



General Court of the European Union

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Judgments in Joint Cases T-244/16 Yanukovych v Council, T-285/17 Yanukovych v Council, Joint cases T-245/16 and T-286/17 Yanukovych v Council and cases T-274/18 Klymenko v Council, T-284/18 Arbuzov v Council, T-285/18 Pshonka v Council, T-289/18 Pshonka v Council and T-305/18 Klyuyev v Council

Press and Information

## **The General Court annuls the freezing of funds of seven members of the former Ukrainian ruling class, including Viktor Yanukovych, former President of Ukraine**

In response to the crisis in Ukraine in February 2014, the Council of the European Union decided, on 5 March 2014, to freeze the funds and economic resources, in particular, of persons identified as responsible for misappropriation of Ukrainian State funds.

Viktor Fedorovych Yanukovych, former President of Ukraine, and one of his sons, Oleksandr Viktorovych Yanukovych, together with Oleksandr Klymenko, former Minister of Revenue and Duties of Ukraine, Sergej Arbuzov, former Prime Minister of Ukraine, Viktor Pshonka, former Prosecutor General of Ukraine, Artem Pshonka, his son, and Andriy Klyuyev, former Head of Administration of the President of Ukraine, were included, for the first time in 2014, on the list of persons subject to the freezing of funds, on the ground that they were subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.

The decision concerning the freezing of funds against those persons was repeatedly extended, for one-year periods, on the new ground that they were subject to criminal proceedings by the Ukrainian authorities for the misappropriation of public funds or assets.

They brought actions before the General Court contesting the acts extending the freezing of their funds in 2016 and 2017,<sup>1</sup> in so far as Viktor Yanukovych and one of his sons are concerned, and in 2018, in so far as the other persons are concerned,<sup>2</sup> on the ground, inter alia, that the Council had failed to comply with the listing criteria.

**By today's judgments, the General Court upholds the actions brought by the Ukrainians by annulling the restrictive measures taken against them for those periods.**

First of all, the General Court, applying the case-law principles arising from the Court of Justice's judgment in *Azarov v Council*,<sup>3</sup> recalls that the EU judicature must review the lawfulness of all EU acts in the light of fundamental rights. In that connection, although the Council can base the adoption or maintenance of restrictive measures on a decision of a third State, it must itself verify

<sup>1</sup> Council Decision (CFSP) 2016/318 of 4 March 2016 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2016, L60, p.76) for the period from 6 March 2016 to 6 March 2017, and Council Decision (CFSP) 2017/381 of 3 March 2017 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2017, L 58, p. 34) , for the period from 6 March 2017 to 6 March 2018.

<sup>2</sup>Council Decision (CFSP) 2018/333 of 5 March 2018 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2018, L 63 p. 48), for the period from 6 March 2018 to 6 March 2019.

<sup>3</sup> Case: [C-530/17 P](#) *Azarov v Council*. The action brought by Mr Azarov case [T-286/18](#) against the acts of the Council extending the restrictive measures against him for the period from 6 March 2018 to 6 March 2019 is pending, the hearing having taken place on 20 May 2019.

that, in particular, the rights of the defence and the right to effective judicial protection were complied with at the time of the adoption of the decision.

The General Court finds that the statement of reasons for the Council's acts extending the restrictive measures does not include a single reference to the fact that the Council verified compliance with such rights.

According to the General Court, none of the information contained in the letters from the Ukrainian authorities, on which the Council based its decision to maintain the restrictive measures at issue, makes it possible to consider that the Council had sufficient information to verify that those rights had been complied with. Furthermore, it was under an obligation to carry out that verification irrespective of any evidence adduced by the Ukrainians concerned by the freezing of funds.

Secondly, the General Court adds that, although the Council claims that the conduct of the criminal investigations had been subject to judicial oversight in Ukraine and that several judicial decisions adopted in that context show that it was able to verify that the rights in question had been complied with, those decisions are not capable, alone, of demonstrating that the decision of the Ukrainian authorities to initiate and conduct the criminal proceedings, on which the maintenance of restrictive measures is based, was taken in accordance with the rights of the defence and the right to effective judicial protection.

The General Court concludes that **none of the information before it establishes that the Council verified that the Ukrainian judicial authorities complied with the rights in question before extending the restrictive measures at issue. It therefore annuls the Council's acts extending the restrictive measures for the periods from 6 March 2016 to 6 March 2017 and from 6 March 2017 to 6 March 2018, with regard to Viktor Yanukovych and one of his sons,<sup>4</sup> and from 6 March 2018 to 6 March 2019, with regard to the other Ukrainians concerned.**

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**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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*Unofficial document for media use, not binding on the General Court.*

*The full text of the judgments [T-244/16 & T-285/17](#), [T-245/16 & T-286/17](#), [T-274/18](#), [T-284/18](#), [T-285/18](#), [T-289/18](#) & [T-305/18](#)) are published on the CURIA website on the day of delivery*

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<sup>4</sup> The actions brought by Mr Yanukovych (Case [T-300/18](#)) and one of his sons (Case [T-301/18](#)) against the Council's acts extending the restrictive measures against them for the period from 6 March 2018 to 6 March 2019 are pending, the hearing having taken place for both cases, which were joined for the purposes of the oral part of the procedure, on 6 June 2019.