



Reports of Cases

JUDGMENT OF THE GENERAL COURT (Appeal Chamber) 13 October 2015

Case T-104/14 P

European Commission
v
Marco Verile
and
Anduela Gjergji

(Appeal — Cross-appeal — Civil service — Officials — Pensions — Transfer of national pension rights — Proposals concerning additional pensionable years — Act not having an adverse effect — Inadmissibility of the action at first instance — Article 11(2) of Annex VIII to the Staff Regulations — Legal certainty — Legitimate expectations — Equal treatment)

Appeal: against the judgment of the European Union Civil Service Tribunal (Full Court) of 11 December 2013 in *Verile and Gjergji v Commission* (F-130/11, ECR-SC, EU:F:2013:195), seeking to have that judgment set aside.

Held: The judgment of the European Union Civil Service Tribunal (Full Court) of 11 December 2013 in *Verile and Gjergji v Commission* (F-130/11) *Verile and Gjergji v Commission* (F-130/11) is set aside. The action brought by Mr Marco Verile and Ms Anduela Gjergji before the Civil Service Tribunal in Case F-130/11 is dismissed. Mr Verile and Ms Gjergji, on one hand, and the European Commission, on the other hand, are to pay their own costs.

Summary

1. *Actions brought by officials — Act adversely affecting an official — Definition — Proposal concerning additional pensionable years with a view to a transfer to the EU pension scheme of pension rights acquired before entry into the service of the EU — Not included — Decision to credit pensionable years adopted following transfer of the capital representing acquired pension rights — Included*

(*Staff Regulations, Art. 91(1); Annex VIII, Art. 11(2)*)

2. *Officials — Pensions — Pension rights acquired before entry into the service of the EU — Transfer to the EU scheme — Right of the person concerned to ascertain definitively, before the transfer, the number of pensionable years credited — Right to seek an advance ruling from the EU judiciary — None*

(*Staff Regulations, Annex VIII, Art. 11(2)*)

3. *Actions brought by officials — Jurisdiction of the Courts of the European Union — Advisory opinion — Not included*

(Art. 270 TFEU; Staff Regulations, Art. 91(1))

4. *Officials — Link between an official and the institution based on the Staff Regulations — Pension scheme — Governed by the Staff Regulations and not contractual in nature*

(Staff Regulations, Annex VIII, Art. 11(2))

5. *Acts of the institutions — Temporal application — Immediate application of the new rule to the future effects of a situation which arose under the old rule — Adoption of new general implementing provisions for Articles 11 and 12 of Annex VIII to the Staff Regulations — Application to the transfer of acquired pension rights applied for before the adoption of the new rule but effected after its entry into force — Infringement of acquired rights and of the principle of legitimate expectations — None*

(Staff Regulations, Annex VIII, Art. 11(2))

6. *Officials — Pensions — Pension rights acquired before entry into the service of the EU — Transfer to the EU scheme — Adoption of new general implementing provisions for Articles 11 and 12 of Annex VIII to the Staff Regulations — Difference in treatment between officials who have had the capital representing their pension rights transferred to the EU scheme before and after the entry into force of those provisions, respectively — Breach of the principle of equal treatment — None*

(Staff Regulations, Annex VIII, Art. 11(2))

1. A proposal concerning additional pensionable years, sent to an official with a view to a transfer to the European Union pension scheme of pension rights acquired under another scheme, does not produce binding legal effects which directly and immediately affect the legal situation of the person to whom it is addressed by significantly changing that situation. Therefore, it does not constitute an act having adverse effect, for the purposes of Article 91(1) of the Staff Regulations.

In accordance with Article 11(2) of Annex VIII to the Staff Regulations, the actual determination of the number of pensionable years with which an official will be credited, after applying for the transfer to the EU pension scheme of his pension rights previously acquired under another scheme, is necessarily carried out after the transfer has in fact taken place, 'on the basis of the capital transferred'. It is therefore not possible to consider that a proposal to calculate the number of pensionable years which, by its very nature, is notified prior to the transfer, can make such a determination.

The number of pensionable years to be credited is the result of applying the method for converting the capital sum representing previous rights to pensionable years, laid down in the general implementing provisions adopted by the institution in question under Article 11(2) of Annex VIII to the Staff Regulations.

It is the decision to be adopted after completion of the transfer of the capital sum representing the pension rights acquired by the person concerned before entering service which constitutes an act having adverse effect and may form the subject matter of an action for annulment under Article 91(1) of the Staff Regulations.

(see paras 56, 58, 62, 74)

2. Article 11(2) of Annex VIII to the Staff Regulations does not require that the person concerned must be able, before deciding whether or not to exercise his right to transfer his pension rights acquired under another scheme to the EU pension scheme, to ascertain definitively the number of pensionable years with which he will be credited after that transfer.

Nor does this provision require that any dispute between the person concerned and his institution concerning the interpretation and application of the relevant provisions must be resolved by the EU judicature even before the person concerned has decided whether or not to transfer his pension rights acquired under another scheme to the EU pension scheme.

(see para. 79)

3. Article 270 TFEU does not give the Courts of the European Union jurisdiction to issue advisory opinions; it only confers jurisdiction in any dispute between the European Union and its officials within the limits and under the conditions laid down in the Staff Regulations.

It is indeed the Staff Regulations which provide, in Article 91(1) thereof, that only an act having adverse effect can form the subject matter of an action for annulment. If the act against which the action was brought does not adversely affect the applicant, the action is inadmissible. Any interest the applicant may have in having the substance of the question raised by his action resolved is, in that regard, irrelevant.

(see paras 81-82)

4. The legal link between an official and the administration is based upon the Staff Regulations and not upon a contract. As a result, the legal relations governed directly by the provisions of the Staff Regulations, such as those concerning the EU pension scheme, are not contractual in nature. Accordingly, concepts falling within the realm of Member States' private law applicable to contracts, such as the concept of a proposal akin to an 'offer', are not relevant to the application of Article 11(2) of Annex VIII to the Staff Regulations.

(see para. 94)

See:

Judgments of 19 March 1975 in *Gillet v Commission*, 28/74, ECR, EU:C:1975:46, para. 4, and of 22 December 2008 in *Centeno Mediavilla and Others v Commission*, C-443/07 P, ECR, EU:C:2008:767, paragraph 60

5. Amending legislation applies, unless otherwise provided, to the future consequences of situations which arose under earlier legislation. That is so except for situations originating and becoming definitive under the previous legislation, which create acquired rights. A right is considered to be acquired when the event giving rise to it occurred before the legislative amendment. However, that is not the case when the event creating the right did not take place under the legislation that has been amended.

The application of the new general implementing provisions for Articles 11 and 12 of Annex VIII to the Staff Regulations to a transfer of pension rights acquired under another pension scheme, applied for before the adoption of those implementing provisions but carried out after those provisions entered into force, is not contrary to Article 11(2) of Annex VIII to the Staff Regulations.

In that regard, the person concerned only acquires a right to be credited with additional pensionable years once the capital sum representing his rights acquired under another scheme has been transferred to the EU pension scheme. Accordingly, since neither a proposal concerning additional pensionable years, sent to an official or servant by his institution in response to an application for the

transfer to the EU scheme of pension rights he had acquired under another scheme, nor, a fortiori, the mere submission of such an application produce binding legal effects, then, provided that the requested transfer has not yet been completed, this is a ‘situation yet to arise’ or, at most, a ‘situation that has arisen without being fully constituted’. In any event, this is not a situation originating and becoming definitive under the previous legislation.

Furthermore, even if specific assurances are given such as to engender legitimate expectations in the addressees, individuals cannot rely on the principle of protection of legitimate expectations in order to oppose the application of a new legislative provision, especially in a sphere in which the legislature enjoys a considerable degree of latitude.

(see paras 152-154, 170)

See:

Judgment of 22 December 2008 in *Centeno Mediavilla and Others v Commission*, EU:C:2008:767, paras 61 to 63 and 91 and the case law cited

6. The institution, in adopting the new general implementing provisions for Articles 11 and 12 of Annex VIII to the Staff Regulations, which give rise to a difference in the treatment of officials who have had the capital sum representing their pension rights acquired under another scheme transferred to the EU scheme before and after the entry into force of those implementing provisions, respectively, has not infringed the principle of equal treatment, since the differentiated treatment affects officials who do not form part of a single category.

The officials in respect of whom the capital sum representing their pension rights acquired under another scheme has not been transferred to the EU pension scheme when the new implementing provisions come into force are not in the same legal situation as officials whose pension rights acquired before their entry into service had already, prior to that date, been transferred, in the form of a capital sum, to the EU pension scheme and in respect of whom a decision crediting additional pension years under the latter scheme had already been adopted. The first set of officials still have pension rights under another scheme while, for the second set, the transfer of the capital sum resulting in the extinguishment of those rights and the corresponding crediting of additional pensionable years under the EU pension scheme has already taken place.

Such a difference in treatment is, moreover, based on an objective factor independent of the will of the institution concerned, namely, the speed with which the external pension scheme concerned processed the application for the transfer of the capital of the person concerned.

(see paras 177-179)

See:

Judgment of 22 December 2008 in *Centeno Mediavilla and Others v Commission*, EU:C:2008:767, paras 79 to 81