JUDGMENT OF THE COURT (Third Chamber)

17 December 2009 *

In Case C-197/09 RX-II,

REVIEW of the judgment of the Court of First Instance of the European Communities (Appeal Chamber) of 6 May 2009 in Case T-12/08 P *M* v *EMEA*, delivered in the proceedings

M

v

European Medicines Agency (EMEA),

THE COURT (Third Chamber),

composed of K. Lenaerts, President of the Chamber, E. Juhász, G. Arestis, T. von Danwitz (Rapporteur) and D. Šváby, Judges,

* Language of the case: French.

Advocate General: J. Mazák,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Mr M, by S. Orlandi, J.-N. Louis and E. Marchal, avocats,

— the European Medicines Agency (EMEA), by V. Salvatore and N. Rampal Olmedo, acting as Agents,

— the Italian Government, by G. Palmieri, acting as Agent, and G. Aiello, avvocato dello Stato,

— the Polish Government, by M. Dowgielewicz, acting as Agent,

— the European Parliament, by E. Perillo, M. Gómez-Leal and L. Visaggio, acting as Agents,

— the Council of the European Union, by C. Fekete and M. Bauer, acting as Agents,

— the Commission of the European Communities, by J. Currall and D. Martin, acting as Agents,

having regard to the second subparagraph of Article 225(2) EC,

having regard to Articles 62a and 62b of the Statute of the Court of Justice,

after hearing the Advocate General,

gives the following

Judgment

1 The purpose of these proceedings is to review the judgment of the Court of First Instance of the European Communities (now 'the General Court') (Appeal Chamber) of 6 May 2009 in Case T-12/08 P *M* v *EMEA* ('the judgment of 6 May 2009'), by which that court, first, set aside the order of the European Union Civil Service Tribunal (First Chamber) of 19 October 2007 in Case F-23/07 *M* v *EMEA*, not yet published in the ECR-SC, and annulled the decision of the European Medicines Agency (EMEA) of 25 October 2006, in so far as it rejected Mr M's request of 8 August 2006 for the referral of his case to the Invalidity Committee ('the decision of 25 October 2006') and, second, ordered the EMEA to pay damages of EUR 3 000 to the applicant.

2 The review relates to whether the judgment of 6 May 2009 affects the unity or consistency of Community law in that, in that judgment, the General Court, as the appeal court, interpreted the expression 'where the state of the proceedings … permits' in Article 61 of the Statute of the Court of Justice and Article 13(1) of the Annex to the Statute as permitting it to dispose of the case and rule as to the substance, despite the fact that the appeal before it concerned the examination of the treatment given at first instance to a plea of inadmissibility and that, as regards the aspect of the case which was disposed of, there had been no exchange of arguments before it or before the Civil Service Tribunal as the court seised at first instance.

Legal context

3 The first paragraph of Article 61 of the Statute of the Court of Justice provides as follows:

'If the appeal is well founded, the Court of Justice shall quash the decision of [the General Court]. It may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to [the General Court] for judgment.'

4 Article 13(1) of the Annex to the Statute provides as follows:

'If the appeal is well founded, [the General Court] shall quash the decision of the Civil Service Tribunal and itself give judgment in the matter. It shall refer the case back to the Civil Service Tribunal for judgment where the state of the proceedings does not permit a decision by the Court.'

The background to the case

5 It is apparent from the judgment of 6 May 2009 that Mr M, a member of the temporary staff who took up employment with the EMEA in October 1996, suffered an accident at work in March 2005 and has been on sick leave since then. Since his contract with the EMEA was not renewed, it expired on 15 October 2006.

6 On 17 February 2006, Mr M requested that an Invalidity Committee be convened and the EMEA refused that request by letter of 31 March 2006. On 3 July 2006, Mr M lodged a complaint against the refusal, which was rejected by the decision of 25 October 2006.

7 In the intervening period, on 8 August 2006, Mr M submitted another request that an Invalidity Committee be convened, attaching a medical report by Dr W to the request.

8 By letter of 21 November 2006, Mr M asked the EMEA to indicate whether the decision of 25 October 2006, confirming the decision not to refer the case to the Invalidity Committee, constituted a rejection of the request of 8 August 2006.

9 By letter of 29 November 2006, the EMEA informed Mr M that it had duly expressed the view, in its decision of 25 October 2006, that the request of 8 August 2006 could not be regarded as a new request under Article 59(4) of the Staff Regulations of Officials of the European Communities and it therefore had to be rejected on the grounds set out in that decision.

10 By letter of 25 January 2007, Mr M lodged a complaint seeking the withdrawal of the decision of 25 October 2006 in so far as it rejected his request of 8 August 2006. The following day, he also sent a request to the EMEA for compensation for the material and non-material damage he claimed to have suffered.

11 A letter from the EMEA of 31 January 2007 rejected the complaint and the request.

12 On 19 March 2007, Mr M brought an action before the Civil Service Tribunal seeking, first, annulment of the decision of 25 October 2006 and, second, an order that the EMEA pay EUR 100 000 by way of damages for wrongful acts in the performance of public duties.

13 By separate document, the EMEA raised a plea of inadmissibility against the action under Article 114(1) of the Rules of Procedure of the General Court, applicable mutatis mutandis to the Civil Service Tribunal by virtue of Article 3(4) of Council Decision 2004/752/EC, Euratom, of 2 November 2004 establishing the European Union Civil Service Tribunal (OJ 2004 L 333, p. 7) until the entry into force of the Rules of Procedure of the Tribunal, which took place on 1 November 2007.

14 By order in Case F-23/07 *M* v *EMEA* under Article 114 of the Rules of Procedure of the General Court, the Civil Service Tribunal, without initiating the oral procedure and without reserving a decision on the plea of inadmissibility for the final judgment, dismissed the action in its entirety as inadmissible.

15 The Civil Service Tribunal considered that the claims for annulment directed against the decision of 25 October 2006, in so far as it rejected Mr M's request of 8 August 2006, were inadmissible, on the ground that that decision had to be construed as a decision which merely confirmed the decision in the EMEA's letter of 31 March 2006 and that the claims directed against that decision had already been held to be inadmissible on the

ground that the prior complaint was unduly late by the order of the Civil Service Tribunal of 20 April 2007 in Case F-13/07 *L* v *EMEA*, not yet published in the ECR-SC.

16 The claim for damages was also rejected as inadmissible in view, in particular, of the close link between that claim and the claim seeking annulment considered previously.

The appeal before the General Court and the judgment of 6 May 2009

17 By his appeal against the order in Case F-23/07, Mr M requested the General Court not only to set aside that order but also to give a ruling on the substance of the case. The EMEA contended that the appeal should be dismissed as manifestly unfounded and confined its submissions to the admissibility of Mr M's action.

18 After granting Mr M's application to be heard at the oral stage of the proceedings, in its judgment of 6 May 2009, the General Court set aside the order in Case F-23/07, finding that it was vitiated by an error of law in so far as it had held Mr M's claims for annulment and claim for damages to be inadmissible.

19 Taking the view that the state of the proceedings so permitted, within the meaning of Article 13(1) of the Annex to the Statute of the Court of Justice, the General Court proceeded to give final judgment itself in the matter. It held that the claims for annulment were admissible and well-founded and annulled the decision of 25 October 2006. It also held that Mr M's claim for damages was admissible and ordered the EMEA to pay damages of EUR 3 000 to make good the non-material damage suffered by Mr M.

20 In that connection, the General Court stated, at paragraph 100 of the judgment of 6 May 2009, that Mr M had submitted in his application before the Civil Service Tribunal that, by persisting in its refusal to invoke the invalidity procedure, the EMEA had induced in him a state of anxiety and uncertainty. At paragraph 104 of the judgment, the General Court took the view that, in the circumstances of the case, Mr M had suffered non-material damage that could not be entirely remedied by the annulment of the decision of 25 October 2006.

Procedure before the Court of Justice

21 Following the proposal of the First Advocate General that the judgment of 6 May 2009 should be reviewed, the special Chamber provided for in Article 123b of the Rules of Procedure of the Court decided, by decision of 24 June 2009 in Case C-197/09 RX, see Case C-197/09 RX-II [2009] ECR I-12033 ('the decision of the Court of 24 June 2009'), that there should be a review of that judgment and that the review should cover the question whether the judgment of 6 May 2009 affects the unity or consistency of Community law in that the General Court, as the appeal court, interpreted the expression 'where the state of the proceedings … permits' in Article 61 of the Statute of the Court of Justice and Article 13(1) of the Annex to the Statute as permitting it to dispose of a case and rule on the substance, despite the fact that the appeal before it concerned the examination of the treatment given at first instance to a plea of inadmissibility and that, as regards the aspect of the case which was disposed of, there had been no exchange of arguments before it or before the Civil Service Tribunal as the court seised at first instance.

22 The General Court upheld in part, as to the substance, the claim for compensation for the damage alleged by Mr M, even though, first, it was not possible, as a consequence of the preliminary issue raised before the Civil Service Tribunal, for there to be a written or oral exchange of arguments on the substance before the Tribunal and, second, there does not appear to have been any such exchange before the General Court. There is therefore a serious risk that the unity or consistency of Community law might be affected in that the judgment of 6 May 2009 gave a ruling on the substance of the claim for compensation for the non-material damage alleged by Mr M.

23 As regards the purpose of the review, the decision of the Court of 24 June 2009 identified three specific questions to be considered. The first requires consideration to be given to the meaning of the expression 'where the state of the proceedings … permits' in Article 61 of the Statute of the Court of Justice and Article 13(1) of the Annex to the Statute in a situation where at first instance, in this case before the Civil Service Tribunal, the defendant asked the Tribunal to rule on a plea of inadmissibility not going to the substance of the case and the appeal court, in this case the General Court, set aside the order made at first instance which upheld that plea of inadmissibility.

24 The second question requires consideration to be given to whether or not the fact that, having set aside that order and held the action admissible, including the claim for damages made in the action, the appeal court, in this case the General Court, ruled on the substance of a claim for compensation for non-material damage alleged by the applicant when no written or oral exchange of arguments had taken place in that regard at first instance, in this case before the Civil Service Tribunal, and it does not appear that any such exchange took place before the appeal court, constitutes a breach of the requirements of the right to a fair hearing, in particular the requirement of respect for the rights of the defence.

25 If it is held that the judgment of 6 May 2009 infringes Article 61 of the Statute of the Court of Justice and Article 13(1) of the Annex to the Statute and/or disregards the requirements of the right to a fair hearing, in particular the requirement of respect for the rights of the defence, it must be considered whether and, if so, to what extent that judgment affects the unity or consistency of Community law.

The questions to be reviewed

26 It should be pointed out, first, that it is apparent from the decision of the Court of 24 June 2009, in particular paragraphs 17 and 20, that the review has regard only to the order that the EMEA pay damages of EUR 3 000 to the applicant to make good the non-material damage alleged. On the other hand, the annulment of the decision of

25 October 2006 and the dismissal of the action as to the remainder are not the subject of the present proceedings. The review procedure constitutes an objective review by the Court which is completely independent of any initiative on the part of the parties.

27 Mr M submitted, in his written observations lodged with the Court, that the General Court's interpretation of the expression 'where the state of the proceedings … permits' is correct and that the judgment of that court did not affect the unity or consistency of Community law or infringe the rights of the defence and the rule that the parties should be heard. On the other hand, all the other interested parties which submitted observations to the Court have essentially proposed that an affirmative answer be given to the principal question raised by the decision of the Court of 24 June 2009.

The expression 'where the state of the proceedings … permits'

28 It is necessary to consider the question whether, and to what extent, the state of the proceedings permits final judgment to be given by the appeal court where the plea of inadmissibility not going to the substance of the case raised by the defendant has been upheld at first instance and the appeal against that decision proves to be well founded.

29 According to the established case-law of the Court, as a rule, the state of the proceedings does not permit final judgment to be given on the substance of an action brought before the General Court where that court dismissed the action as inadmissible by upholding a plea of inadmissibility and did not reserve a decision on that plea for the final judgment (see Case C-39/93 P *SFEI and Others* v *Commission* [1994] ECR I-2681, paragraph 38; Case C-480/99 P *Plant and Others* v *Commission and South Wales Small Mines* [2002] ECR I-265, paragraph 57; Case C-193/01 P *Pitsiorlas* v *Council and ECB* [2003] ECR I-4837, paragraph 32; Case C-229/05 P *PKK and KNK* v *Council* [2007] ECR I-439, paragraphs 91 and 123; Case C-521/06 P *Athinaïki Techniki* v *Commission* [2008] ECR I-5829, paragraph 66; and Case C-319/07 P *3F* v *Commission* [2009] ECR I-5963, paragraph 98).

30 However, it is possible, in certain circumstances, for a ruling to be given on the substance of an action, even though the proceedings at first instance were confined to a plea of inadmissibility which the General Court upheld. That may be so where, first, the setting aside of the judgment or order under appeal necessarily brings about a definitive resolution of the substance of the action in question (see, to that effect, Case C-359/98 P *Ca' Pasta* v *Commission* [2000] ECR I-3977, paragraphs 32 to 36 and 39) or, second, the examination of the substance of the application for annulment is based on arguments exchanged by the parties in the appeal proceedings following the reasoning adopted by the court at first instance (see, to that effect, Case C-389/98 P *Gevaert* v *Commission* [2001] ECR I-65, paragraphs 27 to 30, 34, 35 and 52 to 58, and Case C-459/98 P *Martínez del Peral Cagigal* v *Commission* [2001] ECR I-135, paragraphs 29, 34 and 48 to 54).

31 However, in the present case, no such special circumstance existed which would have enabled the General Court itself to give a ruling on the substance of the application for compensation for the non-material damage alleged.

32 First of all, the right to the award of damages by way of compensation for the non-material damage alleged does not flow directly from the unlawfulness of the order under appeal or indeed from that of the contested act. First, the issues which are central to the analysis as to whether the claim for damages is well founded are not, in essence, the same as those which are central to the analysis as to whether the order in Case F-23/07 is vitiated by an error of law and as to the admissibility of the action and, second, as the General Court pointed out at paragraph 103 of the judgment of 6 May 2009, the annulment of that act may in itself constitute adequate compensation for the non-material damage.

33 Second, the question whether the claim for damages was well founded was neither the subject of an exchange of arguments in the proceedings before the Civil Service Tribunal nor assessed by the Tribunal in the order in Case F-23/07, since it gave a ruling only on the plea of inadmissibility.

34 In giving a ruling on the claim for compensation for the non-material damage alleged by Mr M, the General Court therefore departed from the case-law of the Court of Justice on the conditions necessary for the state of the proceedings to be regarded as permitting judgment to be given, for the purpose of Article 61 of the Statute of the Court of Justice, where, at first instance, the defendant has asked the court to rule on a plea of inadmissibility not going to the substance of the case and that court has upheld the plea of inadmissibility.

35 It is true that Article 13(1) of the Annex to the Statute of the Court of Justice, which governs the decision of the General Court if the appeal is well founded, is not worded in exactly the same way as the first paragraph of Article 61 of the Statute, which is the relevant provision for the Court of Justice. However, in the case of a procedural situation such as that in question in the present case, the expression 'where the state of the proceedings … permits' must be interpreted in the same manner in applying those provisions, regardless of the fact that Article 61 of the Statute, unlike Article 13(1) of the Annex thereto, confers on the Court of Justice a discretion, where the state of the proceedings so permits, authorising it to refer the case back to the court of first instance.

36 According to established case-law, in a situation comparable to that in the present case, in which it transpires that the court at first instance incorrectly dismissed the action as inadmissible by upholding a plea of inadmissibility, not reserving a decision on that plea for the final judgment, the Court of Justice must simply find that the state of the proceedings does not permit judgment to be given on the substance of the case and refer it back to that court and cannot exercise any discretion in that regard (see, to that effect, *SFEI and Others* v *Commission*, paragraph 38; *Plant and Others* v *Commission and South Wales Small Mines*, paragraph 57; *Pitsiorlas* v *Council and ECB*, paragraph 32; *PKK and KNK* v *Council*, paragraphs 91 and 123; *Athinaïki Techniki* v *Commission*, paragraph 66; and *3F* v *Commission*, paragraph 98).

37 It follows from the foregoing that the General Court misinterpreted the expression 'where the state of the proceedings … permits' in the first paragraph of Article 61 of the Statute of the Court of Justice and Article 13(1) of the Annex to the Statute and infringed the latter provision by holding that, in the present case, the state of the proceedings permitted final judgment to be given in respect of the claim for compensation for the non-material damage alleged by Mr M.

The requirements associated with the right to a fair hearing, in particular the requirement of respect for the rights of the defence

38 It is necessary to examine whether, in ruling on the substance of the claim for compensation for the non-material damage alleged by the applicant, the General Court failed to have regard to the requirements associated with the right to a fair hearing, in particular the requirement of respect for the rights of the defence, independently of the error of law established at paragraph 37 above.

39 According to the case-law of the Court, the rights of the defence occupy a prominent position in the organisation and conduct of a fair hearing (see, to that effect, Case C-462/98 P *Mediocurso* v *Commission* [2000] ECR I-7183, paragraph 36; Case C-14/07 *Weiss und Partner* [2008] ECR I-3367, paragraph 47; and Case C-394/07 *Gambazzi* [2009] ECR I-2563, paragraph 28).

40 The rights of the defence include the right to a fair hearing (see Case C-413/06 P *Bertelsmann and Sony Corporation of America* v *Impala* [2008] ECR I-4951, paragraph 61, and Case C-89/08 P *Commission* v *Ireland and Others* [2009] ECR I-11245, paragraph 50).

41 That principle applies to any procedure which may result in a decision by a Community institution perceptibly affecting a person's interests (see Case C-315/99 P *Ismeri Europa* v *Court of Auditors* [2001] ECR I-5281, paragraph 28, and *Commission* v *Ireland and Others*, paragraph 50). It means, as a rule, that the parties to proceedings have a right to be given the opportunity to comment on the facts and documents on which a judicial decision will be based and to discuss the evidence produced and the observations made to the court as well as the pleas in law raised by the court of its own motion on which it intends to base its decision (see, to that effect, *Commission* v *Ireland and Others*, paragraphs 52 and 55). In order to satisfy the requirements associated with the right to a fair hearing, it is important for the parties to be able to debate and be heard on the matters of fact and of law which will determine the outcome of the proceedings (see *Commission* v *Ireland and Others*, paragraph 56).

42 The Community Courts must ensure that the rule that the parties should be heard is respected in proceedings before them and that they themselves respect that rule (see *Commission* v *Ireland and Others*, paragraphs 51 and 54). That rule must benefit all parties to proceedings before the Community judicature, irrespective of their legal status. The Community institutions may also, therefore, avail themselves of that rule when they are parties to such proceedings (see *Commission* v *Ireland and Others*, paragraph 53).

43 It is therefore necessary to consider whether or not, in the present case, the EMEA was given the opportunity in the course of the proceedings to submit its observations on whether Mr M's claim for damages was well founded.

44 It should be noted that the arguments presented to the Civil Service Tribunal and the findings made by the Tribunal related solely to whether the action brought by Mr M and the claim for damages made in the action were admissible, given that the Tribunal upheld the EMEA's plea of inadmissibility under Article 114 of the Rules of Procedure of the General Court without going into the substance of the case or initiating the oral procedure.

45 Moreover, nothing in the written pleadings lodged by the parties in the appeal proceedings before the General Court indicates that the EMEA had defined its position as to whether Mr M's claim for damages was well founded. In addition, neither the record of the hearing held on 23 January 2009 by the General Court nor the judgment of 6 May 2009 gives any indication that the issues relating to whether Mr M had a right to compensation for non-material damage and the precise extent of any such right were discussed at that hearing.

46 Furthermore, not only did the General Court amend the grounds but, in ordering the EMEA to pay damages, it also altered the outcome of the action, to the detriment of the defendant.

47 The question that first arises is therefore whether the EMEA's failure to define its position and the absence of any exchange of arguments on the claim for damages can be attributed to the EMEA, on the ground that, in both sets of proceedings, it freely decided to confine its defence to the issues of admissibility and thus consciously decided not to defend its substantive interests.

48 The plea of inadmissibility provided for in both Article 91 of the Rules of Procedure of the Court of Justice and Article 114 of the Rules of Procedure of the General Court as a preliminary issue makes it possible, for reasons of economy of procedure, to confine the debate and examination, at an early stage in the proceedings, to the question whether the action at issue is admissible. Thus, it is possible, as a result of the preliminary issue, to avoid a situation in which the parties' pleadings and the court's examination go into the substance of the case, even though the action is inadmissible.

49 On the other hand, where the action is declared admissible because the plea of inadmissibility is rejected or where a decision on that plea is reserved for the final judgment, there must be an exchange of arguments on the substance of the application at a subsequent stage. Indeed, the provisions referred to above expressly provide that the President is to prescribe new time-limits for further steps in the proceedings if an application for a ruling on a plea of inadmissibility is rejected or the decision on that application is reserved.

50 It would therefore be inconsistent with the logic of the rules on pleas of inadmissibility to oblige a defendant who raises such a plea to put forward, as a precaution, at the same time or, where he has been successful at first instance, in the response to the appeal, his arguments on the substance of the dispute.

51 Accordingly, the EMEA cannot be criticised for having freely decided not to present its arguments on whether the claim for damages was well founded.

52 Second, the question arises as to whether the procedure adopted by the General Court may be justified as lawful on the ground that, even in the absence of the breach of procedure in question, the proceedings could not have had a different outcome, so that the failure to observe the rule that the parties should be heard could not have influenced the content of the judgment of 6 May 2009 and did not adversely affect the interests of the EMEA (see, to that effect, *Ismeri Europa* v *Court of Auditors*, paragraphs 33 to 35; Joined Cases C-74/00 P and C-75/00 P *Falck and Acciaierie di Bolzano* v *Commission* [2002] ECR I-7869, paragraph 70; and *Commission* v *Ireland and Others*, paragraph 61).

53 In the General Court's analysis, Mr M suffered non-material damage as a result of the decision of 25 October 2006, which could not be adequately compensated for by the annulment of that decision, and it was therefore necessary to award him EUR 3 000 in damages, a sum which was determined in accordance with the principles of equity (see, to that effect, inter alia, Case 25/60 *De Bruyn* v *European Parliamentary Assembly* [1962] ECR 21, 31; Case 75/77 *Mollet* v *Commission* [1978] ECR 897, paragraph 29; Case C-348/06 P *Commission* v *Girardot* [2008] ECR I-833, paragraph 58; and judgment of 24 September 2008 in Case T-412/05 *M* v *Ombudsman*, paragraph 158). It follows that that analysis derives from a genuine assessment which could be contested.

54 It cannot therefore be ruled out that the General Court's assessment might have been different if it had given the EMEA the opportunity to submit its observations on the claim for damages and that, accordingly, observance of the rule that the parties should be heard could have influenced the content of the judgment of 6 May 2009.

55 Thirdly and lastly, contrary to the submissions made by Mr M in his written observations, nor can the procedure adopted by the General Court be justified on the ground that the Community judicature enjoys unlimited jurisdiction under Article 91(1) of the Staff Regulations of Officials of the European Communities in disputes of a financial character between the European Communities and any of the persons covered by the Regulations.

56 According to the case-law of the Court, that jurisdiction entrusts the Community judicature with the task of providing a complete solution to the disputes brought before it (see Case C-135/06 P *Weißenfels* v *Parliament* [2007] ECR I-12041, paragraph 67). It enables it, even in the absence of any formal claim for such relief, not only to annul the measure in point but also, where appropriate, to order of its own motion that compensation be paid by the defendant for the non-material damage caused by maladministration on its part (see, to that effect, Case 44/59 *Fiddelaar* v *Commission* [1960] ECR 535, 542; Case 23/69 *Fiehn* v *Commission* [1970] ECR 547, paragraph 17; and Joined Cases 176/86 and 177/86 *Houyoux and Guery* v *Commission* [1987] ECR 4333, paragraph 16).

57 However, the Community Courts cannot, as a general rule, base their decisions on a plea raised of their own motion — even one involving a matter of public policy — without first having invited the parties to submit their observations on that plea (see *Commission* v *Ireland and Others*, paragraph 57).

58 As a consequence, the unlimited jurisdiction enjoyed by the Community Courts in disputes involving claims for damages between Community institutions and their staff cannot be regarded as conferring on those courts the power to absolve such disputes from compliance with procedural rules governing the principle that the parties have the right to be heard, especially in a situation such as that in the present case. Moreover, it should be noted that, in the present case, the General Court did not rely on that jurisdiction in making its decision.

59 It follows from the foregoing that, in the present case, the General Court did not give the EMEA the opportunity effectively to make known its point of view as to whether the claim for damages was well founded and, therefore, infringed the rule that the parties should be heard, which derives from the requirements associated with the right to a fair hearing.

Whether the unity or consistency of Community law is affected

60 Given that, first, in the judgment of 6 May 2009, the General Court misinterpreted the expression 'where the state of the proceedings … permits' in the first paragraph of Article 61 of the Statute of the Court of Justice and Article 13(1) of the Annex to the Statute and therefore infringed the latter provision by considering that the state of the proceedings permitted it to give judgment in the case in its entirety and, second, it disregarded the requirements associated with the right to a fair hearing, it is necessary, in accordance with the decision of the Court of 24 June 2009, to consider whether and, if so, to what extent the judgment of 6 May 2009 affects the unity or consistency of Community law.

61 In that connection, account must be taken of the following aspects of the case.

62 First, the judgment of 6 May 2009 is the first decision of the General Court by which it found that an appeal against an order of the Civil Service Tribunal upholding a plea of inadmissibility not going to the substance of the case was well founded. It could therefore constitute a precedent for future cases.

63 Secondly, as regards the expression 'where the state of the proceedings … permits', the General Court departed from the established case-law of this Court, as pointed out at paragraphs 29, 34 and 36 above.

64 Thirdly, the errors of the General Court relate to two rules of procedure which do not pertain solely to the law relating to the employment of Community officials but are applicable regardless of the matter at issue.

65 Fourthly and lastly, the rules which the General Court failed to comply with occupy an important position in the Community legal order. In particular, the Statute of the Court of Justice and the Annex to the Statute form part of primary law.

66 In view of those circumstances, considered as a whole, it must be held that the judgment of 6 May 2009 affects the unity and the consistency of Community law in that the General Court, as the appeal court, interpreted the expression 'where the state of the proceedings … permits' in Article 61 of the Statute of the Court of Justice and Article 13(1) of the Annex to the Statute as permitting it to dispose of the case in question, to rule on the substance of the application for compensation for the non-material damage alleged and to order the EMEA to pay damages of EUR 3 000, despite the fact that the appeal before it concerned the examination of the treatment given at first instance to a plea of inadmissibility and that, as regards the aspect of the case which was disposed of, there had been no exchange of arguments before it or before the Civil Service Tribunal as the court seised at first instance.

67 In those circumstances, all that remains is to determine the consequences which should follow from the fact that the unity and consistency of Community law is affected.

68 The first paragraph of Article 62b of the Statute of the Court of Justice provides that if the Court of Justice finds that the decision of the General Court affects the unity or consistency of Community law, it is to refer the case back to the General Court, which is bound by the points of law decided by the Court of Justice. In referring the case back, the Court of Justice may also state which of the effects of the decision of the General Court are to be considered definitive in respect of the parties to the litigation. In exceptional cases, the Court of Justice can itself give final judgment if, having regard to the result of the review, the outcome of the proceedings flows from the findings of fact on which the decision of the General Court was based.

69 It follows that the Court cannot confine itself to finding that the unity or consistency of Community law is affected without drawing the necessary inferences from that finding

as regards the dispute in question. In the circumstances of this case, the judgment of 6 May 2009 must therefore be set aside in so far as, at points 3 and 5 of the operative part of the judgment, the General Court ordered the EMEA to pay damages of EUR 3 000 to Mr M and to pay the costs of the proceedings before the Civil Service Tribunal and of the proceedings before the General Court.

70 In the present case, given that the unity and consistency of Community law is affected as a result of a misinterpretation of the expression 'where the state of the proceedings … permits' and infringement of the rule that the parties should be heard, the Court cannot itself give final judgment, in accordance with the last sentence of the first paragraph of Article 62b of the Statute of the Court of Justice.

71 It is therefore necessary to refer the case back to the General Court of the European Union as regards the claim for compensation for the non-material damage allegedly suffered by Mr M, so that the EMEA will have the opportunity to present its arguments as to whether that claim is well founded.

Costs

72 Under the last paragraph of Article 123e of the Rules of Procedure of the Court of Justice, where the decision of the General Court which is subject to review was given under Article 225(2) EC, the Court of Justice is to make a decision as to costs.

73 Since there are no specific rules governing orders for costs in the case of a review, the interested parties referred to in Article 23 of the Statute of the Court of Justice and the parties to the proceedings before the General Court who lodged pleadings or written observations before the Court of Justice concerning the questions covered by the review must be ordered to bear their own costs relating to the review procedure.

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

1. **Declares that the judgment of the Court of First Instance of the European Communities (Appeal Chamber) of 6 May 2009 in Case T-12/08 P *M* v *EMEA* affects the unity and consistency of Community law in that that court, as the appeal court, interpreted the expression 'where the state of the proceedings … permits' in Article 61 of the Statute of the Court of Justice and Article 13(1) of the Annex to the Statute as allowing it to dispose of the case in question, rule as to the substance on the claim for compensation for the non-material damage alleged and order the European Medicines Agency (EMEA) to pay damages of EUR 3 000, despite the fact that the appeal before it concerned the examination of the treatment given at first instance to a plea of inadmissibility and that, as regards the aspect of the case which was disposed of, there had been no exchange of arguments before it or before the European Union Civil Service Tribunal as the court seised at first instance;**

2. **Sets aside points 3 and 5 of the operative part of the judgment of the Court of First Instance of the European Communities (Appeal Chamber) of 6 May 2009 in Case T-12/08 P *M* v *EMEA*;**

3. **Refers the case back to the General Court of the European Union;**

4. **Orders Mr M, the European Medicines Agency, the Italian Republic, the Republic of Poland, the European Parliament, the Council of the European Union and the European Commission to bear their own costs relating to the review procedure.**

[Signatures]