



Press and Information

Court of Justice of the European Union

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Judgment in Case C-78/11

Asociación Nacional de Grandes Empresas de Distribución (ANGED) v
Federación de Asociaciones Sindicales (FASGA) and Others

A worker who becomes unfit for work during his paid annual leave is entitled at a later point in time to a period of leave of the same duration as that of his sick leave

That right exists irrespective of the point at which the incapacity for work arose

The Working Time Directive¹ entitles all workers to annual leave.

In Spain, periods during which leave may be taken must be scheduled by mutual consent between the employer and the employee, in accordance, where appropriate, with the provisions of collective agreements on the annual planning of leave.

Spanish law also provides that where the period of leave coincides with a period of temporary incapacity for work resulting from pregnancy, labour or breastfeeding, the worker is entitled at a later point in time to take leave corresponding to the period of incapacity². In the present case, the collective agreement for department stores for the period 2009 – 2010 contains a similar provision. However, Spanish law does not address situations in which the period of leave coincides with a period of sick leave on account of temporary disability.

A number of trade unions representing workers brought collective actions before the Spanish courts for recognition of the right of workers subject to the collective agreement for department stores to paid annual leave, **even where such leave coincides with periods of sick leave owing to temporary incapacity for work**. However, the Asociación Nacional de Grandes Empresas de Distribución (ANGED) (the National Association of Large Distribution Businesses) opposes those claims. In its view, workers affected by temporary incapacity for work – before starting a period of pre-arranged leave, or who are so affected during such a period of leave – are not entitled to take leave at a later date, after the period during which they were unfit for work has ended, except in the situations expressly provided for by national legislation.

The Tribunal Supremo (Supreme Court), before which the matter has been brought, asks the Court of Justice whether the directive precludes the Spanish legislation under which a worker who becomes unfit for work during a period of paid annual leave is not entitled subsequently to that annual leave where it coincides with the period of unfitness for work. **In its judgment today, the Court answers in the affirmative.**

The Court points out that, according to settled case-law³, entitlement to paid annual leave must be regarded as a particularly important principle of EU social law, a principle expressly enshrined in the EU Charter of Fundamental Rights. The right to paid annual leave cannot be interpreted restrictively.

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 right to annual leave is laid down in Article 7(1) of the Directive.

² The same possibility exists where the period of annual leave scheduled for a worker coincides with a period during which the contract of employment is suspended on account of child birth, death of the mother after child birth, premature birth, hospitalisation of a premature baby, adoption or fostering.

³ Case [C-214/10 KHS](#); see also Press Release No [123/11](#).

The Court also points out that **the purpose of entitlement to paid annual leave is to enable the worker to rest and enjoy a period of relaxation and leisure. The purpose of entitlement to sick leave is different, since it enables a worker to recover from an illness that has caused him to be unfit for work.**

Bearing in mind the purpose of paid annual leave, the Court has already held that a worker who is unfit for work before the commencement of a period of paid annual leave is entitled to take that leave at another time which does not coincide with the period of sick leave⁴.

In its judgment today, the Court states that the point at which the temporary incapacity arose is irrelevant. Consequently, **a worker is entitled to take paid annual leave which coincides with a period of sick leave at a later point in time, irrespective of the point at which the incapacity for work arose.** It would be arbitrary and contrary to the purpose of entitlement to paid annual leave to grant workers the right to paid leave only if they are already unfit for work when the period of paid annual leave commences.

In that context, the Court points out that the new period of annual leave (corresponding to the duration of the overlap between the period of leave initially scheduled and the period of sick leave to which the worker is entitled after he has recovered) may be scheduled, if necessary, outside the corresponding reference period for annual leave.

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.

Press contact: Christopher Fretwell 📞 (+352) 4303 3355

⁴ Case [C-277/08](#) *Vicente Pereda*.