

2. Second plea in law, alleging infringement of Conclusion No 273/15 of 25 February 2016 of the Board of Heads of Administration on medical examination following retirement on grounds of invalidity, in so far as it provides that the institution's doctor may, exceptionally, accept a report prepared by the attending physician or defer the examination if the nature of the condition that gave rise to the invalidity does not justify an examination to assess the possibility of returning to work.
3. Third plea in law, alleging breach of the duty to have regard for the welfare of officials. The applicant submits in this regard that the institution was required to take into account the opinions of the attending physician and the medical officer of 23 and 24 August 2017, of the psychologist of 26 September 2019 and of the attending physician of 11 October 2019.

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**Action brought on 18 October 2019 — Ashworth v Parliament**

**(Case T-720/19)**

(2019/C 413/77)

*Language of the case: French*

**Parties**

*Applicant:* Richard Ashworth (Lingfield, United Kingdom) (represented by: A. Schmitt and A. Waisse, lawyers)

*Defendant:* European Parliament

**Form of order sought**

The applicant claims that the Court should:

- declare the present application admissible;
- where necessary, by way of measures of organisation of procedure or measures of inquiry in relation to the present case, order the European Parliament to submit the opinions of the Legal Service of the European Parliament which, regardless of the exact date, are believed to have been issued on 16 July 2018 and 3 December 2018 and in any event before the adoption of the decision of the Bureau of the European Parliament of 10 December 2018 amending the Implementing Measures for the Statute for Members of the European Parliament (2018/C 466/02, Official Journal, 28 December 2018, C 466/8);
- declare the contested individual decision notified to the applicant by the Members' Salaries and Social Entitlements Unit of the Directorate-General for Finance of the European Parliament concerning the applicant's right to his (voluntary) additional pension during the month of September 2019 to be annulled on the basis of Article 263 TFEU in so far as that decision applies the special levy of 5 % on the nominal amount of the (voluntary) additional pension payable to the applicant pursuant to the abovementioned decision of the Bureau of 10 December 2018;
- declare the abovementioned decision of the Bureau of 10 December 2018 inapplicable under Article 277 TFEU in so far as it amends Article 76 of the Implementing Measures for the Statute for Members of the European Parliament and, more specifically, in so far as it introduces a special levy of 5 % on the nominal amount of (voluntary) additional pensions payable from 1 January 2019;

— order the Parliament to pay the costs.

### **Pleas in law and main arguments**

In support of the action, the applicant relies on five pleas in law.

1. First plea in law, alleging lack of competence *ratione materiae* on the part of the Bureau:

— first, the decision of the Bureau of 10 December 2018 ('the Bureau decision') breaches the Statute for Members of the European Parliament adopted by decision of the European Parliament of 28 September 2005, 2005/684/EC, Euratom (OJ 2005 L 62, p.1) ('the Statute'). The Bureau decision is, *inter alia*, contrary to the provisions of Article 27 of the Statute, which requires the maintenance of 'acquired rights' and 'future entitlements';

— secondly, the Bureau decision creates a tax by introducing a special levy of 5 % on the nominal amount of the pension although the creation of a tax is not within the competence of the Bureau pursuant to Article 223(2) TFEU.

2. Second plea in law, alleging infringement of essential procedural requirements:

— first, the Bureau adopted its decision without complying with the rules laid down in Article 223 TFEU;

— secondly, the Bureau decision is inadequately reasoned and thus fails to comply with the obligation to state reasons laid down in Article 296(2) TFEU and Article 41(2)(c) of the Charter of Fundamental Rights of the European Union.

3. Third plea in law, alleging infringement of acquired rights and future entitlements and of the principle of legitimate expectations:

— first, the Bureau decision infringes the acquired rights and future entitlements resulting from both the general principles of law and the Statute, which expressly provides that they are to be maintained 'in full' (Article 27);

— secondly, the Bureau decision infringes the principle of legitimate expectations.

4. Fourth plea in law, alleging infringement of the principle of proportionality and of the principles of equal treatment and non-discrimination:

— first, the infringement of the applicant's rights is disproportionate to the objectives pursued by the Bureau decision;

— secondly, the Bureau decision must be declared inapplicable on grounds of infringement of the principles of equal treatment and non-discrimination.

5. Fifth plea in law, alleging breach of the principle of legal certainty and a lack of transitional measures:

— first, the Bureau decision breaches the principle of legal certainty in so far as it has unlawful retroactive effects;

— secondly, the Bureau decision infringes the principle of legal certainty in so far as it fails to provide for transitional measures.