

JUDGMENT OF THE COURT (Sixth Chamber)
17 July 1997 *

In Case C-52/96,

Commission of the European Communities, represented by Julian Currall and Francisco Enrique González Díaz, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Kingdom of Spain, represented by Rosario Silva de Lapuerta, Abogado del Estado, of the Community Legal Affairs Department, acting as Agent, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard E. Servais,

defendant,

APPLICATION for a declaration that, by failing to adopt the national measures necessary to ensure that officials of the institutions are able to transfer their retirement pension rights to the Community pension scheme, the Kingdom of Spain has failed to fulfil its obligations under Article 11(2) of Annex VIII to the Staff Regulations of Officials of the European Communities and Article 5 of the EC Treaty,

* Language of the case: Spanish.

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, C. N. Kakouris, P. J. G. Kapteyn, G. Hirsch (Rapporteur) and R. Schintgen, Judges,

Advocate General: P. Léger,
Registrar: R. Grass,

having regard to the Report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 29 May 1997,

gives the following

Judgment

- 1 By application lodged at the Court Registry on 21 February 1996, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by failing to adopt the national measures necessary to ensure that officials of the institutions are able to transfer their retirement pension rights to the Community pension scheme, the Kingdom of Spain has failed to fulfil its obligations under Article 11(2) of Annex VIII to the Staff Regulations of Officials of the European Communities [introduced by Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 (OJ, English Special Edition 1968 (I), p. 30), as amended by Council Regulation (EEC, Euratom, ECSC) No 571/92 of 2 March 1992 (OJ 1992 L 62, p. 1, hereinafter 'the Staff Regulations')] and Article 5 of the EC Treaty.

2 Article 11(2) of Annex VIII to the Staff Regulations provides:

'An official who enters the service of the Communities after:

- leaving the service of a government administration or of a national or international organization; or
- pursuing an activity in an employed or self-employed capacity;

shall be entitled upon establishment to have paid to the Communities either the actuarial equivalent or the flat-rate redemption value of retirement pension rights acquired by virtue of such service or activities.

In such case, the institution in which the official serves shall, taking into account his grade on establishment, determine the number of years of pensionable service with which he shall be credited under its own pension scheme in respect of the former period of service, on the basis of the amount of the actuarial equivalent or sums repaid as aforesaid.'

3 Following its accession to the European Communities, the Kingdom of Spain took certain steps to give effect to its obligations under Article 11(2). It thus adopted the amended version of the Law on pensioners and retired employees of the State, which was published on 27 May 1987. Acknowledging, however, that that Law

was not sufficient to ensure the operation of the scheme in question, the Spanish Government has, since 1989, submitted a number of draft royal decrees setting out detailed measures in that respect.

- 4 The Commission noted that those measures were still in draft form and, on 27 October 1992, sent a letter of formal notice to the Kingdom of Spain under Article 169 of the Treaty.
- 5 Having received no official response to that letter, the Commission issued a reasoned opinion on 13 December 1993 concerning the lack of national measures necessary to ensure the implementation of Article 11(2) of Annex VIII to the Staff Regulations.
- 6 Various contacts subsequently took place between the Spanish authorities and the Commission, in the course of which the Spanish authorities submitted a new draft; the Commission then proposed amendments to that draft and the Spanish authorities submitted comments on the proposed amendments. However, since it had still received no official response to the reasoned opinion, the Commission decided to initiate proceedings before the Court.
- 7 The Commission claims that the fact that there is no possibility in law for the transfer of rights from the Spanish scheme to the Community scheme jeopardizes the equality of treatment of Community officials and gives rise to inequality between Member States. It recalls that the Kingdom of Spain has been subject to the obligation set out in Article 11(2) of Annex VIII to the Staff Regulations for over ten years, which exists independently of the conclusion of an agreement concerning the application of Article 11(1), and that other Member States have long

since managed to take the relevant measures in spite of administrative and financial difficulties similar to those pleaded by the Kingdom of Spain.

- 8 The Kingdom of Spain emphasizes that determination of the criteria for the application of the transfer system set out in Article 11(2) of Annex VIII to the Staff Regulations has given rise to a number of internal problems resulting from the differences in social security schemes depending on the department responsible for the persons concerned. It considers that, in view of the complexity of the issue and the practical problems arising, the Spanish authorities have remained in constant contact with the Commission, taking all relevant steps in order to be able to resolve the problems raised as quickly as possible and thus discharge the obligation set out in Article 11(2).
- 9 It should be noted, first of all, that where a provision of the Staff Regulations requires implementation at national level, Article 5 of the Treaty requires the Member States to take all appropriate measures, whether general or particular (see Case 137/80 *Commission v Belgium* [1981] ECR 2393, paragraph 9). That is the case in respect of the obligation set out in Article 11(2) of Annex VIII to the Staff Regulations.
- 10 Secondly, more than ten years have elapsed since the Staff Regulations entered into force in Spain and that country has still not taken the measures necessary to ensure that its national legislation is in conformity with Article 11(2) of Annex VIII to the Staff Regulations.

- 11 As for the arguments submitted by the Kingdom of Spain to justify its failure to act, it is sufficient to recall that, according to settled case-law of the Court, a Member State may not plead provisions, practices, or circumstances existing in its internal legal system in order to justify a failure to comply with obligations resulting from a Community regulation (*Commission v Belgium*, cited above, paragraph 17).
- 12 Accordingly, it must be held that, by failing to adopt the national measures necessary to ensure that officials of the institutions are able to transfer their retirement pension rights to the Community pension scheme, the Kingdom of Spain has failed to fulfil its obligations under Article 11(2) of Annex VIII to the Staff Regulations of Officials of the European Communities and Article 5 of the EC Treaty.

Costs

- 13 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Kingdom of Spain has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. Declares that, by not adopting the national measures necessary to ensure that officials of the institutions are able to transfer their retirement pension rights to the Community pension scheme, the Kingdom of Spain has failed

to fulfil its obligations under Article 11(2) of Annex VIII to the Staff Regulations of Officials of the European Communities and Article 5 of the EC Treaty;

2. Orders the Kingdom of Spain to pay the costs.

Mancini

Kakouris

Kapteyn

Hirsch

Schintgen

Delivered in open court in Luxembourg on 17 July 1997.

R. Grass

G. F. Mancini

Registrar

President of the Sixth Chamber