

an exchange of views as a formal decision on the part of the administration until he receives the first letter from the administration stating the grounds on which that decision is based. Only at that time does he become bound to lodge a complaint within the period laid down by the Staff Regulations.

A letter addressed to an official is not in the nature of a decision where, in particular, the author of that letter took care expressly to draw the applicant's attention to the fact that the pension calculations communicated to him were for guidance and had to be subject to subsequent confirmation.

3. An application is inadmissible if it is directed against an act preparatory to a decision, in particular against an act coming within the category of administrative information, on the ground that it refers to the subsequent adoption of a decision or does not emanate from an appointing authority.
4. The time-limits prescribed in Articles 90 and 91 of the Staff Regulations for the lodging of complaints and appeals are a matter of public policy and are not subject to the discretion of the parties or the court, since they were laid down with a view to ensuring clarity and legal certainty.

ORDER OF THE COURT OF FIRST INSTANCE (Fifth Chamber)  
14 December 1989 \*

In Case T-119/89

**René Teissonnière**, an official of the Commission of the European Communities, residing in Dakar (Sénégal), represented by Edmond Lebrun, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of T. Biever, 83 boulevard Grande-Duchesse Charlotte,

applicant,

\* Language of the case: French.

**Commission of the European Communities**, represented by its Legal Adviser, Sean Van Raepenbusch, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Department, Wagner Centre, Kirchberg,

defendant,

concerning, on the one hand, the calculation of the applicant's years of pensionable service under the Community pension scheme and, on the other hand, the recognition of his right to the application of Article 5 of Annex VIII to the Staff Regulations,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

composed of: H. Kirschner, President of Chamber, C. P. Briët and J. Biancarelli, Judges,

Registrar: H. Jung

makes the following

**Order**

1 By an application lodged at the Registry of the Court of Justice on 26 June 1989, Mr Teissonnière brought an action for: first, a declaration that, for the purpose of his pension rights under the Community scheme, the period during which he was employed by the European Agency for Cooperation (hereinafter referred to as the 'EAC') should be taken into account in its entirety, as if he had been an official of the Commission; secondly, a declaration that he is entitled to the increase on grounds of age provided for in Article 5 of Annex VIII to the Staff Regulations; thirdly, a declaration that the Commission's decision, on the one hand, determining the years of pensionable service under the Community scheme to which he would be entitled on the basis of his employment with EAC in the event of a transfer of the pension rights acquired by him with the insurance company

Generali Belgium on the basis of his employment with EAC and, on the other hand, refusing to grant him the benefit of the increase provided for in the first paragraph of Article 5 of Annex VIII to the Staff Regulations is void; finally, a declaration that the rejection of his complaint registered on 21 December 1988 which must be implied from the Commission's silence is void.

- 2 By a document received at the Court Registry on 28 July 1989, the Commission raised an objection of inadmissibility under Article 91(1) of the Rules of Procedure of the Court, applicable *mutatis mutandis* to the procedure before the Court of First Instance, and asked for a decision to be given on that objection prior to an examination of the case.
- 3 The applicant, who was born on 2 June 1925, was employed by the EAC from 16 July 1966 to 31 December 1987. On 1 January 1988, that is to say at the age of 62 and a half years, he was appointed an official of the Commission in pursuance of Council Regulation (Euratom, ECSC, EEC) No 3018/87 of 5 October 1987 introducing special transitional measures for the recruitment of overseas staff of the European Association for Cooperation as officials of the European Communities (Official Journal 1987, L 286, p. 1).
- 4 From 1 January 1971 to 31 December 1987, the applicant's contributions were paid to the insurance company, Generali Belgium. On 26 March 1988, the applicant requested the Commission to examine the possibility of transferring the rights thus acquired to the Community scheme, in pursuance of Article 11(2) of Annex VIII to the Staff Regulations.
- 5 After an initial exchange of correspondence, the Head of the Transfers Sector of the Specialized Pensions Department of the Commission (hereinafter referred to as the 'Head of the Transfers Sector') sent the applicant a letter dated 6 June 1988 containing certain administrative information and stating, by way of guidance and subject to subsequent confirmation, that the transfer of the capital accumulated with the Generali Belgium would in principle entitle him to a credit of nine years, three months and 17 days of pensionable service under the Communities scheme, subject to an agreement to be reached between the Commission and that insurance company in order to enable the transfer to be made.

- 6 After a second exchange of correspondence between the applicant and the Head of the Transfers Sector, the latter addressed to Mr Teissonnière a letter dated 27 July 1988 in which: (i) he informed the applicant that an agreement on the transfer of pension rights had been concluded between the Commission and Generali Belgium; (ii) he confirmed that the transfer of capital acquired with that insurance company would correspond to nine years, three months and 17 days of pensionable service under the Community scheme; (iii) he informed the applicant of the direct payment to him by the EAC of an allowance in respect of the period from 1 July 1966 to 31 December 1970, by way of contribution to a retirement pension thereby precluding any additional retirement pension entitlement under the Community scheme; (iv) he disputed a line of argument deployed by the applicant in his fax of 21 June 1988, based on an alleged infringement of the general principle of equal treatment, by pointing to the differences in the situations of the applicant and the official whose situation had been mentioned by the applicant, in particular as regards the age and grade of that official, on the one hand, and the fact that the applicant, having entered the service of the European Communities after the age of 60 years, was not entitled, unlike that official, to the increase provided for in Article 5 of Annex VIII to the Staff Regulations, on the other.
- 7 That letter of 27 July 1988 in three places contains considerations which show that it was for guidance only: 'I shall be able to send you an official proposal regarding the transfer in the near future', 'I have asked Generali for a copy of your insurance certificate . . . in order to verify the amount transferable as at the end of December 1988'; 'I would however draw your attention to the fact that the pension calculations which have been notified to you are only for guidance and must still be subject to later confirmation'.
- 8 On 19 August 1988, the Commission sent the applicant statements of account in respect of his retirement insurance drawn up by Generali Belgium as at 31 December 1987. In reply to that letter, the applicant sent to the Head of the Transfers Sector a letter dated 24 August 1988 in which he stated: 'I am not interested in a transfer to the Commission and I request the payment of my pension rights' with the Generali Belgium company.

- 9 On 8 September 1988, the Head of the Transfers Sector sent the applicant a letter noting the applicant's refusal of the transfer of his pension rights to the Community scheme and informing him that the file was being closed.
- 10 On 10 November 1988 the applicant wrote a letter to the Director-General of Directorate-General VIII (Development), under whose authority he came, in which he drew the Director-General's attention to the 'injustice caused by the application in my case of rules of the Staff Regulations relating to appointment as an official in connection with the calculation of the retirement pension', alleging that, in those circumstances, he would at the age of 65, receive from the Commission a monthly pension of an amount deemed by him to be very low.
- 11 On 9 December 1988 the Director-General of the Directorate-General for Development replied to the applicant, pointing out, in the first place, that the Commission was obliged to comply with the rules of the Staff Regulations applicable to the transfer of pension rights into the Community scheme, secondly, that in this field, differences between groups of officials may be explained by the fact that regard is had to a number of parameters and, thirdly, that the amount of the pension indicated by the applicant was equivalent only to two years and six months service as an official of the Commission, whereas, in respect of the previous period, the applicant had available to him capital accumulated under the pension scheme offered by the EAC to its staff.
- 12 The applicant thereupon lodged a complaint registered on 21 December 1988 at the Secretariat-General of the Commission seeking a review of the manner in which the transfer to the Community pension scheme of pension rights acquired by him with Generali Belgium is calculated, and of his right to the application of the first paragraph of Article 5 of Annex VIII to the Staff Regulations. In that complaint, which makes express reference to the letter of 27 July 1988 examined above, the applicant essentially invokes the incompleteness of the information he received from the Commission, with a view to clarification as regards the transfer of pension rights, his good faith, alleged discriminatory treatment in the settlement of his case as compared with other EAC staff, equity and the need to grant him an individual derogation from the general rules on the transfer of pension rights to the Community scheme.

13 In those circumstances, Mr Teissonnière brought this action against which the Commission has raised an objection of inadmissibility. By order of 15 November 1989, the Court of Justice referred the case to the Court of First Instance.

14 The Commission bases its objection of inadmissibility on the following two arguments: first, it submits that the contested decision, namely the letter of 27 July 1988, cannot be regarded as an act adversely affecting the official, since it is both confirmatory of earlier correspondence from the Commission and preparatory to the adoption of the decision, which did not happen since the applicant announced his intention to seek payment of his rights with Generali Belgium; secondly, the Commission maintains that the complaint was not lodged within the period of three months provided for in Article 90(2) of the Staff Regulations, that it is therefore out of time and, accordingly, inadmissible.

15 The applicant argues, first of all, that the objection of inadmissibility raised by the Commission concerns only the first head of claim, regarding the transfer to the Community scheme of pension rights acquired by him with Generali Belgium, and not the second claim, for the application of Article 5 of Annex VIII to the Staff Regulations. He goes on to submit that the line of argument deployed by the Commission is contradictory, since it describes its letter of 27 July 1988 as being at the same time for guidance, preparatory and confirmatory; according to him, as far as pension rights are concerned, there is necessarily an act having adverse effects, and it is therefore of little importance whether or not the complaint was preceded by a decision; as regards his request for payment of the pension rights with Generali Belgium, that constitutes merely an interim solution, since Article 11(2) of Annex VIII to the Staff Regulations does not prohibit the transfer to the Community scheme of pension rights when the retirement capital is in the possession of the official concerned; finally, the applicant considers that in any event the letter of 27 July 1988 cannot be regarded as the starting point for the running of time as provided for in Article 90(2) of the Staff Regulations and that it is necessary in the present case to take into consideration the right of access to legal remedies and the particular characteristics of the case, namely, the geographical remoteness of the applicant, the complexity of questions of pension rights and the excessive burden on the relevant departments of the Commission.

16 By virtue of Article 91(3) of the Rules of Procedure of the Court, which are applicable *mutatis mutandis* to the procedure before the Court of First Instance, the remainder of the proceedings relating to the objection raised is to be oral, unless it

is decided otherwise. The Court of First Instance considers in the present case that it is sufficiently well informed from an examination of the documents before it and that it is not necessary to open the oral procedure.

17 It should be stated at the outset that, under Article 91(1) of the Staff Regulations, the Court of First Instance has jurisdiction in any dispute regarding the legality of an act adversely affecting a person to whom the Staff Regulations apply. Under Article 90(2) of the Staff Regulations the act having adverse effects consists either in a decision adopted by the appointing authority or in a failure by the appointing authority to adopt a measure prescribed by the Staff Regulations. Article 91(2) of the Staff Regulations provides that an appeal lies only if the official has previously submitted a complaint to the appointing authority and the complaint has been rejected by express decision or by implied decision. It is only against a decision rejecting the official's request, which, in the absence of a reply from the administration, is deemed to have been given after a period of four months, that the person concerned may, within a further period of three months, submit a complaint to the appointing authority in accordance with Article 90(2) (judgment of the Court of 14 February 1989 in Case 346/87 *Bossi v Commission* [1989] ECR 303; Order of the Court of 4 June 1987 in Case 14/86 *G. P. v Economic and Social Committee* [1987] ECR 2409).

18 The two submissions put forward by the Commission in support of its objection of inadmissibility must be examined in the light of those principles.

### **The absence of an act adversely affecting the official**

19 It should first be noted that, contrary to the Commission's assertions, although it is true that before retirement, an uncertain future event, pension rights are contingent rights accruing from day to day, it is none the less clear that an administrative act deciding that a period of employment cannot be taken into account for the calculation of years of pensionable service, or a decision refusing a request for application of the increase provided for under Article 5 of Annex VIII to the Staff Regulations, immediately and directly affects the legal situation of the person concerned, even if that act is to be implemented only subsequently. In principle, therefore, the official has a legitimate, present and vested interest in taking proceedings against such an act (judgment of the Court of 1 February 1979 in Case 17/78 *Fausta Desbormes v Commission* [1979] ECR 189).

20 Secondly, it should be pointed out that, although the decision which the applicant seeks to contest is not specifically identified, it *is clearly* the letter dated 27 July 1988 from the Head of the Transfers Sector, examined above, and that for the following reasons: it is expressly referred to in the complaint of 21 December 1988; it is also the measure referred to in the application to which, moreover, it is annexed in accordance with Article 19 of the Statute of the Court of Justice of the European Communities and Article 37(4) of the Rules of Procedure of the Court of Justice, which are applicable *mutatis mutandis* to the Court of First Instance; finally, in reply to the analysis made by the Commission in its objection of inadmissibility, which is not contested in principle, the applicant merely argues that that letter cannot constitute the starting point of the three-month period laid down in Article 90(2) of the Staff Regulations, but in no way indicates any other decision which he seeks to contest, contrary to the consistent case-law of the Court of Justice according to which, in order to protect the rights of the defence and of third parties concerned, an application which does not define precisely the measures allegedly affecting the applicant is to be regarded as inadmissible (see in particular the judgment of the Court of 28 May 1970 in Case 30/68 *Lacroix v Commission* [1970] ECR 301).

21 According to the consistent case-law of the Court of Justice (see in particular the judgment of 14 July 1981 in Case 145/80 *Maschetti v Commission* [1981] ECR 1975), within the framework of a continuing discussion between an institution and an official, the latter is entitled not to regard an exchange of views as a formal decision on the part of the administration until he receives the first letter from the administration stating the grounds on which that decision is based. Only at that time does he become bound to lodge a complaint within the period laid down by the Staff Regulations. Moreover, also in accordance with the consistent case-law of the Court of Justice (see in particular the judgment in the aforementioned case of *Desbormes v Commission*), an application is inadmissible if it is directed against an act preparatory to a decision, in particular against an act coming within the category of administrative information, on the ground that it refers to the subsequent adoption of a decision or does not emanate from an appointing authority, as required by the Staff Regulations for the adoption of a decision.

22 In the present case, it is clear from the documents before the Court of First Instance that the letter of 27 July 1988 addressed to the applicant and signed on behalf of the Head of the Transfers Sector of the pensions department of the Commission is not in the nature of a decision, without its being necessary to rule on whether the signatory is the appointing authority: in the first place, that letter suggests to the applicant that an official proposal for a decision on transfer is to be forwarded to him in the near future; secondly it makes that future decision conditional on receipt from the insurance company, Generali Belgium, of a copy of an



insurance certificate; finally, the author of that letter took care expressly to draw the applicant's attention to the fact that the pension calculations communicated to him were for guidance and had to be subject to subsequent confirmation; it is clear from the documents before the Court of First Instance that the latter statement by the Commission covers all the details of the calculation of the applicant's pension rights, whether it be the transfer of his rights previously acquired or the conditions for the application to him of Article 5 of Annex VIII to the Staff Regulations. In those circumstances, the applicant's complaint, registered on 21 December 1988, was not directed against an act adversely affecting him, and the present application is, accordingly, inadmissible.

- 23 Furthermore, it should be pointed out that, following receipt of the letter of 24 August 1988 in which the applicant informed the Commission that he was no longer interested in a transfer of his pension rights to the Community scheme, and requested the payment of his pension right from the Generali Belgium insurance company, the Commission was in no way obliged to take a decision on the applicant's initial request dated 24 March 1988, which was necessarily withdrawn by the letter of 24 August 1988 examined above; the Commission was perfectly entitled to take note of that decision by the applicant and to close the file on the application for transfer, after having transmitted its memorandum to the EAC.

### **The submission that the complaint was out of time**

- 24 In the present case it is clear from an examination of the documents before the Court of First Instance, in particular the complaint itself, the applicant's letter dated 24 August 1988 and the fact that the applicant has not contradicted the Commission's allegations in this respect that the applicant was acquainted with the letter of 27 July 1988 which, it is not contested, was transmitted to him by the Commission by fax and received on the same day, at the latest at the beginning of August 1988.
- 25 Accordingly, even on the assumption that the letter of 27 July 1988 examined above may be regarded as an act adversely affecting the official, which is not the case, the complaint registered on 21 December 1988 is, it is said, in any event out of time and the present application is itself inadmissible.

- 26 On that point, in accordance with the consistent case-law of the Court of Justice (see in particular the judgment of the Court of 12 July 1984 in Case 227/83 *Moussis v Commission* [1984] ECR 3133), the time-limits prescribed in Articles 90

and 91 of the Staff Regulations for the lodging of complaints and appeals are a matter of public policy and are not subject to the discretion of the parties or the court, since they were laid down with a view to ensuring clarity and legal certainty.

27 In those circumstances, the factors alleged by the applicant in his observations on the objection of inadmissibility, namely that an official must be granted the right of access to legal remedies, that the applicant, since he was posted in Africa, encountered more difficulties in discussing his situation with the Commission, that the question of pension rights is particularly complex and, finally, the excessive work-load of Commission departments competent for calculating pension rights are of no avail and cannot alter the mandatory nature of the time-limits prescribed in Articles 90 and 91 of the Staff Regulations.

28 It follows from all the foregoing considerations that the application must be rejected as inadmissible.

### Costs

29 Under Article 69(2) of the Rules of Procedure of the Court of Justice, which are applicable *mutatis mutandis* to the procedure before the Court of First Instance, the unsuccessful party is to be ordered to pay the costs. However, Article 70 of those Rules provides that in proceedings brought by servants of the Communities, the institutions are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby orders:

**(1) The application is dismissed as inadmissible.**

**(2) The parties shall bear their own costs.**

Luxembourg, 14 December 1989.

H. Jung  
Registrar

H. Kirschner  
President of the Fifth Chamber