

Decision of the Cancellation Division: Rejection of the application for a declaration of invalidity

Decision of the Board of Appeal: Allowed the appeal and annulled in their entirety both the decision of the Cancellation Division and the registration of the contested Community trade mark

Pleas in law:

- Infringement of Article 76 of Regulation No 207/2009;
- Infringement of Article 52(1)(b) of Regulation No 207/2009.

Action brought on 15 May 2014 — Kurchenko v Council

(Case T-339/14)

(2014/C 253/51)

Language of the case: English

Parties

Applicant: Serhiy Vitaliyovych Kurchenko (Chuhiv, Ukraine) (represented by: B. Kennelly and J. Pobjoy, Barristers, M. Drury and A. Swan, Solicitors)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

- Annul 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 L 66, p. 26) and Council Regulation (EU) No 208/2014 of 5 March 2014 (OJ L 66, p. 1) concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine insofar as they apply to the applicant; and
- Order the defendant to pay the applicant's costs.

Pleas in law and main arguments

In support of the action, the applicant relies on seven pleas in law.

1. First plea in law, alleging that the Council failed to identify a proper legal base. Article 29 TEU was not a proper legal base for the decision because the complaint made against the applicant did not identify him as an individual having undermined the rule of law or human rights in Ukraine (within the meaning of Articles 21(2) and 23 TEU). As the decision was invalid, the Council could not rely on Article 215(2) TFEU to enact the Regulation. At the time that the restrictive measures were imposed, there was no charge or claim against the applicant in any jurisdiction that his activities threatened to undermine the rule of law, or violated any human rights in Ukraine.
2. Second plea in law, alleging that the Council failed to fulfil the criterion for listing, namely that the person has been 'identified as responsible' for misappropriation of Ukrainian State funds or human rights violations in Ukraine, or is a person associated with anyone who has been so identified. The only reason given for the listing of the applicant was that he was said to be subject to 'investigation' in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine. There is therefore not even an allegation (applying the Court's reasoning in Case T-256/11 Ezz) that the applicant was a person responsible for the misappropriation of Ukrainian State funds or human rights violations in Ukraine, or was associated with a person properly so identified.

3. Third plea in law, alleging that the Council violated the applicant's rights of defence and the right to effective judicial protection. The applicant has at no stage been given particularised information as to the 'investigation' that is said to justify his inclusion in the list, still less 'serious and credible' or 'concrete' evidence to that effect. Despite requests, the Council has failed to provide this information.
4. Fourth plea in law, alleging that the Council failed to give the applicant sufficient reasons for his inclusion. These reasons given were insufficiently detailed and precise. No detail has been provided as to the nature of the conduct of the applicant that has allegedly 'involved' him in 'crimes', or how such alleged 'involvement in crimes' is in any way connected with both 'the embezzlement of Ukrainian State funds' and 'their illegal transfer outside Ukraine'. No detail is provided as to the 'investigation', the entity allegedly carrying it out, its nature, or the date upon which it is supposed to have begun.
5. Fifth plea in law, alleging that the Council severely infringed the applicant's fundamental rights to property and reputation. The restrictive measures were not 'provided for by law'; they were imposed without proper safeguards enabling the applicant to put his case effectively to the Council; they are not restricted to any specific property which is said to represent misappropriated state funds or even limited to the amount of funds alleged to have been misappropriated.
6. Sixth plea in law, alleging that the Council relied on materially inaccurate facts. Contrary to the sole reason for his inclusion, there is no information or evidence available that the applicant was in fact subject to 'investigation' in Ukraine of the type specified in the Decision and Regulation.
7. Seventh plea in law, alleging that the Council failed to ensure the relevance and validity of the evidence underlying the listing of the applicant: it failed to consider whether the current Acting General Prosecutor of Ukraine had authority under the Constitution of Ukraine to commence any investigation against the applicant and the Council failed to appreciate that the applicant was not in fact subject to the alleged 'investigation'.

Action brought on 14 May 2014 — Yanukovich v Council

(Case T-346/14)

(2014/C 253/52)

Language of the case: English

Parties

Applicant: Viktor Fedorovych Yanukovich (Kyiv, Ukraine) (represented by: T. Beazley, QC)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

- Annul 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 L 66, p. 26), as amended by Council Decision 2014/216/CFSP of 14 April 2014 (OJ L 111, p. 91) and Council Regulation (EU) No 208/2014 of 5 March 2014 (OJ L 66, p. 1) concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, as amended by Council Regulation (EU) 381/2014 of 14 April 2014 (OJ L 111, p. 33), insofar as they apply to the applicant; and
- Order the defendant to pay the applicant's costs.