

**Action brought on 13 May 2016 – Yanukovych v Council****(Case T-244/16)**

(2016/C 243/55)

*Language of the case: English***Parties**

*Applicant:* Viktor Fedorovych Yanukovych (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 (CFSP) 2016/318 of 4 March 2016 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2016 L 60, p. 76) insofar as it applies to the applicant;
- annul Council Implementing Regulation (EU) 2016/311 of 4 March 2016 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2016 L 60, p. 1), on the basis that it fails to revoke the Regulation No 208/2014, insofar as it applies to the applicant;
- order the Council 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 contested measures. First, the conditions for the Council relying on Article 29 TEU were not fulfilled by the contested measures. Amongst other things: (i) the Council's expressly invoked objectives (consolidating the rule of law and respect for human rights in Ukraine) are merely vague assertions that cannot be legitimately sustained as a valid basis for these measures; (ii) the basis on which the Council seeks to rely lacks any sufficient connection to the proper standard of judicial review required in the present circumstances; and (iii) the imposition of restrictive measures on the applicant in fact supports and legitimises the conduct of the new regime in Ukraine that is itself undermining due process and the rule of law and that is violating, and is prepared systematically to violate, human rights. Second, the conditions for relying on Article 215 TFEU were not fulfilled because there was no valid decision under Chapter 2 of Title V TEU. Third, 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 contested measures was essentially to try to curry favour with the current regime in Ukraine (so that Ukraine proceeds with closer ties with the EU), and not the purposes/rationales stated on the face of the contested measures
3. Third plea in law, alleging that the Council failed to state reasons. The 'statement of reasons' adopted in the contested measures for including the applicant (in addition to being wrong) are formulaic, inappropriate and inadequately particularised.
4. Fourth plea in law, alleging that the applicant does not fulfil the stated criteria for a person to be listed at the relevant time.
5. Fifth plea in law, alleging that the Council made manifest errors of assessment in including the applicant in the contested measures. In re-designating the applicant, notwithstanding the clear disconnect between the 'statement of reasons' and the relevant designation criteria, the Council has made a manifest error.

6. Sixth plea in law, alleging that the applicant's rights of defence have been breached and/or that he has been denied effective judicial protection. Amongst other things, the Council has failed to adequately consult with the applicant prior to the re-designation, and the applicant has not been afforded a proper or fair opportunity either to correct errors or produce information relating to his personal circumstances.
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, because inter alia: (i) there is no suggestion that any funds allegedly misappropriated by the applicant are considered to have been transferred outside Ukraine; and (ii) it is neither necessary nor appropriate to freeze all the applicant's assets since the Ukraine authorities have now quantified the value of the losses allegedly being pursued in underlying criminal cases against the applicant.

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**Action brought on 13 May 2016 – Yanukovych v Council**

(Case T-245/16)

(2016/C 243/56)

*Language of the case: English*

**Parties**

*Applicant:* Oleksandr Viktorovych Yanukovych (Donetsk, 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 (CFSP) 2016/318 of 4 March 2016 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2016 L 60, p. 76) insofar as it applies to the applicant;
- annul Council Implementing Regulation (EU) 2016/311 of 4 March 2016 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2016 L 60, p. 1), on the basis that it fails to revoke the Regulation No 208/2014, insofar as it applies to the applicant;
- order the Council 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 contested measures. Arguments in support of this and subsequent pleas, include the following. The conditions for the Council relying on Article 29 TEU were not satisfied by the contested measures. Those contested measures were inconsistent with the objectives expressly invoked by the Council Decision (CFSP) 2016/318 (rule of law and respect for human rights in Ukraine). Indeed, the contested measures undermine the rule of law and human rights by supporting a regime which does not have a history of human rights compliance or compliance with the rule of law. No reliance can properly be placed by the Council on decisions of Ukraine's Prosecutor General's Office or Courts, including because they are neither independent nor impartial, and are subject to political interference by the current regime in Ukraine. The presumption of innocence, to which the applicant is entitled, has been repeatedly violated by the Ukraine authorities.
2. Second plea in law, alleging that the Council misused its powers. The Council's actual purpose in implementing the contested measures was and is to curry favour with the current regime in Ukraine, and to maximise its political influence with that regime, which are not proper uses of the powers concerned.