

SUMMARY SHEETS : ARTICLE 31 ECHFR

“Fair and just working conditions”.

- 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.”*

Content and scope of the article

General:

Paragraph 1 of this Article is based on Directive 89/391/EEC which introduces measures to encourage improvements in the safety and health of workers at the workplace. It also draws upon the Social Charter, the Community Charter on the rights of workers, and, with regards to dignity at work, the revised Social Charter. The term “working conditions” should be understood in the context of Article 156 of the Treaty on the Functioning of the European Union.

Paragraph 2 is based on Directive 93/104/EC concerning certain aspects of the organisation of working time, the European Social Charter and the Community Charter on the rights of workers.


Organisation of working time:

By establishing the right of every worker to daily and weekly rest periods, Directive 2003/88 concretely implements the fundamental right expressly enshrined in Article 31(2) of the Charter. Consequently, Directive 2003/88 must be interpreted in the light of Article 31(2), and its provisions cannot be interpreted restrictively to the detriment of the rights that workers derive from it.

It should also be recalled that the worker is in a weaker position in the employment relationship. Therefore, measures must be in place to prevent the employer from being in a position to impose a restrictions on workers’ rights and exploit the power hierarchy at paly in this relationship.

Furthermore, while a Member State may lay down more favourable provisions concerning the weekly rest period than those required as a minimum threshold by Directive 2003/88, this cannot deprive the worker of other rights conferred by the Directive, particularly the right to daily rest.

The purpose of Directive 2003/88 is to lay down minimum requirements intended to improve workers’ living and working conditions by harmonising national rules



particularly regarding the working hours. These minimum requirements are key rules of EU social law, from which all worker must benefit.

Paid annual leave:

According to the settled case-law of CJEU, the right to be paid annual leave must be regarded as a particularly important principle of EU social law from which there may be no derogations and whose implementation by the competent national authorities must be confined within the limits expressly laid down by Directive 2003/88.

Article 7(1) of Directive 2003/88 requires Member States to take the necessary measures to ensure that every worker is entitled to at least four weeks of paid annual leave, under the conditions defined by national legislation and/or practice. This provision reflects and gives effect to the fundamental right to paid annual leave, as enshrined in Article 31(2) of the Charter, which is recognised by Article 6(1) TEU as having the same legal value as the Treaties.

The Court has held, in that context, that the right to paid annual leave cannot be interpreted restrictively.

In certain specific situations where a worker is unable to perform their duties, the right to be paid annual leave cannot be conditioned by a Member State on the worker having actually worked. The same applies, in particular, with regard to workers who are absent from work on sick leave during the reference period. As established by the Court's case law, workers who are absent from work on sick leave during the reference period should be treated in the same way as those who have worked during that period, with respect to their entitlement to paid annual leave.

The right to annual leave is one of the two aspects of the broader right to paid annual leave as a fundamental principle of EU social law. This fundamental right also includes, as an integral part of the entitlement to "paid" annual leave, the right to receive an allowance in lieu of annual leave not taken upon the termination of the employment relationship. In that respect, the reason for the termination is not relevant.

Article 7(1) of Directive 2003/88 does not, in principle, preclude national legislation from establishing conditions for the exercise of the right to paid annual leave, as expressly conferred by the Directive. This may include provisions that result in the loss of the right at the end of a leave year or of a carry-over period, provided, however, that the worker has had the opportunity to exercise the right granted under the Directive.

This applies even where the employment relationship is subsequently terminated, as long as the worker has had the opportunity to exercise the right conferred by the Directive.

However, where the worker has refrained from taking paid annual leave deliberately and in full knowledge of the ensuing consequences, after having been given the opportunity to actually to their right thereto, Article 31(2) of the Charter does not prevent the loss of that right. In the event of the termination of the employment relationship, this may also mean that no allowance in lieu of the unused paid annual

leave is required, without the employer being obligated to force the worker to actually exercise that right and take the leave.

CJEU Case Law

ECJ, Grd. Ch., C-218/22, 18/01/2024, *BU v Commune Di Copertino*

Keywords: Protection of the safety and health of workers - paid annual leave in case of termination of employment contract - article 7(1) and Article 7(2) of Directive 2003/88.

ECJ, Grd. Ch., C-477/21, 02/03/2023, *IH v Mav-start*

Keywords: Protection of the safety and health of workers - Organisation of working time - daily rest period, weekly rest period - article 5 of Directive 2003/88.

ECJ, Grd. Ch., C-344/19, 09/03/2021, *D.J. v Radioteleviza Slovenija*

Keywords: Protection of the safety and health of workers - Organisation of working time, period of stand-by time during which the worker is required only to be contactable by telephone, constitute or not a working time - article 2(1) of Directive 2003/88

ECJ, Grd. Ch., C-119/19 and C-126/19, 08/09/2020, *Commission and Council v Francisco Carreras Sequeros e.a.*

Keywords: Protection of the safety and health of workers - Right to paid annual leave - Officials and members of Eu institutions serving in a third country – New provisions on the granting of days of paid annual leave - article 7(1) of Directive 2003/88/EC.

ECJ, Grd. Ch., C-55/18, 14/05/2019, *Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank SAE.*

Keywords: Protection of the safety and health of workers - Organisation of working time, minimum rest periods must be observed and to prevent maximum weekly working time - obligation to have recourse to an instrument that enables the objective and reliable determination of the number of hours worked each day and each week - Directive 2003/88


ECJ, Grd. Ch., C-762/18 and C 37/19, 25/06/2020, *QH v Varhoven kasatsionen sad na Republika Bulgaria*

Keywords: Protection of the safety and health of workers - paid annual leave, annulment of the dismissal by a court - right to be a paid annual leave for the period between the date of the dismissal and that of the reinstatement in his or her employment - article 7(1) of Directive 2003/88.

ECJ, Grd. Ch., C-609/17 and C 610/17, 19/11/2019, *Terveys- ja sosiaalialan neuvottelujärjestö ry v hyvinvointialan liitto ry*

Keywords: Protection of the safety and health of workers - Right to paid annual leave of at least 4 weeks in case illness - article 7(1) of Directive 2003/88/EC.

ECJ, Grd. Ch., C-684/16, 06/11/2018, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften e.V. v Tetsuji Shimizu,*



Keywords: Protection of the safety and health of workers - Right to paid annual leave in the event of the termination of the employment relationship - Obligation to interpret national law in conformity with EU law, article 7 of Directive 2003/88.

Highlights

Protection for EU Employees: Article 31 offers a valuable tool for addressing workplace disputes within EU institutions. Lawyers can use it to advocate for fair treatment, especially in cases involving EU-employed individuals.

Broader Social Rights Context: While the European Convention on Human Rights provides limited protections in employment matters, lawyers should consider Article 31 alongside the European Social Charter when addressing complex issues like discrimination, privacy, and freedom of association.

Strategic Use in Labor Law:

- **Health and Safety:** Leverage Article 31 to challenge practices that compromise workplace safety or violate EU health standards.
- **Dignity in the Workplace:** Address harassment, unfair remuneration practices, and workplace discrimination by tying them to the dignity principle embedded in Article 31.
- **Working Hours:** Advocate for compliance with EU standards on working time, particularly in industries with systemic violations.

Defining the “Worker”: Article 31’s autonomous interpretation of the term “worker” by the CJEU provides a basis for expanding protections to non-traditional employment arrangements, such as gig workers or contractors, depending on the context.


Horizontal Effect: Lawyers can rely on the horizontal effect recognized by the CJEU to invoke Article 31 rights in disputes between private parties. This opens pathways to enforce worker protections even in purely private employment relationships

Correspondence with other European/International instruments

- European Social Charter, Article 2
- Convention No 132 of the International Labour Organisation of 24 June 1970 concerning Annual Holidays with Pay (revised)

Further readings

- H. Nasom-Tissandier, “*L’invocabilité de la Charte des droits fondamentaux au soutien du droit à congé annuel payé*”, *Revue de jurisprudence sociale*, 2019, n°2, p.80.
- H. Nasom-Tissandier, “*Le droit au congé annuel payé est-il un principe général du droit de l’Union ? La CJUE entre fermeté et indécision*”, *Revue de jurisprudence sociale*, 2012, p.261-263.

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- L. He, *“Une protection remarquable du droit au repos et au loisir”*, RTDE, 2019, p. 651
 - S. Robin-Olivier, *“Article 31 conditions de travail justes et équitables”*, in Charte des droits fondamentaux de l’Union européenne commentaire article par article, 3ème ed., dir. F. Picod, C. Rizcallah et S. Van Drooghenbroeck, Bruylant, p. 845 et s.
 - Bogg, M. Ford, *“Article 31 : Fair and just working conditions”*, in Peers, St hervey, Kenner, Ward (dir), The EU Charter of fundamentals rights. A commentary, Munich/oxford/Baden baden, Beck/Hart/Nomos,2021.
 - J. Mouly, *“Le revirement relative au droit à congé payé – Une jurisprudence pas tout à fait nouvelle”* A propos de l’arrêt de la Cour de cassation français du 13/09/2023, Dr. Soc. fev. 2024, p.174 et s.
 - Handbook on European non-discrimination law – 2018 edition