

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.

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 of the European Union ('the Council') lacked a proper legal basis for the Decision and the Regulation. Arguments in support of the plea include (a) that the conditions for the Council relying on Article 29 TEU were not fulfilled by the Decision. Amongst other things: (i) The Council's expressly invoked objectives (consolidating the rule of law and respect for human rights in Ukraine) could not, as a matter of fact, be sustained by the Council, which then stated grounds for designation (linked to alleged embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine, which the Applicant denies) which were not consistent with, and failed to comply with, the stated or any relevant objectives of Article 21 TEU. (ii) The Decision and the Regulation are contrary to other relevant objectives identified in Article 21 in that they failed to 'consolidate and support democracy ... [and] the principles of international law', in particular by wrongly asserting, and acting on the basis that, the legitimate democratically elected President of Ukraine, the applicant, was a 'former President', contrary to the law of Ukraine and International law, and by providing support for the so-called 'interim President and government', who have not been lawfully and democratically elected, and who took what power they have from time to time by illegal force, contrary to the rule of law, democratic principles and international law. (b) The conditions for relying on Article 215 TFEU were not fulfilled because there was no valid decision under Chapter 2 of Title V TEU. (c) There was no sufficient link for Article 215 TFEU to be relied on against the applicant.
2. Second plea in law, alleging that the Council misused its powers. The Council's actual purpose in implementing the Decision (and, therefore, the Regulation) was in essence to try to win favour with the so-called 'interim regime' of Ukraine so that Ukraine proceeded with closer ties with the EU (such closer ties having been rejected by the democratically elected President of Ukraine and his Government), and not the rationales stated on the face of the Decision and the Regulation.
3. Third plea in law, alleging that the Council failed to state reasons. The statement of reasons in the Decision and the Regulation for including the applicant (in addition to being wrong) are formulaic, inappropriate and deficient in required particularity.
4. Fourth plea in law, alleging that the applicant failed to fulfil the stated criteria for a person to be listed at the relevant time. Amongst other things, the Council failed to provide relevant information, but so far as he is aware, the applicant (a) had not at the time been identified by any judicial or other relevant body as being responsible for the embezzlement of Ukrainian State funds or their illegal transfer, and (b) was not at the time a person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer abroad.
5. Fifth plea in law, alleging that the Council made manifest errors of assessment in including the applicant in the contested measures. Amongst other things, the Council had no and, in any event, no 'concrete' evidence demonstrating that the allegations against the applicant were 'materially accurate', and wrongly relied on assertions by the illegitimate so-called 'interim regime' who were seeking to usurp power, and had a clear incentive to make such allegations for improper purposes.
6. Sixth plea in law, alleging that the applicant's defence rights have been breached and/or that he has been denied effective judicial protection. Amongst other things, the Council has failed to provide the applicant with a full statement of reasons, including the evidence against him, and failed to provide him with precise information and material said to justify the asset freeze, and he has been obliged to make this application in an unfairly short time period.
7. Seventh plea in law, alleging that the applicant's rights to property under Article 17(1) of the Charter of Fundamental Rights of the EU, have been breached in that, amongst other things, the restrictive measures are an unjustified and disproportionate restriction on those rights.