



Press and Information

Court of Justice of the European Union

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Judgment in Case C-282/10

Maribel Dominguez v Centre informatique du Centre Ouest Atlantique,
Préfet de région Centre

The Working Time Directive precludes national rules which make entitlement to paid annual leave conditional on a minimum period of 10 days' actual work

That entitlement cannot be affected where the employee is on sick leave which has been duly granted, as a result of sickness or an accident at his place of work or elsewhere

The Working Time Directive¹ introduces an obligation for Member States to take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks in accordance with national legislation (Article 7).

Ms Dominguez was involved in an accident on the journey between her home and her place of work in November 2005. Following that accident she was absent from work from 3 November 2005 until 7 January 2007. She brought a claim before the French courts for 22.5 days' paid leave in respect of that period which her employer, the Centre informatique du Centre Ouest Atlantique ('CICOA') refused to grant her and, in the alternative, compensation in the region of €1970. Ms Dominguez argues that an accident on the journey to or from work is a work-related accident and is covered by the same arrangements as a work-related accident. She maintains that the period of suspension of her contract of employment following the accident on the journey to work should be treated as being equivalent to actual work time for the purpose of calculating her paid leave. Having been unsuccessful in her claim, Ms Dominguez brought an appeal on a point of law.

The Cour de cassation (French Court of Cassation) asks the Court of Justice whether the French rules, which make entitlement to paid annual leave conditional on an employee having worked a minimum of 10 days (or, up until February 2008, one month) for the same employer during the reference period (normally one year) are compatible with the directive. The French rules also recognise, as periods of actual work, periods during which performance of the contract of employment was suspended owing, *inter alia*, to a work-related accident, although no mention is made of an accident on the journey to or from work.

In its judgment delivered today, the Court replies, first, that the directive must be interpreted as precluding a national provision which makes entitlement to paid annual leave conditional on a minimum period of 10 days' (or one month's) actual work during the reference period.

The Court notes that entitlement to paid annual leave must be regarded as a particularly important principle of EU social law, from which there can be no derogations and whose implementation by the national authorities must be confined within the limits expressly laid down by the directive. Although Member States may lay down conditions for the exercise and implementation of the right to paid annual leave, they are not entitled to make it subject to any preconditions whatsoever or to exclude the very existence of that right, which is expressly granted to all workers.

Moreover, the Court confirms that the directive does not make any distinction between workers who are absent from work on sick leave during the reference period and those who have in fact worked in the course of that period². It follows that, with regard to workers on sick leave which has

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).

² Judgment of the Court of 20 January 2009 in Joined Cases [C-350/06](#) and [C-520/06](#) *Schultz-Hoff and Others*, see also Press Release [4/09](#).

been duly granted, the right to paid annual leave conferred by that directive on all workers cannot therefore be made subject by a Member State to a condition that the worker has actually worked during the reference period.

Secondly, the Court states that, when applying domestic law, national courts are bound to interpret it, so far as possible, in the light of the wording and the purpose of the directive. In order to ensure that the latter is fully effective, it is for the national court to determine whether it can interpret national law as allowing the absence of the worker due to an accident on the journey to or from work to be treated as being equivalent to a work-related accident. In that regard, the Court observes that, according to the directive, a worker, whether he is on sick leave during the reference period as a result of an accident at his place of work or elsewhere, or as the result of sickness of whatever nature or origin, cannot have his entitlement to paid annual leave affected.

In the event that it is not possible to interpret national law as complying with the directive, however, it is necessary for the national court to determine whether a worker such as Ms Dominguez may rely directly on the directive. In that regard, the Court holds first of all that the provisions of the directive appear, so far as their subject-matter is concerned, to be unconditional and sufficiently precise that individuals may rely upon them before the national courts against the Member State. Also, since individuals are not able to rely directly on a directive as against private parties, it is for the national court to determine, on the basis of the capacity in which the CICOA is acting (as a body governed by private or public law), whether the directive may be relied upon against it. If the directive could be relied upon against the CICOA the national court would have to disregard any conflicting national provision.

If not, Ms Dominguez would be able to bring an action for damages against the State in order to obtain, if appropriate, compensation for the loss sustained as a result of the failure to acknowledge her entitlement to paid annual leave under the directive³.

Thirdly, the Court holds that the directive allows Member States to make provision for a different period of paid annual leave, depending on the reason for the sick leave, provided that such period is equal to or exceeds the minimum period of four weeks laid down in that directive.

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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³ Joined Cases [C-6/90 and C-9/90](#) *Francovich and Others*.