

**Appeal brought on 3 July 2015 by Johannes Tomana and others against the judgment of the General Court (Eighth Chamber) delivered on 22 April 2015 in Case T-190/12: Johannes Tomana and others v Council of the European Union, European Commission**

**(Case C-330/15 P)**

(2015/C 302/25)

*Language of the case: English*

**Parties**

*Appellants:* Johannes Tomana and others (represented by: M. O'Kane, Solicitor, M. Lester, Z. Al-Rikabi, Barristers)

*Other parties to the proceedings:* Council of the European Union, European Commission, United Kingdom of Great Britain and Northern Ireland

**Form of order sought**

The Appellants ask the Court for an order setting aside the judgment of the General Court, an order annulling the Contested Measures in so far as they apply to the Appellants, and an order that the Respondents should pay the Appellants' costs at first instance and of the appeal.

**Pleas in law and main arguments**

First plea: The Court erred in holding that the Contested Regulation had a valid legal basis. Its only stated legal basis empowered the Commission to amend Regulation 314/2004<sup>(1)</sup> on the basis of a Common Position that had since been repealed, and which could not be interpreted as referring instead to a subsequent decision.

Second plea: The Court erred in considering that people could be listed in the Contested Measures on the basis that they are 'members of the Government' or their 'associates' solely by virtue of their occupations or former occupations. Moreover, the Court erred in considering that people should be deemed to be 'associates' of members of the Government on the basis that allegations that they had engaged in conduct said to undermine the rule of law, democracy or human rights in Zimbabwe in the past showed that they had 'colluded' with the Government. The Court should not have permitted the Respondents to have relied on presumptions that were not provided for in the Contested Measures and were inconsistent with and disproportionate to their objectives, but should have required them to have discharged their burden of justifying re-listings with a sufficiently solid factual basis.

Third plea: The Court erred in concluding that the statement of reasons was sufficient where it simply listed the occupations said to have been held by members of the Government and their associates, or where it set out vague and unparticularised allegations of past misconduct. The Court also erred in having permitted the reasons to have been supplemented with additional ex post facto reasons stated nowhere in the Contested Measures. When a number of the Appellants submitted observations refuting the allegations against them, the Court incorrectly and unfairly held their evidence to be inadmissible and did not consider it.

Fourth plea: The Court departed from the settled case law on rights of defence by holding that the Respondents were not required to communicate evidence or the basis for maintaining a listing, or give an opportunity for the Appellants to make observations, prior to their decisions to re-list each of the Appellants.

Fifth plea: The Court failed to assess whether listing each of the Appellants struck a proportionate balance between the serious infringement of their fundamental rights and the objectives of the Contested Measures.

<sup>(1)</sup> Council Regulation (EC) No 314/2004 of 19 February 2004 concerning certain restrictive measures in respect of Zimbabwe. OJ L 55, p. 1