ORDER OF THE PRESIDENT OF THE COURT

19 July 2012 (*)

(Appeal – Application for interim measures – Restrictive measures against Syria – Freezing of funds and economic resources – Application for suspension of operation of measures and for interim measures – No urgency – No serious and irreparable damage)

In Case C-110/12 P(R),

APPEAL pursuant to the second paragraph of Article 57 of the Statute of the Court of Justice of the European Union, brought on 24 February 2012,

Tarif Akhras, residing in Homs (Syria), represented by S. Ashley, Solicitor,

appellant,

the other party to the proceedings being:

Council of the European Union, represented by M. Bishop and M.-M. Joséphidès, acting as Agents,

defendant at first instance,

THE PRESIDENT OF THE COURT,

after hearing the First Advocate General, J. Mazák,

makes the following

Order

1 By his appeal Mr Akhras requests that the Court set aside the order of the President of the General Court of the European Union of 12 December 2011 in Case T-579/11 R *Akhras* v *Council* ('the order under appeal') dismissing his application for interim measures and the suspension of operation 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 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), 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) and Council Regulation (EU) No 1011/2011 of 13 October 2011 amending Regulation No 442/2011 concerning restrictive measures in view of the situation in Syria (OJ 2011 L 269, p. 18) (together, 'the contested measures') to the extent that those measures affect him.

Legal context, background to the dispute and procedure before the judge hearing the application for interim measures

2 The legal context and the background to the dispute are summarised in paragraphs 1 to 9 of the order under appeal as follows:

'1 The applicant, Mr Tarif Akhras, is a Syrian citizen and businessman. He is legally resident in Homs (Syria). After being the subject of attacks and death threats, the applicant and members of his family left Homs on 10 October 2011, to take refuge first in Damascus (Syria), then outside Syria. For security reasons, where they currently reside is not disclosed.

2 Strongly condemning the violent repression of peaceful protest in various locations across Syria and calling on the Syrian authorities not to resort to repression, on 9 May 2011 the Council of the European Union adopted Decision 2011/273/CFSP concerning restrictive measures against Syria (OJ 2011 L 121, p. 11). In view of the

seriousness of the situation, the Council established an arms embargo, a ban on internal repression equipment, restrictions on the admission to the Union of certain persons and entities responsible for the violent repression against the civilian population in Syria, and the freezing of their funds and economic resources.

3 The names of the persons responsible for the violent repression against the civilian population in Syria and of the persons (natural or legal) and entities associated with them are listed in the annex to … Decision 2011/273 … Under Article 5 of that decision, the Council, acting upon a proposal by a Member State or the High Representative of the Union for Foreign Affairs and Security Policy, may amend that annex.

4 The name of the applicant is not one of the 13 names listed in the annex to Decision 2011/273.

5 Given that some of the restrictive measures taken against Syria fall within the scope of the FEU Treaty, the Council adopted 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). That regulation is, essentially, identical to Decision 2011/273, but provides for the possibility that frozen funds may be released. Annex II to that regulation – which consists of a list of names of persons, entities or bodies identified as being responsible for the repression in question, or associated with those responsible – is identical to the list in the annex to Decision 2011/273. The name of the applicant is not one of the 13 names listed in Annex II to that regulation. Under Article 14(1) and (4) of the regulation in question, where the Council decides to subject a person, entity or body to the restrictive measures referred to, it is to amend Annex II accordingly and is to review, moreover, the list in Annex II at regular intervals and at least every 12 months.

6 By Decision 2011/522 …, the Council amended Decision 2011/273 with a view, inter alia, to applying the restrictive measures in question to other persons and entities benefiting from or supporting the regime, in particular persons and entities financing the regime, or providing logistical support to the regime. Consequently, the scope of Decision 2011/273 was extended to "persons benefiting from the regime or supporting it, and persons associated with them, as listed in the Annex". Under Article 2 of Decision 2011/522, the names of four natural persons and three entities, "listed in the annex to [that] Decision", were added to the list set out in the annex to Decision 2011/273. The applicant is one of those named, with the details "date of listing: 2.09.2011" and the following "reasons":

"Founder of the Akhras Group (commodities, trading, processing and logistics), Homs. Provides economic support for the Syrian regime".

7 By Regulation … No 878/2011 …, the Council amended Regulation No 442/2011 by extending Annex II to that regulation to "persons and entities benefiting from or supporting the regime, or persons and entities associated with them". Under Article 2 of Regulation No 878/2011, Annex II to Regulation No 442/2011 is to be amended in accordance with Annex I to Regulation No 878/2011, that annex containing the name of the applicant and stating the same date of listing and the same "reasons" as given in Decision 2011/522.

8 On 23 September 2011 the Council adopted Decision 2011/628 … and, on 13 October 2011, the Council adopted Regulation … No 1011/2011 … In accordance with recital 6 of the preamble to Decision 2011/628, Article 3 thereof and Annex II thereto, and Article 2 of Regulation No 1011/2011, the information relating to the applicant in the Annex to Decision 2011/273 and Annex II to Regulation No 442/2011 was updated as follows:

"Name: Tarif Akhras;

Identifying information: Date of birth: 1949; place of birth: Homs, Syria;

Reasons: Founder of the Akhras Group (commodities, trading, processing and logistics), Homs. [Provides economic support to / Supports economically] the Syrian regime;

Date of listing: 2.9.2011".

9 Since the applicant considered that the Council had been wrong to impose on him the restrictive measures established by [the contested measures] and had erred in accusing him of providing economic support to the Syrian regime, he sent letters on 12, 18, 19 and 24 October 2011 to the Council asking the Council to inform him of the specific and concrete grounds for this accusation and to suspend the restrictive measures applied to him. The Council did not respond to those letters.'

3 By application lodged at the Registry of the General Court on 11 November 2011 the applicant brought an action for the annulment of the contested measures in so far as they concern him.

4 By separate document, lodged at the registry of the General Court on the same date, the applicant brought an application for interim measures, whereby he claimed that the President of the General Court should:

– suspend the operation of the contested measures in so far as they concern him until the General Court has ruled on the application for interim measures, or, in any event, until the General Court has ruled on the main action and

– order the Council, by means of a press release and a notice in the *Official Journal of the European Union*, to make public the suspension of operation of the contested measures within 24 hours of being served with the order of the General Court.

5 In its written observations, the Council requested that the judge hearing the application dismiss the application for interim measures.

The order under appeal

6 In the order under appeal the President of the General Court first examined whether the condition of urgency was satisfied.

7 The President of the General Court stated, first, that the contested measures were adopted in order to apply pressure to the Syrian authorities not to resort to violent repression of protest in Syria and that it was in that context that the Council adopted, inter alia, restrictive measures, economic and financial, against persons and entities benefiting from the regime or supporting it.

8 The President of the General Court then found that the application for interim measures was not however based on the negative effects which the contested measures might have on the applicant's economic and financial activities, because of the freezing of his funds and economic resources, the applicant's justification of the urgency of his application being limited to the claim that there was an imminent threat, caused by those measures, both to his own life and personal safety and to the lives and personal safety of his family.

9 According to what was said by the applicant, the claim, made in the contested measures, that he was providing economic support to the Syrian regime had been spread throughout Syria, in particular in Homs, and had incited opponents of the Syrian regime to commit acts of serious violence directed at him and at members of his family.

10 After examining the evidence of various kinds produced by the applicant, in particular in the light of the circumstances prevalent for some time in Syria, characterised by increasingly violent riots approaching civil war, the President of the General Court concluded that the applicant had not adequately substantiated, by evidence, his assertions that attacks directed against him and his family in Syria had taken place following the publication of the contested measures. He had in particular not established that those measures constituted the decisive cause of those attacks and, therefore, constituted the decisive cause of the risk he claimed to exist that there would be further attacks.

11 The President of the General Court added that the conclusion that, in the absence of urgency, there was no justification in this case for granting the interim measures requested was not affected by the fact that the condition relating to a prima facie case was satisfied. The President of the General Court stated, in that regard,

that the condition relating to urgency and that relating to a prima facie case are cumulative, and consequently an application for interim measures must be rejected whenever one of them is not satisfied, given that the granting of interim measures by the court hearing the application for such measures is strictly exceptional.

12 Referring to paragraph 58 of Case T-86/11 *Bamba* v *Council* [2011] ECR II-0000, the President of the General Court stated, further, that the second paragraph of Article 60 of the Statute of the Court of Justice of the European Union provides that decisions of the General Court declaring a regulation to be void are to take effect only as from the date of expiry of the period within which an appeal may be brought or, if an appeal has been brought within that period, as from the date of dismissal of the appeal by the Court of Justice. Further, he stated that in paragraph 59 of that judgment the General Court ensured that, on grounds of legal certainty, the effective date of annulment of the contested decision was in line with that of the contested regulation, since those two acts imposed identical measures on Mr Bamba.

13 According to the President of the General Court, it followed that even an annulment of the contested measures at the conclusion of the main proceedings would not have the immediate and automatic effect of removing the name of the applicant from those measures, particularly if the Council were to bring an appeal against the judgment ordering annulment. In the particular circumstances of the specific proceedings, governed by the second paragraph of Article 60 of the Statute of the Court of Justice, and taking into account the fact that interim measure proceedings are ancillary to the main proceedings, the existence of a prima facie case did not, therefore, justify, by itself, the grant of the interim measures requested.

14 For all those reasons, the President of the General Court dismissed the application for interim measures.

Forms of order sought by the parties

15 The appellant claims that the Court should set aside the order under appeal, grant to him the interim measures sought in the application for such measures and order the Council to pay the costs.

16 In its observations, lodged on 22 March 2012, the Council contends that the Court should dismiss the appeal and order the appellant to pay the costs.

The appeal

17 In support of his appeal the appellant relies on three grounds, namely:

– an error of law in the assessment of the condition of a prima facie case, in particular in relation to the second paragraph of Article 60 of the Statute of the Court;

– an error of law in the assessment of the evidence relating to the irreparable harm suffered by the appellant, and

– an infringement of his procedural rights.

The first ground of appeal

18 The appellant claims in the first ground of appeal that the President of the General Court committed an error of law in declaring that, despite the fact that the pleas of fact and law relied on by him appeared to establish a strong prima facie case, the grant of interim measures was not justified because of the effects of the second paragraph of Article 60 of the Statute of the Court of Justice. The President of the General Court held that the effect of that provision was that the listing of the appellant’s name in the contested measures would continue until an appeal brought against a judgment of the General Court annulling that listing had been dismissed by the Court of Justice.

19 The appellant argues that the designation of a natural or legal person in a regulation imposing restrictive measures amounts in reality to a decision in the form of a regulation, rather than to a true regulation, and thus the second paragraph of Article 60 of the Statute of the Court does not apply.

20 According to the appellant, interim measures intended to suspend the operation of restrictive measures such as those imposed on him should prima facie be granted, where the pleas of fact and law relied on by the party seeking those interim measures establish a strong case, unless compelling considerations dictate otherwise. Accordingly, it is possible to reconcile the time required to decide on the validity of the designation at issue, the importance and seriousness of the case for the person concerned and the requirement, confirmed in the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, that a ruling be given within a reasonable time.

21 In that regard, it should be recalled that the court hearing an application for interim relief may order suspension of operation and interim measures, if it is established that such an order is justified, prima facie, in fact and in law (fumus boni juris) and that it is urgent in so far as, in order to avoid serious and irreparable harm to the applicant's interests, it must be made and produce its effects before a decision is reached in the main action (order of the President of the Court of Justice in Case C-268/96 P(R) *SCK and FNK* v *Commission* [1996] ECR I-4971, paragraph 30).

22 Those conditions are cumulative, so that an application for interim measures must be dismissed if either of them is absent (orders of the president of the Court of Justice in *SCK and FNK* v *Commission*, paragraph 30, and of 3 April 2007 in Case C-459/06 P(R) *Vischim* v *Commission*, paragraph 23).

23 In the context of that overall examination, the court hearing the application for interim measures enjoys a broad discretion and is free to determine, having regard to the particular circumstances of the case, the manner and order in which those various conditions are to be examined, there being no rule of law imposing a pre-established scheme of analysis within which the need to order interim measures must be assessed (orders of the President of the Court of Justice in Case C-149/95 P(R) *Commission* v *Atlantic Container Line and Others* [1995] ECR I-2165, paragraph 23, and in *Vischim* v *Commission*, paragraph 25).

24 In this case, the President of the General Court examined first whether the condition relating to urgency was satisfied and he found that it was not.

25 Next, referring to the case-law mentioned in this order, he correctly stated that the existence of a prima facie case was not capable of affecting the conclusion that the grant of interim measures was not possible in the present case, given that there was no urgency.

26 It is clear from the Court's case-law that, while the relative strength of the prima facie case is not without effect on the assessment of urgency (see, to that effect, order of the President of the Court of Justice in Case C-445/00 R *Austria* v *Council* [2001] ECR I-1461, paragraph 110), it remains the case that, in accordance with Article 83(2) of the Court's Rules of Procedure, there are two separate conditions which govern the obtaining of a suspension of operation of measures, and accordingly the applicant remains bound to demonstrate the imminent threat of serious and irreparable harm (order of the President of the Court of Justice of 31 January 2011 in Case C-404/10 P-R *Commission* v *Éditions Odile Jacob*, paragraph 27).

27 That was the background to the examination by the President of the General Court, for the sake of completeness, of the considerations linked to the second paragraph of Article 60 of the Statute of the Court of Justice, pursuant to which decisions of the General Court declaring a regulation to be void are to take effect only as from the date of expiry of the period laid down for bringing an appeal or, if an appeal has been brought within that period, as from the date of dismissal of the appeal.

28 The President of the General Court held, in essence, that since, in a case with similarities to this case, the effects of a regulation annulled by a judgment of the General Court were maintained, by reference to the second paragraph of Article 60 of the Statute of the Court of Justice, at least until the possible bringing of an appeal, so that the annulment of the regulation even at the conclusion of the main proceedings did not have the immediate and automatic effect of removing the name of a person listed in the measures at issue in that similar case, there was no justification in the present case for the applicant being able to obtain the removal of his name at the stage of ancillary proceedings for interim measures, solely on the basis of a prima facie case.

29 Even if, as maintained by the appellant with arguments which do not appear to be unfounded, the second paragraph of Article 60 of the Statute of the Court of Justice is not applicable in the case of regulations such as those contested in the main proceedings by the appellant, it remains the case that the grant of interim measures in the present case was refused not because of the effects of that provision of the Statute of the Court of Justice, but, as is clear from paragraphs 24 and 25 of this order, because the condition relating to urgency was not satisfied.

30 In those circumstances, the first ground of appeal is ineffective and must therefore be rejected.

The second ground of appeal

31 In the second ground of appeal, which contains, in essence, seven parts, the appellant claims that the President of the General Court manifestly erred in his assessment of the evidence. In particular, he did not give sufficient weight to the evidence produced by the appellant, he set too high a standard of proof, and he reached conclusions that were not available to him on the evidence produced.

32 By the second and seventh parts of the second ground, which can be examined first, the appellant claims that the President of the General Court wrongly and unfairly disregarded the evidence that the physical attacks on him and his family took place only after his designation by the Council and are therefore caused by it and, further, that the President of the General Court failed to take into account and failed to give proper weight to the evidence that he was not considered to be a supporter of the regime.

33 In that regard, it should be recalled that it is clear from Article 256 TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice that the General Court has exclusive jurisdiction, first, to find the facts, except where the substantive inaccuracy of its findings is apparent from the documents submitted to it and, second, to assess those facts. When the General Court has found or assessed the facts, the Court of Justice has jurisdiction under Article 256 TFEU to review the legal characterisation of those facts by the General Court and the legal conclusions it has drawn from them (see, inter alia, Case C-90/09 P *General Química and Others* v *Commission* [2011] ECR I-0000, paragraph 71 and case-law cited, and order of the President of the Court of Justice of 20 April 2012 in Case C-507/11 P(R) *Fapricela* v *Commission*, paragraph 30).

34 The Court of Justice thus has no jurisdiction to establish the facts or, in principle, to examine the evidence which the General Court accepted in support of those facts. Provided that the evidence has been properly obtained and the general principles of law and the rules of procedure in relation to the burden of proof and the taking of evidence have been observed, it is for the General Court alone to assess the value which should be attached to the evidence produced to it. Save where the clear sense of the evidence has been distorted, that appraisal does not therefore constitute a point of law which is subject as such to review by the Court of Justice (*General Química and Others* v *Commission*, paragraph 72 and case-law cited, and the order in *Fapricela* v *Commission*, paragraph 31).

35 In this case, it is clear from the order under appeal, in particular from paragraphs 29 to 37 thereof, that the President of the General Court examined the evidence produced by the appellant intended to prove, first, that the attacks against him and his family took place only after his designation by the Council and, second, that he was not considered to be a supporter of the regime.

36 Consequently, since the appellant does not claim any distortion of the evidence but claims that the President of the General Court wrongly and unfairly disregarded evidence or failed to take into account and to give proper weight to such evidence, the second and seventh parts of the second ground of appeal do not concern questions of law which are subject to review by the Court of Justice and must therefore be rejected as being inadmissible.

37 By the third to sixth parts of the second ground, which can be examined in the second place, the appellant claims, in essence, that the President of the General Court applied an incorrect standard of proof and imposed on the appellant a burden of proof which was too high. In support of his argument, the appellant refers to several passages in the order under appeal.

38 In connection with the third part of that ground, the appellant refers to the finding made by the President of the General Court that he could not reasonably rule out the possibility that the attacks carried out against the appellant himself and his family were carried out in the context of a situation approaching civil war and anarchy prevalent for some time in Syria and conducive to an increase in general criminality.

39 In connection with the fourth part of the second ground of appeal, the appellant criticises the statement by the President of the General Court that it appeared plausible that the primary and therefore decisive cause of the attacks carried out against the appellant himself and his family was that he was denounced as a supporter of the Syrian regime by opponents of that regime, and the fact of his being denounced could at the same time have been brought to the notice of the European Union.

40 In connection with the fifth part of the second ground of appeal, the appellant refers to the conclusion of the President of the General Court that the appellant had not established that, before his name was listed in the contested measures, he had in fact been the 'opposite of a supporter' of the Syrian regime and that his stigmatisation, in the eyes of opponents of that regime, could therefore have its origin only in that listing.

41 Lastly, in connection with the sixth part of the second ground of appeal, the appellant criticises the finding by the President of the General Court that, taking into account the prominent position occupied by him in Syria as a successful businessman, chairman of the Homs Chamber of Commerce, board member of the Federation of Syrian Chambers of Commerce and member of a family linked by marriage to the Syrian regime, it did not appear surprising that the appellant had been identified and targeted, by the opponents of the Syrian regime and in the context of what was approaching civil war, as a person benefiting from that regime and supporting it.

42 In that regard, it must be recalled that, while it is not necessary for it to be absolutely certain that the serious and irreparable damage will occur, a sufficient degree of probability being enough, the applicant is none the less required to prove the facts which are considered to found the prospect of such damage (see, inter alia, orders of the President of the Court in Case C-156/03 P-R *Commission* v *Laboratoires Servier* [2003] ECR I-6575, paragraph 36, and in *Commission* v *Éditions Odile Jacob*, paragraph 30).

43 Further, in order to be able to assess whether the harm alleged by the applicant is indeed serious, the judge hearing the application for interim measures must have hard and precise information, supported by detailed documents showing the applicant's situation and making it possible to examine the actual consequences which would be likely to result if the measures sought were not granted. The applicant is therefore obliged to provide, with supporting documentation, information capable of giving an accurate and comprehensive picture of the situation which he claims to justify the grant of those measures (see, to that effect, order of the President of the Court of 16 December 2010 in Case C-373/10 P(R) *Almamet* v *Commission*, paragraph 24).

44 It should also be added that, as the President of the General Court correctly stated, when suspension of operation of a measure is sought, granting of the interim measure requested is justified only where the measure at issue constitutes the decisive cause of the alleged serious and irreparable harm.

45 In those circumstances, it is not apparent that the President of the General Court did anything other than examine whether the facts which were supposed to be the basis of the prospective harm allegedly suffered by the appellant were proved or whether the listing of the appellant's name in the contested measures did constitute the decisive cause of the harm claimed by the appellant.

46 The findings made by the President of the General Court and his statements which the appellant criticises simply reveal the doubts entertained by the judge hearing the application for interim measures as to the truth of the facts claimed or as to the probable cause of the harm alleged by the appellant.

47 In particular, contrary to what is claimed by the appellant, he was not at all required to establish that the listing of his name in the contested measures was the sole possible explanation of the violence committed against him.

48 It follows that the third to sixth parts of the second ground of appeal are unfounded and must therefore be rejected.

49 Finally, in relation to the first part of the second ground of appeal, which can be examined last, the appellant maintains that the President of the General Court, by holding that his assertions were essentially based on a witness statement which he had drafted himself, unduly and unreasonably criticised the appellant for relying on evidence which came from himself. Since the attacks were committed against the appellant and his family, it would be very odd were he not to be able to put in a witness statement recording his evidence in his own words. Further, since, according to the appellant, the President of the General Court accepted that the attacks were actually carried out, the criticism that the appellant essentially relied on the single witness statement which he himself drew up should have been of no consequence.

50 In that regard, suffice it to observe that the President of the General Court did not hold that the appellant could not produce witness statements or other evidence of which he himself was the source. On the other hand, it was open to the President of the General Court to hold that such evidence was of limited probative value and did not prove, to the requisite legal standard, the truth of the facts alleged by the appellant.

51 Moreover, contrary to what is claimed by the appellant, the President of the General Court held that, while the Syrian police reports and the report made to the police, submitted by the appellant, certainly constitute material capable of demonstrating that the attacks mentioned therein had actually been carried out, it remains the case that they were incapable of proving that those attacks had been caused simply by the listing of the appellant's name in the contested measures. Consequently, the content of other evidence, in particular that coming from the appellant himself, was not without significance.

52 The first part of the second ground of appeal must therefore be rejected.

53 In the light of the foregoing considerations, the second ground of appeal must be rejected in its entirety.

The third ground of appeal

54 In the third ground of appeal, the appellant claims that, taking into account the importance attached by the President of the General Court to the absence of 'hard' evidence, the President should have allowed the appellant an opportunity to respond to his doubts, whether through written questions or at an oral hearing. By choosing not to proceed in that way, the President of the General Court infringed the rights of the defence, the right to a fair hearing and the right to be heard.

55 In that regard, it must be recalled that an application for interim measures must by itself enable the defendant to prepare its observations and the judge hearing the application to rule on it, as necessary, without any other supporting information, since the essential elements of fact and law on which the application is based must be found in the actual text of that application (orders of the President of the Court of Justice in Case C-530/10 P(R) *Nencini* v *Parliament*, paragraph 28, and in *Fapricela* v *Commission*, paragraph 52).

56 Moreover, taking into account the expedition which naturally characterises proceedings for interim relief, it is a reasonable requirement to make of the party seeking the interim measures that, save in exceptional cases, he submit at the time when the application is made all the evidence available in support of that application, so that the judge hearing the application can assess, on that basis, whether the application is well founded (orders in *Nencini* v *Parliament*, paragraph 29, and in *Fapricela* v *Commission*, paragraph 53).

57 It must also be recalled that, in relation to an application for interim measures, it is for the President of the General Court to assess the need to hold a hearing and to hear the parties' oral submissions. The President must in that regard enjoy a broad discretion (orders of the President of the Court in Case C-113/09 P(R) *Ziegler* v *Commission*, paragraph 30; in Case C-446/10 P(R) *Alcoa Trasformazioni* v *Commission*, paragraph 72, and in *Fapricela* v *Commission*, paragraph 49).

58 Further, under the first subparagraph of Article 105(2) of the Rules of Procedure of the General Court, it is for the President of that court to assess whether it is necessary to order a preparatory inquiry.

59 Accordingly, with regard to the fact that, in some cases, the President of the General Court has exercised his discretion to request additional written submissions from the parties, whereas, in other cases, he has declined to do so, it has been held that each case has its own specific circumstances and difficulties and that the judge hearing the application for interim measures alone has jurisdiction to assess which measures of organisation of procedure he deems appropriate in order to rule on the application for interim measures (order in *Fapricela* v *Commission*, paragraph 51).

60 In the light of the case-law cited above, it is clear that the appellant has put forward no argument to support the conclusion that, in this case, the President of the General Court exceeded the limits of his discretion.

61 First, the argument that the President of the General Court attached particular importance to the failure by the appellant to produce 'hard' evidence is not sufficient, in itself, for it to become essential that there be an oral procedure or written replies to questions put by the President of the General Court. If it were otherwise, the President of the General Court would be almost bound, whenever he had doubts as to the probative value or sufficiency of the evidence submitted in support of the urgency of an application for interim measures, to invite the applicant to respond to those doubts, which would be manifestly incompatible both with the nature of proceedings for interim measures and with the discretion enjoyed by the judge hearing the application for such measures within such proceedings.

62 Secondly, as regards the arguments relied on by the appellant based on Case C-42/07 *Liga Portuguesa de Futebol Profissional and Bwin International* [2009] ECR I-7633, paragraph 31, and Case C-89/08 P *Commission* v *Ireland and Others* [2009] ECR I-11245, paragraph 56, it is clear that, contrary to the respective circumstances of the cases which gave rise to those judgments, this case does not concern an argument on the basis of which the case was to be decided which had not been debated between the parties or a plea raised by the court of its own motion without the parties having first been invited to submit their observations on that plea.

63 In those circumstances, the Court cannot hold that the President of the General Court infringed the rights of the defence, the right to a fair hearing or the appellant's right to be heard.

64 Consequently the third ground of appeal must be rejected.

65 Since none of the three grounds relied on by the appellant in support of his appeal can be accepted, it follows that the appeal must be dismissed.

Costs

66 Under Article 69(2) of the Rules of Procedure of the Court, applicable to appeal proceedings by virtue of Article 118 of those rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Council has applied for costs and the appellant has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds, the President of the Court hereby orders:

1. **The appeal is dismissed.**

2. **Mr Akhras shall pay the costs.**

[Signatures]

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* Language of the case: English.