

Case T-38/89

Ingfried Hochbaum

v

Commission of the European Communities

(Official — Compliance with a judgment of the Court of Justice annulling an appointment — Cancellation by the institution of the vacancy notice and initiation of a fresh recruitment procedure)

Judgment of the Court of First Instance (Third Chamber), 14 February 1990 45

Summary of the Judgment

1. *Officials — Actions — Interest in bringing proceedings — Candidate admitted to competition — Judgment annulling the appointment decision — Initiation by the administration of a fresh recruitment procedure*
(*Staff Regulations, Art. 91*)
2. *Officials — Recruitment — Obligation on the administration to fill the post declared vacant — None — Judgment partially annulling a recruitment procedure — Initiation of a fresh procedure — Permissible*
(*EEC Treaty, Art. 176; Staff Regulations, Art. 29*)
3. *Officials — Decision adversely affecting them — Obligation to state grounds — Scope*
(*Staff Regulations, Art. 25*)
4. *Officials — Actions — Submissions — Misuse of powers — Conditions*
5. *Officials — Promotion — Power of appraisal of the administration — Judicial review — Limits*
(*Staff Regulations, Art. 45*)

1. The fact that a candidate has been admitted to take part in a recruitment procedure confers on him an interest in the subsequent conduct of that procedure by the appointing authority. Accordingly, such a candidate has an interest to protect in challenging the decisions adopted by the administration to withdraw the first vacancy notice and to organize a fresh appointment procedure, following a judgment annulling the decision appointing another candidate to the post at issue, even if the candidate in question was able to submit a fresh application subject to the same conditions, since the fresh procedure alters the objective conditions for the comparative examination of the various applications by enabling, on the one hand, new competitors to take part and, on the other hand, experience and qualifications acquired by candidates during the period separating the two competition notices to be taken into consideration, where appropriate.

Moreover, it cannot be disputed that persons to whom a judgment annulling a decision by an institution is addressed are directly concerned by the manner in which the institution complies with that judgment. They are therefore entitled to request the Court to rule on any failure by the institution to fulfil its obligations under the applicable provisions.

2. The appointing authority is not obliged to carry through a recruitment procedure initiated pursuant to Article 29 of the Staff Regulations. That principle remains applicable even when the recruitment procedure is partially annulled by a judgment of the Community judicature.

It follows that such a judgment may in no way affect the discretionary power of

the appointing authority to widen its field of choice in the interests of the service by cancelling the initial vacancy notice and at the same time initiating a fresh appointment procedure. In fact, since the appointing authority is not required to carry through the procedure initiated, *a fortiori* it is entitled to initiate a fresh recruitment procedure without being obliged, in order to comply with the judgment, to resume the procedure again from the stage which it had reached prior to the adoption of the unlawful decision.

3. The withdrawal of a vacancy notice for a post and the initiation of a fresh recruitment procedure occurring after an annulment judgment fall within the discretionary power of the administration to organize its departments. The requirement to state the grounds of a decision laid down in Article 25 of the Staff Regulations is satisfied by the publication of the fresh vacancy notice, since it is adopted in a situation known to the official concerned and enables him to apprehend the scope of the measures in issue.
4. A misuse of powers is not deemed to exist unless it is proved that the appointing authority in taking the measure in question has followed an objective other than that pursued by the rules in question.
5. The appointing authority has a discretionary power of appraisal as regards the comparative examination of the respective merits of officials eligible for promotion, and the Community judicature must limit its review to the question whether the appointing authority has used its power in a manner which is manifestly wrong.