ECJ 10 December 2018, case C-621/18 (Wightman and Others), Miscellaneous

Andy Wightman, Ross Greer, Alyn Smith, David Martin, Catherine Stihler, Jolyon Maugham, Joanna Cherry – v – Secretary of State for Exiting the European Union, UK case

Ruling

Article 50 TEU must be interpreted as meaning that, where a Member State has notified the European Council, in accordance with that article, of its intention to withdraw from the European Union, that article allows that Member State – for as long as a withdrawal agreement concluded between that Member State and the European Union has not entered into force or, if no such agreement has been concluded, for as long as the two-year period laid down in Article 50(3) TEU, possibly extended in accordance with that paragraph, has not expired – to revoke that notification unilaterally, in an unequivocal and unconditional manner, by a notice addressed to the European Council in writing, after the Member State concerned has taken the revocation decision in accordance with its constitutional requirements. The purpose of that revocation is to confirm the EU membership of the Member State concerned under terms that are unchanged as regards its status as a Member State, and that revocation brings the withdrawal procedure to an end.

ECJ 13 December 2018, case C-385/17 (Hein), Paid leave

Torsten Hein – v – Albert Holzkamm GmbH & Co. KG, German case

Summary

Article 7(1) of Directive 2003/88 and Article 31(2) of the Charter of Fundamental Rights of the European Union (the 'Charter') preclude national legislation which allows, for the purpose of calculating remuneration for annual leave, collective agreements to reflect days on which no work was performed due to short-time working, leading to a lower remuneration for annual

leave than the normal remuneration. The temporal effect of this judgment cannot be limited.

Legal background

Article 7 of Directive 2003/88 provides that every worker has the right to four weeks of annual paid leave per year. Article 31(2) of the Charter provides for a right to annual paid leave as well. The German Federal law on Leave grants workers a right of annual paid leave of 24 working days per year. Following paragraph 11 of that law, the payment of that annual leave is based on the average earnings in the 13 weeks prior to the start of the week, not including any overtime compensation. It is possible to deviate from that last provision in a collective agreement. This is the case in the collective framework agreement for the construction industry. In short, the remuneration for annual leave is lower if the worker has not been able to work every day as a result of short-time work.

Facts

Mr Hein served as construction worker for Holzkamm. Their employment relationship was governed by the collective framework agreement for the construction industry. Mr Hein was on short-time work for 26 weeks in 2015. Consequently, his remuneration during annual leave was lower than his normal remuneration. Mr Hein believed, however, that periods of short-time work could not influence his vacation remuneration. The referring court wished to know whether the legal provision enabling the collective agreement to agree on a lower vacation pay was in conformity with Article 7 of the Directive and Article 31(2) of the Charter. Therefore, it asked preliminary questions.

Questions

1. Must Article 7(1) of Directive 2003/88 and Article 31(2) of the Charter be interpreted as precluding national legislation, such as that at issue in the main proceedings, which, for the purpose of calculating remuneration for annual leave, allows collective agreements to provide for account to be taken of reductions in earnings resulting from the fact that during the reference period there were days when no work was actually performed owing to short-time working, with the consequence that the worker receives, for the duration of the minimum period of annual leave to which he is entitled under Article 7(1) of the Directive, remuneration for annual leave that is lower than the remuneration which he would have received had it been calculated on the basis of