



Reports of Cases

DECISION OF THE COURT OF JUSTICE (Reviewing Chamber)

9 September 2014

((Review))

In Case C-417/14 RX,

PROPOSAL for review made by the First Advocate General, in accordance with Article 62 of the Statute of the Court of Justice of the European Union, on 9 August 2014,

THE COURT (Reviewing Chamber),

composed of T. von Danwitz (Rapporteur), President of the Chamber, E. Juhász, A. Rosas, D. Šváby and C. Vajda, Judges,

makes the following

Decision

- 1 This proposal for review made by the First Advocate General concerns the judgment of the General Court of the European Union (Appeal Chamber) in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625). By that judgment, the General Court set aside the judgment of the European Union Civil Service Tribunal in *Missir Mamachi di Lusignano v Commission* (F-50/09, EU:F:2011:55), dismissing the action to establish non-contractual liability of the European Union brought by Mr Livio Missir Mamachi di Lusignano seeking, firstly, the annulment of the decision of the European Commission of 3 February 2009, by which it rejected his claim for compensation for the harm suffered as a result of the murder of his son, Alessandro, a European Union official, and, secondly, an order that the Commission pay him and his son's heirs and successors various sums in compensation for the material and non-material losses resulting from that murder.
- 2 The action alleges a failure by the Commission in its duty to ensure the protection of its officials and seeks compensation for the non-material harm suffered by the official himself, which the applicant claims on behalf of the children of the official as heirs and successors, and compensation for the material and non-material harm suffered by the applicant and the children of the official in their capacity as his family members.
- 3 As regards the claim for compensation for the harm suffered by the applicant and the deceased official's children, the General Court held that the Civil Service Tribunal ought to have held that it did not have jurisdiction to hear that application, since the application falls within the jurisdiction of the General Court. Consequently, it ought to have referred the matter to the General Court in accordance with Article 8(2) of Annex I to the Statute of the Court of Justice of the European Union.
- 4 With regard to the claim for compensation for the harm suffered by the official before his death, the General Court held that the Civil Service Tribunal, although having jurisdiction to hear that claim, had wrongly rejected it as inadmissible in the light of the rule that there must be correspondence

between the application and the administrative claim. Since, having regard to that application, the state of the proceedings did not permit a decision, the General Court held that that aspect of the action should be referred to the Civil Service Tribunal. However, the Tribunal would be required to find that it and the General Court were seised of cases in which the same relief is sought and, in accordance with the second subparagraph of Article 8(3) of Annex I to the Statute of the Court of Justice, would be required to decline jurisdiction so that the General Court may act on those cases.

- 5 In those circumstances, considering that it had jurisdiction to rule on all the heads of claim, the General Court decided to refer the entire case to itself, as court of first instance.
- 6 Under Article 256(2) TFEU, decisions given by the General Court on appeal against decisions of the Civil Service Tribunal may exceptionally be subject to review by the Court of Justice under the conditions and within the limits laid down by the Statute of the Court of Justice, where there is a serious risk of the unity or consistency of EU law being affected.
- 7 The proposal for review made by the First Advocate General on 9 August 2014 is based on Article 62 of the Statute of the Court of Justice, pursuant to which, where the First Advocate General considers that there is a serious risk of the unity or consistency of EU law being affected, he may propose that the Court of Justice review the decision of the General Court.
- 8 In that regard, it is clear from Article 193(4) of the Rules of Procedure of the Court of Justice that the Reviewing Chamber, where it has before it such a proposal to review, is to decide whether the decision of the General Court is to be reviewed and that, when that is the case, the decision to review the decision of the General Court is to indicate only the questions which are to be reviewed.
- 9 In the present case, the Reviewing Chamber considers that it is appropriate to review the judgment in *Missir Mamachi di Lusignano v Commission* (EU:T:2014:625).
- 10 The question which is to be reviewed is set out in point 2 of the operative part of the present decision.

On those grounds, the Court of Justice (Reviewing Chamber) decides:

1. **It is appropriate to review the judgment of the General Court of the European Union (Appeal Chamber) in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625).**
2. **The review shall concern the question whether the judgment of the General Court of the European Union (Appeal Chamber) in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625) affects the unity or consistency of European Union law in that the General Court, as the court hearing the appeal, held that it had jurisdiction to rule, as the court of first instance, on an action to establish non-contractual liability of the European Union**
 - **alleging a failure of an institutions in its duty to ensure the protection of its officials,**
 - **brought by third parties, in their capacity as heirs and successors of a deceased official and as a family member of such an official, and**
 - **seeking compensation for the non-material harm suffered by the deceased official himself and the material and non-material harm suffered by those third parties.**

- 3. The persons referred to in Article 23 of the Statute of the Court of Justice of the European Union and the parties to the proceedings before the General Court of the European Union are invited to lodge their written observations on those questions at the Court of Justice of the European Union within one month of service of the present decision.**

[Signatures]