Reports of Cases

JUDGMENT OF THE GENERAL COURT (Seventh Chamber)

27 April 2022*

(Common foreign and security policy – Restrictive measures adopted in view of the situation in the Democratic Republic of the Congo – Freezing of funds – Restriction on admission to the territory of the Member States – Retention of the applicant's name on the lists of persons covered – Proof that inclusion and retention on the lists is well founded – Continuation of the factual and legal circumstances which led to the adoption of the restrictive measures)

In Case T-108/21,

Ferdinand Ilunga Luyoyo, residing in Kinshasa (Democratic Republic of the Congo), represented by T. Bontinck, P. De Wolf, A. Guillerme and T. Payan, lawyers,

applicant,

v

Council of the European Union, represented by M.-C. Cadilhac and H. Marcos Fraile, acting as Agents,

defendant,

THE GENERAL COURT (Seventh Chamber),

composed of R. da Silva Passos (Rapporteur), President, I. Reine and L. Truchot, Judges,

Registrar: E. Coulon,

having regard to the written part of the procedure,

having regard to the fact that no request for a hearing was submitted by the parties within three weeks after service of notification of the close of the written part of the procedure, and having decided to rule on the action without an oral part of the procedure, pursuant to Article 106(3) of the Rules of Procedure of the General Court,

gives the following

* Language of the case: French

Judgment

1 By his action under Article 263 TFEU, the applicant, Mr Ferdinand Ilunga Luyoyo, seeks the annulment, first, of Council Decision (CFSP) 2020/2033 of 10 December 2020 amending Decision 2010/788/CFSP concerning restrictive measures against the Democratic Republic of the Congo (OJ 2020 L 419, p. 30), and, secondly, of Council Implementing Regulation (EU) 2020/2021 of 10 December 2020 implementing Article 9 of Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo (OJ 2020 L 419, p. 5) (together, 'the contested acts'), in so far as those acts concern him.

Background to the dispute

The context of the restrictive measures

2 The applicant is a national of the Democratic Republic of the Congo who held the posts of commander of the Légion nationale d'intervention (National intervention Legion) (LNI) and then commander of the unit responsible for the protection of institutions and high-ranking officials (UPIHP) in the Police nationale congolaise (Congolese National Police) (PNC).

3 The present case has been brought in connection with the restrictive measures imposed by the Council of the European Union with a view to establishing a lasting peace in the Democratic Republic of the Congo and putting pressure on persons and entities acting in violation of the arms embargo imposed on that State.

The measures adopted autonomously by the European Union

4 On 18 July 2005, the Council adopted, on the basis of Articles 60, 301 and 308 of the EC Treaty, Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo (OJ 2005 L 193, p. 1).

5 On 20 December 2010, the Council adopted, on the basis of Article 29 TEU, Decision 2010/788/CFSP concerning restrictive measures against the Democratic Republic of the Congo and repealing Common Position 2008/369/CFSP (OJ 2010 L 336, p. 30).

6 On 17 October 2016, the Council adopted conclusions in which, first, it expressed the European Union's deep concern about the situation in the Democratic Republic of the Congo, exacerbated by the 'acts of extreme violence that [had taken] place on 19 and 20 September 2016, in particular in Kinshasa [(Democratic Republic of the Congo)]', and recalled 'the primary responsibility of the [Democratic Republic of the Congo] authorities for the holding of the elections'. Secondly, the Council stated that, in order to create a climate conducive to dialogue and the holding of the elections, the Government of the Democratic Republic of the Congo had to make a clear commitment to ensuring that human rights and the rule of law are respected and to cease all use of the justice system as a political tool. In addition, it stated that the European Union called for the release of all political prisoners and the discontinuation of politically motivated prosecutions against the opposition and civil society as well as for the rehabilitation of people who have been subject to politically motivated judgments, and that the banning of peaceful demonstrations and

the intimidation and harassment of the opposition, of civil society and of the media were obstacles to the preparation of a peaceful and democratic transition. Finally, the Council stated that 'the EU [would] use all the means at its disposal, including individual restrictive measures against those responsible for serious human rights violations, those who promot[ed] violence and those who [tried] to obstruct a consensual and peaceful solution to the crisis, one that respects the aspiration of the people of the [Democratic Republic of the Congo] to elect their representatives.'

7 On 12 December 2016, the Council adopted, on the basis of Article 29 TEU, Decision (CFSP) 2016/2231 amending Decision 2010/788 (OJ 2016 L 336 I, p. 7).

8 On the same date, the Council adopted, on the basis of Article 215 TFEU, Regulation (EU) 2016/2230 amending Regulation No 1183/2005 (OJ 2016 L 336 I, p. 1).

9 Recitals 2 to 4 of Decision 2016/2231 restate the conclusions adopted by the Council on 17 October 2016 as mentioned in paragraph 6 above.

10 On 6 March 2017, the Council adopted conclusions in which, first of all, it expressed the European Union's concern about the political situation in the Democratic Republic of the Congo, caused in particular by the security situation in several parts of the country, where the disproportionate use of force had been observed. After condemning the serious human rights violations, the Council stated that the fight against impunity was one of the conditions necessary for a peaceful transition and lasting stability in the country. Finally, the Council stated that the European Union deplored the emergence of outbreaks of violence in the three Kasai provinces and in Kongo Central (Democratic Republic of the Congo) and was concerned about reports of serious violations of human rights and humanitarian law committed by local militias in the Kasai region, including the recruitment and unlawful use of child soldiers and the killing of civilians by members of the security forces of the Democratic Republic of the Congo, which could constitute war crimes under international law.

11 On 29 May 2017, the Council adopted, on the basis, inter alia, of Article 31(2) TEU and Article 6(2) of Decision 2010/788, Implementing Decision (CFSP) 2017/905 implementing Decision 2010/788 (OJ 2017 L 138 I, p. 6). On the same date, the Council adopted Implementing Regulation (EU) 2017/904, implementing Article 9(2) of Regulation No 1183/2005 (OJ 2017 L 138 I, p. 1).

Criteria for adopting restrictive measures against the Democratic Republic of the Congo

12 Article 3(2) of Decision 2010/788, as amended by Decision 2016/2231, provides:

'Restrictive measures as provided for in Articles 4(1) and 5(1) and (2) shall be imposed against persons and entities:

(a) obstructing a consensual and peaceful solution towards elections in [the Democratic Republic of the Congo], including by acts of violence, repression or inciting violence, or by undermining the rule of law;

(b) involved in planning, directing or committing acts that constitute serious human rights violations or abuses in [the Democratic Republic of the Congo];

(c) associated with those referred to in points (a) and (b);

as listed in Annex II.'

13 Article 4(1) of Decision 2010/788, as amended by Decision 2016/2231, provides that 'Member States shall take the necessary measures to prevent the entry into or transit through their territories of the persons referred to in Article 3'.

14 Under Article 5(1) and (2) of Decision 2010/788, as amended by Decision 2016/2231, the following is provided:

'1. All funds, other financial assets and economic resources owned or controlled directly or indirectly by the persons or entities referred to in Article 3 or held by entities owned or controlled directly or indirectly by them or by any persons or entities acting on their behalf or at their direction, as identified in Annex I and II, shall be frozen.

2. No funds, other financial assets or economic resources shall be made available, directly or indirectly, to or for the benefit of the persons or entities referred to in paragraph 1.'

15 Article 2b(1) of Regulation No 1183/2005, as amended by Regulation 2016/2230, provides:

'Annex Ia shall include the natural or legal persons, entities or bodies designated by the Council on any of the following grounds:

(a) obstructing a consensual and peaceful solution towards elections in [the Democratic Republic of the Congo], including by acts of violence, repression or inciting violence, or by undermining the rule of law;

(b) planning, directing, or committing acts that constitute serious human rights violations or abuses in [the Democratic Republic of the Congo];

(c) being associated with natural or legal persons, entities or bodies referred to in points (a) and (b).'

16 Article 2 of Regulation No 1183/2005, as amended by Regulation 2016/2230, provides as follows:

'1. All funds and economic resources belonging to, owned, held or controlled, either directly or indirectly, by a natural or legal person, entity or body listed in Annex I or Annex Ia including by a third party acting on their behalf or at their direction, 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 Annex Ia.'

Initial duration of the restrictive measures

17 According to Article 9(2) of Decision 2010/788, as amended by Decision 2016/2231, 'the measures referred to in Article 3(2) shall apply until 12 December 2017' and 'they shall be renewed, or amended as appropriate, if the Council deems that their objectives have not been met'.

Initial inclusion of the applicant's name on the lists of persons covered by the restrictive measures

18 By Decision 2016/2231 and Regulation 2016/2230, the applicant's name was included on the lists of persons and entities subject to the restrictive measures set out in Annex II to Decision 2010/788 and Annex Ia to Regulation No 1183/2005 (together 'the lists at issue').

19 The Council included his name for the following reasons:

'As Commander of the anti-riot body [LNI] of the [PNC], Ferdinand Ilunga Luyoyo was responsible for disproportionate use of force and violent repression in September 2016 in Kinshasa. Ferdinand Ilunga Luyoyo was therefore involved in planning, directing, or committing acts that constitute serious human rights violations or abuses in [the Democratic Republic of the Congo]'.

20 By application lodged at the Court Registry on 6 March 2017, the applicant brought an action, registered as Case T-143/17, seeking, in essence, the annulment of Regulation 2016/2230 in so far as that act concerned him. The case was removed from the Court register by order of 7 December 2018, *Ilunga Luyoyo* v *Council* (T-143/17, not published, EU:T:2018:987), following the applicant's discontinuance of the proceedings.

First three extensions of the restrictive measures imposed on the applicant

21 By Council Decision (CFSP) 2017/2282 of 11 December 2017 amending Decision 2010/788 (OJ 2017 L 328, p. 19), the restrictive measures imposed on the applicant were maintained, for the same reasons, until 12 December 2018.

22 By application lodged at the Court Registry on 8 March 2018, the applicant brought an action, registered as Case T-166/18, against decision 2017/2282, in so far as that decision concerned him. That action was dismissed by judgment of 12 February 2020, *Ilunga Luyoyo* v *Council* (T-166/18, not published, EU:T:2020:50).

23 On 10 December 2018, the Council adopted Decision (CFSP) 2018/1940 amending Decision 2010/788 (OJ 2018 L 314, p. 47) and Implementing Regulation (EU) 2018/1931 implementing Article 9 of Regulation No 1183/2005 (OJ 2018 L 314, p. 1). By those acts, the inclusion of the applicant's name on the lists at issue was maintained until 12 December 2019. The reasons for including the applicant's name on the lists at issue had been updated in order to add that, 'in July 2017, Ferdinand Ilunga Luyoyo [had been] appointed Commander of the PNC unit[, UPIHP]'.

24 By application lodged at the Court Registry on 20 February 2019, the applicant brought an action, registered under as Case T-124/19, against Decision 2018/1940 and against Implementing Regulation 2018/1931, in so far as those acts concerned him. That action was dismissed by judgment of 3 February 2021, *Ilunga Luyoyo* v *Council* (T-124/19, not published, EU:T:2021:63).

25 On 9 December 2019, the Council adopted Decision (CFSP) 2019/2109 amending Decision 2010/788 (OJ 2019 L 318, p. 134) and Implementing Regulation (EU) 2019/2101 implementing Article 9 of Regulation No 1183/2005 (OJ 2019 L 318, p. 1). By those acts, the inclusion of the applicant's name on the lists at issue was maintained until 12 December 2020. The Council

updated the reasons for that listing by adding, after referring to his position as commander of the UPIHP, the statement that 'owing to his role, he [bore] responsibility for the recent human rights violations committed by the PNC'.

26 By letter of 10 December 2019, the Council notified the applicant of Decision 2019/2109 and specified that, should he wish to submit further observations, they should be sent before 1 September 2020.

27 By application lodged at the Court Registry on 19 February 2020, the applicant brought an action, registered as Case T-101/20, against Decision 2019/2109 and Implementing Regulation 2019/2101, in so far as those acts concerned him. That action was dismissed by judgment of 15 September 2021, *Ilunga Luyoyo* v *Council* (T-101/20, not published, EU:T:2021:575).

Review

28 By letter of 4 June 2020, the applicant's lawyers submitted to the Council a request for access to the file and asked that the deadline for submitting evidence in support of the request for a review of the decision to include the applicant's name on the disputed lists be extended until 1 October 2020.

29 By letter of 7 July 2020, the Council informed the applicant's lawyers that it was granting their request for an extension of the deadline for submitting a request for review until 1 October 2020.

30 By letter of 23 July 2020, the Council sent the applicant's lawyers eight working documents.

31 On 1 October 2020, the applicant's lawyers formally submitted to the Council a request for review in which they claimed, inter alia, that the Council had committed an error of assessment. In that regard, they stated that the applicant no longer held the same positions, as he had not performed any actual duties within the Congolese police force since December 2019, although he retains the rank of General and the associated allowances, and that during the year 2020 he had not held any positions or been involved in any political, military or administrative action of the Democratic Republic of the Congo, but held the office of President of the Congolese Boxing Federation in a private capacity.

32 In annex to a letter addressed to the applicant's lawyers on 30 October 2020, the Council sent them four working documents relating to the inclusion of the applicant's name on the lists at issue.

33 In the letter of 30 October 2020, the Council stated that that information had led it to consider updating the statement of reasons concerning the applicant by stating that he had been a commander of UPIHP 'until December 2019' and by adding the statement that he '[had] retained his rank of General and remain[ed] active on the public scene in [the Democratic Republic of the Congo]'.

34 The Council further stated that, should the applicant wish to submit further observations, they should be sent before 20 November 2020.

35 By letter of 20 November 2020 addressed to the Council, the applicant's lawyers commented on the documents referred to in paragraph 32 above, arguing that none of them justified the extension of the measures at issue. In particular, they noted that although one of the documents

produced by the Council in annex to its letter of 30 October 2020 referred to the applicant's new position as President of the Congolese Boxing Federation, they disputed the validity of that reason for retaining his name on the lists in question.

Fourth extension of the restrictive measures imposed on the applicant

36 On 10 December 2020, the Council adopted the contested acts, by which the applicant's name was maintained on the lists at issue until 12 December 2021, with the statement of reasons for that listing now reading as follows:

'As Commander of the anti-riot unit called the [LNI] of the [PNC] until 2017, and Commander of the [UPIHP] within the PNC until December 2019, Ferdinand Ilunga Luyoyo was responsible for the disproportionate use of force and violent repression in September 2016 in Kinshasa, and bears responsibility for the subsequent human rights violations committed by the PNC.

Ferdinand Ilunga Luyoyo was therefore involved in planning, directing or committing acts that constitute serious human rights violations or abuses in the [Democratic Republic of the Congo].

Ferdinand Ilunga Luyoyo has retained his rank of General and remains active on the public scene in the [Democratic Republic of the Congo].'

37 By letter of 11 December 2020, the Council notified the applicant of Decision 2020/2033, recalling that the situations of human rights violations continued.

38 In the same letter, the Council stated that the applicant's situation at the time of the adoption of the contested acts justified the decision to retain his name on the lists at issue, because 'as Commander of the anti-riot unit of the PNC until 2017 and Commander of the [UPIHP] within the PNC until December 2019, [he was] responsible for the disproportionate use of force and violent repression in September 2016 in Kinshasa, and [bore] responsibility for the subsequent human rights violations committed by the PNC', and that 'although [he] no longer [held] a position within the PNC[,] he [had] retained his rank of General and … remain[ed] active on the public scene in [the Democratic Republic of the Congo], as [was] shown by the documents which [had] been sent to [him]'.

39 The Council added that, should the applicant wish to submit further observations, they should be sent before 1 September 2021.

Forms of order sought

40 By application lodged at the Court Registry on 19 February 2021, the applicant brought the present action. He claims that the Court should:

– annul the contested acts, in so far as they concern him;

– order the Council to pay the costs.

41 The Council contends that the Court should:

– dismiss the action;

– in the alternative, in the event of the annulment of the contested acts, maintain the effects of Decision 2020/2033 'until the partial annulment of Implementing Regulation 2020/2021 takes effect';

– order the applicant to pay the costs.

Law

42 In support of his claim for annulment of the contested acts, the applicant puts forward two pleas in law, the first alleging infringement of the right to be heard and the second alleging errors of assessment. The Court takes the view that the second plea should be examined first.

The second plea, alleging errors of assessment

43 In the first place, the applicant alleges a manifest error of assessment as to the context of the review of the democratic and political situation in the Democratic Republic of the Congo which preceded the extension of the restrictive measures against him.

44 In the second place, the applicant disputes, in essence, that the contested acts are justified in so far as they maintain the inclusion of his name on the lists at issue even though he could not be regarded as being involved in serious human rights violations in the Democratic Republic of the Congo at the time of the adoption of those acts.

45 First, the applicant claims that the Council maintained the inclusion of his name on the lists at issue on the basis of past actions and by reason of positions which he no longer held at the time of the adoption of the contested acts, in disregard of the listing criterion, which is written in the present tense.

46 In that regard, the applicant submits that, since his departure from the LNI of the PNC in 2017, he no longer holds a position as a commander in the PNC and that, as of December 2019, he is no longer commander of the UPIHP. He states that, although he has retained his rank of General, he no longer carries out any specific public duties.

47 Secondly, the applicant disputes the information relied on by the Council referring to his position as President of the Congolese Boxing Federation because such a position, which he holds in a private capacity, does not permit the inference that he is still involved in acts justifying the decision to maintain the restrictive measures against him. In particular, the applicant disputes the relevance and evidential value, on account of the author's partiality, of an article dated 8 October 2020 and published on the website 'desc-wondo.org' according to which he retains political influence by virtue of that position.

48 The Council contends that the objectives pursued by the restrictive measures, which include support for the rule of law and human rights, had not been achieved at the time of the adoption of the contested acts, in particular because serious human rights violations by PNC officers had continued during the review period in question. In addition, it argues that the regime led by the former President only partially changed in 2019, with the appointment of the new President of the Democratic Republic of the Congo, and that that political situation continued during 2020. It also states that the applicant has not provided any evidence or indications that he had dissociated himself from the former regime. Thus, it considers that, in the absence of a sufficiently profound

change in the political and security situation in the Democratic Republic of the Congo at the time of the adoption of the contested acts, it was relevant to rely on the applicant's current position, in order to assess whether the factual and legal circumstances which led to the adoption of the restrictive measures continue to apply and whether there is a need to persist with them in order to achieve their objective.

49 In that regard, the Council notes that, although the applicant ceased to carry out his duties as commander of the UPIHP with effect from December 2019, having been suspended because of his involvement in acts of violence and aggression against a lawyer, he retains his rank of General and remains active on the public scene in the Democratic Republic of the Congo, in particular because of his new position as President of the Congolese Boxing Federation, which is a highly politicised role and enables him to maintain close links with the country's political leaders.

50 The Council combines these findings with the fact that, at the time of the adoption of the contested acts, the applicant had not ceased to carry out his duties as commander of the UPIHP until December 2019, barely a year before those acts were adopted, and that he was also involved in acts constituting serious human rights violations in September 2016 and in those subsequently committed by the PNC, as well as in acts of violence in December 2019. It considers, therefore, that it could legitimately conclude that there was a need to persist with the restrictive measures against the applicant in order to achieve the objectives pursued by those measures, and that it had consistent and reliable evidence enabling it to draw the updated conclusions, with regard to the applicant, in the contested acts.

51 The first point to be noted is that, according to the case-law, the effectiveness of the judicial review guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union requires, in particular, that the Courts of the European Union ensure that the decision by which restrictive measures were adopted or maintained, which affects that person individually, is taken on a sufficiently solid factual basis. That entails a verification of the facts alleged in the statement 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 (judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 119).

52 It is the task of the Council to establish, in the event of challenge, that the reasons relied on against the person concerned are well founded, and not the task of that person to adduce evidence of the negative, that those reasons are not well founded (see, to that effect, judgments of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 121, and of 28 November 2013, *Council* v *Fulmen and Mahmoudian*, C-280/12 P, EU:C:2013:775, paragraph 66).

53 For that purpose, there is no requirement that the Council produce before the Courts of the European Union all the information and evidence underlying the reasons alleged in the act whose annulment is sought. It is however necessary that the information or evidence produced should support the reasons relied on against the person concerned (see, to that effect, judgments of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 122, and of 28 November 2013, *Council* v *Fulmen and Mahmoudian*, C-280/12 P, EU:C:2013:775, paragraph 67).

54 The assessment of whether the factual basis for the Council's decision is sufficiently solid must be carried out by examining the evidence and information not in isolation, but in its context. The Council discharges the burden of proof borne by it if it presents to the Courts of the European Union a set of indicia sufficiently specific, precise and consistent to establish that there is a sufficient link between the entity subject to a measure freezing its funds and the regime or, in general, the situations, being combated (see judgment of 20 July 2017, *Badica and Kardiam* v *Council*, T-619/15, EU:T:2017:532, paragraph 99 and the case-law cited).

55 Moreover, restrictive measures are of a precautionary and, by definition, provisional nature, and their validity always depends on whether the factual and legal circumstances which led to their adoption continue to apply and on the need to persist with them in order to achieve their objective. It is thus for the Council, in the course of its periodic review of those restrictive measures, to conduct an updated assessment of the situation and to appraise the impact of such measures, in order to determine whether they have made it possible to attain the objectives pursued by the initial inclusion of the names of the persons and entities concerned on the list at issue or whether the same conclusion in respect of those persons and entities can still be drawn (judgment of 12 February 2020, *Amisi Kumba* v *Council*, T-163/18, EU:T:2020:57, paragraphs 58 and 59).

56 It was in that context that the General Court held that the Council could decide to retain persons' names on the lists at issue for the same reasons relating to past acts relied on in previous decisions concerning those persons, without the persons in question having committed any further human rights violations during the period preceding the review, provided that that retention is still justified in the light of all the relevant circumstances and, in particular, of the fact that the objectives pursued by the restrictive measures have not been achieved (see, to that effect, judgment of 12 February 2020, *Amisi Kumba* v *Council*, T-163/18, EU:T:2020:57, paragraphs 82 to 84 and the case-law cited).

57 In the present case, it follows from recitals 3 and 4 of Decision 2016/2231 that the restrictive measures at issue against certain categories of persons, and in particular those who are involved serious human rights violations, were intended, inter alia, to stabilise the situation in the Democratic Republic of the Congo by encouraging the government to create a climate conducive to democratic dialogue, to ensure that human rights and the rule of law are respected and to cease all use of the justice system as a political tool with a view to bringing the perpetrators of serious human rights violations before an independent judiciary (see paragraphs 6 to 11 above). To that end, they were intended to put pressure on those held responsible for the volatile security situation in the Democratic Republic of the Congo.

58 Thus, the applicant's name was included on the lists at issue, by Decision 2016/2231 and by Regulation 2016/2230, on the ground, in essence, that he held the position of commander of the LNI, a PNC unit involved in a disproportionate use of force and violent repression of demonstrations held in Kinshasa in September 2016. In that regard, the General Court has already found that the reasons for that listing were established in the judgments of 12 February 2020, *Ilunga Luyoyo* v *Council* (T-166/18, not published, EU:T:2020:50, paragraphs 87 to 136) and of 3 February 2021, *Ilunga Luyoyo* v *Council* (T-124/19, not published, EU:T:2021:63, paragraphs 96 to 144), concerning, respectively, the first and second renewals of the decision to include the applicant's name on the lists at issue.

59 Furthermore, by adopting Decision 2019/2109 and Implementing Regulation 2019/2101, renewing for the third time the decision to include the applicant's name on the lists at issue, the Council added to the statement of reasons for that inclusion a reference to the fact that the applicant, who became commander of the UPIHP within the PNC in July 2017, bore a responsibility for the human rights violations committed by the PNC in the Democratic Republic of the Congo. In the action concerning those acts, the General Court found that the Council had adduced sufficient evidence of a link between the applicant and those violations (see, to that effect, judgment of 15 September 2021, *Ilunga Luyoyo* v *Council*, T-101/20, not published, EU:T:2021:575, paragraphs 156 to 160).

60 In the contested acts, the wording of which is reproduced in paragraph 36 above, the Council continues to refer to the acts described in paragraphs 58 and 59 above, which relate to the applicant's involvement in human rights violations in his capacity as commander, first of the LNI until 2017, and then of the UPIHP. However, the Council updated the statement of reasons relied on against the applicant, first, by specifying that he had been a commander of the UPIHP until December 2019 and, secondly, by adding that he had retained his rank of General and remained active on the public scene in the Democratic Republic of the Congo.

61 The applicant disputes that the decision taken in the contested acts to maintain the restrictive measures at issue against him was well founded, given that, at the time of the adoption of those acts, he was no longer carrying out any duties within the PNC and that, in essence, his new position as President of the Congolese Boxing Federation did not adequately demonstrate the existence of a link between him and the security situation in the Democratic Republic of the Congo. It must therefore be ascertained whether, in accordance with the case-law cited in paragraphs 55 and 56 above, the Council could, following its updated assessment of the situation carried out in the context of the review of the restrictive measures at issue, continue to refer to past acts already relied on in previous decisions concerning the applicant to support its decision to maintain the restrictive measures against him.

62 In that connection, first, as regards the security situation in the Democratic Republic of the Congo at the time of the adoption of the contested acts, it must be noted that the Council had at its disposal a body of information from various sources, according to which, despite the holding of the presidential elections on 30 December 2018, the situation with regard to respect for the rule of law and human rights in the Democratic Republic of the Congo was still worrying. Indeed, the finding that there was an increase in human rights violations during the review period in question, in particular violations relating to the democratic space committed by PNC officials, is supported by the evidence which the Council sent to the applicant in annex to its letter of 30 October 2020, and in particular by three notes from the United Nations Joint Human Rights Office (UNJHRO) on the main trends in human rights violations between January and June 2020, and in July and August 2020.

63 Thus, the Council had sufficient evidence to consider that the conditions set out in Article 3(2)(b) of Decision 2010/788 and Article 2b(1)(b) of Regulation No 1183/2005 were met.

64 Secondly, as regards the applicant's personal situation at the time of the adoption of the contested acts, in the first place, it is common ground between the parties that, as of December 2019, the applicant no longer held any position within the PNC. Furthermore, the Council already had that information when the time came to review the restrictive measures adopted against the applicant.

This is evidenced by the Council's letter to the applicant on 30 October 2020, in which it informed the applicant of its intention to take that information into account when updating the statement of reasons relied on against him.

65 In the second place, in those circumstances, it is necessary to examine the reasoning behind the contested acts, according to which the retention of the applicant's name on the lists at issue was still justified at the time of the adoption of the contested acts on the grounds that, despite his involvement in various human rights violations between September 2016 and December 2019, the applicant had retained his rank of General and taken up a new position as president of the Congolese Boxing Federation, enabling him to be politically influential.

66 In that regard, first, it must be noted that the evidence relied on by the Council is not capable of establishing a link between human rights violations and the applicant since December 2019, which is almost one year before the adoption of the contested acts.

67 According to an article from the website 'actualite.cd' of 18 December 2019, entitled '[République démocratique du Congo]: pour avoir agressé un avocat à Lubumbashi, la police suspend le général Ilunga Luyoyo' ('[Democratic Republic of the Congo]: police force suspends General Ilunga Luyoyo for assaulting a lawyer in Lubumbashi'), produced by the Council in annex to the letter of 30 October 2020, the applicant was personally involved in an assault on a lawyer. However, it was precisely in response to those acts that the applicant was removed from his position in the PNC. Moreover, the article states that the assault in question occurred following an altercation between the applicant and a person who was also a lawyer which took place for personal reasons, and not specifically because of that person's profession. Furthermore, it is not apparent from the Council's file, nor is it alleged by the Council, that when the contested acts were adopted, which was almost a year after the events in question, the applicant had been reinstated to his former position within the PNC or to any other position in connection with the security situation in the Democratic Republic of the Congo, nor indeed that he was likely to be.

68 Secondly, the fact that, after leaving his position within the PNC in December 2019, the applicant retained his rank of General does not in itself permit the inference that he could have any role within the security forces in the Democratic Republic of the Congo. This is not, moreover, what is asserted by the Council, which confines itself to observing that the applicant had retained his rank of General, while the applicant expressly argues in the application that he 'no longer [carries out] any specific duties'.

69 Thirdly, as regards the applicant's position as President of the Congolese Boxing Federation, the Council relies on three articles, namely an article from the website 'Matininfos.net', dated 9 September 2020, entitled 'Boxe: Ilunga Makabu défendra sa ceinture WBC en novembre à Kinshasa' ('Boxing: Ilunga Makabu to defend his WBC belt in November in Kinshasa'); an article from the website 'Scoop.rdc', dated 5 February 2020, entitled 'Sacré champion du monde de boxe "WBC" golden: Junior Makabu Ilunga reçu par Fatshi!' ('World Boxing Champion WBC Gold: Junior Ilunga Makabu meets Fatshi!'); and an article dated 8 October 2020, published on the website 'desc-wondo.org' and entitled 'European Union must extend sanctions against former collaborators of Joseph Kabila' ('the article of 8 October 2020').

70 It is true that the article of 8 October 2020 refers to the fact that 'the applicant continues to hold a highly politicised post'.

71 Nevertheless, irrespective of its reliability, which is disputed by the applicant on the ground of alleged bias on the part of its author, the article of 8 October 2020 does not contain any concrete information to prove that the President of the national boxing federation in the Democratic Republic of the Congo could have an influence on security policy.

72 In addition, it is reported in the two other articles mentioned in paragraph 69 above that, during the review period in question, the applicant was in contact with the political authorities of the Democratic Republic of the Congo in the context of his duties as President of the Congolese Boxing Federation, when the Presidency of the Republic held an honorary reception for a young Congolese professional boxer who had become world champion, and when that boxer requested financial backing from the Ministry of Sports and Leisure to support his sporting activity.

73 However, it is not apparent from those acts that the applicant went beyond what would be expected in the normal performance of the duties of a president of a national sports federation, given that those duties may include, in particular, backing professionals in that sector by supporting applications for subsidies from the ministry specifically responsible for that sector and accompanying them to honorary public events.

74 Consequently, the articles described in paragraph 72 above do not corroborate the information in the article of 8 October 2020 according to which the applicant was carrying out 'highly politicised' duties as President of the Congolese Boxing Federation.

75 It follows from the foregoing that, first, the applicant had not held any positions in connection with the PNC for a significant period of almost a year before the adoption of the contested acts and, secondly, the Council did not adduce sufficient evidence that the applicant was in a position to influence the security policy of the Democratic Republic of the Congo.

76 In those circumstances, the facts, relied on in the contested acts, that the applicant retained his rank of General and that he had remained active on the public scene, do not support the conclusion that it remained justified to maintain the restrictive measures against him in order to achieve the objectives pursued by those measures, namely, in particular, to support the improvement of the human rights situation in that State.

77 Finally, as regards the possibility for the Council to rely on the fact that the applicant did not dissociate himself from the regime formerly in power in the Democratic Republic of the Congo, it should be pointed out that, in certain circumstances specific to each situation, the Council may consider the failure on the part of the person concerned to dissociate from the regime in power as an element to be taken into account in support of the decision to maintain restrictive measures against him.

78 However, in the present case, it is clear from the foregoing that the applicant no longer held the various positions which had justified the initial inclusion of his name on the lists at issue, and the subsequent renewals of that listing for the considerable period of almost a year before the adoption of the contested measures. It is also apparent that the Council was informed in good time that the applicant no longer held those positions. However, despite those circumstances, the Council has failed to adduce sufficient evidence to support the view that, following the review period in question, there was still a sufficient link between the applicant and the security situation which gave rise to the human rights violations in the Democratic Republic of the Congo. In those circumstances, the Council cannot legitimately rely on the fact that the applicant has not dissociated himself from the regime formerly in power in the Democratic Republic of the

Congo to support its decision to maintain the restrictive measures against him. In the specific circumstances of the present case, such an argument cannot therefore be sufficient to justify the contested acts.

79 Consequently, in response to the applicant's objections, the Council has been unable to establish that the maintenance of the restrictive measures at issue against him was justified.

80 It follows that the Council committed an error of assessment in concluding, in the contested acts, that the inclusion of the applicant's name on the lists at issue continued to be justified on the ground that he had been involved in planning, directing or committing acts that constitute serious human rights violations or abuses in the Democratic Republic of the Congo.

81 The second part of the second plea must therefore be upheld, without there being any need to rule on the applicant's other arguments and on the first part of that plea.

82 In the light of the foregoing, the contested acts must be annulled in so far as they concern the applicant, without it being necessary to examine the first plea raised by the applicant.

The temporal effects of the partial annulment of Decision 2020/2033

83 As regards the application made by the Council in the alternative, in its defence, that the effects of Decision 2020/2033 be maintained until the partial annulment of Implementing Regulation 2020/2021 takes effect in respect of the applicant, it should be recalled that, by that decision, the Council had maintained the applicant's name on the list of persons subject to the restrictive measures set out in Annex II to Decision 2010/788 from 12 December 2020 until 12 December 2021.

84 However, by Council Decision (CFSP) 2021/2181 of 9 December 2021 amending Decision 2010/788 (OJ 2021 L 443, p. 75), the Council updated the list of persons subject to the restrictive measures set out in Annex II to Decision 2010/788, maintaining the name of the applicant on that list until 12 December 2022.

85 Therefore, while the annulment of Decision 2020/2033, in so far as it concerns the applicant, entails the annulment of his listing in Annex II to Decision 2010/788 for the period from 12 December 2020 to 12 December 2021, that annulment is, however, incapable of calling into question the lawfulness of the listing for the period subsequent to that, given that the present action does not concern Decision 2021/2181.

86 Consequently, since the applicant is now subject to new restrictive measures, the Council's application in the alternative, relating to the temporal effects of the partial annulment of Decision 2020/2033, referred to in paragraph 83 above, has become devoid of purpose.

Costs

87 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Council has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the applicants.

On those grounds,

THE GENERAL COURT (Seventh Chamber)

hereby:

1. **Annuls Council Decision (CFSP) 2020/2033 of 10 December 2020 amending Decision 2010/788/CFSP concerning restrictive measures against the Democratic Republic of the Congo and Council Implementing Regulation (EU) 2020/2021 of 10 December 2020 implementing Article 9 of Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo, in so far as those acts concern Mr Ferdinand Ilunga Luyoyo;**

2. **Orders the Council of the European Union to pay the costs.**

da Silva Passos Reine Truchot

Delivered in open court in Luxembourg on 27 April 2022.

[Signatures]