General Court of the European Union
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Press and Information

Judgment in Case T- 203/12
Mohamad Nedal Alchaar v Council

The General Court annuls the restrictive measures imposed on Mr Mohamad Nedal Alchaar solely because of his status as a former Syrian Minister of Economy and Trade

The Council improperly reversed the burden of proof by holding that it was permissible to presume, without a careful and impartial examination of exculpatory evidence, that Mr Alchaar still maintained close links with the Syrian regime after he left the government

Between 2011 and 2013, the Council listed the name of Mr Mohamad Nedal Alchaar in the list of persons subject to the restrictive measures adopted against Syria. Mr Alchaar was thus prohibited from entry into or transit through the territory of the EU Member States, while his funds and economic resources were frozen. Initially, the reasons stated for his listing were as follows: 'Minister of Economy and Trade. Responsible for the Syrian economy'.[1] After Mr Alchaar left ministerial office on 23 June 2012, the Council altered the reasons for his listing to read as follows: 'Former Minister of Economy and Trade. Associated with the Syrian regime and its violent repression against the civilian population'[2] Mr Alchaar seeks the annulment of his listing.

In today's judgment, the General Court partially annuls the listing of Mr Alchaar, in so far as it is based solely on his status as a former Minister.[3]

As regards first the reasons based on the ministerial office held by Mr Alchaar and on his responsibilities in respect of the Syrian economy, the General Court considers that his listing was legitimate in so far as the members of a government must be held to be jointly and severally responsible for the policy of repression pursued by the government. In that regard, the General Court considers that the Council was not obliged to demonstrate that Mr Alchaar was personally involved in repression, but could, because of the significant responsibilities held by him, infer that he was one of the leaders of the regime or, at the very least, that he was associated with the regime.

As regards the grounds based on Mr Alchaar's status as a former Minister, and on his links with the regime and his joint responsibility vis-à-vis the violent repression practised against the civil population, the General Court holds that it was permissible to presume that, even after he left office, Mr Alchaar still maintained close links with the Syrian regime, provided that that presumption was rebuttable and proportionate and respected the rights of the defence. Accordingly, where the existence of such links is challenged, it is for the Council to adduce evidence of sufficient probative value that it can reasonably be held that the person concerned maintained close links with the regime even after leaving office. The General Court states however that the Council did not provide such evidence, and consequently the Council improperly reversed the burden of proof by claiming that Mr Alchaar had failed to establish that he was no longer associated with the Syrian regime

[1] See, for instance, 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).
[2] See, for instance, Implementing Regulation (EU) No 363/2013 of 22 April 2013 implementing Regulation No 36/2012 (OJ 2013 L 111, p. 1).
[3] More specifically, the General Court annuls the listing of Mr Alchaar in Implementing Regulation No 363/2013. In accordance with Article 266 TFEU, the Council is required to take the necessary measures to comply with the judgment of the General Court and must therefore withdraw Mr Alchaar's name from any other act which is based on the same grounds as Implementing Regulation No 363/2013.

after he left office. The Council therefore committed an error of assessment by considering that the listing of Mr Alchaar was justified solely by reason of his status as a former Minister.

Further, the General Court finds that the Council failed to examine carefully and impartially the evidence provided by Mr Alchaar in the course of the procedure. Mr Alchaar produced two affidavits stating that he did not exercise significant political responsibilities and that he was never a member of the Baath party in Syria. He also stated that it was primarily his experience and his reputation which led to his appointment as a Minister and that as a member of the government he was always opposed to the use of violence and the 'security solution'. The General Court considers that there is no reason to doubt the credibility of that information, unless bad faith on the part of Mr Alchaar is to be assumed.

The General Court also states that Mr Alchaar produced a number of articles which refer to the experience he acquired in the United States, his academic work and to his international reputation as an economist (he has published many works in the economic field and in 2009 was recognised as one of the 500 most influential Muslims in the world). Such international recognition should have prompted the Council to examine the reasons which led him to leave ministerial office, rather than presume that he had links with the Syrian regime because he held ministerial office for a brief period.[4]

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

NOTE: According to the Statute of the Court of Justice, a decision of the General Court declaring a regulation void takes effect only as from the date of expiry of the period allowed for bringing an appeal before the Court of Justice, that is to say, two months and ten days from notification of the judgment or, if an appeal has been brought, as from the date of its dismissal.

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The full text of the judgment is published on the CURIA website on the day of delivery

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[4] Mr Alchaar was Minister of Economy and Trade from 14 April 2011 until 23 June 2012.