Reports of Cases

JUDGMENT OF THE GENERAL COURT (Appeal Chamber)

10 July 2014*

(Appeal — Civil service — Officials — Non-contractual liability — Personal damage suffered by the close relatives of the deceased official — Damage suffered by the official before his death — Respective jurisdiction of the General Court and the Civil Service Tribunal — Rule of correspondence between the request for compensation and the complaint against the decision rejecting that request)

In Case T-401/11 P,

APPEAL against the judgment of the European Union Civil Service Tribunal (First Chamber) of 12 May 2011 in Case F-50/09 *Missir Mamachi di Lusignano* v *Commission* [2011] ECR, seeking to have that judgment set aside,

Livio Missir Mamachi di Lusignano, residing in Kerkhove Avelgem (Belgium), acting both on his own behalf and as legal representative of the heirs of Alessandro Missir Mamachi di Lusignano, his son, a former official of the European Commission, represented initially by F. Di Gianni, R. Antonini, G. Coppo and A. Scalini and subsequently by F. Di Gianni, G. Coppo and A. Scalini, lawyers,

appellant,

the other party to the proceedings being

European Commission, represented by D. Martin, B. Eggers and L. Pignataro-Nolin, acting as Agents,

defendant at first instance,

THE GENERAL COURT (Appeal Chamber),

composed of M. Jaeger, President, N.J. Forwood (Rapporteur) and S. Papasavvas, Judges,

Registrar: B. Pastor, Deputy Registrar,

having regard to the written procedure and further to the hearing on 12 December 2013,

gives the following

Judgment

1 By his appeal, brought under Article 9 of Annex I to the Statute of the Court of Justice of the European Union, the appellant, Mr Livio Missir Mamachi di Lusignano, asks the Court to set aside the judgment of the European Union Civil Service Tribunal (First Chamber) of 12 May 2011 in Case F-50/09 *Missir Mamachi di Lusignano* v *Commission* [2011] ECR ('the judgment under appeal'),

* Language of the case: Italian.

whereby the Tribunal dismissed his action for, first, annulment of the decision of 3 February 2009 whereby the Commission of the European Communities rejected his request for compensation for the material and non-material damage resulting from the murder of his son and daughter-in-law on 18 September 2006 at Rabat (Morocco) and, second, an order that the Commission pay him, and the heirs and successors of his son, various sums by way of reparation for the material and non-material damage resulting from those murders.

Facts giving rise to the dispute

2 The facts giving rise to the dispute are set out at paragraphs 16 to 34 of the judgment under appeal, as follows:

‘16 Alessandro Missir Mamachi di Lusignano, who entered the service of the Commission as an official on 1 November 1993, married Ariane Lagasse de Locht in 1995. The couple had four children, born between 1996 and 2002.

…

18 From 28 August 2006 onwards Alessandro Missir Mamachi di Lusignano was posted to the Commission’s delegation in Rabat as political and diplomatic counsellor. Before his transfer he had indicated that his wife and children would accompany him in this posting. …

19 The Missir Mamachi di Lusignano family stayed in a hotel from 28 to 31 August 2006 and from 1 September onwards temporarily occupied a furnished house rented by the Commission delegation …

20 During the night of 17 to 18 September 2006, towards half past midnight, a burglar entered the house by squeezing between the bars of a ground-floor window in one of the side walls. Suddenly awoken by the presence of the burglar in the parents’ bedroom on the first floor, Alessandro Missir Mamachi di Lusignano surprised the intruder, who was searching the room. The criminal then stabbed the official several times and left him on the floor. The wife of Mr Missir Mamachi di Lusignano, who had also awoken, was stabbed in the back and appears to have died very quickly from her injuries. After binding and gagging Mr Missir Mamachi di Lusignano, the intruder took a shower and then forced the seriously injured official to reveal the personal identification number of his credit card. The official finally died from his wounds. The murderer spared the children. He left the premises at about four in the morning at the wheel of the family’s car, taking with him various objects, including a television set.

21 On 19 September 2006 the Moroccan police arrested Karim Zimach. During his preliminary interrogation he confessed to the double murder of Mr and Mrs Missir Mamachi di Lusignano during the night of 17 to 18 September. Karim Zimach was found guilty of these crimes and was sentenced to death in a judgment of 20 February 2007 by the Criminal Chamber of First Instance of the Court of Appeal, Rabat, which was confirmed on appeal by a judgment of 18 June 2007 by the Criminal Appeal Chamber of the same court. It should be noted that the Moroccan authorities have not carried out a death sentence since 1993, the year of the last execution of a person sentenced to death in Morocco.

22 The Commission brought independent action for damages in the Moroccan courts. In its abovementioned judgment, the Criminal Chamber of First Instance of the Court of Appeal, Rabat, declared the Commission’s civil action to be admissible and ordered Karim Zimach to pay a symbolic dirham to the European Union.

23 As a result of the tragic loss of their parents, the four Missir Mamachi di Lusignano children were placed in the care of their grandparents, including the appellant, by an order of 24 November 2006 of the Magistrates' Court, Kraainem (Belgium).

24 From 1 October to 31 December 2006, the Commission made the payment due under the first paragraph of Article 70 of the Staff Regulations [of Officials of the European Communities].

25 The Commission also paid to the children and heirs of the deceased official the sum of EUR 414 308.90 by way of death grant under Article 73 of the Staff Regulations and the sum of EUR 76 628.40 on account of the death of the spouse under Article 25 of Annex X to the Staff Regulations.

26 In addition, the Commission granted to the four children, as from 1 January 2007, entitlement to the orphans' pension under Article 80 of the Staff Regulations and the education allowance referred to in Annex VII to the Staff Regulations.

27 Moreover, the Commission granted the deceased official a posthumous promotion to grade A*11, first step, with retroactive effect from 1 September 2005. This promotion was taken into account in calculating the orphans' pension and the death grant.

28

Furthermore, by decision of 14 May 2007 taken on the basis of Article 76 of the Staff Regulations, the Commission granted each of the children an extraordinary monthly benefit on social grounds equal to a dependent child allowance, payable until they reached the age of 19 years.

…

30 By letter of 25 February 2008 addressed to the President of the Commission, the appellant, after thanking the Commission for the ceremony of 18 September 2007, first expressed his disagreement with the amounts paid to his four grandchildren and his dissatisfaction with the Commission's refusal to authorise the permanent engagement of a governess or family assistant, which in his opinion was essential in view of the respective ages of the children and their grandparents. The appellant then asked whether the Commission had yet begun negotiations with Morocco for the latter to pay adequate compensation beyond the single dirham granted symbolically to the European Union by the Moroccan court. Lastly, the appellant drew the attention of the President of the Commission to the answer provided on 6 August 2007 by Mrs Ferrero-Waldner, the Commissioner for External Relations, to a written question from Mr Coûteaux, Member of the European Parliament (written question of 25 June 2007, P-3367/07, OJ 2008 C 45, p. 179), on the "murder of an official of the Directorate-General for External Relations in Morocco" (the "written answer of 6 August 2007"). According to the appellant, the adequate security measures usually taken by the Commission and recalled in the answer from the Commissioner for External Relations had not been taken before the double murder. In his view, the Commission had thus been guilty of gross negligence, justifying the payment to the minor children of compensation equivalent to at least the total salary that the murdered official would have received up to the presumed date of his retirement in 2032, that is to say 26 years' salary.

31 Mr Kallas, Vice-President of the Commission responsible for personnel, replied to the appellant by letter of 11 June 2008. In that letter Mr Kallas stated that no negligence or fault could be attributed to the Moroccan authorities and that the conditions for opening diplomatic negotiations with Morocco with a view to obtaining compensation were not fulfilled. He indicated that the staff protection measures taken by the Commission complied with the security conditions relating to the Rabat delegation and that the request for compensation submitted in that respect in the appellant's letter of 25 February 2008 could not be granted. He stated that the

payments already made by the Commission (EUR 490 937.30 in death grant and accident insurance, EUR 4 376.82 per month in orphans' pensions and education allowances, EUR 2 287.19 per month — including tax rebate — in dependent child allowances and EUR 1 332.76 per month in extraordinary assistance or additional dependent child allowance for each child) had been calculated correctly.

32 However, in that letter of 11 June 2008 the Commissioner informed the appellant that, in view of the particularly tragic circumstances of this case, the Commission had decided to take an additional measure and exceptionally to increase the amounts paid under Article 76 of the Staff Regulations. Accordingly, by decision of 4 July 2008 each of the grandchildren was granted on this basis, as from 1 August 2008 and until reaching the age of 19 years, a monthly amount equal to two dependent child allowances. In the light of that decision, the monthly payment from the Commission to the children of the deceased official amounted to more than EUR 9 800 (EUR 9 862 in February 2009).

33 By letter of 10 September 2008 the appellant submitted a complaint against the letter of 11 June 2008 on the basis of Article 90(2) of the Staff Regulations. In that complaint he maintained that the Commission bore liability for wrongful acts on account of its failure to meet its obligation to protect its staff. He also claimed that the Commission bore liability even without fault owing to the harm caused by a lawful act. Lastly, in the alternative, he relied on Article 24 of the Staff Regulations, under which the Communities are required jointly and severally to compensate for damage caused by a third party to one of their agents.

34 By decision of 3 February 2009 the appointing authority rejected the complaint.'

Procedure before the Civil Service Tribunal and judgment under appeal

3 It was in those circumstances that the appellant, acting both on his own behalf and as legal representative of the heirs of Alessandro Missir Mamachi di Lusignano, brought an action before the Civil Service Tribunal on 12 May 2009, in which he claimed that the Tribunal should:

— annul the appointing authority's decision of 3 February 2009;

— order the Commission to pay to the heirs and successors of Alessandro Missir Mamachi di Lusignano:

  — the sum of EUR 2 552 837.96, subsequently re-evaluated at EUR 3 975 329, corresponding to the murdered official's salary spanning a period of 26 years, to be reassessed in order to take account of that person's career prospects, by way of compensation for financial loss;

  — the sum of EUR 250 000 by way of compensation for the non-material damage suffered by the victim before his death;

  — the sum of EUR 1 276 512 by way of compensation for the non-material damage suffered by the children of the victim, who witnessed his tragic murder;

— order the Commission to pay the sum of EUR 212 752 by way of compensation for the non-material damage suffered by the appellant as the father of the victim;

— order the Commission to pay 'compensatory interest and default interest accrued';

— order the Commission to pay the costs.

4 The Commission contended, at first instance, that the action should be dismissed.

5 By the judgment under appeal, the Civil Service Tribunal dismissed the action as unfounded and ordered the Commission to pay all the costs.

6 The Civil Service Tribunal first of all considered, at paragraphs 71 and 72 of the judgment under appeal, referring to the judgment in Case T-90/95 *Gill* v *Commission* [1997] ECR-SC I-A-471 and II-1231, paragraph 45, that the appellant's claims for annulment could not be assessed in isolation from the claims for compensation, so that the action must be analysed as having as its sole purpose to obtain compensation for damages that the appellant, the deceased official and the latter's children allegedly suffered on account of the Commission's actions. That assessment is not challenged in the present appeal.

7 As the Commission had raised, in particular, two pleas of inadmissibility concerning the appellant's heads of claim relating to reparation for non-material damage, alleging, first, that the claim for compensation of 25 February 2008 contained no application for reparation for non-material damage and, second, that the complaint of 10 September 2008 also contained no application for reparation for the non-material damage suffered by the appellant in person, the Civil Service Tribunal answered those pleas as follows, at paragraphs 82 to 91 of the judgment under appeal:

> '82 It must be recalled that, within the system of actions provided for in Articles 90 and 91 of the Staff Regulations [of Officials of the European Communities], where an action does not contain any claim for the annulment of a particular measure but claims compensation for damage allegedly caused by a series of wrongful acts or omissions which, because they have no legal effect, cannot be described as acts adversely affecting an official, it is imperative that the administrative procedure commence with a request by the person concerned that the appointing authority compensate him for the damage, and be followed where appropriate by a complaint against the rejection of such request, failing which a subsequent action will be inadmissible (see, in particular, the judgment of 13 July 1995 in Case T-44/93 *Saby* v *Commission* [1995] ECR-SC I-A-175 and II-541, paragraph 31).
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> 83 Moreover, it is settled case-law that the relief sought in the application to the Courts of the European Union must be the same as that set out in the complaint and the application may contain only heads of claim based on the same cause of action as those raised in the complaint, and that those heads of claim may be developed before the courts by means of pleas and arguments which did not necessarily appear in the administrative complaint but are closely linked to it (see, for example, the judgment of 23 April 2002 in Case C-62/01 P *Campogrande* v *Commission* [2002] ECR I-3793, paragraph 34).
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> 84 The Tribunal recently held that the concept of "cause of action" must be given a broad interpretation (judgment of 1 July 2010 in Case F-45/07 *Mandt* v *Parliament*, paragraph 119). Although this guideline was established by the Tribunal with regard to an action for annulment, that does not mean that it cannot be applied by analogy to an action for damages, subject to the specific nature of the latter case being respected. However, in cases relating strictly to compensation, the concept of "cause of action" is not defined by reference to "heads of claim" within the meaning of the case-law cited in the preceding paragraph but to "heads of damage" raised by the official concerned in his claim for compensation. It is these heads of damage that determine the subject-matter of the compensation sought by the official and, consequently, the relief sought by the claim on which the administration must rule.

85 It follows from the considerations set out in the three preceding paragraphs that claims for compensation based on different heads of damage are admissible before the Tribunal only if they have been preceded first by an application to the administration seeking the same relief and based on the same heads of damage and then by a complaint against the decision of the administration that ruled, expressly or impliedly, on that application.

86 That does not prevent the official concerned from altering the amount of the claims stated in his application to the administration, in particular if the loss worsens further or if the extent of the damage is not known or cannot be assessed until after the application has been lodged (see, to that effect, on the possibility of quantifying a loss at the application stage, the judgment of 23 September 2004 in Case C-150/03 P *Hectors* v *Parliament* [2004] ECR I-8691, paragraph 62), but on condition that the heads of damage for which he seeks compensation were listed in the application.

87 In the present case, whereas the applicant seeks reparation for the damaging consequences of the same facts as those referred to in his application of 25 February 2008, his claims for damages are based on reparation for the various non-material losses allegedly caused to himself, his deceased son and his grandchildren.

88 It is common ground that in the request for compensation contained in his letter of 25 February 2008 the applicant sought only reparation for material damage and did not raise the heads of non-material damage alleged before the Tribunal.

89 It is true that subsequently, in his complaint, the applicant requested reparation not only for material damage but also for non-material damage, which enabled the administration to adopt a position on these heads of damage in the decision rejecting the complaint before the action was brought. However, this part of the decision rejecting the complaint must be regarded as the first decision taken by the administration on the said heads of damage. The applicant did not lodge a complaint against that decision, as he should have done, and therefore failed to comply with the two-stage administrative procedure which determines the admissibility of claims for compensation based on these heads of damage.

90 The line of argument based on the judgment of 26 January 1989 in Case 224/87 *Koutchoumoff* v *Commission* [1989] ECR 99, which the applicant developed at the second hearing, cannot be accepted. Although the Court of Justice acknowledged in that judgment that an official was permitted to submit claims for damages for the first time before the Court, it did so on the ground that the challenge to the lawfulness of the act adversely affecting the official, which was set out in the complaint, could imply a request for damages for the loss caused by that act. However, the present dispute relates solely to damages and is not associated with a challenge to the lawfulness of a decision adversely affecting the applicant.

91 As a consequence, the claims for reparation for non-material damage must, in the present case, be dismissed as inadmissible, without there being need to examine the other pleas of inadmissibility raised against them.'

8 Adjudicating, as to the substance, on the plea alleging wrongful failure by the Commission to fulfil its duty to ensure the safety of its official, the Civil Service Tribunal first of all held that the Commission had acted wrongfully in such a way as to incur liability, as the failure to implement appropriate protection measures at the temporary accommodation of the Missir Mamachi di Lusignano family at Rabat had constituted a failure to fulfil its obligation to ensure the safety of its official and his family posted to a third country.

9 As regards the causal link between that fault and the alleged financial damage, the Civil Service Tribunal considered that it was established.

10 At this stage of its reasoning, the Civil Service Tribunal stated, at paragraph 191 of the judgment under appeal, that the murderer's share in the liability for the occurrence of the damage remained to be determined.

11 Taking into account the two counts of damage pleaded, namely the double murder and the loss of a chance of survival, and the fact that the second damage was narrower in scope than the first, the Civil Service Tribunal considered, at paragraph 197 of the judgment under appeal, that the Commission must be held liable for 40% of the damage suffered.

12 As regards the extent of the financial damage, the Civil Service Tribunal considered, at paragraph 200 of the judgment under appeal, that the material damage linked to the loss of revenue that must be taken into consideration in the present case amounted to the sum of EUR 3 million.

13 After observing, at paragraph 201 of the judgment under appeal, that the Commission was required to make good 40% of that damage, or EUR 1.2 million, the Civil Service Tribunal stated at paragraph 202 of that judgment that the amounts which the Commission had already paid and which it would continue to pay to the heirs and successors, which exceeded the benefits normally provided under the Staff Regulations of Officials of the European Communities ('the Staff Regulations'), came to around EUR 1.4 million, which could increase to around EUR 2.4 million if the benefits concerned were paid until the 26th birthday of each of the four children. The Civil Service Tribunal therefore stated, at paragraph 203 of the judgment under appeal, that the Commission had already made full reparation for the material damage for which it must bear liability.

14 On the basis of all of the foregoing, the Civil Service Tribunal held, at paragraph 205 of the judgment under appeal, that the plea of the action, although well founded, did not permit the Tribunal to accept the appellant's arguments for reparation of the material damage suffered.

Procedure before the General Court

15 By a pleading received at the Court Registry on 29 September 2011, the appellant lodged the present appeal.

16 The Commission lodged its response on 16 December 2011.

17 The written procedure was closed on 23 January 2012.

18 By a document lodged at the Court Registry on 1 February 2012, the appellant submitted an application setting out the reasons for which he wished to be heard, in accordance with Article 146 of the Rules of Procedure of the General Court.

19 On hearing the report of the Judge-Rapporteur, the Court (Appeal Chamber) granted that application and opened the oral procedure, raising of its own motion a plea involving a matter of public policy and requesting the parties, by way of measures of organisation of procedure, to answer in writing certain questions related to that plea. The Commission complied with that request within the prescribed period.

20 In that regard, the Court first of all reminded the parties that, as the appellant had stated at paragraph 57 of his application at first instance, he sought compensation for four distinct heads of damage, namely:

— 'the material damage suffered by the heirs of Alessandro [Missir Mamachi di Lusignano], 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;

— the non-material damage suffered by Alessandro [Missir Mamachi di Lusignano], consisting of the unwarranted physical suffering undergone between the time of the assault and the time of his death, and also the mental suffering resulting from the knowledge of his imminent death, the knowledge of the murder of his beloved wife and the terrible anguish and uncertainty about the fate of his four children;

— the non-material damage (both mental and existential) suffered by the children of the slain official, consisting in the unwarranted sadness of the loss of their beloved parents, and also by the terrible and horrific mental trauma of having seen with their own eyes their dying parents at the scene of the crime, one of the most horrific and tragic spectacles at which a human being could be present during his life;

— the non-material damage (both mental and existential) suffered by the appellant in his capacity as the father of the victim, consisting of the unwarranted sadness and suffering of the loss of his son in such tragic circumstances'.

21 The Court then, in the first place, requested the parties to comment in writing on whether the right to reparation for the material damage suffered by the heirs of Alessandro Missir Mamachi di Lusignano (as referred to in the first indent of paragraph 20 above), although it must be calculated by reference to the proportion of their father's income from which they could hope to benefit if he had remained alive, had been transferred to those heirs by succession and was therefore actionable by them in their capacity as heirs, like the right to reparation for the non-material damage suffered by Alessandro Missir Mamachi di Lusignano himself between the time of the assault and the time of his death (as referred to in the second indent of paragraph 20 above), or whether it was not, rather, a right to reparation for damage personal to them, actionable *jure proprio*, which had therefore not been transferred to them by succession (such as the damage referred to in the third and fourth indents of paragraph 20 above).

22 Without prejudice to the answer that should be given to that question, but closely related to it, the Court, in the second place, raised of its own motion a plea involving a matter of public policy, based on the fact that the Civil Service Tribunal had no jurisdiction to adjudicate on the claim for reparation for the damage referred to in the first, third and fourth indents of paragraph 20 above.

23 In particular, the Court referred the parties to the case-law resulting from the order of 7 May 1980 in Joined Cases 114/79 to 117/79 *Fournier* v *Commission* [1980] ECR 1529; the judgment of 8 October 1986 in Joined Cases 169/83 and 136/84 *Leussink and Others* v *Commission* [1986] ECR 2801; the Opinion of Advocate General Sir Gordon Slynn in that case; and the judgment of 3 March 2004 in Case T-48/01 *Vainker* v *Parliament* [2004] ECR-SC I-A-51 and II-197.

24 The Court considered that, in those circumstances, the question arose whether it did not follow from the strict 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, that the close relatives of an official are necessarily required to bring two actions, one before the Civil Service Tribunal and the other before the General Court, depending on whether they have acquired the rights of the official concerned or whether they seek reparation for damage, whether material or non-material, that is personal to them.

25 Last, the Court requested the parties to comment on any inferences that should be drawn, for the purposes of the present appeal and in answer to the plea involving a matter of public policy raised of the Court's own motion at paragraph 22 above, if the second part of the alternative set out at paragraph 21 above should be applied and if, in addition, the question set out at paragraph 24 above should be answered in the affirmative.

26 The parties presented oral argument and gave their answers to the questions put by the Court at the hearing on 12 December 2013.

Forms of order sought

27 The appellant claims that the Court should:

— set aside the judgment under appeal;

— order the Commission to pay the heirs and successors of Alessandro Missir Mamachi di Lusignano the sum of EUR 3 975 329 by way of compensation for the financial damage suffered;

— declare the claim for compensation for the non-material damage admissible, order the Commission to pay:

  — the heirs and successors, first, the sum of EUR 250 000 by way of compensation for the non-material damage suffered by the victim before his death and, second, the sum of EUR 1 276 512 by way of compensation for the non-material damage suffered by them as children of the victim and witnesses of his tragic murder;

  — the appellant in person the sum of EUR 212 752 by way of compensation for the non-material damage suffered by him as the father of the victim;

— order the Commission to pay compensatory interest and default interest accrued in the meantime;

— order the Commission to pay the costs.

28 The Commission contends that the Court should:

— refer the case back before the Civil Service Tribunal as regards the claim for reparation for non-material damage;

— in any event, dismiss the appeal as inadmissible and/or unfounded;

— order the appellant to pay the costs.

The appeal

The jurisdiction of the Civil Service Tribunal to adjudicate on the action at first instance

Observations of the parties in response to the measure of organisation of procedure

29 In its written observations, lodged at the Registry on 10 September 2013, the Commission begins by claiming, in answer to the first question put by the Court (see paragraph 21 above), that the right to reparation for the material damage suffered by the heirs of Alessandro Missir Mamachi di Lusignano is a right that is personal to them which they derive, in particular, from Article 73(2)(a) and Articles 76 and 80 of the Staff Regulations.

30 In response to the plea involving a matter of public policy raised of the Court's own motion (see paragraph 22 above), the Commission then claims that any dispute having its origin in an alleged omission by an institution vis-à-vis one of its officials, in the context of the employment relationship governed exclusively by the Staff Regulations, falls within the exclusive jurisdiction of the Civil Service Tribunal, pursuant to Article 270 TFEU.

31 In that regard, the Commission maintains, in the first place, that, in the event of the death of an official, Article 73(2)(a) of the Staff Regulations replaces the bilateral relationship between the official and his institution, which, pursuant to Article 47(g) of the Staff Regulations, is interrupted by the death, by the relationship which, in application of the Staff Regulations, the institution in question has with the persons referred to in that provision, including the heirs and successors.

32 The Commission maintains, in the second place, that the jurisdiction of the Civil Service Tribunal is justified by the fact that it is the possible harmful and wrongful conduct of the institution vis-à-vis its official or former official that is at issue.

33 The Commission observes, in that regard, that it is common ground that the Civil Service Tribunal has jurisdiction to hear and determine any dispute relating to the application of Articles 73, 76 and 80 of the Staff Regulations. Only if the benefits under the Staff Regulations were not sufficient to make full reparation for the damage suffered would the heirs and successors be able to claim further compensation, which could only be additional to that obtained under Article 73 of the Staff Regulations and could not duplicate it (*Leussink and Others* v *Commission*, paragraph 13, and Case C-257/98 P *Lucaccioni* v *Commission* [1999] ECR I-5251, paragraphs 21 and 22). The Civil Service Tribunal also has jurisdiction to rule on any such additional compensation, provided that the damage is caused by the same wrongful conduct of the institution vis-à-vis the official concerned.

34 The Commission submits that its argument is also supported both by the need for legal certainty as to the determination of the competent court and in the interest of procedural economy, which requires that only a single court have jurisdiction (see, to that effect, order of 27 May 2004 in Case C-517/03 *IAMA Consulting* v *Commission*, not published in the ECR, paragraph 17).

35 As for the case-law referred to by the Court and cited at paragraph 23 above, the Commission maintains that it is irrelevant in the present case, since in the cases concerned the official was alive. In such a situation, Article 73(2)(b) and (c) of the Staff Regulations confers a right to compensation solely on the invalided official and not on his heirs and successors. Conversely, the heirs and successors of a deceased official are expressly referred to in Article 73(2)(a) of the Staff Regulations, which confers a personal right on them.

36 If the Court should consider that the Civil Service Tribunal did not have jurisdiction to adjudicate on the requests for reparation for the damage alleged *jure proprio* by the heirs and successors of Alessandro Missir Mamachi di Lusignano, the Commission claims that the judgment under appeal should be set aside, save in so far as it adjudicated on the request for reparation for the non-material damage suffered by Alessandro Missir Mamachi di Lusignano. As this last request was — rightly in the Commission's submission — rejected as inadmissible owing to the breach of the administrative procedure provided for in Articles 90 and 91 of the Staff Regulations, the judgment under appeal should be upheld on that point.

37 For the remainder, the Commission maintains that the Court, as an appellate court, could not continue to deal with the substance of the case. In its submission, a new ordinary action at first instance should therefore be brought before the Court and it would then be for the Court to decide on the steps to be taken both on this new action and on the action in the parallel Case T-494/11.

38 The appellant did not lodge a written answer within the prescribed period to the questions put by the Court. At the hearing, he left the matter to the discretion of the Court.

Findings of the Court

39 It is appropriate, at the outset, to determine the various types of damage for which the appellant seeks reparation and also the capacity in which he is acting with respect to each of them.

40 In that regard, the Court observes that, according to the general principles common to the laws of the Member States concerning non-contractual liability, most legal orders distinguish, in the event of the death of the victim in circumstances such as those of the present case, at least three types of damage that should generally be made good by the person or persons responsible and which, in essence, correspond to the following typology:

— the non-material damage, sometimes called '*ex haerede*' damage, suffered by the victim himself, consequent upon the mental suffering which preceded his death, if it is proved that he was aware of it;

— the material damage suffered by the victim's close relatives, which depends on the income which they derived from the deceased; in the case of children, this is often a capitalised sum, determined by reference to the age of majority or the age at which they are likely to complete their studies;

— the non-material damage suffered by the victim's close relatives, owing to the existence of a special relationship of affection with the victim.

41 In his application at first instance in Case F-50/09, which gave rise to the present appeal, the appellant himself conformed to that typology in his classification of the various heads of damage claimed. Thus, among the four heads of damage cited in the first and second indents of paragraph 3 above, the first corresponds to the material damage suffered personally by the children of Alessandro Missir Mamachi di Lusignano; the second corresponds to the '*ex haerede*' non-material damage suffered by Alessandro Missir Mamachi di Lusignano before he died and claimed on behalf of his estate; the third corresponds to the personal non-material damage suffered by the children of Alessandro Missir Mamachi di Lusignano; and the fourth corresponds to the personal non-material damage suffered by the appellant in its capacity as the father of Alessandro Missir Mamachi di Lusignano.

42 For the purposes of the present judgment, the Court will therefore rely on the following two premisses:

— the *ex haerede* non-material damage, namely the damage suffered by Alessandro Missir Mamachi di Lusignano before he died, is claimed by his heirs and successors in that capacity, and not on their own behalf, as the right to reparation for that damage was transferred to them by succession, in accordance with the provisions of national law on succession;

— the other three types of damage for which reparation is requested in the present case, namely the material and non-material damage suffered by the children and the non-material damage suffered by the father of Alessandro Missir Mamachi di Lusignano, are claimed by the appellant and his grandchildren on their own behalf, independently of their capacity as heirs and successors.

43 It is by reference to those two premisses that the Court will examine the questions of jurisdiction raised by the present plea.

44 As regards the determination of the rules on jurisdiction applicable in the present case, the Court observes that, under Article 256(1) TFEU, it has jurisdiction to hear and determine at first instance, in particular, actions or proceedings referred to in Articles 268 TFEU and 270 TFEU, with the exception of those assigned to a specialised court set up under Article 257 TFEU and those which the Statute of the Court of Justice reserves for the Court of Justice.

45 Since Article 1 of Annex I to the Statute of the Court of Justice, added to that Statute by Council Decision 2004/752/EC, Euratom of 2 November 2004 establishing the European Union Civil Service Tribunal (OJ 2004 L 333, p. 7), recognised, in application of Article 256(1) TFEU, that the Civil Service Tribunal is to have jurisdiction to hear and determine at first instance actions brought under Article 270 TFEU concerning any dispute between the Union and its servants within the limits and under the conditions laid down in the Staff Regulations and the Conditions of Employment of other servants of the Union, the General Court no longer has jurisdiction to hear and determine at first instance actions for compensation brought under Article 270 TFEU (order of 8 July 2009 in Case T-545/08 *Thoss* v *Court of Auditors*, not published in the ECR, paragraph 26). Conversely, the Civil Service Tribunal has jurisdiction only in actions validly brought under Article 270 TFEU.

46 The judicial system of the European Union, as established by the FEU Treaty, the Statute of the Court of Justice and the Council decisions relating to the General Court and the Civil Service Tribunal, thus entails a precise delimitation of the respective jurisdiction of the General Court and the Civil Service Tribunal, so that where one of those two courts has jurisdiction to hear and determine an action at first instance the other one necessarily has no jurisdiction to do so.

47 As EU law currently stands, that delimitation is based on the personal status of the applicant 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 (Case 9/75 *Meyer-Burckhardt* v *Commission* [1975] ECR 1171, paragraph 7; Case 48/76 *Reinarz* v *Commission and Council* [1977] ECR 291, paragraph 10; Case 176/83 *Allo and Others* v *Commission* [1985] ECR 2155, paragraph 18; order in Case 317/85 *Pomar* v *Commission* [1987] ECR 2467, paragraph 7; and judgment of 14 October 2004 in Case T-1/02 *Polinsky* v *Court of Justice*, not published in the ECR, 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 Alessandro Missir Mamachi di Lusignano 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 Alessandro Missir Mamachi di Lusignano 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 of 16 December 2010 in Case T-143/09 P *Commission* v *Petrilli* [2010] ECR, 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 Case C-352/98 P *Bergaderm and Goupil* v *Commission* [2000] ECR I-5291).

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 (*Leussink and Others* v *Commission*, paragraphs 21 to 23).

54 This tendency in the case-law is also confirmed by the decisions cited at paragraph 23 above.

55 Thus, in the order in *Fournier* v *Commission*, 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 EEC (now Article 268 TFEU) rather than under Article 179 EEC (now Article 270 TFEU).

56 The Court of Justice approved that choice in *Leussink and Others* v *Commission*, 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 EEC for Mr Leussink and Article 178 EEC and the second paragraph of Article 215 EEC for his wife and children.

57 In his Opinion in *Leussink and Others* v *Commission*, Advocate General Sir Gordon Slynn acknowledged that the family's action had been correctly based on Articles 178 EEC and 215 EEC, 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 EEC rather than Article 179 EEC, at paragraph 25 of *Leussink and Others* v *Commission*, 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*, this Court dismissed as unfounded the action brought by Mrs Vainker, relying on the precedent of *Leussink and Others* v *Commission*, and implicitly approving the choice of Article 235 EC as the appropriate legal basis of the action.

60 The Court must also reject the argument which the Commission bases, in essence, on Article 73(2)(a) of the Staff Regulations.

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 (Case T-23/95 *Bitha* v *Commission* [1996] ECR-SC I-A-13 and II-45; Case F-32/08 *Klein* v *Commission* [2009] ECR-SC I-A-1-5 and II-A-1-13; see also, to that effect and by analogy, order of 19 June 2001 in Case T-145/00 *Hotzel-Wagenknecht* v *Commission*, not published in the ECR, 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 Alessandro Missir Mamachi di Lusignano, 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 Alessandro Missir Mamachi di Lusignano'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 Alessandro Missir Mamachi di Lusignano'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 Alessandro Missir Mamachi di Lusignano'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 Alessandro Missir Mamachi di Lusignano'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.

66 It also follows from the foregoing that those two actions for damages are subject to different substantive conditions, in accordance with the distinction made by this Court in *Commission* v *Petrilli* and set out at paragraphs 52 and 53 above.

67 It further follows from the foregoing that where the close relatives in question bring an action for damages before the Civil Service Tribunal they are subject to the time-limits and other procedural constraints, such as the rule on correspondence between the prior administrative complaint and the action, laid down in Articles 90 and 91 of the Staff Regulations (see, to that effect, Case 257/85 *Dufay* v *Parliament* [1987] ECR 1561, paragraph 21), while they are subject only to the limitation period of five years provided for in the first paragraph of Article 46 of the Statute of the Court of Justice, applicable to proceedings before the General Court pursuant to the first paragraph of Article 53 of that Statute, where they bring proceedings before the General Court.

68 Such lack of uniformity in the procedural requirements would be deeply unsatisfactory in many respects, both for the parties concerned and for the Courts of the European Union. The duality of the actions that would result from the strict application of the rule set out at paragraph 65 above would give rise to serious inconvenience: for example, the proceedings would become more onerous and more expensive for litigants, the limited resources of the Courts of the Union would be wasted and, above all, inconsistent judicial decisions might well be delivered in the same dispute, which would be incompatible with the principle of legal certainty.

69 In such circumstances, according to principles widely recognised in the procedural systems of the Member States, there must be mechanisms to prevent or regulate conflicts of jurisdiction between courts before which the same matters are or are likely to be brought, such as the extension of jurisdiction, with or without the parties' consent, an objection to jurisdiction, the power of the higher court to order that the case be transferred to itself, priority given to the first court seised or the application of the maxim *accessorium sequitur principale* (see, to that effect, Case 266/85 *Shenavai* [1987] ECR 239, paragraph 19), such mechanisms being either provided for by law or created by the courts.

70 Likewise, in EU law, the Court of Justice has already departed from the strict procedural framework laid down in the provisions in force, in order to derogate in its decisions from certain rules of jurisdiction or procedure, notwithstanding that they are a matter of public policy, drawing inspiration essentially from considerations connected with procedural economy and the sound administration of justice.

71 Thus, as regards the rules of jurisdiction, in the order in *IAMA Consulting* v *Commission*, the Court of Justice, rejecting the approach taken by the General Court, which had adhered to the strict framework of the provisions of Article 225(1) EC in conjunction with Article 51 of the Statute of the Court of Justice, applied a judge-made rule, that solution being justified by 'the interest of procedural economy … and the priority recognised to the court first seised, such considerations also being generally recognised in the procedural systems of the Member States' (paragraph 17 of the order).

72 As regards the rules of procedure, although, according to the system laid down in Articles 90 and 91 of the Staff Regulations, any action must be preceded by a properly conducted administrative procedure, and therefore by a prior administrative complaint, the Court of Justice has derogated on its own authority from that rule in order to allow a matter to be brought directly before the Courts of the European Union with respect to a wide range of decisions, such as decisions of competition selection boards or staff reports, in regard to which the appointing authority has no discretion in the context of

such a complaint (see, in particular, as regards the decisions of selection boards, Case 44/71 *Marcato* v *Commission* [1972] ECR 427 and Case 52/85 *Rihoux and Others* v *Commission* [1986] ECR 1555, at 1567, and, as regards staff reports, Joined Cases 6/79 and 97/79 *Grassi* v *Council* [1980] ECR 2141 and Case 140/87 *Bevan* v *Commission* [1989] ECR 701). That case-law was inspired by the fact that a complaint directed against a decision of a selection board or against a staff report would be 'meaningless', as the institution concerned has no power to annul or amend the decisions of a selection board or the appraisal of the assessors. Consequently, an 'excessively restrictive interpretation of Article 91(2) of the Staff Regulations would merely result in a needless prolongation of the procedure' (Case 7/77 *Ritter von Wüllerstorff und Urbair* v *Commission* [1978] ECR 769).

73 In the light of those precedents, and given overriding grounds relating to legal certainty, the sound administration of justice, procedural economy and the prevention of inconsistent judicial decisions, it must be considered that, in circumstances such as those of the present case, 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 persons entitled to claim under the deceased official or other servant and in their own name and on their own behalf, it is open to them to join those claims by bringing a single action.

74 This single action must be brought before the General Court, which is not only the 'general' or 'general law' court, having 'unlimited jurisdiction' in that respect, unlike the Civil Service Tribunal, which is the specialised court, but also the higher court, to which the Civil Service Tribunal is 'attached', in the words of Article 257 TFEU. It should be observed, in that regard, that where two courts of different ranks are seised of cases in which the same relief is sought, it is generally the higher court that has jurisdiction to hear and determine the entire dispute. Thus, in European law, the second subparagraph of Article 8(3) of Annex I to the Statute of the Court of Justice provides that where the Civil Service Tribunal and the General Court are seised of cases in which the same relief is sought, the Civil Service Tribunal is to decline jurisdiction so that the General Court may act on those cases. A comparable solution is provided for in the third paragraph of Article 54 of the Statute of the Court of Justice where the Court of Justice and the General Court are seised of cases in which the same relief is sought, the same issue of interpretation is raised or the validity of the same act is called in question.

75 It should further be observed, in that context, that if, in circumstances such as those of the present case, the close relatives of the deceased official were required to bring two actions, that would mean that the General Court and the Civil Service Tribunal were seised at the same time of cases in which the same relief was sought, namely, in essence, claims for reparation for the damage resulting from the death of the official concerned, liability for which would by definition be attributed to the same fault of the defendant institution. In such circumstances, in application of the second subparagraph of Article 8(3) of Annex I to the Statute of the Court of Justice, the Civil Service Tribunal should immediately decline jurisdiction so that the General Court might act on those cases.

76 Thus, the assertion, in such circumstances, of a rule allowing the General Court to order that the case be transferred to it also appears to be the corollary of the rule in Article 8(3) of Annex I to the Statute of the Court of Justice. It would be pointless, in those circumstances, if the persons concerned were required to bring proceedings before the Civil Service Tribunal, and an excessively restrictive interpretation of the framework of powers 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 would result solely in the needless prolongation of the procedure (see, to that effect and by analogy, the case-law of the Court of Justice cited at paragraph 72 above).

77 In this specific case, it follows from all of the foregoing considerations that the Civil Service Tribunal lacked jurisdiction from the outset to hear and determine the present action, save with respect to the claim for reparation of the *ex haerede* non-material damage suffered by Alessandro Missir Mamachi di Lusignano before his death.

78 Accordingly, in application of the rule on the strict separation of jurisdiction between the two courts concerned, as set out at paragraph 65 above, the Court finds of its own motion that the Civil Service Tribunal had no jurisdiction to hear and determine the claim for reparation for the personal damage, both material and non-material, suffered by the appellant in person and the heirs and successors of Alessandro Missir Mamachi di Lusignano and to that extent sets aside the judgment under appeal.

79 The consequences of the judgment under appeal being to that extent set aside will be examined at paragraphs 102 and 103 below.

80 It is appropriate, for the remainder, to examine the appeal, by reference to the appellant's pleas, solely in so far as the Civil Service Tribunal had jurisdiction to hear and determine the claim before it, namely in that it adjudicated on the claim for reparation for the *ex haerede* non-material damage suffered by Alessandro Missir Mamachi di Lusignano before he died.

First plea, alleging that the Civil Service Tribunal erred in law in rejecting as inadmissible the claim for compensation for the ex haerede *non-material damage suffered by Alessandro Missir Mamachi di Lusignano before he died*

81 The first plea consists of three parts. Since, however, the second part of the plea relates to the rejection of the claim for compensation for the non-material damage suffered by the appellant in person, it will not be examined further, since that aspect of the judgment under appeal has already been set aside in the context of the examination of the plea involving a matter of public policy raised by the Court of its own motion.

82 By the first part of the plea, which relates more particularly to the dismissal as inadmissible of the request for compensation for the non-material damage suffered by the murdered official before he died (*ex haerede* non-material damage), the appellant maintains that the procedural rule on correspondence, applicable to actions in civil service matters, requires identity of cause of action and subject-matter between the administrative complaint and the action and not, as the Civil Service Tribunal wrongly held, between the request and the complaint. The appellant relies, in particular, to that effect, on Case 58/75 *Sergy* v *Commission* [1976] ECR 1139. In the present case, the complaint of 10 September 2008 did indeed contain a claim for compensation for the non-material damage suffered by the murdered official and by his heirs and successors before he died.

83 By the third part of the plea, the appellant further claims, in essence, that the rule on correspondence, as applied by the Civil Service Tribunal, limits the right to effective judicial protection.

84 The Commission contends that the Civil Service Tribunal did not err in law in that regard and that compliance with the administrative procedure does not breach the principle of effective judicial protection, which may entail restrictions, provided that they correspond to objectives of general interest and do not involve a disproportionate and intolerable interference which infringes upon the very substance of those rights (Joined Cases C-317/08 to C-320/08 *Alassini and Others* [2010] ECR I-2213, paragraph 63 et seq.).

85 In that regard, the Court considers that the Civil Service Tribunal failed to have regard, at paragraphs 84 to 86 of the judgment under appeal, to the procedural rules and constraints arising from Articles 90 and 91 of the Staff Regulations in an action by an official seeking only compensation.

86 It is true that, at paragraph 82 of the judgment under appeal, the Civil Service Tribunal correctly referred to the case-law according to which, in the system of actions provided for in Articles 90 and 91 of the Staff Regulations, where, as in the present case, an action seeks only compensation, in that it does not contain any claim for the annulment of a particular measure but claims solely compensation for damage allegedly caused by a series of wrongful acts or omissions which, because

they have no legal effect, cannot be described as acts adversely affecting an official, it is imperative that the administrative procedure commence with a request by the person concerned that the appointing authority compensate him for the damage, and be followed where appropriate by a complaint against the rejection of such request (see *Saby* v *Commission*, paragraph 31, and judgment of 13 December 2012 in Case T-595/11 P *A* v *Commission* [2012] ECR, paragraphs 111 to 118 and the case-law cited).

87 At paragraph 83 of the judgment under appeal, the Civil Service Tribunal referred, also correctly, to the settled case-law according to which the relief sought in the application to the Courts of the European Union must be the same as that set out in the complaint and the application may contain only heads of claim based on the same cause of action as those raised in the complaint, and that those heads of claim may be developed before the courts by means of pleas and arguments which did not necessarily appear in the administrative complaint but are closely linked to it (see *Campogrande* v *Commission*, paragraph 34 and the case-law cited).

88 However, at paragraph 84 of the judgment under appeal the Civil Service Tribunal developed that case-law, adding that, in cases relating strictly to compensation, the concept of 'cause of action' is not defined by reference to 'heads of claim' within the meaning of the case-law cited in the preceding paragraph but to 'heads of damage' raised by the official concerned in his request for compensation and that it is these heads of damage that determine the subject-matter of the compensation sought by the official and, consequently, the relief sought by the request on which the administration must rule.

89 At paragraph 85 of the judgment under appeal, the Civil Service Tribunal concluded from the considerations set out at paragraphs 86 to 88 above that claims for compensation based on different heads of damage are admissible before the Courts of the European Union only if they have been preceded first by an application to the administration seeking the same relief and based on the same heads of damage and then by a complaint against the decision of the administration that ruled, expressly or impliedly, on that application.

90 In that regard, it should be observed at the outset that those developments and the conclusions to which they led are the result of confusion between the concepts of 'subject-matter' and 'cause of action'. More specifically, contrary to the assertion made in the penultimate sentence of paragraph 84 of the judgment under appeal, the concept of 'cause of action' cannot be defined by reference to 'heads of damage' raised by the official in his request for compensation, since those heads of damage determine in reality the 'subject-matter' of the request for compensation, as the Civil Service Tribunal added in the final sentence of paragraph 84.

91 In any event, those developments and conclusions are not consistent with the case-law on which they are based or, above all, with the principles underlying that case-law.

92 It is appropriate to refer, in that context, to the case-law resulting from *Koutchoumoff* v *Commission*, according to which, in the system of remedies provided for in Articles 90 and 91 of the Staff Regulations, a claim for compensation raised for the first time before the General Court, although the prior administrative complaint sought only annulment of the allegedly harmful decision, is admissible, since an application for annulment may entail a claim for reparation for the loss suffered (*Saby* v *Commission*, paragraph 28).

93 Likewise, according to consistent case-law, in order to be admissible before the General Court, a claim for default interest in the event of the annulment of the contested decision does not need to have been expressly mentioned in the prior administrative complaint (Case T-4/92 *Vardakas* v *Commission* [1993] ECR II-357, paragraph 50; Case T-583/93 *P* v *Commission* [1995] ECR-SC I-A-137 and II-433, paragraph 50; and Case T-271/01 *López Cejudo* v *Commission* [2002] ECR-SC I-A-221 and II-1109).

94 Contrary to the Civil Service Tribunal's assertion at paragraph 90 of the judgment under appeal, that case-law is not specific to annulment proceedings and it cannot be concluded that it would not be applicable to a dispute relating solely to damages.

95 Thus, in Case T-84/91 *Meskens* v *Parliament* [1992] ECR II-2335, paragraph 44, which concerned an action relating solely to damages, the General Court held that claims for compensation for the material and non-material damage caused to an official by a decision of the administration, submitted in an action for damages, are not, in the light of the rule requiring that the prior complaint and the action have the same subject-matter, to be regarded as different from the claims seeking, first, annulment of that decision and, second, compensation for the non-material damage suffered by the official concerned that are set out in the complaint. It must be accepted that a request for annulment of a decision adversely affecting an official that is formulated in the complaint may imply a claim for compensation for the damage, both material and non-material, that that decision may have caused.

96 Furthermore, in *Sergy* v *Commission*, in rejecting the plea of inadmissibility raised by the Commission with respect to two of the various heads of damage alleged, on the ground that they had not been mentioned in the prior administrative complaint, the Court of Justice observed that the object of Article 91 of the Staff Regulations is to enable and encourage an amicable settlement of difference which has arisen between officials or servants and the administration; that, on the other hand, it is not the purpose of that provision to bind strictly and absolutely the contentious stage of the proceedings, if any, provided that the claims submitted at that stage change neither the cause of action nor the subject-matter of the complaint; that, in his complaint, the appellant, after setting out his grounds for complaint, had claimed that his belated reinstatement was causing him considerable damage, the 'main constituents' of which he had gone on to enumerate; and that, in those circumstances, the additional factors which were alleged to stem from the conduct for which the administration was criticised and to be directed to the question of compensation for the damage which the appellant claimed to have suffered on that account might be submitted for consideration by the Court of Justice (paragraphs 31 to 36 of the judgment).

97 Although that case-law concerns, *stricto sensu*, only the rule on correspondence between the administrative complaint and the action, the principles that guide it, and therefore the flexibility which it permits, can also be applied by analogy to the rule on 'correspondence' between the request and the complaint, specific to actions seeking only compensation, as set out at paragraph 86 above.

98 In the light of that case-law and those principles, it must therefore be concluded that the Civil Service Tribunal erred in law at paragraphs 84 to 86 of the judgment under appeal. Accordingly, the first plea in the action must be upheld and the judgment under appeal set aside, in that it upheld the first plea of inadmissibility raised by the Commission, against the request for reparation for the *ex haerede* non-material damage suffered by Alessandro Missir Mamachi di Lusignano before he died.

99 The consequences of the judgment under appeal being set aside in that respect will be set out at paragraphs 104 to 112 below.

100 It follows from all of the foregoing considerations that the judgment under appeal must be set aside in its entirety, without there being any need to rule on the other pleas in law.

The action at first instance

101 In accordance with Article 13(1) of Annex I to the Statute of the Court of Justice, if the appeal is well founded, the General Court is to quash the decision of the Civil Service Tribunal and itself give judgment in the matter. It is to refer the case back to the Civil Service Tribunal for judgment where the state of the proceedings does not permit a decision by the Court.

102 As regards, in the first place, the request for reparation for the personal damage, both material and non-material, suffered by the appellant in person and the heirs and successors of Alessandro Missir Mamachi di Lusignano, the Civil Service Tribunal, after finding that it did not have jurisdiction to hear and determine that aspect of the action, as it came within the jurisdiction of the General Court, ought to have referred it to the General Court, in accordance with Article 8(2) of Annex I to the Statute of the Court of Justice.

103 The state of the proceedings does, in that regard, permit a decision by the Court ready for judgment and that aspect of the action should be referred to it so that it can hear and determine the action as a court of first instance, pursuant to Articles 268 TFEU and 340 TFEU. It is not the role of the appellate court, in an appeal brought under Article 9 of Annex I to the Statute of the Court of Justice, to hear and determine such an action.

104 As regards, in the second place, the request for reparation for the *ex haerede* non-material damage suffered by Alessandro Missir Mamachi di Lusignano before he died, the Civil Service Tribunal had jurisdiction to hear and determine it, but incorrectly rejected it as inadmissible in the light of the rule on 'correspondence' between the request and the administrative complaint.

105 In that regard, the Court considers, in application of the principles and the case-law referred to at paragraphs 92 to 97 above, that, contrary to the finding made in the judgment under appeal, the request for reparation for the non-material damage suffered both by Alessandro Missir Mamachi di Lusignano before he died and also by his close relatives, alleged to have been caused by the same fault as that in respect of which the Commission was criticised in the appellant's letter of 25 February 2008, although expressly submitted for the first time in the complaint, did not alter either the subject-matter or the cause of action of the initial request for compensation made in that letter.

106 In that regard, although the Civil Service Tribunal asserted, at paragraph 88 of the judgment under appeal, that it was 'common ground' that in that letter the appellant had 'sought only reparation for material damage' and that he had not 'raise[d] the heads of non-material damage alleged before the [Civil Service] Tribunal', the Court must re-assess the scope of the request for compensation contained in that letter.

107 In fact, in that letter the appellant asked the President of the Commission, Mr Barroso, to take a 'personal and explicit decision … on all the political and financial implications of the double murder'.

108 More specifically, in Part I of that letter, the appellant first of all expressed his disagreement with the proposals made to him by the Commission's services, in particular as to the amount of the 'various compensation and rights in favour of the heirs', thereby apparently meaning the orphans' benefits provided for in the Staff Regulations. Next, in Part II of that letter, the appellant expressly referred to the 'compensation for non-material damage' awarded by the Moroccan courts, emphasising its inadequacy. Last, in Part III of the letter, the appellant requested payment of 'compensation equivalent to at least a total of 26 years' salary of the murdered official, calculated therefore between 2006 (the date of the tragic event at Rabat) and 2032 (the presumed date of the official's retirement)'. In that context, the appellant further emphasised that that compensation, to be paid by the Commission to the four minor children, was, 'of course, distinct from and additional to' the compensation referred to in Part II of the letter, that is to say, the compensation for non-material damage.

109 In the light of the wording of the appellant's letter of 25 February 2008, and contrary to the assertion made at paragraph 88 of the judgment under appeal, it must therefore be held that, in the request for compensation formulated in that letter, the appellant did not seek only reparation for material damage, but also clearly referred to non-material damage.

110 Moreover, by having requested that the institution adopt a view on 'all the political and financial implications' of the double murder, the appellant fundamentally requested reparation in full for the damage caused by the fault on the Commission's part that had led to Alessandro Missir Mamachi di Lusignano's death. The fact that he did not itemise that global damage at the outset according to particular legal categories with which he was certainly not familiar, such as material, non-material or existential damage, *ex haerede* damage or *jure proprio* damage, does not appear to have been decisive at that early stage in the administrative pre-contentious procedure, where legal assistance is not compulsory and where the appointing authority must above all endeavour to favour an amicable settlement of the dispute, especially in circumstances as tragic as those of the present case. In any event, it must therefore be held, following the example set by the Court of Justice in *Sergy* v *Commission*, that the appellant enumerated the 'main constituents' of the damage for which he requested reparation, in Parts I, II and III of his letter of 25 February 2008.

111 Furthermore, in his complaint of 10 September 2008, the appellant duly detailed the various elements of the alleged damage, including by expressly requesting reparation for the *ex haerede* non-material damage suffered by Alessandro Missir Mamachi di Lusignano before he died.

112 It follows that the first plea of inadmissibility raised by the Commission against the request for compensation for the *ex haerede* non-material damage suffered by Alessandro Missir Mamachi di Lusignano before he died must be rejected.

113 As regards the other pleas of inadmissibility also raised by the Commission against that request (see paragraph 91 of the judgment under appeal), the state of the proceedings does not permit a decision by the Court.

114 In those circumstances, it would normally be appropriate to refer this aspect of the action back to the Civil Service Tribunal so that it might act again on the case.

115 It must be added, however, at the same time, that if such a referral were made, the Civil Service Tribunal would be immediately required to state that it and this Court are currently seised of cases in which the same relief is sought, namely, so far as this Court is concerned, the present case and the parallel Case T-494/11. In accordance with the second subparagraph of Article 8(3) of Annex I to the Statute of the Court of Justice, the Civil Service Tribunal would then be required to decline jurisdiction so that this Court might act on those cases (see also paragraph 75 above).

116 Such a referral thus appears to be devoid of purpose, as the Civil Service Tribunal would have no alternative but to refer the case, in turn, to this Court. Consequently, an excessively strict application of Article 13(1) of Annex I to the Statute of the Court of Justice would result solely in the unnecessary prolongation of the procedure (see, to that effect and by analogy, the case-law of the Court of Justice cited at paragraph 72 above).

117 In those circumstances, it is appropriate also to refer this aspect of the action back to the Civil Service Tribunal so that it may hear and determine it as a court of first instance, pursuant to Articles 268 TFEU and 340 TFEU.

118 It follows from all of the foregoing that Case F-50/09 must be referred in its entirety back to the Civil Service Tribunal.

Costs

119 Since the case is being referred back to the Civil Service Tribunal, it is appropriate to reserve the costs.

On those grounds,

THE GENERAL COURT (Appeal Chamber)

hereby:

1. **Sets aside the judgment of the European Union Civil Service Tribunal (First Chamber) of 12 May 2011 in Case F-50/09 *Missir Mamachi di Lusignano* v *Commission;***

2. **Refers Case F-50/09 back to the Civil Service Tribunal, so that it may hear and determine it as a court of first instance, pursuant to Articles 268 TFEU and 340 TFEU;**

3. **Reserves the costs.**

Delivered in open court in Luxembourg on 10 July 2014.

[Signatures]