Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fifth Chamber)

4 April 2019*

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

In Case T-5/17,

Ammar Sharif, residing in Damascus (Syria), represented by B. Kennelly QC, and J. Pobjoy, Barrister,

applicant,

v

Council of the European Union, represented by S. Kyriakopoulou, P. Mahnič and V. Piessevaux, acting as Agents,

defendant,

supported by

European Commission, represented by L. Havas and J. Norris, acting as Agents,

intervener,

APPLICATION, principally, pursuant to Article 263 TFEU for annulment of Council Implementing Decision (CFSP) 2016/1897 of 27 October 2016 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2016 L 293, p. 36), of Council Implementing Regulation (EU) 2016/1893 of 27 October 2016 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2016 L 293, p. 25), of Council Decision (CFSP) 2017/917 of 29 May 2017 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2017 L 139, p. 62), of Council Implementing Regulation (EU) 2017/907 of 29 May 2017 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2017 L 139, p. 15), of Council Decision (CFSP) 2018/778 of 28 May 2018 amending Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ 2018 L 131, p. 16), and of Council Implementing Regulation (EU) 2018/774 of 28 May 2018 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2018 L 131, p. 1), in so far as those acts concern the applicant; and, in the alternative, pursuant to Article 277 TFEU for a declaration that the following provisions are inapplicable, in so far as they apply to the applicant: Article 28(2)(a) of Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria (OJ 2013 L 147, p. 14), as amended by Council Decision (CFSP) 2015/1836 of 12 October 2015 (OJ 2015 L 266, p. 75), and Article 15(1a)(a) of Council Regulation (EU) No 36/2012

* Language of the case: English.

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), as amended by Council Regulation (EU) 2015/1828 of 12 October 2015 (OJ 2015 L 266, p. 1),

THE GENERAL COURT (Fifth Chamber),

composed of D. Gratsias (President), I. Labucka and I. Ulloa Rubio (Rapporteur), Judges,

Registrar: F. Oller, Administrator,

having regard to the written part of the procedure and further to the hearing on 7 September 2018,

gives the following

Judgment [1]

Background to the dispute

1 The applicant, Mr Ammar Sharif, is a businessman of Syrian nationality.

2 Strongly condemning the violent repression of peaceful protest in various locations across Syria and calling on the Syrian security forces to exercise restraint instead of force, on 9 May 2011 the Council of the European Union adopted Decision 2011/273/CFSP concerning restrictive measures against Syria (OJ 2011 L 121, p. 11). In view of the seriousness of the situation, the Council imposed an arms embargo, a ban on exports of *matériel* which might be used for internal repression, restrictions on admission to the European Union, and the freezing of funds and economic resources of certain persons and entities responsible for the violent repression against the civilian population in Syria.

3 The names of the persons responsible for the violent repression against the civilian population in Syria and those of the natural or legal persons and entities associated with them are mentioned in the Annex to Decision 2011/273. Under Article 5(1) of that decision, the Council, acting upon a proposal by a Member State or the High Representative of the Union for Foreign Affairs and Security Policy, may amend that annex.

4 Since some of the restrictive measures taken against the Syrian Arab Republic fall within the scope of the FEU Treaty, the Council adopted Regulation (EU) No 442/2011 of 9 May 2011 concerning restrictive measures in view of the situation in Syria (OJ 2011 L 121, p. 1). That regulation is largely identical to Decision 2011/273, but provides for the possibility of frozen funds being released. The list of persons, entities and bodies identified as being either responsible for the repression in question or associated with those responsible, in Annex II to that regulation, is identical to the list in the Annex to Decision 2011/273. Under Article 14(1) and (4) of Regulation No 442/2011, where the Council decides to subject a natural or legal person, entity or body to the restrictive measures referred to, it is to amend Annex II accordingly and, furthermore, to review the list in that annex at regular intervals and at least every 12 months.

5 By Decision 2011/782/CFSP of 1 December 2011 concerning restrictive measures against Syria and repealing Decision 2011/273 (OJ 2011 L 319, p. 56), the Council considered it necessary, in view of the gravity of the situation in Syria, to impose additional restrictive measures. For the sake of clarity, the measures imposed by Decision 2011/273 and the additional measures were integrated into a single

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

legal instrument. Decision 2011/782 provides, in Article 18, for restrictions on admission to the territory of the European Union and, in Article 19, for the funds and economic resources of the persons and entities whose names are listed in Annex I to the decision to be frozen.

6 Regulation No 442/2011 was replaced by Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation No 442/2011 (OJ 2012 L 16, p. 1).

7 By Council Decision 2012/739/CFSP of 29 November 2012 concerning restrictive measures against Syria and repealing Decision 2011/782 (OJ 2012 L 330, p. 21), the restrictive measures in question were integrated into a single legal instrument.

8 Decision 2012/739 was replaced by Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria (OJ 2013 L 147, p. 14). Decision 2013/255 was renewed until 1 June 2015 by Council Decision 2014/309/CFSP of 28 May 2014 amending Decision 2013/255 (OJ 2014 L 160, p. 37).

9 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).

10 According to recital 6 of Decision 2015/1836, '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' and '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'.

11 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'.

12 By Implementing Decision (CFSP) 2016/1897 of 27 October 2016 implementing Decision 2013/255 (OJ 2016 L 293, p. 36), the Council amended Decision 2013/255 in order in particular to apply the restrictive measures concerned to other persons and entities, whose names were added to the list in the annex to the latter decision. The applicant's name was inserted in that list at line 212 of Table A of the annex, together with the date of his listing, 28 October 2016, and the following reasons:

'Leading Syrian businessman operating in Syria, active in the banking, insurance, and hospitality sectors. Founding partner of Byblos Bank Syria, major shareholder in Unlimited Hospitality Ltd, and board member of the Solidarity Alliance Insurance Company and the Al-Aqueelah Takaful Insurance Company'.

13 On 27 October 2016, the Council adopted Implementing Regulation (EU) 2016/1893 implementing Regulation No 36/2012 (OJ 2016 L 293, p. 25). The applicant's name was listed in Table A of the annex to that implementing regulation with the same information and reasons as those set out in Implementing Decision 2016/1897.

14 On 28 October 2016, the Council published in the *Official Journal of the European Union* a Notice for the attention of the persons subject to the restrictive measures provided for in Decision 2013/255 and in Regulation No 36/2012 (OJ 2016 C 398, p. 4).

15 On 29 May 2017, the Council adopted Decision (CFSP) 2017/917 amending Decision 2013/255 (OJ 2017 L 139, p. 62). By Article 1 of Decision 2017/917, Article 34 of Decision 2013/255 was amended to provide for the restrictive measures imposed by the annex to the latter decision to be extended until 1 June 2018. In addition, in accordance with Article 2 of Decision 2017/917, 55 of the references in Annex I to Decision 2013/255, concerning persons other than the applicant, were amended. Last, under Article 3, Decision 2017/917 entered into force on the date of its publication.

16 On the same day, the Council adopted Implementing Regulation (EU) 2017/907 implementing Regulation No 36/2012 (OJ 2017 L 139, p. 15). Under Article 1 of that implementing regulation, Annex II to Regulation No 36/2012 was amended to take account of the amendments made to Annex I to Decision 2013/255 by Decision 2017/917. In accordance with Article 2, Implementing Regulation 2017/907 entered into force on the date of its publication.

17 On 28 May 2018, the Council adopted Decision (CFSP) 2018/778 amending Decision 2013/255 (OJ 2018 L 131, p. 16). By Article 1 of Decision 2018/778, Article 34 of Decision 2013/255 was amended to provide for the restrictive measures imposed by the annex to the latter decision to be extended until 1 June 2019. In addition, in accordance with Article 2 of Decision 2018/778, 34 of the references in Annex I to Decision 2013/255, concerning persons other than the applicant, were amended. Last, under Article 3, Decision 2018/778 entered into force on the day following that of its publication.

18 On the same day, the Council adopted Implementing Regulation (EU) 2018/774 implementing Regulation No 36/2012 (OJ 2018 L 131, p. 1). Under Article 1 of that implementing regulation, Annex II to Regulation No 36/2012 was amended to take account of the amendments made to Annex I to Decision 2013/255 by Decision 2018/778. In accordance with Article 2, Implementing Regulation 2018/774 entered into force on the day following that of its publication.

Procedure and forms of order sought

19 By application lodged at the General Court Registry on 4 January 2017, the applicant brought the present action against Implementing Decision 2016/1897 and Implementing Regulation 2016/1893.

20 On 3 April 2017, the Council lodged its defence at the Court Registry.

21 By document lodged at the Court Registry on 31 March 2017, the European Commission applied for leave to intervene in the present proceedings in support of the form of order sought by the Council. By decision of 28 April 2017, the President of the Fifth Chamber of the General Court granted the Commission leave to intervene. The Commission lodged its statement in intervention on 22 June 2017. The applicant lodged his observations on that statement within the prescribed period.

22 The reply and the rejoinder were lodged, respectively, by the applicant on 19 May 2017, and by the Council on 27 June 2017.

23 By document lodged at the Court Registry on 3 August 2017, the applicant modified the application in order to seek annulment also of Decision 2017/917 and of Implementing Regulation 2017/907.

24 In the context of measures of organisation of procedure as provided for in Article 89(3)(d) of the Rules of Procedure of the General Court, on 27 February 2018 the Court requested the Council to produce a legible version of certain documents. The Council complied with that request on 9 March 2018.

25 By document lodged at the Court Registry on 11 June 2018, the applicant modified the application in order to seek annulment also of Decision 2018/778 and of Implementing Regulation 2018/774.

26 In the context of measures of organisation of procedure as provided for in Article 89(3)(d) of the Rules of Procedure, on 15 June and 28 September 2018 the Court requested the Council to produce certain documents. The Council complied with the Court's request on 20 June and 3 October 2018, respectively.

27 The applicant claims that the Court should:

– annul, in so far as they concern him, Implementing Decision 2016/1897, Implementing Regulation 2016/1893, Decision 2017/917, Implementing Regulation 2017/907, Decision 2018/778 and Implementing Regulation 2018/774 ('the contested measures');

– in the alternative, pursuant to Articles 277 and 263 TFEU, declare Article 28(2)(a) of Decision 2013/255, as amended by Decision 2015/1836, and Article 15(1a)(a) of Regulation No 36/2012, as amended by Regulation 2015/1828, inapplicable in so far as they apply to him;

– order the Council to pay the costs.

28 In the application, the applicant made a claim for damages, on the basis of the second paragraph of Article 340 TFEU, for the harm allegedly suffered as a result of the listing of his name in the contested measures. In the reply, the applicant withdrew that claim on the ground that he was not in a position to provide detailed evidence on the extent of the damage sustained.

29 The Council contends that the Court should:

– dismiss the action;

– in the alternative, in the event that the contested measures are annulled with regard to the applicant, order that the effects of the contested decisions be maintained as regards the applicant until the expiry of the period for bringing an appeal;

– order the applicant to pay the costs.

30 The Commission, supporting the Council, contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

31 At the hearing, the Commission withdrew the second part of the form of order sought.

Law

Admissibility of the statements of modification of the form of order sought in so far as they relate to Implementing Regulation 2017/907 and Implementing Regulation 2018/774

…

Substance

35 In support of the action, the applicant relied in his application on two pleas in law, alleging, first, an error of law and error of assessment and, second, breach of the right to property, of the principle of proportionality, of the freedom to conduct a business and of the right to reputation. In the statements of modification of the form of order sought, he also put forward a third plea, alleging, formally, infringement of the rights of the defence, of the right to good administration and of the right to effective judicial protection.

36 The Court considers that, in so far as the arguments advanced in support of the third plea put forward in the statements of modification in fact relate to an error of assessment and not to an infringement of procedural rights, that plea must be regarded as alleging such an error and will be examined together with the first plea in law.

37 In addition, in the alternative, the applicant raised a fourth plea in law, a plea of illegality, according to which the designation criterion laid down in Article 28(2)(a) of Decision 2013/255, as amended by Decision 2015/1836, and in Article 15(1a)(a) of Regulation No 36/2012, as amended by Regulation 2015/1828, is disproportionate to the objectives of the contested measures and must be declared inapplicable with respect to the applicant.

38 Consequently, the Court considers it appropriate to examine, first of all, the first and third pleas together, then the second plea and, last, the fourth plea, a plea of illegality put forward by the applicant in the alternative.

…

Plea of illegality

86 In the alternative, the applicant raises a plea of illegality, pursuant to Article 277 TFEU, concerning the designation criterion laid down in Article 28(2)(a) of Decision 2013/255, as amended by Decision 2015/1836, and in Article 15(1a)(a) of Regulation No 36/2012, as amended by Regulation 2015/1828, with regard to the category of 'leading businesspersons operating in Syria'. The applicant maintains in that regard that that criterion is disproportionate in relation to the legitimate objectives of the contested measures and must, therefore, be declared inapplicable to him if it is to be interpreted as relating to any 'leading businessperson operating in Syria', irrespective of whether there is any connection between that person and the Syrian regime.

87 On that basis, the applicant disputes, in the first place, that the contested listing criterion is compatible with the principle of proportionality. He argues that the arbitrary width and scope of the criterion that would result from the interpretation with which he takes issue would exceed the limits of what is appropriate and necessary in order to achieve the objectives of the contested measures. In addition, he maintains, first, that the criterion which he challenges must be interpreted consistently with the object and purpose of the restrictive measures and, second, that, in view of the draconian nature of the restrictive measures and their devastating effect on a designated person's reputation and business, designation of individuals on such an arbitrary basis cannot be justified, still less be proportionate.

88 The applicant submits, in the second place, that, in the light of Article 28(3) of Decision 2013/255, as amended by Decision 2015/1836, and of Article 15(1a) of Regulation No 36/2012, as amended by Regulation 2015/1828, the listing criterion in question presupposes that there is a sufficient link between the category of 'leading businesspersons operating in Syria' and the Syrian regime. In his view, the Council cannot justify the arbitrary nature of that criterion by concluding that the person

designated by the restrictive measures is in a position to prove that he or she is not linked to the Syrian regime, given that that person cannot be required to adduce evidence of the negative, that the criterion is not satisfied.

89 The Council challenges the plea of illegality raised by the applicant and contends that the applicant's listing is the result of an individual evaluation of the evidence adduced and, moreover, that, according to the judgment of 21 April 2015, *Anbouba* v *Council* (C-630/13 P, EU:C:2015:247), it has a broad discretion in defining the general designation criteria. The Council further argues that the presumption established by Decision 2013/255 has a legal basis and is proportionate and rebuttable.

90 It must be noted, first of all, that, according to the case-law, the principle of proportionality, as one of the general principles of EU law, requires that measures adopted by the EU institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives pursued by the legislation in question. Consequently, when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see judgment of 27 February 2014, *Ezz and Others* v *Council*, T-256/11, EU:T:2014:93, paragraph 205 and the case-law cited).

91 Next, it must be pointed out that, in accordance with the case-law, the institutions may make use of presumptions which reflect the fact that it is open to the authority on which the burden of proof lies to draw certain conclusions on the basis of common experience derived from the normal course of events (see, by analogy and to that effect, judgment of 10 September 2009, *Akzo Nobel and Others* v *Commission*, C-97/08 P, EU:C:2009:536, paragraphs 60 to 63, and Opinion of Advocate General Kokott in *T-Mobile Netherlands and Others*, C-8/08, EU:C:2009:110, points 87 to 89).

92 In addition, it follows from the case-law that a presumption, even where it is difficult to rebut, remains within acceptable limits so long as it is proportionate to the legitimate aim pursued, it is possible to adduce evidence to the contrary and the rights of the defence are safeguarded (see judgment of 29 September 2011, *Elf Aquitaine* v *Commission*, C-521/09 P, EU:C:2011:620, paragraph 62 and the case-law cited). Similarly, the European Court of Human Rights considers that Article 6(2) of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, does not regard presumptions of fact or of law with indifference, but that it requires States to confine them within reasonable limits which take into account the importance of what is at stake and maintain the rights of the defence (ECtHR, 7 October 1988, *Salabiaku v. France*, CE:ECHR:1988:1007JUD001051983).

93 It should be noted, last, that it is apparent from recitals 1 to 6 of Decision 2015/1836 that, since the restrictive measures adopted in Decision 2011/273 had not enabled the repression against the Syrian civilian population pursued by the Syrian regime to be brought to an end, the Council, in view of the gravity of the situation in Syria, decided, under Article 29 TEU, to maintain and ensure the effectiveness of those restrictive measures by further developing them while maintaining its targeted and differentiated approach and bearing in mind the humanitarian conditions of the Syrian population.

94 In order to achieve those objectives and because of the close control exercised over the economy by the Syrian regime, the Council found, first, that the existing regime could not continue to exist without the support of business leaders and, second, that an inner cadre of 'leading businesspersons operating in Syria' was only able to maintain its status by enjoying a close association with, and the support of, the Syrian regime and by having influence within it. On that basis, as has been indicated in paragraph 56 above, the Council sought to apply a presumption that 'leading businesspersons operating in Syria' are linked with the Syrian regime.

95 As provided for by Article 27(2)(a) and Article 28(2)(a) of Decision 2013/255, as amended by Decision 2015/1836, individuals belonging to the category of 'leading businesspersons operating in Syria' are now subject to the restrictive measures imposed by that decision. In addition, under Article 27(3) and Article 28(3) of that decision, those individuals are not to be subject to those measures or are to cease to be subject to them only if 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.

96 In the present case, the Court must examine whether the contested listing criterion is compatible with the principle of proportionality.

97 In the first place, it must be observed that the contested listing criterion is necessary and appropriate for attaining the objectives pursued by Decision 2013/255 and by Regulation No 36/2012, to strongly condemn and to end the violent repression pursued by Mr Al-Assad and his regime against the civilian population in Syria. It must be recalled in that regard, first, that the Council enjoys a broad discretion as regards the general and abstract definition of the legal criteria and procedures for adopting restrictive measures (see, to that effect, judgment of 28 November 2013, *Council* v *Manufacturing Support & Procurement Kala Naft*, C-348/12 P, EU:C:2013:776, paragraph 120). Second, it must be noted that the contested listing criterion was set by the Council in 2015 on the ground that, despite the adoption of restrictive measures to put pressure on the Syrian regime over a period of four years, that is to say, since May 2011, the repression of the Syrian population continued. In addition, because of the close control exercised over the economy by the Syrian regime, the freezing of funds and economic resources belonging to the category of 'leading businesspersons operating in Syria' would prevent that category of individuals from continuing to provide material or financial support to the Syrian regime and, given their influence, would increase pressure on the regime to change its policies of repression. In those circumstances, it must be concluded that the freezing of the funds of 'leading businesspersons operating in Syria' is essential in order for pressure to be put on the Syrian regime to end the repression of the civilian population or to reduce it and is, therefore, necessary and appropriate for ensuring the effectiveness of the measures adopted against that category of individuals.

98 In the second place, as regards the sufficiency of the listing criterion at issue for the purpose of achieving the objectives thus pursued, it must be held that, if the contested measures did not target the individuals belonging to the category of 'leading businesspersons operating in Syria', the attainment of those objectives could be frustrated, since that category of individuals constitutes an essential material and financial support for the Syrian regime. The establishment of the listing criterion at issue is the consequence of the continued repression against the Syrian civilian population, notwithstanding the imposition of restrictive measures since 2011. In addition, the introduction of that criterion in Decision 2015/1836 and in Regulation 2015/1828 is the result of developments in the case-law leading the Council to refine the criteria enabling the objectives of the legislation in question to be achieved effectively. In view of those considerations, the contested listing criterion is sufficient for the attainment of those objectives.

99 In the third place, as regards the disadvantages to the applicant, it is apparent from the case-law that fundamental rights are not absolute, and that their exercise may be restricted on the basis of objectives of general interest pursued by the European Union. Thus, any economic or financial restrictive measure, regardless of the listing criterion on the basis of which that measure is imposed, necessarily incorporates effects on certain fundamental rights of the person whose name is included in the lists concerned. The importance of the objectives pursued by the disputed legislation is such as to justify the possibility that, for certain operators, the consequences may be negative, even significantly so.

100 To conclude, the Court must examine whether the presumption of a link with the Syrian regime as applied to individuals falling within the category of 'leading businesspersons operating in Syria', established by the Council, is not manifestly disproportionate.

101 On that basis, it must be pointed out, first of all, that the Council is entitled to define the general listing criteria on the basis of the common experience referred to in paragraph 2 et seq. above and to draw the appropriate legal conclusions from it.

102 In the present case, when establishing the contested listing criterion, the Council found, as has been indicated in paragraphs 56 and 94 above, that being a 'leading businessman operating in Syria' implied the existence of a link with the Syrian regime.

103 Next, it should be noted that it is important to distinguish between legal presumptions that are rebuttable and those which are irrebuttable. A legal presumption is simple or rebuttable if it can be countered by evidence to the contrary, whereas a presumption is absolute or irrebuttable if it cannot be countered by any contrary evidence.

104 In that regard, it is necessary to ascertain whether, in accordance with the case-law cited in paragraph 92 above, the presumption of a link with the Syrian regime in the case of individuals belonging to the category of 'leading businesspersons operating in Syria' is confined within reasonable limits, whether it can or cannot be countered by evidence to the contrary and whether the rights of the defence are maintained.

105 In the first place, it must be held that in the light, first of all, of the authoritarian nature of the Syrian regime, next, of the interdependence that has developed between the business community and the Syrian regime as a result of the process of liberalisation of the economy initiated by Mr Al-Assad, and, last, of the close control exercised by the State over the Syrian economy, the Council was fully entitled to regard as common experience the fact that individuals belonging to the category of 'leading businesspersons operating in Syria' are only able to maintain their status by enjoying a close association with the Syrian regime. In that regard, it must be considered reasonable to presume that a person falling within that category has a link with the regime of Mr Al-Assad that enables that person to develop his or her business and to benefit from the policies of that regime.

106 It should be observed, in the second place, as has been set out in paragraphs 56 and 94 above, that the Council established a rebuttable presumption that individuals belonging to the category of 'leading businesspersons operating in Syria' are linked with the Syrian regime. The names of individuals falling within that category are not listed if it is established that they are not, or are no longer, associated with the existing regime or do not exercise influence over it or do not pose a real risk of circumvention. It must be noted, as stated in paragraph 67 above, that the applicant has not produced any document to show that he was in any of those situations.

107 In order to challenge the presumption at issue, the applicant was thus required to produce information that would contradict the fact that he was a 'leading businessman operating in Syria' and, moreover, to prove the contrary, namely that he was not, or was no longer, associated with the regime of Mr Al-Assad or that he did not exercise influence over it or pose a real risk of circumvention.

108 In order to prove that he was not linked with the Syrian regime and thereby to demonstrate that the presumption could not be applied and to secure the removal of his name from the lists at issue, it was open to the applicant to present indicia or evidence to challenge the ground relied on in his case, by relying, inter alia, on facts and information that only he could have and establishing that he was not, or was no longer, a member of the board of the companies referred to in the statement of reasons put forward by the Council, that he did not hold, or no longer held, shares in those companies, or that those companies were not leading companies in the Syrian economy and, therefore, that his shareholding in those companies did not constitute a risk of circumvention.

109 In the third place, it must be borne in mind that, since measures such as the contested measures have a considerable impact on the rights and freedoms of the persons concerned, the Council is required to observe the rights of defence of those persons by notifying them of the reasons for their inclusion on the list in question at the same time as, or immediately after, the decision is adopted, and by allowing them to make representations at the latest before the adoption of the second decision concerning them and thus to rebut, where appropriate, the presumption in question, by producing such information relating to their personal circumstances as will tell in favour of the decision's being adopted or not, or of its having this content or that (see, to that effect, judgment of 21 December 2011, *France* v *People's Mojahedin Organization of Iran*, C-27/09 P, EU:C:2011:853, paragraphs 61 to 67). In that regard, it should be observed that it is clear from the file that, by letter of 19 December 2016, the Council sent to the applicant the evidence and the listing proposal submitted by a Member State on the basis of which his name was included on the lists annexed to the contested measures. The Council had, therefore, afforded the applicant the opportunity to produce evidence that, notwithstanding the existence of serious indicia that he should be included in the category of persons covered by the relevant listing criterion, he was not in fact linked to the Syrian regime. Consequently, it must be held that the applicant's rights of defence were respected.

110 It is apparent from all of the foregoing that the contested listing criterion is compatible with the principle of proportionality and is not arbitrary in so far as the Council, in the light of the position set out above, introduced that criterion in Decision 2015/1836 and Regulation 2015/1828 in a manner that was justified and proportionate to the objectives pursued by the legislation governing the restrictive measures against Syria, whilst preserving the possibility that the persons concerned could rebut the presumption of a link with the Syrian regime.

111 Accordingly, the plea of illegality put forward by the applicant must be rejected as unfounded, without there being any need to rule on its admissibility, which was contested by the Commission.

…

Costs

113 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under Article 138(1) of the Rules of Procedure, the Member States and institutions which have intervened in the proceedings are to bear their own costs.

114 In the present case, since the applicant has been unsuccessful and the Council has applied for costs, the applicant must be ordered to pay the costs. Furthermore, as an intervening institution, the Commission is to bear its own costs.

On those grounds,

THE GENERAL COURT (Fifth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Mr Ammar Sharif to bear his own costs and to pay those incurred by the Council of the European Union;**

3. **Orders the European Commission to bear its own costs.**

Gratsias Labucka Ulloa Rubio

Delivered in open court in Luxembourg on 4 April 2019.

E. Coulon
Registrar

D. Gratsias
President