and leisure (e.g. *Schultz-Hoff*, C-350/06). That purpose, which distinguishes paid annual leave from other types of leave with different purposes, is based on the premise that the worker has actually worked during the reference period. Therefore, the entitlement must be determined by reference to the periods of work actually completed under the employment contract.
Case law has demonstrated that, in certain situations in which the worker is unable to perform his duties, such as sick leave and maternity leave, absent workers must be treated equally to those who have worked. However, these are different situations. Incapacity to work due to sickness is in principle unforeseeable and beyond the worker's control. Article 5(4) of ILO Convention No 132 (to which recital 6 of Directive 2003/88 refers) states that absences from work due to illness for reasons beyond the control of the employee must be counted as periods of service.
By contrast, taking parental leave is not unforeseeable and, in most cases, reflects the worker's wish to take care of his or her child (*Kiiski*, C-166/06). The parent is also not subject to illness and therefore in a different situation than that resulting from an inability for health reasons. The situation is also different from that of a worker on maternity leave. This is intended to protect a woman's physical condition during and after her pregnancy and to protect the special relationship between a mother and her child during the period following pregnancy and childbirth. It should not be hindered by the multiple tasks that would result from the woman working.
Whilst a worker on parental leave remains a worker, the reciprocal obligations can be (and in this case, were) suspended. The worker's period of parental leave could therefore not be treated as a time of actual work. Thus, although the ECJ's settled case-law suggests that a period of leave cannot affect the right to take another guaranteed period of leave, it cannot be inferred from this that Member States must count parental leave in the reference period for annual leave.

Ruling

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 is to be interpreted as not precluding a provision of national law, such as the provision at issue in the main proceedings, which, for the purpose of determining a worker's entitlement to paid annual leave, as guaranteed by that article for a worker in respect of a given reference period, does not treat the amount of time spent by that worker on parental leave during that reference period as a period of actual work.

ECJ 25 October 2018, case C-451/17 (Walltopia), Social insurance

'Walltopia' AD – v – Direktor na Teritorialna direktsia na Natsionalnata agentsia za prihodite – Veliko Tarnovo, Bulgarian case

Question

Must Article 14(1) of Regulation No 987/2009, read together with Article 12(1) of Regulation No 883/2004, be interpreted as meaning that an employee recruited with a view to being posted to another Member State must be regarded as having been 'immediately before the start of his employment … already subject to the legislation of the Member State in which his employer is established', within the meaning of Article 14(1) of Regulation No 987/2009, if just before the start of his employment, and even though he did not have the status of an insured person under that legislation, he was a national of that Member State and his residence, within the meaning of Article 1(j) of Regulation No 883/2004, was in that Member State?

Ruling

Article 14(1) of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, read together with Article 12(1) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, as amended by Regulation (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012, must be interpreted as meaning that an employee recruited with a view to being posted to another Member State must be regarded as having been 'just before the start of his employment … already subject to the legislation of the Member State in which his employer is established', within the meaning of Article 14(1) of Regulation No 987/2009, even if that employee was not an insured person under the legislation of that Member State immediately before the start of his employment, if, at that time, that employee had his residence in that Member State, which is for the referring court to ascertain.

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