

Case C-362/05 P

Jacques Wunenburger

v

Commission of the European Communities

(Appeal — Staff cases — Promotion — Selection procedure — Rejection of the appellant's candidature — Retirement in the interests of the service — Obligation to state the reasons on which the decision is based — Error of law — Cross-appeal — Subject-matter of the dispute — Interest in bringing proceedings)

Opinion of Advocate General Kokott delivered on 15 February 2007 I - 4336
Judgment of the Court (Fourth Chamber), 7 June 2007 I - 4355

Summary of the Judgment

1. *Appeals — Purpose*
(*Statute of the Court of Justice, Art. 56, second para.*)

2. *Actions for annulment — Contested measure becoming obsolete in the course of the proceedings — Action retaining its purpose where the contested measure not withdrawn (Arts 230 EC and 233, first para., EC; Staff Regulations of Officials, Art. 29)*

1. Since, under the second paragraph of Article 56 of the Statute of the Court of Justice, an appeal may be brought by any party which has been unsuccessful, in whole or in part, in its submissions, an appeal brought against a judgment of the Court of First Instance is admissible in so far as the latter has rejected a plea that the action is inadmissible or has become devoid of purpose, even if, finally, the action is dismissed as unfounded. Having regard to that provision, there is no need to determine whether the plea, raised before the Court of First Instance and dismissed by it, seeks the dismissal of the action because it is inadmissible or because it has become devoid of purpose, those being two preliminary issues, which, if successful, would prevent the Court of First Instance from ruling on the merits.

judgment. The dispute thus retains its purpose where the contested measure has not been formally withdrawn, and the appellant may retain an interest in claiming its annulment in order to prevent its alleged unlawfulness recurring in the future. That interest in bringing proceedings follows from the first paragraph of Article 233 EC under which the institutions whose act has been declared void are to be required to take the necessary measures to comply with the judgment of the Court. However, that interest in bringing proceedings can only exist if the alleged unlawfulness is liable to recur in the future independently of the circumstances of the case which gave rise to the action brought by the appellant.

(see paras 36-39)

2. Obsolescence of the contested measure occurring during the proceedings does not in itself oblige the Community judicature to declare that there is no need to adjudicate for lack of purpose or for lack of interest in bringing proceedings at the date of the delivery of the

That applies to an action for annulment brought by an official against the rejection of his candidature for a vacant post, and against the appointment of another official, in circumstances where, in the course of the proceedings, the administration has made that post subject to retirement in the interests of the service pursuant to Article 50 of the Staff Regulations and organised a new selection procedure, thereby rendering the contested decisions obsolete in so far as

the appellant challenges the procedure which led to the initial appointment being made. In contrast to the substantive assessment of the various candidatures for a given post to be filled, the methods of a selection procedure are likely to be repeated in the future in similar procedures, with the result that the appellant retains his interest in bringing an action against the contested

decisions, even though they have no effect with regard to him, in view of future candidatures for posts such as the post at issue.

(see paras 47-52, 58-60)