Reports of Cases

JUDGMENT OF THE GENERAL COURT (Appeal Chamber)

14 December 2011 *

(Appeal — Staff employed at the JET joint undertaking — Application of a legal status different from that of members of the temporary staff — Compensation for material damage suffered — Time-limits for instituting proceedings — Late submission — Reasonable period)

In Case T-433/10 P,

APPEAL against the order of the European Union Civil Service Tribunal (First Chamber) of 13 July 2010 in Case F-103/09 *Allen and Others* v *Commission* [2010] ECR-SC I-A-1-0000 and II-A-1-0000 seeking to have that order set aside,

John Allen, residing in Horspath (United Kingdom), and the 109 other appellants whose names are listed in the annex, represented by K. Lasok QC and B. Lask, Barrister,

appellants,

the other party to the proceedings being

European Commission, represented by J. Currall and D. Martin, acting as Agents,

defendant at first instance,

THE GENERAL COURT (Appeal Chamber),

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

Registrar: N. Rosner, Administrator,

having regard to the written procedure and further to the hearing on 11 July 2011,

gives the following

Judgment

1 By their appeal, brought under Article 9 of Annex I to the Statute of the Court of Justice of the European Union, the appellants, Mr John Allen and the 109 persons whose names are listed in the annex, request the Court to set aside the order of the Civil Service Tribunal (First Chamber) of 13 July 2010 in Case F-103/09 *Allen and Others* v *Commission* [2010] ECR I-A-1-0000 and II-A-1-0000 ('the order under appeal') by which the Tribunal dismissed the action as inadmissible on the ground that it was out of time.

* Language of the case: English.

Background to the dispute

2 The Joint European Torus (JET) joint undertaking was established by Council Decision 78/471/Euratom of 30 May 1978 (OJ 1978 L 151, p. 10) with the task of implementing the European Atomic Energy Community's 'Fusion' programme, which provided for the construction, operation and exploitation of a large torus facility of the Tokamak type and its auxiliary facilities. Originally scheduled for a period of twelve years, the lifespan of JET was extended on three occasions: first, until 31 December 1992 by Council Decision 88/447/Euratom of 25 July 1988 approving an amendment to the Statutes of [JET] (OJ 1988 L 222, p. 4); next, until 31 December 1996 by Council Decision 91/677/Euratom of 19 December 1991 approving amendments to the Statutes of [JET] (OJ 1991 L 375, p. 9); and, lastly, until 31 December 1999 by Council Decision 96/305/Euratom of 7 May 1996 approving amendments to the Statutes of [JET] (OJ 1996 L 117, p. 9). JET ceased operations on 31 December 1999.

3 The appellants were employed and remunerated by third-party companies with which JET had concluded contracts and which had no legal connection with the European Commission.

4 By judgments of 5 October 2004 in Case T-144/02 *Eagle and Others* v *Commission* [2004] ECR II-3381 ('*Eagle*') and Case T-45/01 *Sanders and Others* v *Commission* [2004] ECR II-3315 ('*Sanders*'), the General Court held that, by failing to offer posts as temporary staff members to a certain number of persons who worked for third-party employers with whom JET had concluded contracts, the Commission had committed a wrongful act entailing its liability. The Court therefore ordered the Commission to make good the financial loss which those persons had each suffered as a result of the fact that they had not been recruited as members of the Commission's temporary staff during the time they worked at JET. It none the less requested the parties to seek agreement within a period of six months from notification of the judgment as to the amount of compensation to be paid in order to make good that loss. In the absence of agreement, the parties were to transmit to the Court within the same period a statement of their views with supporting figures.

5 By judgments of 12 July 2007 in Case T-144/02 *Eagle and Others* v *Commission* [2007] ECR II-2721 and in Case T-45/01 *Sanders and Others* v *Commission* [2007] ECR II-2665, the General Court determined the amount of compensation the Commission was required to pay to each of the victims of the unlawful conduct referred to in paragraph 4 above.

6 By a joint letter of 6 February 2009, the appellants submitted a request to the Commission on the basis of Article 90(1) of the Staff Regulations of Officials of the European Communities ('the Staff Regulations'), seeking compensation for the material loss which they had each suffered as a result of the fact that they were not recruited as temporary staff members during the time they worked at JET.

7 By letter of 30 April 2009, the Commission rejected that request on the ground that the appellants had not submitted their claim for compensation within a reasonable period.

8 By a joint letter of 18 June 2009, the appellants submitted a complaint on the basis of Article 90(2) of the Staff Regulations.

9 By decision of 25 September 2009, the Commission rejected that complaint ('the decision rejecting the complaint').

Procedure at first instance and order under appeal

10 By an action brought before the Civil Service Tribunal on 22 December 2009, the appellants sought: (i) annulment of the decision rejecting the complaint; (ii) a declaration that they had a right to be treated, and should have been treated, as 'other personnel' and/or recruited as such, in accordance with

Article 8 of the JET Statutes; (iii) a declaration that the Commission discriminated against them without objective justification, during the time they were working at JET, as regards their remuneration, pension rights and related benefits, and security of future employment; (iv) compensation for the loss of earnings, pension and related benefits and privileges occasioned by the aforesaid breach of Community law, including interest thereon as appropriate; and (v) an order that the Commission should pay the costs.

11 By a separate document sent to the Registry of the Civil Service Tribunal, the Commission raised three pleas of inadmissibility. In that application for a decision not going to the substance of the case, filed pursuant to Article 78 of the Rules of Procedure of the Civil Service Tribunal, the Commission contended that the Tribunal should dismiss the action as inadmissible and order the applicants to pay the costs.

12 The applicants submitted their observations on the pleas of inadmissibility.

13 By the order under appeal, the Civil Service Tribunal dismissed the action as inadmissible and ordered the applicants to pay all the costs. It held in essence that the claim for damages, which was lodged more than five years after they became aware of the facts, had not been submitted within a reasonable period.

Procedure before the General Court and forms of order sought

14 By document lodged at the Registry of the General Court on 20 September 2010, the appellants brought the present appeal.

15 The Commission lodged its response on 15 December 2010.

16 The written procedure was closed on 13 January 2011.

17 The appellants claim that the Court should:

— allow the appeal;

— set aside the order under appeal;

— reject the first and second pleas of inadmissibility raised by the Commission;

— order the Commission to pay the costs.

18 The Commission contends that the Court should:

— dismiss the appeal;

— order the appellants to pay the costs.

19 By letter of 7 February 2011, the appellants submitted a reasoned application under Article 146 of the Rules of Procedure for an oral hearing.

20 After hearing the report of the Judge-Rapporteur, the General Court (Appeal Chamber) decided to allow the appellants' application and opened the oral procedure.

21 The parties presented oral argument and replied to the oral questions put by the Court at the hearing on 11 July 2011.

Law

22 The appellants put forward three pleas in support of their appeal. The first plea alleges that there is no obligation to bring a claim for damages within a reasonable period. The second plea, put forward in the alternative, alleges that the duration and start point of a reasonable period for bringing a claim for damages were wrongly defined. The third plea alleges an error in law consisting in failure to rule on the second plea of inadmissibility.

First plea: no obligation to bring a claim for damages within a reasonable period

23 The first plea comprises two parts, alleging (i) an error in law in the interpretation of Article 90(1) of the Staff Regulations and (ii) the erroneous nature of the four factors considered by the General Court in *Eagle* and *Sanders* and also by the Tribunal in the order under appeal (see paragraph 34 of the order under appeal).

First part: an error in law in the interpretation of Article 90(1) of the Staff Regulations

24 The appellants claim in essence that the Civil Service Tribunal erred in law in holding that the fact that the Staff Regulations do not expressly set a time-limit for the purpose of bringing an action for damages based on misconduct attributable to the European Union does not have the effect of allowing an individual entitled to bring proceedings unlimited time within which to bring an action before the court. In their view, the legislature took a considered decision not to lay down a time-limit for the submission of a request under Article 90(1) of the Staff Regulations.

25 The Commission disputes the appellants' arguments.

26 In that regard, it must be held that the appellants' argument that the absence of a time limit automatically means that it is possible to bring a claim for damages without any time-limit cannot succeed. It should be noted on that point that, contrary to what the appellants contend, there is an obligation to act within a reasonable time in all cases except those where the legislature has expressly excluded or expressly laid down a specific time-limit. The legal basis for setting a reasonable time-limit, in the absence of any statutory rule, is the principle of legal certainty, which precludes institutions and natural persons from acting without any time-limits, thereby threatening to undermine the stability of legal positions already acquired (see, to that effect, Case T-192/99 *Dunnett and Others* v *EIB* [2001] ECR II-813, paragraphs 51 to 53; Case T-281/01 *Huygens* v *Commission* [2004] ECR-SC I-A-203 and II-903, paragraphs 46 and 47; and *Eagle*, paragraph 57). Thus, in the absence of any statutory rule, it is for the judicature to decide on the length of the reasonable period for submitting a claim for damages, in the light of the circumstances of the case (see, to that effect, *Dunnett and Others* v *EIB*, paragraph 54; *Huygens* v *Commission*, paragraph 49; *Eagle*, paragraph 57; and *Sanders*, paragraph 58).

27 As regards *Informations Administratives* (Administrative Notices) No 83-2001 of 20 September 2001, in which, according to the appellants, the Commission stated that a request may be submitted at any time, it should be noted that, contrary to what the appellants assert, in view of the legal value of those notices they cannot have any effect on the interpretation based on the general principle of legal certainty given by the Civil Service Tribunal in the order under appeal.

28 Consequently, the first part of the first plea must be rejected.

Second part: the erroneous nature of the four factors considered by the General Court in *Eagle* and *Sanders* and also by the Tribunal in the order under appeal

29 The appellants challenge the four factors considered by the General Court in *Eagle* and *Sanders* and also by the Civil Service Tribunal in the order under appeal. They criticise the Tribunal for considering (i) that there is a need to limit claims where there is no statutory time limit; (ii) that there is a duty imposed on the institutions to act within a reasonable time; (iii) that there is a duty for legal and natural persons to mitigate loss; and (iv) that there is a duty on an official or servant to submit a claim within a reasonable time after he or she becomes aware of an act or a substantive new fact.

30 First, as regards a need to limit claims in the absence of a time-limit in the Staff Regulations, the appellants contend that if, as in the present case, such absence is not an oversight, the Civil Service Tribunal interfered with the powers of the legislature by imposing a time-limit which the legislature had decided not to impose. They maintain that there is no absence of a statutory rule in this case and that, where there is a disparity between case-law and the express wording of the Staff Regulations, the latter prevail in the interests of fairness so as not to deprive a person of a right of redress.

31 In that regard, it should be noted, as was stated in paragraph 26 above, that the absence of a time-limit in the Staff Regulations cannot in itself be regarded as meaning that it is possible to bring a claim for damages without any time-limit, since the general principle of a reasonable period applies in all cases except those in which the legislature has expressly excluded it or expressly laid down a specific time-limit.

32 As for the judgment of the Court of Justice in Case 34/80 *Authié* v *Commission* [1981] ECR 665, referred to by the appellants, the latter claim that it follows from that judgment that the express wording of the Staff Regulations must prevail in the interests of fairness and that therefore any requirement to act within a reasonable period cannot be relied upon against a person who has relied on the Staff Regulations. Such an interpretation must, however, be rejected. As was stated in paragraph 26 above, the absence in the Staff Regulations of a time-limit for bringing a claim for damages cannot be construed as an express acknowledgment of the absence of a time-limit, because of the need to ensure legal certainty and the stability of legal situations that have not been challenged within reasonable periods. Consequently, the suggested analogy with *Authié* v *Commission* is irrelevant.

33 Secondly, as regards the existence of a duty on institutions to act within a reasonable time, the appellants contend that *Eagle*, *Sanders* and the order under appeal are based on a 'misconception'. In their view, the case-law cited by the General Court in those judgments, to which the Civil Service Tribunal refers in the order under appeal for the purpose of demonstrating that there is a duty on institutions to act within a reasonable period, is not convincing.

34 In that regard, it should be noted that, contrary to what the appellants contend, in Case C-282/95 P *Guérin automobiles* v *Commission* [1997] ECR I-1503, paragraph 37, the Court did not merely find that delay by the Commission would expose it to an action for failure to act, it held that a decision must be adopted within a reasonable time in order to comply with the principle of good administration. In Case 52/69 *Geigy* v *Commission* [1972] ECR 787, paragraph 20, the Court also held that, in the absence of a time-limit laid down by the legislature, the fundamental requirement of legal certainty had the effect of preventing the Commission from indefinitely delaying the exercise of its power to impose fines.

35 Moreover, as regards Case C-96/89 *Commission* v *Netherlands* [1991] ECR I-2461 and Case C-508/03 *Commission* v *United Kingdom* [2006] ECR I-3969, it should be pointed out that those judgments were delivered in infringement proceedings. Such proceedings, by their nature, allow the Commission a very broad discretion. Hence, the duty on institutions to act within a reasonable period cannot be called into question by the judgment in *Commission* v *Netherlands*, in which the Court held that the Commission was not obliged to act within a specific period or in *Commission* v *United Kingdom*, in

which the Court held that a Member State could not rely on the principle of legal certainty and the principle of legitimate expectations in order to prevent the Commission from bringing an action seeking an objective finding that the Member State had failed to fulfil its obligations under a directive. The absence of a time-limit imposed on the Commission for bringing infringement proceedings is a consequence of the particular nature of such proceedings.

36 Thirdly, as regards the duty of legal and natural persons to mitigate loss, the appellants contend that this factor is irrelevant, since it concerns the quantification of any recoverable loss and not the admissibility of a claim for damages.

37 It is sufficient to note in that regard that that argument is examined in *Eagle* and in *Sanders*, but not in the order under appeal, so it is irrelevant.

38 Fourthly, as regards the duty of an official or servant to bring an action for damages within a reasonable time after he or she becomes aware of an act or a substantive new fact, the appellants dispute the analogy drawn by the Civil Service Tribunal between an official or servant within the meaning of the Staff Regulations and a person who, like themselves, is neither an official nor a servant. They also contend that the General Court did not explain in *Eagle* how paragraph 56 of the judgment was 'compatible' with paragraphs 60 and 61 of that judgment.

39 In that regard, it must be held that, although the appellants dispute the analogy drawn by the General Court in *Eagle* and *Sanders* between, on the one hand, officials and servants within the meaning of the Staff Regulations and, on the other hand, the appellants themselves, who are neither one nor the other, they have no grounds for challenging the fact that they were treated as being such officials or such servants in so far as their claim for damages is based on the Staff Regulations. If they had not been treated like servants or officials their claim for damages would have been subject to the limitation period laid down in Article 46 of the Statute of the Court of Justice. Moreover, so far as the alleged inconsistency of the judgment in *Eagle* is concerned, it is sufficient to note that the General Court merely held that Article 90(1) of the Staff Regulations does not set a time-limit, but, as was stated in paragraph 26 above, that absence does not mean that such a time-limit does not exist. In any event, the appellants have not demonstrated that that alleged inconsistency was such as to undermine the assessments made in the [order] under appeal.

40 In the light of all those considerations, the second part of the first plea must be rejected. It follows that the first plea must be rejected in its entirety.

The second plea, put forward in the alternative: incorrect definition of the duration of a reasonable period for bringing a claim for damages and incorrect definition of the starting point for such a period

41 The second plea, put forward in the alternative, comprises three parts: (i) incorrect definition of the duration of a reasonable period within which to bring a claim for damages, (ii) an error in the definition of the starting point of a reasonable period and (iii) an error in law on the part of the Civil Service Tribunal in holding that there was no principle requiring the Commission to inform the appellants of the existence of the judgment in *Sanders*.

First part: incorrect definition of the duration of a reasonable period

42 The appellants claim that even if the Civil Service Tribunal was correct in recognising the existence of a duty for them to bring an action for damages within a reasonable period, it defined the duration of that period incorrectly. They put forward four arguments in support of that complaint: (i) failure to take into account the reasonableness of the period in relation to their conduct; (ii) the obligation to provide for a transitional period; (iii) a breach of the right to effective judicial protection; and (iv) a breach of the principle of legal certainty.

43 In the context of their first argument, alleging failure to take into account the reasonableness of the period in relation to their conduct, the appellants contend that they cannot be criticised for not submitting their claim for damages before 5 October 2004 since they were not aware that they were under such an obligation. Also, they point out that the orders and the judgment cited by the Civil Service Tribunal in paragraph 38 of the order under appeal do not bear out the view that they were under an obligation to act within a period of five years.

44 In that regard, it should be noted first of all that the appellants cannot validly argue that prior to 5 October 2004, the date on which the judgments were delivered in *Eagle* and *Sanders*, they were unaware that they were under an obligation to act within a reasonable period. As was stated in paragraph 26 above, the General Court did not state new principles in those judgments, it merely upheld the case-law according to which, in the absence of any statutory rule, it is for the judicature, in the light of the circumstances of the case, to set a reasonable time-limit in accordance with the principle of legal certainty, which precludes an individual from bringing an action before the General Court without any time-limits (*Dunnett and Others* v *EIB*, paragraphs 51 to 53; *Huygens* v *Commission*, paragraphs 46 and 47; and *Eagle*, paragraph 57).

45 Moreover, where the Courts of the European Union are called on to decide on the duration of the reasonable period to be complied with it must take into account the relevant circumstances. In the order under appeal the Civil Service Tribunal imposed, by analogy, the limitation period laid down in Article 46 of the Statute of the Court of Justice. That period of five years, by weighing up the interests at stake, on the one hand, allows the persons concerned sufficient time from the occurrence of the actionable event to assess whether it is appropriate to claim damages and to make known their claims to the institution concerned and, on the other hand, allows the European Union to safeguard its interests, in particular its financial interests, from claims made by persons who have shown too little diligence in pursuing them. The appellants cannot, therefore, dispute the length of the reasonable period set in this case by the Civil Service Tribunal by claiming that prior to delivery of the judgments in *Eagle* and *Sanders* there was no obligation on them to bring a claim for damages within a certain time-limit.

46 For the remainder, as regards the period of five years decided on by the Civil Service Tribunal in the order under appeal, it is appropriate to note the parallels between the facts in the present case and those in *Eagle* and in *Sanders*. Those parallels justify, in the present case, imposition by analogy of the limitation period laid down in Article 46 of the Statute of the Court of Justice. The order under appeal does not therefore contain an error in law as regards the definition of the duration of the reasonable period within which the appellants should have brought a claim for damages.

47 Lastly, as regards the case-law cited by the Civil Service Tribunal in paragraph 38 of the order under appeal, it should be observed that the Civil Service Tribunal referred to those decisions in order to point out that a claim for damages must be brought within a reasonable period. In addition, in so far as the appellants contend that the order in Case T-202/97 *Koopman* v *Commission* [1998] ECR-SC I-A-163 and II-511) and the judgments in *Dunnett and Others* v *EIB* and *Huygens* v *Commission* do not allow the duration of the reasonable period within which a claim for damages must be brought to be set at five years, it should be noted that that period must be set in the light of the circumstances of the case, which in the present case differ from those in the abovementioned cases. Thus, in the order under appeal, the Civil Service Tribunal did not apply a rule that was novel but rather a rule that was based on the principle of legal certainty, whereby, in the absence of any statutory rule, it is for the judicature to decide on the length of the reasonable period in the light of the circumstances of the case.

48 As regards the appellants' second argument, based on the obligation to provide for a transitional period, the appellants contend that if the legislature had introduced a time-limit for requests under Article 90(1) of the Staff Regulations it would have had to provide for the new time-limit to apply in the future, and for a transitional period that was long enough to enable persons entitled to bring

claims to bring them before the new time-limit applied to such claims. They also maintain that there is no reason why individuals should be denied the protection offered by such transitional arrangements where the time-limit is imposed by a court rather than by the legislature.

49 The appellants also challenge the reference made by the Civil Service Tribunal to the Opinion of Advocate General Sharpston in Joined Cases C-145/08 and C-149/08 *Club Hotel Loutraki and Others* [2010] ECR I-4165, and the judgment of the European Court of Human Rights of 15 October 2009 in *Micalleff v. Malta*, No 17056/06, in order to point out that a change in case-law applies, in principle, to the case in which it is adopted, without a transitional period.

50 It must be held that, by the second argument, the appellants seek to draw an analogy between the powers of the legislature and those of the judicature. In that regard it should be noted that, in Case C-62/00 *Marks & Spencer* [2002] ECR I-6325, paragraphs 37 to 46, and Case C-255/00 *Grundig Italiana* [2002] ECR I-8003, paragraphs 37 to 40, the Court held that in a situation where a national legislature reduces a limitation period, the compatibility of the new period is subject to the condition that provision is made for it to apply in the future and for transitional arrangements to be made in order to ensure that individuals are not denied time for lodging their claims. However, that rule cannot be applied in the present case. In the first place, in the case of judgments, the rule is that they come into force immediately (Case 24/86 *Blaizot and Others* [1988] ECR 379), save in exceptional situations (Case 43/75 *Defrenne* [1976] ECR 455). Secondly, even if the appellants' situation were exceptional, the analogy is not relevant since in the order under appeal the Civil Service Tribunal did not set a new limitation period by reducing an existing one, it merely reiterated the requirement that a claim for damages must be brought within a reasonable period and set the duration of that period at five years by reference to existing case-law and according to the principle of legal certainty. Thirdly, it must be borne in mind that the interpretation which the European Union judicature gives of a provision of European Union law is limited to clarifying and defining the meaning and scope of that provision as it ought to have been understood and applied from the time of its entry into force. It follows that the provision as thus interpreted must be applied even to legal relationships which arose and were established before the judgment in question was delivered and it is only exceptionally that, in application of a general principle of legal certainty which is inherent in the Community legal order, the Court may decide to restrict the right to rely upon a provision which it has interpreted, with a view to calling into question legal relationships established in good faith (Case T-289/03 *BUPA and Others* v *Commission* [2008] ECR II-81, paragraph 159).

51 As regards the Opinion of Advocate General Sharpston, cited above in paragraph 49, it is sufficient to note that in the present case the legal context is different from that in *Club Hotel Loutraki and Others*. Since no time-limit had been laid down in Article 90(1) of the Staff Regulations, the principle of legal certainty justified a reasonable time-limit being set by the Courts of the European Union. There was therefore no reduction of a time-limit set by the legislation. As regards the appellants' reference to the judgment of the European Court of Human Rights in *Micallef v. Malta*, it is sufficient to note that the appellants' observation that interim proceedings have nothing to do with time-limits does not affect application of the principle that a change in case-law applies to the case in which it is adopted, without a transitional period.

52 With regard to the appellants' third argument, alleging a breach of their right to effective judicial protection, the appellants claim in essence that it was legitimate for them to expect that within a reasonable period it would be possible for them to bring a claim for damages and that, by applying the rules in *Eagle* and *Sanders*, the Civil Service Tribunal denied them an effective remedy.

53 In that regard, it should be pointed out that in paragraph 64 of *Eagle* the General Court held that the right of persons subject to the law to a fair trial, enshrined in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, did not preclude the court hearing a case from drawing inferences, even in the absence of express rules as to limitation periods, from the fact that an action was brought after a clearly excessive length of time.

Moreover, the judgment of the European Court of Human Rights of 28 March 2006 in *Melnyk v. Ukraine*, No 23436/03, relied upon by the appellants in support of their argument, concerns changes made by the legislature and, in particular, reduction of the time-limit by the law, whereas in the present case the legal context is different. As was explained in paragraph 26 above, no time-limit is laid down in Article 90(1) of the Staff Regulations and the principle of legal certainty justifies the setting of a reasonable time-limit by the Court in the light of the circumstances of the present case.

54 With regard to the alleged breach of the principle of legitimate expectations, it should be noted that, although it was only in *Eagle* and *Sanders* that the General Court gave details concerning the length of a reasonable period in respect of a claim for damages based on wrongful failure to adopt a decision, it should be pointed out that the rules recognised by the Court on that occasion are more detailed than those that applied previously. Prior to those judgments, the principles of which were used by the Civil Service Tribunal in the order under appeal, the duration of the period that was regarded as reasonable was shorter than the duration defined in those judgments, namely three months in *Dunnett and Others* v *EIB* (paragraph 55) and ten months in *Huygens* v *Commission* (paragraph 49). Moreover, since determination by the Courts of the European Union of the reasonableness of the period within which a claim for damages should be brought is necessarily dependent on the circumstances of each particular case, the appellants can neither claim that it is necessary to provide for a transitional period when defining that period, nor derive legitimate expectations from earlier case-law concerning the determination of that period in other cases. Consequently, the appellants have no grounds on which to claim a breach of the principle of legitimate expectations.

55 With regard to the fourth argument, the appellants contend that the approach adopted by the Civil Service Tribunal in the order under appeal is contrary to the principle of legal certainty, as explained by the Court of Justice in Case C-406/08 *Uniplex (UK)* [2010] ECR I-817.

56 In that regard, it should be noted that the Civil Service Tribunal did not err in law when it held that the relevant legal context in the present case is different from that in *Uniplex (UK)*. In the latter case the time-limit at issue was one set by the legislature, which could be reduced by the judicature, whereas in the present case no time-limit has been set by the legislature and hence it is for the judicature to decide on it in accordance with the principle of legal certainty.

57 In the light of all those considerations, the first part of the second plea must be rejected.

Second part: incorrect definition of the start point of a reasonable period

58 The appellants claim that even if there were an obligation on them to bring an action for damages within a reasonable period, that period would have to commence upon publication of a judgment correcting the error in *Eagle* and *Sanders*, since those judgments failed to provide a transitional period for claims that the appellants could have brought after 5 October 2004, but had not been brought within the reasonable period determined by the General Court.

59 It is sufficient to note that, in *Eagle* and *Sanders*, the General Court held that the event from which the period within which a claim for damages must be submitted is to be calculated is the date on which the person concerned becomes aware of the potentially unlawful position in which he has been placed because the Commission has failed to offer him a temporary contract within the meaning of the Staff Regulations. In the present case, however, the appellants were formerly employed at JET, which ceased operations on 31 December 1999. Therefore, the fact which might have given rise to their right to compensation necessarily occurred before that date. The Civil Service Tribunal, on the basis of those judgments and following the approach adopted in them, decided, in the order under appeal, that the conclusion of each initial annual contract, or each renewal thereof, marked the starting point.

Hence, the starting point for the reasonable period within which a claim for damages should have been brought in the present case was correctly decided on by the Civil Service Tribunal. The second part of the second plea must therefore be rejected.

Third part: an error in law on the part of the Civil Service Tribunal in holding that there was no principle requiring the Commission to inform them of the existence of the judgment in *Sanders*

60 The appellants claim that the Commission should have informed them of their legal position so that they could have made a proper decision whether or not to bring claims for damages. They argue that that duty to inform stems from the principles of equal treatment and sound administration, recognised by the General Court in Case T-93/94 *Becker* v *Court of Auditors* [1996] ECR II-141 and Case T-371/03 *Le Voci* v *Council* [2005] ECR I-A-209 and II-957. They therefore dispute in essence the Civil Service Tribunal's finding that no written instrument or principle required the Commission to inform them of the existence of the judgment in *Sanders* in order to allow them to bring an action for damages within a reasonable period.

61 With regard to the alleged breach of the principle of equal treatment, it should be noted that, unlike the appellants, some of their former colleagues within JET who were applicants in *Sanders* had submitted a claim for damages within a reasonable period. It follows that, in that context, the reference to the principle of equal treatment is unfounded.

62 With regard to the alleged breach of the principle of sound administration, it is sufficient to note that the judgment in *Sanders* was delivered in open court on 5 October 2004 and published, inter alia, on the internet site of the Court of Justice. In view of the accessibility of that judgment, the Civil Service Tribunal did not err in law in deciding that in the present case there was no obligation on the Commission to inform the appellants of the existence of that judgment. It was rather for the appellants to seek information concerning that judgment. Moreover, it should be added that the appellants did not show reasonable diligence in limiting the extent of their loss (Joined Cases C-104/89 and C-37/90 *Mulder and Others* v *Council and Commission* [1992] ECR I-3061, paragraph 33, and *Eagle*, paragraph 59), in so far as they waited almost ten years after the fact which could have given rise to their right to compensation before submitting a claim for damages. The third part of the second plea must therefore be rejected.

63 In the light of those considerations, the second plea must be rejected in its entirety.

Third plea: an error in law consisting in failure to rule on the second plea of inadmissibility

64 The appellants, claim that, since the first plea of inadmissibility raised at first instance was unfounded, the Civil Service Tribunal was wrong not to rule on the second plea of inadmissibility on the basis of its finding that the appellants' claims were inadmissible under the first plea of inadmissibility.

65 The appellants also claim that the Commission's second plea of inadmissibility before the Civil Service Tribunal is inadmissible because its wording is insufficiently clear and precise to enable the Tribunal (or the General Court) to rule on it. That plea is in any event unfounded since, in the pre-litigation exchanges between the parties, the Commission never asserted that it had not been given sufficient information about the appellants' claims.

66 In that regard, contrary to what the appellants contend, it is sufficient to state that, in the light of the considerations set out in paragraphs 23 to 63 above, the Civil Service Tribunal was right to dismiss the action as inadmissible in the context of its examination of the first plea of inadmissibility raised before it by the Commission. Therefore, since it is based on an incorrect premiss, the third plea must be rejected.

67 It follows from all the foregoing considerations that the appeal must be dismissed in its entirety.

Costs

68 Under the first paragraph of Article 148 of the Rules of Procedure, where the appeal is unfounded, the General Court is to make a decision as to costs.

69 Under the first subparagraph of Article 87(2) of the same Rules, which apply to the procedure on appeal pursuant to Article 144 thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

70 Since the appellants have been unsuccessful and the Commission has applied for costs, the appellants must be ordered to bear their own costs and those incurred by the Commission in the present proceedings.

On those grounds,

THE GENERAL COURT (Appeal Chamber)

hereby:

1. **Dismisses the appeal;**

2. **Orders Mr John Allen and the 109 other appellants whose names are listed in the annex to bear their own costs and those incurred by the European Commission in the present proceedings.**

Jaeger Azizi Papasavvas

Delivered in open court in Luxembourg on 14 December 2011.

[Signatures]

Annex

David Barnes, residing in Long Wittenham (United Kingdom),

Robin Barnsley, residing in Forcalquier (France),

Keith Betts, residing in Abingdon (United Kingdom),

John Bird, residing in Calcot, Reading (United Kingdom),

Adrian Blunt, residing in Hermitage, Thatcham (United Kingdom),

Roger Bolt, residing in Wallingford (United Kingdom),

James Bradshaw, residing in Newbury (United Kingdom),

Malcom Bright, residing in Didcot (United Kingdom),

Philip Butcher, residing in Brize Norton (United Kingdom),

Arthur Callaghan, residing in Abingdon,

Dave Case, residing in Wantage (United Kingdom),

Ian Clarke, residing in Bilton, Rugby (United Kingdom),

Paul Coates, residing in Abingdon,

Ivor Coffey, residing in Abingdon,

Clifford Cole, residing in Abingdon,

Robert Cook, residing in Abingdon,

Kenneth Cornwall, residing in Wheatley (United Kingdom),

Gerard Corrigan, residing in Sutton Courtney (United Kingdom),

Adrian Couchman, residing in Abingdon,

Ronald Denyer, residing in Wantage (United Kingdom),

Richard Devitt, residing in Abingdon,

Simon Dillon, residing in Farnham (United Kingdom),

Patrick Doyle, residing in Abingdon,

Paul Edwards, residing in Grove (United Kingdom),

Darrel Elford, residing in Abingdon,

Clive Elsmore, residing in Farnham,

Glyn Evans, residing in Bicester (United Kingdom),

George Ewart, residing in Sutton Courtney (United Kingdom),

Jim Forbes, residing in Headington (United Kingdom),

Timothy Franklin, residing in Didcot,

Richard Fraser, residing in Sutton Courtney,

Phillip Goodfellow, residing in Abingdon,

Alex Goodyear, residing in Oxford (United Kingdom),

Kelvin Greenough, residing in Swindon (United Kingdom),

Klaus Guenther, residing in Berlin (Germany),

Geoff Hackney, residing in Fleet (United Kingdom),

Steve Hallworth-Cook, residing in Reading (United Kingdom),

Nigel Hammond, residing in Headington (United Kingdom),

Alan Hancock, residing in Abingdon,

Jeffrey Harrington, residing in Marlborough (United Kingdom),

Steve Harris, residing in Wallingford,

Thomas Hartrampf, residing in Abingdon,

Ian Hewitt, residing in Hartlepool (United Kingdom),

Mark Hill, residing in Abingdon,

Mike Hitchin, residing in Clapton-on-the-Hill (United Kingdom),

Owen Hockey, residing in Long Wittenham,

Colin Hogben, residing in Abingdon,

Michael Hopkins, residing in Didcot,

Alan Horton, residing in Abingdon,

Mark Hough, residing in Ambergate (United Kingdom),

Zachary Hudson, residing in Seascale (United Kingdom),

Harold Hughes, residing in Sutton Courtney,

John Hunt, residing in Minster Lovell (United Kingdom),

John Inglett, residing in Didcot,

Richard Johnson, residing in Witney (United Kingdom),

Grayham Jones, residing in Upper Brutingthorpe (United Kingdom),

Tom Kinsella, residing in Abingdon,

Vasili Kiptily, residing in Didcot,

Terry Knight, residing in Dubai (United Arab Emirates),

Johan Lingertat, residing in Berlin,

Richard Lucock, residing in Oxford,

Andrew Mackenzie, residing in Abingdon,

James Marsh, residing in Winchester (United Kingdom),

Jan McClean, residing in Abingdon,

Paul McCullen, residing in Compton (United Kingdom),

Terry McLoughlin, residing in Hartlepool (United Kingdom),

Steve Meigh, residing in High Wycombe (United Kingdom),

Andy Meigs, residing in Oxford,

John Mills, residing in Wallingford,

Robert Minchin, residing in Kidlington (United Kingdom),

Michael Mortimer, residing in Abingdon,

Roger Nicholson, residing in Didcot,

Steve Osbourne, residing in Wantage,

Danny O'Shea, residing in Abingdon,

John O'Shea, residing in Abingdon,

Steve Parish, residing in Abingdon,

Leslie Pedrick, residing in Dursley (United Kingdom),

Sergey Popovichev, residing in Abingdon,

Adrien Porter, residing in Wantage,

Colin Prior, residing in Alicante (Spain),

Ian Prior, residing in Radley (United Kingdom),

Phil Prior, residing in Abingdon,

Krishan Purahoo, residing in Kennington (United Kingdom),

Mark Rainford, residing in Marston (United Kingdom),

Barry Runham, residing in Bracknell (United Kingdom),

Simon Rutter, residing in Didcot,

Eric Searle, residing in Leamington Spa (United Kingdom),

Peter Seymour, residing in Woodley (United Kingdom),

Sergei Sharapov, residing in Abingdon,

Steven Skeats, residing in Buckland (United Kingdom),

James Spence, residing in Abingdon,

Mike Stead, residing in Grove,

Will Studholme, residing in Oxford,

Keith Summerell, residing in Wallingford,

Roman Szuszkiewicz, residing in Didcot,

Adrian Talbot, residing in Wantage,

Adrian Terrington, residing in Upper Sundon (United Kingdom),

Gareth Thomas, residing in Didcot,

Dave Thrower, residing in Abingdon,

Jonathan Todd, residing in Islip (United Kingdom),

Amrithal Vadgama, residing in Crawley (United Kingdom),

Mike Vincent, residing in Curridge (United Kingdom),

Stuart Webster, residing in Abingdon,

Martin Wheatley, residing in Cholsey (United Kingdom),

Ken Williams, residing in Caernarfon (United Kingdom),

Alan Wilson, residing in Didcot,

Brian Wilson, residing in Didcot,

David Witts, residing in Didcot,

Bruce Wright, residing in Didcot.