

Case T-29/93

Antonio Calvo Alonso-Cortés
v
Commission of the European Communities
(Inadmissibility)

Order of the Court of First Instance (Fifth Chamber), 14 December 1993 II - 1391

Summary of the Order

1. *Officials — Actions — Conditions for admissibility — Actionable measures — Questions which the Court may consider of its own motion*
(Staff Regulations, Art. 91)
2. *Officials — Actions — Act adversely affecting an official — Meaning — Communication sent to an official informing him that the procedure for transfer to the Community pension scheme of rights acquired by him under a national scheme has been suspended until the national authorities have established detailed rules for transfers — Not an act adversely affecting him*
(Staff Regulations, Art. 91; Annex VIII, Art. 11(2))
3. *Officials — Actions — Subject-matter — Issue of directions to the Commission to bring infringement proceedings — Inadmissible*
(EEC Treaty, Arts 169 and 179; Staff Regulations, Art. 91)

4. *Actions for annulment — Actionable measures — Refusal by the Commission to bring infringement proceedings — Not an actionable act*
 (EEC Treaty, Arts 169 and 173)

1. The existence of the measure whose annulment is sought under Article 91 of the Staff Regulations is an essential requirement for admissibility, the absence of which may be considered by the Court of its own motion.
2. Measures producing binding effects capable of affecting the applicant's interests by clearly altering his legal position and by definitively laying down the position of the institution constitute measures open to challenge under Article 91 of the Staff Regulations.

A communication sent by the authorities to an official informing him that a national pension fund has refused to transfer to the Community scheme pension rights acquired by him under the national scheme and that they themselves intend to defer consideration of the official's request is not such a measure.

Inasmuch as it follows from Article 11(2) of Annex VIII to the Staff Regulations that the Community institution cannot itself transfer the pension rights, or acknowledge any entitlement and ascertain the number of years of pensionable

service to be credited until the relevant Member State has established detailed rules for transfers, such a deferral does not amount to a definitive decision rejecting the applicant's request, as the institution has left open the possibility of taking further steps in the procedure initiated under Article 11(2) of Annex VIII to the Staff Regulations pending establishment by the relevant Member State of the detailed rules necessary for the transfer of pension rights.

3. The Community judicature lacks jurisdiction to hear actions based on Article 91 of the Staff Regulations and Article 179 of the EEC Treaty in which the claims seek not to contest the legality of an act adversely affecting an official within the meaning of Article 91(1) of the Staff Regulations but to have the Commission ordered to use the powers which it possesses as an institution under Article 169 of the Treaty.

4. An action for annulment brought by a natural or legal person against a Commission decision not to bring proceedings against a Member State for failure to fulfil its obligations is inadmissible.