



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Joined Cases C-478/11 P
Gbagbo v Council, C-479/11 P Koné v Council, C-480/11 P Boni-Claverie v
Council, C-481/11 P Djédjé v Council, C-482/11 P N'Guessan v Council

Advocate General Cruz Villalón proposes that the Court of Justice should set aside the orders of the General Court dismissing the applications of Mr Gbagbo and others targeted by restrictive measures against Côte d'Ivoire

The Advocate General proposes that the cases should be referred back to the General Court for a ruling on the admissibility of the applications after the parties have been heard

In October 2010, presidential elections were held in Côte d'Ivoire, following which the UN certified Alassane Ouattara's victory. Against this background, the Council of the European Union adopted a series of measures¹ against individuals who threatened the proper outcome of the electoral process by banning their entry into, or transit through, the territories of the Member States and freezing all their economic resources in the EU.

The measures targeted, among others, the following individuals, and included these observations: Laurent Gbagbo 'Supposedly President of the Republic', Pascal Affi N'Guessan 'Secretary General of the Ivorian Popular Front (FPI), former Prime Minister. Expression of radical views and active disinformation. Incitement to violence', Justin Koné Katina. 'Supposedly Minister Delegate for the Budget. Participation in the illegitimate government of Mr Laurent Gbagbo' and Danièle Boni Claverie 'French and Ivorian national. Supposedly Minister for Women, the Family and Children. Participation in the illegitimate government of Mr Laurent Gbagbo.' These measures were communicated by way of a notice published in the Official Journal of the European Union.

In July 2011, these individuals brought actions before the General Court for the annulment of the provisions which concerned them. The Court ordered² the immediate dismissal of the actions solely on the basis of the relevant documents instituting the proceedings, holding them to be manifestly out of time (the documents arriving at the court with varying degrees of lateness of between six days and three months, depending on the case).

As a result, in September 2011, they lodged an appeal against the orders of the General Court. Firstly, they complained that the General Court did not take account of the fact that the state of war in which Côte d'Ivoire allegedly found itself constituted a case of *force majeure* which prevented them from actually exercising their right to bring an action. Secondly, they argued that the principle of legal certainty could not provide justification, on the one hand, for applying to the applications the ordinary time-limit for bringing proceedings, extended solely on account of the distance, or on the other, for the contested measures not being served personally.

In his opinion presented today, Advocate General Pedro Cruz Villalón emphasised that his analysis must be guided by the special circumstances of the case in terms of the effect on the rights and safeguards afforded by EU law. Thus he cited the singular nature of the measures adopted by the Council (measures restricting their rights and freedoms), the procedure for drawing up the

¹ In particular, Council Decision 2010/656/CFSP of 29 October 2010, renewing the restrictive measures against Côte d'Ivoire (OJ 2010 L 285, p. 28), as amended by Decisions of 22 December 2010, 11 and 14 January 2011 and 6 April 2011; as well as Council Regulation (EC) No 560/2005 of 12 April 2005, imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire (OJ L 95, p. 1), as amended by Regulations of 14 January and 6 April 2011.

² Orders of the General Court of 13 July 2011, Gbagbo v Council ([T-348/11](#)), Koné v Council ([T-349/11](#)), Boni-Claverie v Council ([T-350/11](#)), Djédjé v Council ([T-351/11](#)) and N'Guessan v Council ([T-352/11](#)).

measures (in which there was no hearing and no possibility of a defence), the fact that the action before the General Court was the only means of defence available to the parties concerned (a clear exception to the usual system of safeguards that is a feature of the rule of law), and the fact that personal service of the measures was impossible in respect of people who were outside the territory of the EU in a situation which the Council described as chaotic.

He has therefore taken the view that it follows from the fundamental right to effective judicial protection, above any other formal consideration, that the measures adopted by the Council must be communicated directly to the interested parties by way of personal notification. However, he accepted that, in situations such as the present case, it is very probable that personal notification was not feasible and that consequently it is necessary to resort to other means of communication, such as the publication of notices in the Official Journal. In any event, the EU is required to engage actively in efforts to ensure that the parties concerned are aware of the measures adopted.

With regard to calculating the time-limit for bringing actions, the Advocate General reiterated that these must be brought within two months of the publication of the measure, or of its notification to the claimant, or, failing these, of the day on which it came to the knowledge of the claimant, as the case may be³. From this he concludes that, although in principle there is no dispute that procedural time-limits must be interpreted strictly for the sake of legal certainty, that requirement is not taken to the extreme by the Treaty. Therefore, whilst accepting the importance of the actual knowledge of the interested party, he also accepts that the computation of time-limits is conditioned by the very specific circumstances of each case.

For these reasons, the Advocate General took the view that the applicants, Mr Gbagbo, Mr Koné, Ms Boni-Claverie, Mr Djédjé and Mr N'Guessan, had to be given every opportunity to argue that, for reasons of *force majeure*, they had actual knowledge of the measures adopted only after they were published, with the consequent effect on the period for bringing their actions. In his opinion, the General Court had the procedural means at its disposal to do this. In view of the alleged late filing of the actions, the General Court opted to take a procedural route reserved for cases where the inadmissibility, because it was manifest, could be determined without the parties making any representations. However, Mr Cruz Villalón has stated that, in the special circumstances of the case, it is doubtful that the inadmissibility could be held to be manifest. For that reason, the General Court should have chosen to make use of its power to make a ruling of its own motion on the inadmissibility of the applications at any time during the procedure, after the parties were heard. That hearing would have made it possible for the action to be declared inadmissible after a hearing had been conducted in accordance with due process. In a situation such as this, where the parties concerned suffered harm due to the effects of measures adopted as part of a process in which they could not have taken part, the opportunities which the legal system provides for those measures to be judicially reviewed should have been maximised.

Finally, Mr Cruz Villalón expressed the view that the conduct of the applicants' lawyers (who touched on, but did not develop, in their applications, the arguments which, in their opinion, would have justified the late filing of the actions, and who did not attend the hearing before the Court of Justice, with the result that it could not then take place) could have no impact on his opinion given the particular circumstances of the case.

Consequently, Advocate General Cruz Villalón proposed that the Court of Justice should set aside the orders of the General Court dismissing the applications, and refer the matters back to the General Court for a decision on the admissibility of the applications, after hearing representations from the parties.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are

³ Art. 263 of the Treaty on the Functioning of the European Union.

responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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