

Request for a preliminary ruling from the Verwaltungsgericht Wien (Austria) lodged on 8 July 2015 — Hans Maschek

(Case C-341/15)

(2015/C 346/03)

Language of the case: German

Referring court

Verwaltungsgericht Wien

Parties to the main proceedings

Appellant: Hans Maschek

Respondent: Magistratsdirektion der Stadt Wien

Questions referred

- 1) Is national legislation, such as the provision at issue of Paragraph 41a(2) of the Wiener Besoldungsordnung 1994, which in principle does not allow an employee who has, at his own request, terminated the employment relationship with effect from a particular date an entitlement to an allowance in lieu of leave within the meaning of Article 7 of Directive No 2003/88/EC ⁽¹⁾ compatible with Article 7 of Directive 2003/88/EC?

If not, is a provision of national law which lays down that every employee who, at his own request, terminates an employment contract must make every effort to use up any outstanding entitlement to annual leave by the end of the employment relationship and that, in the event of termination of the employment relationship at the request of the employee, an entitlement to an allowance in lieu of leave arises only if, also in the event of request being made for annual leave beginning on the day of the application to terminate the employment relationship, the employee was unable to take a period of leave corresponding to the full extent of an entitlement to an allowance in lieu of leave compatible with Article 7 of Directive 2003/88/EC?

- 2) Is it to be assumed that there is only to be an entitlement to payment of an allowance in lieu of leave if the employee who was unable due to incapacity to work to use up his leave entitlement immediately before the termination of his employment relationship (a) without unnecessary delay (and therefore in principle before the date of termination of the employment relationship) made his employer aware of his incapacity to work (e.g. due to illness) and (b) without unnecessary delay (and therefore in principle before the date of termination of the employment relationship) provided proof (e.g. through a doctor's sick note) of his incapacity to work (e.g. due to illness)?

If not, is a provision of national law which lays down that there is only to be an entitlement to an allowance in lieu of leave if the employee who was unable due to incapacity to work to use up his leave entitlement immediately before the termination of his employment relationship (a) without unnecessary delay (and therefore in principle before the date of termination of the employment relationship) made his employer aware of his incapacity to work (e.g. due to illness) and (b) without unnecessary delay (and therefore in principle before the date of termination of the employment relationship) provided proof (e.g. through a doctor's sick note) of his incapacity to work (e.g. due to illness) compatible with Article 7 of Directive 2003/88/EC?

- 3) According to the case-law of the Court of Justice of the European Union (cf. judgments of the Court of Justice of 18 March 2004 in *Gomez*, C-342/01, paragraph 31; of 24 January 2012 in *Dominguez*, C-282/10, paragraphs 47 to 50; of 3 May 2012 in *Neidei*, C-337/10, paragraph 37) the Member States are free to grant an employee a statutory entitlement to leave or to an allowance in lieu of leave above the minimum entitlement guaranteed by Article 7 of Directive 2003/88. In addition, the entitlements laid down by Article 7 of Directive No 2003/88 have direct effect (cf. judgments of the Court of Justice of 24 January 2012 in *Dominguez*, C-282/10, paragraphs 34 to 36; of 12 June 2014 in *Bollacke*, C-118/13, paragraph 28).

In the light of that interpretation given to Article 7 of Directive 2003/88/EC, does a situation in which the national legislature allows a certain class of persons an entitlement to an allowance in lieu of leave significantly above the requirements of that provision of the directive have the effect that, as a result of the direct effect of Article 7 of Directive 2003/88/EC, those persons who were, contrary to the terms of the directive, refused an entitlement to an allowance in lieu of leave by that national legislation are also entitled to an allowance in lieu of leave to the extent significantly above the requirements of that provision of the directive, and which is allowed by the national legislation to the persons favoured by that provision?

- (¹) 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 (OJ 2003 L 299, p. 9).

**Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on
13 July 2015 — College van Burgemeester en Wethouders van de gemeente Amersfoort; other party:
X BV**

(Case C-360/15)

(2015/C 346/04)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: College van Burgemeester en Wethouders van de gemeente Amersfoort

Other party to the proceedings: X BV

Questions referred

- (1) Must Article 2(3) of Directive 2006/123/EC (¹) of the European Parliament and of the Council of 12 December 2006 on services in the internal market be interpreted as meaning that that provision applies to the levying of charges ('leges') by an authority of a Member State in respect of the processing of an application for consent with regard to the timing, location and manner of performance of excavation works associated with the installation of cables for a public electronic communications network?
- (2) Must Chapter III of Directive 2006/123/EC ... be interpreted as meaning that it also applies in purely internal situations?
- (3) Must Directive 2006/123/EC..., against the background of recital 9 in the preamble thereto, be interpreted as meaning that that directive does not apply to national rules which require the intention to carry out excavation work in connection with the installation, maintenance and removal of cables for a public electronic telecommunications network to be notified to the municipal council, and on the basis of which the latter is not competent to prohibit that work but is, however, competent to impose conditions in respect of the location, timing and manner of performance of the work and of the promotion of shared use of facilities and the coordination of the work with the managers of other construction works on the land?