

A. (No. 5)

v.

Eurocontrol

(Application for review)

127th Session

Judgment No. 4122

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 4016 filed by Mr I. A. on 2 November 2018;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. The complainant requests the review of Judgment 4016, delivered in public on 26 June 2018, by which the Tribunal dismissed his fifth complaint filed on 29 March 2016 against the European Organisation for the Safety of Air Navigation (Eurocontrol). In that complaint, the complainant, who was an air traffic controller at the Maastricht Upper Area Control Centre, challenged the decision not to extend his appointment beyond the mandatory retirement age. His main argument was that paragraph 2 of Article 53 of the General Conditions of Employment (GCE), which provided at the material time that air traffic controllers recruited after 2 May 1990 would be retired on the last day of the month in which they would reach the age of 55, involved age discrimination in its application.

2. In Judgment 4016, the Tribunal held that paragraph 2 of Article 53 of the GCE does not violate the general principle of non-discrimination. The Tribunal accepted that air traffic controllers are in a different situation than other servants subject to the GCE and that the different treatment for this category of servants and, specifically, the lower retirement age, was justified by the specificity of their work. It considered that the contested provision was neither unreasonable nor unjustified.

3. According to the Tribunal's case law, its judgments, pursuant to Article VI of its Statute, are "final and without appeal" and carry the authority of *res judicata*. They may therefore be reviewed only in exceptional circumstances and on strictly limited grounds. The only admissible grounds for review are failure to take account of material facts, a material error involving no exercise of judgement, an omission to rule on a claim, or the discovery of new facts on which the complainant was unable to rely in the original proceedings. Moreover, these pleas must be likely to have a bearing on the outcome of the case. Pleas of mistake of law, failure to admit evidence, misinterpretation of the facts or omission to rule on a plea, on the other hand, afford no grounds for review (see Judgment 3305, under 3, and the case law cited therein).

4. In support of his application, the complainant contends that in reaching its decision in Judgment 4016 the Tribunal made a material error. In his view, in order to determine whether there had been any unlawful difference of treatment, the Tribunal ought to have compared the treatment of older and younger air traffic controllers, instead of comparing the treatment of air traffic controllers with that of other servants. He points out that air traffic controllers recruited after the entry into force of Eurocontrol's administrative reform in July 2016 benefited from an amendment of the provisions of Article 53 of the GCE and were able to continue working until the age of 57.

5. In Judgment 4016, the Tribunal observed that the amendment of paragraph 2 of Article 53 did not affect the conclusion that this provision was not unlawfully discriminatory. The Tribunal considered

that the complainant's contention that the amendment in question created unlawful discrimination based on age was unfounded. Air traffic controllers recruited prior to the entry into force of the administrative reform are, by definition, not in the same situation in fact or in law as their younger counterparts who joined Eurocontrol after Article 53 had been amended. Accordingly the difference in treatment as between these two different categories of servants was not, in itself, considered unlawful. Moreover, in consideration 7 of Judgment 4016 the Tribunal stated that "[the] work situation [of the air traffic controllers] is also different from that of pilots". It may be inferred from this statement that the reference made by the complainant to the judgment of the European Court of Justice in the case of *Reinhard Prigge and others v. Deutsche Lufthansa AG* (13 September 2011, C-447/09) was considered by the Tribunal to be irrelevant to its decision.

6. The complainant also contends that the Tribunal did not take into account several material facts, namely: the fact that the age limit of 55 was not based on "generally accepted socio-physiological and psychological criteria" but rather on the age limitation applied in certain Member States of Eurocontrol; developments in international legislation; changes in the technological environment; and the existence of mandatory competence and medical checks within Eurocontrol. He argues that the omission to take into account these facts meant that the Tribunal could not properly evaluate whether the contested provision violated the principle of non-discrimination.

7. By this plea, the complainant simply expresses his disagreement with the Tribunal's appraisal of the evidence and its interpretation of the law. His application for review does not raise any of the admissible grounds for review recalled in consideration 3, above, and is merely an attempt to re-open issues already settled in Judgment 4016. Accordingly, it must be summarily dismissed in accordance with the procedure provided for in Article 7 of the Rules of the Tribunal.

DECISION

For the above reasons,

The application for review is dismissed.

In witness of this judgment, adopted on 15 November 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Patrick Frydman, Vice-President, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 February 2019.

GIUSEPPE BARBAGALLO

PATRICK FRYDMAN

FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ