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Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

6 November 2018 (\*)

(Reference for a preliminary ruling — Social policy — Organisation of working time — Directive 2003/88/EC — Article 7 — Right to paid annual leave — Employment relationship terminated by the death of the worker — National legislation preventing the payment of an allowance to the legal heirs of a worker in lieu of paid annual leave not taken by him — Obligation to interpret national law in conformity with EU law — Charter of Fundamental Rights of the European Union — Article 31(2) — Whether it may be relied upon in a dispute between individuals)

In Joined Cases C-569/16 and C-570/16,

REQUESTS for a preliminary ruling under Article 267 TFEU made by the Bundesarbeitsgericht (Federal Labour Court, Germany), by decisions of 18 October 2016, received at the Court on 10 November 2016, in the proceedings

**Stadt Wuppertal**

v

**Maria Elisabeth Bauer** (C-569/16) and

and

**Volker Willmeroth**, in his capacity as owner of TWI Technische Wartung und Instandsetzung Volker Willmeroth e.K.

v

**Martina Broßonn** (C-570/16),

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, J.-C. Bonichot, A. Prechal (Rapporteur), M. Vilaras, T. von Danwitz, F. Biltgen, K. Jürimäe, and C. Lycourgos, Presidents of Chambers, M. Ilešič, J. Malenovský, E. Levits, L. Bay Larsen and S. Rodin, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Stadt Wuppertal, by T. Herbert, Rechtsanwalt,
- Mrs Broßonn, by O. Teubler, Rechtsanwalt,
- the European Commission, by M. van Beek and T.S. Bohr, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 29 May 2018,

gives the following

## **Judgment**

1 The present requests for a preliminary ruling concern the interpretation of 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 (OJ 2003 L 299, p. 9) and of Article 31(2) of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The requests have been made in two sets of proceedings between, in Case C-569/16, Stadt Wuppertal (town of Wuppertal, Germany) and Mrs Maria Elisabeth Bauer and, in Case C-570/16, Mr Volker Willmeroth, in his capacity as owner of TWI Technische Wartung und Instandsetzung Volker Willmeroth e.K., and Mrs Martina Broßonn, concerning the refusal by Stadt Wuppertal and Mr Willmeroth, respectively, in their capacity as former employers of the late husbands of Mrs Bauer and Mrs Broßonn, to pay Mrs Bauer and Mrs Broßonn an allowance in lieu of the paid annual leave not taken by their spouses before their death.

## **Legal context**

### **European Union law**

3 The fourth recital of Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (OJ 1993 L 307, p. 18), stated:

‘Whereas the Community Charter of the Fundamental Social Rights of Workers, adopted at the meeting of the European Council held at Strasbourg on 9 December 1989 by the Heads of State or of Government of 11 Member States, and in particular ... [point] 8 ... thereof, declared that:

“ ...

8. Every worker in the European Community shall have a right to a weekly rest period and to annual paid leave, the duration of which must be progressively harmonised in accordance with national practices.

...”

4 As is apparent from recital 1, Directive 2003/88, which repealed Directive 93/104, codified the provisions of the latter.

5 According to recitals 4 to 6 of Directive 2003/88:

‘(4) The improvement of workers’ safety, hygiene and health at work is an objective which should not be subordinated to purely economic considerations.

(5) All workers should have adequate rest periods. The concept of “rest” must be expressed in units of time, i.e. in days, hours and/or fractions thereof. [European Union] workers must be granted minimum daily, weekly and annual periods of rest and adequate breaks. ...

(6) Account should be taken of the principles of the International Labour Organisation with regard to the organisation of working time, including those relating to night work.’

6 Article 7 of Directive 2003/88, which is identical to Article 7 of Directive 93/104, is worded as follows:

‘1. Member States shall 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.

2. The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.’

7 Article 17 of Directive 2003/88 provides that Member States may derogate from certain provisions of that directive. However, no derogation is permitted in respect of Article 7 of the directive.

### **German law**

8 Paragraph 7(4) of the Bundesurlaubsgesetz (Federal Law on leave), of 8 January 1963 (BGBl. 1963, p. 2), in its version of 7 May 2002 (BGBl. 2002 I, p. 1529) (‘the BUrlG’), provides:

‘If, because of the termination of the employment relationship, leave can no longer be granted in whole or in part, an allowance shall be paid in lieu.’

9 Paragraph 1922(1) of the Bürgerliches Gesetzbuch (Civil Code) (‘the BGB’) provides, under the heading ‘Universal Succession’:

‘Upon the death of a person (devolution of an inheritance), that person’s property (estate) passes as a whole to one or several other persons (heirs).’

### **The disputes in the main proceedings and the questions referred for a preliminary ruling**

10 Mrs Bauer is the sole legal heir of her husband, who died on 20 December 2010, and who was employed by Stadt Wuppertal. The latter rejected Mrs Bauer’s request for an allowance in the amount of EUR 5 857.75, corresponding to the 25 days of outstanding paid annual leave which her husband had not taken at the time of his death.

11 Mrs Broßonn is the sole legal heir of her husband, who had been employed by Mr Willmeroth since 2003 and had died on 4 January 2013, having been unable to work since July 2012 due to illness. Mr Willmeroth rejected Mrs Broßonn's request for an allowance in the amount of EUR 3 702.72, corresponding to the 32 days of outstanding paid annual leave which her husband had not taken at the time of his death.

12 Mrs Bauer and Mrs Broßonn both brought an action before the Arbeitsgericht (Labour Court, Germany) having jurisdiction, seeking payment of those allowances. Those actions were upheld, and the appeals brought, respectively, by Stadt Wuppertal and by Mr Willmeroth against the judgments delivered at first instance were dismissed by the Landesarbeitsgericht (Higher Labour Court, Germany) having jurisdiction. Stadt Wuppertal and Mr Willmeroth thereupon appealed to the referring court, the Bundesarbeitsgericht (Federal Labour Court, Germany), on a point of law against those decisions.

13 In the orders for reference in each of those two cases, the referring court points out that the Court has already held, in its judgment of 12 June 2014, *Bollacke* (C-118/13, EU:C:2014:1755), that Article 7 of Directive 2003/88 must be interpreted as precluding national legislation or practice which provides that the entitlement to paid annual leave is lost without conferring entitlement to an allowance in lieu of outstanding paid annual leave, where the employment relationship is terminated by the death of the worker.

14 The referring court asks, however, whether the same applies where national law precludes an allowance in lieu from forming part of the estate of the deceased.

15 In that regard, that court states that, read together, Paragraph 7(4) of the BUrlG and Paragraph 1922(1) of the BGB lead to the right to paid annual leave lapsing upon the worker's death, as a result of which it cannot be converted into an entitlement to an allowance in lieu or be part of the estate. It states, furthermore, that any other interpretation of those provisions would be *contra legem* and cannot therefore be accepted.

16 First, the referring court recalls that the Court held, in the judgment of 22 November 2011, *KHS* (C-214/10, EU:C:2011:761), that the right to paid annual leave could lapse after 15 months from the end of the reference year, since it had not yet satisfied the purpose of the leave, which was to enable the worker to rest and to enjoy a period of relaxation and leisure. Moreover, noting that that objective does not appear capable of being attained where the worker dies, the referring court asks whether the loss of the right to paid annual leave and to an allowance in lieu of paid annual leave not taken may also be accepted in the latter case. According to that court, to hold otherwise would suggest that the minimum paid annual leave guaranteed by Directive 2003/88 and the Charter is also intended to provide cover for the heirs of the deceased worker.

17 In that context, the referring court is also uncertain whether Article 7 of Directive 2003/88 or Article 31(2) of the Charter may have the effect of requiring the employer to pay an allowance in lieu of paid annual leave not taken to the worker's heirs, notwithstanding the fact that, in the present case, the provisions of national law mentioned in paragraph 15 of the present judgment preclude such a possibility.

18 Finally, in Case C-570/16, the referring court, which observes that the dispute in the main proceedings is between two individuals, asks whether those provisions of EU law are capable of producing direct effect in such a context.

19 It is in those circumstances that the Bundesarbeitsgericht (Federal Labour Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling, the first of those questions being asked in identical terms in respect of Cases C-569/16 and C-570/16, and the second only in respect of Case C-570/16:

‘(1) Does Article 7 of Directive [2003/88] or Article 31(2) of the [Charter] grant the heir of a worker who died while in an employment relationship a right to financial compensation for the worker’s minimum annual leave prior to his death, which is precluded by Paragraph 7(4) of the [BUrlG], read in conjunction with Paragraph 1922(1) of the [BGB]?’

(2) If the first question is answered in the affirmative: Does this also apply where the employment relationship is between two private persons?’

### **Consideration of the questions referred**

#### **Admissibility**

20 Mrs Broßonn casts doubt on the admissibility of the requests for a preliminary ruling on the ground, first, that the Court has already held, in its judgment of 12 June 2014, *Bollacke* (C-118/13, EU:C:2014:1755), that Article 7 of Directive 2003/88 precludes national legislation or practices, such as that at issue in the main proceedings, under which, in the event of the death of the worker, the right to paid annual leave lapses without giving rise to an entitlement to an allowance in lieu of paid annual leave not taken. To hold that that provision does not preclude the national legislation at issue, in so far as it prevents the allowance from being passed on to the heirs, would render ineffective the guidance resulting from the judgment of the Court. Moreover, many national courts and academic legal writings take the view that it is possible to interpret the national legislation at issue in a manner consistent with that guidance.

21 In that regard, however, it should first be recalled that, even when there is case-law of the Court resolving the point of law at issue, national courts remain entirely at liberty to bring a matter before the Court if they consider it appropriate to do so; the fact that the provisions whose interpretation is sought have already been interpreted by the Court does not deprive the Court of jurisdiction to give a further ruling (judgment of 17 July 2014, *Torresi*, C-58/13 and C-59/13, EU:C:2014:2088, paragraph 32 and the case-law cited).

22 It follows that the fact that the Court, in the judgment of 12 June 2014, *Bollacke* (C-118/13, EU:C:2014:1755), has already interpreted Article 7 of Directive 2003/88 in the light of the same national legislation as that at issue in the main proceedings, cannot lead to the inadmissibility of the questions referred in the present cases.

23 Secondly, it is settled case-law that, 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 a 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 bound to give a ruling (judgment of 6 March 2018, *SEGRO and Horváth*, C-52/16 and C-113/16, EU:C:2018:157, paragraph 42 and the case-law cited).

24 The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main

action or its object, or 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 6 March 2018, *SEGRO and Horváth*, C-52/16 and C-113/16, EU:C:2018:157, paragraph 43 and the case-law cited).

25 In that regard, and in respect of Mrs Broßonn's submission that the national legislation at issue in the main proceedings could be interpreted in such a way as to ensure its compliance with Article 7 of Directive 2003/88, as interpreted by the Court in the judgment of 12 June 2014, *Bollacke* (C-118/13, EU:C:2014:1755), it is admittedly true that the question whether a national provision must be disapplied inasmuch as it conflicts with EU law arises only if no compatible interpretation of that provision proves possible (see, to that effect, judgment of 24 January 2012, *Dominguez*, C-282/10, EU:C:2012:33, paragraph 23).

26 However, it should also be recalled that the principle that national law must be interpreted in conformity with EU law has certain limits. Thus the obligation on a national court to refer to the content of a directive when interpreting and applying the relevant rules of domestic law is limited by general principles of law and cannot serve as the basis for an interpretation of national law *contra legem* (judgment of 24 January 2012, *Dominguez*, C-282/10, EU:C:2012:33, paragraph 25 and the case-law cited).

27 In the case in the main proceedings, and as is apparent from paragraph 15 of the present judgment, the referring court states that it is faced with precisely such a limitation. In its view, Paragraph 7(4) of the BUrlG, read in conjunction with Paragraph 1922(1) of the BGB is not open to an interpretation which is compatible with Article 7 of Directive 2003/88, as interpreted by the Court in the judgment of 12 June 2014, *Bollacke* (C-118/13, EU:C:2014:1755).

28 In those circumstances, the requests for a preliminary ruling cannot be held inadmissible in that the questions referred concern the issue of whether the provisions of EU law to which they relate can, where it is not possible to interpret national law in a manner consistent with EU law, result in the national court being obliged, where necessary, to disapply that national legislation, in particular in the context of a dispute between two individuals.

29 In the light of the foregoing, the requests for a preliminary ruling must be regarded as admissible.

## **Substance**

### *Preliminary observations*

30 It should be noted that, as is apparent from the grounds of the orders for reference set out in paragraphs 13 to 17 of the present judgment and in the light of which the question in Case C-569/16 and the first question in Case C-570/16 must be read, those questions include two separate parts.

31 First, 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 legislation such as that at issue in the main proceedings, and whether the Court's interpretation in its judgment of 12 June 2014, *Bollacke* (C-118/13, EU:C:2014:1755) should be reconsidered or qualified in that regard.

32 Secondly, and assuming that the Court upholds that interpretation, the referring court asks whether those provisions of EU law must be interpreted as meaning that they have direct effect, as a

result of which the national court is required to set aside that national legislation in so far as it cannot be interpreted in a manner consistent with the requirements deriving from those provisions.

33 Finally, by its second question in Case C-570/16, the referring court wishes to know whether any such exclusionary effect in respect of the national legislation at issue is also applicable in a dispute between two private parties.

34 In those circumstances, it is appropriate to examine, first, the first part of the question referred in Case C-569/16 and the first part of the first question in Case C-570/16 and, secondly, and in the light of the connection between them, the second part of those questions and the second question referred in Case C-570/16.

*The first part of the question in Case C-569/16 and the first part of the first question in Case C-570/16*

35 By the first part of its question in Case C-569/16 which is identical to the first part of its first question in Case C-570/16, 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, such as that at issue in the main proceedings, under which, where the employment relationship is terminated by the death of the worker, the right to paid annual leave acquired under those provisions, and not taken by the worker before his death, lapses without being able to give rise to an entitlement to an allowance in lieu of that leave which may be passed on to the worker's legal heirs by inheritance.

36 As regards, first, Article 7 of Directive 2003/88, it should be recalled that, as the referring court observes, in the judgment of 12 June 2014, *Bollacke* (C-118/13, EU:C:2014:1755), in a case involving a similar factual context to that of the present joined cases and relating to the same national legislation as that at issue in the main proceedings, the Court held, in paragraph 30 of that judgment, that that provision of EU law must be interpreted as meaning that it precludes national legislation or practices which provide that the right to paid annual leave lapses without conferring any right to an allowance in lieu of leave not taken where the employment relationship is terminated by the death of the worker.

37 As is apparent from the orders for reference and from paragraphs 14 to 16 of the present judgment, the referring court, however, has doubts concerning the interpretation adopted by the Court, on the ground, essentially, that the purpose of the right to paid annual leave, which is to enable the worker to rest and to enjoy a period of relaxation and leisure, no longer appears to that court to be capable of being met once the person concerned has died.

38 In that regard, it should be recalled at the outset 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 12 June 2014, *Bollacke*, C-118/13, EU:C:2014:1755, paragraph 15 and the case-law cited). Similarly, and in order to ensure respect for that fundamental right affirmed in EU law, Article 7 of Directive 2003/88 may not be interpreted restrictively at the expense of the rights that workers derive from it (see, to that effect, judgment of 12 June 2014, *Bollacke*, C-118/13, EU:C:2014:1755, paragraph 22 and the case-law cited).

39 It is settled case-law that the right to annual leave constitutes only one of two aspects of the right to paid annual leave as an essential principle of EU social law, that right also including the

entitlement to payment. The expression ‘paid annual leave’, used, inter alia, by the EU legislature in Article 7 of Directive 2003/88, means that, for the duration of the annual leave within the meaning of that directive, the worker’s remuneration must be maintained. In other words, workers must continue to receive their normal remuneration throughout that period of rest and relaxation (judgment of 12 June 2014, *Bollacke*, C-118/13, EU:C:2014:1755, paragraphs 20 and 21 and the case-law cited).

40 The holiday pay required by Article 7(1) of Directive 2003/88 is intended to enable the worker actually to take the leave to which he is entitled (judgment of 16 March 2006, *Robinson-Steele and Others*, C-131/04 and C-257/04, EU:C:2006:177, paragraph 49).

41 According to the settled case-law of the Court, the right to annual leave laid down in Article 7 of Directive 2003/88 is intended to enable the worker to rest from carrying out the work he is required to do under his contract of employment and to enjoy a period of relaxation and leisure (judgment of 20 July 2016, *Maschek*, C-341/15, EU:C:2016:576, paragraph 34 and the case-law cited).

42 Thus, by providing that the minimum period of paid annual leave may not be replaced by an allowance in lieu, except in the event of termination of the employment relationship, 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 (see, to that effect, judgment of 16 March 2006, *Robinson-Steele and Others*, C-131/04 and C-257/04, EU:C:2006:177, paragraph 60 and the case-law cited).

43 Upon termination of the employment relationship, the actual taking of paid annual leave to which a worker was entitled is no longer possible. It is 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, that Article 7(2) of Directive 2003/88 provides that the worker is entitled to an allowance in lieu for the days of annual leave not taken (see, to that effect, judgments of 20 January 2009, *Schultz-Hoff and Others*, C-350/06 and C-520/06, EU:C:2009:18, paragraph 56; of 12 June 2014, *Bollacke*, C-118/13, EU:C:2014:1755, paragraph 17; and of 20 July 2016, *Maschek*, C-341/15, EU:C:2016:576, paragraph 27).

44 That provision lays down no condition for entitlement to an allowance in lieu other than that relating to the fact, 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 (see, to that effect, judgment of 12 June 2014, *Bollacke*, C-118/13, EU:C:2014:1755, paragraph 23).

45 Thus, the reason for which the employment relationship is terminated 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 20 July 2016, *Maschek*, C-341/15, EU:C:2016:576, paragraph 28).

46 As noted by the referring court, while the worker’s death admittedly has the inevitable consequence of depriving him of any effective possibility of enjoying the period of rest and relaxation attaching to the right to paid annual leave to which he was entitled at the time of his death, it cannot be accepted that his death retroactively entails the total loss of the right thus acquired which, as recalled in paragraph 39 of the present judgment, includes a second aspect of equal importance, namely the entitlement to a payment (see, to that effect, judgment of 12 June 2014, *Bollacke*, C-118/13, EU:C:2014:1755, paragraph 25).



47 In that regard, it should also be noted that the Court has already held that Article 7(2) of Directive 2003/88 must be interpreted as meaning that a worker is entitled, upon retirement, to an allowance in lieu of paid annual leave not taken due, for example, to the fact that he has not performed his duties because of illness (see judgment of 20 July 2016, *Maschek*, C-341/15, EU:C:2016:576, paragraphs 31 and 32 and the case-law cited). Nor is such a worker able to enjoy leave as a period intended to allow him to rest and relax with a view to the future pursuit of his occupational activity, since he has, in principle, entered a period of occupational inactivity and is thus, in essence, able to benefit only from the financial aspect of paid annual leave.

48 Moreover, from a financial perspective, the right to paid annual leave acquired by a worker is purely pecuniary in nature and, as such, is therefore intended to become part of the relevant person's assets, as a result of which the latter's death cannot retrospectively deprive his estate and, accordingly, those to whom it is to be transferred by way of inheritance, from the effective enjoyment of the financial aspect of the right to paid annual leave.

49 The loss of a worker's acquired right to paid annual leave or his corresponding right to payment of an allowance in lieu of leave not taken upon termination of the employment relationship, without the worker having actually had the opportunity to exercise that right to paid annual leave, would undermine the very substance of that right (see, to that effect, judgment of 19 September 2013, *Review of Commission v Strack*, C-579/12 RX-II, EU:C:2013:570, paragraph 32).

50 Thus, receipt of financial compensation if the employment relationship is terminated by reason of the worker's death is essential to ensure the effectiveness of the entitlement to paid annual leave granted to the worker (see, to that effect, judgment of 12 June 2014, *Bollacke*, C-118/13, EU:C:2014:1755, paragraph 24).

51 Secondly, it must be recalled that the right to paid annual leave, as a principle of EU social law, is not only particularly important, but is also expressly laid down in Article 31(2) of the Charter, which Article 6(1) TEU recognises as having the same legal value as the Treaties (judgment of 30 June 2016, *Sobczyszyn*, C-178/15, EU:C:2016:502, paragraph 20 and the case-law cited).

52 The fundamental rights guaranteed in the legal order of the European Union are applicable in all situations governed by EU law (judgment of 15 January 2014, *Association de médiation sociale*, C-176/12, EU:C:2014:2, paragraph 42 and the case-law cited).

53 Since the national legislation at issue in the main proceedings is an implementation of Directive 2003/88, it follows that Article 31(2) of the Charter is intended to apply to the cases in the main proceedings (see, by analogy, judgment of 15 January 2014, *Association de médiation sociale*, C-176/12, EU:C:2014:2, paragraph 43).

54 In that regard, it follows, first, from the wording of Article 31(2) of the Charter that that provision enshrines the 'right' of all workers to an 'annual period of paid leave'.

55 Next, according to the explanations relating to Article 31 of the Charter, which, in accordance with the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, must be taken into consideration for the interpretation of the Charter, Article 31(2) of the Charter is based on Directive 93/104 and on Article 2 of the European Social Charter, signed in Turin on 18 October 1961 and revised in Strasbourg on 3 May 1996, and on point 8 of the Community Charter of the Fundamental Social Rights of Workers, adopted at the meeting of the European Council in Strasbourg on

9 December 1989 (judgment of 19 September 2013, *Review of Commission v Strack*, C-579/12 RX-II, EU:C:2013:570, paragraph 27).

56 As is apparent from the first recital of Directive 2003/88, that directive codified Directive 93/104. Article 7 of Directive 2003/88 concerning the right to paid annual leave reproduces the terms of Article 7 of Directive 93/104 exactly (judgment of 19 September 2013, *Review of Commission v Strack*, C-579/12 RX-II, EU:C:2013:570, paragraph 28).

57 In that context, it is important, finally, to recall that the Court has already held that the expression ‘paid annual leave’ in Article 7(1) of Directive 2003/88, which should be given the same meaning as that of ‘annual period of paid leave’ in Article 31(2) of the Charter, means that, for the duration of annual leave within the meaning of those provisions, remuneration must be maintained and, in other words, workers must receive their normal remuneration for that period of rest (see, to that effect, judgment of 15 September 2011, *Williams and Others*, C-155/10, EU:C:2011:588, paragraphs 18 and 19).

58 As was recalled in paragraph 39 of the present judgment, the right to annual leave constitutes only one of two aspects of the right to paid annual leave as an essential principle of EU social law reflected in Article 7 of Directive 93/104 and Article 7 of Directive 2003/88, now expressly enshrined as a fundamental right in Article 31(2) of the Charter. As well as an entitlement to a payment, 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.

59 In that regard, limitations may be imposed on that right only under the strict conditions laid down in Article 52(1) of the Charter and, in particular, of the essential content of that right. Thus, Member States may not derogate from the rule laid down in 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 leave (see, to that effect, judgment of 29 November 2017, *King*, C-214/16, EU:C:2017:914, paragraph 56).

60 As was recalled in paragraph 46 of the present judgment, Member States are similarly precluded from deciding that termination of the employment relationship caused by death leads retroactively to the complete loss of the right to paid annual leave acquired by the worker, since such a right, aside from the right to leave as such, includes a second aspect of equal importance, namely the entitlement to a payment, justifying the payment to the person concerned or his legal heirs of an allowance in lieu of annual leave not taken upon termination of the employment relationship.

61 Therefore, in relation to situations falling within the scope of Article 31(2) of the Charter, that provision has the effect, in particular, that it is not open to Member States to adopt legislation pursuant to which the death of a worker retroactively deprives him of the right to paid annual leave acquired before his death, and, accordingly, his legal heirs of the allowance in lieu thereof by way of the financial settlement of those rights.

62 In the light of the foregoing, and in view of what has been stated in paragraphs 38 to 50 of the present judgment, it must be held that, where an employment relationship is terminated by the death of the worker, it follows not only from Article 7(2) of Directive 2003/88 but also from Article 31(2) of the Charter that, in order to prevent the fundamental right to paid annual leave acquired by that worker from being retroactively lost, including the financial aspect of those rights, the right of the

person concerned to an allowance in lieu of leave which has not been taken may be passed on by inheritance to his legal heirs.

63 It follows that the answer to the first part of the question in Case C-569/16 and to the first part of the first question in Case C-570/16 is that Article 7 of Directive 2003/88 and Article 31(2) of the Charter must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which, upon termination of the employment relationship because of the worker's death, the right to paid annual leave acquired under those provisions and not taken by the worker before his death lapses without being able to give rise to a right to an allowance in lieu of that leave which is transferable to the employee's legal heirs by inheritance.

*The second part of the question in Case C-569/16 and the second part of the first question and the second question in Case C-570/16*

64 By the second part of its question in Case C-569/16 and by the second part of its first question in Case C-570/16, the referring court asks, in essence, whether, in the event that it is impossible to interpret a national rule such as that at issue in the main proceedings in such a way as to ensure compliance with Article 7 of Directive 2003/88 and Article 31(2) of the Charter, the provisions of EU law must be interpreted as meaning that they entail that such national legislation must be disapplied by the national court and that the legal heir of the deceased worker must be granted, by the former employer, an allowance in lieu of paid annual leave acquired under those provisions and not taken by that worker. By its second question in Case C-570/16, the referring court asks whether such an interpretation of those provisions of EU law must, in the present case, also prevail in the context of a dispute between the legal heir of a deceased worker and his former employer where the employer is a private individual.

65 As a preliminary point, it should be recalled that the question whether a national provision must be disapplied in as much as it conflicts with EU law arises only if no interpretation of that provision which is compatible with EU law proves possible.

66 In that regard, it should be noted that, when national courts apply domestic law, they are bound to interpret it, so far as possible, in the light of the wording and the purpose of the directive concerned in order to achieve the result sought by the directive, and consequently comply with the third paragraph of Article 288 TFEU (judgment of 24 January 2012, *Dominguez*, C-282/10, EU:C:2012:33, paragraph 24 and the case-law cited).

67 It should further be noted that the principle that national law must be interpreted in conformity with EU law requires national courts to do whatever lies within their jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by it, with a view to ensuring that the directive in question is fully effective and to achieving an outcome consistent with the objective pursued by it (judgment of 24 January 2012, *Dominguez*, C-282/10, EU:C:2012:33, paragraph 27 and the case-law cited).

68 As has been held by the Court, the requirement to interpret national law in conformity with EU law entails, in particular, the obligation for national courts to change established case-law, where necessary, if it is based on an interpretation of national law that is incompatible with the objectives of a directive. Consequently, a national court cannot, in particular, validly claim that it is impossible for it to interpret a provision of national law in a manner that is consistent with EU law merely because that provision has consistently been interpreted in a manner that is incompatible with EU law (judgment of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraphs 72 and 73 and the case-law cited).

69 It is, in the present case, for the referring court to fulfil its obligation under EU law to check, in the light of the principles set out in the three preceding paragraphs of the present judgment, if an interpretation which is consistent with EU law is possible.

70 That being so, and as regards, first, the possible direct effect that it may be appropriate to acknowledge Article 7 of Directive 2003/88 as producing, it is clear from the settled case-law of the Court that, whenever the provisions of a directive appear, so far as their subject matter is concerned, to be unconditional and sufficiently precise, they may be relied upon before the national courts by individuals against the State where the latter has failed to implement the directive in domestic law by the end of the period prescribed or where it has failed to implement the directive correctly (judgment of 24 January 2012, *Dominguez*, C-282/10, EU:C:2012:33, paragraph 33 and the case-law cited). In addition, where a person involved in legal proceedings is able to rely on a directive against a State, he may do so regardless of the capacity in which the latter is acting, whether as an employer or as a public authority. In either case, it is necessary to prevent the State from taking advantage of its own failure to comply with EU law (judgment of 24 January 2012, *Dominguez*, C-282/10, EU:C:2012:33, paragraph 38 and the case-law cited).

71 On the basis of those considerations, the Court has held that provisions of a directive that are unconditional and sufficiently precise may be relied upon by individuals, in particular against a Member State and all the organs of its administration, including decentralised authorities (see, to that effect, judgment of 7 August 2018, *Smith*, C-122/17, EU:C:2018:631, paragraph 45 and the case-law cited).

72 The Court has already held that Article 7(1) of Directive 2003/88 satisfies those criteria of unconditionality and sufficient precision, as it imposes on Member States, in unequivocal terms, a precise obligation as to the result to be achieved that is not coupled with any condition regarding application of the rule laid down by it, which gives every worker entitlement to at least four weeks' paid annual leave. That article thus fulfils the conditions required to produce direct effect (see, to that effect, judgment of 24 January 2012, *Dominguez*, C-282/10, EU:C:2012:33, paragraphs 34 to 36).

73 As regards Article 7(2) of that directive, as recalled in paragraph 44 of the present judgment, that provision does not lay down any condition for entitlement to an allowance in lieu other than that relating to the fact, 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. That right is conferred directly by the directive and does not depend on conditions other than those which are explicitly provided for (see, to that effect, judgment of 12 June 2014, *Bollacke*, C-118/13, EU:C:2014:1755, paragraph 28). Article 7(2) thus fulfils all the conditions necessary for it to have direct effect.

74 In the present case, as regards Case C-569/16, it is not disputed, first, that Mr Bauer had not, at the time of his death which caused the employment relationship with Stadt Wuppertal to be terminated, taken all paid annual leave to which he was entitled on that date, and, second, that the status of the employer is that of a decentralised public authority.

75 Since Article 7 of Directive 2003/88 fulfils, as is apparent from paragraphs 72 and 73 of the present judgment, the conditions required to produce direct effect, it follows that Mr Bauer, or in the light of his death, his legal heir, has, as is clear from the case-law of the Court referred to in paragraphs 70 and 71 of this judgment, the right to obtain, from Stadt Wuppertal, an allowance in lieu of paid annual leave acquired under that provision and not taken by the individual, national

courts being, in that regard, required to disapply national legislation which, like that at issue in the main proceedings, precludes the award of such an allowance.

76 However, as regards the dispute in the main proceedings in Case C-570/16 between Ms Broßonn, as the legal heir of her late husband, and his former employer, Mr Willmeroth, it should be recalled that, according to the Court's settled case-law, a directive cannot of itself impose obligations on an individual and cannot therefore be relied upon as such against an individual. If the possibility of relying on a provision of a directive that has not been transposed, or has been incorrectly transposed, were to be extended to the sphere of relations between individuals, that would amount to recognising a power in the European Union to enact obligations for individuals with immediate effect, whereas it has competence to do so only where it is empowered to adopt regulations (judgment of 7 August 2018, *Smith*, C-122/17, EU:C:2018:631, paragraph 42 and the case-law cited).

77 Thus, even a clear, precise and unconditional provision of a directive seeking to confer rights on or impose obligations on individuals cannot of itself apply in a dispute exclusively between private persons (judgment of 7 August 2018, *Smith*, C-122/17, EU:C:2018:631, paragraph 43 and the case-law cited).

78 As the Court has already held, Article 7 of Directive 2003/88 cannot therefore be invoked in a dispute between individuals in order to ensure the full effect of the right to paid annual leave and to set aside any contrary provision of national law (judgment of 26 March 2015, *Fenoll*, C-316/13, EU:C:2015:200, paragraph 48).

79 In the light of the foregoing, it is necessary, secondly, to examine the scope of Article 31(2) of the Charter, in order to determine whether that provision, for which it has been established, in paragraphs 52 to 63 of the present judgment, that it is intended to apply to situations such as those in the main proceedings and must be interpreted as meaning that it precludes legislation such as that at issue in the main proceedings, may be invoked in a dispute between individuals, such as that arising in Case C-570/16, in order to require that the national court sets aside that national legislation and grants the deceased worker's legal heirs an allowance, payable by the former employer, in lieu of paid annual leave not taken to which that worker was entitled under EU law at the time of his death.

80 In that regard, it should be recalled that the right to paid annual leave constitutes an essential principle of EU social law.

81 That principle is itself mainly derived both from instruments drawn up by the Member States at EU level, such as the Community Charter of the Fundamental Social Rights of Workers, which is moreover mentioned in Article 151 TFEU, and from international instruments on which the Member States have cooperated or to which they are party. Among them is the European Social Charter, to which all Member States are parties in so far as they ratified it in its original version, its revised version or both versions, also referred to in Article 151 TFEU. Mention should also be made of Convention No 132 of the International Labour Organisation of 24 June 1970 concerning Annual Holidays with Pay (revised) which, as the Court noted in paragraphs 37 and 38 of the judgment of 20 January 2009, *Schultz-Hoff and Others* (C-350/06 and C-520/06, EU:C:2009:18), sets out certain principles of that organisation which recital 6 of Directive 2003/88 states must be taken into account.

82 In that regard, the fourth recital of Directive 93/104 states, in particular, that paragraph 8 of the Community Charter of the Fundamental Social Rights of Workers provides that every worker in

the Union has a right, inter alia, to paid annual leave, the duration of which must be progressively harmonised in accordance with national practices (see, to that effect, judgment of 26 June 2001, *BECTU*, C-173/99, EU:C:2001:356, paragraph 39).

83 Article 7 of Directive 93/104 and Article 7 of Directive 2003/88 did not, therefore, themselves establish the right to paid annual leave, which is based in particular on various international instruments (see, by analogy, judgment of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 75) and is, as an essential principle of EU social law, mandatory in nature (see, to that effect, judgment of 16 March 2006, *Robinson-Steele and Others*, C-131/04 and C-257/04, EU:C:2006:177, paragraphs 48 and 68), that essential principle including, as noted in paragraph 58 of the present judgment, the right to ‘paid’ annual leave as such and the right, inherent in the former, to an allowance in lieu of annual leave not taken upon termination of the employment relationship.

84 By providing in mandatory terms that ‘every worker’ has ‘the right’ ‘to an annual period of paid leave’ — like, for example, Article 27 of the Charter which led to the judgment of 15 January 2014, *Association de médiation sociale* (C-176/12, EU:C:2014:2) — without referring in particular in that regard to ‘the cases and ... conditions provided for by Union law and national laws and practices’, Article 31(2) of the Charter reflects the essential principle of EU social law from which there may be derogations only in compliance with the strict conditions laid down in Article 52(1) of the Charter and, in particular, the fundamental right to paid annual leave.

85 The right to a period of paid annual leave, affirmed for every worker by Article 31(2) of the Charter, is thus, as regards its very existence, both mandatory and unconditional in nature, the unconditional nature not needing to be given concrete expression by the provisions of EU or national law, which are only required to specify the exact duration of annual leave and, where appropriate, certain conditions for the exercise of that right. It follows that that provision is sufficient in itself to confer on workers a right that they may actually rely on in disputes between them and their employer in a field covered by EU law and therefore falling within the scope of the Charter (see, by analogy, judgment of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 76).

86 Article 31(2) of the Charter therefore entails, in particular, as regards the situations falling within the scope thereof, first, that the national court must disapply national legislation such as that at issue in the main proceedings pursuant to which the death of a worker retroactively deprives him of his entitlement to paid annual leave acquired before his death, and, accordingly, his legal heirs of the entitlement to the allowance in lieu thereof by way of the financial settlement of those rights, and, second, that employers cannot rely on that national legislation in order to avoid payment of the allowance in lieu which they are required to pay pursuant to the fundamental right guaranteed by that provision.

87 With respect to the effect of Article 31(2) of the Charter on an employer who is a private individual, it should be noted that, although Article 51(1) of the Charter states that the provisions thereof are addressed to the institutions, bodies, offices and agencies of the European Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing EU law, Article 51(1) does not, however, address the question whether those individuals may, where appropriate, be directly required to comply with certain provisions of the Charter and cannot, accordingly, be interpreted as meaning that it would systematically preclude such a possibility.

88 First of all, as noted by the Advocate General in point 78 of his Opinion, the fact that certain provisions of primary law are addressed principally to the Member States does not preclude their application to relations between individuals (see, to that effect, judgment of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 77).

89 Next, the Court has, in particular, already held that the prohibition laid down in Article 21(1) of the Charter is sufficient in itself to confer on individuals a right which they may rely on as such in a dispute with another individual (judgment of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 76), without, therefore, Article 51(1) of the Charter preventing it.

90 Finally, as regards, more specifically, Article 31(2) of the Charter, it must be noted that the right of every worker to paid annual leave entails, by its very nature, a corresponding obligation on the employer, which is to grant such periods of paid leave.

91 In the event that the referring court is unable to interpret the national legislation at issue in a manner ensuring its compliance with Article 31(2) of the Charter, it will therefore be required, in a situation such as that in the particular legal context of Case C-570/16, to ensure, within its jurisdiction, the judicial protection for individuals flowing from that provision and to guarantee the full effectiveness thereof by disapplying if need be that national legislation (see, by analogy, judgment of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 76).

92 In the light of all the foregoing considerations, the answer to the second part of the question in Case C-569/16 and the second part of the first question and the second question in Case C-570/16 is that, where it is impossible to interpret a national rule such as that at issue in the main proceedings in a manner consistent with Article 7 of Directive 2003/88 and Article 31(2) of the Charter, the national court, before which a dispute between the legal heir of a deceased worker and the former employer of that worker has been brought, must disapply that national legislation and ensure that the legal heir receives payment from the employer of an allowance in lieu of paid annual leave acquired under those provisions and not taken by the worker before his death. That obligation on the national court is dictated by Article 7 of Directive 2003/88 and Article 31(2) of the Charter where the dispute is between the legal heir and an employer which has the status of a public authority, and under the second of those provisions where the dispute is between the legal heir and an employer who is a private individual.

### **Costs**

93 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Grand Chamber) hereby rules:

**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 of Article 31(2) of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding national legislation such as that at issue in the main proceedings, under which, where the employment relationship is terminated by the death of the worker, the right to paid annual leave acquired under those provisions and not taken by the worker before his death lapses without being able to give rise to a right to an allowance in lieu of that leave which is transferable to the employee's legal heirs by inheritance.**

**2. Where it is impossible to interpret a national rule such as that at issue in the main proceedings in a manner consistent with Article 7 of Directive 2003/88 and Article 31(2) of the Charter of Fundamental Rights, the national court, before which a dispute between the legal heir of a deceased worker and the former employer of that worker has been brought, must disapply that national legislation and ensure that the legal heir receives payment from the employer of an allowance in lieu of paid annual leave acquired under those provisions and not taken by the worker before his death. That obligation on the national court is dictated by Article 7 of Directive 2003/88 and Article 31(2) of the Charter of Fundamental Rights where the dispute is between the legal heir and an employer which has the status of a public authority, and under the second of those provisions where the dispute is between the legal heir and an employer who is a private individual.**

[Signatures]

\* Language of the case: German.

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