



## Reports of Cases

**Joined Cases C-116/21 P to C-118/21 P, C-138/21 P and C-139/21 P**

**European Commission**

**v**

**VW and Others**

**Judgment of the Court (Third Chamber), 14 July 2022**

(Appeal – Civil service – Pension – Staff Regulations of Officials of the European Union – Article 20 of Annex VIII – Grant of a survivor’s pension – Surviving spouse of a former official in receipt of a retirement pension – Marriage entered into after termination of the official’s service – Condition that the marriage must have lasted for at least five years at the date of the official’s death – Article 18 of Annex VIII – Marriage entered into before termination of the official’s service – Condition that the marriage must have lasted for at least one year only – Plea of illegality in respect of Article 20 of Annex VIII – Charter of Fundamental Rights of the European Union – Article 20 – Principle of equal treatment – Article 21(1) – Principle of non-discrimination on the ground of age – Article 52(1) – No arbitrary or manifestly inappropriate differentiation in the light of the objective pursued by the EU legislature)

1. *EU law – Principles – Equal treatment – Different treatment objectively justified – Criteria for assessment – Application to a legislative act of the Union (Charter of Fundamental Rights of the European Union, Art. 20; Staff Regulations of Officials, Annex VIII, Arts 18 and 20)*

(see paragraphs 95-97, 140-143)

2. *Officials – Pensions – Survivor’s pension – Conditions for granting – Different application depending on whether the marriage was entered into before or after termination of the deceased official’s service – Comparable nature of the two situations in the light of the subject matter and purpose of the survivor’s pensions and the common condition of the legal nature of the ties between the spouses (Staff Regulations of Officials, Annex VIII, Arts 18 to 20 and 27)*

(see paragraphs 98-100, 102-108)

3. *Officials – Pensions – Survivor’s pension – Conditions for granting – Minimum duration of marriage – Difference in treatment of surviving spouses depending on whether their marriage was entered into before or after termination of the deceased official’s service – EU legislature’s broad discretion – Observance of the principle of proportionality – Judicial review – Limits – Examination by the EU judicature of the appropriate and necessary nature of the differentiation – Not permissible*

*(Charter of Fundamental Rights of the European Union, Arts 20 and 52(1); Staff Regulations of Officials, Annex VIII, Arts 18 and 20)*

(see paragraphs 127-130, 144)

4. *Officials – Pensions – Survivor’s pension – Conditions for granting – Minimum duration of marriage – Difference in treatment of surviving spouses depending on whether their marriage was entered into before or after termination of the deceased official’s service – Limitation of the right to equal treatment and indirect discrimination on the ground of age – Whether justified – Combating fraud – Whether permissible – Proportionality test (Charter of Fundamental Rights of the European Union, Arts 20, 21(1) and 52(1)); Staff Regulations of Officials, Art. 1d and Annex VIII, Arts 18 and 20)*

(see paragraphs 139-142, 146-156, 172-176)

5. *Appeal – Grounds – Grounds referring to findings in the judgment under appeal that were not challenged in a cross-appeal – Res judicata – Rejection (Rules of Procedure of the Court of Justice, Arts 169(1) and 178(1))*

(see paragraph 180)

### **Résumé**

VW, BT and RN were, according to the individual case, either married or remarried to officials of the European Union who were no longer in the service of an EU institution on the date on which their marriage or remarriage was concluded. Less than five years after that date in each case, their spouse died.

Each of the three women in question, as the surviving spouse of a former official of the European Union, applied for a survivor’s pension.

Those applications were rejected by the European Commission (‘the decisions at issue’) on the ground that VW, BT and RN did not satisfy the conditions laid down in Article 20 of Annex VIII to the Staff Regulations of Officials of the European Union (‘the Staff Regulations’). Under that provision, surviving spouses who married an official after termination of the latter’s service are excluded from entitlement to the survivor’s pension where their marriage had lasted less than five years. By contrast, under Article 18 of Annex VIII to the Staff Regulations, surviving spouses who married an official before termination of the latter’s service are entitled to a survivor’s pension provided that their marriage had lasted at least one year.

Hearing the actions for annulment brought by VW, BT and RN against the decisions at issue, the General Court concluded that Article 20 of Annex VIII to the Staff Regulations infringed the principle of equal treatment enshrined in Article 20 of the Charter of Fundamental Rights of the European Union (‘the Charter’) as well as, in the case concerning VW, the principle of proportionality and, in the cases concerning BT and RN, the principle of non-discrimination on the ground of age enshrined in Article 21(1) of the Charter. In those circumstances it upheld the pleas of illegality raised by VW, BT and RN and annulled each of the decisions at issue.

In appeal proceedings brought by the Commission and the Council of the European Union, the Court of Justice sets aside the judgments of the General Court and dismisses the actions brought by VW, BT and RN. The Court observes that, by providing, in Articles 18 and 20 of Annex VIII to the Staff Regulations, for different minimum periods for which the marriage must have lasted before a surviving spouse of a deceased official or former official is entitled to a survivor's pension, the EU legislature did not exercise in an arbitrary or manifestly inappropriate manner the broad discretion which it enjoys in that regard.

### *Findings of the Court*

While confirming the General Court's analysis that the situations covered by Articles 18 and 20 of Annex VIII to the Staff Regulations are comparable and having regard to the fact that, by providing, in those provisions, for different minimum periods for which the marriage must have lasted, the EU legislature treated comparable situations differently, the Court of Justice points out that, in the light of the broad discretion which the EU legislature enjoys when adopting provisions of the Staff Regulations, there is a breach of the principle of equal treatment, as enshrined in Article 20 of the Charter, only where the EU legislature makes a distinction which is arbitrary or manifestly inappropriate in relation to the objective pursued by the rules in question. That case-law is also applicable in the context of the verification of the requirement of proportionality imposed by Article 52(1) of the Charter.

It follows that, in the present case, the General Court ought to have confined itself to ascertaining whether the distinction between surviving spouses of officials or former officials on the basis of the date on which the marriage was entered into, made in Article 20 of Annex VIII to the Staff Regulations, read in conjunction with Article 18 of that annex, seemed to be neither 'arbitrary' nor 'manifestly inappropriate' in the light of the general-interest objective pursued by those provisions. By having assessed, in the judgments under appeal, whether that distinction seemed not 'unreasonable' in the light of the public interest objective pursued and by having, in addition, examined whether the condition of a minimum duration of five years' marriage laid down in Article 20 of Annex VIII to the Staff Regulations, taken in isolation and independently of the minimum duration of one year laid down in Article 18 of that annex, was, in the context of Article 52(1) of the Charter, proportionate in that it did not manifestly go beyond what is necessary to achieve that general-interest objective, the General Court misunderstood the scope of its judicial review and thus made an error of law.

Accordingly, the Court of Justice sets aside the judgments of the General Court under appeal and, having held that those disputes were ready for judgment, itself gives final judgment on them.

In that regard, the Court observes that, although the EU legislature treated comparable situations differently by providing, in Articles 18 and 20 of Annex VIII to the Staff Regulations, for different minimum periods for which the marriage must have lasted, that difference in treatment is nevertheless justified under Article 52(1) of the Charter.

Under Article 52(1) of the Charter, limitations may be imposed on the rights and freedoms recognised by the Charter only if, first, they are provided for by law, second, they respect the essence of those rights and freedoms and, third, they are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others.

In the present case, it is common ground that the difference in treatment between surviving spouses of officials is provided for by law, since it results from Article 20 of Annex VIII to the Staff Regulations, read in conjunction with Article 18 of that annex. Those provisions lay down precisely quantified conditions relating to the minimum duration of marriage, which define the scope of the limitation on the exercise of the right to equal treatment.

According to the Court, the limitation introduced to the survivor's pension scheme by the difference in treatment at issue also respects the essence of the principle of equal treatment. That limitation does not call into question the principle of equal treatment as such since it concerns only the matter of the condition of the minimum duration of marriage which surviving spouses of deceased officials or former officials must satisfy in order to be able to receive a survivor's pension, without those spouses being deprived of the possibility of receiving such a pension in each of the situations contemplated in Articles 18 and 20 of Annex VIII to the Staff Regulations.

Furthermore, that limitation meets a general-interest objective, namely that of preventing abuse of rights and fraud. In that context, the condition that the marriage must have lasted for a certain period of time in order for the surviving spouse to be entitled to the survivor's pension is intended to ensure the reality and stability of the relationship between the persons concerned. This is a uniform criterion applicable without distinction to all surviving spouses covered by the provisions of Articles 18 and 20 of Annex VIII to the Staff Regulations, which is designed not to presume the existence of abuse or fraud on the part of surviving spouses, but to prevent the commission of such abuses or fraud.

As regards, lastly, the assessment of proportionality, the Court holds that it appears neither arbitrary nor manifestly inappropriate to require, in Article 20 of Annex VIII to the Staff Regulations, a longer minimum duration of marriage than that provided for in Article 18 of that annex. In the situation referred to in Article 20, which is characterised by the fact that the marriage was entered into after termination of the official's service, there is likely to be greater incentive to commit abuses or fraud as a result of the greater predictability of and the closer proximity to the official's death since, as in the present cases, the official left service as a result of retirement.

In the light of the foregoing, the Court concludes that, in so far as the difference in treatment established in Article 20 of Annex VIII to the Staff Regulations meets the criteria set out in Article 52(1) of the Charter, Article 20 of Annex VIII to the Staff Regulations is consistent with the principle of equal treatment enshrined in Article 20 of the Charter.

On the same grounds, the Court, while finding that that difference in treatment also constitutes a difference of treatment indirectly based on age, holds that it also complies with the principle of non-discrimination on the ground of age laid down in Article 21(1) of the Charter.