



Reports of Cases

ORDER OF THE COURT (Eighth Chamber)

6 July 2017*

(Appeal — Article 181 of the Rules of Procedure of the Court — Restrictive measures taken having regard to the situation in Ukraine — List of persons, entities and bodies subject to the freezing of funds and economic resources — Inclusion of the applicant's name — Modification of the form of order sought — Statement submitted in the name and on behalf of the deceased applicant)

In Case C-505/16 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 23 September 2016,

Olga Stanislavivna Yanukovych, as heir of Viktor Viktorovych Yanukovych, residing in Donetsk (Ukraine), represented by T. Beazley QC,

appellant,

the other parties to the proceedings being:

Council of the European Union, represented by P. Mahnič Bruni and J.-P. Hix, acting as Agents,

defendant at first instance,

European Commission, initially represented by S. Bartelt and J. Norris-Usher, and then by E. Paasivirta and J. Norris-Usher, acting as Agents,

intervener at first instance,

THE COURT (Eighth Chamber),

composed of M. Vilaras, President of the Chamber (Rapporteur), J. Malenovský and D. Šváby, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having decided, after hearing the Advocate General, to give a decision by reasoned order, in accordance with Article 181 of the Rules of Procedure of the Court of Justice,

makes the following

* Language of the case: English.

Order

- 1 By her appeal, Mrs Olga Stanislavivna Yanukovych seeks to have the order of the General Court of the European Union of 12 July 2016, *Yanukovych v Council* (T-347/14, EU:T:2016:433) ('the order under appeal') set aside, in that, by that order, the General Court dismissed her claim for annulment of Council Decision (CFSP) 2015/143 of 29 January 2015 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2015 L 24, p. 16), Council Decision (CFSP) 2015/364 of 5 March 2015 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2015 L 62, p. 25), Council Regulation (EU) 2015/138 of 29 January 2015 amending Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2015 L 24, p. 1), and Council Implementing Regulation (EU) 2015/357 of 5 March 2015 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2015 L 62, p. 1), in so far as they concern Mr Viktor Viktorovych Yanukovych ('the measures at issue').

Legal context

- 2 Article 1(1) and (2) of Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 26) provides:

'1. All funds and economic resources belonging to, owned, held or controlled by persons having been identified as responsible for the misappropriation of Ukrainian State funds and persons responsible for human rights violations in Ukraine, and natural or legal persons, entities or bodies associated with them, as listed in the Annex, 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 the Annex.'
- 3 Viktor Viktorovych Yanukovych's name appears in point 10 of the Annex to Decision 2014/119, which is headed 'List of persons, entities and bodies referred to in Article 1', and he is identified as the 'son of former President [Yanukovych], Member of the Verkhovna Rada of Ukraine [(Supreme Council)]; the accompanying statement of reasons indicates that he was a person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.
- 4 Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 1) requires the adoption of the restrictive measures at issue and defines the manner in which they are to be carried out in terms that are identical, in essence, to that decision.
- 5 Viktor Viktorovych Yanukovych's name appears in point 10 of Annex I to Regulation No 208/2014, which is headed 'List of natural and legal persons, entities and bodies referred to in Article 2', with the same entries as those in point 10 of the Annex to Decision 2014/119.
- 6 Decision 2014/119 was amended, inter alia, by Decision 2015/143 and Decision 2015/364, and Regulation No 208/2014 was amended, inter alia, by Regulation 2015/138 and Implementing Regulation 2015/357.

7 By those acts, the restrictive measures directed against Mr Yanukovych were thus extended until 6 June 2015, with, however, the following statement of reasons:

‘Person subject to investigations by the Ukrainian authorities for the misappropriation of public funds or assets. Person associated with a designated person (former President of Ukraine, Viktor Fedorovych Yanukovych) subject to criminal proceedings by the Ukrainian authorities for the misappropriation of public funds or assets.’

8 By Council Decision (CFSP) 2015/876 of 5 June 2015 amending Decision 2014/119 (OJ 2015 L 142, p. 30), and Council Implementing Regulation (EU) 2015/869 of 5 June 2015 implementing Regulation No 208/2014 (OJ 2015 L 142, p. 1), Mr Yanukovych’s name was removed from the list of persons made subject to the restrictive measures pursuant to Decision 2014/119 and Regulation No 208/2014.

The proceedings before the General Court and the order under appeal

9 The proceedings before the General Court and the statement of reasons in law of the order under appeal are set out, on the one hand, in paragraphs 17 to 34, and, on the other hand, in paragraphs 38 to 95 of that order. For the purposes of the present proceedings, they can be summarised as follows.

10 By application lodged at the Registry of the General Court on 14 May 2014, Mr Yanukovych brought an action for annulment of Decision 2014/119 and Regulation No 208/2014, in so far as those acts concerned him.

11 On 20 March 2015, Mr Yanukovych died.

12 By separate document lodged at the Registry of the General Court on 8 April 2015, Mr Yanukovych’s representative lodged a statement of modification in Mr Yanukovych’s name in order to take account of the measures at issue.

13 In parallel, Mr Yanukovych’s representative brought an action for annulment of those measures, in Mr Yanukovych’s name, registered at the Registry of the General Court under reference T-172/15 (‘the second action for annulment’).

14 In both the statement of modification and the second action for annulment, Mr Yanukovych’s representative explained that Mr Yanukovych had died shortly before they were lodged. He stated in those documents that the proceedings in Ukraine to appoint his legal successor were ongoing and that it was likely that Mr Yanukovych’s widow would succeed to his rights. He therefore applied to have the case stayed for as long as was necessary for the legal successor to be appointed and to decide on whether to continue the action.

15 By decision of the President of the Ninth Chamber of the General Court of 13 July 2015, adopted under Article 69(d) of the Rules of Procedure of the General Court, the proceedings were stayed until 31 October 2015.

16 By order of 16 July 2015, *Yanukovych v Council* (T-172/15, not published, EU:T:2015:569), the General Court dismissed the second action for annulment as manifestly inadmissible, on the ground that it had been lodged by the representative of Mr Yanukovych after the latter’s death.

17 By letter of 30 October 2015, Mr Yanukovych’s representative filed his death certificate, stating that Mr Yanukovych’s widow and sole heir, Mrs Yanukovych, intended to continue the action, and setting out the reasons for her continued legal interest in bringing the proceedings, despite the removal of Mr Yanukovych’s name from the list of persons made subject to restrictive measures in accordance with Decision 2014/119 and Regulation No 208/2014.

- 18 By letter of 17 March 2016, the Registry of the General Court asked the parties, inter alia, to set out their positions on the possible consequences, for the action for annulment, of the modification of the form of order sought, on the one hand, and the order of 16 July 2015, *Yanukovych v Council* (T-172/15, not published, EU:T:2015:569), on the other hand. The parties replied within the prescribed period.
- 19 In paragraphs 38 to 75 of the order under appeal, the General Court, on the basis of several of its judgments on the same points of law as those raised in the action for annulment, held that the inclusion of Mr Yanukovych's name in the list of persons made subject to restrictive measures in accordance with Decision 2014/119 and Regulation No 208/2014 did not satisfy the criteria laid down in that decision for the designation of the persons covered by those measures. Accordingly, the General Court declared that the action was manifestly well founded to that extent and annulled Decision 2014/119 and Regulation No 208/2014.
- 20 Those paragraphs of the order under appeal are not challenged in this appeal.
- 21 In paragraphs 76 to 95 of the order under appeal, the General Court examined the admissibility of the claim for annulment of the measures at issue set out in the statement of modification lodged on 8 April 2015.
- 22 In paragraph 82 of the order under appeal, the General Court held that the admissibility of the statement must be assessed by reference to the situation prevailing when it was lodged.
- 23 In paragraph 83 of the order, the General Court found as a fact that Mr Yanukovych's representative, in Mr Yanukovych's name, had lodged a statement of modification of the original form of order set out in the application initiating proceedings, and that it was not apparent from the case file that the statement had been presented on behalf of the appellant.
- 24 In paragraph 84 of the order under appeal, the General Court noted that Mr Yanukovych was dead when the statement was lodged and thus concluded that the statement must be dismissed as inadmissible.
- 25 In paragraphs 85 to 92 of the order, the General Court rejected various arguments put forward by the appellant.
- 26 The General Court therefore concluded that it was necessary to dismiss the modification of the application, and thus the action for annulment, as manifestly inadmissible in so far as they were directed against the measures at issue.

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

- 27 The appellant claims that the Court should:
- set aside paragraphs 2 and 4 of the operative part of the order under appeal;
 - set aside paragraph 3 of the operative part of the order under appeal to the extent that the Court considers that it requires the Council of the European Union to pay only the costs incurred by the appellant but not the costs incurred by the deceased;
 - remit the case to the General Court for hearing and judgment or alternatively:
 - annul the measures at issue;

- to the extent that the Court considers that the General Court has not already done so, order the Council to pay both the appellant's costs and the costs incurred by the deceased in relation to the claim for annulment made in the application;
- order the Council to pay the appellant's costs, to include those incurred by the deceased in relation to the claim for annulment made in the statement of modification; and
- in any event, order the Council to pay the costs of the appeal.

28 The Council contends that the Court should:

- dismiss the appeal;
- order the appellant to pay the costs of the appeal; and
- in the alternative, dismiss the action for annulment of the measures at issue.

29 The European Commission submits that the Court should:

- dismiss the second ground of appeal as inadmissible;
- dismiss the remaining grounds of appeal as manifestly unfounded; and
- order the appellant to pay the costs.

The appeal

30 Under Article 181 of its Rules of Procedure, where the appeal is, in whole or in part, manifestly inadmissible or manifestly unfounded, the Court of Justice may at any time, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide by reasoned order to dismiss that appeal in whole or in part.

31 It is appropriate to apply that provision in the context of the present appeal.

Arguments of the parties

32 By her first ground of appeal, the appellant submits that the General Court erred in law by concluding, in paragraphs 84, 89 and 92 of the order under appeal, that the statement of modification was inadmissible because it was lodged in Mr Yanukovych's name after his death, thus assessing the admissibility of that statement by reference to the situation when it was lodged.

33 According to the appellant, the General Court should have assessed the admissibility of the statement of modification by considering all of the relevant circumstances, namely, that the action for annulment was admissible, having been lodged when Mr Yanukovych was alive, that he had intended the statement of modification to be lodged, that the statement of modification was lodged by and on behalf of the appellant as the de facto successor and heir of the deceased and that, when the admissibility of the statement was examined, the appellant had been legally confirmed as heir, with retroactive effect.

34 By its second ground of appeal, the appellant claims that the General Court made findings of fact which the documents in the file show to be substantially incorrect, and that it distorted the clear sense of the evidence before it.

- 35 Thus, she is of the opinion that the finding that the statement of modification was not drawn up or presented on her behalf, as set out in paragraphs 83 and 87 of the order under appeal, are substantially and manifestly incorrect and result from a clear distortion. She points out that Mr Yanukovych had decided to lodge a statement of modification and that, under Ukrainian law, the legal succession devolves automatically onto the widow of the deceased and his parents, provided that six months have passed.
- 36 According to the appellant, those aspects are evidenced in paragraph 2 of the statement of modification, an email from the appellant to Mr Yanukovych's lawyer dated 7 April 2015, the observations submitted to the General Court on 3 July 2015 and her lawyer's letter of 30 October 2015 notifying the General Court of her designation as the heir and successor of the deceased and making observations on her continuing legal interest in bringing proceedings.
- 37 In addition, the appellant maintains that she approved and authorised the lodging of the statement of modification in her capacity as Mr Yanukovych's de facto successor.
- 38 By her third ground of appeal, the appellant submits that the General Court erred in law by treating the admissibility of the statement of modification and the second action for annulment in the same way. The appellant takes the view that there is an important factual difference between the two actions, arising out of the General Court's differing approach to the applications for a stay of proceedings. According to the appellant, the fact that stay was granted after the statement of modification was lodged, whereas it was refused in the second action for annulment, created a reasonable expectation, the General Court not having regarded the statement as inadmissible because it had been lodged after Mr Yanukovych's death.
- 39 Moreover, the appellant notes that when the General Court decided on the admissibility of the second action for annulment, the appellant was not yet the legally designated successor and heir of Mr Yanukovych, whereas she was when the order under appeal was made. She therefore concludes that, for the statement of modification, the criteria for admissibility of the FEU Treaty were satisfied.
- 40 Lastly, the appellant considers that the General Court's conclusion that the statement of modification is inadmissible has the effect of depriving her of her right to bring an action in her capacity as the legal successor and heir of the deceased, providing no justification for that deprivation, contrary to the Court of Justice's case-law. She notes that the General Court's reasoning, in paragraph 87 of the order under appeal, means that an applicant or appellant is obliged to lodge multiple claims, in different capacities, as a precautionary measure.
- 41 The Council and the Commission consider that the first and third grounds of appeal should be dismissed as manifestly unfounded and that the second ground of appeal should be dismissed as inadmissible.

Findings of the Court

- 42 The three grounds of appeal, which it is appropriate to examine together, are intended, in essence, to dispute, on the one hand, the identity of the person in whose name the statement of modification was lodged and, on the other hand, the date on which the admissibility of the statement was examined.
- 43 In the first place, with regard to the identity of the person in whose name the statement of modification was lodged, it should be recalled that, in point 83 of the order under appeal, the General Court, after recalling that Mr Yanukovych had died on 20 March 2015, noted that on 8 April 2015 his representative had lodged a statement of modification in Mr Yanukovych's name and that it was not apparent from the case file that the statement of modification had been drawn up on behalf of the appellant.

- 44 On the basis of that finding, the General Court held, in paragraph 84 of the order under appeal, that the statement of modification must be dismissed as inadmissible, given that Mr Yanukovych had died before the statement was lodged.
- 45 By those arguments, summarised in points 35 to 37 of the present order, the appellant argues, in essence, that it was as a result of a distortion of the clear sense of the statement of modification itself, and that of certain evidence and documents in the file, that the General Court made the finding mentioned in paragraph 43 of the present order.
- 46 However, it should be noted, upon reading the statement of modification in the file in the case at first instance, transmitted to the Court of Justice by the General Court pursuant to Article 167(2) of the Rules of Procedure of the Court of Justice, that the statement expressly mentions that it was introduced in Mr Yanukovych's name.
- 47 Admittedly, in paragraph 2 of the statement of modification, it was stated that Mr Yanukovych had died on 20 March 2015, that the process of identifying his legal successor was ongoing when the statement was lodged, that the appellant was expecting to be confirmed as his successor by the Ukrainian authorities and that she anticipated being able to express her legal interest in continuing the case after being designated as Mr Yanukovych's legal successor.
- 48 However, far from invalidating the conclusion that the statement of modification was lodged in Mr Yanukovych's name, those statements, which, besides, the General Court has accurately summarised in paragraph 86 of the order under appeal, confirm that conclusion, in so far as they show that, when the statement of modification was lodged, Mr Yanukovych had no designated legal successor and the appellant had not yet continued the action but had merely envisaged doing so in future.
- 49 In those circumstances, by finding, in paragraphs 25 and 83 of the order under appeal, that the statement of modification was lodged in Mr Yanukovych's name, and that it was not apparent from the case file that the statement had been drawn up in the appellant's name or on her behalf, the General Court did not distort the content of that statement. Accordingly, the appellant's claims to the contrary must be rejected as unfounded.
- 50 In that regard it must be noted that, in so far as the statement of modification clearly mentioned the identity of the person in whose name it was lodged, it was not for the General Court to identify another person as being the one in whose name it was lodged (see, to that effect, judgment of 12 November 2015, *Elitaliana v Eulex Kosovo*, C-439/13 P, EU:C:2015:753, paragraph 74).
- 51 Nor did the General Court distort the clear sense of the evidence and other documents in the file mentioned by the appellant. With regard to the observations submitted by the appellant to the General Court on 3 July 2015, it should be noted that the appellant failed to specify how exactly their clear sense was allegedly distorted by the General Court. In any event, it is clear from reading paragraphs 86, 88 and 91 of the order under appeal that the General Court summarised them accurately without distorting their clear sense. With regard to the appellant's email of 7 April 2015 and her lawyer's letter of 30 October 2015, also mentioned by the appellant, suffice it to observe that the General Court makes no mention of them at all in the order under appeal, and, therefore, cannot be accused of distorting their clear sense.
- 52 In the second place, with regard to the various arguments put forward by the appellant to challenge the General Court's finding that the EU judicature should assess the admissibility of the statement of modification by reference to when it was lodged, in so far as the General Court, rightly and without distorting its clear sense, found that the statement of modification was lodged in Mr Yanukovych's name, it must be noted that the statement of modification could be held admissible only if it had been lodged before Mr Yanukovych's death.

- 53 However, the appellant does not deny that the statement of modification was lodged at the Registry of the General Court on the date mentioned in paragraph 43 of the present order, which is after Mr Yanukovych's death. Therefore, the statement of modification could be held admissible only if its admissibility were assessed at a time before it was lodged and Mr Yanukovych died. However, as the Court of Justice has already held, the admissibility of an action must be judged by reference to the situation prevailing when the application or the statement of modification is lodged (see, to that effect, judgment of 27 November 1984, *Bensider and Others v Commission*, 50/84, EU:C:1984:365, paragraph 8).
- 54 Moreover, the appellant's argument that the admissibility of the statement of modification should have been assessed at a date after it was lodged must be rejected as ineffective. In fact, even supposing that such a date could be chosen, the fact still remains that Mr Yanukovych was already dead when the admissibility of the statement of modification lodged in his name was assessed.
- 55 It should be added that the inadmissibility of the statement of modification lodged in Mr Yanukovych's name has not had the effect of depriving the appellant of her right to bring an action in her capacity as the legal successor and heir of the deceased.
- 56 As the General Court mentioned in paragraph 87 of the order under appeal, the appellant could either have brought an action, in her own name and on her own behalf, for annulment of the measures at issue or have declared her intention to pursue the proceedings initiated by her husband, by modifying the forms of order according to those measures, that is to say, by lodging a statement of modification in her own name and on her own behalf.
- 57 In the third place, the argument that the General Court erred in law by not taking account of the fact that the stay of proceedings was granted after the statement of modification was lodged, whereas that was not so for the second action for annulment, must be rejected as ineffective. Indeed, the appellant cannot draw any conclusion from the benefit she gained from the proceedings at first instance being stayed.
- 58 In the fourth and final place, it should be recalled that, according to settled case-law, where all the other grounds put forward in an appeal have been rejected, any ground challenging the decision of the General Court on costs must be rejected as inadmissible by virtue of the second paragraph of Article 58 of the Statute of the Court of Justice of the European Union, under which no appeal lies regarding only the amount of the costs or the party ordered to pay them (judgment of 9 June 2016, *PROAS v Commission*, C-616/13 P, EU:C:2016:415, paragraph 88, and order of 12 January 2017, *Europäischer Tier- und Naturschutz and Giesen v Commission*, C-343/16 P, not published, EU:C:2017:10, paragraph 24).
- 59 Since the grounds of appeal put forward by the appellant have been rejected, the argument relating to the apportionment of costs must, accordingly, be declared inadmissible.
- 60 It follows from all the foregoing that the present appeal must be dismissed in its entirety pursuant to Article 181 of the Rules of Procedure of the Court of Justice.

Costs

- 61 In accordance with Article 184(2) of the Rules of Procedure of the Court, where the appeal is unfounded, the Court is to make a decision as to the costs.
- 62 Under Article 138(1) of those rules, which applies to the procedure on appeal by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

- ⁶³ Since the Council has applied for the appellant to be ordered to pay the costs and the appellant has been unsuccessful, the latter must be ordered to bear her own costs and to pay those incurred by the Council.
- ⁶⁴ In accordance with Article 140(1) of the Rules of Procedure of the Court, which applies to appeal proceedings by virtue of Article 184(1) thereof, the Commission is to bear its own costs.

On those grounds, the Court (Eighth Chamber) hereby orders:

- 1. The appeal is dismissed.**
- 2. Mrs Olga Stanislavivna Yanukovych shall bear her own costs and pay those incurred by the Council of the European Union.**
- 3. The European Commission shall bear its own costs.**

Luxembourg, 6 July 2017.

A. Calot Escobar
Registrar

M. Vilaras
President of the Eighth Chamber