Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

8 July 2020 * [1]

(Common foreign and security policy — Restrictive measures adopted against Syria — Freezing of funds — Error of assessment)

In Case T-186/19,

Khaled Zubedi, residing in Damascus, Syria, represented by M. Lester QC, and M. O'Kane, Solicitor,

applicant,

v

Council of the European Union, represented by V. Piessevaux and A. Limonet, acting as Agents,

defendant,

APPLICATION pursuant to Article 263 TFEU seeking the annulment of Council Implementing Decision (CFSP) 2019/87 of 21 January 2019 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2019 L 18 I, p. 13) and of Council Implementing Regulation (EU) 2019/85 of 21 January 2019 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2019 L 18 I, p. 4), in so far as those measures relate to the applicant.

THE GENERAL COURT (Fourth Chamber),

composed of S. Gervasoni, President, L. Madise and J. Martín y Pérez de Nanclares (Rapporteur), Judges,

Registrar: E. Coulon,

gives the following

Judgment

Background to the dispute

1 The applicant, Mr Khaled Zubedi, is a Syrian businessperson who is engaged in business in the real estate sector.

* Language of the case: English.

1 Only the paragraphs of the present judgment which the Court considers it appropriate to publish are reproduced here.

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8 On 12 October 2015 the Council adopted Decision (CFSP) 2015/1836 amending Decision 2013/255 (OJ 2015 L 266, p. 75). On the same day, it adopted Regulation (EU) 2015/1828 amending Regulation No 36/2012 (OJ 2015 L 266, p. 1).

9 Recital 6 of Decision 2015/1836 states that 'the Council has assessed that because of the close control exercised over the economy by the Syrian regime, an inner cadre of leading businesspersons operating in Syria is only able to maintain its status by enjoying a close association with, and the support of, the regime, and by having influence within it. The Council considers that it should provide for restrictive measures to impose restrictions on admission and to freeze all funds and economic resources belonging to, owned, held or controlled by those leading businesspersons operating in Syria, as identified by the Council and listed in Annex I, in order to prevent them from providing material or financial support to the regime and, through their influence, to increase pressure on the regime itself to change its policies of repression'.

10 The wording of Articles 27 and 28 of Decision 2013/255 was amended by Decision 2015/1836. Those articles now provide for restrictions on the entry into, or transit through, the territories of the Member States and for the funds of 'leading businesspersons operating in Syria' to be frozen, unless there is 'sufficient information that [those persons] are not, or are no longer, associated with the regime or do not exercise influence over it or do not pose a real risk of circumvention'.

…

Law

…

36 It should be noted that the general listing criteria set out in Articles 27(1) and 28(1) of Decision 2013/255, which are reproduced, as regards the freezing of funds, in Article 15(1)(a) of Regulation No 36/2012, provide that persons and entities benefiting from or supporting the Syrian regime are to be subject to restrictive measures. Similarly, Article 27(2)(a) and (3) and Article 28(2)(a) and (3) of that decision, which are reproduced, as regards the freezing of funds, in Article 15(1a)(a) and (1b) of that regulation, provide that the category of 'leading businesspersons operating in Syria' is to be subject to restrictive measures, unless there is sufficient information that they are not, or are no longer, associated with the regime or do not exercise influence over it or do not pose a real risk of circumvention.

37 In addition, as mentioned in paragraph 12 above, the grounds for including the applicant's name on the lists in question are worded as follows:

'Leading businessperson operating in Syria, with significant investments in the construction industry, including a 50% stake in Zub[e]di and [Kalai] LLC, which is constructing the luxury tourist city Grand Town and to which the regime has granted a 45-year agreement in return for 19-21% of its revenue. In this capacity he is linked to Nader [Kalai]. Khaled al-Zub[e]di benefits from and/or supports the regime through his business activities, in particular through this stake in the Grand Town development.'

38 It follows that the complainant's name was included in the lists in question on account of, first, his status as a leading businessperson operating in Syria and, secondly, his association with the Syrian regime.

39 In other words, the listing of the applicant's name is based, first, on the criterion laid down in Article 27(2)(a) and Article 28(2)(a) of Decision 2013/255 and in Article 15(1a)(a) of Regulation No 36/2012 (criterion of a leading businessperson operating in Syria) and, second, on the criterion laid down in Article 27(1) and Article 28(1) of that decision and in Article 15(1)(a) of that regulation (criterion of association with the regime).

40 It is in the light of those considerations that it is appropriate to examine the single plea raised by the applicant and, first of all, the first complaint, which seeks, in essence, to call into question the first ground for listing, namely that the applicant is a leading businessperson operating in Syria.

41 In that regard, it should be noted that the applicant acknowledges that he is a businessperson, but denies that he is a 'leading' businessperson and, as such, belongs to a 'an inner cadre of leading businesspersons operating in Syria'.

…

66 Lastly, the applicant submits, in essence, that the Council was required to demonstrate that there is a link between him and the Syrian regime.

67 In that regard, it should be pointed out that the case-law on which the applicant relies was delivered in a different legislative context from that at the time the contested acts were adopted. In particular, the judgment of 21 April 2015, *Anbouba* v *Council* (C-605/13 P, EU:C:2015:248, paragraph 52), which required the Council to bring before the Courts of the European Union a set of sufficiently precise and consistent indicia to establish that there is a sufficient link between the person subject to a measure freezing his funds and the regime concerned, related to a specific legislative context, namely that established by Decision 2013/255 before it was amended in 2015 by Decision 2015/1836, in which the only criteria for the inclusion of a person's name on the lists in question were, precisely, close links with, support for and/or benefit from the Syrian regime.

68 However, in the present case, the applicant's name was included on the lists in question in the legislative context of Decision 2013/255, as amended by Decision 2015/1836. In that respect, Decision 2015/1836 introduced, inter alia, as an objective, autonomous and sufficient listing criterion, that of 'leading businessperson operating in Syria', with the result that the Council is no longer required to demonstrate that there is a link between that category of persons and the Syrian regime, or between that category of persons and the support provided to, or the benefit derived from, the regime, since being a leading businessperson operating in Syria is sufficient for the restrictive measures in question to be applied to a person (see, to that effect, judgments of 11 September 2019, *HX* v *Council*, C-540/18 P, not published, EU:C:2019:707, paragraph 38; of 4 April 2019, *Sharif* v *Council*, T-5/17, EU:T:2019:216, paragraphs 55 and 56 (not published); and order of 11 September 2019, *Haswani* v *Council*, T-231/15 RENV, not published, EU:T:2019:589, paragraph 56).

69 In that regard, the General Court has found that it is possible to infer from the criterion relating to the category of 'leading businesspersons operating in Syria' a rebuttable presumption that such persons are associated with the Syrian regime (see, to that effect, judgment of 4 April 2019, *Sharif* v *Council*, T-5/17, EU:T:2019:216, paragraph 106, and order of 11 September 2019, *Haswani* v *Council*, T-231/15 RENV, not published, EU:T:2019:589, paragraph 60). That presumption applies where the Council is able to demonstrate that the person is not only a businessperson operating in Syria, but also that he or she can be described as 'leading'. As is apparent from the express terms of recital 6 of Decision 2015/1836 and as mentioned in paragraph 9 above, it is the influence that that category of persons is likely to exert over the Syrian regime that the Council aims to exploit by pushing them, through the restrictive measures it adopts against them, to put pressure on the Syrian regime to change its policy of repression. Thus, once the Council has established the influence that a businessperson is capable of exerting over the Syrian regime, there is presumed to be a link between that person and the Syrian regime.

70 In addition, it should be noted that compliance, by the General Court, with the rules relating to the burden of proof and the taking of evidence as regards restrictive measures require the General Court to comply with the principle established in the case-law referred to in paragraph 31 above and reiterated by the Court of Justice in its judgment of 11 September 2019, *HX* v *Council* (C-540/18 P, not published, EU:C:2019:707, paragraphs 48 to 50). According to that principle, in essence, the burden of proof lies with the institution where the grounds for listing are challenged on the basis that they are unfounded. The Court of Justice has thus held that the burden of proving the existence of sufficient information, within the meaning of Article 27(3) and Article 28(3) of Decision 2013/255, showing that the applicant was not, or was no longer, associated with the Syrian regime, that he exercised no influence over that regime and that he did not pose a real risk of circumvention of the restrictive measures adopted in respect of that regime did not fall on the applicant (see, to that affect, judgments of 14 June 2018, *Makhlouf* v *Council*, C-458/17 P, not published, EU:C:2018:441, paragraph 86, and of 11 September 2019, *HX* v *Council*, C-540/18 P, not published, EU:C:2019:707, paragraphs 50 and 51).

71 Consequently, an excessive standard of proof may not be imposed on the applicant in order to rebut the presumption of a link with the Syrian regime. Thus, the applicant must be considered to have succeeded in rebutting that presumption if he or she puts forward arguments or evidence capable of seriously calling into question the reliability of the evidence submitted by the Council or the Council's assessment, in particular in the light of the conditions laid down in Articles 27(3) and 28(3) of Decision 2013/255, or if he or she produces before the Courts of the European Union a set of indicia establishing that he or she was never associated, or is no longer associated, with that regime, that he or she had no influence over the regime and that he or she did not pose a real risk of circumvention of the restrictive measures, in accordance with Articles 27(3) and 28(3) of that decision.

72 In the present case, however, the applicant has not succeeded in rebutting the presumption of a link with the Syrian regime. First, it should be pointed out that, in the first complaint, the applicant did not present any argument or evidence which might cast doubt on the reliability of the evidence submitted by the Council or on the assessment to be made of that evidence, nor did he put forward any concrete evidence which would enable the General Court to conclude that there was not, or was no longer, any link between him and that regime, that he had no influence over that regime or that he did not pose a real risk of circumvention of the restrictive measures. Secondly, even if account is taken of the arguments put forward by the applicant in the third complaint, seeking to call into question the second ground for listing, relating to association with the regime in question as referred to in Articles 27(1) and 28(1) of Decision 2013/255, the applicant cannot be regarded as having provided evidence capable of rebutting that presumption.

73 It is clear that the applicant denies that he is associated with the Syrian regime and that he has any influence over that regime, but confirms his participation in the 'Grand Town' project, in which the Syrian Ministry of Tourism is involved.

74 In the light of all the above, it must be held that the grounds for including the applicant's name on the lists in question on the basis of his status as a leading businessperson operating in Syria is sufficiently substantiated and, therefore, in the light of that criterion, the listing is justified. The first complaint must therefore be rejected.

…

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

1. Dismisses the action;

2. Orders Mr Khaled Zubedi to bear his own costs and to pay those incurred by the Council of the European Union.

Gervasoni Madise Martín y Pérez de Nanclares

Delivered in open court in Luxembourg on 8 July 2020.

E. Coulon
Registrar

S. Papasavvas
President