Reports of Cases

JUDGMENT OF THE GENERAL COURT (Second Chamber)

26 February 2016 *

(Non-contractual liability — Accession of Croatia to the European Union — Repeal before accession of national legislation providing for the creation of the profession of public bailiff — Harm sustained by the persons previously appointed as public bailiffs — Failure by Commission to adopt measures ensuring compliance with the accession commitments — Sufficiently serious breach of a rule of law conferring rights on individuals — Article 36 of the Act of Accession)

In Joined Cases T-546/13, T-108/14 and T-109/14,

Ante Šumelj, residing in Zagreb (Croatia), and the other applicants whose names appear in the annex, represented by M. Krmek, lawyer,

applicants,

v

European Commission, represented by K. Ćutuk and G. Wils and, in Cases T-546/13 and T-108/14, by S. Ječmenica, acting as Agents,

defendant,

APPLICATION for damages for the harm alleged to have been sustained by the applicants as a result of the Commission's wrongful conduct when monitoring the Republic of Croatia's compliance with its accession commitments,

THE GENERAL COURT (Second Chamber),

composed of M.E. Martins Ribeiro, President, S. Gervasoni (Rapporteur) and L. Madise, Judges,

Registrar: S. Bukšek Tomac, Administrator,

having regard to the written part of the procedure and further to the hearing on 15 September 2015,

gives the following

* Language of the case: Croatian.

Judgment

Legal context

1 Article 36 of the Act concerning the conditions of accession of the Republic of Croatia and the adjustments to the Treaty on European Union, the Treaty of the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community (OJ 2012 L 112, p. 21; 'the Act of Accession'), annexed to the Treaty between the Member States of the European Union and the Republic of Croatia concerning the accession of the Republic of Croatia to the European Union (OJ 2012 L 112, p. 10; 'the Treaty of Accession'), stipulates:

'1. The Commission shall closely monitor all commitments undertaken by Croatia in the accession negotiations, including those which must be achieved before or by the date of accession. The Commission's monitoring shall consist of regularly updated monitoring tables, dialogue under the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part … peer assessment missions, the pre-accession economic programme, fiscal notifications and, when necessary, early warning letters to the Croatian authorities. In the autumn of 2011, the Commission shall present a Progress Report to the European Parliament and the Council. In the autumn of 2012, it shall present a Comprehensive Monitoring Report to the European Parliament and the Council. Throughout the monitoring process, the Commission shall also draw on input from Member States and take into consideration input from international and civil society organisations as appropriate.

The Commission's monitoring shall focus in particular on commitments undertaken by Croatia in the area of the judiciary and fundamental rights (Annex VII), including the continued development of track records on judicial reform and efficiency, impartial handling of war crimes cases, and the fight against corruption.

…

As an integral part of its regular monitoring tables and reports, the Commission shall issue six-monthly assessments up to the accession of Croatia on the commitments undertaken by Croatia in these areas.

2. The Council, acting by qualified majority on a proposal from the Commission, may take all appropriate measures if issues of concern are identified during the monitoring process. The measures shall be maintained no longer than strictly necessary and, in any case, shall be lifted by the Council, acting in accordance with the same procedure, when the relevant issues of concern have been effectively addressed.'

2 Under Annex VII to the Act of Accession, entitled 'Specific commitments undertaken by the Republic of Croatia in the accession negotiations (referred to in Article 36(1), second subparagraph, of the Act of Accession)':

'1. To continue to ensure effective implementation of its Judicial Reform Strategy and Action Plan.

2. To continue to strengthen the independence, accountability, impartiality and professionalism of the judiciary.

3. To continue to improve the efficiency of the judiciary.

…

6. To continue to improve its track record of strengthened prevention measures in the fight against corruption and conflict of interest.

…

9. To continue to improve the protection of human rights.

…’

3 Article 36 of the Act of Accession is to apply, according to Article 3(5) of the Treaty of Accession, on the date of signature of that Treaty, that is to say, on 9 December 2011.

Background to the dispute

4 With a view to its accession to the European Union, the Republic of Croatia signed, on 29 October 2001, the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part (OJ 2005 L 26, p. 3), whereby it undertook, in particular, to respect democratic principles, human rights and the principles of international law and of the rule of law.

5 After the Commission had expressed a favourable opinion on respect for the requisite criteria for the opening of the accession negotiations, the negotiations concerning Chapter 23 of the accession negotiations, entitled ‘Judiciary and fundamental rights’, were opened at the Intergovernmental Conference of 30 June 2010.

6 Following on from the revised action plan for judicial reform of 20 May 2010 (‘the 2010 Action Plan’), providing in particular for the establishment of public bailiffs, the Croatian Parliament on 23 November 2010 adopted the Ovršni zakon (Law on enforcement) (NN 139/10, ‘the Enforcement Act’) and the Zakon o javnim ovršiteljima (Law on public bailiffs (NN 139/10), ‘the Public Bailiffs Act’), which introduced a new regime for the enforcement of court decisions. Under Article 122 of the Public Bailiffs Act, certain provisions of that law were to enter into force on 1 January 2012, while other provisions were to enter into force on the date of the accession of the Republic of Croatia to the European Union. The Croatian Parliament also adopted, on 15 September 2010, the strategy for the reform of the justice system for the period of 2011 to 2015 (‘the Judicial Reform Strategy 2011-2015’), stating that the Croatian authorities had decided to resolve the problem of the inefficiency of the system for the enforcement of court decisions by implementing a radical reform of the system, under which enforcement would be transferred from the courts to public bailiffs.

7 The negotiations concerning Chapter 23 were closed at the Intergovernmental Conference of 30 June 2011, following the presentation to the Commission by the Croatian authorities of their report of 12 May 2011 on respect for the obligations laid down in that chapter.

8 Following the publication, on 19 August 2011, of a public invitation for applications with a view to the appointment of public bailiffs by the Croatian Ministry of Justice, Mr Ante Šumelj and the other applicants whose names appear in the annex, having been successful in the relevant competition, were appointed public bailiffs by Ministerial decisions of 24 October 2011, sworn in on 12 December 2011 and authorised to commence their activities.

9 In the monitoring table depicting the progress made in the commitments given under Chapter 23 for the period from 30 June to 1 September 2011, and also in its report and opinion of 12 October 2011, the Commission stated, in particular, that the Republic of Croatia was making progress in complying with its commitments and that judicial reform was continuing and required constant attention, particularly in relation to the efficiency of the judicial system.

10 On 9 December 2011, the Treaty of Accession between the Member States of the European Union and the Republic of Croatia was signed. The Treaty of Accession, ratified in January 2012 by the Republic of Croatia, was published on 24 April 2012 in the *Official Journal of the European Union*. The Act of Accession, annexed to the Treaty of Accession, provides in Article 36 that the Commission is to monitor the commitments undertaken by the Republic of Croatia in the accession negotiations (see paragraphs 1 to 3 above).

11 On 22 December 2011 the Croatian Parliament, at its inaugural sitting following the legislative elections held on 4 December 2011, decided to postpone the application of the Enforcement Act and the Public Bailiffs Act until 1 July 2012.

12 At a meeting between the representative of the Delegation of the European Union to the Republic of Croatia and the Croatian authorities on 25 January 2012, the Croatian Justice Minister explained the reasons why the application of those Acts had been postponed and undertook to consult the Commission on the new legislative initiatives and on analysis and vision on the enforcement system. In a letter of 30 January 2012 to certain public bailiffs, the Head of the Delegation of the European Union stated that, in the context of its mandate to closely monitor the commitments undertaken by the Republic of Croatia, the Commission was monitoring the system of enforcement of court decisions and that it would inform the Croatian authorities, if necessary, of its opinion in the context of that monitoring.

13 In the monitoring table for the period from 1 September 2011 to 29 February 2012 and, in essence, in its report of 24 April 2012, the Commission emphasised that the reform of the system of enforcement of court decisions should be given priority, taking into account in particular the postponement of the entry into force of the Public Bailiffs Act.

14 At two meetings held on 9 March 2012, and by letter of 16 May 2012, the Commission requested explanations for that postponement. It also expressed its dissatisfaction at the failure to consult the EU authorities before postponing the entry into force of the act in question and emphasised the need for the Croatian authorities to define without delay a clear position on the question of the system of enforcement of court decisions, taking account of the requirements of efficiency.

15 By letters of 21 and 22 May 2012, the Croatian authorities sent the Commission explanations relating to the reform of the system of enforcement of court decisions and other corresponding bills.

16 At a meeting held on 5 June 2012, the Commission informed the Croatian authorities that the amendment of measures agreed during the accession negotiations must be justified by serious grounds and enable equivalent results to be achieved, and requested that information relating to such results be communicated to it.

17 On 21 June 2012 a law amending the Public Bailiffs Act was adopted, postponing its entry into force until 15 October 2012.

18 By letter of 27 June 2012 to the Croatian authorities, the Commission set out the criteria against which the reform of the system of enforcement of court decisions must be assessed, asked to receive statistics relating to the enforcement procedures and offered the assistance of its services.

19 In the monitoring table for the period of 1 March to 1 September 2012, the Commission reiterated, in essence, the opinion it had expressed in the previous monitoring table and stated that since the Republic of Croatia was generally meeting its commitments, it should be in a position to implement the European Union *acquis* upon accession.

20 By letter of 16 September 2012, one of the applicants submitted a complaint to the Commission, drawing its attention to the Republic of Croatia's failure to comply with its accession commitments and taking issue with the Commission for not ensuring that the Republic of Croatia did so.

21 On 25 September 2012, at a meeting between the Commission and the Croatian authorities, the solutions provided for in the new Enforcement Act, in the process of being adopted, and the possibility of making additional improvements were addressed.

22 By a Law of 28 September 2012, the Public Bailiffs Act was repealed and that profession was abolished with effect from 15 October 2012.

23 In its report of 10 October 2012, the Commission expressed its concern at the number of unresolved cases linked with the enforcement of court decisions and stated that one of the actions to which the Croatian authorities should pay particular attention in the coming months was the adoption of new legislation on the enforcement of court decisions, in order to ensure the execution of court decisions and reduce the backlog in cases relating to the enforcement of judgments.

24 By letters of 8 and 19 October 2012, the Commission replied to a number of public bailiffs, stating that it would monitor the implementation of the new legislation on the enforcement of court judgments, by drawing up reports and ensuring in particular that the new system would help to reduce the court backlog.

25 By letter of 3 December 2012, replying to the Croatian authorities' letter of 10 October 2012 informing it that the new legislation on the enforcement of court decisions had been adopted, the Commission recalled the criteria against which the results of that new legislation would be measured and emphasised the urgent need for measures that would enable that new legislation to produce successful results by 1 July 2013.

26 By decision of 23 January 2013, the Ustavni sud (Constitutional Court, Croatia) dismissed the application for judicial review of the constitutionality of the law postponing the application of the Public Bailiffs Act. However, it acknowledged that there had been a breach of the legitimate expectations of the bailiffs appointed with a view to commencing their activity on 1 January 2012 and on that ground ordered, by way of reparation, payment of a lump sum to those bailiffs, without prejudice to their right to seek compensation under the general rules on civil liability.

27 In the monitoring table for the period from 1 September 2012 to 28 February 2013, the Commission emphasised the progress made by the Republic of Croatia, pointing to the decrease in the number of unresolved civil cases on the enforcement of court decisions between September and December 2012 (a decrease of between 4.28% and 28.85%).

28 In its report of 26 March 2013, the Commission stated that the Republic of Croatia had completed the priority action relating to the adoption of the new enforcement legislation designed to ensure the execution of court decisions and reduce the backlog of enforcement cases.

29 On 22 April 2013, the Council of the European Union welcomed the Commission's monitoring report and the accompanying monitoring tables and took note of the Commission's conclusion that Croatia was generally meeting the commitments and requirements arising from the accession negotiations. It also noted that the accession of the Republic of Croatia was the result of a rigorous negotiation process and of close monitoring during the pre-accession preparations.

30 In its reply of 23 April 2013 to the President of the association formed to represent public bailiffs, the Commission emphasised that it had closely monitored the enforcement system and stated that it left the choice of an enforcement system model to the candidate countries, provided that that model led to the desired results and was in line with EU standards and best practice.

31 By decision of 23 April 2013, the Ustavni sud dismissed the application for judicial review of the constitutionality of the law repealing the Public Bailiffs Act. It stated, in particular, that it would not examine the allegations of the Croatian Association of Public Bailiffs concerning failure to observe the Treaty of Accession, on the ground that the Commission had established, in its report of 26 March 2013, that the Republic of Croatia had complied with its accession commitments.

32 The Republic of Croatia became a member of the European Union on 1 July 2013.

Procedure and forms of order sought

33 By applications lodged at the Court Registry on 20 September 2013 (Case T-546/13) and 17 February 2014 (Cases T-108/14 and T-109/14), the applicants brought the present actions.

34 By order of 5 May 2014, the President of the Second Chamber of the General Court joined Cases T-546/13, T-108/14 and T-109/14 for the purposes of the written procedure, the oral procedure, if any, and the final judgment.

35 By order of 18 July 2014, the President of the Second Chamber joined the pleas of inadmissibility raised in the three cases to the substance of the actions.

36 The applicants claim that the Court should:

— reject the pleas of inadmissibility and order the Commission to pay the costs relating to those pleas;

— declare, by interlocutory judgment, that the European Union is liable for the harm which they have sustained and stay the proceedings relating to the determination of the quantum of that harm until such time as the interlocutory judgment has become final;

— reserve the costs and, in the event that the Court should not deliver an interlocutory judgment, order the Commission to pay the costs.

37 The Commission contends that the Court should:

— principally, dismiss the actions as inadmissible;

— in the alternative, dismiss the actions as unfounded;

— order the applicants to pay the costs.

38 In answer to certain questions put by the Court at the hearing, the Commission withdrew its pleas of inadmissibility, the withdrawal of those pleas being duly noted in the minutes of the hearing.

Law

39 In accordance with settled case-law, the non-contractual liability of the European Union, within the meaning of the second paragraph of Article 340 TFEU, for unlawful conduct by its institutions is incurred only where a set of conditions are satisfied: there must have been wrongful conduct on the part of the institutions, actual damage must have been sustained and there must be a causal link between the conduct complained of and the damage pleaded (see judgments of 19 April 2012 in *Artegodan* v *Commission*, C-221/10 P, ECR, EU:C:2012:216, paragraph 80 and the case-law cited, and of 16 May 2013 in *Gap granen & producten* v *Commission*, T-437/10, EU:T:2013:248, paragraph 16 and the case-law cited).

40 As regards the condition that there must have been wrongful conduct on the part of the institutions, it is also settled case-law that the non-contractual liability of the European Union is incurred only where there has been a sufficiently serious breach of a rule of law intended to confer rights on individuals (see judgments of 4 July 2000 in *Bergaderm and Goupil* v *Commission*, C-352/98 P, ECR, EU:C:2000:361, paragraphs 42 and 43 and the case-law cited, and of 2 March 2010 in *Arcelor* v *Parliament and Council*, T-16/04, ECR, EU:T:2010:54, paragraph 141 and the case-law cited).

41 It should be made clear at the outset that what is alleged to be the Commission's unlawful conduct in the present case consists solely in a wrongful omission, namely its failure to adopt the measures that would have prevented the repeal of the Public Bailiffs Act. Contrary to the applicants' submissions at the hearing, the fact that the Commission expressed a favourable opinion in the last monitoring report on the preparations for the accession of the Republic of Croatia (see paragraph 28 above) forms part of the set of omissions on the Commission's part which are alleged to have vitiated its monitoring of the accession process. The Commission did not stop or suspend that process by expressing a negative opinion. The opinion which it expressed in the abovementioned report cannot thus be regarded as an independent wrongful act, *a fortiori* because the applicants themselves emphasised in the reply that their complaint related to a wrongful omission on the Commission's part.

42 According to settled case-law, omissions by the institutions give rise to liability on the part of the European Union only when the institutions have breached a legal obligation to act under a provision of EU law (judgments of 15 September 1994 in *KYDEP* v *Council and Commission*, C-146/91, ECR, EU:C:1994:329, paragraph 58, and of 13 November 2008 in *SPM* v *Council and Commission*, T-128/05, EU:T:2008:494, paragraph 128). It also follows from the case-law that the requirement that there be a breach of a rule of law intended to confer rights on individuals also applies in the case of a wrongful omission (see judgment of 29 January 1998 in *Dubois et Fils* v *Council and Commission*, T-113/96, ECR, EU:T:1998:11, paragraph 60 and the case-law cited).

43 In the present case, the applicants maintain, in essence, that the obligation to act borne by the Commission arose under Article 36 of the Act of Accession. They also refer to Articles 13 TEU and 17 TEU and to the principle of protection of legitimate expectations.

Infringement of Article 36 of the Act of Accession

44 It is appropriate to determine whether the Commission was under an obligation, in the present case, to note in its monitoring tables and reports that the Croatian authorities failed to comply with their commitments, by postponing and then repealing the Public Bailiffs Act, and to send those authorities early warning letters warning them of such non-compliance, in accordance with Article 36(1) of the Act of Accession, and to propose the corresponding appropriate measures to the Council, pursuant to Article 36(2) of that Act.

45 First, the applicants base their claim that such an obligation existed on the obligation borne by the Croatian authorities to establish the office of public bailiff, which, in their submission, arises under the Treaty of Accession.

46 It is not disputed that the principles laid down in Chapter 23 of the Accession Negotiations, concerning the implementation of an independent and efficient judicial mechanism and respect for fundamental rights, are binding on the Croatian authorities. Those principles were set out in Annex VII to the Act of Accession, in the form of 10 specific commitments undertaken by the Republic of Croatia. Apart from the commitment relating to 'effective implementation of its Judicial Reform Strategy and Action Plan' (commitment 1), the Republic of Croatia also undertook to 'continue to strengthen the independence, accountability, impartiality and professionalism of the judiciary' (commitment 2), to 'continue to improve the efficiency of the judiciary' (commitment 3), to

'continue to improve its track record of strengthened prevention measures in the fight against corruption and conflict of interest' (commitment 6) and to 'continue to improve the protection of human rights' (commitment 9) (see paragraph 2 above). Thus, only failure to comply with those commitments could have given rise to an obligation to act on the Commission's part in the present case.

47 As regards commitment 1, it may be noted that it follows from its wording that it is not aimed at a specific judicial reform strategy and action plan. As the Commission pertinently observes, that commitment refers generally to the Croatian authorities' 'Judicial Reform Strategy' and 'Action Plan', without more, although the strategy and plan in question could have been identified, by mentioning those in force on the date of signature of the Treaty of Accession, namely the Judicial Reform Strategy 2011-2015 and the 2010 Action Plan, both of which provided for the establishment of the office of Public Bailiff (see paragraph 6 above).

48 Such general references may be explained by the fact that the period between the date of signature of the Act of Accession and the date of actual accession, and in particular the monitoring of the accession commitments during that period, is characterised by regular exchanges between the EU authorities and the authorities of the acceding State, as may be seen from the antecedents to the present dispute. While those exchanges cannot be characterised as negotiation exchanges in the strict sense, since the negotiations were by definition closed on the date of the Act of Accession specifying the commitments in question, they necessarily take the form, as the Commission submits, of adjustments on both sides according to the results obtained by the acceding State and the assessments of the monitoring authority. It thus frequently happens that, during the period when the accession commitments are being monitored, additional or corrective measures are adopted by the acceding State, particularly where disappointing results are noted by the Commission.

49 It follows that the reform strategy and action plan mentioned in Annex VII to the Act of Accession not did not refer solely to the Judicial Reform Strategy 2011-2015 and the 2010 Action Plan, in force on the date of the Act of Accession, *a fortiori* because the 2010 Action Plan essentially fixed short-term objectives to be achieved in 2010, implying that it must necessarily be followed by one or indeed several new plans up to the date of actual accession. The Judicial Reform Strategy 2011-2015 itself provided, moreover, that implementing measures would be prepared in the context of several annual action plans. Likewise, the Commission stated at the hearing, without being challenged on that point by the applicants, that the Croatian authorities had adopted a new Judicial Action Strategy in December 2012, together with a new corresponding action plan.

50 The fact, emphasised by the applicants, that the Judicial Reform Strategy 2011-2015 and the 2010 Action Plan are mentioned in a number of acts adopted in connection with the opening and the closing of the negotiations relating to Chapter 23, including, in particular, the Croatian authorities' report of 12 May 2011 (see paragraph 7 above) and also in the Commission's reports and monitoring tables, does not undermine that analysis. Those references to the Judicial Reform Strategy 2011-2015 and the 2010 Action Plan may be explained by the fact that they were the reform strategy and action plan in force at the date of the documents in question, as borne out by the fact that a number of later Commission documents refer to a different reform strategy and a different action plan (see, in particular, the monitoring table for the period 1 September 2012 to 28 February 2013, which refers to the strategy adopted in December 2012 and the action plan to be adopted in March 2013.

51 Commitment 1 therefore does not give rise to any obligation for the Croatian authorities to establish the office of Public Bailiff.

52 It cannot be inferred, however, that the Croatian authorities, including those in place as a result of a new political majority, as was the case of the authorities who postponed and then repealed the Public Bailiffs Act, had unlimited discretion to amend the Judicial Reform Strategy 2011-2015 and the 2010 Action Plan. In view of the provisions of the Act of Accession, in particular Article 36 and Annex VII,

those authorities were required to comply not only with commitment 1 but also with all the other commitments referred to in that annex, including commitments 2, 3, 6 and 9, on which the applicants rely.

53 As regards commitment 3, it should be observed that it concerns only the efficiency of the judicial system and does not require that power to enforce court decisions be conferred on one body in particular according to pre-defined procedures. As the Commission correctly observes, the court decision enforcement system in the Member States is not governed by EU law and, accordingly, is not part of the EU acquis that must be adopted by the acceding State, which, moreover, the applicants do not dispute. The Treaties, like the Charter of Fundamental Rights of the European Union, fix certain principles that must govern the justice dispensed in the Member States, such as the impartiality of the courts or the presumption of innocence, and also certain rules designed to ensure judicial cooperation between Member States, where necessary by the approximation of the national laws. The Commission thus had occasion to intervene in regard to the Croatian authorities, as the applicants have observed, moreover, referring to the so-called 'Lex Perković', owing to problems in transposing certain harmonised provisions relating to judicial cooperation. Conversely, no provision of primary law or secondary law defines a harmonised system of enforcement of court decisions. The applicants have also pointed out that many Member States of the European Union had opted for a system of enforcement of court decisions equivalent to that of public bailiffs, thereby acknowledging that such a system was not shared by all Member States.

54 It thus cannot be inferred from commitment 3 that there was any obligation to entrust the enforcement procedures to public bailiffs. The only obligation imposed on the Croatian authorities is the obligation to ensure the efficiency of enforcement procedures, independently of the means put in place in order to do so.

55 As regards commitment 9, relating to the protection of human rights, although the applicants claim that there has been an infringement of the fundamental rights of the European Union and even claim to have informed the Commission that those rights had been infringed by the Croatian authorities, they put forward no specific factor, other than breach of the principle of protection of legitimate expectations (for the examination of that claim, see paragraphs 72 to 77 below), of such a kind as to establish that the abolition of the profession of public bailiff would infringe those rights.

56 Last, as regards commitments 2 and 6, relating respectively to the impartiality and professionalism of the judiciary and to the fight against corruption and conflict of interests, to which the applicants also refer, it cannot be inferred, in the absence of any explanation in that respect, that there is any obvious connection with the profession of public bailiff.

57 It therefore does not follow from any of the commitments in Annex VII to the Act of Accession on which the applicants rely that the Republic of Croatia was under an obligation to establish the profession of public bailiff, or that the Commission was under any obligation to have recourse, on that basis, to the means of action provided for in Article 36 of the Act of Accession in order to prevent the repeal of the Public Bailiffs Act. It also follows that the Commission cannot be criticised for having, by not having recourse to those means of action, approved the amendment of the accession commitments contrary to the Treaty of Accession and Article 26 of the Vienna Convention on the Law of Treaties of 23 May 1969, entitled 'Pacta sunt servanda'.

58 Second, the applicants maintain that an obligation for the Commission to act in the present case in order to prevent the repeal of the Public Bailiffs Act is based on the fact that the system of enforcement of court decisions eventually adopted, after the repeal of that Act, did not provide the same guarantees of efficiency. They claim, in that regard, to have drawn the Commission's attention to the problems raised by the postponement and repeal of the Public Bailiffs Act.

59 First of all, it should be observed that in support of that assertion the applicants submit only a single document, namely the complaint addressed by one of the applicants to the Commission by letter of 16 September 2012 (see paragraph 20 above).

60 Next, it should be stated that the smear campaign directed against the public bailiffs, referred to in that complaint and again mentioned in the reply, however regrettable it may be, is not relevant for the purposes of assessing the efficiency of the court decisions enforcement system in Croatia. Such efficiency is measured essentially against the benchmark of the number of enforcement cases pending, the duration and cost of enforcement procedures and the rate of recovery, as the Commission stated in its letters of 27 June and 3 December 2012 (see paragraphs 18 and 25 above), without being challenged on that point. The smear campaign conducted against public bailiffs by the media is clearly unrelated to those assessment criteria.

61 As regards the alleged conflict of interests facing the Croatian Justice Minister, also referred to both in the complaint and in the reply, it is not in itself sufficient to establish that the enforcement system for court decisions in Croatia is inefficient when measured against the abovementioned criteria. At most, it could explain the decision to opt for enforcement by the courts with mandatory representation of the parties, instead of enforcement by public bailiffs without legal representation and thus suggest that the costs of enforcement procedures would be higher in the new enforcement system than those resulting from the enforcement system based on public bailiffs, owing to the involvement of lawyers. However, the costs of enforcement procedures are only one of the criteria for assessing the efficiency of an enforcement system, and not necessarily the essential criterion in that assessment. The Commission considered, by making the reduction of the backlog of enforcement procedures a priority for action to be taken by the Croatian authorities, in its report of 10 October 2012 (see paragraph 23 above), that the number of pending enforcement cases was a decisive criterion for the assessment of the efficiency of the enforcement procedure in Croatia. Therefore, the costs of enforcement procedures cannot in themselves establish failure to comply with commitment 3 in Annex VII to the Act of Accession as regards the efficiency of those procedures.

62 Last, the assertion in the complaint, and reiterated in the reply, that the new enforcement system that was to replace the system based on public bailiffs would lead in essence to an increase in the number of enforcement procedures and pending enforcement cases is wholly unsubstantiated.

63 Consequently, it cannot be inferred from the evidence adduced in the complaint of 16 September 2012 that there was any failure to comply with commitment 3 in Annex VII to the Act of Accession and that the Commission was thus under an obligation to take action to prevent the repeal of the Public Bailiffs Act. The Commission therefore did not make a wrongful omission by failing to use for that purpose the means of action provided for in Article 36 of the Act of Accession.

64 It should be added, in that regard, that the Commission cannot be criticised for having failed to act diligently when monitoring the Croatian authorities' compliance with commitment 3 as regards the efficiency of enforcement procedures.

65 Contrary to the applicants' contention, the Commission, in particular at the meeting of 5 June 2012 (see paragraph 16 above), merely requires of the Croatian authorities that their new enforcement procedure should produce results equivalent to those that would have been achieved by the system based on public bailiffs. First, throughout the accession procedure, and in particular from the second postponement of the entry into force of the Public Bailiffs Act, it regularly asked the Croatian authorities for information about the progress of the reform of the court decisions enforcement system in the absence of public bailiffs, in particular by requesting communication of statistical data, and emphasised the need to obtain conclusive results before the date of accession (see the letters of 27 June and 3 December 2012 and the report of 10 October 2012, referred to in paragraphs 18, 25 and 23 above). Second, the Commission received communication of those statistical data, relating in particular to the decisive criterion of efficiency of the number of pending cases (see paragraph 61

above), and regularly examined them, finding, in its report of 26 March 2013, that the number of unresolved enforcement cases had fallen (see paragraph 28 above). The Commission cannot therefore be criticised for not having carried out a diligent analysis of the efficiency of the system of enforcement of court decisions in Croatia.

66 It follows that neither the Commission's duty of diligence in monitoring the accession commitments under Article 36 of the Act of Accession, nor Article 36 of the Act of Accession itself, on the assumption that that requirement was intended to confer rights on individuals, has been breached in the present case.

Infringement of Articles 13 TEU and 17 TEU

67 According to Article 13 TEU, the European Union is to have an institutional framework, consisting, in particular, of the European Parliament, the Council and the Commission, which is to aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of its policies and actions.

68 Since the applicants take issue with only the Commission for not having complied with its obligations under the Treaties, it must be considered that that article, which defines the institutional framework of the European Union, is not relevant in the present case, especially because the applicants have also alleged infringement of Article 17 TFEU, which is specifically devoted to the role and remit of the Commission.

69 Article 17 TEU provides that the Commission is to promote the general interest of the European Union and take appropriate initiatives to that end and that it is to exercise coordinating, executive and management functions as laid down in the Treaties.

70 According to the case-law, it follows from Article 17(1) TEU that the Commission, as guardian of the Treaties and of the agreements concluded under them, must ensure the correct implementation by a third State of the obligations which it has assumed under an agreement provided for in the Treaties, using the means provided for in that agreement (see order of 12 July 2012 in *Mugraby* v *Council and Commission*, C-581/11 P, EU:C:2012:466, paragraph 68 and the case-law cited).

71 It follows that, in so far as Article 36 of the Act of Accession defines the Commission's obligations under Article 17 TEU in the context of the accession of the Republic of Croatia to the European Union and in so far as that article has not been infringed in the present case (see paragraph 66 above), Article 17 TEU cannot be considered to have been infringed either.

Breach of the principle of protection of legitimate expectations

72 It is settled case-law that the principle of the protection of legitimate expectations is a general principle of EU law which confers rights on individuals (judgments of 19 May 1992 in *Mulder and Others* v *Council and Commission*, C-104/89 and C-37/90, ECR, EU:C:1992:217, paragraph 15, and of 6 December 2001 in *Emesa Sugar* v *Council*, T-43/98, ECR, EU:T:2001:279, paragraph 64). Breach of that principle may therefore render the European Union liable (see judgment in *SPM* v *Council and Commission*, cited in paragraph 42 above, EU:T:2008:494, paragraph 146 and the case-law cited).

73 The right to claim protection of legitimate expectations extends to any individual in a situation in which it is apparent that the EU administration, by giving him precise assurances, has caused him to have legitimate expectations (see judgments of 13 July 1995 in *O'Dwyer and Others* v *Council*, T-466/93, T-469/93, T-473/93, T-474/93 and T-477/93, ECR, EU:T:1995:136, paragraph 48 and the case-law cited, and of 16 October 1996 in *Efisol* v *Commission*, T-336/94, ECR, EU:T:1996:148, paragraph 31 and the case-law cited). Conversely, no one may plead breach of the principle of the

protection of legitimate expectations in the absence of specific assurances given to him by the administration. Precise, unconditional and consistent information from authorised and reliable sources constitutes such assurances (see judgment in *SPM* v *Council and Commission*, cited in paragraph 42 above, EU:T:2008:494, paragraph 149 and the case-law cited).

74 In the present case, the applicants have claimed, in essence, only that precise assurances were given to them by the national authorities when they were appointed as public bailiffs. As the applicants have emphasised, the Ustavni sud, in its decision of 23 January 2013, recognised, moreover, that there had been a 'breach of [the appointed public bailiffs'] legitimate expectations based on valid legislative acts adopted by the State and [of] the trust placed by individuals in the institutions of the State and the right which [those institutions] create' (see paragraph 26 above).

75 On the other hand, the applicants have not relied on any factor showing or giving rise to the assumption that the EU institutions, including, in particular, the Commission, caused them to have legitimate expectations that they would ensure that the profession of public bailiff was maintained. The — unsubstantiated — circumstance that the Commission participated in the preparation of the Public Bailiffs Act, financed it, and indeed was at the origin of it cannot in itself constitute a precise assurance given by the Commission that it would regard the establishment of public bailiffs as the only means capable of complying with the accession commitments. In order for such assurances to be established, those acts providing initial support for the Public Bailiffs Act would, having regard to the fact that the Republic of Croatia was under no obligation to create the profession of Public Bailiff, need to be supplemented by subsequent consistent and explicit acts to that effect.

76 In fact, none of the factors put forward by the applicants can be thus described. The report of 24 April 2012 on which the applicants rely merely takes note of the postponement of the Public Bailiffs Act (see paragraph 13 above) but does not at any point criticise that postponement or, *a fortiori*, demand that the Act in question be brought into force. Quite to the contrary, the Commission even notes, after having taken note of that postponement, that the Croatian authorities have implemented various measures designed to improve the efficiency of the judicial system and also that the enforcement of court decisions has improved. Likewise, at the meeting of 5 June 2012 to which the applicants referred at the hearing, the Commission merely asked the Croatian authorities to communicate to it data relating to the enforcement system that was to replace the system based on public bailiffs, for the purpose of ascertaining whether equivalent results would be obtained from (see paragraph 16 above). The Public Bailiffs Act was therefore mentioned at that meeting only as one of a number of means of achieving the aim of the efficiency of the judicial system sought by the Commission and not as an objective that the Commission would require the Republic of Croatia to pursue.

77 The applicants have therefore failed to establish that the Commission had caused them to have a legitimate expectation and had thus, by its failure to act, breached the principle of protection of legitimate expectations.

78 It follows from all of the foregoing that the Commission cannot be criticised for any wrongful omission.

79 It follows that one of the three cumulative conditions of EU liability is not satisfied and that the present actions must therefore be dismissed, without there being any need to examine the other conditions that must be satisfied in order for such liability to be incurred.

Costs

80 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful, they must be ordered, in addition to bearing their own costs, to pay the costs incurred by the Commission, in accordance with the form of order sought by it.

On those grounds,

THE GENERAL COURT (Second Chamber)

hereby:

1. **Dismisses the actions;**

2. **Orders Mr Ante Šumelj and the other applicants whose names appear in the annex to pay the costs.**

Martins Ribeiro Gervasoni Madise

Delivered in open court in Luxembourg on 26 February 2016.

[Signatures]

Annex

Dubravka Bašljan, residing in Zagreb (Croatia),

Đurđica Crnčević, residing in Sv. Ivan Zeline (Croatia),

Miroslav Lovreković, residing in Križevaci (Croatia),

applicants in Case T-546/13,

Drago Burazer, residing in Zagreb,

Nikolina Nežić, residing in Zagreb,

Blaženka Bošnjak, residing in Sv. Ivan (Croatia),

Bosiljka Grbašić, residing in Križevaci,

Tea Tončić, residing in Pula (Croatia),

Milica Bjelić, residing in Dubrovnik (Croatia),

Marijana Kruhoberec, residing in Varaždin (Croatia),

applicants in Case T-108/14,

Davor Škugor, residing in Sisak (Croatia),

Ivan Gerometa, residing in Vrsar (Croatia),

Kristina Samardžić, residing in Split (Croatia),

Sandra Cindrić, residing in Karlovac (Croatia),

Sunčica Gložinić, residing in Varaždin,

Tomislav Polić, residing in Kaštel Novi (Croatia),

Vlatka Pižeta, residing in Varaždin,

applicants in Case T-109/14.