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Case C-605/13 P

Issam Anbouba

v

Council of the European Union

(Appeal — Common foreign and security policy — Restrictive measures against the Syrian Arab Republic — Measures directed against persons and entities benefiting from the regime — Proof that inclusion on the lists is well founded — Set of indicia)

Summary — Judgment of the Court (Grand Chamber), 21 April 2015

1. *Common foreign and security policy — Specific restrictive measures directed against certain persons and entities in view of the situation in Syria — Decision 2011/273/CFSP and Regulation No 442/2011 — Presumption that the heads of the leading businesses of Syria provide support for the Syrian regime — No such presumption*

(Council Regulation No 442/2011, as amended by Regulation No 878/2011; Council Decision 2011/273/CFSP, as amended by Decision 2011/522/CFSP)

2. *European Union — Judicial review of the legality of the acts of the institutions — Restrictive measures against Syria — Scope of the review*

(Charter of Fundamental Rights of the European Union, Art. 47; Council Regulation No 442/2011, as amended by Regulation No 878/2011; Council Decision 2011/273/CFSP, as amended by Decision 2011/522/CFSP)

3. *Common foreign and security policy — Restrictive measures against Syria — Freezing of funds and economic resources — Action for annulment brought by a person benefiting from the Syrian regime who is subject to a decision to freeze funds — Allocation of the burden of proof — Decision based on a set of indicia — Lawfulness — Conditions*

(Council Regulation No 442/2011, as amended by Regulation No 878/2011; Council Decision 2011/273/CFSP, as amended by Decision 2011/522/CFSP)

4. *Appeals – Grounds – Incorrect assessment by the General Court of the application by the Council of a presumption of support in the context of a decision to freeze funds directed against a person benefiting from the Syrian regime – Consequences – Setting aside of the judgment under appeal – No setting aside – Condition – Review by the General Court in a legally satisfactory manner of whether there was a sufficiently solid factual basis supporting the decision to freeze funds*

(Council Regulation No 442/2011, as amended by Regulation No 878/2011; Council Decision 2011/273/CFSP, as amended by Decision 2011/522/CFSP)

1. Articles 3(1) and 4(1) of Decision 2011/273 concerning restrictive measures against Syria, as amended by Decision 2011/522, apply to, amongst others, persons and entities benefiting from or supporting the Syrian regime and persons and entities associated with them, whilst Article 5(1) of Regulation No 442/2011 concerning restrictive measures in view of the situation in Syria, as amended by Regulation No 878/2011, likewise applies to, amongst others, persons and entities benefiting from or supporting that regime and persons and entities associated with them.

Neither Decision 2011/273 nor Regulation No 442/2011 contains definitions of the concepts of ‘benefit’ derived from the Syrian regime, of ‘support’ for that regime or of ‘association’ with the persons and entities benefiting from or supporting the Syrian regime. Nor do they contain any details regarding how those matters are to be proved.

Consequently, neither Decision 2011/273 nor Regulation No 442/2011 establishes a presumption that the heads of the leading businesses of Syria provide support for the Syrian regime.

(see paras 41-43)

2. The effectiveness of the judicial review guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union requires that, as part of the review of the lawfulness of the grounds which are the basis of the decision to include a person’s name on the list of persons subject to restrictive measures, the Courts of the European Union are to ensure that that decision, which affects that person individually, is taken on a sufficiently solid factual basis. That entails a verification of the factual allegations in the summary of reasons underpinning the decision, in order to review whether those reasons, or, at the very least, one of those reasons, deemed sufficient in itself to support the decision, is substantiated. In carrying out the assessment of the importance of what was at stake, which forms part of the review of the proportionality of the restrictive measures at issue, account may be taken of the context of those measures, of the fact that there was an urgent need to adopt such measures intended to put pressure on the Syrian regime in order for it to stop the violent repression against the population, and of the difficulty in obtaining more specific evidence in a State at civil war and having an authoritarian regime.

(see paras 45, 46)

3. In view of the situation in Syria, 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 person subject to a measure freezing his funds and the regime being combated.

(see para. 52)

4. Where the General Court has reviewed whether a person's inclusion on the lists of persons subject to restrictive measures is well founded on the basis of a set of indicia relating to his situation, functions and relations in the context of the Syrian regime that were not rebutted by him, reference in the judgment under appeal to a presumption of support for that regime, although the acts contested before the General Court concerning restrictive measures in view of the situation in Syria do not establish such a presumption, is not such as to affect the lawfulness of the judgment under appeal inasmuch as it is apparent from the General Court's findings that it has reviewed in a legally satisfactory manner whether there was a sufficiently solid factual basis supporting that person's inclusion on the lists under consideration.

(see para. 54)