

JUDGMENT OF THE COURT (Eighth Chamber)

19 October 2017 (*)

(Appeal — Restrictive measures taken in view of the situation in Ukraine — List of persons, entities and bodies subject to the freezing of funds and economic resources — Inclusion of the appellant's name)

In Case C-599/16 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 23 November 2016,

Oleksandr Viktorovych Yanukovych, residing in Saint Petersburg (Russia), represented by T. Beazley QC,

appellant,

the other parties to the proceedings being:

Council of the European Union, represented by P. Mahnič Bruni and J.-P. Hix, acting as Agents,

defendant at first instance,

European Commission, represented initially by S. Bartelt and J. Norris-Usher, and subsequently by E. Paasivirta and J. Norris-Usher, acting as Agents,

intervener at first instance,

THE COURT (Eighth Chamber),

composed of M. Safjan, acting as President of the Chamber, D. Šváby and M. Vilaras (Rapporteur),
Judges,

Advocate General: P. Mengozzi,

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 his appeal, Mr Oleksandr Viktorovych Yanukovych seeks to have the judgment of the General Court of the European Union of 15 September 2016, *Yanukovych v Council* (T-348/14, 'the judgment under appeal', EU:T:2016:508), set aside in so far as, by that judgment, the General Court dismissed his claim for annulment of Council Decision (CFSP) 2015/143 of 29 January 2015 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2015 L 24, p. 16), Council Decision (CFSP) 2015/364 of 5 March 2015 amending Decision

2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2015 L 62, p. 25), Council Regulation (EU) 2015/138 of 29 January 2015 amending Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2015 L 24, p. 1), and Council Implementing Regulation (EU) 2015/357 of 5 March 2015 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2015 L 62, p. 1), in so far as they concern him ('the acts at issue').

Legal context

2 Article 1(1) and (2) of Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 26) provides:

'1. All funds and economic resources belonging to, owned, held or controlled by persons having been identified as responsible for the misappropriation of Ukrainian State funds and persons responsible for human rights violations in Ukraine, and natural or legal persons, entities or bodies associated with them, as listed in the Annex, shall be frozen.

2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies listed in the Annex.'

3 The name of the appellant appears in point 9 of the Annex to Decision 2014/119, which is headed 'List of persons, entities and bodies referred to in Article 1', and he is identified as being the 'son of former President [Yanukovych], businessman'. It is clear from the statement of reasons for his listing that he is considered to be a 'person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine'.

4 Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 1) requires the adoption of the restrictive measures at issue and defines the manner in which they are to be carried out in terms that are identical, in essence, to that decision.

5 The appellant's name appears in point 9 of Annex I to that regulation, entitled 'List of natural and legal persons, entities and bodies referred to in Article 2', which is worded in terms similar to those of Article 1(1) and (2) of Decision 2014/119. The identifying information and statement of reasons are worded in the same way as those set out in point 1 of the Annex to Decision 2014/119.

6 Decision 2014/119 was amended by, inter alia, Decision 2015/143 and Decision 2015/364, and Regulation No 208/2014 was amended by, inter alia, Regulation 2015/138 and Implementing Regulation 2015/357.

7 By those acts, the restrictive measures directed against the appellant were thus extended until 6 March 2016, with, however, the following statement of reasons:

'Person subject to criminal proceedings by the Ukrainian authorities for the misappropriation of public funds or assets.'

8 Decision 2014/119 and Regulation No 208/2014 were most recently amended, respectively, by Council Decision (CFSP) 2017/381 of 3 March 2017 (OJ 2017 L 58, p. 34) and by Council Implementing Regulation (EU) 2017/374 of 3 March 2017 (OJ 2017 L 58, p. 1).

9 Decision 2017/381 amended Article 5 of Decision 2014/119 by extending the restrictive measures against the appellant until 6 March 2018.

The procedure before the General Court and the judgment under appeal

- 10 The procedure before the General Court and the statement of reasons in law of the judgment under appeal are set out respectively in paragraphs 24 to 33 and in paragraphs 36 to 175 of that judgment. For the purposes of the present proceedings, they can be summarised as follows.
- 11 By application lodged at the General Court Registry on 14 May 2014, the appellant brought an action for annulment of Decision 2014/119 and Regulation No 208/2014, in so far as they concerned him.
- 12 By orders of 12 November 2014, the President of the Ninth Chamber of the General Court granted the applications of the Republic of Poland and of the European Commission for leave to intervene.
- 13 By document lodged at the General Court Registry on 8 April 2015, the appellant modified the form of order sought so that it also covered annulment of the acts at issue ('the statement of modification').
- 14 In paragraphs 36 to 54 of the judgment under appeal, which relate to the claims for annulment of Decision 2014/119 and of Regulation No 208/2014, as amended, respectively, by Council Implementing Decision 2014/216/CFSP of 14 April 2014 (OJ 2014 L 111, p. 91), and by Council Implementing Regulation (EU) No 381/2004 of 14 April 2014 (OJ 2014 L 111, p. 33), the General Court held, on the basis of several of its judgments dealing with the same points of law as those raised in the action for annulment before it, that the inclusion of the appellant's name in the list of persons made subject to restrictive measures pursuant to Decision 2014/119 and Regulation No 208/2014 ('the list') did not rest on a factual basis that was sufficient to guarantee compliance with the criteria for the designation of persons subject to those measures, laid down by that decision. Consequently, it upheld the plea in law alleging failure to comply with those criteria and annulled Decision 2014/119 and Regulation No 208/2014, in so far as those acts concerned the appellant.
- 15 In paragraphs 55 to 170 of the judgment under appeal, the General Court examined the claims for annulment of the acts at issue. In paragraphs 57 to 62 of that judgment, it, first, rejected the plea of lack of jurisdiction raised by the Council of the European Union with regard to Decision 2015/143, and, secondly, upheld the plea of inadmissibility raised by the latter on the ground that the appellant has no *locus standi* in relation to Regulation 2015/138.
- 16 In paragraphs 66 to 85 of that judgment, the General Court rejected the pleas in law alleging, first, infringement of the rights of the defence and of the right to effective judicial protection, and, secondly, infringement of the duty to state reasons.
- 17 In paragraphs 86 to 119 of the judgment under appeal, the General Court rejected the plea in law alleging that there was no legal basis for the restrictive measures.
- 18 In the first place, it addressed the main argument in that regard, concerning the non-compliance of the criterion for the appellant's listing, set out in the acts at issue, with the objectives of consolidating and supporting the rule of law and ensuring respect for human rights in Ukraine, and with the other objectives of the Common Foreign and Security Policy (CFSP) stated in Article 21(2)(b) TEU. The General Court considered that it was clear from Decision 2014/119, as amended by certain of the acts at issue, that the restrictive measures taken against the appellant had been adopted solely with the objective of consolidating and supporting the rule of law in Ukraine. On the basis of its case-law, it held that objectives such as those referred to in Article 21(2)(b) TEU could be achieved by an asset-freeze in respect of persons whose actions could have jeopardised the proper functioning of public institutions and bodies linked to them. However, it considered that, in order for a misappropriation of public funds to be capable of 'justifying European Union action under the CFSP, based on the objective of consolidating and supporting the rule of law, it [was] ... necessary that the disputed acts should be such as to undermine the legal and institutional foundations of the country concerned'. It held that the criterion for the appellant's listing concerned 'the misappropriation of public funds or assets which, having regard to the amount or the type of funds or assets misappropriated or to the context in which the offence took place, [were], at the very least, such as

to undermine the legal and institutional foundations of Ukraine, ... and, ultimately, undermining respect for the rule of law in that country’.

19 In the second place, the General Court rejected the other arguments in support of the plea alleging an absence of legal basis. The General Court considered, *inter alia*, in paragraph 108 of the judgment under appeal, that the listing criterion stated by Decision 2014/119 and Regulation No 208/2014, as amended by Decision 2015/143 and Regulation 2015/138, enabled the Council ‘to take into account an investigation with respect to acts classifiable as misappropriation of State funds as a factor that might justify, in certain cases, the adoption of restrictive measures’.

20 Moreover, the General Court found as follows in paragraphs 114 and 115 of the judgment under appeal:

‘114 However, in this case, the applicant claims, first, that he is the victim of political persecution, as demonstrated by the number of charges made with respect to him, some of the charges being false and politically motivated, second, that numerous public statements have been made by members of the current regime describing the applicant as guilty of various crimes and, third, that there have been procedural irregularities in the legal proceedings brought against him. More generally, he questions the legitimacy of the new Ukrainian regime, and the impartiality of the Ukrainian judicial system, and also the human rights situation in Ukraine.

115 Those factors were not however either capable of calling into question the cogency of the charges made with respect to the applicant in relation to very specific cases of embezzlement of public funds, a matter which is examined in relation to the fourth plea in law below, or sufficient to demonstrate that the applicant’s particular situation was affected by the problems he identifies in the Ukrainian judicial system, in the course of the proceedings concerning him that were the basis for the imposition of restrictive measures on him. Accordingly, in the circumstances of this case, the Council was not obliged to undertake an additional verification of the evidence submitted to it by the Ukrainian authorities.’

21 In paragraphs 120 to 130 of the judgment under appeal, the General Court rejected the plea in law alleging misuse of power.

22 In paragraphs 131 to 153 of the judgment under appeal, the General Court rejected the plea in law alleging non-compliance with the listing criteria.

23 First, the General Court addressed the main argument in that regard, namely that the reasons stated for the inclusion of the appellant’s name on the list, as amended, respectively, by Decision 2015/364 and Implementing Regulation 2015/357, did not satisfy the listing criteria, as amended by Decision 2015/143 and Regulation 2015/138. It considered, primarily, that it was necessary to assess the statement of reasons for the appellant’s listing in the light of the listing criteria laid down in Decision 2015/364 and Implementing Regulation 2015/357, which established new restrictive measures, and on the basis of the evidence taken into consideration by the Council, in particular the letter of 30 December 2014 from the Ukrainian authorities (‘the letter of 30 December 2014’), which constituted, according to the General Court, sufficient proof of the fact that the appellant was the subject of criminal proceedings for misappropriation of public funds or assets. In that context, it found, in paragraph 144 of the judgment under appeal, having regard to the principle of the fight against corruption within the scope of the concept of the rule of law and the fact that the offences that the appellant is alleged to have committed were part of a context of suspicions of serious crimes in the management of public resources by the former Ukrainian leadership, seriously threatening the legal and institutional foundations of the country, that the restrictive measures adopted against the appellant contributed, in an effective manner, to facilitating the prosecution of those offences committed to the detriment of the Ukrainian institutions and ensured that they could more easily secure restitution of the profits of that misappropriation. Consequently, the General Court held that the inclusion of the appellant’s name on the list by means of Decision 2015/364 and Implementing Regulation 2015/357 complied with the listing criterion.

- 24 Secondly, the General Court addressed the appellant's other arguments. It considered, first, that the Council could take account of an investigation with respect to acts classifiable as misappropriation of public funds, provided that it established that the reasons stated for the appellant's inclusion on the list were well founded by relying on a sufficient factual basis. Secondly, it considered that the appellant's arguments, by which he disputed, first, the contention that the evasion of taxes and other compulsory payments constituted misappropriation of public funds and, secondly, the contention that he had attempted to misappropriate public funds, did not call into question either the existence of the investigation concerning him or the reality of the acts to which that investigation relates. On that point, the General Court took the view that the appellant's arguments rather concerned matters of procedure relating to the investigation carried out by the Ukrainian authorities or the rebuttal of charges brought against him by those authorities.
- 25 In paragraphs 154 to 159 of the judgment under appeal, the General Court rejected the plea in law alleging a manifest error of assessment, by which, in essence, the Council was accused of having failed to conduct its own examination of the accuracy of the allegations of the Ukrainian authorities. The General Court considered that the Council had discharged the burden of proof upon it, having relied on more substantiated information, of judicial origin, concerning acts classifiable as misappropriation of public funds.
- 26 In paragraphs 160 to 170 of that judgment the General Court rejected the plea in law alleging breach of the right to property.
- 27 Consequently, the General Court dismissed the action in so far as it sought annulment of the acts at issue.

The procedure before the Court of Justice and the forms of order sought

- 28 By a letter filed at the Registry of the Court of Justice on 7 March 2017, the Council requested confidential treatment, vis-à-vis third parties, for Annex A 14 to the appeal and any letters from the Ukrainian Prosecutor General's Office to the High Representative of the Union for Foreign Affairs and Security Policy.
- 29 By decision of the President of the Court of 9 March 2017, that request was granted.
- 30 The appellant claims that the Court should:
- set aside paragraphs 2 and 4 of the operative part of the judgment under appeal;
 - annul the acts at issue, and
 - order the Council to pay the costs incurred in the context of the appeal and the costs with respect to the claim for annulment stated in the statement of modification of the form of order sought.
- 31 The Council contends that the Court should:
- dismiss the appeal;
 - in the alternative, dismiss the action for annulment of the acts at issue, and
 - order the appellant to pay the costs.
- 32 The Commission contends that the Court should:
- dismiss the second ground of appeal as inadmissible or, in the alternative, as unfounded;
 - dismiss the remaining grounds of appeal as manifestly unfounded, and

- order the appellant to pay the costs.

The appeal

33 In support of his appeal, the appellant puts forward three grounds. First, he claims that the General Court was wrong to consider that the listing criterion contained in the acts at issue corresponded to the objectives of the CFSP. Secondly, he submits that the General Court failed to find that there was credible evidence of Ukraine's lack of a consistent and adequate record regarding human rights and the rule of law and that the General Court was wrong to describe the Ukrainian Prosecutor General's Office as being a 'high judicial authority'. Thirdly, he maintains that the General Court erred in law in concluding that his inclusion on the list complied with the listing criterion.

34 First of all, it should be noted that the appellant does not dispute the ground in paragraph 62 of the judgment under appeal, to the effect that the claim for annulment of Regulation 2015/138 is inadmissible on account of the appellant's lack of *locus standi*.

35 Accordingly, the present appeal must be dismissed in so far as concerns the judgment under appeal to the extent that it rejected the claim for annulment of that regulation.

36 It is appropriate to examine the second ground of appeal first.

The second ground of appeal

Arguments of the parties

37 The appellant claims that the General Court erred in law in failing to conclude that there was credible evidence that Ukraine does not have a consistent and adequate record of human rights compliance and compliance with the rule of law and in describing the Ukrainian Prosecutor General's Office as a 'high judicial authority'. He submits that the General Court thus reached substantially incorrect findings and/or distorted the evidence before it, in particular in paragraph 19 of the statement of modification and in the documents referred to in that paragraph, which point to a lack of due process and the poor human rights situation in Ukraine.

38 The appellant maintains that the General Court made, in paragraphs 112 and 115 of the judgment under appeal, an incorrect assessment of that evidence. First, he claims that it did not give reasons for its assessment in paragraph 115 of that judgment, as the findings set out in paragraph 112 of that judgment, which served as the basis for that assessment, do not engage directly with Ukraine's compliance with human rights or the rule of law. Secondly, the appellant submits that that evidence calls into question the cogency of the charges made with respect to the appellant and is sufficient to demonstrate that the appellant's legal situation was affected by the problems in the Ukrainian judicial system.

39 The appellant submits that the General Court does not specify the evidence on which it relied in describing the Ukrainian Prosecutor General's Office as a 'high judicial authority'. He maintains that the General Court failed to give reasons for its assessment in that regard in relying solely on the classification, in Ukraine, of that body. The General Court should have ruled on the basis of whether the Prosecutor General's Office had all the judicial hallmarks of independence and impartiality required under EU law.

40 The Council and the Commission maintain that the second ground of appeal must be rejected.

Findings of the Court

41 It must be borne in mind that, in an appeal, the Court of Justice has no jurisdiction to establish the facts or, in principle, to examine the evidence which the General Court accepted in support of those facts. Provided that the evidence has been properly obtained and that the general principles of law and the rules of procedure in relation to the burden of proof and the taking of evidence have been observed, it is for the

General Court alone to assess the value which should be attached to the evidence produced to it. Save where the evidence adduced before the General Court has been distorted, that assessment therefore does not constitute a point of law which is subject to review by the Court of Justice (judgment of 18 January 2017, *Toshiba v Commission*, C-623/15 P, not published, EU:C:2017:21, paragraph 39).

42 With regard, in particular, to the distortion of evidence and facts, the Court has repeatedly held that there is such distortion where, without having recourse to new evidence, the assessment of the existing evidence appears to be clearly incorrect or manifestly at odds with its wording (judgment of 18 January 2017, *Toshiba v Commission*, C-623/15 P, not published, EU:C:2017:21, paragraph 40).

43 Furthermore, in accordance with Article 256 TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and Article 168(1)(d) of the Rules of Procedure of the Court of Justice, an appellant must indicate precisely the evidence alleged to have been distorted by the General Court and show the errors of appraisal which, in its view, led to that distortion (judgment of 18 January 2017, *Toshiba v Commission*, C-623/15 P, not published, EU:C:2017:21, paragraph 54).

44 In the first place, the appellant claims that the General Court, in paragraphs 114 and 115 of the judgment under appeal, distorted the evidence which he had submitted to it, in paragraph 19 of the statement of modification, with a view to demonstrating that Ukraine does not have a consistent and adequate record of human rights compliance or compliance with the rule of law.

45 However, it must be noted that, in the present case, the appellant's claim that the facts were distorted is not substantiated to the requisite legal standard in his appeal. The appellant merely claims that the evidence which he relied on before the General Court called into question the cogency of the charges brought against him and proved that his particular situation was affected by problems in the Ukrainian judicial system. However, he did not indicate the precise errors of appraisal alleged to have been committed by the General Court in its assessment of that evidence, which allegedly led it to distort that evidence.

46 The same is true of the appellant's argument that the assessment in paragraph 115 of the judgment under appeal is not based on any, or any proper, reasons.

47 It follows that, under cover of a claim of distortion, the appellant seeks, in fact, to have the Court of Justice reassess the facts, which does not come within the jurisdiction of the Court when ruling on an appeal.

48 Consequently, the second ground of appeal, in so far as it is directed against the findings in paragraphs 114 and 115 of the judgment under appeal, must be rejected as inadmissible.

49 In the second place, the appellant criticises the General Court for its description, in paragraphs 112 and 157 of that judgment, of the Ukrainian Prosecutor General's Office as a 'high judicial authority', without having specified the evidence on which it relied in deciding upon that description, or assessing the nature of that Prosecutor General's Office in the light of EU law, after examining whether it bore all the judicial hallmarks of independence and impartiality.

50 It is clear from a reading of paragraphs 103 to 116 and paragraphs 154 to 159 of the judgment under appeal as a whole that, in paragraphs 112 and 157 of that judgment, the General Court used the term 'judicial authority' in a broad sense and that it described the Ukrainian Prosecutor General's Office accordingly, since, in that State, it acts as the public prosecutor's office in the administration of criminal justice and is conducting pre-trial investigations in the context of the criminal proceedings against the appellant, as is apparent from, inter alia, paragraph 138 of that judgment.

51 Contrary to what the appellant appears to claim, the use of the term 'judicial authority' with regard to the Ukrainian Prosecutor General's Office means neither that the General Court likened that body to a court nor that it necessarily took the view that it offered guarantees of independence and impartiality. On the contrary, in paragraph 114 of the judgment under appeal, the General Court, inter alia, referred to the

appellant's questioning of the impartiality of the Ukrainian judicial system. Nevertheless, it is apparent from paragraph 115 of that judgment that the General Court considered that those concerns were not capable of calling into question the cogency of the charges made with respect to the appellant in relation to very specific cases of embezzlement of public funds or of demonstrating that the appellant's particular situation had been affected by the problems in the Ukrainian judicial system on which he relied.

52 It follows that that part of the appellant's argument is based on an incorrect reading of the judgment under appeal and must be rejected as unfounded.

53 As a consequence, the second ground of appeal must be rejected as, in part, inadmissible and, in part, unfounded.

The first ground of appeal

Arguments of the parties

54 The appellant claims that the General Court erred in law in considering that the listing criterion contained in the acts at issue corresponded to the CFSP objectives. He submits that the General Court failed to recognise that the disputed acts had to be the subject of an ongoing prosecution or other judicial proceedings, and not merely a pre-trial investigation, where there was credible evidence that the country concerned did not have a consistent record of human rights compliance or compliance with the rule of law.

55 According to the appellant, the Council should have carried out additional verification to ensure compliance with those principles. If a person could be included in a list for the sole reason that a country had declared that person to be the subject of an investigation, the listing criteria would not fulfil the objectives of the acts at issue and those of Article 21 TEU. Such a person would be deprived of the safeguard which derives from the existence of judicial oversight and proceedings and the executive authorities of the country concerned would be given extensive power leading to the adoption of restrictive measures by the Council. The appellant submits that there is credible evidence of Ukraine's lack of a consistent record regarding human rights compliance and compliance with the rule of law.

56 According to the appellant, the situation in the present case differs from that in the case giving rise to the judgment of 5 March 2015, *Ezz and Others v Council* (C-220/14 P, EU:C:2015:147), in which, first, seizure of the appellant's assets had been ordered by the Egyptian Prosecutor General and endorsed by the criminal court and, secondly, the political context and human rights context in Egypt had not been relied on.

57 The Council and the Commission contend that the first ground of appeal must be rejected.

Findings of the Court

58 In view of the broad scope of the aims and objectives of the CFSP, as expressed in Articles 3(5) and 21 TEU, and the specific provisions relating to the CFSP, in particular Articles 23 and 24 TEU, the fight against the misappropriation of State funds forms part of a policy of supporting the new authorities of a third State, intended to promote both the economic and the political stability of that State (see, to that effect, judgment of 5 March 2015, *Ezz and Others v Council*, C-220/14 P, EU:C:2015:147, paragraphs 43, 44 and 46).

59 The appellant submits, in essence, that the General Court erred in law in finding that the listing criterion contained in the acts at issue corresponded to the CFSP objectives, in a situation where he was listed in the light, not of prosecution or judicial proceedings, but of a pre-trial investigation and even though there is credible evidence that Ukraine does not have a consistent record of human rights compliance or compliance with the rule of law, and without the Council having undertaken additional verification to ensure compliance with those principles.

- 60 It should be noted that the effectiveness of a decision to freeze funds would be undermined if the adoption of restrictive measures were made subject to the criminal convictions of persons suspected of having misappropriated funds, since those persons would have enough time pending their conviction to transfer their assets to States having no form of cooperation with the authorities of the State of which they are nationals or in which they reside (see, to that effect, judgment of 5 March 2015, *Ezz and Others v Council*, C-220/14 P, EU:C:2015:147, paragraph 71).
- 61 Having regard to the case-law cited in paragraph 60 of the present judgment and the discretion enjoyed by the judicial authorities of a third State concerning implementing arrangements for criminal proceedings, the fact that the appellant was the subject of a pre-trial investigation, conducted under the authority of the Ukrainian Prosecutor General's Office, and not of judicial proceedings, is not, in itself, such as to lead to a finding that the acts at issue are unlawful, based on the contention that, in such circumstances, the Council ought to have requested additional verification from the Ukrainian authorities concerning the allegations made against the person concerned, in a context where, as the General Court found in paragraph 115 of the judgment under appeal, the appellant had not put forward any evidence capable of calling into question the reasons set out by the Ukrainian authorities to justify the charges made with respect to him in relation to very specific cases or of demonstrating that his particular situation was affected by the alleged problems in the Ukrainian judicial system.
- 62 Consequently, the first ground of appeal must be rejected as being unfounded.

The third ground of appeal

Arguments of the parties

- 63 The appellant claims that the General Court erred in law in taking the view, in paragraph 145 of the judgment under appeal, that his inclusion in the list complied with the listing criterion, on the ground that the letter of 30 December 2014 provided sufficient proof of the fact that, on the date of adoption of the acts at issue, he was the subject of criminal proceedings for misappropriation of public funds or assets. According to the appellant, that letter merely gives an account of a pre-trial investigation within the framework of criminal proceedings initiated with respect to the appellant. In the light of the human rights situation in Ukraine, and, in particular, the lack of prosecutorial and judicial independence, such a letter cannot, he contends, be taken into consideration without further evidence.
- 64 The appellant submits that the General Court also erred in law, in paragraph 156 of the judgment under appeal, in holding that the Council had discharged the burden of proof upon it and that it was the task of the Council only to verify whether the decision to freeze funds was well founded in the light of the investigations in question. In the light of the evidence put forward regarding concerns about human rights compliance and compliance with the rule of law, the appellant maintains that the Council had the burden, and was required, to verify whether the investigations to which he was subject were well founded, as is, moreover, apparent from the case-law of the General Court, and, in particular, the judgment of 30 June 2016, *Al Matri v Council* (T-545/13, not published, EU:T:2016:376).
- 65 The appellant claims that he had submitted credible and detailed evidence regarding the violations of his presumption of innocence and right to due process, and of his political persecution and the lack of prosecutorial and judicial independence.
- 66 The appellant adds that the General Court failed to address the argument alleging that the letter of 30 December 2014 and the earlier letters of the Ukrainian Prosecutor General's Office, of 3 March, 8 July, and 10 October 2014, lacked detail. In particular, he maintains that the General Court did not address the arguments alleging the selective addition in the letter of 30 December 2014 of two points intended to persuade the Council of the need to impose sanctions, but which called into question the reliability and credibility of that letter. The General Court also failed to consider why it was that an alleged offence under Article 191(5) of the Ukrainian Criminal Code was referred to for the first time only in that letter, whereas

those arguments showed that the charges made with respect to the appellant were solely intended to provide a legal basis for the measures adopted by the Council.

67 The Council and the Commission contend that the third ground of appeal must be rejected.

Findings of the Court

68 The appellant claims, in essence and principally, that the General Court erred in law, in paragraphs 145 and 156 of the judgment under appeal, in considering that the letter of 30 December 2014 was sufficient proof of the existence of criminal proceedings brought against him on account of alleged misappropriations of public funds. The appellant maintains that the General Court failed to take into account concerns about human rights compliance and compliance with the rule of law in Ukraine and, in particular, about the lack of prosecutorial and judicial independence, even though those elements led to violations of the presumption of his innocence and his right to due process.

69 In that regard, it follows from the case-law that, in the event of the adoption of a decision to freeze funds such as that adopted in respect of the appellant, it is not for the General Court to verify whether or not the investigations to which the person concerned by that decision was subject were well founded, but only to verify whether that was the case as regards the decision to freeze funds in the light of the document or documents on which that decision was based (see, to that effect, judgment of 5 March 2015, *Ezz and Others v Council*, C-220/14 P, EU:C:2015:147, paragraph 77).

70 On that point, it should be noted that, in the context of his pleas in law put forward before the General Court, alleging, respectively, failure to comply with the listing criteria and a manifest error of assessment, the appellant did not specify the grounds on which the charges made with respect to him by the Ukrainian Prosecutor General's Office, in the letter of 30 December 2014, were incorrect. However, as the General Court found, in paragraph 139 of the judgment under appeal, that letter gives an account of a pre-trial investigation within the framework of criminal proceedings initiated with respect to the appellant, concerning acts categorised as misappropriation of public funds, namely, first, evasion of taxes and of other compulsory payments achieved by, inter alia, forgery of documents, and, secondly, an attempted misappropriation of public funds through a fictitious tax credit in relation to value added tax.

71 In the light of the detailed nature of the charges brought against the appellant, as set out in the letter of 30 December 2014, the General Court did not err in law in finding, in paragraph 145 of the judgment under appeal, that the inclusion of the appellant's name in the list of persons subject to the freezing of their assets complied with the listing criterion, interpreted in the light of the objective of consolidating and supporting the rule of law in Ukraine.

72 Moreover, as regards the general situation in Ukraine with regard to the rule of law and human rights, referred to by the appellant, it must be held that he has not provided any concrete evidence of the effect of that general situation on his own particular situation in the pre-trial investigations conducted in his regard. In those circumstances, the appellant has failed to show that the General Court erred in law in paragraphs 145 and 156 of the judgment under appeal.

73 Finally, the appellant's argument summarised in paragraph 66 of the present judgment, alleging, essentially, infringement of the obligation to state reasons, in so far as the General Court failed to address four arguments put forward by the appellant before it, must also be rejected.

74 First, while the appellant submits that the General Court did not address his argument alleging lack of detail in all the letters from the Ukrainian Prosecutor General's Office, it must be noted that the General Court took the view, in paragraphs 139 and 140 of the judgment under appeal, that the letter of 30 December 2014 sufficiently clarified the reasons set out by the Ukrainian authorities in support of the charges made with respect to the appellant in order to justify the inclusion of his name in the list, without it being necessary to examine further the content of the other letters which had previously been sent to the Council by the Ukrainian Prosecutor General's Office.

- 75 Secondly, in maintaining that the General Court did not address the argument alleging that a reference had been made, for the first time in the letter of 30 December 2014, to an alleged offence under Article 191(5) of the Ukrainian Criminal Code, which he had claimed, before the General Court, was a false charge against him, the appellant is, in fact, seeking a declaration that the Council, when it plans to adopt a fund-freezing measure against a person, must verify whether the charges made with respect to that person are well founded. However, as noted in paragraph 69 above, it is not for the General Court to verify whether the investigations to which the person concerned by that decision was subject were well founded, but only to verify whether that was the case as regards the decision to freeze funds in the light of the document or documents on which that decision was based (see, to that effect, judgment of 5 March 2015, *Ezz and Others v Council*, C-220/14 P, EU:C:2015:147, paragraph 77).
- 76 Thirdly, while the appellant maintains that the General Court did not address the argument that the alleged attempted misappropriation of public funds did not satisfy the listing criterion, it must be noted that that argument was examined in paragraphs 149 and 150 of the judgment under appeal, in which the General Court found that the arguments raised by the appellant did not call into question the reasons set out by the Ukrainian authorities in order to justify that investigation. In paragraph 150 of that judgment, the General Court, moreover, held that those arguments represented rather a challenge to matters of procedure, such as the absence of actual ‘judicial proceedings’, or the rebuttal of charges brought by those authorities with respect to the appellant.
- 77 Fourthly, it must be held that the General Court addressed the argument that the reasons set out by the Ukrainian authorities in support of the charges made with respect to the appellant were intended to provide a sufficient basis for the Council to impose sanctions on the appellant and ought to have been regarded as elements of the political persecution to which he was subject, in the context of the examination, in paragraphs 104 and 115 of the judgment under appeal, of the first plea in law of the action for annulment.
- 78 It follows that the third ground of appeal must be rejected as unfounded and that, consequently, the appeal must be dismissed.

Costs

- 79 In accordance with Article 184(2) of its Rules of Procedure, where the appeal is unfounded, the Court is to make a decision as to the costs.
- 80 Under Article 138(1) of those rules, made applicable to the procedure on appeal by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party’s pleadings.
- 81 Since the Council has applied for costs and the appellant has been unsuccessful, the appellant must be ordered to bear his own costs and to pay those incurred by the Council.
- 82 In accordance with Article 140(1) of the Rules of Procedure of the Court of Justice, which applies to appeal proceedings by virtue of Article 184(1) thereof, the Commission is to bear its own costs.

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

- 1. Dismisses the appeal;**
- 2. Orders Mr Oleksandr Viktorovych Yanukovych to bear his own costs and to pay those incurred by the Council of the European Union;**
- 3. Orders the European Commission to bear its own costs.**

Safjan

Šváby

Vilaras

Delivered in open court in Luxembourg on 19 October 2017.

A. Calot Escobar

M. Safjan

Registrar

For the President of the Eighth
Chamber

* Language of the case: English.