



Reports of Cases

ORDER OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL
(Third Chamber)
4 May 2016

Case F-44/12

Olivier Maes

and

Michal Strojwas

v

European Commission

(Civil service — Officials — Members of the contract staff — Pensions — Article 11(2) of Annex VIII to the Staff Regulations — Pension rights acquired, prior to entering the service of the EU, under a national pension scheme — Transfer to the EU pension scheme — Proposal concerning the crediting of pensionable years, made by the appointing authority or AECE, based on new general implementing provisions — Objection of inadmissibility — Concept of an act having an adverse effect — Article 83 of the Rules of Procedure)

Application: under Article 270 TFEU, applicable to the EAEC Treaty pursuant to Article 106a thereof, in which Mr Olivier Maes and Mr Michal Strojwas seek annulment of the decisions of the authority empowered to conclude contracts of employment of the European Commission ('the AECE') and the appointing authority of the Commission ('the appointing authority'), respectively, of 22 August and 27 October 2011, by which those authorities definitively fixed, for the purposes of the European Union pension scheme, the pension rights acquired by the applicants prior to entering the service of the EU.

Held: The action is dismissed as inadmissible. Mr Olivier Maes and Mr Michal Strojwas are to bear their own costs and are ordered to pay the costs incurred by the European Commission.

Summary

1. Actions brought by officials — Act adversely affecting an official — Concept — Proposal concerning additional pensionable years with a view to a transfer to the EU pension scheme of pension rights acquired before entry into the service of the EU — Not included — Decision to credit pensionable years adopted following transfer of the capital representing acquired pension rights — Included (Art. 270 TFEU; Staff Regulations, Art. 91(1) and Annex VIII, Art. 11(2))

2. Actions brought by officials — Action against a decision rejecting a complaint — Admissibility — Obligation to adjudicate on claims directed against a decision rejecting a complaint — Claims lacking independent content or purely confirmatory decision — None (Staff Regulations, Arts 90 and 91)

1. In the procedure for the transfer of pension rights laid down in Article 11(2) of Annex VIII to the Staff Regulations, it is the decision adopted by the appointing authority or the authority empowered to conclude contracts of employment, as the case may be, once the capital representing the pension rights acquired by the person concerned before entering the service of the EU has actually been transferred, which constitutes an act adversely affecting him, against which he may bring an action under Article 270 TFEU and Article 91(1) of the Staff Regulations. On the other hand, a proposal concerning the crediting of pension rights, if accepted by the person concerned, does not constitute an act adversely affecting him which may be the subject of an action under Article 270 TFEU and Article 91(1) of the Staff Regulations.

Additional pensionable years may be credited only where the official concerned gives his consent to the procedure for transferring to the EU pension scheme the capital representing pension rights he has acquired previously with the external pension fund concerned, that consent being informed by the proposal for the additional pensionable years to be credited made by the appointing authority or the authority empowered to conclude contracts of employment on the basis of the provisional amount of capital declared by the national pension fund concerned.

In that regard, at the stage when the proposal for the pension rights to be credited is made, the institution concerned merely undertakes to apply correctly to the situation of the official concerned Article 11(2) of Annex VIII to the Staff Regulations and the general implementing provisions. That obligation on the institution arises directly from the provisions of the Staff Regulations in question, even if the institution does not expressly give such an undertaking.

Thus, such an undertaking expressed in a proposal for pensionable years to be credited does not give rise to a fresh obligation on the institution in question nor, consequently, to a change in the legal position of the person concerned, in particular because, even where the person gives his consent to the transfer to the EU pension scheme of pension rights which he acquired under a different scheme, the institution making the proposal is not under a corresponding obligation, once the amount of capital declared by the national fund has actually been transferred, automatically to award the person concerned the number of pensionable years stated in the original proposal, in the light of which the official confirmed his intention to transfer the capital to the EU pension scheme.

(see paras 32-36)

See:

Judgments of 13 October 2015 in *Commission v Verile and Gjergji*, T-104/14 P, EU:T:2015:776, paras 50, 52, 53 and 74; *Commission v Cocchi and Falcione*, T-103/13 P, EU:T:2015:777, para. 66, and *Teughels v Commission*, T-131/14 P, EU:T:2015:778, paras 37, 46, 48, 49, 58 and 70

2. In accordance with the principle of economy of procedure, the Union judicature may decide that it is not appropriate to rule specifically on claims directed against a decision rejecting a complaint where it finds that those claims have no independent content and are, in reality, the same as those directed against the act against which the complaint has been made. That may, in particular, be the case where it finds that the decision rejecting the complaint is purely confirmatory of the act which is the subject of the complaint and that, moreover, that act does not constitute an act having an adverse effect within the meaning of Article 90 of the Staff Regulations.

(see para. 39)

See:

Judgment of 21 September 2011 in *Adjemian and Others v Commission*, T-325/09 P, EU:T:2011:506, para. 33

Judgment of 19 November 2014 in *EH v Commission*, F-42/14, EU:F:2014:250, para. 85