



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

13 March 2012*

(Appeal — Common foreign and security policy — Restrictive measures against the Republic of the Union of Myanmar — Freezing of funds applicable to persons, entities and bodies — Legal basis)

In Case C-376/10 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 23 July 2010,

Pye Phyo Tay Za, residing in Yangon (Myanmar), represented by D. Anderson QC, S. Kentridge QC, M. Lester, Barrister, and G. Martin, Solicitor,

appellant,

the other parties to the proceedings being:

Council of the European Union, represented by M. Bishop and E. Finnegan, acting as Agents,

defendant at first instance,

United Kingdom of Great Britain and Northern Ireland, represented by S. Hathaway, acting as Agent, and D. Beard, Barrister,

European Commission, represented by S. Boelaert and M. Konstantinidis, acting as Agents, with an address for service in Luxembourg,

interveners at first instance,

THE COURT (Grand Chamber),

composed of V. Skouris, President, A. Tizzano, J.N. Cunha Rodrigues (Rapporteur), K. Lenaerts, J.-C. Bonichot and M. Safjan, Presidents of Chambers, K. Schiemann, G. Arestis, A. Borg Barthet, M. Ilešič, J.-J. Kasel, D. Šváby, and M. Berger, Judges,

Advocate General: P. Mengozzi,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 6 September 2011,

after hearing the Opinion of the Advocate General at the sitting on 29 November 2011,

gives the following

* Language of the case: English.

Judgment

- 1 By his appeal, Mr Tay Za, a national of the Republic of the Union of Myanmar, requests the Court of Justice to set aside the judgment of the General Court of the European Union in Case T-181/08 *Tay Za v Council* [2010] ECR II-1965 ('the judgment under appeal'), by which that court dismissed his action for annulment of Council Regulation (EC) No 194/2008 of 25 February 2008 renewing and strengthening the restrictive measures in respect of Burma/Myanmar and repealing Regulation (EC) No 817/2006 (OJ 2008 L 66, p. 1) ('the contested regulation'), in so far as the applicant's name appears on the list of persons, entities or bodies to which the regulation applies.

Background to the dispute and the contested regulation

- 2 On account of the failure to make progress towards democracy and persistent human rights violations in Myanmar, the Council of the European Union adopted, on 28 October 1996, a number of restrictive measures against that country in Common Position 96/635/CFSP (OJ 1996 L 287, p. 1). Since the situation which justified the adoption of the Common Position did not improve, the restrictive measures in question were extended and strengthened during the following years.
- 3 At the age of 16, the appellant first became subject to restrictive measures imposed by the Council under Decision 2003/907/CFSP of 22 December 2003 implementing Common Position 2003/297 (OJ 2003 L 340, p. 81), and under Commission Regulation (EC) No 2297/2003 of 23 December 2003 amending Council Regulation (EC) No 1081/2000 prohibiting the sale, supply and export to Burma/Myanmar of equipment which might be used for internal repression or terrorism, and freezing the funds of certain persons related to important governmental functions in that country (OJ 2003 L 340, p. 37).
- 4 On 27 April 2006, the Council adopted Common Position 2006/318/CFSP renewing restrictive measures against Burma/Myanmar (OJ 2006 L 116, p. 77). It imposed inter alia the freezing of funds and economic resources belonging to members of the Government of the Republic of the Union of Myanmar or to any natural or legal person, entity or body associated with them — those members of the Government and natural persons also being subject to a prohibition on travel in the Member States. Those measures were extended until 30 April 2008 by Council Common Position 2007/248/CFSP of 23 April 2007 renewing restrictive measures against Burma/Myanmar (OJ 2007 L 107, p. 8).
- 5 In view of the seriousness of the situation in Myanmar, the Council considered it necessary to increase pressure on the military regime and adopted Council Common Position 2007/750/CFSP of 19 November 2007 amending Common Position 2006/318 (OJ 2007 L 308, p. 1).
- 6 Article 5(1) and (2) of Common Position 2006/318, as amended by Common Position 2007/750, is worded as follows:
- '1. All funds and economic resources belonging to, owned, held or controlled by the individual members of the Government of Burma/Myanmar and belonging to, owned, held or controlled by the natural or legal persons, entities or bodies associated with them as listed in Annex II 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 Annex II.'
- 7 Under heading J, 'Persons who benefit from Government economic policies and other persons associated with the regime', in Annex II to Common Position 2006/318, as amended by Common Position 2007/750, appear, inter alia, the applicant's name, together with the information 'Son of Tay Za' (J1c), and the name of his father, Mr Tay Za, together with the information 'Managing Director, Htoo Trading Co., ...' (J1a).

- 8 In so far as concerns the powers of the European Community, the contested regulation, which was adopted on the basis of Articles 60 EC and 301 EC, implemented some of the restrictive measures provided for in Common Positions 2006/318 and 2007/750. The annexes to the regulation, containing the lists of persons, entities and bodies to which the restrictive measures apply, were amended by Commission Regulation (EC) No 385/2008 of 29 April 2008 amending Regulation No 194/2008 (OJ 2008 L 116, p. 5).
- 9 Article 11(1) and (2) of the contested regulation provides as follows:
- ‘1. All funds and economic resources belonging to, owned, held or controlled by the individual members of the Government of Burma/Myanmar and to the natural or legal persons, entities or bodies associated with them, as listed in Annex VI, 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 Annex VI.’
- 10 Annex VI to the contested regulation is entitled ‘List of members of the Government of Burma/Myanmar and persons, entities and bodies associated with them referred to in Article 11’.
- 11 Under heading J of Annex VI to the contested regulation, as amended by Regulation No 358/2008, are listed the ‘[p]ersons who benefit from government economic policies and other persons associated with the regime’. Entries J1c and J1a include, respectively, the name of the appellant, together with the information ‘Son of Tay Za’, and the name of his father, Mr Tay Za, together with the information ‘Managing Director, Htoo Trading Co.; Htoo Construction Co.’.
- 12 As regards the modalities for submitting information in relation to Annex VI to the contested regulation, Article 18(2) thereof provides for the publication of a notice.
- 13 On 11 March 2008, the Council published a notice for the attention of the persons and entities on the lists provided for in Articles 7, 11 and 15 of the contested regulation (OJ 2008 C 65, p. 12).
- 14 At paragraph 2 of that notice, the Council states that the persons and entities listed in Annex VI to the contested regulation are:
- ‘(a) individual members of the Government of ... Myanmar; or
- (b) natural or legal persons, entities or bodies associated with them.’
- 15 That notice states that ‘[t]he persons and entities concerned may submit at any time a request to the Council, together with any supporting documentation, that the decision to include and maintain them on the lists referred to ... should be reconsidered ...’.
- 16 The appellant lived in Singapore with his mother from 2000 to 2007, when he returned to Myanmar.
- 17 By letter of 15 May 2008, the appellant asked the Council to provide him with the facts justifying the inclusion of his name on the list in Annex VI to the contested regulation and to remove his name from that list.
- 18 By letter of 26 June 2008, the Council replied that the appellant was on the list in that annex because, as the son of Mr Tay Za, he belonged to the group of persons benefiting from the economic policies of the Government of the Republic of the Union of Myanmar.

The action before the General Court and the judgment under appeal

- 19 By application lodged at the Registry of the General Court on 16 May 2008, the appellant sought annulment of the contested regulation.
- 20 In support of his action, the appellant relied on eight pleas in law, alleging, respectively, the absence of a legal basis for the contested regulation, infringement of the duty to state reasons, of the right to a fair hearing, of the right to effective judicial protection and of the right to property, breach of the principle of proportionality and of the principles of law deriving from the criminal law nature of the imposition of the asset freeze and breach of the principle of legal certainty.
- 21 The Council, supported by the United Kingdom of Great Britain and Northern Ireland and by the European Commission, contended that the action should be dismissed.
- 22 By the judgment under appeal, the General Court dismissed the action in its entirety.

Forms of order sought by the parties before the Court of Justice

- 23 In his appeal, the appellant claims that the Court should:
- set aside the judgment under appeal;
 - declare that the contested regulation is void and a nullity in so far as it concerns the appellant; and
 - order the Council to pay the costs of the appeal and of the proceedings before the General Court.
- 24 The Council contends that the Court should:
- dismiss the appeal; and
 - order the appellant to pay the costs.
- 25 The United Kingdom requests the Court to dismiss the appeal.
- 26 The Commission requests the Court to dismiss the appeal and order the appellant to pay the costs.

The appeal

- 27 The appellant relies on four grounds of appeal, alleging that the General Court erred in law with regard to: (i) the legal basis of the contested regulation; (ii) the duty incumbent on the Council to give reasons; (iii) the rights of defence; and (iv) respect for the right to property and the principle of proportionality.
- 28 With regard to the first ground of appeal, alleging an error in law in the interpretation of the legal basis of the contested regulation, the relevant paragraphs of the judgment under appeal are as follows:

‘57 ... the purpose of the contested regulation is to renew and strengthen the restrictive measures against the Union of Myanmar. It is clear from recital 6 in the preamble to the contested regulation that, during a period of more than 10 years before the adoption of the contested regulation, the Council and members of the international community repeatedly condemned the practices of the military regime in Myanmar, in particular the restrictions on fundamental rights,

and that, in view of that regime's longstanding, continuing serious violations of human rights, the restrictive measures adopted by the Council were intended to promote respect for fundamental human rights and thus serve the purpose of protecting public morals.

58 Accordingly, the contested regulation in general is clearly directed against a third country, namely the Union of Myanmar.

...

61 ... it must be recalled that, according to case-law, the concept of a third country, within the meaning of Articles 60 EC and 301 EC, may include the rulers of such a country and also individuals and entities associated with or controlled, directly or indirectly, by them [Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation v Council and Commission* [2008] ECR I-6351, paragraph 166]. In order to be treated as associated with the rulers of a third country, a sufficient link must exist between the individual concerned and the regime in question.

...

66 The Court also finds that the Council rightly considered that those in charge of major businesses under the military regime in Myanmar, such as the applicant's father, who is the managing director of Htoo Trading Co. and Htoo Construction Co., could be treated as persons associated with that regime. In Myanmar, the commercial activity of those businesses cannot prosper unless they enjoy the favour of the regime. As persons in charge of those businesses they benefit, by their function, from the economic policies of that country. Accordingly, there is a close link between those business figures and the military regime.

67 As regards family members of such leading business figures, it may be presumed that they benefit from the functions exercised by those businessmen, so that there is nothing to prevent the conclusion that such family members also benefit from the economic policies of the government.

68 However, the presumption that the family members of leading business figures in a third country also benefit from the economic policies of the government of that country can be rebutted if an applicant successfully demonstrates that he does not have a close link with the businessman who is part of his family.

69 In that regard, the applicant has not established that he had dissociated himself from his father, so that his father's position as a leading business figure no longer enabled him to benefit from the economic policies of the Government of Myanmar. It is true that at the hearing the applicant stated that he had lived with his mother in Singapore from the age of 13, that he had never worked for his father and had no shareholdings in companies in Myanmar. However, he did not indicate the source of the funds which allowed him to be a shareholder in two of his father's companies established in Singapore between 2005 and 2007.

70 Furthermore, under Article 301 EC, an action by the Community may go as far as totally interrupting economic relations with a third country. The Council could, therefore, take the necessary urgent measures on the movement of capital and on payments in order to implement such an action, in accordance with Article 60 EC. A general embargo on trade against a third country would concern all persons in Myanmar and not only those who benefit from the economic policies of the military regime of Myanmar by reason of their personal situation in that country. In the present case, it must, a fortiori, be held that the restrictive measures, on the basis of targeted and selective sanctions applied to certain categories of persons deemed by the Council to be associated with the regime concerned, including the family members of leading business figures in the third country concerned, fall within the scope of Articles 60 EC and 301 EC.

...

72 Furthermore, the inclusion of family members in the categories of persons covered by the restrictive measures in relation to the Union of Myanmar is justified by considerations of effectiveness. ... The inclusion of family members of leading business figures prevents the circumvention of the restrictive measures in question by the transfer of the assets of those businessmen to their family members.'

Arguments of the parties

- 29 The appellant claims that Articles 60 EC and 301 EC do not give the Council the power to freeze his assets because the connection between himself and the government of the Republic of the Union of Myanmar is insufficient. In the appellant's view, it is clear from paragraph 166 of *Kadi and Al Barakaat International Foundation v Council and Commission* that only the rulers of a third country and the persons associated with or controlled by them may be subject to restrictive measures adopted on the basis of Articles 60 EC and 301 EC. It would not be permissible to impose such measures on individuals on the sole ground that they are presumed to benefit from the economic policies of a regime because they are related to persons who are themselves presumed, as business people, to have benefited from the regime.
- 30 Citing the judgment in Case T-256/07 *People's Mojahedin Organization of Iran v Council* [2008] ECR II-3019, the appellant submits that the burden lies with the Council to prove that the freezing of funds is justified. In his view, it is clear from that judgment that the decision to include the person concerned on the list in question must be based on serious and credible evidence and the institutions must communicate the grounds of the decision to that person.
- 31 In the judgment under appeal, the General Court claimed that the appellant had failed to rebut the presumption against him due to a lack of specificity concerning the source of the funds which allowed him between 2005 and 2007 to be a shareholder in two of his father's companies established in Singapore. The appellant states that he did not hold such shares when his name first appeared on the list at issue in 2003, or in 2008, when the contested regulation was adopted, and that he was in no way connected with his father's business interests.
- 32 The appellant submits that the inclusion on such a list of the family members of the persons at whom the contested regulation is directed in order to avoid the risk of circumventing the asset freeze is not a convincing justification, since it would not prevent the pre-emptive transfer of assets to either more distant family members or third parties.
- 33 With regard to the Community's power to impose targeted restrictive measures directed at certain categories of persons, the appellant observes that, in *Kadi and Al Barakaat International Foundation v Council and Commission*, the Court held that, while Articles 60 EC and 301 EC authorise the imposition of sanctions against a third country, that does not mean that selective measures against natural persons are therefore automatically authorised.
- 34 In response to those arguments, the Council states that, contrary to what the appellant claims, his name is included on the list in the contested regulation on account of his capacity as a member of a particular category of persons identified in the regulation, not his capacity as an individual. Unless there is an indication to the contrary, the family members of persons associated with the military regime of the Republic of the Union of Myanmar are presumed to benefit from the economic policies of that country. The appellant is therefore in fact associated with that regime within the meaning of the *Kadi and Al Barakaat International Foundation v Council and Commission* case-law. Moreover, the appellant has always described himself as a student and has at no time suggested that he is financially independent of his father.

- 35 As regards the risk of the restrictive measures being circumvented, the Council claims that the simultaneous inclusion on the list at issue of the business figure and his family members has the precise effect of freezing all relevant assets, including any which may have been pre-emptively transferred to such family members. Given the degree of trust necessary, business figures are less likely to make such transfers to third parties.
- 36 The United Kingdom, which has confined its intervention to the ground of appeal under consideration, and the Commission are of the view that the General Court did not err in law in finding that there was a proper legal basis for the contested regulation. In the light of the wording and purpose of Common Position 2006/318 and of the contested regulation and the need to prevent any circumvention of important measures, it is appropriate to interpret the words ‘... persons associated with ...’ members of the Government of the Republic of the Union of Myanmar in Article 11 of that regulation as including family members of such persons and family members of persons benefiting from the economic policies of that government.
- 37 According to the Commission, the appellant appears to challenge the very mechanism of ‘targeted sanctions’ chosen by the Council. It submits that the particular mechanism chosen to enforce trade embargoes against third countries is not, however, a matter for review by the European Union courts.
- 38 In the legal system of the European Union, the Council enjoys broad discretion in its assessment of the matters to be taken into consideration for the purpose of adopting economic and financial sanctions on the basis of Articles 60 EC and 301 EC, consistent with a common position adopted on the basis of the common foreign and security policy.
- 39 Since the European Union Courts may not, in particular, substitute their assessment of the evidence, facts and circumstances justifying the adoption of such measures for that of the Council, the review carried out by the General Court of the lawfulness of decisions to freeze funds must be restricted to checking that the rules governing procedure and the statement of reasons have been complied with, that the facts are materially accurate, and that there has been no manifest error of assessment of the facts or misuse of power. The appellant has failed to establish that the General Court was incorrect in rejecting his arguments that the rules governing procedure and the reasons put forward by the Council for the adoption of the contested regulation were vitiated by errors.
- 40 In the view of the Commission, the question whether there is a sufficient link between the appellant and the rulers of the Republic of the Union of Myanmar and the factual assessment made by the General Court of the insufficiency of the evidence and claims put forward by the appellant to disprove his direct or indirect association with the military regime of that country are not legal questions.

Findings of the Court

Preliminary observations

- 41 Without expressly raising an objection of inadmissibility in relation to the ground of appeal under consideration, the Commission maintains that the question whether there is a sufficient link between the appellant and the leaders of the Republic of the Union of Myanmar which may justify the imposition of the restrictive measures at issue is a question of fact, not of law. In its view, since the appellant has failed to demonstrate that the General Court made a substantive error as to the facts or distorted the evidence, the findings of fact arrived at by that court must be upheld by the Court of Justice.
- 42 That argument cannot be accepted.

- 43 As the General Court observed at paragraph 61 of the judgment under appeal, according to the case-law of the Court of Justice, the concept of a third country, within the meaning of Articles 60 EC and 301 EC, may include the rulers of such a country and also individuals and entities associated with or controlled, directly or indirectly, by them (see *Kadi and Al Barakaat International Foundation v Council and Commission*, paragraph 166).
- 44 It is in the light of that case-law that the General Court examined whether there was a sufficient link between the appellant and the leaders of the Republic of the Union of Myanmar capable of justifying the adoption of restrictive measures in respect of the appellant on the basis of Articles 60 EC and 301 EC.
- 45 In the present appeal, the issue to be determined is whether, by finding at paragraphs 66 and 67 of the judgment under appeal that there is a presumption that the family members of those in charge of major businesses under the military regime in Myanmar benefit from the function performed by those persons, so that it is permissible to conclude that those family members also benefit from the economic policies of the government of that country, the General Court correctly applied the Court's case-law on the scope of Articles 60 EC and 301 EC, as established, in particular, by *Kadi and Al Barakaat International Foundation v Council and Commission*.

Substance

- 46 According to the Court's settled case-law, the choice of the legal basis for a Community measure must rest on objective factors which are amenable to judicial review, including in particular the aim and the content of the measure (see, inter alia, Case C-548/09 P *Bank Melli Iran v Council* [2011] ECR I-11381, paragraph 66).
- 47 Article 60(1) EC provides that, if, in the cases envisaged by Article 301 EC, action by the Community is deemed necessary, the Council may take the necessary urgent measures on the movement of capital and on payments as regards the third countries concerned.
- 48 According to Article 301 EC, where it is provided, in a common position or in a joint action adopted according to the Treaty on European Union relating to the common foreign and security policy, for an action by the Community to interrupt or to reduce, in part or completely, economic relations with one or more third countries, the Council is to take the necessary urgent measures.
- 49 The contested regulation concerns the adoption of restrictive measures against the Republic of the Union of Myanmar.
- 50 It is apparent from recital 6 in the preamble to the contested regulation that, taking into account the continuing serious violations of human rights by the regime in power in that country, the restrictive measures in that regulation are instrumental in promoting respect for fundamental rights and thus serve the purpose of protecting public morals in that country.
- 51 Article 11 of the contested regulation provides that the restrictive measures in question are to take the form of the freezing of all funds and economic resources belonging to the individual members of the Government of the Republic of the Union of Myanmar and to the natural or legal persons, entities or bodies associated with them.
- 52 The list referred to in Article 11 of the contested regulation of the individual members of that government and the persons, entities and bodies associated with them, which appears in Annex VI to the regulation, contains inter alia the names of the members of the State Peace Development Council, Ministers, senior military officers and persons benefiting from the economic policies of that government.

- 53 In that regard, it should be recalled that the Court has already held that, having regard to the wording of Articles 60 EC and 301 EC, especially to the expressions ‘as regards the third countries concerned’ and ‘with one or more third countries’ used there, those provisions concern the adoption of measures vis-à-vis third countries, since that concept may include the rulers of such a country and also individuals and entities associated with or controlled, directly or indirectly, by them (*Kadi and Al Barakaat International Foundation v Council and Commission*, paragraph 166).
- 54 The list of persons benefiting from the economic policies of the Government of the Republic of the Union of Myanmar whose respective funds and economic resources have been frozen, which appears under heading J of Annex VI to the contested regulation, includes, inter alia, the names of family members of those in charge of certain businesses, including that of the appellant.
- 55 In the light of the Court’s case-law cited at paragraph 53 above, the possibility cannot be ruled out that those in charge of certain businesses may be subject to restrictive measures adopted on the basis of Articles 60 EC and 301 EC, provided it is established that they are associated with the leaders of the Republic of the Union of Myanmar or that the activities of those businesses are dependent on those leaders.
- 56 However, the family members of those in charge of businesses on the list in Annex VI to the contested regulation are covered by the measures freezing funds for the sole reason that they belong to the families of persons who, in turn, are associated with those national leaders.
- 57 In that connection, the General Court held, at paragraph 67 of the judgment under appeal, that it may be presumed that the family members of leading business figures benefit from the functions exercised by those businessmen, so that there is nothing to prevent the conclusion that such family members also benefit from the economic policies of the government. That court also found that that presumption can be rebutted if the applicant successfully demonstrates that he does not have a close link with the businessman who is part of his family (paragraph 68 of the judgment under appeal).
- 58 The General Court therefore concluded (paragraph 70 of the judgment under appeal) that the restrictive measures, on the basis of targeted and selective sanctions applied to certain categories of persons deemed by the Council to be associated with the regime concerned, including the family members of leading business figures in the third country concerned, fall within the scope of Articles 60 EC and 301 EC.
- 59 It is necessary to ascertain whether, in reaching that conclusion, the General Court erred in law as regards the scope of Articles 60 EC and 301 EC, as interpreted by the case-law of the Court of Justice (see, inter alia, *Kadi and Al Barakaat International Foundation v Council and Commission*).
- 60 While it is true that, at paragraph 166 of *Kadi and Al Barakaat International Foundation v Council and Commission*, the General Court gave a broad interpretation of Articles 60 EC and 301 EC, in so far as it included in the concept of ‘third country’ used in those provisions the leaders of such countries as well as the individuals and entities associated with or controlled, directly or indirectly, by them, the fact remains that such an interpretation was subject to conditions designed to ensure that Articles 60 EC and 301 EC are applied in a manner that is consistent with the objective assigned to them.
- 61 This Court has rejected the Commission’s argument that it is enough for the restrictive measures at issue to be directed at persons or entities present in a third country or associated with one in some other way in order for them to be regarded as having been adopted against such a country for the purpose of Articles 60 EC and 301 EC (see *Kadi and Al Barakaat International Foundation v Council and Commission*, paragraph 168).

- 62 According to the Court, such an interpretation of Articles 60 EC and 301 EC would give those provisions an excessively broad meaning and would fail to take any account at all of the requirement, imposed by their very wording, that the measures decided on the basis of those provisions must be taken against third countries (*Kadi and Al Barakaat International Foundation v Council and Commission*, paragraph 168).
- 63 It follows from the above that, in order for it to be possible for them to be adopted on the basis of Articles 60 EC and 301 EC as restrictive measures imposed on third countries, the measures in respect of natural persons must be directed only against the leaders of such countries and the persons associated with those leaders (*Kadi and Al Barakaat International Foundation v Council and Commission*, paragraph 166).
- 64 That requirement ensures that there is a sufficient link between the persons concerned and the third country targeted by the restrictive measures adopted by the European Union, precluding too broad an interpretation of Articles 60 EC and 301 EC which would therefore be contrary to the Court's case-law.
- 65 By considering that it may be presumed that the family members of leading business figures also benefit from the economic policies of the government, the General Court extended the category of natural persons who may be subject to targeted restrictive measures.
- 66 The application of such measures to natural persons on the sole ground of their family connection with persons associated with the leaders of the third country concerned, irrespective of the personal conduct of such natural persons, is at variance with the Court's case-law on Articles 60 EC and 301 EC.
- 67 It is not easy to establish a link, even an indirect link, between the absence of progress towards democratisation and the continuing violation of human rights in Myanmar, which, as is apparent from recital 1 in the preamble to the contested regulation, is one of the reasons which led to the adoption of the regulation, and the conduct of the family members of those in charge of businesses, which, in itself, has not been criticised.
- 68 On the other hand, by finding at paragraph 168 of *Kadi and Al Barakaat International Foundation v Council and Commission* that the restrictive measures adopted against a third country could not be directed at persons associated with that country 'in some other way', the Court intended to restrict the categories of natural persons at whom targeted restrictive measures may be directed to those whose connection with the third country concerned is quite obvious, namely the leaders of third countries and the individuals associated with them.
- 69 Moreover, the criterion used by the General Court in order to include the family members of those in charge of businesses is based on a presumption for which no provision was made in the contested regulation or in Common Positions 2006/318 and 2007/750, to which that regulation refers, and which is inconsistent with the objective of the regulation.
- 70 Consequently, a measure to freeze funds and economic resources belonging to the appellant could have been adopted within the framework of a regulation intended to impose sanctions on a third country on the basis of Articles 60 EC and 301 EC only in reliance upon precise, concrete evidence which would have enabled it to be established that the appellant benefits from the economic policies of the leaders of the Republic of the Union of Myanmar.
- 71 It follows from all the foregoing considerations that, by finding that it may be presumed that the family members of leading business figures benefit from the functions exercised by those businessmen, so that such family members also benefit from the economic policies of the government, and that there is therefore a sufficient link, for the purposes of Articles 60 EC and 301 EC, between the appellant and the military regime of Myanmar, the General Court erred in law.

72 It follows that the first ground of appeal is well founded and that the judgment under appeal must be set aside to the extent that it failed to annul the contested regulation, in so far as the appellant is concerned, for want of legal basis.

73 Since the finding that the first ground of appeal is well founded means that the judgment under appeal must be set aside, it is not necessary to examine the other grounds of appeal.

The action before the General Court

74 Under the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if the appeal is well founded, the Court of Justice is to set aside the decision of the General Court. It may itself give final judgment in the matter, where the state of the proceedings so permits.

75 In the present case, the Court has the necessary information to give final judgment on the action for annulment of the contested regulation brought by the appellant before the General Court.

76 It is sufficient to note in that regard that, on the grounds set out at paragraphs 60 to 70 above, the appeal is well founded and it is necessary to annul the contested regulation for want of legal basis, in so far as the appellant is concerned.

Costs

77 The first paragraph of Article 122 of the Rules of Procedure provides that, where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to costs.

78 Under Article 69(2) of the Rules of Procedure, which applies to appeal proceedings pursuant to Article 118 of those rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Council has been unsuccessful, it must be ordered to pay the costs of both sets of proceedings, in accordance with the form of order sought by the appellant.

79 Under the first subparagraph of Article 69(4) of the Rules of Procedure, which is also applicable to appeal proceedings by virtue of Article 118 of those rules, the Member States and institutions which intervene in the proceedings are to bear their own costs. In accordance with that provision, the United Kingdom and the Commission are to be ordered to bear their own costs relating to both the proceedings before the General Court and the appeal proceedings.

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

- 1. Sets aside the judgment of the General Court of the European Union of 19 May 2010 in Case T-181/08 *Tay Za v Council*;**
- 2. Annuls Council Regulation (EC) No 194/2008 of 25 February 2008 renewing and strengthening the restrictive measures in respect of Burma/Myanmar and repealing Regulation (EC) No 817/2006 in so far as Mr Tay Za is concerned;**
- 3. Orders the Council of the European Union to pay the costs of both the proceedings at first instance and the appeal proceedings;**
- 4. Orders the United Kingdom of Great Britain and Northern Ireland and the European Commission to bear their own costs in relation to both the proceedings at first instance and the appeal proceedings.**

[Signatures]