Reports of Cases

OPINION OF ADVOCATE GENERAL
PIKAMÄE
delivered on 4 May 2023 [1]

Case C-206/22

TF
v
Sparkasse Südpfalz

(Request for a preliminary ruling from the Arbeitsgericht Ludwigshafen am Rhein (Labour Court, Ludwigshafen am Rhein, Germany))

(Reference for a preliminary ruling – Social policy – Directive 2003/88/EC – Organisation of working time – Right to paid annual leave – Quarantining of a worker because of his exposure to the SARS-CoV-2 virus – Quarantine overlapping with a period of paid leave – Carrying-over of paid annual leave)

I. Introduction

1. The outbreak of the SARS-CoV-2 pandemic required Member States, often urgently, to take health measures to combat the spread of the virus. Those measures were not without social repercussions, and national legislatures endeavoured to limit their extent by taking steps to reconcile the continuation of business activity with the protection of workers' rights. [2]

2. Against this background, the Arbeitsgericht Ludwigshafen am Rhein (Labour Court, Ludwigshafen am Rhein, Germany) has requested the Court to give a preliminary ruling on the interpretation of Article 7(1) of Directive 2003/88/EC [3] and Article 31(2) of the Charter of Fundamental Rights of the European Union ('the Charter').

3. More specifically, the present case raises the question whether paid annual leave granted to a worker which overlaps with a period of government-ordered quarantine resulting from the fact that the worker had contact with an individual infected by the SARS-CoV-2 virus must be carried over to a time other than that originally scheduled. [4]

1 Original language: French.

2 See, in this respect, Sachs, T., Perulli, A., Guamán, A., Sanchez, J.M., Brockmann, J., Pisarczyk, L., and Fragale Filho, R., 'Regards comparés sur le droit social à l'épreuve du Covid-19', *Revue de droit du travail*, 2020, p. 273 et seq.

3 Directive 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).

4 It should be noted that, in *I* (Case C-749/22; currently stayed), a question addressing the same issue has been referred for a preliminary ruling by the Bundesarbeitsgericht (Federal Labour Court, Germany).

4. This novel question gives the Court an opportunity to refine the case-law which it has developed on the carrying-over of paid annual leave and to clarify the meaning and scope of a worker's right to have the actual benefit of that leave.

II. Legal framework

A. European Union law

5. Under Article 31 of the Charter:

'1. Every worker has the right to working conditions which respect his or her health, safety and dignity.

2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.'

6. Article 7 of Directive 2003/88, which is part of Chapter 2 entitled 'Minimum rest periods – other aspects of the organisation of working time', provides:

'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.'

B. German law

7. Under Paragraph 1 of the Bundesurlaubsgesetz (Federal Law on leave) of 8 January 1963 (BGBl. 1963, p. 2; 'the BUrlG'):

'Every worker shall be entitled to paid recuperative leave in each calendar year.'

8. Paragraph 7(3) of the BUrlG states:

'Leave must be granted and taken in the course of the current calendar year. The carrying-over of leave to the next calendar year shall be permitted only if justified on compelling operational grounds or for reasons personal to the employee. If leave is carried over, it must be granted and taken during the first three months of the following calendar year. …'

9. Paragraph 9 of the BUrlG provides:

'If a worker falls sick during the period of leave, the days of incapacity for work as evidenced by a medical certificate shall not be counted against annual leave.'

10. Paragraph 28(1) of the Gesetz zur Verhütung und Bekämpfung von Infektionskrankheiten beim Menschen (Infektionsschutzgesetz) (Law on the prevention and control of infectious diseases in humans) provides:

'If sick people, those suspected of being sick, those suspected of being infected or carriers of the virus are identified …, the competent authority shall take the necessary protective measures … to the extent and for as long as is necessary to prevent the spread of transmissible diseases; the competent authority may inter alia require persons not to leave the place where they are located or to do so only under certain conditions, or not to enter certain places or public places or to do so only under certain conditions. …'

III. The facts of the dispute, the main proceedings and the question referred for a preliminary ruling

11. TF, who has been employed by Sparkasse Südpfalz since 2003, was granted paid annual leave for the period from 3 to 11 December 2020.

12. On 2 December 2020, the Kreisverwaltung Germersheim (Germersheim District Authority, Germany) ordered TF to quarantine pursuant to Paragraph 28 of the Law on the prevention and control of infectious diseases in humans for the period from 2 to 11 December 2020 on the ground that he had been in contact, at his workplace, with an individual infected by the SARS-CoV-2 virus. During that period, TF was required to remain at home, specifically in his bedroom and bathroom.

13. On 4 March 2021, TF requested that the paid annual leave corresponding to the period of enforced quarantine be carried over. After the Sparkasse Südpfalz had refused that request, the employee brought an action before the Arbeitsgericht Ludwigshafen am Rhein (Labour Court, Ludwigshafen am Rhein).

14. That court notes that, according to the prevailing view of the German courts, in a situation such as that at issue, the worker is not entitled not to have paid annual leave deducted from a period of government-ordered quarantine.

15. In this regard, that court states that Paragraph 1 of the BUrlG solely concerns the release from the obligation to work and the payment of holiday pay, with the result that, as part of the personal vagaries of life, any subsequent events that interfere with that leave fall within the sphere of the risks borne by the worker. It states that German law provides for an exception to that principle where the worker becomes incapacitated for work, attested by a medical certificate, during the approved period of leave. However, the German courts take the view that such a derogation does not apply to a case of government-ordered quarantine if the worker is not incapacitated for work.

16. Since it was uncertain whether this approach is compatible with the Court's interpretation of Article 7(1) of Directive 2003/88 and Article 31(2) of the Charter, the Arbeitsgericht Ludwigshafen am Rhein (Labour Court, Ludwigshafen am Rhein) decided, on 17 March 2022, to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 7(1) of Directive [2003/88] and the right to an annual period of paid leave set out in Article 31(2) of the [Charter] be interpreted as precluding national legislation or practice on the

granting of annual leave to workers under which the obligation to grant an entitlement to leave is fulfilled even if the worker is affected by an unforeseeable event during an authorised period of leave, such as, in the present case, government-ordered quarantine, and is therefore prevented from exercising that entitlement in full?'

IV. The procedure before the Court

17. Written observations were submitted by the defendant in the main proceedings, the Finnish Government and the European Commission.

V. Legal analysis

A. Admissibility

18. The Sparkasse Südpfalz disputes the admissibility of the question referred for a preliminary ruling on the ground that the question asked by the referring court addresses in general terms, without making any distinction, the consequences of an unforeseeable event for the exhaustion of the right to paid annual leave. It asserts that, in so far as it goes beyond the scope of overlapping periods of paid annual leave and of government-ordered quarantine, that question is hypothetical and, unless it is reformulated more precisely, must be declared inadmissible.

19. In this regard, in accordance with the Court's settled case-law, it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case in the main proceedings, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it refers to the Court.

20. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle bound to give a ruling. It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it. [5]

21. In the present case, the dispute brought before the referring court concerns a worker's right to have paid annual leave overlapping with a period of government-ordered quarantine carried over to a later date. In this regard, the referring court has made clear that in accordance with the provisions of German labour law, as interpreted by the case-law of the German courts, it could be compelled to dismiss the action brought by TF unless Article 7(1) of Directive 2003/88 and Article 31(2) of the Charter are to be interpreted as precluding such dismissal.

[5] Judgment of 2 February 2023, *Towarzystwo Ubezpieczeń Ż (Misleading standard assurance contracts)* (C-208/21, EU:C:2023:64, paragraphs 42 and 43 and the case-law cited).

22. In these circumstances, the referring court has set out, in its request for a preliminary ruling, not only the reasons which led it to ask about the interpretation of those articles, but also the reasons why that interpretation appears to be necessary for the resolution of the dispute in the main proceedings. It follows, in my view, that the complaint based on the hypothetical nature of the preliminary question must be dismissed.

23. The question referred for a preliminary ruling is therefore admissible.

B. Substance

24. By its only question, the referring court is seeking to ascertain, in essence, whether Article 7(1) of Directive 2003/88 and Article 31(2) of the Charter must be interpreted as precluding national legislation or practice under which paid annual leave granted to a worker, which overlaps with a period of government-ordered quarantine, is considered to be exhausted, such that the leave cannot be carried over to a time other than that originally scheduled.

25. It should be noted at the outset that the Court has already been called upon to examine the situation in which sick leave overlaps with a period of previously scheduled paid annual leave.[6] However, the question at issue here arises in a different context as, in the course of his professional activity, a worker was exposed to the SARS-CoV-2 virus and, without being placed on sick leave, was subject to a decision placing him in prophylactic isolation the length of which corresponded to the period of his paid leave.

26. That being said, going beyond the dissimilarity of those situations, I think it necessary to analyse the case-law on the relationship between paid annual leave and sick leave. In the light of the reasoning and criteria adopted by the Court, it is arguable that that case-law can be transposed to a situation such as that in the main proceedings.

27. However, if, as I propose, such transposition seemed neither possible nor desirable, it would appear that this part of the answer alone is not sufficient to reply to the question asked by the referring court. It is necessary to determine, more fundamentally, whether the consequences of an isolation measure on the organisation and operation of paid leave are sufficient justification in themselves to carry over that leave to a later time in order to enable the worker to have the actual benefit of it. This question calls for clarification of the purport of actual benefit of paid leave for the purposes of EU law.

1. The transposition of the Court's case-law on the relationship between paid annual leave and sick leave

28. Under Article 7(1) of Directive 2003/88, 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.

29. According to the Court's settled case-law, that right must be regarded as a particularly important principle of EU social law, the implementation of which by the competent national authorities must be confined within the limits expressly laid down by Directive 2003/88

[6] See point 34 of this Opinion.

itself.[7] Furthermore, the right to annual leave constitutes an 'essential and mandatory principle of EU social law',[8] expressly enshrined in Article 31(2) of the Charter.[9] It follows that the provisions of that directive cannot be interpreted restrictively to the detriment of the rights that the workers derive from it.[10]

30. The purposes of Directive 2003/88 are connected with the right to health and safety at work guaranteed by Article 31(1) of the Charter. In this regard, it should be recalled that, according to recital 4 thereof, the objective of that directive is to improve workers' safety, hygiene and health at work. Recital 5 of that directive, for its part, states that workers should have adequate rest periods. In that context, Article 1 of that same directive provides that it lays down minimum safety and health requirements for the organisation of working time as regards, in particular, minimum periods of annual leave.[11]

31. Having regard to these objectives, the Court has consistently ruled that the right to annual leave has the dual purpose of enabling the worker both to rest from carrying out the work he or she is required to do under his or her contract of employment, and to enjoy a period of relaxation and leisure.[12]

32. In order to ensure that this purpose is achieved, where there is an overlap between paid leave and leave granted on other grounds, the Court conducts a comparative analysis of the purpose of each of them. On the basis of this exercise it can be determined whether, having regard to its purpose, leave overlapping with a period of paid annual leave precludes the actual benefit of that leave. Where the benefit is clearly undermined, the overlapping of the two types of leave necessarily means that the annual leave must be carried over to a time later than that originally scheduled.

33. Thus, in deciding that a worker must be able to benefit from her paid annual leave during a period other than the period of her maternity leave, the Court held that the purpose of paid annual leave is different from that of maternity leave, in so far as maternity leave is intended, first, to protect a woman's biological condition during and after pregnancy and, second, to protect the special relationship between a woman and her child over the period which follows pregnancy and childbirth.[13]

7 Judgment of 22 September 2022, *Fraport and St. Vincenz-Krankenhaus* (C-518/20 and C-727/20, EU:C:2022:707, paragraph 24 and the case-law cited).

8 Judgment of 8 September 2020, *Commission and Council* v *Carreras Sequeros and Others* (C-119/19 P and C-126/19 P, EU:C:2020:676, paragraph 113).

9 See, to that effect, judgment of 13 January 2022, *Koch Personaldienstleistungen* (C-514/20, EU:C:2022:19, paragraph 25 and the case-law cited).

10 Judgment of 24 February 2022, *Glavna direktsia 'Pozharna bezopasnost i zashtita na naselenieto'* (C-262/20, EU:C:2022:117, paragraph 43 and the case-law cited).

11 Judgment of 13 January 2022, *Koch Personaldienstleistungen* (C-514/20, EU:C:2022:19, paragraphs 28 and 29).

12 Judgment of 22 September 2022, *Fraport and St. Vincenz-Krankenhaus* (C-518/20 and C-727/20, EU:C:2022:707, paragraph 27 and the case-law cited).

13 Judgments of 18 March 2004, *Merino Gómez* (C-342/01, EU:C:2004:160, paragraph 32), and of 4 October 2018, *Dicu* (C-12/17, EU:C:2018:799, paragraph 30).

34. Following the same logic, the Court had regard to the difference between the purposes pursued by paid annual leave and sick leave, which is intended to enable a worker to recover from an illness, in concluding that a worker who is on sick leave during a period of previously scheduled annual leave has the right to take that leave at a time that does not overlap with the period of sick leave. [14]

35. Furthermore, the Court has recognised that in certain specific situations, such as sick leave, in which the worker is incapable of carrying out his or her duties, the right to annual leave cannot be made subject by a Member State to a condition that the worker has actually worked. The right of a worker to minimum annual leave, guaranteed by EU law, cannot be reduced where the worker could not fulfil his or her obligation to work due to an illness. [15]

36. According to the Court's case-law, the key features of these circumstances in which incapacity for work must be treated in the same way as actual work are, first, that they are not foreseeable and beyond the worker's control, and, second, that they subject the worker to physical or psychological constraints.

37. As regards the first of these criteria, the Court takes the view that incapacity for work owing to sickness is, as a rule, not foreseeable and beyond the worker's control. [16] Reasoning by analogy, the Court has held that, like incapacity for work owing to sickness, the fact that a worker was deprived of the opportunity to work owing to dismissal that was subsequently held to be unlawful is, as a rule, not foreseeable and beyond the worker's control. [17] On the other hand, where a worker takes parental leave, that is not unforeseeable and, in most cases, is a reflection of the worker's wish to take care of his or her child. [18]

38. The second criterion relating to the existence of physical or psychological constraints has been applied negatively by the Court. Thus, inasmuch as a worker on parental leave is not subject to physical or psychological constraints caused by an illness, that worker is in a situation different from that resulting from an inability to work due to his or her state of health. [19]

39. That being so, it must be determined whether the Court's case-law can be applied, *mutatis mutandis*, to a situation such as that in the main proceedings, in which, because of his exposure to the SARS-CoV-2 virus and without being placed on sick leave, it was decided to place a worker in quarantine, the length of which corresponds to the period of previously scheduled paid leave.

[14] Judgments of 10 September 2009, *Vicente Pereda* (C-277/08, EU:C:2009:542, paragraph 22), and of 4 June 2020, *Fetico and Others* (C-588/18, EU:C:2020:420, paragraphs 33 and 34 and the case-law cited). See, with regard to convalescence leave, judgment of 30 June 2016, *Sobczyszyn* (C-178/15, EU:C:2016:502, paragraph 27).

[15] Judgment of 22 September 2022, *Fraport and St. Vincenz-Krankenhaus* (C-518/20 and C-727/20, EU:C:2022:707, paragraph 32 and the case-law cited).

[16] Judgment of 22 September 2022, *Fraport and St. Vincenz-Krankenhaus* (C-518/20 and C-727/20, EU:C:2022:707, paragraph 30 and the case-law cited).

[17] Judgment of 25 June 2020, *Varhoven kasatsionen sad na Republika Bulgaria and Iccrea Banca* (C-762/18 and C-37/19, EU:C:2020:504, paragraph 67).

[18] See, to that effect, judgment of 4 October 2018, *Dicu* (C-12/17, EU:C:2018:799, paragraph 32 and the case-law cited).

[19] Judgment of 4 October 2018, *Dicu* (C-12/17, EU:C:2018:799, paragraph 33). Previously the Court had ruled that a worker on short-time working under a social plan is not subject to physical or psychological constraints caused by an illness and is therefore in a situation different from that resulting from an inability to work due to his or her state of health. See, to that effect, judgment of 8 November 2012, *Heimann and Toltschin* (C-229/11 and C-230/11, EU:C:2012:693, paragraph 29).

40. In the light of the foregoing considerations, such transposition cannot be automatically ruled out. First, the purpose of paid annual leave is different from that of quarantine, which is intended to prevent the spread of a contagious disease. Second, there is no doubt that in most cases, an isolation measure of this nature constitutes a circumstance which is not foreseeable and beyond the worker's control.

41. However, it does not seem possible to apply reasoning by analogy beyond this first stage. It should be noted in this regard that the Court's case-law is based on the premiss that during the period in question, the occurrence of an illness has rendered the worker unable to carry out the work he or she is required to do under his or her contract of employment. It is because of the concomitant existence of incapacity for work owing to sickness that the worker is placed in a situation preventing him or her from resting and relaxing, so that the annual paid leave must be postponed to a period other than the one initially set. In other words, the occurrence of incapacity for work cannot have the effect of undermining the worker's right to benefit from the minimum period of paid leave provided for in Article 7 of Directive 2003/88.

42. Quarantine does not automatically mean that workers are in a situation where they are prevented from performing work, since they may be able, depending on the circumstances, to carry out their professional activity from the place in which they are required to remain.

43. In this regard, the Commission suggests that a distinction be drawn between workers who continue to be able to work and workers who are prevented by the quarantine measure from carrying out the work they are required to do under their contract of employment. In the latter case, workers should be able to have their annual leave carried over to a period other than the one initially set.

44. There are, however, two main objections to this solution.

45. First, I find it difficult to consider that the inability to carry out work as a consequence of quarantine could be treated in the same way as incapacity for work within the meaning of the abovementioned case-law. A worker to whom a prophylactic isolation decision relates is not subject to physical or psychological constraints similar to those caused by an illness, and is therefore in a different situation from that resulting from incapacity for work due to the worker's state of health.

46. Second, the assessment as to whether or not there is an incapacity for work resulting from quarantine appears to be particularly sensitive, in so far as it requires a specific examination of each situation in order to determine whether workers are able to carry out their work from the place where they are confined. This possibility depends on many factors, including, inter alia, the precise nature of the work which the worker is required to do,[20] the possible arrangements for the position held, the employer's activity and organisation and the detailed arrangements for isolation. The combined application of these various factors is likely to lead to a wide variety of solutions which could be seen as unjustified and unequal, particularly where they relate to situations that, a priori, might have appeared similar.[21] Moreover, such a solution creates undeniable practical difficulties for the employer, which is required, within a short time, to assess whether or not

[20] This first criterion is essential because some work, in particular involving physical labour, clearly can only be carried out at the workplace.

[21] In addition, these difficulties seem likely to give rise to a considerable body of litigation before the labour courts, which would have to verify a posteriori whether in a specific case the worker was still capable of working during the period of quarantine.

workers who were initially placed on paid leave, are capable of carrying out their work from the place where they are confined and, if so, to take organisational measures appropriate to that situation. [22]

47. I conclude from the foregoing that the Court's case-law cannot be transposed by analogy to a situation such as that in the main proceedings, with the result that, on this basis alone, a worker could not carry over paid annual leave granted for a period overlapping with the period during which he or she is quarantined on account of contact with an individual infected by the SARS-CoV-2 virus.

48. That being said, it must still be determined whether, in the light of the restrictions caused by it, quarantine is such as to deprive workers of the actual benefit of their right to paid annual leave.

2. Undermining of the actual benefit of the right to paid annual leave

49. It is undeniable that the restrictions caused by quarantine significantly limit the personal activities in which individuals are able to engage as well as their movements. It follows that such a situation is likely to reduce the opportunities for a worker 'to rest or to devote himself [or herself] to recreational and leisure activities'. [23] Such undermining of the purpose of the right to paid annual leave could, prima facie, offer sufficient justification, where there is an overlap with a period of quarantine, for that leave to be carried over so that the worker is able to have the *actual benefit* of that right. [24]

50. However, in my view, this solution would be based on a misunderstanding of the notion of 'actual benefit' of paid annual leave which is consistent neither with the objectives pursued by Directive 2003/88 nor with the Court's case-law. It should be noted in this regard that, in order to ensure the objective of protecting the safety and health of workers, the right to paid leave is subject to the national authorities and the employer complying with obligations intended to guarantee the effectiveness of that right.

51. First, having regard to the essential objective pursued by Directive 2003/88, which is to ensure the effective protection of the living and working conditions of workers and better protection of their safety and health, Member States are required to ensure that the effectiveness of those rights is guaranteed in full, by ensuring that workers actually benefit from a minimum period of paid annual leave laid down in that directive. It follows that the arrangements made by the Member States to implement the requirements of Directive 2003/88 must not be liable to render the rights enshrined in Article 31(2) of the Charter and Article 7 of that directive meaningless. [25] In this context, the measures adopted by Member States must allow the worker to benefit from this period of leave in its entirety and cannot affect or limit the minimum protection guaranteed by the directive; nor can it be capable of infringing other provisions of that directive, or adversely affecting its coherence or the objectives pursued thereby. [26]

[22] In this regard, the dispute in the main proceedings illustrates the difficulties that would be faced by an employer which was notified of the quarantine the day before the start of the period of paid leave.

[23] Judgment of 8 November 2012, *Heimann and Toltschin* (C-229/11 and C-230/11, EU:C:2012:693, paragraph 29).

[24] Judgment of 4 June 2020, *Fetico and Others* (C-588/18, EU:C:2020:420, paragraph 32 and the case-law cited).

[25] See, by analogy, judgment of 2 March 2023, *MÁV-START* (C-477/21, EU:C:2023:140, paragraph 35 and the case-law cited).

[26] See, *a contrario*, judgment of 19 November 2019, *TSN and AKT* (C-609/17 and C-610/17, EU:C:2019:981, paragraph 51 and the case-law cited).

52. Second, employers must ensure that workers are given the opportunity to exercise their right to paid annual leave. [27] During those rest periods, workers must not be subject to any obligation vis-à-vis their employers which may prevent them from pursuing freely and without interruption their own interests in order to neutralise the effects of work on their safety or health. [28]

53. It follows, in my view, that the actual benefit of the right to annual leave enshrined in Article 31(2) of the Charter requires that, with a view to the protection of their safety and health, workers are entitled to the minimum period of paid leave provided for in Article 7 of Directive 2003/88 and, during that period, have the *opportunity*, being released from any obligation vis-à-vis their employer, to rest or to devote themselves to recreational and leisure activities.

54. However, going beyond the need to comply with these requirements, it does not follow from the abovementioned legislation or from the Court's case-law that the attainment of the objective of protecting the safety and health of workers pursued by Directive 2003/88 should require that, during the period of paid leave which they must be able to enjoy, that leave actually provided them with a time of relaxation, rest and leisure. In other words, the right to have the actual benefit of paid annual leave cannot be confused with a right to the actual result of that leave. [29]

55. It would seem that an analysis contrary to my suggested approach would be likely to establish a particularly broad understanding of the right to paid annual leave whereby the actual benefit of that right would be acquired only where no event occurs [30] during the period of paid leave which interferes with the organisation of the activities that workers intended to pursue during their free time.

56. Unlike incapacity for work, quarantine does not undermine the right to have the actual benefit of paid annual leave, as I propose to define it, but only affects the conditions under which workers are able to enjoy their free time.

57. Moreover, the understanding of rest, relaxation and leisure is highly subjective, such that a confinement measure may alter an individual's perception of the quality of his or her paid leave to widely varying degrees. Furthermore, the rigour and scale of the government-ordered restrictions are also likely to have significant repercussions on a worker's opportunities for relaxation. These considerations make it particularly difficult to attempt to objectivise and categorise situations in which quarantine materially affects the conditions under which workers enjoy their annual leave.

58. The fact remains that a decision to isolate may, depending on the circumstances, significantly reduce the quality of the paid annual leave granted to a worker. However, it would appear that the right to paid annual leave as enshrined in EU law does not resolve this difficulty. By contrast, going beyond the minimum protection guaranteed in Article 7 of Directive 2003/88, the national legislature always has the option to adopt more favourable measures under which days of paid annual leave may be carried over to a later time. It should be noted in this regard that,

[27] See, to that effect, judgment of 6 November 2018, *Kreuziger* (C-619/16, EU:C:2018:872, paragraph 51 and the case-law cited).

[28] See, by analogy, judgment of 9 September 2003, *Jaeger* (C-151/02, EU:C:2003:437, paragraph 94).

[29] See, to that effect, Opinion of Advocate General Saugmandsgaard Øe in *Fetico and Others* (C-588/18, EU:C:2019:1083, points 75 and 76).

[30] By way of illustration, it would be difficult to see how an event such as the occurrence of severe weather conditions could give entitlement under EU law to the carrying-over of paid annual leave.

subsequent to the present request for a preliminary ruling, the German legislature introduced in its national law provisions under which days in isolation are counted against paid annual leave. [31]

59. Therefore, in the light of all these elements, I consider that EU law does not require paid annual leave overlapping with a period of government-ordered quarantine because of a worker's exposure to the SARS-CoV-2 virus to be carried over.

VI. Conclusion

60. In the light of the foregoing considerations, I propose that the question referred for a preliminary ruling by the Arbeitsgericht Ludwigshafen am Rhein (Labour Court, Ludwigshafen am Rhein, Germany) be answered as follows:

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 and Article 31(2) of the Charter of Fundamental Rights of the European Union

must be interpreted as not precluding national legislation or practice under which paid annual leave which was granted to a worker and which overlaps with a period of government-ordered quarantine on the ground that the worker had contact with an individual infected by a virus cannot be carried over to a time other than that originally scheduled.

[31] According to the request for a preliminary ruling lodged in *I* (Case C 749/22, currently stayed), that provision, which was introduced by a law of 16 September 2022, is not applicable *ratione temporis* to the situation at issue in the main proceedings.