



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

7 April 2016*

(Appeal — Restrictive measures taken against the Islamic Republic of Iran — List of persons and entities subject to the freezing of funds and economic resources — Criterion relating to the provision of material, logistical or financial support to the Government of Iran — Financial services of a central bank)

In Case C-266/15 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 3 June 2015,

Central Bank of Iran, established in Tehran (Iran), represented by M. Lester and Z. Al-Rikabi, Barristers,

appellant,

the other party to the proceedings being:

Council of the European Union, represented by V. Piessevaux and M. Bishop, acting as Agents,

defendant at first instance,

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, C. Toader, A. Rosas (Rapporteur), A. Prechal and E. Jarašiūnas, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: English.

Judgment

1 By its appeal, Central Bank of Iran seeks to have set aside the judgment of 25 March 2015 (T-563/12, EU:T:2015:187) ('the judgment under appeal'), by which the General Court of the European Union dismissed its action seeking annulment of (i) Council Decision 2012/635/CFSP of 15 October 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2012 L 282, p. 58) and (ii) Council Implementing Regulation (EU) No 945/2012 of 15 October 2012 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2012 L 282, p. 16) (collectively, 'the acts at issue'), in so far as those acts concern Central Bank of Iran.

Legal context

2 On 26 July 2010, the Council of the European Union adopted Decision 2010/413/CFSP concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39). Annex II to that decision lists the names of the persons and entities — other than those designated by the United Nations Security Council or by the Sanctions Committee established pursuant to Resolution (UNSCR) 1737 (2006) as listed in Annex I to that decision — whose assets are to be frozen.

3 On 23 January 2012, the Council adopted Decision 2012/35/CFSP amending Decision 2010/413 (OJ 2012 L 19, p. 22). According to recital 13 of that decision, '[t]he restrictions on admission and the freezing of funds and economic resources should be applied to additional persons and entities providing support to the Government of Iran allowing it to pursue proliferation-sensitive nuclear activities or the development of nuclear weapon delivery systems, in particular persons and entities providing financial, logistical or material support to the Government of Iran'.

4 Article 1(7)(a)(ii) of Decision 2012/35 added the following point to Article 20(1) of Decision 2010/413, providing for the freezing of funds belonging to the following persons and entities:

'(c) other persons and entities not covered by Annex I that provide support to the Government of Iran, and persons and entities associated with them, as listed in Annex II.'

5 Article 1(8)(a) of Decision 2012/635 amended Article 20(1)(c) of Decision 2010/413, which thus states that the following are to be subject to restrictive measures:

'(c) other persons and entities not covered by Annex I that provide support to the Government of Iran and entities owned or controlled by them or persons and entities associated with them, as listed in Annex II'.

6 By Decision 2012/35, the appellant's name was included on the list appearing in Annex II to Decision 2010/413, on the ground that it was involved in activities designed to circumvent sanctions. For the same reason, the appellant's name was included on the list appearing in Annex VIII to Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 (OJ 2010 L 281, p. 1) by Council Implementing Regulation (EU) No 54/2012 of 23 January 2012 implementing Regulation No 961/2010 (OJ 2012 L 19, p. 1).

7 By Decision 2012/635, the reason for inclusion was supplemented by the following note:

'Provides financial support to the Government of Iran.'

8 On 23 March 2012, the Council adopted Regulation (EU) No 267/2012 concerning restrictive measures against Iran and repealing Regulation No 961/2010 (OJ 2012 L 88, p. 1). Article 23(2) of that regulation provides for the freezing of funds of the persons, entities and bodies listed in Annex IX thereto, who have been identified as:

‘(d) being other persons, entities or bodies that provide support, such as material, logistical or financial support, to the Government of Iran, and persons and entities associated with them.’

9 By Regulation No 945/2012, the reason for including the appellant’s name on the list appearing in Annex IX to Regulation No 267/2012 was supplemented by the following note:

‘Provides financial support to the Government of Iran.’

Procedure before the General Court and the judgment under appeal

10 By application lodged at the Registry of the General Court on 26 December 2012, Central Bank of Iran brought an action seeking annulment of the acts at issue, in so far as those acts, after review, maintained its name on the lists of entities subject to restrictive measures.

11 Central Bank of Iran relied on four pleas in law in support of its action. The first plea alleged an error of assessment, the second, breach of the obligation to state reasons, the third, infringement of the principle of respect for the rights of the defence and of the right to effective judicial review, and, lastly, the fourth alleged infringement of the principle of proportionality and breach of Central Bank of Iran’s fundamental rights, notably the right to protection of its property and reputation.

12 By the judgment under appeal, the General Court dismissed the action in its entirety.

Forms of order sought

13 Central Bank of Iran claims that the Court should:

- set aside the judgment under appeal;
- annul the acts at issue in so far as those acts concern it; and
- order the Council to pay the costs incurred by Central Bank of Iran both at first instance and on appeal.

14 The Council contends that the Court should:

- dismiss the appeal; and
- order the appellant to pay the costs.

The appeal

15 In support of its appeal, Central Bank of Iran relies on four grounds of appeal. The first ground of appeal alleges that the General Court erred in ruling that the Council was justified in concluding that Central Bank of Iran was providing ‘financial support’ to the Government of Iran. The second ground of appeal alleges that the General Court erred in law in its assessment of the Council’s obligation to provide a statement of reasons. The third ground of appeal alleges infringement of the principle of

respect for the rights of the defence, while, lastly, the fourth ground of appeal alleges infringement of the principle of proportionality and breach of the appellant's fundamental rights, notably the right to protection of its property and reputation.

- 16 It is appropriate to begin by examining the second ground of appeal, and then the third, followed by the first and fourth grounds of appeal.

Second ground of appeal: the General Court erred in law in its assessment of the Council's obligation to provide a statement of reasons

Judgment under appeal

- 17 In paragraphs 53 to 58 of the judgment under appeal, the General Court recalled the case-law relating to the obligation to provide a statement of reasons for acts of the European Union. It then went on, in paragraph 59 et seq. of that judgment, to examine the reasons set out in the acts at issue in the light of the criteria for inclusion laid down in Article 23(2)(a), (b) and (d) of Regulation No 267/2012 and in Article 20(1)(b) and (c) of Decision 2010/413, as amended by Decision 2012/635.
- 18 In paragraph 74 of the judgment under appeal, the General Court held 'that the question whether the statement of reasons for the [acts at issue] is sufficient can be assessed only with regard to the criteria of assistance in circumventing restrictive measures and of support to the Government of Iran, to which the Council implicitly but necessarily refers in those acts'. However, in paragraph 75 of that judgment, it found that, to the extent that the acts at issue were based on the criterion of assistance in circumventing restrictive measures, the statement of reasons that the present appellant had been 'involve[d] in activities to circumvent sanctions' was insufficient, since that statement of reasons appeared to be no more than a reproduction of the criterion itself and contained nothing in the form of specific reasons why that criterion was applicable to Central Bank of Iran. Furthermore, in paragraph 79 of the judgment under appeal the General Court held that implicit reasoning could not be taken into account in order to compensate for the insufficiency of the explicit statement of reasons as regards assistance in circumventing restrictive measures.
- 19 Examining the criterion of support to the Government of Iran, the General Court found in paragraphs 84 and 85 of the judgment under appeal that the reasoning according to which Central Bank of Iran '[p]rovides financial support to the Government of Iran' was sufficient for the Council to fulfil its obligation to provide a statement of reasons, as that bank was in a position to understand that the Council was referring to the financial services which it was providing, as the central bank of the Islamic Republic of Iran, to the Government of Iran. The General Court relied on the written pleadings submitted by Central Bank of Iran and, in particular, on the witness statement of that bank's Vice Governor for Foreign Exchange Affairs, appended by Central Bank of Iran to its application, according to which that bank provides services to the Government, which is one of its customers. The General Court also referred to Articles 12 and 13 of the Monetary and Banking Law of Iran, which sets out some of the appellant's functions and powers as the central bank of the Islamic Republic of Iran.

Arguments of the parties

- 20 By its second ground of appeal, Central Bank of Iran argues that the General Court erred in law in finding that the Council had fulfilled its obligation to provide a statement of reasons as laid down in Article 296 TFEU.

- 21 In particular, Central Bank of Iran criticises paragraphs 84 and 85 of the judgment under appeal, by which the General Court held that it was in a position to understand that the Council was referring to the financial services which the former was providing to the Government of Iran in its capacity as central bank and that it was unnecessary to specify those functions and powers ‘since these are laid down by publicly accessible legislative provisions which, accordingly, may be presumed to be known to all’.
- 22 Central Bank of Iran submits that the existence of the Monetary and Banking Law of Iran, which sets out its functions and powers as the central bank of the Islamic Republic of Iran, did not make clear what the Council meant by ‘financial support’ in the statement of reasons for the acts at issue. The appellant was not able to ascertain whether the Council took the view that it was providing the Government with substantial funds or whether the Council was relying on the fact that it regulated monetary policy or that it held accounts on behalf of the Government of Iran and provided other central banking services of that nature. It maintains that it was for the Council to state precisely which services it would consider to be of the prerequisite qualitative and quantitative significance to fall within the ambit of ‘support for the Government of Iran’ for the purposes of Article 23(2)(d) of Regulation No 267/2012 (judgment of 16 July 2014 in *National Iranian Oil Company v Council*, T-578/12, EU:T:2014:678, paragraph 119), something which it failed to do. The Council at no time relied on Articles 12 and 13 of the Monetary and Banking Law of Iran when making the decision to maintain the appellant on the lists of persons subject to restrictive measures, with the result that the appellant’s functions as provided for by that law constituted a new reason which did not appear in the acts at issue.
- 23 The Council disputes Central Bank of Iran’s arguments.

Findings of the Court

- 24 As the General Court recalled in, inter alia, paragraphs 53 to 58 of the judgment under appeal, the question whether the statement of reasons for a measure is sufficient must be assessed with regard to the context of that measure and to all the legal rules governing the matter in question, with the result that the reasons given for a measure adversely affecting a person are sufficient if that measure was adopted in a context which was known to that person and enables him to understand the measure concerning him (see judgment of 15 November 2012 in *Council v Bamba*, C-417/11 P, EU:C:2012:718, paragraphs 53 and 54).
- 25 The General Court therefore did not err in law in considering in paragraph 85 of the judgment under appeal, referring to publicly accessible legislative provisions, that the statement of reasons for the acts at issue by which the Council explained that Central Bank of Iran ‘[was providing] financial support to the Government of Iran’ referred implicitly but necessarily to the functions and powers of that party as the central bank of the Islamic Republic of Iran, as defined in Chapter 2 of Part Two of the Monetary and Banking Law of Iran, notably in Articles 12 and 13 thereof.
- 26 Accordingly, the General Court was right to find, in paragraph 86 of the judgment under appeal, that ‘the Council was not obliged to provide an explicit statement of reasons relating to the financial services and, therefore, to the financial facilities or resources which ... the applicant allegedly provided to the Government of Iran’.
- 27 It follows that the second ground of appeal is unfounded.

Third ground of appeal: infringement of the rights of the defence

Judgment under appeal

- 28 Having recalled, in paragraphs 92 to 94 of the judgment under appeal, the case-law relating to respect for the rights of the defence, the General Court found in paragraphs 95 and 98 of that judgment that, on 2 August 2012, the Council had communicated to Central Bank of Iran individually the statement of reasons for the acts at issue by which it had indicated that that party ‘[was providing] financial support to the Government of Iran’, and that Central Bank of Iran had been able to challenge that statement of reasons and the underlying evidence prior to the adoption of those acts.
- 29 In paragraph 97 of the judgment under appeal, the General Court held that ‘the Council did not in this instance have to communicate to the applicant the documentary evidence on which that statement of reasons was based, since that evidence, which related to the financial services specifically provided to the Government of Iran by the applicant, as the central bank of the Islamic Republic of Iran, could be presumed to be known to all and to be implicitly included in the statement of reasons for the [acts at issue] so far as concerns the criterion of support to the Government of Iran’. As a result, the General Court found, in paragraph 99 of the judgment under appeal, that ‘the applicant’s rights of defence and its right to effective judicial review [had been] respected’.

Arguments of the parties

- 30 By its third ground of appeal, Central Bank of Iran submits that the General Court erred in finding that its rights of defence had been respected. It contends that the Council failed to provide it with any evidence prior to the adoption of the acts at issue in relation to that institution’s decision to maintain Central Bank of Iran on the lists of entities subject to restrictive measures. It argues that the General Court was wrong to find that the Council could supplement the grounds for maintaining the inclusion of Central Bank of Iran’s name on the lists in question by taking into consideration factors stemming from the provisions of the Monetary and Banking Law of Iran which were manifestly not referred to in the grounds for the acts at issue and had not been communicated to Central Bank of Iran prior to the adoption of those acts. The appellant was not aware of the arguments raised against it and was not in a position to put forward a proper defence. It was only in the course of the hearing that the appellant had the opportunity, for the first time, to respond to the allegation that it had provided funding to the Government of Iran.
- 31 The Council disputes Central Bank of Iran’s arguments.

Findings of the Court

- 32 As the Court has previously held, in the case of an initial decision to freeze funds, the Council is not obliged to inform the person or entity concerned beforehand of the grounds on which that institution intends to rely in order to include that person or entity’s name on a list, whereas the adoption of a subsequent decision by which the inclusion on that list of the name of that person or entity is maintained must, in principle, be preceded by notification of the incriminating evidence and by allowing that person or entity an opportunity to be heard (see, to that effect, judgment of 21 December 2011 in *France v People’s Mojahedin Organization of Iran*, C-27/09 P, EU:C:2011:853, paragraphs 61 and 62).

- 33 Accordingly, in the context of the adoption of a decision to maintain the name of a person or an entity on a list of persons or entities subject to restrictive measures, the Council must respect the right of that person or entity to be heard beforehand where that institution is including in that decision new evidence against that person or entity, namely evidence which was not included in the initial listing decision (judgment of 18 June 2015 in *Ipatau v Council*, C-535/14 P, EU:C:2015:407, paragraph 26).
- 34 In paragraph 94 of the judgment under appeal the General Court — without erring in law — recalled that case-law.
- 35 The General Court then went on to state in paragraphs 95 and 98 of that judgment that, on 2 August 2012, the Council communicated to Central Bank of Iran the new reasoning according to which that bank '[was providing] financial support to the Government of Iran' and that, on 7 October 2012, Central Bank of Iran contested that reasoning.
- 36 Contrary to the appellant's assertions, the lack of communication by the Council of the evidence on the basis of which it formed the view that Central Bank of Iran was providing financial support to the Government of Iran was not capable of undermining that bank's rights of defence.
- 37 Indeed, as is apparent from paragraphs 25 and 26 above, the appellant's role as the central bank of the Islamic Republic of Iran and the legislative provisions concerning it were capable of being viewed as constituting a context known to the appellant, such that that the General Court was fully entitled to hold that the Council was not required to provide an explicit statement of reasons regarding the financial services and, thus, the financial resources or facilities which the appellant had allegedly provided to the Government of Iran.
- 38 In those circumstances, the General Court did not disregard the appellant's rights of defence by finding that the Council was not required to provide documentary evidence or proof as regards what was known by the appellant.
- 39 Consequently, the third ground of appeal is unfounded.

First ground of appeal: the General Court erred in ruling that the Council was justified in concluding that Central Bank of Iran was providing 'financial support' to the Islamic Republic of Iran

Judgment under appeal

- 40 In paragraph 103 of the judgment under appeal, the General Court held that it was necessary to assess the legality of the acts at issue in the light of the statement of reasons for those acts, according to which Central Bank of Iran '[was providing] financial support to the Government of Iran'. In paragraph 104 of that judgment, the General Court held that, for the purposes of assessing the merits of that statement of reasons, account could be taken of the functions and powers of that party as the central bank of the Islamic Republic of Iran, as defined in Articles 12 and 13 of the Monetary and Banking Law of Iran. After examining those provisions, the General Court found, in paragraph 108 of that judgment, that 'it [was] evident that the applicant [was providing] the Government of Iran with financial services which [were] capable, by their quantitative and qualitative significance, of encouraging nuclear proliferation, by providing the Government of Iran with support in the form of resources or facilities of a material, financial or logistical nature which allow it to pursue such proliferation'. Accordingly, in paragraph 111 of that judgment the General Court held that the Council had not made an error of assessment.

Arguments of the parties

- 41 By its first ground of appeal, Central Bank of Iran submits that the General Court erred in concluding that the Council had properly assessed whether the criteria for inclusion on the lists of the acts at issue had been fulfilled. Analysing Articles 12 and 13 of the Monetary and Banking Law of Iran, it argues that the services which it provides as the central bank, such as holding accounts and clearing transactions, do not constitute ‘financial support’ to the Government of Iran for the purposes of Article 23(2)(d) of Regulation No 267/2012, that is to say, financial support of such a quantitative and qualitative significance as to enable the Government of Iran to pursue a nuclear programme (judgment of 16 July 2014 in *National Iranian Oil Company v Council*, T-578/12, EU:T:2014:678, paragraph 119).
- 42 The Council disputes the appellant’s arguments.

Findings of the Court

- 43 It should be borne in mind that the criterion of ‘support to the Government of Iran’ set out in Article 20(1)(c) of Decision 2010/413, as amended by Decision 2012/635, and Article 23(2)(d) of Regulation No 267/2012 relates to support which may be material, logistical or financial (see, to that effect, judgment of 1 March 2016 in *National Iranian Oil Company v Council*, C-440/14 P, EU:C:2016:128, paragraph 79).
- 44 The purpose behind the addition of that criterion was to target the relevant person or entity’s own activities which, even if they have no actual direct or indirect connection with nuclear proliferation, are nonetheless capable of encouraging it by providing the Government of Iran with resources or facilities of a material, financial or logistical nature which allow it to pursue proliferation activities (see, to that effect, judgment of 1 March 2016 in *National Iranian Oil Company v Council*, C-440/14 P, EU:C:2016:128, paragraphs 80 and 81).
- 45 As the General Court held in paragraph 108 of the judgment under appeal, Central Bank of Iran was providing the Government of Iran with financial services which were capable, by their quantitative and qualitative significance, of encouraging nuclear proliferation by providing that Government with support in the form of resources or facilities of a material, financial or logistical nature allowing it to pursue such proliferation (see, by analogy, judgment of 1 March 2016 in *National Iranian Oil Company v Council*, C-440/14 P, EU:C:2016:128, paragraph 83). Services such as the holding of accounts, the performance and conclusion of financial transactions or the purchase and sale of bonds, constitute material, logistical and financial support to that State and, as a result, support to the Government of that State.
- 46 Consequently, the General Court was right to observe in paragraph 109 of the judgment under appeal that it is of scant importance that Central Bank of Iran has denied placing its own financial resources at the disposal of the Government of Iran, since it has always admitted to providing that Government with the services which any central bank of a State provides to the Government of that State.
- 47 Therefore, the General Court did not err in law in finding, in paragraph 110 of the judgment under appeal, that the Council was justified in concluding that Central Bank of Iran ‘[was providing] financial support to the Government of Iran’, with the result that the criterion set out in Article 20(1)(c) of Decision 2010/413, as amended by Decision 2012/635, and in Article 23(2)(d) of Regulation No 267/2012 was fulfilled in the case at hand.
- 48 Consequently, the first ground of appeal is unfounded.

Fourth ground of appeal: breach of the appellant's fundamental rights, right to protection of property and reputation

Judgment under appeal

- 49 In paragraph 119 of the judgment under appeal, the General Court held that the difficulties caused to Central Bank of Iran by the acts at issue are not disproportionate to the importance of maintaining international peace and security, which is the objective pursued by those acts. It also noted, in the same paragraph, that the acts at issue relate to only part of Central Bank of Iran's assets, that there are means of releasing funds in certain circumstances and that the Council is not alleging that the bank is itself involved in nuclear proliferation.

Arguments of the parties

- 50 By its fourth ground of appeal, Central Bank of Iran submits that the General Court erred in rejecting its plea alleging that the Council had breached, without justification or in a way which was disproportionate, its fundamental rights, including its right to protection of its property and reputation. It argues that the General Court failed to carry out an appropriate assessment as to whether the application of those restrictive measures to Central Bank of Iran constituted unlawful and disproportionate interference with that bank's fundamental rights to property and reputation. The General Court, it contends, ought to have found that the measures concerned were disproportionate to the aims pursued.
- 51 In particular, Central Bank of Iran criticises paragraph 119 of the judgment under appeal. It argues that the General Court did not sufficiently take into consideration the negative consequences of the restrictive measures for the economic life of the country and people of Iran. It also argues that the services which it provides are unconnected with the Government of Iran's ability to pursue a nuclear programme and that the General Court's approach would allow restrictive measures to be adopted against thousands of individual taxpayers or service providers. Lastly, it argues, the Council's decision to include Central Bank of Iran's name on the lists of entities subject to restrictive measures and to maintain that inclusion is contrary to various public declarations which have been made by the European institutions, including the Council conclusions on Iran of 23 January 2012, in which the Council states that 'the restrictive measures agreed today are aimed at affecting the funding of Iran's nuclear programme by the Iranian regime and are not aimed at the Iranian people'.
- 52 The Council disputes the appellant's arguments.

Findings of the Court

- 53 It should be pointed out that, in order to ascertain whether the principle of proportionality had been infringed, in paragraph 117 of the judgment under appeal the General Court took into consideration the public-interest objective pursued by the acts at issue. In paragraph 118 of that judgment, it acknowledged that those acts were causing harm to Central Bank of Iran, in that they were detrimental to its rights of property and to its reputation. However, in paragraph 119 of that judgment, the General Court took into account the objective of maintaining international peace and security, while observing that the acts at issue related to only part of Central Bank of Iran's assets, that there were means of releasing funds in certain circumstances and that it was not alleged by the Council that the bank was itself involved in nuclear proliferation.
- 54 In the light of those elements, the General Court was fully entitled to reject the plea alleging infringement of the principle of proportionality and breach of Central Bank of Iran's fundamental rights, notably the right to protection of its property and reputation.

55 The fourth ground of appeal must therefore be rejected.

56 As the four grounds of appeal have been found to be unfounded, the appeal must be dismissed.

Costs

57 Pursuant to Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded the Court is to make a decision as to costs.

58 Under Article 138(1) of those Rules, applicable to appeal proceedings 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.

59 Since the Council has applied for costs and Central Bank of Iran has been unsuccessful, the latter must be ordered to bear its own costs and to pay those incurred by the Council.

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

1. Dismisses the appeal;

2. Orders Central Bank of Iran to bear its own costs and to pay those incurred by the Council of the European Union.

[Signatures]