ECLI:EU:C:2019:981

JUDGMENT OF THE COURT (Grand Chamber)

19 November 2019 (*)

(Reference for a preliminary ruling — Social policy — Article 153 TFEU — Minimum safety and health requirements for the organisation of working time — Directive 2003/88/EC — Article 7 — Right to paid annual leave of at least 4 weeks — Article 15 — Provisions of national legislation and collective agreements more favourable to the protection of the safety and health of workers — Workers incapable of working during a period of paid annual leave due to illness — Refusal to carry over that leave where not carrying over that leave does not reduce the actual duration of the paid annual leave below 4 weeks — Article 31(2) of the Charter of Fundamental Rights of the European Union — Inapplicable where there is no implementation of EU law for the purposes of Article 51(1) of the Charter of Fundamental Rights)

In Joined Cases C-609/17 and C-610/17,

TWO REQUESTS for a preliminary ruling under Article 267 TFEU from the työtuomioistuin (Labour Court, Finland), made by decisions of 18 October 2017, received at the Court on 24 October 2017, in the proceedings

Terveys- ja sosiaalialan neuvottelujärjestö (TSN) ry

v

Hyvinvointialan liitto ry,

intervener:

Fimlab Laboratoriot Oy (C-609/17),

and

Auto- ja Kuljetusalan Työntekijäliitto AKT ry

v

Satamaoperaattorit ry,

intervener:

Kemi Shipping Oy (C-610/17),

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, A. Prechal (Rapporteur), E. Regan and P.G. Xuereb, Presidents of Chambers, M. Ilešič, J. Malenovský, L. Bay Larsen, T. von Danwitz, F. Biltgen, K. Jürimäe and C. Lycourgos, Judges,

Advocate General: Y. Bot,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 26 February 2019,

after considering the observations submitted on behalf of:

– Terveys- ja sosiaalialan neuvottelujärjestö (TSN) ry, by J. Kasanen and M. Nyman,

– Hyvinvointialan liitto ry and Fimlab Laboratoriot Oy, by M. Kärkkäinen and I. Kallio,

– Auto- ja Kuljetusalan Työntekijäliitto AKT ry, by J. Tutti and J. Hellsten,

– Satamaoperaattorit ry and Kemi Shipping Oy, by M. Kärkkäinen and I. Kallio,

– the Finnish Government, by S. Hartikainen, acting as Agent,

– the French Government, by A.-L. Desjonquères and R. Coesme, acting as Agents,

– the European Commission, by M. van Beek and M. Huttunen, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 June 2019,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 7 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 requests have been made in two sets of proceedings between, in Case C-609/17, Terveys- ja sosiaalialan neuvottelujärjestö (TSN) ry (‘TSN’) and Hyvinvointialan liitto ry and, in Case C-610/17, Auto- ja Kuljetusalan Työntekijäliitto AKT ry (‘AKT’) and Satamaoperaattorit ry, concerning the refusal to carry over, for two workers who were incapable of working during a period of paid annual leave due to illness, paid annual leave corresponding to all or some of the sick days concerned.

Legal context

European Union law

3 Directive 2003/88 was adopted on the basis of Article 137(2) EC, now Article 153(2) TFEU.

4 Under recitals 1, 2 and 5 of Directive 2003/88:

‘(1) Council Directive 93/104/EC of 23 November 1993, concerning certain aspects of the organisation of working time [(OJ 1993 L 307, p. 18)], which lays down minimum safety and health requirements for the organisation of working time, in respect of periods of daily rest, breaks, weekly rest, maximum weekly working time, annual leave and aspects of night work, shift work and patterns of work, has been significantly amended. In order to clarify matters, a codification of the provisions in question should be drawn up.

(2) Article 137 [EC] provides that the Community is to support and complement the activities of the Member States with a view to improving the working environment to protect workers’ health and safety. Directives adopted on the basis of that Article are to avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

…

(5) All workers should have adequate rest periods. The concept of “rest” must be expressed in units of time, i.e. in days, hours and/or fractions thereof. Community workers must be granted minimum daily, weekly and annual periods of rest and adequate breaks. …’

5 Article 1 of Directive 2003/88, entitled ‘Purpose and scope’, provides:

‘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 …

…’

6 Article 7 of that directive provides:

‘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.’

7 Article 15 of that directive, entitled ‘More favourable provisions’, states:

‘This Directive shall not affect Member States’ right to apply or introduce laws, regulations or administrative provisions more favourable to the protection of the safety and health of workers or to

facilitate or permit the application of collective agreements or agreements concluded between the two sides of industry which are more favourable to the protection of the safety and health of workers.'

8 Article 17 of Directive 2003/88 provides that Member States may derogate from certain provisions of that directive. However, no derogation is permitted in respect of Article 7 thereof.

Finnish law

The Law on annual leave

9 The vuosilomalaki (162/2005) (Law (162/2005) on annual leave; 'the Law on annual leave') is intended, inter alia, to transpose Article 7 of Directive 2003/88 into Finnish law. Under the first subparagraph of Paragraph 5 of that law, a worker is entitled to 2½ working days of paid leave for each complete monthly reference period. However, if, at the end of the annual reference period, the employment relationship has lasted less than 1 year without interruption, the worker is entitled to 2 days of leave for each complete monthly reference period.

10 The annual reference period, which runs from 1 April of a given year to 31 March of the following year, may include, at most, 12 monthly reference periods. If, during an annual reference period, a worker has 12 complete monthly reference periods, he is entitled, under the Law on annual leave, to 24 or 30 days of leave, depending on the duration of the employment relationship.

11 Under point 3 of the first subparagraph of Paragraph 4 of the Law on annual leave, working days are weekdays apart from Sundays, religious feast days, Independence Day, Christmas Eve, St John's Eve (Midsummer Eve), Easter Saturday and 1 May. Therefore, 6 days of annual leave are imputed to 1 week which does not include any of the abovementioned days.

12 Point 2 of the first subparagraph of Paragraph 4 of the Law on annual leave states that the 'leave period' is the period from 2 May to 30 September inclusive. The second subparagraph of Paragraph 20 of that law provides that 24 working days of annual leave (summer leave) must be taken during the leave period. The remaining leave (winter leave) must be granted no later than the beginning of the following leave period.

13 The first subparagraph of Paragraph 25 of the Law on annual leave, as amended by Law (276/2013), in force from 1 October 2013 to 31 March 2016, provided:

'Where a worker, on commencement of his or her annual leave, or a part thereof, is incapable of working owing to maternity, sickness or accident, the leave shall, upon application by the worker, be carried over to a later date. The worker shall also be entitled, upon application, to carry over leave or a part thereof where it is established that he or she must, during his or her leave, undergo treatment for an illness or other treatment to be assimilated thereto during the period in which he or she is incapable of working.'

14 The second subparagraph of Paragraph 25 of the Law on annual leave, as amended by Law (182/2016), which entered into force on 1 April 2016, is worded as follows:

'Should the incapacity for work owing to maternity, sickness or accident commence during annual leave, or a part thereof, the worker shall, upon application, be entitled to carry over the days of incapacity for work falling within the annual leave, provided that they exceed 6 days of leave. The aforementioned days of absence may not reduce the worker's entitlement to 4 weeks' annual leave.'

The applicable collective agreements

15 In Finland, collective agreements often grant a longer period of paid annual leave than that provided for by the Law on annual leave. This is the case, in particular, as regards the collective agreement concluded between Terveyspalvelualan liitto ry, which has been succeeded by Hyvinvointialan liitto, and TSN for the period between 1 March 2014 and 31 January 2017 for the health sector ('the health sector collective agreement') and the collective agreement concluded between Satamaoperaattorit and AKT for the period between 1 February 2014 and 31 January 2017 for the freight transport sector ('the freight transport sector collective agreement').

16 Under Paragraph 16(1) of the health sector collective agreement, 'annual leave shall be determined in accordance with the Law on annual leave and the following provisions'. Under Paragraph 16(7) of that collective agreement, 'annual leave shall be granted in accordance with the Law on annual leave'.

17 Under Paragraph 10(1) and (2) of the freight transport sector collective agreement, 'the period of a worker's annual leave shall be determined in accordance with the Law on annual leave in force' and 'annual leave shall be granted in accordance with the Law on annual leave, unless provision to the contrary is made'.

The disputes in the main proceedings and the questions referred for a preliminary ruling

Case C-609/17

18 Ms Marika Luoma has been employed since 14 November 2011 by Fimlab Laboratoriot Oy as a laboratory assistant, under an employment contract of indefinite duration.

19 Pursuant to the health sector collective agreement and having regard to her age, Ms Luoma was entitled to 42 working days, or 7 weeks, of paid annual leave in respect of the annual reference period ending on 31 March 2015.

20 Ms Luoma was granted 6 days of paid annual leave for the period from Monday 7 September to Sunday 13 September 2015. On 10 August 2015 she informed her employer that she had to undergo a surgical operation on 2 September 2015 and requested that her abovementioned annual leave be carried over to a later date. Following that operation, Ms Luoma was on sick leave until 23 September 2015. Of the 42 working days' annual leave to which she was entitled, the person concerned had also previously taken 22 days of leave, that is to say, 3 weeks and 4 working days. Fimlab Laboratoriot carried over the first 2 days of leave still owing under the Law on annual leave, but not the remaining 4 days of leave resulting from the health sector collective agreement, relying, in that regard, on Paragraph 16(1) and (7) of that collective agreement and on the first subparagraph of Paragraph 25 of the Law on annual leave, as amended by Law (276/2013).

21 TSN, in its capacity as a workers' representative organisation which had signed the health sector collective agreement, brought an action before the työtuomioistuin (Labour Court, Finland), seeking a declaration that Ms Luoma was entitled, having regard to her incapacity for work in connection with the abovementioned surgical operation, to carry over to a later date the entirety of the leave that she had been granted for the period between 9 September and 13 September 2015. In support of that action, TSN argued that the first subparagraph of Paragraph 25 of the Law on annual leave, as amended by Law (276/2013), made applicable in this case through the health sector collective agreement, is contrary to Article 7(1) of Directive 2003/88 and Article 31(2) of the Charter, in so far as it provides for the carrying over of leave on the grounds of, inter alia, illness,

only in respect of the leave guaranteed by that law and not that resulting from collective agreements.

22 Hyvinvointialan liitto, as the employers' representative organisation which has succeeded Terveyspalvelualan liitto, itself a signatory to the health sector collective agreement, and Fimlab Laboratoriot contend that the first subparagraph of Paragraph 25 of the Law on annual leave, as amended by Law (276/2013), does not infringe those provisions of EU law, given that, in their opinion, those provisions are not applicable to the part of the entitlement to paid annual leave granted by national law or by collective agreements beyond the minimum leave period of 4 weeks prescribed in Article 7(1) of Directive 2003/88.

23 In that context, the referring court questions whether the application of the first subparagraph of Paragraph 25 of the Law on annual leave, as amended by Law (276/2013), thus carried out through the health sector collective agreement meets the requirements stemming from Article 7(1) of Directive 2003/88 and Article 31(2) of the Charter. With regard to the latter provision, the referring court questions, in particular, whether it is likely to have direct effect in a dispute such as that in the main proceedings, which concerns employment relationships between private persons.

24 In those circumstances the työtuomioistuin (Labour Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does Article 7(1) of Directive [2003/88] preclude a national provision in a collective agreement, or its interpretation, under which an employee who was incapacitated for work at the beginning of his annual leave or part thereof is not entitled, irrespective of any application by him, to carry over annual leave falling within the period in question and to which he is entitled under the collective agreement, if the employee's entitlement to 4 weeks of annual leave is not reduced by reason of the fact that the leave under the collective agreement is not carried over?

(2) Does Article 31(2) of the [Charter] have direct effect in an employment relationship between private legal subjects, that is to say, horizontal direct effect?

(3) Does Article 31(2) of the [Charter] protect accrued leave, in so far as the duration of the leave exceeds the minimum annual leave of 4 weeks provided for in Article 7(1) of [Directive 2003/88], and does that provision of the [Charter] preclude a national provision in a collective agreement, or its interpretation, under which an employee who was incapacitated for work at the beginning of his annual leave or part thereof is not entitled, irrespective of any application by him, to carry over annual leave falling within the period in question and to which he is entitled under the collective agreement, if the employee's entitlement to 4 weeks of annual leave is not reduced by reason of the fact that the leave under the collective agreement is not carried over?'

Case C-610/17

25 Mr Tapio Keränen is employed by Kemi Shipping Oy.

26 Under the freight transport sector collective agreement, Mr Keränen was entitled to 30 working days, or 5 weeks, of paid annual leave in respect of the annual reference period ending on 31 March 2016.

27 After his paid annual leave began on 22 August 2016, Mr Keränen was taken ill on 29 August 2016. The occupational doctor whom he consulted then prescribed sick leave between that date and 4 September 2016. Mr Keränen's request for 6 working days of his annual leave to be carried over

as a result was refused by Kemi Shipping on the basis of Paragraph 10(1) and (2) of the freight transport sector collective agreement and of the second subparagraph of Paragraph 25 of the Law on annual leave, as amended by Law (182/2016), and that company imputed those 6 days of sick leave to the paid annual leave to which Mr Keränen was entitled.

28 As a workers' representative organisation which had signed the freight transport sector collective agreement, AKT brought an action before the työtuomioistuin (Labour Court) seeking a declaration that the application of Paragraph 10(1) and (2) of that collective agreement could not lead to the application of the second subparagraph of Paragraph 25 of the Law on annual leave, as amended by Law (182/2016), in so far as the latter provision is, according to that organisation, contrary to Article 7(1) of Directive 2003/88 and Article 31(2) of the Charter.

29 Satamaoperaattorit, as an employers' representative organisation which had signed the freight transport sector collective agreement, and Kemi Shipping contend, for reasons similar to those mentioned in paragraph 22 above, that the second subparagraph of Paragraph 25 of the Law on annual leave does not infringe those provisions of EU law.

30 In that context, the referring court questions whether the application of the second subparagraph of Paragraph 25 of the Law on annual leave, as amended by Law (182/2016), carried out through the freight transport sector collective agreement meets the requirements stemming from Article 7(1) of Directive 2003/88 and Article 31(2) of the Charter and questions the possible horizontal direct effect of the latter provision in a dispute such as that in the main proceedings.

31 In those circumstances the työtuomioistuin (Labour Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does Article 7(1) of Directive [2003/88] preclude a national provision in a collective agreement, or its interpretation, under which an employee whose incapacity for work on account of illness commences during his annual leave, or a part thereof, is not entitled, irrespective of any application by him, to carry over the first 6 days of incapacity for work falling within the annual leave, where those days of absence on account of illness do not reduce the employee's entitlement to be granted 4 weeks' annual leave?

(2) Does Article 31(2) of the [Charter] have direct effect in an employment relationship between private legal subjects, that is to say, horizontal direct effect?

(3) Does Article 31(2) of the [Charter] protect accrued leave, in so far as the duration of the leave exceeds the minimum annual leave of 4 weeks provided for in Article 7(1) of [Directive 2003/88] and does that provision of the [Charter] preclude a national provision in a collective agreement, or its interpretation, under which an employee whose incapacity for work on account of illness commences during his annual leave, or a part thereof, is not entitled, irrespective of any application by him, to carry over the first 6 days of incapacity for work falling within the annual leave, where those days of absence on account of illness do not reduce the employee's entitlement to be granted 4 weeks' annual leave?'

Consideration of the questions referred

The first question

32 By its first question in Cases C-609/17 and C-610/17, the referring court asks, in essence, whether Article 7(1) of Directive 2003/88 is to be interpreted as precluding national rules or

collective agreements which provide for the granting of days of paid annual leave which exceed the minimum period of 4 weeks laid down in that provision, and yet exclude the carrying over of those days of leave on the grounds of illness.

33 In that regard, it should be borne in mind that, according to settled case-law, Directive 2003/88 does not preclude domestic provisions granting a right to a period of paid annual leave longer than the 4 weeks laid down in Article 7(1) of that directive, under the conditions for entitlement to, and granting of, the right to paid annual leave laid down by national law (see, to that effect, judgments of 24 January 2012, *Dominguez*, C-282/10, EU:C:2012:33, paragraph 47; of 3 May 2012, *Neidel*, C-337/10, EU:C:2012:263, paragraph 34; of 20 July 2016, *Maschek*, C-341/15, EU:C:2016:576, paragraph 38; and of 13 December 2018, *Hein*, C-385/17, EU:C:2018:1018, paragraph 31).

34 Indeed, it is expressly apparent from the wording of Article 1(1) and (2)(a), Article 7(1) and Article 15 of Directive 2003/88 that the purpose of that directive is simply to lay down minimum safety and health requirements for the organisation of working time and it does not affect the Member States' right to apply provisions of national law that are more favourable to the protection of workers (judgments of 24 January 2012, *Dominguez*, C-282/10, EU:C:2012:33, paragraph 48; of 3 May 2012, *Neidel*, C-337/10, EU:C:2012:263, paragraph 35; and of 13 December 2018, *Hein*, C-385/17, EU:C:2018:1018, paragraph 30).

35 In such a situation, the rights to paid annual leave thus granted beyond the minimum required by Article 7(1) of Directive 2003/88 are governed not by that directive, but by national law, outside the regime established by that directive, it being nonetheless borne in mind that such provisions of national law which are more favourable to workers cannot be used to compensate for a possible infringement of the minimum protection guaranteed by that provision of EU law, such as that resulting from, inter alia, a reduction in the remuneration due by virtue of the minimum paid annual leave thus guaranteed by that provision (see, to that effect, judgment of 13 December 2018, *Hein*, C-385/17, EU:C:2018:1018, paragraphs 42 and 43, and, by analogy, judgment of 10 July 2014, *Julián Hernández and Others*, C-198/13, EU:C:2014:2055, paragraphs 43 and 44).

36 As the Advocate General noted in point 58 of his Opinion, it is thus for the Member States, first, to decide whether or not to grant workers additional days of paid annual leave which go beyond the minimum period of 4 weeks guaranteed by Article 7(1) of Directive 2003/88 and, second, to determine, where appropriate, the conditions for granting and extinguishing those additional days of leave, without being required, in that regard, to comply with the protective rules which the Court has laid down in respect of that minimum period.

37 The Court has thus held, in particular, where there is a national rule or collective agreement providing that no paid annual leave entitlement is to be given in a particular year in respect of absences as a result of illness or prolonged illness that have resulted in a break in work of 12 consecutive months or more, that it is permissible for Member States to provide that entitlement to paid annual leave under national law may vary according to the reason for the worker's absence on health grounds, provided that the entitlement is always equal to or exceeds the minimum period of 4 weeks laid down in Article 7 of Directive 2003/88 (judgment of 24 January 2012, *Dominguez*, C-282/10, EU:C:2012:33, paragraph 49).

38 Similarly, the Court has held that, when deciding to grant workers rights to paid annual leave beyond that minimum period of 4 weeks, the Member States continue to have the freedom, in particular, to grant or not to grant an allowance in lieu to a worker who is retiring, where that worker has been unable to enjoy leave rights which so exceed that minimum period, because he has

been prevented from performing his duties due to illness and, in the case of the former, to determine the conditions for the grant of such an allowance (see, to that effect, judgments of 3 May 2012, *Neidel*, C-337/10, EU:C:2012:263, paragraph 36, and of 20 July 2016, *Maschek*, C-341/15, EU:C:2016:576, paragraph 39).

39 A similar solution must prevail where there are national rules or collective agreements which, like those at issue in the main proceedings, grant workers a right to a period of paid annual leave longer than the minimum period of 4 weeks laid down in Article 7(1) of Directive 2003/88, and yet exclude the right to carry over all or some of the days of paid annual leave which exceed that minimum period, where the worker has been incapable of working due to illness during all or part of a period of paid annual leave. It is still possible for the Member States to make provision for such a right of carrying over or to refuse to do so and, in the case of the former, to determine the conditions for such a carrying over, provided that the right to paid annual leave actually enjoyed by the worker, when he is not incapable of working due to illness, remains at least equal to the abovementioned minimum period of 4 weeks.

40 In the light of the foregoing considerations, the answer to the first question in Cases C-609/17 and C-610/17 is that Article 7(1) of Directive 2003/88 must be interpreted as not precluding national rules or collective agreements which provide for the granting of days of paid annual leave which exceed the minimum period of 4 weeks laid down in that provision, and yet exclude the carrying over of those days of leave on the grounds of illness.

The third question

41 By its third question in Cases C-609/17 and C-610/17, which must be examined second, the referring court asks, in essence, whether Article 31(2) of the Charter is to be interpreted as precluding national rules or collective agreements which provide for the granting of days of paid annual leave which exceed the minimum period of 4 weeks laid down in Article 7(1) of Directive 2003/88, and yet exclude the carrying over of those days of leave on the grounds of illness.

42 The scope of the Charter is defined in Article 51(1) thereof, according to which, so far as action by the Member States is concerned, the provisions of the Charter are addressed to those States only when they are implementing EU law (judgment of 13 June 2017, *Florescu and Others*, C-258/14, EU:C:2017:448, paragraph 44 and the case-law cited). According to Article 51(2) thereof, the Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.

43 It should also be borne in mind that, according to settled case-law, the fundamental rights guaranteed in the legal order of the European Union are applicable in all situations governed by EU law (judgment of 6 November 2018, *Bauer and Willmeroth*, C-569/16 and C-570/16, EU:C:2018:871, paragraph 52 and the case-law cited).

44 In that regard, it should be borne in mind that, under Article 94 of the Rules of Procedure of the Court of Justice, the referring court is called on to explain the relationship between the provisions of EU law of which it seeks interpretation and the national legislation applicable to the dispute brought before it. The order for reference does not contain any element permitting a finding that the dispute in the main proceedings concerns the interpretation or the application of provisions of EU law other than Directive 2003/88 and Article 31(2) of the Charter.

45 It is therefore necessary to verify whether national rules or collective agreements which provide for the granting of days of paid annual leave which exceed the minimum period of 4 weeks laid down in Article 7(1) of Directive 2003/88 and yet exclude the carrying over of those days of leave on the grounds of illness are to be regarded as implementing that directive for the purposes of Article 51(1) of the Charter and whether, as a result, Article 31(2) thereof is intended to apply to situations such as those at issue in the main proceedings (see, to that effect, judgment of 6 November 2018, *Bauer and Willmeroth*, C-569/16 and C-570/16, EU:C:2018:871, paragraph 53 and the case-law cited).

46 In that regard, it should be borne in mind that the mere fact that domestic measures come, as is the situation in the present case, within an area in which the European Union has powers cannot bring those measures within the scope of EU law, and, therefore, cannot render the Charter applicable (see, to that effect, judgment of 10 July 2014, *Julián Hernández and Others*, C-198/13, EU:C:2014:2055, paragraph 36 and the case-law cited).

47 It should also be borne in mind, first, that, under Article 4(2)(b) TFEU, the Union and the Member States have, in the area of social policy, in respect of the aspects defined in that treaty, a shared competence for the purposes of Article 2(2) thereof. Second, and as is specified in Article 153(1) TFEU and recalled in recital 2 of Directive 2003/88, the Union is to support and complement the activities of the Member States in the field of improvement of the working environment to protect the safety and health of workers.

48 In that regard, it should be emphasised that Directive 2003/88, the purpose of which, as recalled in paragraph 34 above, is simply to lay down minimum safety and health requirements for the organisation of working time, was adopted on the basis of Article 137(2) EC, now Article 153(2) TFEU. As is apparent from the case-law of the Court, the expression ‘minimum requirements’ in those provisions of primary law which is reproduced in Article 1(1) of that directive must be read in the light of Article 137(4) EC, now Article 153(4) TFEU, which specifies that such minimum requirements are not to prevent any Member State from maintaining or introducing more stringent protective measures that are compatible with the Treaties. Accordingly, the Member States remain free, in exercising the powers they have retained, to adopt such measures, which are more stringent than those which form the subject matter of action by the EU legislature, provided that those measures do not undermine the coherence of that action (see, to that effect, judgment of 17 December 1998, *IP*, C-2/97, EU:C:1998:613, paragraphs 35, 37 and 40).

49 Thus, Article 15 of Directive 2003/88, pursuant to which that directive ‘shall not affect’ Member States’ ‘right’ to apply provisions of national legislation that are more favourable to the protection of the safety and health of workers, does not grant the Member States an option of legislating by virtue of EU law, but merely recognises the power which they have to provide for such more favourable provisions in national law, outside the framework of the regime established by that directive (see, by analogy, judgment of 10 July 2014, *Julián Hernández and Others*, C-198/13, EU:C:2014:2055, paragraph 44).

50 Therefore, the situations at issue in the main proceedings are different from the situation in which an act of the Union gives the Member States the freedom to choose between various methods of implementation or grants them a margin of discretion which is an integral part of the regime established by that act, and from the situation in which such an act authorises the adoption, by the Member States, of specific measures intended to contribute to the achievement of the objective of that act (see, in those various respects, judgments of 21 December 2011, *N.S. and Others*, C-411/10 and C-493/10, EU:C:2011:865, paragraphs 64 to 68; of 16 February 2017, *C. K. and Others*, C-578/16 PPU, EU:C:2017:127, paragraph 53; of 9 March 2017, *Milkova*, C-406/15,

EU:C:2017:198, paragraphs 46, 47, 52 and 53 and the case-law cited; and of 13 June 2017, *Florescu and Others*, C-258/14, EU:C:2017:448, paragraph 48).

51 Lastly, in the present case, it should be noted that the fact of granting workers days of paid annual leave which exceed the minimum period of 4 weeks guaranteed in Article 7(1) of Directive 2003/88 and of providing that those days are not to be carried over on the grounds of illness, pursuant to national rules or collective agreements such as those at issue in the main proceedings, is not, as such, capable of affecting or limiting the minimum protection thus guaranteed to those workers under that provision (see, by analogy, judgment of 10 July 2014, *Julián Hernández and Others*, C-198/13, EU:C:2014:2055, paragraph 43); nor is it capable of infringing other provisions of that directive, or adversely affecting its coherence or the objectives pursued thereby.

52 It follows from all of the foregoing that, where the Member States grant, or permit their social partners to grant, rights to paid annual leave which exceed the minimum period of 4 weeks laid down in Article 7(1) of that directive, such rights, or the conditions for a possible carrying over of those rights in the event of illness which has occurred during the leave, fall within the exercise of the powers retained by the Member States, without being governed by that directive or falling within its scope (see, by analogy, judgment of 10 July 2014, *Julián Hernández and Others*, C-198/13, EU:C:2014:2055, paragraph 45).

53 Where the provisions of EU law in the area concerned do not govern an aspect of a given situation and do not impose any specific obligation on the Member States with regard thereto, the national rule enacted by a Member State as regards that aspect falls outside the scope of the Charter and the situation concerned cannot be assessed in the light of the provisions of the Charter (see, to that effect, judgments of 10 July 2014, *Julián Hernández and Others*, C-198/13, EU:C:2014:2055, paragraph 35; of 14 December 2017, *Miravitlles Ciurana and Others*, C-243/16, EU:C:2017:969, paragraph 34; and of 19 April 2018, *Consorzio Italian Management and Catania Multiservizi*, C-152/17, EU:C:2018:264, paragraphs 34 and 35).

54 Accordingly, by adopting national rules or authorising the negotiation of collective agreements which, like those at issue in the main proceedings, grant workers rights to days of paid annual leave which exceed the minimum period of 4 weeks laid down in Article 7(1) of Directive 2003/88 and lay down the conditions for any carrying over of such additional rights in the event of the worker's illness, the Member States are not implementing that directive for the purposes of Article 51(1) of the Charter.

55 In the light of all of the foregoing, the answer to the third question in Cases C-609/17 and C-610/17 is that Article 31(2) of the Charter, read in conjunction with Article 51(1) thereof, must be interpreted as meaning that it is not intended to apply where national rules or collective agreements exist which provide for the granting of days of paid annual leave which exceed the minimum period of 4 weeks laid down in Article 7(1) of Directive 2003/88, and yet exclude the carrying over of those days of leave on the grounds of illness.

The second question

56 In view of the answer to the third question in Cases C-609/17 and C-610/17, there is no need to examine the second question raised in each of those cases.

Costs

57 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 (Grand Chamber) hereby rules:

1. **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 not precluding national rules or collective agreements which provide for the granting of days of paid annual leave which exceed the minimum period of 4 weeks laid down in that provision, and yet exclude the carrying over of those days of leave on the grounds of illness.**

2. **Article 31(2) of the Charter of Fundamental Rights of the European Union, read in conjunction with Article 51(1) thereof, must be interpreted as meaning that it is not intended to apply where such national rules or collective agreements exist.**

[Signatures]

---

* Language of the case: Finnish.