JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

6 September 2023 (*)

(Non-contractual liability – Regulation (EU) 2016/1624 – Directive 2013/32/EU – Directive 2008/115/EC – Frontex's obligations relating to the protection of fundamental rights – No abuse of process – Admissibility – Causal link)

In Case T-600/21,

WS and the other applicants whose names appear in the annex, (1) represented by A.M. van Eik and L.-M. Komp, lawyers,

applicants,

v

European Border and Coast Guard Agency (Frontex), represented by H. Caniard, C. Rueger and R.-A. Popa, acting as Agents, and by B. Wägenbaur, lawyer,

defendant,

THE GENERAL COURT (Sixth Chamber),

composed of M.J. Costeira (Rapporteur), President, M. Kancheva and P. Zilgalvis, Judges,

Registrar: M. Zwozdziak-Carbonne, Administrator,

having regard to the written part of the procedure,

further to the hearing on 9 March 2023,

gives the following

Judgment

1 By their action based on Article 268 TFEU, the applicants, WS and the other natural persons whose names appear in the annex, claim compensation for the damage allegedly suffered by them following the failure of the European Border and Coast Guard Agency (Frontex) to comply with its obligations pursuant to (i) Articles 16, 22, 26, 28, 34 and 72 of Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ 2016 L 251, p. 1); (ii) steps 1 to 5 of Frontex's Standard Operating Procedure seeking to guarantee respect for fundamental rights in the joint operations and pilot projects carried out by that agency; and (iii) Article 4 of the Code of Conduct for joint return operations coordinated by Frontex.

Background to the dispute

2 The applicants are Syrian nationals who arrived on the island of Milos (Greece) on 9 October 2016 amongst a group of 114 refugees.

3 On 14 October 2016, the applicants and 85 other refugees were transferred to the Reception and Identification Centre in Leros (Greece), where they declared, on a form entitled 'Beneficiary notice for international protection request', their interest in applying for international protection.

4 On 20 October 2016, following a joint return operation carried out by Frontex and the Hellenic Republic, the applicants were transferred to a temporary reception centre in South-East Türkiye ('the return operation').

5 On 2 November 2016, the Turkish authorities issued the applicants with temporary protection documents and a temporary travel permit, valid for two weeks, to travel to Sanliurfa (Türkiye). The applicants left the reception centre and moved temporarily to the village of Saruj (Türkiye), before settling in Erbil (Iraq), where they have resided ever since.

6 On 4 January 2017, the applicants lodged an initial complaint with the Frontex Fundamental Rights Officer ('the Fundamental Rights Officer') regarding their return to Türkiye following the return operation. The applicants also lodged a complaint against the Hellenic Republic before the European Court of Human Rights.

7 On 15 February 2017, the applicants' first complaint was deemed admissible and forwarded to Frontex's Executive Director and to the Greek Ombudsman.

8 On 7 June 2017, Frontex informed the applicants that their complaint had been forwarded to the Hellenic Police, since the Greek Ombudsman did not have a mandate to review that complaint.

9 On 17 July 2018, the applicants lodged a second complaint against Frontex concerning the handling of their first complaint.

10 On 25 July 2018, the Fundamental Rights Officer informed the applicants of the steps taken with the Hellenic authorities to ensure that their first complaint would be followed up.

11 On 9 August 2018, the applicants' second complaint was deemed admissible by the Fundamental Rights Officer and joined to their first complaint.

12 On 29 November 2018, the Fundamental Rights Officer informed the applicants that Frontex was still awaiting the outcome of the Hellenic Police's internal investigation into the first complaint.

13 On 25 November 2019, the Fundamental Rights Officer informed the applicants that the Hellenic Police had closed its internal investigation. He also informed the applicants of the decision by the Hellenic Police authorities not to share their internal investigation report, as it was classified 'confidential'.

14 On 6 October 2020, the Fundamental Rights Officer sent the applicants his final report on the complaints and closed the complaints procedure.

15 On 8 October 2020, the applicants sent an email to the Fundamental Rights Officer pointing out that the final report did not address Frontex's role in the return operation nor did it address the second complaint lodged against Frontex.

16 On 13 October 2020, in response to that email, the Fundamental Rights Officer informed the applicants that Frontex had complied with its obligations concerning the handling of their complaints.

Forms of order sought

17 The applicants claim, in essence, that the Court should:

- find that Frontex engaged in improper conduct with regard to them;
- order Frontex to pay them compensation in the amount of EUR 96 212.55 in respect of material damage, plus the interest due on the date of payment, and in the amount of EUR 40 000 in respect of non-material damage, plus the interest due on the date of payment;
- order Frontex to pay the costs, plus interest;
- order Frontex to pay those amounts within two weeks after the delivery of the judgment, plus the interest due for each day of delay.

18 Frontex contends, in essence, that the Court should:

- reject the application;
- order the applicants to pay the costs.

Law

Admissibility

Admissibility of the action

19 Without formally raising a plea of inadmissibility by separate document on the basis of Article 130(1) of the Rules of Procedure of the General Court, Frontex submits, in essence, that the application is inadmissible in so far as the applicants should have brought, within the relevant time limit, an action for annulment within the meaning of the fourth paragraph of Article 263 TFEU against the letter of the Fundamental Rights Officer of 6 October 2020, since, together with the final report, that letter constitutes a challengeable act for the purposes of that article. Moreover, by the present action, the applicants allegedly seek, in reality, to obtain a result which is identical to that which they would have obtained, if successful, from an action for annulment brought within the relevant time limit. According to case-law, an action for damages will be considered to be inadmissible if it is used solely to circumvent the failure to bring an action for annulment within the regulatory time limit.

20 The applicants dispute this inadmissibility.

21 In the present case, it should be noted at the outset that Frontex disputes the admissibility of the present action on the premiss that the applicants should first have brought an action for annulment of the letter from the Fundamental Rights Officer of 6 October 2020 closing the procedure for handling of their complaints.

22 According to case-law, a claim for damages based on the second paragraph of Article 340 TFEU is an independent form of action in the system of remedies available in EU law (see judgment of 12 May 2016, *Holistic Innovation Institute* v *Commission*, T-468/14, EU:T:2016:296, paragraph 45 and the case-law cited), with the result that the bringing of an action for annulment is not a prerequisite for bringing an action for damages.

23 In those circumstances, and since the objection to admissibility is based on a false premiss, it must be rejected.

24 However, an action for damages must be declared inadmissible where it is actually aimed at securing withdrawal of an individual decision which has become definitive and it would, if upheld, have the effect

of nullifying the legal effects of that decision (see order of 24 May 2011, *Power-One Italy* v *Commission*, T-489/08, not published, EU:T:2011:238, paragraph 43 and the case-law cited).

25 Nonetheless, it would be contrary to the autonomy of an action for damages, and to the effectiveness of the system of remedies established by the Treaty, to consider that an action for damages is inadmissible on the sole ground that it might lead to a result comparable to the results of an action for annulment. It is only where an action for damages is actually aimed at securing withdrawal of an individual decision addressed to the applicants which has become definitive – so that it has the same purpose and the same effect as an action for annulment – that the action for damages could be considered to be an abuse of process (see order of 24 May 2011, *Power-One Italy* v *Commission*, T-489/08, not published, EU:T:2011:238, paragraph 44 and the case-law cited).

26 An action for damages may also be able to nullify the legal effects of a decision which has become final where the applicant seeks a greater benefit, but including that which it could obtain from an annulling judgment. In such a case, it is necessary however to establish the existence of a close connection between the action for damages and the action for annulment in order to conclude that the former is inadmissible (see order of 24 May 2011, *Power-One Italy* v *Commission*, T-489/08, not published, EU:T:2011:238, paragraph 46 and the case-law cited).

27 In the present case, by their first complaint, the applicants requested the Fundamental Rights Officer, in view of the alleged infringements committed by Frontex during the return operation, to give them full access to the operational plan of the operation and to ask the Greek and Turkish authorities to return them to Greece. By their second complaint, the applicants referred to their first complaint and reported to the Fundamental Rights Officer the lack of information concerning the handling of the latter. By letter of 6 October 2020, the Fundamental Rights Officer informed the applicants that the procedure for handling their complaints had been closed and sent them his final report, at the end of which he took the view, in essence, that Frontex had guaranteed and taken the necessary measures to ensure that the fundamental rights of persons subject to a return decision were fully respected.

28 In those circumstances and irrespective of whether the letter of 6 October 2020, together with the final report, constitutes a challengeable act for the purposes of Article 263 TFEU, the immediate consequence of an action for annulment, if successful, would merely have been a fresh examination, by the Fundamental Rights Officer, of the applicants' complaints. By their action for damages, the applicants seek compensation for the material and non-material damage which they claim to have suffered as a result of Frontex's alleged unlawful conduct before, during and after the return operation.

29 It follows that the damage invoked by the applicants, first, is not a consequence of the letter of 6 October 2020 together with the final report and, second, would subsist after the annulment of those acts. It is therefore clear that the present action for damages does not have the same purpose or the same effect as an action for annulment brought against those documents.

30 Consequently, the inadmissibility raised by Frontex must be rejected.

Admissibility of the first and second heads of claim

31 Frontex submits, in essence, that the first and second heads of claim are inadmissible because, according to case-law, the EU courts do not have jurisdiction to make statements of principle.

32 The applicants dispute this inadmissibility.

33 By their first and second heads of claim, the applicants ask the Court to find, respectively, that:

- Frontex is responsible under Article 268 TFEU, read in conjunction with the second paragraph of Article 340 TFEU, for the damage caused to them by Frontex;

– there is a sufficiently serious breach of Frontex's obligations under Articles 16, 22, 26, 28, 34 and 72 of Regulation 2016/1624, under steps 1 to 5 of Frontex's Standard Operating Procedure seeking to guarantee respect for fundamental rights in the context of joint operations and pilot projects carried out by that agency and under Article 4 of the Code of Conduct for joint return operations coordinated by Frontex, conferring rights on them as enshrined in Articles 1, 4, 18, 19, 24, 41 and 47 of the Charter of Fundamental Rights of the European Union, and a sufficiently serious breach by Frontex of their fundamental rights laid down in Articles 1, 4, 18, 19, 24, 41 and 47 of the Charter of Fundamental Rights, thereby directly causing them the damage they have suffered.

34 Under the second paragraph of Article 340 TFEU, in the case of non-contractual liability, the European Union must, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties.

35 It is settled case-law that in order for the European Union to incur non-contractual liability within the meaning of that provision, for the unlawful conduct of its institutions or bodies, a number of conditions must be satisfied, namely, the alleged conduct of the institution must be unlawful, actual damage must have been suffered and there must be a causal link between the alleged conduct and the damage pleaded (see judgment of 17 February 2017, *Novar* v *EUIPO*, T-726/14, EU:T:2017:99, paragraph 25 and the case-law cited).

36 As regards the condition relating to the unlawfulness of the alleged conduct of the institution or body concerned, the case-law requires there to be established a sufficiently serious breach of a rule of law intended to confer rights on individuals. The decisive test for finding that a breach is sufficiently serious is whether the EU institution or body concerned manifestly and gravely disregarded the limits on its discretion (see judgment of 12 May 2016, *Holistic Innovation Institute* v *Commission*, T-468/14, EU:T:2016:296, paragraph 41 and the case-law cited).

37 The findings which the applicants ask the Court to make, by means of their first two heads of claim, fall within the normal process for establishing the European Union's non-contractual liability. By those heads of claim, the applicants ask the Court to find that Frontex has committed a sufficiently serious breach of its obligations relating to the protection of fundamental rights, a condition which is necessary for a finding that their claim for compensation is well founded.

38 In those circumstances, the view must be taken that those heads of claim, based on Articles 268 and 340 TFEU, seek to obtain from Frontex compensation for the damage the applicants claim to have suffered as a result of the infringements allegedly committed by Frontex.

39 Consequently, the inadmissibility raised by Frontex must be rejected.

Admissibility of the documents produced for the first time at the stage of the reply

40 Frontex argues in the rejoinder that Annexes C.1 and C.3 to C.6 submitted by the applicants at the reply stage must be declared inadmissible, pursuant to Article 85(1) and (2) of the Rules of Procedure, since the applicants have not provided any justification for that delay.

41 At the hearing, the applicants challenged that inadmissibility and justified the submission of those annexes at the reply stage on the ground that they had appeared relevant to them only after they had taken note of the arguments put forward by Frontex in its defence.

42 The documents at issue correspond in the present case to the legal opinion of an expert dated February 2022 (Annex C.1), a translation of the undated written statement of one of the applicants (Annex C.3), two reports from the Parliamentary Assembly of the Council of Europe dated April and June 2016, respectively (Annexes C.4 and C.5), and extracts from the European Asylum Support Office (EASO) 2016 annual report on the situation of asylum in the European Union (Annex C.6).

43 In accordance with Article 76(f) of the Rules of Procedure, an application is to contain, where appropriate, any evidence produced or offered. Article 85(1) of the Rules of Procedure provides, in that regard, that evidence produced or offered is to be submitted in the first exchange of pleadings. Article 85(2) of the Rules of Procedure specifies, however, that in reply or rejoinder a party may produce or offer further evidence in support of its arguments, provided that the delay in the submission of such evidence is justified.

44 According to case-law, although, in accordance with the time-bar rule laid down in Article 85(1) of those Rules of Procedure, the parties must state the reasons for the delay in submitting or offering new evidence, the Courts of the European Union have jurisdiction to review the merits of the reasons for the delay in submitting or offering that evidence and, depending on the case, the content of that evidence and also, if its belated production is not justified to the requisite legal standard or substantiated, jurisdiction to reject it. The belated submission or offer of evidence by a party may be justified, in particular, by the fact that that party did not previously have the evidence in question at its disposal, or if the belated production of evidence by the opposing party justifies the file being supplemented, in such a way as to ensure observance of the *inter partes* principle (see judgment of 16 September 2020, *BP* v *FRA*, C-669/19 P, not published, EU:C:2020:713, paragraph 41 and the case-law cited).

45 In the light of the explanations provided by the applicants at the hearing, as recalled in paragraph 41 above, it must be noted that the applicants have not put forward anything capable of justifying the submission of the annexes in question at the stage of the reply. The applicants' finding out, during the court proceedings, about the supposed relevance of those documents cannot in any way constitute a valid reason when the documents in question are intended to establish facts alleged in the application and most of them predate the lodging of the application.

46 Consequently, pursuant to Article 85(2) of the Rules of Procedure, Annexes C.1 and C.3 to C.6 must be considered to be inadmissible, on the ground that they were submitted out of time without justification.

Admissibility of the document produced before the close of the oral part of the procedure

47 By letter of 7 March 2023 to the Court Registry, the applicants requested that Annex E.1, corresponding to the operational plan that Frontex had sent to them by email on 2 June 2017, be placed in the file. At the hearing, the applicants claimed that that annex had not been submitted in the written part of the procedure due to an oversight on their part.

48 At the hearing, Frontex was asked to comment on the admissibility of that annex and deferred to the Court's decision.

49 In that regard, under Article 85(3) of the Rules of Procedure, the main parties may, exceptionally, produce or offer further evidence before the oral part of the procedure is closed or before the Court's decision to rule without an oral part of the procedure, provided that the delay in the submission of such evidence is justified.

50 In the present case, in the light of the explanations provided by the applicants at the hearing, as recalled in paragraph 47 above, it must be noted that the applicants have not put forward anything capable of justifying the submission of the annex in question at that stage of the procedure, except an oversight on their part in compiling the file. That latter justification cannot in any way constitute a valid reason.

51 Consequently, pursuant to Article 85(3) of the Rules of Procedure, Annex E.1 must be held to be inadmissible on the ground that it was submitted out of time without justification.

Substance

52 It is settled case-law that in order for the European Union to incur non-contractual liability, within the meaning of the second paragraph of Article 340 TFEU, for the unlawful conduct of its institutions or bodies, a number of conditions must be satisfied, namely, the conduct must be unlawful, actual damage must have been suffered and there must be a causal link between the alleged conduct and the damage pleaded. Those principles apply *mutatis mutandis* to the non-contractual liability incurred by the European Union, within the meaning of that provision, as a result of the unlawful conduct of and damage cause by one of its agencies, such as Frontex, which the latter, pursuant to Article 60(3) of Regulation 2016/1624, is required to make good (see, to that effect, judgment of 17 February 2017, *Novar* v *EUIPO*, T-726/14, EU:T:2017:99, paragraph 25 and the case-law cited).

53 It is also settled case-law that the conditions for the European Union to incur non-contractual liability within the meaning of the second paragraph of Article 340 TFEU are cumulative. It follows that where one of those conditions is not fulfilled, the action must be dismissed in its entirety without it being necessary to examine the other conditions (see judgment of 17 February 2017, *Novar* v *EUIPO*, T-726/14, EU:T:2017:99, paragraph 26 and the case-law cited).

54 The applicants allege, in the present case, that the three conditions for the non-contractual liability of the European Union, pursuant to the second paragraph of Article 340 TFEU, for the unlawful conduct of its bodies, which are required by case-law and set out in paragraphs 35 and 52 above, are fulfilled.

55 The Court will begin its examination of the action by addressing the condition that there must be a causal link between the alleged conduct and the damage pleaded.

56 As a preliminary point, it must be borne in mind that the damage pleaded must be a sufficiently direct consequence of the conduct complained of, which must be the determining cause of the damage, although there is no obligation to make good every harmful consequence, even a remote one, of an unlawful situation. It is for the applicant to adduce evidence of a causal link between the conduct complained of and the damage pleaded (see judgment of 8 November 2017, *De Nicola* v *Court of Justice of the European Union*, T-99/16, not published, EU:T:2017:790, paragraph 25 and the case-law cited).

57 The applicants claim, in the present case, that Frontex's unlawful conduct before, during and after the return operation caused them actual and certain damage of a material and non-material nature. More specifically, they argue that, if Frontex had not infringed its obligations relating to the protection of fundamental rights in the context of joint operations, in particular the principle of *non-refoulement*, the right to asylum, the prohibition of collective expulsion, the rights of the child, the prohibition of degrading treatment, the right to good administration and to an effective remedy, they would not have been unlawfully returned to Türkiye and they would have obtained the international protection to which they were entitled, given their Syrian nationality and the situation in Syria at the material time.

58 Thus, they would not have had to suffer material damage consisting of (i) the amount spent to travel to Greece; (ii) the cost of renting a house in Saruj and the cost of purchasing furniture; (iii) the expenses incurred in fleeing to Iraq; (iv) the rent paid in Iraq; (v) the electricity costs for their home in Iraq; (vi) the children's school fees in Iraq; (vii) the subsistence costs in Iraq; and (viii) the cost of legal aid for assistance with their complaints against Frontex.

59 Similarly, they would not have had to suffer non-material damage consisting of (i) feelings of anguish, particularly on the part of the children, caused by the return flight to Türkiye, on account of their separation during that flight, their being prohibited from speaking and the presence of uniformed escort officers and police officers and (ii) a feeling of fear and suffering linked to an extremely difficult and dangerous journey to Iraq in the snow-covered mountains because of the fear of being returned to Syria by the Turkish authorities.

60 Frontex disputes the existence of a direct causal link between the conduct of which it is accused and the damage invoked by the applicants.

61 In that regard, it should be noted at the outset that the expenses linked to the smugglers' fees incurred by the applicants to travel to Greece predate the return operation, with the result that they cannot be a direct consequence of the conduct of which Frontex is accused.

62 Next, it should be noted that the applicants' arguments are based on the incorrect premiss that, but for Frontex's alleged failures to fulfil its obligations relating to the protection of fundamental rights in the context of the return operation, they would not have been unlawfully returned to Türkiye and would not have suffered the material and non-material damage invoked, since, as they confirmed at the hearing, they would have obtained the international protection to which they were entitled, given their Syrian nationality and the situation in Syria at the material time. They would thus eventually have been provided with housing, basic support and a permit to stay in Greece. They would not have suffered from anxiety either and they would have avoided a difficult journey to Iraq.

63 While it is true that Regulation 2016/1624, and in particular Article 6(3) thereof, provides that '[Frontex] shall contribute to the consistent and uniform application of Union law, including the Union *acquis* concerning fundamental rights, at all external borders', Article 34(1) of that regulation nevertheless states that 'the European Border and Coast Guard shall ensure the protection of fundamental rights in the performance of its tasks under this Regulation in accordance with relevant Union law, in particular the [Charter of Fundamental Rights], relevant international law – including the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol thereto and obligations on access to international protection, in particular the principle of *non-refoulement*'.

64 First, under Article 27(1)(a) and (b) and Article 28(1) of Regulation 2016/1624, as regards return operations, Frontex's task is only to provide technical and operational support to the Member States and not to enter into the merits of return decisions. The latter assessment, as is clear from Article 6(1) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98) falls within the competence of the Member States alone. Article 28(2) of Regulation 2016/1624 states, in that regard, that 'Member States shall on a monthly basis inform [Frontex] of their indicative planning of the number of returnees and of third countries of return, both with respect to relevant national return operations, and of their needs for assistance or coordination by [Frontex]'.

65 Second, in accordance with the provisions of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60), and, in particular, Article 2(f) and Articles 4, 6, 8 and 31 thereof, the Member States alone are competent to examine applications for international protection, which designate the bodies responsible for an appropriate examination of applications.

66 Consequently, and since Frontex has no competence either as regards the assessment of the merits of the return decisions or as regards applications for international protection, the direct causal link alleged by the applicants between the damage allegedly suffered and the conduct of which Frontex is accused cannot be established within the meaning of the case-law referred to in paragraph 56 above. That applies to the material damage linked to the expenses incurred by the applicants in Türkiye and Iraq and the non-material damage consisting, inter alia, of feelings of anguish connected with the return flight to Türkiye, which, as is also clear from Article 42(1) and (2) of Regulation 2016/1624, is, in principle, the sole responsibility of the host Member State.

67 Moreover, the damage invoked must result directly from the alleged illegality and not from the applicant's choice as to how to react to the allegedly unlawful act. The view has thus been taken that the mere fact that the unlawful conduct constituted a necessary condition (a condition *sine qua non*) for the damage to arise, in the sense that the damage would not have arisen in the absence of such conduct, is not sufficient to establish a causal link (see, to that effect, judgment of 30 November 2011, *Transnational Company 'Kazchrome' and ENRC Marketing* v *Council and Commission*, T-107/08, EU:T:2011:704, paragraph 80 and the case-law cited).

68 It should thus be noted that the material and non-material damage alleged by the applicants, relating, on the one hand, to the rent and cost of furniture in Saruj, the smugglers' fees incurred in order to travel to Iraq and, on the other hand, to the feelings of fear and suffering connected with their extremely difficult and risky journey to Iraq, are the result of the choice they made. First, it is apparent from the case file that the material damage linked to the costs incurred by the applicants in connection with their move to the village of Saruj is a consequence of the choice they made not to comply with the instructions from the temporary travel permit issued by the Turkish authorities, which allowed them only to travel, on certain dates, to the 'Provincial Directorate of Immigration of Sanliurfa' in order to update their residence status. Second, it is apparent from the applicants' written submissions that the material and non-material damage linked to their flight to Iraq is a consequence of their fear of being returned to Syria by the Turkish authorities for failure to comply with the instructions on their temporary travel permit. In particular, in paragraph 19 of their application, the applicants state that, given that fear, they decided to abandon the house they had been renting for about a month in Saruj, together with the furniture they had purchased, and to go to Iraq via the mountains with the help of a smuggler.

69 In those circumstances, and in the light of the case-law referred to above, the damage in question cannot be regarded as being a direct consequence of the conduct of which Frontex is accused. Consequently, the material damage alleged, relating to the costs of accommodation, electricity, school fees and subsistence incurred by the applicants in Iraq, which is a corollary of the choice they made to move to that country, cannot be regarded as resulting directly from Frontex's conduct.

70 It is also apparent from settled case-law that where representation by a lawyer or adviser in the pre-litigation procedure is not mandatory, there is no causal link between the alleged damage, namely the cost of such representation, and any exceptionable conduct on the part of the institution or body. Although it is not possible to prohibit those concerned from seeking legal advice even at that stage, it is their own decision and the institution or body concerned cannot be held liable for the consequences (see, to that effect, judgment of 17 February 2017, *Novar* v *EUIPO*, T-726/14, EU:T:2017:99, paragraph 31 and the case-law cited). In those circumstances, and given that, in any event, no provision required legal representation for the purposes of the complaints mechanism, the alleged material damage, consisting of the legal aid costs incurred by the applicants in connection with their complaints, cannot be directly attributed to Frontex.

71 Accordingly, the applicants have not adduced evidence of a sufficiently direct causal link between the damage invoked and the conduct of which Frontex is accused, in accordance with the requirements of the case-law referred to in paragraph 56 above.

72 Therefore, in view of the cumulative nature of the conditions for incurring non-contractual liability on the part of the institutions, bodies, offices and agencies of the European Union, referred to in paragraph 53 above, the action for damages must be dismissed in its entirety, without it being necessary to examine the other conditions giving rise to that liability.

Costs

73 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

74 Since the applicants have been unsuccessful, they must be ordered to pay the costs, in accordance with the form of order sought by Frontex.

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders WS and the other applicants whose names appear in the annex to bear their own costs and to pay those incurred by the European Border and Coast Guard Agency (Frontex).**

Costeira Kancheva Zilgalvis

Delivered in open court in Luxembourg on 6 September 2023.

[Signatures]

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* Language of the case: English.

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1 The list of the other applicants is annexed only to the version notified to the parties.