

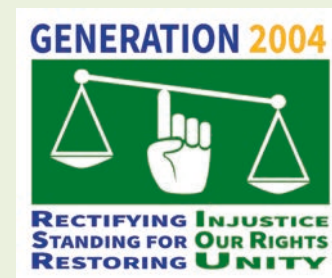
# The Picard case – C-366/21 P

Consequences for (mostly) temporary staff

Brussels 24 April 2023

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# Before we start



- We record the presentation part of this conference.
- We do **NOT** record the Q&A part; nor do we publish the chat.
- Recordings and presentation available via the website article about this conference:  
<https://generation2004.eu/lunchtime-conference-the-picard-case/>  
➔ No need to ask via chat/e-mail for it!
- This announcement was brought to you by our (absolutely awesome) secretariat 😊

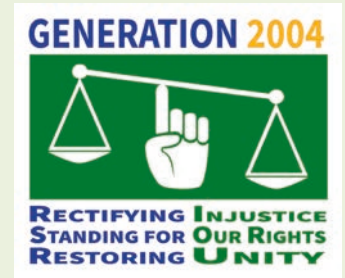
# This conference in one slide

- **No need for immediate action for most colleagues**
- Hard criteria: your age today  $\leq 56$  years  
→ there is **under no circumstances** any urgent action required
- If you are older: there may be a need for action, depending on your individual circumstances
- But even for these colleagues: **most will not need to do anything right now**
- Quiz at the end: why the age limit of 56?
- Your age  $\leq 56$  – we still invite you to stay in the conference 😊

# Abbreviations used

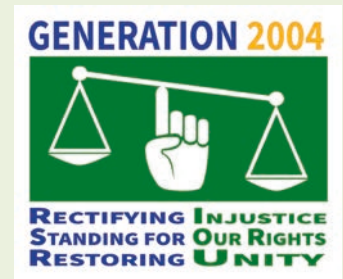
- HR = HR in all Institutions, agencies, joint undertakings, ...  
Basically, wherever current (or former) CAs/TAs work / worked
- Commission HR probably has the lead in the discussions with PMO

# Court of Justice before Picard



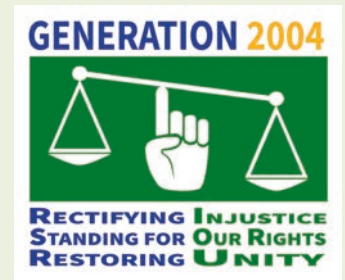
- Plaintiff: *„I will retire in the future and I think something is wrong with my pension rights. But PMO/HR does not want to change it.“*
- Court: *„Come back to us when you really retire. Then, all facts are clear and we do not rule on hypothetical problems.“*
- Example: [T-702/16 P](#)

# Case T-702/16 P



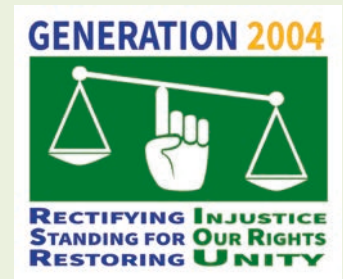
- CAs had transferred in pension rights from other schemes in the EU pension scheme
- Problem: they will (most likely) only receive the minimum pension, with or without transfer-in → money lost!
- Quiz: What did the Court say?
- „Come back to us when you really retire.”

# Picard – the facts



- Recruited in 2008 as FGI in PMO – indefinite contract as of 2011
- Reclassified as FGII-5 on 1 June 2014 (still indefinite, but new contract)
- 35 years old on 1 May 2014
- Retirement age: old:63; new: 66;  
if transitional measures apply: 64y8m, max: 65
- Pension accrual rate: old: 1.9%; new: 1.8%

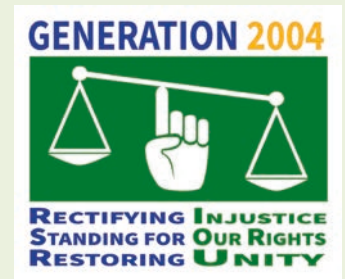
# Picard – the case #1



- First round (general court) lost in 2021
- Case focuses on transitional measures (art. 22 & 23 of Annex XIII)
- Argumentation centres around „by analogy“ in art. 1(1), annex to the CEOS  
*„The provisions of Annex XIII to the Staff Regulations shall apply **by analogy** to other servants employed on 30 April 2004. Article 21, Article 22, with the exception of paragraph 4, [...] of that Annex shall apply **by analogy** to other servants employed on 31 December 2013.“*

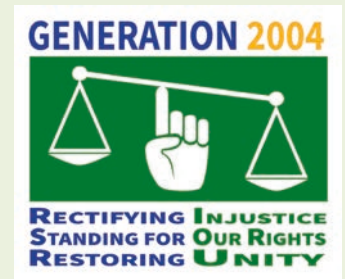


# Picard – the case #2



- General court: „by analogy“ applies to contract; change in function group from I to II → no functional continuity
- Court of Justice (second round):  
„by analogy“ applies to uninterrupted payment of pension contributions:  
79 Therefore, for the **purposes of applying the transitional provisions** relating to that pension scheme, [...], a member of the contract staff, such as the appellant, is in a situation similar to that of an official, [...], where there is a change to his or her employment relationship with the administration of the European Union after 31 December 2013 that does **not entail any interruption in the payment of contributions** to the EU pension scheme.

# Picard – the case #3



- Commission:

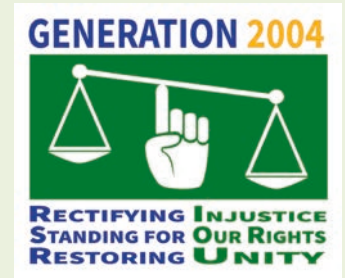
What about „*Come back to us when you really retire?*”

More formally: *there is no decision to attack* →  
the whole complaint should be inadmissible

- Court:

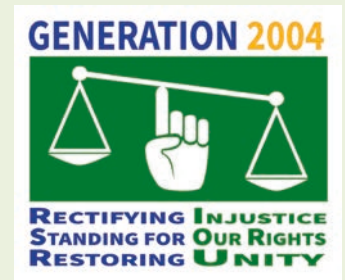
Impossible to decide later: we have no time machine to fix an error in the retirement age

# Consequences



- Unexpected Christmas present (15/12/2022)
- Affects staff in all Institutions, Agencies, JUs, ...
- Many, many corner cases → quite a headache for HR and a substantial workload
- Staff representation received information by CAB Hahn that the judgement would be „*applied*“ to everybody
- Political commitment – nice, but not binding

# Necessary actions ( $\leq 56$ )

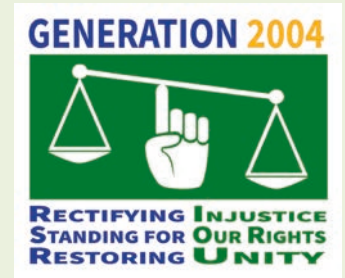


- Minimum retirement age: 58 years (VIII, art.9)
- You  $\leq 56$  today
  - even if discussions take another year, there is still time before your earliest possible retirement
  - ➔ **no action necessary NOW**

# Necessary actions ( $\geq 56$ )

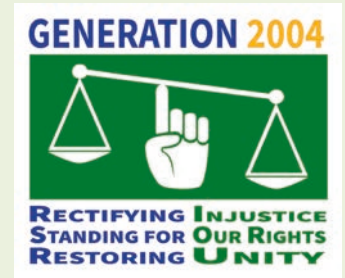
- Check normal retirement age after the 2014 reform (Annex XIII, art. 22) or [My IntraComm](#)
- If 2 years or more from today and you don't want to retire early → **again, no need for any action NOW**

# Necessary actions (close to retirement age) #1



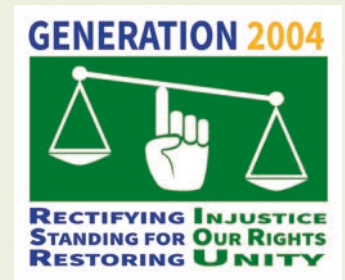
- Check normal retirement age after the 2014 reform (Annex XIII, art. 22) or [My IntraComm](#)
- **Do NOT start the retirement procedure** in Sysper before HR/PMO have informed staff of the “new procedure”
  - ➔ risk that **considered as early retirement** under the current rules
- Even if this is corrected later, it will be a pain for everybody involved, including you!

# Necessary actions (close to retirement age) #2



- You can work until 65 and gain a bonus for your pension rights (1.5% for each year; VIII art. 5)
- If you want to do this and your retirement is then 2 years or more away → do nothing NOW
- Careful: more than 70% are not possible (but probably not a concern for CAs/TAs)

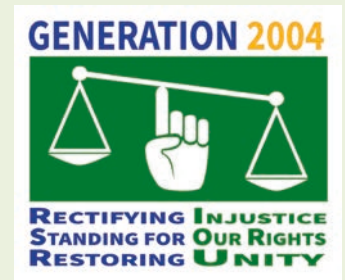
# Necessary actions (close to retirement age) #3



- After everything that was already said/considered, your retirement age is in 6 months or less (number is a bit arbitrary)
- Contact PMO (Staff Matters) and ask them what you should do
- If you don't get a timely answer, contact us
- We need to get an overview of how many colleagues are affected
- We will then see with HR

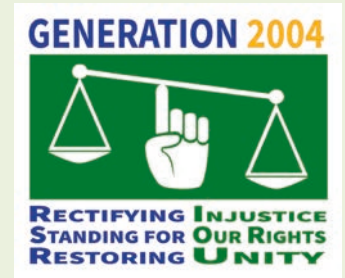


# Necessary actions (after retirement age) #4



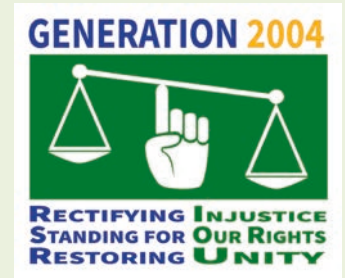
- You are older than 65 or you could have retired already (and want to retire now) – but you are still working
- Contact PMO NOW and ask them what to do
- Contact us after you have the answer from PMO
- Sorry for the lack of precision, but it is difficult to give a better answer today

# Questions so far #1



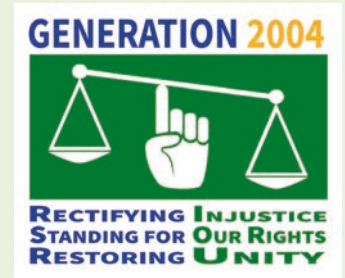
- Will PMO update my file/calculations now?
- Uh, NO!
- To update sth., it must exist in the first place
- PMO calculates your rights when you retire
- ➔ there simply is no calculation NOW that could be updated

# Questions so far #2



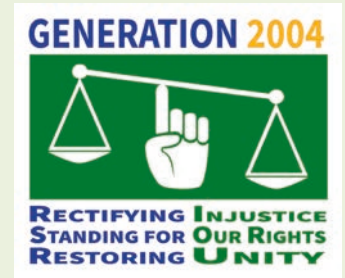
- I was a CA before and became a TA/official later. Does the judgement apply to me?
- Judgement focuses on uninterrupted payment of pension contributions and accepts even a change in function group (judgment paragraph 79)
- **In our view**, it should therefore apply to TA/officials today, **if** they contributed without interruption to the pension scheme.
- We have to see if HR will have a similar view (for officials, one needs to „jump“ from CEOS to staff regulations).
- Careful: a payment gap of even one month destroys this!

# Questions so far #3



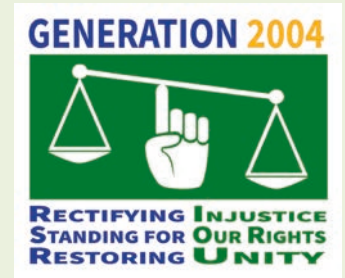
- I was a CA/TA in Institution/Agency A and moved to Institution/Agency B. Does the judgement apply to me?
- Judgement focuses on uninterrupted payment of pension contributions and accepts even a change in function group.
- Officials can change Institution without a change in their pension rights.
- **In our view**, it should therefore apply to CAs/TAs who changed working place, **if** they contributed without interruption to the pension scheme
- We have to see if HR will have a similar view.
- Careful again: a payment gap of even one month destroys this!

# Questions so far #4



- I have heard rumour XYZ about this. Is it true?
- Our FMB probably knows this rumour already, too – in several copies and versions 😊
- At this point: we have no further confirmed(!) information
- Just follow the advice that we have given here so far

# Questions?



Email us:

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