Court of Justice of the European Union
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Press and Information

Advocate General's Opinion in Case C-282/10
Maribel Dominguez v Centre informatique du centre Ouest Atlantique

In the opinion of Advocate General Trstenjak, exercise of the right to paid annual leave cannot be made subject to a requirement under national law of having worked a minimum of 10 days

However, a worker cannot rely directly on that right vis-à-vis the employer before the national court

The Working Time Directive[1] recognises that each worker has the right to annual leave. Under the French Employment law the right to annual leave is subject to the condition that the employee must have worked for the same employer over a period equivalent to a minimum of 10 working days during the reference period.

Maribel Dominguez has been an employee of the Centre informatique du centre Ouest Atlantique since 10 January 1987. On 3 November 2005, she had an accident on her way to work. Following that accident, she was away from work from 3 November 2005 until 7 January 2007. She resumed work on 8 January 2007. On her return, the Centre informatique du centre Ouest Atlantique informed her of the number of days' leave to which she was entitled, according to its calculations, in respect of her period of absence in accordance with French law. Ms Dominguez challenged that calculation and claimed from her employer 22.5 days of paid leave in respect of that period and, in the alternative, compensation amounting to €1 971.39.

The referring court, the Cour de Cassation (France), referred questions to the Court of Justice as to the compatibility of the national provisions of French employment law with EU law and as to the obligation of the national court to disapply national provisions contrary to EU law.

In her Opinion delivered today, Advocate General Verica Trstenjak states that the right to annual paid leave must be regarded as a particularly important principle of EU social law which cannot be derogated from, and that its implementation by the competent national authorities can be carried out only within the limits expressly set out in the Working Time Directive itself. However, that national legislative competence reaches its limit where the rules chosen undermine the effectiveness of the right to annual paid leave to the point where the realisation of the aim of the right to annual leave is no longer guaranteed. According to Advocate General Trstenjak, the French legislation in question cannot be regarded as compatible with the Working Time Directive, since the right itself is made subject to the condition that the worker completes a minimum of 10 days' actual working during the reference year. In that context, the Advocate General states that the absence of a worker on sick leave during the reference year does not prevent that worker's right to paid annual leave from arising, provided the worker was on duly prescribed sick leave. Absences from work independent of the wishes of the employee concerned, such as sickness, must be counted in the period of service.

Concerning the applicability of the right to annual leave in the event of incompatibility of the national legislation with EU law, the Cour de Cassation wishes to know whether Working Time Directive obliges the national court to disapply the national legislation in a dispute between private individuals or whether the worker can also rely directly on the directive in relations with his

[1] 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). The right in question arises under Article 7(1) of Directive 2003/88/EC.

employer. Taking the view that an interpretation in conformity with the directive is not possible in the present case without interpreting national law *contra legem*, Advocate General Trstenjak examines various approaches. In that respect, she reaches the conclusion that neither the possibility of directives having horizontal effect nor direct application of the right to annual paid leave laid down by the Charter of Fundamental Rights[2] enable the worker to assert his rights vis-à-vis the employer. In the view of the Advocate General, not even recognition of the right to paid annual leave as a general principle of EU law can entail the direct application of the Working Time Directive in relations between individuals. Moreover, the approach applied by the Court of Justice in its judgment in *Kücükdeveci*[3] cannot be transposed to the present case. Therefore the Advocate General concludes that EU law does not allow the Cour de Cassation to disapply the national legislation in question.

In addition, Advocate General Trstenjak points out that, where a breach of EU law has been established for failing to transpose the Working Time Directive, Ms Dominguez is by no means left without remedies. On the contrary, she may bring an action in State liability against the contravening Member State in order to have the right to annual paid leave arising from EU law applied.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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[2] Article 31(2) of the Charter of Fundamental Rights
[3] Case C-555/07 *Kücükdeveci,* see PR 4/10.