



Press and Information

Court of Justice of the European Union

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Judgment in Case C-341/15

Hans Maschek v Magistratsdirektion der Stadt Wien - Personalstelle Wiener
Stadtwerke

When he himself puts an end to his employment relationship, a worker is entitled to an allowance if he could not use up all or part of his right to paid annual leave

Mr Hans Maschek, a civil servant of the city of Vienna, retired, at his own request, with effect from 1 July 2012. Between 15 November 2010 and 30 June 2012, he did not report to his work place. During the period from 15 November to 31 December 2010, Mr Maschek was on sick leave. From 1 January 2011, he was required, in accordance with an agreement concluded with his employer, to not report to his workplace, while continuing to receive his salary.

After retiring, Mr Maschek asked his employer to pay him an allowance in lieu of paid annual leave not taken, claiming that he had fallen ill again shortly before he retired. His employer refused his request on the grounds that, according to the rules on the remuneration of civil servants of the city of Vienna, a worker who, at his own request, terminates the employment relationship – particularly because he applies for retirement – is not entitled to such an allowance.

The Verwaltungsgericht Wien (Administrative Court of Vienna), hearing an action brought by Mr Maschek against that refusal, asks the Court whether such rules are compatible with EU law and, more specifically, with Directive 2003/88.¹

In today's judgment, the Court recalls that the Directive provides that every worker is entitled to paid annual leave of at least four weeks and that the right to paid annual leave is a particularly important principle of EU social law. It is granted to every worker, whatever his state of health.

When the employment relationship comes to an end and paid annual leave can therefore no longer be taken, the Directive states that the worker is entitled to an allowance in lieu in order to prevent the impossibility of taking leave leading to a situation in which the worker loses all enjoyment of that right, even in pecuniary form.

The Court states in this regard that the reason why the employment relationship has ended is irrelevant. Therefore, the fact that a worker terminates, at his own request, the employment relationship has no bearing on his entitlement to receive, where appropriate, an allowance in lieu of the paid annual leave that he could not use up before the end of his employment relationship.

The Court concludes from this that the Directive precludes national legislation such as that on the rules on the remuneration of civil servants of the city of Vienna, which deprives the worker, whose employment relationship was terminated following his request for retirement, of an allowance in lieu of paid annual leave not taken and who has been unable to use up his entitlement to paid annual leave before the end of that employment relationship.

The Court recalls, in addition, its case-law according to which an employee is entitled, on retirement, to an allowance when he could not, because of sickness, use up his right to paid

¹ Directive 2003/88/EC of the European Parliament and of the Council concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9).

annual leave.² Mr Maschek is therefore entitled to an allowance for the period 15 November to 31 December 2010, a period during which it is established that he was on sick leave and for that reason could not use up his entitlement to the annual paid leave acquired over that period.

The Court adds that the right to annual leave has the twofold purpose of enabling the worker both to rest from carrying out the work he is required to do under his contract of employment and to enjoy a period of relaxation and leisure.

In order to ensure the effectiveness of the right to annual leave, the Court proposes the following principle: a worker whose employment relationship has ended and who, pursuant to an agreement with his employer, while continuing to receive his salary, is required not to report to his place of work during a specified period preceding his retirement, is not entitled, should the case arise, to an allowance in lieu of paid annual leave not taken during this period, unless it was owing to sickness that he could not use up that entitlement.

The Court holds therefore that it will be for the referring court to determine if that was the case in respect of Mr Maschek during the period from 1 January 2011 to 30 June 2012. If so, he will not be entitled to an allowance in lieu of the paid annual leave he could not use up during that period, unless it was because of sickness that he could not use up his right to paid annual leave.

The Court further observes that, while the purpose of the Directive is to lay down minimum health and safety requirements for the organisation of working time, requirements that the Member States are obliged to comply with; the latter have the right to introduce provisions more favourable to workers. Thus, the Directive does not preclude domestic provisions giving entitlement to more than the minimum period of four weeks' paid annual leave guaranteed by the Directive and granted on the conditions for entitlement to, and granting of, the right to paid annual leave fixed by national law.

Accordingly, the Member States are free to grant workers more paid annual leave than the minimum annual paid leave of four weeks provided for by the Directive. In that case, the Member States may provide for a worker who, because of illness, could not use up all his additional paid annual leave before the end of his employment relationship, to be granted entitlement to an allowance in lieu of that additional period. It is for the Member States to determine the conditions for granting that entitlement.

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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² [C-337/10](#), Neidel Press Release [No 57/12](#) : 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), and 20 January 2009 in Schultz-Hoff and Others [C-350/06 and C-520/06](#), Press Release [No 4/09](#) : a worker does not lose his right to paid annual leave which he has been unable to exercise because of sickness).