Reports of Cases

ORDER OF THE COURT (Tenth Chamber)

1 February 2017 [1]

(Appeal — Article 181 of the Rules of Procedure of the Court of Justice — Action for damages — Act of accession of the Republic of Croatia to the European Union — Commitments relating to a strategy for judicial reform — Creation followed by the abolition of the position of public bailiff — Damage suffered by persons appointed as public bailiffs — Monitoring of the Republic of Croatia's commitments by the European Commission — Appeal dismissed — Appeal manifestly inadmissible)

In Case C-241/16 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 26 April 2016,

Darko Graf, residing in Zagreb (Croatia), represented by L. Duvnjak, odvjetnik,

applicant,

the other party to the proceedings being:

European Commission, represented by S. Ječmenica and G. Wils, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

THE COURT (Tenth Chamber),

composed of M. Berger (Rapporteur), President of the Chamber, A. Borg Barthet and E. Levits, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having decided, after hearing the Advocate General, to give a decision by reasoned order, pursuant to Article 181 of the Rules of Procedure of the Court of Justice,

makes the following

1 — Language of the case: Croatian.

Order

1 By his appeal, Mr Darko Graf seeks to have set aside the judgment of the General Court of the European Union of 26 February 2016, *Vidmar and Others* v *Commission* (T-507/14, not published, 'the judgment under appeal', EU:T:2016:106), by which it dismissed his action for compensation for harm he claims to have suffered by reason of the Commission's wrongful conduct in its monitoring of compliance with the accession commitments made by the Republic of Croatia.

I. **EU law**

2 Article 36 of the Act concerning the conditions of accession of the Republic of Croatia and the adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community (OJ 2012 L 112, p. 21) ('the Act of Accession'), annexed to the Treaty between the Member States of the European Union and the Republic of Croatia concerning the accession of the Republic of Croatia to the European Union (OJ 2012 L 112, p. 10) ('the Accession Treaty'), states:

'1. The Commission shall closely monitor all commitments undertaken by Croatia in the accession negotiations, including those which must be achieved before or by the date of accession. The Commission's monitoring shall consist of regularly updated monitoring tables, dialogue under the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part …, peer assessment missions, the pre-accession economic programme, fiscal notifications and, when necessary, early warning letters to the Croatian authorities. In the autumn of 2011, the Commission shall present a Progress Report to the European Parliament and the Council. In the autumn of 2012, it shall present a Comprehensive Monitoring Report to the European Parliament and the Council. Throughout the monitoring process, the Commission shall also draw on input from Member States and take into consideration input from international and civil society organisations as appropriate.

The Commission's monitoring shall focus in particular on commitments undertaken by Croatia in the area of the judiciary and fundamental rights (Annex VII), including the continued development of track records on judicial reform and efficiency, impartial handling of war crimes cases, and the fight against corruption.

…

As an integral part of its regular monitoring tables and reports, the Commission shall issue six-monthly assessments up to the accession of Croatia on the commitments undertaken by Croatia in these areas.

2. The Council, acting by qualified majority on a proposal from the Commission, may take all appropriate measures if issues of concern are identified during the monitoring process …'

3 Pursuant to Commitment No 1, in Annex VII to the Act of Accession, entitled 'Specific commitments undertaken by the Republic of Croatia in the accession negotiations (referred to in Article 36(1), second subparagraph, of the Act of Accession)' ('Commitment No 1'), the Republic of Croatia is required to 'continue to ensure effective implementation of its Judicial Reform Strategy and Action Plan'.

4 Article 36 of the Act of Accession applies, according to Article 3(5) of the Accession Treaty, from the date of the signature of the treaty, that is 9 December 2011.

II. **Background to the dispute**

5 The background to the dispute was set out at paragraphs 4 to 33 of the judgment under appeal and may be summarised as follows.

6 With a view to the accession of the Republic of Croatia to the European Union, the negotiations relating on Chapter 23 of the accession negotiations, entitled 'Judiciary and Fundamental Rights' were opened on 30 June 2010.

7 In the extension of the Action plan for judicial reform, which provides, in particular, for the establishment of the post of 'public bailiff', on 23 November 2010, the Croatian Parliament adopted the Ovršni zakon (Law on enforcement) and the Zakon o javnim ovršiteljima (Law on public bailiffs), which introduced a new system for the enforcement of judgments. The entry into force of several provisions of the Law on public bailiffs was fixed for a later date. On 15 December 2010, the Croatian Parliament also adopted a Strategy for Judicial Reform for 2011-2015 ('the Strategy for Judicial Reform 2011-2015'), according to which, in particular, the enforcement of judgments was to be transferred from the courts to public bailiffs.

8 Following the publication, on 19 August 2011, of a public call for candidates for the appointment of public bailiffs by the Croatian Ministry of Justice, Mr Graf, who had passed the competition at issue, was appointed as a public bailiff and received the authorisation to commence his activities.

9 The Accession Treaty between the Member States of the EU and the Republic of Croatia, ratified in January 2012 by the Republic of Croatia, was published on 24 April 2012 in the *Official Journal of the European Union*. The Act of Accession, annexed to the Accession Treaty, provides in Article 36 for the monitoring by the Commission of the commitments given by the Republic of Croatia during the accession negotiations.

10 On 22 December 2011, the Croatian Parliament decided to postpone the application of the Law on enforcement and the Law on public bailiffs. In May 2012, the Croatian authorities sent explanations to the Commission concerning the reform of the system of the enforcement of judgments and the corresponding draft legislation. On 21 June 2012, the entry into force of the Law on public bailiffs was again postponed. Finally, the Law of 28 September 2012, the Law on public bailiffs was repealed, and that profession was abolished with effect from 15 October 2012.

11 In its report of 26 March 2013, the Commission indicated that the Republic of Croatia had adopted a new law concerning the enforcement of judgments in order to ensure the application of judgments and reduce the backlog of cases relating to the enforcement of judgments. On 22 April 2013, the Council of the European Union welcomed that Commission's monitoring report.

12 The Republic of Croatia acceded to the European Union on 1 July 2013.

III. **The action before the General Court and the judgment under appeal**

13 By application lodged at the Registry of the General Court on 1 July 2014, Mr Graf and Mr Vedran Vidmar, Mr Saša Čaldarević, Ms Irena Glogovšek, Ms Gordana Grancarić, Ms Martina Grgec, Ms Ines Grubišić, Ms Sunčica Horvat Peris, Mr Zlatko Ilak, Ms Mirjana Jelavić, Mr Romuald Kantoci, Ms Svjetlana Klobučar, Mr Ivan Kobaš, Ms Tihana Kušeta Šerić, Mr Damir Lemaić, Mr Željko Ljubičić, Ms Gordana Mahovac, Ms Martina Majcen, Ms Višnja Merdžo, Mr Tomislav Perić, Mr Darko Radić, and Mr Damjan Saridžić brought an action seeking an order that the Commission pay compensation for the harm they claim to have suffered, assessed at EUR 600 000 per year and per appellant, plus default interest.

14 By the judgment under appeal, the General Court dismissed the action as unfounded.

IV. **Forms of order sought by the parties**

15 By his appeal, the appellant claims that the Court should:

— principally, set aside the judgment under appeal and grant the form of order sought before the General Court;

— in the alternative, set aside the judgment under appeal and refer the case back to the General Court; and

— in any event, order the Commission to bear the costs.

16 The Commission contends that the Court of Justice should:

— principally, dismiss the appeal as manifestly inadmissible;

— in the alternative, dismiss the appeal as unfounded; and

— order the appellant to pay the costs.

V. **The appeal**

17 In support of his appeal, the appellant relies, in substance, on two grounds of appeal based on an infringement of EU law and procedural irregularities which adversely affect his interests.

18 Under Article 181 of the Rules of Procedure, where an appeal is, in whole or in part, manifestly inadmissible or manifestly unfounded, the Court may at any time, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide by reasoned order to dismiss that appeal in whole or in part, without opening the oral procedure.

19 That option should be exercised in the present case.

A. **The first ground of appeal: infringement of EU law**

20 By his first ground of appeal, the appellant claims essentially that, contrary to the General Court's finding in paragraphs 47 to 52 of the judgment under appeal, Article 36 of the Act of Accession, read together with Annex VII thereto, lays down specific commitments to be undertaken by the Republic of Croatia, which if not complied with give rise to the obligation on the Commission to act in accordance with paragraph 2 thereof. Therefore, the General Court wrongly held that, in the present case, the Commission cannot be regarded, first, as being the perpetrator of a breach of the principle of the protection of legitimate expectations and, second, it held that the latter institution had not infringed Article 17 TEU.

21 In that connection, it must be recalled that, in paragraphs 47 to 49 of the judgment under appeal, the General Court held, essentially, that the Commitment No 1, which provides that the Republic of Croatia was to continue to ensure the effective implementation of its judicial reform strategy and the accompanying action plan, did not refer to a specific judicial reform strategy or action plan. The general references mentioned in that commitment are explained by the fact that the period between the date of the signature of an act of accession and the date of actual access and, in particular, the

monitoring, during that period of the commitments given in the accession negotiations are characterised by regular exchanges between the EU authorities and those of the acceding State. Those exchanges necessarily lead to adjustments on both sides.

22 Moreover, in paragraphs 50 to 52 of the judgment under appeal, the General Court held, in particular, that the Strategy for Judicial Reform and the action plan mentioned in Annex VII to the Act of Accession did not only cover the Strategy for Judicial Reform 2011-2015 and to the Action plan for judicial reform, as that plan essentially sets out the short term objectives which had to be achieved in 2010 and, therefore, had to be followed by a new plan up until the actual date of accession and that Commitment No 1 did not give rise to any obligations on the Croatian authorities to establish the post of public bailiff.

23 According to settled case-law, an appeal must indicate precisely the contested elements of the order which the appellant seeks to have set aside, and the legal arguments specifically advanced in support of the appeal (see, in particular, judgment of 5 March 2015, *Ezz and Others* v *Council*, C-220/14 P, EU:C:2015:147, paragraph 111 and the case-law cited). A ground of appeal does not meet those requirements which does not contain any legal argument to demonstrate the manner in which the General Court allegedly erred in law, and which is merely constitutes a request to have the action brought at first instance re-examined, in breach of the rules imposed by both the Statute of the Court of Justice and its Rules of Procedure (see, to that effect, judgment of 13 September 2007, *Il Ponte Finanziaria* v *OHIM*, C-234/06 P, EU:C:2007:514, paragraphs 45 and 46).

24 Furthermore, it follows from Article 256(1), second subparagraph, TFEU and Article 58, first paragraph, of the Statute of the Court of Justice of the European Union that the General Court has exclusive jurisdiction, first, to find the facts, except where the substantive inaccuracy of its findings is apparent from the documents submitted to it, and, second, to assess those facts. When the General Court has established or assessed the facts, the Court of Justice has jurisdiction under the abovementioned Article 256 to review the legal characterisation of those facts by the General Court and the legal conclusions it has drawn from them (see, in particular, order of the President of the Court of 6 October 2015, *Cap Actions SNCM* v *Commission*, C-418/15 P(I), EU:C:2015:671, paragraph 24 and the case-law cited).

25 In the present ground of appeal, first, the appellant does not present any specific legal arguments seeking to prove the existence of an error that the General Court allegedly committed. He merely challenges the substance of paragraphs 47 to 52 of the judgment under appeal in a general manner and to a large extent simply repeats the arguments he relied on before the General Court. The same is true as regards an alleged infringement by the Commission of Article 17 TEU, an infringement that the General Court wrongly excluded in paragraph 68 of that judgment. The appellant does not put forward any argument aiming to identify the errors which the General Court allegedly committed in those paragraphs of the judgment under appeal.

26 Second, in so far as the appellant, in particular in paragraphs 8 to 15 of the notice of appeal, seeks to establish that he received precise, unconditional and consistent assurances from the Commission that the public bailiffs would commence their activities on 1 January 2012, he seeks to challenge the assessment of the facts undertaken in that regard by the General Court. In support of his claims, the appellant does not put forward any arguments that the General Court distorted those facts. In any event, he does not identify any specific facts that the General Court distorted or how it distorted them.

27 In those circumstances, the first ground of appeal must be dismissed as manifestly inadmissible.

B. **The second ground of appeal: procedural irregularities adversely affecting the appellant's interests**

28 As regards the second ground of appeal, raised in summary form in paragraph 1 of the notice of appeal, it must be stated that it does not contain any arguments seeking to demonstrate any procedural irregularity that the General Court may have committed and, therefore, it clearly fails to satisfy the requirements deriving from Article 168(1)(d) and Article 169(2) of the Rules of Procedure. Therefore, it must therefore be dismissed as clearly inadmissible.

29 Since the two grounds of appeal raised in support of the present appeal are manifestly admissible, it must be dismissed in its entirety.

VI. **Costs**

30 Under Article 138(1) of the Rules of Procedure, which applies to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs to be awarded against the appellant and the appellant has been unsuccessful, the latter must be ordered to pay the costs of the appeal proceedings.

On those grounds, the Court hereby orders:

1. The appeal is dismissed.

2. Mr Darko Graf is ordered to pay the costs.

[Signatures]