



Reports of Cases

Joined Cases T-229/11 and T-276/11

Lord Inglewood and Others

v

European Parliament

(Rules governing the payment of expenses and allowances to Members of the European Parliament — Additional pension scheme — Decisions rejecting applications seeking to benefit from the provisions in force before the amendment to the additional pension scheme in 2009 — Plea of illegality — Acquired rights — Legitimate expectations — Proportionality — Equal treatment)

Summary — Judgment of the General Court (Fourth Chamber), 13 March 2013

1. *Acts of the institutions — Decision amending the rules governing the additional voluntary pension scheme of Members of the European Parliament — Publication — Notification by means of the intranet site of the institution — Not accessible to former Members — Applicability of the decision subject to publication on the internet*
2. *European Parliament — Regulation governing the payment of expenses and allowances to Members — Additional voluntary pension scheme — Conditions for granting — Cumulative nature*
3. *European Parliament — Regulation governing the payment of expenses and allowances to Members — Additional voluntary pension scheme — Non-contractual character*
4. *European Parliament — Regulation governing the payment of expenses and allowances to Members — Additional voluntary pension scheme — Withdrawal of the possibility to pay part of the pension in the form of a lump sum — No breach of principle of the protection of legitimate expectations*
5. *European Parliament — Regulation governing the payment of expenses and allowances to Members — Additional voluntary pension scheme — Withdrawal of the possibility to pay part of the pension in the form of a lump sum and of the possibility of early retirement — No breach of principle of proportionality*
6. *European Parliament — Regulation governing the payment of expenses and allowances to Members — Additional voluntary pension scheme — Introduction of amendments to restore financial balance to the scheme — Lawfulness*

(Art. 232, first para., TFEU)

7. *EU law — Principles — Equal treatment — Concept — Judicial review — Limits*

8. *European Parliament — Regulation governing the payment of expenses and allowances to Members — Additional voluntary pension scheme — Increase of the retirement age — No infringement of the principle of equal treatment by failing to adopt transitional measures such as those for EU officials*

(Council Regulation No 723/2004)

9. *European Parliament — Regulation governing the payment of expenses and allowances to Members — Additional voluntary pension scheme — Amendment — No obligation of prior consultation with the Secretary General of the Parliament and the College of Quaestors*

(Rules of Procedure of the European Parliament, Rule 21(2))

1. As a measure of general application which is not addressed to a particular party, a decision of the Bureau of the European Parliament amending the Rules Governing the Additional (Voluntary) Pension Scheme for Members found in Annex VII to Rules Governing the Payment of Expenses and Allowances to Members does not need to be notified individually, but has to be published to enter into force. A fundamental principle in the European Union legal order requires that a measure adopted by the public authorities shall not be applicable to those concerned before they have the opportunity to make themselves acquainted with it.

Since what is in issue is not a measure in respect of which Article 254 EC provides for publication in the Official Journal, any other appropriate form of publication must be considered to be sufficient. Thus, inasmuch as the decision constitutes a measure of internal organisation, it must be accepted that the parties concerned can be informed of it in accordance with the rules established within the institution as regards such measures. In that regard, publication on the intranet of the Parliament, in accordance with the practice of the Parliament, is sufficient with regard to serving Members. By contrast, as former Members no longer have access to the Parliament's intranet site, publication on the internet is necessary with regard to them.

As a measure of general application, that decision was to enter into force at the same time in respect of all persons whose legal position was affected by it, both for reasons of legal certainty and for reasons relating to the principle of equal treatment. Furthermore, as the person concerned must have the opportunity to make himself acquainted with a measure in order for it to be applicable to him, it is the date on which the last of the persons concerned had that opportunity that must be taken into account in this respect.

(see paras 32-34, 37)

2. It is clear from Article 1(1) of the Rules Governing the Additional (Voluntary) Pension Scheme for Members found in Annex VII to Rules Governing the Payment of Expenses and Allowances to Members that, in order to acquire the right to additional pension, a Member must cumulatively fulfil all the conditions there referred to, namely, first, have paid additional contributions to the pension scheme for at least two years, secondly, have ceased to hold office and, thirdly, be of pension age (60 years before 14 July 2009, 63 years after that date). Thus, it is the satisfaction by a Member or a former Member of the last of those conditions, whichever that may be, that constitutes the event giving rise to his right to an additional pension.

(see paras 40, 56)

3. The Additional (Voluntary) Pension Scheme for Members found in Annex VII to Rules Governing the Payment of Expenses and Allowances to Members falls exclusively within the scope of the powers as a public authority which are vested in the Parliament so that it is able to perform the tasks entrusted to it by the Treaties. Consequently, the rights and obligations of the Parliament and of Members who

are part of that scheme are governed by the internal rules and statutes which bind them, and are not therefore contractual but rather a matter of public law, a finding which is not called into question by the fact that the person concerned joined that scheme voluntarily.

(see paras 61, 148)

4. See the text of the decision.

(see para. 66)

5. See the text of the decision.

(see paras 70-72, 93-95, 107, 132)

6. Within the framework of the exercise of its powers to regulate the Additional (Voluntary) Pension Scheme for Members found in Annex VII to Rules Governing the Payment of Expenses and Allowances to Members, the European Parliament may legitimately make amendments to avoid as far as possible any financial impact on European taxpayers, ensure that any costs are distributed fairly and with due regard to the need to explain decisions to the general public, and to preserve the pension fund's liquidity as far as possible. If, under that pension scheme based on an actuarial calculation in which the total of the annual contributions made by members and by the Parliament must, in principle, cover all of the pension rights acquired in the same year, it transpires that the estimates as to the return on the fund's assets, on the basis of which the amount of the contributions have been established, were overly optimistic, it must be concluded that the contributions made by members and by the Parliament in the past were in actual fact too low to finance the corresponding pension rights. In order to rebalance the scheme, there is thus justification, as a matter of principle, in making both the members and the Parliament contribute.

In that regard, since the fundamental decision to increase the retirement age under the additional pension scheme was the difficult financial situation of the additional pension fund, the argument that the age was fixed in accordance with considerations applicable to compulsory pension schemes is irrelevant.

(see paras 73-75, 98, 145)

7. See the text of the decision.

(see paras 112, 113)

8. With regard to the amendment of the Additional (Voluntary) Pension Scheme for Members of the European Parliament found in Annex VII to Rules Governing the Payment of Expenses and Allowances to Members, the fact that the retirement age was increased without transitional measures is not discriminatory simply because of the fact that, for the amendment of other Community pension schemes, such measures were used. Since Members of the European Parliament, on the one hand, and officials of the European Union, on the other hand, are in factual and legal situations which differ in essential respects, it is possible for them to be treated differently with regard to the adoption of transitional measures.

With regard to the amendment of the pension scheme for European Union officials introduced by Regulation No 723/2004 amending the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities, the transitional measures consist, first, in an exemption in respect of certain officials who were in service on the date of entry into force of the amendments and, secondly, in the staggered application of the amendments, on the basis of the age of the officials in service on the date of their entry into force. In that context, it

is important to note that the old-age pension which European Union officials may expect to receive constitutes, in the majority of cases, the most important, if not the only component of the old-age income to which they are entitled by virtue of their professional activities. By contrast, a term of office as a Member of the Parliament is not in general in the nature of a sole professional activity. It is thus normally held after or before other periods of professional activity on the part of the Member, or even in parallel to such activity. Consequently, the additional pension under the scheme at issue constitutes, as a general rule, only a portion of the old-age income of former Members, as the latter will normally have acquired other pension rights in the course of their other professional activities. It follows that an amendment to the additional pension scheme is not likely to affect members of that scheme in the same manner as that in which European Union officials are affected by an amendment to their pension scheme.

Moreover, the amendment to the pension scheme for European Union officials adopted under Regulation No 723/2004 was based on grounds which are different from those advanced by the decision to amend the additional pension scheme for Members of the Parliament. The increase in the retirement age of officials and the reduction in the annual rate of accrual of pension rights constituted an adaptation of the pension scheme to progressive demographic changes and not a reaction to an acute crisis in respect of that scheme. By contrast, the reason for the decision to amend the additional pension scheme of Members, and, in particular, the decision to increase the retirement age under that scheme, was the imminent liquidity crisis of the additional pension fund.

(see paras 114, 117-121, 123, 124)

9. See the text of the decision.

(see paras 137, 138)