



## Reports of Cases

### JUDGMENT OF THE COURT (First Chamber)

10 July 2019\*

(Appeal — Action for damages against the European Commission — Decision of the Commission to put an end to a collaboration in connection with the Team Europe network — Compensation for the damage suffered — Plea of inadmissibility raised by the Commission — Whether the dispute is contractual or tortious)

In Case C-19/18 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 5 January 2018,

**VG**, successor in title to **MS**, represented by L. Levi, avocate,

appellant,

the other party to the proceedings being:

**European Commission**, represented by I. Martínez del Peral, C. Ehrbar and B. Mongin, acting as Agents,

defendant at first instance,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, C. Toader (Rapporteur), A. Rosas, L. Bay Larsen and M. Safjan, Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 11 April 2019,

gives the following

\* Language of the case: French.

## Judgment

- 1 By her appeal, VG, successor in title to MS, seeks the setting aside of the order of the General Court of the European Union of 31 May 2017, *MS v Commission* (T-17/16, not published, EU:T:2017:379) (‘the order under appeal’), whereby that court dismissed the action brought by MS claiming that the Commission should be ordered to pay compensation for the damage suffered as a result of its decision to put an end to his collaboration in connection with the Team Europe network.

### Legal context

- 2 Article 268 TFEU provides:

‘The Court of Justice of the European Union shall have jurisdiction in disputes relating to compensation for damage provided for in the second and third paragraphs of Article 340.’

- 3 Article 340 of that treaty is worded as follows:

‘The contractual liability of the Union shall be governed by the law applicable to the contract in question.

In the case of non-contractual liability, the Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties.

...’

### Background to the dispute

- 4 Team Europe is a local communications network whose main task is to assist Commission Representations in providing information on European policies at local level and whose members act as conference speakers, moderators, events facilitators and communications experts.
- 5 Those conference speakers are connected to the Commission by a ‘letter of agreement and membership of Team Europe’. That letter provides for the possibility for each party to withdraw from that agreement, at any time, in writing, with no further conditions attached. The members of the Team Europe network are not paid by the Commission. Instead, that institution, depending on the available budget, provides them with a free support service, consisting in coordination meetings, training seminars, an online communications platform and communication tools, to assist them in their tasks as conference speakers. The letter of agreement and membership of Team Europe also specifies that the members of the Team Europe network operate on a voluntary basis and that they may accept reimbursement of expenses or reasonable compensation from the organisers of the events in which they take part.
- 6 MS was a member of the Team Europe network from 20 July 2011 to 10 April 2013 by virtue of the letter of agreement and membership of Team Europe between the parties to the dispute (‘the letter of agreement’) which was signed by the Head of the Commission Representation in France in Paris (France) on 8 July 2011 and by MS in Montpellier (France) on 20 July 2011. According to that letter, MS’s membership of the Team Europe network was due to expire on 30 June 2014. On 10 April 2013 the Head of the Commission Representation in France informed MS by telephone that his collaboration on that network was terminated, a decision which was then confirmed by letter on the ground that he had conducted himself inappropriately with regard to participants in the course of his activities.

7 The reason put forward by the Head of the Commission Representation in France was that she had received a complaint concerning MS's conduct from women who had taken part in Team Europe network conferences or workshops.

### **Proceedings before the General Court and the order under appeal**

8 By document lodged at the Registry of the General Court on 11 January 2016, MS applied for legal aid, with a view to bringing an action for liability.

9 By order of 3 May 2016, *MS v Commission* (T-17/16 AJ, not published, EU:T:2016:446), the President of the General Court granted him legal aid.

10 By application lodged at the Registry of the General Court on 19 July 2016, MS brought an action for liability before the General Court.

11 MS claimed that the General Court should:

- acknowledge the non-contractual liability of the Commission;
- order the Commission to pay compensation for the non-material damage he claimed to have suffered as a result of that institution's wrongful conduct, assessed at EUR 20 000;
- order the Commission to publish a letter of apology to MS and to reinstate him within the Team Europe network;
- request the production of the documents, declared confidential by the Commission, on which that institution based its decision to put an end to his collaboration on the Team Europe network; and
- order the Commission to pay the costs.

12 By separate document, lodged on 6 October 2016, the Commission raised a plea of inadmissibility pursuant to Article 130 of the Rules of Procedure of the General Court and contended that MS should be ordered to pay the costs.

13 In his observations regarding the plea of inadmissibility, lodged at the Registry of the General Court on 21 November 2016, MS claimed that the General Court should reject that plea.

14 By the order under appeal, made on the basis of Article 126 of the Rules of Procedure of the General Court, that court upheld the plea of inadmissibility. The General Court held that the subject matter of the action consists in fact of a contractual claim for damages. As the letter of agreement did not contain an arbitration clause, the General Court declared that it had no jurisdiction to hear and determine the case.

### **Proceedings before the Court of Justice and forms of order sought**

15 By order of 30 November 2017, the Court of Justice granted the appellant's request for legal aid.

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

- set aside the order under appeal;

- consequently, refer the case back to the General Court so that it may give a ruling on the substance of the action brought before it at first instance, or, should the Court of Justice consider that the state of the proceedings permits final judgment, grant the appellant the form of order sought at first instance;
  - accordingly, acknowledge the non-contractual liability of the Commission on the basis of Article 268 TFEU and the second paragraph of Article 340 TFEU;
  - order the production of the documents declared confidential by the Commission and providing the necessary basis for the decision to put an end to the appellant’s collaboration on the Team Europe network;
  - order the payment of compensation for the non-material damage resulting from the Commission’s wrongful conduct, assessed *ex aequo et bono* at EUR 20 000;
  - order the Commission to publish a letter of apology and to reinstate the appellant within Team Europe; and
  - order the respondent to pay all of the costs at first instance and on appeal.
- 17 By letter of 21 February 2018, the Court was informed of the death of MS on 16 February 2018 and of VG’s decision to continue the proceedings.
- 18 In her reply of 28 May 2018, VG withdrew the head of claim requesting reinstatement within the Team Europe network.

### **The appeal**

- 19 In support of her appeal, VG raises two grounds, the first alleging an error of law in the legal classification of the action for compensation and breach of the duty to state reasons, and the second alleging an error of law in the legal classification of the letter of agreement, breach of the duty to state reasons, and distortion of the facts.

***First ground of appeal, taken as a whole, and first and second parts of the second ground of appeal, taken together, alleging an error of law as regards the classification of the action and breach of the duty to state reasons***

#### *Arguments of the parties*

- 20 In the first place, as regards the alleged breach of the duty to state reasons, the appellant submits that the General Court, first of all, did not explain why the claim for damages is necessarily linked to the interpretation of the letter of agreement, when the conduct complained of in that claim is not breach of the alleged contract, but infringement of MS’s fundamental rights in the handling of the complaint brought against him, so that the interpretation of that letter is neither necessary nor indispensable for the purpose of examining that claim for the purposes of paragraph 80 of the judgment of 18 April 2013, *Commission v Systran and Systran Luxembourg* (C-103/11 P, EU:C:2013:245).
- 21 Next, the order under appeal does not set out the reasons why the General Court considered that the Commission’s handling of the complaint brought against MS is necessarily linked to the interpretation of the letter of agreement. That letter does not contain any provisions relating to the handling of possible complaints; nor does it impose any obligation on the Commission to provide reasons for

renouncing the collaboration of a conference speaker on the Team Europe network. The rules of law, including fundamental rights, of which infringement is alleged apply independently of the provisions of the letter of agreement.

- 22 Lastly, aspects of the application brought before the General Court remained unanswered by that court, which failed to examine, objectively and overall, by reference to the various matters contained in the file, whether a genuine contractual context existed, in accordance with what is nonetheless required by the judgment of 18 April 2013, *Commission v Systran and Systran Luxembourg* (C-103/11 P, EU:C:2013:245).
- 23 VG also submits that the General Court breached its duty to state reasons as regards the classification of the letter of agreement.
- 24 In the second place, as regards the error of law which the General Court is alleged to have committed in classifying the action as ‘contractual’, VG claims, in essence, that the General Court was wrong to classify the letter of agreement as a ‘contract’, when it is rather a set of non-binding guidelines, defined unilaterally by the Commission, governing the operation of the Team Europe network. The Commission never stated that the relationship was contractual, as can be seen from paragraph 21 of its observations before the European Ombudsman and paragraph 15 of the order of 3 May 2016, *MS v Commission* (T-17/16 AJ, not published, EU:T:2016:446), whereby the General Court gave a ruling on MS’s application for legal aid. The letter of agreement is confined to a summary of the rights and obligations governing the Team Europe network and does not concern those governing the particular relations between the Commission and MS. It does not provide for sanctions in the event of infringement of its provisions, nor does it refer to the applicable law or the courts having jurisdiction, so that the letter of agreement refers more to simple recommendations with regard to conduct and not to genuine legal ties between persons. The Commission belatedly changed its position and relied on the contractual nature of the letter of agreement. The common intention of the parties was never to mutually bind each other by contract. However, the intention of the parties is a decisive element in the classification of an act as contractual. Thus, the General Court, in particular, was wrong to classify the letter of agreement as a ‘contract’ and breached its duty to state reasons.
- 25 The Commission contends that the first ground of appeal and the first and second parts of the second ground of appeal should be rejected.

#### *Findings of the Court*

- 26 In the first place, it should be borne in mind that, regarding judicial proceedings brought against the Union in which the Union’s liability for damages is at issue, the Treaty on the Functioning of the European Union provides for jurisdiction to be divided between the Courts of the European Union and the national courts.
- 27 As regards the non-contractual liability of the Union, it follows from the second paragraph of Article 340 TFEU, read in conjunction with Article 268 TFEU, that disputes relating to such liability come within the jurisdiction of the Courts of the European Union.
- 28 In order to decide which court has jurisdiction to hear and determine a specific action brought against the Union seeking compensation for damage, it is necessary to determine whether the action in question concerns the Union’s contractual liability or its non-contractual liability (judgment of 18 April 2013, *Commission v Systran and Systran Luxembourg*, C-103/11 P, EU:C:2013:245, paragraph 61 and the case-law cited).

- 29 To that end, the Courts of the European Union cannot simply rely on the rules cited by the parties. Thus, the mere invocation of rules of law not flowing from a contract relevant in the case, but which are binding on the parties, cannot have the consequence of altering the contractual nature of the dispute and thus removing it from the jurisdiction of the competent court. If it were otherwise, the nature of the dispute and, consequently, the competent court, could be changed at the whim of the rules invoked by the parties, which would go against the rules on the jurisdiction of the various courts *ratione materiae* (see, to that effect, judgment of 18 April 2013, *Commission v Systran and Systran Luxembourg*, C-103/11 P, EU:C:2013:245, paragraphs 64 and 65 and the case-law cited).
- 30 In that context, the Courts of the European Union are required to verify whether the action for compensation before them has as its subject matter a claim for damages based objectively and overall on rights and obligations of a contractual nature or of a non-contractual nature. For those purposes, those courts must examine, on an analysis of the various matters in the file, such as, for example, the rule of law allegedly infringed, the nature of the damage claimed, the conduct complained of and the legal relations between the parties in question, whether there exists between them a genuine contractual context, linked to the subject matter of the dispute, the in-depth examination of which proves to be indispensable for the resolution of the said action (judgment of 18 April 2013, *Commission v Systran and Systran Luxembourg*, C-103/11 P, EU:C:2013:245, paragraph 66).
- 31 In the second place, it should be borne in mind that the duty of the General Court under Article 36 of the Statute of the Court of Justice of the European Union and the first paragraph of Article 53 thereof to state the reasons for its judgments does not require that court to provide an account that follows exhaustively and one by one all the arguments put forward by the parties to the dispute. Therefore, so long as the statement of reasons clearly and unequivocally discloses the General Court's thinking, the reasoning may be implicit, on condition that it enables the persons concerned to ascertain the reasons why the measures in question were taken and the Court of Justice to have sufficient evidence to exercise its power of review (see, to that effect, judgment of 30 May 2018, *L'Oréal v EUIPO*, C-519/17 P and C-522/17 P to C-525/17 P, not published, EU:C:2018:348, paragraph 67 and the case-law cited).
- 32 In the present case, it should be noted that the General Court, first of all, found, in paragraph 34 of the order under appeal, that the letter of agreement defines the respective obligations of the parties, the duration of the collaboration and the rules for terminating that collaboration. In particular, it noted that paragraph 5 of that letter refers to conditions for 'termination'. Next, the General Court held, in paragraph 35 of that order, that the claim for compensation was linked to the interpretation of the letter of agreement, since MS had not referred to other acts of which the Commission was the author. Furthermore, the General Court considered, in paragraph 36 of that order, that the conduct complained of had a direct link with an existing contractual relationship, which led it to conclude, in paragraph 37 of the order under appeal, that MS's claim for compensation was linked to the interpretation of the letter of agreement and, in paragraph 38 of that order, that that letter rendered the dispute a contractual one. Lastly, the General Court noted, in paragraph 40 of the order under appeal, that the letter of agreement did not contain any arbitration clause, so that the dispute falls outside the jurisdiction of the Courts of the European Union.
- 33 It must therefore be found that the General Court stated reasons to the requisite legal standard to support its finding that the subject matter of the dispute was contractual and that the conditions determining the jurisdiction of the Courts of the European Union were not satisfied.
- 34 Moreover, it must be held that none of the arguments put forward by VG is capable of showing that those considerations are vitiated by errors of law.



- 35 In particular, the analysis conducted by the General Court cannot be undermined by the fact that the appellant relied on a quotation taken from the observations previously made by the Commission before the Ombudsman and reproduced in paragraph 23 of the order under appeal, according to which the Commission had indicated that ‘the members [of] Team Europe had no contractual relationship with [that institution]’.
- 36 The position previously expressed by the Commission before the Ombudsman is not necessarily at odds with the position resulting from the plea of inadmissibility raised by that institution before the General Court.
- 37 In that regard, it should be noted that that quotation is incomplete in so far as the sentence, taken in its entirety, specifies that ‘the members of Team Europe have no contractual relationship with the Commission and receive no remuneration or subsidies from that institution’.
- 38 Even assuming that that quotation can be understood as excluding the existence of an employment contract, since the letter of agreement ruled out any remuneration and did not provide for any legal hierarchical relationship, the fact that there was no such contract between the Commission and the members of the Team Europe network does not exclude the existence of other obligations agreed between those persons, so that a relationship existed between them that can nonetheless be classified as ‘contractual’ (see, by analogy, judgment of 14 July 2016, *Granarolo*, C-196/15, EU:C:2016:559, paragraph 25).
- 39 Furthermore, it follows from the considerations expressed in the Ombudsman’s decision of 19 November 2015 that that person noted that, ‘if the Commission decides not to pursue its contractual relationship with an expert or a member of its networks, it must first of all, before deciding on its final position, give the person concerned the opportunity to express his point of view regarding the envisaged measure’.
- 40 It follows that the subject matter of the dispute between the parties is indeed to challenge the circumstances of the breach and more specifically the circumstances in which the Commission’s decision to put an end to MS’s collaboration on the Team Europe network was issued.
- 41 The fact that the appellant has alleged infringement of fundamental rights is also not capable of altering the nature of the dispute between the parties.
- 42 Indeed, as has been recalled in paragraph 29 above, and as the Court of Justice also ruled in paragraph 43 of the judgment of 20 May 2009, *Guigard v Commission* (C-214/08 P, not published, EU:C:2009:330), the mere invocation of rules of law not flowing from the contract, but which are binding on the parties, cannot have the consequence of altering the contractual nature of the dispute and thus removing it from the jurisdiction of the competent court. If it were otherwise, the nature of the dispute and, consequently, the competent court, could be changed at the whim of the rules invoked by the parties, which would go against the rules on the jurisdiction of the various courts *ratione materiae*.
- 43 Accordingly, the General Court was correct to rule that the Courts of the European Union did not have jurisdiction and stated to the requisite legal standard the reasons why it had come to the conclusion that there was a genuine contractual context linked to the subject matter of the dispute.
- 44 In those circumstances, the first ground of appeal must be rejected in its entirety as unfounded, as must the first and second parts of the second ground of appeal, taken together.

### ***Third part of the second ground of appeal, alleging distortion of the facts***

#### *Arguments of the parties*

- 45 By the third part of the second ground of appeal, the appellant claims that, by considering that the letter of agreement constitutes a contract without defining the law applicable thereto, the General Court distorted that letter.
- 46 The Commission contends that that third part is inadmissible or, in the alternative, unfounded.

#### *Findings of the Court*

- 47 According to the settled case-law of the Court of Justice, it is apparent from Article 256(1) TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union that an appeal is to be limited to points of law and that the General Court therefore has exclusive jurisdiction to find and appraise the relevant facts and to assess the evidence. The assessment of the facts and evidence does not, save where the facts or evidence are distorted, constitute a point of law, which is subject, as such, to review by the Court of Justice on appeal. Such a distortion must be obvious from the documents on the Court's file, without there being any need to carry out a new assessment of the facts and evidence (judgment of 15 May 2019, *CJ v ECDC*, C-170/18 P, not published, EU:C:2019:410, paragraph 39 and the case-law cited).
- 48 Where an appellant alleges distortion of the evidence by the General Court, he must, under Article 256 TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and Article 168(1)(d) of the Rules of Procedure of the Court of Justice, indicate precisely the evidence alleged to have been distorted by the General Court and show the errors of appraisal which, in his view, led to such distortion (judgment of 6 September 2018, *Klein v Commission*, C-346/17 P, EU:C:2018:679, paragraph 126 and the case-law cited).
- 49 In the present case, the appellant confines herself to a brief criticism of the reasoning of the General Court without however establishing that that reasoning is based on a distortion of the elements of fact that were brought before it which is obvious from the documents on the Court's file.
- 50 Moreover, the appellant is relying for the first time before the Court of Justice on the argument alleging a failure to identify the applicable law.
- 51 Such an argument must be declared inadmissible. According to Article 170(1) of the Rules of Procedure, the subject matter of the proceedings before the General Court may not be changed in the appeal. Indeed, the jurisdiction of the Court of Justice, in an appeal, is limited to assessing the findings in law on the pleas argued at first instance. Consequently a party cannot raise for the first time before the Court of Justice a ground that it did not raise before the General Court, as this would be tantamount to enabling that party to bring before the Court of Justice, whose jurisdiction in appeals is limited, a wider case than that brought before the General Court (order of the Vice-President of the Court of 10 January 2018, *Commission v RW*, C-442/17 P(R), not published, EU:C:2018:6, paragraph 70 and the case-law cited).
- 52 Accordingly, the third part of the second ground of appeal cannot succeed.
- 53 In the light of all of the foregoing, the appeal must be dismissed in its entirety.



## **Costs**

54 Article 184(2) of the Rules of Procedure provides that, where the appeal is unfounded, the Court is to make a decision as to the costs. Under Article 138(1) of those rules, applicable to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and VG has been unsuccessful, the latter must be ordered to pay the costs.

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

- 1. Dismisses the appeal;**
- 2. Orders VG to pay the costs.**

[Signatures]