ORDER OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
9 June 1992 *

In Case T-81/91,

Jacques Feltz, an official of the European Parliament, residing in Greiveldange, Grand Duchy of Luxembourg, represented by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the office of Fiduciaire Myson SARL, 1 Rue Glesener,

applicant,

v

European Parliament, represented by Jorge Campinos, Jurisconsult, and Kieran Bradley, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the General Secretariat of the European Parliament, Kirchberg,

defendant,

APPLICATION for the annulment of the decision of the European Parliament of 4 February 1991 reducing the number of years of pensionable service to be taken into consideration in connection with the transfer of the applicant's national pension rights to the Community scheme,

THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES (Fourth Chamber),

composed of: R. García-Valdecasas, President of the Chamber, R. Schintgen and C. P. Briët, Judges,

Registrar: H. Jung,

makes the following

* Language of the case: French.

Order

Facts

1 The applicant, an official of the European Parliament ('the Parliament'), was established on 1 July 1976 in Grade C4, step 1. Before entering the service of the Parliament he had paid contributions to two Luxembourg social security institutions, the Caisse de Pensions des Employés Privés ('CPEP') and the Établissement d'Assurance contre la Vieillesse et l'Invalidité ('AVI').

2 In 1979, the applicant lodged a request for the transfer of his pension rights to the Community pension scheme.

3 By memorandum of 15 October 1979, Parliament officials forwarded to him, in accordance with Article 11(2) of Annex VIII to the Staff Regulations of Officials of the European Communities ('the Staff Regulations'), a calculation of the number of years of pensionable service to be credited to him as a result of the transfer of the rights acquired by him through affiliation to the CPEP, which amounted to 3 years, 3 months and 2 days. By memorandum of 5 February 1980, the Parliament administration also notified to him the calculation of the years of pensionable service accruing to him from the transfer of the rights acquired by him through affiliation to the AVI, which amounted to 5 years, 3 months and 20 days. The applicant did not at that time proceed with his request for the transfer of his pension rights.

4 In 1985, the applicant again applied for the transfer of his pension rights to the Community scheme and, despite the belatedness of the application, the two institutions agreed to make the transfer, in response to insistent representations from the Parliament, but did not add to the capital sum indicated in 1979 the interest that had accrued over the period from 1980 to 1985.

5 By memorandum of 31 May 1985, the AVI informed the Parliament that a sum of LFR 369 907 would be remitted to it in respect of the transfer of Mr Feltz's pension contributions.

6 By memorandum of 18 June 1985, the Parliament sent the applicant a proposal for the transfer of his CPEP rights, which credited him with 2 years, 9 months and 22 days. That transfer was made in September 1985.

7 By memorandum of 19 September 1985, sent to the applicant on 20 September 1985, Parliament officials fixed the number of years of pensionable service to be taken into account for the transfer of the applicant's AVI pension rights as 4 years, 4 months and 24 days. That memorandum also determined 6 August 1971 as the reference date.

8 In October 1985, the Parliament sought information from the CPEP concerning the payment of interest on the applicant's contributions for the period from April 1980 to September 1985.

9 By letter of 22 April 1986, the Parliament was informed by the CPEP that additional interest was due, amounting to LFR 51 685.

10 On 5 May 1986, the Parliament adopted a new decision which, taking account of the interest paid by the CPEP, fixed the reference date as 13 December 1967 and the number of years of pensionable service to be taken into account as 3 years, 5 months and 27 days.

11 On 5 October 1990, the AVI transferred the amount of interest still due. That transfer made further calculations necessary.

12 In October 1990, the Parliament re-opened the applicant's pension file and reduced the number of years of pensionable service to be taken into account in respect of his AVI rights from 4 years, 4 months and 24 days to 3 years, 6 months and 22 days. The Parliament administration notified those new calculations to the applicant by memorandum of 4 February 1991, also enclosing the calculations in respect of his CPEP rights, which reduced the years of pensionable service to be taken into account from 3 years, 5 months and 27 days to 2 years, 2 months and 17 days.

13 The defendant contends that that result is attributable to the application by the administration, for the first time, of a weighting. The calculations which had been notified to the applicant in 1979 and 1980 were, it states, incorrect since the officials concerned had neglected to apply the appropriate weighting to the applicant's basic salary at the time of his establishment. That error was not discovered until the calculation was made in respect of the transfer effected in October 1990 by the AVI.

14 On 3 May 1991, the applicant lodged a complaint under Article 90(2) of the Staff Regulations in which he requested that 'the administration annul the decision notified to him by letter dated 4 February 1991, notifying to him a new calculation of the pension rights credited to him and obliging him to make a choice without having provided him with the information needed to enable him to check the calculations of the years of service credited and notified to him and the reasons for which the third calculation is more correct than the two previous ones which are more favourable to him'. He added, 'it is therefore necessary to replace the contested decision by a new one which sets out an exact, precise and reasoned calculation of the years of service credited to him in respect of the rights acquired before his entry into service and enables him to choose, on the basis of all the relevant information, the scheme which is most favourable to him. To that end, the administration is required to provide him, on its own initiative and in view of its duty to have regard for the welfare of its officials, the technical difficulties of the case and the principle laid down in the *Schneemann* judgment, with the technical and financial assistance needed to enable him to make the appropriate choose [sic]'.

15 On 5 September 1991, the Secretary General of the Parliament, as the decision-making authority, replied to the complaint in the following terms:

... after examination of the file, it appears that the calculations notified to you in 1985, when you decided to transfer your national pension rights to the Community scheme, were incorrect.

Consequently, I have given the necessary instructions to the administration to provide you with a calculation of the pension rights to which you would have been entitled if you had not made a transfer in 1985 ...'.

Procedure

16 In those circumstances, by application lodged at the Registry of the Court of First Instance on 15 November 1991, Mr Feltz brought the present action, which was registered as Case 81/91, in which he claims that the Court should:

find that:

the administration is required on its own initiative to grant the applicant the technical and financial assistance he needs in order to exercise, in full knowledge of the facts, the right conferred on him by Article 11(2) of Annex VIII to the Staff Regulations;

and give judgment as follows:

1. the decision of the European Parliament of 4 February 1991 reducing the number of years of pensionable service to be taken into consideration in connection with the transfer of the applicant's national pension rights to the Community scheme is annulled;

2. the defendant is ordered to pay the costs.'

17 On 21 November 1991 the Parliament sent a letter to the two national pension funds, the CPEP and the AVI, asking them on what terms they would agree to the repayment to them of the amounts transferred and what would be the amount of the deferred pension that would have been paid to Mr Feltz by those funds if the transfer had not taken place.

18 On 27 November 1991, the AVI replied that it would not accept any re-transfer of the applicant's pension rights. The AVI also provided a calculation of the pension to which the applicant would have been entitled if the transfer had not taken place in 1985. The CPEP informed the Parliament that a re-transfer would not be possible.

19 On 15 January 1992, the Secretary General of the Parliament wrote to the applicant in the following terms:

'My officials have just informed me that the Caisse de Pensions des Employés Privés ("CPEP") and Établissement d'Assurance contre la Vieillesse et l'Invalidité ("AVI") have refused to agree to any re-transfer of the amounts transferred to the European Parliament by way of the transfer of pension rights.

The annulment of such a transfer is not permitted by any statutory provision. Moreover, the CPEP has refused to provide, for information, a calculation of the pension to which you would have been entitled if the transfer had not taken place, considering that it would be otiose to make a calculation for a former member for whom the responsibility in respect of insurance benefits has now been discharged.

Since you signed an application for the transfer of pension rights on the basis of the calculation of the number of years of pensionable service made on 18 June 1985 for the CPEP and on 20 June 1985 for the AVI, and having regard to the

complexity of the arithmetical operations involved in calculating transfers of pension rights, I have asked my officials to treat the calculations made in 1985 as final. Only the interest transferred in 1990 by the AVI will remain unchanged, having been converted into years of pensionable service with the Community on the basis of calculations in which the weighting was and continues to be applied.

Consequently, since the amended calculations of 17 October 1990 and of 4 February 1991 are being treated as null and void, you will be entitled to the maximum rate of pension at the age of 60 years and 2 months'.

20 On 20 January 1992, the Parliament objected that the action was inadmissible on the ground that the letter from its Secretary General of 5 September 1991 constituted an express decision upholding the applicant's complaint of 3 May 1991. In its objection, the Parliament contended that the Court should declare the present action devoid of purpose and inadmissible and give a decision on costs in accordance with the Staff Regulations. When lodging the objection, the Parliament stated that the Secretary General had given instructions to his administration on 5 September 1991 — the same date as that of the reply to the complaint — which stated, *inter alia*, as follows:

'As is apparent from the documents which you forwarded to the Legal Service in connection with the complaint, all the calculations for the transfer of pension rights notified to the applicant between 1979 and 1990 were incorrect through failure to apply the weighting to his basic salary.

In order to remedy the adverse effects of that mistake, I should be grateful if you would provide the applicant with details of the calculation of the national pension rights to which he would have been entitled if he had not made a transfer in 1985 and, if appropriate, negotiate the re-transfer of his rights to the national scheme'.

21 On 9 March 1992, the applicant submitted his observations on that objection, in which he states that, when the Parliament notified to him, on 4 February 1991, an

amended calculation of the years of pensionable service taken into account for the transfer of his pension rights, it did so because it considered that the previous calculations were incorrect. Thus, the letter of 5 September 1991 merely confirms the incorrectness of the 1985 calculations but does not cast doubt on the calculations notified on 4 February 1991. Moreover, the applicant considers that if he had been apprised of the instructions given by the Secretary General of the Parliament to the administration, he would have been able to ask the administration to clarify the meaning of its answer of 5 September 1991 and would not have been obliged to bring the present action for annulment. In the applicant's view, the Parliament administration seems to have resumed its examination of the file only after receiving notice of his action. The applicant maintains that it was only by decision of 15 January 1992 that the Parliament responded favourably to his complaint of 3 May 1991 and he therefore claims that the Court should reject the objection of inadmissibility raised by the defendant and accordingly proceed with the case, at least as regards the award of costs.

The supervening redundancy of the proceedings, and the costs

22 The Court considers that the letter from the Secretary General of the Parliament of 5 September 1991 cannot be regarded as a decision upholding the applicant's complaint. It is true that the Secretary General states that he has given the requisite instructions to his officials to provide the applicant with details of the calculations of the national pension rights to which he would have been entitled if he had not applied for their transfer in 1985. However, the wording of those instructions was not set out in the letter of 5 September 1991 and was not brought to the notice of the applicant until they were quoted by the Parliament in its objection of inadmissibility. Accordingly, it cannot be inferred, merely from its content, that the letter of 5 September 1991 constituted a favourable response. Indeed, on the contrary, it reaffirms the finding made by the Parliament staff, namely that the calculations made in 1985 were incorrect.

23 It was only by the letter of 15 January 1992 that the Secretary General of the Parliament informed the applicant that the amended calculations of 17 October 1990

and 4 February 1991 were to be regarded as null and void and that he had asked his officials to treat the calculations made in 1985 as final.

24 Whilst acknowledging that he was satisfied with the letter of 15 January 1992, the applicant has not discontinued his action and contends that the Court should proceed with the case, at least as regards the award of costs.

25 Having regard to the foregoing, the Court considers, first, that the action was admissible when brought but that the Parliament's decision of 15 January 1992 has rendered the proceedings between the applicant and the Parliament otiose. It is therefore no longer necessary to give a decision.

26 Similarly, the Court observes that, since the applicant has not discontinued his action, it is appropriate to make an order as to costs in accordance not with Article 87(5) of the Rules of Procedure but with Article 87(6) thereof, which provides that where a case does not proceed to judgment, the costs are to be in the discretion of the Court of First Instance.

27 In the present case, the Court finds that it was only after the action was brought by the applicant that the Parliament staff approached the social security institutions concerned, which led to the negative outcome mentioned above in the account of the facts, and that it was not until 15 January 1992 that the Parliament gave satisfaction to the applicant.

28 In view of the fact that the applicant obtained satisfaction from the Parliament after bringing his action, but has not discontinued the proceedings, the Court considers that it is fair for the Parliament to bear its own costs and two-thirds of the applicant's costs and for the applicant to bear one-third of his own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby orders:

1. There is no need to give a decision.

2. The Parliament shall bear its own costs and two-thirds of the costs of the applicant, who shall bear the remaining third of his own costs.

Luxembourg, 9 June 1992.

H. Jung — Registrar

R. García-Valdecasas — President