

Paid leave and European Union law: Starting point of the limitation period for entitlement to paid leave allowance (Ruling n° 885 – 22-11.106, 22-10.529)

13/09/2023



Ruling No. 885

Partial quashing

FRENCH REPUBLIC

ON BEHALF OF THE FRENCH PEOPLE

RULING OF THE COUR DE CASSATION (COURT OF CASSATION), CHAMBER FOR SOCIAL AND LABOUR MATTERS, 13 SEPTEMBER 2023

I. The *Institut national des formations notariales* (National Institute of Notarial Training, INFN), whose registered office is [Address 2], successor to the rights of the *Institut des métiers du notariat* (Institute of Notary Professions) of [Town/City 3], lodged appeal No Z 22-10.529 against the judgment of the *cour d'appel* (Court of Appeal) of Aix-en-Provence (Chamber 4-3) of 26 November 2021 in its dispute with Ms [U] [G], residing at [Address 1],

respondent in the quashing.

II. Ms [U] [G] lodged appeal No. B 22-11.106 against the same ruling delivered between the same parties.

The appellant in appeal No. Z 22-10.529 bases the appeal on three pleas of quashing.

The plaintiff in appeal No. B 22-11.106 bases the appeal on eight pleas of quashing.

The case files were sent to the Prosecutor-General.

On the report of Mr Flores, judge, the observations of SCP Célice, Texidor, Périer, lawyer of the *Institut national des formations notariales*, SARL Matuchansky, Poupot and Valdelièvre, lawyer of Ms [G], and the advisory opinion of Ms Berriat, first advocate-general, after deliberations in the public hearing of 22 June 2023 attended by Mr Sommer, president, Mr Flores, reporting-judge, Ms Capitaine, elder Judge, Ms Monge, Ms Mariette, Mr Rinuy, Ms Van Ruymbeyke, Mr Pietton, Ms Cavrois, Ms Ott, Ms Somme, Mr Barincou, Ms Lacquemant, judges, Ms Ala, Ms Le Corre, Ms Chamley-Coulet, Ms Valéry, judges referee, Ms Berriat, first advocate-general, and Ms Piquot, Chamber Registrar,

the Chamber for Social and Labour Matters of the *Cour de cassation* (Court of Cassation), composed, pursuant to Articles R. 421-4-1 and R. 431-5 of the Judicial Code, of the above-mentioned President and Judges, having deliberated in accordance with the law, has delivered the present ruling.

Joinder

1. Given that they are related, appeals Nos. Z 22-10.529 and B 22-11.106 have been joined together.

Account of the dispute

Facts and Procedure

2. According to the judgment under appeal (Aix-en-Provence, 26 November 2021), Ms [G] worked at the *Institut des métiers du notariat* in [Town/City 3], which became the *Institut national des formations notariales* (the Institute).

3. The contractual relationship was terminated by letter of 20 June 2018.

4. Considering that she was linked to the Institute by an employment contract, on 28 September 2018 she lodged various claims for salaries and compensation before the labour court.

[...]

Pleas

On the first part of the second plea in appeal No. B 22-11.106

Statement of plea

10. The employee complained that the judgment limited the employer's order for holiday pay for the periods 2015-2016 and 2016-2017 to a certain sum and dismissed her claims for holiday pay for the reference periods 2005-2006 to 2014-2015, where "the employee bases her right to holiday pay directly on Article 31(2) of the Charter of Fundamental Rights of the European Union and Article 7 of Directive 2003/88 of the European Union, and the CJEU has ruled that these provisions preclude a claim against the employee that her right to holiday pay has lapsed when the employer does not establish that it has done everything in its power for the employee to exercise her right to a paid leave, that when the employment has ended, the right to paid leave acquired by the employee but not taken for reasons to do with the employer takes the form of financial compensation for paid leave; that, in order to dismiss Ms [G]'s claim for payment of the financial compensation corresponding to paid leave for the reference periods 2005-2006 to 2014-2015 inclusive, brought after the employer had terminated their relationship, the *cour d'appel* (Court of Appeal) merely stated that the action for payment of the compensation for paid leave was subject to the three-year limitation period applicable to salaries; in so ruling, without investigating whether the employer had demonstrated that the employer had taken all reasonable care to ensure that the employee was able to exercise her right to paid leave and had informed her of her entitlement thereto, even though it had found that, in accordance with supranational and national law, Ms [G], as an employee with a full-time permanent employment contract, had a right to rest and to payment of an allowance which she had not received, the court deprived its decision of any legal basis with regard to the principle of primacy and effectiveness of European Union law, Article 31(2) of the Charter of Fundamental Rights of the European Union, Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 as interpreted by the CJEU concerning paid leave, Article 55 of the Constitution which establishes the principle of the superiority of the Treaty over the law, and Article L. 3141-3 of the French Labour Code."

Statement of reasons

Court's response

Having regard to Article L. 143-14, which became Article L. 3245-1 of the Labour Code, in the wording resulting from Order No. 2007-329 of 12 March 2007, to Article L. 3245-1 of the Labour Code, in the wording resulting from Law No. 2008-561 of 17 June 2008, and to Article L. 3245-1 of the Labour Code in the wording resulting from Law No. 2013 D-501 of 14 June 2013, 21-V of that same law, to Article L. 223-11, which became L. 3141-22 of the Labour Code, in the wording resulting from Order No. 2007-329 of 12 March 2007 and to Article L. 3141-24 of the same code, in the wording resulting from Law No. 2016-1088 of 8 August 2016:

11. According to the first of these texts, the statute of limitations for bringing an action for payment of salary was set at five years in accordance with Article 2277 of the Civil Code.

12. According to the second text, the action for payment or recovery of salary was time-barred by five years in accordance with Article 2244 of the Civil Code.

13. According to the third text, an action for payment or recovery of salary is time-barred by three years from the day when the person who exercises it knew, or should have known, the facts allowing them to file said action. The claim may relate to sums due in respect of the last three years from that day or, where the employment contract is terminated, to sums due in respect of the three years preceding termination of the contract.

14. According to the fourth text, Article L. 3245-1 of the Labour Code is applicable to statutes of limitations in progress as of 16 June 2013, without the total statute of limitations period exceeding the period provided for by the previous law, i.e. five years.

15. According to the case-law of the *Cour de cassation* (Court of Cassation), the starting point for the statute of limitations for paid leave, which comes under the concept of salary, must be set at the expiry of the legal or conventional period during which the paid leave could have been taken (Soc., 14 November 2013, No. 12-17.409, Bull. 2013, V, No. 271).

16. However, the right to paid annual leave constitutes an essential principle of EU labour law (CJEU 6 November 2018, *Stadt Wuppertal v. Bauer*, C-569/16 and *Willmeroth v. Broßonn*, C-570/16, point 80).

17. The Court of Justice of the European Union has ruled that the right to paid leave at the end of a reference or carry-over period may be lost only if the worker has actually had the opportunity to exercise that right in good time. It adds that it is unacceptable for the employer, on the pretext of guaranteeing legal certainty, to invoke its own fault, namely that it failed to put the worker in a position where they could effectively exercise their right to paid leave, to benefit therefrom in the context of his/her action for the same right, by relying on the statute of limitations (CJEU 22 September 2022, *LB v/ TO*, C-120/21, points 45 and 48).

18. Accordingly, the Court of Justice of the European Union has ruled that 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 hours, and Article 31(2) of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding a national regulation under which the right to paid leave acquired by a worker under a reference period is time-barred at the end of a three-year period starting from the year in which the right arose, where the employer has not actually put the worker in a position to exercise that right (same ruling).

19. Furthermore, the *Cour de cassation* (Court of Cassation) believes that it is up to the employer to take the measures necessary to ensure that the employee is able to effectively exercise their right to paid leave, and, in the event of a dispute, to justify that they have proceeded with all diligence as required by law to that end (Soc., 13 June 2012, No. 11-10.929, Bull. V, No. 187; Soc. 21 September 2017, no. 16-18.898, Bull. V, No. 159).

20. It must therefore now be held that, where the employer opposes the dismissal based on the statute of limitations, the starting point for the statute of limitations of the allowance for paid leave must be set at the expiry of the legal period or that agreed in the corresponding collective agreement, during which the paid leave could have been taken if the employer can demonstrate that he proceeded with all diligence as legally required of him in order to ensure that the employee could effectively exercise his/her right to paid leave.

21. In dismissing the claim for payment of compensation for paid leave for the reference periods 2005-2006 to 2014-2015, the ruling held that the action for payment of said compensation was subject to the three-year statute of limitations applicable to salary payments, and that, consequently, the employee's claim for payment was admissible only in part.

22. In so ruling, without finding that the employer demonstrated having proceeded with all diligence as required by law to ensure that the employee could effectively exercise her right to leave, the *cour d'appel* (Court of Appeal) violated the above-mentioned texts.

Pleas

And on the third plea of appeal No. B 22-11.106

Statement of plea

23. The employee objects to the ruling dismissing her claim for payment of compensation for paid leave for the reference periods from 1 June 2018 to the date of her actual reinstatement, where "the employee is entitled to her right to paid leave in respect of the period during which she was dismissed, between the date of nullity of the dismissal and the date of reinstatement in her employment pursuant to Articles L. 3141-3 and L. 3141-9 of the Labour Code; by holding, in order to dismiss the claim for payment of compensation for the reference period from 1 June 2018 to the date of her actual reinstatement, that the compensation for dismissal was in the nature of a remedy and not a restoration, and the period of dismissal did not give rise to a right to paid leave, the *cour d'appel* (Court of Appeal) violated Articles L. 1226-9 and L. 1226-13 of the Labour Code."

Statement of reasons

Court's response

Having regard to Articles L. 1152-1, L. 1152-2, in the tenor prior to Law No. 2022-401 of 21 March 2022, and L. 1152-3 of the Labour Code:

24. According to the first of these texts, no employee may be subjected to repeated acts of psychological harassment which have the purpose or effect of degrading their working conditions in a way that is likely to violate their rights and dignity, affect their physical or mental health or compromise their professional future.

25. Under the second of these texts, no employee or person undergoing training or on a traineeship may be penalised, dismissed or be the subject of a discriminatory, direct or indirect measure, in particular with regard to remuneration, professional training, transfer or renewal of contract for having undergone or refused to accept such treatment or for having reported the fact.

26. Under the latter, any termination of the employment contract occurring in disregard of Articles L. 1152-1 and L. 1152-2, any provision or any act to the contrary is null and void.

27. Employees are entitled to paid leave during the period of dismissal from the date of their dismissal from employment to the date of their reinstatement pursuant to Articles L. 3141-3 and L. 3141-9 of the Labour Code, except when they have been employed in another job during that period.

28. In order to dismiss the employee's claim for compensation for paid leave for the reference periods from 1 June 2018 to the date of her actual reinstatement, the ruling, after holding that the dismissal was null and void pursuant to Article L. 1152-3 of the Labour Code, holds that the compensation for dismissal is in the nature of remedy and not restoration, and paid leave are not due during the period of dismissal.

29. In so ruling, the Court of Appeal violated the above-mentioned texts.

Scope and consequences of the quashing

30. The quashing of the operative parts relating to claims for back pay for paid leave does not include the operative parts of the ruling ordering the *Institut national des formations notariales* to pay the costs and to pay a sum pursuant to Article 700 of the Code of Civil Procedure, which are justified by other sentences pronounced against the latter.

ON THESE GROUNDS, and without the need for judgment on the other plea, the Court:

Dismisses appeal No. Z 22-10.529;

QUASHES AND SETS ASIDE, but only insofar as it limits the order whereby the *Institut national des formations notariales* is instructed to pay compensation for paid leave for the years 2015/2016 to 2016/2018 amounting to EUR 6,042.77 gross, EUR 7,088 gross and EUR 6,939.50 gross and dismisses the other claims for compensation for paid leave, the ruling delivered on 26 November 2021 between the parties by the *cour d'appel* (Court of Appeal) of Aix-en-Provence;

Returns, on these points, the case and the parties to the status existing prior to the said ruling and refers them to the *cour d'appel* (Court of Appeal) of Aix-en-Provence otherwise composed;

Orders the *Institut national des formations notariales* to pay the costs;

In accordance with Article 700 of the Code of Civil Procedure, rejects the requests made by the *National Institute of Notarial Education* and orders it to pay Ms [G] the sum of EUR 3,000;

Finds that, at the behest of the Prosecutor-General at the *Cour de cassation* (Court of cassation), the present ruling will be forwarded for transcription in the margin or at the bottom of the partially overturned judgment;

Thus decided by the Chamber for Social and Labour Matters of the *Cour de cassation* (Court of Cassation) and pronounced by the president at the public hearing on the thirteenth day of the month of September of the year two thousand and twenty-three.

President : Mr Sommer

First advocate-general : Ms Berriat

Judge : M. Flores

Lawyer(s) : of SCP Célice, Texidor, Périer – SARL Matuchansky, Poupot and Valdelièvre

[READ THE FRENCH VERSION](#)

Institution judiciaire

Translated rulings