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Press and Information

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Judgment of the Court of Justice in Case C-124/05

Federatie Nederlandse Vakbeweging v Staat der Nederlanden

COMMUNITY LAW PRECLUDES THE REPLACEMENT OF THE MINIMUM PERIOD OF PAID ANNUAL LEAVE BY AN ALLOWANCE IN LIEU, WHERE LEAVE IS CARRIED OVER TO A SUBSEQUENT YEAR.

Financial compensation for the minimum annual leave carried over would encourage employees not to take that leave. In that regard, it is immaterial whether such compensation is or is not based on a contractual arrangement.

According to the working time directive¹, the Member States must take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks. The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.

In a brochure, the Netherlands Ministry of Social Affairs and Employment interpreted the Netherlands rules regarding leave as meaning that employers and employees can, during a contract of employment, agree in writing that financial compensation be paid in a following year to an employee who has not made use (in whole or in part) of the minimum leave entitlement. In the Ministry's view, leave days, statutory as well as non-statutory, saved up from previous years exceed the minimum leave entitlement and can therefore be eligible for redemption.

The Federatie Nederlandse Vakbeweging (FNV) brought an action in the Rechtbank te 's-Gravenhage by an application seeking a declaration that that interpretation is incompatible with the working time directive. The Netherlands Gerechtshof te 's-Gravenhage, sitting on appeal, decided to refer the question to the Court of Justice of the European Communities.

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 Court notes that the entitlement to paid annual leave is **an important principle of Community social law**. Workers must be entitled to actual rest, with a view to ensuring effective protection of their safety and health. It is only where the employment relationship is terminated that payment of an allowance in lieu of paid annual leave is permitted.

The Court considers that the positive effect which that leave has for the safety and health of the worker is deployed fully if it is taken in the prescribed year. But the significance of that rest period, for the protection of workers, remains if it is taken during a later period. In any event, the possibility of financial compensation in respect of the minimum period of annual leave carried over would create an incentive, incompatible with the objectives of the directive, not to take leave or to encourage employees not to do so.

Consequently, the directive precludes the replacement, by an allowance in lieu, of the minimum period of paid annual leave, where that leave is carried over to a subsequent year. In that regard, it is immaterial whether financial compensation for paid annual leave is or is not based on a contractual arrangement.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: FR, EN, DE, NL, IT, ES, PL, HU, EL, CS, SK

The full text of the judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-124/05>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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