



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 83/13

Luxembourg, 12 June 2014

Judgment in Case C-118/13

Gülay Bollacke v K+K Klaas & Kock B.V. & Co. KG

The death of a worker does not extinguish his right to paid annual leave

National legislation and practice which, in the event of a worker's death, precludes payment of the allowance in lieu of annual paid leave not taken is contrary to EU law

The Working Time Directive¹ provides that every worker is entitled to paid annual leave of at least four weeks and that that period of leave may not be replaced by an allowance in lieu, unless the employment relationship ends.

Mr Bollacke worked for the retailer K+K from 1 August 1998 to 19 November 2010, the date of his death. He had been seriously ill since 2009 as a result of which he was unfit to work until the date of his death. On that date he had accumulated 140.5 days of annual leave outstanding.

Mr Bollacke's widow submitted an application to K+K for an allowance in lieu which corresponded to the annual leave not taken by her husband. The undertaking rejected the application expressing doubts that an inheritable entitlement could exist.

Hearing the case, the Landesarbeitsgericht (Higher Labour Court, Germany) asks the Court of Justice whether national legislation or practice which provides that, if the employment relationship ends because of the worker's death, the entitlement to paid annual leave is lost without giving rise to an allowance in lieu of outstanding leave is compatible with EU law. It also asks whether receipt of that allowance depends on the prior application by the applicant.

In today's judgment, the Court notes² that the right to paid annual leave is a particularly important principle of social law and that the right to annual leave and to a payment on that account constitute two aspects of a single right.

The Court has previously held that where the employment relationship has terminated, the worker is entitled to an allowance in lieu in order to prevent all enjoyment of that right to leave being lost.³ EU law precludes national legislation or practices under which an allowance in lieu is not due to the worker at the end of the employment relationship, although the worker could not benefit from his right to paid annual leave because of his illness.

The Court notes that expression 'paid annual leave' means that, for the duration of annual leave, the worker's remuneration must be maintained.

Receipt of financial compensation if the employment relationship ends by reason of the worker's death ensures the effectiveness of the entitlement to leave. The unintended occurrence of the worker's death must not retroactively lead to a total loss of the entitlement to paid annual leave.

Consequently, the Court rules that EU law **precludes national legislation or practice which provide that, where the employment relationship is terminated by the death of the worker,**

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 L 299, p. 9).

² Joined Cases [C-350/06 et C-520/06](#) *Schultz-Hoff and Others*; see also Press Release No [4/09](#).

³ Case [C-337/10](#) *Neidel*; see also Press Release No [57/12](#).

the entitlement to paid annual leave is lost without conferring entitlement to an allowance in lieu of leave outstanding.

Furthermore, the Court rules that **that allowance does not depend on a prior application by the interested party.**

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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