



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

19 December 2019*

(Appeal — Civil service — Staff Regulations of Officials of the European Union — Article 1d — First paragraph of Article 17 of Annex VIII — Pension for the surviving spouse — Conditions for granting — Concept of ‘surviving spouse’ of a Union official — Marriage and non-marital partnership — Cohabitation — Principle of non-discrimination — Comparable situation — None — Condition of duration of marriage — Combating fraud — Justification)

In Case C-460/18 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 12 July 2018,

HK, residing in Espartinas-Seville (Spain), represented by S. Rodrigues and A. Champetier, avocats,
appellant,

the other parties to the proceedings being:

European Commission, represented by G. Gattinara and B. Mongin, acting as Agents,
defendant at first instance,

Council of the European Union, represented by M. Bauer and R. Meyer, acting as Agents,
intervener at first instance,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, R. Silva de Lapuerta, Vice-President of the Court, M. Safjan, L. Bay Larsen (Rapporteur) and C. Toader, Judges,

Advocate General: P. Pikamäe,

Registrar: V. Giacobbo-Peyronnel, Administrator,

having regard to the written procedure and further to the hearing on 8 May 2019,

after hearing the Opinion of the Advocate General at the sitting on 29 July 2019,

gives the following

* Language of the case: French.

Judgment

- 1 By his appeal, HK seeks to have set aside the judgment of the General Court of the European Union of 3 May 2018, *HK v Commission* (T-574/16, not published, EU:T:2018:252; ‘the judgment under appeal’), by which the General Court dismissed his action for, first, annulment of the decision of the European Commission refusing to grant him the benefit of the survivor’s pension (‘the contested decision’) and, in so far as necessary, of the Commission’s decision rejecting his complaint and, second, compensation for the material and non-material damage allegedly suffered.

Legal context

Directive 2000/78/EC

- 2 Article 1 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16), headed ‘Purpose’, states:

‘The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.’

- 3 Article 2 of that directive, entitled ‘Concept of discrimination’, provides:

‘1. For the purposes of this Directive, the “principle of equal treatment” shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

...’

Staff Regulations

- 4 Under Article 1d of the Staff Regulations of Officials of the European Union, in the version applicable to the present dispute (‘the Staff Regulations’):

‘1. In the application of these Staff Regulations, any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation shall be prohibited.

For the purposes of these Staff Regulations, non-marital partnerships shall be treated as marriage provided that all the conditions listed in Article 1(2)(c) of Annex VII are fulfilled.

...

5. Where persons covered by these Staff Regulations, who consider themselves wronged because the principle of equal treatment as set out above has not been applied to them, establish facts from which it may be presumed that there has been direct or indirect discrimination, the onus shall be on the institution to prove that there has been no breach of the principle of equal treatment. This provision shall not apply in disciplinary proceedings.

6. While respecting the principle of non-discrimination and the principle of proportionality, any limitation of their application must be justified on objective and reasonable grounds and must be aimed at legitimate objectives in the general interest in the framework of staff policy. Such objectives may in particular justify stipulating a mandatory retirement age and a minimum age for drawing a retirement pension.'

5 The first paragraph of Article 79 of the Staff Regulations states that:

'The surviving spouse of an official or of a former official shall be entitled in the manner provided for in chapter 4 of Annex VIII to a survivor's pension equal to 60% of the retirement or disability pension which was paid to the deceased, or which, irrespective of length of service or of age, would have been payable to him if he had qualified for it at the time of his death.'

6 Article 91(2) of the Staff Regulations provides:

'An appeal to the Court of Justice of the European Union shall lie only if:

- the appointing authority has previously had a complaint submitted to it pursuant to Article 90(2) within the period prescribed therein, and
- the complaint has been rejected by express decision or by implied decision.'

7 Article 1(2) of Annex VII to the Staff Regulations provides:

'The household allowance shall, be granted to:

...

(c) an official who is registered as a stable non-marital partner, provided that:

- (i) the couple produces a legal document recognised as such by a Member State, or any competent authority of a Member State, acknowledging their status as non-marital partners,
- (ii) neither partner is in a marital relationship or in another non-marital partnership,
- (iii) the partners are not related in any of the following ways: parent, child, grandparent, grandchild, brother, sister, aunt, uncle, nephew, niece, son-in-law, daughter-in-law,
- (iv) the couple has no access to legal marriage in a Member State; a couple shall be considered to have access to legal marriage for the purposes of this point only where the members of the couple meet all the conditions laid down by the legislation of a Member State permitting marriage of such a couple;

...'

8 Article 17 of Annex VIII to the Staff Regulations reads as follows:

'Where an official dies having one of the administrative statuses set out in Article 35, of the Staff Regulations the surviving spouse shall be entitled, provided that the couple were married for at least one year at the time of his death and subject to the provisions of Articles 1(1) and 22, to a survivor's pension equal to 60% of the retirement pension which the official would have been paid if he had qualified, irrespective of length of service or of age, for such pension at the time of death.

The duration of the marriage shall not be taken into account if there are one or more children of the marriage or of a previous marriage of the official provided that the surviving spouse maintains or has maintained those children, or if the official's death resulted either from physical disability or sickness contracted in the performance of his duties or from accident.'

Background to the dispute

- 9 HK, the appellant, and Ms N. began their life together in 1994, residing in Liège (Belgium).
- 10 Ms N. was an official of the European Commission and had been assigned to the Joint Research Centre (JRC) in Seville (Spain) from 16 May 2005.
- 11 Due to his health problems, the appellant was prevented from working or engaging in training. He regularly received money from Ms N.
- 12 The appellant and Ms N were married in Liège on 9 May 2014.
- 13 Ms N. died on 11 April 2015.
- 14 After Ms N.'s death, the Commission informed the appellant orally that he was not entitled to a survivor's pension.
- 15 On 15 June 2015, the appellant lodged a prior administrative complaint against the contested decision. By decision of 15 September 2015, the Commission rejected that complaint.

The procedure before the General Court and the judgment under appeal

- 16 By application lodged at the Registry of the Civil Service Tribunal on 23 December 2015, the appellant brought an action for the annulment of the contested decision and for compensation for the material and non-material damage allegedly suffered.
- 17 By letter received at the Registry of the Civil Service Tribunal on 18 February 2016, the Council of the European Union requested leave to intervene in that case in support of the form of order sought by the Commission. The President of the First Chamber of the Civil Service Tribunal granted that leave by order of 13 April 2016.
- 18 Pursuant to Article 3 of Regulation (EU, Euratom) 2016/1192 of the European Parliament and of the Council of 6 July 2016 on the transfer to the General Court of jurisdiction at first instance in disputes between the European Union and its servants (OJ 2016 L 200, p. 137), that case was transferred to the General Court of the European Union as it stood on 31 August 2016.
- 19 In support of his claims for annulment of the contested decision and, 'so far as necessary', of the decision rejecting the complaint of 15 June 2015, the appellant pleaded, by way of objection, that the first paragraph of Article 17 of Annex VIII to the Staff Regulations was unlawful, claiming, first, that the criterion of marriage or non-marital partnership, of more than 1 year, is arbitrary and inadequate having regard to the purpose of the survivor's pension, and that that article is unlawful in so far as it infringes Article 21 of the Charter of Fundamental Rights of the European Union ('the Charter') and Article 2 of Directive 2000/78.
- 20 The appellant also sought an order that the Commission pay compensation for his material damage and for his non-material damage, which was assessed *ex aequo et bono* at EUR 5 000.

21 By the judgment under appeal, the General Court dismissed the action in its entirety and ordered the appellant to pay the costs.

Forms of order sought by the parties before the Court

22 By the appeal, the appellant claims that the Court of Justice should:

- set aside the judgment under appeal;
- dispose of the case itself by upholding his claims made at first instance, including the claim that the Commission be ordered to pay the costs; or in the alternative
- refer the case back to the General Court for a ruling and, in those circumstances, make an order as to the costs of the appeal in accordance with Article 184 of the Rules of Procedure of the General Court.

23 The Commission contends that the Court should:

- dismiss the appeal; and
- order the appellant to pay all the costs.

The appeal

24 In support of his appeal, the appellant relies on two grounds of appeal, the first alleging infringement of the first paragraph of Article 17 of Annex VIII to the Staff Regulations and an ambiguous, inconsistent and contradictory statement of reasons in the judgment under appeal, and the second alleging infringement of the principle of non-discrimination and insufficient reasoning of that judgment.

Admissibility

25 The Commission and the Council maintained at the hearing that, in his application to the General Court, the appellant pleaded, by way of objection, that the first paragraph of Article 17 of Annex VIII to the Staff Regulations was unlawful, by which he claimed that that article was discriminatory on the ground that the award of the survivor's pension was conditional on the existence of a matrimonial relationship between the persons concerned. In support of the first ground of appeal, the appellant now claims that the first paragraph of Article 17 does not allow the survivor's pension only for married couples. According to the Commission and the Council, that ground had not been discussed before the General Court and is therefore of a new nature, making it inadmissible.

26 In that regard, it should be observed that, according to settled case-law, to allow a party to put forward for the first time before the Court of Justice pleas and arguments which it did not raise before the General Court would be to authorise it to bring before the Court of Justice, whose jurisdiction in appeals is limited, a case of wider ambit than that which came before the General Court. In an appeal, the Court's jurisdiction is therefore confined to review of the findings of law on the pleas and arguments argued before the first courts (judgment of 1 June 1994, *Commission v Brazzelli Lualdi and Others*, C-136/92 P, EU:C:1994:211, paragraph 59, and of 8 November 2016, *BSH v EUIPO*, C-43/15 P, EU:C:2016:837, paragraph 43).

- 27 However, where a ground of appeal is admissible, it is in principle for the appellant to set out arguments in support of it as he or she sees fit, whether by relying on arguments already used before the General Court or by developing new arguments, in particular in relation to the positions adopted by that Court. Otherwise, the appeal procedure would be deprived of part of its purpose (judgment of 18 January 2007, *PKK and KNK v Council*, C-229/05 P, EU:C:2007:32, paragraph 64 and the case-law cited).
- 28 In the present case, it is clear that the interpretation of the first paragraph of Article 17 of Annex VIII to the Staff Regulations and its application to the appellant's circumstances were discussed in the proceedings at first instance. The present ground of appeal is intended to challenge in detail the interpretation and application made by the General Court of that article and does not constitute a new ground of appeal whose production at the appeal stage would be prohibited.
- 29 It follows that the first ground of appeal is admissible.

Substance

Arguments of the parties

- 30 The appellant claims that the judgment under appeal is vitiated by ambiguous, inconsistent and contradictory reasoning. In that respect, he takes the view that, in response to his first plea that the criterion of marriage or non-marital partnership was arbitrary and inadequate, the General Court adopted an erroneous reasoning by establishing an 'unequivocal' link between the concept of 'spouse', within the meaning of the first paragraph of Article 17 of Annex VIII to the Staff Regulations, and that of 'marriage'. The General Court thus added a condition to the application of that provision, which did not make the benefit of the survivor's pension in favour of the surviving spouse of a deceased official subject to the existence of a marital relationship between those two persons. The appellant claims that positive law has evolved, with several national laws having brought the form of marriage closer to that of other forms of union, such as cohabitation or non-marital partnership.
- 31 In addition, the Union's legislation itself has evolved, in particular in the context of the reform of the Staff Regulations in 2004, with the amendment, in particular, of the first paragraph of Article 1d thereof. Indeed, the Union legislature has added the reference to sexual orientation, allowing officially registered same-sex partners to benefit, under certain conditions, from the advantages conferred by the Staff Regulations, in the same way as married persons.
- 32 According to the appellant, the General Court could therefore not validly consider, in paragraph 30 of the judgment under appeal, that the provisions of the Staff Regulations relevant for the settlement of the dispute, including the first paragraph of Article 17 of Annex VIII, contain concepts of Union law such as those of 'marriage' and 'spouse' referring exclusively to a relationship based on civil marriage in the traditional sense.
- 33 Furthermore, in the appellant's view, the judgment under appeal is contradictory in that the General Court also pointed out, in paragraph 28 of that judgment, that marriage is not 'in principle' comparable to cohabitation or other de facto situations. Accordingly, the General Court recognised that there are situations in which marriage may be comparable to those other types of union. However, it did not draw any inferences from that possibility in order to assess whether, in the present case, the union which the appellant had with the deceased official was comparable to a marital union and whether he could be regarded as a 'surviving spouse' within the meaning of the first paragraph of Article 17 of Annex VIII to the Staff Regulations, a fortiori in so far as he could prove the existence and duration of his living together with Ms N.

- 34 Moreover, in paragraph 47 of the judgment under appeal, the General Court inferred from paragraph 22 of that judgment that the condition for granting the survivor's pension is not based on the loss of the deceased official's remuneration, but on the legal nature of the relationship between the official and her surviving spouse or partner. In so ruling, the General Court was correct to consider that the concepts of 'spouse' and 'partner' are equivalent.
- 35 The Commission contends that the interpretation of concepts contained in the Staff Regulations cannot oblige the Union courts to take national legislation into consideration. It states that non-marital partnerships may, in certain cases, confer rights on the unmarried partner, but only if the conditions laid down in the Staff Regulations are met. The latter would make the recognition of a 'non-marital partnership' conditional on evidence of living together characterised by a certain stability and on compliance with the conditions laid down in Article 1(2)(c) of Annex VII to the Staff Regulations, in particular the impossibility of getting married. It would be solely if all the conditions listed in that article were met that, under the second subparagraph of Article 1d(1) of the Staff Regulations, non-marital partnerships would be treated in the same way as marriage. However, according to the Commission, the appellant does not demonstrate that he fulfils all those conditions.
- 36 As regards the alleged flaws in the reasoning of the judgment under appeal, the Commission takes the view that paragraph 47 of that judgment is neither ambiguous nor contradictory. By that paragraph, the General Court calls for account to be taken of the legal nature of the relationships existing between the partners, that is either the existence of a marriage, which makes receipt of the survivor's pension possible, or the existence of a partnership, as indicated by the conjunction 'or'. The interpretation that the General Court had, in that respect, treated the 'surviving partner' in the same way as the 'spouse' is, in the Commission's view, contradicted by that judgment as a whole.

Findings of the Court

- 37 By his first ground of appeal, the appellant claims that the judgment under appeal is vitiated by reasoning which is ambiguous, incoherent and contradictory. Although in some paragraphs of that judgment the concept of 'spouse', referred to in the first paragraph of Article 17 of Annex VIII to the Staff Regulations, refers only to the married person, in other paragraphs of that judgment the General Court applied that concept also to the 'partner'.
- 38 It has consistently been held that the statement of the reasons on which a judgment of the General Court is based must clearly and unequivocally disclose the General Court's reasoning in such a way as to enable the persons concerned to ascertain the reasons for the decision taken and the Court of Justice to exercise its power of review (see, to that effect, judgment of 14 October 2010, *Deutsche Telekom v Commission*, C-280/08 P, EU:C:2010:603, paragraphs 135 and 136, and order of 4 June 2019, *Aldo Supermarkets v EUIPO*, C-822/18 P, not published, EU:C:2019:466, paragraph 18).
- 39 The question whether the grounds of a judgment of the General Court are contradictory or inadequate is a question of law which is amenable, as such, to judicial review on appeal (judgments of 17 December 1998, *Baustahlgewebe v Commission*, C-185/95 P, EU:C:1998:608, paragraph 25, and of 23 January 2019, *Klement v EUIPO*, C-698/17 P, not published, EU:C:2019:48, paragraph 29).
- 40 In his application to the General Court, the appellant raised, by way of objection, two pleas in law alleging the unlawfulness of Article 17 of Annex VIII to the Staff Regulations in so far as that article, on the one hand, provides for an allegedly 'arbitrary and inadequate' criterion for determining entitlement to a survivor's pension and, on the other hand, infringes Article 21 of the Charter and Article 2 of Directive 2000/78.
- 41 In order to rule on these pleas, the General Court examined the personal scope of the first paragraph of Article 17 of Annex VIII to the Staff Regulations.

- 42 In that respect, the General Court stated, in paragraph 22 of the judgment under appeal, that that article lays down, ‘first, a condition relating to the marital status which is to be the surviving spouse of the deceased official and, second, a condition relating to the duration of that status, that is, to have been her spouse for at least 1 year’.
- 43 The General Court noted, in paragraph 23 of that judgment, that the ‘provisions of the first paragraph of Article 17 of Annex VIII to the Staff Regulations are clear and precise and set out, without ambiguity, the conditions for receiving a survivor’s pension, namely that the deceased official must have been married for at least 1 year’. In paragraph 25 of that judgment, the General Court clarified that ‘according to its legal definition as much as in its ordinary sense, the term “spouse” refers to a person who has formally contracted a civil “marriage” recognised by law, with all the rights and obligations arising therefrom’.
- 44 The Court added, in paragraph 29 of the judgment under appeal, that the ‘concepts of “non-marital partnership” or “cohabitation” differ from that of “marriage”, the delineation of which is clearly defined in all the Member States’.
- 45 Consequently, in paragraph 30 of that judgment, the General Court considered that the provisions of the Staff Regulations relevant to the settlement of the dispute, including the first paragraph of Article 17 of Annex VIII to the Staff Regulations, ‘contain Community concepts such as those of “marriage” and “spouse” exclusively referring to a relationship based on civil marriage in the traditional sense of the term’.
- 46 Thus, in those various paragraphs on the grounds, the Court held that the first paragraph of Article 17 of Annex VIII to the Staff Regulations applied only to a person who had entered into a civil marriage recognised by law.
- 47 However, in paragraph 32 of the judgment under appeal, the Court held that, ‘by limiting the award of the survivor’s pension to persons married under civil law and to registered partners not having access to marriage, the Union legislature did not act in an arbitrary manner’.
- 48 Consequently, in that paragraph of the grounds of the judgment under appeal, contrary to what it held in paragraph 30 thereof, the General Court considered, without giving reasons for its assessment in this respect, that the first paragraph of Article 17 of Annex VIII to the Staff Regulations covered not only married persons but also registered partners.
- 49 Moreover, in paragraph 47 of the judgment under appeal, the General Court observed that it followed from paragraph 22 of that judgment that ‘it is not the loss of the deceased official’s remuneration which constitutes the condition for granting the survivor’s pension, but the legal nature of the relationship between the official and her surviving spouse or partner’.
- 50 In those circumstances, the reasoning of the judgment under appeal does not make the General Court’s rationale clear and understandable as to the determination of the persons coming within the scope of the first paragraph of Article 17 of Annex VIII to the Staff Regulations.
- 51 However, as the Advocate General stated in point 50 of his Opinion, the question of the personal scope of that article is closely linked to the question of the comparable nature of the situations weighed up for the purposes of examining the compatibility of that article with the general principle of non-discrimination.

- 52 Consequently, in the light of the case-law referred to in paragraphs 38 and 39 of the present judgment, it must be held that the General Court infringed the obligation to state reasons, since the ambiguous grounds of the judgment under appeal do not allow, on the one hand, the appellant to understand the General Court's reasoning on the scope of application of the first paragraph of Article 17 of Annex VIII to the Staff Regulations and, on the other, the Court of Justice to exercise its review.
- 53 It follows from all the foregoing that the first ground of appeal made by the appellant must be upheld and, therefore, that the judgment under appeal must be set aside, without there being any need to examine the appellant's second ground of appeal.

The action before the General Court

- 54 In accordance with the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, in the event that the Court of Justice sets aside the decision of the General Court, it may itself give final judgment in the matter, where the state of the proceedings so permits.
- 55 That is the case with the present proceedings.

Admissibility

- 56 In its defence before the General Court, the Commission stated that the pleas raised by the appellant were inadmissible on the ground that they differed from those relied on in support of the prior administrative complaint and that, as a result, the 'rule of concordance' between such a prior administrative complaint and the subsequent contentious action was not recognised.
- 57 However, at the hearing before the General Court on 19 October 2017, the Commission waived its right to challenge the admissibility of those pleas.
- 58 In those circumstances, there is no need to address the other pleas put forward before the General Court.

Substance

The claim for annulment of the contested decision

– Arguments of the parties

- 59 In support of his claim for annulment, the appellant submits, first, that the purpose of the survivor's pension is to enable the person who has received the income of a Union official, during the life which he or she has shared with the latter, to partially compensate for the loss of income caused by the death of the official. The appellant acknowledges that being married or having entered into a non-marital partnership does not necessarily imply that the surviving spouse or partner has benefited from the deceased official's income whilst living together and therefore that he or she needs a replacement income.
- 60 He indicates that this is the case, however, when, as here, the surviving spouse or partner was dependent on the deceased official's income. Accordingly, he claims that, suffering from health problems, he was prevented from working or taking training from 2013 onwards and that he was exclusively dependent on Ms N.'s income.

- 61 The appellant submits that the first paragraph of Article 17 of Annex VIII to the Staff Regulations is unlawful in that, under the conditions for granting the survivor's pension, it provides that the appellant must have been married or in a non-marital partnership with the deceased official for at least 1 year. In his view, those conditions are arbitrary and inadequate having regard to the aim of the survivor's pension. Thus, a surviving spouse who has been married for a period of 1 year and 1 day would receive the survivor's pension, while a surviving cohabiting partner who has shared the life and income of an official for several decades would not be entitled to that pension.
- 62 Second, the appellant submits that there are similarities between *de facto* unions and legal unions. Some Belgian legal commentators and case-law state that there are natural obligations between cohabitants. The recognition of those obligations, which could become civil obligations, would make it possible to consider that the situation of married couples and cohabitants is similar, at least if there is financial assistance by one of the cohabitants in favour of the other, during a stable and long-term relationship, as is the case here.
- 63 Consequently, according to the appellant, the difference in treatment between surviving spouses and surviving cohabitants, as provided for in the first paragraph of Article 17 of Annex VIII to the Staff Regulations, is discriminatory. In this respect, the appellant refers to the Court's judgment of 1 April 2008, *Maruko* (C-267/06, EU:C:2008:179).
- 64 In the appellant's view, the first paragraph of Article 17 of Annex VIII to the Staff Regulations therefore infringes Article 21 of the Charter and Article 2 of Directive 2000/78 and, consequently, the contested decision, adopted on its basis, should be annulled.
- 65 The Commission and the Council, as interveners, submit that the grounds of appeal made by the appellant must be rejected.

– *Findings of the Court*

- 66 According to settled case-law, the principle of non-discrimination requires that comparable situations must not be treated differently and different situations must not be treated alike unless such treatment is objectively justified (judgment of 20 June 2019, *Ustariz Aróstegui*, C-72/18, EU:C:2019:516, paragraph 28 and the case-law cited).
- 67 The comparability of different situations must be assessed with regard to all the elements which characterise them. Those elements must, in particular, be determined and assessed in the light of the subject matter and purpose of the EU act which makes the distinction in question. The principles and objectives of the field to which the act relates must also be taken into account (judgment of 16 December 2008, *Arcelor Atlantique et Lorraine and Others*, C-127/07, EU:C:2008:728, paragraph 26, and of 6 June 2019, *P. M. and Others*, C-264/18, EU:C:2019:472, paragraph 29).
- 68 In the present case, the purpose of the survivor's pension referred to in the first paragraph of Article 17 of Annex VIII to the Staff Regulations is to grant the 'surviving spouse' a replacement income intended to partially compensate for the loss of the deceased spouse's income.
- 69 As the Advocate General pointed out in point 90 of his Opinion, it follows from the wording of the first paragraph of Article 17 of Annex VIII to the Staff Regulations, read in conjunction with the second paragraph of Article 1d(1) of the Staff Regulations and Article 1(2)(c) of Annex VII to the Staff Regulations, that entitlement to a survivor's pension is not subject to conditions of resources or assets which should characterise the surviving spouse's inability to meet his needs and thereby demonstrate his past financial dependence on the deceased.

- 70 The grant of the survivor's pension, in contrast, depends solely on the legal nature of the ties between the person concerned and the deceased official (see, to that effect, judgment of 31 May 2001, *D and Sweden v Council*, C-122/99 P and C-125/99 P, EU:C:2001:304, paragraph 47).
- 71 Thus, the condition laid down in the first paragraph of Article 17 of Annex VIII to the Staff Regulations to determine the personal scope of that provision, namely the fact of being the 'spouse' of the deceased official, implies that the recipient of the survivor's pension must have been connected to the deceased official in a civil relationship which has given rise to a set of rights and obligations between them.
- 72 In that regard, it follows from the Court's case-law that although de facto unions and legally recognised unions, such as marriage, may display similarities in certain respects, those similarities do not necessarily mean that those two types of union must be treated in the same way (judgment of 15 April 2010, *Gualtieri v Commission*, C-485/08 P, EU:C:2010:188, paragraph 75).
- 73 Marriage is characterised by rigorous formalism and creates reciprocal rights and obligations between the spouses, of a high degree, including the duties of assistance and solidarity.
- 74 In addition, the Union legislature has explicitly extended the application of the provisions of the Staff Regulations relating to married persons, under certain conditions, to persons linked by a registered non-marital partnership.
- 75 Accordingly, under the second paragraph of Article 1d(1) of the Staff Regulations, for the purposes of those Regulations, non-marital partnerships are to be treated as marriage provided that all the conditions listed in Article 1(2)(c) of Annex VII of the Staff Regulations are fulfilled. The conditions provided for in that article include in particular the fact that the couple provide an official document recognised as such by a Member State or by any competent authority of a Member State, certifying their status as non-marital partners, and that the couple does not have access to legal marriage in a Member State.
- 76 That provision therefore requires, in order for a registered non-marital partnership to be treated as marriage within the meaning of the Staff Regulations, that an official registered as a stable non-marital partner satisfies the legal conditions laid down in that article.
- 77 It follows from the first paragraph of Article 17 of Annex VIII to the Staff Regulations, read in conjunction with the second paragraph of Article 1d(1) thereof, that, where the conditions laid down in the latter provision are met, a non-marital partner is entitled to receive a survivor's pension following the death of his or her partner.
- 78 In contrast, a de facto union, such as cohabitation, does not satisfy those characteristics in so far as, as the Advocate General stated, in essence, in point 94 of his Opinion, a de facto union is not, in principle, the subject of a statute laid down by law.
- 79 In his application, the appellant claims, first, that the situation of married couples and that of cohabitants is similar, with some Belgian legal commentators and case-law finding that it is necessary to recognise the existence of natural obligations between cohabitants, which tend to become legal obligations.
- 80 In that regard, without it being necessary to rule on the existence of such natural obligations under Belgian law, it is sufficient to note that the appellant does not claim, in any event, that cohabitation would give rise, under that national law, to obligations of the same nature as those arising from marriage.

- 81 Consequently, it cannot be considered that it follows from the argument thus made that the Union legislature could not validly decide to subject situations of cohabitation and marriage to a separate scheme.
- 82 Second, the appellant refers to the judgment of 1 April 2008, *Maruko* (C-267/06, EU:C:2008:179), according to which the Court held that the combined provisions of Articles 1 and 2 of Directive 2000/78 preclude legislation under which, after the death of his or her life partner, the surviving partner does not receive a survivor's benefit equivalent to that granted to a surviving spouse, whereas under the applicable national law, the non-marital partnership would place persons of the same sex in a situation comparable to that of spouses with regard to that survivor's benefit and it is for the referring court to determine whether a surviving non-marital partner is in a situation comparable to that of a spouse receiving the survivor's benefit provided for by the occupational pension scheme concerned.
- 83 However, in the case giving rise to that judgment, it was a life partnership registered in a Member State and not, as in the present case, cohabitation. It cannot therefore be inferred from that judgment that cohabitation must be treated as marriage for the purposes of the first paragraph of Article 17 of Annex VIII to the Staff Regulations.
- 84 In those circumstances, it must be noted that, with regard to the survivor's pension, cohabitants are not in a situation comparable to that of married persons or to that of partners who have entered into a registered partnership satisfying the conditions required to benefit from the application of the first paragraph of Article 17 of Annex VIII to the Staff Regulations.
- 85 The first paragraph of Article 17 of Annex VIII to the Staff Regulations, in so far as it excludes cohabitants from its scope, does not therefore appear manifestly inadequate in relation to the objective of the survivor's pension and does not infringe the general principle of non-discrimination.
- 86 In addition, the appellant claims that the condition of a minimum duration of 1 year of marriage for entitlement to the survivor's pension is arbitrary, inadequate and discriminatory. In his view, having been married for almost a year to Ms N., he should therefore be entitled to a survivor's pension.
- 87 In that respect, the Commission submits that the purpose of the requirement of a minimum duration of marriage at the date of death is to avoid that it is merely a pact on future successions, motivated more by financial considerations than by a plan for living together. That condition of duration made it possible, *inter alia*, to combat fraud.
- 88 It should be borne in mind that the principle of prohibition of fraud and abuse of rights is a general principle of EU law which individuals must comply with (see, to that effect, judgment of 6 February 2018, *Altun and Others*, C-359/16, EU:C:2018:63, paragraph 49 and the case-law cited).
- 89 Therefore, it must be stated that, in order to combat abuse or even fraud, the Union legislature has a margin of discretion in establishing entitlement to a survivor's pension. In the present case, the condition that the marriage must have lasted for at least 1 year for the surviving spouse to receive the survivor's pension is intended to ensure the reality and stability of the relationship between the persons concerned.
- 90 Such a condition does not appear to be discriminatory or manifestly inadequate in relation to the objective of the survivor's pension.
- 91 In the light of all those considerations, the claim for annulment submitted by the appellant against the contested decision should be rejected as being unfounded.

The claim for damages

- 92 The appellant claims that the contested decision caused him material and non-material damage.
- 93 In that regard, it should be stated that, in civil service issues, a claim for compensation for material and non-material damage must be rejected in so far as they are closely linked to the claim for annulment, which itself was dismissed as unfounded (see, to that effect, judgment of 6 March 2001, *Connolly v Commission*, C-274/99 P, EU:C:2001:127, paragraph 129).
- 94 In the present case, it should be noted that the claim for damages is closely linked to the request for annulment.
- 95 Since the claim for annulment has been rejected, the claim for damages must also be rejected.
- 96 It follows from all the foregoing that the action brought at first instance must be dismissed in its entirety.

Costs

- 97 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to costs.
- 98 Under Article 138(3) of the Rules of Procedure, which is also applicable to appeal proceedings by virtue of Article 184(1) thereof, where each party succeeds on some and fails on other heads, the parties are to bear their own costs. However, if it appears justified in the circumstances of the case, the Court of Justice may order that one party, in addition to bearing its own costs, pay a proportion of the costs of the other party.
- 99 In the present case, given that the judgment under appeal is set aside, but that the action at first instance is rejected, the appellant and the Commission are to be ordered to bear their own costs in relation to both the proceedings at first instance and the appeal proceedings.
- 100 Article 140(1) of the Rules of Procedure, which is also applicable to appeal proceedings by virtue of Article 184(1) thereof, provides that the Member States and institutions which have intervened in the proceedings are to bear their own costs.
- 101 Consequently, as an intervener at first instance, the Council shall bear its own costs.

On those grounds, the Court (First Chamber) hereby:

- 1. Sets aside the judgment of the General Court of the European Union of 3 May 2018, *HK v Commission* (T-574/16, not published, EU:T:2018:252);**
- 2. Dismisses HK's action seeking annulment of European Commission's decision refusing to grant him the benefit of the survivor's pension and to pay compensation for the material and non-material damage alleged;**
- 3. Orders HK, the European Commission and the Council of the European Union to bear their own costs at first instance and on appeal.**

[Signatures]