JUDGMENT OF THE COURT (Grand Chamber)

24 January 2012 *(1)

(Social policy – Directive 2003/88/EC – Article 7 – Right to paid annual leave – Precondition for entitlement imposed by national rules – Absence of the worker – Length of the leave entitlement based on the nature of the absence – National rules incompatible with Directive 2003/88 – Role of the national court)

In Case C-282/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Cour de cassation (France), made by decision of 2 June 2010, received at the Court on 7 June 2010, in the proceedings

Maribel Dominguez

v

Centre informatique du Centre Ouest Atlantique,

Préfet de la région Centre,

THE COURT (Grand Chamber),

composed of V. Skouris, President, A. Tizzano, J.N. Cunha Rodrigues, K. Lenaerts, and U. Lõhmus, Presidents of Chambers, A. Rosas, E. Levits (Rapporteur), A. Ó Caoimh, L. Bay Larsen, T. von Danwitz and A. Arabadjiev, Judges,

Advocate General: V. Trstenjak,

Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 17 May 2011,

after considering the observations submitted on behalf of:

– Ms Dominguez, by H. Masse-Dessen and V. Lokiec, avocats,

– the Centre informatique du Centre Ouest Atlantique, by D. Célice, avocat,

– the French Government, by G. de Bergues, A. Czubinski and N. Rouam, acting as Agents,

– the Danish Government, by S. Juul Jørgensen, acting as Agent,

– the Netherlands Government, by C. Wissels and M. Noort, acting as Agents,

– the European Commission, by M. van Beek and M. Van Hoof, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 September 2011,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 7 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 (OJ 2003 L 299, p. 9).

2 The reference has been made in the proceedings between Ms Dominguez and her employer, the Centre informatique du Centre Ouest Atlantique ('the CICOA'), concerning Ms Dominguez's claim for entitlement to paid annual leave not taken in respect of the period between November 2005 and January 2007 due to absence from work granted after an accident and, in the alternative, for compensation.

Legal context

European Union legislation

3 Article 1 of Directive 2003/88 provides:

'Purpose and scope

1. This Directive lays down minimum safety and health requirements for the organisation of working time.

2. This Directive applies to:

(a) minimum periods of … annual leave …

...'

4 Article 7 of that directive reads as follows:

'Annual leave

1. Member States shall take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks in accordance with the conditions for entitlement to, and granting of, such leave laid down by national legislation and/or practice.

2. The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.'

5 Article 15 of that directive provides:

'More favourable provisions

This Directive shall not affect Member States' right to apply or introduce laws, regulations or administrative provisions more favourable to the protection of the safety and health of

workers or to facilitate or permit the application of collective agreements or agreements concluded between the two sides of industry which are more favourable to the protection of the safety and health of workers.'

6 Article 17 of Directive 2003/88 provides that Member States may derogate from certain provisions of that directive. No derogation is allowed with regard to Article 7 of the directive.

National legislation

7 The first paragraph of Article L. 223-2 of the Code du travail (Labour Code) provides:

'A worker who, during the reference year, has been employed by the same employer for a period equivalent to a minimum of one month of actual work shall be entitled to leave, the length of which shall be calculated on the basis of two and a half working days for each month worked, provided the total period of leave that may be requested does not exceed thirty working days.'

8 Article L. 223-4 of the Code du travail provides:

'Periods equivalent to four weeks or twenty-four days of work shall be treated as equivalent to one month of actual work for the purpose of calculating the length of leave. Periods of paid leave, compensatory leave …, periods of maternity leave …, leave acquired by reason of reduced working time and periods of an uninterrupted duration not exceeding one year during which performance of the contract of employment is suspended owing to a work-related accident or occupational disease, shall be treated as periods of actual work ...'

9 The fourth paragraph of Article XIV of the model rules annexed to the national collective labour agreement for staff of social security bodies provides:

'No annual leave entitlement is given in a particular year in respect of absences as a result of the following: illness or prolonged illness that has resulted in a break in work of twelve consecutive months or more, ... leave entitlement begins again on the date on which work is resumed, the length of leave being calculated in proportion to the time of actual work that has not yet given rise to the allocation of annual leave.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

10 Ms Dominguez, who has been employed by the CICOA since 1987, is covered by the collective labour agreement for staff of social security bodies. Following an accident on the journey between her home and her place of work she was absent from work from 3 November 2005 until 7 January 2007.

11 Ms Dominguez brought a claim before the industrial relations court (juridiction prud'homale) and also the Cour d'appel, Limoges for 22.5 days' paid leave in respect of that period and, in the alternative, a payment in lieu of leave.

12 Since those courts dismissed her claims, Ms Dominguez brought an appeal on a point of law. She argues that an accident on the journey to or from work is a work-related accident

and is covered by the same arrangements as a work-related accident. Thus, under Article L. 223-4 of the Code du travail, the period of suspension of her contract of employment following the accident on the journey to work should be treated as being equivalent to actual work time for the purpose of calculating her paid leave.

13 In the light of the case-law of the Court of Justice relating to Article 7 of Directive 2003/88, the Cour de cassation (French Court of Cassation) was unsure whether the relevant French provisions were compatible with that article.

14 In those circumstances, the Cour de cassation decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Must Article 7(1) of Directive 2003/88… be interpreted as precluding national provisions or practices which make entitlement to paid annual leave conditional on a minimum of ten days' (or one month's) actual work during the reference period?

2. If the answer to the first question is in the affirmative, does Article 7 of Directive 2003/88…, which imposes a specific obligation on an employer in so far as it creates entitlement to paid leave for a worker who is absent on health grounds for a period of one year or more, require a national court hearing proceedings between individuals to disregard a conflicting national provision which makes entitlement to paid annual leave in such a case conditional on at least ten days' actual work during the reference year?

3. Since Article 7 of Directive 2003/88/EC does not distinguish between workers according to whether their absence from work during the reference period is due to a work-related accident, an occupational disease, an accident on the journey to or from work or a non-occupational disease, are workers entitled, under that directive, to paid leave of the same length whatever the reason for their absence on health grounds, or must that directive be interpreted as not precluding the length of paid leave differing according to the reason for the worker's absence, if national law provides that in certain circumstances the length of paid annual leave may exceed the minimum of four weeks provided for by [Directive 2003/88]?'

The first question

15 By its first question, the national court asks, essentially, whether Article 7(1) of Directive 2003/88 must be interpreted as precluding national provisions or practices which make entitlement to paid annual leave conditional on a minimum period of ten days' or one month's actual work during the reference period.

16 In that regard it should be noted that, according to settled case-law, the entitlement of every worker to paid annual leave must be regarded as a particularly important principle of European Union social law from which there can be no derogations and whose implementation by the competent national authorities must be confined within the limits expressly laid down by Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (OJ 1993 L 307, p. 18) itself, that directive being now codified by Directive 2003/88 (see Case C-173/99 *BECTU* [2001] ECR I-4881, paragraph 43; Joined Cases C-350/06 and C-520/06 *Schultz-Hoff and Others* [2009] ECR I-179, paragraph 22; and Case C-214/10 *KHS* [2011] ECR I-0000, paragraph 23).

17 Thus, Directive 93/104 must be interpreted as precluding Member States from unilaterally limiting the entitlement to paid annual leave conferred on all workers by applying a precondition for such entitlement which has the effect of preventing certain workers from benefiting from it (*BECTU*, paragraph 52).

18 Although Member States are free to lay down, in their domestic legislation, conditions for the exercise and implementation of the right to paid annual leave, they are not entitled to make the very existence of that right subject to any preconditions whatsoever (see *Schultz-Hoff and Others*, paragraph 46).

19 Thus, the requisite arrangements for implementation and application of the requirements of Directive 93/104, codified by Directive 2003/88, may display certain divergences as regards the conditions for exercising the right to paid annual leave, but that directive does not allow Member States to exclude the very existence of a right expressly granted to all workers (*BECTU*, paragraph 55, and *Schultz-Hoff and Others*, paragraph 47).

20 Also, since Directive 2003/88 does not make any distinction between workers who are absent from work on sick leave during the reference period and those who have in fact worked in the course of that period (see *Schultz-Hoff and Others*, paragraph 40) it follows that, with regard to workers on sick leave which has been duly granted, the right to paid annual leave conferred by that directive on all workers cannot be made subject by a Member State to a condition that the worker has actually worked during the reference period laid down by that State (*Schultz-Hoff and Others*, paragraph 41).

21 It follows from the foregoing that Article 7(1) of Directive 2003/88 must be interpreted as precluding national provisions or practices which make entitlement to paid annual leave conditional on a minimum period of ten days' or one month's actual work during the reference period.

The second question

22 By its second question, the national court asks, essentially, whether Article 7 of Directive 2003/88 must be interpreted as meaning that in proceedings between individuals a national provision which makes entitlement to paid annual leave conditional on a minimum period of actual work during the reference period, which is contrary to Article 7, must be disregarded.

23 It should be stated at the outset that the question whether a national provision must be disapplied in as much as it conflicts with European Union law arises only if no compatible interpretation of that provision proves possible.

24 In that regard, the Court has consistently held that when national courts apply domestic law they are bound to interpret it, so far as possible, in the light of the wording and the purpose of the directive concerned in order to achieve the result sought by the directive and consequently comply with the third paragraph of Article 288 TFEU. This obligation to interpret national law in conformity with European Union law is inherent in the system of the Treaty on the Functioning of the European Union, since it permits national courts, for the matters within their jurisdiction, to ensure the full effectiveness of European Union law when they determine the disputes before them (see, inter alia, Joined Cases C-397/01 to C-403/01 *Pfeiffer and Others* [2004] ECR I-8835, paragraph 114; Joined Cases C-378/07 to C-380/07

Angelidaki and Others [2009] ECR I-3071, paragraphs 197 and 198; and Case C-555/07 *Kücükdeveci* [2010] ECR I-365, paragraph 48).

25 It is true that this principle of interpreting national law in conformity with European Union law has certain limitations. Thus the obligation on a national court to refer to the content of a directive when interpreting and applying the relevant rules of domestic law is limited by general principles of law and it cannot serve as the basis for an interpretation of national law contra legem (see Case C-268/06 *Impact* [2008] ECR I-2483, paragraph 100, and *Angelidaki and Others*, paragraph 199).

26 In the dispute in the main proceedings, the national court states that it has encountered such a limitation. According to that court, the first paragraph of Article L. 223-2 of the Code du travail, which makes entitlement to paid annual leave conditional on a minimum of one month's actual work during the reference period, is not amenable to an interpretation that is compatible with Article 7 of Directive 2003/88.

27 In that regard, it should be noted that the principle that national law must be interpreted in conformity with European Union law also requires national courts to do whatever lies within their jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by domestic law, with a view to ensuring that the directive in question is fully effective and achieving an outcome consistent with the objective pursued by it (see Case C-212/04 *Adeneler and Others* [2006] ECR I-6057, paragraph 111, and *Angelidaki and Others*, paragraph 200).

28 In the dispute in the main proceedings, Article L. 223-4 of the Code du travail, which provides an exemption from the requirement of actual work during the reference period in respect of certain periods of absence from work, is an integral part of the domestic law to be taken into consideration by the French courts.

29 If Article L. 223-4 of the Code du travail were to be interpreted by the national court as meaning that a period of absence due to an accident on the journey to or from work must be treated as being equivalent to a period of absence due to an accident at work in order to give full effect to Article 7 of Directive 2003/88, that court would not encounter the limitation, referred to in paragraph 26 above, as regards interpreting Article L. 223-2 of the Code du travail in accordance with European Union law.

30 In that regard, it should be pointed out that Article 7 of Directive 2003/88 does not make any distinction between workers who are absent on sick leave during the reference period and those who have actually worked in the course of that period (see paragraph 20 above). It follows that the right to paid annual leave of a worker who is absent from work on health grounds during the reference period cannot be made subject by a Member State to a condition concerning the obligation actually to have worked during that period. Thus, according to Article 7 of Directive 2003/88, any worker, whether he be on sick leave during the reference period as a result of an accident at his place of work or elsewhere, or as the result of sickness of whatever nature or origin, cannot have his entitlement to at least four weeks' paid annual leave affected.

31 It is clear from the foregoing that it is for the national court to determine, taking the whole body of domestic law into consideration, in particular Article L. 223-4 of the Code du travail, and applying the interpretative methods recognised by domestic law with a view to

ensuring that Directive 2003/88 is fully effective and achieving an outcome consistent with the objective pursued by it, whether it can find an interpretation of that law that allows the absence of the worker due to an accident on the journey to or from work to be treated as being equivalent to one of the situations covered by that article of the Code du travail.

32 In the event that such an interpretation is not possible, it is necessary to consider whether Article 7(1) of Directive 2003/88 has a direct effect and, if so, whether Ms Dominguez may rely on that direct effect against the respondents in the main proceedings, in particular her employer, the CICOA, in view of their legal nature.

33 In that regard, it is clear from the settled case-law of the Court that, whenever the provisions of a directive appear, so far as their subject-matter is concerned, to be unconditional and sufficiently precise, they may be relied upon before the national courts by individuals against the State where the latter has failed to implement the directive in domestic law by the end of the period prescribed or where it has failed to implement the directive correctly (see, inter alia, *Pfeiffer and Others*, paragraph 103 and the case-law cited).

34 Article 7 of Directive 2003/88 fulfils those criteria as it imposes on Member States, in unequivocal terms, a precise obligation as to the result to be achieved that is not coupled with any condition regarding application of the rule laid down by it, which gives every worker entitlement to at least four weeks' paid annual leave.

35 Even though Article 7 of Directive 2003/88 leaves the Member States a degree of latitude when they adopt the conditions for entitlement to, and granting of, the paid annual leave which it provides for, that does not alter the precise and unconditional nature of the obligation laid down in that article. It is appropriate to note in that regard that Article 7 of Directive 2003/88 is not one of the provisions of that directive from which Article 17 thereof permits derogation. It is therefore possible to determine the minimum protection which must be provided in any event by the Member States pursuant to that Article 7 (see, *mutatis mutandis*, *Pfeiffer and Others*, paragraph 105).

36 Since Article 7(1) of Directive 2003/88 fulfils the conditions required to produce a direct effect, it should also be noted that the CICOA, one of the two respondents in the main proceedings and Ms Dominguez's employer, is a body operating in the field of social security.

37 It is true that the Court has consistently held that a directive cannot of itself impose obligations on an individual and cannot therefore be relied on as such against an individual (see, inter alia, Case C-91/92 *Faccini Dori* [1994] ECR I-3325, paragraph 20; Case C-192/94 *El Corte Inglés* [1996] ECR I-1281, paragraph 15; *Pfeiffer and Others*, paragraph 108; and *Kücükdeveci*, paragraph 46).

38 It should also be recalled however that, where a person is able to rely on a directive not as against an individual but as against the State he may do so regardless of the capacity in which the latter is acting, whether as employer or as public authority. In either case it is necessary to prevent the State from taking advantage of its own failure to comply with European Union law (see, inter alia, Case 152/84 *Marshall* [1986] ECR 723, paragraph 49; Case C-188/89 *Foster and Others* [1990] ECR I-3313, paragraph 17; and Case C-343/98 *Collino and Chiappero* [2000] ECR I-6659, paragraph 22).

39 Thus the entities against which the provisions of a directive that are capable of having direct effect may be relied upon include a body, whatever its legal form, which has been made responsible, pursuant to a measure adopted by the State, for providing a public service under the control of the State and has for that purpose special powers beyond those which result from the normal rules applicable in relations between individuals (see, inter alia, *Foster and Others*, paragraph 20; *Collino and Chiappero*, paragraph 23; and Case C-356/05 *Farrell* [2007] ECR I-3067, paragraph 40).

40 It is therefore for the national court to determine whether Article 7(1) of Directive 2003/88 may be relied upon against the CICOA.

41 If that is the case, as Article 7 of Directive 2003/88 fulfils the conditions required to produce a direct effect, the consequence would be that the national court would have to disregard any conflicting national provision.

42 If that is not the case, it should be borne in mind that even a clear, precise and unconditional provision of a directive seeking to confer rights or impose obligations on individuals cannot of itself apply in proceedings exclusively between private parties (see *Pfeiffer and Others*, paragraph 109).

43 In such a situation, the party injured as a result of domestic law not being in conformity with European Union law can none the less rely on the judgment in Joined Cases C-6/90 and C-9/90 *Francovich and Others* [1991] ECR I-5357 in order to obtain, if appropriate, compensation for the loss sustained.

44 The answer to the second question is therefore that

– it is for the national court to determine, taking the whole body of domestic law into consideration, in particular Article L. 223-4 of the Code du travail, and applying the interpretative methods recognised by domestic law, with a view to ensuring that Article 7 of Directive 2003/88 is fully effective and achieving an outcome consistent with the objective pursued by it, whether it can find an interpretation of that law that allows the absence of the worker due to an accident on the journey to or from work to be treated as being equivalent to one of the situations covered by that article of the Code du travail.

– if such an interpretation is not possible, it is for the national court to determine whether, in the light of the legal nature of the respondents in the main proceedings, the direct effect of Article 7(1) of Directive 2003/88 may be relied upon against them.

– if the national court is unable to achieve the objective laid down in Article 7 of Directive 2003/88, the party injured as a result of domestic law not being in conformity with European Union law can none the less rely on the judgment in *Francovich and Others* in order to obtain, if appropriate, compensation for the loss sustained.

The third question

45 By its third question, the national court asks, essentially, whether Article 7 of Directive 2003/88 must be interpreted as precluding a national provision which, depending on the reason for the worker's absence on sick leave, provides for a period of paid annual leave equal to or exceeding the minimum period of four weeks laid down in that directive.

46 In that regard, it should be noted, as was held in paragraph 30 above, that Article 7 of Directive 2003/88 does not make any distinction, on grounds of the reason for the worker's absence on sick leave, duly granted, and any worker, whether he be on sick leave following an accident at his place of work or elsewhere, or as the result of sickness of whatever nature or origin, is entitled to at least four weeks' paid annual leave.

47 However, as stated both by the Advocate General in point 178 of her Opinion and by the European Commission in its written observations, the finding made in the preceding paragraph does not mean that Directive 2003/88 precludes national provisions giving entitlement to more than four weeks' paid annual leave, granted under the conditions for entitlement to, and granting of, the right to paid annual leave laid down by that national law.

48 As appears expressly from Article 1(1) and (2)(a) and from Articles 7(1) and 15 of Directive 2003/88, the purpose of the directive is merely to lay down minimum safety and health requirements for the organisation of working time and it does not affect Member States' right to apply national provisions more favourable to the protection of workers.

49 Thus it is permissible for Member States to provide that entitlement to paid annual leave under national law may vary according to the reason for the worker's absence on health grounds, provided that the entitlement is always equal to or exceeds the minimum period of four weeks laid down in Article 7 of that directive.

50 It follows from the foregoing that Article 7(1) of Directive 2003/88 must be interpreted as not precluding a national provision which, depending on the reason for the worker's absence on sick leave, provides for a period of paid annual leave equal to or exceeding the minimum period of four weeks laid down in that directive.

Costs

51 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **Article 7(1) 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 provisions or practices which make entitlement to paid annual leave conditional on a minimum period of ten days' or one month's actual work during the reference period;**

2. **It is for the national court to determine, taking the whole body of domestic law into consideration, in particular Article L. 223-4 of the Code du travail, and applying the interpretative methods recognised by domestic law, with a view to ensuring that Article 7 of Directive 2003/88 is fully effective and achieving an outcome consistent with the objective pursued by it, whether it can find an interpretation of that law that allows the absence of the worker due to an accident on the journey to or from work to be treated as being equivalent to one of the situations covered by that article of the Code du travail.**

If such an interpretation is not possible, it is for the national court to determine whether, in the light of the legal nature of the respondents in the main proceedings, the direct effect of Article 7(1) of Directive 2003/88 may be relied upon against them.

If the national court is unable to achieve the objective laid down in Article 7 of Directive 2003/88, the party injured as a result of domestic law not being in conformity with European Union law can none the less rely on the judgment of 19 November 1991 in Joined Cases C-6/90 and C-9/90 *Francovich and Others* in order to obtain, if appropriate, compensation for the loss sustained.

3. **Article 7(1) of Directive 2003/88 must be interpreted as not precluding a national provision which, depending on the reason for the worker's absence on sick leave, provides for a period of paid annual leave equal to or exceeding the minimum period of four weeks laid down in that directive.**

[Signatures]

1* Language of the case: French.