



Press and Information

Court of Justice of the European Union  
**PRESS RELEASE No 201/18**  
Luxembourg, 13 December 2018

Judgment in Case C-385/17  
Torsten Hein v Albert Holzkamm GmbH & Co. KG

**During their minimum period of annual leave guaranteed by EU law, workers are entitled to their normal remuneration, in spite of prior periods of short-time working**

*However, the length of that minimum period of annual leave depends on the work actually performed during the reference period; therefore periods of short-time working may reduce that minimum period of leave to less than four weeks*

Mr Torsten Hein is employed by the German company Holzkamm as a concrete worker. In 2015 Mr Hein was on short-time working and did not perform actual work for 26 weeks, that is to say half of the year. During periods of short-time working like in Mr Hein's case, the employment relationship between the employer and worker continues, but the worker does not perform actual work for his employer.

Nevertheless, according to the collective agreement for the construction industry, workers are entitled to 30 days of annual leave, irrespective of periods of short-time working during which actual work was not performed. Accordingly, in 2015 and 2016 Mr Hein took the 30 days of leave he had accrued in 2015.

However, under that collective agreement, periods of short-time working are to be taken into account for the purpose of calculating remuneration paid in respect of annual leave ('remuneration for annual leave'). Holzkamm therefore calculated the amount to be paid to Mr Hein on the basis of a gross hourly wage that was lower than his normal hourly wage, with the result that his remuneration was significantly reduced.

Taking the view that periods of short-time work during the reference period cannot have the effect of reducing the amount of remuneration for annual leave to which he is entitled, Mr Hein brought an action before the Arbeitsgericht Verden (Labour Court, Verden, Germany).

The Labour Court asked the Court of Justice whether national legislation under which collective agreements may provide for account to be taken of losses of earnings that occur in the reference period as a result of short-time work, leading to a reduction of remuneration for annual leave, is in conformity with EU law.<sup>1</sup>

By today's judgment, the Court notes that, under EU law, every worker is entitled to paid annual leave of at least four weeks. That single right consists of two aspects: the entitlement to annual leave and the entitlement to payment for that leave.

As regards, first, the four-week minimum duration of annual leave, the Court recalls that this is based on the premiss that the worker actually worked during the reference period.<sup>2</sup> Accordingly, entitlement to paid annual leave must, in principle, be calculated by reference to the periods of actual work completed under the employment contract.

<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. 9) and Article 31 of the Charter of Fundamental Rights of the European Union.

<sup>2</sup> Case: [C-12/17](#) Dicu see Press Release No [149/18](#).

Thus, given that in 2015 Mr Hein did not perform actual work for 26 weeks, it appears that he is entitled, under EU law, to only two weeks of leave (but the exact duration of that period of leave is a matter for the Labour Court to determine).

However, EU law governs only the minimum duration of annual leave and does not preclude national legislation or collective agreements from giving workers the right to a longer period of paid annual leave, irrespective of the fact that the workers' working time has been reduced on account of short-time working.

As regards, second, the remuneration that must be paid to a worker in respect of the minimum period of annual leave guaranteed by EU law, the Court notes that, during that period, remuneration must be maintained. In other words, workers must receive their normal remuneration for that period of rest.<sup>3</sup>

Indeed, the purpose of requiring payment during that leave is to put the worker, during such leave, in a position which is, as regards remuneration, comparable to periods of work.

If he did not receive his normal remuneration, a worker might be encouraged not to take his paid annual leave, at least during periods of actual work, as taking it would lead to a reduction in his remuneration during those periods.

The Court finds, therefore, that the fact **that a worker in a position such as that of Mr Hein receives, for his days of annual leave guaranteed by EU law, remuneration which does not correspond to the normal remuneration he receives during periods of actual work, is contrary to EU law.**

The Court notes, however, that EU law does not require normal remuneration to be granted for the entire duration of the annual leave to which the worker is entitled under national law. The employer is required to grant such remuneration only for the minimum period of annual leave provided for by EU law, such leave being accrued by the worker only in respect of periods of actual work.

In a dispute such as that in the main proceedings, which is between private persons, the national court is required to interpret its national legislation in a way that is in accordance with EU law.<sup>4</sup> Such an interpretation should result in the remuneration for annual leave paid to workers in respect of the minimum annual leave provided for by EU law not being lower than the average normal remuneration received by those workers during periods of actual work.

By contrast, EU law does not require national legislation to be interpreted as giving entitlement to a collectively agreed additional payment on top of that average normal remuneration, or to the right to have pay received for overtime taken into account, unless the obligations arising from the employment contract require the worker to work overtime on a broadly regular and predictable basis and the corresponding pay constitutes a significant element of his total remuneration.

As regards the temporal effects of today's judgment, the Court notes that the interpretation which it gives to a rule of EU law clarifies and defines the meaning and scope of that rule as it must be or ought to have been understood and applied from the time of its entry into force.

It follows that the rules of EU law regarding annual leave, as interpreted in today's judgment, may, and must, be applied by national courts even to legal relationships which arose and were established before today, provided that the conditions for bringing a dispute relating to the application of that rule before the national court are satisfied.

**The Court finds that it is not appropriate to limit the temporal effects of today's judgment, since the condition as to serious economic repercussions is not satisfied.**

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<sup>3</sup> Cases: [C-131/04](#) and [C-257/04](#) *Robinson-Steele and Others*; see Press Release No [24/06](#), [C-155/10](#) *Williams and Others* see Press Release No [90/11](#).

<sup>4</sup> A directive cannot of itself impose obligations on a private person, like *Holzmann*, and cannot therefore be relied upon as such against a private person.

The Court also states that EU law precludes national courts from protecting, on the basis of national law, the legitimate expectation of employers that the case-law of the highest national courts, which confirmed the lawfulness of the provisions concerning paid annual leave in the collective agreement for the construction industry, will continue to apply.

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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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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit 📞 (+352) 4303 3355