

ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)
26 November 2003

Case T-95/02

Michael Hohenbichler
v
Commission of the European Communities

(Officials – Pensions – Transfer of national pension rights –
Calculation of the annual contributions to be taken into account –
Annual salary used as reference –
Action manifestly devoid of any legal basis)

Full text in French II - 1431

Application for: annulment of the Commission's decision of 21 May 2001 calculating the annual contributions to be credited for the purpose of transfer to the Community scheme, under Article 11(2) of Annex VIII to the Staff Regulations, of national pension rights acquired by the applicant before his entering the service.

Held: The action is dismissed as being manifestly devoid of any legal basis. The parties are ordered to bear their own costs

Summary

1. 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 – No effect

(Staff Regulations, Annex VIII, Art. 11(2); Commission's general implementing provisions, Art. 4(2) and (3))

2. Officials – Pensions – Pension rights acquired before entry into the service of the Communities – Transfer to the Community scheme – Method of calculating years of pensionable service credited

(Staff Regulations, Annex VIII, Art. 11(2); Commission's general implementing provisions, Art. 4(2) and (4)(b))

1. The Staff Regulations, the Conditions of Employment of Other Servants and the general implementing provisions adopted by the Commission for the application of Article 11(1) and (2) of Annex VIII to the Staff Regulations 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, and if the person concerned is an official at the time when he makes a request to that effect, the transfer of pension rights is governed by the provisions of Article 11(2) of Annex VIII to the Staff Regulations and by Article 4(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.

(see paras 50-51)

See: T-106/01 *Youssouroum v Council* [2002] ECR-SC I-A-93 and II-435, para. 41

2. When pension rights are transferred, where the years of pensionable service to be credited are calculated in accordance with Article 4(4)(b) of the general provisions adopted by the Commission for the implementation of Article 11(2) of Annex VIII to the Staff Regulations on the transfer to the Community scheme of pension rights acquired before entering the service of the Communities, the total amount of the national pension rights involved in the transfer is converted on the basis of the current rate applicable on the date of the transfer. In that case, the salary and the actuarial value to be taken into account for calculating the years of pensionable service are, respectively, the salary applicable on the date of the transfer for the grade at which the official was established, and the actuarial value corresponding to the official's age on that same date. Because the rate has been updated to the date of the transfer, there is no need to deduct interest as provided for in Article 4(2) of the general implementing provisions for the period between the date of establishment and that of the transfer, which is intended to compensate the Community institution for the delay in the actual transfer to the Community of the amount of the national pension rights to which the official is entitled on the date when he is established.

(see paras 59-60)

See: T-303/00, T-304/00 and T-322/00 *Caballero Montoya and Others v Commission* [2003] ECR-SC I-A-29 and II-189, para. 76