ECLI:EU:C:2021:252

JUDGMENT OF THE COURT (Sixth Chamber)

25 March 2021 (*)

(Appeal – Action for annulment and for damages – Environment – 2030 climate and energy package – Fourth paragraph of Article 263 TFEU – Lack of individual concern)

In Case C-565/19 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 23 July 2019,

Armando Carvalho, residing in Santa Comba Dão (Portugal), **and Others,**

represented by G. Winter, Professor, H. Leith, Barrister, and by R. Verheyen, Rechtsanwältin,

appellants,

the other parties to the proceedings being:

European Parliament, represented by M. Peternel, C. Ionescu Dima and A. Tamás, acting as Agents,

Council of the European Union, represented by M. Moore and K. Michoel, acting as Agents,

defendants at first instance,

supported by:

European Commission, represented by A.C. Becker and J.-F. Brakeland, acting as Agents,

intervener in the appeal,

THE COURT (Sixth Chamber),

composed of L. Bay Larsen, President of the Chamber, C. Toader and N. Jääskinen (Rapporteur), Judges,

Advocate General: G. Hogan,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By their appeal, Mr Armando Carvalho and 36 other appellants, whose names are set out in the annex to the present judgment, seek the setting aside of the order of the General Court of the European Union of 8 May 2019, *Carvalho and Others* v *Parliament and Council* (T-330/18, not published, EU:T:2019:324; 'the order under appeal'), by which the General Court dismissed as inadmissible their action seeking, first, the partial annulment of (i) Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814 (OJ 2018 L 76, p. 3), in particular Article 1 thereof, (ii) Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 (OJ 2018 L 156, p. 26), in particular Article 4(2) thereof and Annex I thereto, and (iii) Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU (OJ 2018 L 156, p. 1), in particular Article 4 thereof ('the acts at issue' or 'the legislative package'), and, second, compensation in the form of an injunction for the damage which the appellants claim to have suffered.

2 The appellants operate in either the agricultural sector, including reindeer husbandry, or the tourism sector. They are 36 individuals belonging to families from various Member States of the

European Union, namely Germany, France, Italy, Portugal and Romania, as well as from the rest of the world, namely Kenya and Fiji, as well as an association governed by Swedish law, which represents young indigenous Samis.

The Kyoto Protocol and the Paris Agreement

3 The European Union ratified the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) by Council Decision 2002/358/EC of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder (OJ 2002 L 130, p. 1).

4 In view of the expiry of the second commitment period of the Kyoto Protocol in 2020, the Paris Agreement was adopted by the Conference of the Parties to the UNFCCC in December 2015, aiming to limit the global temperature increase to between 1.5 °C and 2 °C above pre-industrial levels. In 2016 the European Union ratified that agreement by Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ 2016 L 282, p. 1).

5 The Paris Agreement focuses on the concept of 'nationally determined contributions'. Article 4(2) thereof provides:

'Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.'

6 The European Union and its Member States have committed jointly to complying, by means of their nationally determined contributions, with a binding target of reducing greenhouse gas emissions within the European Union by at least 40% by 2030 in relation to 1990 levels.

The acts at issue

7 The acts at issue were adopted by the European Union in order to comply with the Paris Agreement as regards contributions determined at national level.

8 Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32), as amended by Directive 2018/410 ('Directive 2003/87'), the first act at issue, enhances the scheme for greenhouse gas emission allowance trading within the European Union for the period from 2021 to 2030 by increasing the rate of annual allowance reductions from 1.74% to 2.2% from 2021 onwards.

9 The first paragraph of Article 9 of Directive 2003/87, entitled 'Union-wide quantity of allowances', provides:

'The Union-wide quantity of allowances issued each year starting in 2013 shall decrease in a linear manner beginning from the mid-point of the period from 2008 to 2012. The quantity shall decrease by a linear factor of 1.74% compared to the average annual total quantity of allowances issued by Member States in accordance with the Commission Decisions on their national allocation plans for the period from 2008 to 2012 …

Starting in 2021, the linear factor shall be 2.2%.'

10 Regulation 2018/841, the second act at issue, sets binding commitments for all Member States so as to ensure that accounted emissions from land use are offset in their entirety by an equivalent removal of CO2 from the atmosphere by means of activities carried out in the land use, land use change and forestry sector.

11 Article 4 of that regulation states:

'For the periods from 2021 to 2025 and from 2026 to 2030, taking into account the flexibilities provided for in Articles 12 and 13, each Member State shall ensure that emissions do not exceed removals, calculated as the sum of total emissions and total removals on its territory in all of the land accounting categories referred to in Article 2 combined, as accounted in accordance with this Regulation.'

12 Regulation 2018/842, the third act at issue, lays down obligations for the Member States, in accordance with Article 1 thereof, with respect to their minimum contributions, for the period from 2021 to 2030, to fulfilling the Union's target of reducing its greenhouse gas emissions by 30% below 2005 levels in the sectors covered by Article 2 of that regulation, and contributes to achieving the objectives of the Paris Agreement. That regulation applies to emissions from economic sectors not falling within the scope of Directive 2003/87 or Regulation 2018/841.

13 Article 4 of Regulation 2018/842, entitled 'Annual emission levels for the period from 2021 to 2030', is worded as follows:

'1. Each Member State shall, in 2030, limit its greenhouse gas emissions at least by the percentage set for that Member State in Annex I in relation to its greenhouse gas emissions in 2005, determined pursuant to paragraph 3 of this Article.

2. Subject to the flexibilities provided for in Articles 5, 6 and 7 of this Regulation, to the adjustment pursuant to Article 10(2) of this Regulation and taking into account any deduction resulting from the application of Article 7 of Decision No 406/2009/EC [of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 (OJ 2009 L 140, p. 136)], each Member State shall ensure that its greenhouse gas emissions in each year between 2021 and 2029 do not exceed the limit defined by a linear trajectory, starting on the average of its greenhouse gas emissions during 2016, 2017 and 2018 determined pursuant to paragraph 3 of this Article and ending in 2030 on the limit set for that Member State in Annex I to this Regulation. The linear trajectory of a Member State shall start either at five-twelfths of the distance from 2019 to 2020 or in 2020, whichever results in a lower allocation for that Member State.

3. The Commission shall adopt implementing acts setting out the annual emission allocations for the years from 2021 to 2030 in terms of tonnes of CO2 equivalent as specified in paragraphs 1 and 2 of this Article. For the purposes of those implementing acts, the Commission shall carry out a comprehensive review of the most recent national inventory data for the years 2005 and 2016 to 2018 submitted by Member States pursuant to Article 7 of Regulation (EU) No 525/2013 [of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC (OJ 2013 L 165, p. 13)].

Those implementing acts shall indicate the value for the 2005 greenhouse gas emissions of each Member State used to determine the annual emission allocations specified in paragraphs 1 and 2.

4. Those implementing acts shall also specify, based on the percentages notified by Member States under Article 6(3), the total quantities that may be taken into account for a Member State's compliance under Article 9 between 2021 and 2030. If the sum of all Member States' total quantities were to exceed the collective total of 100 million, the total quantities for each Member State shall be reduced on a pro rata basis so that the collective total is not exceeded.

…'

Procedure before the General Court and the order under appeal

14 By application lodged at the Registry of the General Court on 23 May 2018, the appellants brought an action seeking, first, annulment of the acts at issue and, second, compensation in the form of an injunction for the damage which the appellants claimed to have suffered.

15 In their application, the appellants claimed that the General Court should:

– declare that the legislative package regarding greenhouse gas emissions is unlawful in so far as it permits the emission between 2021 and 2030 of a quantity of greenhouse gases corresponding to 80% of 1990 levels in 2021, decreasing to 60% of 1990 levels in 2030;

– annul the legislative package regarding greenhouse gas emissions in so far as it sets targets to reduce greenhouse gas emissions by 2030 by 40% compared to 1990 levels, in particular Article 1 of Directive 2018/410, Article 4(2) of Regulation 2018/842 and Annex I thereto, and Article 4 of Regulation 2018/841;

– order the European Parliament and the Council of the European Union to adopt measures under the legislative package regarding greenhouse gas emissions requiring a reduction in greenhouse gas emissions by 2030 by at least 50% to 60% compared to their 1990 levels, or by such higher level of reduction as the General Court shall deem appropriate;

– in the alternative, in the event that the decision to annul the contested acts is adopted too late to allow the relevant provisions to be amended before 2021, order that the contested provisions of the legislative package regarding greenhouse gas emissions are to remain in force until a date to be determined by the General Court, by which time at the latest they should have been amended by higher-ranking rules of law; and

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

16 By separate document lodged at the Registry of the General Court on 16 October 2018, the Council raised a plea of inadmissibility in relation to the action.

17 By separate document lodged at the Registry of the General Court on 20 October 2018, the Parliament also raised a plea of inadmissibility.

18 As a result, the processing of the applications for leave to intervene lodged by Climate Action Network Europe on 20 September 2018, WeMove Europe SCE mbH on 20 September 2018 and Arbeitsgemeinschaft Bäuerliche Landwirtschaft on 24 September 2018 in support of the form of order sought by the appellants, and by the Commission on 4 October 2018 in support of the form of

order sought by the Parliament and the Council, was suspended in accordance with Article 144(3) of the Rules of Procedure of the General Court.

19 On 10 December 2018 the appellants submitted their observations regarding the plea of inadmissibility raised by the Parliament and the Council.

20 By the order under appeal, the General Court held, in accordance with Article 130 of its Rules of Procedure, that both the claim for annulment and the claim for damages submitted by the appellants were inadmissible.

21 Regarding, on the one hand, the claim for annulment, the General Court held that the appellants did not satisfy any of the *locus standi* criteria laid down in the fourth paragraph of Article 263 TFEU.

22 First, concerning the first scenario in which a natural or legal person may have *locus standi* under that provision, the General Court observed, in paragraph 35 of the order under appeal, that the appellants were not the addressees of the acts at issue. Next, regarding the third scenario, it found, in paragraphs 37 to 41 of the order under appeal, that the acts at issue had been adopted on the basis of Article 192(1) TFEU in accordance with the ordinary legislative procedure, with the result that the acts at issue could not be regarded as regulatory acts for the purposes of the fourth paragraph of Article 263 TFEU. Lastly, concerning the second scenario, the General Court held, in paragraphs 46 to 54 of the order under appeal, that the appellants were not individually concerned for the purposes of the fourth paragraph of Article 263 TFEU. In that regard, the General Court considered that the fact that the effects of climate change may be different for one person than they are for another does not mean that, for that reason, there exists standing to bring an action against a measure of general application. In its view, a different approach has the effect of rendering the requirements of the fourth paragraph of Article 263 TFEU meaningless and of creating *locus standi* for all.

23 Regarding, on the other hand, the claim for damages, the General Court considered, in essence, in paragraphs 67 to 70 of the order under appeal, that that claim sought, in reality, to obtain a result similar to the result of annulling the acts at issue and that, consequently, it had to be declared inadmissible, like the appellants' claim for annulment.

Forms of order sought before the Court of Justice

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

– set aside the order under appeal;

– declare the actions at first instance admissible;

– refer the case back to the General Court so that it may give a ruling on the merits of the claim for annulment;

– refer the case back to the General Court so that it may give a ruling on the merits of the claim invoking the non-contractual liability of the Union; and

– order the Parliament and the Council to pay the costs of the present appeal and the costs of the proceedings before the General Court.

25 The Parliament and the Council, supported by the Commission, contend that the Court should:

– dismiss the appeal; and

– order the appellants to pay the costs.

The appeal

26 In support of their appeal, the appellants rely on four grounds of appeal, alleging that the General Court erred (i) in finding that the appellants were not individually concerned; (ii) on account of the failure to adapt the settled case-law on *locus standi* in order to guarantee the legal protection of fundamental rights; (iii) in finding that the association Sáminuorra did not have *locus standi*; and (iv) in rejecting their claim for damages.

The first ground of appeal, alleging that the General Court erred in law in finding that the appellants were not individually concerned

Arguments of the parties

27 By their first ground of appeal, the appellants submit that the General Court erred in law by failing to take account of the fact that the appellants were concerned, from a factual and legal point of view, in distinct ways.

28 That ground is divided into two parts.

29 By the first part, the appellants claim that the acts at issue affect each of them 'by reason of certain attributes which are peculiar to them' and by virtue of these factors '[distinguish] them individually'. Each of the appellant families, and even each member of those families, has different characteristics that are peculiar to them. Some families are affected by droughts, others by flooding, still others by melting snow or heatwaves caused or intensified by climate change. Some of those families are farmers or forest owners, others own businesses in the tourism sector, still others are dedicated to animal husbandry. Ultimately, they are all individuals suffering in distinct ways as a result of climate change.

30 According to the appellants, the General Court did not, in the order under appeal, make any reference to the evidence showing that the appellants were affected in different ways by climate change. It merely ruled, in paragraph 50 of that order, that the fact that persons are affected differently does not confer standing to bring an action to challenge a measure of general application.

31 By the second part of the first ground of appeal, the appellants claim that, in the light of recent case-law developments regarding *locus standi*, the interference of the acts at issue with fundamental rights gives rise to individual concern, for the purposes of the fourth paragraph of Article 263 TFEU, if the right concerned is a personal right. The fact that there may be several rightholders cannot be of any significance, because the individual nature of the concern arises from the nature of the right as a personal and individual right.

32 According to the appellants, the General Court erred, in paragraph 49 of the order under appeal, in so far as it neglected the importance of the legal effects of the acts at issue on each specific appellant, focusing exclusively on the factual consequences. The appellants submit that, if

the General Court had taken account of the appellants' legal position, it would have focused on the fact that each of them holds a fundamental right, which is individually affected by the acts at issue.

33 In that regard, the appellants emphasise that both the Charter of Fundamental Rights of the European Union ('the Charter') and the case-law of the Court of Justice clearly state that the fundamental rights concerned in the present case confer individual rights on each appellant. In particular, the rights concerned are the right to equality and non-discrimination, provided for in Article 21 of the Charter, the right to pursue an occupation, set out in Article 15(1) of the Charter, the right to property, within the meaning of Article 17(1) of the Charter, and the rights relating to children under Article 24 of the Charter.

34 The Parliament and the Council, supported by the Commission, dispute the appellants' arguments.

Findings of the Court

35 In the first place, as regards the first part of the first ground of appeal, the Council disputes the appellants' claims and contends that those claims, which fall within the scope of the factual assessment carried out by the General Court, cannot be contested in the context of the present appeal.

36 In that regard, it should be borne in mind that it is clear from Article 256 TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union that the General Court has exclusive jurisdiction, first, to find the facts, except where the substantive inaccuracy of its findings is apparent from the documents submitted to it and, second, to assess those facts. When the General Court has found or assessed the facts, the Court of Justice has jurisdiction under Article 256 TFEU to review the legal characterisation of those facts by the General Court and the legal conclusions it has drawn from them. The Court of Justice thus has no jurisdiction to establish the facts or, in principle, to examine the evidence which the General Court accepted in support of those facts. Save where the clear sense of the evidence has been distorted, that appraisal does not therefore constitute a point of law which is subject as such to review by the Court of Justice (see, in particular, judgment of 19 March 2009, *Archer Daniels Midland* v *Commission*, C-510/06 P, EU:C:2009:166, paragraph 105).

37 In the present case, it should be noted that, in order to find that the appellants were not individually concerned by the acts at issue, the General Court held, in paragraphs 49 and 50 of the order under appeal, as follows:

'49 The applicants have not established that the contested provisions of the legislative package infringed their fundamental rights and distinguished them individually from all other natural or legal persons concerned by those provisions just as in the case of the addressee.

50 It is true that every individual is likely to be affected one way or another by climate change, that issue being recognised by the European Union and the Member States who have, as a result, committed to reducing emissions. However, the fact that the effects of climate change may be different for one person than they are for another does not mean that, for that reason, there exists standing to bring an action against a measure of general application. As can be seen from the case-law cited in paragraph 48 above, a different approach would have the result of rendering the requirements of the fourth paragraph of Article 263 TFEU meaningless and of creating *locus standi* for all without the criterion of individual concern within the meaning of the case-law resulting from

the judgment of 15 July 1963, *Plaumann* v *Commission* (25/62, EU:C:1963:17) [("the judgment in *Plaumann*")], being fulfilled.'

38 It is apparent from paragraphs 49 and 50 of the order under appeal that the General Court provided a legal characterisation of the facts in order to determine whether the appellants were individually concerned for the purposes of the fourth paragraph of Article 263 TFEU, considering that the circumstances alleged by them were not capable of establishing that the acts at issue distinguished them individually, just as in the case of the addressee of those acts. The calling in question of such a legal characterisation of the facts is therefore a point of law which may, as such, be invoked in the context of the present appeal.

39 It should, however, be noted that, contrary to what the appellants seek to argue in the first part of the present ground of appeal, the General Court took account, in paragraphs 49 and 50 of the order under appeal, of the arguments which, in their view, set out the numerous and specific ways in which they were concerned from a factual point of view.

40 The General Court held, in essence, in paragraph 50 of the order under appeal, that the fact that the effects of climate change may be different for one person than they are for another and that they depend on the personal circumstances specific to each person does not mean that the acts at issue distinguish each of the appellants individually. In other words, the fact that the appellants, owing to the alleged circumstances, are affected differently by climate change is not in itself sufficient to establish the standing of those appellants to bring an action for annulment of a measure of general application such as the acts at issue.

41 Accordingly, the General Court held, in paragraph 50 of the order under appeal, that the appellants' interpretation of the circumstances alleged by them as establishing that they were individually concerned would render the requirements of the fourth paragraph of Article 263 TFEU meaningless and would create *locus standi* for all without the criterion of individual concern referred to in the judgment in *Plaumann* being fulfilled.

42 Consequently, the appellants cannot claim that the General Court did not take into account, in the order under appeal, the characteristics specific to them in order to determine whether they were individually concerned.

43 Moreover, the appellants' argument that the General Court made no reference, in the order under appeal, to the evidence showing that the appellants were affected in different ways by climate change is, in the light of the foregoing, ineffective.

44 The first part of the first ground of appeal must therefore be rejected.

45 In the second place, as regards the appellants' argument, raised in the context of the second part of the first ground of appeal, that the interference of the acts at issue with their fundamental rights gives rise to individual concern for the purposes of the fourth paragraph of Article 263 TFEU, it must be stated that the appellants have misinterpreted the criterion of individual concern set out in that provision, as interpreted by the case-law of the Court.

46 According to settled case-law, which has not been altered by the Treaty of Lisbon, natural or legal persons satisfy the condition of individual concern only if the contested act affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons, and by virtue of these factors distinguishes them individually just as in the case of the person addressed (judgment of 3 October 2013, *Inuit Tapiriit*

Kanatami and Others v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraphs 71 and 72 and the case-law cited).

47 In that regard, as is noted by the Parliament, the appellants' reasoning, in addition to its generic wording, leads to the conclusion that there is *locus standi* for any applicant, since a fundamental right is always likely to be concerned in one way or another by measures of general application such as those contested in the present case.

48 As was recalled by the General Court in paragraph 48 of the order under appeal, the claim that the acts at issue infringe fundamental rights is not sufficient in itself to establish that the action brought by an individual is admissible, without running the risk of rendering the requirements of the fourth paragraph of Article 263 TFEU meaningless (see, to that effect, orders of 10 May 2001, *FNAB and Others* v *Council*, C-345/00 P, EU:C:2001:270, paragraph 40, and of 14 January 2021, *Sabo and Others* v *Parliament and Council*, C-297/20 P, not published, EU:C:2021:24, paragraph 29 and the case-law cited).

49 Since, as is apparent from paragraph 46 of the order under appeal, the appellants merely invoked, before the General Court, an infringement of their fundamental rights, inferring individual concern from that infringement, on the ground that the effects of climate change and, accordingly, the infringement of fundamental rights are unique to and different for each individual, it cannot be held that the acts at issue affect the appellants by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons, and by virtue of these factors distinguish them individually just as in the case of the person addressed.

50 Therefore, the General Court was fully entitled to hold, in paragraph 49 of the order under appeal, that the appellants had not established that the contested provisions of the acts at issue distinguished them individually from all other natural or legal persons concerned by those provisions just as in the case of the addressee.

51 The second part of the first ground of appeal must therefore be rejected.

52 Accordingly, the first ground of appeal must be rejected in its entirety.

The second ground of appeal, alleging that the General Court erred on account of the failure to adapt the settled case-law on* locus standi *in order to guarantee the legal protection of fundamental rights

Arguments of the parties

53 By their second ground of appeal, the appellants claim that, in the event that the Court of Justice is not convinced by the arguments put forward in their first ground of appeal, the test derived from the judgment in *Plaumann* for establishing the existence of 'individual concern' should be adapted in order to ensure adequate judicial protection against serious infringements of fundamental rights. The appellants put forward six arguments in support of that claim.

54 In the first place, the appellants remark that the test derived from the judgment in *Plaumann* is not specified in the wording of the fourth paragraph of Article 263 TFEU. That wording simply states that a person may institute proceedings where the act 'is of direct and individual concern to them'. That phrasing provides an opportunity to alter the test established by case-law provided such alteration is well founded. In addition, according to the appellants, that same test has already been adapted depending on the specific circumstances of the individual case, which shows that the text of

the FEU Treaty may allow for a wide range of interpretations. The Court has relaxed the test derived from the judgment in *Plaumann* where it deemed it appropriate to do so in order to ensure effective judicial protection.

55 In the second place, the appellants maintain that the condition relating to individual concern must be interpreted in accordance with the constitutional traditions of the Member States, pursuant to Article 6(3) TEU. In that regard, the appellants emphasise that none of the Member States requires an applicant to prove that it is distinguished individually, in the narrow sense of the test derived from the judgment in *Plaumann*. This is true both for courts which adopt an 'administrative' approach to judicial protection, and for courts which apply a 'constitutional' approach. According to the appellants, the wording established in the judgment in *Plaumann*, as applied to their action for annulment, disregards the obligation to develop EU constitutional principles on the basis of the constitutional principles of the Member States.

56 In the third place, the appellants submit that the right to bring an action before the Courts of the European Union must be given a teleological interpretation in order to take account of how seriously an applicant is concerned. The appellants maintain that it is paradoxical, or even illogical, to find that, where a failure by the European Union to fulfil its legal obligations has far-reaching consequences, no individual can demonstrate individual concern.

57 In the fourth place, the appellants claim that the fourth paragraph of Article 263 TFEU must in principle allow for direct actions against legislative acts. Those acts are, by their very nature, likely to concern a large number of persons, which means that it is virtually impossible to satisfy the test used in the judgment in *Plaumann*. However, the fourth paragraph of Article 263 TFEU provides the possibility of direct access to the Courts of the European Union in order to establish the compatibility of legislative acts with higher-ranking rules of law.

58 In that regard, the appellants recall that the issue of direct access to courts in order to challenge measures of general application has already been addressed by Advocate General Jacobs in his Opinion in *Unión de Pequeños Agricultores* v *Council* (C-50/00 P, EU:C:2002:197), and by the General Court in its judgment of 3 May 2002, *Jégo-Quéré* v *Commission* (T-177/01, EU:T:2002:112). In connection with the appeal against that judgment, Advocate General Jacobs proposed that individual concern should be regarded as serious and direct concern to individuals, thereby eliminating the concept of 'singularity'. That step was successful in so far as, in the fourth paragraph of Article 263 TFEU, that requirement was entirely removed for regulatory acts not entailing implementing measures. The appellants invite the Court of Justice to adapt the definition of 'individual concern' in order to take account of the particular nature of constitutional actions against legislative acts of the European Union.

59 In the fifth place, the appellants submit that the test used in the judgment in *Plaumann* must be amended in order to meet the legal requirement of effective judicial protection. In that regard, they observe that, in the order under appeal, the General Court held, with regard to Article 47 of the Charter, that that article 'does not require that an individual should have an unconditional entitlement to bring an action for annulment of such a legislative act of the Union directly before the Courts of the European Union'. The General Court also held that an effective review of the legality of the acts at issue could be obtained by means of the interlocutory procedure provided for in Article 277 TFEU or a reference for a preliminary ruling under Article 267 TFEU.

60 However, in the present case, neither of those remedies is legally applicable and, therefore, the General Court erred in law. In the circumstances of the present case and in view of the breach of legal standards complained of by the appellants, proceedings against the implementing acts under

Article 277 TFEU or proceedings before the national courts, with the possibility to request a reference for a preliminary ruling pursuant to Article 267 TFEU, would not afford effective judicial protection.

61 First, as regards the implementing acts, the appellants remark in particular that the Commission is not empowered to adopt implementing acts that would reduce the overall level of emissions into the European Union below the level set by the legislative package regarding greenhouse gas emissions.

62 Secondly, as regards the possibility of bringing proceedings before the national courts, the appellants submit, in essence, that proceedings before a national court or tribunal are not truly effective. The appellants indicate that a number of factors make it structurally impossible to obtain an effective remedy through the national courts, having regard, in particular, first, to the inadmissibility of a request for a preliminary ruling concerning the validity of the legislative package regarding greenhouse gas emissions, secondly, to the irrational imposition of the obligation to bring proceedings in all the Member States and, third, to the fact that no adequate national remedies are available.

63 In the sixth place, the appellants submit that, contrary to what the General Court held in paragraph 50 of the order under appeal, the amendment of the criterion of individual concern referred to in the case-law derived from the judgment in *Plaumann* may make it possible both to avoid creating *locus standi* for all and to create an effective filter for actions.

64 According to the appellants, where it is impossible to gain access to an effective and adequate remedy through the national courts and/or a procedure concerning the implementing measures, the condition of individual concern must be regarded as satisfied if the contested legislative act significantly encroaches on a personal fundamental right or encroaches on that right to an extent likely to undermine the essence of the right.

65 The appellants maintain that a criterion of that nature provides a mechanism that is sufficient to filter potential actions at an early stage. Furthermore, that criterion has points in common with comparable concepts applied by the courts of the Member States in accordance with their constitutional traditions. Lastly, according to the appellants, the criterion of seriousness could be specified by case-law reacting to different kinds of fundamental rights and factual constellations.

66 The Parliament and the Council, supported by the Commission, dispute those arguments.

Findings of the Court

67 As a preliminary point, it should be borne in mind that the European Union is a union based on the rule of law in which the acts of its institutions are subject to review of their compatibility with, in particular, the Treaties, the general principles of law and fundamental rights (judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 91).

68 To that end, the FEU Treaty has established a complete system of legal remedies and procedures designed to ensure judicial review of the legality of acts of the institutions, and has entrusted such review to the Courts of the European Union (judgment of 25 July 2002, *Unión de Pequeños Agricultores* v *Council*, C-50/00 P, EU:C:2002:462, paragraph 40).

69 According to settled case-law, the Courts of the European Union may not, without going beyond their jurisdiction, interpret the conditions under which an individual may institute proceedings against an act of the Union in a way which has the effect of setting aside those conditions, which are expressly laid down in the FEU Treaty, even in the light of the principle of effective judicial protection (see, to that effect, judgment of 1 April 2004, *Commission* v *Jégo-Quéré*, C-263/02 P, EU:C:2004:210, paragraph 36).

70 It follows that, even if the appellants are requesting that the judgment in *Plaumann* be adapted so as to enable the acts at issue to be contested in the present case, such an adaptation must be rejected inasmuch as it is contrary to the provisions laid down in the FEU Treaty regarding the admissibility of actions for annulment, such as that set out in the fourth paragraph of Article 263 TFEU.

71 Under that provision, any natural or legal person may institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.

72 In that regard, the General Court correctly held, in paragraph 35 of the order under appeal, that the acts at issue do not identify the appellants as being the addressees of those acts and that, consequently, the first scenario in which a natural or legal person has standing to bring proceedings under the fourth paragraph of Article 263 TFEU had to be excluded.

73 Next, regarding the second scenario provided for in that provision, that is to say, that proceedings may be instituted on condition that the act is of direct and individual concern to the natural or legal person instituting those proceedings, the General Court was fully entitled to consider, as is apparent from paragraph 50 of the present judgment, that the appellants had not established that the contested provisions of the acts at issue were such as to distinguish them individually just as in the case of the addressee. Since the conditions of direct concern and individual concern are cumulative (judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 76), the General Court did not err in considering that the appellants were not covered by the second scenario provided for in the fourth paragraph of Article 263 TFEU for bringing an action before the General Court.

74 Lastly, the General Court rightly held that the acts at issue, having been adopted on the basis of Article 192(1) TFEU, are not regulatory acts covered by the third scenario provided for in the fourth paragraph of Article 263 TFEU.

75 In the light of the foregoing, the General Court did not err in law in considering that the appellants were not covered by any of the three scenarios provided for in the fourth paragraph of Article 263 TFEU allowing them to bring an action before the General Court.

76 Consequently, as is apparent from the case-law cited in paragraph 69 of the present judgment, the appellants cannot ask the Court of Justice to set aside such conditions, which are expressly laid down in the FEU Treaty, and, in particular, to adapt the criterion of individual concern as defined by the judgment in *Plaumann*, in order that they may have access to an effective remedy.

77 In that regard, it should be borne in mind, as the General Court did in paragraph 52 of the order under appeal, that the protection conferred by Article 47 of the Charter does not require that an individual should have an unconditional entitlement to bring an action for annulment of such a legislative act of the Union directly before the Courts of the European Union (see, to that effect,

judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 105).

78 Although the conditions of admissibility laid down in the fourth paragraph of Article 263 TFEU must be interpreted in the light of the fundamental right to effective judicial protection, such an interpretation cannot have the effect of setting aside the conditions expressly laid down in that Treaty (see, to that effect, judgments of 25 July 2002, *Unión de Pequeños Agricultores* v *Council*, C-50/00 P, EU:C:2002:462, paragraph 44, and of 1 April 2004, *Commission* v *Jégo-Quéré*, C-263/02 P, EU:C:2004:210, paragraph 36).

79 It follows that the appellants' arguments seeking to have the criterion of individual concern extended cannot, in any event, succeed.

80 In the light of the foregoing considerations, the second ground of appeal must therefore be rejected.

***The third ground of appeal, alleging that the General Court erred in finding that the association Sáminuorra did not have* locus standi**

Arguments of the parties

81 By the third ground of appeal, the association Sáminuorra claims that the General Court erred in law by failing to take into account the evidence demonstrating that that association was individually concerned. According to that appellant, the General Court held, in a single sentence, in paragraph 51 of the order under appeal, that it had not demonstrated that it satisfied the conditions for admissibility of an action for annulment. The General Court thus distorted the evidence submitted by that association, in particular in order to demonstrate, in accordance with settled case-law, that it represented the interests of its members, who were themselves entitled to bring proceedings.

82 Furthermore, the association Sáminuorra submits that the General Court erred in law by failing to take account of another type of action that may be brought by an association, namely the 'action of a collective defending a collective good'. The association Sáminuorra represents a whole that is more than the sum of the individual interests of its members. The common good represented by that association is the right of the Sami people to use public and private land for their reindeer herds, in accordance with the Swedish Law of 1971 on Reindeer Husbandry, as amended in 1993.

83 In that context, the association Sáminuorra remarks that individual concern should, in the present case, be defined as being the concern of an identifiable collective. Such an interpretation falls within the scope of the European Union's obligations as defined in the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the United Nations General Assembly on 13 September 2007, as well as in the Convention on Biological Diversity (CBD), signed in Rio de Janeiro on 5 June 1992, which is also binding on the European Union.

84 The Parliament and the Council, supported by the Commission, dispute those arguments.

Findings of the Court

85 As regards the association Sáminuorra, the General Court found, in paragraph 51 of the order under appeal, as follows:

‘51 So far as concerns the association Sáminuorra, it should be pointed out, in the first place, that, like the other applicants and for the same reason, that applicant has not shown that it was individually concerned. In the second place, it is settled case-law that actions for annulment brought by associations have been held to be admissible in three types of situation: firstly, where a legal provision expressly grants a series of procedural powers to trade associations; secondly, where the association represents the interests of its members, who would themselves be entitled to bring proceedings; and, thirdly, where the association is distinguished individually because its own interests as an association are affected, in particular because its negotiating position has been affected by the act in respect of which annulment is sought (see order of 23 November 1999, *Unión de Pequeños Agricultores* v *Council*, T-173/98, EU:T:1999:296, paragraph 47 and the case-law cited). In the present case, the association Sáminuorra has not shown that it satisfied one of those conditions.’

86 It is apparent from the preceding paragraph of the present judgment that the General Court stated in the order under appeal that, first, for the same reasons as those applicable to the other appellants – natural persons – that association could not be regarded as being individually concerned. In the light of the findings made in connection with the first and second grounds of appeal, in particular in paragraphs 49 and 50 of the present judgment, it cannot be held that the General Court erred in making those findings.

87 Secondly, the General Court held that the association Sáminuorra had not established that it was covered, as an association, by one of the three conditions under which case-law allows associations to bring an action for annulment.

88 In that regard, the General Court cannot be said to have distorted the facts in its assessment of the association Sáminuorra as regards, in particular, the second condition.

89 Indeed, in so far as the appellants, as natural persons, were considered not to be individually concerned for the purposes of the fourth paragraph of Article 263 TFEU, the same consideration applies to the members of that association. Those members cannot therefore claim that they possess attributes which distinguish them individually from the other potential addressees of the acts at issue.

90 Concerning the first condition, it should be borne in mind that associations have a right to bring proceedings against an act of the Union where the provisions of EU law specifically recognise those associations as having procedural rights (see, to that effect, judgment of 4 October 1983, *Fediol* v *Commission*, 191/82, EU:C:1983:259, paragraph 28). However, the association Sáminuorra has not claimed that such provisions exist in its favour.

91 As regards the argument that the General Court should have recognised the existence of another situation in which associations would be entitled to bring proceedings, namely ‘the action of a collective defending a collective good’, that argument was not put forward at first instance and must therefore, pursuant to Article 170(1) of the Rules of Procedure of the Court of Justice, be rejected as inadmissible in the context of the present appeal.

92 To allow the appellants to raise for the first time before the Court of Justice arguments which they have not raised before the General Court would be to authorise them to bring before the Court of Justice, whose jurisdiction in appeals is limited, a case of wider ambit than that which came before the General Court. In an appeal, the jurisdiction of the Court of Justice is thus confined to review of the findings of law on the pleas argued before the lower court (see, to that effect, judgment of 17 June 2010, *Lafarge* v *Commission*, C-413/08 P, EU:C:2010:346, paragraph 52).

93 As regards the third condition, the association Sáminuorra has not claimed to satisfy it.

94 It follows from the foregoing that the General Court did not err in concluding that the association Sáminuorra could not be regarded as being individually concerned by the acts at issue under the fourth paragraph of Article 263 TFEU.

95 The third ground of appeal must therefore be rejected as being in part unfounded and in part inadmissible.

The fourth ground of appeal, alleging that the General Court erred in rejecting the appellants' claim for damages

Arguments of the parties

96 The appellants claim that the General Court wrongly concluded that the non-contractual liability of the Union was excluded in so far as the appellants did not have standing to bring an action for annulment. There are fundamental differences between the measure requested in the claim for annulment and that requested in the claim invoking the non-contractual liability of the Union, which were not addressed by the General Court in the order under appeal.

97 First, the General Court's approach is contrary to the principle that actions for annulment based on the non-contractual liability of the Union are autonomous. It would also be contrary to its own practice, as the General Court has repeatedly examined the validity of legal acts as part of the preconditions for non-contractual liability without regard to whether the act had been the subject of annulment proceedings or not.

98 Secondly, contrary to what the General Court held in the order under appeal, the alleged illegality was not the same in the two claims. On the one hand, in the claim for annulment, the appellants argued that the acts at issue which make up the legislative package regarding greenhouse gas emissions were vitiated by errors of law, having regard to higher-ranking rules of law. On the other hand, the claim invoking the non-contractual liability of the Union is based on a broader breach of higher-ranking rules of law, which began in 1992. That breach is a continuous one. The European Union's failure to adopt adequate emission reductions in the legislative package regarding greenhouse gas emissions is only one aspect of that continuous breach.

99 Thirdly, the appellants emphasise that, contrary to the reasoning employed by the General Court in the order under appeal, the two claims in question did not seek to obtain the same result, namely the replacement of the acts at issue which make up the legislative package in question with new measures that will have to achieve a greater reduction in greenhouse gas emissions than is laid down currently. In their claim invoking the non-contractual liability of the Union, the appellants requested measures targeting the legislative package regarding greenhouse gas emissions, whereas the basis underlying the liability of the Union is much broader. That liability is based on a continuous breach of higher-ranking rules of law which began in 1992.

100 The Parliament and the Council, supported by the Commission, dispute those arguments.

Findings of the Court

101 As was recalled by the General Court in paragraphs 65 and 66 of the order under appeal, according to settled case-law, the action for damages under the second paragraph of Article 340 TFEU was introduced as an autonomous form of action, with a particular purpose to fulfil within

the system of actions and subject to conditions on its use dictated by its specific purpose, and hence a declaration of inadmissibility of the application for annulment does not automatically render the action for damages inadmissible (judgment of 5 September 2019, *European Union* v *Guardian Europe* and *Guardian Europe* v *European Union*, C-447/17 P and C-479/17 P, EU:C:2019:672, paragraph 49 and the case-law cited).

102 However, although a party may take action by means of a claim for compensation without being obliged by any provision of law to seek the annulment of the illegal measure which causes him damage, he may not in that way circumvent the inadmissibility of an application which concerns the same instance of illegality and which has the same financial end in view (judgment of 5 September 2019, *European Union* v *Guardian Europe* and *Guardian Europe* v *European Union*, C-447/17 P and C-479/17 P, EU:C:2019:672, paragraph 50 and the case-law cited).

103 Thus, an action for damages must be declared inadmissible where it is actually aimed at securing withdrawal of an individual decision which has become final and it would, if upheld, have the effect of nullifying the legal effects of that decision. That is the case if the applicant seeks, by means of a claim for damages, to obtain the same result as he would have obtained had he been successful in an action for annulment which he failed to commence in due time (judgment of 5 September 2019, *European Union* v *Guardian Europe* and *Guardian Europe* v *European Union*, C-447/17 P and C-479/17 P, EU:C:2019:672, paragraph 51 and the case-law cited).

104 In the present case, in paragraph 67 of the order under appeal, the General Court makes the following finding:

‘In that regard, it should be pointed out that the claim seeking annulment of the legislative package and the injunction requested in connection with the action for damages are almost identical and concern the same alleged unlawfulness. In the action for annulment, the applicants have argued that the target set by the three contested acts, namely a 40% reduction in emissions, is manifestly inadequate, which is why that target should be annulled and reviewed. In the action for damages, they seek, instead of pecuniary damages for their alleged individual losses, compensation in the form of an injunction ordering the Union to adopt measures to put an end to its unlawful and harmful conduct. The applicants therefore request that the Parliament and the Council be ordered to adopt measures under the legislative package requiring a reduction in greenhouse gas emissions by 2030 by at least 50% to 60% compared to 1990 levels.’

105 That finding by the General Court cannot be challenged. The action, taken as a whole, shows that the claim for compensation, which is formulated as an injunction, is intended not to obtain damages for harm attributable to an unlawful act or an omission, but to amend the acts at issue. Thus, as the General Court found in paragraph 69 of the order under appeal, both by their claim for annulment and by their request for an injunction, the appellants seek to obtain the same result, namely the replacement of the acts at issue with new measures that are more severe than those currently laid down in terms of reducing greenhouse gas emissions.

106 The General Court was therefore fully entitled to find, in paragraph 70 of the order under appeal, that, since the appellants did not have standing to bring proceedings to request partial annulment of the legislative package, their claim for compensation, which in reality seeks to achieve the same result, must also be declared inadmissible.

107 The fourth ground of appeal must therefore be rejected, and the appeal must be dismissed in its entirety.

Costs

108 In accordance with Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to the costs.

109 Under Article 138(1) of those rules, applicable to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party must be ordered to pay the costs if they have been applied for in the successful party's pleadings.

110 Since the Parliament and the Council have applied for costs and the appellants have been unsuccessful, the appellants must be ordered to pay the costs.

111 In accordance with Article 140(1) of the Rules of Procedure of the Court of Justice, applicable to appeal proceedings by virtue of Article 184(1) thereof, the Commission, which has intervened in the proceedings, must bear its own costs.

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

1. **Dismisses the appeal;**

2. **Orders Mr Armando Carvalho and 36 other appellants whose names are set out in the annex to the present judgment to bear their own costs and to pay those incurred by the European Parliament and the Council of the European Union;**

3. **Orders the European Commission to bear its own costs.**

Bay Larsen Toader Jääskinen

Delivered in open court in Luxembourg on 25 March 2021.

A. Calot Escobar
Registrar

L. Bay Larsen
President of the Sixth Chamber

Annex

List of appellants

Armando Carvalho, residing in Santa Comba Dão (Portugal),

Diogo Carvalho, residing in Santa Comba Dão,

Ildebrando Conceição, residing in Tomar (Portugal),

Alfredo Sendim, residing in Foros de Vale de Figueira (Portugal),

Joaquim Caxeiro, residing in Foros de Vale de Figueira,

Renaud Feschet, residing in Grignan (France),

Guylaine Feschet, residing in Grignan,

Gabriel Feschet, residing in Grignan,

Maurice Feschet, residing in Grignan,

Geneviève Gassin, residing in Grignan,

Roba Waku Guya, residing in Marsabit County (Kenya),

Fadhe Hussein Tache, residing in Marsabit County,

Sado Guyo, residing in Marsabit County,

Issa Guyo, residing in Marsabit County,

Jibril Guyo, residing in Marsabit County,

Adanoor Guyo, residing in Marsabit County,

Mohammed Guyo, residing in Marsabit County,

Petru Vlad, residing in Cugir (Romania),

Ana Tricu, residing in Cugir,

Petru Arin Vlad, residing in Cugir,

Maria Ioana Vlad, residing in Cugir,

Andrei Nicolae Vlad, residing in Cugir,

Giorgio Davide Elter, residing in Cogne (Italy),

Sara Burland, residing in Cogne,

Soulail Elter, residing in Cogne,

Alice Elter, residing in Cogne,

Rosa Elter, residing in Cogne,

Maria Elter, residing in Cogne,

Maike Recktenwald, residing in Langeoog (Germany),

Michael Recktenwald, residing in Langeoog,

Lueke Recktenwald, residing in Langeoog,

Petero Qaloibau, residing in Vanua Levu (Fiji),

Melania Cironiceva, residing in Vanua Levu,

Katarina Dimoto, residing in Vanua Levu,

Petero Jnr Qaloibau, residing in Vanua Levu,

Elisabeta Tokalau, residing in Vanua Levu,

Sáminuorra, established in Jokkmokk (Sweden).

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* Language of the case: English.