Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

4 February 2021 *

(Reference for a preliminary ruling – Civil service – Transfer of retirement pension rights – Staff Regulations of Officials of the European Union – Article 11 of Annex VIII – Officials and temporary staff reinstated in their national administration of origin after a period of non-active status and the performance of duties in an EU institution)

In Case C-903/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (France), made by decision of 2 December 2019, received at the Court on 10 December 2019, in the proceedings

DQ

v

Ministre de la Transition écologique et solidaire,

Ministre de l'Action and des Comptes publics

THE COURT (Eighth Chamber),

composed of N. Wahl, President of the Chamber, F. Biltgen (Rapporteur) and L.S. Rossi, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the French Government, by A.-L. Desjonquères, N. Vincent and A. Ferrand, acting as Agents,

– the European Commission, by B. Mongin and M. Brauhoff, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: French.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 11(1) of Annex VIII to the Staff Regulations of Officials of the European Union ('the Staff Regulations').

2 The request has been made in proceedings between DQ and both the ministre de la Transition écologique et solidaire (Minister for Ecological and Joint Transition, France) and the ministre de l'Action et des Comptes publics (Minister for the Public Sector and Public Accounts, France) concerning his application for transfer of the actuarial equivalent of his retirement pension rights acquired under the EU pension scheme.

Legal context

3 Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities (OJ 2004 L 124, p. 1) reformed the Staff Regulations. One of the innovations introduced by that regulation concerns the portability of retirement pension rights.

4 Recital 32 to that regulation states:

'The rules of severance grant should be amended to take into account Community rules on portability of pension rights. This should be achieved by correcting a number of inconsistencies and introducing greater flexibility.'

5 Annex VIII to the Staff Regulations, entitled 'Pension scheme', provides, in Article 11:

'1. An official who leaves the service of the Union to:

– enter the service of a government administration or a national or international organisation which has concluded an agreement with the Union;

– pursue an activity in an employed or self-employed capacity, by virtue of which he acquires pension rights under a scheme whose administrative bodies have concluded an agreement with the Union,

shall be entitled to have the actuarial equivalent of his retirement pension rights updated to the actual date of transfer, in the Union transferred to the pension fund of that administration or organisation or to the pension fund under which he acquires retirement pension rights by virtue of the activity pursued in an employed or self-employed capacity.

2. An official who enters the service of the Union after:

– leaving the service of a government administration or of a national or international organisation;

or

– pursuing an activity in an employed or self-employed capacity;

shall be entitled, after establishment but before becoming eligible for payment of a retirement pension within the meaning of Article 77 of the Staff Regulations, to have paid to the Union the capital value, updated to the date of the actual transfer, of pension rights acquired by virtue of such service or activities.

…

3. Paragraph 2 shall also apply to an official who is reinstated after a period of secondment under the second indent of Article 37(1)(b) of the Staff Regulations and to an official who is reinstated following expiry of a period of leave on personal grounds under Article 40 of the Staff Regulations.'

6 Article 12 of that annex is worded as follows:

'1. An official aged less than the pensionable age whose service terminates otherwise than by reason of death or invalidity and who is not entitled to an immediate or deferred retirement pension shall be entitled on leaving the service:

(a) where he has completed less than one year's service and has not made use of the arrangement laid down in Article 11(2) to payment of a severance grant equal to three times the amounts withheld from his basic salary in respect of his pension contributions, after deduction of any amounts paid under Articles 42 and 112 of the Conditions of Employment of Other Servants;

(b) in other cases, to the benefits provided under Article 11(1) or to the payment of the actuarial equivalent of such benefits to a private insurance company or pension fund of their choice, on condition such company or fund guarantees that:
   (i) the capital will not be repaid;
   (ii) a monthly income will be paid from age 60 at the earliest and age 66 at the latest;
   (iii) provisions are included for reversion or survivors' pensions;
   (iv) transfer to another insurance company or other fund will be authorised only if such fund fulfils the conditions laid down in points (i), (ii) and (iii).

2. By way of derogation from point (b) of paragraph 1, officials under pensionable age who, since taking up their duties, have, in order to establish or maintain pension rights, paid into a national pension scheme, a private insurance scheme or a pension fund of their choice which satisfies the requirements set out in paragraph 1, and whose service terminates for reasons other than death or invalidity without their qualifying for an immediate or deferred retirement pension, shall be entitled, on leaving the service, to a severance grant equal to the actuarial value of their pension rights acquired during service in the institutions. In those cases the payments made in order to establish or maintain their pension rights under the national pension scheme in application of Articles 42 or 112 of the Conditions of Employment of Other Servants shall be deducted from the severance grant.'

7 Under Article 39(1) of the Conditions of Employment of Other Servants of the European Union:

'On leaving the service, … staff shall be entitled to a retirement pension, transfer of the actuarial equivalent or the payment of a severance grant in accordance with Chapter 3 of Title V of, and Annex VIII to, the Staff Regulations.'

The dispute in the main proceedings and the question referred for a preliminary ruling

8 The appellant in the main proceedings has been a French State civil servant since 1 September 2006 and is employed as a senior expert in sustainable development in the departmental directorate of the Bas-Rhin area (France).

9 Between 1 April 2011 and 31 August 2013, he was assigned non-active status for personal reasons, during which time he held a position as member of the contract staff at the European Commission.

10 After being reinstated in his administration of origin at the end of that period of non-active status, he requested the transfer, to the pension scheme for retired State officials, of the actuarial equivalent of his retirement pension rights acquired in the EU pension scheme, relying on Article 11(1) of Annex VIII to the Staff Regulations.

11 That request was refused by two decisions of 10 July and 17 September 2014.

12 The appellant in the main proceedings brought an action for annulment of those decisions before the Tribunal administratif de Strasbourg (Administrative Court, Strasbourg, France), which was dismissed by a judgment of 19 October 2016.

13 The appellant in the main proceedings brought an appeal on a point of law before the Conseil d'État (Council of State, France), alleging infringement of the principle of equal treatment in that the tribunal administratif de Strasbourg (Administrative Court, Strasbourg) held that the benefit of the transfer of the actuarial equivalent of the retirement pension rights at issue is reserved solely to members of staff and officials of the European Union who are initially posted within an administration of a Member State, excluding those who return to a national administration at the end of a period of non-active status for personal reasons.

14 Taking the view that the response to the ground of appeal raised is not obvious and that the interpretation of Article 11 of Annex VIII to the Staff Regulations is of decisive importance for the resolution of the dispute before it, the Conseil d'État (Council of State) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is the benefit of the provisions of Article 11(1) of Annex VIII to the [Staff Regulations] reserved exclusively to officials and contract staff posted for the first time within a national administration after having been employed as officials, contract staff or temporary staff in an EU institution, or does that benefit also extend to officials and contract staff returning to the service of a national administration after having performed duties in an EU institution and having been assigned non-active status or granted leave for personal reasons during that period?'

Consideration of the question referred

15 By its question, the referring court asks, in essence, whether Article 11(1) of Annex VIII to the Staff Regulations must be interpreted as meaning that the transfer of the actuarial equivalent of retirement pension rights is restricted solely to officials and members of the contract staff who are seconded to a national administration for the first time after having been employed in an EU institution, or whether that transfer may also be requested by those who return to that administration after having performed duties in an EU institution while on non-active status or leave on personal grounds.

16 As a preliminary point, it must be recalled that the provisions of Article 11 of Annex VIII to the Staff Regulations are applicable to members of the contract staff, such as the appellant in the main proceedings, by virtue of the reference made in Article 39(1) of the Conditions of Employment of Other Servants of the European Union. That provision provides that, upon termination of his or her service, the member of the contract staff is entitled to a retirement pension, to a transfer of the actuarial equivalent or to payment of the severance grant under the conditions laid down in Chapter 3 of Title V of the Staff Regulations and Annex VIII thereto.

17 Under Article 11(1) of Annex VIII to the Staff Regulations, any official or member of the contact staff who leaves the service of the Union to enter the service of a government administration or a national or international organisation or to pursue an activity in an employed or self-employed capacity, is entitled to have the actuarial equivalent of retirement pension rights acquired in the Union transferred.

18 As regards the wording of Article 11(1) of Annex VIII to the Staff Regulations, it must be observed that the term 'enter', the usual meaning of which, when taking up duties, indicates the start of the performance of those duties or their starting point in time, does not, in itself, enable an answer to be given to the question whether it is the initial entry into service or whether that term also includes the return to that service.

19 Nor does a literal interpretation by juxtaposition with the wording of Article 11(3) of Annex VIII to the Staff Regulations, which refers to an official who is 'reinstated' after a period of secondment under the second indent of Article 37(1)(b) of the Staff Regulations or following expiry of a period of leave on personal grounds under Article 40 of the Staff Regulations, make it possible to give any indication in that regard. The different wording of Article 11(1) and (3) of Annex VIII to the Staff Regulations is, in itself, an indication as to their different scope. Thus, paragraph 3 of that article, which deals with the specific case of an official on secondment or leave on personal grounds provided for in the Staff Regulations, expressly refers to the conditions for the application of paragraph 2 of that article.

20 With regard to the interpretation to be given to the expression 'enter the service of [an] … administration' in Article 11(1) of Annex VIII to the Staff Regulations, it is appropriate to recall that it follows both from the requirements of the uniform application of EU law and from the principle of equality that the terms of a provision of EU law which makes no express reference to the law of the Member States to determine its meaning and scope must normally be given, throughout the European Union, an autonomous and uniform interpretation which must take into account the context of the provision and the objective pursued by the legislation in question (judgment of 15 October 2015, *Axa Belgium*, C-494/14, EU:C:2015:692, paragraph 21 and the case-law cited).

21 As regards the context of which Article 11 of Annex VIII to the Staff Regulations forms part, it must be borne in mind that the provisions of Articles 11 and 12 of that annex were amended in the reform of the Staff Regulations by Regulation No 723/2004. As is clear from recital 32 of that regulation, the EU legislature sought to amend the rules on the severance grant in order to take account of EU legislation on the portability of retirement pension rights and, to that end, remedy certain inconsistencies and introduce more flexibility.

22 The amendment of those provisions reflects the intention of the EU legislature to reduce the number of cases in which members of the contract staff who are not entitled to a retirement pension because they have completed fewer than 10 years' service may receive a severance grant and to extend the possibility of transferring retirement pension rights to another pension scheme.

23 As regards the objective pursued by the reform of the Staff Regulations by Regulation No 723/2004, by establishing the portability of retirement pension rights as the rule, the severance grant subsisting as a derogation and exceptional mechanism to which strict conditions apply, it is appropriate to note that the EU legislature intended to promote the attractiveness of the EU civil service. In that regard, the system for the transfer of retirement pension rights, as provided for in Article 11 of Annex VIII to the Staff Regulations, by enabling coordination between the national schemes and the EU pension scheme, is intended to facilitate transition from national, public or private employment to the EU administration and thus to ensure that the European Union has the best choice of qualified staff who already have appropriate professional experience (see, to that effect, judgment of 16 December 2004, *My*, C-293/03, EU:C:2004:821, paragraph 44 and the case-law cited).

24 It is with the aim of having a greater choice among staff with adequate professional experience that the EU legislature introduced greater flexibility in relation to the portability of retirement pension rights in both directions, thus putting an end to the uncertainties which certain members of the contract staff had to face as regards the possibility of ending their employment relationship and the impossibility of obtaining equivalent length-of-service pension rights.

25 Thus, although the Court had already held, before the reform of the Staff Regulations by Regulation No 723/2004, that Article 11(1) of Annex VIII to the Staff Regulations allowed, in the event of a return to the national scheme, the transfer to that scheme of the actuarial equivalent of the retirement pension rights acquired under the EU pension scheme (judgment of 29 June 1988, *Gritzmann-Martignoni* v *Commission*, 124/87, EU:C:1988:345, paragraph 17), that is all the more the case since that reform.

26 The restrictive interpretation of the conditions governing the portability of retirement pension rights laid down in Article 11(1) of Annex VIII to the Staff Regulations, adopted by the French administration, to the effect that a national official who has performed duties for a limited period within an EU institution is refused the portability of the retirement pension rights acquired during that period, clearly runs counter to the objective pursued by that provision, which is to ensure great flexibility with regard to the portability of retirement pension rights and providing a choice of qualified staff.

27 It follows that the transfer of the actuarial equivalent of retirement pension rights provided for in Article 11(1) of Annex VIII to the Staff Regulations must be capable of being requested both by officials and members of the contract staff who are posted for the first time to the service of a national administration and by those who return to a national administration at the end of, inter alia, a period of non-active status or leave on personal grounds.

28 Any other interpretation of Article 11(1) of Annex VIII to the Staff Regulations, which would deprive a person such as the appellant in the main proceedings of his right to transfer the actuarial equivalent of the retirement pension rights acquired in the EU pension scheme, would be incompatible with the provisions of the FEU Treaty concerning the principle of freedom of movement for workers.

29 In that regard, it must be borne in mind that an official or member of the contract staff of the European Union may have the status of a migrant worker within the meaning of Article 45 TFEU. It is settled case-law that an EU national working in a Member State other than his or her Member State of origin does not lose the status of worker, within the meaning of that article, by occupying a post with an international organisation (judgments of 16 February 2006, *Öberg*, C-185/04, EU:C:2006:107, paragraph 12 and the case-law cited, and of 6 October 2016, *Adrien and Others*, C-466/15, EU:C:2016:749, paragraph 24 and the case-law cited).

30 It follows that EU nationals working for an EU institution or body in a Member State other than their Member State of origin, such as the appellant in the main proceedings, may not be refused the rights and social advantages which Article 45 TFEU affords them (judgment of 6 October 2016, *Adrien and Others*, C-466/15, EU:C:2016:749, paragraph 25 and the case-law cited).

31 In accordance with settled case-law, Article 45 TFEU precludes any measure which, even if applicable without discrimination on grounds of nationality, is liable to hinder or render less attractive the exercise by EU nationals of the fundamental freedoms guaranteed by the Treaty (judgment of 6 October 2016, *Adrien and Others*, C-466/15, EU:C:2016:749, paragraph 26 and the case-law cited).

32 Thus, the Court has held that depriving a worker of the right to aggregation of periods completed under the legislation of a number of Member States, without taking into account periods completed in international organisations, would constitute an obstacle to the freedom of movement for workers within the meaning of Article 45 TFEU (see, to that effect, judgment of 4 July 2013, *Gardella*, C-233/12, EU:C:2013:449, paragraph 45).

33 In the present case, the French administration's interpretation of Article 11(1) of Annex VIII to the Staff Regulations is such as to place at a disadvantage officials of the Member State concerned who have exercised their freedom of movement by accepting employment in an EU institution as compared with officials who have remained in that Member State, since the latter benefit from an uninterrupted period of contributions, while the former, because of the refusal to transfer the retirement pension rights acquired in the EU pension scheme, would have to suffer an interruption to their contribution periods.

34 Furthermore, the Court has previously held, with regard to Article 11(2) of Annex VIII to the Staff Regulations, that, by refusing to adopt the measures necessary for the transfer to the EU pension scheme of the actuarial equivalent or the flat-rate redemption value of retirement pension rights acquired under the national pension scheme, as provided for in that article, a Member State makes the recruitment by the European Union of national officials with a certain length of service more difficult, since movement from the national administration to that of the European Union would entail the loss of pension rights to which they would be entitled if they had not accepted employment with the European Union (see, to that effect, judgments of 16 December 2004, *My*, C-293/03, EU:C:2004:821, paragraph 45, and of 4 February 2015, *Melchior*, C-647/13, EU:C:2015:54, paragraph 26).

35 Such consequences cannot be accepted in the light of the duty of genuine cooperation and assistance which Member States owe the European Union and which finds expression in the obligation, laid down in Article 4(3) TEU, to facilitate the achievement of the European Union's tasks (judgment of 16 December 2004, *My*, C-293/03, EU:C:2004:821, paragraph 48, and order of 9 July 2010, *Ricci and Pisaneschi*, C-286/09, not published, EU:C:2010:420, paragraph 33).

36 Furthermore, in accordance with the case-law of the Court, compliance with the Staff Regulations, which are binding in their entirety and directly applicable, is required of the Member States (judgments of 20 October 1981, *Commission* v *Belgium*, 137/80, EU:C:1981:237, paragraph 7, and of 10 May 2017, *de Lobkowicz*, C-690/15, EU:C:2017:355, paragraph 42), including not only the national courts but also all the organs of the Member State concerned, including the administrative authorities (judgment of 19 December 2019, *GRDF*, C-236/18, EU:C:2019:1120, paragraph 35).

37 It follows that, in addition to the effects of the Staff Regulations within the EU administration, they also place an obligation on the Member States to the full extent to which their cooperation is necessary for the implementation of those regulations (judgments of 20 October 1981, *Commission* v *Belgium*, 137/80, EU:C:1981:237, paragraph 8, and of 13 February 2019, *Rohart*, C-179/18, EU:C:2019:111, paragraph 15 and the case-law cited), and national authorities must refrain from any measures designed to limit the scope of the opportunities afforded by the Staff Regulations.

38 In the light of the foregoing considerations, the answer to the question referred is that Article 11(1) of Annex VIII to the Staff Regulations must be interpreted as meaning that the transfer of the actuarial equivalent of retirement pension rights may be requested both by officials and members of the contract staff who enter a national administration for the first time after having been employed in an EU institution and by those who return to a national administration after having performed duties in an EU institution in the context of a period of non-active status or leave on personal grounds.

Costs

39 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 (Eighth Chamber) hereby rules:

Article 11(1) of Annex VIII to the Staff Regulations of Officials of the European Union must be interpreted as meaning that the transfer of the actuarial equivalent of retirement pension rights may be requested both by officials and members of the contract staff who enter a national administration for the first time after having been employed in an EU institution and by those who return to a national administration after having performed duties in an EU institution in the context of a period of non-active status or leave on personal grounds.

[Signatures]