



**Key Issues:** Social Policy – Right to Paid Annual Leave – Sick Leave - Request for a Preliminary Ruling

**Case:** Hans Maschek v Magistratsdirektion der Stadt Wien

**Reference:** Case C-341/15, CJEU (Tenth Chamber), 20 July 2016

**Legislation:** Directive 2003/88/EC

Mr Maschek was a public servant with the city of Vienna from 3 January 1978. Between 15 November 2010 and 30 June 2012, the date of his retirement, he did not report to his place of work. The referring court (Administrative Court of Vienna) states that it is apparent from Mr Maschek's administrative file that his employer, in its records, classified as an "absence due to illness" only the period between 15 November 2010 and 31 December 2010.

Mr Maschek's employer apparently did not object to Mr Maschek's other absences, from 1 January 2011 to 30 June 2012, due to it having concluded with him two agreements relating to those absences and their consequences. At the time of the conclusion of the second agreement, Mr Maschek also filed a request for retirement. His employer accordingly adopted, on 21 July 2011, a decision by which Mr Maschek retired with effect from 1 July 2012. Mr Maschek then made a commitment to waive any legal action against that decision.

According to the referring court, it is thus established, first, that from 15 November 2010 to 31 December 2010, the absence of Mr Maschek from his place of work was justified as sick leave and, second, that from 1 January 2011 to 30 June 2012, namely until the end of his employment relationship due to retirement, Mr Maschek was required not to report to his place of work due to the instructions of the service, resulting from the application of the second agreement. Mr Maschek claims nevertheless that he fell ill a little before 30 June 2012. He is of the opinion, therefore, that he is entitled to an allowance in lieu of paid annual leave not taken and submitted a request in that regard to his employer.

By decision of 1 July 2014, his employer rejected his request and Mr Maschek brought an action against that decision before the Administrative Court of Vienna which decided to stay the proceedings and to refer a number of questions to the Court of Justice (CJEU) for a preliminary ruling.

### **Consideration by CJEU**

The referring court asks, in essence, whether Article 7(2) of Directive 2003/88 must be interpreted as precluding national legislation which deprives the worker, whose employment relationship was terminated following his request for retirement, of an allowance in lieu of paid annual leave not taken and who

has not been able to use up his rights to paid annual leave before the end of his employment relationship.

The CJEU first noted that according to Article 7(1) of Directive 2003/88, a provision from which that directive allows no derogation, every worker is entitled to paid annual leave of at least four weeks. That right to paid annual leave which, according to settled case-law, must be regarded as a particularly important principle of EU social law, is therefore granted to every worker, whatever his state of health.

On termination of the employment relationship, when it is no longer possible to take paid annual leave, Article 7(2) of Directive 2003/88 provides that the worker is entitled to an allowance in lieu in order to prevent this impossibility leading to a situation in which the worker loses all enjoyment of that right, even in pecuniary form.

The CJEU also noted that Article 7(2) of Directive 2003/88, as interpreted by the CJEU, lays down no condition for entitlement to an allowance in lieu other than that relating to the fact, first, that the employment relationship has ended and, second, that the worker has not taken all annual leave to which he was entitled on the date that that relationship ended. It follows that a worker who has not been able to take all his entitlement to paid annual leave before his employment relationship has ended, is entitled to allowance in lieu of paid annual leave not taken. In that respect, the reason for which the employment relationship has ended is not relevant.

Therefore, the fact that a worker terminates, at his own request, his employment relationship has no bearing on his entitlement to receive, where appropriate, an allowance in lieu of paid annual leave which he has not been able to use up before the end of his employment relationship.

The CJEU held that:

Article 7(2) of 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, must be interpreted:

- **as precluding national legislation which deprives the worker, whose employment relationship was terminated following his request for retirement, of an allowance in lieu of paid annual leave not taken and who has not been able to use up his rights to paid annual leave before the end of that employment relationship;**
- **as meaning that a worker is entitled, on retirement, to an allowance in lieu of paid annual leave not taken because he was prevented from working by sickness;**
- **as meaning that a worker whose employment relationship has ended and who, pursuant to an agreement with his employer, while continuing to receive his salary, was required not to report to his place of work during a specified period preceding his retirement, is not entitled to an allowance in lieu of paid annual leave not taken during this period, unless he was not able to use up that entitlement due to illness;**
- **as meaning that it is, on the one hand, for the Member States to decide whether to grant workers additional paid leave in addition to**

**the minimum annual paid leave of four weeks provided for in Article 7 of Directive 2003/88. In that case, the Member States may grant to a worker who, because of illness, could not use up all of his additional paid annual leave before the end of his employment relationship, an entitlement to an allowance in lieu of that additional period. It is, on the other hand, for the Member States to determine the conditions for granting that entitlement.**

### **Why is this decision important?**

The Court of Justice has clarified that an employee is entitled to an allowance in lieu of paid annual leave where the employee has not been able to use up his rights to paid annual leave before the end of the employment relationship as a result of retirement requested by him.

Employers may take some comfort from the decision of the Court of Justice that, if agreement is reached that an employee will continue to receive his salary but is not required to report to his place of work during a specified period preceding his retirement, the employee is not then entitled to an allowance in lieu of paid annual leave not taken during this period, unless he was not able to use up that entitlement due to illness.

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### **CLfE (6/2016)**

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