

DECISION OF THE COURT
(special Chamber provided for in Article 123b of the Rules of Procedure)

8 February 2011

In Case C-17/11 RX,

PROPOSAL TO REVIEW made by the First Advocate General, under Article 62 of the Statute of the Court of Justice of the European Union, on 12 January 2011,

THE COURT (special Chamber provided for in Article 123b of the Rules of Procedure of the Court),

composed of V. Skouris, President, A. Tizzano (Rapporteur), J.N. Cunha Rodrigues, K. Lenaerts and J.-C. Bonichot, Presidents of Chambers,

makes the following

Decision

- ¹ The proposal to review made by the First Advocate General concerns the judgment of the General Court of the European Union (Appeal Chamber) of 16 December 2010 in Case T-143/09 P *Commission v Petrilli*, in which the General Court dismissed the ap-

peal brought by the Commission of the European Communities against the judgment of the European Union Civil Service Tribunal (Second Chamber) of 29 January 2009 in Case F-98/07 *Petrilli v Commission*.

- 2 The judgment whose review is proposed allegedly shows a divergence in the case-law of the General Court of the European Union with regard to the conditions governing the non-contractual liability of the European Union in staff cases, in particular as regards the condition relating to the existence of a sufficiently serious breach of European Union law by the institution concerned. In that judgment, the General Court held, departing from the decision to the contrary in its judgment of 10 December 2008 in Case T-57/99 *Nardone v Commission*, that this condition is fulfilled when the institution concerned commits an unlawful act, without its being necessary to consider whether that unlawful act constitutes a manifest and grave disregard of the limits on the discretion of that institution.

- 3 In addition, although the Court has already specified the general conditions governing the non-contractual liability of the European Union (see, in particular, Case C-352/98 P *Bergaderm and Goupil v Commission* [2000] ECR I-5291), it is argued that the Court has however not yet ruled on whether the specific nature of litigation in staff cases arising from Article 270 TFEU and Articles 90 and 91 of the Staff Regulations of Officials of the European Communities justifies making the non-contractual liability of the European Union in this area subject to special conditions.

- 4 Such circumstances do not justify the proposed review. First, it is not for the Court of Justice, in the context of the review procedure, to rule on the merits of the General Court's development of its own case-law when acting in its appellate capacity. Second, the fact that the Court of Justice has not yet ruled on a point of law is, in itself, not sufficient to justify a review pursuant to Article 62 of the Statute of the Court of Justice of the European Union, in so far as it is now solely for the Civil Service Tribunal and the General Court of the European Union to develop the case-law in matters relating to the civil service, since the Court of Justice has jurisdiction only to prevent the decisions of the General Court affecting the unity or consistency of European Union law.

- 5 In the present case, examination of the judgment of the General Court in *Commission v Petrilli* has not revealed that there is a serious risk of the unity or consistency of European Union law being affected.

On those grounds, the Court (special Chamber provided for in Article 123b of the Rules of Procedure) hereby decides:

It is not necessary to review the judgment of the General Court of the European Union of 16 December 2010 in Case T-143/09 P *Commission v Petrilli*.

[Signatures]