

JUDGMENT OF THE COURT (First Chamber)

9 November 2017 (*)

(Appeal — Common foreign and security policy — Restrictive measures against the Syrian Arab Republic — Restrictive measures against a person listed in an annex to a decision — Extension of the validity of that decision during proceedings before the General Court of the European Union — Request to modify the application in the course of the hearing and not by a separate document — Article 86 of the Rules of Procedure of the General Court — Bulgarian language version — Annulment by the General Court of the original decision placing the person concerned on the list of persons subject to restrictive measures — Expiry of the extension decision — Continuation of the interest in bringing legal proceedings in relation to the modification of the application)

In Case C-423/16 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 1 August 2016,

HX, residing in Damascus (Syria), represented by S. Koev, advokat,
applicant,

the other party to the proceedings being:

Council of the European Union, represented by I. Gurov and by S. Kyriakopoulou,
acting as Agents,

defendant at first instance,

THE COURT (First Chamber),

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

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 22 June 2017,

gives the following

Judgment

1 By his appeal, HX seeks the partial setting aside of the judgment of the Court of Justice of the European Union of 2 June 2016, *HX v Council* (T-723/14, ‘the judgment under appeal’, EU:T:2016:332), by which it, first, annulled the Council Implementing Decision 2014/488/CFSP of 22 July 2014 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2014 L 217, p. 49), and Council Implementing Regulation (EU) No 793/2014 of 22 July 2014 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2014 L 217, p. 10), to the extent that that implementing decision and that implementing regulation concerned HX, and, second, rejecting his claims seeking the annulment of Council Decision (CFSP) 2015/837 of 28 May 2015 amending the decision 2013/255/CFSP (OJ 2015 L 132, p. 82).

Legal context

2 Article 44 of the Rules of Procedure of the General Court in the versions applicable to the procedure which led to the judgment under appeal (‘the Rules of Procedure of the General Court’), lists the languages of a case before the General Court, included within which is the Bulgarian language.

3 Article 45(1) of the Rules of Procedure of the General Court, entitled ‘Determination of the language of a case’ and which falls under Title II, headed ‘Languages’, provides:

‘In direct actions within the meaning of Article 1, the language of a case shall be chosen by the applicant ...’

4 Article 78 of those Rules of Procedure provides:

1. The application shall be accompanied, where appropriate, by the documents specified in the second paragraph of Article 21 of the Statute [of the Court of Justice of the European Union].

2. An application submitted under Article 272 TFEU pursuant to an arbitration clause contained in a contract governed by public or private law, entered into by the Union or on its behalf, shall be accompanied by a copy of the contract which contains that clause.

3. An application made by a legal person governed by private law shall be accompanied by recent proof of that person’s existence in law (extract from the register of companies, firms or associations or any other official document).

4. The application shall be accompanied by the documents referred to in Article 51(2) and (3).

5. If the application does not comply with the requirements set out in paragraphs 1 to 4, the Registrar shall prescribe a reasonable time limit within which the applicant is to produce the abovementioned documents. If the applicant fails to put the application in

order within the time limit prescribed, the General Court shall decide whether the non-compliance with these conditions renders the application formally inadmissible.’

5 Article 86 of those Rules of Procedure, 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 of modification 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 shall 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 shall 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.

...’

6 Article 102(1) of the Rules of Procedure of the General Court provides:

‘The Registrar shall draw up minutes of every inquiry hearing. The minutes shall be signed by the President and by the Registrar. They shall constitute an official record.’

7 Article 227 of the Rules of Procedure of the General Court provides that those rules are authentic in all the languages referred to in Article 44 thereof.

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

8 The appellant is a Syrian businessman who was made subject to restrictive measures under the Common Foreign and Security Policy (CFSP). 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) by Implementing Decision 2014/488, 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) by Implementing Regulation No 793/2014. He sought, in his application instituting the proceedings before the General Court, the annulment of that implementing decision and that implementing regulation in so far as they concerned him.

9 Since, in the meantime, Decision 2013/255 was extended by Decision 2015/837, the appellant also sought the annulment of the latter decision by means of the modification of his application instituting proceedings, as provided for in Article 86 of the Rules of Procedure of the General Court.

10 He requested that modification at the hearing of 8 December 2015, during which he submitted that he learned of the extension decision during the pleading by the representative of the Council of the European Union.

11 The General Court, which upheld the claim for annulment set out in the application instituting proceedings, nevertheless did not find that the request to modify that application was admissible. That inadmissibility was, according to the General Court, the result of the failure to submit that request by ‘separate document’ within the meaning of Article 86 of the Rules of Procedure of the General Court.

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

12 The appellant claims that the Court of Justice should:

- set aside the judgment under appeal, in so far as, by paragraph 2 of the operative part thereof, the General Court rejected his claim seeking the annulment of Decision 2015/837;
- adjudicating on the merits, annul Decision 2015/837 in so far as it concerns him;
- in the alternative, set aside the judgment under appeal, in so far as, by paragraph 2 of the operative part thereof, the General Court rejected his claim seeking the annulment of Decision 2015/837 and refer the case back to the General Court, and
- order the Council to pay the costs.

13 The Council claims that the Court should:

- dismiss the appeal in its entirety, and
- order the appellant to pay the costs.

The appeal

Arguments of the parties

14 The appellant submits that the General Court was wrong not to take into account his request to modify the application, when that request, even though expressed orally at the hearing, was the object of a written form before the oral phase of the procedure closed, since it was referred to in the minutes of the hearing. He submits that, in that way, and notwithstanding the failure to lodge a separate written document in the strict sense, his request to modify the application should have been regarded as having satisfied the requirements set out in Article 86 of the Rules of Procedure of the General Court. He submits, in addition, that the lack of a specific written request did not harm the rights of the opposing party and did not impede the work of the General Court.

15 The appellant considers, furthermore, that the General Court erred in law in the judgment under appeal in not taking into account the particular nature of the language of the case that he had chosen, namely Bulgarian. That language version of the Rules of Procedure of the General Court used an ambiguous word which did not necessarily imply a requirement for a separate written document for making a request to modify the application.

16 Moreover, he submits that the General Court infringed the principle of *audi alteram partem* in not granting him additional time in order to lodge an application seeking the annulment of Decision 2015/837, even though he only learned of that decision in the course of the hearing.

17 The Council submits that Article 86(2) of the Rules of Procedure of the General Court requires, without any ambiguity, the submission of a written request. Even if the Bulgarian language version diverges from the other language versions in that regard, the Council considers that that language version cannot prevail. All the other language versions use, according to the Council, words that express, incontestably, the need for a separate written document. In any event, a contextual analysis of the whole of Article 86 of the Rules of Procedure suffices to show that it must only concern a written document, in particular as regards items ‘attached’ to the document.

Findings of the Court

18 As a preliminary point, it must be noted that it is clear from the case-law of the Court that the forms of order sought by the parties may not, in principle, be altered (see, inter alia, the judgment of 11 November 2010, *Commission v Portugal*, C-543/08, EU:C:2010:669, paragraph 20 and the case-law cited). Article 86 of the Rules of Procedure of the General Court is a codification of pre-existing case-law on the admissible exceptions to the principle that the forms of order sought by the parties are unalterable. The Court’s observations, in the present appeal, therefore apply only in the context of that exceptional situation.

19 It must be recalled that, in direct actions, Article 45 of the Rules of Procedure of the General Court allows the applicant to choose the language of the case. In the present case, HX’s choice, in the proceedings before the General Court leading to the judgment under

appeal, was for the Bulgarian language, of which his lawyer has command.

20 The appellant submits before the Court, without being challenged by the Council, that that language version of Article 86(2) of the Rules of Procedure of the General Court is ambiguous, in the sense that, contrary to the English language version ('separate document') and the French version ('acte séparé') of that provision, the Bulgarian language version thereof does not use the word 'document', but the term 'molba' ('request'). That word does not necessarily convey the requirement of being in writing, since more usually it means the expression of a wish, which could just as well be oral as written.

21 It is not therefore inconceivable that that ambiguity induced the appellant's lawyer to consider that it would be admissible to request the modification of the application orally at the hearing in which he said he learned of the decision that is the object of the request. Furthermore, the appellant could have been reassured in having that impression by the fact that the said request was, subsequently, recorded in the minutes of the oral hearing, which is an official record, pursuant to Article 102(1) of the Rules of Procedure of the General Court.

22 If the General Court considered that the request to modify the application submitted in that way did not comply with the form required by its Rules of Procedure, it was under an obligation, at the very least, to inform the appellant of his error and to place him in a position of being able to rectify it.

23 As the Advocate General observed, in points 33 and 34 of her Opinion, 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.

24 In that regard, Article 86(3) and (4) of the Rules of Procedure of the General Court themselves provide that the failure to satisfy certain formalities in the presentation of requests for modifications does not necessarily render them inadmissible. The same discretion on the part of the General Court is also found in respect of the annexes to the application, since Article 78(5) of the rules provides for a possibility of regularising the annexes in accordance with directions set by the Registrar, failing which the General Court may still decide that the application is nevertheless admissible.

25 That conclusion cannot validly be called into question by the argument made by the Council based, first, on the fact that the Bulgarian language version of the Rules of Procedure of the General Court is the only one to contain the ambiguity pointed out by the applicant and, second, on the case-law of the Court according to which the need to apply and interpret EU law uniformly precludes the examination of a provision in one of the language versions in isolation, but requires, on the contrary, its interpretation in the light of all the other language versions in accordance with its author's intention (see, to that effect, the judgments of 12 November 1969, *Stauder*, 29/69, EU:C:1969:57, paragraph 3;

of 17 July 1997, *Ferriere Nord v Commission*, C-219/95 P, EU:C:1997:375, paragraph 15, and of 15 October 2015, *Grupo Itevelesa and Others*, C-168/14, EU:C:2015:685, paragraph 42).

26 To expect litigants, with regard to a provision of the Rules of Procedure of a Court of the European Union — moreover, adopted and made authentic in all the languages of the case by that jurisdiction itself under the combined provisions of Article 44 and Article 227(1) of those rules — to refer to all the language versions of those rules in order to avoid a possible divergence in the language version which is the language of the case resulting in a finding of inadmissibility would be contrary to their right to address the Courts of the European Union in the official language of their choice, which is provided for both by Article 20(2)(d) TFEU and the fourth paragraph of Article 24 TFEU and also Article 45 of the Rules of Procedure of the General Court.

27 Therefore, it was wrong in law for the General Court to reject as inadmissible HX's request to modify the application on the sole ground that it had not been submitted in a separate written document, without having invited the latter, beforehand, to regularise the request.

28 Consequently, without it being necessary to examine the other ground of appeal, the second paragraph of the operative part of the judgment under appeal must be set aside.

On the request to modify the application submitted at first instance

29 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if the Court quashes the decision of the General Court, it may itself give final judgment in the matter, where the state of the proceedings so permits. It is appropriate to apply that provision to the present case.

30 As the Court of Justice has held in its settled case-law, both an applicant's legal interest in bringing proceedings and the purpose of the action must exist not merely when the action is brought, but must continue to subsist until delivery of final judgment, failing which there will be no need to adjudicate. That presupposes that the action is capable, by its outcome, of procuring an advantage to the party bringing it (judgments of 19 October 1995, *Rendo and Others v Commission*, C-19/93 P, EU:C:1995:339, paragraph 13; of 7 June 2007, *Wunenburger v Commission*, C-362/05 P, EU:C:2007:322, paragraph 42, and of 28 May 2013, *Abdulrahim v Council and Commission*, C-239/12 P, EU:C:2013:331, paragraph 61).

31 In that regard, it should be recalled that HX wishes, in essence, to modify his initial application at first instance, which sought, in particular, the annulment of implementing decision 2014/488 including his name on the list in annex I to Decision 2013/255, so that it seeks, in addition, the annulment of the decision extending that list for an additional year.

32 By the retroactive effect of the annulment of implementing decision 2014/488, decided in the first paragraph of the operative part of the judgment under appeal, which has become definitive since the appeal in the present case only related to the second

paragraph of the operative part, the list in annex I to Decision 2013/255 must be regarded as never having included the name of the appellant.

33 The appellant is unable, therefore, to obtain from the annulment of Decision 2015/837 extending the existence of that list any benefit going beyond that which he was able to obtain upon the annulment of Implementing Decision 2014/488 which included his name on it.

34 It follows that there is no longer a need to adjudicate on the request to modify the application submitted by HX at first instance.

Costs

35 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to the costs.

36 Under Article 138(1) of those rules, which applies to the procedure on appeal 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.

37 Since HX applied for the Council to be ordered to pay the costs and the Council has been unsuccessful, the Council shall be ordered to pay, in addition to its own costs, the costs incurred by HX both in the proceedings at first instance and in the present appeal.

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

1. **Sets aside paragraph 2 of the operative part of the judgment of the General Court of the European Union of 2 June 2016, *HX v Council* (T-723/14, EU:T:2016:332);**
2. **Declares that there is no longer a need to adjudicate on the request to modify the application submitted by HX before the General Court of the European Union;**
3. **Orders the Council of the European Union to pay its own costs and the costs incurred by HX both at first instance and in the present appeal.**

[Signatures]

* Language of the case: Bulgarian.