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<https://doi.org/10.26881/gsp.2025.2.12>

Entitlement to Paid Annual Leave in the Czech Legal System and the Case Law of the Court of Justice of the European Union

1. Introduction to the issue and relevant national legislation

This article deals with an issue in the field of implementation of supranational standards in Czech national law, specifically, the regulation of annual paid leave. It answers the question under which conditions an employee has the right, in light of EU regulations, to compensation for leave not taken, in the event of termination of employment preceded by a lawsuit to determine the unlawfulness of the termination.

If the employer terminates the employment relationship with the employee by giving notice and the employee disagrees with the notice, that is, he/she considers it unlawful, the employee may bring an action in a civil court to declare that the notice is unlawful. In this situation, it is up to the employer whether to assign work to the employee during the litigation. If the employee ends up being the winner of the litigation and the employer has not assigned work to the employee during the litigation, the employee is entitled to wage compensation for the period beginning when he/ she did not receive work from the employer. Specifically, the relevant Czech legislation¹ provides that the employee is entitled to wage compensation (at the rate of average earnings²) from the date on which he/she notifies his/her employer in writing that he/she insists on continued employment until the employer allows him/her to continue working or the employment relationship is lawfully terminated.

The period that occurs in the event of initiation of litigation to determine the lawfulness or unlawfulness of a statement or action is traditionally referred to as a period of uncertainty³ by court practice and doctrine. It is a period of uncertainty until

¹ See: Section 69(1) of the Czech Labor Code.

² On average earnings or likely earnings, cf. Section 351 to Section 361 of the Czech Labor Code.

³ Cf., for example: Supreme Court judgment of 24 June 2004, Case No. 21 Cdo 2504/2003, and Supreme Court resolution of 24 August 2006, Case No. 21 Cdo 2569/2005. Established decision-making practice explicitly states – cf., for example, the Supreme Court's judgment of 15 August 2018, Case No. 21 Cdo 3606/2017 – that: "When considering the legal nature of the performance of work which an employee

the court decides on the action for a declaration that the termination of employment is unlawful or until, for example, the employment relationship is otherwise lawfully terminated.⁴ It is a settled opinion that, during that period, the relationship between the employee and the employer is not governed by the “contract of employment, collective agreement, internal regulations and the relevant employment legislation in the same form as if the employment relationship had undoubtedly continued. The employment relationship between the employee and the employer is therefore governed, during that period, by the special legislation contained in Sections 69 to 72” of the Labor Code.

In the event of somewhat slow litigation, the question, therefore, arises, *inter alia*, as to what entitlement to leave the employee has during the period of uncertainty defined above. The Czech Republic, like other Member States of the European Union, is mindful of the protection of the employee and his/her proper respite from work through the regulation of leave.⁵ In accordance with EU law, an employee is guaranteed, through statutory provision, a minimum of four weeks’ holiday per calendar year if, during a continuous relationship of employment with the same employer, he/she has worked

has undertaken on the basis of a notification (call) made pursuant to the provisions of Section 69(1) or Section 70(1) of the Labour Code, the Supreme Court shall consider the legal nature of the performance of work which the employee has undertaken on the basis of a notification (call) made pursuant to the provisions of Section 69(1) or Section 70(1) of the Labour Code. If the employee or the employer has terminated the employment relationship by notice, immediate termination or termination during the probationary period, but the other party to the basic employment relationship does not recognise their validity, or if an agreement on termination of the employment relationship has been concluded, which one of the parties considers to be an invalid employment act, a dispute has arisen between the employer and the employee as to whether their employment relationship actually ended as a result of the employment act or whether their employment relationship will (may) continue. Until this dispute over the validity of the termination of the employment relationship is resolved, there is uncertainty between the parties to the underlying employment relationship as to what their (continuing) employment relationship will be and what obligations (if any) they will incur. In the period beginning on the day following the day on which the employment relationship should have ended pursuant to the notice, immediate termination, probationary termination or agreement, and ending on the day on which the court finally decides on the validity of the termination of the employment relationship or on which the employment relationship is otherwise validly terminated, the legal relations between the parties to the employment relationship cannot, in view of the uncertainty in their legal position, be governed by the employment contract, the collective agreement, the internal regulations and the relevant labour legislation in the same form as if the employment relationship had undoubtedly continued. The employment relationship between the employee and the employer is therefore governed, during the period in question, by the special legislation contained in Articles 69 to 72 of the Labour Code.” Cf. also the legal opinion contained in the judgment of the Supreme Court of 9 March 2006, Case No. 21 Cdo 1218/2005, in the judgment of the Supreme Court of 20 December 2012, Case No. 21 Cdo 3693/2011, and in the judgment of the Supreme Court of 26 January 2017, Case No. 21 Cdo 19/2016.

⁴ L. Drápal, § 69 [Consequences of invalid termination of employment by the employer] [in:] M. Bělina, L. Drápal *et al.*, *Labor Code. Commentary*, 4th ed., Prague 2023, p. 462, marg. no. 24.

⁵ The Labor Code refers to the EU sources of regulation through an “implementation provision,” that is, through Section 363 which states what provisions in the Labor Code incorporate EU regulations. Among these are the provisions relevant to the regulation of leave and to this article contained in sections 212(1) and (4) and 213(1) and (2).

for that employer for fifty-two weeks in the relevant calendar year within the scope of the fixed weekly working time falling within that period. If the employee has not taken the leave before the termination of the employment relationship, he/she shall (only in such a situation) be entitled to compensation for leave not taken.⁶ In this way, the current Czech legal regulation differs from the previous one,⁷ because according to the previous regulation, the employee was entitled to wage compensation even in cases where the employee was unable to take his/her leave by the end of the calendar year following the year in which the employee's right to leave arose, except for the situation when employment had been terminated. It should be noted that the current legislation (a) respects the nature and purpose of the institute of paid annual leave and (b) is in accordance with Directive 2003/88.

2. Relevant findings of the Court of Justice of the European Union and the evolution of its conclusions

Issues relating to an employee's entitlement to wage compensation for leave not taken have been addressed by the CJEU on several occasions in the past. In its judgment of 25 June 2020, *Joined Cases C-762/18 and C-37/19 QH and CV v. Varhoven kasatsionen sad na Republika Bulgaria and Iccrea Banca SpA Istituto Centrale del Credito Cooperativo*, the Court of First Instance holds that Article 7(1) of Directive 2003/88 must be interpreted as taking precedence over national case-law according to which a worker who has been unlawfully dismissed from his employment and subsequently reinstated in accordance with national law following a judicial decision annulling his dismissal, is not entitled to paid annual leave for the period from the date of his/her dismissal until the date of his/her reinstatement on the grounds that he/she did not actually work for the employer during that period. It is also held that Article 7(2) of Directive 2003/88 must be interpreted as taking precedence over national case-law according to which a worker is not entitled to financial compensation for paid annual leave not taken for the period from the date of his/her unlawful dismissal to the date of his/her reinstatement in the event of termination of his/her employment after he/she has been unlawfully dismissed and subsequently reinstated in accordance with national law following a judicial decision annulling his/her dismissal. From these decisions alone, it is clear that there is protection for the employee and his/her entitlement to compensation for leave not taken.⁸

⁶ Section 222(2) of the Czech Labor Code.

⁷ The previous regulation, contained in Section 222(2) of the Czech Labor Code, specifically states that compensation of wages or salary for the part of leave exceeding four weeks not taken is due to the employee, not only in the event of termination of the relationship of employment, but also if the employee is unable to take the leave by the end of the following calendar year.

⁸ Other EU decisions are also related to entitlements to financial compensation for untaken leave. For example, in the decision of 25 November 2021 in *Case C-233/20 WD v. job-medium GmbH*, it is held that Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November

It is crucial for the question that we have posed to present the relatively recent conclusions of the CJEU in its judgment of 22 September 2022 in Case C-120/21, *LB v. TO*. In this case, it is held that Article 7 of Directive 2003/88 and Article 31(2) of the Charter of Fundamental Rights of the European Union must be interpreted as taking precedence over national legislation under which an entitlement to paid annual leave accrued by a worker in respect of a reference period is time-barred after the expiry of a period of three years beginning at the end of the year in which that entitlement arose, unless the employer has actually allowed the worker to exercise that entitlement. Thus, in the name of protecting the employee, a decision was made not to bar his/her right. In its decision, the CJEU⁹ responds to a question referred for a preliminary ruling, asking whether Article 7 of Directive 2003/88 and Article 31(2) of the Charter of Fundamental Rights of the European Union must be interpreted as taking precedence over national legislation under which an entitlement to paid annual leave accrued by a worker in respect of a reference period is time-barred after the expiry of a three-year period beginning at the end of the year in which that entitlement arose, when the employer has not actually enabled the worker to exercise that entitlement.

In its decision, the CJEU emphasizes that the wording of Article 7 of Directive 2003/88 and the case-law of the CJEU allow Member States to define in their national legislation the conditions for the exercise and implementation of the right to paid annual leave by specifying the specific circumstances in which workers may exercise that right. At the same time, however, it has been made clear that the conclusion expressed does not mean that EU legislation takes precedence over national legislation which lays down rules for the exercise of the entitlement to paid annual leave expressly granted by the directive, including the extinction of that entitlement at the end of a reference period or a period of transferability, provided that the worker whose entitlement to paid annual leave has expired has in fact had the opportunity to exercise the entitlement conferred by EU law.

2003 concerning certain aspects of the organization of working time must be interpreted in the light of Article 31(1) of Directive 2003/88/EC. 2 of the Charter of Fundamental Rights of the European Union; it must be interpreted as taking precedence over a provision of national law under which there is no entitlement to any financial compensation for annual leave not taken in respect of the last normal year of employment, if the worker terminates his/her relationship of employment early and unilaterally without serious reason. The issue has also been addressed recently in relation to agency workers. From the decision of the CJEU of 15 May 2022, in Case C-426/20, *GD and EC v. Luso Temp – Empresa de Trabalho Temporário SA.*, it follows that the first subparagraph of Article 5(1) of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on agency work, read in conjunction with Article 3(1)(a) of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on agency work (f) of that directive, must be interpreted as taking precedence over national legislation which provides that the compensation which the employees of an employment agency may claim in the event of the termination of their relationship of employment with the user on account of paid annual leave not taken and the corresponding holiday allowance are lower than the compensation which those employees could claim in the same situation and on the same grounds, if that user had employed them directly in the same job and for the same duration.

⁹ Hereafter also CJEU.

In a similar vein, other relevant conclusions have been expressed. According to the judgment of the CJEU of 22 September 2022, Joined Cases C-518/20 and C-727/20, *XP and AR v. Fraport AG Frankfurt Airport Services Worldwide and St. Vincenz-Krankenhaus GmbH*, EU law must be interpreted as taking precedence over national legislation under which a worker's entitlement to paid annual leave, earned in respect of a reference period during which the worker actually worked before becoming totally disabled or incapable of work on account of an illness which has persisted since then, may have expired either at the end of the period of transferability permitted by national law or at a later date, even though the worker was not allowed by his/her employer to exercise that entitlement in time. For the relevant findings, cf. also the judgment of the Court of Justice of 27 April 2023 in Case C-192/22, *FI v. Bayerische Motoren Werke AG*, or the judgment of 12 October 2023 in Case C-57/22, *YQ v. Road and Motorway Directorate of the Czech Republic*, the judgment of 12 June 2014 in Case C-118/13, *Gulay Bollacke v. K+K Klaas & Kock B.V. & Co. KG*, or the judgment of 3 May 2012 in Case C-337/10, *Georg Neidel v. Stadt Frankfurt am Main*.

Attention should also be drawn to the relatively recent order of the Court of Justice of 10 October 2023 in Case C-795/22, *Adolfo v. Direccion000 CB, Alfonso, Álvaro, Fondo de Garantía Salarial (FOGASA)*, according to which those EU rules must be interpreted as taking precedence over national legislation under which a worker's entitlement to paid annual leave is time-barred after a period of one year has elapsed from the end of the annual reference period, to which the leave relates, where the employer has not in fact allowed the worker to exercise that entitlement, even if that worker has not, before the termination of his employment, initiated proceedings which have the effect of interrupting the limitation period.

The presentation of the relevant EU case-law cannot but conclude with a reference to the judgment of the CJEU of 6 November 2018, in Case C-684/16 *Max-Planck-Gesellschaft zur Förderung der Wissenschaften eV v. Tetsuji Shimizu*. According to the conclusions expressed in this judgment, EU rules also take precedence over national legislation under which the fact that a worker has not applied (during the reference period) for paid annual leave (to which he/she was entitled under that legislation) automatically (and without prior verification of whether the employer has actually enabled him/her to exercise that entitlement, in particular by providing him/her with the relevant information) has the effect that such worker loses the paid annual leave days to which he/she was entitled under that legislation during that period and, consequently, the right to financial compensation for that paid annual leave not taken in the event of termination of employment. In that regard, it is for the referring court to ascertain, in the light of national law and using the methods of interpretation recognized by it, whether it can arrive at an interpretation of that law that can give full effect to European Union law. In the event that national legislation such as that at issue in the main proceedings cannot be interpreted in such a way as to ensure that it is compatible with Article 7 of Directive 2003/88 and Article 31(2) of the Charter, it follows (from the latter provision) that a national court hearing a dispute between a worker and his/her former employer in his/her individual capacity must

refrain from applying that national legislation. At the same time, the national court must ensure that, where that employer is unable to prove that it/he/she has acted with due diligence to ensure that the worker can in fact take the paid annual leave to which he/she is entitled under European Union law, that worker is not denied the right to such paid annual leave and, in the event of termination of the relationship of employment, to financial compensation for leave not taken, which, in that event, must be paid directly by the employer concerned. Thus, it can be summarized that a worker cannot automatically lose his/her accrued entitlement to paid annual leave because he/she has not requested it. However, if an employer can prove that the worker did not take paid annual leave deliberately and with full knowledge of the matter after having been given the opportunity to exercise his/her entitlement to it, EU law does not prevent the loss of that entitlement or the consequent lack of financial compensation in the event of termination of employment.¹⁰

3. The new concept of compensation for leave not taken, following the intervention of the Court of Justice of the European Union

The topic of this article exemplifies the interplay between national and EU legislation. The specific legal issue shows how national law is noticeably influenced by supranational law, that is, by EU law. In fact, we would venture to state that with the current level of regulation through EU norms, it hardly makes sense to separate national labor law from supranational law anymore, as the interpretation of the specific content of a particular legal norm must be made in the light of both national sources of regulation and supranational sources of regulation. Only in this way can the true content of the legal norm be found.

The Supreme Court of the Czech Republic was aware of this when it asked the CJEU for help in answering the preliminary question. It was aware of it even after the question had already been answered and the Czech Supreme Court had implemented the EU advice in its own case law, thus adopting supranational standards directly into national law regarding the legal regulation of leave.

So how exactly did the gradual adoption of the EU conclusions take place? First, the Czech Supreme Court¹¹ addressed the question of substantive law as to whether an employee with whom an employer has terminated the relationship of employment and who has notified the employer in writing that he/she insists that he/she continue to be employed, is entitled to wage compensation for the period during which the litigation concerning the unlawfulness of the termination of the employment relationship, which has been finally terminated by a decision declaring the termination unlawful, was

¹⁰ Cf. also V. Bognárová, § 222 [Paid and unpaid leave] [in:] M. Bělina, L. Drápal *et al.*, *Labor Code. Commentary...*, p. 1026, and the case law commented on herein.

¹¹ Judgment of the Supreme Court of 13 November 2023, Case No. 21 Cdo 2124/2021.

pending. After asking the preliminary question to the CJEU, the Czech Supreme Court concluded that in view of the CJEU's conclusions and the EU legislation, the answer to this question (in relation to the application of Czech legislation) should be as follows. Even in cases where the legal status of the employee and the employer is governed by the provisions of Sections 69 to 72 of the Labor Code, the employee is entitled to "paid leave" (in the words of Article 7 of the Directive) for that period, and the provisions of the Labor Code governing the employee's entitlement to leave, including entitlement to compensation for wages or salary for that leave and the method of calculating it, cannot be disregarded.

The Czech Supreme Court¹² subsequently addressed the question of the conditions under which an employee's right to leave could be extinguished under the legislation contained in the Labor Code in the version in force until 31 December 2011, and from which reference period the employee's average earnings are to be determined for the purposes of salary compensation for untaken leave from 1 January 2012. The Czech Supreme Court referred to the CJEU judgments concerning the limitation of the right to leave in the case of an employee whose employer did not actually allow him to exercise this right (Case C-120/21), the extinction of the right to leave in the case of an employee who "did not request paid annual leave during the reference period" (Case C-684/16), and the right to leave and to financial compensation for untaken leave in the case of a staff member who was unlawfully dismissed and then reinstated following a judicial decision annulling his dismissal (Joined Cases C-762/18 and C-37/19). The Supreme Court concluded that the findings in the abovementioned case law do not apply here, since, under the Czech legislation in force until the end of 2011,¹³ the applicant's right to leave of at least four weeks was neither extinguished nor time-barred, but, on the contrary, exhausted by operation of law. The Supreme Court further held that an employee is entitled to compensation for wages or salary on the day after the relationship of employment between him/her and the employer ends. Therefore, the relevant period for determining average earnings for the purposes of compensation for wages or salary for untaken leave or part thereof is the calendar quarter preceding that date.

4. Conclusion or evaluation of the adoption of the Court's conclusions by Czech jurisprudence and a note on the limitation of law

In addition to presenting the development of the regulation of employee's claims for annual leave pay, we would like to add a few more comments on the legal assessment concerning the statute of limitations and the employee's right to compensation for

¹² Judgment of the Supreme Court of 23 January 2024, Case No. 21 Cdo 1220/2023.

¹³ According to this legislation, if the employer did not designate untaken leave to the employee even by 31 October of the following calendar year, the employee's start date for such untaken leave was the first following working day.

annual leave not taken. On the one hand, it may be considered that an interpretation of national rules within the meaning and purpose of the Directive is necessary, because of the non-limitation of every worker's right to paid annual leave. The national legislation must be interpreted in the light of EU law as meaning that, where work has not been assigned in accordance with the contract of employment for undisputed reasons on the part of the employer, the failure of the employee to carry out work must always be regarded as an obstacle to work on the part of the employer. In other words, the employee must, in the light of Article 7 of the Directive, retain the right to wage compensation.

However, the above conclusion and the new approach of the case law clash with the Czech legal regulation. As in other legal systems, the principle of subsidiarity applies between the Labor Code and the Civil Code. The Czech Labor Code does not contain a special rule on the limitation of property rights, and so the rule in Section 609 of the Civil Code must be applied, according to which: "If the right has not been exercised within the limitation period, it is time-barred, and the debtor is not obliged to perform." Also, the rule in Section 611 of the Civil Code must be applied, according to which all property rights are time-barred, except in the cases provided for by law. The majority's approach to exceptions to rights that are time-barred has historically been to list these rights exhaustively in legislation.

We understand that in relation to EU law, the principle of primacy of application applies, which states that if an EU norm conflicts with a national norm (that is, a law) of a Member State, the EU norm prevails. However, in view of legal certainty, confidence in the law, and the clarity of the legal regulation for the addressees of legal norms, we consider it appropriate that in the future the exception to the rule on the non-limitation of an employee's property right to wage compensation in the event of termination of employment should be explicitly set out in the Labor Code.

Literature

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Summary

Michal Blažek, Michal Smejkal

Entitlement to Paid Annual Leave in the Czech Legal System and the Case Law of the Court of Justice of the European Union

Workers are dismissed from their jobs in countries across the European Union (and not only) every day. Understandably, some workers defend themselves against such dismissals in ways

that national law allows them to, and they are often successful. However, the path from dismissal to that dismissal being declared unfair (void) can be thorny and long. Case law in the Czech Republic, as is also the situation in other countries, has already adjudicated on employment claims arising in cases of unfair dismissal. Thus, over time, the case law of the Czech national courts has taken the view that, in the special "period of uncertainty," that is, the period from the contested legal action by which the employee is dismissed until the final decision of the court, relations of employment cannot be governed by a contract of employment, a collective agreement, internal regulations, or the relevant labor law, as those relations had continued unchanged. Therefore, during that period the employee is not entitled to compensation for wages or salary for leave not taken under the Czech Labor Code.

However, this interpretation is not consistent with the interpretation of Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time and the (recent) case-law of the Court of Justice of the European Union. According to the Court of Justice of the European Union (CJEU), a worker who has been unlawfully dismissed from his/her employment and subsequently reinstated in accordance with national law, following a judicial decision annulling his/her dismissal is entitled to financial compensation for untaken paid annual leave for the period from the date of his/her unlawful dismissal until the date of reinstatement.

This article focuses on the recent case law of the CJEU concerning the right to annual paid leave, not only in the context of the unlawful dismissal of an employee, and on the implications of this case law for Czech national practice. Thus, the central theme of the paper is a reasoned finding of the law on entitlement to financial compensation for untaken leave in light of national and supranational legislation.

Keywords: paid annual leave, unlawful dismissal, period of uncertainty, statute of limitations.

Streszczenie

Michał Błażek, Michał Smejkał

Prawo do płatnego urlopu wypoczynkowego w czeskim porządku prawnym oraz w orzecznictwie Trybunału Sprawiedliwości Unii Europejskiej

W państwach członkowskich Unii Europejskiej (a także poza ich granicami) każdego dnia dochodzi do rozwiązywania stosunków pracy z pracownikami. Część pracowników kwestionuje zasadność takich czynności prawnych, korzystając z przewidzianych prawem krajowym środków zaskarżenia, nierzadko skutecznie. Procedura prowadząca od rozwiązania stosunku pracy do prawomocnego stwierdzenia jego bezskuteczności (nieważności) bywa jednak długa i złożona. Orzecznictwo sądów czeskich – podobnie jak judykatura sądów innych państw – od lat rozstrzyga roszczenia wynikające z niezgodnego z prawem rozwiązania stosunku pracy. Utrwalił się pogląd, że w szczególnym „okresie niepewności”, obejmującym czas od zakwestionowanej czynności rozwiązującej stosunek pracy do dnia prawomocnego rozstrzygnięcia sądu, stosunek pracy nie jest regulowany umową o pracę, układem zbiorowym pracy, regulaminem wewnętrznym ani właściwymi przepisami prawa pracy tak, jak gdyby nadal trwał. W konsekwencji w tym

okresie pracownik nie jest uprawniony – na gruncie czeskiego kodeksu pracy – do ekwiwalentu pieniężnego za niewykorzystany urlop wypoczynkowy.

Powyższa wykładnia pozostaje jednak w sprzeczności z interpretacją art. 7 dyrektywy 2003/88/WE Parlamentu Europejskiego i Rady z dnia 4 listopada 2003 r. w sprawie niektórych aspektów organizacji czasu pracy oraz z najnowszym orzecnictwem Trybunału Sprawiedliwości Unii Europejskiej (TSUE). Zgodnie z judykaturą TSUE pracownik, którego stosunek pracy został bezprawnie rozwiązany i który następnie, na podstawie orzeczenia sądu stwierdzającego nieważność rozwiązania, został przywrócony do pracy, nabywa prawo do ekwiwalentu pieniężnego za niewykorzystany płatny urlop wypoczynkowy za okres od dnia bezprawnego rozwiązania stosunku pracy do dnia przywrócenia do pracy.

Niniejszy artykuł analizuje aktualne orzecznictwo TSUE dotyczące prawa do corocznego płatnego urlopu, nie tylko w kontekście bezprawnego rozwiązania stosunku pracy, oraz konsekwencje tej judykatury dla praktyki krajowej w Republice Czeskiej. Centralnym zagadnieniem jest dogmatyczne ustalenie zakresu prawa do ekwiwalentu pieniężnego za niewykorzystany urlop wypoczynkowy w świetle norm krajowych i ponadnarodowych.

Słowa kluczowe: płatny coroczny urlop wypoczynkowy, bezprawne rozwiązanie stosunku pracy, okres niepewności, przedawnienie roszczeń.