



PRESS RELEASE No 10/24

Luxembourg, 18 January 2024

Judgment of the Court in Case C-218/22 | Comune di Copertino

A worker who was not able to take all of his or her days of paid annual leave before resigning is entitled to an allowance in lieu of that leave

Member States cannot rely on reasons linked to controlling public expenditure to limit that right

From February 1992 to October 2016, a public servant worked as an Administrative Officer for the Municipality of Copertino (Italy). He resigned in order to take early retirement and asked for the payment of an allowance in lieu of the 79 days of paid annual leave which he had not taken during his employment relationship. The Municipality of Copertino opposed that request, invoking the rule laid down in Italian legislation according to which public sector workers do not have, under any circumstances, the right to an allowance in lieu of days of paid annual leave not taken at the end of the employment relationship.

The Italian court before which the dispute between the public servant and the Municipality of Copertino was brought has doubts regarding the compatibility of that rule with EU law. According to the 'Working Time Directive'¹, a worker who has not been able to take all of his or her entitlement to paid annual leave before the end of the employment relationship is entitled to an allowance in lieu of the days of paid annual leave that were not taken.

In its judgment, **the Court confirms that EU law precludes a national law which prohibits the payment to a worker of an allowance in lieu of days of paid annual leave not taken when that worker voluntarily terminates the employment relationship.**

As regards the objectives pursued by the Italian legislature in adopting the national law in question, the Court notes that **the right of workers to paid annual leave**, including its eventual replacement by an allowance in lieu, **cannot be subordinate to purely economic considerations, such as controlling public spending**. However, the Court finds that the objective linked to the organisational needs of the public sector employer aimed at ensuring the rational planning of the leave period is, in fact, consistent with the purpose of the directive consisting of enabling the worker to rest, whilst encouraging him or her to take leave. The Court therefore concludes that it is only where the worker deliberately refrained from taking his or her days of leave, even though the employer encouraged him or her to do so and informed him or her of the risk of losing that right at the end of the leave year or carry-over period, that EU law does not preclude the loss of that right. It follows that, unless the employer is 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 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 authorised leave year or 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.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European

Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text and, as the case may be, the abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ 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 – Fair and just working conditions – of the Charter of Fundamental Rights of the European Union.