

JUDGMENT OF THE COURT (Grand Chamber)

21 April 2015 (*)

(Appeal — Common foreign and security policy — Restrictive measures against the Syrian Arab Republic — Measures directed against persons and entities benefiting from the regime — Proof that inclusion on the lists is well founded — Set of indicia)

In Case C-605/13 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 25 November 2013,

Issam Anbouba, residing in Homs (Syria), represented by M.-A. Bastin, J.-M. Salva, and S. Orlandi, avocats,

appellant,

the other parties to the proceedings being:

Council of the European Union, represented by A. Vitro, R. Liudvinaviciute and M.-M. Joséphidès, acting as Agents,

defendant at first instance,

supported by:

European Commission, represented by S. Pardo Quintillán and F. Castillo de la Torre, acting as Agents, with an address for service in Luxembourg,

intervener in the appeal,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, R. Silva de Lapuerta, C. Vajda and S. Rodin, Presidents of Chambers, A. Rosas (Rapporteur), E. Juhász, A. Borg Barthet, C. Toader, M. Safjan, D. Šváby and F. Biltgen, Judges,

Advocate General: Y. Bot,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 18 November 2014,

after hearing the Opinion of the Advocate General at the sitting on 8 January 2015,

gives the following

Judgment

1 By his appeal, Mr Anbouba requests the Court to set aside the judgment of the General Court of the European Union of 13 September 2013 in *Anbouba v Council* (T-563/11, EU:T:2013:429; ‘the judgment under appeal’), by which the General Court dismissed his action for annulment of:

- Council Decision 2011/522/CFSP of 2 September 2011 amending Decision 2011/273/CFSP concerning restrictive measures against Syria (OJ 2011 L 228, p. 16);
- Council Decision 2011/628/CFSP of 23 September 2011 amending Decision 2011/273/CFSP concerning restrictive measures against Syria (OJ 2011 L 247, p. 17);
- Council Decision 2011/782/CFSP of 1 December 2011 concerning restrictive measures against Syria and repealing Decision 2011/273/CFSP (OJ 2011 L 319, p. 56);
- Council Regulation (EU) No 878/2011 of 2 September 2011 amending Regulation (EU) No 442/2011 concerning restrictive measures in view of the situation in Syria (OJ 2011 L 228, p. 1); and
- 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),

in so far as his name appears on the lists of the persons to whom the restrictive measures decided upon under those acts (‘the acts at issue’) apply.

Background to the dispute

2 On 9 May 2011 the Council of the European Union adopted, on the basis of Article 29 TEU, Decision 2011/273/CFSP concerning restrictive measures against Syria (OJ 2011 L 121, p. 11). As is apparent from recital 2 in the preamble to that decision, ‘[t]he Union strongly condemned the violent repression, including through the use of live ammunition, of peaceful protest in various locations across Syria resulting in the death of several demonstrators, wounded persons and arbitrary detentions’. Recital 3 in its preamble is worded as follows:

‘In view of the seriousness of the situation, restrictive measures should be imposed against [the Syrian Arab Republic] and against persons responsible for the violent repression against the civilian population in Syria.’

3 Article 3(1) of Decision 2011/273 provides that Member States are to take the necessary measures to prevent the entry into, or transit through, their territories of the persons responsible for the violent repression against the civilian population in Syria, and persons associated with them, as listed in the annex to that decision. Article 4(1) of the decision states that ‘[a]ll funds and economic resources belonging to, owned, held or controlled by persons responsible for the violent repression against the civilian population

in Syria, and natural or legal persons ... and entities associated with them, as listed in the Annex, shall be frozen'. The detailed rules governing their freezing are laid down in Article 4(2) to (6) of Decision 2011/273. Article 5(1) of that decision provides that the Council is to establish the list.

4 Council Regulation (EU) No 442/2011 of 9 May 2011 concerning restrictive measures in view of the situation in Syria (OJ 2011 L 121, p. 1) was adopted on the basis of Article 215 TFEU and Decision 2011/273. It provides in Article 4(1) for the freezing of '[a]ll funds and economic resources belonging to, owned, held or controlled by the natural or legal persons, entities and bodies listed in Annex II'.

5 In recital 2 in the preamble to Decision 2011/522, the Council recalled that the European Union had condemned in the strongest terms the brutal campaign that President Bashar Al-Assad and his regime were waging against their own people which had led to the killing or injury of many Syrian citizens. Given that the Syrian leadership had remained defiant with regard to calls from the European Union as well as from the broad international community, the European Union decided to adopt additional restrictive measures against the Syrian regime. Recital 4 is worded as follows:

'The restrictions on admission and the freezing of funds and economic resources should be applied to additional persons and entities benefiting from or supporting the regime, in particular persons and entities financing the regime, or providing logistical support to the regime, in particular the security apparatus, or who undermine the efforts towards a peaceful transition to democracy in Syria.'

6 Article 3(1) of Decision 2011/273 as amended by Decision 2011/522 applies also to 'persons benefiting from or supporting the regime'. Likewise, Article 4(1) of Decision 2011/273 as amended by Decision 2011/522 provides for the freezing of funds belonging to, amongst others, 'persons and entities benefiting from or supporting the regime, and persons and entities associated with them, as listed in the Annex'.

7 By Decision 2011/522, Mr Anbouba's name was added to the list in the Annex to Decision 2011/273. The grounds for his listing are as follows:

'President of Issam Anbouba Est. for agro-industry ["SAPCO"]. Provides economic support for the Syrian regime.'

8 Regulation No 878/2011 also amended the general listing criteria laid down in Article 5(1) of Regulation No 442/2011, in order to cover, as stated in recital 2 in the preamble to Regulation No 878/2011, persons and entities who benefit from or support the regime. Mr Anbouba's name was added by Regulation No 878/2011 to Annex II to Regulation No 442/2011. The grounds stated for his inclusion in the list set out in that annex are the same as those stated in the Annex to Decision 2011/522.

9 Decision 2011/628 and Council Regulation (EU) No 1011/2011 of 13 October 2011 amending Regulation No 442/2011 (OJ 2011 L 269, p. 18) retained Mr Anbouba's name on the lists at issue and inserted information relating to his place and date of birth.

10 As a result of the adoption of new additional measures, Decision 2011/273 was repealed and replaced by Decision 2011/782, which retained Mr Anbouba's name on the list of persons and entities subject to restrictive measures.

11 Regulation No 36/2012 repealed Regulation No 442/2011 and again placed Mr Anbouba's name on the list of persons, entities and bodies subject to restrictive measures.

Proceedings before the General Court and judgment under appeal

12 Mr Anbouba's application, as extended by subsequent claims, sought the annulment of the acts at issue.

13 Mr Anbouba also made an application for damages, but he withdrew it at the hearing before the General Court.

14 Since the Council failed to lodge a defence within the time prescribed, the judgment under appeal was delivered by default. Consequently, the General Court held that there was no longer any need to adjudicate on the application which the European Commission had made for leave to intervene in support of the form of order sought by the Council.

15 After putting forward six pleas in law in support of his action, Mr Anbouba retained only three of them, namely, the second plea, alleging infringement of the rules concerning proof and manifest errors of assessment relating to the grounds for his inclusion on the lists of persons subject to restrictive measures, the third plea, alleging infringement of the rights of the defence, and the fourth plea, alleging infringement of the obligation to state reasons.

16 When examining the second plea, the General Court first of all ruled on the burden of proof, in paragraphs 31 to 44 of the judgment under appeal.

17 Paragraphs 32 and 33 of the judgment under appeal read as follows:

'32 It is clear from the preamble to Decision 2011/522 that, since the restrictive measures adopted in Decision 2011/273 had not been able to stop the repression by the Syrian regime against the civilian population, the Council considered that those measures should be applied to additional persons and entities benefiting from or supporting the regime, in particular those who financed the regime or provided logistical support to the regime, particularly the security apparatus, or who undermined the efforts to secure a peaceful transition to democracy. It is thus apparent that Decision 2011/522 extended the restrictive measures to the leading Syrian business figures, the Council taking the view that they could be classified as persons associated with the Syrian regime, since the commercial activities of their businesses could not prosper unless they enjoyed the favour of that regime and provided it with a degree of support in return. In so doing, the Council intended to apply a presumption of support for the Syrian regime to the heads of the leading businesses of Syria.

33 As regards the applicant, it is clear from the documents before the Court that the Council applied such a presumption to him on account of his roles as president of [SAPCO], a major company in the agri-food industry, as head of several companies operating in the property and education sectors and as founding member of the board of directors of Cham Holding, a company created in 2007, and his functions as Secretary General of the Chamber of Commerce and Industry of Homs (Syria).’

18 In order to establish whether the Council had erred in law by using a presumption, the General Court referred, in paragraph 35 of the judgment under appeal, to the case-law in the field of competition law to the effect that the institutions may make use of presumptions that reflect the possibility for the authority on whom the burden of proof lies to draw certain conclusions from typical sequences of events on the basis of common experience. It recalled, in paragraph 36 of the judgment under appeal, that a presumption, even where it is difficult to rebut, remains within acceptable limits so long as it is proportionate to the legitimate aim pursued, it is possible to adduce evidence to the contrary and the rights of the defence are safeguarded.

19 In the same paragraph, it referred to the case-law of the European Court of Human Rights to the effect that Article 6(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, does not regard presumptions of fact or of law with indifference, but requires States to confine them within reasonable limits which take into account the importance of what is at stake and maintain the rights of the defence.

20 In paragraph 37 of the judgment under appeal, the General Court also referred to paragraph 69 of the judgment in *Tay Za v Council* (C-376/10 P, EU:C:2012:138), relating to a decision to freeze funds, in which the Court of Justice held that the use of presumptions is not precluded if the contested acts have made provision for them and they serve the purpose of the legislation at issue.

21 In paragraph 38 of the judgment under appeal, the General Court held that, ‘given the authoritarian nature of the Syrian regime and the State’s tight control over the Syrian economy, the Council could rightly regard as constituting a matter of common experience the fact that the activities of one of the leading businessmen in Syria, who is active in numerous sectors, could not have prospered if he had not enjoyed the favour of that regime and provided it with a degree of support in return’.

22 In paragraph 40 of the judgment under appeal, the General Court noted the objectives pursued by Decision 2011/522, the protective nature of the measures adopted, and the overriding considerations to do with the security or the conduct of the international relations of the European Union and its Member States which may militate against the communication of certain items of evidence to the persons concerned. It concluded that the Council’s use of the presumption was proportionate.

23 In paragraph 41 of the judgment under appeal, the General Court held that the presumption adopted was rebuttable since the Council had to inform the persons subject to the measures of the grounds for their listing and they could rely on facts and

information which they alone were liable to possess in order to demonstrate that they do not provide support for the current regime.

24 In paragraph 43 of the judgment under appeal, the General Court observed, referring to paragraph 32 of the judgment, that the acts at issue had made provision for that presumption and, referring to paragraph 40, that that presumption enabled the objectives pursued by those acts to be served.

25 In paragraph 44 of the judgment under appeal, the General Court concluded that the Council had not erred in law in considering that the applicant's status as an important businessman in Syria was in itself sufficient for it to presume that he provided economic support for the Syrian regime.

26 In paragraphs 45 to 61 of the judgment under appeal, the General Court examined the part of the second plea that related to manifest errors of assessment. It noted first of all, in paragraph 46, the facts which were not contested by the parties, and then examined the various items of evidence adduced by the applicant. In paragraph 60 of the judgment under appeal, the General Court concluded that the applicant had not adduced any evidence capable of rebutting the presumption that, as an important businessman in Syria, he provided support for the current regime.

27 After rejecting each of the pleas relied upon by Mr Anbouba in support of his action, the General Court dismissed the action and ordered Mr Anbouba to pay the costs.

Forms of order sought

28 Mr Anbouba claims that the Court should:

- set aside the judgment under appeal;
- annul the acts at issue; and
- order the Council to pay the costs of both sets of proceedings.

29 The Council contends that the Court should:

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

30 The Commission contends that the Court should:

- dismiss the appeal; and
- order Mr Anbouba to pay the costs.

The appeal

31 The appeal is based on two grounds. By his first ground of appeal, Mr Anbouba submits that the General Court erred in law in that it held that the Council properly applied a presumption of support for the Syrian regime to the heads of the leading businesses of Syria, when that presumption has no legal basis, is disproportionate to the legitimate aim pursued and is irrebuttable. By his second ground of appeal, alleging infringement by the General Court of the rules of evidence, Mr Anbouba submits that, since the Council could not rely on such a presumption, it had to provide the General Court with the evidence on which its decision to include his name on the list of persons subject to the restrictive measures in Syria was based (judgment in *Commission and Others v Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518). It is appropriate to consider these two grounds of appeal together.

Arguments of the parties

32 As regards the first ground of appeal, Mr Anbouba submits, first, that there is no legal basis for reliance on the presumption, contrary to the condition laid down by the Court in *Tay Za v Council* (C-376/10 P, EU:C:2012:138). The second sentence of paragraph 32 of the judgment under appeal constitutes an interpretation of Decision 2011/522 by the General Court and does not set out the terms of a presumption for which the EU legislature has made provision.

33 Second, Mr Anbouba submits that the presumption applied to him is disproportionate to the objective pursued by the acts at issue.

34 Third, Mr Anbouba maintains that, contrary to what the General Court held, that presumption is irrebuttable in nature since he cannot deny being a business head in Syria and it is in practical terms impossible for him to prove the negative that he does not provide support for the Syrian regime.

35 The Council notes that restrictive measures are protective in nature and that the EU legislature has a broad discretion in relation to foreign policy.

36 It stresses the importance, for decades, of family groupings in the exercise of both economic and political power in Syria. It notes that Mr Anbouba forms part of a narrow group composed of the most important heads of business in Syria and that his businesses have prospered under the Syrian regime, a finding which the General Court made in paragraph 46 of the judgment under appeal.

37 As regards the proportionality of the presumption adopted in respect of Mr Anbouba to the objective pursued by the acts at issue, the Council refers to paragraph 40 of the judgment under appeal.

38 In its statement in intervention, the Commission proposes that the appeal be dismissed as unfounded.

Findings of the Court

39 By his two grounds of appeal, Mr Anbouba submits, in essence, that in the judgment under appeal the General Court failed to comply with the rules relating to the burden of proof as regards restrictive measures by accepting the existence of a presumption of support for the Syrian regime in his regard and not requiring the Council to provide additional evidence in support of his inclusion on the lists of persons subject to such measures.

40 It is necessary to examine, first, the general criteria for inclusion on the lists of persons subject to restrictive measures, second, the grounds stated for including Mr Anbouba on such a list and, third, the evidence that his listing was well founded.

41 As regards the general criteria which were adopted in this instance for the purpose of applying restrictive measures, and for the defining of which the Council has a broad discretion (see, to this effect, judgment in *Council v Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776, paragraph 120 and the case-law cited), Articles 3(1) and 4(1) of Decision 2011/273, as amended by Decision 2011/522, apply to, amongst others, persons and entities benefiting from or supporting the Syrian regime and persons and entities associated with them, whilst Article 5(1) of Regulation No 442/2011, as amended by Regulation No 878/2011, likewise applies to, amongst others, persons and entities benefiting from or supporting that regime and persons and entities associated with them.

42 Neither Decision 2011/273, as amended by Decision 2011/522, nor Regulation No 442/2011, as amended by Regulation No 878/2011, contains definitions of the concepts of ‘benefit’ derived from the Syrian regime, of ‘support’ for that regime or of ‘association’ with the persons and entities benefiting from or supporting the Syrian regime. Nor do they contain any details regarding how those matters are to be proved.

43 Therefore, neither Decision 2011/273, as amended by Decision 2011/522, nor Regulation No 442/2011, as amended by Regulation No 878/2011, establishes a presumption that the heads of the leading businesses of Syria provide support for the Syrian regime. Notwithstanding the absence of an express presumption of that kind, the General Court held in paragraph 32 of the judgment under appeal that Decision 2011/522 extended the restrictive measures to the leading Syrian business figures on the ground that the Council took the view that the heads of the leading Syrian businesses could be classified as persons associated with the Syrian regime, since the commercial activities of those businesses could not prosper without enjoying the favour of that regime and providing it with a degree of support in return. The General Court inferred that, in so doing, the Council had intended to apply a presumption of support for the Syrian regime to the heads of the leading businesses in Syria.

44 That said, even though the General Court thus referred to the application of a presumption by the Council, it must, however, be determined whether, in the light of the review which it carried out regarding the lawfulness of the findings upon which the Council based its decision to include Mr Anbouba on the list of persons subject to restrictive measures, the General Court in fact committed an error of law which should result in the judgment under appeal being set aside.

45 In that regard, it should be noted that the effectiveness of the judicial review guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union requires that, as part of the review of the lawfulness of the grounds which are the basis of the decision to include a person's name on the list of persons subject to restrictive measures, the Courts of the European Union are to ensure that that decision, which affects that person individually, is taken on a sufficiently solid factual basis. That entails, in this instance, a verification of the factual allegations in the summary of reasons underpinning the acts at issue, in order to review whether those reasons, or, at the very least, one of those reasons, deemed sufficient in itself to support those acts, is substantiated (see, to this effect, judgments in *Commission and Others v Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 119, and *Council v Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776, paragraph 73).

46 In this instance, in carrying out the assessment of the importance of what was at stake, which forms part of the review of the proportionality of the restrictive measures at issue, account may be taken of the context of those measures, of the fact that there was an urgent need to adopt such measures intended to put pressure on the Syrian regime in order for it to stop the violent repression against the population, and of the difficulty in obtaining more specific evidence in a State at civil war and having an authoritarian regime.

47 The grounds for including Mr Anbouba on the list of the persons subject to restrictive measures lie in the fact that he is the president of SAPCO and that he provides economic support for the Syrian regime.

48 In paragraph 33 of the judgment under appeal, the General Court noted the fact that Mr Anbouba was the president of SAPCO, a major company in the agri-food industry, the head of several companies operating in the property and education sectors, a founding member of the board of directors of Cham Holding, a company created in 2007, and the Secretary General of the Chamber of Commerce and Industry of Homs.

49 Mr Anbouba does not deny having performed those functions. In this connection, the General Court noted in paragraph 46 of the judgment under appeal that 'the parties are in agreement as to the fact that the applicant is one of the leading businessmen in Syria, active in the agri-food sphere (SAPCO holding a 60% market share in the soya bean oil sector) and the spheres of property and education, and that he has had significant economic success in Syria under the current regime'. The General Court added, furthermore, that Mr Anbouba 'acknowledged being the Secretary General of the Chamber of Commerce and Industry of Homs and having been, from 2007 to April 2011, one of the nine members of the board of directors of the largest private company in Syria, which has also been subject to EU restrictive measures and whose co-president was the cousin of the Syrian President Bashar Al-Assad, who has likewise been subject to such measures'.

50 The review as to whether Mr Anbouba's inclusion on the lists was well founded must be carried out by assessing whether his situation constitutes sufficient proof that he provided economic support for the Syrian regime. Such an appraisal must be carried out by examining the evidence not in isolation but in the context in which it fits (see, to this effect, judgments in *Commission and Others v Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 102, and *Council v Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776, paragraph 70).

51 In the light of that context, the General Court was entitled to hold that Mr Anbouba's position in Syrian economic life, his position as the president of SAPCO, his important functions within both Cham Holding and the Chamber of Commerce and Industry of Homs and his relations with a member of the family of President Bashar Al-Assad constituted a set of indicia sufficiently specific, precise and consistent to establish that he provided economic support for the Syrian regime.

52 As the Advocate General has observed in point 208 of his Opinion, in view of the situation in Syria, the Council discharges the burden of proof borne by it if it presents to the Courts of the European Union a set of indicia sufficiently specific, precise and consistent to establish that there is a sufficient link between the person subject to a measure freezing his funds and the regime being combated.

53 As regards observance of the rights of the defence, in paragraphs 48 to 59 of the judgment under appeal the General Court examined the evidence adduced by Mr Anbouba. The General Court did not err in law in holding, in paragraphs 51 to 53 and 56 to 58 of the judgment under appeal, that certain evidence could not be taken into consideration. As to the remaining evidence, the General Court held that it was not capable of demonstrating that Mr Anbouba did not provide any economic support for the Syrian regime. Since Mr Anbouba has not asserted that the General Court's analysis is founded on a distortion of the clear sense of that evidence, it is not for the Court, on appeal, to review the merits of the General Court's findings of fact in respect of that evidence.

54 It follows from all the foregoing considerations that the General Court reviewed whether Mr Anbouba's inclusion on the lists of persons subject to restrictive measures was well founded on the basis of a set of indicia relating to his situation, functions and relations in the context of the Syrian regime that were not rebutted by him. Consequently, the reference in the judgment under appeal to a presumption of support for that regime is not such as to affect the lawfulness of the judgment under appeal, since it is apparent from the General Court's findings that it reviewed in a legally satisfactory manner whether there was a sufficiently solid factual basis supporting Mr Anbouba's inclusion on the lists under consideration.

55 In so doing, the General Court observed the principles, stemming from the case-law recalled in paragraph 45 of the present judgment, that relate to review of the lawfulness of the grounds which are the basis of acts such as the acts at issue.

56 Consequently, as the first ground of appeal, relating to the error of law committed by the General Court, is not such as to result in the judgment under appeal being set aside and the second ground of appeal is unfounded, those grounds put forward by Mr Anbouba have to be rejected.

57 In the light of all of the foregoing considerations, the appeal must be dismissed.

Costs

58 In accordance with 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 the costs.

59 Under Article 138(1) of the Rules of Procedure, which applies 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.

60 Since the Council has applied for costs and Mr Anbouba has been unsuccessful, the latter must be ordered to bear his own costs and to pay those incurred by the Council.

61 In accordance with Article 140(1) of the Rules of Procedure, 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 (Grand Chamber) hereby:

1. **Dismisses the appeal;**
2. **Orders Mr Issam Anbouba to bear his own costs and to pay those incurred by the Council of the European Union;**
3. **Orders the European Commission to bear its own costs.**

[Signatures]

* Language of the case: French.