

Case T-21/90

Günter Generlich

v

Commission of the European Communities

(Officials — Voluntary termination of service — Period of entitlement to an allowance — Old-age pension — Basic salary taken into consideration in calculating the pension)

Judgment of the Court of First Instance (Third Chamber), 27 November 1991 II - 1325

Summary of the Judgment

- 1. Procedure — Application originating the proceedings — Formal requirements — Brief statement of a plea in law — Development in the reply — Defendant's arguments submitted, for the first time, in the rejoinder — Observance of the principle of audi alteram partem (Statute of the Court of Justice of the EEC, first paragraph of Art. 19; Rules of Procedure, Art. 38(1)(c))*
- 2. Officials — Pensions — Old-age pension — Calculation — Official in receipt of a termination of service allowance — Acquisition of further rights to pension — Concept (Staff Regulations, Art. 77; Council Regulation No 3518/85, Art. 4(7))*

1. A plea for annulment may be developed only in the reply if it has been set out in summary form in the application originating the proceedings in accordance with the requirements of the first

paragraph of Article 19 of the Statute of the Court of Justice and Article 38(1)(c) of the Rules of Procedure, which require that the Court of Justice should be able to review the legality of the measure

under challenge and that the defendant should not be deprived of the opportunity to defend its interests effectively.

The fact that the defendant submits, for the first time, in the rejoinder its arguments concerning the above plea is not in breach of the principle of *audi alteram partem*.

2. Article 4(7) of Regulation No 3518/85 introducing on a temporary basis special measures to terminate the service of officials of the European Communities as a result of the accession of Spain and Portugal, which enables an official affected by a measure to terminate his service to acquire 'further years of pensionable service', does not distinguish between the two main factors which, according to Article 77 of the Staff Regulations, determine the calculation of

the retirement pension, namely the number of years of pensionable service acquired by the official and the basic salary attaching to his last grade and step.

It follows that the period during which an official affected by a measure of termination of service receives the allowance provided for in the above regulation and continues to contribute to the Community pension scheme may be taken into consideration both for the purpose of increasing the number of years of pensionable service which he has acquired and for the purpose of completing the year during which he must, in accordance with Article 77 of the Staff Regulations, have been classified in his last grade and step for his old-age pension to be calculated on the basis of the salary attaching to them.