ECLI:EU:C:2017:466

JUDGMENT OF THE COURT (Eighth Chamber)

15 June 2017 (*)

(Appeal — Common foreign and security policy (CFSP) — Fight against terrorism — Specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban — Regulation (EC) No 881/2002 — Freezing of funds and economic resources of natural and legal persons included in a list drawn up by the United Nations Sanctions Committee — Re-listing of those persons in Annex I to Regulation No 881/2002 after annulment of the original listing — Disappearance of the legal person in the course of the proceedings — Capacity to be a party to judicial proceedings)

In Case C-19/16 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 7 January 2016,

Al-Bashir Mohammed Al-Faqih, residing in Al Sharkasa, Misrata (Libya),

Ghunia Abdrabbah, residing in Birmingham (United Kingdom),

Taher Nasuf, residing in Manchester (United Kingdom),

Sanabel Relief Agency Ltd, established in Birmingham,

represented by N. Garcia-Lora, Solicitor, and E. Grieves, Barrister,

appellants,

the other parties to the proceedings being:

European Commission, represented by F. Ronkes Agerbeek, D. Gauci and J. Norris-Usher, acting as Agents,

defendant at first instance,

Council of the European Union, represented by G. Étienne, J.-P. Hix and H. Marcos Fraile, acting as Agents,

intervener at first instance,

THE COURT (Eighth Chamber),

composed of M. Vilaras (Rapporteur), President of the Chamber, J. Malenovský and D. Šváby, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By their appeal, Mr Al-Bashir Mohammed Al-Faqih, Mr Ghunia Abdrabbah, Mr Taher Nasuf and Sanabel Relief Agency Ltd ask the Court to set aside the judgment of the General Court of the European Union of 28 October 2015, *Al-Faqih and Others* v *Commission* (T-134/11, not published, 'the judgment under appeal', EU:T:2015:812), by which the General Court dismissed their action for annulment of (i) Commission Regulation (EU) No 1138/2010 of 7 December 2010 amending for the 140th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban (OJ 2010 L 322, p. 4), and (ii) Commission Regulation (EU) No 1139/2010 of 7 December 2010 amending for the 141st time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban (OJ 2010 L 322, p. 6) ('the acts at issue'), in so far as those acts concern them.

Background to the dispute

2 The background to the dispute, as set out by the General Court in paragraphs 4 to 20 of the judgment under appeal, may be summarised as follows.

3 In the context of the implementation of United Nations Security Council Resolution 1390 (2002), the appellants were made subject to restrictive measures freezing

their funds and other financial assets, adopted pursuant to Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ 2002 L 139, p. 9). That regulation had been adopted in order to implement Article 3 of Council Common Position 2002/402/CFSP of 27 May 2002 concerning restrictive measures against Usama bin Laden, members of the Al-Qaida organisation and the Taliban and other individuals, groups, undertakings and entities associated with them and repealing Common Positions 96/746/CFSP, 1999/727/CFSP, 2001/154/CFSP and 2001/771/CFSP (OJ 2002 L 139, p. 4).

4 The appellants were originally placed on the list of persons, entities and bodies affected by the freezing of funds imposed by Article 2 of Regulation No 881/2002, in Annex I to that regulation ('the list at issue'), by Commission Regulation (EC) No 246/2006 of 10 February 2006 amending for the 63rd time Regulation No 881/2002 (OJ 2006 L 40, p. 13). Regulation No 246/2006 had been adopted following a decision of the United Nations Sanctions Committee ('the Sanctions Committee') of 7 February 2006 to amend the list — drawn up under Resolution 1390 (2002) — of persons, groups and entities to whom the freezing of funds and economic resources should apply, by including in that list, inter alia, the names of the appellants.

5 Following the judgment of the Court of 3 September 2008, *Kadi and Al Barakaat International Foundation* v *Council and Commission* (C-402/05 P and C-415/05 P, EU:C:2008:461), the Council of the European Union adopted Regulation (EC) No 1286/2009 of 29 December 2009 amending Regulation No 881/2002 (OJ 2009 L 346, p. 42) to provide for a listing procedure that ensures that the fundamental rights of the defence of the persons concerned and, in particular, their right to be heard are respected.

6 By judgment of 29 September 2010, *Al Faqih and Others* v *Council* (T-135/06 to T-138/06, not published, EU:T:2010:412), the General Court annulled Article 2 of Regulation No 881/2002 in so far as it concerned the appellants.

7 By Regulation No 1138/2010, the European Commission re-listed Sanabel Relief Agency. Recital 3 of that regulation states that the Commission communicated to Sanabel Relief Agency, in August 2009, the statement of reasons of the Sanctions Committee, then, in July 2010, a 'related statement of reasons', and that Sanabel Relief Agency submitted its observations on those two statements.

8 By Regulation No 1139/2010, the Commission also re-listed Mr Al-Faqih, Mr Abdrabbah and Mr Nasuf. According to recital 3 of that regulation, the Commission provided them with a statement of reasons on 22 September, 7 August and 11 August 2009, after the action had been brought that gave rise to the judgment of 29 September 2010, *Al-Faqih and Others* v *Council* (T-135/06 to T-138/06, not published, EU:T:2010:412).

9 Following a decision of the Sanctions Committee of 22 June 2011, the Commission subsequently removed the names of Mr Al-Faqih, Mr Abdrabbah and Mr Nasuf from the list at issue by Commission Implementing Regulation (EU) No 640/2011 of 30 June 2011 amending for the 152nd time Regulation No 881/2002 (OJ 2011 L 173, p. 1).

10 Following a decision of the Sanctions Committee of 8 October 2013, the Commission also removed the name of Sanabel Relief Agency from the list at issue by Commission Implementing Regulation (EU) No 996/2013 of 17 October 2013 amending for the 205th time Regulation No 881/2002 (OJ 2013 L 277, p. 1).

The judgment under appeal

11 By an application lodged at the General Court Registry on 3 March 2011, Mr Al-Faqih, Mr Abdrabbah, Mr Nasuf and Sanabel Relief Agency brought an action for annulment of Regulations No 1138/2010 and No 1139/2010 in so far as those acts concerned them.

12 In support of that action, the appellants raised four pleas in law, one of which concerned the Commission's review procedure in respect of Sanabel Relief Agency, the other three concerning that adopted in respect of Mr Al-Faqih, Mr Abdrabbah and Mr Nasuf.

13 The General Court held, in paragraph 46 of the judgment under appeal, that there was no longer any need to adjudicate on the action brought in respect of Regulation No 1138/2010, by which Sanabel Relief Agency had been re-listed, since, according to a letter from the United Kingdom authorities of 26 September 2013, Sanabel Relief Agency no longer had any existence in law and, as a result, no longer had the capacity to bring legal proceedings.

14 However, the General Court declared the action brought in respect of Regulation No 1139/2010, by which the other three appellants, Mr Al-Faqih, Mr Abdrabbah and Mr Nasuf, were re-listed, to be admissible. It found, in paragraphs 47 to 51 of the judgment under appeal, that those three individuals still had a legal interest in bringing proceedings for annulment of that regulation, notwithstanding the subsequent removal of their names from that list by Implementing Regulation No 640/2011. It nevertheless rejected the three pleas in law concerning them, relating, respectively, to procedural irregularity in the review conducted by the Commission, breach of the obligation to state reasons as required by Article 296 TFEU, and breach of the right to property and of the right to respect for private life.

The forms of order sought

15 The appellants claim that the Court should:

– set aside the judgment under appeal;

– annul the acts at issue; and

– order the Council and the Commission to pay the costs.

16 The Council contends that the Court should:

– dismiss the appeal; and

– order the appellants to pay the costs.

17 The Commission contends that the Court should:

– dismiss the appeal; and

– order the appellants to pay the costs.

The appeal

18 In support of their appeal, the appellants put forward four grounds of appeal.

19 By their first three grounds of appeal, they take issue with the General Court's interpretation of one of the pleas they raised at first instance and with the General Court's review of (i) the lawfulness of their re-listing, and more specifically the Commission's assessment of the information justifying that re-listing in the light of the principles identified by the Court of Justice in the judgment of 18 July 2013, *Commission and Others* v *Kadi* (C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518), and (ii) the statement of reasons for the acts at issue.

20 By their fourth ground of appeal, the appellants challenge, in essence, the General Court's finding that Sanabel Relief Agency did not exist in law and had no capacity to be a party to judicial proceedings. They submit, principally, that, since Sanabel Relief Agency was included on the list at issue, it must be accepted as having a right of action to challenge that listing, even if it was subsequently removed from that list.

21 The fourth ground of appeal must be examined first of all.

The fourth ground of appeal

Arguments of the parties

22 By their fourth ground of appeal, the appellants claim that the General Court erred in law by holding that there was no longer any need to adjudicate on the action in so far as it concerned Sanabel Relief Agency, since the latter no longer had any existence in law, within the meaning of Article 78(3) of the Rules of Procedure of the General Court, in the version in force at the date of its ruling, and had therefore lost the capacity to bring legal proceedings.

23 In the appellants' submission, the General Court was not entitled to rely in that regard on Article 78 of its Rules of Procedure and the letter from the Foreign and Commonwealth Office of the United Kingdom of Great Britain and Northern Ireland of 26 September 2013 indicating that Sanabel Relief Agency no longer existed in law since it had not been included on the United Kingdom's Companies House register since 2007 and had been removed from the United Kingdom's Charity Commission register on 28 January 2012.

24 First, they submit that Article 78 of the Rules of Procedure of the General Court is of no relevance, since it merely governs the lodging of applications initiating proceedings.

25 Second, and in essence, they argue that the legal personality of an entity is neither conferred nor lost by its registration on or removal from the United Kingdom's Companies House or Charity Commission registers. If it were otherwise, Sanabel Relief Agency would not have had legal personality to apply for its removal from the list at issue from 2007. In any event, they claim that neither the factual basis on which the United Kingdom's Charity Commission removed Sanabel Relief Agency from its register nor the reasons for that removal are apparent from the removal decision of 28 January 2012.

26 They state, moreover, that the United Nations system, under which the names of persons, groups and entities whose funds and economic resources are to be frozen are entered on the list drawn up pursuant to Resolution 1390 (2002), is based on its own criteria which are independent of any categorisations in domestic law, and that that is why the Court found in its judgment of 18 January 2007, *PKK and KNK* v *Council* (C-229/05 P, EU:C:2007:32) that a formulaic approach was not appropriate and that an entity which was listed was capable of applying to be de-listed.

27 They also note that, by stating in paragraph 45 of the judgment under appeal that Sanabel Relief Agency has not been subject to restrictive measures since 17 October 2013, the General Court seems to have adopted an entirely different legal basis for its decision not to accept that Sanabel Relief Agency has the capacity to maintain legal proceedings. It thus considered that the case-law derived from the judgment of 18 January 2007, *PKK and KNK* v *Council* (C-229/05 P, EU:C:2007:32), according to which an entity must be accepted as existing in law in so far as it is subject to restrictive measures, did not apply to a charitable body like Sanabel Relief Agency, since that body had not been subject to restrictive measures since 17 October 2013. They also submit that the General Court should have asked Sanabel Relief Agency to establish its legal interest, since it had asked the natural persons among the appellants to do so.

28 The appellants complain, lastly, that the General Court did not take into account their observations on the Council's statement in intervention, in which they maintained that the approach taken in the judgment of 28 May 2013, *Abdulrahim* v *Council and Commission* (C-239/12 P, EU:C:2013:331) applied equally in the present case.

29 The Council and the Commission contend that the General Court correctly held that Sanabel Relief Agency no longer existed in law and had lost its capacity to maintain legal proceedings, and that it was therefore fully entitled to rule that there was no longer any need to adjudicate with regard to that party. They submit, moreover, that Sanabel Relief Agency cannot rely on the judgment of 18 January 2007, *PKK and KNK* v *Council* (C-229/05 P, EU:C:2007:32), since, not being a clandestine organisation, its situation is totally different from that of the Kurdistan Workers' Party (PKK).

Findings of the Court

30 The General Court held, in paragraphs 42 and 46 of the judgment under appeal, that there was no longer any need to adjudicate on the action in so far as it concerned Sanabel Relief Agency, since the latter no longer had any existence in law within the meaning of Article 78(3) of the Rules of Procedure, as applicable at the date of the General Court's ruling, and that it therefore no longer had the capacity to bring legal proceedings before the General Court.

31 In so doing, it noted, in paragraph 41 of the judgment under appeal, that it was apparent from a letter from the Foreign and Commonwealth Office of the United Kingdom of Great Britain and Northern Ireland dated 26 September 2013 that Sanabel Relief Agency had not been included on the United Kingdom's Companies House register since 2007 and that it had been removed from the register of the United Kingdom's Charity Commission in 2012.

32 It should be noted in that regard that, under Article 78(3) of the Rules of Procedure of the General Court, in the version in force at the date of the General Court's ruling, legal persons governed by private law are required to prove their existence in law, by enclosing with their application proof of that existence, such as an extract from the register of companies, firms or associations or any other official document. That requirement also applies to legal persons who bring an action for annulment against an EU act imposing restrictive measures on them.

33 In the present case, it is apparent from the documents before the Court that although, on being invited to do so by the General Court, Sanabel Relief Agency proved its existence in law by producing a document from the register of the United Kingdom's Charity Commission, that evidence was nevertheless rebutted during the proceedings by a letter from the Foreign and Commonwealth Office of the United Kingdom of Great Britain and Northern Ireland, informing the General Court of the removal of that entity from the Companies House register and the register of the Charity Commission in the United Kingdom.

34 In their appeal, the appellants argue only that the mere fact that Sanabel Relief Agency had been removed from those two registers did not permit the inference that it no longer existed in law. The appellants do not, however, in any way claim that the General Court's assessment regarding the existence in law of Sanabel Relief Agency was based on

substantially incorrect information or was attributable to a distortion of the clear sense of the evidence before it.

35 In those circumstances, the fact that Sanabel Relief Agency no longer existed in law and had therefore ceased to have the capacity to be a party to proceedings before the General Court as at the date on which the latter delivered its ruling must be regarded as having been established.

36 It is true that the Court of Justice has held that a person whose name was entered on a list of persons subject to restrictive measures had to be accepted as having at least a non-material interest in having that listing annulled, in view of the consequences for his reputation, even after the removal of his name from that list (see judgments of 28 May 2013, *Abdulrahim* v *Council and Commission*, C-239/12 P, EU:C:2013:331, paragraphs 70 to 72, and of 8 September 2016, *Iranian Offshore Engineering & Construction* v *Council*, C-459/15 P, not published, EU:C:2016:646, paragraph 12).

37 However, in the case of a legal person governed by private law, either that person must exist in law or the action must have been brought by its successors.

38 As is evident from paragraph 35 of the present judgment, it has been established that Sanabel Relief Agency no longer existed in law as at the date on which the General Court delivered its ruling. Moreover, the appellants have at no time argued that, in so far as their action concerned Sanabel Relief Agency, it was brought by other natural or legal persons as its successors, or in particular by its founders and former directors, including Mr Abdrabbah and Mr Nasuf, the second and third appellants respectively (see, in particular, judgments of 20 October 1983, *Gutmann* v *Commission*, 92/82, EU:C:1983:286, paragraph 2, and of 23 April 1986, *Les Verts* v *Parliament*, 294/83, EU:C:1986:166, paragraphs 15 to 18).

39 Likewise, since it has been established that Sanabel Relief Agency no longer existed in law as at the date on which the General Court delivered its ruling, it cannot derive any benefit from the approach taken by the Court in its judgment of 18 January 2007, *PKK and KNK* v *Council* (C-229/05 P, EU:C:2007:32).

40 Admittedly, the Court held in paragraph 112 of that judgment that, if the EU legislature takes the view that an organisation whose existence has been called into question retains an existence sufficient for it to be subject to restrictive measures, it must be accepted, on grounds of consistency and justice, that that entity continues to have an existence sufficient to contest that measure. The effect of any other assessment would be that an organisation could be included in the list at issue without being able to bring an action challenging its inclusion.

41 The fact remains, however, that Sanabel Relief Agency is in an entirely different situation from that of the PKK, the Court having ruled, in paragraph 53 of that judgment, that the General Court's findings of fact in the order under appeal, to the effect that the

PKK had been dissolved, were incorrect and distorted the clear sense of the evidence available to the General Court.

42 Therefore, the General Court did not err in law when it ruled that there was no longer any need to adjudicate on the action in so far as it concerned Sanabel Relief Agency.

43 The fourth ground of appeal must, therefore, be rejected as being entirely unfounded.

The first ground of appeal

Arguments of the parties

44 By their first ground of appeal, the appellants complain that the General Court misinterpreted the third plea they had put forward, alleging breach of the right to property and of the right to respect for private life. They claim that, in paragraphs 81 to 90 of the judgment under appeal, the General Court rejected that plea on the basis of Article 44 of its Rules of Procedure, without examining the substance of the material they had produced. In so doing, the General Court failed to take into account their written observations and oral submissions and/or failed to apply the principles identified in the judgment of 14 April 2015, *Ayadi* v *Commission* (T-527/09 RENV, not published, EU:T:2015:205).

45 They submit that, by that third plea, they were arguing specifically that the Council and the Commission had interfered disproportionately with their right to property and their right to respect for private life. They state that, as a result, the General Court should have carried out an assessment of the facts which they had put forward in the light of the evidence the institutions used against them. They emphasise that they relied in that regard on a key fact, namely that, at the time of their re-listing, the United Kingdom — the Member State responsible for their inclusion on the lists of persons subject to fund-freezing measures — was of the view that they no longer satisfied the listing criteria. They make clear that they had indicated, in paragraph 94 of their application initiating the proceedings, that that material demonstrated that the Commission had failed to establish to any relevant standard of proof that they satisfied the criteria under Resolution 1617 (2005), and therefore that the interference with their rights was necessarily disproportionate.

46 They further submit that the stance taken by the General Court in the judgment under appeal is incompatible with the judgment of 14 April 2015, *Ayadi* v *Commission* (T-527/09 RENV, not published, EU:T:2015:205), in which the General Court ruled that the fact that the applicant had not ‘expressly’ challenged the Commission’s assessment of the facts did not prevent it from determining whether those facts were made out, since he had repeatedly challenged that assessment in his observations and by implication in the other pleas put forward.

47 The Council and the Commission contend that the General Court was fully entitled to reject the third plea in law put forward by the appellants, since their application did not meet the requirements of clarity and precision.

Findings of the Court

48 The General Court held, in paragraphs 81 to 90 of the judgment under appeal, that the third plea in law put forward by the appellants in their application did not satisfy the requirements of Article 44(1) of its Rules of Procedure of 2 May 1991, as amended, and consequently had to be rejected.

49 It recalled, first of all, that those requirements were such that the essential points of law and of fact on which a case was based had to be indicated coherently and intelligibly in the application itself and that that application was accordingly required to specify the nature of the grounds on which the action was based, and that a mere abstract statement of those grounds did not satisfy those requirements.

50 It went on to note that the appellants' arguments in respect of breach of the right to property had not been developed, as the only points made in the application related to evidential requirements under criminal law. It also stated that it had questioned the appellants at the hearing about the scope of their plea, and that they had explained that they were seeking to challenge the substance of the statements of reasons on which the Commission had based its decision to re-list them, referring in that regard to paragraphs 65, 94 and 95 of their application and to their observations on the consequences of the judgment of 18 July 2013, *Commission and Others* v *Kadi* (C-584/10 P, C-593/10 P et C-595/10 P, EU:C:2013:518), which they had submitted on 9 September 2013, after their application had been lodged.

51 Lastly, it held that the references to paragraphs 94 and 95 of the application were purely abstract and did not specifically relate to any of the grounds set out in the statements of reasons on which the Commission had based its re-listing decision. It noted, moreover, that the unintelligible nature of the pleas set out in the application could not be cured by a reference to the annexes thereto, as was suggested in paragraph 65 of the application.

52 It does not appear, in those circumstances, that the grounds for the General Court's rejection of the appellants' third plea are vitiated by an error of law, nor does it appear that the General Court misinterpreted that third plea.

53 Under Article 21 of the Statute of the Court of Justice of the European Union, applicable to the General Court by virtue of the first paragraph of Article 53 thereof, and Article 44 of the Rules of Procedure of the General Court of 2 May 1991, as amended, an application is required, in particular, to state the subject matter of the dispute and to contain the form of order sought and a brief statement of the pleas in law on which the application is based.

54 It should be noted, first, that, in order for an action before the General Court to be admissible, it is necessary that the basic matters of law and fact relied on be indicated, at least in summary form, coherently and intelligibly in the application itself. Whilst the body of the application may certainly be supported and supplemented on specific points by references to extracts from documents annexed thereto, a general reference to other documents, even those annexed to the application, cannot make up for the absence of the essential arguments in law which must appear in the application (judgments of 11 September 2014, *MasterCard and Others* v *Commission*, C-382/12 P, EU:C:2014:2201, paragraph 40, and of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraph 50).

55 Second, the brief statement of the pleas in law which must be contained in any application, as provided for by those articles, means that the application must specify the nature of the grounds on which the action is based (judgment of 11 September 2014, *MasterCard and Others* v *Commission*, C-382/12 P, EU:C:2014:2201, paragraph 39).

56 It is evident, on examination of the application which the appellants submitted at first instance, that although, according to its actual heading, the third plea formally alleged a breach of the right to property and of the right to respect for private life, the very brief explanations provided in support of that plea challenged only the Commission's assessment of the evidence justifying the appellants' entry on the list at issue.

57 The appellants maintained that the Commission had failed to take into account the view of the government of the United Kingdom that they had long since ceased to satisfy the criteria laid down by Resolution 1617 (2005) for entry on that list. Their arguments thus related essentially to the standard of proof required in criminal matters, not to the right to property.

58 Consequently, the General Court was fully entitled to consider that the appellants' third plea did not satisfy the requirements of Article 44 of its Rules of Procedure of 2 May 1991, as amended.

59 It cannot, moreover, be held that the General Court misinterpreted that plea, since the appellants failed, in their application, to establish any link between the evidential requirements they were asserting and any breach of their right to property and of their right to respect for private life.

60 It follows from this that the General Court did not err in law when, in paragraph 90 of the judgment under appeal, it rejected the appellants' third plea in law.

61 The first ground of appeal must therefore be rejected.

The second ground of appeal

Arguments of the parties

62 By their second ground of appeal, directed against paragraphs 78 and 79 of the judgment under appeal, the appellants submit that the General Court failed to carry out the judicial review which it was required to carry out in accordance with the judgment of 18 July 2013, *Commission and Others* v *Kadi* (C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraphs 120 and 121). It neither required any substantiation of the facts alleged by the Commission, nor assessed whether the allegations made against the appellants were too old. Nor did it take formal notice of the detailed representations made by the appellants to the Commission and to the General Court as to why the allegations made against them were not well founded.

63 The Council contends, principally, that the appellants' second ground of appeal is imprecise and confuses considerations pertaining to the procedural legality of the acts at issue — in particular the obligation to state reasons, an essential procedural requirement — and their substantive legality, concerning the question whether the grounds for listing are well founded. This ground of appeal does not, therefore, satisfy the formal requirements set out in Article 169(2) of the Rules of Procedure of the Court of Justice and should be rejected as manifestly inadmissible. In the alternative, the Council submits that, by this ground of appeal, the appellants are merely reformulating the first ground of appeal, concerning the substantive challenge to the statements of reasons on which the Commission based the appellants' re-listing, and that it should therefore, in any event, be rejected for the same reasons as those set out in the examination of the first ground of appeal.

64 It is the Commission's contention that this ground of appeal, which concerns paragraphs 78 and 79 of the judgment under appeal, in which the General Court found that Regulation No 1139/2010 was not vitiated by any infringement of the obligation to state reasons, is manifestly unfounded. The General Court applied precisely the legal test set out in the judgment of 18 July 2013, *Commission and Others* v *Kadi* (C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 118), which requires that the statement of reasons identify the individual, specific and concrete reasons why the competent authorities consider that a particular person must be subject to restrictive measures. The Commission adds that paragraphs 120 and 121 of the latter judgment do not relate to the obligation to state reasons but to the substantive assessment of the reasons given, and thus that 'the appellants' arguments ... are misdirected'.

Findings of the Court

65 In paragraph 80 of the judgment under appeal, the General Court rejected as unfounded the second plea in law put forward by the appellants, relating to the Commission's alleged infringement of the obligation to state reasons for the acts at issue. By that plea, they challenged the vague and insufficient nature of the statements of reasons on which the Commission relied in order to re-enter them on the list at issue.

66 Recalling, in paragraphs 74 to 76 of that judgment, the requirements stemming from the obligation to state the reasons on which an act adversely affecting a person is based, to which the institutions are subject under Article 296 TFEU, the General Court

pointed out, in particular, that, in accordance with paragraph 116 of the judgment of 18 July 2013, *Commission and Others* v *Kadi* (C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518), that obligation entails in all circumstances, not least when the reasons stated for the EU measure represent reasons stated by an international body, that that statement of reasons identifies the individual, specific and concrete reasons why the competent authorities consider that the individual concerned must be subject to restrictive measures.

67 The General Court concluded from this, in paragraph 77 of its judgment, that it 'would be possible to rely solely on the statement of reasons placing the names of the persons concerned on the list at issue, provided that that statement contains the individual, specific and concrete reasons and those reasons remain valid in the light of the observations of the persons listed'.

68 As is evident from paragraphs 78 and 79 of the judgment under appeal, the General Court stated that Regulation No 1139/2010 referred to the communication to the appellants of the statements of reasons and to the observations which the appellants were able to submit in that regard, and, moreover, assessed the reasons given in those statements, finding in this instance that they conformed to the requirements stemming from the judgment of 18 July 2013, *Commission and Others* v *Kadi* (C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 116), since they contained the individual, specific and concrete reasons for placing the appellants' names on the list at issue.

69 It cannot, therefore, be claimed that, on the basis of the grounds set out in those paragraphs, which the General Court applied in assessing the statement of reasons for the appellants' re-listing, the General Court failed to ascertain that the Commission had discharged its obligation to state reasons for the acts at issue.

70 Consequently, while it must be made clear that the appellants have not claimed that the General Court misinterpreted their second plea in law in the proceedings at first instance, the second ground of appeal must be rejected as unfounded.

The third ground of appeal

Arguments of the parties

71 By their third ground of appeal, the appellants submit that the General Court wrongly found that the Commission had conducted a careful, impartial and independent analysis for itself of the facts relied on in the statement of reasons for the acts at issue and of the exculpatory material and observations they had produced. They state, in that regard, that the General Court appears to have overlooked the written observations and oral submissions which they presented in the course of the proceedings, since it did not address any of the arguments they had put forward.

72 In their submission, at the time when the acts at issue were adopted, the Commission simply gave the appearance of reviewing the file. In essence, it observed only in the most formal sense the appellants' rights of defence, and did not envisage calling into question the Sanctions Committee's findings in the light of their observations, conduct which the General Court had already had occasion to condemn in its judgment of 30 September 2010, *Kadi* v *Commission* (T-85/09, EU:T:2010:418, paragraph 71), and subsequently in its judgments of 21 March 2014, *Yusef* v *Commission* (T-306/10, EU:T:2014:141, paragraphs 103 and 104), and of 14 April 2015, *Ayadi* v *Commission* (T-527/09 RENV, not published, EU:T:2015:205, paragraphs 72 and 73). They submit that the fact that the Commission made no approach to the United Kingdom — although that was the Member State responsible for their inclusion on the lists of persons subject to fund-freezing measures and it no longer supported their re-listing when the acts at issue were adopted — is evidence of that conduct.

73 According to the appellants, the General Court merely noted, in paragraphs 66 and 67 of the judgment under appeal, that the Commission had 'reviewed' the grounds for the listings on 16 April 2010 and corresponded with the Sanctions Committee on 27 May, 14 September and 26 October 2010. There is nothing, however, that might establish that the Commission actually carried out an assessment of the exculpatory material and as to whether the alleged reasons were well founded. Simply communicating the appellants' observations to the Sanctions Committee on 27 May 2010 and then asking for reasons as to why the appellants had not been removed from the list at issue is not evidence of the Commission having evaluated the material held by the United Kingdom authorities for itself. The General Court had thus, in paragraphs 66 to 70 of the judgment under appeal, maintained an 'irrational' view of the facts.

74 The Council contends that the appellants' third ground of appeal relates to findings of fact made by the General Court and must therefore be rejected as inadmissible. It submits that, on the basis of the process of review followed by the Commission, the General Court did not distort any facts presented under the first and second pleas raised by the appellants in the proceedings at first instance. They had not, according to the Council, provided sufficient material in the course of the present appeal to demonstrate that the General Court manifestly distorted the evidence in respect of the facts related to the procedure followed by the Commission, which had complied with the principles set out in the judgment of 18 July 2013, *Commission and Others* v *Kadi* (C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518).

75 The Commission also contends that the appellants, who, it claims, are in essence asking the Court to reassess the evidence and the facts underpinning their entry on the list at issue, have not identified any particular document which shows the General Court's findings to be substantially incorrect or demonstrates that the General Court distorted the clear sense of the evidence before it, and concludes that their third ground of appeal should therefore be declared inadmissible.

76 It also states that the three very general arguments put forward by the appellants in support of their claim that the General Court took an irrational view of the facts are

unfounded. First of all, the assertion that the ground set out in paragraph 70 of the judgment under appeal is unsubstantiated is untenable, the General Court having correctly found that the Commission had carried out a careful, independent and critical review of the appellants' observations and of their entry on the list of persons subject to restrictive measures that was decided upon by the Sanctions Committee, and, moreover, that it had not automatically reproduced that committee's conclusions. Next, in the Commission's submission, the appellants' arguments that the grounds set out in paragraphs 66 to 70 of the judgment under appeal are incompatible with the judgments of 18 July 2013, *Commission and Others* v *Kadi* (C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518); of 21 March 2014, *Yusef* v *Commission* (T-306/10, EU:T:2014:141); and of 14 April 2015, *Ayadi* v *Commission* (T-527/09 RENV, not published, EU:T:2015:205) are unfounded, since the question as to whether there is an infringement of the rights of the defence and of the right to effective judicial protection must be examined in relation to the specific circumstances of each particular case. Lastly, the argument that paragraphs 66 to 70 of the judgment under appeal are vitiated by an error of law because no approach was made to the United Kingdom at all, at any time, is unfounded. It does not follow from that case-law that the Commission is obliged to approach the United Kingdom. In any event, the Commission had consulted the EU Committee for the review of listings, on which all the Member States are represented.

Findings of the Court

77 Having examined, in paragraphs 59 to 70 of the judgment under appeal, the first plea in law advanced by the appellants, alleging procedural irregularity in the review conducted by the Commission, the General Court rejected that plea.

78 In the first place, it recalled, in paragraphs 59 to 65 of the judgment under appeal, the terms in which the Court of Justice, in its judgment of 18 July 2013, *Commission and Others* v *Kadi* (C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518), set out the obligations to which the institutions are subject, in accordance with respect for the rights of the defence and the right to effective judicial protection, when they adopt a decision placing a person's name on a list of persons subject to restrictive measures.

79 In the second place, in paragraphs 66 to 70 of the judgment under appeal, it examined the various stages of the procedure which the Commission followed in order to adopt Regulation No 1139/2010 re-listing the appellants.

80 It concluded from this that the Commission had respected the three procedural guarantees referred to by the Court of Justice in its judgment of 18 July 2013, *Commission and Others* v *Kadi* (C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518), by carrying out a careful, independent and critical review of the parties' observations and of the listing decided upon by the Sanctions Committee, and by subjecting that committee's conclusions to thorough personal scrutiny. Accordingly, it held, in paragraph 71 of its judgment, that the appellants' first plea in law had to be rejected.

81 In the context of their third ground of appeal, the appellants have not put forward anything that might establish that the General Court's findings were based on substantially inaccurate information or were attributable to a distortion of the clear sense of the evidence before it.

82 They merely argue that the General Court was wrong to find that the Commission had carried out a careful, impartial and independent analysis of their case. They rely in that respect on the fact that the United Kingdom, which was responsible for their inclusion on the United Nations list, had radically changed its stance towards them from November 2009, and on the exchange of letters between the Commission and the Sanctions Committee from September 2009.

83 It must, however, be held that, while that circumstance was capable of justifying the appellants' removal from the list at issue — a removal ultimately occasioned by the adoption of Implementing Regulation No 640/2011 — it could not, by itself, lead the General Court to rule that the Commission had failed to fulfil its obligations and infringed the appellants' rights of defence by adopting Regulation No 1139/2010.

84 It should be recalled, first of all, that the appellants were first entered on the list at issue by Regulation No 246/2006, following a decision of the Sanctions Committee of 7 February 2006 placing them on the list of persons and entities subject to restrictive measures that was drawn up pursuant to Resolution 1390 (2002). Article 2 of Regulation No 881/2002 was subsequently annulled, in so far as it concerned the appellants, by the judgment of 29 September 2010, *Al-Faqih and Others* v *Council* (T-135/06 to T-138/06, not published, EU:T:2010:412), referred to in paragraph 6 of the present judgment. They were then re-listed by Regulation No 1139/2010, the subject matter of the action for annulment which the General Court dismissed by the judgment under appeal. The appellants were subsequently removed from the list at issue by Implementing Regulation No 640/2011, adopted following a decision of the Sanctions Committee of 22 June 2011 removing them from the United Nations list.

85 As is apparent from recitals 2 to 6, Regulation No 1139/2010 had retroactive effect, being principally intended to replace Regulation No 881/2002, as amended by Regulation No 246/2006, in so far as it concerned the appellants. The second paragraph of Article 2 of Regulation No 1139/2010 expressly stated that that regulation applied from 11 February 2006.

86 The appellants' arguments must, therefore, be considered ineffective.

87 It follows that the third ground of appeal must be rejected.

Costs

88 Under 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. Under Article 138(1) of those rules, which is applicable 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.

89 Since the Council and the Commission have applied for costs and the appellants have been unsuccessful, Mr Al-Bashir Mohammed Al-Faqih, Mr Ghunia Abdrabbah and Mr Taher Nasuf must be ordered to pay the costs.

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

1. **Dismisses the appeal;**

2. **Orders Mr Al-Bashir Mohammed Al-Faqih, Mr Ghunia Abdrabbah and Mr Taher Nasuf to pay the costs.**

Vilaras Malenovský Šváby

Delivered in open court in Luxembourg on 15 June 2017.

A. Calot Escobar M. Vilaras

Registrar President of the Eighth Chamber

* Language of the case: English.