

## Decision in case 1958/2014/ANA against the European Commission concerning the transfer of national pension rights into the EU pension scheme

Decision

**Case** 1958/2014/ANA - **Opened on** 10/12/2014 - **Decision on** 02/12/2015 - **Institution concerned** European Commission ( Settled by the institution ) |

The case concerned the transfer of national pension rights into the EU pension scheme by a Commission official.

Following the Ombudsman's intervention, the Commission re-examined the file, identified the mistake and undertook to recalculate the number of pensionable years the complainant is entitled to.

The Ombudsman concluded that the case has been settled to the complainant's satisfaction and closed the case.

### The background to the complaint

1. The Staff Regulations provide that an official who enters the service of the European Union shall be entitled to transfer his pension entitlements under national pension schemes to the Pension Scheme of the European Union's Institutions ('PSEUI'). Taking into account the official's basic salary, age and exchange rate at the date of application for a transfer, the Appointing Authority determines the number of years of pensionable service with which the official shall be credited under the PSEUI in respect of the period of service on the national level [1] .

2. The complainant is an official who, in 2007, requested to transfer his entitlements from the relevant national pension fund into the PSEUI in accordance with the applicable procedural rules. The Commission's Paymaster ('PMO') asked the national institution competent for the management of pension funds ('ZUS') to determine the annuities to be transferred. On 16 November 2009, the ZUS informed the PMO that on the day the complainant's application for transfer was made the capital on his account amounted to 189.533,19 Polish Zloty ('PLN'). On 17 February 2010, the PMO proposed to the complainant to recognise 6 years and 5 months of pensionable service and transfer these entitlements to the PSEUI. The complainant agreed to



the proposal.

3. Subsequently, the ZUS transferred 282.491,76 PLN to the Commission and the latter informed the complainant of the amount.
4. On 1 June 2012, the complainant lodged a complaint under Article 90(2) of the Staff Regulations in which he argued that the PMO should have taken into account the amount of 282.491,76 PLN instead of 189.533,19 PLN to determine the annuities transferred to the PSEUI.
5. On 7 September 2012, the PMO rejected the complaint arguing that the difference of 92.958,57 PLN (circa EUR 23.000) represented the capital appreciation over the period between the date of the registration of the application and the date of the actual transfer to the Commission's bank account, in accordance with Article 11(2) of Annex VIII to the Staff Regulations.
6. Between 1 and 16 May 2014, the complainant asked the PMO to recalculate his pension rights. In its reply of 20 October 2014, the Commission explained that the correspondence sent between 1 and 16 May 2014 does not bring any new facts to the case and that his file was closed.
7. Dissatisfied with the Commission's reply, on 4 November 2014, the complainant lodged this complaint with the European Ombudsman.

## The inquiry

8. The Ombudsman opened an inquiry into the complaint and identified the following allegation and claim:

- 1) The Commission failed to address properly the complainant's arguments regarding the calculation of the number of years of his pensionable service.
- 2) The Commission should address the complainant's arguments and recalculate the number of years of his pensionable service in a manner that is more favourable for him.

In the letter opening the inquiry, the Ombudsman asked the Commission to give reasons for considering the difference between the amount of capital value calculated by the national pension authorities and the amount actually transferred as 'capital appreciation' within the meaning of Article 11(2) of Annex VIII of the Staff Regulations.

9. In the interest of efficiency and expediency, the Ombudsman contacted the Commission with a view to seeking a rapid solution to the issue. However, on 15 December 2014, the Commission informed the Ombudsman that because the Commission had taken a position on the file, the complaint could be not handled as an informal complaint. The Commission therefore



asked that the complaint be submitted under a formal procedure.

10. In the course of the inquiry that followed, the Ombudsman received the opinion of the Commission on the complaint and, subsequently, the comments of the complainant in response to the Commission's opinion. In conducting the inquiry, the Ombudsman has taken into account the arguments and opinions put forward by the parties.

## **Allegation that the Commission failed to address properly the complainant's arguments regarding the calculation of the number of years of his pensionable service and related claim**

### **Arguments presented to the Ombudsman**

11. In support of his allegation, the complainant argued that the Commission, when calculating his pensionable years, took into account the capital value at the time the complainant's request was registered with ZUS, instead of the amount actually transferred. The Commission wrongly treated the difference as capital appreciation. Moreover, the complainant argued that Polish officials in other Union institutions had their pensionable years calculated with reference to the actually transferred amount, and were therefore treated more favourably. The complainant questioned the Commission's reasoning for refusing to recalculate the number of years of his pensionable service.

12. In its opinion, the Commission gave a detailed account of the background and of its handling of the case. It concluded by stating that, following the re-examination of the case in the context of the present complaint, some aspects of the file suggest that the calculation of the pension rights was made under the mistaken assumption that ZUS had provided a valid calculation of the complainant's pension rights on the date of the registration of the application, whereas in fact the calculation provided by ZUS did not correspond to the amount of the capital to be transferred to the PSEUI on the date on which the application was registered. Therefore, the Commission agreed to revise the complainant's file by applying simple interest, at the rate provided for in Article 8 of Annex VIII to the SR, to be deducted from the amount transferred for the period from the date on which the application was registered to the date of the actual transfer.

13. In his observations of 29 September 2015, the complainant thanked the Ombudsman for her help in the case and stated that the proposal made by the Commission is in line with his request.

### **The Ombudsman's assessment**

14. Article 11(2) of Annex VIII of the Staff Regulations, dealing with cases in which a person



enters service following employment in a member state, provides as follows:

*" An official who enters the service of the Union ... shall be entitled ... to have paid to the Union the capital value, updated to the date of the actual transfer, of pension rights acquired by virtue of such service or activities.*

*In such case the appointing authority of the institution in which the official serves shall, taking into account the official's basic salary, age and exchange rate at the date of application for a transfer, determine by means of general implementing provisions the number of years of pensionable service with which he shall be credited under the Union pension scheme in respect of the former period of service, on the basis of the capital transferred, after deducting an amount representing capital appreciation between the date of application for a transfer and the actual date of the transfer ."*

**15.** It is clear from this provision that, when calculating the number of pensionable years with which an official will be credited under the PSEUI, the Commission should not take account of the total capital amount actually transferred from the national pensions scheme, but must deduct an amount representing capital appreciation.

**16.** In this case, however, it was questionable whether, given the amounts involved, the difference between (i) the amount calculated by the national pension scheme for the date of the application and (ii) the amount actually transferred constituted that 'capital appreciation'.

**17.** Following the Ombudsman's inquiry, the Commission's PMO re-examined the complainant's file, identified the mistake and undertook to recalculate the number of pensionable years the complainant is entitled to transfer. The complainant expressed his satisfaction with this outcome.

**18.** In light of the above, the Ombudsman concludes that the case has been settled to the complainant's satisfaction. She therefore closes the case.

## Conclusion

On the basis of the inquiry into this complaint, the Ombudsman closes it with the following conclusion:

**The case has been settled to the complainant's satisfaction.**

The complainant and the Commission will be informed of this decision.

Emily O'Reilly

Strasbourg, 02/12/2015



[1] Article 11(2) of Annex VIII of the Staff Regulations.