Pleas and main arguments

In support of his appeal, the appellant raises the following pleas in law:

— *Force majeure*, the fact of the war interrupting the limitation period. The events with which the appellant had been confronted since November 2010 in Côte d'Ivoire constitute a case of *force majeure* within the meaning of Article 45 of the Statute of the Court of Justice of the European Union, having regard to the state of war which interrupted the limitation period for acts adopted against him by the Council.

— The present case of *force majeure* because of the war constitutes an obstacle to the appellant's freely exercising his right of action against actions which manifestly infringe fundamental rights.

— The fundamental rights and freedoms take priority over the principle of legal certainty. By applying the principle of legal certainty in order to declare the appellant's application inadmissible, the General Court infringes the fundamental right of access to courts and tribunals and of the rights of the defence. Thus, the appellant has been deprived of his right to be heard by a court having jurisdiction.

— The unenforceability of the time-limit on account of distance and of the time-limit for lodging an appeal in the event of war. The time-limit on account of distance and the time-limit for lodging an appeal cannot be enforced against a person residing in a State at open war. Such time-limits apply only in peacetime and on the continent of Europe. The appellant is located on another continent and, therefore, the strict application of Article 102 of the Rules of Procedure of the General Court to the present case is indisputably in breach of Article 6(1) of European Convention for the Protection of Human Rights and Fundamental Freedoms and of Article 263 of the Treaty on the Functioning of the European Union.

— The primacy of Article 263 of the Treaty on the Functioning of the European Union. Article 102 of the Rules of Procedure of the General Court would render inoperable any obligation of notification as provided for in the Treaty on the Functioning of the European Union which provides that the period for lodging an appeal starts to run with effect from the publication or notification to the plaintiff of the measure or the day on which it came to his knowledge. Article 102 of the Rules of Procedure avoids the obligation of notification and does not take into account the day on which the application effectively became aware of the measure, thus restricting the letter and the spirit of Article 263 TFEU. Accordingly, Article 102 calls into question the rights laid down and protected by the Treaty, which is of higher legal standing and which is mandatory for the institutions comprising the European Union. Consequently, since the contested measures were not notified to the appellant, in breach of Article 263(5) of the Treaty on the Functioning of the European Union, the period for lodging an appeal can start only from when he became aware of the measures adopted against him.

— A serious infringement of fundamental rights and freedoms. The principle of legal certainty as stated by the General Court seriously calls into question legal certainty as a whole since citizens seeking justice who reside outside the European Union and who reside in a country at war have sanctions issued against them against which they cannot effectively exercise their rights since they do not know of the sanction.

— In the alternative, the appellant seeks the annulment of the measures adopted against him by the Council on the ground of the seriousness of the breach of fundamental rights and freedoms. Since the contested measures infringe fundamental freedoms protected by different international treaties, it is for the Court of Justice to annul those measures in so far as their unlawfulness contravenes the established European legal order and on the ground that no time-limit for lodging an appeal can be enforced because of the seriousness of the breach of the protected fundamental rights and freedoms.

Appeal lodged on 21 September 2011 by Katinan Justin Koné against the order delivered on 13 July 2011 by the General Court in Case T-349/11 Koné v Council

(Case C-479/11 P)

(2012/C 6/04)

Language of the case: French

Parties

Appellant: Katinan Justin Koné (represented by: L. Bourthoumieux, J. Vergès, R. Dumas and M. Ceccaldi, avocats)

Other party to the proceedings: Council of the European Union

Form of order sought

— Declare the action brought by Mr Katinan Justin Koné admissible;

— Annul the order in Case T-349/11 of 13 July 2011, after holding it to be time-barred;

— Refer the action back to the General Court in order that the appellant may claim his rights;

— Order the Council of the European Union to pay the costs under Articles 69 and 73 of the Rules of Procedure of the Court.

Pleas and main arguments

In support of his appeal, the appellant raises the following pleas in law:

— *Force majeure*, the fact of the war interrupting the limitation period. The events with which the appellant had been confronted since November 2010 in Côte d'Ivoire constitute a case of *force majeure* within the meaning of Article 45 of the Statute of the Court of Justice of the European Union, having regard to the state of war which interrupted the limitation period for acts adopted against him by the Council.

— The present case of *force majeure* because of the war constitutes an obstacle to the appellant's freely exercising his right of action against actions which manifestly infringe fundamental rights.

— The fundamental rights and freedoms take priority over the principle of legal certainty. By applying the principle of legal certainty in order to declare the appellant's application inadmissible, the General Court infringes the fundamental right of access to courts and tribunals and of the rights of the defence. Thus, the appellant has been deprived of his right to be heard by a court having jurisdiction.

— The unenforceability of the time-limit on account of distance and of the time-limit for lodging an appeal in the event of war. The time-limit on account of distance and the time-limit for lodging an appeal cannot be enforced against a person residing in a State at open war. Such time-limits apply only in peacetime and on the continent of Europe. The appellant is located on another continent and, therefore, the strict application of Article 102 of the Rules of Procedure of the General Court to the present case is indisputably in breach of Article 6(1) of European Convention for the Protection of Human Rights and Fundamental Freedoms and of Article 263 of the Treaty on the Functioning of the European Union.

— The primacy of Article 263 of the Treaty on the Functioning of the European Union. Article 102 of the Rules of Procedure of the General Court would render inoperable any obligation of notification as provided for in the Treaty on the Functioning of the European Union which provides that the period for lodging an appeal starts to run with effect from the publication or notification to the plaintiff of the measure or the day on which it came to his knowledge. Article 102 of the Rules of Procedure avoids the obligation of notification and does not take into account the day on which the application effectively became aware of the measure, thus restricting the letter and the spirit of Article 263 TFEU. Accordingly, Article 102 calls into question the rights laid down and protected by the Treaty, which is of higher legal standing and which is mandatory for the institutions comprising the European Union. Consequently, since the contested measures were not notified to the appellant, in breach of Article 263(5) of the Treaty on the Functioning of the European Union, the period for lodging an appeal can start only from when he became aware of the measures adopted against him.

— A serious infringement of fundamental rights and freedoms. The principle of legal certainty as stated by the General Court seriously calls into question legal certainty as a whole since citizens seeking justice who reside outside the European Union and who reside in a country at war have sanctions issued against them against which they cannot effectively exercise their rights since they do not know of the sanction.

— In the alternative, the appellant seeks the annulment of the measures adopted against him by the Council on the ground of the seriousness of the breach of fundamental rights and freedoms. Since the contested measures infringe fundamental freedoms protected by different international treaties, it is for the Court of Justice to annul those measures in so far as their unlawfulness contravenes the established European legal order and on the ground that no time-limit for lodging an appeal can be enforced because of the seriousness of the breach of the protected fundamental rights and freedoms.

Appeal brought on 21 September 2011 by Akissi Danièle Boni-Claverie against the order of the General Court (Fifth Chamber) delivered on 13 July 2011 in Case T-350/11 *Boni-Claverie v Council*

(Case C-480/11 P)

(2012/C 6/05)

Language of the case: French

Parties

Appellant: Akissi Danièle Boni-Claverie (represented by: L. Bourthoumieux, J. Vergès, R. Dumas and M. Ceccaldi, avocats)

Other party to the proceedings: Council of the European Union

Form of order sought

— Declare the action brought by Mr Danièle Boni-Claverie admissible;

— Annul the order in Case T-350/11 of 13 July 2011, after holding it to be time-barred;