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Advocate General's Opinion in Case C-218/22 | Comune di Copertino

Advocate General Ćapeta: Member States may restrict the monetisation of unused paid annual leave at the end of the employment relationship

They may impose conditions to encourage the taking of annual leave with the purpose of safeguarding the health of workers so long as certain conditions are met

A civil servant held the position of 'Technical Manager for Public Works' from February 1992 to October 2016, in the Municipality of Copertino, Italy. By letter of 24 March 2016 to the Municipality, this civil servant voluntarily resigned in order to take early retirement from 1 October 2016. He sought recognition of the right to an allowance in lieu of paid annual leave, amounting to 79 days, which he had not taken during the course of employment. The Municipality replied that he was aware of his obligation to take the remaining days of leave, and that he could not monetise them. For that, the Municipality relied on the rule laid down in Italian law, which provides that workers in the public sector do not *under any circumstances* have the right to payment in lieu of unused annual leave at the end of the employment. The interpretation given to the Italian provision by the Italian courts allows the monetisation in lieu of annual leave only if the leave was not actually taken for reasons beyond the worker's control (such as illness).

The Court of Lecce, hearing the case, has doubts as to whether Italian law is compatible with the Working Time Directive, so it asks the Court of Justice whether that Directive prohibits such national law, and if not, whether it is up to the worker or the employer to prove that the worker had a real possibility to take paid annual leave.

In her Opinion, Advocate General Tamara Ćapeta observes that allowance in lieu is not a self-standing right granted to workers by the Working Time Directive. It is only where the employment relationship is terminated that the Directive permits an allowance to be paid in lieu of paid annual leave. However, **Member States may impose conditions under which the right to annual leave can be exercised in order to encourage annual leave to actually be taken. The preference for the actual use of the paid annual leave over its monetisation is justified by the purpose of paid annual leave, which is to protect the health of workers by creating an opportunity to rest from work.** Indeed, building both from the Court's case-law and the available literature in social sciences, AG Ćapeta demonstrates that the effective exercise of paid annual leave is an important way for workers to recover their mental and physical energy and, more generally, to contribute to their health at and outside work.

By and large, when the employment relationship ends, the Working Time Directive does not always preclude the loss of unused paid annual leave. Where the worker has refrained from taking his paid annual leave deliberately and in full knowledge of the ensuing consequences, after having been given the opportunity actually to exercise his right thereto, the Working Time Directive does not preclude the loss of that right or, in the event of the termination of the employment relationship, the corresponding absence of an allowance. **Member States are thus allowed to encourage the actual use of paid annual leave instead of its monetisation**.

Finally, **Advocate General Ćapeta finds that the Working Time Directive does not preclude national law which prohibits the monetisation of unused paid annual leave at the end of the employment relationship so long**

as the following conditions are met. First, the prohibition to request allowance in lieu cannot cover the right to annual leave acquired in the reference year in which the termination of work happens. Second, the worker must have had an actual opportunity to take the annual leave in the previous reference years, including during the minimal carry-over period. Third, the employer had encouraged the worker to take the annual leave. Fourth, the employer had informed the worker that unused paid annual leave cannot be cumulated in order to be replaced by an allowance in lieu at the moment of the termination of the employment relationship.

According to the Advocate General Ćapeta, it is for the national court to assess whether Italian law can be interpreted in that way and whether the enumerated conditions are met in the case at hand.

As regards the burden of proof, the Advocate General Ćapeta takes the view that it is not on the worker, but on the employer. In her view, the Working Time Directive requires that the employer demonstrates that it has enabled and encouraged the worker to take the leave, informed him or her that the monetisation will not be possible at the moment of the termination of the employment relationship and that nevertheless the worker chose not to take the annual leave.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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.

The full text of the Opinion is published on the CURIA website on the day of delivery.

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