(EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to their families moving within the Community, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005 and Article 19(2) 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, must be interpreted as meaning that an E 101 Certificate, issued by the competent institution of a Member State, under Article 14(1)(a) or Article 14(2)(b) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to their families moving within the Community, in the version amended and updated by Regulation No 118/97, as amended by Council Regulation (EC) No 1606/98 of 29 June 1998, to workers employed in the territory of another Member State, and an A 1 Certificate, issued by that institution, under Article 12(1) or Article 13(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 (EC) No 465/2012 of the European Parliament and of the Council of 22 May 2012, to such workers, are binding on the courts or tribunals of the latter Member State solely in the area of social security.

ECJ 4 June 2020, case C-828/18 (Trendsetteuse), Miscellaneous

Trendsetteuse SARL – v – DCA SARL, French case

No English translation has been made available yet. For now, the official case information is available on: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62018CJ0828

ECJ 4 June 2020, case C-588/18 (Fetico and others), Working Time, Paid Leave

Federación de Trabajadores Independientes de Comercio (Fetico), Federación Estatal de Servicios, Movilidad y Consumo de la Unión General de Trabajadores (FESMC-UGT), Federación de Servicios de Comisiones Obreras (CCOO) – v – Grupo de Empresas DIA SA, Twins Alimentación SA, Spanish case

Legal background

Directive 2003/88 (the Working Time Directive) provides minimum safety and health requirements for the organisation of working time. This Directive sets minimum periods of daily and weekly rest as well as annual leave, breaks and maximum weekly working time. Article 5 introduces a weekly rest period, whereas Article 7 grants the right to paid annual leave.
Articles 37(1) and 38 of the Workers' Statute are Spanish laws that provide for minimum rest periods and annual leave which exceed the periods required under Articles 5 and 7 of Directive 2003/88. In addition, Article 37(3) of the Workers' Statute grants paid special leave to workers which enables them to meet specific needs or obligations such as the following: marriage, the birth of a child, hospitalisation, surgery, the death of a close relative, and the performance of representative trade union functions. Article 46 of the collective agreement of 13 July 2016 is a Spanish law that grants leave of a longer duration or in circumstances other than those specified in Article 37(3).

Facts and initial proceedings

The request for preliminary ruling has been made in proceedings between, on the one hand, workers' trade unions, namely the *Federación de Trabajadores Independientes de Comercio* (Fetico), the *Federación Estatal de Servicios, Movilidad y Consumo de la Unión General de Trabajadores* (FESMC-UGT) and the *Federación de Servicios de Comisiones Obreras* (CCOO), and on the other hand, *Grupo de Empresas DIA SA and Twins Alimentación SA*, concerning disputes between employers and employees related to the conditions governing the application of paid special leave provided for in Article 46 of the collective agreement of 13 July 2016. That Article gives effect to the minimum requirements of Article 37(3) of the Workers' Statute and grants leave of

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a longer duration or in circumstances other than those specified in Article 37(3).

In particular, the referring court notes that, under Article 46 of the collective agreement of 13 July 2016, the duration of leave for marriage is expressed in 'calendar days', whereas the duration of other paid special leave is expressed in 'days', with no indication as to whether those 'days' are calendar days or working days. Furthermore, that that provision does not specify when the leave is to begin.

Therefore, the question arises whether that paid special leave must be calculated from a day when the worker is as a general rule required to work and, with the exception of leave for marriage the duration of which is explicitly expressed in calendar days, is to be taken by the worker during such days. The days when a worker is not required to work for the employer include, *inter alia*, public holidays and days of leave.

In this light, the referring court states that it is crucial to ascertain whether it is compatible with Articles 5 and 7 of Directive 2003/88 to enact a provision meaning that the needs and obligations arising from the events covered by Article 46 of that agreement may justify the special leave laid down by that provision to be taken only outside the weekly rest periods or periods of paid annual leave, even though those needs and obligations reflect purposes that differ from those served by the latter periods.

If one of the events specified by the national rules occurs during the weekly rest periods or periods of paid annual leave, different requirements would overlap, namely the rest which those periods are particularly designed to ensure that workers have and a need or an obligation which is to be met by one of the types of paid special leave laid down by those rules. If, in that situation, it were not possible to postpone entitlement to the paid special leave to a time other than during those periods, the benefit of those periods would be rendered nugatory, since the workers would have to use those periods to meet the needs and obligations for which that paid special leave is provided.

Hence, the referring court is doubtful that a refusal to grant a worker the right to take the leave provided for in Article 37(3) of the Workers' Statute and in Article 46 of the collective agreement of 13 July 2016, where one of the events specified in those provisions occurs during weekly rest periods or periods of paid annual leave, is compatible with Articles 5 and 7 of Directive 2003/88.

Question

Must Articles 5 and 7 of Directive 2003/88 be interpreted as precluding national rules that do not allow workers to claim the special leave for which they provide on days when they are required to work in so far as the needs and obligations met by that special leave arise during the weekly rest periods or periods of paid annual leave that are the subject of those Articles?

Consideration

Harmonisation at European Union level in relation to the organisation of working time laid down in Directive 2003/88 is intended to guarantee better protection of the health and safety of workers by ensuring that they are entitled, in accordance with recital 5 of that Directive, to minimum rest periods – particularly daily and weekly – as well as adequate breaks, and by providing for a ceiling on the duration of the working week (*CCOO*, C-55/18, paragraph 37 and the case law cited).

Nevertheless, it is explicitly indicated in Article 1(1) and (2)(a), Article 5, Article 7(1) and Article 15 of Directive 2003/88 that the aim of that Directive is simply to lay down minimum health and safety requirements for the organisation of working time and that that Directive does not affect the right of the Member States to apply provisions of national law that are more favourable to the protection of workers (*TSN and AKT*, C-609/17 and C-610/17, paragraph 34 and the case law cited).

Also, it must be observed that, under Article 4(2)(b) TFEU, the Union and the Member States have, in the area of social policy, for the aspects defined in the FEU Treaty, shared competence, within the meaning of Article 2(2) TFEU.

The days of special leave granted under Article 46 of the collective agreement of 13 July 2016 in order to enable workers to meet specific needs or obligations do not fall within the scope of Directive 2003/88 but rather of the exercise, by a Member State, of its own competences (see by analogy *TSN and AKT*, C-609/17 and C-610/17, paragraph 35 and the case law cited). However, the exercise by a Member State of its own competences cannot, nonetheless, have the effect of undermining the minimum protection guaranteed to workers by that Directive and, in particular, the actual benefit of the minimum weekly rest periods and periods of paid annual leave provided for in Articles 5 and 7 of that Directive (see by analogy *TSN and AKT*, C-609/17 and C-610/17, paragraph 35 and the case law cited).

The Court has held that the purpose of the right to paid annual leave, which is to enable a worker to rest and enjoy a period of relaxation and leisure, is different from that of the right to sick leave, which is to enable a worker to recover from an illness (*Schultz-Hoff and Others*, C-350/06 and C-520/06, paragraph 25; *ANGED*, C-78/11, paragraph 19; *Sobczyszyn*, C-178/15, paragraph 25). Given those different purposes, it was concluded that a worker who is on sick leave during a period of previously scheduled annual leave has the right, at his or her request and in order that he or she may actually use the annual leave, to take that leave at a time that does not overlap with the period of sick leave (*Vicente Pereda*, C-277/08, paragraph 22; *ANGED*, C-78/11, paragraph 20; *Sobczyszyn*, C-178/15, paragraph 26).

The special leave at issue in the main proceeding depends on two cumulative conditions, namely the occurrence of one of the events specified in that body of rules and the fact that the needs or obligations justifying

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the grant of one type of special leave arise during a working period. The purpose of that paid special leave is solely to enable workers to take time off from work in order to meet certain specific needs or obligations that require their personal presence. That leave is inextricably linked to working time as such, and consequently workers will not have recourse to such leave during weekly rest periods or periods of paid annual leave. Thus, the special leave cannot be regarded as comparable to sick leave.

The applicants in the main proceedings argue that, where the events justifying the grant of a type of paid special leave occur during a weekly rest period or a period of paid annual leave, those workers should be able to use that paid special leave at the time of a subsequent working period.

It is however untenable to claim that, on the ground that those weekly rest periods or periods of paid annual leave fall within the scope of Articles 5 and 7 of Directive 2003/88, those provisions oblige a Member State whose national rules provide for an entitlement to paid special leave to grant such special leave solely by reason of the occurrence of one of the events specified in those rules during one of those periods while excluding, consequently, the other conditions laid down by those rules governing the entitlement to and the granting of that leave. To create such an obligation would amount to ignoring the fact that the special leave, and the body of rules applicable to it, stand apart from the body of rules established by Directive 2003/88.

Ruling

Articles 5 and 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 must be interpreted as not being applicable to national rules providing for special leave on days when workers are required to work which do not allow those workers to claim that leave in so far as the needs and obligations met by that special leave arise during weekly rest periods or periods of paid annual leave that are the subject of those Articles.

Other remarks

It appears, though this is subject to review by the referring court, that the special leave that is the subject of Article 46(I)(B) and (C) of the collective agreement of 13 July 2016 falls, in part, within the scope of the Framework Agreement and, therefore, of Directive 2010/18, since some of the types of leave are likely to correspond to those to which the Member States must ensure that workers are entitled, in accordance with clause 7.1 of that Framework Agreement. Therefore, it is apparent from the Court's settled case law that a period of leave guaranteed by EU law cannot affect the right to take another period of leave guaranteed by EU law which has a different purpose from the former (*Dicu*, C-12/17, paragraph 37 and the case law cited). However, clause 7.1 of the Framework Agreement, interpreted in the light of clauses 1.1 and 8.1 thereof, does no more than provide that workers are to be entitled to time off from work on grounds of *force majeure* for urgent family reasons in cases of sickness or accident making the immediate presence of the worker indispensable. It follows that the minimum rights laid down in clause 7 cannot be regarded as comparable to leave, within the meaning of the latter mentioned case law.

ECJ 11 June 2020, case C-114/19 P (Di Bernardo), Miscellaneous

European Commission – v – Danilo Di Bernardo, EU Case

Summary

EC infringed its obligations to state reasons for not including an applicant on the reserve list for an open competition position.

Order

The Court (First Chamber):

1. Dismisses the appeal;
2. Orders the European Commission to pay the costs.

ECJ 25 June 2020, joined cases C-762/18 and C-37/19 (Varhoven kasatsionen sad na Republika Bulgaria), Paid Leave

QH – v – Varhoven kasatsionen sad na Republika Bulgaria (C-762/18), Bulgarian case and CV – v – Iccrea Banca SpA (C-37/19), Italian case

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