Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

14 October 2014*

(Appeals — Common fisheries policy — Fishing quotas — Emergency measures adopted by the Commission — Non-contractual liability of the European Union — Second paragraph of Article 340 TFEU — Conditions — Actual and certain harm)

In Joined Cases C-12/13 P and C-13/13 P,

TWO APPEALS under Article 56 of the Statute of the Court of Justice of the European Union, lodged on 4 January 2013,

Gérard Buono, residing in Agde (France),

Jean-Luc Buono, residing in Agde,

Roger Del Ponte, residing in Balaruc-les-Bains (France),

Serge Antoine Di Rocco, residing in Sète (France),

Jean Gérald Lubrano, residing in Balaruc-les-Bains,

Jean Lubrano, residing in Port-Vendres (France),

Jean Lucien Lubrano, residing in Saleilles (France),

Fabrice Marin, residing in Frontignan (France),

Robert Marin, residing in Balaruc-les-Bains,

represented by A. Arnaud and P.-O. Koubi-Flotte, avocats (C-12/13 P),

and

Syndicat des thoniers méditerranéens, established in Marseille (France),

Marc Carreno, residing in Sète (France),

Jean Louis Donnarel, residing in Lourmarin (France),

Jean-François Flores, residing in Sète,

Gérald Jean Lubrano, residing in Balaruc-les-Bains,

* Language of the cases: French.

Hervé Marin, residing in Balaruc-le-Vieux (France),

Nicolas Marin, residing in Frontignan,

Sébastien Marin, residing in Bouzigues (France),

Serge Antoine José Perez, residing in Sorède (France),

represented by C. Bonnefoi, avocate (C-13/13 P),

appellants,

the other party to the proceedings being:

European Commission, represented by A. Bouquet and D. Nardi, acting as Agents,

defendant at first instance,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, R. Silva de Lapuerta, C. Vajda and S. Rodin, Presidents of Chambers, A. Rosas, E. Juhász, A. Borg Barthet, J. Malenovský, E. Levits (Rapporteur), J.L. da Cruz Vilaça, and F. Biltgen, Judges,

Advocate General: P. Cruz Villalón,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 20 March 2014,

gives the following

Judgment

1 By their respective appeals, Messrs Gérard Buono, Jean-Luc Buono, Roger Del Ponte, Serge Antoine Di Rocco, Jean Gérald Lubrano, Jean Lubrano, Jean Lucien Lubrano, Fabrice Marin and Robert Marin (Case C-12/13 P) and the Syndicat des thoniers méditerranéens ('the STM'), Mssrs Marc Carreno, Jean-Louis Donnarel, Jean-François Flores, Gérald Jean Lubrano, Hervé Marin, Nicolas Marin, Sébastien Marin and Serge Antoine José Perez (Case C-13/13 P) ask the Court to set aside the judgment of the General Court of the European Union in *Syndicat des thoniers méditerranéens and Others* v *Commission* (T-574/08, EU:T:2012:583, 'the judgment under appeal'), by which that court dismissed their action seeking damages for the harm allegedly suffered on the basis of the adoption of Commission Regulation (EC) No 530/2008 of 12 June 2008 establishing emergency measures as regards purse seiners fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45 °W, and in the Mediterranean Sea (OJ 2008 L 155, p. 9).

Legal context

2 Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy (OJ 2002 L 358, p. 59), seeks to establish a multi-annual approach to fisheries management in order to ensure the long-term viability of that sector.

3 Article 7 of Regulation No 2371/2002, entitled 'Commission emergency measures', states:

'1. If there is evidence of a serious threat to the conservation of living aquatic resources, or to the marine eco-system resulting from fishing activities and requiring immediate action, the Commission, at the substantiated request of a Member State or on its own initiative, may decide on emergency measures which shall last not more than six months. The Commission may take a new decision to extend the emergency measures for no more than six months.

2. The Member State shall communicate the request simultaneously to the Commission, to the other Member States and to the Regional Advisory Councils concerned. The other Member States may submit their written comments to the Commission within five working days of receipt of the request.

The Commission shall take a decision within 15 working days of receipt of the request referred to in paragraph 1.

3. The emergency measures shall have immediate effect. They shall be notified to the Member States concerned, and published in the Official Journal.

4. The Member States concerned may refer the Commission decision to the Council within 10 working days of receipt of the notification.

5. The Council, acting by qualified majority, may take a different decision within one month of the date of receipt of the referral.'

4 Article 20 of Regulation 2371/2002, entitled 'Allocation of fishing opportunities', provides:

'1. The Council, acting by qualified majority on a proposal from the Commission, shall decide on catch and/or fishing effort limits and on the allocation of fishing opportunities among Member States as well as the conditions associated with those limits. Fishing opportunities shall be distributed among Member States in such a way as to assure each Member State relative stability of fishing activities for each stock or fishery.

2. When the Community establishes new fishing opportunities the Council shall decide on the allocation for those opportunities, taking into account the interests of each Member State.

3. Each Member State shall decide, for vessels flying its flag, on the method of allocating the fishing opportunities assigned to that Member State in accordance with Community law. It shall inform the Commission of the allocation method.

4. The Council shall establish the fishing opportunities available to third countries in Community waters and allocate those opportunities to each third country.

5. Member States may, after notifying the Commission, exchange all or part of the fishing opportunities allocated to them.'

5 It was in that context that Regulation (EC) No 40/2008 of 16 January 2008 fixing for 2008 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required (OJ 2008 L 19, p. 1) was adopted.

6 Those limitations and quantities were amended by Commission Regulation (EC) No 446/2008 of 22 May 2008 adapting certain bluefin tuna quotas in 2008 pursuant to Article 21(4) of Council Regulation (EEC) No 2847/93 establishing a control system applicable to the Common Fisheries Policy (OJ 2008 L 134, p. 11).

7 Pursuant to Article 7 of Regulation No 2371/2002, the Commission adopted, on 12 June 2008, Regulation No 530/2008.

8 Recital 6 in the preamble to Regulation No 530/2008 states:

'The data in its possession, as well as the information obtained by the Commission inspectors during their missions in the Member States concerned, show that the fishing opportunities for bluefin tuna in the Atlantic Ocean, east of longitude 45 °W, and the Mediterranean Sea allocated to purse seiners flying the flag of or registered in Greece, France, Italy, Cyprus and Malta will be deemed to be exhausted on 16 June 2008 and that the fishing opportunities for the same stock allocated to purse seiners flying the flag of or registered in Spain will be deemed to be exhausted on 23 June 2008.'

9 Article 13 of that regulation provides:

'Fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45 °W, and the Mediterranean by purse seiners flying the flag of or registered in Greece, France, Italy, Cyprus and Malta shall be prohibited as from 16 June 2008.

It shall also be prohibited to retain on board, place in cages for fattening or farming, tranship, transfer or land such stock caught by those vessels as from that date.'

10 Article 2 of the regulation is worded as follows:

'Fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45 °W, and the Mediterranean by purse seines flying the flag of or registered in Spain shall be prohibited as from 23 June 2008.

It shall also be prohibited to retain on board, place in cages for fattening or farming, tranship, transfer or land such stock caught by those vessels as from that date.'

11 Article 3 of Regulation No 530/2008 provides:

'1. Subject to paragraph 2, as from 16 June 2008, Community operators shall not accept landings, placing in cages for fattening or farming, or transhipments in Community waters or ports of bluefin tuna caught in the Atlantic Ocean, east of longitude 45 °W, and the Mediterranean Sea by purse seiners.

2. It shall be allowed to land, place in cages for fattening or farming and to tranship in Community waters or ports of bluefin tuna caught in the Atlantic Ocean, east of longitude 45 °W, and the Mediterranean Sea by purse seiners flying the flag of, or registered in Spain until 23 June 2008.'

Background to the dispute

12 The appellants in Case C-12/13 P as well as Mssrs Marc Carreno, Jean-Louis Donnarel, Jean-François Flores, Gérald Jean Lubrano, Hervé Marin, Nicolas Marin, Sébastien Marin and Serge Antoine José Perez, appellants in Case C-13/13 P, are owners and/or shareholders in purse seiners flying the flag of France operating in the waters of the Mediterranean Sea. They are all members of the STM.

13 The STM, also an appellant in Case C-13/13 P, is a trade union, governed by Book IV of the French Code du Travail (Labour Code), membership of which is open only to mariners involved in tuna fishing.

14 All the appellants other than STM, had, for 2008, a special fishing licence, authorising them to catch, retain, tranship, transfer, land, transport, store and sell bluefin tuna from the Mediterranean Sea, within the limits of the fishing opportunities available to them in the form of individual quotas. The licence, which was granted by the French authorities, allowed fishing from 1 April 2008 to 30 June 2008.

15 Following the adoption of Regulation No 530/2008, prohibiting fishing for bluefin tuna in the Mediterranean Sea, that fishing season was brought to an end on 16 June 2008 and the fishing licences of the appellants other than STM, were revoked.

The proceedings before the General Court and the judgment under appeal

16 By application lodged at the Registry of the General Court on 24 December 2008, made collectively by the applicants at first instance, appellants in Joined Cases C-12/13 P and C-13/13 P, an action for damages was brought to establish the non-contractual liability without fault of the European Union as a result of the adoption of Regulation No 530/2008.

17 By order of 25 March 2010, the proceedings before the General Court were stayed pending the final decision of the Court in *AJD Tuna* (C-221/09) and the decision of the General Court ruling on admissibility in *Norilsk Nickel Harjavalta and Umicore* v *Commission* (T-532/08) and *Etimine and Etiproducts* v *Commission* (T-539/08).

18 By judgment of 17 March 2011 in *AJD Tuna* (C-221/09, EU:C:2011:153), the Court held that Regulation No 530/2008 was invalid in so far as, having been adopted on the basis of Article 7(1) of Regulation No 2371/2002, the prohibitions it contained took effect from 23 June 2008 for purse seiners flying the flag of or registered in Spain and Community operators who had concluded contracts with them, whereas those prohibitions took effect from 16 June 2008 for purse seiners flying the flag of or registered in Greece, France, Italy, Cyprus and Malta and Community operators who had concluded contracts with them, without such difference in treatment being objectively justified.

19 In the judgment under appeal, the General Court ruled that the action was inadmissible, in so far as it was brought by the STM, and dismissed the action as being unfounded, in so far as it was brought by the other appellants.

Procedure before the Court and forms of order sought

20 By order of the President of the Court of 26 February 2013, Case C-12/13 P and C-13/13 P were joined for the purposes of the written and oral procedure and the judgment, in accordance with Article 54 of the Rules of Procedure of the Court.

21 The appellants in Case C-12/13 P claim that the Court should:

— set aside the judgment under appeal;

— rule on the substance by ordering the Commission, by way of non-contractual liability, to pay the following amounts:

  — to Mr Gérard Buono and Mr Jean-Luc Buono, the sum of EUR 1 523 588.94;

  — to Mr Roger Del Ponte, the sum of EUR 1 068 600;

  — to Mr Serge Antoine Di Rocco, the sum of EUR 1 094 800;

  — to Mr Gérald Jean Lubrano, the sum of EUR 855 628.20;

  — to Mr Jean Lubrano and Mr Jean Lucien Lubrano, the sum of EUR 1 523 588.94;

  — to Mr Fabrice Marin and Mr Robert Marin, the sum of EUR 865 784.59;

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

22 The appellants in Case C-13/13 P claim that the Court should:

— declare the action brought by the STM to be admissible;

— set aside the judgment under appeal;

— order, by way of non-contractual liability, the Commission to pay the compensatory amounts requested in the application; and

— order the Commission to pay the costs.

23 The Commission contends that the Court should:

— dismiss the appeals;

— in the alternative, dismiss the actions for non-contractual liability; and

— order the appellants to pay the costs of the appeals and those at first instance.

Consideration of the request to reopen the oral part of the procedure

24 After the oral part of the procedure was closed on 20 March 2014 following the presentation of the Advocate General's Opinion, the appellants in Case C-13/13 P requested the reopening of the oral part of the procedure by letter of 24 March 2014, lodged at the Registry of the Court on 25 March 2014.

25 In particular, they claimed, first, that the conclusions of the Advocate General are based on an argument that has not been sufficiently debated between the parties, namely the legality or otherwise of Regulation No 530/2008, and, secondly, that there is a new fact, likely to have a decisive influence on the decision of the Court, linked to the fact that the Commission took no action and did not take measures to address the discrimination resulting in the invalidity of Regulation No 530/2008.

26 In that regard, it must be recalled that, under Article 83 of the Rules of Procedure, the Court may at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court or the case must be decided on the basis of an argument which has not been debated between the parties or the persons referred to in Article 23 of the Statute of the Court of Justice of the European Union (see judgments in *Pohotovosť*, C-470/12, EU:C:2014:101, paragraph 21, and *Emerging Markets Series of the DFA Investment Trust Company*, C-190/12, EU:C:2014:249, paragraph 20).

27 In addition, pursuant to the second paragraph of Article 252 TFEU, it is the duty of the Advocate General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice, require the Advocate General's involvement. The Court is not bound either by the Advocate General's Opinion or by the reasoning on which it is based (judgment in *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 57 and the case-law cited).

28 In the present case, the Court considers, after hearing the Advocate General, that it has sufficient information to give a ruling, that these cases do not need to be decided on the basis of arguments which have not been debated between the parties and that the new fact mentioned by the appellants is not such as to have a decisive influence on the decision of the Court. There is therefore no need to grant the request that the oral part of the procedure be reopened.

The appeals

The first ground of appeal raised in Case C-13/13 P

Arguments of the parties

29 By their first ground of appeal, the appellants in Case C-13/13 P claim that, in finding that the STM does not have standing to bring proceedings, the General Court distorted the evidence in the file. The appellants believe that a comprehensive review of that evidence would establish that the STM has an interest of its own in bringing legal proceedings allowing it to seek compensation for the separate harm which is has suffered.

30 First, the appellants in Case C-13/13 P contest the factual accuracy of the General Court's finding, made in paragraph 23 of the judgment under appeal, that the STM has failed to substantiate its loss and refer to their written responses to two questions raised by the General Court, showing that STM's non-material harm is linked to the professional image of its members' activity being adversely affected.

31 Second, the appellants in Case C-13/13 P do not challenge the General Court's finding, made in paragraph 24 of the judgment under appeal, that the STM is not an assignee of a right to damages assigned by its members, but claims that, under French law, as a trade association the STM has a public interest mission giving it standing to bring proceedings on its own behalf and that of its members.

32 The Commission disputes the arguments put forward by the appellants in Case C-13/13 P in support of their first ground of appeal. In its response, it notes that the General Court's reasoning reflects the confused line of argument developed by the STM.

Findings of the Court

33 Under Article 21 of the Statute of the Court of Justice and Article 44 of the Rules of Procedure of the General Court, the application is to contain the subject-matter of the dispute, the form of order sought and a brief statement of the pleas in law on which the application is based.

34 It is undisputed that, for an action for damages to satisfy the requirements mentioned above, the applicant must indicate, in its application, the pleas in law on which it intends to rely in support of its claims and, in particular, the nature of the harm which it has allegedly suffered and the event giving rise to that harm (Order *TAO/AFI* v *Commission*, C-322/91, EU:C:1992:495, paragraph 13).

35 However, a claim for damages, the object of which is not specified and which lacks the statement of the grounds relied on, must be considered inadmissible (judgment in *Zuckerfabrik Schöppenstedt* v *Council*, 5/71, EU:C:1971:116, paragraphs 8 and 9).

36 The application at first instance did not contain any details of the nature of the harm allegedly suffered by the STM.

37 Indeed, the harm allegedly suffered by the STM appears only in the part of the application containing the form of order sought by the appellants at first instance and in the form of a request for a lump sum of EUR 30 000 in respect of non-material harm, to be invested in training programmes for members of the STM.

38 It follows that, as the General Court held in paragraph 22 of the judgment under appeal, the STM provided no details in its application on, first, the nature of the harm alleged in the light of the conduct of the Commission of which it complains and, secondly, even approximately, the assessment of that harm. Moreover, the assertion that the amount of EUR 30 000 would be used for training programmes for members of STM is irrelevant to the determination of the nature or extent of the harm claimed, since it covers only the future use of the compensation and not the extent of the harm alleged.

39 Consequently, the action for damages brought by the STM had, in any case, to be declared inadmissible because it did not satisfy the conditions laid down in Article 44(1)(c) of the Rules of Procedure of the General Court, and it is not necessary to rule on whether the General Court erred in law by declaring the action inadmissible, in so far as it was brought by the STM, due to the STM's lack of standing to bring proceedings.

The third ground of appeal raised in Case C-12/13 P and the third and fourth grounds of appeal raised in Case C-13/13 P

Arguments of the parties

40 By their third ground of appeal, the appellants in Case C-12/13 P claim that the judgment under appeal is vitiated by an error of law in that the General Court did not recognise the existence, generally, of non-contractual liability without fault in EU law.

41 By their third and fourth grounds of appeal, which should be regarded as constituting a single ground of appeal, the appellants in Case C-13/13 P claim that the General Court erred in law in that it held, in paragraphs 82 to 88 of the judgment under appeal, that the harm alleged was not unusual since it did not exceed the limits of the economic risks inherent in the fishing sector.

42 The Commission disputes all of the arguments raised in the context of those grounds of appeal.

Findings of the Court

43 It is undisputed that, as EU law currently stands, a comparative examination of the Member States' legal systems does not permit the affirmation of a regime providing for non-contractual liability of the European Union for the lawful pursuit by it of its activities falling within the legislative sphere (see judgment in *FIAMM and Others* v *Council and Commission*, C-120/06 P and C-121/06 P, EU:C:2008:476, paragraphs 175 and 179).

44 In that regard, the General Court did not commit any error of law in so far as, first, it relied on that case-law in paragraphs 69 to 73 of the judgment under appeal and, second, it considered, in paragraph 76 of that judgment, that the plea in law alleging the non-contractual liability of the European Union for a lawful act should be examined in the light of that case-law.

45 It follows that the third ground of appeal raised by the appellants in Case C-12/13 P must be rejected as being unfounded.

46 As regards the appellants' third and fourth grounds of appeal in Case C-13/13 P, the General Court, in paragraphs 77 to 87 of the judgment under appeal, examined the supposed unusual and special nature of the harm alleged, for the sake of completeness in the event of the principle of EU liability for a lawful act being recognised in EU law (see, to that effect, judgment in *Dorsch Consult* v *Council and Commission*, C-237/98 P, EU:C:2000:321, paragraphs 18 and 19).

47 It is settled case-law that, in the context of an appeal, where one of the grounds adopted by the General Court is sufficient to sustain the operative part of its judgment, any defects that might vitiate other grounds of the judgment concerned cannot influence that operative part and, accordingly, a plea relying on such defects is ineffective and must be dismissed (judgment in *Commission* v *CAS Succhi di Frutta*, C-496/99 P, EU:C:2004:236, paragraph 68).

48 It follows that the third and fourth grounds of appeal raised by the appellants in Case C-13/13 P must be rejected as being ineffective, as they are directed against a ground of the judgment under appeal adopted for the sake of completeness.

The second ground of appeal raised in Case C-13/13 P

Arguments of the parties

49 By their second ground of appeal, the appellants in Case C-13/13 P claim that Regulation No 530/2008 remains, even after the delivery of the judgment in *AJD Tuna* (EU:C:2011:153), a primarily lawful act, declared invalid only in part, namely as regards the date of its entry into force in respect of purse seiners flying the flag of or registered in Greece, France, Italy, Cyprus and Malta, and EU operators who had concluded contracts with them.

50 The Commission, while noting that that ground of appeal is directed against the paragraphs of the judgment under appeal concerning applicants at first instance other than those who have brought the appeal in Case C-13/13 P, believes the ground of appeal to be well founded and that, consequently, the delivery of the judgment in *AJD Tuna* (EU:C:2011:153) does not constitute a new fact within the meaning of Article 48(2) of the Rules of Procedure.

51 In particular, the Commission considers, firstly, that the General Court erred in law by declaring admissible the plea alleging that the European Union was non-contractually liable for an unlawful act, relied on by the applicants at first instance, appellants in Case C-12/13 P, since, as is clear from reading the judgment in *AJD Tuna* (EU:C:2011:153), the Court declared Regulation No 530/2008 invalid only in so far as the prohibitions it contains took effect from 23 June 2008 for fishing vessels

flying the flag of or registered in Spain and EU operators who had concluded contracts with them, whereas those prohibitions took effect from 16 June 2008 for fishing vessels flying the flag of or registered in Greece, France, Italy, Cyprus and Malta and EU operators who had concluded contracts with them, and, secondly, that the applicants at first instance were in no way precluded from bringing an action for damages for the harm resulting from an unlawful act of the European Union, even in the absence of a judgment declaring that act to be invalid.

Findings of the Court

52 In the first place, as regards the admissibility of the second ground of appeal raised by the appellants in Case C-13/13 P, the Court has already held that, where the General Court has joined two cases and given a single judgment which answers all the pleas submitted by the parties to the proceedings before the General Court, each of those parties may criticise the reasoning concerning pleas which, before the General Court, were raised only by the applicant in the other joined case (judgment in *ISD Polska and Others* v *Commission*, C-369/09 P, EU:C:2011:175, paragraph 85 and the case-law cited).

53 In the present case, even if, initially, the General Court had before it a single case, the fact that, during the written procedure, the appellants were divided into two groups, one of which — namely that of the applicants at first instance, appellants in Case C-12/13 P — has raised a new ground of appeal, allows the application, by analogy, of the case-law referred to above.

54 It follows that the second ground of appeal raised by the appellants in Case C-13/13 P, against the General Court's reply to a plea in law raised by the applicants at first instance, appellants in Case C-12/13 P, is admissible.

55 Secondly, as regards the merits of the second ground of appeal raised by the appellants in Case C-13/13 P, it should be recalled that, under Article 48(2) of the Rules of Procedure of the General Court, no new plea in law may be introduced in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the procedure.

56 In the present case, as stated in paragraph 18 of the present judgment, the Court having ruled, in the judgment in *AJD Tuna* (EU:C:2011:153), that Regulation No 530/2008 was invalid, the General Court asked the parties to the dispute to submit written comments on the inferences to be drawn from that judgment. In their reply, the applicants at first instance, appellants in Case C-12/13 P, raised a plea of non-contractual liability of the European Union for an unlawful act. In particular, they claimed that the permission granted to purse seiners flying the flag of Spain to fish until 23 June 2008, while purse seiners flying the flag of Greece, France, Italy, Cyprus and Malta had to bring their fishing to an end on 16 June 2008, caused them harm of an actual and certain nature and which consists of the unfished and unsold part of their quota for 2008.

57 At the outset, it should be noted that the General Court held, in paragraphs 48 and 49 of the judgment under appeal, that the applicants at first instance, appellants in Case C-12/13 P, had raised a plea in law which had not been raised in the originating application and which, consequently, constituted a new plea in law, within the meaning of Article 48(2) of the Rules of Procedure of the General Court.

58 In that regard, with respect to the admissibility of that plea in law, in paragraphs 53 and 54 of the judgment under appeal, the General Court held that the judgment in *AJD Tuna* (EU:C:2011:153), delivered by the Court of Justice on a date after that when the action was brought, had to be considered to be a factor allowing a new plea in law to be raised, since that judgment has changed the legal situation which existed at the time that the application was lodged. Indeed, the General Court found that, following the judgment in *AJD Tuna* (EU:C:2011:153), Regulation No 530/2008 has been invalidated in its entirety and ceased to produce legal effects under the application of the presumption of legality.

59 It should be noted that, in the present case, the General Court's reasoning derives from a misreading of the judgment in *AJD Tuna* (EU:C:2011:153). In particular, it is clear from paragraphs 105 to 108 of that judgment that, by postponing until 23 June 2008 the entry into force of the measures prohibiting fishing only for purse seiners flying the flag of Spain, without that extra period being objectively justified, the Commission infringed the principle of non-discrimination. Accordingly, it follows from that finding by the Court that, by rejecting all other grounds of appeal seeking to establish the invalidity of Regulation No 530/2008, the judgment in *AJD Tuna* (EU:C:2011:153) declared that regulation to be invalid only to the extent that the purse seiners flying the flag of Spain were given an extra week of fishing, but maintained the validity of the date of the prohibition set for the remaining fishing vessels, that is 16 June 2008.

60 It follows that, contrary to the assessment of the General Court, Regulation No 530/2008 having been declared invalid only to the extent that it granted more favourable treatment to purse seiners flying the flag of Spain, the adoption of the judgment in *AJD Tuna* (EU:C:2011:153) did not constitute a new element of law which arose during the proceedings before the General Court. In fact, since the prohibition on fishing enacted for purse seiners flying the flag of Greece, France, Italy, Cyprus and Malta remained valid, that judgment has only confirmed a legal situation of which the applicants at first instance, appellants in Case C-12/13 P, were aware when they brought their action.

61 It follows from the foregoing that the General Court erred in law in holding that the delivery of the judgment in *AJD Tuna* (EU:C:2011:153) constituted a new element of law which allowed a new plea in law to be raised in the proceedings.

62 However, it must be borne in mind that, if the grounds of a judgment of the General Court disclose an infringement of EU law but the operative part is shown to be well founded on other legal grounds, such an infringement is not capable of bringing about the setting aside of that judgment (see, to that effect, judgments in *FIAMM and Others* v *Council and Commission*, EU:C:2008:476, paragraph 187, and *Diputación Foral de Vizcaya* v *Commission*, C-465/09 P to C-470/09 P, EU:C:2011:372, paragraph 171).

63 In the present case, although the General Court erred in law by declaring admissible the plea in law which alleged that the European Union was non-contractually liable for an unlawful act, alleged by the applicants at first instance, appellants in Case C-12/13 P, that error is not such as to lead to the judgment under appeal being set aside, since the General Court, in any event, dismissed that plea in law as being unfounded, in paragraphs 55 to 66 of the judgment under appeal.

64 In view of the foregoing, the second ground of appeal raised by the appellants in Case C-13/13 P, while being well founded, must be rejected as being ineffective (see, to that effect, *Ojha* v *Commission*, C-294/95 P, EU:C:1996:434, paragraph 52, and *FIAMM and Others* v *Council and Commission*, EU:C:2008:476, paragraph 189).

The first and second grounds of appeal raised in Case C-12/13 P

Arguments of the parties

65 By their first ground of appeal, the appellants in Case C-12/13 P claim that the General Court erred in law in the context of examining the European Union's non-contractual liability for an unlawful act, in that it held, in paragraphs 61 to 66 of the judgment under appeal, that the harm alleged was not actual and certain.

66 By their second ground of appeal, the appellants in Case C-12/13 P claim that the General Court also erred in its assessment of the actual and certain nature of the harm alleged, in that it did not find that the harm resulted from the infringement of property rights and free exercise of a professional activity.

67 The Commission contends that those ground of appeal must be rejected as being inadmissible and, in any event, unfounded.

Findings of the Court

68 It should be borne in mind that, as is apparent from paragraph 63 of the present judgment, the General Court erred in law by declaring admissible the plea in law alleging that the European Union was non-contractually liable for an unlawful act, alleged by the applicants at first instance, appellants in Case C-12/13 P, in the proceedings at first instance.

69 It follows that, since that plea in law had to be declared inadmissible, it is necessary to reject the first and second grounds of appeal raised by the appellants in Case C-12/13 P as being ineffective in so far as those grounds of appeal concern the General Court's analysis of the substance of that plea in law.

70 In the light of all the foregoing considerations, the appeals brought by the appellants in Cases C-12/13 P and C-13/13 P must be rejected in their entirety.

Costs

71 In accordance with Article 184(2) of its Rules of Procedure, where the appeal is unfounded, the Court is to make a decision as to costs. Under Article 138(1) of those Rules, which is applicable to the procedure on appeal by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs to be awarded against the appellants in Cases C-12/13 P and C-13/13 P and the latter have been unsuccessful, the appellants must be ordered to pay the respective costs.

On those grounds, the Court (Grand Chamber) hereby:

1. **Dismisses the appeals brought in Cases C-12/13 P and C-13/13 P;**

2. **Orders Gérard Buono, Jean-Luc Buono, Roger Del Ponte, Serge Antoine Di Rocco, Jean Gérald Lubrano, Jean Lubrano, Jean Lucien Lubrano, Fabrice Marin and Robert Marin to pay the costs in Case C-12/13 P and the Syndicat des thoniers méditerranéens, Marc Carreno, Jean-Louis Donnarel, Jean-François Flores, Gérald Jean Lubrano, Hervé Marin, Nicolas Marin, Sébastien Marin and Serge Antoine José Perez to pay the costs in Case C-13/13 P.**

[Signatures]