

5. Fifth plea in law, alleging that the Council made manifest errors of assessment in including the applicant in the contested measures. Amongst other things, the Council had no and, in any event, no 'concrete' evidence demonstrating that the allegations against the applicant were 'materially accurate', and wrongly relied on assertions by the illegitimate so-called 'interim regime' who were seeking to usurp power, and had a clear incentive to make such allegations for improper purposes.
6. Sixth plea in law, alleging that the applicant's defence rights have been breached and/or that he has been denied effective judicial protection. Amongst other things, the Council has failed to provide the applicant with a full statement of reasons, including the evidence against him, and failed to provide him with precise information and material said to justify the asset freeze, and he has been obliged to make this application in an unfairly short time period.
7. Seventh plea in law, alleging that the applicant's rights to property under Article 17(1) of the Charter of Fundamental Rights of the EU, have been breached in that, amongst other things, the restrictive measures are an unjustified and disproportionate restriction on those rights.

Action brought on 14 May 2014 — Yanukovych v Council

(Case T-348/14)

(2014/C 253/54)

Language of the case: English

Parties

Applicant: Oleksandr Viktorovych Yanukovych (Donetsk, Ukraine) (represented by: T. Beazley, QC)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

- Annul 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 L 66, p. 26), as amended by Council Decision 2014/216/CFSP of 14 April 2014 (OJ L 111, p. 91) and Council Regulation (EU) No 208/2014 of 5 March 2014 (OJ L 66, p. 1) concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, as amended by Council Regulation (EU) 381/2014 of 14 April 2014 (OJ L 111, p. 33), insofar as they apply to the applicant; and
- Order the defendant to pay the applicant's costs.

Pleas in law and main arguments

In support of the action, the applicant relies on seven pleas in law.

1. First plea in law, alleging that the Council of the European Union ('the Council') lacked a proper legal basis for the Decision and the Regulation. Arguments in support of the plea include (a) that the conditions for the Council relying on Article 29 TEU were not fulfilled by the Decision. Amongst other things: (i) The Council's expressly invoked objectives (consolidating the rule of law and respect for human rights in Ukraine) could not, as a matter of fact, be sustained by the Council, which then stated grounds for designation (linked to alleged embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine, which the Applicant denies) which were not consistent with, and failed to comply with, the stated or any relevant objectives of Article 21 TEU. (ii) The Decision and the Regulation are contrary to other relevant objectives identified in Article 21 in that they failed to 'consolidate and support democracy ... [and] the principles of international law', in particular by wrongly asserting, and acting on the basis that, the legitimate democratically elected President of Ukraine, President Yanukovich, was a 'former President', contrary to the law of Ukraine and International law, and by providing support for the so-called 'interim President and government', who have not been lawfully and democratically elected, and who took what power they have from time to time by illegal force, contrary to the rule of law, democratic principles and international law. (b) The conditions for relying on Article 215 TFEU were not fulfilled because there was no valid decision under Chapter 2 of Title V TEU. (c) There was no sufficient link for Article 215 TFEU to be relied on against the applicant.

2. Second plea in law, alleging that the Council misused its powers. The Council's actual purpose in implementing the Decision (and, therefore, the Regulation) was in essence to try to win favour with the so-called 'interim regime' of Ukraine so that Ukraine proceeded with closer ties with the EU (such closer ties having been rejected by the democratically elected President of Ukraine and his Government), and not the rationales stated on the face of the Decision and the Regulation.
3. Third plea in law, alleging that the Council failed to state reasons. The statement of reasons in the Decision and the Regulation for including the applicant (in addition to being wrong) are formulaic, inappropriate and deficient in required particularity.
4. Fourth plea in law, alleging that the applicant failed to fulfil the stated criteria for a person to be listed at the relevant time. Amongst other things, the Council failed to provide relevant information, but so far as he is aware, the applicant (a) had not at the time been identified by any judicial or other relevant body as being responsible for the embezzlement of Ukrainian State funds or their illegal transfer, and (b) was not at the time subject to investigation for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer abroad.
5. Fifth plea in law, alleging that the Council made manifest errors of assessment in including the applicant in the contested measures. Amongst other things, the Council had no and, in any event, no 'concrete' evidence demonstrating that the allegations against the applicant were 'materially accurate', and wrongly relied on assertions by the illegitimate so-called 'interim regime' who were seeking to usurp power, and had a clear incentive to make such allegations for improper purposes.
6. Sixth plea in law, alleging that the applicant's defence rights have been breached and/or that he has been denied effective judicial protection. Amongst other things, the Council has failed to provide the applicant with a full statement of reasons, including the evidence against him, and failed to provide him with precise information and material said to justify the asset freeze, and he has been obliged to make this application in an unfairly short time period.
7. Seventh plea in law, alleging that the applicant's rights to property under Article 17(1) of the Charter of Fundamental Rights of the EU, have been breached in that, amongst other things, the restrictive measures are an unjustified and disproportionate restriction on those rights.

Action brought on 19 May 2014 — Comercializadora Eloro v OHIM — Zumex Group (zumex)

(Case T-354/14)

(2014/C 253/55)

Language in which the application was lodged: Spanish

Parties

Applicant: Comercializadora Eloro, SA (Ecatepec, Mexico) (represented by: J. L de Castro Hermida, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: Zumex Group, SA (Moncada, Spain)

Form of order sought

The applicant claims that the General Court should:

- hold, on the basis of the documents filed in the administrative procedure and those submitted together with the present application, that the applicant has provided sufficient proof of use of its earlier mark 'JUMEX' for fruit juices in Class 32;
- refuse the registration of the mark applied for 'ZUMEX' for all goods in Class 32 on account of the opposing party, who is the applicant in the present proceedings, having proved use of the mark with priority, because of the likelihood of confusion on the part of consumers arising from the coexistence in the market of both marks, given the similarity of the words and their identity in application.