ORDER OF THE COURT (Fifth Chamber)

12 July 2012 (*)

(Appeal – Action for a declaration of failure to act – Infringement of fundamental rights and of the Association Agreement between the European Community and the Republic of Lebanon – Failure of the Council and of the Commission to take measures against the Republic of Lebanon – Actions for damages – Appeal clearly unfounded and clearly inadmissible)

In Case C‑581/11 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 22 November 2011,

Muhamad Mugraby, residing in Beirut (Lebanon), represented by S. Delhaye, avocate,

appellant,

the other parties to the proceedings being:

Council of the European Union, represented by B. Driessen and M.‑M. Joséphidès, acting as Agents,

European Commission, represented by S. Boelaert and F. Castillo de la Torre, acting as Agents, with an address for service in Luxembourg,

defendants at first instance,

THE COURT (Fifth Chamber),

composed of M. Safjan (Rapporteur), President of the Chamber, J.‑J. Kasel and M. Berger, Judges,

Advocate General: P. Cruz Villalón,

Registrar: A. Calot Escobar,

after hearing the Advocate General,

makes the following

Order

1 By his appeal, Mr Mugraby seeks to have set aside the order of the General Court of the European Union of 6 September 2011 in Case T‑292/09 Mugraby v Council and Commission ('the order under appeal'), by which the General Court dismissed, first, his action for a declaration of failure to act in that the Council of the European Union and the European Commission had unlawfully omitted to take a decision, at his request, concerning the adoption of measures against the Republic of Lebanon, on account of the alleged infringement by that State of his fundamental rights and of the Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the Republic of Lebanon, of the other part, signed in Luxembourg on 17 June 2002 and approved on behalf of the European Community by Article 1(1) of Council Decision 2006/356/EC of 14 February 2006 (OJ 2006 L 143, p. 1) ('the Association Agreement') and, secondly, his action for damages seeking compensation for the harm which he claims to have suffered as a result of the failure of those European Union institutions to act.

Legal context

Regulation (EC) No 1638/2006

2 Article 1 of Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument (OJ 2006 L 310, p. 1) ('the ENPI Regulation') states:

'1. This Regulation establishes a Neighbourhood and Partnership Instrument to provide Community assistance for the development of an area of prosperity and good neighbourliness involving the European Union, and the countries and territories listed in the Annex (hereinafter partner countries).

2. Community assistance shall be used for the benefit of partner countries. Community assistance may be used for the common benefit of Member States and partner countries and their regions, for the purpose of promoting cross-border and trans-regional cooperation ...

3. The European Union is founded on the values of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law and seeks to promote commitment to these values in partner countries through dialogue and cooperation.'

3 Article 28 of the ENPI Regulation, entitled 'Suspension of Community assistance', provides:

'1. Without prejudice to the provisions on the suspension of aid in partnership and cooperation agreements and association agreements with partner countries and regions, where a partner country fails to observe the principles referred to in Article 1, the Council, acting by a qualified majority on a proposal from the Commission, may take appropriate steps in respect of any Community assistance granted to the partner country under this Regulation.

2. In such cases, Community assistance shall primarily be used to support non-state actors for measures aimed at promoting human rights and fundamental freedoms and supporting the democratisation process in partner countries.'

The Association Agreement

4 Article 1 of the Association Agreement provides:

'1. An association is hereby established between the Community and its Member States, of the one part, and Lebanon, of the other part.

2. The aims of this Agreement are to:

(a) provide an appropriate framework for political dialogue between the Parties, allowing the development of close relations in all areas they consider relevant to such dialogue,

(b) establish the conditions for the gradual liberalisation of trade in goods, services and capital,

(c) promote trade and the expansion of harmonious economic and social relations between the Parties, notably through dialogue and cooperation, so as to foster the development and prosperity of Lebanon and its people,

(d) promote economic, social, cultural, financial and monetary cooperation,

(e) promote cooperation in other areas which are of mutual interest.'

5 Article 2 of the Association Agreement is worded as follows:

'Relations between the Parties, as well as all the provisions of this Agreement itself, shall be based on respect of democratic principles and fundamental human rights as set out in the Universal Declaration on Human Rights, which guides their internal and international policy and constitutes an essential element of this Agreement.'

6 Under Article 86 of the Association Agreement:

'1. The Parties shall take any general or specific measures required to fulfil their obligations under this Agreement. They shall see to it that the objectives set out in the Agreement are attained.

2. If either Party considers that the other Party has failed to fulfil an obligation under this Agreement, it may take appropriate measures. Before so doing, except in cases of special urgency, it shall supply the Association Council with all the relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties.

3. In the selection of the appropriate measures referred to in paragraph 2, priority must be given to those which least disturb the functioning of this Agreement. The Parties also agree that these measures shall be taken in accordance with international law and shall be proportional to the violation.

These measures shall be notified immediately to the Association Council and shall be the subject of consultations within the Association Council if the other Party so requests.'

The Statute of the Court of Justice of the European Union and its Rules of Procedure

7 It follows from the third paragraph of Article 19 of the Statute of the Court of Justice that parties other than the Member States, the institutions of the European Union, the States which are parties to the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3) ('the EEA Agreement') and the EFTA Surveillance Authority must be represented by a lawyer. The fourth paragraph of that article states that '[o]nly a lawyer authorised to practise before a court of a Member State or of another State which is a party to [the EEA Agreement] may represent or assist a party before the Court'.

8 The first paragraph of Article 21 of the Statute of the Court of Justice provides:

'A case shall be brought before the Court of Justice by a written application addressed to the Registrar. The application shall contain the applicant's name and permanent address and the description of the signatory ...'

9 Article 37(1), first subparagraph, of the Court's Rules of Procedure provides that '[t]he original of every pleading must be signed by the party's agent or lawyer'.

10 Under Article 38(3) of those rules, applicable to an appeal pursuant to Article 112(1) thereof, '[t]he lawyer acting for a party must lodge at the Registry a certificate that he is authorised to practise before a court of a Member State or of another State which is a party to the EEA Agreement'.

Background to the dispute

11 The facts of the dispute are set out as follows in paragraphs 7 to 12 of the order under appeal:

'7 According to a report drawn up in November 2003 by the Commission internationale des juristes (International Commission of Jurists), which has its head office in Geneva (Switzerland), the applicant, Mr M. Mugraby, is a lawyer specialising in human rights law in Lebanon. Since 2003, the Lebanese authorities have prevented him from practising as a

lawyer in Lebanon on account of his criticism, inter alia, of the Lebanese judicial system and have harassed him and deprived him of certain fundamental rights.

8 By letter of 29 April 2009 (“the letter of 29 April 2009”), the applicant called on the European Commission, as the body directly responsible for the implementation of the various European Union aid programmes in Lebanon, to suspend the implementation of the ongoing economic aid programmes in view, in particular, of the violation by Lebanon of the clause relating to human rights in Article 2 of the Association Agreement.

9 In the same letter of 29 April 2009, the applicant requested the Commission to submit a recommendation to the Council of the European Union regarding the suspension of European Union aid to Lebanon, including the freezing of economic aid pending the resolution, in particular, of Lebanon’s failures to comply with Article 2 of the Association Agreement as regards the applicant.

10 Finally, in that letter, the applicant requested the Council, in its function as part of the EU-Lebanon Association Council, to invite the Commission to recommend that the Council take specific and effective measures regarding the Community aid to Lebanon under the Association Agreement, including the freezing of economic aid pending the resolution of Lebanon’s failures to comply with Article 2 of the Association Agreement as regards the applicant.

11 By letter addressed to the applicant’s legal counsel on 26 May 2009, the Council informed Mr Mugraby that it had received the letter of 29 April 2009 and that it had transmitted it to the Presidency of the Council.

12 By letter to the applicant’s legal counsel on 29 May 2009, the Commission reminded the applicant that the respect for human rights and the reform of the Lebanese judicial system remained high on the European Union-Lebanon bilateral agenda. The Commission also informed the applicant that the procedure to be followed in the case where there is a failure to fulfil one of the obligations imposed on the parties by the Association Agreement is set out in Article 86 thereof. Under that provision, if one party considers that the other party has failed to fulfil one of the obligations under the agreement it may take the appropriate measures in accordance with international law. In that regard, the Commission stated that it was not convinced that suspension of the agreement would constitute an appropriate or effective reaction to the applicant’s case.’

Procedure before the General Court and the order under appeal

12 By application lodged at the Registry of the General Court on 27 July 2009, Mr Mugraby brought an action requesting that Court to:

– find that the Commission had failed to act on:

– his request that a recommendation be sent to the Council regarding the suspension of Community aid to the Republic of Lebanon, as laid down in Article 28 of the ENPI Regulation;

– his request to suspend the implementation of the various Community aid programs pending the resolution of the Republic of Lebanon's continuing infringement of fundamental rights, more specifically his own;

– find that the Council had failed to act on his request to invite the Commission to recommend that the Council take specific and effective measures regarding the aid granted to the Republic of Lebanon under the Association Agreement, in order to fulfil the parties' obligations under that agreement;

– find that the Community, the Council and the Commission had incurred non-contractual liability and should make good the harm suffered by him as a result of their consistent failure, from December 2002 onwards, effectively to utilise the available resources and instruments towards effective enforcement of the human rights clause in Article 2 of the Association Agreement;

– order the Commission, in part as reparation in kind, to propose to the Council the suspension of the Association Agreement, pending the resolution of the Republic of Lebanon's failure to comply with Article 2 of that agreement with regard to him;

– order the Commission to limit the implementation of current aid programmes (which are carried out and/or supervised by the Commission) to those programmes that are aimed specifically at promoting fundamental rights and which do not constitute economic aid to the Republic of Lebanon, pending the resolution of the latter's failure to comply with Article 2 of the Association Agreement with regard to him;

– order the Council to invite the Commission to make a recommendation to suspend the Association Agreement, and to act through the institutions of the Association Agreement to the same end;

– order the Council and the Commission to compensate him for the material and moral damage which he has suffered, in an amount to be fixed ex aequo et bono at not less than EUR 5 000 000; and

– order the Council and the Commission to pay the costs.

13 By the order under appeal, the General Court dismissed that action as, in part, clearly inadmissible and, in part, clearly lacking any foundation in law.

14 The General Court first examined Mr Mugraby's argument that only the Council and the Commission had raised objections of inadmissibility, whereas the proceedings had been expressly brought against the Community, the Council and the Commission.

15 At paragraphs 23 and 24 of the order under appeal, the General Court rejected that argument on the following grounds:

'23 As regards the action for failure to act, it must be held that, in the present case, it is brought exclusively against the Council and the Commission. As stated …, the applicant's form of order refers only to those two institutions. Furthermore, it is clear from the letter of 29 April 2009 that only the Council and the Commission were called upon to act, in accordance with the second paragraph of Article 232 EC, and not the Community. In any event, it is clear from the wording of Article 232 EC that an action founded on that provision may be brought only if one of the institutions referred to therein or the European Central Bank (ECB) has failed to act, in infringement of an obligation in the [EC] Treaty. Since the Community is not referred to by that provision, it follows that a failure to act brought against it would be inadmissible.

24 As regards the action for damages, it must be observed that, according to settled case-law, where the liability of the Community is incurred by the act of one of its institutions, it is represented before the Court by the institution or institutions accused of the act giving rise to liability (Case 353/88 Briantex and Di Domenico v EEC and Commission [1989] ECR 3623, paragraph 7). In the present case, it must be observed that the alleged harm suffered by the applicant derives from the alleged unlawful conduct of the Council and the Commission. It follows that it is for them to represent the Community before the General Court.'

16 The General Court then went on to deal with Mr Mugraby's various heads of claim.

17 First, with regard to the action for failure to act, the General Court examined whether the Council and the Commission had an obligation to act.

18 First of all, with regard to the Commission's alleged failure to act in not addressing to the Council a recommendation concerning the suspension of European Union aid granted to the Republic of Lebanon, the General Court noted, in paragraphs 35 to 39 of the order under appeal, that, taking account of the Commission's discretion regarding the submission to the Council of a proposal under Article 28 of the ENPI Regulation, its failure to address such a proposal to the Council could not be relied on in an action based on the third paragraph of Article 232 EC.

19 In particular, the General Court held as follows in paragraph 38 of the order under appeal:

'Taking account of the aim of the ENPI Regulation, namely to support the external policies of the European Union, the question of the implementation of Article 28 of that regulation, which involves the Commission addressing a proposal to the Council, is a matter of discretion for the Commission. In accordance with the case-law, the exercise of such discretion excludes the right for an individual to require the Commission to take a position in that connection (see, to that effect, order of 30 March 2006 in Case T‑2/04 Korkmaz and Others v Commission, not published in the ECR, paragraph 50).'

20 With regard to the alleged failure by the Commission to act in relation to the suspension of various European Union assistance programmes in the Republic of Lebanon, the General Court went on to hold as follows in paragraph 40 of the order under appeal:

'… it must be held that, contrary to the applicant's assertions, Article 2 of the Association Agreement is not intended to permit or indeed to impose the recourse to and adoption of measures if the parties to that agreement fail to comply with the clause relating to fundamental rights contained in that article. Article 2 of the Association Agreement contains a provision on human rights, which provides that the relations between the parties and all the provisions of the agreement itself are to be based on respect of democratic principles and fundamental human rights.'

21 The General Court concluded, in paragraph 41 of the order under appeal, that that alleged failure by the Commission to act could not be relied on in an action based on the third paragraph of Article 232 EC.

22 Finally, as regards the Council's alleged failure to act in not requesting the Commission to submit to it a proposal for effective and specific measures relating to the assistance to the Republic of Lebanon, the General Court observed, in paragraphs 43 and 44 of the order under appeal, that the act adoption of which was requested was an invitation for the purposes of Article 208 EC and that the failure by an institution of the European Union to exercise a discretion could not be the subject of an action for failure to act.

23 In those circumstances, the General Court held that the action seeking a declaration of failure to act had to be dismissed as being inadmissible.

24 Secondly, with regard to the orders sought by Mr Mugraby, the General Court stated, in paragraph 47 of the order under appeal, that the Courts of the European Union have no power to issue orders to the institutions of the European Union in the context of judicial-review proceedings pursuant to Articles 230 EC and 232 EC. Consequently, the General Court dismissed those applications for orders as being inadmissible.

25 Thirdly, with regard to the action for damages, the General Court held, inter alia, as follows:

'59 ... it is clear from the wording of the second paragraph of Article 86 of the Association Agreement and, in particular, from the use of the expression "[i]f either Party considers that the other Party has failed to fulfil an obligation under this Agreement", that each party to the agreement is free to decide whether there may be an infringement of the clause relating to the respect for fundamental human rights laid down in Article 2 by the Republic of Lebanon and, if so, the nature and seriousness of such infringement. It is also clear from the use of the word "may" that, in the event of an infringement of the provisions of the agreement, each party to the agreement is free to adopt the measure it regards as being the most appropriate. It is true that the suspension of the Association Agreement is a measure that the Community, through its competent institutions, may adopt. However, it is not obliged to adopt such a measure, nor does that measure represent the only measure available to deal with an infringement of the obligations in the Association Agreement.

60 The Council and the Commission enjoy a wide margin of discretion in the management of the external relations of the European Union with respect to development in so far as that management involves complex political and economic assessments. However, the applicant has not established that the Council and the Commission have manifestly and gravely disregarded the limits of the broad discretion that they have with regard to a possible suspension of the Association Agreement.'

26 The General Court added, at paragraph 61 of the order under appeal, that, even assuming that those institutions had manifestly and gravely exceeded the limits of their discretion and had thereby infringed Article 86 of the Association Agreement, that article did not, in any event, give rights to individuals.

27 Finally, the General Court examined and rejected certain arguments of Mr Mugraby, finding as follows in paragraphs 70 and 71 of the order under appeal:

'70 ... the applicant mentions his legitimate expectations arising from the Barcelona Declaration on the Euro-Mediterranean Partnership and Article 2 of the Association Agreement as regards the willingness of the defendants to actually perform the obligations relating to fundamental human rights.

71 It must be observed that such assertions are, however, not precise enough to identify, firstly, the conduct complained of with any certainty and, secondly, its possible unlawfulness. In any event, the applicant does not establish how he could acquire a right from those expectations (see, by analogy, [Case T‑367/03] Yedaş Tarim ve Otomotiv Sanayi ve Ticaret v Council and Commission [[2006] ECR II‑873], paragraph 47).'

28 In conclusion, the General Court held, in paragraph 72 of the order under appeal, that the first condition for Community liability, namely the unlawfulness of the conduct of the institution complained of, was not satisfied and that there was no need, therefore, to consider whether the other conditions were satisfied.

29 Consequently, the General Court dismissed the claim for damages as being manifestly devoid of any legal basis, and consequently dismissed the action in its entirety.

Forms of order sought by the parties before the Court of Justice

30 In his appeal, Mr Mugraby asks the Court of Justice to set aside the order under appeal and submits the same claims as those brought before the General Court, as set out in paragraph 12 of the present order, the term 'European Union' replacing 'Community'.

31 The Council contends that the Court should:

– dismiss the appeal as manifestly inadmissible or manifestly unfounded in law; and

– order the appellant to pay the costs.

32 The Commission contends that the Court should:

– dismiss the appeal as totally or partially inadmissible and, in any event, as manifestly unfounded; and

– order the appellant to pay the costs.

The appeal

33 Under Article 119 of its Rules of Procedure, where an appeal is, in whole or in part, clearly inadmissible or clearly unfounded, the Court may, at any time, acting on a report from the Judge-Rapporteur and after hearing the Advocate General, dismiss the appeal by reasoned order without opening the oral procedure.

34 In the present case, the Court considers that it has sufficient information from the documents in the file and decides, pursuant to that article, to give its decision by way of reasoned order.

Admissibility of the appeal

35 First of all, the Council and the Commission argue that, in his appeal, Mr Mugraby indicates that he is self-represented and that he signed the appeal, in breach of the third paragraph of Article 19 of the Statute of the Court. The Commission adds that it understands that the copy of the original of the appeal, sent to the Court by fax on 18 November 2011, bore the sole signature of Mr Mugraby, whereas the original of the appeal, lodged at the Court on 22 November 2011, also bore the signature of his lawyer.

36 In this regard, the Court has already held that it is unambiguously apparent from the third paragraph of Article 19 and the first paragraph of Article 21 of the Statute of the Court, and from Article 37(1), first subparagraph, and Article 38(3) of the Rules of Procedure that an applicant must be represented by a person authorised to do so and that only an application signed by such a person may be validly referred to the Court. Since no derogation from or exception to that obligation is provided for by the Court's Statute or Rules of Procedure, the

submission of an application signed by the applicant himself cannot therefore be sufficient for the purpose of bringing an action (see orders in Case C‑174/96 P Lopes v Court of Justice [1996] ECR I‑6401, paragraph 8; of 16 March 2006 in Case C‑200/05 P Correia de Matos v Commission, paragraph 11; and of 6 October 2011 in Case C‑265/11 P Campailla v Commission, paragraph 7).

37 In the present case, while the original of the appeal was indeed signed by the appellant, it was also signed by a person qualified as a lawyer, who, pursuant to Article 38(3) of the Rules of Procedure, lodged at the Registry a certificate that she is authorised to practise before a court of a Member State or of another State which is a party to the EEA Agreement.

38 Furthermore, following notification of the order under appeal to the appellant on 14 September 2011, the original of the appeal was lodged at the Court on 22 November 2011, that is to say, within the period of two months provided for in the first paragraph of Article 56 of the Statute of the Court of Justice, that period being extended on account of distance by a single period of 10 days, in accordance with the provisions of Article 81(2) of the Rules of Procedure.

39 Consequently, it must be held that, in any event, the appeal has been brought in accordance with the third paragraph of Article 19 of the Statute of the Court of Justice.

Grounds of appeal

40 In his appeal, Mr Mugraby puts forward, in essence, eight grounds for annulment of the order under appeal. These allege, namely: (i) that the action was dismissed as inadmissible without any grounds of inadmissibility; (ii) breach of the right to name the defendants; (iii) breach of the rights of defence; (iv) that not all of the requests submitted were examined; (v) that the order under appeal is based on the ENPI Regulation; (vi) misinterpretation of Articles 2 and 86 of the Association Agreement; (vii) that the General Court has power to issue orders; (viii) denial of justice.

41 The Council and the Commission consider that the grounds for annulment put forward in support of the appeal are either manifestly inadmissible or manifestly unfounded.

Preliminary observations

42 As provided for in Article 256 TFEU and in the first paragraph of Article 58 of the Statute of the Court, an appeal against a decision of the General Court is limited to points of

law and must be based on the grounds of lack of competence of the General Court, breach of procedure before it which adversely affects the interests of the appellant, or infringement of European Union law by the General Court (see, inter alia, orders in Case C‑345/00 P FNAB and Others v Council [2001] ECR I‑3811, paragraph 28, and of 1 March 2012 in Case C‑474/11 P Smanor v Commission and Ombudsman, paragraph 9). Furthermore, Article 112(1)(c) of the Rules of Procedure specifies that the appeal must contain the pleas in law and legal arguments relied on.

43 It follows that an appeal must indicate precisely the contested elements of the judgment or order which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal (Case C‑352/98 P Bergaderm and Goupil v Commission [2000] ECR I‑5291, paragraph 34, and order in Smanor v Commission and Ombudsman, paragraph 10).

First ground of appeal

44 The appellant claims that the order under appeal should be set aside as the General Court erred in law in dismissing his action as inadmissible without basing itself on any of the recognised grounds of inadmissibility, namely, lack of jurisdiction, lack of locus standi, lack of capacity, lack of interest, prescription, connexity, lis pendens, res judicata and/or procedural irregularity.

45 In that regard, first, it should be noted that the appellant mentions the inadmissibility, in general, of his action before the General Court, without making any distinction between his various heads of claim submitted before that Court. In paragraphs 54 to 73 of the order under appeal, however, the General Court examined and dismissed his action for damages as being manifestly devoid of any legal basis, and not as being inadmissible. It follows that, with regard to the action for damages, the first ground has no factual basis.

46 Second, it should be noted that, in paragraphs 34 to 45 and in paragraphs 47 and 48 of the order under appeal, the General Court duly stated the reasons for dismissing, as being inadmissible, the action for failure to act and the applications for orders submitted by the appellant. In his appeal, however, the appellant makes no attempt whatsoever to criticise those reasons and does not develop any legal arguments specifically designed to demonstrate in which respect, by its reasoning, the General Court erred in such a way as to invalidate the order under appeal.

47 It follows that the first ground of appeal is clearly inadmissible.

Second ground of appeal

48 The appellant argues that the General Court erred in law by infringing his right to name the defendants. In that regard, he points out that his action before the General Court was brought against the Community, the Council and the Commission. However, in the order under appeal, the Community, which is the most important defendant, was not named and did not lodge any response. Neither the Council nor the Commission, he argues, indicated that they were representing the Community. Furthermore, the General Court could not reach a conclusion on a question in respect of which the parties did not have an opportunity to submit their arguments in defence. The General Court, the appellant argues, thus erred in law.

49 That argument cannot be upheld.

50 In paragraphs 23 and 24 of the order under appeal, the General Court examined Mr Mugraby’s arguments and set out, in detail, the reasons why he could not bring his actions for failure to act and for damages against the Community as such. As in the case of the first ground of appeal, however, the appellant makes no attempt whatsoever to criticise the grounds relied on by the General Court in paragraphs 23 and 24 of its order.

51 It follows that the second ground of appeal is clearly inadmissible.

Third ground of appeal

52 The appellant claims that he put forward extensive arguments in support of his application, pointing out in particular fundamental rights with regard to the European Union and the Republic of Lebanon, Community obligations towards him and the protection of human rights defenders. In breach of the rights of defence, however, he claims, the General Court ignored those arguments.

53 In this regard, it should be noted that the appellant merely develops an abstract argument concerning respect for fundamental rights, without identifying specifically the error of law that allegedly vitiates the order under appeal.

54 It follows that a ground of appeal, thus formulated, cannot be the subject of a legal assessment which would allow the Court to exercise its function in the area under examination and to carry out its review of legality (see, to that effect, Case C‑51/92 P Hercules Chemicals v Commission [1999] ECR I‑4235, paragraph 113; orders of 29

November 2007 in Case C‑107/07 P Weber v Commission, paragraph 28, and of 1 July 2009 in Case C‑29/09 P Marinova v Université Libre de Bruxelles and Commission, paragraph 20).

55 The third ground of appeal must therefore be rejected as being clearly inadmissible.

Fourth ground of appeal

56 The appellant criticises the General Court for not having ruled, in the order under appeal, on his third head of claim, seeking a declaration that the Community, the Council and the Commission had incurred non-contractual liability and that they had to make good the damage which he claimed to have suffered.

57 It must be stated that this ground of appeal is based on a misreading of the order under appeal.

58 The General Court, in paragraph 26 of the order under appeal, indicated the order in which it proposed to deal with Mr Mugraby's various heads of claim and stated that it would examine the 'claims for compensation in the third and seventh heads of claim' at the end.

59 In that context, in paragraphs 54 to 73 of the order under appeal, the General Court considered whether, in the present case, the Community could incur non-contractual liability as a result of unlawful conduct of the Council and Commission. At the conclusion of that review, the General Court held that the condition of the unlawfulness of the conduct complained of had not been satisfied and that the claim for damages therefore had to be dismissed as being manifestly devoid of legal basis.

60 Consequently, contrary to what the appellant asserts, the General Court did indeed address his third head of claim.

61 In those circumstances, the fourth ground of appeal must be rejected as being clearly unfounded.

Fifth ground of appeal

62 The appellant observes that the General Court based its reasoning on the ENPI Regulation by finding, in paragraph 38 of the order under appeal, that the aim of that

regulation was to support the external policies of the European Union and that, consequently, the Council and Commission have a wide discretion in the exercise of the powers conferred on them by that regulation, which would exclude an action for failure to act. It is argued, however, that the ENPI Regulation clearly conflicts with the Treaties establishing the European Union, the treaties concluded by the European Union and international law, which rank higher in the hierarchy of rules.

63 In this regard, it should be noted that the appellant does not put forward any specific arguments to identify an error of law allegedly committed by the General Court. He does not indicate why the ENPI Regulation 'clearly conflicts' with the international agreements to which he refers nor which provisions of those agreements have allegedly been disregarded by the General Court.

64 In view of the foregoing, the fifth ground of appeal must be rejected as being manifestly inadmissible.

Sixth ground of appeal

65 The appellant claims that, in paragraph 40 of the order under appeal, the General Court failed to comply with the wording of Article 2 of the Association Agreement. There can, he submits, be no doubt that, in international law, the breach of an essential element of a treaty requires that a penalty should be imposed in that regard.

66 The appellant also argues that the General Court, in paragraphs 58 to 60 of the order under appeal, misinterpreted Article 86(2) of the Association Agreement. That provision, he submits, should be interpreted in the light of Article 86(1) and Article 2 of the Association Agreement, which establish that the obligations in question are an essential element. Thus, the expression 'may take', used in Article 86(2) of the Association Agreement, can only mean 'shall take'.

67 Finally, the appellant claims that the interpretation of the General Court is clearly based on the ENPI Regulation and on its own interpretation of the concept of 'broad margin of discretion'. That reasoning, it is claimed, conflicts with the concept of the rule of law. Furthermore, the European Union and the Member States are irrevocably bound and committed in internationally binding agreements to the protection of fundamental rights, notably the FEU Treaty, the Charter of Fundamental Rights of the European Union and the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950. Furthermore, the General Court lacked any basis in law for finding that, in the presence of a clear breach by the Republic of Lebanon of its international

obligations, a total lack of action can be considered as the exercise of a broad margin of discretion.

68 In this regard, it should be noted that it follows from Article 17(1) TEU that the Commission, as guardian of the EU and FEU Treaties and of the agreements concluded under them, must ensure the correct implementation by a third State of the obligations which it has assumed under an agreement concluded with the European Union, using the means provided for by that agreement or by the decisions taken pursuant thereto (see, to that effect, Case C‑204/07 P C.A.S. v Commission [2008] ECR I‑6135, paragraph 95).

69 Specifically, under the terms of the first sentence of Article 86(2) of the Association Agreement, '[i]f either Party considers that the other Party has failed to fulfil an obligation under this Agreement, it may take appropriate measures'.

70 By using the words 'may take', the parties to the Association Agreement indicated clearly and unequivocally that each of them had a right, and not an obligation, to take such appropriate measures.

71 That non-binding nature, expressly envisaged in that provision, cannot be called into question in the light of Article 86(1) of the Association Agreement, which concerns the measures that the parties must take to fulfil their obligations, and not the suspension of those obligations.

72 Moreover, the appellant states, in the abstract, that the breach of an essential element of a treaty justifies a penalty, that the order under appeal is contrary to the rule of law and to various international agreements, and that the General Court relied on an unreasonable interpretation of the concept of 'broad margin of discretion'. Such allegations, however, which do not explain why the grounds of the order under appeal are vitiated by an error of law, are too general and imprecise to be assessed by the Court (see, to that effect, Hercules Chemicals v Commission, paragraph 113; orders of 12 December 2006 in Case C‑129/06 P Autosalone Ispra v Commission, paragraph 31, and of 25 March 2009 in Case C‑159/08 P Scippacercola and Terezakis v Commission, paragraph 96).

73 The sixth ground of appeal must therefore be rejected as being in part clearly unfounded and in part clearly inadmissible.

Seventh ground of appeal

74 The appellant contests the assertion of the General Court, in paragraph 47 of the order under appeal, that the Courts of the European Union have no power to issue orders. He claims that no provision of the FEU Treaty or of the Statute of the Court of Justice prevents the General Court from issuing such orders to the Council and to the Commission.

75 In this regard, suffice it to point out that the Courts of the European Union have no power to issue orders to the institutions and bodies of the European Union (see Case C‑63/89 Assurances du crédit v Council and Commission [1991] ECR I‑1799, paragraph 30, and order of 26 October 2011 in Case C‑52/11 P Victoria Sánchez v Parliament and Commission, paragraph 38).

76 Consequently, the seventh ground of appeal must be rejected as being clearly unfounded.

Eighth ground of appeal

77 The appellant contends that his application put before the General Court a highly documented case of denial of justice in Lebanon, of which the European Union and its institutions were well aware and which constitutes a serious infringement of the fundamental right of access to justice.

78 He adds that, as a result of his human rights advocacy and his high respect for the rule of law, he developed strong and legitimate expectations that his fundamental rights would be protected by all the institutions of the European Union, including the courts of law, and that those institutions would hold the parties to the Association Agreement to their obligations.

79 It is claimed, however, that the General Court did not take the appellant's expectations seriously by finding, in paragraph 71 of the order under appeal, that his assertions were not sufficiently precise. Accordingly, the General Court totally ignored the fact that his application, supported by numerous documents, went into great length and detail in establishing his case, thereby infringing his right of access to justice, his right to be heard in court and his right of defence.

80 In that regard, suffice it to note that the appellant has failed to identify those elements of the order under appeal by which the General Court committed the error of law which he alleges. In his eighth ground of appeal, the appellant confines himself to making general assertions as to the existence of a denial of justice.

81 In any event, on the assumption that the appellant is invoking the principle of effective judicial protection, it should be noted that this is a general principle of European Union law to which expression is now given by Article 47 of the Charter of Fundamental Rights of the European Union (see Case C‑279/09 DEB [2010] ECR I‑13849, paragraphs 30 and 31, and Case C‑69/10 Samba Diouf [2011] ECR I‑0000, paragraph 49).

82 However, it must be noted that the appellant has not put forward, in support of his appeal, any evidence to warrant a finding that that principle was infringed by the General Court.

83 The eighth ground of appeal must therefore be rejected as being clearly inadmissible.

84 As the grounds put forward by the appellant in support of his appeal are in part clearly inadmissible and in part clearly unfounded, the appeal must be dismissed in its entirety.

Costs

85 Under Article 69(2) of the Rules of Procedure, which applies to appeal proceedings by virtue of Article 118 thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the Council and Commission have applied for costs and the appellant has been unsuccessful, the appellant must be ordered to pay the costs.

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

1. The appeal is dismissed.

2. Mr Mugraby shall pay the costs.

[Signatures]

* Language of the case: English.