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Supreme Court invokes EU legislation,  
disregarding the French Labor Code's  
annual leave provisions

Alliant Global Knowledge Center

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## Supreme Court invokes EU legislation, disregarding the French Labor Code's annual leave provisions

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On 13 September 2023, three Supreme Court rulings related to paid annual leave entitlements set aside the provisions of the French Labor Code, and directly applied European Union (EU) legislation.

The rulings bring paid annual leave entitlements into conformity with EU legislation.

Specifically, based on these recent rulings:

- Sick or injured employees will be entitled to paid annual leave accrual during their sick leave, even if this absence is unrelated to a work accident or an occupational illness;
- In the event of a work accident or occupational disease, the calculation of paid leave entitlements will no longer be limited to the first year of sick leave;
- The statute of limitations for annual leave back payment claims only begins to run when the employer has placed their employee in a position that allows them to effectively exercise their entitlement in good time.

### Details of the cases

*Case 1, Supreme Court, Appeal No. 22-17.340:* Employees contracted a non-occupational illness which prevented them from working. Subsequently, they calculated their entitlement to

paid leave by including the period during which they were unable to work. According to French legislation, an employee does not accrue annual leave during a sick leave that is due to a non-occupational illness.

*Case 2, Supreme Court, Appeal No. 22-17.638:* An employee who was the victim of a work accident, included the entire period during which he was away from work in calculating his paid leave entitlements. In application of French legislation, the Court of Appeal considered that this calculation could not take into account more than one year of leave of absence. The employee filed an appeal with the Supreme Court.

*Case 3, Supreme Court, Appeal No. 22-10.529:* A teacher worked for a training institute for more than 10 years. Following a lower court's ruling that qualified the contractual relationship as an employment contract, the teacher requested compensation for the paid leave that she was never able to take during the years of service. The court of appeal considered that the teacher should be compensated, but only based on the three years preceding the recognition by the courts of her employment contract. The teacher and the training institute each filed an appeal with the Supreme Court.

## Annual leave accrual during sick leave

Article 7 of the EU Directive 2003/88/CE of 4 November 2003 provides that employees are entitled to four weeks of employer-paid annual leave each year. The Directive is silent on annual leave accrual rights during leaves of absence.

In contrast, [Article L 3141-3](#) and [Article L 3141-5](#) of the Labor Code, provide that employer-paid annual leave is not accrued during an employee's sick leave, unless the sick leave is due to an occupational illness or accident, in which case annual leave accrual is limited to the employee's first year of sick leave.

In both Appeal No. 22-17.340 and Appeal No. 22-17.638, the Supreme Court ruled that employees suffering from an illness or an accident, of any nature whatsoever (i.e., occupational or non-occupational) are entitled to paid leave accrued over a period that includes the time during which they could not work, i.e., during their sick leave.

For these rulings, the Supreme Court, invoked Article 31, Section 2 of the Charter of Fundamental Rights of the European Union on the right to rest, to reject the provisions of French Labor Code which are not in conformity with EU legislation.

## Statute of limitations for back payment claims

According to [Article L. 3245-1 of the Labor Code](#), the limitation period for claims for payment or

recovery of pay is three years, starting from the day on which the individual exercising an entitlement knew or should have known the facts allowing them to exercise their right.

In Appeal No. 22-17.340 the Supreme Court's ruling determined that the three-year statute of limitations for claiming annual leave back payments, starts once the period over which the leaves could have been taken ends, and provided the employer has taken the measures required to allow the employee to effectively exercise their paid leave entitlement.

This ruling was in the case of the teacher who was not able to take paid leave during her 10 years of service, because the employer had not recognized the existence of an employment contract, and therefore, the limitation period could not begin to run.

## Underlying rulings

Supreme Court, Appeal No. 22-17.340 of 13 September 2023 ([13 septembre 2023, Cour de cassation, Pourvoi n° 22-17.340](#))

Supreme Court, Appeal No. 22-17.638 of 13 September 2023 ([13 septembre 2023, Cour de cassation, Pourvoi n° 22-17.638](#))

Supreme Court, Appeal No. 22-17.529 of 13 September 2023 ([13 septembre 2023, Cour de cassation, Pourvoi n° 22-17.529](#))



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Negda Jahanshahi serves Alliant's multinational clients as Global Compliance Consultant.

Negda has 30 years of experience primarily working in international development and later in international HR benefits.

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Negda received her MA in Economics from The Johns Hopkins University, and her B.A. in Economics from the University of Brussels. She is trilingual in English, French and Farsi.

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