



Press and Information

Court of Justice of the European Union

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Judgment in Joined Cases C-569/16 and C-570/16
Stadt Wuppertal v Maria Elisabeth Bauer and
Volker Willmeroth v Martina Broßonn

The heirs of a deceased worker may claim from the latter's former employer an allowance in lieu of the paid annual leave not taken by the worker

The deceased worker's right to an allowance in lieu of leave which is not taken may be passed on by inheritance to his heirs

The late husbands of Mrs Maria Elisabeth Bauer and Mrs Martina Broßonn were respectively employed by the city of Wuppertal (Germany) and Mr Volker Willmeroth. As the deceased had not taken all their paid annual leave prior to their death, Mrs Bauer and Mrs Broßonn, as the sole heirs, asked their spouses' former employers for an allowance in lieu of that leave. The city of Wuppertal and Mr Willmeroth having refused to pay that allowance, Mrs Bauer and Mrs Broßonn applied to the German labour courts.

In those circumstances, the Bundesarbeitsgericht (Federal Labour Court, Germany), before which the proceedings were brought, asked the Court of Justice to interpret the EU legislation¹ according to which all workers are entitled to at least four weeks' paid annual leave, which may be replaced by an allowance in lieu only in the event that the employment relationship is terminated.

The Bundesarbeitsgericht recalls that the Court already ruled in 2014 that a worker's right to paid annual leave does not lapse upon his death.²

However, it is uncertain whether that is also the case where national law, such as German law, precludes that allowance in lieu from forming part of the estate. Moreover, it takes the view that the purpose of the right to paid annual leave, namely to allow the worker to rest and to enjoy a period of relaxation and leisure, can no longer be achieved where the person concerned has died.

By today's judgment, the Court confirms that, under EU law, a worker's right to paid annual leave does not lapse upon his death. In addition, it states that the heirs of a deceased worker may claim an allowance in lieu of the paid annual leave not taken by the worker.

In the event that national law precludes that possibility and is therefore incompatible with EU law, the heirs may directly rely on EU law, both against a public and a private employer.

The Court accepts that the inevitable consequence of the death of the worker is that he can no longer enjoy the period of rest and relaxation attaching to the right to paid annual leave to which he was eligible. However, the temporal aspect constitutes only one of the two aspects of the right to paid annual leave, which constitutes an essential principle of EU social law and is expressly affirmed as a fundamental right in the Charter of Fundamental Rights of the European Union.

That fundamental right also includes the right to be paid during such leave, together with, as a right which is inseparable from the entitlement to 'paid' annual leave, the right to an allowance in lieu of annual leave not taken when the employment relationship ends.

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) and the Charter of Fundamental Rights of the European Union.

² Case: [C-118/13](#) Bollacke, see also Press Release No. [83/14](#).

This financial aspect is strictly pecuniary in nature, and is therefore intended to form part of the assets of the person concerned, so that the death of the latter cannot retroactively deprive his estate and, consequently, those to whom it is to be transferred by inheritance, of the effective enjoyment of the financial aspect of the right to paid annual leave.

Where it is impossible to interpret national legislation (such as the German legislation in question) in a manner consistent with EU law, the national court, hearing a dispute between the heir of a deceased worker and the former employer of that worker, must disregard the national legislation and ensure that the heir is granted, at the expense of the former employer, an allowance in lieu of the paid annual leave acquired under EU law and not taken by that worker before his death.

That obligation is binding on the national court irrespective of whether the dispute involves an employer who is a public authority (such as the City of Wuppertal) or an employer who is a private individual³ (such as Mr Willmeroth).

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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³ The Court recalls in that regard that a directive cannot of itself impose obligations on an individual, such as a private employer, and cannot therefore be relied on as such against him. However, as regards the right to paid annual leave, the Charter may be relied on in such a dispute.