



## Reports of Cases

### JUDGMENT OF THE COURT (Fifth Chamber)

10 September 2015\*

(Review of the judgment of the General Court in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625) — Civil service — Non-contractual liability of the European Union based on the failure of an institution to fulfil its duty to ensure the protection of its officials — Deceased official — Material and non-material damage suffered by the official before his death — Material and non-material damage suffered by the family members of the official — Jurisdiction — General Court — European Union Civil Service Tribunal — Adverse effect on the unity of EU law)

In Case C-417/14 RX-II

REVIEW under the second subparagraph of Article 256(2) TFEU of the judgment of the General Court of the European Union (Appeal Chamber) of 10 July 2014 in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625), in the proceedings

**Livio Missir Mamachi di Lusignano**, residing in Kerkhove Avelgem (Belgium),

v

**European Commission**,

THE COURT (Fifth Chamber),

composed of T. von Danwitz (Rapporteur), President of the Chamber, C. Vajda, A. Rosas, E. Juhász and D. Šváby, Judges,

Advocate General: M. Wathelet,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 25 February 2015,

after considering the observations submitted on behalf of:

- Missir Mamachi di Lusignano, by F. Di Gianni, G. Coppo and A. Scalini, avvocati,
- the European Commission, by J. Currall, G. Gattinara and D. Martin, acting as Agents,

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

after hearing the Advocate General,

gives the following

\* Language of the case: Italian.

## Judgment

- 1 The present proceedings concern the review of the judgment of the General Court of the European Union (Appeal Chamber) of 10 July 2014 in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625). In that judgment the General Court set aside the judgment of the European Union Civil Service Tribunal of 12 May 2011 in *Missir Mamachi di Lusignano v Commission* (F-50/09, EU:F:2011:55), which dismissed the action for damages brought by Livio Missir Mamachi di Lusignano seeking, first, the annulment of the decision of 3 February 2009, in which the European Commission rejected his application for compensation for the material and non-material damage arising from the murder of his son, Alessandro Missir Mamachi di Lusignano, an EU official ('the deceased official'), and second, requiring the Commission to pay him and his son's dependents various sums by way of reparation for the material and non-material damage arising from that murder.
- 2 The review concerns the question whether the judgment in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625) adversely affects the unity or consistency of European Union law, in that, in that judgment the General Court, in its appellate capacity, took the view that it had jurisdiction, as a court of first instance, to rule on an action concerning the non-contractual liability of the European Union
  - alleging the failure of an institution in its duty to ensure the protection of its officials.
  - brought by third parties in their capacity as heirs and successors of the official and in their capacity as family members of the official, and
  - seeking compensation for the non-material damage suffered by the official himself and the material and non-material damage suffered by those third parties.

### Legal context

#### *The Statute of the Court of Justice of the European Union*

- 3 Article 1 of Annex I to the Statute of the Court of Justice is worded as follows:

'The European Union Civil Service Tribunal (hereafter "the Civil Service Tribunal") shall exercise at first instance jurisdiction in disputes between the Union and its servants referred to in Article 270 of the Treaty on the Functioning of the European Union, including disputes between all bodies or agencies and their servants in respect of which jurisdiction is conferred on the Court of Justice of the European Union.'

- 4 Article 8 of Annex I to the Statute of the Court of Justice provides:

'1. Where an application or other procedural document addressed to the Civil Service Tribunal is lodged by mistake with the Registrar of the Court of Justice or General Court, it shall be transmitted immediately by that Registrar to the Registrar of the Civil Service Tribunal. Likewise, where an application or other procedural document addressed to the Court of Justice or to the General Court is lodged by mistake with the Registrar of the Civil Service Tribunal, it shall be transmitted immediately by that Registrar to the Registrar of the Court of Justice or General Court.

2. Where the Civil Service Tribunal finds that it does not have jurisdiction to hear and determine an action in respect of which the Court of Justice or the General Court has jurisdiction, it shall refer that action to the Court of Justice or to the General Court. Likewise, where the Court of Justice or the

General Court finds that an action falls within the jurisdiction of the Civil Service Tribunal, the Court seised shall refer that action to the Civil Service Tribunal, whereupon that Tribunal may not decline jurisdiction.

3. Where the Civil Service Tribunal and the General Court are seised of cases in which the same issue of interpretation is raised or the validity of the same act is called in question, the Civil Service Tribunal, after hearing the parties, may stay the proceedings until the judgment of the General Court has been delivered.

Where the Civil Service Tribunal and the General Court are seised of cases in which the same relief is sought, the Civil Service Tribunal shall decline jurisdiction so that the General Court may act on those cases.'

*The Staff Regulations of Officials of the European Union*

- 5 Article 24 of the Staff Regulations of Officials of the European Union ('the Staff Regulations'), established by Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ 1968 L 56 p. 1), as amended by Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 (OJ 2004 L 124, p. 1), provides:

'The Communities shall assist any official, in particular in proceedings against any person perpetrating threats, insulting or defamatory acts or utterances, or any attack to person or property to which he or a member of his family is subjected by reason of his position or duties.

They shall jointly and severally compensate the official for damage suffered in such cases, in so far as the official did not either intentionally or through grave negligence cause the damage and has been unable to obtain compensation from the person who did cause it.'

- 6 Article 73 of those regulations provides:

'1. ... the official is insured, from the date of his entering the service, against the risk of occupational disease and of accident. He shall contribute to the cost of insuring against non-occupational risks up to 0.1% of his basic salary.

Such rules shall specify which risks are not covered.

2. The benefits payable shall be as follows:

(a) in the event of death:

payment to the persons listed below of a lump sum equal to five times the deceased's annual basic salary calculated by reference to the monthly amounts of salary received during the 12 months before the accident:

- to the deceased official's spouse and children in accordance with the law of succession governing the official's estate; the amount payable to the spouse shall not, however, be less than 25% of the lump sum,
- where there are no persons of the category above, to the other descendants in accordance with the law of succession governing the official's estate,

- where there are no persons of either of the two categories above, to the relatives in the ascending line in accordance with the law of succession governing the official's estate,
- where there are no persons of any of the three categories above, to the institution;

...'

7 Article 90 of those regulations provides:

'1. Any person to whom these Staff Regulations apply may submit to the appointing authority, a request that it take a decision relating to him. The authority shall notify the person concerned of its reasoned decision within four months from the date on which the request was made. If, at the end of that period, no reply to the request has been received, this shall be deemed to constitute an implied decision rejecting it, against which a complaint may be lodged in accordance with the following paragraph.

2. Any person to whom these Staff Regulations apply may submit to the appointing authority a complaint against an act affecting him adversely, either where the said authority has taken a decision or where it has failed to adopt a measure prescribed by the Staff Regulations. ...'

8 Article 91 of the Staff Regulations is worded as follows:

'1. The Court of Justice of the European Union shall have jurisdiction in any dispute between the Communities and any person to whom these Staff Regulations apply regarding the legality of an act embodying a complaint against such person within the meaning of Article 90(2). In disputes of a financial character the Court of Justice shall have unlimited jurisdiction.

2. 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.

3. Appeals under paragraph 2 shall be filed within three months. ...'

### **Background to the case for review**

#### *Background to the dispute*

- 9 The deceased official was murdered on 18 September 2006 with his wife in Rabat (Morocco), where he was required to take up his post as a political and diplomatic counsellor to the Commission's delegation ('the deceased official'). The murder was committed in a furnished house rented by that delegation for the official, his wife and his four children.
- 10 Following that event, the children were placed under the guardianship of their paternal grandfather, the appellant, and of their paternal grandmother.

- 11 The Commission has paid to the children of the deceased official, in their capacity as the heirs of that official, the payments provided for under Article 73 of the Staff Regulations and has acknowledged the right of those children to other payments provided for in those regulations.
- 12 By letter dated 25 February 2008 addressed to the Commission, the appellant expressed his dissatisfaction with the amount paid to his grandchildren. As the decision taken by the Commission in response to that letter did not satisfy him, by note dated 10 September 2008, he lodged a complaint against that decision on the basis of Article 90(2) of the Staff Regulations, claiming that the Commission was in breach of its administrative duty by reason of its failure to meet its obligation to protect its staff. He also relied on the strict liability of the Commission and, in the alternative, the infringement by it of Article 24 of those regulations, pursuant to which the European Union is required jointly and severally to compensate the harm caused by a third party to one of their staff. That complaint was rejected by the Commission in a decision of 3 February 2009.

*The judgment in Missir Mamachi di Lusignano v Commission (F-50/09, EU:F:2011:55)*

- 13 Maintaining that the Commission had failed in its duty to protect its staff, the appellant brought an action before the Civil Service Tribunal seeking, first, the annulment of the decision of 3 February 2009 rejecting his complaint and, second, reparation, firstly for the material damage suffered by the children of the deceased official in their name; secondly for the non-material damage suffered by the children in their name; thirdly for the non-material damage suffered by the appellant himself as the father of the deceased official in his own name, and fourthly for the non-material damage suffered by the deceased official in the name of his children in their capacity as heirs and successors.
- 14 By the judgment in *Missir Mamachi di Lusignano v Commission* (F-50/09, EU:F:2011:55), the Civil Service Tribunal dismissed that application as being in part unfounded in relation to the material damage claimed and in part inadmissible in relation to the alleged non-material damage. The appellant brought an appeal against that judgment.

*The judgment in Missir Mamachi di Lusignano v Commission (T-401/11 P, EU:T:2014:625)*

- 15 In the judgment in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625), the General Court examined of its own motion the jurisdiction of the Civil Service Tribunal to hear and determine the action at first instance. To that end, the General Court identified, at paragraphs 20 and 39 to 42 of that judgment, the different heads of damage for which the appellant sought reparation and clarified the capacity in which he acted in relation to each of them. The General Court found that the appellant sought:
- in the name of the children of the deceased official, reparation for the material damage that they had suffered, that damage consisting of ‘the loss of the murdered official’s earnings that would have been made available to them between the date of his death and the probable date of his retirement’;
  - in the name of the children of the deceased official, reparation for the non-material damage suffered by them, that damage consisting of the sadness resulting from the death of both their parents and of the trauma caused by having been witnesses to the suffering of the latter;
  - in his own name, reparation for the non-material damage that he suffered as the father of the deceased official, that damage consisting of the sadness resulting from the death of his son and,

- in the name of the children of the deceased official, as his heirs and successors, reparation for the non-material damage suffered by them, that damage consisting of the physical suffering between the time of the assault and his death, and the mental suffering resulting, inter alia, from the knowledge of his imminent death.
- 16 Having declared that it had jurisdiction to adjudicate on all those applications, the General Court made a distinction, in particular, between the damage suffered by the deceased official, on the one hand, and the damage suffered by his children and the appellant, on the other hand.
- 17 Concerning the material and non-material damage suffered by the appellant and the children of the deceased official, the General Court held that the Civil Service Tribunal erred in law in declaring that it had jurisdiction to hear and determine the action in so far as it sought compensation for such damage, and concluded that the case should be referred to the General Court for it to rule on the applications as a court of first instance.
- 18 In that regard, the General Court, concerning the delimitation of jurisdiction between the General Court and the Civil Service Tribunal, held the following at paragraphs 47 to 53 of the judgment in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625):
- ‘47 As EU law currently stands, that delimitation is based on the personal status of the [appellant] and on the origin of the dispute, in accordance with consistent case-law, according to which a dispute between an official and the institution by which he is or was employed is pursued, where it originates in the relationship of employment between the person concerned and the institution, under Article 270 TFEU (formerly Article 236 EC) and Articles 90 and 91 of the Staff Regulations and therefore lies outside the scope of Articles 268 TFEU (formerly Article 235 EC) and 340 TFEU (formerly Article 288 EC), which govern the general system of extra-contractual liability of the Union ([judgments in *Meyer-Burckhardt v Commission*, 9/75, EU:C:1975:131, paragraph 7; *Reinarz v Commission and Council*, 48/76, EU:C:1977:30, paragraph 10; and *Allo and Others v Commission*, 176/83, EU:C:1985:290, paragraph 18; order in *Pomar v Commission*, 317/85, EU:C:1987:267, paragraph 7; and judgment in *Polinsky v Court of Justice*, T-1/02, EU:T:2004:298, paragraph 47]).
- 48 However, it is not possible to determine on the basis of that case-law whether it is before this Court or before the Civil Service Tribunal that the close relatives of the deceased official ought to have brought their claim for reparation for the personal damage, both material and non-material, which they claim to have suffered. Contrary to the Commission’s contention, that case-law specifically relates only to a dispute (i) between an official or former official and the institution by which he is or was employed and (ii) having its origin in the relationship of employment which exists or existed between them, and it is therefore capable of being applied by analogy only in part to a dispute which does indeed have its origin in the relationship of employment, but is not between an official or former official, but between a close third party — a member of his family or the successor to his rights — and the institution by which that official is or was employed.
- 49 If that third party succeeds to the rights of the official or former official concerned, and therefore if he acts as a person entitled to claim under that official, and claiming in that capacity, for the benefit of the estate, reparation for damage personal to the official himself, the case-law in question must be applied by analogy, since, notwithstanding the succession that has intervened, the dispute continues to be a dispute between an official and the institution by which he was employed, having its origin in the relationship of employment between them.
- 50 In the present case, that consideration applies in the case of the second head of damage claimed by the [appellant], as set out at paragraph 20 above, namely the ex haerede non-material damage suffered by the deceased official between the time when he was assaulted and the time of his death. To that extent, the Civil Service Tribunal was correct to state, in the last sentence of

paragraph 116 of the judgment under appeal, that the case-law cited at paragraph 47 above could be applied by analogy to a dispute between the heirs and successors of a deceased official or their legal representative and the institution to which the official was answerable.

- 51 On the other hand, if that third party brings an action in order to obtain reparation for damage which is personal to him, whether that damage is material or non-material, such an application of that case-law by analogy is not justified either by the content of that case-law or by the fundamental considerations underlying it. Even if it is accepted that such a dispute originates in the relationship of employment between the official concerned and the institution, the subjective personal condition, linked to the status of official enjoying the rights in question, is in any event lacking and the Civil Service Tribunal therefore, in principle, lacks jurisdiction *ratione personae* to hear and determine the dispute under Article 270 TFEU and Articles 90 and 91 of the Staff Regulations.
- 52 Contrary to the Commission's contention, the judgment in [*Commission v Petrilli* (T-143/09 P, EU:T:2010:5310)] confirms that analysis and sets out its rationale. At paragraph 46 of that judgment, the Court held that proceedings relating to the civil service under Article 236 EC (now Article 270 TFEU) and Articles 90 and 91 of the Staff Regulations, including proceedings seeking reparation for damage caused to an official or other servant, obey particular rules that form a special category by reference to those deriving from the general principles governing the non-contractual liability of the Union in the context of Article 235 EC (now Article 268 TFEU) and Article 288 EC (now Article 340 TFEU). According to the General Court, where the Union acts as an employer, it is subject to increased liability, manifested in the obligation to make good damage caused to its staff by any illegality committed in that capacity, whereas, under the general law, it is required to make good only damage caused by a "sufficiently serious" breach of a rule of law (consistent case-law since the judgment in [*Bergaderm and Goupil v Commission*, C-352/98 P, EU:C:2000:361]).
- 53 Those considerations relating to the particular and special system of the increased liability of the Union vis-à-vis its staff, justified in particular by the relationship of employment, with its specific rights and obligations such as the duty to have regard for the welfare of its staff, and by the relationship of trust that must exist between the institutions and their officials, in the general interest, are specifically lacking in the case of third parties who are not officials. Even in the case of the members of an official's close family, and subject to the social benefits such as those referred to in Article 76 of the Staff Regulations, the case-law does not recognise the existence of a duty of care on the part of the institutions towards such third parties (judgment in [*Leussink v Commission*, 169/83 and 136/84, EU:C:1986:371], paragraphs 21 to 23).'
- 19 The General Court considered that that line of authority was confirmed by other decisions of the Court. In that regard, the General Court, at paragraphs 55 to 59 of the judgment in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625), made the following findings:
- '55 Thus, in the order in *Fournier v Commission* [(114/79 to 117/79, EU:C:1980:124)], the Court of Justice upheld in principle, at least implicitly, the fact that the members of an official's family acting "on their own behalf" and claiming reparation for damage suffered "personally" must bring proceedings under Article 178 [of the EEC Treaty] (now Article 268 TFEU) rather than under Article 179 [of the EEC Treaty] (now Article 270 TFEU).
- 56 The Court of Justice approved that choice in [*Leussink and Others v Commission* (169/83 and 136/84, EU:C:1986:371)], in a situation in which the applicants had expressly based their claims for compensation on different provisions according to whether or not they were officials, namely Article 179 [of the EEC Treaty] for Mr Leussink and Article 178 [of the EEC Treaty] and the second paragraph of Article 215 [of the EEC Treaty] for his wife and children.

- 57 In his Opinion in [*Leussink and Others v Commission* (169/83 and 136/84, EU:C:1986:371), Advocate General Sir Gordon Slynn acknowledged that the family's action had been correctly based on Articles 178 [of the EEC Treaty] and 215 [of the EEC Treaty], since it related to the independent loss suffered by the family and did not concern a dispute between an official and his institution.
- 58 Although it did not formally rule on that question, the Court of Justice none the less implicitly approved the decision to bring the action by the official's family under Article 178 [of the EEC Treaty] rather than Article 179 [of the EEC Treaty], at paragraph 25 of the judgment in [*Leussink v Commission* (169/83 and 136/84, EU:C:1986:371)], although it considered that the dispute “[arose] from the relationship between an official and his institution”. In addition, the Court of Justice expressly based its decision on costs on Article 69 of its Rules of Procedure, namely the provision applicable to actions brought by individuals who are not officials.
- 59 Last, in *Vainker v Parliament* [(T-48/01, EU:T:2004:61)], this Court dismissed as unfounded the action brought by Mrs Vainker, relying on the precedent of [*Leussink v Commission* (169/83 and 136/84, EU:C:1986:371)], and implicitly approving the choice of Article 235 EC as the appropriate legal basis of the action.’
- 20 Concerning the possibility of the heirs and successors of the deceased official bringing an action on the basis of Article 270 TFEU and Articles 90 and 91 of the Staff Regulations, the General Court stated the following at paragraphs 61 to 65 of the judgment in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625):
- ‘61 It is true that the possibility, indeed the obligation, for those entitled to claim under a deceased official to bring an action on the basis of Article 270 TFEU and Articles 90 and 91 of the Staff Regulations in order to receive the benefits provided for in Article 73(2)(a) of the Staff Regulations has already been recognised, at least implicitly, by the Courts of the European Union ([judgments in *Bitha v Commission*, T-23/95, EU:T:1996:3]; [*Klein v Commission*, F-32/08, EU:F:2009:3]; see also, to that effect and by analogy, order in [*Hotzel-Wagenknecht v Commission*, T-145/00, EU:T:2001:164], paragraph 17).
- 62 However, first, that argument applies only for the persons entitled to claim specifically listed in Article 73(2)(a) of the Staff Regulations, namely the spouse and children or, where there are no such persons, the other descendants or, where there are no such persons, the relatives in the ascending line or, last, where there are no such persons, the institution itself. Thus, in the present case, even on the assumption that the Commission's argument did apply in the case of the four children of [the deceased official], it does not apply in the case of the [appellant], Livio Missir Mamachi di Lusignano himself, who does not have the capacity of a person entitled to claim, within the meaning of Article 73(2)(a) of the Staff Regulations, when there are children. Nor does it apply in the case of [the deceased official's] mother, brother and sister, who are applicants in the parallel Case T-494/11.
- 63 Second, that argument is tantamount to making the procedural implementation of the general law on the non-contractual liability of the Union subject to the procedural implementation of the specific law on social security of officials as provided for in the Staff Regulations. In fact, there is no valid reason why the special jurisdiction of the Civil Service Tribunal vis-à-vis officials should also prevail over the general jurisdiction of this Court to hear and determine any dispute involving the liability of the Union.
- 64 Third, and last, even in the case of [the deceased official's] four children, what is at issue in the present case is not the Commission's obligation to pay the benefits guaranteed in the Staff Regulations, which, moreover, have already been paid to those concerned, but its possible obligation to make full reparation for the alleged material and non-material damage. The Court observes, in that regard, that the [appellant] specifically maintains, in the context of the third plea in law, that the Civil



Service Tribunal erred in law in taking into consideration, for the purpose of making good that damage, the benefits conferred on [the deceased official's] children under the Staff Regulations. In those circumstances, it does not appear possible to base a rule of jurisdiction of the Civil Service Tribunal on Article 73(2)(a) of the Staff Regulations, when it is specifically claimed that that article does not constitute the basis of the action brought on behalf of [the deceased official's] four children.

65 It follows from all of the foregoing considerations that, in circumstances such as those of the present case, the legal framework defined by Articles 268 TFEU and 270 TFEU, Article 1 of Annex I to the Statute of the Court of Justice and Articles 90 and 91 of the Staff Regulations, leads of itself to the inevitable conclusion that the close relatives of a deceased official are necessarily required to bring two actions, one before the Civil Service Tribunal and the other before this Court, depending on whether they have succeeded to the rights of the official in question or whether they claim reparation for material or non-material damage that is personal to them.'

- 21 In order to avoid 'lack of uniformity in the procedural requirements', the General Court held at paragraphs 73 and 74 of the judgment in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625), in the light of the case-law of the Court, and given overriding grounds relating to legal certainty, the sound administration of justice, procedural economy and the prevention of inconsistent judicial decisions, that where the heirs and successors of a deceased official or other servant claim compensation for various heads of damage caused by the same act, both in their capacity as heirs and successors and in their own name, it is open to them to join those claims by bringing a single action. The General Court added that that 'single action' must be brought before it, as it is not only the 'general law' court having 'unlimited jurisdiction' in that regard, unlike the Civil Service Tribunal which is the 'specialised court', but also the higher court in relation to the Civil Service Tribunal.
- 22 In that regard, the General Court has, at paragraphs 75 and 76 of the judgment in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625), observed in particular that if, in circumstances such as those of the present case, the close relatives of a deceased official were required to bring two actions, the General Court and the Civil Service Tribunal would be seized at the same time of cases in which the same relief was sought. In such circumstances, the Civil Service Tribunal should, pursuant to the second subparagraph of Article 8(3) of Annex I to the Statute of the Court of Justice, decline jurisdiction so that the General Court might decide on those cases. The General Court held at paragraphs 77 and 78 of that judgment, that, in the present case, the Civil Service Tribunal 'lacked jurisdiction from the outset' to hear and determine the action brought by the appellant, save with respect to the claim for reparation of non-material damage suffered by the deceased official. Consequently, at paragraph 78 of that judgment, the General Court found of its own motion that the Civil Service Tribunal had no jurisdiction to hear and determine the claim for reparation for the damage suffered by the appellant and by the children of the deceased official and set aside, in that respect, the judgment under appeal.
- 23 In the light of those considerations, the General Court held, at paragraphs 102 and 103 of the judgment in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625), that the Civil Service Tribunal should have held that it lacked jurisdiction to hear and determine that claim for reparation for damage suffered by the appellant and by the children of the deceased official and, therefore, referred that claim to it in accordance with Article 8(2) of Annex I to the Statute of the Court of Justice. The proceedings being, in that respect, ready for judgment, the General Court considered that it was appropriate to refer that part of the action to itself, so that it might hear and determine it as a court of first instance.
- 24 As regards the non-material damage suffered by the deceased official and in respect of which the appellant claims reparation in the name of the children of that official, the General Court, after having noted at paragraph 80 of the judgment in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625), that the Civil Service Tribunal had jurisdiction to hear and determine such a claim, considered the appeal at paragraphs 81 to 98 of that judgment. In that regard, the General Court held

that the Civil Service Tribunal, in upholding a plea of inadmissibility raised by the Commission seeking to oppose the admissibility of that claim, had erred in law and consequently, in that respect, set aside the judgment in *Missir Mamachi di Lusignano v Commission* (F-50/09, EU:F:2011:55).

- 25 At paragraphs 113 to 117 of the judgment in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625), the General Court held, in relation to that claim, that the state of the proceedings did not permit a decision, since the Civil Service Tribunal had not expressed a view on the other pleas of inadmissibility raised by the Commission and, to that extent, the case should theoretically be referred back to that court. However, the General Court observed that, if such a referral were made, the Civil Service Tribunal would be required to find that the General Court and the Tribunal were seised of cases in which the same relief was sought, namely, first, Case T-494/11 and second, the present case and would be obliged, in accordance with the second subparagraph of Article 8(3) of Annex I to the Statute of the Court of Justice, to decline jurisdiction so that the General Court might act in those two cases.
- 26 In the light of all those considerations, the General Court held that case F-50/09 must be referred to it in its entirety so that it might hear and determine it as a court of first instance.

### **Procedure before the Court**

- 27 Following the proposal of the First Advocate General that the judgment in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625) be reviewed, the Reviewing Chamber held, in a decision of 9 September 2014, Review of *Missir Mamachi di Lusignano v Commission* (C-417/14 RX, EU:C:2014:2219), adopted under Article 62, second paragraph, of the Statute of the Court of Justice and under Article 193(4) of the Rules of Procedure of the Court of Justice, that there should be a review of that judgment in order to determine whether it affects the unity or consistency of EU law.
- 28 The question which, according to the terms of that decision, the review is to concern is set out in paragraph 2 of the present judgment.

### **The question for re-examination**

- 29 The Civil Service Tribunal is, in accordance with Article 1 of Annex I to the Statute of the Court of Justice, to exercise within the Court of Justice at first instance the jurisdiction conferred on it to adjudicate in proceedings relating to civil service disputes in the European Union within the meaning of Article 270 TFEU. That jurisdiction applies to ‘any dispute’ between the Union and its servants ‘within the limits and under the conditions laid down in the Staff Regulations of Officials and the Conditions of Employment of other servants of the Union’.
- 30 Given that reference to the Staff Regulations, it is therefore necessary, in order to determine the jurisdiction of the Civil Service Tribunal, to take those regulations into account, in particular Articles 90 and 91 thereof, which implement Article 270 TFEU (see, to that effect, judgment in *Syndicat général du personnel des organismes européens v Commission*, 18/74, EU:C:1974:96, paragraph 14).
- 31 The Staff Regulations are intended to regulate legal relations between the European institutions and their officials, by establishing a series of reciprocal rights and obligations and by affording certain members of an official’s family rights which they may assert in relation to the European Union (judgment in *Johannes*, C-430/97, EU:C:1999:293, paragraph 19).

- 32 Accordingly, Article 91(1) of the Staff Regulations defines the jurisdiction of the Court of Justice in relation to EU civil service disputes, providing that it has jurisdiction in ‘any dispute’ between the Union and ‘any person to whom [those Regulations] apply’ and regarding the legality of an act affecting such a person adversely within the meaning of Article 90(2) of those regulations. In accordance with that provision, ‘any person to whom the Staff Regulations apply’ may submit to the appointing authority a complaint against an act adversely affecting him.
- 33 As regards the jurisdiction *ratione personae* of the Civil Service Tribunal, it should be noted that those provisions, which refer in general terms to ‘any person to whom the Staff Regulations apply’, do not, as such, permit a distinction to be made between an application brought by an official and one brought by any other person referred to in the regulations. Consequently, contrary to what was held by the General Court at paragraph 51 of the judgment in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625), the Civil Service Tribunal has jurisdiction *ratione personae* to hear and determine not only applications brought by officials but also applications brought by any other person referred to in those regulations.
- 34 Article 73(2)(a) of the Staff Regulations expressly identifies the ‘descendants’ and the ‘ascendants’ of the official as the individuals who may, in the event of the death of that official, receive a benefit. Therefore, both the appellant and the children of the deceased official are persons covered by that provision.
- 35 Contrary to what was held by the General Court at paragraphs 62 and 64 of the judgment in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625), the question of whether the appellant and the children of the deceased official actually have, in the present case, a right to payments guaranteed by the Staff Regulations, in particular those referred to in Article 73 of those regulations, may not, as the Advocate General noted at paragraph 35 of his view, be taken into consideration in determining the jurisdiction *ratione personae* of the Civil Service Tribunal on the basis of Article 1 of Annex I to the Statute of the Court of Justice, read together with Article 270 TFEU and Article 91(1) of the Staff Regulations. If it were otherwise, it would be necessary, in order to rule on the jurisdiction *ratione personae* of the Civil Service Tribunal to hear and determine an application brought before it, first to examine the merits of that application.
- 36 It follows that, in the present case, the Civil Service Tribunal has jurisdiction *ratione personae* to hear and determine the claim for damages brought by the appellant both in his own name and in the name of the children of the deceased official.
- 37 On the question of whether the jurisdiction *ratione materiae* of the Civil Service Tribunal extends to actions for damages based on the failure of an institution to fulfil its obligation to ensure the protection of its officials, it should be noted that both Article 270 TFEU and Article 91 of the Staff Regulations which relate to ‘any dispute between the Union and its servants’ refrain from defining the type of action available in the event of rejection of an administrative complaint. Therefore, where proceedings concern the legality of an act adversely affecting an applicant, within the meaning of Article 90 of those regulations, the Civil Service Tribunal has jurisdiction to hear and determine those proceedings, whatever, moreover, the type of action at issue (see in relation to the jurisdiction of the Court, before the creation of the General Court and the Civil Service Tribunal, judgment in *Meyer-Burckhardt v Commission*, 9/75, EU:C:1975:131, paragraph 10).
- 38 It is in those circumstances that the Court held that a dispute between an official and the institution by whom he is or was employed, where it originates in the relationship of employment between that person and the institution, falls under Article 270 TFEU and Articles 90 and 91 of the Staff Regulations, even if it is a claim for compensation (see judgments in *Meyer-Burckhardt v Commission*, 9/75, EU:C:1975:131, paragraph 10; *Reinarz v Commission and Council*, 48/76, EU:C:1977:30,

paragraphs 10 and 11; and *Allo and Others v Commission*, 176/83, EU:C:1985:290, paragraph 18; order in *Pomar v Commission*, 317/85, EU:C:1987:267, paragraph 7; judgment in *Schina v Commission*, 401/85, EU:C:1987:425, paragraph 9).

- 39 Further, the unlimited jurisdiction that the second sentence of Article 91(1) of the Staff Regulations, read in conjunction with Article 270 TFEU and Article 1 of Annex I to the Statute of the Court of Justice, confers on the Civil Service Tribunal allows it, if need be, in disputes of a financial character, of its own motion to order the defendant to pay compensation for the damage caused by the defendant's wrongful act and, in such a case, taking account of all of the circumstances of the case, to assess the damage suffered ex aequo et bono (see, to that effect, judgments in *Reinarz v Commission and Council*, 48/76, EU:C:1977:30, paragraph 11; *Houyoux and Guery v Commission*, 176/86 and 177/86, EU:C:1987:461, paragraph 16; *Commission v Girardot*, C-348/06 P, EU:C:2008:107, paragraph 58; and *Gogos v Commission*, C-583/08 P, EU:C:2010:287, paragraph 44). 'Disputes of a financial character', within the meaning of the first of those provisions, include, in particular, actions brought by staff members seeking to have an institution held liable (judgment in *Gogos v Commission*, C-583/08 P, EU:C:2010:287, paragraph 45).
- 40 The Court concluded that it is for the Courts of the European Union, in an appropriate case, to order an institution to pay a sum to which the applicant is entitled under the Staff Regulations or another legal measure (judgment in *Weißenfels v Parliament*, C-135/06 P, EU:C:2007:812, paragraph 68).
- 41 Accordingly, the Civil Service Tribunal has jurisdiction *ratione materiae* to hear and determine an action in damages brought by an official against the institution by whom he is or was employed, where the dispute originates in the employment relationship between the person concerned and the institution.
- 42 The same is true of an action for damages brought by anyone who, although not an official, is covered by the Staff Regulations as a result of family ties he has with an official, since the dispute has its origin in the employment relationship between that official and the institution concerned, having regard to the fact that Article 1 of Annex I to the Statute of the Court of Justice, read in conjunction with Article 270 TFEU and Article 91 of the Staff Regulations, confers, as has been held at paragraphs 32, 33 and 37 of the present judgment, on the Civil Service Tribunal the jurisdiction to hear and determine 'any dispute' between the European Union and any 'person to whom the Staff Regulations apply'.
- 43 In that regard, and contrary to what the General Court held, in particular at paragraphs 54 to 56 of the judgment in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625), neither the order in *Fournier v Commission* (114/79 to 117/79, EU:C:1980:124) nor the judgment in *Leussink v Commission* (169/83 and 136/84, EU:C:1986:371) support the conclusion that a dispute, such as that in the present case, comes under the jurisdiction of the General Court rather than that of the Civil Service Tribunal.
- 44 First, those decisions were made by the Court at a time when the General Court and the Civil Service Tribunal had not yet been established and when, consequently, no question relating to the delimitation of jurisdiction arose.
- 45 Next, with regard specifically to the judgment in *Leussink v Commission* (169/83 and 136/84, EU:C:1986:371), the Court in that judgment recognised that an action for damages brought by the family members of an official pursuant to Article 178 of the EEC Treaty (subsequently Article 178 of the EC Treaty, then Article 235 EC and now Article 268 TFEU) and seeking compensation for non-material damage that they have suffered following an accident at work in which that official was a victim, is an EU civil service dispute. At paragraph 25 of that judgment, concerning the costs of the case, the Court applied Article 70 of its Rules of Procedure, in the version then in force, in

accordance with which costs incurred by institutions in staff cases are to be borne by them, given that the action at issue, although brought under Article 178 of the EEC Treaty, had its origin in the relationship between the official concerned and the institution by whom he was employed.

- 46 Lastly, in relation to the order in *Fournier v Commission* (114/79 to 117/79, EU:C:1980:124), no conclusion can be drawn from it as to whether an action brought by the family members of an official and seeking compensation for damage that is personal to them, is an EU civil service dispute and, therefore, falls under the jurisdiction of the Civil Service Tribunal. The Court confined itself, in that order, to stating that it would be contrary to the system of legal remedies established by EU law for rectifying irregularities in conditions of employment to concede that by a misuse of procedure an action for damages based on the same facts may be brought by the members of the family of an official or other servant acting on their own behalf, even if they allege that they have personally suffered damage in that connection.
- 47 Moreover, the Court has held that an action for damages brought by a family member of an official entitled to cover under the joint scheme of sickness insurance is an EU civil service dispute (see order in *Lenz v Commission*, C-277/95, EU:C:1996:456, paragraph 55).
- 48 In the present case, the various claims for damages listed at paragraph 15 of the present judgment, all relate to damage resulting from the death of the deceased official and are based on an alleged failure of the Commission to fulfil its duty to ensure the protection of its officials. In that regard, the appellant contends that the present dispute, not only in so far as it concerns the non-material damage suffered by the deceased official but also in so far as it seeks compensation for the material and non-material damage suffered by the children of that official and for the non-material damage suffered by the appellant, has its origin in the employment relationship connecting the deceased official with the institution. Therefore, and in accordance with the approach in the judgment in *Leussink v Commission* (169/83 and 136/84, EU:C:1986:371), it should be held that the entirety of the present dispute has its origin in that employment relationship.
- 49 The fact that, according to the General Court, the non-contractual liability of the European Union in relation to family members of the official mentioned in the Staff Regulations, is subject to substantive conditions stemming from Article 340 TFEU, whereas liability in respect of the official obeys particular rules that form a special category by reference to those conditions, may not, contrary to what appears, in particular, from paragraphs 52 to 59 of the judgment in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625), exclude in that respect the jurisdiction *ratione materiae* of the Civil Service Tribunal pursuant to Article 1 of Annex I to the Statute of the Court of Justice read in conjunction with Article 270 TFEU and Article 91(1) of the Staff Regulations.
- 50 As has been held at paragraphs 37 and 38 of the present judgment, an action for damages brought by a person mentioned in the Staff Regulations falls under the jurisdiction *ratione materiae* of the Civil Service Tribunal, since it originates in the employment relationship between the official and the institution, the nature of the proceedings being of no relevance in that regard. As in the case of proceedings relating to a right expressly provided for in those regulations, proceedings concerning a right to compensation may require the EU Courts, in principle, to make findings concerning that employment relationship, which justifies the Civil Service Tribunal having jurisdiction to hear and determine, in its capacity as the specialised court in EU civil service disputes, that type of case. Therefore, the jurisdiction *ratione materiae* of that court derives from the origin of the dispute and not from the legal basis giving rise to the right to compensation, which was confirmed in the judgment in *Leussink v Commission* (169/83 and 136/84, EU:C:1986:371) referred to in paragraph 45 of the present judgment.
- 51 Finally, as is apparent from paragraph 2 of the present judgment, the determination of the substantive conditions to be fulfilled, in the present case, in order for the non-contractual liability of the European Union to arise, is not the subject of the present review proceedings.

- 52 Having regard to all the foregoing considerations, it must be held that the Civil Service Tribunal has jurisdiction to hear and determine, on the basis of Article 1 of Annex I to the Statute of the Court of Justice, read in conjunction with Article 270 TFEU and Article 91(1) of the Staff Regulations, the action brought by the appellant in its entirety.
- 53 In those circumstances, the General Court has erred in law in holding, in the judgment in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625),
- at paragraph 65 that ‘the close relatives of a deceased official are necessarily required to bring two actions, one before the Civil Service Tribunal and the other before this Court, depending on whether they have succeeded to the rights of the official in question or whether they claim reparation for material or non-material damage that is personal to them’;
  - at paragraphs 77, 78, 102 and 103, that the Civil Service Tribunal lacked jurisdiction from the outset to hear and determine the present action in so far as it concerns claims for compensation for damage suffered by the appellant and the children of the deceased official and that, as those claims fall under the jurisdiction of the General Court, it should refer the action to that court, in order that it might hear and determine the action as a court of first instance;
  - at paragraphs 113 to 117, that it was appropriate also to refer the action to the General Court, pursuant to the second subparagraph of Article 8(3) of Annex I to the Statute of the Court of Justice, in so far as it concerned the non-material damage suffered by the deceased official before his death and for which the appellant sought reparation in the name of the children of that official, who were their father’s heirs and successors.

#### **Whether the unity or consistency of EU law is affected**

- 54 The Civil Service Tribunal, established under Article 225 A EC (now Article 257 TFEU), is a specialised court within the meaning of Article 256 TFEU, which exercises, in accordance with the combined provisions of Article 270 TFEU, Article 1 of Annex I to the Statute of the Court of Justice and Article 91(1) of the Staff Regulations, jurisdiction to hear and determine EU civil service disputes. Accordingly, and contrary to the ruling of the General Court at paragraphs 63 and 74 of the judgment in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625), the Civil Service Tribunal does not have only a ‘special jurisdiction’.
- 55 In referring the present action to itself so that it could hear and determine that action as the court of first instance, the General Court deprived the Civil Service Tribunal of its original jurisdiction and put in place a jurisdiction rule to its advantage, of a type that would have consequences for the determination of the court with jurisdiction in appeals and as a consequence on the structure of the levels of jurisdiction within the Court of Justice.
- 56 However, the judicial system at present set out in the FEU Treaty, the Statute of the Court of Justice and Council Decision 2004/752/EC, Euratom of 2 November 2004 establishing the European Union Civil Service Tribunal (OJ 2004 L 333, p. 7) contains a precise delimitation of the respective jurisdictions of the three courts of the Court of Justice, namely, the Court of Justice, the General Court and the Civil Service Tribunal, so that the jurisdiction of one of those three courts to rule on an action necessarily excludes the jurisdiction of the other two (see, to that effect, order in *Commission v IAMA Consulting*, C-517/03, EU:C:2004:326, paragraph 15).

- 57 The rules on the jurisdiction of the courts of the European Union, as laid down by the FEU Treaty and also by the Statute of the Court of Justice and the Annex thereto, form part of primary law and are central to the EU legal order. Respect for those rules, beyond the issues involved in being the only jurisdiction for EU civil service disputes, constitutes a fundamental requirement in that legal order and is crucial in ensuring the unity of EU law.
- 58 In those circumstances, the errors of law vitiating the judgment in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625), as held at paragraph 53 of the present judgment, undermine the unity of EU law.

### Conclusions to be drawn from the review

- 59 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 the consistency of EU law, it is to refer the case back to the General Court, which is to be 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 relation to the parties to the litigation. Exceptionally, the Court of Justice can itself give final judgment if, having regard to the result of the review, the outcome of the proceedings stems from the findings of fact on which the decision of the General Court was based.
- 60 It follows that the Court cannot confine itself to finding that the unity or consistency of EU law is affected without stating the implications of that finding as regards the dispute in question (judgment in *Review of Commission v Strack*, C-579/12 RX-II, EU:C:2013:570, paragraph 62 and the case-law cited).
- 61 As regards the present case, it is therefore necessary, in the first place, to set aside the judgment in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625), to the extent that the General Court held of its own motion, at paragraph 78 of that judgment, that the Civil Service Tribunal did not have jurisdiction to hear and determine the claim for reparation for the personal damage suffered by the appellant and by the children of the deceased official and to the extent that it held, at paragraphs 102 and 103 of that judgment, that that claim came within its jurisdiction and that it should refer that aspect of the action to itself to hear and determine as a court of first instance.
- 62 In the second place, with regard to the claim for compensation for non-material damage suffered by the deceased official, the judgment in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625) should be set aside in so far as the General Court held, at paragraph 117 of that judgment, that that aspect of the case must also be referred to it so that it might hear and determine it as a court of first instance.
- 63 As regards the decision to be made on the appeal brought by the appellant, it must be observed first, that in the first ground of that appeal, the appellant alleged that the Civil Service Tribunal had erred in law in holding that one of the pleas of inadmissibility raised by the Commission was well founded and in holding inadmissible, at paragraph 91 of the judgment in *Missir Mamachi di Lusignano v Commission* (F-50/09, EU:F:2011:55), the claim for compensation for non-material damage suffered by the appellant, by the deceased official and by his children. That first ground of appeal, in so far as it concerned the claim for reparation for harm suffered by the deceased official, was upheld by the General Court at paragraphs 98 and 104 to 112 of the judgment in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625). The setting aside, to that extent, of the judgment in *Missir Mamachi di Lusignano v Commission* (F-50/09, EU:F:2011:55) must be held to be definitive in the absence of a review on that point.

- 64 However, since the General Court did not examine that first ground of appeal, in so far as it concerned the dismissal by the Civil Service Tribunal, at paragraph 91 of the judgment in *Missir Mamachi di Lusignano v Commission* (F-50/09, EU:F:2011:55), of the claim for compensation for non-material damage suffered by the appellant and by the children of the deceased official, that aspect of the case should be referred back to the General Court in order for it to rule on it in its appellate capacity.
- 65 As regards the second and third grounds of appeal, in which the refusal of the Civil Service Tribunal to allow the claim for compensation for material harm suffered by the children of the deceased official was disputed, the General Court limited its examination of that appeal to the sole question of the jurisdiction of the courts. Therefore, that aspect of the case should be referred back to the General Court so that it might rule on it in its appellate capacity.

### Costs

- 66 Under Article 195(6) of the Rules of Procedure, where the decision of the General Court which is subject to review was given under Article 256(2) TFEU, the Court of Justice is to make a decision as to costs.
- 67 Since there are no specific rules governing orders for costs in the case of a review procedure, 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 (Fifth Chamber) hereby:

1. **Declares that the judgment in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625) adversely affects the unity of EU law in so far as, by that judgment, the General Court, as an appeal court, held:**
  - that the relatives of a deceased official are required to bring two actions, one before the Civil Service Tribunal of the European Union, the other before the General Court of the European Union, depending on whether they are claiming under the rights of the official in question or are seeking compensation for material or non-material damage which is personal to them;
  - that the Civil Service Tribunal lacked jurisdiction from the outset to hear and determine the present action in so far as it related to claims for reparation of damage suffered by Livio Missir Mamachi di Lusignano and by the children of Alessandro Missir Mamachi di Lusignano, and that as those claims fell under its jurisdiction, it should refer the action to the General Court so that it might hear and determine it as a court of first instance;
  - that it should refer the action to the General Court, pursuant to the second subparagraph of Article 8(3) of Annex I to the Statute of the Court of Justice of the European Union, in so far as it relates to the non-material damage suffered by Alessandro Missir Mamachi di Lusignano before his death and in respect of which Livio Missir Mamachi di Lusignano claims reparation in the name of the children of the former, who are their father's heirs and successors;
2. **Declares that the judgment in *Missir Mamachi di Lusignano v Commission* (T-401/11 P, EU:T:2014:625) must be held to be definitive, in so far as, by that judgment, the General Court of the European Union held that the Civil Service Tribunal of the European Union, in the judgment in *Missir Mamachi di Lusignano v Commission* (F-50/09, EU:F:2011:55),**



**erred in law in upholding the first plea of inadmissibility raised by the European Commission and in dismissing, for that reason, as inadmissible the claim for reparation for the non-material damage suffered by Alessandro Missir Mamachi di Lusignano;**

- 3. Sets aside the judgment as to the remainder;**
- 4. Refers the case back to the General Court of the European Union;**
- 5. Orders Livio Missir Mamachi di Lusignano and the European Commission to bear their own costs incurred in the review proceedings.**

[Signatures]