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NEWS REPORT

Country:	France
Title:	CJEU decision of 26 March 2015 no C-316/13
Date:	7 April 2015
Expert:	Sophie Latraverse
Context	
Issue at stake:	Whether disabled persons attending a work based occupational centre (<i>Etablissement et service d'aide par le travail</i>) who are not employees according to national law, can be qualified as workers according to EU Law
Ground of discrimination:	Disability
Source:	CJEU
Field:	Employment
Applicable law:	Article 1 and 2 of Directive 2003/88

Content

Case: Plaintiff attended an 'occupational centre through employment' (*Etablissement et service d'aide par le travail*) from 1 February 1996 to 20 June 2005. He benefited from 5 weeks paid holidays until 2004 when he fell sick. He then had 12 remaining days to take for 2004 and remained on sick leave for a year.

When he resigned, Plaintiff requested to be paid, as any salaried employee, holidays he had not taken since 2004, for a value of 945 €. The centre refused to pay.

In French law, disabled persons attending these centres are not considered as employees and many provisions of the labour code do not apply to their occupation.

Plaintiff raised before the court that the minimal holidays claimed were mandatory in application of Directive 2003/88 relating to certain aspects of working hours.

Plaintiff's case was dismissed and he brought it before the Court of Cassation which referred the following prejudicial question to the CJEU: The issue is whether persons attending work based occupational centres, who are not deemed employees by national law, benefit from protection of workers afforded by EU Law and directive 2003/88.

Decision of the Court: The CJEU decided that Directive 2003/88 applied to persons attending work based occupational centres as regards its provisions relating to working time, regardless of their worker's status in national law.

¹ These centres allow persons who are not independent enough to exercise work independently or adapted work in an ordinary work environment, to have access to employment in a protected environment where they are not subject to dismissal or discipline.

In order to define whether a disabled person with such an occupation is a worker according to EU Law, the national judge must take into consideration objective parameters and all circumstances of the context of the work executed and the relation between the parties. The fact that persons attending these centres are not subject to some provisions of the labour code is not a determining factor.

Even if the work executed in these centres and its conditions of execution are meant to accommodate a person's disability, it has an economic value, is a paid activity, provides a person with social security and pursues the production of value. The fact that it is not subject to minimum wage and paid much less is not relevant. The applicable test is whether there is a real and effective production, as opposed to marginal and purely accessory, as it was held in the case of a detox centre for addicts.²

The national judge must therefore verify value and organisation of the work to determine if it comes within the realm of the employment market.

Key points of analysis: The issue of the case is in what circumstances minimal rights and obligations protected by directive 2003/88 are opposable to centres proposing activity in a special environment for disabled persons, who are not otherwise covered by the labour code, on the ground that the activity qualifies as work according to EU Law.

Internet link source:

<http://curia.europa.eu/juris/celex.jsf?celex=62013CJ0316&lang1=fr&type=TXT&ancre=>
(not yet available in English)

² *Bettray*, Case C-344/87, EU:C:1989:226; *Trojani*, case C-456/02, EU:C:2004:488.