Reports of Cases

JUDGMENT OF THE GENERAL COURT (Eighth Chamber)

18 September 2014*

(Common foreign and security policy — Restrictive measures adopted against certain persons and entities in view of the situation in Zimbabwe — Freezing of funds — Non-contractual liability — Causal link — Sufficiently serious breach of a rule of law intended to confer rights on individuals — Manifest error of assessment — Obligation to state reasons)

In Case T-168/12,

Aguy Clement Georgias, residing in Harare (Zimbabwe),

Trinity Engineering (Private) Ltd, established in Harare,

Georgiadis Trucking (Private) Ltd, established in Harare,

represented initially by M. Robson and E. Goulder, Solicitors, and H. Mercer QC, and subsequently by M. Robson, H. Mercer QC and I. Quirk, Barrister,

applicants,

v

Council of the European Union, represented by B. Driessen and G. Étienne, acting as Agents,

and

European Commission, represented by M. Konstantinidis and S. Bartelt, acting as Agents,

defendants,

APPLICATION for compensation for the damage allegedly suffered by the applicants following the adoption of Commission Regulation (EC) No 412/2007 of 16 April 2007 amending Council Regulation (EC) No 314/2004 concerning certain restrictive measures in respect of Zimbabwe (OJ 2007 L 101, p. 6),

THE GENERAL COURT (Eighth Chamber),

composed of D. Gratsias (Rapporteur), President, M. Kancheva and C. Wetter, Judges,

Registrar: J. Weychert, Administrator,

having regard to the written procedure and further to the hearing on 3 April 2014,

* Language of the case: English.

gives the following

Judgment

Background to the dispute

1 In Common Position 2002/145/CFSP of 18 February 2002 concerning restrictive measures against Zimbabwe (OJ 2002 L 50, p. 1), adopted on the basis of Article 15 of the EU Treaty, in the version prior to the Treaty of Lisbon, the Council of the European Union expressed its serious concern about the situation in Zimbabwe, in particular the serious infringements, committed by the Government of Zimbabwe, of human rights and specifically of freedom of opinion, freedom of association and freedom of peaceful assembly. The Council therefore imposed restrictive measures for a renewable period of 12 months, to be kept under constant review.

2 Council Common Position 2004/161/CFSP of 19 February 2004, renewing restrictive measures against Zimbabwe (OJ 2004 L 50, p. 66), provided for the renewal of the restrictive measures established by Common Position 2002/145. Article 4(1) thereof provides that Member States are to take the necessary measures to prevent the entry into, or transit through, their territories of the natural persons, listed in the Annex thereto, who are engaged in activities that seriously undermine democracy, respect for human rights and the rule of law in Zimbabwe. Article 5(1) thereof provides, further, that '[a]ll funds and economic resources belonging to individual members of the Government of Zimbabwe and to any natural or legal persons, entities or bodies associated with them as listed in the Annex shall be frozen'. Last, Article 6 thereof provides that '[t]he Council, acting upon a proposal by a Member State or the Commission, shall adopt modifications of the list contained in the Annex as required by political developments in Zimbabwe'.

3 Common Position 2004/161 was applicable as from 21 February 2004, in accordance with the second paragraph of Article 8 thereof. Article 9 thereof provided that it was to apply for a 12-month period and that it was to be kept under constant review. The same article provided that the Common Position was to be 'renewed, or amended as appropriate, if the Council deem[ed] that its objectives [had] not been met'.

4 The period of validity of that Common Position was thereafter extended, until 20 February 2006 by Council Common Position 2005/146/CFSP of 21 February 2005 extending Common Position 2004/161 (OJ 2005 L 49, p. 30), until 20 February 2007 by Council Common Position 2006/51/CFSP of 30 January 2006 renewing restrictive measures against Zimbabwe (OJ 2006 L 26, p. 28), until 20 February 2008 by Council Common Position 2007/120/CFSP of 19 February 2007 renewing restrictive measures against Zimbabwe (OJ 2007 L 51, p. 25), until 20 February 2009 by Council Common Position 2008/135/CFSP of 18 February 2008 renewing restrictive measures against Zimbabwe (OJ 2008 L 43, p. 39), until 20 February 2010 by Council Common Position 2009/68/CFSP 26 January 2009 renewing restrictive measures against Zimbabwe (OJ 2009 L 23, p. 43) and, last, until 20 February 2011 by Council Decision 2010/92/CFSP of 15 February 2010 extending restrictive measures against Zimbabwe (OJ 2010 L 41, p. 6).

5 Council Regulation (EC) No 314/2004 of 19 February 2004 concerning certain restrictive measures in respect of Zimbabwe was adopted, as stated in recital 5 in the preamble thereof, in order to implement the restrictive measures laid down by Common Position 2004/161. Article 6(1) of that regulation provides that the funds and economic resources belonging to individual members of the Government of Zimbabwe and to any natural or legal persons, entities or bodies associated with them as listed in Annex III to that regulation are to be frozen. Article 11(b) of that regulation provides that the Commission of the European Communities is empowered to amend Annex III thereto on the basis of decisions taken in respect of the Annex to Common Position 2004/161.

6 The first applicant, Mr Aguy Clement Georgias, is a Zimbabwean businessman. He is the owner and chief executive of the second applicant, Trinity Engineering (Private) Ltd. The third applicant, Georgiadis Trucking (Private) Ltd is a subsidiary of the second applicant. The first applicant is again its chief executive.

7 On 29 November 2005 the first applicant was appointed a non-constituency Senator to the Senate of Zimbabwe by the President of the Republic of Zimbabwe. On 6 February 2007 the President of the Republic of Zimbabwe appointed him Deputy Minister for Economic Planning and Development.

8 Council Decision 2007/235/CFSP of 16 April 2007 implementing Common Position 2004/161 (OJ 2007 L 101, p. 14) amended the Annex to the latter to include, inter alia, the following entry as regards the first applicant: 'Georgias, Aguy; Deputy Minister for Economic Development, born 22. 6. 1935'. The Commission adopted, on the same day, Regulation (EC) No 412/2007 of 16 April 2007 amending Council Regulation (EC) No 314/2004 (OJ 2007 L 101, p. 6), which amended Annex III to the latter regulation. The annex thus amended includes, inter alia, an entry in relation to the first applicant which has the same wording as the original entry.

9 On 25 May 2007 the first applicant arrived at Heathrow Airport (United Kingdom) in order to visit family living in England and then, on the following day, to take a flight to New York (United States). He was refused leave to enter the United Kingdom or transit through the United Kingdom airports on his way to New York and he was compelled to spend the night detained in Heathrow Airport and to take a return flight to Harare (Zimbabwe) the following day.

10 Council Decision 2007/455/CFSP of 25 June 2007 implementing Common Position 2004/161 (OJ 2007 L 172, p. 89) again amended the Annex to the latter Common Position. The following sentence was added to the entry in relation to the first applicant referred to in paragraph 8 above:

'Member of the Government and as such engaged in activities that seriously undermine democracy, respect for human rights and the rule of law'.

11 By Regulation (EC) No 777/2007 of 2 July 2007 amending Regulation No 314/2004 (OJ 2007 L 173, p. 3), the Commission again amended Annex III to Regulation No 314/2004. The first applicant remained listed with, now, an entry worded in the same terms as in paragraph 10 above.

12 Council Decision 2011/101/CFSP of 15 February 2011 concerning restrictive measures against Zimbabwe (OJ 2011 L 42, p. 6) repealed Common Position 2004/161. That decision laid down, against persons who were listed in the Annex thereto, restrictive measures comparable to those laid down by Common Position 2004/161. However, the first applicant was not listed in the Annex to that decision. The Commission thereafter adopted Regulation (EU) No 174/2011 of 23 February 2011 amending Regulation No 314/2004 (OJ 2011 L 49, p. 23), which replaced Annex III to the latter regulation with a new annex in which the first applicant was again not listed.

Procedure and forms of order sought by the parties

13 By application lodged at the Court Registry on 13 April 2012, the applicants brought the present action.

14 By separate document, lodged at the Court Registry on the same day, the applicants submitted an application under Article 76a of the Rules of Procedure of the General Court, requesting adjudication of the case under an expedited procedure. That application was rejected by a decision of 25 May 2012.

15 After a change in the composition of the Chambers of the Court, the Judge-Rapporteur was assigned to the Eighth Chamber, to which the present case was consequently allocated.

16 Upon hearing the report of the Judge-Rapporteur, the Court (Eighth Chamber) decided to open the oral procedure.

17 The parties presented oral arguments and gave answers to the questions put by the Court at the hearing of 3 April 2014.

18 The applicants claim that the Court should:

— order the European Union, the Commission and/or the Council to make good the damage caused by paying them compensation of the following amounts or such other amounts as the Court shall think fit, namely EUR 374 986.57 or equivalent in respect of the first applicant, in addition to such sum as the Court deems appropriate for the non-financial damage suffered; EUR 469 520.24 or equivalent in respect of the second applicant, and EUR 5 627 020 or equivalent in respect of the third applicant;

— if, and to the extent that, the Court finds it necessary, order an inquiry into the amount of damage suffered by the applicants;

— order the Council and/or the Commission to pay the costs.

19 In the reply, the applicants corrected to EUR 462 626 the amount initially sought as compensation for the second applicant. Further, they stated that, although it is for the General Court to assess the appropriate amount of compensation for non-financial damage, they would consider the following amounts to be appropriate compensation for the damage of that kind suffered by the first applicant:

— EUR 500 for having spent a night imprisoned at Heathrow Airport (paragraph 9 above);

— EUR 10 000 for the deterioration in his state of health.

20 The Council and the Commission contend that the Court should:

— dismiss the action;

— order the applicants to pay the costs.

Law

The damage for which compensation is sought

21 According to the applicants, the damage for which compensation is sought in this action consists, as regards the first applicant, in:

— travelling and hotel costs, assessed in total at 9 689 United States Dollars (USD), lost because he was compelled to abandon his journey to New York following his detention at Heathrow Airport (paragraph 9 above);

— medical costs, assessed in total at 221 766,74 USD, which he states had to be incurred because of the deterioration in his state of health due to the personal stress caused by the freezing of his assets, by the effect of that freezing on his business and on his ability to support his family, and by his detention at Heathrow Airport;

— legal fees, assessed at 67 879,30 Pounds Sterling (GBP), incurred for the purposes of challenging, before the competent United Kingdom Courts, the decision of the United Kingdom authorities to refuse him access to the United Kingdom and transit through its airports;

— legal fees, assessed at 74 097,72 GBP, incurred in connection with steps taken to remove his name from Annex III to Regulation No 314/2004;

— advertising costs, assessed at 9 696,43 USD, incurred to mitigate the negative effects of the freezing of his assets on his professional reputation and thereby reduce the losses suffered by his businesses;

— non-financial damage caused by the deterioration of his state of health and his detention at Heathrow Airport in a prison cell.

22 As regards the second and third applicants, the damage for which compensation is sought consists in business losses, valued at 605 675 USD and 7 375 000 USD respectively, suffered by them because of the alleged 'extraterritorial effects' of Regulation No 314/2004, which led some of their business partners no longer to trade with them.

23 The applicants state that they estimated the damage suffered in USD. The sums thus estimated, converted into euros, correspond to the sums mentioned in their forms of order, as corrected in the reply (see paragraphs 18 and 19 above).

Case-law concerning claims for damages brought under the second paragraph of Article 340 TFEU

24 In accordance with settled case-law, in order for a claim for damages brought under the second paragraph of Article 340 TFEU to be well founded, a number of conditions must be satisfied: the alleged conduct on the part of the institutions must be unlawful, actual damage must have been suffered and there must be a causal link between the alleged conduct and the purported damage (Case 26/81 *Oleifici Mediterranei* v *EEC* [1982] ECR 3057, paragraph 16, and Case T-175/94 *International Procurement Services* v *Commission* [1996] ECR II-729, paragraph 44). If any one of those conditions is not satisfied, the action must be dismissed in its entirety and it is unnecessary to consider the other conditions (Case C-146/91 *KYDEP* v *Council and Commission* [1994] ECR I-4199, paragraphs 19 and 81, and Case T-279/03 *Galileo International Technology and Others* v *Commission* [2006] ECR II-1291, paragraph 77).

25 With regard to whether the condition that the conduct be unlawful is satisfied, according to the case-law, there must be a sufficiently serious breach of a rule of law intended to confer rights on individuals (Case C-352/98 P *Bergaderm and Goupil* v *Commission* [2000] ECR I-5291, paragraph 42, and Case C-312/00 P *Commission* v *Camar and Tico* [2002] ECR I-11355, paragraph 53).

26 Further, it is also settled case-law that there is a causal link for the purposes of the second paragraph of Article 340 TFEU where there is a definite and direct causal nexus between the fault committed by the institution concerned and the injury pleaded, the burden of proof of which rests on the applicants (Case 253/84 *GAEC de la Ségaude* v *Council and Commission* [1987] ECR 123, paragraph 20, and Joined Cases C-363/88 and C-364/88 *Finsider and Others* v *Commission* [1992] ECR I-359, paragraph 25). The alleged harm must be a sufficiently direct consequence of the conduct complained of, which must be the determinant cause of the harm, whereas there is no obligation to make good every harmful consequence, even a remote one, of an unlawful situation (Joined Cases 64/76, 113/76, 167/78, 239/78, 27/79, 28/79 and 45/79 *Dumortier and Others* v *Council* [1979] ECR 3091, paragraph 21; see *Galileo International Technology and Others* v *Commission*, paragraph 130 and case-law cited).

Whether the applicants' arguments on the unlawfulness of Regulations No 314/2004 and No 412/2007 are time-barred and whether they are admissible

27 Having regard to certain arguments put forward by the Council in its statement of defence, it is necessary to consider whether the applicants complied with the period of limitation on an action for damages laid down in Article 46 of the Statute of the Court of Justice of the European Union.

28 The Council states that Regulation No 314/2004 was published in the *Official Journal* on 24 February 2004 and considers that 'as far as the applicants would want to claim damages because of a perceived illegality' in that regulation, their action is time-barred.

29 It must be recalled, in that regard, that, under Article 46 of the Statute of the Court of Justice, applicable to the procedure before the General Court pursuant to the first paragraph of Article 53 of the Statute, proceedings in matters arising from non-contractual liability are to be barred after a period of five years from the occurrence of the event giving rise thereto. The period of limitation is to be interrupted if proceedings are instituted before the Court of Justice or if prior to such proceedings an application is made by the aggrieved party to the relevant institution. However, in the latter event, the proceedings must be instituted within a period of two months.

30 It is clear from settled case-law that that limitation period cannot begin to run until all the requirements governing the obligation to provide compensation are satisfied and, in particular, until the damage to be made good has materialised. Consequently, in cases where the liability of the European Union has its origin in a legislative measure, that period of limitation does not begin until the damaging effects of that measure have arisen and, therefore, until the time at which the persons concerned were bound to have suffered definite damage (see Case C-51/05 P *Commission* v *Cantina sociale di Dolianova and Others* [2008] ECR I-5341, paragraph 54 and case-law cited).

31 In this case, Regulation No 314/2004 could begin to produce its allegedly damaging effects on the applicants only after the adoption, on 16 April 2007, of Regulation No 412/2007, which replaced Annex III to Regulation No 314/2004 with a new annex which contained, inter alia, the name of the first applicant. Since this action was brought on 13 April 2012, it is obvious that the applicants' action is not time-barred.

32 It must also be recalled that, according to settled case-law, an action for damages under the second paragraph of Article 340 TFEU is an autonomous form of action with a particular purpose to fulfil within the system of actions, and that its exercise is subject to conditions imposed in view of its specific objective. It differs from an action for annulment in that its end is not the abolition of a particular measure but compensation for damage caused by an institution (see Case T-47/02 *Danzer* v *Council* [2006] ECR II-1779, paragraph 27 and case-law cited).

33 It has thus been held that even the existence of an individual decision which has become final cannot preclude the admissibility of an action for damages, save only in the particular circumstances where the objective of such an action is, in reality, the withdrawal of that individual decision, as is the case where the action for damages seeks the payment, to an applicant, of an amount precisely equal to the duty paid by him pursuant to that decision (Case 175/84 *Krohn Import-Export* v *Commission* [1986] ECR 753, paragraphs 32 and 33; see also *Danzer* v *Council*, paragraph 28 and case-law cited).

34 Further, it must be borne in mind that, under Article 277 TFEU, notwithstanding the expiry of the period laid down in the sixth paragraph of Article 263 TFEU, any party may, in proceedings in which an act of general application adopted by an institution of the European Union is at issue, plead the grounds specified in the second paragraph of Article 263 TFEU against that act.

35 In this case, it is clear that the acts giving rise to the damage allegedly suffered by the applicants are of a particular nature, since they at the same time resemble both measures of general application, in that they define the criteria which must be satisfied with regard to a person before a freezing of fund and economic resources can be imposed on him and in that they prohibit a category of addressees determined in a general and abstract manner from, inter alia, making available funds and economic resources to persons and entities named in the lists contained in their annexes, and also a bundle of individual decisions affecting those persons and entities (see, to that effect, Joined Cases C-478/11 P to C-482/11 P *Gbagbo and Others* v *Council* [2013] ECR, paragraph 56, and Case T-187/11 *Trabelsi and Others* v *Council* [2013] ECR, paragraphs 85 and 86). It follows that, in so far as Regulations No 314/2004 and No 412/2007 constitute acts of general application, the applicants' claim, in support of their action for damages, that those regulations are unlawful is admissible, notwithstanding the fact that they have not brought an action for the annulment of those regulations. The Council's argument to the contrary to the effect that Article 277 TFEU 'does not derogate from Article 46 of the Statute' cannot be accepted. As has been stated (see paragraph 31 above), the period of limitation laid down in Article 46 had not yet elapsed when this action was brought and there is no reason why that article might preclude the application of Article 277 TFEU in this case.

The alleged damage resulting from the first applicant's detention at Heathrow Airport

36 Consideration of the action can begin by examining the application for compensation for damage allegedly suffered by the first applicant because of his detention at Heathrow Airport (see paragraph 9 above).

37 In that regard, it must be observed that the circumstances of that incident and the reasons why the first applicant was refused entry to the United Kingdom or transit through its airports are set out in a letter of 28 August 2007 sent by the Treasury Solicitor's Department to the first applicant's lawyers and produced by the applicants as an annex to their application.

38 It is stated in that letter that, upon his arrival at Heathrow Airport on 25 May 2007, the first applicant was served with notice of a decision by the competent United Kingdom authority to refuse him leave to enter. That decision had been made on the basis of Section 8B of the Immigration Act 1971, as amended. That provision authorises the Secretary of State to designate, inter alia, an act adopted by the Council, as being a 'designated instrument' for the purposes of that section, in which case any person named in the act concerned must be refused leave to enter the United Kingdom.

39 However, according to that letter, it emerged upon review that, at the time when the first applicant arrived at Heathrow Airport, Decision 2007/235 had not yet been designated by the Secretary of State in accordance with Section 8B of the Immigration Act 1971 and, consequently, the first applicant could not on the basis of that provision be refused leave to enter the United Kingdom. Accordingly, the Treasury Solicitor's Department, in the abovementioned letter, informed the first applicant's lawyers that the initial decision refusing him leave to enter the United Kingdom was withdrawn and replaced by a new decision, to the same effect, taken by the Secretary of State on the basis of Paragraph 321A(5) of the Immigration Rules, under which an individual's leave to enter the United Kingdom may be cancelled if it appears, on the basis of information available to the competent authorities, that such a cancellation is 'conducive to the public good'.

40 Those explanations are not challenged by the applicants and, it may be added, are reproduced in the application and in a statement by the first applicant, annexed to the application. It is apparent that the immediate cause of the damage claimed by the first applicant because of his being refused leave to enter the United Kingdom and his being detained at Heathrow Airport for a night, before, on the following day, he took a return flight to Harare, was a decision of the competent United Kingdom authorities.

41 The applicants consider none the less that there is a causal nexus between that damage and the adoption of Regulation No 412/2007. In that context, they state that Common Position 2004/161 which, after the amendment of its annex by Decision 2007/235, also targeted the first applicant, has no legally binding effect in the law of the Member States. It follows that, in their opinion, it was the fact that the first applicant 'was a person subject to the freezing of his assets under the Council Regulation [No 314/2004] which gave the [United Kingdom] authorities access to the discretionary reasons for refusal [to him] of entry in rule 321A(5) of the Immigration Rules'.

42 That argument cannot succeed.

43 Whatever may have been the reasons which led the United Kingdom authorities to cancel the first applicant's leave to enter and therefore to refuse him entry to the United Kingdom and transit through its airports, what is important is that the decision was one taken by the competent authorities of that Member State in the exercise of that State's sovereign powers relating to controlling the entry of citizens of third countries, not members of the European Union, to the territory of that State. It is that decision which gave rise to the first applicant's detention at Heathrow Airport, and his return by direct flight out of Heathrow, those events being the claimed cause of the damage suffered by him. Accordingly, only between that decision and the damage claimed by the first applicant can there be said to be a definite and direct causal nexus, within the meaning of the case-law cited in paragraph 26 above. Conversely, even if it is the freezing of the first applicant's assets which led the United Kingdom authorities to adopt the decision to refuse him leave to enter the United Kingdom, the alleged damage suffered by him as result of that refusal is not a sufficiently direct consequence of the asset-freezing in question, as required by that case-law.

44 In that regard, it must be observed that, admittedly, Article 4(1) of Common Position 2004/161 provides that the Member States are to take the necessary measures to prevent the entry into or transit through their territory of the natural persons listed in the Annex to that Common Position, one of those persons being the first applicant. However, it follows from Case C-354/04 P *Gestoras Pro Amnistía and Others* v *Council* [2007] ECR I-1579, paragraphs 51 to 57, and Case C-355/04 P *Segi and Others* v *Council* [2007] ECR I-1657, paragraphs 51 to 57, that a Common Position such as that provided for under Titles V and VI of the EU Treaty, in the version prior to the Treaty of Lisbon, was not supposed to produce of itself legal effects in relation to third parties, such as, in this case, the first applicant. Accordingly, as follows from Article 46 of the EU Treaty, in the version prior to the Treaty of Lisbon, there was no provision conferring jurisdiction on the Court of Justice or the General Court with regard to acts adopted on the basis of the various provisions of Title V of the EU Treaty concerning the CFSP.

45 Further, the applicants, who are clearly aware that the General Court has no jurisdiction to hear an action for damages seeking compensation for damage allegedly caused by the adoption of a Common Position on the basis of provisions of Title V of the EU Treaty, in the version prior to the Treaty of Lisbon, do not claim, in their action, that the cause of the damage for which they seek compensation is, either wholly or partly, the adoption of Common Position 2004/161. They claim that that damage was caused by the adoption of Regulation No 314/2004. Yet that cannot be true of the alleged damage caused by the first applicant's detention at Heathrow Airport, since there is no provision in Regulation No 314/2004 which prohibits the first applicant's entry into the United Kingdom, or his transit through United Kingdom territory.

46 Consequently, it must be concluded that there is no causal link between the conduct of the EU institutions which is complained of in this action, namely the adoption of Regulation No 412/2007, which is allegedly unlawful, and the damage alleged by the first applicant because of that fact (see paragraph 21 above, the first third and sixth indents). Since one of the cumulative conditions governing whether the European Union may incur liability under the second paragraph of Article 340 TFEU has not, therefore, been satisfied, the action must be dismissed as being unfounded in so far as it seeks compensation for the damage allegedly suffered by the first applicant because of his detention at

Heathrow Airport, that is, specifically, in so far as it concerns travel and hotel costs lost by the first applicant, legal fees incurred by him in order to challenge before the competent United Kingdom courts the decision to refuse him leave to enter the United Kingdom, and the 'non-financial', in other words non-material, damage which he claims to have suffered because of that fact (see paragraph 21 above, the first indent, third indent and sixth indent respectively).

The other heads of damage

47 As regards the other heads of damage, it is necessary to analyse the various grounds of complaint relied on by the applicants in order to determine whether the necessary condition of the European Union incurring liability under the second paragraph of Article 340 TFEU, that the alleged conduct is unlawful, is in this case satisfied.

48 The applicants put forward several grounds of complaint in order to demonstrate that the conduct of the Council and Commission in adopting Regulations No 314/2004 and No 412/2007 was unlawful. First, they claim, in essence, that the EU institutions committed a manifest error of assessment in holding that it was necessary to include the first applicant's name in the list of persons subject to the freezing of assets imposed by Regulation No 314/2004. Second, they claim that the statement of reasons in the contested regulations with regard to the first applicant is insufficient, which is a breach of his rights of defence and deprives him of any effective judicial protection. Third, they claim a misuse of powers. Fourth, they claim a breach of the first applicant's rights of defence, as regards more particularly the question of maintaining his listing in Annex III to Regulation No 314/2004, which, in their opinion, should have been the subject of regular review by those institutions.

49 In setting out those various grounds of complaint, the applicants start from the premise that the mere fact that the first applicant was a Deputy Minister was not sufficient justification for his being listed in Annex III to Regulation No 314/2004 and for his assets being frozen. Their criticism therefore of the EU institutions is both that they committed a manifest error of assessment, in that they wrongly relied on that fact alone to justify the conclusion that the first applicant was responsible for serious human rights violations, and for infringing the obligation to state reasons, in that they failed to provide sufficient reasons for the freezing of his assets. The basis of the ground of complaint relating to the alleged misuse of powers is, in essence, the same. For their part, the defendants contend that the first applicant's listing in Annex III to Regulation No 314/2004 was lawfully decided solely on the basis of his status as a Deputy Minister, and there was no need to justify it by reference to other evidence.

50 Those arguments of the applicants raise the preliminary question of identifying the reasons which justified the freezing of assets of persons affected by Regulation No 314/2004, one of those persons being the first applicant, following the adoption of Regulation No 412/2007. Specifically, that involves determining whether, in the view of the authors of that measure, the freezing of assets imposed was justified, with regard to the first applicant, solely by his status as a member of the Government of Zimbabwe or also on other grounds, which should, if necessary, be identified.

The reasons for the freezing of the first applicant's assets and whether the obligation to state reasons was met

51 It must first be noted that Regulation No 314/2004 was adopted on the base of Articles 60 EC and 301 EC. Article 60(1) EC provides that '[i]f, in the cases envisaged in Article 301 [EC], action by the Community is deemed necessary, the Council may, in accordance with the procedure provided for in Article 301, take the necessary urgent measures on the movement of capital and on payments as regards the third countries concerned'. For its part, Article 301 EC provides that '[w]here it is provided, in a common position or in a joint action adopted according to the provisions of the Treaty

[EU, in the version prior to the Treaty of Lisbon] relating to the [CFSP], 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 shall take the necessary urgent measures'.

52 According to the case-law of the Court of Justice, having regard to the wording of Articles 60 EC and 301 EC, in particular 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, where that concept may include the rulers of such countries 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, and Case C-376/10 P *Tay Za* v *Council* [2012] ECR, paragraph 53).

53 It is also necessary to recall recitals 4 and 5 in the preamble of Regulation No 314/2004, which explain the reasons for the adoption of, inter alia, Article 6 of that regulation, the content of which is set out in paragraph 5 above. Those recitals read as follows:

'(4) The restrictive measures provided for by Common Position 2004/161/CFSP include … the freezing of funds, financial assets and economic resources of members of the Government of Zimbabwe and of any natural or legal persons, entities or bodies associated with them.

(5) Those measures fall within the scope of the [EC] Treaty and, therefore, in order to avoid any distortion of competition, Community legislation is necessary to implement them …'.

54 As regards Regulation No 412/2007, recital (2) in the preamble merely states that '… Decision 2007/235/CFSP … amends the Annex to Common Position 2004/161/CFSP' and that 'Annex III to Regulation … No 314/2004 should, therefore, be amended accordingly'. Regulation No 412/2007 contains only two articles, Article 1 thereof merely effecting the amendment, as set out in its Annex, to Annex III to Regulation No 314/2004 and Article 2 of Regulation No 412/2007 stating the date when it enters into force.

55 Account must also be taken of the provisions of Common Position 2004/161 and Decision 2007/235, summarised respectively in paragraph 2 and paragraph 8 above, which are part of the background to the adoption of Regulations No 314/2004 and No 412/2007 and were published in the *Official Journal*.

56 In that regard, it is necessary also to recall the wording of recitals 2, 6 and 7 in the preamble of Common Position 2004/161, which read as follows:

'(2) Pursuant to Common Position 2002/145/CFSP the Council also imposed a travel ban and a freezing of funds on the Government of Zimbabwe and persons who bear a wide responsibility for serious infringements of human rights and of the freedom of opinion, of association and of peaceful assembly.

…

(6) In view of the continued deterioration in the human rights situation in Zimbabwe, the restrictive measures adopted by the European Union should be renewed …

(7) The objective of these restrictive measures is to encourage the persons targeted to reject policies that lead to the suppression of human rights, of the freedom of expression and of good governance.'

57 It is very clear from reading together the abovementioned recitals and provisions that, in adopting Article 6 of Regulation No 314/2004, the Council intended to freeze the assets of the 'members of the Government of Zimbabwe' whose names were listed in Annex III to that regulation, having regard solely to their status as members of the Government of that State. One indication of that is the reference, in recital 2 and Article 5(1) of Common Position 2004/161, to two distinct categories of persons who are to subject to freezing of assets, namely, on the one hand, the members of the Government of Zimbabwe and, on the other, 'persons who bear a wide responsibility for serious infringements of human rights and of the freedom of opinion, of association and of peaceful assembly'.

58 The alteration of the entry relating to the first applicant in the Annex to Common Position 2004/161 and in Annex III to Regulation No 314/2004, made by Decision 2007/455 and Regulation No 777/2007 respectively (see paragraphs 10 and 12 above), cannot lead to any other conclusion. The expression 'as such' in the clause added to that entry indicates that it is, as regards the first applicant, his mere status as a member of a government involved in activities which undermine democracy, respect for human rights and the rule of law which justified his being subjected in accordance with that Common Position to the measures concerned. In other words, the addition is plainly a mere clarification and not an alteration of that justification.

59 Nor is any other conclusion warranted by the arguments to the contrary put forward by the applicants.

60 First, the applicants refer to recital 2 in the preamble of Regulation No 314/2004, which reads as follows:

'The Council continues to consider that the Government of Zimbabwe is still engaging in serious infringements of human rights. Therefore, for as long as the infringements occur, the Council deems it necessary to maintain restrictive measures against the Government of Zimbabwe and those who bear prime responsibility for such infringements.'

61 According to the applicants, that reference is consistent with the context of that regulation, having regard also to the reference, in recital 3 in the preamble of Common Position 2004/161, to another Common Position adopted earlier which was amended by extending '[the] restrictive measures [adopted by Common Position 2002/145] to other persons who bear a wide responsibility [for the] violations' mentioned in recital 2 of Common Position 2004/161.

62 The argument which the applicants endeavour to develop from the abovementioned recitals cannot be accepted. The reference, in recital 2 in the preamble of Regulation No 314/2004, to the fact that, according to the Council, the Government of Zimbabwe is engaging in serious violations of human rights, does not mean that the Council is accusing each member of that government individually of specific violations of human rights, for which that member is personally responsible. Such a reference is entirely compatible with a decision to impose on the members of the government concerned as a body a freezing of their assets, on the sole ground of their status as government members, responsible, as such, for violations of human rights.

63 That reading of the recital concerned is confirmed by its second sentence which makes a clear distinction between 'the Government of Zimbabwe' and 'those who bear prime responsibility for such violations', which, in other words, is effectively the same distinction as referred to in paragraph 57 above.

64 Further, recital 3 in the preamble of Common Position 2004/161, also relied on by the applicants, is of no relevance, since it is no more than a reminder of the content of another Common Position which amended Common Position 2002/145. It must be recalled, in that regard, that the period of validity of Common Position 2002/145 expired on 20 February 2004 and that it was replaced by Common Position 2004/161.

65 Secondly, the applicants refer to Article 4(1) of Common Position 2004/161 (see paragraph 2 above). They argue that the first applicant's mere status as a Deputy Minister does not demonstrate his involvement in activities which seriously undermine democracy, respect for human rights and the rule of law in Zimbabwe.

66 That argument must also be rejected. Article 4(1) of Common Position 2004/161 concerns the prohibition, on the natural persons listed in the Annex to that Common Position, of entry into the territories of the Member States or transit through them. As stated in paragraph 44 above, that is a measure which it is the task of the Member States themselves to adopt. There is no provision to that effect in Regulation No 314/2004. It follows that, even were it accepted that the prohibition referred to in Article 4 of that Common Position was not imposed on the persons concerned, including the first applicant, solely because of their status as members of the Government of Zimbabwe, that circumstance by itself has no bearing on the reasons for the imposition, on those same persons, of a freezing of their assets. Article 5(1) of Common Position 2004/161, which concerns freezing of assets and the wording of which is set out in paragraph 2 above, contains no reference to the activities of the members of the Government of Zimbabwe comparable to that found in Article 4(1) of that Common Position.

67 Thirdly, the applicants refer, first, to the fact that, at the time of the removal of his name from Annex III to Regulation No 314/2004 (see paragraph 12 above), the first applicant was still a Deputy Minister and that he continued to hold that office even after that removal and, secondly, to the fact that certain other Ministers or Deputy Ministers, members of the Government of Zimbabwe appointed in February 2009, were not subject to a comparable freezing of their assets. It follows, according to the applicants, that the post of Deputy Minister held by the first applicant was not, in itself, sufficient justification for his being listed as one of the persons subject to the freezing of assets imposed by Regulation No 314/2004.

68 In that regard, it must be observed that it is common ground that, subsequent to the listing of the first applicant in the list of persons subject to the freezing of assets imposed by Regulation No 314/2004, the political situation in Zimbabwe was significantly altered by the signature, on 15 September 2008, of the Global Political Agreement ('GPA') between, on the one hand, the Government party, Zanu PF, and, on the other, the two formations of the opposition party, MDC. The GPA provided for, inter alia, the appointment of Mr Morgan Tsvangirai, leader of the MDC, as Prime Minister and the formation of a new Government, composed of two Deputy Prime Ministers, proposed by the two formations of the MDC, 31 Ministers, 15 proposed by Zanu PF and 16 proposed by the two formations of the MDC, and 15 Deputy Ministers, eight proposed by Zanu PF and seven proposed by the two formations of the MDC. The formation of that new Government finally took place in February 2009.

69 Having regard to that important development, it cannot be argued, as the applicants do, that the non-inclusion of the names of Ministers appointed as members of the Government of Zimbabwe following the GPA in the list of persons subject to the freezing of assets laid down by Regulation No 314/2004 supports the claim that, in 2007, when such a freezing measure was imposed on the first applicant, the Council did not intend to freeze his assets solely on the ground that he was a member of the Government of Zimbabwe. That consideration is without prejudice to the examination, below, of the lawfulness both of the decision to freeze the first applicant's assets and the decision not to relieve the applicant of that measure in February 2009. Those questions are separate from the question of identification of the reasons which justified the listing of the first applicant in the list of persons whose assets were frozen pursuant to Regulation No 314/2004.

70 In the light of all the foregoing, it must be concluded that a freezing of assets was imposed on the first applicant on the sole ground of his status as a Deputy Minister. That conclusion makes it possible to reject at the outset, as being unfounded, the applicants' complaint of an infringement of the obligation to state reasons. Since, as is apparent from the foregoing paragraphs, Regulation No 314/2004 clearly states that the Council intended to freeze the assets of the members of the Government of Zimbabwe

and since Annex III to that Regulation, as amended by Regulation No 412/2007, mentions the first applicant's status as a Deputy Minister, it must be concluded that the regulation contains a sufficient statement of the reasons justifying the freezing of the first applicant's assets.

71 Whether the Council was entitled to hold that that status of the first applicant was sufficient, in itself, to justify the freezing of his assets is not a question of compliance with the obligation to state reasons, but a question of whether that statement of reasons was well founded, which goes to the substantive legality of the contested measure (Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 67, and Case C-17/99 *France* v *Commission* [2001] ECR I-2481, paragraph 35). It is the latter question which must be examined now, which requires an examination of the applicants' complaints concerning manifest error of assessment and misuse of powers.

The complaints concerning manifest error of assessment and misuse of powers

72 The Court has previously held, in its judgment in Case T-390/08 *Bank Melli Iran* v *Council* [2009] ECR II-3967, paragraph 36, that, so far as the general rules defining the procedures for giving effect to restrictive measures are concerned, the Council has broad discretion as to what to take into consideration for the purpose of adopting economic and financial sanctions on the basis of Articles 60 EC and 301 EC, in accordance with a common position adopted on the basis of the common foreign and security policy (CFSP). Since the courts of the European Union 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 Court must, therefore, 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. That limited review applies, especially, to the assessment of the considerations of appropriateness on which such decisions are based.

73 It is however necessary in that context also to take into consideration the case-law relating to the concept of a third country, for the purposes of Articles 60 EC and 301 EC, quoted in paragraph 52 above. It follows that, when exercising its broad discretion in the matter, the Council, where it intends to adopt, on the basis of those articles, restrictive measures against the leaders of such a country and individuals and entities associated with those leaders or controlled directly or indirectly by them, may, it is true, define more or less broadly the leaders and their associates who are to be subject to the measures to be adopted, but the Council may not extend the scope of those measures to persons or entities who do not fall into one or the other of the abovementioned categories (see, to that effect, *Tay Za* v *Council*, paragraph 52 above, paragraph 63).

74 Further, in a situation where the Council defines abstractly the criteria which may justify the listing of a person, or entity, in the list of persons or entities subject to restrictive measures adopted on the basis of Articles 60 EC and 301 EC, it is the task of the Court to determine, on the basis of the pleas in law raised by the person or entity concerned or, where necessary, raised of its own motion, whether the case in point corresponds to the abstract criteria defined by the Council. That review extends to the assessment of the facts and circumstances relied on as justifying the listing of the person or entity concerned on the list of persons and entities subject to restrictive measures, and to verifying the evidence and information on which that assessment is based. The Court must likewise ensure that the rights of the defence are observed and that the requirement of a statement of reasons is satisfied and also, where applicable, that the overriding considerations relied on exceptionally by the Council in order to justify disregarding those rights are well founded (see, to that effect, *Bank Melli Iran* v *Council*, paragraph 72 above, paragraph 37).

75 In this case, it is common ground that the first applicant was, at the time of his listing in Annex III to Regulation No 314/2004, a Deputy Minister in Zimbabwe and that he retained that status throughout the period during which he was listed in that annex.

76 The applicants claim that it is necessary to determine 'to what extent a Deputy Minister enjoys executive power' and put forward a number of factors to demonstrate that the first applicant's authority was 'strictly limited to the matters directly related to his portfolio' and that there was no 'link between [the first applicant's] ministerial portfolios and any restriction on human rights, rule of law or democracy'.

77 However, the Court considers that a Deputy Minister is one of the 'leaders' of a third country, in this case Zimbabwe, within the meaning of the case-law cited in paragraph 52 above and one of the 'members of the Government' of that country, within the meaning of Common Position 2004/161 and Regulation No 314/2004. Consequently, it cannot be said that the EU institutions committed an error of fact, in so far as they applied to the first applicant the restrictive measure of the freezing of his assets following his appointment as a Deputy Minister.

78 In those circumstances, the applicants' arguments as outlined in paragraph 76 above can be examined only from the perspective that the Council may have committed a manifest error of assessment in that it imposed, when adopting Regulation No 314/2004, a restrictive measure, consisting of freezing of assets, on all the members of the Government of Zimbabwe, without drawing any distinction between those whose activities or powers revealed a link with the serious human rights violations in that country, as identified by the Council (see recital 1 in the preamble of Regulation No 314/2004) and those in respect of whom a link of that kind could not be established.

79 In that regard, it must be observed that the applicants are wrong to claim that this case 'is not concerned with alleged illegality in the formulation of the rules' governing the listing of a person in the list of persons subject to freezing of their assets, but with the application of those rules. As was stated in paragraph 77 above, having regard to the criterion selected in this case, namely the mere status of the person concerned as a member of the Government of Zimbabwe, the relevant rules were correctly applied in this case.

80 As regards whether the Council committed a manifest error of assessment in the formulation of those rules, the Court considers, having regard to, first, the objective of the freezing of assets at issue, which is 'to encourage the persons targeted to reject policies that lead to the suppression of human rights, of the freedom of expression and of good governance' (recital 7 in the preamble of Common Position 2004/161; see paragraph 56 above) and, secondly, the broad discretion enjoyed by the Council in the matter (see paragraph 72 above), that it cannot be said that the Council committed such an error.

81 The applicants claim that engagement by an individual in the democratic mechanisms of his/her country, where democracy is functioning imperfectly and where there are serious violations of human rights and the rule of law, cannot justify the adoption of restrictive measures against that individual. A position to the contrary would, according to the applicants, do a disservice to democracy.

82 That argument cannot succeed. As is apparent from the recitals and provisions mentioned in paragraphs 1 to 8 above, at the time when the asset freezing at issue was established by Regulation No 314/2004, and at the time, in 2007, when the first applicant was listed in the list of persons subject to that measure, the Council considered that the Government of Zimbabwe was responsible for serious human rights violations in that country. Given that position, which the applicants do not seek to call into question, the Council was entitled, without committing a manifest error of assessment, to consider that a person interested in participation in 'the democratic mechanisms of [his country]' ought not to become a member of such a government until that government, or another in its place, rejected the policies that led to the suppression of human rights and freedom of expression and prevented good governance.

83 The applicants also claim that the concept of 'targeted sanctions', which encompasses the freezing of assets at issue, necessarily implies that the individual activities of the persons concerned should be taken into account. According to the applicants, the objective of such sanctions is to single out those responsible for the human rights violations in question.

84 The applicants refer, also, to Council Document 15114/05 of 2 December 2005, titled 'Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security policy', a copy of which is annexed to their application.

85 They refer, in particular, to paragraph 14 of that document, which is headed 'Targeted measures' and reads as follows:

'The measures taken should target those identified as responsible for the policies or actions that have prompted the EU decision to impose restrictive measures. Such targeted measures are more effective than indiscriminate measures and minimise adverse consequences for those not responsible for such policies and actions.'

86 It must be recalled, in that regard, that Articles 60 EC and 301 EC concern, from their very wording, third countries. In that context, there are 'targeted sanctions' where the restrictive measures adopted on the basis of those two articles do not affect the whole of the country concerned and the persons who reside there or have the nationality of that country, but solely the persons identified as being responsible for the policies or actions which have led to the imposition of those measures. That is precisely what is stated, it may be said, in paragraph 14 of Council Document 15114/05, relied on by the applicants.

87 The essential question which arises is only how those who are responsible and who may be subject to targeted sanction are identified. It is clear from the case-law of the Court of Justice that the leaders of a third country and the persons who are associated with them may be subjected to such sanctions (see, to that effect, *Tay Za* v *Council*, paragraph 52 above, paragraph 68). To put it another way, according to that case-law, those leaders and the persons associated with them are deemed to be responsible for the policies or actions which have led to the imposition of the restrictive measures concerned, irrespective of whether they are personally involved in the implementation of those policies and actions. That conclusion is all the more compelling in relation to the members of the government of a third country who, regardless of their individual powers within that government, must assume collective responsibility for the policy pursued by that government and all the actions undertaken by it.

88 It follows that the applicants' arguments in relation to the restrictive measures at issue, on the basis that they are targeted sanctions, and in relation to Council Document 15114/05, must be rejected. Consequently, there is no need to examine the implications, for this case, of the fact that Council Document 15114/05 post-dates the adoption of Regulation No 314/2004.

89 Further, in the light of all the foregoing, the applicants' arguments in respect of the first applicant's personal activities must be rejected in their entirety. At most, the purpose of those arguments, even were they accepted as well founded, is to demonstrate that the first applicant was not personally involved in the policies and actions of the Government of Zimbabwe targeted by the measures at issue and that he exercised, both in his capacity as a private individual and as a Minister, a positive influence on his country. Such circumstances are not sufficient ground for finding that the Council committed a manifest error of assessment when it decided that all the members of the Government of Zimbabwe should be subject to a freezing of their assets, while making no distinction between those who were personally involved in the human rights violations and those who were not.

90 Equally wanting, in that regard, are the applicants' assertions that the first applicant provided personal support to a number of white farmers threated with eviction from their land.

91 It must be observed, in that regard, that the evidence which the applicants rely on in respect of that matter consists of letters and statements which, in part, pre-date the first applicant's appointment as a Deputy Minister. As regards the material which post-dates that appointment, it is not clear from their content whether reference is made to events before or after that appointment.

92 In any event, even were it accepted, on the basis of the evidence mentioned above, that, subsequent to his appointment as a Deputy Minister, the first applicant continued to provide his support to a number of white farmers threatened with eviction, that fact alone is plainly not sufficient ground to conclude that he pursued, within the Government of Zimbabwe, a separate policy, clearly opposed to the human rights violations for which that Government was responsible, and seeking to end those violations. Only if the latter were to be the case could there be any question of the Council having committed a manifest error of assessment in so far as it failed to distinguish between two distinct factions within the same government and indiscriminately imposed an asset freezing measure on the members of that government as a body.

93 In the light of the foregoing, the Court is in a position to reject as being unfounded both the applicants' complaint claiming a manifest error of assessment and that claiming misuse of powers, in so far as they concern the first applicant's listing in the list of persons subject to the freezing of assets imposed by Regulation No 314/2004.

94 In particular, as regards the complaint of misuse of powers, it must be noted that a measure is vitiated by misuse of powers only if it appears on the basis of objective, relevant and consistent evidence to have been taken with the exclusive or at least the main purpose of achieving an end other than that stated or of evading a procedure specifically prescribed for dealing with the circumstances of the case (see *Bank Melli Iran* v *Council*, paragraph 72 above, paragraph 50 and case-law cited).

95 However, the applicants have not put forward any arguments or adduced any evidence in order to demonstrate that, in imposing on the members of the Government of Zimbabwe a freezing of their assets and in listing the first applicant in the list of persons subject to that freezing, the Council and the Commission pursued an objective other than that of encouraging the persons concerned to reject policies that led to the suppression in that country of human rights and freedom of expression and prevented good governance. Accordingly, there cannot, in this case, be any question of a misuse of powers (see, to that effect, *Bank Melli Iran* v *Council*, paragraph 72 above, paragraph 50).

96 In fact, the arguments put forward by the applicants in setting out their complaint of a misuse of power are aimed, in essence, at demonstrating a manifest error of assessment. It is from that perspective that those arguments were examined above and rejected.

97 Next, it is necessary to examine the action in so far as it concerns, in particular, the issue of maintaining the first applicant's listing in the list of persons subject to a freezing of their assets. Specifically, it is necessary to determine whether the Council and the Commission did not commit a manifest error of assessment by not delisting the first applicant from that list before 23 February 2011. The Court will also examine, in that context, the applicants' complaint of a breach of the first applicant's rights of defence, as it relates to that particular issue.

The maintaining of the first applicant's name in the list of names of persons whose assets had been frozen

98 The applicants state that Common Position 2004/161, which Regulation No 314/2004 was designed to implement, applied for an initial period of 12 months, that it was under 'constant review' and that the period of its validity was thereafter extended on several occasions (see paragraphs 3 and 4 above). According to the applicants, although Regulation No 314/2004 contained no expiry date, that was

merely a matter of 'administrative expediency', as is clear from paragraph 31 of Council Document 15114/05, and the need for constant and regular review also applied as regards whether it was appropriate to maintain the restrictive measures provided for by that regulation.

99 The applicants add that, since the assets of the persons concerned were already frozen, there was no need for any element of surprise and the persons concerned, such as in this case the first applicant, could have been informed of the reasons and relevant evidence which justified the renewal of the restrictive measures imposed on them and could have been provided with an opportunity to request the review of their situation. Yet those persons, of whom the first applicant was one, were not provided with such procedural safeguards, and there is not even any evidence that a review of their situation did in fact take place. The first applicant's rights of defence were therefore wholly disregarded in the period during which he was subject to the restrictive measures at issue, which is manifestly unlawful.

100 In this case, there is no doubt that there was an obligation on the EU institutions to review regularly the situation which justified the adoption of the restrictive measures at issue and whether it was appropriate to extend them, in relation to, among others, the first applicant. That is even more the case when those measures entailed a restriction, on the exercise by the persons concerned of their right to property, that had, moreover, to be classified as considerable, having regard to the general application of the asset freezing measure at issue (see, to that effect, *Kadi and Al Barakaat International Foundation* v *Council and Commission*, paragraph 52 above, paragraph 358).

101 That is why the period of validity of Common Position 2004/161 was initially limited to one year and why, before it could be extended, there was required a new Council decision, necessarily adopted after a review of the situation. Further, as the applicants correctly state, the fact that the period of validity of Regulation No 314/2004 was not limited in time was due to grounds of mere administrative expediency.

102 Paragraph 31 of Council Document 15114/05 states the following in that regard:

'In cases where the CFSP legal instrument contains an expiration date, the need for an expiration date in Regulations implementing the CFSP legal instrument is nonetheless not self-evident;

— since the Regulations implement the CFSP act, they have to be repealed if the CFSP legal instrument ceases to be applicable … In such a situation, the Regulations can be repealed with retroactive effect, but it is desirable that this period is kept as short as possible.

— If a subsequent CFSP legal instrument renews the measures, amending the expiration date of the Regulation or adopting a new one containing the same legal provisions constitutes a mere administrative burden which should be avoided. Especially where last minute decisions on renewal are made, there may be a period during which the measures are not applicable pending amendment or adoption of a Regulation …

It is therefore preferable to have the Regulation remain in force, until it is repealed.'

103 It is however self-evident that, although the period of validity of Regulation No 314/2004 was not limited in time, if the period of validity of Common Position 2004/161, which that regulation was supposed to implement, was not extended, either in its entirety or only as regards some of the persons affected by it, the Council and the Commission would also revoke, with regard to the persons concerned, Regulation No 314/2004. That is indeed acknowledged, at least implicitly, in paragraph 31 of Council Document 15114/05, quoted above.

104 Further, in its statement of defence, the Council does not dispute that there was an obligation to review the restrictive measures at issue regularly, but it contends that they were in fact subject to such a review, although no grounds emerged from it which could have justified their repeal as regards the first applicant before 15 February 2011. The Commission, for its part, states that its role is limited to the implementation of acts adopted by the Council.

105 Since the applicants plead an infringement of the first applicant's rights of defence in the context of regular review of the measures at issue, it must be recalled that, according to settled case-law, observance of the rights of the defence is, in all procedures initiated against a person which are liable to culminate in a measure adversely affecting that person, a fundamental principle of EU law which must be guaranteed even in the absence of any rules governing the procedure in question (see Case 234/84 *Belgium* v *Commission* [1986] ECR 2263, paragraph 27, and Case C-344/05 P *Commission* v *De Bry* [2006] ECR I-10915, paragraph 37). That principle requires that the person concerned must have been afforded the opportunity effectively to make known his views on any information against him which might have been taken into account in the measure to be adopted (*Commission* v *De Bry*, paragraph 38).

106 However, in the context of an action for annulment, it is also settled case-law that, before such an infringement of the rights of the defence can result in the annulment of the act at issue, it must be demonstrated that, had it not been for that irregularity, the outcome of the procedure might have been different (Case C-142/87 *Belgium* v *Commission* [1990] ECR I-959, paragraph 48, and order of 18 October 2001 in Case C-241/00 P *Kish Glass* v *Commission* [2001] ECR I-7759, paragraph 36).

107 In a case such as this, where the applicant seeks, by means of an action for damages, compensation for the damage which he claims to have suffered because of the adoption of an act or the extension of its validity, in breach of his rights of defence, and where that party has not brought an action for annulment of the act concerned, it logically follows, both from the case-law cited in paragraph 106 above and from considerations relating to the requirement that there must be a causal link between the alleged illegality and the claimed damage (see paragraph 24 above), that the claim of an alleged breach of his rights of defence is not by itself sufficient to establish that his action for damages is well founded. It is also necessary to explain what arguments and evidence the person concerned would have relied on if his rights of defence had been respected and to demonstrate, where appropriate, that such arguments and evidence might have led in his case to a different result, in other words, in this case and as regards the first applicant, to the restrictive measure at issue, the freezing of his assets, not being renewed against him.

108 It is clear that, in this case, the applicants have not met that requirement. They do not explain, in their written pleadings, what arguments and evidence the first applicant would have relied on if he had been heard before each annual renewal of the validity of Common Position 2004/161 and how such arguments and evidence would have led in his case to a different result, namely the removal, on a date earlier than 15 February 2011, of his name from the list of persons subject to a freezing of their assets.

109 Consequently, without it being necessary to determine whether, as the applicants claim, the Council was under an obligation to hear the first applicant before each annual renewal of the validity of Common Position 2004/161 in so far as it concerned him, the complaint relating to a breach of the first applicant's rights of defence when the restrictive measures at issue were renewed must be rejected as being unfounded.

110 It remains to consider whether the EU institutions committed a manifest error of assessment in so far as they did not, earlier than 15 February 2011, remove the name of the first applicant from the list of persons subject to a freezing of their assets in accordance with Regulation No 314/2004, implementing Common Position 2004/161.

111 It must be stated that the only factor mentioned in the applicants' arguments which might be of any relevance in that regard is the fact that none of the new members of the Government of Zimbabwe, appointed in February 2009, were subjected to a freezing of their assets comparable to that to which the first applicant was subject until 15 February 2011. It is accordingly necessary to determine whether the EU institutions committed a manifest error of assessment since they failed to decide to remove the name of the first applicant from the list of persons subject to a freezing of their assets, when they decided not to include in that list the names of the members of the Government of Zimbabwe who took office in February 2009. More generally, it is necessary to determine whether maintaining the name of the first applicant on that list during the two years which followed that development is the result of a manifest error of assessment.

112 In this case, it must be acknowledged that, in February 2009, the Council's choice not to extend the restrictive measures concerned by means of Common Position 2004/161 to the new members of the Government of Zimbabwe, who took office following the GPA, represents a significant change in its position. Until that development, the Council's position seems to have been that any member of the Government of Zimbabwe had to be subject to restrictive measures, including in particular the freezing of their assets, on the sole ground that he was a member of a government responsible for serious human rights violations (see also paragraph 57 above). Obviously, that position no longer applied after February 2009, since all the new members of the Government of Zimbabwe, including those proposed by the Zanu-PF party, which held power alone before the GPA, were not subjected to a freezing of their assets.

113 The Council states on this point that, following the conclusion of the GPA and the appointment of the new members of the Government in February 2009, 'the decision was taken not to delist [the first applicant] or any other listed member of government until more certainty was obtained about the attitude of the incumbent members of government towards the coalition' which was the result of the GPA.

114 For their part, the applicants criticise, first, the fact that the Council did not disclose to them, notwithstanding many requests on their part, what they consider to be the 'decision' which the Council mentions in the argument outlined above. They rely, further, on extracts from the European External Action Service document CFSP/00028/11 of 18 January 2011, which they obtained following a request for access to documents. That document names the first applicant among those 'senior officials and politicians who are moderate and have been assessed as not being connected directly with human rights abuses', and proposes that his name be removed from the list of persons subject to restrictive measures. According to the applicants, it is as a result of this assessment that the first applicant's name was removed from the list concerned.

115 Further, the applicants claim that when the first applicant 'merely asserted' in a letter from his lawyers to the Council that he was a 'bona fide businessman and an avid campaigner for human rights', his name was promptly removed from the list of persons subject to restrictive measures.

116 It must first be stated that the applicants misinterpret the Council's argument, when they complain that there was no disclosure to them of the 'decision' not to remove the first applicant's name from the list of persons subject to a freezing of their assets. It is obvious that, when the Council refers to such a 'decision', the Council means the choice which it made, when, in 2009 and 2010, the period of validity of Common Position 2004/161 was renewed, to maintain in force the freezing of assets of members of the Government of Zimbabwe who were appointed prior to the GPA and prior to the change in the composition of that government which took place in February 2009. The reasons for that choice are stated in Common Position 2009/68 and Decision 2010/92, which extended until 20 February 2010 and 20 February 2011 respectively the period of validity of Common Position 2004/161.

117 Thus, recital 3 in the preamble of Common Position 2009/68, which precedes the change, in February 2009, of the composition of the Government of Zimbabwe, reads as follows:

'In view of the situation in Zimbabwe, in particular given the violence organised and committed by the Zimbabwean authorities and the continued blocking of the implementation of [the GPA], Common Position 2004/161/CFSP should be extended for a further period of 12 months'.

118 Common Position 2009/68 also replaced the Annex to Common Position 2004/161 with a new annex, in order to add the names of certain persons. The entry relating to the first applicant was not altered.

119 Recitals 3 and 4 in the preamble of Decision 2010/92 read as follows:

'(3) In view of the situation in Zimbabwe, in particular the absence of progress in the implementation of [the GPA], the restrictive measures provided for in Common Position 2004/161/CFSP should be extended for a further period of 12 months.

(4) However, there are no longer grounds for keeping certain persons and entities on the list of persons, entities and bodies to which Common Position 2004/161/CFSP applies. The list set out in the Annex to Common Position 2004/161/CFSP should be amended accordingly.'

120 It is also apparent from the Annex to Decision 2010/92 that the names of six natural persons were removed from the list of persons subject to restrictive measures annexed to Common Position 2004/161. Only one of those six persons, namely Mr Joseph Msika, was a member of the Government of Zimbabwe (the Vice-President). However, the removal of his name from that list was due, quite obviously, to the fact that, as the parties confirmed in response to a question from the Court at the hearing, he died on 4 August 2009.

121 It is accordingly apparent that the Council considered, both when adopting Common Position 2009/68 and when adopting Decision 2010/92, that there had not been sufficient progress in implementing the GPA and that, in order to maintain pressure on the political forces in Zimbabwe which alone held power before the conclusion of the GPA, it was necessary to maintain in force the restrictive measures imposed on the incumbent members of the Government of that country at the time when the GPA was concluded.

122 It is clear that the applicants have provided no specific evidence capable of demonstrating that that assessment was vitiated by a manifest error. On the contrary, the fact that the appointment of the Ministers proposed by the MDC opposition party, as provided for by the GPA concluded in September 2008, took place only several months later, in February 2009, tends rather to support the Council's assessment.

123 The assessment in the European External Action Service document CFSP/00028/11 (see paragraph 114 above), according to which the first applicant was one of the 'moderate' politicians and that he had not been directly' connected with human rights abuses, is not sufficient ground to establish such an error. Admittedly, in the light of that factor, it can be concluded that on 15 February 2011, at the time of the adoption of Decision 2011/101 which brought about the cessation of the restrictive measures imposed on the first applicant, the Council considered that recent developments in the situation in Zimbabwe had been sufficiently positive to justify the revocation of restrictive measures imposed on a number of those identified as 'moderate', including the first applicant. However, in the absence of any evidence to the contrary being produced by the applicants, it cannot be held that the Council committed an error of assessment in that it did not decide on such a revocation at an earlier date.

124 In the light of the foregoing, the applicants' complaint of a manifest error of assessment can again not be accepted in relation to the Council's omission to revoke the asset freezing measure imposed on the first applicant on a date earlier than 15 February 2011. That complaint must therefore be rejected in its entirety.

125 Since all the grounds of complaint, outlined in paragraph 49 above, put forward by the applicants to demonstrate the unlawfulness of the conduct at issue of the Council and the Commission, must be rejected, it follows that the action as a whole must be dismissed, in accordance with the case-law cited in paragraph 24 above.

Costs

126 Under Article 87(2) of the Rules of Procedure, 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 applicants have been unsuccessful, they must be ordered to pay the costs, as applied for by the Council and the Commission.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Mr Aguy Clement Georgias, Trinity Engineering (Private) Ltd and Georgiadis Trucking (Private) Ltd to bear their own costs and to pay those incurred by the Council of the European Union and the European Commission.**

Gratsias Kancheva Wetter

Delivered in open court in Luxembourg on 18 September 2014.

[Signatures]