



Press and Information

Court of Justice of the European Union

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Judgment in Joined Cases C-762/18  
QH v Varhoven kasatsionen sad na Republika Bulgaria  
and C-37/19 CV v Iccrea Banca SpA

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**Workers are entitled, for the period between an unlawful dismissal and reinstatement as an employee, to annual paid leave or, at the end of the employment relationship, to a payment in lieu of such leave not taken**

*Where, during that period, a worker has taken new employment, he or she will be able to claim the entitlement corresponding to the period during which he or she has been in that employment only from the new employer*

Case C-762/18 concerns QH, a former employee of a school in Bulgaria. She was initially dismissed and then reinstated in her employment following a court judgment declaring her dismissal unlawful. Subsequently, QH was again dismissed.

QH brought an action against the school seeking, inter alia, payment of compensation in lieu of leave not taken for the period between her unlawful dismissal and her reinstatement. The Varhoven kasatsionen sad na Republika Bulgaria (Supreme Court of Cassation, Bulgaria), ruling at last instance, did not uphold her claims.

QH then brought proceedings before the Rayonen sad Haskovo (District Court, Haskovo, Bulgaria) against the Varhoven kasatsionen sad na Republika Bulgaria, seeking compensation for the losses allegedly suffered as a result of that court's infringement of EU law.

Case C-37/19 involves facts similar to those of Case C-762/18, concerning CV, a former employee of Iccrea Banca, an Italian credit institution.

CV was reinstated in her employment following the annulment of her dismissal by a court judgment declaring that dismissal to be unlawful. Subsequently, CV's contract of employment was again terminated.

The Corte suprema di cassazione (Court of Cassation, Italy) was seised at last instance of CV's action seeking an order that Iccrea Banca pay compensation for leave not taken in respect of the period between her unlawful dismissal and her reinstatement.

The Bulgarian and Italian courts decided to refer questions for a preliminary ruling to the Court of Justice. The Rayonen sad Haskovo asks the Court whether EU law<sup>1</sup> must be interpreted as meaning that a worker, in the situation described, is entitled to **paid annual leave** for the period between unlawful dismissal and reinstatement as an employee even if, during that period, he or she has not actually worked for the employer. In addition, the Rayonen sad Haskovo and the Corte suprema di cassazione ask the Court whether EU law must be interpreted as meaning that workers, in the situations described, are entitled to **financial compensation in lieu** of paid annual leave not taken during the period between unlawful dismissal and reinstatement.

By its judgment, delivered today, the Court answers both questions in the affirmative.

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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 (JO 2003, L 299, p. 9), and Article 31(2) of the Charter of Fundamental Rights of the European Union.

The Court recalls, first of all, its case-law<sup>2</sup> in accordance with which, where the worker is unable to perform his or her duties for an unforeseeable reason beyond his or her control, such as sickness, the right to paid annual leave cannot be made subject to a condition that the worker has actually worked.

The Court notes, next, that, as when a worker is unable to perform his duties due to sickness, the fact that a worker has been deprived of the opportunity to work as a result of a dismissal subsequently found to be unlawful is, in principle, unforeseeable and beyond the control of that worker.

The Court concludes therefrom that **the period between a worker's unlawful dismissal and reinstatement in his or her employment must be assimilated to a period of actual work for the purposes of determining the entitlement to paid annual leave.** Consequently, a worker unlawfully dismissed then reinstated in his or her employment, by virtue of national law, following the annulment of the dismissal by the judgment of a court, **is entitled to the paid annual leave acquired during that period.**

The Court observes that, if the reinstated worker is again dismissed or if the employment relationship, after reinstatement, ceases for any reason, the worker is entitled to a **payment in lieu of paid annual leave not taken** to which the entitlement was acquired during the period between the unlawful dismissal and the reinstatement.

However, the Court specifies that, **if, during the period between the unlawful dismissal and his or her reinstatement in his or her former employment, the worker has taken new employment, he or she will be able to claim the entitlement to paid annual leave corresponding to the period during which he or she has been in that employment only from the new employer.**

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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.

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