Court of Justice of the European Union
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Press and Information

Advocate General's Opinion in Joined Cases
C-569/16 Stadt Wuppertal v Maria Elisabeth Bauer and
C-570/16 Volker Willmeroth als Inhaber der TWI Technische Wartung und Instandsetzung Volker Willmeroth e. K. v Martina Broßonn

Advocate General Bot proposes that the Court of Justice rule that EU law precludes national legislation which prevents the heirs of a deceased worker from claiming an allowance in lieu of outstanding leave

The heirs may rely on EU law against both a public employer and a private employer

Mrs Maria Elisabeth Bauer and Mrs Martina Broßonn requested the former employers of their late husbands, that is to say, respectively, Stadt Wuppertal (Germany) and Mr Volker Willmeroth (in his capacity as the owner of the undertaking TWI Technische Wartung und Instandsetzung Volker Willmeroth), to pay them an allowance in lieu of the paid annual leave not taken by their spouses before their deaths. Since payment of such an allowance was refused, they brought actions before the German labour courts.

The Bundesarbeitsgericht (Federal Labour Court, Germany) asks the Court of Justice, in that context, to interpret the Working Time Directive[1] and the Charter of Fundamental Rights of the European Union (in particular Article 31(2) thereof), which enshrines the right of every worker to an annual period of paid leave. Under that directive, that leave must be of at least four weeks.

The Bundesarbeitsgericht recalls that the Court has previously held, in its judgment in Bollacke,[2] that the directive precludes national legislation or practice which provides that the entitlement to paid annual leave is lost without conferring entitlement to an allowance in lieu of outstanding paid annual leave, where the employment relationship is terminated by the death of the worker.

However, it is doubtful as to whether that is also the case where national law excludes the possibility that such an allowance in lieu may form part of the estate. Under German law, as interpreted by the Bundesarbeitsgericht, the deceased's entitlement to leave is extinguished upon death and cannot, therefore, be converted into a right to an allowance in lieu or form part of the estate. In the view of the Bundesarbeitsgericht, no other interpretation of the German provisions at issue can be accepted. In the event that EU law were to preclude such national legislation, the Bundesarbeitsgericht wishes to ascertain whether the heir can directly rely on EU law, in particular against a private employer, such as Mr Willmeroth.

In today's Opinion, Advocate General Yves Bot concludes that there is no reason to call into question the solution adopted by the Court in its judgment in Bollacke. He points out in particular that considerations relating to inheritance were taken into account by the Court in the solution which it established in that judgment.

He therefore **proposes that the Court's interpretation that the directive precludes national legislation or practice, such as that at issue in the main proceedings, which provides that the entitlement to paid annual leave is lost without conferring entitlement to an allowance in lieu of outstanding paid annual leave, and which therefore makes it impossible for the deceased's heirs to be paid such an allowance, where the employment relationship is terminated by the death of the worker, be confirmed**.

[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] Case: C-118/13 Bollacke, see Press Release No 83/14.

As regards the consequences which the Bundesarbeitsgericht must draw from that finding of incompatibility between the German law and EU law, the Advocate General recalls that, in accordance with the Court's case-law, the obligation for a national court to interpret national law in compliance with EU law does not require an interpretation contrary to the provisions of national law. However, a national court cannot validly claim that it is impossible for it to interpret a national provision in a manner that is consistent with EU law by mere reason of the fact that it has consistently interpreted that provision in a manner that is incompatible with EU law.

In the event that the Bundesarbeitsgericht continues to consider that it is impossible for it to interpret national law in conformity with EU law, the Advocate General distinguishes the two specific cases.

Mrs Bauer, by the fact that her husband was employed by Stadt Wuppertal, which is a body governed by public law, can without difficulty rely, as against that body, on her right to an allowance in lieu of outstanding paid annual leave, which, it should be recalled, is directly conferred on her by the directive. The Bundesarbeitsgericht must therefore disapply any contrary national provision.

Mrs Broßonn's dispute is more complicated, however, as her husband was employed by a person governed by private law. The Court has consistently held that a directive cannot of itself impose obligations on an individual and cannot therefore be relied on as such against an individual before a national court or tribunal.

Nevertheless, **in the view of the Advocate General, the right to paid annual leave, now enshrined in Article 31(2) of the Charter, is to be treated not only as a particularly important principle of EU social law, but also and above all as a fundamental social right in itself.**

The Advocate General is of the view that that article of the Charter possesses the qualities needed for it to be relied on directly in a dispute between individuals in order to disapply national provisions which have the effect of depriving a worker of his right to an annual period of paid leave. Indeed, that article is mandatory in nature and is self-sufficient in that it requires no supplementary measure to be adopted in order directly to produce effects as regards individuals.

In the view of the Advocate General, it is apparent from the explanations relating to the Charter (which explanations refer to the directive) **that Article 31(2) of the Charter guarantees to every worker the right to an annual period of paid leave *of at least four weeks***.

It is **also** because of that interrelationship between the provisions that **the entitlement to an allowance in lieu, which must be available to any 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**, as derived from the directive and as recognised and given specific expression by the Court, **must be regarded as being an entitlement protected by Article 31(2) of the Charter.**

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.

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