JUDGMENT OF THE COURT (Fifth Chamber)

18 June 2015 (*)

(Appeal — Common foreign and security policy — Restrictive measures taken against the Republic of Belarus — Admissibility — Time-limit for bringing proceedings — Legal aid — Suspensory effect — Effective judicial protection — Rights of the defence — Principle of proportionality)

In Case C-535/14 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 24 November 2014,

Vadzim Ipatau, residing in Minsk (Belarus), represented by M. Michalauskas, lawyer,

applicant,

the other party to the proceedings being:

Council of the European Union, represented by F. Naert and B. Driessen, acting as Agents,

defendant at first instance,

THE COURT (Fifth Chamber),

composed of T. von Danwitz, President of the Chamber, C. Vajda, A. Rosas (Rapporteur), E. Juhász 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 his appeal, Mr Ipatau seeks the setting aside of the judgment of 23 September 2014 in *Ipatau* v *Council* (T-646/11, EU:T:2014:800) ('the judgment under appeal') by which the General Court of the European Union dismissed his action for annulment of:

– Council Decision 2011/666/CFSP of 10 October 2011 amending Decision 2010/639/CFSP concerning restrictive measures against Belarus (OJ 2011 L 265, p. 17);

– Council Implementing Regulation (EU) No 1000/2011 of 10 October 2011 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (OJ 2011 L 265, p. 8);

– the Council's letter of 14 November 2011 ('the letter of 14 November 2011') by which that institution refused to grant Mr Ipatau's request for his name to be removed from Council Decision 2011/69/CFSP of 31 January 2011 amending Council Decision 2010/639/CFSP concerning restrictive measures against certain officials of Belarus (OJ 2011 L 28, p. 40);

– Council Implementing Regulation (EU) No 84/2011 of 31 January 2011 amending Regulation (EC) No 765/2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus (OJ 2011 L 28, p. 17);

– Council Decision 2012/642/CFSP of 15 October 2012 concerning restrictive measures against Belarus (OJ 2012 L 285, p. 1), and

– Council Implementing Regulation (EU) No 1017/2012 of 6 November 2012 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (OJ 2012 L 307, p. 7),

in so far as they concern him.

Background to the dispute

2 The background to the dispute is summarised by the General Court as follows:

'1 The applicant, Mr Vadzim Ipatau, is a Belarussian national and Deputy Chairperson of the Central Electoral Commission ("the CEC").

2 Council Common Position 2006/276/CFSP of 10 April 2006 concerning restrictive measures against certain officials of Belarus and repealing Common Position

2004/661/CFSP (OJ 2006 L 101, p. 5) states that, following the disappearance of well-known persons in Belarus, the fraudulent elections and referendum, and the severe human rights violations in the repression of peaceful demonstrators in the aftermath of those elections and that referendum, a decision was made to take restrictive measures against various persons in Belarus, such as the prevention of entry into, or transit through, the European Union, and the freezing of funds and economic resources.

3 The Union implementing measures were set out in Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures in respect of Belarus (OJ 2006 L 134, p. 1). Those measures were subsequently amended on several occasions and Article 8a(1) of that regulation, as amended, states that, where the Council of the European Union decides to subject a natural or legal person, entity or body to the measures referred to in Article 2(1) of that regulation, it is to amend the annex containing the list in which that person is included accordingly.

4 The restrictive measures laid down in Common Position 2006/276 were extended until 15 March 2010 by Council Common Position 2009/314/CFSP of 6 April 2009 amending Common Position 2006/276/CFSP concerning restrictive measures against certain officials of Belarus, and repealing Common Position 2008/844/CFSP (OJ 2009 L 93, p. 21). However, the travel restrictions imposed on certain leading figures in Belarus, with the exception of (i) those involved in the disappearances which occurred in 1999 and 2000 and (ii) the President of the CEC, were suspended until 15 December 2009.

5 On 15 December 2009, the Council adopted Decision 2009/969/CFSP extending the restrictive measures against certain officials of Belarus laid down in Common Position 2006/276/CFSP, and repealing Common Position 2009/314/CFSP (OJ 2009 L 332, p. 76). It extended the restrictive measures laid down in Common Position 2006/276 and the suspension of the travel restrictions imposed on certain leading figures in Belarus until 31 October 2010.

6 Following a review of Common Position 2006/276, the Council, by Decision 2010/639/CFSP of 25 October 2010 concerning restrictive measures against Belarus (OJ 2010 L 280, p. 18), renewed the restrictive measures laid down in Common Position 2006/276 and the suspension of the travel restrictions imposed on certain leading figures in Belarus until 31 October 2011.

7 By [Decision 2011/69/CFSP], it was decided, in view of the fraudulent presidential elections of 19 December 2010 and the violent crackdown on political opposition, civil society and representatives of independent mass media in Belarus, to terminate the suspension of the travel restrictions and to implement other restrictive measures. Article 1(1) of Decision 2010/639 was supplemented as follows:

"(d) [responsible] for the violations of international electoral standards in the presidential elections in Belarus on 19 December 2010, and the crackdown on civil society and democratic opposition, and those persons associated with them, as listed in Annex IIIA."

8 Decision 2011/69 replaced Article 2 of Decision 2010/639 as follows:

"*Article 2*

1. All funds and economic resources belonging to ... persons who are responsible:

...

(b) for the violations of international electoral standards in the presidential elections in Belarus on 19 December 2010, and the crackdown on civil society and democratic opposition, and those natural or legal persons, entities or bodies associated with them, as listed in Annex IIIA; shall be frozen.

..."

9 The applicant's name was mentioned in Annex V to Decision 2011/69, which adds Annex IIIA to Decision 2010/639 (Annex IIIA, list of persons referred to in Article 1(1)(d) and Article 2(1)(b)). The applicant's name, which appears as entry No 10, is accompanied by the following description: "Deputy Chairperson, [CEC]".

10 [Implementing Regulation No 84/2011] replaced, inter alia, Article 2 of Regulation No 765/2006 with the following text:

"*Article 2*

1. All funds and economic resources belonging to, owned, held or controlled by the natural or legal persons, entities and bodies listed in Annex I or in Annex IA shall be frozen.

2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the natural or legal persons, entities or bodies listed in Annex I or in Annex IA.

...

5. Annex IA shall consist of the natural or legal persons, entities and bodies referred to in Article 2(1)(b) of [Decision 2010/639] as amended."

11 The applicant's name, together with the description given in paragraph 9 above, was added to that annex by means of Annex II to Implementing Regulation No 84/2011 (Annex IA to Regulation No 765/2006, containing the list of natural and legal persons, entities or bodies referred to in Article 2(1), 2(2) and 2(5)).

12 On 2 February 2011, a notice for the attention of the persons to which measures provided for in Council Decision 2011/69/CFSP and in Council Regulation (EU)

No 84/2011 amending Regulation (EC) No 765/2006 apply was published in the *Official Journal of the European Union* (OJ 2011 C 33, p. 17).

13 By letter of 2 September 2011, the applicant asked the Council to review the inclusion of his name in the lists concerned.

14 By letter of 14 November 2011, the Council refused that request for review ..., stating that the restrictive measures adopted against the applicant were justified. It enclosed a new decision and implementing regulation with that letter.

15 In that regard, the Council enclosed Decision [2011/666], in which it replaced the description concerning the applicant indicated in paragraph 9 above with the following note:

"Deputy Chairperson, [CEC]. As a Member of the [CEC], he bears shared responsibility for the violations of international electoral standards in the Presidential elections on 19 December 2010."

16 The Council also enclosed Implementing Regulation [No 1000/2011], by means of which the description indicated in paragraph 9 above was also replaced by a note identical to the one appearing in Decision 2011/666 as indicated in paragraph 15 above.

17 On 11 October 2011, a notice for the attention of the persons to which restrictive measures provided for in Council Decision 2010/639/CFSP, as amended by Council Decision 2011/666/CFSP, and in Council Regulation (EC) No 765/2006, as implemented by Council Implementing Regulation (EU) No 999/2011 concerning restrictive measures against Belarus apply was published in the *Official Journal* [*of the European Union*] (OJ 2011 C 299, p. 4).

18 By Decision [2012/642], the Council extended the restrictive measures then in force until 31 October 2013 and integrated the measures imposed by Decision 2010/639 into a single legal instrument. Article 3(1) of Decision 2012/642 states:

"Member States shall take the necessary measures to prevent the entry into, or transit through, their territories of persons:

(a) responsible for serious violations of human rights or the repression of civil society and democratic opposition, or whose activities otherwise seriously undermine democracy or the rule of law in Belarus, or any person associated with them;

(b) benefiting from or supporting the Lukashenk[o] regime,

as listed in the Annex."

19 Article 4(1) of that decision provides:

"All funds and economic resources belonging to, owned, held or controlled by:

(a) persons, entities or bodies responsible for serious violations of human rights or the repression of civil society and democratic opposition, or whose activities otherwise seriously undermine democracy or the rule of law in Belarus, or any natural or legal persons, entities or bodies associated with them, as well as legal persons, entities or bodies owned or controlled by them;

(b) natural or legal persons, entities or bodies benefiting from or supporting the Lukashenk[o] regime, as well as legal persons, entities or bodies owned or controlled by them,

as listed in the Annex shall be frozen."

20 The applicant's name was included in the annex to Decision 2012/642 (list of persons referred to in Articles 3(1) and 4(1)) as entry No 66, together with the following note:

"Deputy Chairperson, [CEC]. As a Member of the CEC, he was responsible for the violations of international electoral standards in the Presidential elections on 19 December 2010."

21 By Regulation (EU) No 1014/2012 of 6 November 2012 (OJ 2012 L 307, p. 1), the Council amended Regulation No 765/2006. It replaced Article 2 of the latter regulation with the following text:

"1. All funds and economic resources belonging to, or owned, held or controlled by the natural or legal persons, entities and bodies listed in Annex I shall be frozen.

2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the natural or legal persons, entities and bodies listed in Annex I.

3. The participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to circumvent the measures referred to in paragraphs 1 and 2 shall be prohibited.

4. Annex I shall consist of a list of the natural or legal persons, entities and bodies who, in accordance with point (a) of Article 4(1) of [Decision 2012/642], have been identified by the Council as being responsible for serious violations of human rights or the repression of civil society and democratic opposition, or whose activities otherwise seriously undermine democracy or the rule of law in Belarus, or any natural or legal persons, entities and bodies associated with them, as well as legal persons, entities or bodies owned or controlled by them.

5. Annex I shall also consist of a list of the natural or legal persons, entities and bodies who, in accordance with point (b) of Article 4(1) of Decision [2012/642], have been

identified by the Council as benefiting from or supporting the Lukashenk[o] regime, as well as legal persons, entities and bodies owned or controlled by them."

22 In addition, Regulation No 1014/2012 replaced the references in Regulation No 765/2006, as amended, to "Annexes I, IA and IB" or "Annexes I or ... IA" with references to "Annex I".

23 By Implementing Regulation [No 1017/2012], the Council replaced Annexes I, IA and IB to Regulation No 765/2006 with a single annex. The applicant's name appears in that single annex as entry No 66, together with a note identical to the one indicated in paragraph 20 above.

24 On 7 November 2012, a notice for the attention of the persons and entities to which the restrictive measures provided for in Council Decision 2012/642/CFSP and in Council Regulation (EC) No 765/2006, as amended by Council Regulation (EU) No 1014/2012 and implemented by Council Implementing Regulation (EU) No 1017/2012 concerning restrictive measures against Belarus apply was published in the *Official Journal* [*of the European Union*] (OJ 2012 C 339, p. 9).'

Procedure before the General Court and the judgment under appeal

3 By document lodged at the Registry of the General Court on 11 December 2011, Mr Ipatau filed an application for legal aid under Articles 94 and 95 of that Court's Rules of Procedure with a view to bringing an action against the Council for annulment of Decision 2011/69, Decision 2011/666, Implementing Regulation No 84/2011 and Implementing Regulation No 1000/2011, in so far as those acts concern him.

4 By order of the President of the Sixth Chamber of the General Court in *CD* v *Council* (T-646/11 AJ, EU:T:2012:279), Mr Ipatau was granted legal aid.

5 By application lodged at the Court Registry on 27 June 2012, Mr Ipatau brought an action for annulment of Decision 2011/666, Implementing Regulation No 1000/2011 and the letter of 14 November 2011. He subsequently extended his heads of claim to include annulment of Decision 2012/642 and Implementing Regulation No 1017/2012.

6 First of all, the General Court assessed whether the time-limits for bringing proceedings had been complied with for all of the acts in respect of which annulment was sought. Having found that the application for annulment of Decision 2011/666 and Implementing Regulation No 1000/2011 had been submitted within the time-limits for bringing proceedings, it gave a ruling on the admissibility of the action to the extent that it was directed against the letter of 14 November 2011. After examining the application for legal aid, it stated in paragraph 58 of the judgment under appeal that it could not be concluded that Mr Ipatau had clearly referred in that application to the letter of 14 November 2011 as an act that ought to be the subject of the proposed action.

7 The prescribed time-limit for bringing an action against the letter of 14 November 2011 was not, therefore, suspended, pursuant to Article 96(4) of the Rules of Procedure of the General Court, by the submission of the application for legal aid. Consequently, as the action had been brought on 27 June 2012, that is to say, more than seven months after the date on which that letter was sent, the General Court concluded that it had been brought after expiry of the time-limits prescribed by Article 263 TFEU and Article 102(1) and (2) of the Rules of Procedure.

8 Mr Ipatau had raised five pleas in support of his action, alleging: (i) an inadequate statement of reasons and infringement of the rights of the defence; (ii) that the responsibility imputed and the restrictive measure imposed were collective in nature; (iii) a 'lack of a legal element'; (iv) an error of assessment; and (v) a failure to comply with the principle of proportionality. The General Court found that all of those pleas were unfounded and, accordingly, dismissed the action.

Forms of order sought

9 By his appeal, Mr Ipatau claims that the Court should:

– set aside the judgment under appeal;

– give a definitive ruling on the dispute or refer the case back to the General Court for judgment, and

– order the Council to pay the costs at first instance and on appeal.

10 The Council contends that the Court should:

– dismiss the appeal and

– order the appellant to pay the costs incurred by the Council.

Appeal

First ground of appeal: infringement of the right to effective judicial protection

Arguments of the parties

11 By his first ground of appeal, Mr Ipatau submits that, in finding that the action was inadmissible to the extent that it was directed against the letter of 14 November 2011, the General Court infringed the right to effective judicial protection.

12 Mr Ipatau contests paragraphs 58 to 60 of the judgment under appeal. First, he submits that acts must be interpreted in such a way as to maximise their effectiveness and that, consequently, the application for legal aid of 11 December 2011 must be interpreted

as necessarily seeking the annulment of the letter of 14 November 2011. Second, he claims not to have been assisted by an advisor when drafting his application for legal aid.

13 The Council contends that the General Court did not err in law in excluding that letter from the subject-matter of Mr Ipatau's application for legal aid. It maintains that the fact that Mr Ipatau drafted that application himself cannot alter the conditions governing the admissibility of the action. It refers to the wording of the application for legal aid and observes that, in his capacity as Director of the National Centre of Legislation and Legal Research of the Republic of Belarus, Mr Ipatau has some awareness of legal rules, as can be seen from the particularly well-developed legal arguments set out in that application.

Findings of the Court

14 First, it should be borne in mind that neither the right to effective judicial protection nor the right to be heard is undermined by the strict application of EU rules concerning procedural time-limits which, according to settled case-law, meets the requirements of legal certainty and the need to avoid all discrimination or arbitrary treatment in the administration of justice (see order in *Page Protective Services* v *EEAS*, C-501/13 P, EU:C:2014:2259, paragraph 39 and the case-law cited).

15 Article 96(4) of the Rules of Procedure of the General Court states that, by way of exception to the rules relating to procedural time-limits, the filing of an application for legal aid is to suspend the period prescribed for the bringing of the action concerned until the date of notification of the order making a decision on that application or, if the person applying for legal aid has not indicated his choice of lawyer or if his choice is unacceptable, of the order designating the lawyer instructed to represent that person.

16 When assessing the admissibility of the action for annulment to the extent that it was directed against the letter of 14 November 2011, the General Court was obliged to interpret the application for legal aid filed by Mr Ipatau on 11 December 2011 in order to ascertain whether that letter formed part of the subject-matter of the proposed action.

17 In paragraph 55 of the judgment under appeal, the General Court cited the passage in the application for legal aid which refers to the letter of 14 November 2011. In paragraph 56 of that judgment, it also reiterated the aim of the application for legal aid, explaining that it was seeking the annulment of Decision 2011/69, Implementing Regulation No 84/2011, Decision 2011/666 and Implementing Regulation No 1000/2011. In paragraph 57 of that judgment, the General Court analysed the reference to the letter of 14 November 2011 in the context of the application for legal aid and analysed the application itself. In that regard, it found that Mr Ipatau had not referred to that letter except when elaborating on the pleas in law and main arguments set out in the part concerning the 'subject-matter of the action', that such reference had not been made until the middle of the summary of the first plea in law, and that no reference had been made to the letter in the context of the other two pleas in law. The General Court also emphasised that, while the three pleas in law very explicitly concerned the decisions and

implementing regulations mentioned above, the same could not be said of the letter of 14 November 2011.

18 In the light of those findings, the General Court did not err in law in stating in paragraph 58 of the judgment under appeal that it could not be concluded that Mr Ipatau had referred in his application for legal aid to the letter of 14 November 2011 as an act that ought to be the subject of the proposed action.

19 Regarding the argument that the application for legal aid of 11 December 2011 should have been interpreted as necessarily seeking the annulment of the letter of 14 November 2011, it should be borne in mind that, by that letter, the Council refused Mr Ipatau's request for review of his inclusion, through Decision 2011/69 and Implementing Regulation No 84/2011, in the lists of persons subject to restrictive measures. That letter also contained Decision 2011/666 and Implementing Regulation No 1000/2011.

20 The application for legal aid had been submitted by Mr Ipatau for the purposes of bringing an action for annulment of Decision 2011/69, Implementing Regulation No 84/2011, Decision 2011/666 and Implementing Regulation No 1000/2011. In view of the clear, precise and legally well-argued wording of that application for legal aid, there was nothing to permit a finding by the General Court that that application was necessarily seeking, in addition, the annulment of the letter of 14 November 2011.

21 Regarding Mr Ipatau's claim not to have been assisted by an advisor when drafting his application for legal aid, it must be pointed out that the application for legal aid drafted by Mr Ipatau was clear, precise, and legally well argued, bearing witness to his legal skills.

22 It follows from all of the foregoing that the first ground of appeal is unfounded and must be dismissed.

Second ground of appeal: infringement of the rights of the defence concerning Decision 2012/642 and Implementing Regulation No 1017/2012

Arguments of the parties

23 By his second ground of appeal, Mr Ipatau argues that, in ruling that the Council was entitled to adopt Decision 2012/642 and Implementing Regulation No 1017/2012 without hearing him beforehand, the General Court infringed the rights of the defence. He therefore contests paragraphs 80 and 81 of the judgment under appeal, which are worded as follows:

'80 It should be noted that there was no substantial change to the reasoning concerning the applicant in 2012, in so far as his responsibility for the violations of electoral standards in the context of the Presidential election of 19 December 2010 is still attributed to his role as Deputy Chairperson and Member of the CEC.

81 It must therefore be concluded, without it being necessary to examine their admissibility, that the objections raised by the applicant in that regard are, in any event, unfounded, as the Council was not obliged to inform the applicant of the incriminating evidence involved or to give him the opportunity to be heard prior to the adoption of Decision 2012/642 and Implementing Regulation No 1017/2012.'

24 He argues that the fact that the reasons for certain acts have not changed cannot exempt the Council from its obligation to consult the person concerned, thereby giving him the opportunity to provide an update on his situation and the information concerning him. He notes that recital 8 in the preamble to Decision 2012/642 refers to the Parliamentary elections of 23 September 2012, indicating that they 'have also been found to be inconsistent with international standards', whereas the reasons for his inclusion in the list of persons subject to restrictive measures relate to 'violations of electoral standards in the context of the Presidential election of 19 December 2010'.

25 The Council disputes the merits of that ground of appeal.

Findings of the Court

26 In paragraphs 75 and 76 of the judgment under appeal, the General Court — without erring in law — recalled the case-law pursuant to which, in the context of the adoption of a decision to maintain the name of a person or an entity in a list of persons or entities subject to restrictive measures, the Council must respect the right of that person or entity to be heard beforehand where that institution is including in that decision new evidence against that person or entity, namely evidence which was not included in the initial listing decision (see, to that effect, in particular, judgment in *France* v *People's Mojahedin Organization of Iran*, C-27/09 P, EU:C:2011:853, paragraphs 62 and 63).

27 As the General Court rightly noted in paragraph 80 of the judgment under appeal, there was no substantial change in 2012 to the grounds for continuing to include Mr Ipatau in the list of persons subject to the restrictive measures in question. Indeed, it is clear from all the acts in respect of which Mr Ipatau sought annulment before the General Court that his responsibility for the violations of electoral standards in the context of the Presidential election of 19 December 2010 was still attributed to his role as Deputy Chairperson and Member of the CEC.

28 In any event, as the Council contends, Mr Ipatau had already submitted observations to the Council and was therefore aware that that right was always available to him, *a fortiori* during regular reviews of the restrictive measures adopted against the Republic of Belarus with a view to the possible extension of those measures.

29 It follows from all of the foregoing that the second ground of appeal is unfounded and must be dismissed.

Third ground of appeal: error of law regarding the adequacy of the grounds provided in the acts in respect of which annulment was sought

Arguments of the parties

30 By his third ground of appeal, Mr Ipatau submits that the General Court erred in law in ruling that the Council had not made an error of assessment in deciding that the reasons for his inclusion in the list of persons subject to restrictive measures were well founded. He therefore contests paragraphs 143 and 144 of the judgment under appeal. Paragraphs 138 to 140 and 142 to 144 of the judgment under appeal are worded as follows:

‘138 The applicant does not deny that he is the Deputy Chairperson of the CEC but, in essence, disputes his role and influence and, more generally, the role and influence of the CEC in presidential elections.

139 The applicant contests the inclusion of his name in the list of persons subject to restrictive measures on the ground that the Council drew erroneous conclusions from the [Organisation for Security and Cooperation in Europe (OSCE)] report in question.

140 However, first of all, it is apparent that, while the Council seems to have based its decision on the OSCE report in question, the findings of that report are, as the Council emphasises, not contradicted by institutions such as those belonging to the Council of Europe. In that regard, it is clear from Resolution 1790(2011) of 27 January 2011 of the Parliamentary Assembly of the Council of Europe and from Resolution 17/24 of 15 June 2011 of the United Nations Human Rights Council that the Presidential elections of December 2010 in Belarus were not conducted in an orderly manner, since candidates were arrested and there was a crackdown in the months following those elections. The fact that the Commonwealth of Independent States (CIS) validated the 2010 Presidential elections in Belarus is not sufficient grounds for contesting the contents of that report in that regard.

...

142 Next, although the CEC is not the only entity responsible for applying electoral law, that does not mean that it bears no responsibility for the way in which the Presidential elections of December 2010 were conducted. It can be seen from the OSCE report in question, and it is not disputed by the parties, that the CEC is the highest-ranking body of the electoral administration. In particular, it plays an important role in drawing up the list of candidates for presidential elections, in supervising lower-ranking bodies of the electoral administration, in monitoring the way in which electoral campaigns are conducted, in dealing with complaints and actions against decisions made by various lower-level electoral commissions and local administrative authorities and in actions brought more generally by various electoral candidates.

143 The OSCE report in question highlights “a lack of independence and impartiality of the election administration, an uneven playing field and a restrictive media environment, as well as a persistent lack of transparency at key stages of the electoral process”. It is also clear from that report that there was insufficient supervision and

monitoring of the elections. The CEC lacked independence, impartiality and collegiality, and announced the official results declaring President Lukashenko's election without publishing any kind of detailed version of those results.

144 Lastly, it is common ground that the applicant, in his capacity as Deputy Chairperson of the CEC, was personally involved in that body's activities. There is no indication that he dissociated himself at any time from the work of the CEC, or that he expressed the slightest protest, reservation or hint regarding the work carried out by that commission concerning the Presidential elections of December 2010, even though the CEC fully endorsed the way in which those elections were conducted.'

31 Mr Ipatau makes reference to the judgment in *Commission and Others* v *Kadi* (C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraphs 119 and 121), pursuant to which it is for the Council to adduce evidence that the grounds which are the basis of the decision to include or to continue to include a person in a list of persons subject to sanctions are well founded, and the judgment in *Tay Za* v *Council* (C-376/10 P, EU:C:2012:138, paragraph 71), by which the Court condemned the making of any assumptions about a person, or the inclusion of that person in such a list purely on the basis of their links with other persons. He submits that the General Court erred in law in ruling that the grounds of the disputed acts were sufficient to establish his responsibility for the violations of international electoral standards which occurred during the Presidential elections of 19 December 2010. In that regard, Mr Ipatau argues, first, that there was no reason for him to dissociate himself from the work of the CEC.

32 Second, he submits that it cannot be held that the CEC contributed to falsifying the results of the election of 19 December 2010 when only one action seeking to call in question the validity of the elections (which, moreover, it is for the Supreme Court and not the CEC to take cognisance of at last instance) was brought before that commission. Furthermore, the CEC cannot be blamed for validating the results of an election which were accepted by 90% of the candidates.

33 Third, he disputes the criticisms raised by the OSCE in its report and set out in paragraph 143 of the judgment under appeal, whereas the General Court was unable to examine the CEC's decisions.

34 The Council refers to the case-law relating to statements of reasons for acts of the institutions and contends that the General Court did not err in law in its examination, in paragraphs 97 to 103 of the judgment under appeal, of the plea for annulment alleging a breach of the duty to provide a statement of reasons.

35 The Council also examines the issue as to whether the measures adopted against Mr Ipatau were well founded and as to the evidence of the facts on which those measures were based. It contends that it listed, in the pleadings which it lodged at first instance, a certain number of actions taken by the CEC which violated international electoral standards and the role played by Mr Ipatau in that regard. In addition, it observes that although only one candidate disputed the election results, seven others were held by

Belarussian security forces immediately after the elections and were not therefore in a position to dispute the results thereof.

36 The Council emphasises that the Belarussian electoral system is able to function only as a result of sincere cooperation between high-level national officials such as Mr Ipatau. It is of the view that, as a high-level government official, Mr Ipatau was associated, within the meaning accepted by the Court in its judgment in *Tay Za* v *Council* (C-376/10 P, EU:C:2012:138), with the Belarussian government. It follows that the Council was entitled to confine itself to mentioning that link between Mr Ipatau and the government in its statement of reasons for the decisions which it adopted.

Findings of the Court

37 It should be borne in mind that the duty to state reasons established by Article 296 TFEU is an essential procedural requirement which must be distinguished from the question whether the reasoning is well founded, which is concerned with the substantive legality of the measure at issue (see, to that effect, judgment in *Commission* v *Sytraval and Brink's France*, C-367/95 P, EU:C:1998:154, paragraph 67). The reasoning of a decision consists in a formal statement of the grounds on which that decision is based. If those grounds are vitiated by errors, the latter will vitiate the substantive legality of the decision, but not the statement of reasons in it, which may be adequate even though it sets out reasons which are incorrect (see judgment in *Bertelsmann and Sony Corporation of America* v *Impala*, C-413/06 P, EU:C:2008:392, paragraph 181). It follows that objections and arguments intended to establish that a measure is not well founded are irrelevant in the context of a ground of appeal alleging an inadequate statement of reasons or a lack of such a statement.

38 Although the appellant has described his ground of appeal as alleging an 'error of law regarding the adequacy of the grounds provided in the acts at issue', it must be pointed out that he is criticising the merits of paragraphs 143 and 144 of the judgment under appeal, in which the General Court responded to his plea alleging an error of assessment. Nevertheless, since the appellant has identified precisely the points in the grounds of that judgment which he is contesting, that ground of appeal must be examined, in accordance with Article 178(3) of the Rules of Procedure.

39 In the context of ascertaining whether Mr Ipatau's inclusion in the lists of persons subject to restrictive measures was well founded, it is necessary to examine, first, the general criteria for inclusion in those lists, second, the grounds stated for including Mr Ipatau in such a list and, third, the evidence that his listing was well founded (judgments in *Anbouba* v *Council*, C-605/13 P, EU:C:2015:247, paragraph 40, and *Anbouba* v *Council*, C-630/13 P, EU:C:2015:248, paragraph 41).

40 It should be borne in mind that the Council has a broad discretion when defining the general criteria to be adopted for the purpose of applying restrictive measures (see, to that effect, judgments in *Council* v *Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776, paragraph 120 and the case-law cited; *Anbouba* v *Council*,

C-605/13 P, EU:C:2015:247, paragraph 41; and *Anbouba* v *Council*, C-630/13 P, EU:C:2015:248, paragraph 42).

41 Mr Ipatau does not allege any error of law in that regard.

42 Regarding the evidence that Mr Ipatau's listing was well founded, it should be borne in mind that the effectiveness of the judicial review guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union requires that, as part of the review of the lawfulness of the grounds which are the basis of the decision to include a person's name in the list of persons subject to restrictive measures, the Courts of the European Union are to ensure that that decision, which affects that person individually, is taken on a sufficiently solid factual basis. That entails, in this instance, a verification of the factual allegations in the summary of reasons underpinning that decision, with the consequence that judicial review cannot be restricted to an assessment of the cogency in the abstract of the reasons relied on, but must concern whether those reasons, or, at the very least, one of those reasons, deemed sufficient in itself to support that decision, is substantiated (see, to that effect, judgments in *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 119; *Council* v *Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776, paragraph 73; *Anbouba* v *Council*, C-605/13 P, EU:C:2015:247, paragraph 45; and *Anbouba* v *Council*, C-630/13 P, EU:C:2015:248, paragraph 46).

43 First, Mr Ipatau challenges the assertion that the CEC could have helped to falsify the results of the election of 19 December 2010, when only one action was brought before it. However, that argument cannot undermine the General Court's factual findings in paragraphs 142 and 143 of the judgment under appeal.

44 In those paragraphs, the General Court found, first, that in its position as the highest-ranking body of the electoral administration, the CEC has powers besides that of processing complaints, such as 'an important role in drawing up the list of candidates for presidential elections, in supervising lower-ranking bodies of the electoral administration, in monitoring the way in which electoral campaigns are conducted [and] in dealing with complaints and actions against decisions made by various lower-level electoral commissions and local administrative authorities'. Second, it held that 'there was insufficient supervision and monitoring of the elections' and that '[t]he CEC lacked independence, impartiality and collegiality, and announced the official results declaring President Lukashenko's election without publishing any kind of detailed version of those results'.

45 Secondly, Mr Ipatau claims not to have had any reason to dissociate himself from the work of the CEC. However, in view of the fact that Mr Ipatau does not identify any error of law on the part of the General Court as regards the CEC's responsibility for the violations of international electoral standards in the context of the Presidential elections of 19 December 2010, the General Court cannot be blamed for having inferred his personal responsibility for those violations from his role as Deputy Chairperson of the

CEC and from the fact that he did not dissociate himself from the work of that commission.

46 Those are the factual findings — which it is not for the Court to review on appeal — which enabled the General Court to conclude, in essence, that the CEC was responsible for violations of international electoral standards in the context of the Presidential elections of 19 December 2010 and that those violations could also be imputed to Mr Ipatau personally as the Deputy Chairperson of that institution. Contrary to Mr Ipatau's assertions, the General Court did not make any assumptions in his regard and, consequently, did not act contrary to the judgment in *Tay Za* v *Council* (C-376/10 P, EU:C:2012:138) in including his name in the list of persons subject to restrictive measures solely by referring to his links to other persons.

47 Thirdly, Mr Ipatau accuses the General Court of having reproduced the criticisms addressed to the CEC by the OSCE relating to the quality of the CEC's decisions without having examined those decisions. By that argument, Mr Ipatau is in fact challenging the assessment of the evidence carried out by the General Court and the value which it ascribed to that evidence.

48 In that regard, it should be borne in mind that, in some situations, the Courts of the European Union may take into account reports from international non-governmental organisations (see, to that effect, judgment in *N.S. and Others*, C-411/10 and C-493/10, EU:C:2011:865, paragraphs 90 and 91). *A fortiori*, it may take into account a report from an international organisation like the OSCE.

49 In paragraph 140 of the judgment under appeal, the General Court verified the reliability of the OSCE report by comparing its findings with the findings of institutions such as the Council of Europe.

50 Having regard to all of the General Court's factual findings — which it is not for the Court to review on appeal — the General Court did not err in law in rejecting as unfounded, in paragraph 145 of the judgment under appeal, the plea alleging that the Council had made an error of assessment.

51 In so doing, the General Court complied with the principles deriving from the case-law referred to in paragraph 42 of this judgment relating to the verification of the lawfulness of the grounds on which acts such as the acts at issue are based.

52 The third ground of appeal must therefore be dismissed as unfounded.

Fourth ground of appeal: failure to comply with the principle of proportionality

Arguments of the parties

53 By his fourth ground of appeal, Mr Ipatau submits that, by validating the measures taken against him in 2011 and 2012 even though the OSCE report did not recommend

adopting any restrictive measures against Members of the CEC, the General Court disregarded the principle of proportionality. He emphasises that the general recommendations of the OSCE regarding the CEC relate only to the composition of that commission and the quality of the instructions which it provides to local commissions. The collective punishment of all Members of the CEC is clearly disproportionate and inefficient, as it prevents Members of the CEC from gaining awareness of European experience and best practice.

54 He also argues that, in order to encourage improvement of the Belarussian electoral system (which does not have any long-standing traditions), it is essential for persons involved in that electoral system, including Members of the CEC, to be made more aware of international electoral standards. To that end, they could be offered training by the Member States of the European Union and observation visits could be organised during elections in those States. However, the ban on travelling within the European Union is clearly contrary to those objectives of the OSCE report.

55 The Council first of all emphasises that the OSCE report is not the sole basis for the restrictive measures against the appellant. Next, it contends that there is no contradiction between the OSCE report and the policies of the Council and the European Union. On the contrary, those policies, including those involving restrictive measures, are designed to exert pressure on the Belarussian government and those associated therewith, in order to put an end to serious human rights violations and the repression of civil society and democratic opposition, and to ensure observance of democracy and the rule of law, including international electoral standards, in Belarus. Moreover, the Council's restrictive measures do not impede persons responsible for the administration of elections from undergoing training in Belarus on the subject of international electoral standards. Furthermore, Article 3(6) of Decision 2012/642 lists potential exemptions from the ban on travelling within the European Union.

Findings of the Court

56 Pursuant to Article 169(2) of the Rules of Procedure of the Court of Justice, the pleas in law and legal arguments relied on in the context of an appeal must identify precisely those points in the grounds of the decision of the General Court which are contested (see order in *Thesing and Bloomberg Finance* v *ECB*, C-28/13 P, EU:C:2014:230, paragraph 25, and judgment in *Klein* v *Commission*, C-120/14 P, EU:C:2015:252, paragraph 85).

57 Accordingly, that requirement is not satisfied by an appeal which, without even specifically identifying the error of law vitiating the judgment which is the subject of that appeal, confines itself to reproducing the pleas in law and arguments previously submitted to the General Court. Such an appeal amounts in reality to nothing more than a request for re-examination of the application submitted to the General Court, which the Court of Justice does not have jurisdiction to undertake (see judgment in *Klein* v *Commission*, C-120/14 P, EU:C:2015:252, paragraph 86).

58 By confining himself to asserting that the General Court wrongly held that the Council's measures were not disproportionate without identifying precisely the points in the grounds of the fifth plea of the judgment under appeal which he wishes to challenge, Mr Ipatau has failed to satisfy the requirements of Article 169(2) of the Rules of Procedure. Moreover, the arguments put forward in the fourth ground of appeal are not directed against the judgment under appeal but against the Council's measures and essentially reproduce the arguments previously submitted to the General Court.

59 Since the fourth ground of appeal thus amounts in reality to nothing more than a request for re-examination of the application submitted by Mr Ipatau at first instance, it must be dismissed as inadmissible.

60 As all four of Mr Ipatau's grounds of appeal have been dismissed, the appeal must also be dismissed.

Costs

61 Pursuant to 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.

62 Under Article 138(1) of the Rules of Procedure, applicable to appeal proceedings pursuant to Article 184(1) 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.

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

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

1. **Dismisses the appeal;**

2. **Orders Mr Vadzim Ipatau to bear his own costs and to pay those incurred by the Council of the European Union.**

[Signatures]

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* Language of the case: French.