



Press and Information

Court of Justice of the European Union
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Judgment in Case C-214/10
KHS AG v Winfried Schulte

National rules may set a temporal limit on the accumulation of unused entitlements to paid annual leave acquired during a period of unfitness for work

However, the period set by that limit must be substantially longer than the reference period in respect of which it is granted

Mr Schulte, an employee of the German company KHS AG from 1964, was covered by a collective agreement under which entitlement to paid annual leave amounts to 30 days per annum. That agreement allows payment in lieu of unused paid annual leave only on termination of the employment relationship and provides that entitlement to paid annual leave that has not been taken because of illness is to lapse on expiry of a carry-over period of 15 months after the end of the leave year (reference period), which is a calendar year.

In 2002 Mr Schulte suffered a heart attack which left him seriously disabled and he was declared unfit for work. He started to receive a pension on the ground of his total invalidity and this continued until August 2008 when his employment relationship with KHS ended.

In 2009 Mr Schulte brought an action before the German courts for payment of allowances in lieu of paid annual leave not taken in 2006, 2007 and 2008. Having been on sick leave throughout those reference periods he had been denied the opportunity to exercise his right to paid annual leave.

The Landesarbeitsgericht Hamm (Higher Labour Court, Hamm, Germany), hearing the case on appeal, held that under the German legislation and the collective agreement the leave entitlement for 2006 was lost on account of the expiry of the carry-over period. In those circumstances, the national court questioned whether national legislation or national practices which provide that in the event of unfitness for work the carrying over of entitlements to paid annual leave is limited in time are compatible with the Working Time Directive.¹

In its judgment delivered today, the Court recalls its case-law² according to which the entitlement of every worker to paid annual leave must be regarded as a particularly important principle of European Union social law from which there can be no derogations and whose implementation by the competent national authorities must be confined within the limits expressly laid down by European Union law. The Court notes that it has held³ that European Union law does not however preclude national legislation which entails the loss of the right to paid annual leave at the end of a reference period or of a carry-over period provided that the worker concerned has actually had the opportunity to exercise his right to such leave.

The Court also notes that, in specific circumstances such as those in the present case, a worker who is unfit for work for several consecutive reference periods would as a result be entitled to accumulate, without any limit, all the entitlements to paid annual leave that are acquired during his absence from work.

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).

² Case [C-173/99 BECTU](#). See also Press Release [21/01](#).

³ Case [C-350/06 Schultz-Hoff and Others](#). See also Press Release [4/09](#).

However, a right to such unlimited accumulation of entitlements to paid annual leave, acquired during a period of unfitness for work, would no longer reflect the actual purpose of the right to paid annual leave. That right has the dual purpose of enabling the worker both to rest from his work and to enjoy a period of relaxation and leisure.

While the positive effect of paid annual leave for the safety and health of the worker is deployed fully where that leave is taken in the year prescribed for that purpose, namely the current year, the significance of that rest period in that regard remains if it is taken during a later period. However, in so far as the carry-over exceeds a certain temporal 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.

In consequence, in light of the actual purpose of the right to paid annual leave, a worker who is unfit for work for several consecutive years cannot have the right to accumulate, without any limit, entitlements to paid annual leave acquired during that period.

In that context, in order to uphold the right to paid annual leave, the objective of which is the protection of workers, the Court holds that any carry-over period must take into account the specific circumstances of a worker who is unfit for work for several consecutive reference periods. Thus, the carry-over period must inter alia ensure that the worker can have, if need be, rest periods that may be staggered, planned in advance and available in the longer term. In addition, any carry-over period must be substantially longer than the reference period in respect of which it is granted.

Moreover, that period must also protect the employer from the risk that a worker will accumulate periods of absence of too great a length, and from the difficulties for the organisation of work which such periods might entail.

Therefore, the Court considers that a carry-over period of 15 months, as in this case, may reasonably be envisaged as it is not contrary to the purpose of the right to paid annual leave, in that it ensures that that right retains its positive effect for the worker as a rest period.

Accordingly, the answer given by the Court is that, **in the case of a worker who is unfit for work for several consecutive reference periods, European Union law does not preclude national provisions or practices, such as collective agreements, which limit, by a carry-over period of 15 months on the expiry of which the right to paid annual leave lapses, the accumulation of entitlement to such leave.**

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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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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