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 part and manifestly unfounded in part)

In Case C-239/16 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 25 April 2016,

Ante Šumelj, residing in Zagreb (Croatia),

Dubravka Bašljan, residing in Zagreb,

Đurđica Crnčević, residing in Sv. Ivan Zelina (Croatia),

Miroslav Lovreković, residing in Križevci (Croatia),

Drago Burazer, residing in Zagreb,

Nikolina Nežić, residing in Zagreb,

Blaženka Bošnjak, residing in Sv. Ivan, (Croatia)

Bosiljka Grbašić, residing in Križevci,

Tea Tončić, residing in Pula (Croatia),

Milica Bjelić, residing in Dubrovnik (Croatia),

Marijana Kruhoberec, residing in Varaždin (Croatia),

Davor Škugor, residing in Sisak (Croatia),

Ivan Gerometa, residing in Vrsar (Croatia),

Kristina Samardžić, residing in Split (Croatia),

Sandra Cindrić, residing in Karlovac (Croatia),

1 — Language of the case: Croatian.

Sunčica Gložinić, residing in Varaždin,

Tomislav Polić, residing in Kaštel Novi (Croatia),

Vlatka Pižeta, residing in Varaždin,

represented by M. Krmek, odvjetnik,

appellants,

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

Order

1 By their appeal, Mr Ante Šumelj, Ms Dubravka Bašljan, Ms Đurđica Crnčević, Mr Miroslav Lovreković, Mr Drago Burazer, Ms Bosiljka Grbašić, Ms Nikolina Nežić, Ms Blaženka Bošnjak, Ms Bosiljka Grbašić, Ms Tea Tončić, Ms Milica Bjelić, Ms Marijana Kruhoberec, Mr Davor Škugor, Mr Ivan Gerometa, Ms Kristina Samardžić, Ms Sandra Cindrić, Ms Sunčica Gložinić, Mr Tomislav Polić and Ms Vlatka Pižeta ask the Court to set aside the judgment of the General Court of the European Union of 26 February 2016, *Šumelj and Others* v *Commission* (T-546/13, T-108/14 and T-109/14, 'the judgment under appeal', EU:T:2016:107), by which it dismissed their action for damages for harm they allegedly suffered by reason of the European Commission's wrongful conduct during its monitoring of compliance with the accession commitments undertaken 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, on 9 December 2011

II. **Background to the dispute**

5 The background to the dispute is set out at paragraphs 4 to 32 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 2010 ('the 2010 Action Plan'), 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, the appellants, who passed the competition at issue, were appointed as public bailiffs and received the authorisation to commence their activities.

9 The Accession Treaty between the Member States of the European Union 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*. Article 36 of the Act of Accession, annexed to the Accession Treaty, provides 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 relevant draft legislation. On 21 June 2012, the entry into force of the Law on public bailiffs was again postponed. Finally, by 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 guarantee their enforcement and reduce the backlog of cases relating to the enforcement of judgments. On 22 April 2013, the Council of the European Union welcomed the 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 applications lodged at the Registry of the General Court on 20 September 2013 (Case T-546/13) and 17 February 2014 (Cases T-108/14 and T-109/14), the appellants brought an action against the Commission for damages for harm they claim to have suffered and asking the Court to determine the amount of those losses.

14 By order of 5 May 2014, Cases T-546/13, T-108/14 and T-109/14 were joined for the purposes of the written procedure, the oral procedure and the decision closing the proceedings.

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

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

16 By their appeal, the appellants claim that the Court should:

— accept the arguments in support of their appeal;

— order the Commission to pay the costs.

17 The Commission contends that the Court should:

— principally, dismiss the appeal as manifestly inadmissible;

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

— order the appellants to pay the costs.

V. **The appeal**

18 In support of their appeal, the appellants rely, essentially, on two grounds of appeal: an infringement of Article 36 of the Act of Accession and an infringement of Articles 13 and 17 TEU.

19 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.

20 That option should be exercised in the present case.

A. **The first ground of appeal: infringement of Article 36 of the Act of Accession**

21 By their first ground of appeal, the appellants claim essentially that, contrary to the General Court's findings that, in accordance with Article 36(1) of the Act of Accession, the Commission should have established that the Croatian authorities had failed to fulfil their commitments by reason of the postponement and then the repeal of the Law on public bailiffs and should have proposed to appropriate measure to the Council, pursuant to Article 36(2). The General Court wrongly held that Commitment No 1 did not refer to a specific judicial reform strategy or action plan.

22 In that connection, it must be recalled that, in paragraphs 46 to 48 of the judgment under appeal, the General Court held, essentially, that 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 accession 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.

23 Moreover, in paragraphs 49 to 51 of the judgment under appeal, the General Court held, in particular, that the judicial reform strategy and the action plan mentioned in Annex VII to the Act of Accession did not refer only to the Strategy for Judicial Reform 2011-2015 and to the 2010 Action Plan, as that plan set out essentially 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.

24 According to settled case-law, an appeal must indicate precisely the contested elements of the judgment 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 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) .

25 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).

26 In the present ground of appeal, first, the appellants do not present any specific legal argument seeking to prove the existence of an error of law law that the General Court committed. They merely submit that the General Court committed such an error, by holding in paragraphs 47 to 51 of the judgment under appeal, that Commitment No 1 did not refer to a specific judicial reform strategy or action plan. However, they do not put forward any specific argument aiming to identify the error that the General Court committed in those paragraphs of the judgment under appeal.

27 Second, in so far as the appellants argue, in that regard, in paragraph 9 of their notice of appeal, that the Republic of Croatia never adopted another judicial reform strategy or another action plan other than the Strategy for Judicial Reform 2011-2015 and the 2010 Action Plan, they do not explain how that fact could affect the finding of the General Court in paragraphs 47 to 51 of the judgment under appeal. In any event, those arguments seek, in reality, to challenge the assessment of the facts found by the General Court without even arguing that the General Court distorted those facts.

28 Having regard to the foregoing, the first ground of appeal must be dismissed as manifestly inadmissible.

B. **The second ground of appeal: infringement of Articles 13 and 17 TEU**

29 By their second ground of appeal, the appellants claim essentially that the General Court wrongly held, first, that Article 13 TEU was not relevant in the present case and, second, that since the Commission had not aroused any legitimate expectations with regard to the appellants, it had not infringed Articles 13 and 17 TEU or the principle of the protection of legitimate expectations. They argue that, by undermining the general principle of legal certainty, the Commission has also infringed Article 13 TEU. Furthermore, given that that institution has not acted in accordance with Article 17 TEU, in particular by not ensuring the proper application of EU law by the Republic of Croatia, it also infringed that article. The appellants submit that the Accession Treaty, in so far as it lays down the obligation for that State to create the post of public bailiff, guarantees them, in particular, the right to work, so that they could therefore legitimately expect to commence to perform the functions for which they had been appointed.

30 As regards that ground of appeal, it suffices to state that all the arguments that the appellants advance in support of it are based on the premiss that Article 36 of the Act of Accession has created an obligation for the Croatian authorities to create the post of public bailiff. As is clear from paragraph 23 of the present order, the General Court held that there was no such obligation, and the appellants failed to invalidate that finding. Therefore, that ground of appeal is manifestly unfounded.

31 It follows from all of the foregoing considerations that the two grounds of appeal raised in support of the present appeal must be dismissed and, therefore, it must be dismissed in its entirety as being manifestly inadmissible in part and manifestly unfounded in part.

VI. **Costs**

32 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 appellants and they have been unsuccessful, the appellants must be ordered to pay the costs of the present proceedings.

On those grounds, the Court (Tenth Chamber) hereby orders:

1. **The appeal is dismissed.**

2. **Mr Ante Šumelj, Ms Dubravka Bašljan, Ms Đurđica Crnčević, Mr Miroslav Lovreković, Mr Drago Burazer, Ms Nikolina Nežić, Ms Blaženka Bošnjak, Ms Bosiljka Grbašić, Ms Tea Tončić, Ms Milica Bjelić, Ms Marijana Kruhoberec, Mr Davor Škugor, Mr Ivan Gerometa, Ms Kristina Samardžić, Ms Sandra Cindrić, Ms Sunčica Gložinić, Mr Tomislav Polić and Ms Vlatka Pižeta are ordered to pay the costs.**

[Signatures]