JUDGMENT OF THE COURT (Grand Chamber)

11 September 2007 *

In Case C-227/04 P,

APPEAL under Article 56 of the Statute of the Court of Justice, lodged on 28 May 2004,

Maria-Luise Lindorfer, an official of the Council of the European Union, residing in Brussels (Belgium), represented by G. Vandersanden and L. Levi, avocats,

appellant,

the other party to the proceedings being:

Council of the European Union, represented by F. Anton and M. Sims-Robertson, acting as Agents,

defendant at first instance,

* Language of the case: French.

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, A. Rosas, R. Schintgen, E. Juhász (Rapporteur) and J. Klučka, Presidents of Chambers, R. Silva de Lapuerta, K. Schiemann, M. Ilešič, J. Malenovský, U. Lõhmus, E. Levits and A. Ó Caoimh, Judges,

Advocate General: F.G. Jacobs, subsequently E. Sharpston,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure,

after hearing the Opinion of Advocate General Jacobs at the sitting on 27 October 2005,

having regard to the order of 26 April 2006 reopening the oral procedure and further to the hearing on 28 June 2006,

after hearing the Opinion of Advocate General Sharpston at the sitting on 30 November 2006,

gives the following

Judgment

1 By her appeal, Ms Lindorfer seeks to have set aside the judgment of the Court of First Instance of the European Communities of 18 March 2004 in Case T-204/01 *Lindorfer* v *Council* [2004] ECR-SC I-A-83 and II-361 (hereinafter 'the judgment under appeal'), by which the Court of First Instance dismissed her action for annulment of the decision of the Council of the European Union of 3 November 2000 calculating her years of pensionable service following transfer to the Community scheme of the redemption value of the pension rights which she had acquired under the Austrian scheme (hereinafter 'the contested decision').

Legal context

2 Article 1a(1) of the Staff Regulations of officials of the European Communities, as inserted therein by Council Regulation (EC, ECSC, Euratom) No 781/98 of 7 April 1998 (OJ 1998 L 113, p. 4; 'the Staff Regulations'), provides:

'Officials shall be entitled to equal treatment under these Staff Regulations without reference, direct or indirect, to race, political, philosophical or religious beliefs, sex or sexual orientation, without prejudice to the relevant provisions requiring a specific marital status.'

3 Article 77 of the Staff Regulations provides:

'An official who has completed at least 10 years' service shall be entitled to a retirement pension. ...

The maximum retirement pension shall be 70% of the final basic salary carried by the last grade in which the official was classified for at least one year. It shall be payable to an official who has completed 35 years' service reckoned in accordance with Article 3 of Annex VIII. Where the number of years' service is less than 35, the above maximum shall be reduced proportionately.

...

The pensionable age shall be 60 years.'

4 Article 83 of the Staff Regulations reads:

'1. Benefits paid under this pension scheme shall be charged to the budget of the Communities. Member States shall jointly guarantee payment of such benefits in accordance with the scale laid down for financing such expenditure.

...

2. Officials shall contribute one third of the cost of financing [the Community] pension scheme ...

...

4. Should an actuarial assessment of the pension scheme, carried out by one or more qualified experts at the request of the Council, show the contributions of officials to be insufficient to finance one third of the benefits payable under the pension scheme, the budgetary authorities shall, acting in accordance with the budgetary procedure and after consulting the Staff Regulations Committee provided for in Article 10, determine what changes are to be made to the rates of contributions or to the retirement age.'

5 Article 2 of Annex VIII to the Staff Regulations provides:

'A retirement pension shall be payable on the basis of the total number of years of pensionable service acquired by the official. Each year of service reckoned as provided for in Article 3 shall entitle him to one year of pensionable service and each complete month to one 12th of a year of pensionable service.

The maximum number of years of pensionable service which may be taken into account for the calculation of retirement pension rights shall be 35.'

6 Article 5 of Annex VIII to the Staff Regulations is in the following terms:

'Notwithstanding the provisions of Article 2, an official who has less than 35 years of pensionable service at the age of 60 years and who continues to acquire pension

rights under Article 3 shall, in respect of each year of service between the age of 60 years and the age when he begins to draw retirement pension, be entitled to an increase in pension equal to 5% of the amount of pension rights acquired by him at the age of 60 years, but so that his total pension shall not exceed 70% of his final basic salary as referred to in the second or third paragraph, as the case may be, of Article 77 of the Staff Regulations.

...'

7 Article 11(2) of Annex VIII to the Staff Regulations provides that an official who enters the service of the Communities after leaving the service of a government administration or of a national or international organisation or after pursuing an activity in an employed or self-employed capacity is entitled, upon establishment, to have paid to the Communities either the actuarial equivalent or the redemption value of retirement pension rights acquired by virtue of such service or activities. The same provision adds that, in such a case, the institution in which the official serves is to determine, taking into account his grade on establishment, the number of years of pensionable service with which he shall be credited under its own pension scheme in respect of the period of former service, on the basis of the amount of the actuarial equivalent or redemption value.

8 By decision of 13 July 1992, the Council laid down general provisions implementing Article 11(1) and (2) of Annex VIII to the Staff Regulations, which were subsequently amended by Council Decision of 19 December 1994, (hereinafter 'the GIP').

9 As regards officials, under the terms of Article 10(2) of the GIP the number of annual contributions to be credited is to be calculated from the total amount transferred, minus simple interest at the annual rate of 3.5 % for the period from the

date of establishment to the date of the actual transfer of the aforesaid amount to the account of the Community. That interest is not to be deducted for periods during which the transferable amount has not been revalued or increased by interest accruals by the pension fund to which the person concerned was subject before taking up employment with the Communities.

10 Article 10(3) and (4) of the GIP provide (both formulae mentioned below being hereinafter referred to 'the conversion formulae'):

'3. The number of annual contributions to be credited shall be calculated by converting:

— the amount transferred (A) into a theoretical pension (P) varying with the actuarial values (V) laid down in Article 39 of Annex VIII to the Staff Regulations ..., according to the formula P = A/V,

— this pension (P) into statutory annual pension contributions (C) varying with the basic annual salary (S), which, for officials, corresponds to the grade of establishment ... according to the formula C = P x 100/S x 2.

However, the number of annual contributions to be credited may in no event exceed the number of years during which the person concerned was a member of non-supplementary schemes before entering the service of the Communities.

4. The amount transferred to the account of the Communities in a currency other than the Belgian franc shall, in calculating the years of pensionable service to be credited, be converted into Belgian francs in accordance with the following procedure:

...

(b) in the case of an official established after 31 December 1971 ... the amount transferred shall be divided in proportion to the duration of the periods in which the pension rights corresponding to such amount were acquired, i.e. the duration of the period prior to 1 January 1972, and the duration of the period following 31 December 1971.

The part sum corresponding to the period prior to 1 January 1972 shall be converted on the basis of the parities accepted by the International Monetary Fund in force on 31 December 1971.

The part sum corresponding to the period following 31 December 1971 shall be converted on the basis of the average updated rate fixed by the Commission for the period from 1 January 1972 to the date of the official's establishment ...' (hereinafter 'variant (i)').

'However, at the request of the official ... the amount (A) taken into account for the purposes of calculation shall be converted on the basis of the updated rate in force on the date of transfer. In this case, the salary (S) and actuarial value (V) to be taken into account in calculating the years of pensionable service to be credited shall be [respectively] the remuneration corresponding, for officials, to the grade of establishment ... in force on the date of the transfer and the actuarial value corresponding to the official's ... age on that date ...' (hereinafter 'variant (ii)').

11 The table of actuarial equivalents for the application of Article 11(2) of Annex VIII to the Staff Regulations, as set out in the Council Decision of 13 July 1992, contains the following values for the two sexes for the age range between 30 and 50 years:

Age	*Men*	*Women*
30	9.667	10.269
31	9.811	10.426
32	9.956	10.586
33	10.102	10.746
34	10.249	10.908
35	10.397	11.071
36	10.546	11.236
37	10.695	11.402
38	10.846	11.569
39	10.998	11.739
40	11.154	11.912
41	11.308	12.034
42	11.465	12.261
43	11.625	12.441
44	11.788	12.626
45	11.955	12.816
46	12.127	13.013
47	12.302	13.215
48	12.480	13.422
49	12.661	13.633
50	12.847	13.850

12 Under Article 31 of the Staff Regulations, selected candidates are to be appointed as officials in Category A or the Language Service to the starting grade of their category or service. However, the appointing authority may, within certain limits, make exceptions to the provisions of that article.

13 Article 1(1) of Council Regulation (EC) No 626/95 of 20 March 1995 introducing special and temporary measures applicable to the recruitment of officials of the European Communities as a result of the accession of Austria, Finland and Sweden (OJ 1995 L 66, p. 1) provides that, notwithstanding, among others, Article 31 of the Staff Regulations, provision may be made until 31 December 1999 for vacant posts to be filled by Austrian, Finnish and Swedish nationals up to the limits set in the context of budgetary discussions within the institutions responsible.

Facts

14 Ms Lindorfer, an Austrian national, entered the Council's service on 16 September 1996. On 16 June 1997, she was established in her post and classified in Grade A5, step 2. Before entering the Council's service, she had worked in Austria for 13 years and three months. During that period, she had contributed to the Austrian pension scheme.

15 On 15 May 1999, Ms Lindorfer requested, on the basis of Article 11(2) of Annex VIII to the Staff Regulations, the transfer to the Community pension scheme of the redemption value of the retirement pension rights which she had acquired under the Austrian scheme.

16 On 18 February 2000, the Austrian pension fund informed Ms Lindorfer that the redemption value of her Austrian pension rights had been provisionally determined, as at 1 March 2000, at ATS 1 306 712.23. It also informed her that she could not be entitled to a pension in Austria, since she had not contributed for the minimum period of 180 months. It nevertheless suggested that she 'purchase' the missing 21 months' affiliation by payment of a sum of ATS 237 963.6. Ms Lindorfer did not take up that suggestion.

17 On 28 March 2000, the Pensions Unit of the Council's General Secretariat sent Ms Lindorfer a note, to which was attached a calculation entitled 'Calculation of the statutory annual pension contributions to be credited in accordance with Article 11(2) of Annex VIII to the Staff Regulations'. It appears from that calculation that the years of pensionable service corresponding to the transferable amount were 5 years, 3 months and 24 days.

18 By note of 12 September 2000, Ms Lindorfer informed the Pensions Unit that she noted its 'agreement in principle' on the transfer of the redemption value of her Austrian pension rights. However, she challenged the number of years of pensionable service stated in the calculation on the ground that the method of calculation used by the Council was discriminatory and not transparent. Finally, she requested a series of details.

19 On 29 September 2000, the Austrian pension fund determined the transferable amount at ATS 1 337 136.07.

20 By note of 3 November 2000, received by Ms Lindorfer on 7 November 2000, she was notified of the contested decision. On 2 February 2001, she submitted, pursuant to Article 90(2) of the Staff Regulations, a complaint against that decision, which complaint was supplemented by an addendum of 25 April 2001.

21 By decision of 31 May 2001, the Council rejected that complaint.

The action before the Court of First Instance and the judgment under appeal

22 On 5 September 2001, Ms Lindorfer brought an action before the Court of First Instance for annulment of the contested decision and of the decision rejecting her complaint and for an order that the Council re-determine, on a correct legal basis, the number of statutory annual pension contributions to be credited for the purposes of her Community pension following the transfer of her pension rights acquired in Austria.

23 In support of her action, Ms Lindorfer raised, in essence, two pleas in law. The first alleged the illegality of Article 10(3) and (4) of the GIP and the second the illegality of Article 11(2) of Annex VIII to the Staff Regulations. She claimed that the former provisions were contrary to the principle of equal treatment and that the latter provision was contrary to that principle and to the principle of freedom of movement of workers.

24 As regards the first plea in law, alleging the illegality of Article 10(3) and (4) of the GIP, the Court of First Instance held that Ms Lindorfer's four complaints were to be dismissed as unfounded.

25 As regards the first complaint under the first plea in law, that is, Ms Lindorfer's criticisms relating to the fact that in the conversion formulae the grade on establishment is to be taken into consideration in the same way for officials recruited in the starting grade of their category as for those recruited in a higher grade, the

Court of First Instance noted that the GIP implement Article 11(2) of Annex VIII to the Staff Regulations, the second subparagraph of which provides that '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 period of former service, on the basis of the amount of the actuarial equivalent or redemption value'.

26 It also noted that, according to settled case-law, for officials who request the transfer of their national pension rights to the Community scheme, it is their grade on establishment, that is to say the grade to which they are appointed on the date they are established as officials, which must be taken into account for the purpose of the calculation of the number of additional years of pensionable service (Case T-106/01 *Youssouroum* v *Council* [2002] ECR-SC I-A-93 and II-435, paragraph 34, and the case-law there cited).

27 The Court of First Instance found that, whilst the application of the conversion formulae means that the higher the basic salary, the lower the number of additional years of pensionable service, it does not follow that there is discrimination, since discrimination can arise only through the application of different rules to comparable situations.

28 Thus, a newly recruited official classified in Grade A5 has more chance of finishing his career in a higher grade than an official recruited and classified in Grade A7 and, consequently, of obtaining a higher salary and greater pension rights than the latter.

29 As regards the second complaint under the first plea in law, that is to say Ms Lindorfer's criticisms of the fact that Article 10(4) of the GIP requires the conversion into Belgian francs of the amount transferred to the Communities' account in a

currency other than the Belgian franc, the Court of First Instance concluded, on the basis of Ms Lindorfer's pleadings and her explanations at the hearing, that she does not dispute either the necessity of converting the amount transferred into Belgian francs or euros, or the consequences of that conversion depending on whether, for that purpose, use is made of variant (i) or of variant (ii).

30 The Court of First Instance rejected that complaint, holding, in paragraphs 76 and 77 of the judgment under appeal, as follows:

'76 First, the comparisons which [Ms Lindorfer] makes in order to show the soundness of her allegations are wholly inconclusive. Thus, in the first table she provides ..., she compares her situation with that of an official whose sex, age and classification in step on recruitment are different to hers, despite the fact that those elements are taken into account in the calculation of the number of additional years of pensionable service. In addition, as the Council correctly states in its reply to one of the Court's written questions, it is by no means established that [Ms Lindorfer] took the same date to make the calculations in that table. The other comparisons she made ... are no more acceptable since they are based on false premises. Thus, the calculations which she puts forward are marred by the fact that she applies variant (i) to amounts expressed in different national currencies obtained by converting the same amount transferred expressed in Austrian schillings on the basis of "current rate[s]" corresponding apparently to rates of exchange between the euro and those national currencies applicable since 1 January 1999. It is evident that, during the period of 27 years of activities before entering the service of the Communities relied on by [Ms Lindorfer], changes, sometimes significant, occurred in the exchange rates between those various national currencies. It is in addition noteworthy that, for her example of the application of variant (i) to the amount expressed in Belgian francs, [Ms Lindorfer] does not make a conversion beforehand on the basis of the "current rate" and that, for her example of the application of that variant to the amount expressed in Greek drachmas, she seems to use the rate of exchange between the euro and the Greek drachma applicable since 1 January 2001. Moreover, in the case of amounts converted into Greek drachmas, Spanish pesetas and Portuguese escudos, she seems to make her calculations as at 1 January 1999.

77 Secondly, it is clear from the explanations provided by the Council that the fact that the application of variant (i) to an amount transferred from a pension fund of a "weak currency" country may be more advantageous than the application of variant (ii) to an amount transferred from a pension fund of a "strong currency" country is the consequence not of the Community rules but of the fluctuation of the various national currencies, or of circumstances external to the action of the Communities. It must be pointed out, accordingly, that the Spanish peseta and the Portuguese escudo, used by [Ms Lindorfer] in her comparative examples, were devalued several times in the course of the 1990s.'

31 The Court of First Instance also rejected the third complaint under the first plea in law. The essence of its reasoning was set forth as follows:

'81 ... [Ms Lindorfer] cannot validly argue that, in the Community pension scheme, there is no distinction according to sex as regards officials' contributions and the age required to obtain a retirement pension.

82 First, she compares, in the same way, two categories of officials whose situations differ, that is to say, first, officials who procure the transfer to the Communities of the actuarial equivalent or redemption value of retirement pension rights which they have acquired in respect of activities before they entered the Communities' service and, second, those who contribute to the Community pension scheme on account of their service in a Community institution.

83 Secondly, and in any event, the use of factors which vary according to sex and age in order to calculate the number of additional years of pensionable service to be credited is objectively justified by the need to ensure sound financial

management of the Community pension scheme. An official who, pursuant to Article 11(2) of Annex VIII to the Staff Regulations, transfers to the Community budget the actuarial equivalent or redemption value of pension rights acquired before joining the staff of the Communities, obtains in exchange a rate of future benefits under the Community pension scheme in the form of additional years of pensionable service credited, the extent of the right being dependent on the number of those additional years of pensionable service. In order to determine the current value of that right the Community institution concerned must take account of a series of factors, including the probable length of time during which the capital transferred will be present in the Community budget, the official's expected career progress, the likelihood that the benefits in question will be paid out and the probable length of time over which such payments will be made. It is clear that those factors are dependent in particular on the official's sex and on his or her age at the time of joining the Community pension scheme. On the one hand, it is an established fact that, statistically, women live longer than men. On the other, the likelihood that a person who enters the Community service long before retirement age will die before reaching that age is greater than in the case of the person recruited at an age close to that at which he or she will be able to claim pension benefits. Furthermore, such a person will leave the capital transferred at the disposal of the Community budget for longer than an official nearer retirement age. In other words, factors such as the duration of service between date of recruitment and date of retirement and the probable length of time, calculated on a statistical basis, during which the official will receive a Community retirement pension have a direct influence on the Community's financial responsibility towards each official individually concerned, and sound financial management of the Community pension scheme requires those factors to be taken into account and properly assessed. The Council is therefore right to take account in its conversion formulae of actuarial factors connected with the official's age and sex.'

32 Finally, the Court of First Instance rejected the fourth complaint under the first plea in law, that it was improper for the parameters of the conversion formulae in Article 10(3) and (4) of the GIP to be taken into account by reference to different dates, depending on whether the amount transferred was converted on the basis of variant (i) or variant (ii).

33 The Court of First Instance concluded that Ms Lindorfer's allegation that variant (ii) was based on the salary corresponding to the grade of the person concerned on the date of actual transfer of the amount concerned by the national pension fund was based on an erroneous reading of Article 10(4) of the GIP, because the salary taken into account in that context is that corresponding to the grade on establishment, as updated to the date of the actual transfer. The Court of First Instance considered it proper that a precise date should serve as the reference point, respectively, for each variant and for the other parameters of the conversion formulae.

34 In connection with the second plea in law, alleging the illegality of Article 11(2) of Annex VIII to the Staff Regulations, the Court of First Instance held, in paragraphs 99 to 106 of the judgment under appeal, that Ms Lindorfer's arguments to show that that provision was incompatible with the principles of equal treatment and of freedom of movement of workers could not be upheld.

35 The Court of First Instance found wholly without foundation Ms Lindorfer's allegation that the 'transfer system itself' put in place by that provision disadvantages officials who start their career in the Communities' service later as against those who do so earlier.

36 It found that Ms Lindorfer had not shown that the rights which she acquired in respect of her professional activities before entering the service of the Communities could not be maintained for her benefit and taken into account by the Community pension scheme. It pointed out that, since the systems are different, it is not abnormal for the number of years of pensionable service to be credited for the purposes of the Community pension to differ from that of the years of pensionable service taken into account by the national or international authority. It observed, also, that Ms Lindorfer had the opportunity of purchasing the 21 months' affiliation which she lacked to total the 180 months necessary to obtain a pension under the Austrian scheme, thereby maintaining her national pension rights, and that the transfer of the redemption value of those pension rights to the Community scheme was an option which she freely exercised.

37 In the Court of First Instance's view, neither can it be argued that Article 11(2) of Annex VIII to the Staff Regulations adversely affects the freedom of movement of workers. On the contrary, that provision facilitates the full exercise of that fundamental freedom, particularly by enabling persons established in a Member State to accept employment in a Community institution without losing the pension rights acquired in respect of earlier professional activities.

38 Concluding that Ms Lindorfer had put forward nothing affecting the legality of Article 10(3) and (4) of the GIP or Article 11(2) of Annex VIII to the Staff Regulations, the Court of First Instance dismissed the action.

Procedure before the Court

39 By decision of 7 June 2005, the Court referred the case to the First Chamber. Since neither party requested an oral hearing, the Court decided to proceed to judgment without one. The Advocate General gave his Opinion at the sitting on 27 October 2005, following which the oral procedure was closed.

40 The First Chamber decided, on 1 December 2005, in accordance with Articles 44(4) and 118 of the Rules of Procedure to refer the case back to the Court in order that it might be reassigned to a formation composed of a greater number of judges.

41 The Court decided, by order of 26 April 2006, to reopen the oral procedure and hold a hearing. The parties and, in accordance with the second paragraph of Article 24 of the Statute of the Court of Justice, the Commission were invited to make submissions on the questions raised in that order.

42 Following the hearing on 28 June 2006 and the giving of the Advocate General's Opinion at the sitting on 30 November 2006, the oral procedure was closed.

Forms of orders sought by the parties

43 By her appeal, in support of which she relies on three grounds, Ms Lindorfer claims that the Court should:

— set aside the judgment under appeal;

— annul the contested decision and, so far as necessary, annul the Council Decision of 31 May 2001 rejecting her complaint;

— order the Council to re-determine the years of pensionable service to be credited, and

— order the Council to pay the costs at first instance and on appeal.

44 The Council contends that the Court should:

— dismiss the appeal, and

— order Ms Lindorfer to pay the costs.

The appeal

45 It should be recalled at the outset that, according to settled case-law, it follows from Article 225 EC, the first paragraph of Article 58 of the Statute of the Court of Justice and Article 112(1)(c) of the Court's Rules of Procedure that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal (Case C-41/00 P *Interporc* v *Commission* [2003] ECR I-2125, paragraph 15, Case C-131/03 P *Reynolds Tobacco and Others* v *Commission* [2006] ECR I-7795, paragraph 49, and Case C-355/04 P *Segi and Others* v *Council* [2007] ECR I-1657, paragraph 22).

46 The Court will examine the appeal in the light of that case-law.

The first ground of appeal, alleging, first, breach of the principle of non-discrimination on account of sex and, second, inadequate statement of reasons in that regard in the judgment under appeal

Arguments of the parties

47 By her first ground of appeal, Ms Lindorfer claims that the Court of First Instance infringed Article 141 EC and, more generally, the principle of non-discrimination on account of sex, by deciding, in paragraph 83 of the judgment under appeal, that the use of factors which vary according to sex in order to calculate the number of additional years of pensionable service to be credited was objectively justified by the need to ensure sound financial management of the Community pension scheme.

48 In Ms Lindorfer's submission, discrimination on account of sex, supposed to take account of women's longer life expectancy, is not necessary to ensure the financial equilibrium of the scheme, as is demonstrated by the fact that neither officials' contributions nor the age required to obtain a retirement pension are determined by reference to their sex. The Court of First Instance, however, rejected the appellant's argument, stating, in paragraph 82 of the judgment under appeal, that she was comparing two incomparable categories of officials, without stating, however, why such a comparison was not possible.

49 The Council contends that Article 141 EC does not apply to this case and that the judgment in Case C-152/91 *Neath* [1993] ECR I-6935 is the relevant case-law. It submits that Ms Lindorfer, relying on judgments given in contexts which differ from that of this dispute, has not shown that the capital transferred is the counterpart of an employment relationship with the Community. It maintains therefore that the transfer mechanism corresponds to the investment of a capital sum by the official in the Community pension scheme, capital built up outside that employment relationship with the Community.

Findings of the Court

50 Ms Lindorfer, in alleging that the Court of First Instance misapplied the principle of non-discrimination and that of equal treatment of the sexes submits, in effect, that one of the general principles protected by the Community legal order was infringed. In that regard, it must also be noted that Article 141 EC and the various provisions of secondary legislation to which Ms Lindorfer refers, as well as Article 1a(1) of the Staff Regulations, are specific expressions of the general principle of equality of the sexes.

51 The Court has pointed out that when the Community legislature lays down rules on the transfer to the Community scheme of pension rights acquired by Community officials under a national scheme, it must comply with the principle of equal treatment. It must therefore avoid laying down rules under which officials are treated differently, unless the circumstances of the persons concerned at the time when they entered the service of the Community justify differences in treatment in view of the particular characteristics of the scheme under which the pension rights were acquired or in view of the fact that they have no such rights (see, as regards the principle of equal treatment, Case C-37/89 *Weiser* [1990] ECR I-2395, paragraph 14).

52 The Court of First Instance did not consider it discriminatory that since actuarial values are higher for women they receive fewer years of pensionable service than men in the case of transfer of their pension rights into the Community scheme. It decided, in paragraphs 81 to 83 of the judgment under appeal, that Ms Lindorfer could not argue that, in that scheme, there is no distinction according to sex as regards officials' contributions, since officials who contribute to the Community pension scheme by their service in a Community institution are in a different situation from those who procure the transfer to the Communities of the actuarial equivalent or redemption value of retirement pension rights which they have acquired in respect of activities before entering the service of the Communities. In any event, in the Court of First Instance's view, the use of factors which vary according to sex in order to calculate the number of additional years of pensionable service to be credited is objectively justified by the need to ensure sound financial management of that scheme.

53 In that regard, it is appropriate to note, first, that the Court of First Instance did not explain why the situations of those two categories of officials are not comparable in the context of the determination which it was called upon to make as to the possibility of discrimination based on sex on the occasion of a transfer of pension rights.

54 In paragraph 86 of the judgment under appeal, the Court of First Instance does not explain on what criteria, other than that of sex, it intended to base a distinction between the treatment of men and that of women transferring their pension rights to the Community scheme, despite the fact that there is no such distinction as regards the contributions levied on the salaries of male and female officials.

55 Moreover, it is appropriate to add that, notwithstanding the fact that Article 1a(1) of the Staff Regulations was not mentioned, that provision, inserted by Regulation No 781/98 and applicable at the time of the calculation of Ms Lindorfer's years of pensionable service, provides that '[o]fficials shall be entitled to equal treatment under these Staff Regulations without reference ... to ... sex ...'.

56 Secondly, as regards the justification of that difference in treatment between men and women by the need for sound financial management of the pension scheme, such an argument cannot be invoked to support the need for higher actuarial values for women.

57 It is sufficient to observe, in that regard, that the identical level of contributions from the remuneration of male and female officials does not adversely affect such management.

58 In addition, the fact that the same equilibrium can be attained with 'unisex' actuarial values is also shown by the fact that, subsequently to the facts of this case, as is clear from the replies of the Council and of the Commission to the Court's questions, the institutions decided to use such values.

59 Consequently, the Court of First Instance was wrong in holding that Ms Lindorfer had not suffered discrimination on account of her sex.

60 The first plea is therefore well founded.

The second ground of appeal, alleging (i) breach of the principle of equal treatment in the sense that officials commencing their careers later are treated less favourably; and (ii) inadequate statement of reasons in that regard in the judgment under appeal

Arguments of the parties

61 Ms Lindorfer submits that, in not accepting that she suffered less favourable treatment in comparison with officials in their posts for a longer period, because she commenced her career in the Communities later, the Court of First Instance misapplied the principle of equal treatment. In her submission, the transfer system treats officials starting their careers late in a Community institution less favourably as compared to those who start theirs much earlier. Ms Lindorfer submits, further, that in paragraph 67 of the judgment under appeal, the Court of First Instance failed in its duty to state reasons when it rejected the comparison, which she put forward, between her situation and that of an official having contributed only to the Community scheme.

62 The Council submits that the situation of 'officials who have always worked in an institution', who have no national rights to transfer, and that of 'officials who are late entrants', that is to say those who transfer their national rights to the Community pension scheme, are not comparable. The Council adds that, if those situations had been comparable, the authors of the Staff Regulations would have had no need to put in place a system for transforming capital into years of pensionable service, and that it would have been simpler to attribute to an 'official who was a late entrant' a number of years of pensionable service in the Community scheme equal to the number of years of pensionable service contributed to in the national scheme.

Findings of the Court

63 The principle of equal treatment or non-discrimination requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (Case C-344/04 *IATA and ELFAA* [2006] ECR I-403, paragraph 95, and Case C-300/04 *Eman and Sevinger* [2006] ECR I-8055, paragraph 57).

64 Given that Ms Lindorfer, who entered the service of a Community institution after having contributed for a certain period to the Austrian pension scheme, claims to have suffered treatment unequal to that of an official who entered the same service earlier having contributed to the Community pension scheme for a certain period, it is necessary to establish whether those two situations are comparable.

65 In the Community pension scheme, as Advocate General Sharpston pointed out in point 28 of her Opinion, retired officials are paid a percentage of their final salary. Thus, the amount of that pension depends, first, on the accomplishment by the official of his career in the service of the Communities, reflected in his final salary and, second, on the length of his service in the Communities. In such a scheme, the pension is not determined by the total amount of contributions levied during the years of service.

66 The case of an official who procures the transfer to the Community scheme, in the form of a capital sum, of pension rights acquired earlier under a national scheme, falls outside that framework. The number of years of pensionable service to be credited for that official depends, under Article 11(2) of Annex VIII of the Staff Regulations, on the capital transferred and the grade on establishment. Thus, the amount of the pension to which the official will be entitled at the end of his career will be determined by his final salary and the length of his service to the

Communities, to which will be added years of pensionable service determined by reference to the capital introduced.

67 A sum of money by which that official contributes to the Community budget and a period of time spent in the service of the Community institutions are not comparable values.

68 It must be held, therefore, that the situation of Ms Lindorfer, having transferred to the Community pension scheme, at the time of taking up her duties with the Communities, a capital sum corresponding to the rights which she acquired in a national scheme, is not comparable to that of an official having taken up his Community duties earlier and contributed to the Community scheme since that time by contributions levied on his salary.

69 As regards the alleged inadequacy of the statement of reasons, the Court of First Instance examined, in paragraphs 64 to 68 of the judgment under appeal, the various elements characterising the career of an official recruited at the start of his working life and that of an official, such as Ms Lindorfer, having worked beforehand and contributed to a national pension scheme.

70 Accordingly, it follows, first, that the Court of First Instance correctly held that, since Ms Lindorfer's situation is not comparable to the situation of an official recruited at the beginning of his or her career, she cannot maintain that she suffered unequal treatment as against such an official and, second, that the Court of First Instance did not fail in its duty to state reasons.

71 Consequently, the second ground of appeal must be rejected.

The third ground of appeal, alleging, first, breach of the principle of equal treatment arising from the application of the conversion formulae and, second, the lack of a lower threshold on the number of years of pensionable service awarded

Arguments of the parties

72 Ms Lindorfer challenges paragraphs 76 and 77 of the judgment under appeal and claims that the Court of First Instance misapplied the principle of equal treatment in not accepting that she suffered less favourable treatment because of the fact that she had transferred her pension rights from the fund of a 'strong currency' country, as against officials who made such a transfer from the fund of a 'weak currency' country.

73 She submits that the Court of First Instance should not have confined itself to stating, in respect of the monetary conversion formulae under Article 10(4) of the GIP, that the fact that the applying variant (i) to an amount transferred from a pension fund of a 'weak currency' country may be more advantageous than applying variant (ii) to an amount transferred from a pension fund of a 'strong currency' country is the consequence of the fluctuation of the national currencies and not of the Community rules.

74 Ms Lindorfer submits that the Court of First Instance should have held, first, that the Council had chosen to deal more favourably with amounts transferred from the pension fund of a 'weak currency' country than with those transferred from the pension fund of a 'strong currency' country and, second, that the Council cannot uphold such discriminatory formulae.

75 In addition, Ms Lindorfer questions the lack of a lower threshold on the number of years of pensionable service awarded in the case of transfer of pension rights from a 'strong currency' country, while the number of years of pensionable service which can be acquired in the Community pension scheme, following a transfer from a 'weak currency' country, is subject to a ceiling in order to avoid it exceeding the number of years during which the person concerned was a member of national non-supplementary pension schemes.

76 In the Council's submission, the Court of First Instance responded correctly, in paragraphs 76 and 77 of the judgment under appeal, to Ms Lindorfer's relevant arguments.

Findings of the Court

77 As regards the first complaint relating to the conversion formulae, first, the Court of First Instance noted, in paragraph 76 of the judgment under appeal, that the comparison Ms Lindorfer made could not be conclusive, because the characteristics of the 'official of reference' differed from those of Ms Lindorfer, and that her other comparisons were based on false premises.

78 Secondly, it must be noted that, when national pension funds determine the redemption value of the pension rights acquired under their national pension schemes, they determine the amount to be transferred, which must necessarily be expressed in a single currency, in the currency of the Member State concerned. The Communities, for their part, enjoy broad discretion when they determine the elements of the system of conversion.

79 Thirdly, it must be observed that variant (ii) is optional as against variant (i), because under Article 10(4)(b) of the GIP the calculation defined by that provision will be made only at the official's request. It is probable that officials for whom variant (ii) is more favourable will opt for it, whereas those whom that variant disadvantages will prefer the application of variant (i). Thus, everyone enjoys the possibility of obtaining the more favourable treatment.

80 It follows that the first complaint relating to the application of the conversion formulae is unfounded.

81 As regards the second complaint, concerning the lack of a lower threshold for the number of years of pensionable service awarded in the case of transfer of pension rights to the Community scheme, the complaint must be declared inadmissible.

82 Whilst, Ms Lindorfer submits that the rules in question are improper because of the lack of such a threshold, she has deployed no argument in line with the case-law referred to in paragraph 45 of the present judgment to show that the judgment under appeal is vitiated by an error of law.

83 In addition, in this case, the allegation that the Court of First Instance misapplied the principle of equal treatment in view of the non-existence of such a lower threshold is too general and imprecise to permit judicial evaluation (see, to that effect, Case C-51/92 P *Hercules Chemicals* v *Commission* [1999] ECR I-4235, paragraph 113, and the order of 12 December 2006 in Case C-129/06 P *Autosalone Ispra* v *Commission*, not published in the ECR.

84 In those circumstances, the third ground of appeal must be rejected.

85 Since Ms Lindorfer's first ground of appeal has been upheld, the judgment under appeal must be set aside to the extent that it dismissed the action on the ground that there was no discrimination based on sex.

The effects of setting aside, in part, the judgment under appeal

86 Under the first paragraph of Article 61 of the Statute of the Court of Justice, if the appeal is well founded, the Court is to quash the decision of the Court of First Instance. It may then itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the Court of First Instance for judgment.

87 Since the state of the proceedings is such as to permit final judgment in the matter, it falls to the Court to rule on the claim for annulment of the contested decision and for an order that the Council re-determine Ms Lindorfer's years of pensionable service.

88 In that regard, it must be held that, in determining Ms Lindorfer's years of pensionable service, the Council took account of a factor based on sex, thereby infringing the principle of non-discrimination on account of sex and Article 1a(1) of the Staff Regulations.

89 As regards the claim for an order that the Council re-determine Ms Lindorfer's years of pensionable service, it is sufficient, in this case, to note that under Article 233 EC it is for the institution which is the author of the act annulled to take the measures necessary to comply with the Court's judgment.

90 Accordingly, the contested decision must be annulled.

Costs

91 Under the first paragraph of Article 122 of the Rules of Procedure of the Court of Justice, where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to costs. Under the first subparagraph of Article 69(2) of those Rules of Procedure, which, pursuant to Article 118 thereof, is applicable to the procedure on appeal, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As Ms Lindorfer has requested that the Council be ordered to pay the costs and as the Council has been unsuccessful, it must be ordered to pay the costs.

On those grounds, the Court (Grand Chamber) hereby:

1. **Sets aside the judgment of the Court of First Instance of the European Communities of 18 March 2004 in Case T-204/01 *Lindorfer* v *Council* to the extent that it dismissed Ms Lindorfer's action on the ground that there was no discrimination based on sex;**

2. **Annuls the Decision of the Council of the European Union of 3 November 2000 calculating the number of Ms Lindorfer's years of pensionable service;**

3. **Dismisses the remainder of the appeal;**

4. **Orders the Council of the European Union to pay the costs at first instance and on appeal.**

[Signatures]