

European Court of Justice: Accrued annual leave does not expire upon the death of an employee

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Background

Paid annual leave accumulated by an employee does not expire upon the employee's death. EU law prevails over national provisions and practices that stand in the way of payment of compensation for untaken paid annual leave in the event of the death of an employee. (*ECJ judgment of 12 July 2014 – C-118/13, Bollacke*).

Facts

The deceased husband of the plaintiff, Gülay Bollacke, had been employed by the defendant since 1998. From 2009 on, he was, with intermittent interruptions, disabled and unable to work due to a seriousness illness. It was undisputed that at the time of his death in November 2010, he had accumulated 140.5 days of annual paid leave.

The plaintiff brought an action against the defendant to obtain payment of compensation for the annual leave not taken.

Decision

Referring to the case law of the Federal Labour Court (*judgment of 20 September 2011 – 9 AZR 416/10*), the court of first instance dismissed the plaintiff's action on the grounds that no right to compensation for vested annual leave accrues in the case of the termination of an employment relationship due to the death of an employee.

The appellate court, the Hamm Higher Labour Court, stayed the proceedings due to reservations regarding the possibility of a conflict between the case law of the Federal Labour Court and EU law and requested an interlocutory decision from the European Court of

Justice (*Hamm Higher Labour Court, order of 14 February 2013 – 16 Sa 1511/12*).

The Higher Labour Court essentially asked whether national legal regulations or practices are in violation of EU law if they stipulate that untaken paid annual leave expires without payment of any compensation in the case of the termination of an employment relationship due to the death of an employee. The Higher Labour Court also asked the Court of Justice for its opinion as to whether EU law would allow such a right to compensation to be made contingent upon prior application by the employee.

The Court of Justice ruled that the death of an employee may not lead to the expiration of the deceased employee's right to compensation for accrued paid annual leave. According to the Court of Justice, this right to compensation is also not dependent on whether or not the employee in question has applied for payment of such compensation.

The Court of Justice grounded its decision in the fact that Article 7 of Directive 2003/88/EC concerning certain aspects of the organisation of working time, which entitles all workers to at least four weeks of paid annual leave, is considered an especially important principle of public welfare law in the Court of Justice's established case law. The right to annual leave and compensation during such leave are, according to the Court of Justice, two aspects of the same right, and it is also absolutely necessary to make provision for financial compensation in the case of the termination of an employment relationship due to the death of an employee in order to ensure that this right under EU law is actually implemented in practice.

The Court of Justice also stated that the right to compensation may also not be made dependent upon any prior application by the employee in question since the Directive contains no mention of any such requirement.

Comments

The submission of the Hamm Higher Labour Court gave the European Court of Justice yet another opportunity to rule on the basic issue of annual leave.

This decision (“The deceased have a right to annual leave”), which may initially seem strange, is essentially consistent with the line of jurisprudence of the European Court of Justice. For example, the Court of Justice had already previously decided that it is in violation of EU law to refuse to compensate employees for untaken annual leave at the end of an employment relationship in cases in which employees were not able to take such annual leave due to illness (*ECJ, judgment of 20 January 2009, - C-350/06 and C-520/06, Schultz-Hoff et al.*). In the present case, a decision consistent with the “*Schultz-Hoff*”, the Court of Justice proceeded primarily from the assumption that the right to annual leave is inseparably associated with the right to compensation during such leave, which means that the Court of Justice placed a special emphasis upon the monetary value of vested annual leave. The Court of Justice’s “*Bollacke*” decision also established that this monetary interest can be passed on by inheritance.

As in the case of decisions concerning the rights to annual leave of employees absent from work due to prolonged illness, the Court of Justice’s “*Bollacke*” decision represents a further change in German law governing annual leave. Previously, the right to paid

annual leave expired upon the death of an employee and was not transformed into a – possibly inheritable – right to compensation pursuant to § 7(4) of the Federal Holiday Act (*Bundesurlaubsgesetz – BUrlG*). This was most recently decided by the Federal Labour Court – without submitting the matter to the European Court of Justice despite reservations expressed in the course of the proceedings as regards inconsistency with EU law – in its judgment of 20 September 2011 (9 AZR 416/10). This ruling was based on thinking to the effect that an important purpose of annual leave – rest and relaxation – can no longer be achieved following the death of an employee.

Unlike under the previous case law of the Federal Labour Court, heirs can now claim compensation for the untaken leave of a deceased employee according to the new case law of the European Court of Justice. However, there are two reasons why the immediate ramifications of the decision are likely to be limited in actual practice, for according to the case law of the Federal Labor Court rights to annual leave not only fall under the general limitation period of three years pursuant to § 195 and §199 of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*) but are also subject to any time bars contained in employment contracts or collective agreements, which regularly call for expiration after only a few months. Nonetheless, as the Federal Labour Court has decided in comparable cases (*Federal Labour Court, judgment of 9 August 2011 – 9 AZR 365/10*), at least since the Higher Labour Court’s request of 14 February 2013 for an interlocutory decision became known, heirs have no longer had the possibility of relying on an implied covenant of good faith and fair dealing based on the previous case law of the Federal Labour Court in the event of failure to observe such time limits.

Legal Update

Note

This overview is intended exclusively for the purposes of general information and is not a substitute for qualified legal advice in an individual case. If you should have any questions, please get in touch with your usual contact at GÖRG or with the author Dr. Piero Sansone by phoning +49 221 33660-534 or sending an e-mail to psansone@goerg.de. For information about the author, please visit our website at www.goerg.de.

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