



Press and Information

Court of Justice of the European Union

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Judgments in Cases C-619/16 and C-684/16

Sebastian W. Kreuziger v Land Berlin and

Max-Planck-Gesellschaft zur Förderung der Wissenschaften eV v Tetsuji

Shimizu

A worker cannot automatically lose his acquired rights to paid annual leave because he did not apply for leave

On the other hand, if the employer proves that the worker deliberately and knowingly refrained from taking his paid annual leave after having been given the opportunity actually to exercise his right thereto, EU law does not preclude the loss of that right or, in the event that the employment relationship ends, the corresponding absence of an allowance in lieu

Mr Sebastian W. Kreuziger was a paid legal trainee with the Land of Berlin (Germany). During the last months of this traineeship, he refrained from taking paid annual leave. After his traineeship ended, he requested an allowance in lieu of the days of leave which he had not taken, which the Land refused. Mr Kreuziger then challenged that refusal before the German administrative courts.

Mr Tetsuji Shimizu was employed by the Max-Planck-Gesellschaft zur Förderung der Wissenschaften. (Max-Planck-Gesellschaft) Some two months before the end of the employment relationship, Max-Planck-Gesellschaft invited Mr Shimizu to take his remaining leave (without forcing him to take it on the dates it had set). Mr Shimizu took only two days off and requested payment of an allowance in lieu of the annual leave not taken, which Max-Planck-Gesellschaft refused. Mr Shimizu then brought proceedings before the German labour courts.

The Oberverwaltungsgericht Berlin-Brandenburg (Higher Administrative Court of Berlin-Brandenburg, Germany) and the Bundesarbeitsgericht (Federal Labour Court, Germany) are uncertain whether EU law precludes national legislation providing for the loss of paid annual leave which is not taken, and the loss of an allowance in lieu of that leave, where the worker did not apply for leave before the employment relationship ended.

They therefore asked the Court of Justice to interpret, in that regard, the EU legislation¹ according to which a worker's right to paid annual leave of at least four weeks may be replaced by an allowance in lieu only if the employment relationship ends.

By today's judgments, the Court of Justice finds that EU law precludes a worker from automatically losing the days of paid annual leave to which he was entitled under EU law and, consequently, his right to an allowance in lieu of the leave which is not taken, solely because he did not apply for leave before the employment relationship ended (or during the reference period).

Those rights may lapse only if the employer actually gave the worker the opportunity, in particular through the provision of adequate information, to take the leave days at issue in good time, which the employer must prove he has done.

The worker must be viewed as the weak party in an employment relationship. Thus, he may be dissuaded from expressly asserting his rights against his employer if, in particular, the assertion of those rights is likely to expose him to measures taken by the employer which may affect the employment relationship to the detriment of the worker.

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.

On the other hand, if the employer is able to prove - and the burden is on him in that regard - that the worker deliberately and knowingly refrained from taking his paid annual leave after having been given the opportunity actually to exercise his right to it, EU law does not preclude the loss of that right or, in the event that the employment relationship is terminated, the corresponding absence of an allowance in lieu of paid annual leave which is not taken.

Any interpretation of the provisions of EU law in question which is liable to encourage the worker to refrain deliberately from taking his paid annual leave during the applicable reference or authorised carry-over periods, in order to increase his remuneration upon termination of the employment relationship, is incompatible with the objectives pursued by the introduction of the right to paid annual leave. Those objectives relate in particular to the need to ensure that workers enjoy a period of actual rest, with a view to ensuring the effective protection of their health and safety.

The Court further states that the above principles apply equally to **employers which are public** (such as the *Land of Berlin*) **or private** (such as *Max-Planck-Gesellschaft*).²

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 [C-619/16](#) and [C-684/16](#) of the judgments are published on the CURIA website on the day of delivery.

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² It is true that a directive cannot in itself create obligations for an individual and cannot therefore be relied on as such against him. Thus, even if it is clear, precise and unconditional, a provision of a directive aimed at conferring rights or imposing obligations on individuals cannot apply as such in the context of a dispute which exclusively involves individuals (such as the dispute between Mr Shimizu and Max-Planck-Gesellschaft). However, the right of every worker to periods of paid annual leave is not only enshrined in a directive, but also, as a fundamental right, in the Charter of Fundamental Rights of the European Union. That fundamental right entails, by its very nature, a corresponding obligation on the employer, namely to grant such periods or an allowance in lieu of paid annual leave not taken at the end of the employment relationship. National provisions to the contrary must, where appropriate, be disregarded.