Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

22 September 2021 *

(Common foreign and security policy – Restrictive measures adopted against Syria – Freezing of funds – Rights of the defence – Right to effective judicial protection – Error of assessment – Proportionality – Right to property – Damage to reputation)

In Case T-203/20,

Maher Al-Imam, residing in Damascus (Syria), represented by M. Brillat, lawyer,

applicant,

v

Council of the European Union, represented by V. Piessevaux and M.-C. Cadilhac, acting as Agents,

defendant,

first, application under Article 263 TFEU for annulment of Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria (OJ 2013 L 147, p. 14), Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011 (OJ 2012 L 16, p. 1), Council Implementing Decision (CFSP) 2020/212 of 17 February 2020 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2020 L 43 I, p. 6), Council Implementing Regulation (EU) 2020/211 of 17 February 2020 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2020 L 43 I, p. 1), Council Decision (CFSP) 2020/719 of 28 May 2020 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2020 L 168, p. 66), and Council Implementing Regulation (EU) 2020/716 of 28 May 2020 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2020 L 168, p. 1), in so far as those measures apply to the applicant, and, second, application under Article 268 TFEU seeking compensation in respect of the harm allegedly suffered by the applicant as a result of those measures,

THE GENERAL COURT (Fourth Chamber),

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

* Language of the case: French.

Registrar: E. Coulon,

gives the following

Judgment [1]

I. Background to the dispute and facts subsequent to the bringing of the action

…

A. On the initial inclusion of the applicant's name on the lists appearing in Annex I to Decision 2013/255 and Annex II to Regulation No 36/2012

12 By Council Implementing Decision (CFSP) 2020/212 of 17 February 2020 implementing Decision 2013/255 (OJ 2020 L 43 I, p. 6), and Council Implementing Regulation (EU) 2020/211 of 17 February 2020 implementing Regulation No 36/2012 (OJ 2020 L 43 I, p. 1) (together 'the initial measures'), the applicant's name was inserted at line 289 of Table A of the lists of natural and legal persons, entities or bodies subject to restrictive measures in Annex I to Decision 2013/255 and in Annex II to Regulation No 36/2012 (together 'the lists in question'), with the following grounds being stated:

'Leading businessperson operating in Syria with business interests in tourism, telecommunications and real estate. As the chief executive officer of the regime-backed [Telsa Group LLC] and Castro LLC, and because of his other financial interests, Mahir Burhan Eddine Al-Imam benefits from the regime and supports its financing and lobbying policy as well as its construction policy.'

…

B. On the retention of the applicant's name on the lists in question

21 On 28 May 2020, the Council adopted Decision (CFSP) 2020/719 amending Decision 2013/255 (OJ 2020 L 168, p. 66) and Implementing Regulation (EU) 2020/716 implementing Regulation No 36/2012 (OJ 2020 L 168, p. 1) (together, 'the retention measures'). Under the retention measures, the application of Decision 2013/255 was extended until 1 June 2021. The applicant's name was retained at line 289 of Table A of the lists in question on the basis of grounds identical to those applying in the initial measures.

…

II. Procedure and forms of order sought

24 By application lodged at the Registry of the General Court on 18 April 2020, the applicant brought the present action seeking the annulment of Decision 2013/255, Regulation No 36/2012 and the initial measures, in so far as those measures apply to him.

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

25 On the same day, the applicant lodged a request for priority treatment, under Article 67(2) of the Rules of Procedure of the General Court, which was dismissed by a decision of the President of the Fourth Chamber of the General Court of 4 June 2020.

26 On 23 April 2020, the applicant lodged an application for anonymity, under Article 66 of the Rules of Procedure, which was dismissed by a decision of the General Court of 15 June 2020, on the basis that the data in question, and specifically the identification details, were shown in the contested decisions, which were themselves published in the Official Journal, and had therefore become public. However, the decision to dismiss the application for anonymity was adopted without prejudice to the application for the omission of financial data and data relating to third parties being upheld.

27 By document lodged at the Registry of the General Court on 24 July 2020, the applicant modified his application, in accordance with Article 86 of the Rules of Procedure, so as to extend his claim to include the annulment of the retention measures, in so far as they apply to him.

28 On 27 July 2020, the Council lodged its defence at the Registry of the General Court.

29 The Council submitted its observations on the statement of modification to the Registry of the General Court on 10 September 2020.

30 The reply and the rejoinder were lodged on 14 September and 26 October 2020, respectively.

31 The written part of the procedure was closed on 26 October 2020.

32 In the context of the measures of organisation of procedure provided for in Article 89(3)(a) of the Rules of Procedure, on 10 March 2021, the Court requested the parties to answer a series of questions. The parties complied with that request within the period prescribed.

33 Given that no request for a hearing was submitted by the parties within the specified period, on 26 May 2021 the General Court (Fourth Chamber) decided, on the basis of a proposal from the Judge-Rapporteur, to rule on the action without an oral hearing.

34 The applicant claims that the Court should:

– declare the application admissible;

– establish that Decision 2013/255, Regulation No 36/2012, the initial measures and the retention measures are unlawful, in so far as they concern him;

– consequently, annul Decision 2013/255, Regulation No 36/2012, the initial measures and the retention measures, in so far as they concern him;

– first, order the Council to pay him (i) the sum of EUR 10 000 and (ii) the sum of EUR 15 000 per week from 18 February 2020 as compensation for the material and non-material loss, respectively, suffered as a result of the adoption of the restrictive measures taken against him, and then, second, order the Council to compensate him for any future loss that he suffers as a result of the adoption of the restrictive measures taken against him;

– order the Council to pay the costs.

35 With regard to the three requests for compensation made by the applicant, the latter stated, in his reply, that the date of the end of the relevant period used to determine the amount of compensation requested should be the date on which the General Court's judgment is given.

36 The Council contends that the Court should:

– dismiss the action in its entirety;

– in the alternative, if the initial measures and retention measures (together, 'the contested measures') are annulled in so far as they apply to the applicant, order that Implementing Decision 2020/212 and Decision 2020/719 continue to have effect in so far as they apply to the applicant until the date of effect of the partial annulment of Implementing Regulations 2020/211 and 2020/716;

– order the applicant to pay the costs.

III. Law

…

B. The claim for annulment

…

2. Substance

…

(a) The first plea, alleging infringement of the rights of defence

…

(1) The first limb, alleging an infringement of the right to be heard and of the right of access to the file

…

(ii) Following publication of the initial measures

– *The review of the initial measures*

84 First, with regard to the initial measures, the applicant is essentially asserting that the time limit for the submission of an application for review and for observations was too short, and thus did not allow him to be heard in a meaningful and effective way. That time limit commenced on the

day of publication in the Official Journal of the notice described in paragraph 13 above, namely 18 February 2020, and ended on the final date indicated in that notice for the submission of such applications, namely 1 March 2020.

85 Furthermore, the applicant claims that there is an imbalance between the period allowed for the submission of an application for review and for observations and the period for consideration of such applications and observations by the Council. That period for consideration commenced on the final date of the submission period, namely 1 March 2020, and ended on the expiry date of the final extension of Decision 2013/255 imposed in accordance with Council Decision (CFSP) 2019/806 of 17 May 2019 (OJ 2019 L 132, p. 36), namely 1 June 2020.

86 Second, with regard to the retention measures, the applicant argues essentially that the fact that, according to the notice published in the Official Journal on 29 May 2020, any observations submitted by him would be considered for the purposes of the following annual review of the lists in question, rather than being analysed immediately, is not consistent with the right to be heard.

87 Third, the applicant claims that the fact that the Council decides to examine the lists in question once a year does not comply with Decision 2013/255, as amended by Decision 2015/1836, and with Regulation No 36/2012, as amended by Regulation No 2015/1828. The applicant asserts that, in accordance with Article 32(4) of Regulation No 36/2012, as amended by Regulation No 2015/1828, the Council is required to review the lists in question at regular intervals and at least every 12 months. Thus, the annual review is only part of the review obligation under those texts.

88 The Council challenges the applicant's arguments.

89 First, with regard to whether the applicant's right to be heard has been infringed because the time limit for lodging an application for review was too short, it should be noted first of all that the time limit in question, which is common ground between the parties, was eight working days from the day of publication in the Official Journal of the notice described in paragraph 13 above, namely 18 February 2020, until the deadline indicated by that notice for the submission of such applications, namely 1 March 2020.

90 It must be observed, according to Article 32(3) of Regulation No 36/2012, 'where observations are submitted, or where substantial new evidence is presented, the Council shall review its decision and inform the natural or legal person, entity or body accordingly.' Furthermore, paragraph 4 of that article adds that 'the lists in Annexes II and IIa shall be reviewed at regular intervals and at least every 12 months.' Therefore, it follows that Regulation No 36/2012 does not set a time limit for the submission of an application for review or for observations.

91 There is therefore nothing to preclude the applicant from submitting an application for review or observations at any time, in accordance with Article 32(3) of Regulation No 36/2012, as amended by Regulation No 2015/1828. In that regard, the Council noted that it responded to those observations without waiting for the annual review phase.

92 Moreover, it must be observed that compliance with a reasonable time requirement in the conduct of administrative procedures constitutes a general principle of EU law, the observance of which is ensured by the EU Courts and is laid down as a component of the right to good administration in Article 41(1) of the Charter (see, by analogy, judgments of 11 April 2006,

Angeletti v *Commission*, T-394/03, EU:T:2006:111, paragraph 162, and of 6 December 2012, *Füller-Tomlinson* v *Parliament*, T-390/10 P, EU:T:2012:652, paragraph 115). The case-law also suggests that where the duration of a procedure is not set by a provision of EU law, the 'reasonableness' of the period of time is to be appraised in the light of all of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the parties to the case (see, by analogy, judgment of 28 February 2013, *Review Arango Jaramillo and Others* v *EIB*, C-334/12 RX-II, EU:C:2013:134, paragraph 28 and the case-law cited).

93 On that point, the Council notes, first, that it needed a period of three months, from 1 March 2020 until the expiry date of the final extension of Decision 2013/255 under Decision 2019/806, namely 1 June 2020, to carry out the annual review. According to the Council, that review involves an analysis of the individual situation of nearly 350 persons and bodies whose names appear on the lists in question. Second, the Council asserts that it responds to the observations submitted and offers the possibility of submitting new comments, such that a process of exchange between it and the persons and bodies that have submitted observations takes place over that three-month period.

94 It is worth noting that a period of three months to examine the individual situation of nearly 350 persons and bodies is relatively short. Under those circumstances, setting a final date for the submission of applications for review is a legitimate means for the Council to ensure that it receives the observations and evidence submitted by the persons and bodies concerned before the end of the review phase and has sufficient time to examine those elements with the necessary diligence. Admittedly, the time limit of 12 days resulting from the final date set in the present case was a short period, in that it required the applicant to examine the content of the notice and the grounds to be relied on and to draft observations that could be accompanied by evidence. Nonetheless, there are no formal requirements laid down for the submission of an application for review. Furthermore, contrary to the applicant's contention, there is no requirement to be represented by a lawyer in order to file such an application. Moreover, the lodging of an application for review establishes a dialogue between the Council and the person or body concerned that is not subject to any limitations in terms of time frame or the number of letters exchanged. That means that there is nothing to prevent an application for review containing summary observations from being lodged within the prescribed time limit and then being supplemented, where applicable, by additional observations or evidence as part of a subsequent adversarial process of exchange with the Council. Thus, in itself, the time limit of 12 days provided by the Council in the notice published in the Official Journal on 18 February 2020 (described in paragraph 13 above) for the submission of applications for review does not constitute grounds for considering that the applicant's right to be heard has been infringed.

95 In any event, as has been established in paragraph 91 above and, further, acknowledged by the Council, there is nothing to prevent the applicant from submitting an application, or observations, at any time, even after that deadline, in accordance with Article 32(3) of Regulation No 36/2012. In this respect, the final date set by the Council in the notice published in the Official Journal of 18 February 2020 (described in paragraph 13 above) was merely indicative. Indeed, such an indication is useful in order to allow the persons and bodies concerned to submit their applications for review before the review phase – an internal Council event they can have no knowledge of – is completed, and before new instruments are adopted by the Council.

96 Second, with respect to the arguments put forward by the applicant whereby, on the one hand, any observations submitted are not examined immediately and, on the other hand, the Council decides to examine the lists in question only once a year, it should be noted – as stated in paragraphs 91 and 95 above – that the applicant can submit observations at any time, to which the Council will provide a response without waiting for the annual review phase.

97 It should also be noted, on the basis of Article 34 of Decision 2013/255, as amended by Decision 2015/1836, that that decision is under constant review, such that it can be extended, or amended if applicable, if the Council believes that its objectives are not being achieved. That is demonstrated, as the Council rightly points out, by the fact that the initial measures were adopted not as a result of an annual review carried out in accordance with Article 32(4) of Regulation No 36/2012, as amended by Regulation No 2015/1828, but in February 2020.

98 The arguments put forward by the applicant based on the limited period allowed for the submission of an application for review of the initial measures and the fact that the Council, by examining the lists only once a year, did not immediately examine his observations, should be dismissed.

…

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

1. Dismisses the action.

2. Orders Maher Al-Imam to pay the costs.

Gervasoni Frendo Martín y Pérez de Nanclares

Delivered in open court in Luxembourg on 22 September 2021.

[Signatures]