

From: REP PERS OSP <REP-PERS-OSP@ec.europa.eu>

Sent: Monday, November 6, 2023 9:30 AM

Subject: Picard judgment concerning the pension scheme: we dispute the restrictive interpretation envisaged by the institutions! / Arrêt Picard concernant le régime de pension : nous contestons l'interprétation restrictive envisagée par les institutions !



**Picard judgment concerning the pension scheme:
we dispute the restrictive interpretation envisaged by the institutions!**

The Court delivered a historical judgment on 15 December 2022 (Picard v Commission – [CURIA – Documents \(europa.eu\)](#)) concerning the pension scheme.

The Court made clear on that occasion that, in so far as contributions to the pension scheme were paid without interruption, the renewal or change of a contract (AC or AT) after the reform of the Staff Regulations should not be regarded as a 'new' entry into service, leading to the application of the new pension rules (increased pension age and reduced rates of accrual of pension rights).

In other words, provided that the staff members were in service before the increase in retirement age and fulfil the conditions set out in Annex XIII of the Staff Regulations (Articles 21 and 22), they benefit from the 'transitional arrangements'.

This is a historical victory for our CA and TA colleagues, who will never again see “the meters reset to zero” in the event of a change in the type of contract, function group or mobility within the Offices and/or Agencies....

It must be borne in mind that this was exactly what the TUs and Staff Associations had requested and which the Commission had refused to take into account when negotiating the GIPs for CA staff.

It is regrettable that we had to wait for a Court ruling for staff rights to be recognised.

Nevertheless, following that judgment of the Court of Justice, the institutions acted in concert and informed staff that these favourable arrangements would not apply if a contract or temporary agent already in service before the reform is appointed as an official after the reform.

Indeed, the institutions consider that a provision (Article 28) of Annex XIII to the Staff Regulations specifies that, in this case, the new, more restrictive rules resulting from the reforms of the Staff Regulations apply.

The undersigned TUs – (representing 87.20 % of our institution's staff representation) have decided to join their efforts to jointly support actions to challenge this restrictive and discriminatory interpretation of the rules.

According to our legal analysis, on the one hand, Article 28 of Annex XIII to the Staff Regulations does not provide that the appointment of a CA/TA as an official must necessarily give rise to the application of the new rules, since no reference is made to the specific situation of a staff member/official who has contributed to the pension scheme without interruption, which is the case with the other provisions of the transitional arrangements interpreted by the Court.

On the other hand, if that were to be the case, it would run counter to the aims pursued by the legislature when it adopted that transitional regime (to protect the legitimate expectations of 'existing staff').

The interpretation of the institutions which leads to the deprivation of the transitional regime merely as a result of an appointment does not sit well with the aim of protecting "legitimate expectations as to the maintenance of the rules applicable to pensions" since these expectations can only be reinforced by an appointment, precisely because it has the effect of perpetuating an employment relationship.

If a change of employment contract justifies the benefit of a transitional scheme in the event of 'uninterrupted' contributions to the pension scheme, in the light of 'legitimate expectations', the same applies, a fortiori, where the change of the employment relationship results in greater stability of employment (appointment as an official). It seemed paradoxical, in such a context, to penalise an CA or TA appointed as official.

To assist us our endeavours, we called on Mr Orlandi, who successfully pleaded both the abovementioned Picard judgment and the Torné judgment ([CURIA – Documents \(europa.eu\)](#)) concerning a related situation which was largely reproduced in the operative part of the Picard judgment.

The complaint lodged under article 90.2 of the Staff Regulations against this interpretation of the rules, with the support of undersigned trade unions, is currently being processed. It will give rise to a reply at the end of November.

We hope that the legal arguments set out in the complaint will persuade the Commission and the other institutions to revise their restrictive interpretation, thereby avoiding further litigation.

Nevertheless, in view of what is at stake for staff, if the complaint is rejected, this case will be brought before the Tribunal at the beginning of 2024.

In the meantime, we invite all colleagues who are retiring to contact us at the address (REP-PERS-OSP@ec.europa.eu) to check whether there are grounds for lodging a complaint, within the 3-month statutory time limit, against the deed of assessment of their entitlements.

A model complaint form has been prepared for this purpose. If you have obtained information about your pension rights and in case of doubt, we also invite you to consult us.

C. Sebastiani / R. Trujillo
Alliance
(signed)

T. Weber
Generation 2004
(signed)

G. Vlandas / H. Conefrey
RS- U4U/USHU
(signed)

N. Mavraganis
USF Luxembourg
(signed)