

# Anonymised version

Translation

C-281/19 — 1

## Case C-281/19

### Request for a preliminary ruling

**Date lodged:**

3 April 2019

**Referring court:**

Tribunal administratif de Paris (France)

**Date of the decision to refer:**

27 March 2019

**Applicant:**

XS

**Defendant:**

Recteur de l'académie de Paris

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**TRIBUNAL ADMINISTRATIF DE PARIS**

**(ADMINISTRATIVE COURT, PARIS)**

[...] [case number]

**FRENCH REPUBLIC**

XS

**IN THE NAME OF THE FRENCH PEOPLE**

[...] [composition of the referring court]

Hearing of 13 March 2019

Reading of 27 March 2019

[...]

By an application and a statement of case lodged on 28 June 2017 and 29 August 2017, XS, [...], [the applicant's representative], claims that the Administrative Court should:

(1) annul the decision of 28 April 2017 rejecting her internal appeal, together with the decision of 15 March 2017 and the decision of 16 March 2017 taken by the recteur de l'académie de Paris (Head of State Education for the Paris Region);

(2) order the Head of State Education for the Paris Region, within two months of notification of the judgment, to regrade her, taking into account her previous service with the European Commission;

(3) hold the State liable in the amount of EUR 3 000 pursuant to Article L. 761-1 of the code de justice administrative (Administrative Justice Code).

XS submits that:

- the contested decisions do not contain a sufficient statement of reasons;
- the contested decisions have no legal basis;
- the contested decisions are vitiated by an error of law.

By a defence, lodged on 31 October 2018, the Head of State Education for the Paris Region contends that the application should be dismissed.

He maintains that the pleas in law contained in the application are unfounded.

Having regard to the other documents in the file.

Having regard to:

- the Treaty on the Functioning of the European Union;
- the code des relations entre le public et l'administration (Code on relations between the public and the administration);
- décret n°51-1423 du 5 décembre 1951 portant règlement d'administration publique pour la fixation des règles suivant lesquelles doit être déterminée l'ancienneté du personnel nommé dans l'un des corps de fonctionnaires de l'enseignement relevant du ministère de l'éducation nationale (Decree No 51-1423 of 5 December 1951 laying down administrative regulations to establish rules for the determination of the seniority of staff appointed to one of the civil service educational 'corps' (professional bodies) under the Ministry of National Education);
- décret n°90-680 du 1<sup>er</sup> août 1990 relatif au statut particulier des professeurs des écoles (Decree No 90-680 of 1 August 1990 on the special statutes governing schoolteachers);

- décret n°2010-311 du 22 mars 2010 relatif aux modalités de recrutements et d'accueil des ressortissants des Etats membres de l'Union européenne ou d'un autre Etat partie à l'accord sur l'Espace économique européen dans un corps, un cadre d'emplois ou un emploi de la fonction publique française (Decree No 2010-311 of 22 March 2010 on the arrangements for the recruitment and admission of nationals of EU Member States or another State Party to the Agreement on the European Economic Area to a professional body, 'cadre d'emplois' (job grouping) or position within the French civil service);
- the circular from the ministre du budget, des comptes publics, de la fonction publique et de la réforme de l'Etat (Minister for the Budget, Public Accounts, the Civil Service and State Reform) NOR BCRF 1100667C of 15 April 2011 on the arrangements for the recruitment and admission of nationals of EU Member States or another State Party to the Agreement on the European Economic Area to a professional body, job grouping or position within the French civil service;
- the Administrative Justice Code.

[...] [procedure]

1. After passing the competitive examination for schoolteachers, XS was appointed as a trainee schoolteacher on 1 September 2016. In the file submitted for the purposes of her regrading review, the applicant referred to the time she had spent in the service of the European Commission in Brussels as a programme manager and administrator from 16 September 1999 to 15 September 2002. On 15 March 2017, the Head of State Education for the Paris Region informed her that he would not be taking that service into account for the purposes of her regrading in the schoolteachers' professional body. By decision of 16 March 2017, the Head of State Education for the Paris Region regraded her on Tier 1. On 30 March 2017, XS made an internal appeal against those two decisions, which was rejected by decision of 28 April 2017. XS is seeking the annulment of all three of those decisions.

External lawfulness:

2. A decision on the regrading of a civil servant is not one of the individual administrative decisions for which reasons must be given pursuant to Article L. 211-2 of the Code on relations between the public and the administration. In addition, both the decision of 15 March 2017 and the decision rejecting XS's internal appeal state that the years the applicant spent at the European Commission cannot be taken into account for her regrading, with reference to Decree No 51-1423 of 5 December 1951, which is applicable to the applicant's situation, and with a brief but sufficiently clear explanation of the factual circumstances of her situation which led to the decisions being taken. Consequently, adequate reasons were, in any event, given for the decisions of 15 March 2017 and 28 April 2017.

Internal lawfulness:

3. First, according to Article 20 of Decree No 90-680 of 1 August 1990 referred to above, *‘schoolteachers recruited through a competition [...] shall be graded on their appointment as trainee teachers in accordance with the provisions of the aforementioned Decree of 5 December 1951.’* In that regard, Article 1 of Decree No 51-1423 of 5 December 1951 referred to above provides that: *‘the seniority of officials entering one of the civil service educational professional bodies under the Ministry of National Education shall be governed by this decree, regardless of whether they have previously belonged to one of those professional bodies.’* Article 2 of the decree goes on to specify that *‘candidates entering one of the professional bodies referred to in Article 1 of this decree shall be assigned to the starting tier of their new grade, subject to the provisions of Articles 3 to 7b and of the special rules described in Chapter II of this decree.’* Under Article 11-1 of the same decree, *‘officials and agents of the State to whom the provisions of Articles 8 to 11 above do not apply and officials and agents of local and regional authorities and their dependent public institutions shall be appointed, on entry to one of the civil service educational professional bodies to which this decree applies, in accordance with the provisions of Articles 11-2 to 11-6 below.’* Finally, according to Article 11-7 of the same decree, *‘when the officials referred to in Article 8 can show evidence of service, other than teaching service, which was not taken into account for their grading on entry into previous teaching professional bodies, their careers in those professional bodies shall be revised to take that service into account, in the circumstances set out in Articles 11-1 to 11-6./ They will then be graded in their new professional body according to the rules laid down in Article 8’.*
4. Under Article 9 of Decree No 2010-311 referred to above, *‘nationals of an EU Member State or another State Party to the Agreement on the European Economic Area shall be graded within a professional body, job grouping or position according to the rules for taking into account earlier service set out in the statutes governing that professional body, that job grouping or that position. ...’.* According to Article 10 of that decree, *‘I- Previous service shall be taken into account by the host administrative or local authority of the individual, where applicable after seeking the opinion of the commission referred to in Article 11, with regard to the equivalence between the individual’s service in the Member State of origin and that of the officials referred to in Article 2 of the aforementioned Law of 13 July 1983 ...’.*
5. Furthermore, the circular from the Minister for the Budget, Public Accounts, the Civil Service and State Reform of 15 April 2011 referred to above provides that service with an international or European intergovernmental institution shall not fall within the scope of the aforesaid decree and specifically excludes *‘service performed under a legal relationship with the European Commission’* since, *‘in such a case, the individual is employed and remunerated by the European Commission and not by an administration, body or establishment of an EU Member State or equivalent’.*

6. Secondly, according to Article 45 of the Treaty on the Functioning of the European Union: *'1. Freedom of movement for workers shall be secured within the Union. / 2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment. ...'*
7. As a result of these stipulations, such as they have been interpreted by the Court of Justice of the European Communities (now the Court of Justice of the European Union), in particular in its judgment of 23 February 1994 in Case C-419/92, where a public body of a Member State, when recruiting staff, provides for account to be taken of candidates' previous employment in a public service, that body may not, in relation to Community nationals, make a distinction according to whether such employment was in the public service of that particular State or in the public service of another Member State. Accordingly, provisions which preclude or deter a national of a Member State from leaving his country of origin to exercise his right to freedom of movement constitute an obstacle to that freedom even if they apply without regard to the nationality of the workers concerned.
8. Furthermore, the Court of Justice of the European Union stated in its judgment of 6 October 2016 in Case C-466/15, in response to a request for a preliminary ruling from the Conseil d'Etat (Council of State) in relation to pensions, that EU nationals working for an EU institution or body in a Member State other than their Member State of origin may not be refused the rights and social advantages which Article 45 of the Treaty on the Functioning of the European Union affords them.
9. In the present case, XS submits that the failure to take into account her service with the European Commission on her appointment to the schoolteachers' professional body and on her regrading, pursuant to the aforementioned provisions of the Decree of 5 December 1951, must be regarded as discrimination in breach of the obligations arising from Article 45 of the Treaty on the Functioning of the European Union.
10. The response to this plea thus depends, first, on whether provisions of national law such as those at issue in the main proceedings and set out in paragraphs 3 and 4 constitute an obstacle to the freedom of movement for workers within the meaning of Article 45 of the Treaty and secondly, if the first question is answered in the affirmative, on whether that obstacle is justified.
11. That question is crucial to resolving the dispute before the Administrative Court. Moreover, it presents a serious difficulty of interpretation of EU law. It is therefore appropriate to refer the matter to the Court of Justice of the European Union pursuant to Article 267 of the Treaty on the Functioning of the European Union and, until the Court has ruled on that question, to stay proceedings with regard to the application by XS for the annulment of the aforementioned decisions of 15 March, 16 March and 28 April 2017.

RULES:

Article 1: Proceedings are stayed with regard to the application by XS for the annulment of the decision of 28 April 2017 rejecting her internal appeal, the decision of 15 March 2017 and the decision of 16 March 2017 taken by the Head of State Education for the Paris Region refusing to take into account the length of her service with the European Commission pending a preliminary ruling of the Court of Justice of the European Union on the following question: does French law, which does not take into account for the purposes of regrading within the school-teaching professional body the previous service of an official with the European Commission, or more broadly, with an EU institution, whereas it does provide for previous professional activities carried out within the authorities of an EU Member State to be taken into account, infringe the obligations and scope of Article 45 of the Treaty on the Function of the European Union?

Article 2: The remainder of the pleas contained in XS's application are rejected.

Article 3: This order will be notified to XS, to the Head of State Education for the Paris Region and to the President of the Court of Justice of the European Union.

A copy hereof will be sent to the Prime Minister.

Deliberated after the hearing of 13 March 2019 [...]. [composition of the referring court at the time of the deliberation]

Read at a public hearing on 27 March 2019.

President,

Rapporteur,

[...] Registrar,

[...]