

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.

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.

3. Third plea in law, alleging that the Council failed to state proper or sufficient reasons, merely relying on formulaic and imprecise statements.
 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. The material relied on by the Council was not a sufficiently solid factual basis for the applicant's listing.
 5. Fifth plea in law, alleging that the Council made manifest errors of assessment in including the applicant in the contested measures. The Council did not have concrete, factually reliable and consistent evidence to justify the contested measures, and had not subjected the limited material that it did have to a sufficiently rigorous review.
 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 adequately to consult with the applicant prior to the contested measures, and the applicant has not been afforded a proper or fair opportunity either to correct errors or to produce relevant information.
 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.
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