

Appeal brought on 29 March 2007 by Commission of the European Communities against the judgment of the Civil Service Tribunal delivered on 16 January 2007 in Case F-92/05, Genette v Commission

(Case T-99/07 P)

(2007/C 117/53)

Language of the case: French

Parties

Appellant: Commission of the European Communities (represented by V. Joris and D. Martin, Agents)

Other party to the proceedings: Emmanuel Genette, Kingdom of Belgium

Form of order sought by the appellant

- annulment of the judgment of the Civil Service Tribunal of 16 January 2007 in Case F-92/05;
- a declaration that the action is inadmissible;
- a decision that each of the parties is to bear its own costs in these proceedings and those brought before the Civil Service Tribunal.

Pleas in law and main arguments

By judgment of 16 January 2007 in Case F-92/05 *Genette v Commission*, the Civil Service Tribunal (CST) upheld the action brought by Mr Genette for the annulment of the Commission

decision of 25 January 2005 denying him, first, authorisation to withdraw the application for the transfer of his pension rights acquired in Belgian pension schemes, which he submitted in 2001, and, secondly, authorisation to apply for a fresh transfer of his pension rights.

In its appeal, the Commission first raises the issue of the admissibility of the initial action. It submits that the Court of First Instance ruled *ultra petita*, by changing the subject-matter of the dispute, and that it made errors of assessment in its examination of the alleged new facts on which the applicant at first instance relied in order to justify the time-limits being re-opened for its benefit. The Commission maintains that, if the CST had correctly assessed both the subject-matter of the proceedings as defined in the application at first instance and the alleged new facts relied on by the applicant, it would have been bound to declare the action inadmissible. The Commission therefore claims that the CST exceeded the limits of its jurisdiction and that it also infringed its rights of defence, since it ruled on several issues without allowing the Commission to submit its arguments.

In support of its appeal in respect of the assessment of the substance of the case made by the CST in the judgment under appeal, the Commission puts forward several pleas alleging the CST's infringement of various provisions of Community law, in particular of the Staff Regulations, and principles of case-law, in so far as the judgment under appeal allows, in its opinion, the withdrawal of legal measures and, in the alternative, infringes the Commission's independent right not to withdraw contested decisions.