Reports of Cases

OPINION OF ADVOCATE GENERAL
MENGOZZI
delivered on 20 March 2018 [1]

Case C-12/17

Ministerul Justiției
Curtea de Apel Suceava,
Tribunalul Botoșani
v
Maria Dicu,
Consiliul Superior al Magistraturii

(Request for a preliminary ruling
from the Curtea de Apel Cluj (Court of Appeal, Cluj, Romania))

(Reference for a preliminary ruling — Social policy — Organisation of working time — Right to paid annual leave — Duration — Concept of 'period of actual work' — Right to parental leave — Duration of parental leave not taken into account for the purposes of determining entitlement to paid annual leave)

Introduction

1. The point at issue in this reference for a preliminary ruling is whether EU law, in particular Article 7(1) 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 [2] — which provides that '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' — requires Member States to recognise time spent by a worker on parental leave as a period of actual work giving rise to the right to paid annual leave.

2. The facts of the dispute in the main proceedings are as follows.

3. The respondent in the main proceedings, Ms Maria Dicu, is a magistrate. She took statutory maternity leave from 1 October 2014 to 3 February 2015. From 4 February to 16 September 2015 she took leave known as 'childcare leave for a child aged less than two years'. That leave is governed by Article 2(1) of the ordonanța de urgență a Guvernului nr. 111/2010 privind concediul și indemnizația lunară pentru creșterea copiilor (Government Emergency Order 111/2010 on parental leave and the corresponding monthly dependent child allowance), which provides, in essence, that persons who, in the two years preceding their child's birth, have received at least 12 months' income from employment or similar, are entitled to leave to care for a child under the age of two and to a monthly allowance.

1 Original language: French.

2 OJ 2003 L 299, p. 9.

4. On her return from childcare leave, the respondent in the main proceedings applied to the court to which she has been appointed, the Tribunalul Botoşani (Regional Court, Botoşani, Romania), for annual leave in respect of the year 2015,[3] from 17 September 2015, and was granted that leave. She obtained, initially, 30 days' paid annual leave up to 17 October 2015. She then submitted a request to take the remaining five days during December 2015, which was refused, the court taking the view that the leave she had taken could not be equated to a period of actual work giving rise to the right to paid annual leave. The Tribunalul Botoşani (Regional Court, Botoşani) also notified her on that occasion that it had ultimately decided that she had been granted seven days of paid annual leave for 2016 in advance.

5. Ms Dicu contested that decision before the Tribunalul Cluj (Regional Court, Cluj, Romania), which upheld her action on 17 May 2016, finding that the parental leave which she had taken should be considered to be a period of actual work in the same way as periods of temporary incapacity for work and maternity leave, and that its purpose was different from that of annual leave.

6. The Tribunalul Botoşani (Regional Court, Botoşani) and the Ministerul Justiției (Ministry of Justice, Romania) appealed that decision before the referring court. They claim that the national legislature, in full knowledge of all the considerations involved, excluded childcare leave for a child under two years of age from Article 145(4) to (6) of the Romanian Labour Code, from which it is clear that only periods of temporary incapacity for work, maternity leave, maternal risk leave or leave to care for a sick child are considered to be periods of actual work for the purpose of determining the duration of annual leave. They claim that parental leave to care for a child under the age of two is distinguishable from those periods due to the fact that it is simply a matter of choice of the worker concerned.

7. The respondent in the main proceedings contends before the referring court that it is apparent from national case-law that the tasks carried out by women with respect to childcare constitute work that, when not undertaken by the mothers themselves, is undertaken by paid carers, which supports the case for treating time spent on leave caring for a young child as actual working time. In addition, parental leave to care for a child under the age of two years entails risks for the individual employment contract that may arise for objective reasons concerning the child's best interests, while annual leave protects the worker's personal and individual interests. Parental leave for a child under two years of age cannot, therefore, be considered voluntary leave.

8. The referring court notes that the Consiliul Superior al Magistraturii (Governing Council of the Judiciary, Romania), which is also a respondent in the main proceedings, stated that, in its view, in the light of the case-law of the Court,[4] a period of leave guaranteed by EU law cannot affect the right to take another period of leave also guaranteed by EU law, such as parental leave as enshrined in Council Directive 2010/18/EU of 8 March 2010 implementing the revised framework agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC ('the revised framework agreement').[5] The right to paid annual leave is guaranteed by Article 7 of Directive 2003/88. According to the Consiliul Superior al Magistraturii (Governing Council of the Judiciary), the particular importance in EU law of the right to paid annual leave supports the case that parental leave should be taken into consideration for the purposes of determining annual leave entitlement, particularly considering the fact that those two types of leave have different purposes (allowing the worker to rest in the one case and caring for a child in the other) and that the beneficiaries of the protection granted by those two types of leave are different (the worker in the case of annual leave, the child in the case of parental leave).

3 A magistrate such Ms Dicu is entitled to 35 days of paid annual leave per year, as is clear from Article 2(1) of Decision No 325/2005 of the Governing Council of the Judiciary approving the regulation on the leave of judges and prosecutors.

4 The referring court mentions here the judgment of 20 January 2009, *Schultz-Hoff and Others* (C-350/06 and C-520/06, EU:C:2009:18, paragraph 26).

5 OJ 2010 L 68, p. 13.

9. For its part, the referring court notes that Article 7 of Directive 2003/88 refers to national legislation and practice for defining the conditions for entitlement to paid annual leave. Although the Romanian legislature amended the law following the judgments in *Schultz-Hoff and Others*[6] and *Dominguez*[7] in order to widen the periods considered 'actual working time', the referring court is nonetheless uncertain whether such periods of parental leave — which, the parties to the main proceedings agree, is what the childcare leave that Ms Dicu took equates to — may be included in those periods. The referring court takes the view that paid annual leave is one of the obligations incumbent on the employer in return for the work provided by the worker; however, when the worker goes on parental leave he or she no longer provides the services which give rise to the right to paid annual leave. Moreover, Directive 2010/18 provides that Member States may grant parental leave for a maximum period of eight years and it seems excessive that the employer should be required to grant paid annual leave for such a long period during which the worker is devoting him or herself to the care of his or her child. The protection afforded to workers during parental leave should be the responsibility of the State, by way of measures promoting family cohesion, rather than that of the employer. The Court's reasoning in the *Schultz-Hoff and Others*[8] and *Dominguez*[9] judgments cannot be applied in cases where the worker is on parental leave. The referring court also notes that, according to Directive 2010/18, the determination of contractual arrangements during parental leave is left to the discretion of the Member States. Article 51(a) of the Romanian Labour Code[10] provides for the suspension of the employment contract during parental leave to care for a young child. The referring court also considers that the aim of paid annual leave is different from that of parental leave. Lastly, it rejects the claim that a worker on parental leave suffers discriminatory treatment regarding the calculation of paid annual leave entitlement as compared to a worker that has not taken such leave, as the two situations are not comparable.

10. It is in these circumstances that the Curtea de Apel Cluj (Court of Appeal, Cluj, Romania) decided to stay the proceedings and, by order for reference received at the Court Registry on 10 January 2017, referred the following question to the Court for a preliminary ruling:

'Does Article 7 of Directive [2003/88 preclude] a provision of national law which, for the purpose of determining the duration of a worker's annual leave, does not consider a period of parental leave to care for a child under the age of two to be a period of actual work[?]'

11. In the present case, written observations have been submitted by the Consiliul Superior al Magistraturii (Supreme Council of the Judiciary), the Romanian, German, Estonian, Spanish, Italian and Polish Governments as well as by the European Commission.

12. At the hearing before the Court on 15 January 2018, the Romanian, German and Spanish Governments as well as the Commission presented their oral arguments.

6 Judgment of 20 January 2009, *Schultz-Hoff and Others* (C-350/06 and C-520/06, EU:C:2009:18).

7 Judgment of 24 January 2012, *Dominguez* (C-282/10, EU:C:2012:33).

8 Judgment of 20 January 2009, *Schultz-Hoff and Others* (C-350/06 and C-520/06, EU:C:2009:18).

9 Judgment of 24 January 2012, *Dominguez* (C-282/10, EU:C:2012:33).

10 That provision is worded as follows: 'An individual employment contract may be suspended on the initiative of the employee in the following cases: (a) parental leave to take care of children under two years of age ...' Article 49(2) of the Romanian Labour Code defines the effects of the suspension of the contract as follows: 'Following the suspension of the individual employment contract, the worker shall suspend the provision of work and the employer shall suspend the payment of remuneration'.

Analysis

13. In order to establish whether EU law requires Member States to take into consideration the period that a worker spent on parental leave for the purposes of calculating his entitlement to paid annual leave, it will be necessary, first, to note the requirements of both Directive 2003/88 and the Court's case-law relating to such annual leave before going on to examine any requirements which might be set out in the revised framework agreement on parental leave in that regard.

The scope of the right to paid annual leave

14. Article 7 of Directive 2003/88 provides for the right to paid annual leave by guaranteeing every worker such leave for a minimum period of four weeks. Only exceptionally can the minimum period of annual leave be replaced by a payment in lieu, that is to say, only when the employment relationship is terminated. [11]

15. The special position that the right to paid annual leave occupies in EU law is confirmed both by the Charter of Fundamental Rights of the European Union [12] ('the Charter'), which, in Article 31, conferred on it the status of a fundamental right, [13] and by the Court's case-law.

16. The Court has held on a number of occasions that 'the entitlement of every worker to paid annual leave must be regarded as a particularly important principle of EU social law from which there can be no derogations and whose implementation by the competent national authorities must be confined within the limits expressly laid down by [Directive 2003/88]'. [14]

17. The purpose of the right to paid annual leave — being 'to enable the worker to rest and to enjoy a period of relaxation and leisure' — explains the particular importance that the Court attaches to it. [15] It is a purpose that is essential to the health and safety of workers, as recital 4 of Directive 2003/88 notes. [16] The link between the 'actual rest' of a worker and the effective protection of his health and safety has also been highlighted by the Court. [17] In other words, a period of actual work must give rise to a right to a period of actual rest.

18. In my opinion, the specific aim pursued by the right to paid annual leave explains why the Court found that, 'with regard to workers on sick leave which has been duly granted, the right to paid annual leave conferred by Directive 2003/88 itself on all workers … cannot be made subject by a Member State to a condition concerning the obligation *actually* to have *worked* during the leave year laid down by that State'. [18] However, that case concerned a worker who was prevented, on account of illness, from taking accumulated paid annual leave at the end of a period during which he had *actually* worked. Accordingly, in paragraphs 44 and 45 of the judgment in *Schultz-Hoff and Others*, [19] the Court first held 'that a worker who … is on sick leave for the whole leave year and beyond the carry-over period laid down by national law *is denied* any period giving the opportunity to benefit from his paid annual leave', [20] before going on to state that 'to accept that, *in the specific circumstances of incapacity*

11 See Article 7(2) of Directive 2003/88.

12 OJ 2007 C 303, p. 1.

13 According to Article 31(2) of the Charter, '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'.

14 Judgment of 24 January 2012, *Dominguez* (C-282/10, EU:C:2012:33, paragraph 16 and the case-law cited).

15 Judgment of 20 January 2009, *Schultz-Hoff and Others* (C-350/06 and C-520/06, EU:C:2009:18, paragraph 25).

16 According to which 'the improvement of workers' safety, hygiene and health at work is an objective which should not be subordinated to purely economic considerations'.

17 See judgment of 20 January 2009, *Schultz-Hoff and Others* (C-350/06 and C-520/06, EU:C:2009:18, paragraph 23 and the case-law cited and paragraph 30 and the case-law cited). Also see judgment of 10 September 2009, *Vicente Pereda* (C-277/08, EU:C:2009:542, paragraph 20).

18 Judgment of 20 January 2009, *Schultz-Hoff and Others* (C-350/06 and C-520/06, EU:C:2009:18, paragraph 41). Emphasis added.

19 Judgment of 20 January 2009, *Schultz-Hoff and Others* (C-350/06 and C-520/06, EU:C:2009:18).

20 Emphasis added.

for work described … the relevant provisions of national law … can provide for *the loss* of the worker's right to paid annual leave guaranteed by Article 7(1) of Directive 2003/88, without the worker actually having the *opportunity to exercise* the right conferred on him by that directive, would mean that those provisions undermined the social right directly conferred by Article 7 of the directive on every worker'. [21]

19. The right to paid annual leave pursues the independent objective of allowing the worker to rest after having actually worked. It is therefore on the basis of the specific purpose of each type of leave that the Court stated, in the *Merino Gómez* judgment, [22] that 'a period of leave guaranteed by Community law cannot affect the right to take another period of leave guaranteed by that law'. [23] That case concerned a situation in which the dates of maternity leave and the dates of collective annual paid leave coincided. Since maternity leave is intended to protect a woman's biological condition during and after pregnancy and, subsequently, to protect the special relationship between a woman and her child over the period which follows pregnancy and childbirth, [24] where those leaves periods coincide, the requirements of Article 7(1) of Directive 2003/88 cannot be regarded as met. [25] The worker in question could not, therefore, be considered to have benefited from her paid annual leave on the ground that she had gone on maternity leave, the latter not being assumed to have enabled that worker to rest from work actually performed.

20. Although it is clear from reviewing those two judgments [26] that a period of one type of leave cannot substitute a period of another type of leave — in other words, the worker on maternity leave or sick leave is not deemed, for that reason alone, to have actually benefited from his or her right to paid annual leave, those three types of leave having different purposes — it should be noted that the Court did not, in those two cases, rule on whether the time spent by a worker on sick leave or maternity leave should be taken into consideration for the purpose of calculating paid annual leave itself.

21. It is in its judgment in *Dominguez* [27] that the Court seems to have broken the link that had been assumed to be intrinsic between the provision of actual work, on the one hand, and the right to paid annual leave, on the other. In that case, the worker in question claimed paid annual leave in relation to the period of more than one year during which she was off work, a period which she considered should be treated as a period of actual work. It is in that specific context that the Court stated that 'since Directive 2003/88 does not make any distinction between workers who are absent from work on sick leave during the reference period and those who have in fact worked in the course of that period … it follows that, with regard to workers on sick leave which has been duly granted, the right to paid annual leave conferred by that directive on all workers cannot be made subject by a Member State to a condition that the worker has actually worked during the reference period laid down by that State'. [28] Thus, 'any worker, whether he be on sick leave during the reference period as a result of an accident at his place of work or elsewhere, or as the result of sickness of whatever nature or origin, cannot have his entitlement to at least four weeks' paid annual leave affected'. [29]

21 Emphasis added.

22 Judgment of 18 March 2004, *Merino Gómez* (C-342/01, EU:C:2004:160).

23 See judgment of 20 January 2009, *Schultz-Hoff and Others* (C-350/06 and C-520/06, EU:C:2009:18, paragraph 26 and the case-law cited).

24 See judgment of 18 March 2004, *Merino Gómez* (C-342/01, EU:C:2004:160, paragraph 32 and the case-law cited). Also see judgments of 14 April 2005, *Commission* v *Luxembourg* (C-519/03, EU:C:2005:234, paragraph 32), and of 20 September 2007, *Kiiski* (C-116/06, EU:C:2007:536, paragraph 46).

25 See judgment of 18 March 2004, *Merino Gómez* (C-342/01, EU:C:2004:160, paragraph 33).

26 Namely judgments of 20 January 2009, *Schultz-Hoff and Others* (C-350/06 and C-520/06, EU:C:2009:18), and of 18 March 2004, *Merino Gómez* (C-342/01, EU:C:2004:160).

27 Judgment of 24 January 2012, *Dominguez* (C-282/10, EU:C:2012:33).

28 Judgment of 24 January 2012, *Dominguez* (C-282/10, EU:C:2012:33, paragraph 20).

29 Judgment of 24 January 2012, *Dominguez* (C-282/10, EU:C:2012:33, paragraph 30).

22. However, given the fundamental difference between the situation of a worker on sick leave and that of a worker on parental leave, due in particular to the fact that the second case does not concern a recognised inability to work outside the control of that worker, such a solution cannot, in my view, be extended to the situation of a worker on parental leave.

The silence of the revised framework agreement

23. Like the right to paid annual leave, the right to parental leave is laid down in Article 33(2) of the Charter. The Court has distinguished the latter from maternity leave as it is granted to parents to enable them to take care of their child.[30] Thus it is no longer simply a matter, in the context of parental leave, of protecting the biological condition of the woman referred to in this Opinion, but of helping parents who work to reconcile their occupational and parental responsibilities[31] by enabling them to *interrupt* their work whilst giving them the assurance that they will be entitled to return to the same or similar job.[32]

24. Parental leave thus appears on every level to be a specific form of leave, governed by its own legislative provision, namely Directive 2010/18. It is therefore necessary to consider whether there is any interaction between paid annual leave and parental leave. In that regard, it is important to note that Directive 2010/18 and, more precisely, the revised framework agreement, make no mention of any right to paid annual leave that should be recognised and granted during the period in which the worker is on parental leave. It is also important to note that the first paragraph in the preamble to the revised framework agreement states that the latter constitutes a commitment by the social partners, represented by the general cross-industry organisations, to introduce, through minimum requirements[33] on parental leave, measures to reconcile work and family responsibilities and to promote equal opportunities and equal treatment between men and women.[34]

25. The revised framework agreement confers on male and female workers an individual right to parental leave on the grounds of the birth or adoption of a child, in order to enable them to take care of that child until a given age.[35] The minimum duration of parental leave is set by the revised framework agreement at four months.[36] The conditions governing access and detailed rules for applying parental leave remain largely defined by national law.[37] Workers on parental leave benefit from protection of their employment rights and the right not to be discriminated against: they enjoy the right to return to the same job or an equivalent job at the end of their parental leave,[38] preservation of the rights acquired or in the process of being acquired on the date that parental leave starts[39] and protection against any less favourable treatment or dismissal on the grounds of an

30 See judgments of 14 April 2005, *Commission* v *Luxembourg* (C-519/03, EU:C:2005:234, paragraph 32); of 20 September 2007, *Kiiski* (C-116/06, EU:C:2007:536, paragraph 35); of 16 July 2015, *Maïstrellis* (C-222/14, EU:C:2015:473, paragraph 31); and of 16 June 2016, *Rodríguez Sánchez* (C-351/14, EU:C:2016:447). Also see clause 2(1) of the revised framework agreement.

31 See judgment of 16 July 2015, *Maïstrellis* (C-222/14, EU:C:2015:473, paragraph 38). Furthermore, the distinction between maternity leave and parental leave is made expressly clear in point 15 of the general considerations in the revised framework agreement (also see judgment of 16 June 2016, *Rodríguez Sánchez* (C-351/14, EU:C:2016:447, paragraph 43)).

32 See judgment of 13 February 2014, *TSN and YTN* (C-512/11 and C-513/11, EU:C:2014:73, paragraph 39). On the applicability of the revised framework agreement to civil service employees, see judgment of 7 September 2017, *H.* (C-174/16, EU:C:2017:637, paragraph 34 and the case-law cited).

33 Also see clause 1 of the revised framework agreement.

34 Also see judgments of 13 February 2014, *TSN and YTN* (C-512/11 and C-513/11, EU:C:2014:73, paragraph 38), and of 7 September 2017, *H.* (C-174/16, EU:C:2017:637, paragraph 29).

35 See clause 2(1) of the revised framework agreement.

36 See clause 2(2) of the revised framework agreement.

37 See clause 3(1) of the revised framework agreement.

38 See clause 5(1) of the revised framework agreement.

39 See clause 5(2) of the revised framework agreement. It is apparent from the case file that the rights acquired, in terms of paid annual leave, by Ms Dicu at the time she went on parental leave were not called into question at the end of the leave.

application for, or the taking of, parental leave.[40] By contrast, the Member States and, where relevant, the social partners remain responsible for defining the status of the employment contract or employment relationship for the period of parental leave[41] as well as matters regarding social security[42] and 'all matters regarding income in relation to [the revised framework agreement]'.[43]

26. At this point, it is important to note that the decision in the main proceedings not to take into account, for the purpose of determining Ms Dicu's right to paid annual leave for 2015 — the period during which she was on parental leave — is based on Article 51(1)(a) of the Romanian Labour Code, which provides for the suspension of the employment contract during parental leave to care for a child. As a result of that suspension, such leave is not equivalent to a period of actual work for the purposes of determining the duration of paid annual leave, as is clear from Article 145(4) to (6) of that Code.[44] That suspension appears to conform to the requirements of the revised framework agreement.

27. Moreover, by the very fact of that suspension, there does not appear to be any further tension between the situation in the main proceedings and Article 7 of Directive 2003/88. As the employment relationship is considered, according to national law and in full compliance with EU law, suspended for reasons which have nothing to do with the worker in question being ill,[45] Ms Dicu's situation with respect to the right to paid annual leave seems to me to be comparable to that of a worker whose working time has been temporarily reduced. With regard to the latter, the Court has ruled that 'although it cannot be accepted that a worker's right to minimum paid annual leave, guaranteed by EU law, may be reduced where the worker could not fulfil his obligation to work during the reference period due to an illness',[46] the case-law according to which Article 7 of Directive 2003/88 precludes national provisions under which, on termination of the employment relationship, no allowance in lieu of untaken paid annual leave is to be paid to a worker who has been on sick leave for the whole or part of the leave year and/or of a carry-over period, that being the reason he could not exercise his right to paid annual leave,[47] 'cannot be applied *mutatis mutandis* to a situation of a worker on short-time working'.[48] The Court went on to confirm clearly that 'the situation of a worker unable to work as a result of an illness, and that of a worker on short-time working, are fundamentally different'.[49]

28. The context in which the Court came to these conclusions is, for its part, entirely comparable to that of the present reference for a preliminary ruling in that the reduction in the working time of the employees concerned resulted from a social plan providing 'for the *suspension*, on the basis of [that reduction], of the *reciprocal obligations* of the employer and the employee as regards work and salary'.[50] In such a case, the Court has acknowledged that the right to paid annual leave may be calculated in accordance with the *pro rata temporis* rule.[51] In the light of the freedom granted to the

40 See clause 5(4) of the revised framework agreement.

41 See clause 5(3) of the revised framework agreement.

42 See the first sentence of clause 5(5) of the revised framework agreement.

43 See the second sentence of clause 5(5) of the revised framework agreement.

44 As regards the effects of suspension of the employment contract during parental leave as defined by Romanian law, see footnote 10 of this Opinion.

45 As the Court has observed, although Convention No 132 of the International Labour Organisation of 24 June 1970 concerning Annual Holidays with Pay expressly provides that absences owing to illness are to be counted as part of the period of service (see judgment of 20 January 2009, *Schultz-Hoff and Others* (C-350/06 and C-520/06, EU:C:2009:18, paragraph 38)), it says nothing about what happens in the case of parental leave.

46 Judgment of 8 November 2012, *Heimann and Toltschin* (C-229/11 and C-230/11, EU:C:2012:693, paragraph 26).

47 See judgment of 20 January 2009, *Schultz-Hoff and Others* (C-350/06 and C-520/06, EU:C:2009:18, paragraph 62).

48 Judgment of 8 November 2012, *Heimann and Toltschin* (C-229/11 and C-230/11, EU:C:2012:693, paragraph 26).

49 Judgment of 8 November 2012, *Heimann and Toltschin* (C-229/11 and C-230/11, EU:C:2012:693, paragraph 27).

50 Judgment of 8 November 2012, *Heimann and Toltschin* (C-229/11 and C-230/11, EU:C:2012:693, paragraph 28). Emphasis added. Also see paragraph 32 of that judgment.

51 The Court first redefined the workers concerned as 'part-time workers' (see judgment of 8 November 2012, *Heimann and Toltschin* (C-229/11 and C-230/11, EU:C:2012:693, paragraph 32)) then applied to them its relevant case-law (see, in relation to the case-law in question, judgment of 22 April 2010, *Zentralbetriebsrat der Landeskrankenhäuser Tirols* (C-486/08, EU:C:2010:215, paragraphs 33 and 34) and, for its application to the workers concerned, see judgment of 8 November 2012, *Heimann and Toltschin* (C-229/11 and C-230/11, EU:C:2012:693, paragraphs 33 to 35)).

Member States to determine the contractual arrangement between workers on parental leave and their employer as well as the fact that EU law does not interfere in the delicate matter of remuneration for parental leave, it is clear that not taking the latter into account for the purpose of calculating entitlement to paid annual leave is nothing other than a consequence of the suspension of reciprocal obligations that up to that point have linked Ms Dicu and her employer.[52] The fact that that suspension leads to a pro rata reduction of the latter's entitlement to paid annual leave does not appear, as EU law currently stands, open to criticism. Accordingly, in those circumstances, nor is the assertion made by the Court on a number of occasions that a period of leave guaranteed by EU law cannot affect another period of leave guaranteed by that law[53] contradicted, precisely because EU law does not guarantee a right to paid annual leave during a period in which the reciprocal obligations of the worker and employer are suspended and which is not deemed to be a period of actual work. The interpretation that I therefore propose that the Court should follow preserves both the integrity of paid annual leave and that of parental leave.

29. Ultimately it is for the Member States alone to decide, where appropriate, to go beyond the minimum prescribed by the revised framework agreement, if they so choose, by assimilating periods of parental leave to periods of actual work for the purpose of calculating entitlement to paid annual leave.

30. Lastly, I intend to resist all temptation to interpret the revised framework agreement, read in the light of the provisions setting out the right to paid annual leave, as imposing an obligation on the Member States to take into consideration, for the purpose of calculating the entitlement to paid annual leave of the workers concerned, only the minimum length of parental leave guaranteed by Clause 2(2) of the revised framework agreement — that is to say, four months. In addition to the fact that the legal basis for such an interpretation seems to me to be entirely uncertain, inter alia because it is not reflected in the Court's case-law on the revised framework agreement, I have previously expressly warned the Court, in another context,[54] about the risks entailed in making the minimum duration of four months the hard core of the protection conferred by EU law on workers on parental leave. *Mutatis mutandis*, that warning remains pertinent with regard to the answer to be given to the referring court in the present case.

31. As a result, it must be concluded that Article 7(1) of Directive 2003/88 must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which excludes from the calculation of the length of a worker's paid annual leave the period during which that worker was on parental leave to take care of a young child, by not treating that period as a period of actual work.

Conclusion

32. In the light of all the foregoing considerations, I propose that the Court answer the question referred for a preliminary ruling by the Curtea de Apel Cluj (Court of Appeal, Cluj, Romania) as follows:

Article 7(1) 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 precluding national legislation, such as that at issue in the main proceedings, which excludes from the calculation of the length of a worker's paid annual leave the period during which that worker was on parental leave to take care of a young child, by not treating that period as a period of actual work.

52 For the sake of completeness, I note that suspension of the contract and, accordingly, the reciprocal obligations as regards work and salary, is without prejudice to the continuation of the employment relationship, that is to say that the worker on parental leave retains his or her employment status (see judgment of 20 September 2007, *Kiiski* (C-116/06, EU:C:2007:536, paragraph 32)).

53 See the case-law referred to in point 19 of this Opinion.

54 See point 20 of my Opinion in *H.* (C-174/16, EU:C:2017:306).