Reports of Cases

OPINION OF ADVOCATE GENERAL
BOBEK
delivered on 2 February 2021 [1]

Case C-758/19

OH
v
ID

(Request for a preliminary ruling from the Polymeles Protodikeio Athinon (Court of First Instance, Athens, Greece))

(Reference for a preliminary ruling – Articles 268, 270, 340 and 343 TFEU – Protocol (No 7) on the privileges and immunities of the European Union – Articles 11, 17 and 19 – Former member of the Commission – Immunity of jurisdiction – Action for non-contractual liability – Waiver – Jurisdiction of the Court of Justice of the European Union)

I. Introduction

1. The applicant in the main proceedings is a Greek national who was hired by the European Commission as a member of its temporary staff. He served in the Cabinet of a then Member of the Commission (the 'defendant' in the main proceedings). Following an alleged breakdown of trust in the relationship between those two individuals, the Commission decided to terminate the applicant's contract.

2. The applicant takes the view that he suffered both material and non-material damage as a consequence of the termination of his employment relationship. He has brought a (civil) action before a court of first instance in Athens, seeking the compensation of that damage. Harbouring doubts about its jurisdiction on the matter, that first instance court poses a number of questions to this Court. In particular, it enquires about who should be the proper respondent (the former Commissioner or the European Union) and before which court (the national courts or the Court of Justice of the European Union) such an action ought to be brought.

1 Original language: English.

II. Legal framework

A. EU law

3. Article 11 of Protocol No 7 on the privileges and immunities of the European Union ('Protocol No 7'), annexed to the EU Treaties, states:

'In the territory of each Member State and whatever their nationality, officials and other servants of the Union shall:

(a) subject to the provisions of the Treaties relating, on the one hand, to the rules on the liability of officials and other servants towards the Union and, on the other hand, to the jurisdiction of the Court of Justice of the European Union in disputes between the Union and its officials and other servants, be immune from legal proceedings in respect of acts performed by them in their official capacity, including their words spoken or written. They shall continue to enjoy this immunity after they have ceased to hold office;

…'

4. Under the terms of Article 17 of the same protocol:

'Privileges, immunities and facilities shall be accorded to officials and other servants of the Union solely in the interests of the Union.

Each institution of the Union shall be required to waive the immunity accorded to an official or other servant wherever that institution considers that the waiver of such immunity is not contrary to the interests of the Union.'

5. Pursuant to Article 19 of Protocol No 7, Articles 11 and 17 thereof are applicable to the Members of the Commission.

B. National law

6. According to the referring court, the provisions of the Greek Code of Civil Procedure concerning the scope of jurisdiction of the national courts and the jurisdictional immunity of certain categories of persons are applicable to the present dispute.

7. More specifically, in accordance with Article 3(2) of the Code of Civil Procedure, foreigners who enjoy immunity from jurisdiction do not fall under Greek jurisdiction, except in disputes relating to rights *in rem* in immovable property.

8. In turn, Article 24 of the Code of Civil Procedure provides that Greek citizens benefiting from jurisdictional immunity, as well as civil servants appointed to posts abroad, are subject to the jurisdiction of the courts of their place of residence prior to such a mission or, failing that, to the jurisdiction of courts located in the capital of the State.

III. Facts, national proceedings and the questions referred

9. On 1 November 2014, the applicant joined the European Commission as a member of the temporary staff recruited under Article 2(c) of the Conditions of Employment of Other Servants of the European Union ('the CEOS').[2] He was hired to serve as Deputy Head of Cabinet in the office of the defendant, who had been appointed as Commissioner.

10. In April 2016, the Directorate-General for Human Resources and Security of the European Commission notified the applicant that his employment relationship with the European Commission would be terminated, after a three-month notice period, with effect from 1 August 2016, on the grounds that the defendant had lost trust in him.

11. Taking the view that he had not been granted the right to a hearing prior to the adoption of the decision to terminate his contract, the applicant lodged a complaint against that decision under Article 90 of the Staff Regulations. The complaint was dismissed on 29 November 2016.

12. On 10 March 2017, the applicant challenged the decision terminating his contract before the General Court, alleging a breach of his right to be heard. Finding that claim to be well founded, the General Court annulled the challenged decision by judgment of 10 January 2019.[3]

13. Following the delivery of that judgment, the Commission provided the applicant the possibility to be heard. On 10 April 2019, the Commission adopted a new decision terminating the applicant's contract as a member of the temporary staff. The applicant lodged an administrative complaint against that decision, which was rejected by decision of 14 August 2019 of the Commission.

14. On 2 December 2019, the applicant brought an action for annulment of the new decision terminating his contract before the General Court. In its judgment of 13 January 2021, the General Court dismissed the action.[4]

15. In parallel, on 13 September 2017, the applicant had also brought proceedings against the defendant before the Polymeles Protodikeio Athinon (Court of First Instance, Athens, Greece).

16. Before that court, the applicant alleged that the defendant had expressed defamatory statements concerning the inadequate performance of his duties. That conduct allegedly caused the applicant to suffer both material damage and non-material damage. The former consisted in the salary otherwise due by the European Commission for the period from 1 November 2016 to 31 October 2019, totalling EUR 452 299.32. The latter, deriving from the damage to his reputation which hampers his future career within the EU institutions and bodies, was considered to amount to EUR 600 000 according to the applicant. On that basis, the applicant requested the national court to deliver a provisionally enforceable judgment ordering the defendant to make good the material and non-material damage caused to him, withdraw certain allegedly defamatory statements, and pay the costs of the proceedings.

2 According to that provision, 'temporary staff' includes 'staff, other than officials of the Union, engaged to assist either a person holding an office provided for in the Treaty on European Union or the Treaty on Functioning of the European Union, or the elected President of one of the institutions or organs of the Union, or one of the political groups in the European Parliament or the Committee of the Regions, or a group in the European Economic and Social Committee'. See Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (English Special Edition: Series 1 Volume 1959-1962 P.135), as amended.

3 Judgment of 10 January 2019, *RY* v *Commission* (T-160/17, EU:T:2019:1).

4 *RY* v *Commission* (T-824/19, not published, EU:T:2021:6).

17. The referring court notes that the action has been brought against a former Commissioner who, although being a Greek national, has the privilege of immunity from legal proceedings under Article 343 TFEU and Articles 11, 17 and 19 of Protocol No 7. In a certificate dated 22 December 2017 produced before the referring court, the Directorate-General for Human Resources and Security of the European Commission stated that: 'as a member of the Commission, [the defendant] … is immune from legal proceedings in respect of acts performed by him in his official capacity, including his words spoken or written, in accordance with Articles 11 and 19 of [Protocol No 7]. Immunity may be waived by the College of Commissioners at the request of a national court, unless waiver of such immunity is contrary to the interests of the Union'.

18. Against that background, harbouring doubts as to the proper interpretation of the relevant EU rules, the Polymeles Protodikeio Athinon (Court of First Instance, Athens) decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Are the terms "immunity from legal proceedings" and "immunity", as formulated and for the purpose which they serve in Article 11 of [Protocol No 7], identical?

(2) Does the immunity from legal proceedings/immunity envisaged in Article 11 include and cover, in addition to criminal prosecutions, civil claims made in actions against members of the Commission by injured third parties?

(3) Is waiver of the Commissioner's immunity from legal proceedings/immunity also possible in the context of a civil action brought against him, such as the action under consideration? If it is, who must initiate the waiver procedure in question?

(4) Do the Courts of the European Union have jurisdiction to rule on a non-contractual claim in tort, such as that at issue here, against a Commissioner?'

19. Written observations have been submitted by the applicant, the defendant and the Commission.

IV. Analysis

20. In my view, the key issue of this case lies in the fourth question asked by the referring court: who is the correct defendant and what is the proper forum in a case where a former member of staff of an EU institution claims damage allegedly caused by the behaviour of a former member of that institution. I shall therefore start with that question. I will then turn to the first three questions posed by the referring court, merely for the sake of completeness since my proposed answer to the fourth question renders an answer to the other questions redundant.

A. Fourth question

21. By its fourth question, the referring court asks whether the Court of Justice of the European Union has jurisdiction in respect of an action for non-contractual liability, such as that at issue in the main proceedings, against a former Commissioner.

22. The question joins together two distinct issues: the identity of the defendant and of the forum. Against *whom* is the applicant to bring proceedings in order to seek compensation for the alleged damage (the former Commissioner or the European Union), and *before which court* is he to do so (the national courts or the Court of Justice of the European Union)? In addition, there is in fact a third

issue, connected to, or even preceding the first two issues, without which the question relating to the identity of the defendant and of the forum can hardly be assessed, but which is not being mentioned: what exactly is the act that should have caused the damage to the applicant? What is the specific *wrong* for which the damage is sought?

23. In this section, I shall start with the issue of identifying the proper defendant vis-à-vis what appears to be the wrongful act that should have caused the damage to the applicant (1). Once the nature of the wrong, and hence the proper defendant, is identified, the proper forum for such an action becomes clear (2).

1. The defendant

24. Pursuant to Article 11 of Protocol No 7, in the territory of each Member State, officials and other servants of the Union are 'immune from legal proceedings in respect of acts performed by them in their official capacity'. That immunity continues 'after they have ceased to hold office'. That provision is made applicable to the Members of the Commission by Article 19 of Protocol No 7.

25. Therefore, in respect of acts performed *in their official capacity*, members of staff (and Commissioners) cannot, absent a waiver from the relevant EU institution, be subject to legal proceedings.

26. According to the Court, the requirement that the act in question is performed in an official capacity refers to those acts 'which, by virtue of an internal and direct relationship, are the necessary extension of the tasks entrusted to the institutions'.[5] In other words, Article 11 of Protocol No 7 refers to the acts which, 'by their nature, represent a participation of the person claiming immunity in the performance of the tasks of the institution to which he belongs'.[6]

27. Thus, the immunity is *functionally* limited. There must be a reasonable degree of proximity (a direct relationship) between the tasks entrusted to the institutions and the type of behaviour or the act of the EU official. However, once that requirement is satisfied, the immunity enjoyed covers acts regardless of any area of law (criminal, administrative, civil, or any other), and regardless of whether those acts are in fact lawful.[7] However, as made clear by the fourth paragraph of Article 340 TFEU and Article 11 of Protocol No 7, members of (temporary) staff who have acted unlawfully may be liable towards the Union, and therefore subject to the related procedures under Article 22 of the Staff Regulations and Article 11 of the CEOS.

28. Beyond that general demarcation, the question as to whether a specific act was performed in an official capacity by a member of staff is heavily case-dependent. Clearly, the *place of commission* is hardly decisive: the mere fact that an act is performed while on the premises of an EU institution, during an official mission, or in the context of a work-related event is not, in and of itself, sufficient to establish that it has been performed in an official capacity.[8] The same is true with regard to, for example, defamatory or insulting statements made by a member of EU staff towards another person, or forms of psychological or sexual harassment, or breaches of local regulations on public health and

5 Judgment of 10 July 1969, *Sayag and Zurich* (9/69, EU:C:1969:37, paragraph 7)..

6 Opinion of Advocate General Gand in *Sayag and Zurich* (9/69, EU:C:1969:31, p. 338).

7 See, to that effect, judgments of 19 December 2019, *Junqueras Vies* (C-502/19, EU:C:2019:1115, paragraphs 76, 77, 87 and 91), and of 12 September 2007, *Nikolaou* v *Commission* (T-259/03, EU:T:2007:254, paragraphs 162, 185 to 188, 192 to 199, 208 and 209). See also Opinion of Advocate General Sharpston in *Commission* v *RQ* (C-831/18 P, EU:C:2019:1143, points 54 and 55), and Opinion of Advocate General Hogan in *Auditors* v *Pinxten* (C-130/19, EU:C:2020:1052, points 28 and 32).

8 See, for example, judgments of 10 July 1969, *Sayag and Zurich* (9/69, EU:C:1969:37, paragraphs 9 and 10), and of 22 March 1990, *Le Pen and Front National* (C-201/89, EU:C:1990:133, paragraph 11).

safety, which could all be claimed to be necessary for the effective exercise of one's activities. However, the fact that such unfortunate events are capable of occurring in the workplace and involve one's colleagues or collaborators certainly does not mean that they are automatically carried out in an official capacity.

29. Thus, the sole criterion remains the *close connection* with the tasks entrusted to the institutions: simply put, a test of proximity. Indeed, a loose and purely contingent connection between the acts performed and the execution of official duties by the members of staff in question cannot be enough to trigger jurisdictional immunity.[9] Jurisdictional immunity is only warranted for acts that find their *raison d'être* in the official functions attributed to the member of staff in question, not for acts which could have also been performed in another, non-official context.

30. At the level of *procedure*, it will be for the national court seised of a dispute (or for any other competent national body) to examine the relevant facts in order to determine whether a given act of a member of staff was performed in his or her official capacity. It is true that that assessment may not always be straightforward, given that it requires a certain knowledge of the competences and internal functioning of the EU institutions. However, in cases where such an issue is pending before a national court, or it ultimately arrives there on judicial review, a request for a preliminary ruling under Article 267 TFEU for the purposes of interpretation of Article 11 of Protocol No 7 can always be made.[10]

31. However, in the context of the present case, most of these general considerations appear to be rather hypothetical, for two reasons.

32. First of all, in view of the facts of the case as set out by the referring court, the issue of whether the defendant's acts were performed 'in an official capacity' is unlikely to even arise in the present proceedings.

33. Indeed, pursuant to the statements made by the referring court, and in this regard confirmed by the submissions of the applicant, the damage alleged by the applicant *follows from* the fact that his employment relationship was terminated. Thus, the Commission's decision to terminate the applicant's contract appears to be the event that is said to have caused the alleged damage. The Commissioner would have certainly provided an input to the process which led to the applicant's dismissal, but the final decision to that end was adopted on 27 April 2016 by the Director-General of the Commission's Directorate-General for Human Resources and Security. Indeed, as the General Court correctly noted in its judgment in the case brought by the applicant, despite the loss of mutual trust between the two individuals, the Commission could have also decided to adopt measures other than dismissal, such as the assignment of the applicant to another post in the Commission.[11]

9 To that effect, by analogy, see judgment of 6 September 2011, *Patriciello* (C-163/10, EU:C:2011:543, paragraphs 35 and 36).

10 See, to that effect, judgment of 6 September 2011, *Patriciello* (C-163/10, EU:C:2011:543, paragraphs 22 and 23). Compliance by the national authorities with the rules set out in Protocol No 7 could ultimately also reach the Court indirectly, by way of infringement proceedings pursuant to Articles 258 to 260 TFEU: see, by analogy, order of 15 December 2020, *Junqueras i Vies* v *Parliament* (T-24/20, EU:T:2020:601, paragraph 84 and the case-law cited).

11 Judgment of 10 January 2019, *RY* v *Commission* (T-160/17, EU:T:2019:1, paragraph 38).

34. In other words, an inquiry into whether or not the defendant's acts were adopted in his 'official capacity' would have been relevant if the damage was flowing from or was attributable *directly* to those acts. Yet, in the present case, the chain of events is different: the Commission's decision to terminate the applicant's contract occurs in between the Commissioner's conduct, on the one hand, and the alleged damage, on the other, breaking the direct causal link between those two. It appears that the conduct of which the defendant complained is not the direct and determining cause of the damage.[12]

35. In short, the chain of events appears to be 'the loss of trust stated by the Commissioner – the Commission's decision – the alleged harm'. It does not appear to be 'the Commissioner's alleged wrongful act – the alleged harm'. Within such a scenario, it is not clear to me why there is any need to discuss the scope of the immunity enjoyed by the defendant, if the act causing the alleged damage (both material – the foregone income from the Commission, as well as non-material – the impact to his reputation[13]) is in fact an official decision of an EU institution, namely the Commission. In such circumstances, the proper defendant is clearly the author of the latter act, namely the Commission (or rather the European Union represented by the Commission).

36. Second, even assuming that an inquiry into the nature of the defendant's acts would in fact be necessary for the national court to dispose of the case, which on the basis of the first point outlined above does not appear to be the case, it seems rather clear that those acts have been performed by the defendant in his official capacity. Indeed, nothing in the request for a preliminary ruling or the applicant's submission suggests that the alleged damage flows from acts which are not directly connected to the defendant's exercise of his (then) official functions as Commissioner.

37. In fact, the opposite appears to be true. The alleged damage seems to flow, essentially, from the fact that the employment relationship was terminated because the defendant stated to have lost trust in the applicant. The grounds for which the applicant seeks compensation for material and non-material damage, and the amounts thereof, show rather clearly that no damage is alleged to result from acts which are separable from the termination of his employment.

38. In my view, the decision to terminate the applicant's contract, assuming that there is a previous and separate 'personal decision' of the Commissioner that could be seen as distinct from the official decision of the Commission thereafter which in fact terminated the contract, *quid non*, would in any case squarely fall within the concept of 'acts performed in an official capacity'.

39. It must be borne in mind that the applicant was hired, as a member of the Commission's temporary staff, to serve in the Cabinet of a Commissioner. As the General Court rightly stated in the judgment given in the first proceedings brought by the applicant, a Member of the Commission has a Cabinet which comprises of staff members who are his personal advisers. Those advisers are appointed *intuitu personae*, that is to say in a manner that is largely discretionary, with those concerned being selected both for their professional and personal qualities and for their ability to adapt to the methods of working specific to the Member of the Commission concerned and those of the whole of his Cabinet.[14]

40. In the same judgment, the General Court further stated that the broad discretion of the Member of the Commission to choose his staff is justified in particular by the specific nature of the duties carried out in the Cabinet of a Member of the Commission, and by the need to maintain relations of mutual confidence between the Member of the Commission and his staff.

12 According to settled EU case-law, there must be a direct causal link between the wrongful act and the damage in order to trigger the non-contractual liability of the Union (one may nonetheless assume that condition to be the same in the majority of other, including national legal orders): see, to that effect, judgment of 5 September 2019, *European Union* v *Guardian Europe* and *Guardian Europe* v *European Union* (C-447/17 P and C-479/17 P, EU:C:2019:672, paragraph 32 and the case-law cited).

13 As set out above in point 16 of this Opinion.

14 Judgment of 10 January 2019, *RY* v *Commission* (T-160/17, EU:T:2019:1, paragraph 31).

41. I agree. A Commissioner must be able to enjoy broad discretion in choosing the staff that are to serve in his or her Cabinet. Their ability to hire temporary staff by choosing individuals in which they can place their trust and, by the same logic, their ability to terminate an individual's employment contract when that relationship of trust breaks down, is crucial for the effective carrying out of their duties.

42. Therefore, the fact that the defendant decided that he no longer needed the services of the applicant, and that he justified that decision with the loss of confidence in the applicant, is an act performed by the defendant in his official capacity. There is a direct and clear link between that act and the Commissioner's execution of the tasks entrusted to him as Member of the Commission.

43. In summary, for the acts at issue in the main proceedings, absent a waiver by the Commission, the defendant cannot be validly sued before the referring court. In fact, in view of the immunity he enjoys by virtue of Article 11 of Protocol No 7, for such acts, *the defendant, in his personal capacity,* could not be sued by the applicant before *any* court.

44. However, pursuant to the first paragraph of Article 340 TFEU, it is for the *Union* to 'make good any damage caused by its institutions or by its servants in the performance of their duties'. As the Court has emphasised as far back as 1969, in respect of non-contractual liability, the Treaties provide for a 'uniform system' in compensating for damage caused by its institutions *and* by its servants in the performance of their duties. [15]

45. Thus, an individual such as the applicant is certainly not deprived of the possibility to obtain compensation before a judicial authority. [16] However, in an action based on non-contractual liability for acts such as those at issue in the main proceedings, the proper defendant is the European Union, to be represented by the EU institution whose conduct has allegedly caused the damage claimed to have been suffered. [17]

2. Court having jurisdiction

46. The conclusion set out above already provides an answer to the second point raised by the fourth question posed by the referring court. Indeed, in accordance with Article 268 TFEU, an action such as the one brought by the applicant in the main proceedings is to be brought before the Court of Justice of the European Union.

47. As the Court has consistently stated, the Court of Justice of the European Union has 'exclusive jurisdiction' in respect of actions for non-contractual liability against the Union. [18] National courts – such as the referring court – have, therefore, no jurisdiction in these type of actions. [19] The fact that the national legislation governing actions for damage may provide for special rules in certain situations (for example, when the damage flows from a criminal conduct) cannot call that conclusion in question. [20]

15 Judgment of 10 July 1969, *Sayag and Zurich* (9/69, EU:C:1969:37, paragraph 5).

16 Indeed, as the International Court of Justice noted in its Advisory Opinion of 29 April 1999 concerning the *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights* (I.C.J. Reports 1999, p. 62, at § 66), 'the question of immunity from legal process is distinct from the issue of compensation for any damages incurred as a result of acts performed by the United Nations or by its agents acting in their officia1 capacity'.

17 See judgment of 13 December 2018, *European Union* v *Kendrion* (C-150/17 P, EU:C:2018:1014, paragraph 33).

18 See, for example, judgments of 27 September 1988, *Asteris and Others* (C-106/87, EU:C:1988:457, paragraphs 14 and 15), and of 29 July 2010, *Hanssens-Ensch* (C-377/09, EU:C:2010:459, paragraph 17).

19 See, to that effect, judgments of 13 February 1979, *Granaria* (C-101/78, EU:C:1979:38, paragraph 16), and of 27 September 1988, *Asteris and Others* (C-106/87, EU:C:1988:457, paragraph 14).

20 See, to that effect, judgment of 29 July 2010, *Hanssens-Ensch* (C-377/09, EU:C:2010:459, paragraphs 23 to 26).

48. Having said that, I cannot help but notice that there is another head of jurisdiction that might be relevant in the present case.

49. Article 270 TFEU provides that 'the Court of Justice of the European Union shall have jurisdiction in any dispute between the Union and its servants within the limits and under the conditions laid down in the Staff Regulations of Officials and the Conditions of Employment of other servants of the Union'. Notably, that provision also provides for an *exclusive* jurisdiction of the Court of Justice of the European Union.

50. In application of Article 270 TFEU, Article 91(1) of the Staff Regulations – made applicable to temporary staff by Article 46 of the CEOS – states: 'the Court of Justice of the European Union shall have jurisdiction in any dispute between the Union and any person to whom these Staff Regulations apply regarding the legality of an act affecting such person adversely … In disputes of a financial character the Court of Justice shall have unlimited jurisdiction'.

51. In that regard, the Court has consistently stated that 'a dispute between an official and the institution by whom he is or she was employed, where it originates in the relationship of employment between that person and the institution, falls under Article 270 TFEU and Articles 90 and 91 of the Staff Regulations, even if it is a claim for compensation'. [21]

52. Against that backdrop, it seems to me that, on the facts as presented by the referring court, that provision could well be applicable in the case at hand, since the applicant was hired as a member of the Commission's temporary staff under Article 2(c) of the CEOS. [22] The applicant is in fact contesting the legality of the Commission's decision to terminate his employment contract, and indirectly of the conduct of a former Member of the Commission which led to the adoption of that decision, and seeks financial compensation for the damages allegedly suffered as the result thereof. In brief, the present dispute possesses a financial character, and originates from the employment relationship between the applicant and the Commission.

53. The case is, therefore, similar to previous cases in which the Court found that actions brought by actual or former members of staff, seeking to have an institution held liable for a certain wrongdoing and be ordered to pay a sum, where the dispute originates from the employment relationship between the person concerned and the institution, fall *ratione materiae* within the scope of Article 270 TFEU and Article 91(1) of the Staff Regulations. [23]

54. It is thus somewhat surprising that the applicant did not introduce a claim for compensation for non-contractual liability before the General Court, jointly with or in parallel to his actions seeking the annulment of the Commission's decisions to terminate his contract. [24] The claims brought in the two proceedings appear to be related. In the EU system of legal remedies, the jurisdiction to rule on a priority claim (for example, annulment of an unlawful act) normally implies jurisdiction to rule on any additional claim deriving from the same act or the same fact (for example, damages flowing from the wrongful act). [25] It is thus in the context of those proceedings before the General Court that the applicant could have validly raised any issue he may have against any fact that preceded his dismissal, including all acts of a preparatory nature (including those performed by the defendant).

21 See, inter alia, judgment of 10 September 2015, Review *Missir Mamachi di Lusignano* v *Commission* (C-417/14 RX-II, EU:C:2015:588, paragraph 38 and the case-law cited).

22 See above, point 9 of this Opinion.

23 See, in particular, judgment of 10 September 2015, Review *Missir Mamachi di Lusignano* v *Commission* (C-417/14 RX-II, EU:C:2015:588, paragraphs 39 to 41 and the case-law cited).

24 See above, points 12 and 14 of this Opinion.

25 Similarly, View of Advocate General Wathelet in Review *Missir Mamachi di Lusignano* v *Commission* (C-417/14 RX-II, EU:C:2015:593, point 48).

55. In conclusion, it is clear that an action for non-contractual liability, such as that initiated by the applicant before the referring court, irrespective of whether it is based on Articles 268 and 340 TFEU or on Article 270 TFEU, should be directed against the European Union and brought before the Court of Justice of the European Union.

56. Having said that, I shall now turn to the other questions referred, which can be answered rather concisely, and only for the sake of completeness.

B. First question

57. By its first question, the referring court asks whether the terms 'immunity from legal proceedings' ('ετεροδικία', 'eterodikia') and 'immunity' ('ασυλία', 'asylia'), included in Article 11(a), of the Greek version of Protocol No 7 have the same meaning.

58. This question was posed in the light of the arguments put forward by the applicant in the main proceedings. He argued that, in view of the two expressions used in the provision at issue, a *former* Commissioner does not enjoy a full immunity of jurisdiction, but rather a more limited form thereof. In his view, the latter form of immunity cannot, in accordance with national law (especially Article 3(2) of the Greek Code of Civil Procedure), 'shield' the defendant from procedures brought before national courts when the damage flows from a criminal offence.

59. Those arguments are ill-founded. As the defendant and the Commission correctly observe in their submissions, the doubts of the national court are merely due to the Greek version of Protocol No 7.

60. According to settled case-law, the need for a uniform interpretation of the provisions of EU law makes it impossible for the text of a provision to be considered in isolation, but requires, on the contrary, that it be interpreted and applied in the light of the versions existing in the other official languages,[26] and by reference to the purpose and general scheme of the rules of which it forms part.[27]

61. In the present case, a simple comparison of the different language versions of the protocol indicates that the two terms are meant to have the same meaning. One may compare the Greek version with, for instance, the Spanish ('*inmunidad de jurisdicción*/*dicha inmunidad*'), German ('*Befreiung von der Gerichtsbarkeit*/*diese Befreiung*'), English ('*immune from legal proceedings/this immunity*'), French ('*immunité de jurisdiction*/*cette immunité*'), or Italian ('*immunità di giurisdizione*/*questa immunità*') versions.

62. The purpose and context of the provision also confirms that reading. The first sentence of Article 11(a), of Protocol No 7 lays down the *material* scope of the immunity, whereas the second sentence regulates its *temporal* scope. In both cases, it is the *same* immunity, possessing the same scope.

63. Consequently, the first question should be answered to the effect that the terms 'immunity from legal proceedings' ('ετεροδικία', 'eterodikia') and 'immunity' ('ασυλία', 'asylia'), included in Article 11(a), of the Greek version of Protocol No 7 have the same meaning.

26 See, inter alia, judgment of 27 April 2017, *Onix Asigurări* (C-559/15, EU:C:2017:316, paragraph 39 and the case-law cited).

27 See, inter alia, judgment of 19 April 2007, *Profisa* (C-63/06, EU:C:2007:233, paragraph 14 and the case-law cited).

C. Second question

64. By its second question, the referring court essentially seeks to know whether the immunity from legal proceedings set out in Article 11 of Protocol No 7 also includes, in addition to criminal prosecutions, civil claims.

65. The answer to this question is also straightforward: as the defendant and the Commission argued (and contrary to what the applicant contended), the immunity granted by Article 11 *does* extend to civil claims. A textual, systematic and teleological reading of the provision supports that.

66. First, the wording of the provision clearly applies vis-à-vis (any) 'legal proceedings in respect of acts performed by them in their official capacity'. There is no limitation, in the text of the provision, regarding the type or nature (civil, criminal, administrative or, for that matters, any other) of the proceedings.

67. Second, a broad concept of 'immunity' is consistent with the rationale of the provision, and more generally with the functional nature of the special prerogatives enshrined in Protocol No 7. Those special prerogatives are intended to ensure that the EU institutions have full and effective protection against hindrances or risks to their proper functioning and independence.[28] More specifically, as follows from Article 17 of Protocol No 7, officials and other servants of the Union are accorded privileges, immunities and facilities '*solely* in the interest of the Union'.[29] Privileges and immunities are, in other words, granted in order to enable EU staff to perform their duties effectively and without external interference, and without having to fear prosecution for the acts they accomplish in the exercise of their duties.[30]

68. If that is so, it can hardly be disputed that the proper execution of the EU staff's tasks could be hampered not only by criminal proceedings, but also by administrative matters, or civil proceedings (including actions for non-contractual liability, such as that at issue in the main proceedings).

69. Third, the Court has interpreted the term 'legal proceedings', contained in Article 8 of Protocol No 7 (which concerns the immunity of the members of the European Parliament) as also precluding civil proceedings.[31] Given the similar wording and purpose of the two provisions, it would hardly be conceivable that that term should be given a different interpretation when used in Article 11 of the same protocol.

70. Fourth, I note, in passing, that the proposed interpretation of Article 11 of Protocol No 7 is also consistent with Article 31(1) of the Vienna Convention on Diplomatic Relations,[32] according to which 'a diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State' and, save exceptions, also 'from its civil and administrative jurisdiction'.

71. Therefore, the answer to the second question should be to the effect that the immunity from legal proceedings envisaged in Article 11 of Protocol No 7 covers any legal proceedings, including civil claims.

28 See, to that effect, judgment of 19 December 2019, *Junqueras Vies* (C-502/19, EU:C:2019:1115, paragraph 82 and the case-law cited).

29 My emphasis. That provision is an expression of the principle laid down in Article 343 TFEU, according to which the Union is to enjoy the privileges and immunities that are 'necessary for the performance of its tasks'.

30 See, inter alia, Opinion of Advocate General Gand in *Sayag and Zurich* (9/69, EU:C:1969:31, p. 339), and Opinion of Advocate General Poiares Maduro in *Marra* (C-200/07 and C-201/07, EU:C:2008:369, point 35).

31 See, by analogy, judgments of 21 October 2008, *Marra* (C-200/07 and C-201/07, EU:C:2008:579), and of 6 September 2011, *Patriciello* (C-163/10, EU:C:2011:543, paragraph 34). Similarly, Opinion of Advocate General Jääskinen in *Patriciello* (C-163/10, EU:C:2011:379, point 51): 'it covers all forms of legal liability, in particular criminal and civil liability'.

32 Concluded in Vienna on 18 April 1961, and entered into force on 24 April 1964 (United Nations, Treaty Series, vol. 500, p. 95). Although that convention applies to States only, it is generally considered that International Organisations too must enjoy similar immunities: see, for example, European Court of Human Rights, 18 February 1999, *Waite and Kennedy v. Germany* (CE:ECHR:1999:0218JUD002608394, §63), and 27 June 2013, *Stichting Mothers of Srebrenica and Others v. the Netherlands* (CE:ECHR:2013:0611DEC006554212, §139).

D. Third question

72. Finally, the third question concerns the waiver of the immunity from legal proceedings. The referring court asks whether that waiver may also be requested in the context of a civil action and, if so, who must initiate the procedure in question.

73. Again, the wording of Article 17 of Protocol No 7 contains no limitation as to the type of proceedings initiated vis-à-vis officials and other servants of the Union in respect of which a waiver may be requested. Therefore, I see no reason to consider that a waiver could only be requested in the context of criminal proceedings.

74. Nor do I see any logic for supporting such a distinction. As explained in point 67 above, privileges and immunities are granted to EU staff in the interest of the Union, in order to enable that staff to perform their duties effectively, without having to fear (civil, criminal, administrative or other) legal proceedings for the acts they accomplish in that context. There may thus naturally be situations in which the Union decides that the initiation and carrying out of such legal proceedings – be it of a civil, criminal or other nature – is not contrary to its interest.

75. Accordingly, a waiver may well be requested in the context of a civil action.

76. As regards, then, the body that must initiate the procedure to request a waiver, the provisions of the protocol neither regulate how the procedure for requesting a waiver ought to be carried out at national level, nor identify the national authorities which are competent to that end. I note that the Vienna Convention on Diplomatic Relations equally does not contain any rule in that respect.[33]

77. That is, in view of the possible variety of scenarios in which such a waiver may be requested and by which national body, rather understandable. Who exactly would be the competent body at national level will depend on the (civil, criminal, administrative or other) nature of the proceedings. It follows that, absent any EU rule on this matter, those aspects cannot but be governed by national law, in accordance with the principle of procedural autonomy.

78. Looking at the practice of various Member States, as it can be seen, for example, from the decisions of the European Parliament concerning the waivers requested for its Members, or from the cases which have reached the EU Courts,[34] it appears that waivers are normally requested by the judicial authorities responsible for the matter (in particular, the court having jurisdiction in the dispute, or the public prosecutor in charge of the investigation and/or prosecution).

79. However, even if the provisions of Protocol No 7 do not regulate the procedural phase at national level, they do regulate the 'EU-side' of the procedure. Indeed, Article 17 thereof indicates that, when a waiver is requested, it is for each institution of the Union to consider whether 'the waiver of such immunity is not contrary to the interests of the Union'. In the present case, should a waiver be requested, it would be for the European Commission (as the College of Commissioners), to examine that request and take a decision on it.

33 See above, footnote 32. With regard to waivers, see Article 32 thereof. In general on that provision, see Denza, E., *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations*, 4th ed., Oxford University Press, 2016, pp. 273-287.

34 See, for example, judgments of 24 October 2018, *RQ* v *Commission* (T-29/17, EU:T:2018:717, paragraphs 5 and 6); of 19 December 2019, *Junqueras Vies* (C-502/19, EU:C:2019:1115, paragraph 92); and of 17 September 2020, *Troszczynski* v *Parliament* (C-12/19 P, EU:C:2020:7, paragraph 10).

80. Clearly, the decision of whether or not the granting of a waiver would be contrary to the interests of the Union is a largely political one. It requires an evaluation of the impact that the legal proceedings sought against a member of staff may have on the integrity of the relevant institution. Thus, the competent EU institutions enjoy wide discretion in that assessment. [35]

81. I thus propose to answer the third question to the effect that a waiver of the immunity from legal proceedings may also be requested in the context of a civil action. It is for national law to determine the authorities that have the competence to make such a request.

V. Conclusion

82. I propose that the Court answer the questions referred for a preliminary ruling by the Polymeles Protodikeio Athinon (Court of First Instance, Athens, Greece) as follows:

(1) The terms 'immunity from legal proceedings' ('ετεροδικία', 'eterodikia') and 'immunity' ('ασυλία', 'asylia'), contained in Article 11(a), of the Greek version of Protocol No 7 have the same meaning.

(2) The immunity from legal proceedings set out in Article 11 of Protocol No 7 includes civil claims.

(3) A waiver of the immunity from legal proceedings, set out in Article 17 of Protocol No 7, may be requested in the context of a civil action. It is for national law to determine the authorities that have the competence to make such a request.

(4) An action for non-contractual liability brought by a former member of the temporary staff of the Union for the recovery of damage allegedly caused to him by the improper termination of his contract should be directed against the European Union and brought before the Court of Justice of the European Union.

35 See, to that effect, judgment of 8 November 2018, *Troszczynski* v *Parliament* (T-550/17, EU:T:2018:754, paragraph 43 and the case-law cited).