

Case T-6/91

Fred Pfloeschner

v

Commission of the European Communities

(Admissibility — Official — Application for a decision in advance
regarding the weighting applicable to the future calculation
of the pension rights of the person
concerned)

Judgment of the Court of First Instance (Third Chamber), 12 February
1992 II - 142

Summary of the Judgment

Officials — Actions — Act adversely affecting an official — Concept — Refusal to fix in advance certain methods of calculating pension rights, such as the weighting applicable thereto — Not included

(Staff Regulations, Arts 90 and 91)

The concept of an act adversely affecting an official covers both decisions and failures to adopt a measure required of the administration under the Staff Regulations. The absence of a decision may thus adversely affect the person concerned where the institution in which he is serving does not take either a decision for which express provision is made by a specific rule of the Staff Regulations or a decision which is implicitly required by the Staff Regulations in order to safeguard the rights of officials.

The implied rejection of an official's request for the institution in which he is serving to fix in advance, that is to say, prior to his retirement, certain detailed arrangements for calculating his pension rights does not constitute an act adversely affecting him. There is no provision in the Staff Regulations expressly obliging the administration so to do. On the contrary, the effect of Articles 10 and 40 of Annex VIII to the Staff Regulations is that the institution may not proceed to calculate an official's pension

rights until his active employment ends, since until then the basis of calculation of those rights is in principle indeterminate and subject to variation.

Only exceptionally, where a factor in that calculation can be definitively determined immediately and directly, will the administration be bound to adopt a decision which is to be implemented subsequently but which immediately and directly affects the legal situation of the person concerned, thus constituting an act adversely affecting him. In those circumstances, the official concerned has a legitimate, present and

vested interest in having an uncertain factor in his status determined in advance.

On the other hand, an official who is still in active employment cannot establish a present, vested interest in obtaining a decision on the weighting to be applied to his future retirement pension. That weighting, which is conditional on the official's choice of country of residence following the cessation of his employment and also on the rules in force when the pension rights are calculated, cannot be fixed by a decision taken in advance which immediately and directly affects the legal situation of the person concerned.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber) 12 February 1992 *

In Case T-6/91,

Fred Pfloeschner, an official of the Commission of the European Communities, residing at Brussels, represented by G. Vandersanden, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Alex Schmitt, 62 Avenue Guillaume,

applicant,

v

Commission of the European Communities, represented by Joseph Griesmar, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Roberto Hayder, a representative of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: French.