SENTENZA DELLA CORTE (Prima Sezione)

18 gennaio 2024 ( * )

(Rinvio pregiudiziale – Politica sociale – Direttiva 2003/88/CE – Articolo 7 – Articolo 31, paragrafo 2, della Carta dei diritti fondamentali dell'Unione europea – Indennità sostitutiva dei giorni di ferie non goduti al termine del rapporto di lavoro – Normativa nazionale che vieta la corresponsione di tale indennità in caso di dimissioni volontarie di un dipendente pubblico – Controllo della spesa pubblica – Esigenze organizzative del datore di lavoro pubblico)

Nella causa C-218/22,

DOMANDA DI PRONUNZIA PREGIUDIZIALE AI SENSI DELL'ART. 267 TFUE, proposta dal Tribunale di Lecce, con decisione del 22 marzo 2022, pervenuta in cancelleria il 24 marzo 2022, nel procedimento

**BU**

v

**Comune di Copertino,**

LA CORTE (Prima Sezione),

composta da A. Arabadjiev, presidente di sezione, T. von Danwitz, PG Xuereb, A. Kumin e I. Ziemele (relatore), giudici,

avvocato generale: T. Ćapeta,

Cancelliere: A. Calot Escobar,

vista la procedura scritta,

considerate le osservazioni presentate per conto di:

– BU, da A. Russo, avvocato,

– Comune di Copertino, da L. Caccetta, avvocata,

– per il governo italiano, da G. Palmieri, in qualità di agente, assistito da L. Fiandaca, avvocato dello Stato,

– per la Commissione europea, da B.-R. Killmann e D. Recchia, in qualità di agenti,

sentite le conclusioni dell'avvocato generale nell'udienza dell'8 giugno 2023,

dà quanto segue

## Giudizio

1 La presente domanda di pronuncia pregiudiziale verte sull'interpretazione dell'articolo 7 della direttiva 2003/88/CE del Parlamento europeo e del Consiglio, del 4 novembre 2003, relativa a taluni aspetti dell'organizzazione dell'orario di lavoro (GU L 299, pag. 9). ), e dell'articolo 31, paragrafo 2, della Carta dei diritti fondamentali dell'Unione europea (in prosieguo: la «Carta»).

2 La domanda è stata proposta nell'ambito di una controversia tra BU, ex dipendente pubblico del Comune di Copertino (Comune di Copertino, Italia), e il Comune di Copertino in merito al rifiuto di corrispondere a BU un'indennità sostitutiva delle ferie annuali retribuite non godute la data di cessazione del rapporto di lavoro a seguito di dimissioni volontarie della BU per andare in pensione anticipata.

### Contesto giuridico

#### *Diritto dell'Unione Europea*

3 Il considerando 4 della direttiva 2003/88 così dispone:

"Il miglioramento della sicurezza, dell'igiene e della salute dei lavoratori sul lavoro è un obiettivo che non deve essere subordinato a considerazioni puramente economiche."

4 L'articolo 7 della direttiva 2003/88, rubricato «Ferie annuali», così dispone:

'1. Gli Stati membri adottano le misure necessarie affinché ogni lavoratore abbia diritto a ferie annuali retribuite di almeno quattro settimane secondo le condizioni di diritto e di concessione di tali ferie stabilite dalle legislazioni e/o prassi nazionali.

2. Il periodo minimo di ferie annuali retribuite non può essere sostituito da un'indennità sostitutiva, salvo in caso di cessazione del rapporto di lavoro».

#### *Legge italiana*

5 L'articolo 36, comma 3, della Costituzione italiana prevede quanto segue:

«Il lavoratore ha diritto al riposo settimanale e alle ferie annuali retribuite e non può rinunciare a tali diritti».

6 L'articolo 2109 del Codice civile, rubricato «Periodo di riposo», così dispone, ai paragrafi 1 e 2:

'1. Il lavoratore ha diritto ad un giorno di riposo settimanale, che normalmente cade di domenica.

2. Ha diritto inoltre ad un periodo annuale di ferie retribuite, anche continuative, in tempi determinati dal datore di lavoro, tenendo conto delle esigenze dell'impresa e degli interessi del lavoratore. La durata di questo periodo sarà determinata dalla legge, dagli standard aziendali, dalle pratiche o dall'equità.'

7 Articolo 5 del Decreto-legge n. 95 – Disposizioni urgenti per la revisione della spesa pubblica con invarianza dei servizi ai cittadini nonché misure di rafforzamento patrimoniale delle imprese del settore bancario (Decreto-Legge n. 95 recante disposizioni urgenti per la revisione della spesa pubblica senza modifica dei servizi ai cittadini e misure di rafforzamento patrimoniale delle imprese del settore bancario), del 6 luglio 2012 (Supplemento ordinario alla GURI n.

156 del 6 luglio 2012), convertito in legge, con modificazioni, dall'articolo 1, comma 1, della legge n. 135 del 7 dell'agosto 2012, nella versione applicabile alla controversia principale («decreto legge n. 95»), rubricato «Riduzione della spesa delle amministrazioni di servizio pubblico», prevede al punto 8:

«Le ferie, i riposi e le altre ferie del personale, anche dirigente, delle pubbliche amministrazioni incluso nel conto economico consolidato della pubblica amministrazione, come individuato dall'[Istituto nazionale di statistica – ISTAT] nell'art. 1, comma 2, della legge 31 dicembre 2009, n. 196 e delle autorità indipendenti, tra cui [la Commissione nazionale per le società e la borsa – Consob], devono essere adottate ai sensi dell'articolo 1, comma 2, della legge 31 dicembre 2009, n. le disposizioni dei rispettivi regolamenti di dette autorità e non possono in nessun caso dar luogo al pagamento di indennità compensative. Tale disposizione si applica anche nel caso in cui il rapporto di lavoro cessi per ragioni relative al cambiamento di sede, alle dimissioni, al licenziamento, al pensionamento o al pensionamento per raggiunti limiti di età. Eventuali disposizioni normative e contrattuali più favorevoli cessano di essere applicabili a decorrere dall'entrata in vigore del presente decreto-legge. La violazione di tale disposizione, oltre a comportare il recupero delle somme indebitamente corrisposte, darà luogo a responsabilità disciplinare e amministrativa a carico dell'amministratore responsabile. Il presente comma non si applica al personale docente, amministrativo, tecnico e ausiliario che abbia la qualifica di supplente temporaneo e occasionale o al personale docente a contratto fino al termine dei corsi o delle attività didattiche, nel limite della differenza tra i giorni di permesso spettanti nonché i giorni in cui il personale in questione è autorizzato a prendere ferie».

**Causa principale e questioni pregiudiziali**

8 Dal 1° febbraio 1992 al 1° ottobre 2016, BU è stato alle dipendenze del Comune di Copertino, dove ha ricoperto l'incarico di *Istruttore Direttivo* .

9 A partire dal 1° ottobre 2016, a seguito di dimissioni volontarie, BU si è dimesso dal suo incarico per andare in pensione anticipata.

10 Ritenendo di avere diritto a un'indennità sostitutiva di 79 giorni di ferie annuali retribuite maturate nel periodo compreso tra il 2013 e il 2016, la BU ha proposto ricorso dinanzi al Tribunale di Lecce, giudice del rinvio , chiedendo un risarcimento economico per i giorni di ferie non goduti.

11 Il Comune di Copertino si è opposto a tale richiesta dinanzi al giudice del rinvio, invocando l'articolo 5, comma 8, del decreto legge n. 95. Secondo il Comune di Copertino, il fatto che BU avesse usufruito delle ferie nel corso del 2016 dimostrava che egli era consapevole dei suoi obblighi , ai sensi di tale disposizione, di fruire dei giorni di ferie maturati prima della cessazione del rapporto di lavoro. Inoltre, nonostante le dimissioni, non ha usufruito del saldo delle sue ferie.

12 The referring court states that the 79 days of leave not taken, referred to by BU, correspond to days of paid annual leave provided for by Directive 2003/88, 55 of which are payable in respect of the years prior to 2016 and the remainder in respect of that final year of employment. That court adds that BU took leave in 2016, corresponding to days acquired in respect of previous years, which had been carried over to 2013 and subsequent years. That situation does not, however, imply any abusive conduct on the part of BU which could amount to the conduct referred to in paragraph 48 of the judgment of 6 November 2018, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften* (C-684/16, EU:C:2018:874).

13 The referring court also notes that the Corte costituzionale (Constitutional Court, Italy), in judgment No 95/2016, held that Article 5(8) of Decree-Law No 95 – which applies to public servants and provides, subject to certain exceptions, that no financial compensation may be paid for untaken paid leave – complied with the principles enshrined in the Italian Constitution, without infringing the principles of EU law or the rules of international law. That court reached that conclusion by identifying various exceptions to that rule, which are not relevant in the present case.

14 The Corte costituzionale (Constitutional Court) took into account both the need to control public expenditure and organisational constraints for public sector employers, noting that that legislation was intended to bring to an end the uncontrolled use of 'financial compensation' for leave not taken and to ensure that the actual taking of leave is prioritised. According to that court, the prohibition on paying an allowance in lieu of leave would be set aside where the leave was not taken for reasons beyond the control of the worker, such as illness, but not in the event of voluntary resignation.

15 However, the referring court has doubts as to the compatibility with EU law of Article 5(8) of Decree-Law No 95, in particular in the light of the judgment of 25 November 2021, *job-medium* (C-233/20, EU:C:2021:960), especially as the objective of controlling public expenditure is apparent from the very title of Article 5 of that decree-law and paragraph 8 of that article forms part of a set of measures aimed at achieving savings in the public administration sector.

16 In those circumstances, the Tribunale di Lecce (District Court, Lecce) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Should Article 7 of Directive [2003/88] and Article 31(2) of the [Charter] be interpreted as precluding national legislation, such as that at issue in the main proceedings (namely Article 5(8) of [Decree-Law No 95] …), which, for reasons of public expenditure containment and organisational requirements of the public sector as employer, does not permit the monetisation of leave in the event that an employee in the public service resigns?

(2) If the answer [to the first question] is in the affirmative, must Article 7 of Directive [2003/88] and Article 31(2) of the [Charter] be interpreted as requiring the employee in the public service to demonstrate that it was impossible for him/her to take the leave concerned in the course of the employment relationship?'

**Consideration of the questions referred**

***Admissibility***

17 The Italian Republic submits that the questions referred for a preliminary ruling are inadmissible, since the case-law of the Court resulting from the judgments of 20 July 2016, *Maschek* (C-341/15, EU:C:2016:576), and of 6 November 2018, M*ax-Planck-Gesellschaft zur Förderung der Wissenschaften* (C-684/16, EU:C:2018:874), clearly indicates how the national law should be interpreted in order for it to be compatible with EU law and the Corte costituzionale (Constitutional Court) has adopted that interpretation. Moreover, the second question contains contradictory statements.

18 In that regard, it should first be noted that, in the light of the Rules of Procedure of the Court of Justice, the fact that a national court is not required to make a reference to the Court of Justice or that the answer to a request for a preliminary ruling is supposedly obvious in the light of EU law has no bearing on the admissibility of such a request (judgment of 25 November 2021, *job-medium*, C-233/20, EU:C:2021:960, paragraph 16).

19 Furthermore, in accordance with the Court's settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is, in principle, required to give a ruling (judgment of 25 November 2021, *job-medium*, C-233/20, EU:C:2021:960, paragraph 17 and the case-law cited).

20 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 25 November 2021, *job-medium*, C-233/20, EU:C:2021:960, paragraph 18 and the case-law cited).

21 According to the referring court, on the basis of Article 5(8) of Decree-Law No 95, BU cannot be granted the allowance in lieu of leave which he claims in respect of paid annual leave not taken on the date of the termination of the employment relationship, on the ground that he voluntarily terminated that relationship. In that context, by its questions, the referring court seeks to ascertain whether that provision is compatible with Article 7 of Directive 2003/88 and with Article 31(2) of the Charter.

22 The questions referred therefore concern the interpretation of EU law and it is not obvious that the interpretation of those provisions sought by that court bears no relation to the actual facts of the main action or its purpose, or that the problem is hypothetical. Furthermore, the Court has before it the information necessary to give a useful answer to those questions.

23 It follows that the questions referred are admissible.

***Substance***

24 By its two questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 7 of Directive 2003/88 and Article 31(2) of the Charter must be interpreted as precluding national legislation which, for reasons relating to the control of public expenditure and the organisational needs of the public employer, prohibits the payment to a worker of an allowance in lieu of days of paid annual leave acquired, during both the last year of employment and previous years, which were not taken at the date of termination of the employment relationship, where that worker voluntarily terminates that relationship and has not shown that he or she had not taken his or her leave during that employment relationship for reasons beyond his or her control.

25 It should be recalled as a preliminary point that, according to the settled case-law of the Court, every worker's right to paid annual leave must be regarded as a particularly important principle of EU social law from which there may be no derogations and whose implementation by the competent national authorities must be confined within the limits expressly laid down by Directive 2003/88 (see, to that effect, judgment of 6 November 2018, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften*, C-684/16, EU:C:2018:874, paragraph 19 and the case-law cited).

26 Thus, Article 7(1) of Directive 2003/88, which provides that Member States are to 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, reflects and gives effect to the fundamental right to a period of paid annual leave enshrined in Article 31(2) of the Charter (see, to that effect, judgment of 25 November 2021, *job-medium*, C-233/20, EU:C:2021:960, paragraph 25 and the case-law cited).

27 In that regard, as is apparent from the very wording of Article 7(1) of Directive 2003/88 and from the case-law of the Court, it is for the Member States to lay down, in their domestic legislation, conditions for the exercise and implementation of the right to paid annual leave, by prescribing the specific circumstances in which workers may exercise the right (judgment of 22 September 2022, *LB* (*Limitation period for the right to paid annual leave*), C-120/21, EU:C:2022:718, paragraph 24 and the case-law cited).

28 However, Member States must refrain from making the very existence of that right, which derives directly from that directive, subject to any preconditions whatsoever (see, to that effect, judgment of 25 November 2021, *job-medium*, C-233/20, EU:C:2021:960, paragraph 27 and the case-law cited).

29 It should be borne in mind that the right to annual leave constitutes only one of two aspects of the right to paid annual leave as a fundamental principle of EU social law. That fundamental right also includes, as a right which is consubstantial with the right to 'paid' annual leave, the right to an allowance in lieu of annual leave not taken upon termination of the employment relationship (judgment of 25 November 2021, *job-medium*, C-233/20, EU:C:2021:960, paragraph 29 and the case-law cited).

30 In that regard, it should be recalled that upon termination of the employment relationship, the actual taking of paid annual leave to which a worker is entitled is no longer possible. In order to prevent this impossibility from leading to a situation in which the worker loses all enjoyment of that right, even in pecuniary form, Article 7(2) of Directive 2003/88 provides that, in the event of termination of the employment relationship, the worker is entitled to an allowance in lieu for the days of annual leave not taken (judgment of 6 November 2018, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften*, C-684/16, EU:C:2018:874, paragraph 22 and the case-law cited).

31 The Court has held that Article 7(2) of Directive 2003/88 lays down no condition for entitlement to an allowance in lieu other than that relating to the circumstance, first, that the employment relationship has ended and, secondly, that the worker has not taken all the annual leave to which he was entitled on the date that that relationship ended (judgment of 6 November 2018, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften*, C-684/16, EU:C:2018:874, paragraph 23 and the case-law cited). That right is conferred directly by the directive and does not depend on conditions other than those which are explicitly provided for therein (judgment of 6 November 2018, *Kreuziger*, C-619/16, EU:C:2018:872, paragraph 22 and the case-law cited).

32 It follows, in accordance with Article 7(2) of Directive 2003/88, that a worker who has not been able to take all his entitlement to paid annual leave before his employment relationship has ended, is entitled to an allowance in lieu of paid annual leave not taken. In that respect, the reason for which the employment relationship has ended is not relevant. Therefore, the fact that a worker terminates, at his own request, his employment relationship has no bearing on his entitlement to receive, where appropriate, an allowance in lieu of paid annual leave which he has not been able to use up before the end of his employment relationship (judgments of 20 July 2016, *Maschek*, C-341/15, EU:C:2016:576, paragraphs 28 and 29, and of 25 November 2021, *job-medium*, C-233/20, EU:C:2021:960, paragraphs 32 and 34).

33 That provision precludes national legislation or practices which provide that, upon termination of the employment relationship, no allowance in lieu of paid annual leave not taken is to be paid to a worker who has not been able to take all the annual leave to which he was entitled before the end of that employment relationship, in particular because he or she was on sick leave for all or part of the leave year and/or of a carry-over period (judgment of 6 November 2018, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften*, C-684/16, EU:C:2018:874, paragraph 24 and the case-law cited).

34 Thus, by providing that the minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated, Article 7(2) of Directive 2003/88 aims in particular to ensure that workers are entitled to actual rest, with a view to ensuring effective protection of their health and safety (judgment of 6 November 2018, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften*, C-684/16, EU:C:2018:874, paragraph 33).

35 Thus, Article 7(1) of Directive 2003/88 does not in principle preclude national legislation which lays down conditions for the exercise of the right to paid annual leave expressly conferred by the directive, including even the loss of that right at the end of a leave year or of a carry-over period, provided, however, that the worker who has lost his or her right to paid annual leave has actually had the opportunity to exercise the right conferred on him or her by the directive (judgment of 6 November 2018, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften*, C-684/16, EU:C:2018:874, paragraph 35 and the case-law cited).

36 In the present case, it is apparent from the order for reference, first, that the worker acquired days of paid annual leave over several reference periods which appear to have accumulated, of which a proportion, acquired both since 2013 and during 2016, had not yet been taken when the employment relationship ended on 1 October 2016. Secondly, it appears that, under Article 5(8) of Decree-Law No 95, that worker is not entitled to the allowance in lieu of all those days of leave not taken solely because he voluntarily terminated the employment relationship by taking early retirement, which he would have been able to foresee in advance.

37 In that regard, it is apparent from the information in the request for a preliminary ruling that, according to the Corte costituzionale (Constitutional Court), that provision is intended to put an end to the uncontrolled use of 'financial compensation' for leave not taken. Thus, alongside measures to control public expenditure, the purpose of the rule established by that provision is to ensure that the actual taking of leave is prioritised over the payment of an allowance in lieu.

38 The latter objective corresponds to that pursued by Directive 2003/88, in particular Article 7(2) thereof, which, as recalled in paragraph 34 of the present judgment, seeks in particular to ensure that workers are entitled to actual rest, with a view to ensuring effective protection of their health and safety.

39 In view of that objective, and since Article 7(1) of Directive 2003/88 does not in principle preclude national legislation which lays down conditions for the exercise of the right to paid annual leave expressly conferred by the directive, including even the loss of that right at the end of a leave year or of a carry-over period, that directive cannot, as a matter of principle, prohibit a national provision which provides that, at the end of such a period, the days of paid annual leave not taken may no longer be replaced by an allowance in lieu, including where the employment relationship is subsequently terminated, provided that the worker has had the opportunity to exercise the right conferred on him by that directive.

40 The reason for which the employment relationship has ended is not relevant as regards the entitlement to an allowance in lieu provided for in Article 7(2) of Directive 2003/88 (see, to that effect, judgment of 25 November 2021, *job-medium*, C-233/20, EU:C:2021:960, paragraphs 32 and 34).

41 It follows from the foregoing considerations that the national legislation at issue in the main proceedings, as interpreted by the Corte costituzionale (Constitutional Court), which prohibits the payment to a worker of an allowance in lieu of paid annual leave not taken on the date of termination of the employment relationship on the ground that that worker voluntarily terminated his employment relationship with his employer, introduces a condition which goes beyond those expressly laid down in Article 7(2) of Directive 2003/88, as recalled in paragraph 31 of the present judgment. In addition, that prohibition covers, in particular, the last year of

employment and the reference period during which the employment relationship ended. That national legislation therefore limits the right to an allowance in lieu of annual leave not taken on termination of the employment relationship, which constitutes one of the aspects of the right to paid annual leave, as is apparent from the case-law cited in paragraph 29 above.

42 In that regard, it must be borne in mind that limitations may be imposed on the right to paid annual leave provided that the conditions laid down in Article 52(1) of the Charter are complied with, namely that those limitations are provided for by law, respect the essence of that right and, subject to the principle of proportionality, are necessary and genuinely meet objectives of general interest recognised by the European Union (judgment of 22 September 2022, *LB (Limitation period for the right to paid annual leave)*, C-120/21, EU:C:2022:718, paragraph 36 and the case-law cited).

43 In the present case, the limitation at issue in the main proceedings on the exercise of the fundamental right referred to in Article 31(2) of the Charter is provided for by law, more specifically by Article 5(8) of Decree-Law No 95.

44 As regards the objectives pursued by the national legislature, which the referring court questions in particular, it is apparent from the wording of the first question that those objectives, as indicated in the title of Article 5 of Decree-Law No 95 and as interpreted by the Corte costituzionale (Constitutional Court), are, first, the control of public expenditure and, secondly, the organisational needs of the public employer, including rational planning of the leave period and encouraging the adoption of appropriate behaviour on the part of the parties to the employment relationship.

45 First, as regards the objective of controlling public spending, it is sufficient to note that it is apparent from recital 4 of Directive 2003/88 that the effective protection of the safety and health of workers should not be subordinated to purely economic considerations (judgment of 14 May 2019, *CCOO*, C-55/18, EU:C:2019:402, paragraph 66 and the case-law cited).

46 Secondly, as regards the objective linked to the organisational needs of the public employer, it should be noted that it is aimed, in particular, at rational planning of the leave period and encouraging the adoption of appropriate behaviour on the part of the parties to the employment relationship, with the result that it may be understood as being intended to encourage workers to take their leave and as meeting the objective of Directive 2003/88, as can be seen from paragraph 38 above.

47 In addition, it should be borne in mind that the Member States may not derogate from the principle flowing from Article 7 of Directive 2003/88, read in the light of Article 31(2) of the Charter, that the right to paid annual leave acquired cannot be lost at the end of the leave year and/or of a carry-over period fixed by national law, when the worker has been unable to take his or her leave (see, to that effect, judgment of 6 November 2018, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften*, C-684/16, EU:C:2018:874, paragraph 54).

48 However, where the worker has refrained from taking his or her paid annual leave deliberately and in full knowledge of the ensuing consequences, after having been given the opportunity actually to exercise his or her right thereto, Article 31(2) of the Charter does not preclude the loss of that right or, in the event of the termination of the employment relationship, the corresponding absence of an allowance in lieu of paid annual leave not taken, without the employer being required to force that worker to actually exercise that right (see, to that effect, judgment of 6 November 2018, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften*, C-684/16, EU:C:2018:874, paragraph 56).

49 In that regard, the employer is, in particular, required, in view of the mandatory nature of the entitlement to paid annual leave and in order to guarantee the effectiveness of Article 7 of Directive 2003/88, to ensure, specifically and transparently, that the worker is actually given the opportunity to take the paid annual leave to which he or she is entitled, by encouraging him or her, formally if need be, to do so, while informing him or her, accurately and in good time so as to ensure that that leave is still capable of procuring for the person concerned the rest and relaxation to which it is supposed to contribute, that, if he or she does not take it, it will be lost at the end of the reference period or authorised carry-over period or can no longer be replaced by an allowance in lieu. The burden of proof is on the employer (see, to that effect, judgment of 6 November 2018, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften*, C-684/16, EU:C:2018:874, paragraphs 45 and 46).

50 It follows that, should the employer not be able to show that it has exercised all due diligence in order to enable the worker actually to take the paid annual leave to which he or she is entitled, which is for the referring court to verify, it must be held that the loss of the right to such leave at the end of the reference period or the authorised carry-over period, and, in the event of the termination of the employment relationship, the corresponding absence of a payment of an allowance in lieu of annual leave not taken constitutes a failure to have regard, respectively, to Article 7(1) and Article 7(2) of Directive 2003/88 and Article 31(2) of the Charter (see, to that effect, judgment of 6 November 2018, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften*, C-684/16, EU:C:2018:874, paragraphs 46 and 55).

51 In any event, it is apparent from the information set out in the request for a preliminary ruling that the prohibition on paying an allowance in lieu of the days of paid annual leave not taken covers those acquired during the current last year of employment.

52 In the light of all the foregoing considerations, the answer to the questions referred is that Article 7 of Directive 2003/88 and Article 31(2) of the Charter must be interpreted as precluding national legislation which, for reasons relating to the control of public expenditure and the organisational needs of the public employer, prohibits the payment to a worker of an allowance in lieu of the days of paid annual leave acquired, during both the last year of employment and previous years, which were not taken at the date on which the employment relationship ended, where that worker voluntarily terminates that employment relationship and has not shown that he or she had not taken his or her leave during that employment relationship for reasons beyond his or her control.

**Costs**

53 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

**Article 7 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 and Article 31(2) of the Charter of Fundamental Rights of the European Union must be interpreted as precluding national legislation which, for reasons relating to the control of public expenditure and the organisational needs of the public employer, prohibits the payment to a worker of an allowance in lieu of the days of paid annual leave acquired, during both the last year of employment and previous years, which were not taken at the date on which the employment relationship ended, where that worker voluntarily terminates that employment relationship and has not shown that he or she had not taken his or her leave during that employment relationship for reasons beyond his or her control.**

[Signatures]

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* Language of the case: Italian.