

ORDER OF THE CIVIL SERVICE TRIBUNAL
(Third Chamber)
10 December 2008

Case F-46/08

Thérèse Nicole Thoss
v
Court of Auditors of the European Communities

(Court of Auditors — Emoluments of members — Pensions —
Survivor's pension)

Full text in the language of the case (French) II-A-1 - 2381

Application: action brought under Article 230 EC, in which Mrs Thoss, widow of Mr Thoss, a former member of the Court of Auditors, asks the Tribunal to annul the decision of the Court of Auditors of 20 March 2006 refusing to allocate her the survivor's pension laid down in Article 16(1) of Council Regulation (EEC, Euratom, ECSC) No 2290/77 of 18 October 1977 determining the emoluments of the members of the Court of Auditors (OJ 1977 L 268, p. 1).

Held: The action registered under number F-46/08 *Thoss v Court of Auditors* is referred back to the Court of First Instance. The costs in the present case are reserved.

Summary

Procedure — Allocation of jurisdiction among the various Community Courts — Action for annulment brought by a member of a Community institution against a decision of that institution

(Art. 225(1), first para., EC, Arts 230 EC, 236 EC and 247(8) EC; Statute of the Court of Justice, Annex I, Art. 1; Staff Regulations, Art. 91(1); Council Regulation No 2290/77)

Since the Court of Auditors is a Community institution and not a 'body' or 'agency' within the meaning of Article 1 of the Annex to the Statute of the Court of Justice, the Civil Service Tribunal has jurisdiction to decide on an action brought by a member of the Court of Auditors against that institution only in so far as that action may be regarded as having been brought on the basis of Article 236 EC.

Where an application has been made for annulment of a decision of the Court of Auditors refusing to allocate the survivor's pension to a widow of a former member of that institution, it must be decided whether such a member may be regarded as a 'servant' within the meaning of Article 236 EC, in other words a 'person to whom the Staff Regulations apply'. First of all, the provisions of the EC Treaty clearly distinguish the situation of members of the Community institutions from that of officials and servants of the European Communities. Secondly, Article 247(8) EC provides that the conditions of employment of the members of the Court of Auditors are covered not by the Staff Regulations or the Conditions of Employment of Other Servants, but by a specific regulation, Regulation No 2290/77, determining the emoluments of the members of the Court of Auditors. Lastly, the Staff Regulations and the Conditions of

Employment of Other Servants are not directly applicable to members of the Court of Auditors, since their situation is affected by the Staff Regulations only indirectly, in so far as Regulation No 2290/77 refers to them. The members of the Court of Auditors cannot therefore be regarded as 'persons to whom the Staff Regulations apply' within the meaning of Article 91(1) of the Staff Regulations and therefore as 'servants' within the meaning of Article 236 EC. Consequently, Article 1 of the Annex to the Statute of the Court of Justice does not apply to an action brought by a member of the Court of Auditors on the basis of Article 236 EC. Such an action does not, therefore, come under the jurisdiction of the Civil Service Tribunal.

An action for annulment brought by a member of the Court of Auditors or by his surviving spouse against a decision of that institution relating in particular to the conditions of his employment fixed pursuant to Article 247(8) EC falls within the scope of Article 230 EC.

A decision of the Court of Auditors may be contested on the basis of Article 230 EC, even though the Court of Auditors is not expressly mentioned in its first paragraph, which determines the institutions whose acts may be subject to a review of legality by the Court of Justice.

Under the first paragraph of Article 225(1) EC the Court of First Instance has jurisdiction to hear and determine at first instance actions or proceedings

referred to in Article 230 EC, among others, with the exception of those reserved in the Statute for the Court of Justice.

(see paras 21, 25, 26, 29, 31-34, 42, 46-47)

See:

193/87 and 194/87 *Maurissen and Union syndicale v Court of Auditors* [1989] ECR 1045, para. 42, and opinion of Advocate General Darmon on that judgment, points 50 to 57; C-416/92 *H. v Court of Auditors* [1994] ECR I-1741

T-121/97 *Ryan v Court of Auditors* [1998] ECR II-3885