ECLI:EU:C:2023:834

Provisional text

JUDGMENT OF THE COURT (First Chamber)

9 November 2023 (*)

(Reference for a preliminary ruling – Social policy – Organisation of working time – Directive 2003/88/EC – Article 7 – Right to paid annual leave – Carry-over of entitlements to paid annual leave in the event of long-term illness – Charter of Fundamental Rights of the European Union – Article 31(2))

In Joined Cases C-271/22 to C-275/22,

FIVE REQUESTS for a preliminary ruling under Article 267 TFEU from the conseil de prud'hommes d'Agen (Labour Tribunal, Agen, France), made by decisions of 14 February 2022, received at the Court on 21 April 2022, in the proceedings,

**XT** (C-271/22),

**KH** (C-272/22),

**BX** (C-273/22),

**FH** (C-274/22),

**NW** (C-275/22)

v

**Keolis Agen SARL,**

intervening parties:

**Syndicat national des transports urbains SNTU-CFDT,**

THE COURT (First Chamber),

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

Advocate General: T. Ćapeta,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– XT, KH, BX, FH, NW, by E. Delgado, avocate,

– Keolis Agen SARL, by J. Daniel, avocat,

– the French Government, by A. Daniel, B. Herbaut and N. Vincent, acting as Agents,

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

after hearing the Opinion of the Advocate General at the sitting on 23 March 2023,

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 proceedings between XT, KH, BX, FH and NW, the applicants in the main proceedings, and Keolis Agen SARL concerning the latter’s refusal to allow them to take accrued days of leave which they were unable to take because of absences from work due to illness or to pay them the allowance in lieu of leave not taken after the end of their employment relationship.

**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.’

***French law***

4 In accordance with Article L. 3141-3 of the Labour Code, an employee is entitled to leave of two and a half working days for each month of actual work for the same employer.

5 Article L. 3141-5 of that code reads as follows:

‘The following shall be regarded as periods of actual work for the purpose of determining the duration of leave:

1° periods of paid leave;

…

5° periods of an uninterrupted duration not exceeding one year during which performance of the contract of employment is suspended owing to a work-related accident or occupational disease;

…’

6 Article L. 3245-1 of that code provides:

‘The limitation period for an action for payment or recovery of salary shall be three years from the day on which the claimant knew or should have known the facts enabling him or her to bring that action. The claim may relate to the sums due in respect of the last three years from that day or, if the employment contract is terminated, to the sums due in respect of the three years preceding the termination of the contract.’

7 Article D. 3141-7 of that code states:

‘Payment of remuneration due in respect of paid leave shall be subject to the rules laid down in Book II for the payment of wages.’

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

8 Keolis Agen is a private company that holds a public service delegation in the public passenger transport sector.

9 Some of the applicants in the main proceedings have permanent employment contracts with that company, while others had such contracts before being declared unfit for work and having their employment contracts terminated.

10 During the period of their respective employment contracts, the applicants in the main proceedings were absent from work due to illness for over a year. They therefore requested Keolis Agen to grant them the days of paid annual leave that they were not able to take during their respective periods of illness and, for those whose contracts had been terminated, an allowance in lieu of leave not taken. Those applications were made less than 15 months after the end of the one-year reference period in which the entitlement to paid annual leave arose, and were limited to entitlements accrued during, at most, two consecutive reference periods.

11 Keolis Agen refused those applications on the basis of Article L. 3141-5 of the Labour Code, on the ground that the absences from work at issue in the main proceedings lasted for over a year and were not caused by an occupational disease.

12 Taking the view that that refusal was contrary to EU law and, in particular, to Article 7(1) of Directive 2003/88 and Article 31(2) of the Charter, the applicants in the main proceedings brought an action before the conseil de prud'hommes d'Agen (Labour Tribunal, Agen, France), which is the referring court in the present cases.

13 The referring court is uncertain, first, whether the applicants in the main proceedings may rely on the right to paid annual leave referred to in Article 7(1) of Directive 2003/88 with respect to Keolis Agen, namely a private undertaking holding a public service delegation.

14 Secondly, the referring court states that national law does not expressly provide for a carry-over period for entitlement to paid annual leave accrued during a long-term absence from work due to illness. That court notes that, according to the Court's case-law and, in particular, the case-law stemming from the judgment of 22 November 2011, *KHS* (C-214/10, EU:C:2011:761), a carry-over period of 15 months may be allowed, where the reference period in which the entitlement to annual leave arose has a duration of one year. According to the referring court, the Conseil d'État (Council of State, France) has, moreover, adopted such a carry-over period of 15 months in its case-law. By contrast, the Cour de cassation (Court of Cassation, France) has accepted, in its case-law, the possibility that entitlement to paid annual leave accumulated as a result of a long-term absence from work due to illness may be carried over indefinitely. In the light of those divergences in the case-law, the referring court raises the question, first, of the reasonable carry-over period that may be applied and, secondly, whether, in the absence of any national provision defining that period, an unlimited carry-over period may be in conformity with EU law.

15 In those circumstances the conseil de prud'hommes d'Agen (Labour Tribunal, Agen) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 7(1) of [Directive 2003/88] be interpreted as being directly applicable in relations between a private transport operator, with a single public service delegation, and its employees, in the light, in particular, of the liberalisation of the rail passenger transport sector?

(2) What is a reasonable carry-over period in respect of the acquired entitlement to four weeks' paid annual leave within the meaning of Article 7(1) of [Directive 2003/88], in so far as the time during which annual leave may be accrued is one year?

(3) Is the application of an unlimited carry-over period in the absence of a provision of national law, a regulation or convention governing that period contrary to Article 7(1) of [Directive 2003/88]?'

## Consideration of the questions referred

### *The first question*

16 By its first question, the referring court asks, in essence, whether Article 7 of Directive 2003/88 must be interpreted as meaning that a worker may rely on the right to paid annual leave against his or her employer, even if the employer is a private undertaking holding a public service delegation.

17 As a preliminary point, it should be borne in mind that Article 7 of Directive 2003/88 is not, in principle, intended to be invoked in a dispute between individuals (see, to that effect, judgment of 26 March 2015, *Fenoll*, C-316/13, EU:C:2015:200, paragraph 48).

18 However, it is settled case-law that that provision reflects and gives concrete expression to the fundamental right to an annual period of paid leave, enshrined in Article 31(2) of the Charter (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).

19 Consequently, it is necessary to examine the first question not only in the light of Article 7 of Directive 2003/88, but also in the light of Article 31(2) of the Charter.

20 It should be borne in mind 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 et C-727/20, EU:C:2022:707, paragraph 24 and the case-law cited).

21 In that respect, it should be noted that the right to paid annual leave is, as a principle of EU social law, not only particularly important, but is also expressly laid down in Article 31(2) of the Charter, 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).

22 In that context, 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 setting 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).

23 The right to a period of paid annual leave, affirmed for every worker by Article 31(2) of the Charter, is thus, as regards its very existence, both mandatory and unconditional in nature, the unconditional nature not needing to be given concrete expression by the provisions of EU or national law, which are only required to specify the exact duration of annual leave and, where appropriate, certain conditions for the exercise of that right. It follows that that provision is sufficient in itself to confer on workers a right that they may actually rely on in disputes between them and their employer in a field covered by EU law and therefore falling within the scope of the Charter (judgment of 6 November 2018, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften*, C-684/16, EU:C:2018:874, paragraph 74 and the case-law cited).

24 Article 31(2) of the Charter therefore entails, in particular, as regards the situations falling within the scope thereof, that the national court seised of a dispute between a worker and his or her employer who is a private individual must disapply national legislation negating the principle that that worker cannot be deprived of an acquired right to paid annual leave at the end of the reference period and/or of a carry-over period fixed by national law when the worker has been unable to take his or her leave, or correspondingly, of the entitlement to the allowance in lieu thereof upon termination of the employment relationship, as a right which is consubstantial with the right to paid annual leave (see, to that effect, judgment of 6 November 2018, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften*, C-684/16, EU:C:2018:874, paragraphs 75 and 81).

25 In that context, it is common ground that, 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).

26 The same applies, inter alia, with regard to workers who are absent from work on sick leave during the reference period. As is clear from the Court's case-law, with regard to entitlement to paid annual leave, workers who are absent from work on sick leave during the reference period are to be treated in the same way as those who have actually worked during that period (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 60).

27 In the present case, the applicants in the main proceedings are therefore entitled to rely on the right to paid annual leave, enshrined in Article 31(2) of the Charter and given specific expression by Article 7 of Directive 2003/88, with regard to their employer, irrespective of its status as a private undertaking holding a public service delegation, and it is for the referring court to disapply national legislation that is contrary to those provisions of EU law.

28 Consequently, the answer to the first question is that Article 31(2) of the Charter and Article 7 of Directive 2003/88 must be interpreted as meaning that a worker may rely on the right to paid annual leave, enshrined in the former provision and given concrete expression by the latter, against his or her employer and the fact that the employer is a private undertaking, holding a public service delegation, is irrelevant in that regard.

***The second question***

29 By its second question, the referring court essentially asks the Court to define the length of the carry-over period applicable to the entitlement to paid annual leave, referred to in Article 7 of Directive 2003/88, in the case of a reference period equal to one year.

30 According to Article 7(1) of Directive 2003/88, Member States are to 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.

31 Consequently, as is apparent from the very wording of Article 7 of Directive 2003/88 and from the case-law of the Court, it is for the Member States to lay down, in their domestic legislation, conditions for the exercise and implementation of the right to paid annual leave, by prescribing the specific circumstances in which workers may exercise that right (see, to that effect, judgment of 22 September 2022, *LB (Limitation period for the right to paid annual leave)*, C-120/21, EU:C:2022:718, paragraph 24 and the case-law cited).

32 As the applicants in the main proceedings, the French Government and the European Commission have submitted in their written observations, it is not for the Court, when giving a preliminary ruling, to define the length of the carry-over period applicable to the right to paid annual leave, referred to in Article 7 of that directive, since the determination of that period falls within the conditions for the exercise and implementation of the right to paid annual leave and is therefore a matter for the Member State concerned. In interpreting Article 7 of that directive, the Court can only examine whether the carry-over period fixed by the Member State concerned is capable of adversely affecting that right to paid annual leave.

33 The Court therefore has no jurisdiction to answer the second question referred for a preliminary ruling.

***The third question***

34 By its third question, the referring court asks, in essence, whether Article 7 of Directive 2003/88 must be interpreted as precluding national legislation and/or a national practice which, in the absence of a national provision laying down an express temporal limit on the carry-over of entitlements to paid annual leave accrued and not exercised due to a long-term absence from work due to illness, allows applications for paid annual leave made by a worker after the end of the reference period in which the entitlement to that leave arose to be granted.

*Admissibility*

35 The French Government and the Commission submit that the third question is inadmissible.

36 According to the French Government, the referring court's account of the regulatory framework is incorrect and is based, inter alia, on an incorrect interpretation of the case-law of the Cour de cassation (Court of Cassation, France), from which it is not apparent that national law allows entitlement to paid annual leave accumulated during a long-term absence from work due to illness to be carried over indefinitely. That government submits that, in the absence of an express provision in national law in that regard, it is the ordinary limitation period of three years, provided for in Article L. 3245-1 of the Labour Code, which is applicable. Consequently, the question referred is hypothetical and has no connection with the actual facts of the disputes in the main proceedings.

37 The Commission, for its part, points out, in particular, that XT, the applicant in the main proceedings in Case C-271/22, before his dismissal, had been absent from work for an uninterrupted period from 9 January 2017 to 31 October 2018, that his dismissal took place on 3 December 2018 and that his request for an allowance in lieu of leave not taken was made on 3 January 2019, that is to say, one month after that dismissal and less than 13 months after the reference period for paid leave accrued in 2017. Thus, the dispute in the main proceedings in no way requires an examination of the legality of any unlimited carry-over of entitlement to paid annual leave, with the result that the third question referred for a preliminary ruling should be declared inadmissible on the ground that it is hypothetical.

38 In that respect, it should be borne in mind that questions on the interpretation of EU law referred by a national court in the factual and legislative context which that national court is responsible for defining, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem 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 (judgment of 15 December 2022, *Veejaam and Espo*, C-470/20, EU:C:2022:981, paragraph 51 and the case-law cited).

39 In the present case, it must be noted that the referring court has clearly defined the factual and legislative context of the third question, stating the reasons why it considers that national law does not lay down a temporal limit on the carry-over of entitlement to paid annual leave. It has also clearly explained how an answer to that question is necessary in order to be able to rule on the possible carry-over of the rights at issue in the main proceedings. In those circumstances, it is not

obvious that that question is hypothetical or that it has no connection with the actual facts of the disputes in the main proceedings or their purpose, with the result that the presumption of relevance referred to in the preceding paragraph cannot be called into question.

40 That being said, it is apparent from the information provided by the referring court that the requests of the applicants in the main proceedings were lodged with Keolis Agen less than 15 months after the end of the reference period concerned and that they were limited to the entitlements relating to two consecutive reference periods. It must therefore be held that the third question referred is raised only with regard to those circumstances, which are clear from the factual context in which it was referred to the Court.

41 It follows that the third question is admissible in so far as it relates to requests for paid annual leave made by a worker less than 15 months after the end of the reference period in which the entitlement to that leave arose and limited to two consecutive reference periods.

*Substance*

42 As is apparent from the settled case-law of the Court, recalled in paragraph 31 above, it is for the Member States to lay down, in their domestic legislation, conditions for the exercise and implementation of the right to paid annual leave, by prescribing the specific circumstances in which workers may exercise that right.

43 In that regard, the Court has held that laying down a carry-over period for annual leave not taken by the end of a reference period forms part of the conditions for the exercise and implementation of the right to paid annual leave and therefore falls, as a rule, within the competence of the Member States (judgment of 22 November 2011, *KHS*, C-214/10, EU:C:2011:761, paragraph 25 and the case-law cited).

44 Thus, the Court has found that Article 7(1) of Directive 2003/88 does not in principle preclude national legislation which lays down conditions for the exercise of the right to paid annual leave expressly conferred by the directive, including even the loss of that right at the end of a leave year or of a carry-over period, provided that the worker who has lost his or her right to paid annual leave has actually had the opportunity to exercise the right conferred on him or her by the directive (judgment of 22 September 2022, *LB (Limitation period for the right to paid annual leave)*, C-120/21, EU:C:2022:718, paragraph 25 and the case-law cited).

45 According to settled case-law, limitations may be imposed on the fundamental right to paid annual leave, enshrined in Article 31(2) of the Charter, if the strict conditions laid down in Article 52(1) thereof are complied with, that is to say, if those limitations are provided for by law, respect the essence of that right and, subject to the principle of proportionality, are necessary and genuinely meet objectives of general interest recognised by the European Union (see, to that effect, judgments of 22 September 2022, *Fraport and St. Vincenz-Krankenhaus*, C-518/20 and C-727/20, EU:C:2022:707, paragraph 33, and of 22 September 2022, *LB (Limitation period for the right to paid annual leave)*, C-120/21, EU:C:2022:718, paragraph 36).

46 Accordingly, in the particular context where the workers concerned had been prevented from exercising their right to paid annual leave as a result of their absence from work due to illness, the Court has allowed such limitations and held that, although a worker who is unable to work for several consecutive reference periods would, in principle, be entitled to accumulate, without any limit, all the entitlements to paid annual leave that are acquired during his or her absence from work, such unlimited accumulation of entitlements would no longer reflect the actual purpose of the

right to paid annual 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 34 and the case-law cited).

47 In that regard, it should be borne in mind that 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. The right to paid annual leave acquired by a worker who is unable to work for several consecutive reference periods can reflect both the aspects of its purpose only in so far as the carry-over does not exceed a certain temporal limit. Beyond such a limit, annual leave ceases to have its positive effect for the worker as a rest period and is merely a period of relaxation and leisure (see, to that effect, judgments of 22 November 2011, *KHS*, C-214/10, EU:C:2011:761, paragraphs 31 and 33, and 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).

48 Consequently, in the specific circumstances in which a worker is unable to work for several consecutive reference periods, the Court has held that, having regard not only to the protection of workers as pursued by Directive 2003/88, but also the protection of employers faced with the risk that a worker will accumulate periods of absence of too great a length and the difficulties in the organisation of work which such periods might entail, Article 7 of that directive does not preclude national provisions or practices limiting the accumulation of entitlements to paid annual leave by a carry-over period at the end of which those entitlements are lost, provided that that carry-over period ensures, inter alia, that the worker can have, if need be, rest periods that may be staggered, planned in advance and available in the longer term and that it is substantially longer than the reference period in respect of which it is granted (see, to that effect, judgments of 3 May 2012, *Neidel*, C-337/10, EU:C:2012:263, paragraph 41, and of 22 September 2022, *Fraport and St. Vincenz-Krankenhaus*, C-518/20 and C-727/20, EU:C:2022:707, paragraph 36, and the case-law cited).

49 In particular, as regards reference periods of one year, the Court has held that Article 7(1) of Directive 2003/88 does not preclude national provisions or practices which limit, by a carry-over period of 15 months on expiry of which the right to paid annual leave lapses, the accumulation of entitlements to such leave of a worker who is unable to work for several consecutive reference periods, on the ground that such national provisions or practices do not fail to have regard to the purpose of that right (see, to that effect, judgment of 22 November 2011, *KHS*, C-214/10, EU:C:2011:761, paragraphs 43 and 44).

50 In the present case, it has been noted in paragraph 40 above that, although the referring court has stated that national law does not expressly lay down a temporal limit as regards the carry-over of rights to paid annual leave accrued and not exercised due to a long-term absence from work due to illness, it is also apparent from the information provided that the requests of the applicants in the main proceedings were lodged with Keolis Agen less than fifteen months after the end of the reference period concerned and that they were limited to entitlements relating to two consecutive reference periods.

51 Since, under Article 7 of Directive 2003/88, it is for the Member States to lay down the conditions for the exercise of the right to paid annual leave and, on that basis, to establish temporal limits on the carry-over of that right where that is necessary in order to ensure that the purpose of that right is not undermined, in compliance with the requirements set out in paragraph 45 above, namely that the Member States must, inter alia, ensure that such limits are provided for by law, that article does not preclude national legislation and/or practice from allowing requests for paid annual

leave made less than 15 months after the end of the reference period in question and limited to entitlements accrued and not exercised, due to a long-term absence from work due to illness, during two consecutive reference periods to be granted.

52 In the light of the case-law referred to in paragraphs 47 and 48 of the present judgment, it should be noted, first, that such a carry-over does not undermine the purpose of the right to paid annual leave, since such leave retains its status as a rest period for the worker concerned, and, secondly, that such a carry-over does not appear to be such as to expose the employer to the risk of an excessively large accumulation of periods of absence by the worker.

53 Thus, the answer to the third question is that Article 7 of Directive 2003/88 must be interpreted as not precluding national legislation and/or a national practice which, in the absence of a national provision laying down an express temporal limit on the carry-over of entitlements to paid annual leave accrued and not exercised due to a long-term absence from work due to illness, allows requests for paid annual leave submitted by a worker less than 15 months after the end of the reference period in which the entitlement to that leave arose and limited to two consecutive reference periods to be granted.

**Costs**

54 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:

1. **Article 31(2) of the Charter of Fundamental Rights of the European Union and 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 must be interpreted as meaning that a worker may rely on the right to paid annual leave, enshrined in the former provision and given concrete expression by the latter, against his or her employer and the fact that the employer is a private undertaking, holding a public service delegation, is irrelevant in that regard.**

2. **Article 7 of Directive 2003/88 must be interpreted as not precluding national legislation and/or a national practice which, in the absence of a national provision laying down an express temporal limit on the carry-over of entitlements to paid annual leave accrued and not exercised due to a long-term absence from work due to illness, allows requests for paid annual leave submitted by a worker less than 15 months after the end of the reference period in which the entitlement to that leave arose and limited to two consecutive reference periods to be granted.**

[Signatures]

---

* Language of the case: French.