Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

24 January 2019*

(Appeal — Article 86 of the Rules of Procedure of the General Court — Admissibility — Procedure for modifying the application — Need to modify the pleas in law and arguments — Restrictive measures adopted against the Syrian Arab Republic — List of persons subject to the freezing of funds and economic resources — Inclusion of the applicant's name)

In Case C-313/17 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 26 May 2017,

George Haswani, residing in Yabroud (Syria), represented by G. Karouni, avocat,

applicant,

the other parties to the proceedings being:

Council of the European Union, represented by A. Sikora-Kalėda and S. Kyriakopoulou, acting as Agents,

defendant at first instance,

European Commission, represented by L. Havas and R. Tricot, acting as Agents,

intervener at first instance,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, Vice-President, acting as President of the First Chamber, J.-C. Bonichot, (Rapporteur), A. Arabadjiev, E. Regan and S. Rodin, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 20 September 2018,

gives the following

* Language of the case: French.

Judgment

1 By his appeal, Mr George Haswani seeks to have set aside the judgment of the General Court of the European Union of 22 March 2017, *Haswani* v *Council* (T-231/15, not published, 'the judgment under appeal', EU:T:2017:200), in so far as his application for annulment of Council Decision (CFSP) 2016/850 of 27 May 2016 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2016 L 141, p. 125), and Council Implementing Decision (EU) No 2016/840 of 27 May 2016 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2016 L 141, p. 30) ('the measures of 27 May 2016') was dismissed.

Legal context

2 Article 86 of the Rules of Procedure of the General Court, in the version applicable to the dispute at first instance ('the Rules of Procedure of the General Court'), entitled 'Modification of the application', is worded as follows:

'1. Where a measure the annulment of which is sought is replaced or amended by another measure with the same subject matter, the applicant may, before the oral part of the procedure is closed, or before the decision of the General Court to rule without an oral part of the procedure, modify the application to take account of that new factor.

2. The modification of the application must be made by a separate document within the time limit laid down in the sixth paragraph of Article 263 TFEU within which the annulment of the measure justifying the modification of the application may be sought.

3. The statement in intervention shall contain:

(a) the modified form of order sought;

(b) where appropriate, the modified pleas in law and arguments;

(c) where appropriate, the evidence produced and offered in connection with the modification of the form of order sought.

4. The statement of modification must be accompanied by the measure justifying the modification of the application. If that measure is not produced, the Registrar is to prescribe a reasonable time limit within which the applicant is to produce it. If the applicant fails to produce the measure within the time limit prescribed, the General Court is to decide whether the non-compliance with that requirement renders the statement modifying the application inadmissible.

5. Without prejudice to the decision to be taken by the General Court on the admissibility of the statement modifying the application, the President shall prescribe a time limit within which the defendant may respond to the statement of modification.

…'

Background to the dispute, the procedure before the General Court and the judgment under appeal

3 The applicant is a Syrian industrialist who is the founder and co-owner of the petrol and gas company HESCO.

4 By two measures of 6 March 2015, his name was added to the list in Annex I to Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria (OJ 2013 L 147, p. 14) and the list in Annex II to Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011 (OJ 2012 L 16, p. 1) for the following reasons:

'Prominent Syrian businessman, co-owner of HESCO Engineering and Construction Company, a major engineering and construction company in Syria. He has close ties to the Syrian regime.

George Haswani provides support and benefits from the regime through his role as a middleman in deals for the purchase of oil from ISIL by the Syrian regime.

He also benefits from the regime through favourable treatment including the award of a contract (as a subcontractor) with Stroytransgaz, a major Russian oil company.'

5 On 5 May 2015, the applicant requested the General Court to annul the measures of 6 March 2015.

6 On 28 May 2015, the Council adopted Decision (CFSP) 2015/837 amending Decision 2013/255 (OJ 2015 L 132, p. 82), which extends the latter decision until 1 June 2016 and amends Annex I to that decision. On the same day, the Council also adopted Implementing Regulation (EU) 2015/828 implementing Regulation No 36/2012 (OJ 2015 L 132, p. 3), amending Annex II to Regulation No 36/2012.

7 By document lodged at the Court Registry on 23 June 2015, the applicant modified the form of order sought in order also to seek annulment of Decision 2015/837 and Implementing Regulation 2015/828.

8 On 12 October 2015, the Council adopted Decision (CFSP) 2015/1836 amending Decision 2013/255 (OJ 2015 L 147, p. 14) and Regulation (EU) 2015/1828 amending Regulation No 36/2012 (OJ 2015 L 266, p. 1), amending Annex II to that regulation ('the measures of 12 October 2015').

9 The amendments concerned, inter alia, the criteria for inclusion on the lists annexed with regard to Article 28(2) of Decision 2013/255 and Article 15(1a) of Regulation No 36/2012. In particular, the criteria concerning responsibility for repression or connection to the regime were supplemented by a list of persons grouped in seven categories, including 'leading businesspersons operating in Syria'.

10 By letter dated 29 April 2016, the Council notified the appellant of its intention to maintain him on the lists at issue and the amendment of the reasons relied on with respect to him. The appellant, through his lawyer, responded to the Council by letter dated 12 May 2016.

11 By the measures of 27 May 2016, the Council included the appellant's name in the annexes to those measures for the following reasons:

'Leading businessperson operating in Syria, with interests and/or activities in the engineering, construction and oil and gas sectors. He holds interests in and/or has significant influence in a number of companies and entities in Syria, in particular HESCO Engineering and Construction Company, a major engineering and construction company.

George Haswani has close ties to the Syrian regime. He provides support and benefits from the regime through his role as a middleman in deals for the purchase of oil from ISIL by the Syrian regime. He also benefits from the regime through favourable treatment including the award of a contract (as a subcontractor) with Stroytransgaz, a major Russian oil company.'

12 By a statement lodged at the General Court Registry on 7 July 2016, the appellant modified the application also seeking annulment of the measures of 27 May 2016 ('the second statement of modification' or 'the second request to modify the application').

13 By letter of 22 July 2016, the Council presented its observations relating to the second statement of modification, considering it to be incomplete and vague.

14 In the judgment under appeal, the General Court, inter alia, dismissed as inadmissible the second request to modify the application on the ground that the second statement of modification should have set out the modified pleas in law and arguments in support of the claim for annulment, pursuant to Article 86(4) of the Rules of Procedure of the General Court.

15 Therefore, the General Court held, in paragraphs 41 to 47 of that judgment, that, since the legal framework relating to the restrictive measures or the criteria for inclusion on those lists had changed, the appellant was required to modify his pleas in law and arguments in order to take account of that and, in the instant case, that requirement was not satisfied, the second request to modify the application sought simply to extend the form of order sought in the application, without providing further explanation or putting forward new matters of fact or of law in the light of the development of the applicable legal framework, in particular the introduction of new listing criteria.

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

16 Mr Haswani claims that the Court should:

– set aside the judgment under appeal, in so far as it declares inadmissible the second request to modify the application;

– as a consequence, order the removal of the name 'Mr George Haswani' from the annexes to the measures of 27 May 2016;

– annul the measures of 12 October 2015;

– order the Council of the European Union to pay EUR 700 000 in damages to compensate all forms of loss;

– order the Council to pay the costs before the Court of Justice and all the costs before the General Court.

17 The Council claims that the Court should:

– dismiss the appeal;

– order the appellant to pay the costs.

18 Pursuant to Article 172 of the Rules of Procedure of the Court of Justice, the European Commission, an intervener at first instance, has lodged a response in which it endorses the form of order sought by the Council and contends that the Court should dismiss the appeal in its entirety and order the appellant to pay the costs.

The appeal

19 By his grounds of appeal, which it is appropriate to examine together, Mr Haswani submits essentially that, by holding the second request to modify the application inadmissible on the grounds set out in paragraph 15 of the present judgment, the General Court committed three errors in law.

Arguments of the parties

20 The first error of law for which Mr Haswani criticises the General Court is for misapplying Article 86(4) and (5) of the Rules of Procedure of the General Court. It follows from those provisions that, if the applicant has failed to annex a copy of the measure justifying the modification requested to his application, the Registrar of the General Court must expressly request him to comply with that requirement within the period prescribed, which otherwise may be rejected by the General Court as inadmissible. Therefore, if the failure to submit the measure justifying the modification of the application does not automatically entail the inadmissibility of a request for modification, a fortiori the same should apply to the failure to submit modified pleas in law.

21 The judgment under appeal is vitiated by a second error of law in that the General Court held that it could reject the forms of order in the appellant's second statement of modification as being inadmissible without even examining whether or not the Registrar had requested him to put that statement in order.

22 The third error of law committed by the General Court relates to the disregard of the phrase 'where appropriate' in Article 86(3) of the Rules of Procedure of the General Court, from which it is clear that the submission of modified pleas in law and arguments was unnecessary since the criteria for inclusion on the lists had changed between the measures initially challenged and the measures added to the application by the request for modification.

23 In that connection, although he does not dispute the fact that the measures of 12 October 2015 extended the number of persons liable to be the subject of restrictive measures, Mr Haswani considers it 'obvious' that beyond the slight differences in formulation, the grounds for the measures adopted against him in 2016 are essentially the same as those in the measures adopted in 2015. The General Court itself held that those grounds were not substantiated, since no document provided by the Council had sufficient probative value as it consisted either of inaccurate newspaper articles or extracts from webpages. Further, Mr Haswani takes the view that he could not be required to submit modified pleas in law, as that would have been 'superfluous'.

24 The Council expresses doubts about the admissibility of the appeal, which does not identify with sufficient precision the provisions of EU law infringed, and takes the view that the second error of law pleaded is insufficiently substantiated.

25 For the remainder, the Council considers that the appeal is manifestly unfounded. It repeats the arguments that it put forward successfully in the proceedings at first instance in its plea of inadmissibility regarding the second statement of modification.

26 Those arguments consist in applying the expected requirements of pleas in law in the originating application to the request for modification, which must, if it is not to be declared inadmissible, be accompanied by a statement, albeit brief, of the pleas in law relied on pursuant to Article 76(d) of the Rules of Procedure of the General Court.

27 That institution considers that the findings relating to the request for modification which are challenged in the present case is a settled practice of the General Court, which had already rejected another request for modification in the same way (judgment of 28 January 2016, *Klyuyev* v *Council*, T-341/14, EU:T:2016:47, paragraphs 71 to 73).

28 The Council, based on the Opinion of the Advocate General in the case which gave rise to the judgment of 9 November 2017, *HX* v *Council* (C-423/16 P, EU:C:2017:848, paragraph 33), considers that the rule deriving from the phrase 'where appropriate', in Article 86(3) of the Rules of Procedure of the General Court must be applied on a case-by-case basis and requires an assessment of the merits by the General Court of the need to submit modified pleas in law and arguments. That interpretation is based on the fact that formal requirements, such as those in Article 86(3)(b) of the Rules of Procedure of the General Court, are intended to ensure the adversarial nature of proceedings and to enable the General Court to make an informed ruling and not for the sake of it. The General Court has a degree of discretion in that regard.

29 The Commission intervened in support of the written observations submitted by the Council, with the same type of arguments. It insists, in particular, on the very incomplete nature of the second statement of modification. It argues that, if a statement is completely inadequate, nothing prevents the General Court from declaring that the request for modification is inadmissible in respect of which it is impossible to evaluate the merits.

Findings of the Court

30 From the outset, the objections formulated by the Council and the Commission that the present appeal is inadmissible must be dismissed. It is clear from the appeal that, by his grounds of appeal, the appellant criticises the General Court for misapplying Article 86(4) and (5) of the Rules of Procedure when it held, in paragraphs 39 to 47 of the judgment under appeal, that the second request for modification had to be dismissed as inadmissible, on the ground that it did not contain modified pleas in law and arguments. Those grounds of appeal raise an issue of law which may be examined by the Court of Justice on appeal.

31 It must be recalled that Article 86 of the Rules of Procedure of the General Court govern the conditions under which the applicant may, by exception to the principle that forms of order are unalterable, modify the application if a measure whose annulment is sought by the General Court is replaced or amended by another measure with the same subject matter (see, in particular, judgment of 9 November 2017, *HX* v *Council*, C-423/16 P, EU:C:2017:848, paragraph 18).

32 In particular, it is clear from Article 86(3)(b) that the statement of modification of the application must, where appropriate, contain the modified pleas in law and arguments related to the application.

33 The use of the phrase 'where appropriate' in that provision clearly indicates that the statement of modification of the application must be accompanied by pleas in law and arguments which are themselves modified only where it is necessary.

34 That finding is supported in the light of the purposes of Article 86 of the Rules of Procedure of the General Court.

35 In that regard, the Court of Justice has found, while it is perfectly in order for modification of the application to be subject to certain formal requirements, such formal requirements do not apply for their own sake but are, on the contrary, intended to ensure the adversarial nature of proceedings and the sound administration of justice (judgment of 9 November 2017, *HX* v *Council*, C-423/16 P, EU:C:2017:848, paragraph 23).

36 As the Advocate General noted, in point 61 of his Opinion, it would be contrary to the principles of the proper administration of justice and of procedural economy to require an applicant who has modified the form of order sought by him, to repeat in his statement of modification, pleas in law and arguments identical to those advanced against the measure contested initially.

37 Therefore, where a subsequent measure challenged by way of the modification of the application is essentially the same as the measure initially challenged, or where it differs from that measure only in purely formal respects, it is conceivable that, by failing to accompany his request for modification by pleas in law and arguments which are themselves modified, the applicant impliedly and specifically relies on the pleas and arguments in his originating application.

38 In such as case, it is for the General Court, when it examines the admissibility of the statement modifying the application, to ascertain whether the measure challenged by means of the modification of the application has, as compared with the measure challenged by the originating application, substantive differences so that they make it necessary to modify the pleas in law and arguments presented in support of the originating application.

39 If, at the end of that examination, the General Court concludes that the applicant was wrong not to accompany the statement modifying the application with modified pleas in law and arguments, it has the power, contrary to Mr Haswani's submissions, on the basis of Article 86(6) of its Rules of Procedure, to declare that statement inadmissible for failure to comply with the procedural rule in Article 86(3)(b), as for any failure to comply with a rule laid down by that article.

40 In that examination, the General Court is not required to invite the applicant beforehand to regularise the failure to submit modified pleas in law and arguments. As the Advocate General observed in points 48 to 57 of his Opinion, the responsibility for assessing the need to modify the pleas in law and arguments in the application is the applicant's, who takes the initiative in pursuing the case and delimiting its subject matter, in particular by the forms of order and pleas in law that he submits, whether that is in the context of a request for modification or in the context of the originating application (see, by analogy, judgment of 14 November 2017, *British Airways* v *Commission*, C-122/16 P, EU:C:2017:861, paragraphs 86 and 87).

41 In that connection, it should be recalled that, although, by the judgment of 9 November 2017, *HX* v *Council* (C-432/16 P, EU:C:2017:848, paragraphs 22 to 27), the Court criticised the General Court for failing to put the applicant in a position beforehand to regularise the request for modification due to the failure to produce the separate document required by Article 86(2) of the Rules of Procedure of the General Court, that was because of circumstances specific to the case — an ambiguity in the language version of the Rules of Procedure of the General Court corresponding to the language of the proceedings chosen by the applicant.

42 In the case which gave rise to the judgment under appeal, in concluding that Mr Haswani should have accompanied his request for modification of the application with modified pleas in law and arguments, the General Court, in paragraphs 41 to 47 of its judgment, merely stated that the legal framework of the restrictive measures and, in particular, the criteria for including the persons concerned on the relevant lists, had changed since the initial application had been lodged, and that the measures challenged in the second statement of modification took that change into account, without examining whether there was a substantive difference between the individual grounds against Mr Haswani in the measures challenged by the originating application, namely the measures of 6 March 2015 and Implementing Regulation 2015/828 and those adopted against Mr Haswani in the measures challenged in the the second statement of modification, that is the measures of 27 May 2016, read in the light of the measures of 12 October 2015.

43 In so doing, the General Court has failed to carry out the verification mentioned in paragraph 38 of the present judgment.

44 It follows from all of the foregoing that paragraph 1 of the operative part of the judgment under appeal must be annulled.

The action before the General Court

45 According to the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, the latter may, where the decision of the General Court has been annulled, either itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment.

46 Since the General Court dismissed the second request to modify the application without undertaking the assessment referred to in paragraph 38 of the present judgment or having heard the parties' submissions in that regard, the Court considers that the state of the proceedings does not permit a decision by the Court of Justice.

Costs

47 Since the case is being referred back to the General Court, it is appropriate to reserve the costs.

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

1. **Annuls paragraph 1 of the operative part of the judgment of the General Court of the European Union of 22 March 2017, *Haswani* v *Council* (T-231/15, not published, EU:T:2017:200);**

2. **Refers the case back to the General Court of the European Union;**

3. **Orders the costs to be reserved.**

[Signatures]