



**A worker must be able to carry over and accumulate unexercised rights to paid annual leave when an employer does not put that worker in a position in which he is able to exercise his right to paid annual leave**

*EU law precludes the requirement that a worker must take leave before establishing whether he has the right to be paid in respect of that leave*

Mr Conley King worked for The Sash Window Workshop ('SWWL') on the basis of a 'self-employed commission-only contract' from 1999 until he retired in 2012. Under that contract, Mr King was paid on a commission-only basis. When he took annual leave, it was unpaid.

Upon termination of his employment relationship, Mr King sought to recover payment for his annual leave — taken and not paid, as well as not taken — for the entire period of his engagement. SWWL rejected the claim made by Mr King who therefore made a claim to the competent Employment Tribunal.

At the conclusion of those proceedings, the Employment Tribunal found that Mr King was a 'worker' within the meaning of UK legislation transposing the Working Time Directive<sup>1</sup> and that he was entitled to payment in lieu of leave.

Hearing the case on appeal, the Court of Appeal of England and Wales asked the Court of Justice several questions concerning the interpretation of the Directive. In particular, it asked whether, in the case of a dispute between a worker and employer as to whether the worker is entitled to annual leave with pay, it is compatible with EU law if the worker has to take leave first before being able to establish whether he is entitled to be paid.

In today's judgment, the Court notes, first, that the right for every worker to have paid annual leave must be regarded as a particularly important principle of EU social law expressly set out in the Charter of Fundamental Rights of the European Union.

The Court finds that the purpose of that right is to enable the worker to rest and to enjoy a period of relaxation and leisure. However, a worker faced with circumstances liable to give rise to uncertainty during the leave period with regards to his remuneration is not able to fully benefit from that leave. In addition, such circumstances are liable to dissuade the worker from taking his annual leave. In that regard, the Court notes that any practice or omission of an employer that might have such a deterrent effect is incompatible with the purpose of the right to paid annual leave.

The Court goes on to note that it is not disputed that the Member States must ensure compliance with the right to an effective remedy, guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union. In the context of the present case, that right would not be guaranteed if, in a situation in which the employer grants only unpaid leave to the worker, the worker would not be able to rely, before the courts, on the right to take paid leave per se, but **would be forced to take leave without pay and then bring an action to claim payment for it.**

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<sup>1</sup> 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. 18)

**The Court finds that such a result is incompatible with the right to an effective remedy and the directive on working time. EU law therefore precludes a situation in which the worker has to take his leave before establishing whether he has the right to be paid in respect of that leave.**

Lastly, the Court concludes that **EU law precludes national provisions or practices that prevent a worker from carrying over and, where appropriate, accumulating, until termination of his employment relationship, paid annual leave rights not exercised in respect of several consecutive reference periods because his employer refused to remunerate that leave.**

In that regard, the Court draws attention to its case-law according to which a worker who has not been able, for reasons beyond his control, to exercise his right to paid annual leave before termination of the employment relationship is entitled to an allowance in lieu. In the cases that gave rise to that case-law, the workers concerned had been prevented from exercising their right to paid annual as a result of their absence from work due to sickness.

In that context, in order to protect the employer from the risk that a worker will accumulate periods of absence of too great a length, and from the difficulties those periods might entail with regard to the organisation of work, the Court found that EU law does not preclude national provisions or practices limiting the accumulation of entitlements to paid annual leave by a carry-over period of 15 months at the end of which the right is lost.

By contrast, in circumstances such as those at issue in the present case, protection of the employer's interests does not seem strictly necessary, particularly since the assessment of the right of a worker such as Mr King to paid annual leave is not connected to a situation in which his employer was faced with periods of his absence. On the contrary, the employer was able to benefit from the fact that Mr King did not interrupt his professional activity. Furthermore, it is for the employer to seek all information regarding his obligations in regard to paid annual leave.

**The Court therefore finds that unlike in a situation of accumulation of entitlement to paid annual leave by a worker who was unfit for work due to sickness, an employer that does not allow a worker to exercise his right to paid annual leave must bear the consequences.**

As a result, in the absence of any national statutory provision establishing a limit to the carry-over of leave in accordance with the requirements of EU law, to accept that the worker's acquired entitlement to paid annual leave could be extinguished would amount to validating conduct by which an employer was unjustly enriched to the detriment of the purpose of that directive, which is that there should be due regard for workers' health.

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**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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Press contact: Holly Gallagher ☎ (+352) 4303 3355

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