



Reports of Cases

OPINION OF ADVOCATE GENERAL
CRUZ VILLALÓN
delivered on 19 December 2012¹

Joined Cases C-478/11 P to C-482/11 P

**Laurent Gbagbo (C-478/11 P),
Katinan Justin Koné (C-479/11 P),
Akissi Danièle Boni-Claverie (C-480/11 P),
Alcide Djédjé (C-481/11 P),
Affi Pascal N'Guessan (C-482/11 P)**

v

Council of the European Union

(Appeal — Specific restrictive measures taken against certain persons and entities regarding the situation in Côte d'Ivoire — Fund freezing — Access to the territory of the European Union — No individual notification of such measures — Recourse to justice — Time-limit — Article 111 and Article 113 of the Rules of Procedure of the General Court — Article 47 of the Charter)

1. In the context of five appeals against different orders of the General Court which dismissed the applications lodged by the parties concerned against measures adopted by the Council as part of a process of re-establishing peace and security in the region of Côte d'Ivoire under the auspices of the Security Council of the United Nations, the Court of Justice is given the opportunity to develop its case-law on the right to effective judicial protection guaranteed by the European Union in respect of acts of its institutions imposing this type of measure.

2. Unlike the cases settled by the judgments of 3 September 2008 in *Kadi and Al Barakaat International Foundation v Council and Commission*,² and of 16 November 2011 in *Bank Melli Iran v Council*,³ in these cases, the Court of Justice is not asked to rule on the legality of the decisions adopting certain restrictive measures against the applicants, but on the lawfulness of the decisions of the General Court dismissing their actions against those measures.

3. I will state that, in my opinion, given the special circumstances of the case, the applicants had to be given the opportunity to make representations before the General Court *inter partes*, with regard to both the point when they in fact became aware of the measures affecting them, and to any circumstances of *force majeure*, in accordance with what is allowed by Article 113 of the Rules of Procedure of that Court, so leading to the second of the two grounds on which these appeals are formulated being upheld. In other words, I consider that, in my opinion and in these circumstances, the General Court erred in law when it immediately dismissed those applications as 'manifestly' out of time, solely by looking at the relevant documents instituting the proceedings, in accordance with Article 111 of those Rules of Procedure.

¹ — Original language: Spanish.

² — Joined Cases C-402/05 P and C-415/05 P [2008] ECR I-6351.

³ — Case C-548/09 P [2011] ECR I-11381.

I – Facts and relevant legislation

4. By Resolution 1572 (2004) of 15 November 2004, the Security Council of the United Nations (hereafter ‘the Security Council’), acting under Chapter VII of the Charter of the United Nations, on the understanding that the internal situation in Côte d’Ivoire threatened the peace and security of the region, decided to impose certain restrictive measures (travel bans and freezing of funds, financial assets and economic resources) on persons and institutions identified by the committee set up for that purpose by the Resolution (hereafter ‘the Sanctions Committee’).

5. Since 13 December 2004, there were a series of European Union resolutions intended to implement the Security Council’s Resolution.⁴

6. As the election of Mr Alassane Ouattara as President of the Republic of Côte d’Ivoire was recognised by the United Nations by virtue of the electoral process that took place between 31 October and 28 November 2010, the European Council, on 17 December 2010, called on Ivorian civil and military leaders to accept the authority of President Ouattara, and confirmed the European Union’s determination to take punitive measures against those who undermined respect for the will of the people.

7. On 22 December 2010, in order to impose restrictive measures on certain persons who, although not named by the Security Council or by the Sanctions Committee, were obstructing the national peace and reconciliation process in Côte d’Ivoire, and in particular were threatening the proper conclusion of the electoral process, the Council adopted Decision 2010/801/CFSP,⁵ which, for present purposes, included in the list of persons concerned by the restrictive measures the names of two of the appellants.

8. In particular, Decision 2010/801 revised the wording of Article 4(1) of Decision 2010/656, by which:

‘1. Member States shall take the necessary measures to prevent the entry into, or transit through, their territories of:

- (a) the persons referred to in Annex I and designated by the Sanctions Committee ...;
- (b) the persons referred to in Annex II who are not included in the list in Annex I and who are obstructing the process of peace and national reconciliation, and in particular who are jeopardising the proper outcome of the electoral process.’

9. Among the names included by Decision 2010/801 in the list in Annex II of Decision 2010/656, the following appear, together with their personal details:

- ‘1. Mr Pascal Affi N’Guessan. Born 1 January 1953 in Bouadikro; ... Secretary General of the Ivorian Popular Front (FPI), former Prime Minister. Expression of radical views and active disinformation. Incitement to violence.

4 — By Council Common Position 2004/852/CFSP of 13 December 2004, concerning restrictive measures against Côte d’Ivoire (OJ 2004 L 368, p. 50), the Council made provision for the implementation of the measures adopted in Resolution 1572 (2004) of the Security Council, including the freezing of funds and economic resources of persons who, in the opinion of the competent Sanctions Committee of the United Nations, constitute a threat to the national peace and reconciliation process in Côte d’Ivoire. In order to implement the measures laid down in Common Position 2004/852, the Council adopted Regulation (EC) No 560/2005 of 12 April 2005, imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d’Ivoire (OJ 2005 L 95, p. 1). Common Position 2004/852 was extended and amended most recently by Council Common Position 2008/873/CFSP of 18 November 2008 renewing the restrictive measures against Côte d’Ivoire (OJ 2008 L 308, p. 52), before being repealed and replaced by Council Decision 2010/656/CFSP of 29 October 2010 renewing the restrictive measures against Côte d’Ivoire (OJ 2010 L 285, p. 28).

5 — Council Decision 2010/801/CFSP of 22 December 2010, amending Council Decision 2010/656/CFSP renewing the restrictive measures against Côte d’Ivoire (OJ 2011 L 341, p. 45).

...

13. Mr Laurent Gbagbo. Born 31 May 1945 in Gagnoa. Supposedly President of the Republic.’

10. By Decision 2011/17/CFSP,⁶ in view of the gravity of the situation in Côte d’Ivoire, Decision 2010/656 was amended again in order to enter new names on the list in Annex II of Decision 2010/656. As far as this action is concerned, the following names were included:

‘17. Danièle Boni Claverie (French and Ivorian national). Supposedly Minister for Women, the Family and Children. Participation in the illegitimate government of Mr Laurent Gbagbo.

...

27. Mr Justin Koné Katina. Supposedly Minister Delegate for the Budget. Participation in the illegitimate government of Mr Laurent Gbagbo.’

11. Again on 14 January 2011, Decision 2010/656 was amended by Decision 2011/18/CFSP,⁷ which imposed additional restrictive measures, in particular the freezing of funds, against persons included in the list in Annex II, which was also amended. It introduced a new version of Article 5(1) and (2) of Decision 2010/656, which reads as follows:

‘1. All funds and economic resources owned or controlled directly or indirectly by:

- (a) the persons referred to in Annex I designated by the Sanctions Committee and referred to in Article 4(1)(a), or held by entities owned or controlled directly or indirectly by them or by any persons acting on their behalf or at their direction, as designated by the Sanctions Committee;
- (b) the persons or entities referred to in Annex II who are not included in the list in Annex I and who are obstructing the process of peace and national reconciliation, and in particular who are jeopardising the proper outcome of the electoral process, or held by entities owned or controlled directly or indirectly by them or by any persons acting on their behalf or at their direction.

shall be frozen.

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

12. On the same date (14 January 2011), in order to ensure consistency with the process of amending and revising Annexes I and II of Decision 2010/656, the Council adopted Regulation (EU) No 25/2011,⁸ which amended Article 2 of Regulation No 560/2005 as follows:

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

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

6 — Council Decision 2011/17/CFSP of 11 January 2011, amending Council Decision 2010/656/CFSP renewing the restrictive measures against Côte d’Ivoire (OJ 2011 L 11, p. 31).

7 — Council Decision 2011/18/CFSP of 14 January 2011, amending Council Decision 2010/656/CFSP, renewing the restrictive measures against Côte d’Ivoire (OJ 2011 L 11, p. 36).

8 — Council Regulation (EU) No 25/2011 of 14 January 2011, amending Council Regulation (EC) No 560/2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d’Ivoire (OJ 2011 L 11, p. 1).

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

4. Annex I shall consist of the natural or legal persons, entities and bodies referred to in Article 5(1)(a) of Decision 2010/656/CFSP as amended.

5. Annex IA shall consist of the natural or legal persons, entities and bodies referred to in Article 5(1)(b) of Decision 2010/656/CFSP as amended.’

13. As regards Mr N’Guessan, Mr Gbagbo, Mr Koné and Ms Boni Claverie, their names were retained on the list in Annex II of Decision 2010/656, and they were entered on the list appearing in Annex IA of Regulation No 560/2005.

14. On 30 March 2011, the Security Council adopted Resolution 1975 (2011), in which Annex I listed a series of persons who had undermined peace and reconciliation in Côte d’Ivoire and the activities of the United Nations and other international actors in that country, and who had committed serious violations of human rights and international humanitarian law. That annex included the names of the following appellants in this case: Mr Gbagbo, Mr N’Guessan and Mr Djédjé.

15. On 6 April 2011, the Council adopted two new resolutions on the matter: first Decision 2011/221/CFSP,⁹ again amending Decision 2010/656, and Regulation (EU) No 330/2011,¹⁰ which did the same for Regulation No 560/2005. Both resolutions imposed additional restrictive measures and amended the lists appearing in Annexes I and II of Decision 2010/656 and in Annexes I and IA of Regulation No 560/2005.

16. By virtue of the above amendments, Mr Gbagbo and Mr N’Guessan were removed from the list in Annex II and were added to the list in Annex I of Decision 2010/656. As regards Mr Djédjé, he was added to Annex I of that Decision with the following mention: ‘Close advisor to Mr Gbagbo: participation in the illegitimate government of Mr Gbagbo, obstruction of the peace and reconciliation process, public incitement to hatred and violence.’

17. Article 7 of Decision 2010/656, in its final version,¹¹ provides:

‘1. Where the Security Council or the Sanctions Committee designates a person or entity, the Council shall include such person or entity in the list in Annex I.

2. Where the Council decides to apply to a person or entity the measures referred to in Article 4(1)(b), it shall amend Annex II accordingly.

3. The Council shall communicate its decision, including the grounds for listing, to the person or entity concerned, either directly, if the address is known, or through the publication of a notice, providing such person or entity with an opportunity to present observations.

4. Where observations are submitted, or where substantial new evidence is presented, the Council shall review its decision and inform the person or entity accordingly.’

9 — Council Decision 2011/221/CFSP of 6 April 2011, amending Decision 2010/656/CFSP renewing the restrictive measures against Côte d’Ivoire (OJ 2011 L 93, p. 20).

10 — Council Regulation (EU) No 330/2011 of 6 April 2011 amending Regulation (EC) No 560/2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d’Ivoire (OJ 2011 L 93, p. 10).

11 — Council Decision 2010/801/CFSP of 22 December 2010.

18. Article 11a(3) of Regulation No 560/2005, in its final version¹² provides:

‘The Council shall communicate its decision, including the grounds for listing, to the natural or legal person, entity or body referred to in paragraphs 1 and 2, either directly, if the address is known, or through the publication of a notice, providing such natural or legal person, entity or body with an opportunity to present observations.’

19. On 28 December 2010, 18 January 2011 and 7 April 2011, the Council published notices in the Official Journal for the attention of the persons to whom the restrictive measures under Decision 2010/656 and Regulation No 560/2005 applied.¹³

II – The proceedings before the General Court and the orders under appeal

20. On 7 July 2011 the appellants in this matter brought actions before the General Court for annulment of contested provisions which concerned them,¹⁴ relying, on the one hand, on breach of the right to a fair hearing and the right to an effective remedy, and on the other, on breach of the right to property and to freedom of movement.

21. With regard to the timeliness of the applications, the applicants alleged¹⁵ that, because they had not been notified of the contested provisions, the two month period laid down by Article 263 TFEU could not apply to them.

22. By the various orders of 13 July 2011, the General Court dismissed the applications for annulment, holding them to be out of time. In short, as far as the General Court was concerned, under Article 263 TFEU and Article 102(1) of the Rules of Procedure of the General Court, the applications had to be lodged within a period of two months which started to run 14 days after the publication of the contested provisions in the *Official Journal of the European Union*. In accordance with this time-limit, the applications should have been submitted before 8 April 2011 or 1 July 2011, as appropriate. As both applications were registered on 7 July 2011, they were consequently held to be inadmissible, particularly since none of the applicants had even relied on the existence of unforeseeable circumstances or *force majeure* that might have allowed the derogation from the time-limit laid down in Article 263 TFEU.

III – The appeals

23. On 21 September 2011, the appellants lodged with the Court of Justice the appeals against the orders of the General Court dismissing the actions as inadmissible.

24. The appellants raised two grounds of appeal. First, they complained that, by not admitting that the state of war in Côte d’Ivoire amounted to *force majeure*, the General Court had erred in law. Secondly, the appellants allege that, even though they had not been notified of the contested acts, the General Court relied on the principle of legal certainty in order to apply to their applications the ordinary time-limit for bringing an action, taking into consideration only the extension on account of distance. Thus, the Court applied a strict interpretation to the procedural rules, which, for the appellants, is acceptable only in normal circumstances, and therefore never in a case such as this, where the parties concerned are outside the European Union in a country that is in a state of war.

12 — Council Regulation (EU) No 25/2011 of 14 January 2011.

13 — OJ 2010 C 353, p. 11; OJ 2011 C 14, p. 8, and OJ 2011 C 108, pp. 2 and 4, respectively.

14 — The actions were lodged under numbers T-348/11 to T-352/11.

15 — Paragraphs 42 and 43.

25. In the alternative, the appellants allege that the contested acts must be set aside by the Court of Justice, because the serious breaches of fundamental rights committed by the Commission would be harmful to the 'European legal order'. Thus they maintain that the Court of Justice cannot but find that the Rules of Procedure are in breach of the Treaties and the European Convention on Human Rights and Fundamental Freedoms in that they allow a time-limit for exercising a right of redress to be used against the appellants.

26. Consequently, they claim that the Court of Justice should (a) set aside the General Court's orders dismissing their actions, (b) refer the matter back to the General Court so that they may exercise their rights, and (c) order the Council to pay the costs.

IV – The procedure before the Court of Justice

27. The Council has appeared to oppose the appeal.

28. In its response to the appeal, the Council submits that, as regards the first ground of appeal, the appellants have not explained why it was impossible for them to be aware of the actions of the European Union before Decision 2011/211/CFSP, when at least one of the appellants had instructed lawyers in Paris in December 2010. Moreover, the state of war relied upon by the appellants could not constitute a case of *force majeure* for their purposes, because that state of war was caused by the appellants themselves by refusing to hand over power to the President-elect.

29. As regards the second ground of the appeal, the Council alleges that the appellants have not demonstrated when they became aware of the contested measures, or what reasons prevented them from challenging the latter in the months of March and April 2011. In any event, the Council is of the understanding that personal service of the contested acts was not necessary because, unlike the case decided by the judgment of 16 November 2011, in *Bank Melli Iran*, the legislation now applicable, namely, Decision 2010/656, has made provision for the possibility of notification by official publication if the address of the person concerned is not known.

30. By order of 14 December 2011, Cases C-478/11 P to C-482/11 P were joined, and the application for the expedited procedure under Article 62a(1)(1) of the Rules of Procedure was refused.

31. By letter dated 16 February 2012, the Council informed the Court of Justice that, by virtue of Council Implementing Decision 2012/74/CFSP of 10 February 2012,¹⁶ Ms Bonie Claverie's name had been removed from the list in Annex I of Decision 2010/656/CFSP.

32. The Court of Justice directed that a public hearing be held and invited the parties to respond in writing before 15 June 2012 to two written questions relating to the date when the appellants had 'actual knowledge' of the contested acts and the reasons which led the Council to conclude that it could not notify them personally. Upon expiry of the period allowed, the only response registered at the Court of Justice was that of the Council, which replied that, as it did not know the addresses of those concerned, and in view of the chaotic situation in Côte d'Ivoire during March/April 2011, it would have been very difficult to make sure that the notices had actually been received by the addressees, even if they had been sent by fax or registered post to their offices, notwithstanding the fact that it is, in any event, Council policy to avoid sending notices to natural persons at their official addresses.

16 — Council Implementing Decision 2012/74/CFSP of 10 February 2012 implementing Decision 2010/656/CFSP renewing the restrictive measures against Côte d'Ivoire (OJ L 38, p. 43).

33. After the appellants were granted a final deadline to respond to the question referred to in the preceding paragraph, and to declare their intention of participating in the hearing scheduled for 26 June 2012, by decision of 21 June 2012 the President of the Court of Justice, with the agreement of the Judge Rapporteur and the Advocate General, and after consulting the Council, which did not object, ordered that the public hearing be vacated in view of the appellants' failure to respond.

V – Assessment

A – Questions referred

34. It should be recalled that these appeals are based on two grounds. In the first, the complaint is that the General Court did not take account of the fact that the state of war in which Côte d'Ivoire allegedly found itself constituted a case of *force majeure* which prevented the appellants from actually exercising their right to bring an action against the contested measures. In the second ground of appeal, it is argued that the principle of legal certainty cannot provide justification, on the one hand, for applying to the applications made in the ordinary time-limit for bringing proceedings, extended solely on account of distance, or on the other, for the contested measures not being notified personally.

35. On the basis of both grounds, the appellants seek a declaration that the orders declaring the actions inadmissible are invalid and the referral back to the General Court of the respective cases so that they may exercise their rights. This is the claim which the Court of Justice must address, in addition to the claim that the Council be ordered to pay costs.

36. In my opinion, the unclear additional reference in the appeals to infringement of the Treaties and the ECHR, attributed to the Rules of Procedure, should not be taken into consideration. Indeed, each of the appeals states:¹⁷ 'In the alternative, annulment of the acts due to the seriousness of the breach of fundamental rights and freedoms'.

37. However, this form of complaint in the various applications against acts imposing restrictive measures on the appellants does not give rise to a formal application for an examination of the validity of those acts or, as appropriate, a declaration as to their invalidity. On the contrary, having repeated that these 'acts' infringe rights and freedoms, the appellants conclude that '[a]s a consequence, the Court of Justice can do no more [*sic*] than find that the Rules of Procedure are in breach of the Treaties and the ... Convention ... in such a way that they cannot be applied ...' (paragraph 97 of the appeals). The breach of rights complained of is not therefore attributed to the acts of the Council contested before the General Court, but to the Rules of Procedure themselves, which allow for those acts to be challenged only within a specified time-limit. The fact is that the breach of rights is not even attributed to the Rules of Procedure as such, but to their application to these proceedings.

38. There is therefore not the slightest basis for concluding that the validity of the Rules of Procedure is being challenged, or that the applicants are seeking, beyond the matter of the validity of the orders declaring the actions inadmissible, that the Court of Justice should also make a ruling on the merits of an issue that they could not have argued before the General Court. Thus, the wording of the forms of order sought is crucial for these purposes. Among them, only those relating to the annulment of the contested orders and the referral of the matters back to the General Court for a ruling on the merits are set out.

17 — Paragraph 95 in appeal C-478/11 P; paragraph 93 in appeal C-479/11 P; and paragraph 92 in appeals C-480/11 P, C-481/11 P and C-482/11 P.

39. It is a different matter that, under Article 61 of the Rules of Procedure, the Court of Justice could, if appropriate, make a ruling in these proceedings on the validity of the contested measures. Clearly, I shall be able to address this issue only after dealing with the complaints made against the decisions that prevented that ruling on validity from being made by the General Court.

40. Having thus defined the subject-matter of this action, I shall set out what, in my opinion, is the most appropriate approach for examining the issues raised in these proceedings.

41. As I have already said, since the subject matter of this action is not the legality of the measures adopted by the Council against the appellants, but the correctness of the approach taken by the General Court in finding inadmissible the actions brought against those measures, in principle it might appear that nothing need be said about the measures in question. That is not the case, however. If, as I have indicated, I consider that the second ground on which these proceedings are based must be upheld, that is only due to the special, if not exceptional, nature of the circumstances surrounding the adoption of the contested measures.

42. Therefore, in the first place, the nature, content and scope of the contested measures must be determined in order to ascertain in what way, and to what extent, they affect the rights of the appellants. The formal and material requirements of giving the persons specifically concerned notice of those measures are dependent on this.

43. If, as I anticipate, the conclusion were to be that the contested measures, because of their content, ought to have been served personally on the parties concerned, the issue that must then arise is whether, having regard to the circumstances of the case, other forms of communication were permissible.

44. If, in the end, it were to be concluded that, in certain circumstances, Union law allows alternative methods of giving notice, it would then be necessary to examine the issue of the period available for challenging the measures thus notified. That is when it would be necessary to examine at what point the time started running and, in particular, whether, in the circumstances, one of the causes preventing the normal running of time, namely, *force majeure*, was present.

45. I would stress that, as regards the above, I am not making any pronouncement on the Council's approach, rather I am pointing out how the issue of the time available for challenging its measures before the General Court was not as straightforward as the latter thought, and therefore there could be no question of a situation of 'manifest' inadmissibility.

B – The nature, content and scope of the contested measures. The need for personal service

46. As has been set out, the measures taken against the appellants include a ban on entry into, or transit through, the territories of the Member States and the freezing of all funds and other economic resources owned by them or under their direct or indirect control in the European Union.

47. Needless to say, these are measures that concern, at least *prima facie*, a fundamental right of the appellants, such as the right to property, guaranteed to 'everyone' by Article 17(1) of the Charter of Fundamental Rights of the European Union ('the Charter'),¹⁸ regardless of whether they may also affect other rights and legal interests.

18 — It is settled case-law of the European Court of Human Rights, since its decision of 7 December 1976 in *Handyside v United Kingdom* (Application no. 5493/72), paragraph 62, that measures which prevent owners from temporarily enjoying their property are included in Article 1(2) of Protocol No 1 of the ECHR.

48. These are, and this is of particular interest for our purposes, measures adopted at a stroke, without the parties concerned being heard or given any opportunity of challenging their effectiveness. Doubtless, there is no lack of reasons to justify such an expedited procedure as part of international operations to maintain or re-establish peace and stability in regions where the most basic rights of individuals may be under threat. However, this does not mean that we can disregard the fact that, in the interests of the effectiveness of these objectives, this procedure is sacrificing some of the safeguards inextricably linked to the notion of the rule of law.¹⁹ The first of these is encapsulated in the principle that no one may suffer an infringement of his rights and interests without being given the opportunity to be heard.

49. In short, we are dealing with measures adopted as part of a procedure which the persons and entities concerned could not have known of or taken part in, and where the content immediately affects their legitimate rights and interests.

50. This last consideration must be applied rigorously to the right to judicial protection. Indeed, through that application, it is clear that the parties concerned must, in any event, enjoy the fundamental right to effective judicial protection of the rights and freedoms involved; this is a fundamental right which Article 47 of the Charter confers on ‘everyone’ against possible violations attributable to the public power of the European Union.

51. In this sense, I consider that the somewhat exceptional circumstances of the procedure for adopting these measures may not, in so far as it is avoidable, be prolonged so as to frustrate the rights of the defence against those measures imposing penalties once they have been adopted and made effective. In short, reasons must be given for the exceptional circumstances for adopting the penalising measure, but this can never be made an exception to effective right of the defence against that measure.

52. In other words, guarantees under the rule of law ensure that anyone, within the ambit of the Union may seek judicial review of the decisions of public authorities capable of affecting their rights, freedoms and interests. Added to this, the guarantee of the rights of the defence is usually preceded by further guarantees included in those proceedings imposing penalties or restricting rights. For this reason, faced with the extensive or even complete removal of those guarantees, the guarantee of judicial protection takes on particular significance.

53. In other words, if very qualified public policy and national security reasons can justify derogating from the common safeguards prescribed by law during the process of drawing up acts and provisions restricting rights, this appears feasible only on condition that, as it were, as necessary compensation for that restriction, ultimate judicial review of those acts and provisions is made possible at the point when they are implemented.²⁰

54. As we shall see below, it is necessary to be particularly demanding when faced, as in this case, with situations where the rule of law is fully present in some way only at the time of the review of a measure emanating from procedures which, it must be repeated, in terms of individual guarantees, are, in normal circumstances, clearly found wanting.

19 — It is only a reference, albeit a very brief one, to the literature on the rule of law, but I believe the thoughts of Thomas Bingham in *The Rule of Law* (The Sixth Sir David Williams Lecture, Centre for Public Law, 16 November 2006) are still very informative and apposite.

20 — In that regard, the recent decision of 15 November 2012, in Case C-417/11 P *Council v Bamba*, stresses that, where a party affected by a decision to freeze funds does not have a right to a hearing before the decision is adopted, compliance with the obligation to provide a reasoned decision is all the more important because it constitutes the only guarantee that enables the party affected to use the available means of redress to contest its legality (paragraph 51).

55. As the Court of Justice has had occasion to declare, ‘the principle of effective judicial review means that the Union authority which adopts an act imposing restrictive measures against a person or entity is bound to communicate the grounds on which it is based, so far as possible, either when that measure is adopted or as swiftly as possible after it has been adopted in order to enable those persons or entities to exercise their right to bring an action.’²¹

56. As is required, the provisions involved in this action have satisfied that obligation. Thus, Article 7(3) of the latest version of Decision 2010/656 establishes that ‘(t)he Council shall communicate its decision, including the grounds for listing, to the person or entity concerned, either directly, if the address is known, or through the publication of a notice, providing such person or entity with an opportunity to present observations’. Similarly, Article 11a(3) of the latest version of Regulation 560/2005 provides that ‘(t)he Council shall communicate its decision, including the grounds for listing, to the natural or legal person, entity or body referred to in paragraphs 1 and 2, either directly, if the address is known, or through the publication of a notice, providing such natural or legal person, entity or body with an opportunity to present observations’.

57. Directly connected with the right to judicial review of these measures, communicating ‘directly’, in accordance with the above provisions, can, in principle, only be a consequence of personal or individual notification. This is because the aim of the communication is simply to make it possible to raise a defence against the measures adopted against the party concerned. It is therefore a communication in the interests of defending the rights and freedoms affected by those measures.²² For that reason it must be, as far as possible, a real and effective communication, which, as a matter of principle, excludes its mere official publication.

58. The Court of Justice made a ruling along these lines in *Bank Melli Iran*, by concluding that, although the applicable legislation in that case did not state how reasons for a measure taken against an entity ‘are to be made known’ by the Council in order to satisfy the obligation imposed in that regard, the Council must ‘communicate a decision individually’.²³

59. Furthermore, for these purposes, it is of relatively secondary importance that the contested measures were adopted pursuant to resolutions which, like decisions, share the same nature as regulations, and therefore, as was pointed out by the Court of Justice in *Bank Melli Iran*,²⁴ they acquire full legal force as soon as they are officially published. What matters above everything else is that, regardless of the formal nature of the provision containing the contested measures, because of their content, those measures directly affect the rights and freedoms of the persons they are directly and personally aimed at. The imperatives of the reasons for the right to effective judicial protection must then prevail over any other consideration of a formal nature.²⁵

60. In short, and as a first conclusion, I consider that, because of their content, the measures adopted by the Council against the appellants had to be communicated directly to them by way of personal notification.

21 — *Bank Melli Iran*, cited in paragraph 47, citing the decision of 3 September 2008 in *Kadi and Al Barakaat International Foundation v Council and Commission*, cited in paragraph 336.

22 — In that regard, the decision of the Court of Justice of 9 January 1997 in Case C-143/95 *Commission v Socurte* [1997] ECR I-1, paragraph 31, stated that ‘notification of the Community acts ... necessarily involves the communication of a detailed account of the contents of the measure notified and of the reasons on which it is based. In the absence of such an account, the third party concerned would be denied precise knowledge of the contents of the act in question and of the reasons for which it was adopted, which would enable him to bring proceedings effectively against that decision’. Emphasis added.

23 — *Bank Melli Iran*, paragraph 52. The provision in question was Article 15(3) of Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1).

24 — Paragraph 45.

25 — I concur with the thoughts of Advocate General Mengozzi in his opinion in the *Bank Melli Iran* case, at paragraph 39 of which he highlights ‘the extremely hybrid nature of acts adopting restrictive measures such as those at issue in this case’. In other words, the acts have both a general scope (in that the addressees are all those who are obliged to implement the sanctions) and a specific scope (aimed particularly at those people who are targeted by the measures).

C – The possibility of alternative methods of communication

61. In the present proceedings, however, it has been established that, contrary to the above conclusion, the parties affected by the restrictive measures adopted by the Council have not been personally notified.

62. It must be borne in mind that, in accordance with Article 7(3) of Decision 2010/656 and Article 11a(3) of Regulation No 560/2005, as we have seen, where direct communication is not possible because the ‘address’ of the party concerned is not known, it is necessary to proceed with ‘the publication of a notice, providing such person or entity with an opportunity to present observations’²⁶ ‘providing such natural or legal person, entity or body with an opportunity to present observations.’²⁷

63. I would like to say straight away that this possibility of alternative communication in these circumstances is, not only in itself, consistent with the right to effective judicial protection; but obligatory, however not always sufficient, as I shall explain. Above any other considerations, the party concerned should be made aware through those alternative methods that the Union has adopted a measure concerning that party’s rights, for reasons which the party will also be informed of. Laid out in such a way as to make it possible to exercise the rights of the defence, communication, even if it is in another format, is required in all cases, and the public authority cannot be satisfied merely with having tried unsuccessfully to use the form of notice required in the first place. When personal notification is unsuccessful, it is essential to make use of any other means that, failing such service, will in fact allow that communication to be made.

64. The ‘opportunity to present observations’ provided under Article 7(3) of Decision 2010/656 and by Article 11a(3) of Regulation No 560/2005 is certainly not in itself an opportunity to challenge the measures before the court. However, for the purposes of the right to effective judicial protection, it matters only that the information provided in order ‘to present observations’ to the authority which issued the measure serves also to challenge that measure before the General Court.

65. At this point, it is necessary to dwell on a very fundamental consideration. The measures concerned here respond to a very singular situation and are addressed to persons, in so far as they are affected, who, to say the least, are placed in very particular circumstances. The measures were in fact adopted as part of an international operation under the auspices of the United Nations aimed at bringing international peace and stability to a region of the African continent. Against a backdrop of civil war – or at least one of the greatest insecurity and confusion, in a territory where the effectiveness of a reasonably established public authority is not guaranteed – it is clear that the normal channels and modes of communication cannot be expected to function smoothly in a situation of peaceful and orderly coexistence. As regards the addressees of the measures, they are precisely the persons and entities who have been accused of a certain degree of involvement in the circumstances that have brought about this instability which the measures are intended to tackle.

66. In situations such as the present case, it must be accepted as very probable that personal notification was not feasible and that consequently, by virtue of what has been stated, it is necessary to resort to other means of communication. In that regard, Article 11a(3) of Regulation No 560/2005, as an alternative to sending notification to the addressee’s home, provides for ‘the publication of a notice’. The Council understood that that notice was to be published in the *Official Journal of the European Union*, and that is what it did on the dates set out in point 19 of this Opinion. The issue

²⁶ — Article 7(3) of Decision 2010/656.

²⁷ — Article 11a(3) of Regulation No 560/2005.

whether another type of ‘publicity’ should have been tried, such as local media, can be left aside. In any event, since this is not a matter that has to be clarified here, and the issue is relatively minor, as we shall see below, then the main criterion, in circumstances such as these, must be the moment at which the parties concerned became aware of the contested measures.²⁸

67. Indeed, the Union is required to pursue, as far as possible, the task of making the parties concerned aware of the measures, because it is only from the moment when that is achieved that the parties will be able to react in an effective manner²⁹ and the period for lodging the relevant application against the contested measures will be calculated. In addition, the Union is required to engage actively in efforts to achieve this objective, because it is through those efforts that the presumption of knowledge on the part of the affected party is established, which then means that time can start to run.

68. In short, the more diligent the public authorities are in their attempt to make the parties affected aware of the measures taken against them, the stronger the presumption will be that they were indeed made aware of those measures, and therefore the more difficult it will be for the parties concerned to rebut the presumption by proving that, despite that diligence, it was not possible for them to be aware of the measures taken against them.

69. Therefore, in that way, if the Council, in its efforts to achieve an effective communication, has published notices in the Official Journal, this leads to an increased presumption of awareness of the measures, which is, of course, stronger than the usual presumption produced by the previous official publication of the actual measures imposing penalties.

70. In short, this is a question of how strong a presumption of fact (awareness of the measures imposing penalties) is, on which the answer to the important question in these proceedings depends; namely, when could the contested measures have been challenged and until when were they open to challenge?

D – The time allowed for bringing proceedings: dies a quo

71. Under the sixth paragraph of Article 263 TFEU, ‘the proceedings provided for in this article are to be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be’.

72. This last point determines the meaning of the provision within the Union’s system of legal remedies when dealing with challenges by individuals to acts that concern them directly and individually. Since the Union is clearly a community based on the rule of law,³⁰ that system must respond to the demands inherent in access to justice, as a necessary part of the right to effective judicial protection, now guaranteed by Article 47 of the Charter.

28 — When dealing with measures to freeze funds, the most common situation must be that point when the party concerned tries unsuccessfully to carry out a banking transaction. Here the information provided by the banks can be very useful when verifying statements of knowledge made by the parties concerned. 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), is a good example of the degree of involvement required of banks when implementing the European Union measures on bank deposit movements. In that regard, the fourth recital states that Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (OJ 1991 L 166, p. 77), ‘required Member States to prohibit money laundering and to oblige the financial sector, comprising credit institutions and a wide range of other financial institutions, to identify their customers, keep appropriate records, establish internal procedures to train staff and guard against money laundering and to report any indications of money laundering to the competent authorities.’

29 — Thus, *Commission v Socurte*, cited in paragraph 31.

30 — Using the paradigmatic expression from the Decision of 23 April 1986 in Case 243/83 *Les Verts v Parliament*, paragraph 23, recently used again by the Court of Justice in the Decision of 26 June 2012, in Case C-335/09 P *Poland v Commission*, paragraph 48.

73. Of course, the case of measures, such as those examined here, involves provisions which, as I have repeated, must, as a matter of principle, be the subject of ‘notification to the plaintiff’. Is it possible to counter this by arguing that the measures were published, and that it is therefore the date of publication which determines the time-limit for challenging them? The fact that it is possible to present arguments along these lines, and that that was the option adopted by the General Court, shows that this is, at the very least, a matter open for discussion. This is precisely the point I am making: in my opinion, the applications ought not to have been dismissed by the General Court in the way in which they were.

74. In principle, there is no dispute that procedural time-limits must be interpreted strictly for the sake of the principle of legal certainty. However, that requirement in principle is not taken to the extreme by the Treaty; whilst accepting the importance of actual knowledge, if appropriate, it also accepts that the computation of the time-limits is conditioned by very specific circumstances in each particular situation.

75. That is also why the procedural rules of the General Court are sensitive to the difficulties that may be caused by the distance separating the citizen seeking justice from the seat of the Court of Justice, in exercising the right to access to the courts. Although Article 102(2) of the Rules of Procedure of the General Court extends the procedural time-limits ‘on account of distance’, originally it met no demand other than that of ensuring access to justice in equal conditions, and therefore, distance, which was more significant in the past, could not become a circumstance, to a greater or less extent, on which the effective use of the full period allowed depended.

76. Although it can be argued that the extension on account of distance is today less justified than it was in the past, due to developments in means of communication, it must be accepted that, in a situation such as this case, the concept of ‘distance’ regains its significance as a physical reality from which some degree of difficulty in communication arises between two realities that are spatially separated. Here the ‘distance’ is, in a figurative sense, one which technology cannot overcome, for which provisions, such as Article 102(2) of the Rules of Procedure of the General Court, continue to be fully relevant.

77. Although knowledge of the act in question may be presumed when the individual is in the territory of one of the Member States, the presumption becomes more problematic when the party concerned is to be found a considerable distance away from the borders of the Union. Indeed, this presumption goes hand in hand with the presumption of knowledge that comes with the publication of an act in the *Official Journal of the European Union*. This knowledge cannot be presumed, especially beyond the ambit of effectiveness of Union law, which incidentally was never intended *urbi et orbi*.

78. The European Court of Human Rights has always insisted on the importance of the moment when the party concerned had ‘actual’ knowledge of the content of the act adversely affecting him for the purposes of determining the point from which the procedural time-limits are calculated.³¹

79. In the end, the issue is whether, given the circumstances of the case, the appellants had to be given every opportunity provided by the legal rules to argue that, for reasons of *force majeure*, they had actual knowledge of the measures only on a date after publication, with a consequent effect, as the case may be, on whether their actions were brought in time.³²

31 — Thus, for example, Decision 25 March 1999 in *Papachelas v Greece* (Application no. 31423/96), paragraph 30.

32 — Without of course going into an issue that will probably be assessed by the General Court, it does not appear that there were huge difficulties, at the very least, in proving the moment when the applicants did become aware of the measures. The very nature of the fund-freezing measure means that it will be effective or acquire potential only when an attempt is made to dispose of those assets. The financial institutions can provide some sort of information on this, as has been seen in note 28. Something similar applies to bans on access to the territory of the European Union, which are enforced by Member States.

E – The General Court’s handling of the actions. Improper application of Article 111 of its Rules of Procedure

80. In this case, we know that the General Court, in accordance with Article 111 of its Rules of Procedure, dismissed the actions brought by the applicants on the sole basis of the document instituting the proceedings, thereby imposing a strict application of the time-limit of two months, laid down in Article 263 TFEU. For the General Court, it was sufficient that there was a finding that the notices of the measures imposing penalties had been officially published, and they concluded that, under Article 102(2) of the Rules of Procedure, the period of two months had started to run fourteen days after the date of that publication.

81. I have to agree with the General Court (paragraph 17 of the Orders under appeal) in that the applicants did not even mention the possible existence of a case of *force majeure* or unforeseeable circumstances under Article 45 of the Statute of the Court of Justice.

82. Notwithstanding this, the applicants made it clear that they had not been notified personally of the punitive measures, after providing a description of the facts (paragraphs 18 to 36 of the applications), from which it can clearly be seen that the context in which the measures were officially made public was, to say the least, one of considerable instability in the territory where they were located. I have already stated that the Council, in paragraph 4 of its response of 14 June 2012 to the question raised by the Court of Justice, does not hesitate to describe the situation in Côte d’Ivoire in March and April 2011 as ‘chaotic’.

83. Of course, I understand that, in principle, it is not for the Court of Justice to delve into the details of these circumstances in the context of an appeal. However, it does have the power to determine whether the General Court, in immediately dismissing the action solely on the basis of the document instituting the proceedings, has sufficiently safeguarded the right to effective judicial protection in the very particular circumstances of the case.

84. In this regard, it is my conclusion that this was not the case. In particular, I consider that the General Court still had to give the applicants the opportunity to expand upon the reasons which, in their opinion, could be used to apply to the case, from among the dates contemplated by Article 263 TFEU, the date relating to knowledge of the measures, and not that relating to official publication. As we shall see below, the court had procedural means at its disposal to do this.

85. Given the seriousness for the parties concerned of the consequence that inevitably follows from the immediate dismissal ordered by the General Court, I consider that, having regard to the particular circumstances of the case, an interpretation and application of the Rules of Procedure of the General Court more suited in its outcome to the requirements of the right to judicial protection guaranteed by Article 47 of the Charter ought to have been imposed.

86. As has been shown, and it is worth repeating once more, the General Court opted for an interpretation of Article 111 of its Rules of Procedure that led to it ordering the dismissal of those actions which appeared to be ‘manifestly’ inadmissible. However, in the circumstances of the case, it is doubtful for the reasons set out that the ground of inadmissibility of the actions in this case was ‘manifest’.

87. Indeed, I believe that the circumstances of the case should have led the General Court to take the opportunity provided by Article 113 of the Rules of Procedure which enables the General Court, at any time, of its own motion, to decide whether there exists any absolute bar to proceeding with an action, ‘after hearing the parties’. That hearing would have made it possible for the action to be declared inadmissible after a hearing had been conducted in accordance with due process.

88. In my opinion, Article 111 of the Rules of Procedure of the General Court is reserved for actions where the inadmissibility, because it is ‘manifest’, is beyond any doubt or discussion, and this can therefore be determined without conducting an *inter partes* hearing, and in particular without the need for the parties to make any representations.

89. Article 113 of the Rules, by contrast, starts from the premise that the inadmissibility is not manifest, but is in fact open to debate or discussion, which is precisely why a channel is provided for the issue to be contested. Clearly the fact that the provision covers the possibility of the proceedings being declared inadmissible ‘at any time’ suggests, in particular, that it allows the action to be declared inadmissible after it has initially been admitted and when the proceedings are very close to being finalised by way of a substantive ruling on the merits. However, in my opinion, all that matters is the fact that the term ‘at any time’ also includes the moment when the proceedings are instigated. Most importantly, the idea that it is possible to bar the proceedings when they are already at an advanced stage highlights the fact that the provision covers situations where inadmissibility is in no way ‘manifest’.

90. In short, the approach taken by the General Court has prevented the appellants from exercising their right to access to justice without having explored all the procedural possibilities available to it in order to determine with the utmost certainty possible whether the appellants had or had not appeared in good time before the court the moment they became aware of the measures affecting them.

91. In my opinion, this ground alone is sufficient to uphold these appeals; not so much because the General Court did not allow the contested acts to be challenged, as because it did not go as far as it could have in order to afford the appellants the opportunity to present the strongest defence possible, given the circumstances of the case, as to the timeliness of their applications. In purely procedural terms, the General Court used Article 111 of the Rules of Procedure to pave a way for deliberating on an absolute bar to proceeding, even though this should have been dealt with under Article 113 of the Rules, as is required by Article 47 of the Charter.

92. On this point I must state that the legal certainty argument relied upon by the General Court in paragraph 16 of the contested Orders does not strike me as decisive. It is clear that time-barring can be used to ensure legal certainty, and this avoids the possibility of challenges being made at any time to the validity of acts or provisions that produce legal effects, and consequently create expectations on the part of third parties, if not rights. However, with measures such as those which concern us in these proceedings, the principle of legal certainty must be weighed together with other constitutional rights and entitlements.

93. Furthermore, I must stress that in a situation such as this, where the parties concerned suffer harm due to the effects of measures adopted as part of a process in which they could not have taken part, the opportunities which the legal system allows for those measures to be judicially reviewed should be ‘maximised’. In these cases, making use of the procedural possibilities that make it possible to exercise the right to this remedy effectively takes on the character of an imperative, from the point of view both of protecting fundamental rights, and of the legitimate exercise of the power of the Union.

F – The conduct of the legal representatives of the appellants in these proceedings and its potential impact on the outcome of the case

94. Finally, attention will now be given to certain matters that arose during the proceedings before the Court of Justice. Without doubt, a greater level of care on the part of the appellants ought to have led them to set out in their applications the arguments which, in their opinion, should have supported the timeliness of those applications. It is no less certain that no greater level of care, but rather just the minimum level due to their clients, should have led the legal representatives of the appellants to

attend the public hearing ordered by the Court of Justice in these proceedings. However, because they did not, the hearing could not be held. At that hearing, it would have been possible for them to explain to the Court of Justice the circumstances and reasons that they were not able to put before the General Court.

95. While all of the above is certainly true, I must underline the unique nature of the measures adopted by the Council against the appellants (measures restricting their rights and freedoms), the procedure for drawing up the measures (in which there was no hearing and no possibility of a defence), the fact that the action before the General Court was the only means of defence available to the parties concerned (a clear exception to the usual system of safeguards that is a feature of the rule of law), and the fact that personal service of the measures was impossible in respect of people who were outside the territory of the Union in a situation which the Council described as ‘chaotic’. If all these circumstances, taken on their own, amount to not insignificant factors affecting the rights and safeguards guaranteed by the Union, together they gave rise to a very delicate, critical situation from the point of view of the requirements of the principle of the rule of law.

96. If the lack of foresight of the applicants’ representatives in submitting their application before the General Court, on the one hand, and the unjustified failure to attend the hearing before the Court of Justice, on the other, had made it definitively impossible for the appellants to be able to defend themselves against the measures imposed by the Council, that would have added a decidedly avoidable final sequel to the special circumstances set out above.

97. Indeed, as I have said, in their application, the appellants did provide sufficient evidence as to the unique nature of the circumstances of the case for the General Court to have been alerted to the possibility that the measures which they were seeking to challenge might not have been known to them or materially open to challenge by them at the time of their official publication. Given the nature of the matter brought to its attention, the General Court should have given to this point, not so much a greater or lesser degree of flexibility in the interpretation of the procedural time-limits, as greater awareness of the constitutional principles at stake, in particular, the principle of the right to a fair hearing, and consequently it should even have provided the applicants with the opportunity to justify the need for time under Article 263 TFEU to start running on a date that was not necessarily the same as that of the official publication of the measures. For this, it would have been enough for the ruling on the absolute bar to the action to have been dealt with by way of Article 113 of its Rules of Procedure.

98. As regards the failure to attend the hearing referred to above, while this is, as conduct of the legal representatives of the appellants, inexcusable, it nonetheless deserves to be excused in so far as it could seriously prejudice the rights of the appellants. Indeed, the appellants, being the subject of measures concerning their freedom to enter the territory of the Union and the freezing of their funds in Member States, should not suffer to that extent the consequences of the procedural conduct of their representatives whose services they certainly cannot do without in the same way as is usually the case for a citizen whose circumstances are not as unique as those affecting the appellants.³³ In the interests of ensuring judicial protection that is truly effective, I consider that it is only fair that anyone who is in a situation such as the appellants’ justly deserves to have every possible defence provided by the Union used until fully exhausted. However, as we have seen, these defences have already been very much eroded.

99. At this stage, we should specify the terms on which justice must be done to the claims made by the appellants in their respective appeals.

33 — To a certain extent, I consider that reliance can be placed on the case-law of the European Court of Human Rights according to which an individual’s right to a defence in criminal proceedings should not be prejudiced as a result of the negligent conduct of a court-appointed lawyer. See the Decision of 19 December 1989 in *Kamasinski v Austria* (Application no. 9783/82).

100. In my opinion, the second ground, based on the strict application of Article 263 TFEU, should be allowed, because, although they did not expand on the consequences of this, as they ought to have done, the appellants did expressly mention the fact that they were not personally notified of the restrictive measures. This should have been enough for the General Court to conclude that the applications were not ‘manifestly’ inadmissible, and therefore, as Article 111 of its Rules of Procedure was not applicable, the doubts that could have been raised by the admissibility of the applications should have been settled through the channel of Article 113 of the Rules of Procedure, that is, after the parties had been heard.

101. Allowing the second ground logically means that it is not necessary to make a ruling on the first, since the appropriate point in the procedure for the General Court to make a ruling on the possibility of there being a case of *force majeure* will be precisely that point when the applications are declared to be admissible after the parties have been heard.

VI – The determination of the dispute by the General Court

102. Pursuant to Article 61 of the Statute of the Court of Justice, ‘If the appeal is well founded, the Court of Justice shall quash the decision of the General Court’, and it may ‘give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment’.

103. In my opinion, this is not a situation in which the Court of Justice may give final judgment on the matter. However, this would always be on the understanding that the proceedings are limited to the inadmissibility of the applications made against the contested measures, and in no circumstances should they relate to these measures or the acts pursuant to which they were adopted.

104. The Court of Justice should, in my opinion, limit itself to setting aside the orders declaring the actions inadmissible, and refer the action back to the General Court so that it may, after providing the applicants and the other parties with the opportunity to make representations under Article 113 of the Rules of Procedure of the General Court on the possibility that the applications were out of time, make a final ruling on whether or not the applications are admissible.

105. In this context, and in view of the submissions made, the General Court should weigh up all the circumstances of the case, and in particular pay special attention to the nature of the contested measures, the procedure for adopting them, the defences available against them, the method by which and the moment when the parties concerned in all likelihood had knowledge of the measures and finally, and above all, the short period of time that elapsed between the expiry of the period provided for by Article 263 and the lodging of the applications (between three months and six days, as the case may be).

106. Finally, I consider that the removal of the appellant, Ms Bonie Claverie, from the list in Annex II of Decision 2010/656/CFSP does not necessarily mean that her application no longer has any purpose, because, if it is upheld, this could form the suitable basis of a claim for damages for loss or harm suffered.

VII – Costs

107. Pursuant to Article 184(2) of the Rules of Procedure, I propose that the Court of Justice should order the costs to be reserved.

VIII – Conclusion

108. In the light of the foregoing considerations, I propose that the Court should:

Uphold the second ground of the appeal, and consequently:

- (1) set aside the orders of the General Court of 13 July 2011 which dismissed the applications lodged under Cases T-/348/11 to T-352/11;
- (2) refer the proceedings back to the General Court for a decision on the admissibility of the applications, after hearing representations from the parties pursuant to Article 113 of the Rules of Procedure of the General Court;
- (3) order the costs to be reserved.