

Anonymised version

Translation

C-903/19 — 1

Case C-903/19

Request for a preliminary ruling

Date lodged:

10 December 2019

Referring court:

Conseil d'État (France)

Date of the decision to refer:

2 December 2019

Appellant:

DQ

Respondents:

Ministre de la transition écologique et solidaire

Ministre de l'action et des comptes publics

...
DQ

The Conseil d'État (Council of State) (France)
sitting in its judicial capacity (Litigation
Section, Combined 4th and 1st Chambers)

...
Hearing on 18 November 2019
Delivery on 2 December 2019

Having regard to the following procedure:

By application lodged at the tribunal administratif de Strasbourg (Administrative Court, Strasbourg, France), DQ sought the annulment for misuse of powers of (i) the decision of 10 July 2014 by which the director of the regional directorate for environment, planning and housing (DREAL) of Alsace refused DQ's request for the transfer of the actuarial equivalent of his pension rights acquired under the pension scheme for officials of the European Union, and (ii) the decision of 17 September 2014 by which the assistant regional director of DREAL dismissed DQ's internal appeal against the decision of 10 July 2014. By judgment ... of 19 October 2016, the tribunal administratif (Administrative Court) dismissed DQ's application.

By an appeal, a reply and a further written pleading lodged on 30 November 2016, 29 June 2017 and 24 December 2018 ..., DQ claims that the Conseil d'État (Council of State) should:

1. set aside that judgment;
2. in the alternative, refer a question to the Court of Justice of the European Union for a preliminary ruling on whether ... [wording of the question referred for a preliminary ruling];...
3. ruling on the substance of the case, uphold his application for annulment of the decisions of 10 July 2014 and 17 September 2014 and order the regional director of environment, planning and housing of Alsace to allow the transfer of the actuarial equivalent of the pension rights acquired under the European Union pension scheme within the period of one month from notification the decision, subject to a penalty payment of EUR 100 for each day of delay;
4. ... [request relating to costs]

DQ submits that the judgment under appeal is vitiated by:

- a procedural irregularity ... [explanation of the alleged procedural defect];
- an inadequate statement of reasons ... [explanation of the alleged inadequacy of the statement of reasons];
- an error of law in so far as it finds that the contested decisions are not vitiated by lack of competence ... [explanation of the alleged lack of competence];
- an error of law and breach of the principle of equal treatment in so far as it finds that the entitlement to a transfer of the actuarial equivalent of pension rights provided for in Article 11(1) of Annex VIII to the Staff Regulations of Officials of the European Union is reserved exclusively to officials of the European Union who are initially posted within an administration of a Member State.

... The ministre de l'économie et des finances (Minister for the Economy and Finance) contends that the appeal should be dismissed. He submits that the grounds of appeal are unfounded.

... Le ministre d'État, ministre de la transition écologique et solidaire (State Minister, Minister for Ecological and Inclusive Transition) and the ministre de la cohésion des territoires (Minister for Regional Cohesion) contend that the appeal should be dismissed. They submit that the authority responsible for the contested decision is the State pension service and that, as for the remainder, the grounds of appeal are unfounded.

... The ministre de l'action et des comptes publics (Minister for the Public Sector and Public Accounts) contends that the appeal should be dismissed. He submits that the grounds of appeal are unfounded.

... [procedural matters]

Having regard to:

- the Treaty on the Functioning of the European Union, in particular Article 267 thereof;
- Council Regulation No 31 (EEC), 11 (EAEC), of 18 December 1961 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities, as amended, in particular, by Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 and Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004;
- the Code des pensions civiles et militaires de retraite (Civil and Military Retirement Pensions Code);
- the Code de la sécurité sociale (Social Security Code);
- Decree No 2009-1052 of 26 August 2009;
- the Code de justice administrative (Code of Administrative Justice);

...

... [procedural matters]

Whereas:

- 1 It is clear from the documents in the case file before the court ruling on the substance of the case that DQ, a State civil servant since 1 September 2006 and senior expert in sustainable development in the departmental directorate of the Bas-Rhin area, was assigned non-active status for personal reasons between 1 April 2011 and 31 August 2013, during which time he held a position as member of the contract staff at the European Commission. After returning to his

administration of origin at the end of that period of non-active status, he requested the transfer to the pension scheme for State officials of the actuarial equivalent of his pension rights acquired under the pension scheme for officials of the European Union, relying on the provisions of Article 11(1) of Annex VIII to the Staff Regulations of Officials of the European Union laid down in Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968, amended by Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004. His request was refused by two decisions of 10 July and 17 September 2014. DQ appeals on a point of law against the judgment of the tribunal administratif de Strasbourg (Administrative Court, Strasbourg) dismissing his application for annulment of those decisions.

Lawfulness of the judgment under appeal:

- 2 ... [examination and rejection of the ground of appeal alleging that the judgment is vitiated by a procedural irregularity, irrelevant to the question referred for a preliminary ruling]
- 3 ... [examination and rejection of the ground of appeal alleging that the statement of reasons is inadequate, irrelevant to the question referred for a preliminary ruling]

Merits of the judgment under appeal:

Claim that the contested decisions are vitiated by lack of competence:

- 4 ...
... [examination and rejection of the ground of appeal alleging that the authority responsible for the decisions lacked competence]

Scope of the persons entitled to a transfer of the actuarial equivalent of pension rights:

- 5 DQ submits that, in its judgment, the tribunal administratif de Strasbourg (Administrative Court, Strasbourg) erred in law and infringed the principle of equal treatment by finding that, for the purpose of the provisions of Article 11(1) of Annex VIII to the Staff Regulations of Officials of the European Union laid down in Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968, made applicable to contract staff by Article 109(1) of the Conditions of Employment of Contract Staff of the European Communities, which was introduced by Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending Regulation [No 259/68], ‘entering the service’ must be interpreted as referring only to the initial posting of the servant within a national administration, not also to his return after a period of non-active status for personal reasons. Under those provisions: ‘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; ...

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'. The answer to the ground of appeal raised depends on whether the benefit of the provisions of Article 11(1) of Annex VIII to the Regulation laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities, as amended by Regulation [No 723/2004], is 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 whether 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 may also benefit from them.

- 6 The interpretation of the provisions of the EU regulation relied on, which is decisive for the resolution of the dispute before the Conseil d'État (Council of State), raises serious difficulties. It is, accordingly, 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, pending the ruling of that Court, to stay the appeal proceedings brought by DQ.

HAS DECIDED AS FOLLOWS:

Article 1: Proceedings on DQ's appeal are stayed until the Court of Justice of the European Union has given a preliminary ruling on the following question:

Is the benefit of the provisions of Article 11(1) of Annex VIII to the Regulation laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities, as amended by Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004, 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?

Article 2: ... [notification to the parties]

...

...

... [procedural matters, composition, signatures]