

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
13 June 2002

Cases T-106/01

Noé Youssouroum
v
Council of the European Union

(Officials – Pensions – Transfer of the actuarial equivalent of retirement pension rights acquired by virtue of occupational activities prior to entry into the service of the Communities)

Full text in French II - 435

Application for: annulment of the Council's decision of 8 June 2000 calculating the number of years of pensionable service to be credited in consequence of the transfer to the Community scheme of the applicant's pension rights acquired under the Greek scheme.

Held: The application is dismissed. The parties are ordered to bear their own costs.

Summary

Officials – Pensions – Pension rights acquired before entry into the service of the Communities – Transfer to the Community scheme – Crediting of years of pensionable service – Method of calculation – Taking into account of basic salary at the date of establishment as an official – Previous recruitment as a member of the temporary staff within the meaning of Art. 2(b) of the Conditions of Employment of Other Servants – No effect

(Staff Regulations, Annex VIII, Art. 11(2); Conditions of Employment of Other Servants, Arts 2(b), 39(2) and 40; Council's general implementing provisions, Art. 10(2) and (3))

The Staff Regulations, the Conditions of Employment of Other Servants and the general implementing provisions adopted by the Council on 13 July 1992 contain no provisions specifically governing, as regards the transfer of pension rights, the situation of a member of the temporary staff who has subsequently become an official. In the absence of such specific provisions, the transfer of the pension rights of the person concerned, who was an official at the time when he made a request to that effect, is governed by the provisions of Article 11(2) of Annex VIII to the Staff Regulations and by Article 10(2) and (3) of the general implementing provisions, pursuant to which the number of years of pensionable service to be credited is to be calculated by reference to the date of the official's establishment and his grade on establishment.

An institutional practice whereby the calculation of the number of years of service to be credited for the purposes of the retirement pension will be made, once the national measures authorising the aforementioned transfer have been adopted, on the basis of the salary of the person concerned at the time of his entry into service as a member of the temporary staff, does not apply to temporary staff falling within the scope of Article 2(b) of the Conditions of Employment of Other Servants. Since, pursuant Article 39(2) of the Conditions of Employment of Other Servants, such staff are not entitled to a Community retirement pension, any delay by the

authorities of a Member State in authorising the transfer of national pension rights to the Community scheme cannot adversely affect such staff.

In that regard, Article 40 of the Conditions of Employment of Other Servants does not affect the calculation to be made under Article 11(2) of Annex VIII to the Staff Regulations. The fact that Article 40 of the Conditions of Employment of Other Servants and Article 4 of Annex VIII to the Staff Regulations also apply to officials who have been members of the temporary staff within the meaning of Article 2(b) of the Conditions of Employment of Other Servants does not mean that such members of the temporary staff would be entitled to a retirement pension or be eligible, during their period of employment as members of the temporary staff, for a transfer of national pension rights to the Community scheme.

(see paras 41, 45-46, 60)

See: 8/85 *Bevere v Commission* [1986] ECR 1187, para. 13