Court of Justice of the European Union
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Press and Information

Judgment in Case C-337/10
Georg Neidel v Stadt Frankfurt am Main

On retirement, a public servant is entitled to an allowance in lieu if he has not, on account of sickness, been able to take all or part of the minimum paid annual leave of four weeks to which he is entitled

However, national legislation may preclude the payment of an allowance in lieu as regards any possible additional entitlement to paid leave

The Working Time Directive[1] imposes an obligation on Member States to take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks. That minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.

Mr Neidel worked with the public services of the City of Frankfurt am Main (Germany) as from 1970. There he held the position of fireman and then that of chief fireman and had the status of a public servant. As of 12 June 2007, he was unfit for service on medical grounds and he retired at the end of August 2009.

In view of the fact that the regular weekly working time for firemen differs from the five-day working week, Mr Neidel's annual leave entitlement in each of the years from 2007 to 2009 was 26 days. In addition, firemen are entitled to compensatory leave for public holidays.

Furthermore, according to the applicable German legislation, Mr Neidel had, as a general rule, to take his leave within the year. However, the legislation allowed for a carry-over period of nine months with the result that civil or public servants forfeited their leave if it had not been commenced within that period of nine months after the end of the leave year.

Mr Neidel takes the view that in 2007 to 2009 he accumulated an entitlement in respect of leave not taken of 86 days, which is equivalent to €16 821.60 gross. He therefore requested that the City of Frankfurt am Main pay him that allowance in lieu of leave not taken. As his request was rejected on the ground that German civil and public service law makes no provision for financial compensation for leave not taken, Mr Neidel brought an action.

Against that background, the Verwaltungsgericht Frankfurt am Main (Germany) (Administrative Court, Frankfurt am Main), before which the action was brought, referred a number of questions to the Court of Justice. In particular, it asked whether the Working Time Directive applies to public servants and whether the entitlement to an allowance in lieu conferred by that directive extends only to the minimum annual leave of four weeks or whether it extends also to the additional leave for which the national law provides.

It its judgment delivered today, the Court points out that the **directive applies**, in principle, **to all sectors of activity, both public and private**, in order to regulate certain aspects of the organisation of workers' working time. In addition, the Court states that although it is true that the directive provides for exceptions to its scope, they were adopted purely for the purpose of ensuring the proper operation of services essential for the protection of public health, safety and order in

[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).

circumstances the gravity and scale of which are exceptional. **Consequently, the Court's answer is that the Working Time Directive applies to a public servant carrying out the activities of a fireman in normal circumstances**.

Next, the Court points out that it is clear from the directive that every worker is entitled to paid annual leave of at least four weeks. However, on termination of an employment relationship, it is in fact no longer possible to take paid annual leave. It is precisely because of that impossibility that, in such a case, in order to prevent a situation in which the worker loses all enjoyment of that right, even in pecuniary form, the directive entitles the worker to an allowance in lieu. In the present case, **the Court takes the view that the retirement of a civil or public servant terminates the employment relationship**. **Consequently, the Court holds that a public servant is entitled, on retirement, to an allowance in lieu of paid annual leave not taken because of the fact that he was prevented from working by sickness**.

However, the Court states that the directive does not preclude provisions of national law conferring on a public servant an entitlement to further paid leave in addition to the entitlement to a minimum paid annual leave of four weeks. In such a case, national legislation does not have to provide for the payment of an allowance in lieu if a public servant who is retiring has been unable to use that additional entitlement because he was prevented from working by sickness.

In that respect, the Court states that the directive simply lays down minimum safety and health requirements for the organisation of working time, which do not affect Member States' right to apply provisions of national law more favourable to the protection of workers. Consequently, provisions of national law may give entitlement to more than four weeks' paid annual leave, granted under the conditions for entitlement to, and granting of, the right to paid annual leave laid down by that national law. In that connection, the Court takes the view that it is for Member States to decide whether to confer on public servants an entitlement to further paid leave in addition to the entitlement to a minimum paid annual leave of four weeks, and either provide or not provide for an entitlement, in respect of a public servant who is retiring, to an allowance in lieu if that person has been unable to use that additional entitlement because he was prevented from working by sickness. Likewise, it is for Member States to lay down the conditions for the granting of that entitlement.

Lastly, the Court states that, according to its recent case-law[2], the directive precludes a provision of national law which restricts, by a carry-over period of nine months on expiry of which the entitlement to paid annual leave lapses, the right of a public servant who is retiring to cumulate the allowances in lieu of paid annual leave not taken because he was unfit for service. The Court takes the view that any carry-over period must ensure that the worker can have, if need be, rest periods that may be staggered, planned in advance and available in the longer term and must be substantially longer than the reference period in respect of which it is granted. In the proceedings in question, the carry-over period laid down is nine months, that is to say a period shorter than the reference period (in this case, one year).

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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Pictures of the delivery of the judgement are available from "Europe by Satellite"☎ (+32) 2 2964106

[2] Case C-214/10 *KHS AG* v *Winfried Schulte*, see also Press Release No 123/11.