Reports of Cases

JUDGMENT OF THE GENERAL COURT (Third Chamber)

28 May 2013 *

(Common foreign and security policy — Restrictive measures directed against certain persons and entities in view of the situation in Tunisia — Freezing of funds — Article 17(1) of the Charter of Fundamental Rights of the European Union — Action for damages — Article 44(1)(c) of the Rules of Procedure of the General Court — Inadmissibility)

In Case T-187/11,

Mohamed Trabelsi,

Ines Lejri,

Moncef Trabelsi,

Selima Trabelsi,

Tarek Trabelsi,

represented initially by A. Metzker, and subsequently by A. Tekari, lawyers,

applicants,

v

Council of the European Union, represented initially by G. Étienne and A. Vitro, and subsequently by G. Étienne, M. Bishop and M.-M. Joséphidès, acting as Agents,

defendant,

supported by

European Commission, represented by A. Bordes and M. Konstantinidis, acting as Agents,

and by

Republic of Tunisia, represented by W. Bourdon, lawyer,

interveners,

* Language of the case: French.

APPLICATION for annulment of, first, Council Implementing Decision 2011/79/CFSP of 4 February 2011 implementing Decision 2011/72/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia (OJ 2011 L 31, p. 40), and, second, a claim for damages,

THE GENERAL COURT (Third Chamber),

composed of O. Czúcz, President, I. Labucka and D. Gratsias (Rapporteur), Judges,

Registrar: C. Kristensen, Administrator,

having regard to the written procedure and further to the hearing on 7 November 2012,

gives the following

Judgment

Background to the dispute

1 Following political developments in Tunisia during the months of December 2010 and January 2011, the Council of the European Union adopted, on 31 January 2011, on the basis of in particular Article 29 TEU, Decision 2011/72/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia (OJ 2011 L 28, p. 62).

2 Recitals 1 and 2 in the preamble to Decision 2011/72 read as follows:

'On 31 January 2011, the Council reaffirmed its full solidarity and support with Tunisia and its people in their efforts to establish a stable democracy, the rule of law, democratic pluralism and full respect for human rights and fundamental freedoms.

The Council further decided to adopt restrictive measures against persons responsible for misappropriation of Tunisian State funds and who are thus depriving the Tunisian people of the benefits of the sustainable development of their economy and society and undermining the development of democracy in the country.'

3 Article 1 of Decision 2011/72 provides:

'1. All funds and economic resources belonging to, owned, held or controlled by persons responsible for misappropriation of Tunisian State funds, and natural or legal persons or entities associated with them, as listed in the Annex, shall be frozen.

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

3. The competent authority of a Member State may authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, under such conditions as it deems appropriate, after having determined that the funds or economic resources concerned are:

(a) necessary to satisfy the basic needs of the persons listed in the Annex and their dependent family members …;

(b) intended exclusively for the payment of reasonable professional fees and the reimbursement of incurred expenses associated with the provision of legal services;

(c) intended exclusively for the payment of fees or service charges for the routine holding or maintenance of frozen funds or economic resources; or

(d) necessary for extraordinary expenses … .'

4 Article 2(1) of Decision 2011/72 provides that '[t]he Council, acting upon a proposal by a Member State or the High Representative of the Union for Foreign Affairs and Security Policy, shall establish and amend the list in the Annex'.

5 Article 3(1) of Decision 2011/72 provides that 'the Annex shall include the grounds for listing the persons and entities'.

6 Under Article 5 of Decision 2011/72:

'This Decision shall apply for a period of 12 months. It shall be kept under constant review. It shall be renewed, or amended as appropriate, if the Council deems that its objectives have not been met.'

7 The list annexed to Decision 2011/72 featured only the names of two natural persons, namely Mr Zine el-Abidine Ben Hamda Ben Ali, former President of the Republic of Tunisia, and Mrs Leïla Bent Mohammed Trabelsi, his wife.

8 Pursuant to 'Decision 2011/72 … and in particular Article 2(1) thereof in conjunction with Article 31(2) [TEU]', the Council adopted, on 4 February 2011, Implementing Decision 2011/79/CFSP implementing Decision 2011/72 (OJ 2011 L 31, p. 40, 'the contested decision').

9 Article 1 of the contested decision stated that the list annexed to Decision 2011/72 was to be replaced by a new list. That list covered 48 natural persons. The entry 'Mohamed Ben Moncef Ben Mohamed TRABELSI' in the column entitled 'Name' was the fourth entry in that new list. In the column entitled 'Identifying information', the following information was set out: 'Tunisian, born in Sabha-Lybie on 7 January 1980, son of Yamina SOUIEI, managing director, married to Inès LEJRI, residing at Résidence de l'Étoile du Nord – suite B – 7th floor – apt. No 25 – Centre urbain du nord – Cité El Khadra – Tunis, holder of NIC No 04524472'. Finally, in the column entitled 'Grounds', the following information was entered: 'Person subject to judicial investigation by the Tunisian authorities in respect of the acquisition of movable and immovable property, the opening of bank accounts and the holding of financial assets in several countries as part of money-laundering operations'.

10 The contested decision entered into force, in accordance with Article 2 thereof, on the day of its adoption.

11 Pursuant to Article 215(2) TFEU and Decision 2011/72, the Council adopted, on 4 February 2011, that is the same day as the contested decision, Regulation (EU) No 101/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Tunisia (OJ 2011 L 31, p. 1). As is apparent from recital 2 in the preamble thereto, that regulation was adopted because the measures introduced by Decision 2011/72 '[fell] within the scope of the [TFEU] and regulatory action at the level of the Union [was] therefore necessary in order to implement them.'

12 Article 2(1) and (2) of Regulation No 101/2011 reproduced, in essence, the provisions of Article 1(1) and (2) of Decision 2011/72. The regulation also included an 'Annex I' that was identical to the annex to Decision 2011/72, as amended by the contested decision.

13 On 7 February 2011, a letter was sent to Mr Mohamed Ben Moncef Ben Mohamed Trabelsi, in order to inform him, in the first place, that restrictive measures had been taken against him under the contested decision, in the second place, that he had the option of presenting to the competent authorities of the Member State concerned an application seeking to obtain authorisation to use the frozen assets to meet fundamental needs or make certain payments, in the third place, that it was possible for him to submit to the Council a request to re-examine his situation and, in the fourth place, that it was possible for him to dispute the contested decision before the General Court. It follows from the documents submitted to the General Court that that letter was returned to the Council without having been delivered to its addressee.

14 Council Decision 2012/50/CFSP of 27 January 2012 amending Decision 2011/72 (OJ 2012 L 27, p. 11) and Council Decision 2013/72/CFSP of 31 January 2013 amending Decision 2011/72 (OJ 2013 L 32, p. 20) extended until 31 January 2013 and 31 January 2014 respectively the application of the restrictive measures provided for by Decision 2011/72, as amended by the contested decision.

Procedure and forms of order sought by the parties

15 By application lodged at the Court Registry on 30 March 2011, Mr Mohamed Ben Moncef Ben Mohamed Trabelsi, his wife, Mrs Ines Lejri, and their three minor children, Moncef, Selima and Tarek (respectively 'the first, second, third, fourth and fifth applicants') brought the present action. They claim that the Court should:

— annul the contested decision;

— 'remove' from that decision, first, the name of the first and second applicants and that of the mother of the first applicant and, second, the reference to the first applicant's address;

— 'grant a right to reply' to the first and second applicants;

— 'protect' the fifth applicant;

— instruct the Council to 're-examine its text and to comply with the principle of the presumption of innocence';

— 'suspend the text adopted by the Council';

— order the Council of the European Union to pay the first applicant the sum of EUR 150 000 by way of damages for the harm suffered;

— 'hold the European Union liable for the sum of EUR 25 000 by way of costs';

— 'order the State to pay non-recoverable expenses – which it falls to the Court to set on an equitable basis – pursuant to Article L 761-1 of the [French Administrative Justice Code]'.

16 By a separate document lodged at the Registry of the Court on 31 March 2011, the applicants submitted an application for interim measures. By order of 14 July 2011, the President of the Court dismissed that application and reserved the costs.

17 On 24 June 2011, the Tunisian Republic submitted its statement in intervention. By order of 26 September 2011 the President of the Third Chamber of the General Court granted the Tunisian Republic leave to intervene, while indicating that the case should be treated, in his view, confidentially.

18 On 11 July 2011, the European Commission submitted an application to intervene. By order of 26 September 2011, the President of the Third Chamber of the General Court granted leave to intervene.

19 On 28 September 2011, the Council lodged its defence with the Court Registry. The Commission contended that the Court should dismiss the action and order the applicants to pay the costs.

20 On 17 November 2011, the Commission indicated that it did not intend to lodge a statement in intervention. As regards the Tunisian Republic, it did not lodge a statement in intervention within the prescribed period under Article 116(4) of the Rules of Procedure of the General Court.

21 The applicants did not lodge a reply within the prescribed period under Article 47(2) of the Rules of Procedure.

22 Acting upon a proposal of the Judge-Rapporteur, the Court (Third Chamber) decided to open the oral procedure. The Court, by way of a measure of organisation of procedure, asked the parties to reply to a question.

23 By documents received on 27 September 2012, 28 September 2012 and 2 October 2012 respectively, the Commission, the applicants and the Council complied with that request.

24 By documents received on 30 October 2012 and 5 November 2012, the Council, moreover, submitted offers of further evidence.

25 At the hearing on 7 November 2012, the applicants and the Council presented oral argument and answered the questions put by the Court.

Law

A – *Admissibility*

26 Under Article 111 of the Rules of Procedure, where, inter alia, it is clear that the Court has no jurisdiction to take cognizance of an action or where the action is manifestly inadmissible, it may, by reasoned order and without taking further steps in the proceedings, give a decision on the action.

27 *A fortiori*, when the General Court clearly does not have jurisdiction to hear a head of claim or when, whatever the reason, an action includes a head of claim which is clearly inadmissible, the General Court may raise that preliminary issue, even of its own motion, and respond to it by way of a judgment (judgment of 29 September 2009 in Joined Cases T-225/07 and T-364/07 *Thomson Sales Europe* v *Commission*, not published in the ECR, paragraph 217, and judgment of 13 June 2012 in Case T-246/09 *Insula* v *Commission*, not published in the ECR, paragraph 105).

28 It is in the light of those considerations that the General Court's jurisdiction to rule on the heads of claim presented by the applicants and on the admissibility thereof must be examined.

1. *The scope and admissibility of the claims for annulment*

a) The scope of the claims for annulment

29 As has been stated in paragraph 15 above, the applicants claimed, in their application, that the Court should annul the entirety of the contested decision. Furthermore, they asked the Court to 'remove' from that decision, first, the name of the first and second applicants and that of the mother of the first applicant, and, second, the reference to the address of the first applicant.

30 In that regard, it is important to note that that claim is manifestly covered by the claims for annulment of the contested decision.

31 Moreover, it must be noted that, questioned during the hearing on the scope of the claims mentioned in paragraph 29 above, the applicants' lawyer indicated that his clients sought annulment of the contested decision only in so far as it concerned the first applicant. That was officially noted in the record of the hearing.

b) *Locus standi* of the applicants

32 Pursuant to the fourth paragraph of Article 263 TFEU, any natural or legal person may institute proceedings against an act addressed to that person or which is of direct and individual concern to them.

33 In the present case, the contested decision refers to the first applicant by name. Therefore he has full *locus standi* to request the annulment of that decision, in so far as it concerns him. That *locus standi* moreover continues to this day since the application of the restrictive measures provided for by Decision 2011/72/CFSP, as amended by the contested decision, was extended.

34 As for the other applicants, namely the wife and the minor children of the first applicant, there is no need to consider whether they are entitled to bring proceedings, nor, as a consequence, their *locus standi*, since they do not present any claims distinct from those of the first applicant (see, to that effect, Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125, paragraph 31; Case T-374/00 *Verband der freien Rohrwerke and Others* v *Commission* [2003] ECR II-2275, paragraph 57; and Case T-282/06 *Sun Chemical Group and Others* v *Commission* [2007] ECR II-2149, paragraph 50).

2. *Admissibility of the other heads of claim*

a) The claims seeking that the Court grant 'a right to reply [to the first and second applicants]' and that the Court protect the fifth applicant

35 The applicants request the Court to 'protect' the fifth applicant.

36 However, no provision in the Treaties or any principle gives the General Court jurisdiction to rule on such a request. Moreover, the applicants did not specify on which legal basis they relied.

37 In those circumstances, that request must be rejected as it was brought before a court manifestly lacking in jurisdiction to hear it.

38 Moreover the applicants request that the Court 'grants a right to reply to [the first and second applicants]'. However, for the reasons set out in paragraph 36 above, that request must be rejected, as the Council maintained, as being brought before a court lacking in jurisdiction to hear it.

b) The claim for directions

39 The applicants ask the Court to instruct the Council to 're-examine its text and [to] comply with the principle of the presumption of innocence'.

40 However, when exercising the jurisdiction to annul acts conferred on it by Article 263 TFEU, the EU judicature is not entitled to issue directions to the institutions (judgment of 12 July 2007 in Case T-266/03 *CB* v *Commission*, not published in the ECR, paragraph 78 and Case T-74/08 *Now Pharm* v *Commission* [2010] ECR II-4661, paragraph 19).

41 The General Court is therefore not empowered to hear the claims for directions referred to in paragraph 39 above, which must therefore be rejected as being manifestly inadmissible.

c) Claim for suspension of application

42 Under Article 278 TFEU:

'The Court may, …, if it considers that circumstances so require, order that application of the contested act be suspended.'

43 Under Article 104(2) of the Rules of Procedure, an application to suspend the operation of a measure presented under Article 278 TFEU must state, inter alia, the circumstances giving rise to urgency. Moreover, under Article 104(3), it must be made by a separate document.

44 In the present case, the applicants ask the General Court, in the application, to 'suspend the text issued by the Council'.

45 Having regard to its wording, that head of claim must be regarded as corresponding to an application for suspension based on Article 278 TFEU. However, it was not made by a separate document. Consequently, for that reason alone, it must be rejected as being manifestly inadmissible.

d) The claim for damages

46 In order to satisfy the requirements set by Article 44(1)(c) of the Rules of Procedure, an application seeking compensation for damage caused by a European Union institution or body must state the evidence from which the conduct which the applicant alleges against the institution or body concerned can be identified, the reasons why the applicant considers that there is a causal link between the conduct and the damage it claims to have suffered, and the nature and extent of that damage (see Case T-16/04 *Arcelor* v *Parliament and Council* [2010] ECR II-211, paragraph 132 and the case-law cited).

47 In the present case, the applicants ask the General Court to order the Council to pay the first applicant a sum of EUR 150 000 by way of damages.

48 However, in the absence of any specification to that effect in the application, and even of information included in the other documents in the file, the General Court cannot identify with certainty either the exact nature of the harm alleged by the applicants, nor the causal link which is assumed to exist between the conduct of which the applicants accuse the Council and that damage. In addition, no information given in the application supports a finding that the conduct of which the Council is accused corresponds to the adoption of the contested decision. Indeed, there is no ground, at least specifically, to support the claims for damages, which are mentioned only in the last point of the application, where the claims made by the applicants are listed. Those claims for damages are therefore marred by imprecision and must, on that basis, be rejected as being manifestly inadmissible.

e) The claims seeking an order to pay non-recoverable expenses

49 The applicants ask the General Court to 'order the State to pay non-recoverable expenses – which it falls to the Court to set on an equitable basis – pursuant to Article L 761-1 of the [French Administrative Justice Code]'.

50 However, as the Court has pointed out, the EU Courts do not have jurisdiction to rule on claims directed against a State and presented on the basis of provisions derived from the law of a Member State (see, by analogy, the order of 1 February 2005 in Case T-413/04 *Gómez Cobacho* v *Spain*, not published in the ECR, paragraph 7).

51 Accordingly, the abovementioned claims must be rejected as having been presented before a court which lacks jurisdiction to adjudicate on them.

B – *The remainder of the application*

52 In support of their claim for annulment, the applicants have raised pleas in law alleging, in the first place, lack of jurisdiction of the author of the contested decision, in the second place, disregard for the obligation to state reasons, in the third place, infringement of fundamental rights, and in particular of the right to property, in the fourth place, a manifest error of assessment and, in the fifth place, misuse of powers.

1. *The first plea, alleging lack of jurisdiction of the author of the contested decision*

53 By the first plea, the applicants claim that the contested decision has been adopted by an authority lacking jurisdiction, since its signatory did not have delegation of power of signature.

a) Applicable provisions

54 In accordance with Article 16(9) TEU:

'The Presidency of Council configurations, other than that of Foreign Affairs, shall be held by Member State representatives in the Council on the basis of equal rotation, in accordance with the conditions established in accordance with Article 236 [TFEU].'

55 In accordance with Article 18(3) TEU:

'The High Representative shall preside over the Foreign Affairs Council.'

56 Under the second subparagraph of Article 2(5) of the Rules of Procedure of the Council, annexed to Council Decision of 1 December 2009 adopting the Council's Rules of Procedure (OJ 2009 L 325, p. 36):

'The Foreign Affairs Council shall be chaired by the High Representative of the Union for Foreign Affairs and Security Policy, who may, where necessary, ask to be replaced by the member of that configuration representing the Member State holding the six-monthly presidency of the Council'.

57 The combined effect of these provisions is that the competent authority for signing measures adopted by the Council configuration in charge of foreign affairs is, in principle, the High Representative of the Union for Foreign Affairs and Security Policy. However, the latter may, where necessary, be replaced by the member of that configuration representing the Member State holding the six-monthly presidency of the Council.

b) Application in the present case

58 In the present case, it is not in dispute that the contested decision has been adopted by the Council, sitting in its configuration in charge of foreign affairs. It is also not in dispute that, on 4 February 2011, the date of its adoption, Mr János Martonyi was on the Council of Foreign Affairs acting as the representative of the Member State holding the six-monthly presidency of the Council. It is apparent, moreover, from the considerations set out in paragraph 57 above, that, as that representative, he could lawfully replace the High Representative of the Union for Foreign Affairs and Security Policy and had authority to sign the contested decision, without having to prove, as the applicants claim, a delegation of signature.

59 Accordingly, the first plea must be rejected as being unfounded.

2. *The second plea, alleging breach of the obligation to state reasons*

a) The scope of the plea in law

60 By the second plea, the applicants claim that the contested decision does not comply with the obligation to state reasons laid down in Article 3 of the French Law No 79-587 of 11 July 1979 on the requirement to state reasons for administrative measures and on improving relations between administrative authorities and the public (JORF of 12 July 1979, p. 1711). In their view, that decision was limited to reproducing a stereotypical formula, which is contrary to French administrative case-law.

61 However, according to settled case-law, the law stemming from the EU Treaty and the FEU Treaty, an independent source of law, cannot because of its very nature be overridden by rules of national law, however framed, without the legal basis of the European Union itself being called into question. Therefore, a national provision cannot be usefully relied upon in support of an action for annulment directed against an EU measure (Case 1/58 *Stork* v *High Authority* [1959] ECR 17, paragraph 4; Case 11/70 *Internationale Handelsgesellschaft* [1970] ECR 1125, paragraph 3; and Case C-409/06 *Winner Wetten* [2010] ECR I-8015, paragraph 61).

62 Accordingly, the applicants cannot usefully rely, in support of the present action, on the failure to observe a French legislative provision requiring the administration to state reasons for some of its measures.

63 However, it is settled case-law that an error made in designating the text applicable cannot lead to the inadmissibility of the complaint put forward, since the purpose and the summary of that complaint appear sufficiently clearly from the application (Case 12/68 *X.* v *Audit Board of the European Communities* [1969] ECR 109, paragraph 7; Case T-171/99 *Corus UK* v *Commission* [2001] ECR II-2967, paragraph 36; and the judgment of 13 November 2008 in Case T-128/05 *SPM* v *Council and Commission*, not published in the ECR, paragraph 65). Nor, therefore, is an applicant obliged expressly to state on which particular rule of law his complaint is based, provided that his line of argument is sufficiently clear for the opposing party and the Community Courts to be able to identify the rule without difficulty (*SPM* v *Council and Commission*, paragraph 65; see also, to that effect, Case T-279/03 *Galileo International Technology and Others* v *Commission* [2006] ECR II-1291, paragraph 47). Consequently, and despite the incorrect reference to a provision of French law, the plea referred to in paragraph 60 above must be understood as meaning that the applicants sought to claim that, in the light of its stereotypical nature, the contested decision disregarded the obligation to state reasons for judicial measures of the European Union laid down by Article 296 TFEU and by Article 41 of the Charter of Fundamental Rights of the European Union (OJ 2010 C 83, p. 389). That interpretation of the application was set out, moreover, on their behalf, during the hearing, by the lawyer for the applicants.

b) The merits of the plea

64 The second paragraph of Article 296 TFEU provides: 'Legal acts [adopted by the European Union institutions] shall state the reasons on which they are based.'

65 Under Article 41(2)(c) of the Charter, the right to good administration includes, inter alia, 'the obligation of the administration to give reasons for its decisions.'

66 It has consistently been held that the statement of reasons required by Article 296 TFEU and Article 41 of the Charter of Fundamental Rights must be appropriate to the measure at issue and to the context in which it was adopted. It must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review of the lawfulness thereof. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case (see Case T-228/02 *Organisation des Modjahedines du peuple d'Iran* v *Council* [2006] ECR II-4665, paragraph 141 and the case-law cited).

67 It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons for a measure satisfies the requirements of Article 296 TFEU and Article 41 of the Charter of Fundamental Rights must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question. In particular, the reasons given for a measure adversely affecting a person are sufficient if that measure was adopted in a context which was known to that person and which enables him to understand the scope of the measure concerning him. Moreover, the degree of precision of the statement of the reasons for a decision must be weighed against practical realities and the time and technical facilities available for making the decision (see *Organisation des Modjahedines du peuple d'Iran* v *Council*, paragraph 66 above, paragraph 141 and the case-law cited).

68 In particular, the statement of reasons for an asset-freezing measure cannot, in principle, consist merely of a general, stereotypical formulation. Subject to the reservations set out in the preceding paragraph, such a measure must, on the contrary, indicate the actual and specific reasons why the Council considers that the relevant rules are applicable to the party concerned (see, to that effect, *Organisation des Modjahedines du peuple d'Iran* v *Council*, paragraph 66 above, paragraph 143).

69 In the present case, the contested decision indicates, unequivocally, the legal considerations on which it is based. The citations in that decision refer to 'Decision 2011/72 …, and in particular [to] Article 2(1) thereof, in conjunction with Article 31(2) [TEU]'. The annex to the contested decision refers to Article 1 of Decision 2011/72.

70 Moreover, it is apparent from the annex to the contested decision, read in conjunction with the actual title of that decision, that the first applicant was made subject to the restrictive measures 'in view of the situation in Tunisia', on the ground that he was 'subject to judicial investigation by the Tunisian authorities in respect of the acquisition of movable and immovable property, the opening of bank accounts and the holding of financial assets in several countries as part of money-laundering operations'. The factual considerations on the basis of which the first applicant was made subject to an asset-freeze are thus stated with clarity and precision.

71 Contrary to the applicants' assertions, those considerations are not of a stereotypical nature either. They are not modelled on the wording of a general provision. Also, whilst they are admittedly the same as those on the basis of which the other natural persons covered by the contested decision were made subject to an asset-freeze, they concern the particular situation of the first applicant, who, according to the Council, has, like others, been subject to judicial investigation by the Tunisian authorities in respect of money-laundering.

72 It follows from this that the contested decision contains the statement of the points of law and facts which, according to the Council, constitute the basis for its decision. In other words, the wording of that decision discloses in a clear and unequivocal fashion the reasoning followed by the Council. Consequently, the contested decision fully satisfies the requirements laid down by Article 296 TFEU and Article 41 of the Charter.

73 In those circumstances, the second plea must be rejected.

3. *The third plea, alleging infringement of the right to property*

74 By the third plea, the applicants claim that the contested decision disregards Article 17(1) of the Charter.

a) The existence of a limitation on exercising the right to property

75 Article 17(1) of the Charter of Fundamental Rights guarantees the right to property. It is not, however, absolute (see, to that effect, Case 4/73 *Nold* v *Commission* [1974] ECR 491, paragraph 14, and Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation* v *Council and Commission* [2008] ECR I-6351, paragraph 355) and may, consequently, be subject to restrictions.

76 In the present case, the Council adopted the contested decision with the purpose of freezing the assets held, in particular, by the first applicant during a 12-month renewable period. For that purpose, the Council, referring to Decision 2011/72, the annex to which had been, in the meantime, amended by the contested decision, adopted Regulation No 101/2011 including restrictive measures against the first applicant, in the form of freezing his assets. The adoption of the contested decision, accordingly, constituted a necessary and decisive step in the process of freezing assets held by the first applicant, so that that decision constitutes, in itself, a measure restricting the exercise of the first applicant's right to property.

b) The conditions on which a limitation on the exercise of the right to property may be accepted

77 Article 52(1) of the Charter on Fundamental Rights provides, first, that '[an]y limitation on the exercise of the rights and freedoms recognised by [the Charter on Fundamental Rights] must be provided for by law and respect the essence of those rights and freedoms', and, second, that '[s]ubject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the [European] Union or the need to protect the rights and freedoms of others.'

78 It follows from that article that, to be held to comply with EU law, a limitation on the exercise of the right to property must, in any event, satisfy three conditions.

79 First, the limitation must be 'provided for by law' (see, to that effect, Case C-407/08 P *Knauf Gips* v *Commission* [2010] ECR I-6375, paragraph 91). In other words, the measure in question must have a legal basis.

80 Secondly, the limitation must refer to an objective of public interest, recognised as such by the European Union. Included in those objectives are those pursued in the context of the Common Foreign and Security Policy ('CFSP'), and referred to in Article 21(2)(b) and (d) TEU, namely to support democracy, the rule of law and human rights as well as sustainable development of developing countries with the essential objective of eradicating poverty.

81 Thirdly, the limitation may not be excessive. First, it must be necessary and proportional to the aim sought (see, to that effect, Case C-84/95 *Bosphorus* [1996] ECR I-3953, point 26; *Kadi and Al Barakaat International Foundation* v *Council and Commission*, paragraph 75 above, paragraphs 355 and 360). Second, the 'essential content', that is, the substance, of the right or freedom at issue must not be impaired (see, to that effect, *Nold* v *Commission*, paragraph 75 above, paragraph 14, and *Kadi and Al Barakaat International Foundation* v *Council and Commission*, paragraph 75 above, paragraph 355).

c) The need to examine the conditions set out in paragraphs 79 to 81 above

82 It has been consistently held that, while the EU Court must adjudicate only on the application of the parties, who must define the scope of the dispute, it cannot be bound solely by the arguments which they put forward in support of their claims, as otherwise it would, should the case arise, be compelled to base its decisions on legally flawed considerations (order of 13 June 2006 in Case C-172/05 P *Mancini* v *Commission*, not published in the ECR, paragraph 41; and Joined Cases C-514/07 P, C-528/07 P and C-532/07 P *Sweden and Others* v *API and Commission* [2010] ECR I-8533, paragraph 65; judgment of 20 June 2007 in Case T-246/99 *Tirrenia di Navigazione and Others* v *Commission*, not published in the ECR, paragraph 102; and Case T-160/08 P *Commission* v *Putterie-De-Beukelaer* [2010] ECR II-3751, paragraph 65).

83 In the present case, to respond to the third plea, alleging infringement of the right to property, it is, in particular, necessary to verify that the first of those three conditions mentioned in paragraphs 79 to 81 above is satisfied, even though none of the parties have asked the General Court to make that verification. If the General Court were to examine the other conditions referred to in those paragraphs without having made that verification, it would risk basing its reasoning on incorrect legal considerations.

d) Observance of the condition referred to in paragraph 79 above

Whether the contested decision must comply with the provisions of Decision 2011/72

84 As was stated at paragraph 79 above, the limitation on the exercise of the first applicant's right to property, by the contested decision, is lawful only if that decision has a legal basis. To determine whether that is the case, it is first of all necessary to determine the relationship between the contested decision and Decision 2011/72.

85 In this respect, it must be pointed out that Articles 1 to 3 and 5 of Decision 2011/72 define the scheme for the asset-freezing applicable to natural or legal persons or entities who meet the objective criteria defined in Article 1(1) of that decision. It concerns persons 'responsible for misappropriation of Tunisian State funds' and their associates. Accordingly, those provisions cover a category of natural and legal persons or entities defined objectively, generally and abstractly.

86 For its part, the Annex to Decision 2011/72 corresponds to a 'list of persons and entities referred to in Article 1'. In its original version, that list seeks to impose asset-freezing on two natural persons referred to by name, the scheme of which was defined in Articles 1 to 3 and 5 of that decision (see paragraph 7 above).

87 As is apparent from Article 1 thereof, the contested decision has the sole objective of amending the list annexed originally to Decision 2011/72, in order to include on it 46 additional persons including the first applicant.

88 It follows that the contested decision must, in particular, comply with Article 1(1) of Decision 2011/72, on which it is based.

Compliance of the contested decision with Article 1(1) of Decision 2011/72

89 Therefore, it is necessary to examine whether the contested decision, in so far as it applies to the first applicant, actually complies with Article 1(1) of Decision 2011/72, which requires, at the outset, a determination of the meaning and scope of the provision at issue, and of the contested decision.

90 In that regard, it must be stated that, as mentioned in paragraph 83 above, the applicants had not specifically asked in their pleadings that such an examination be carried out. Accordingly, the General Court decided, in the interest of ensuring the adversarial nature of the procedure, to invite the parties, by way of organisation of procedure, to state 'whether, in their view, the criteria … set out in Article 1 of Decision 2011/72 … are those which the Council actually applied in the contested decision' (paragraph 22 above).

– Meaning and scope of Article 1(1) of Decision 2011/72

91 As stated in paragraph 3 and recalled in paragraph 85 above, Article 1(1) of Decision 2011/72 requires that all assets held by persons responsible for 'misappropriation of Tunisian State funds' or by associates of those persons be frozen. In other words, that provision, the wording of which is clear and precise, mentions a specific category of conduct that may be characterised as criminal under Tunisian law: not any economic offence or crime, but only actions that may be characterised as 'misappropriation of Tunisian State funds'.

92 In that, the wording of that provision is, moreover, perfectly consistent with the Council's objectives. It is evident from the recitals in the preamble to Decision 2011/72 that that decision is intended to support the efforts of the Tunisian people to establish a 'stable democracy', while helping them to enjoy the 'benefits of the sustainable development of their economy and society'. Such objectives, which are among those referred to in Article 21(2)(b) and (d) TEU, are designed to be achieved by an asset-freeze the scope of which is, as in this instance, restricted to those 'responsible' for misappropriation of 'Tunisian State funds' and their associates, that is to say, to the persons whose actions are liable to have jeopardised the proper functioning of Tunisian public institutions and bodies linked to them.

– Meaning and scope of the contested decision, in so far as it concerns the first applicant

93 As stated in paragraph 9 above, under the contested decision, the name of the first applicant was included among the persons covered by the freezing of funds established by Article 1 of Decision 2011/72, on the ground that he was 'subject to judicial investigation by the Tunisian authorities' in respect of acts carried out 'as part of money-laundering operations'.

94 That ground refers to a term – 'money-laundering' – which is not used in Article 1(1) of Decision 2011/72. Consequently, in order for that ground to be regarded as being among those listed in Article 1(1) of Decision 2011/72, it must at the very least be established that, under the national law applicable, namely Tunisian law, the concept of 'misappropriation of State funds', as used in Article 1(1) of Decision 2011/72, covers, or at least necessarily entails, 'money-laundering'. In this particular case, however, the Council has neither established nor even claimed that, notwithstanding the difference that exists, *prima facie*, between the concepts of 'money-laundering' and 'misappropriation of State funds', an individual may be regarded, under Tunisian criminal law, as 'responsible for misappropriation of … State funds' or as being associated with such a person solely because he is subject to 'judicial investigation' for 'money-laundering'.

95 For the sake of completeness, it may be noted that, in the context of European Union law, 'money-laundering' covers inter alia the intentional conversion and transfer of property deriving from criminal activity of any kind for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action. That is evident, in particular, from the definition stated in Article 1(2) of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money-laundering and terrorist financing (OJ 2005 L 309, p. 15), the wording of which reproduces, in essence, that of Article 9 of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, opened for signature on 16 May 2005, signed by the European Union on 2 April 2009, but not yet approved by it. It must be observed that, as thus defined, 'money-laundering' does not cover solely actions that enable concealment of the illicit origin of assets deriving from misappropriation of State funds.

96 It follows from this that the contested decision applied a criterion other than that laid down in Article 1(1) of Decision 2011/72 when it included the first applicant among the persons whose assets were required to be frozen pursuant to Decision 2011/72. In so doing, it infringed the provision which it was intended to implement, so that the limitation on the exercise of the first applicant's right to property, which that decision entails, cannot be regarded as being provided for by law for the purposes of Article 52(1) of the Charter of Fundamental Rights.

– Arguments of the defence

97 In attempting to challenge the conclusion set out in the preceding paragraph, the Council, supported by the Commission, essentially contended that a literal interpretation of the contested decision had to be ruled out and that that decision had to be read, on the contrary, in the light of its factual context.

98 It put forward three arguments in support of that proposition.

99 By the first argument, the Council claimed at the hearing, supported by the Commission, that the evidence on the basis of which it had been decided that the applicant should be included in the list of persons whose assets were required to be frozen pursuant to Decision 2011/72 showed that the applicant was regarded by the Tunisian authorities as 'responsible for misappropriation of Tunisian State funds' or likely to have been associated with a person responsible for such misappropriation.

100 That argument must, in any event, be rejected.

101 It is apparent from the documents in the file that the name of the first applicant was included in the contested decision after two documents had been taken into account.

102 The first document is a note of 20 January 2011 from the General Directorate of Public Safety of the Republic of Tunisia to the senior investigating judge at the Court of First Instance of Tunis. It is apparent from the very wording of that note that it contains a list of the 'relatives and associates' of the former Head of State of Tunisia. The first applicant's name appears on that list.

103 The second document is a *note verbale* sent on 29 January 2011 by the Ministry of Foreign Affairs of the Republic of Tunisia to the European Union Delegation to Tunisia. That note indicates that the persons listed in the first document are subject, in Tunisia, to judicial investigation in connection with 'blanchiment d'argent par suite d'utilisation abusive des fonctions et des activités professionnelles et sociales' (according to the Council: 'money-laundering resulting from the abuse of … official positions and professional and social activities').

104 The document referred to in paragraph 102 above does indeed, clearly set out the family connections between the first applicant and the former Head of State of Tunisia. However, in any event, that document does not in any way show that members of his family were being prosecuted in Tunisia, at the date of the adoption of Decision 2011/79, for 'misappropriation of State funds'. As has just been stated, that document is a list detailing only the 'full identities' of the 'relatives and associates' of the former Head of State of Tunisia.

105 As for the *note verbale* described in paragraph 103 above, it does not mention the first applicant's particular situation. Furthermore, it refers to a judicial investigation concerning two categories of conduct: money-laundering operations consequent on an 'abuse [of] official positions', on the one hand, and money-laundering operations consequent on the abuse of 'professional and social activities', on the other.

106 However, while that *note verbale* refers to a judicial investigation of money-laundering operations consequent on an 'abuse [of] official positions', it does not specify whether the official positions in question are private or public. Thus, it certainly cannot be ruled out that, as far as some of the persons listed in the first document are concerned, the judicial investigation mentioned in that *note verbale* does indeed relate to acts that may be characterised as 'money-laundering resulting from an abuse of [public] official positions', acts for which the perpetrators might reasonably be characterised as being responsible or 'associated' with those responsible for misappropriation of State funds. None the less, the Court is not in a position to conclude, in the light of the documents described in paragraphs 102 and 103 above, that such acts were specifically alleged against the first applicant. That conclusion is all the more compelling since the Council has neither maintained nor even suggested that the first applicant held public office.

107 Furthermore, even if the first applicant were to be the subject of an investigation into money-laundering resulting from the abuse of 'professional and social activities', none of the documents described above indicates that the activities involved were linked to the exercise of State authority or fell within a Tunisian public service.

108 Accordingly, on the basis of the three documents described in paragraphs 102 and 103 above, it is impossible to conclude with certainty that, at the date of the adoption of the contested decision, the first applicant was subject to judicial investigation for money-laundering consequent on the misappropriation of State funds.

109 By a second argument, the Council claimed that the money-laundering operations of which the first applicant is accused, and which are mentioned in the contested decision, were necessarily linked to the misappropriation of State funds since the interested party was the nephew of the wife of the former Head of State of Tunisia.

110 In support of that argument, the Council produced, on 30 October 2012, an extract from the internet site of the 'Presidency of the [Tunisian] government' of 26 January 2011, from which it is apparent that the former Head of State of Tunisia, his wife and 'several members of their families' were subject to various charges, including 'acquisition of movable and immovable tangible assets … from abroad'.

111 However, it is not apparent from that document, which refers only to the first applicant, that some members of the family of the former Tunisian President other than the first applicant were, on the date that the contested decision was adopted, capable of being considered as 'responsible for misappropriation of State funds', the 'acquisition of movable and immovable tangible assets … from abroad' not necessarily corresponding to misappropriation of State funds.

112 Moreover, in view of what has been stated at paragraph 94 above, even though the wife of the former Head of State of Tunisia or some members of his family entourage other than the first applicant could have been categorised, on the date of the adoption of the contested decision, as 'responsible for

misappropriation of Tunisian State funds', the General Court could not infer from that, in the absence of evidence of consistent circumstantial factors to that effect, that the 'money-laundering operations' of which the first applicant was accused were linked, directly or indirectly, with 'misappropriation of Tunisian State funds' capable of having been committed by those persons. To assert the opposite would require presupposing that every act of money-laundering possibly committed by family members of the former Head of State of Tunisia is necessarily connected to misappropriations of State funds.

113 It follows that the Council's second argument must, in any event, be rejected.

114 By a third argument, raised during the hearing, the Council claimed that it is apparent from a statement made by the registrar of the senior investigating judge at the Court of First Instance, Tunis, produced before the General Court on 30 October 2012, that the first applicant was guilty, in particular, of 'complicity in the misuse by a public civil servant or similar of public funds'. According to the Council, that information would enable the conclusion that the investigation to which reference is made in the contested decision necessarily dealt with, if only indirectly, acts of 'misappropriation of Tunisian State funds'.

115 However, it is apparent from the information provided to the hearing by the Council, confirmed by the first applicant's lawyer, that the statement concerned is dated not 16 September 2001, as was apparent from its translation into French, but 16 September 2011, as the original in Arabic indicated. Accordingly, that statement is subsequent to the contested decision. Yet, the legality of a decision to freeze assets is to be assessed in the light of the information available to the Council when the decision was adopted (see, by analogy, Joined Cases C-74/00 P and C-75/00 P *Falck and Acciaierie di Bolzano* v *Commission* [2002] ECR I-7869, paragraph 168). Therefore, the wording of the statement at issue could not, in any event, reverse the interpretation of the contested decision.

116 Besides, it must be stated, for the sake of completeness, that that statement does not specify whether, on the date that the contested decision was adopted, the first applicant was already charged for acts linked to 'misappropriation of Tunisian State funds'. It merely lists the details of the charges referring to the first applicant, on 16 September 2011, 'in the case under investigation referenced under No 19592/1'.

117 It follows from all the foregoing that the third plea, alleging infringement of the right to property, must be upheld, so that the contested decision must be annulled in so far as it relates to the first applicant, without it being necessary to rule on the remaining pleas in the action.

C – *The temporal effect of the annulment in part of the contested decision*

118 Judgments by which the General Court annuls a decision taken by an institution or body of the European Union take, in principle, immediate effect in that the annulled act is eliminated retroactively from the legal order and is deemed never to have existed (see, to that effect, *Organisation des Modjahedines du peuple d'Iran* v *Council*, paragraph 66 above, paragraph 35). Nevertheless, on the basis of the second paragraph of Article 264 TFEU, the General Court may provisionally maintain the effects of an annulled decision (see, to that effect, *Kadi and Al Barakaat International Foundation* v *Council and Commission*, paragraph 75 above, paragraphs 373 to 376, and the judgment of 16 September 2011 in Case T-316/11 *Kadio Morokro* v *Council*, not published in the ECR, paragraph 39).

119 In the present case, it must be borne in mind that the decisions mentioned in paragraph 14 above are limited to replacing the initial wording of Article 5 of Decision 2011/72, as referred to in paragraph 6 above, to indicate as the expiration date of the measures issued by that decision, first 31 January 2013, then 31 January 2014. Otherwise, the wording of that article was not amended.

120 In so doing, those decisions have not replaced the list annexed to Decision 2011/72, as amended by the contested decision. They had no effect other than to extend the duration of measures imposed by that decision. On the basis of the retroactive effect of the annulment of the contested decision, the first applicant is deemed, as from the entry into force of this judgment, to have never been covered by those measures.

121 Therefore, if the present judgment were to take immediate effect, Regulation No 101/2011, in so far as it covers the first applicant, would be devoid of legal basis and, under the first paragraph of Article 266 TFEU, the Council would be required to annul it with regard to the first applicant. The latter would accordingly be able to transfer all or part of his assets out of the European Union, so that a serious and irreversible infringement would risk being caused to the effectiveness of any asset-freezing likely to be, in future, decided by the Council against him (see, to that effect and by analogy, *Kadi and Al Barakaat International Foundation* v *Council and Commission*, paragraph 75 above, paragraph 373).

122 Having regard to the nature of the plea upheld, it cannot be excluded that, for reasons other than those referred to in the contested decision, it may be justified to include the first applicant on the list annexed to Decision 2011/72.

123 It follows from that, by analogy with the second paragraph of Article 60 of the Statute of the Court of Justice of the European Union, which covers the case of annulled regulations, that it is necessary to maintain the effects of the contested decision until the expiry of the period for bringing an appeal or, if an appeal is lodged in that period, until it is dismissed.

Costs

124 According to Article 87(2) of the Rules of Procedure, '[t]he unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings …'

125 According to Article 87(4) of the Rules of Procedure:

'The Member States and institutions which have intervened in the proceedings shall bear their own costs.

The States, other than the Member States, which are parties to the EEA Agreement, and also the EFTA Surveillance Authority, shall similarly bear their own costs if they have intervened in the proceedings.

The Court may order an intervener other than those referred to in the preceding paragraphs to bear his own costs.'

126 In the present case, since the Council has been largely unsuccessful, it should be ordered to pay the costs, including those relating to the application for interim measures, as applied for by the applicants. However, as regards the applicants' claim for a precise sum in costs from the Council, it must be pointed out that, in the event of dispute between the parties and at the request of the interested party, the General Court shall rule on the costs recoverable by the applicants, by way of order adopted on the basis of Article 92(1) of the Rules of Procedure.

127 As an intervening institution, the Commission must bear its own costs. Lastly, in the light of the particular circumstances of this case, the same is to apply as regards the Republic of Tunisia.

On those grounds,

THE GENERAL COURT (Third Chamber)

hereby:

1. Annuls Council Implementing Decision 2011/79/CFSP of 4 February 2011 implementing Decision 2011/72/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia, in so far as it applies to Mr Mohamed Trabelsi;

2. Declares that the effects of Implementing Decision 2011/79 with respect to Mr Mohamed Trabelsi shall be maintained until the expiry of the period for bringing an appeal against the present judgment or, if an appeal is lodged during that period, until its dismissal;

3. Dismisses the remainder of the action;

4. Orders the Council of the European Union to bear, in addition to its own costs, the costs of Mr Mohamed Trabelsi, Mrs Ines Lejri, Mr Moncef Trabelsi, Miss Selima Trabelsi and Mr Tarek Trabelsi, including the costs relating to the application for interim measures;

5. Orders the European Commission and the Republic of Tunisia to bear their own costs.

Czúcz Labucka Gratsias

Delivered in open court in Luxembourg on 28 May 2013.

[Signatures]

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