restrictively (judgment of 25 November 2021, *job-medium*, C-233/20, EU:C:2021:960, paragraph 26 and the case-law cited), and any derogation from that right may be permitted only within the limits expressly laid down by Directive 2003/88 itself (see, to that effect, judgment of 6 April 2006, *Federatie Nederlandse Vakbeweging*, C-124/05, EU:C:2006:244, paragraph 28 and the case-law cited).

31 Last, it is apparent from the wording of Directive 2003/88 and from the Court's case-law that, although it is for the Member States to lay down the conditions for the exercise and implementation of the right to paid annual leave, they must not make the very existence of that right, which derives directly from that directive, subject to any preconditions whatsoever (judgment of 7 April 2022, *Ministero della Giustizia and Others (Status of Italian magistrates)*, C-236/20, EU:C:2022:263, paragraph 50 and the case-law cited).

32 In the third place, as regards the objectives of the legislation at issue in the main proceedings, it should be recalled that, according to the Court's settled case-law, the right to paid annual leave, as

laid down in Article 7 of Directive 2003/88, 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 22 September 2022, *Fraport and St. Vincenz-Krankenhaus*, C-518/20 and C-727/20, EU:C:2022:707, paragraph 27 and the case-law cited).

33 That purpose, which distinguishes paid annual leave from other types of leave having different purposes, is, however, based, as the Court has recalled, on the premiss that the worker actually worked during the reference period. The objective of allowing the worker to rest presupposes that the worker has been engaged in activities which justify, for the protection of his or her safety and health, as provided for in Directive 2003/88, his or her being given a period of rest, relaxation and leisure. Accordingly, entitlement to paid annual leave must, in principle, be determined by reference to the periods of actual work completed under the employment contract (judgment of 25 June 2020, *Varhoven kasatsionen sad na Republika Bulgaria and Iccrea Banca*, C-762/18 and C-37/19, EU:C:2020:504, paragraph 58 and the case-law cited).

34 Nonetheless, in certain specific situations in which the worker is incapable of carrying out his or her duties, the right to paid annual leave cannot be made subject by a Member State to a condition that the worker has actually worked (judgment of 25 June 2020, *Varhoven kasatsionen sad na Republika Bulgaria and Iccrea Banca*, C-762/18 and C-37/19, EU:C:2020:504, paragraph 59 and the case-law cited).

35 That is the case where a worker unlawfully dismissed and then reinstated in his or her employment, in accordance with national law, following the annulment of his or her dismissal by a decision of a court, has not, during the period between the date of the unlawful dismissal and the date of his or her reinstatement, been given the opportunity to perform actual work for his or her employer (see, to that effect, judgment of 25 June 2020, *Varhoven kasatsionen sad na Republika Bulgaria and Iccrea Banca*, C-762/18 and C-37/19, EU:C:2020:504, paragraph 70).

36 The fact that the worker concerned has not, during the period between the date of his or her unlawful dismissal and the date of his or her reinstatement, actually carried out work for his or her employer is the consequence of the latter's actions that led to the unlawful dismissal, without which the worker would have been in a position to work and to exercise his or her right to annual leave (see, to that effect, judgment of 25 June 2020, *Varhoven kasatsionen sad na Republika Bulgaria and Iccrea Banca*, C-762/18 and C-37/19, EU:C:2020:504, paragraph 68).

37 It follows that the period between the date of the worker's unlawful dismissal and the date of his or her reinstatement, in accordance with national law, following the annulment of that dismissal by a judicial decision, must be treated as a period of actual work for the purposes of determining entitlement to paid annual leave (judgment of 25 June 2020, *Varhoven kasatsionen sad na Republika Bulgaria and Iccrea Banca*, C-762/18 and C-37/19, EU:C:2020:504, paragraph 69).

38 In that regard, it should be borne in mind that it is for the employer to ensure that the worker is given the opportunity to exercise his or her right to annual leave. Unlike in a situation of accumulation of entitlement to paid annual leave by a worker who was unfit for work due to sickness, an employer that does not allow a worker to exercise his or her right to paid annual leave must bear the consequences (judgment of 22 September 2022, *Fraport and St. Vincenz-Krankenhaus*, C-518/20 and C-727/20, EU:C:2022:707, paragraph 40 and the case-law cited).

39 Therefore, Member States cannot derogate from the right enshrined in Article 7 of Directive 2003/88 according to which a right to paid annual leave acquired cannot be lost at the end of the

leave year and/or the carry-over period fixed by national law, when the worker has not been able to take his or her leave (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 41 and the case-law cited).

40 The referring court nevertheless observes that, unlike the legislation at issue in the case which gave rise to the judgment of 25 June 2020, *Varhoven kasatsionen sad na Republika Bulgaria and Iccrea Banca* (C-762/18 and C-37/19, EU:C:2020:504), the Czech legislation grants in principle the payment of gross remuneration in its entirety and for the entire period, subject to the limitations referred to in paragraph 12 above. According to that court, following the solution reached in that judgment would have the effect of creating an imbalance to the detriment of the employer's interests.

41 In that regard, it is apparent from the Court's case-law that Directive 2003/88 treats the right to annual leave and to a payment on that account as being two aspects of a single right. The purpose of the requirement that the leave be paid is to put the worker, during such leave, in a position which is, as regards salary, comparable to periods of work (judgment of 29 November 2017, *King*, C-214/16, EU:C:2017:914, paragraph 35 and the case-law cited).

42 The right to annual leave thus also includes a right to a payment and, as a right which is consubstantial with the right to paid annual leave, the right to an allowance in lieu of annual leave not taken upon termination of the employment relationship (judgment of 6 November 2018, *Bauer and Willmeroth*, C-569/16 and C-570/16, EU:C:2018:871, paragraph 58), the Court having made clear in that regard that Article 7(2) of Directive 2003/88 does not lay down any condition for entitlement to an allowance in lieu other than that relating to the fact, first, that the employment relationship has ended and, second, that the worker has not taken all annual leave to which he or she was entitled on the date that that relationship ended (judgment of 6 November 2018, *Kreuziger*, C-619/16, EU:C:2018:872, paragraph 31).

43 It follows that it is irrelevant, for the purposes of entitlement to paid annual leave, that the amount of the wage compensation which, pursuant to national law, is to be paid to the worker unlawfully dismissed in respect of the period between the date of dismissal and the date of his or her reinstatement corresponds, in principle, to the average salary received by that worker, since the purpose of that wage compensation is to compensate the worker for the remuneration not received as a result of the unlawful dismissal.

44 Furthermore, as has been noted in paragraphs 30 and 31 above, the right to paid annual leave, which results directly from Directive 2003/88, cannot be interpreted restrictively, since the worker must be regarded as the weaker party in the employment relationship, so that it is necessary to prevent the employer from being in a position to impose a restriction of his or her rights on him or her (judgment of 2 March 2023, *MÁV-START*, C-477/21, EU:C:2023:140, paragraph 36 and the case-law cited).

45 In the light of all the foregoing considerations, the answer to the question referred is that Article 7(1) of Directive 2003/88 must be interpreted as precluding national case-law by virtue of which a worker unlawfully dismissed and then reinstated in his or her employment, in accordance with national law, following the annulment of his or her dismissal by a decision of a court, is not entitled to paid annual leave for the period between the date of the dismissal and the date of his or her reinstatement in his or her employment, on the ground that, during that period, that worker did not actually carry out work for the employer as the latter did not assign him or her work and as he or she is already entitled, under national law, to wage compensation during that period.

Costs

46 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 (Sixth 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 case-law by virtue of which a worker who was unlawfully dismissed and then reinstated in his or her employment, in accordance with national law, following the annulment of his or her dismissal by a decision of a court, is not entitled to paid annual leave for the period between the date of the dismissal and the date of his or her reinstatement in his or her employment on the ground that, during that period, that worker did not actually carry out work for the employer as the latter did not assign him or her work and as he or she is already entitled, under national law, to wage compensation during that period.

[Signatures]

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* Language of the case: Czech.