Reports of Cases

JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

12 March 2014*

(Common foreign and security policy — Restrictive measures against Syria — Freezing of funds — Inclusion of an individual on the lists of targeted persons — Personal connections with members of the regime — Rights of defence — Fair hearing — Obligation to state reasons — Burden of proof — Right to effective judicial protection — Proportionality — Right to property — Right to privacy)

In Case T-202/12,

Bouchra Al Assad, residing in Damascus (Syria), represented by G. Karouni and C. Dumont, lawyers,

applicant,

v

Council of the European Union, represented by G. Étienne and M.-M. Joséphidès, acting as Agents,

defendant,

application for the partial annulment of, first, Council Implementing Decision 2012/172/CFSP of 23 March 2012 implementing Decision 2011/782/CFSP concerning restrictive measures against Syria (OJ 2012 L 87, p. 103), secondly, Council Decision 2012/739/CFSP of 29 November 2012 concerning restrictive measures against Syria and repealing Decision 2011/782/CFSP (OJ 2012 L 330, p. 21), third, Council Implementing Regulation (EU) No 363/2013 of 22 April 2013 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ 2013 L 111, p.1, corrigendum OJ 2013 L 127 p. 27), and, fourth, Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria (OJ 2013 L 147, p. 14), in so far as those acts relate to the applicant.

THE GENERAL COURT (Sixth Chamber),

composed of H. Kanninen, President, G. Berardis (Rapporteur) and C. Wetter, Judges,

Registrar: C. Kristensen, Administrator,

having regard to the written procedure and further to the hearing on 12 September 2013,

gives the following

* Language of the case: French.

Judgment

Background

1 The applicant, Ms Bouchra Al Assad, is a Syrian national, sister of the president of the Arab Republic of Syria, Mr Bashar Al Assad, and wife, subsequently widow, of another member of the Syrian Government, Mr Asif Shawkat.

2 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), on the basis of Article 29 TEU.

3 Article 3(1) of that Decision provides that Member States are to take the necessary measures to prevent the entry into, or transit through, their territories of persons responsible for violent repression against the civilian population in Syria, and persons associated with them, as listed in the annex thereto.

4 Article 4(1) of Decision 2011/273 provides that all funds and economic resources belonging to, owned, held or controlled by persons responsible for the violent repression against the civilian population in Syria, and by natural or legal persons, entities and bodies associated with them are to be frozen. The detailed rules for freezing assets are laid down in the other paragraphs of that article.

5 Under Article 5(1) of Decision 2011/273, the Council is to establish a list of the persons concerned.

6 On the same date, the Council adopted, on the basis of Article 215(2) TFEU and Decision 2011/273, Council Regulation (EU) No 442/2011 concerning restrictive measures in view of the situation in Syria (OJ 2011 L 121, p. 1). Article 4(1) thereof provides for the freezing of all funds and economic resources belonging to, owned, held or controlled by the natural or legal persons, entities and bodies listed in Annex II thereto.

7 Decision 2011/273 was replaced by Council Decision 2011/782/CFSP of 1 December 2011 concerning restrictive measures against Syria and repealing Decision 2011/273/CFSP (OJ 2011 L 319, p. 56).

8 Article 18(1) and Article 19(1) of Decision 2011/782 correspond to Article 3(1) and Article 4(1) respectively of Decision 2011/273, with the addition of a provision to the effect that the restrictive measures provided for therein also apply to persons and entities benefiting from the policies of the regime or supporting it.

9 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 (EU) No 442/2011 (OJ 2012 L 16, p. 1).

10 By Council Implementing Decision 2012/172/CFSP of 23 March 2012 implementing Decision 2011/782 (OJ 2012 L 87, p. 103), the applicant's name was added to the list in Annex I of Decision 2011/782 on the following grounds:

'Sister of Bashar al Assad, and wife of Asif Shawkat, Deputy Chief of Staff for Security and Reconnaissance. Given the close personal relationship and intrinsic financial relationship to the Syrian President, Bashar Al Assad and other core Syrian regime figures, she benefits from and is associated with the Syrian regime.'

11 By Council Implementing Regulation (EU) No 266/2012 of 23 March 2012 implementing Article 32(1) of Regulation No 36/2012 (OJ 2012 L 87 p. 45), the applicant's name was added to the list in Annex II of Regulation No 36/2012 on the same grounds as those set out in paragraph 10 above.

12 On 24 March 2012 the Council published in the *Official Journal of the European Union* the notice for the attention of the persons and entities to which restrictive measures provided for in Council Decision 2011/782/CFSP, as implemented by Council Implementing Decision 2012/172/CFSP, and Council Regulation (EU) No 36/2012, as implemented by Council Implementing Regulation (EU) No 266/2012 apply (OJ 2012 C 88, p. 9, 'Notice of 24 March 2012').

13 According to the notice, the persons and entities concerned may submit to the Council a request for review of the decision whereby their names were included on the lists annexed to the acts mentioned in paragraph 12 above, with supporting documentation.

Procedure and the parties' claims

14 By an application lodged at the Registry of the General Court on 16 May 2012, the applicant brought the present proceedings for the annulment of Implementing Decision 2012/172, in so far as it relates to the applicant.

15 In the statement in reply the applicant confirmed the application for annulment.

16 By statement lodged at the Registry of the General Court on 30 January 2013, the applicant, in view of the fact that the Council had in the meantime adopted Decision 2012/739/CFSP of 29 November 2012 concerning restrictive measures against Syria and repealing Decision 2011/782 (OJ 2012 L 330, p. 21), requested to be allowed to extend her application for annulment to include not only Implementing Decision 2012/172, but also Decision 2012/739, Annex I of which contained her name at point 71, together with the same grounds as those set out in paragraph 10 above ('the application covering Decision 2012/739').

17 By letter lodged at the Registry of the General Court on 28 February 2013, the Council stated that it had no observations on the application concerning Decision 2012/739.

18 Upon hearing the report of the Judge-Rapporteur, the General Court (Sixth Chamber) decided to open the oral procedure.

19 By statement lodged at the Registry of the General Court on 30 July 2013, the applicant once again requested to be allowed to amend her pleadings so that her application for annulment would also cover Council Implementing Regulation (EU) No 363/2013 of 22 April 2013 implementing Regulation No 36/2012 (OJ 2013 L 111, p.1, corrigendum OJ 2013 L 127 p. 27), and Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria (OJ 2013 L 147, p. 14), in so far as those acts, to which are annexed lists containing her name, affect her situation ('application relating to Implementing Regulation No 363/2013' and 'application relating to Decision 2013/255').

20 On 30 July 2013 also the applicant requested to be allowed to submit new evidence concerning the death of her husband and the fact that she had moved to the United Arab Emirates with her children, who were at school there ('new evidence').

21 By decision of the President of the Sixth Chamber of the General Court of 21 August 2013, the new evidence was placed on the file.

22 By letter lodged at the Registry of the General Court on 4 September 2013, the Council stated that it had no observations on the application concerning Implementing Regulation No 363/2013 and the application concerning Decision 2013/255.

23 By letter lodged at the Registry of the General Court on 6 September 2013, the Council claimed, in substance, that the new evidence had no bearing on the present application as the death of the applicant's husband and the fact that her children were at school in the United Arab Emirates did not alter her connections with the Syrian regime. In addition, the Council pointed out that the documents produced by the applicant did not prove that she had herself left Syria.

24 The parties presented oral argument and answered the oral questions put to them by the Court at the hearing on 12 September 2013. In particular, the applicant confirmed that the application initiating the proceedings referred to Decision 2012/172, by virtue of which her name was included in Annex I to Decision 2011/782. Formal notice of that statement was taken in the minutes of the hearing.

25 On the same occasion the Court requested the Council to produce proof that the applicant was individually notified of Implementing Regulation No 363/2013.

26 By letter lodged at the Registry of the General Court on 25 September 2013, the Council produced proof that, first, it had sent a copy of Implementing Regulation No 363/2013 and its corrigendum by registered letter of 13 May 2013 to one of the applicant's representatives in the present case and, secondly, that the representative had received that letter on 17 May 2013. The applicant's observations on the evidence provided by the Council were lodged at the Registry of the General Court on 7 October 2013.

27 By letter of 4 October 2013, the applicant requested that the procedure be suspended so that she could submit to the Council a request for her situation to be reviewed.

28 On 22 October 2013 the President of the Sixth Chamber of the General Court, first, after hearing the Council, dismissed the request for suspension and, secondly, decided to close the oral procedure.

29 The applicant claims that the Court should:

— annul Implementing Decision 2012/172 in so far as it concerns the applicant;

— annul Decision 2012/739 in so far as it concerns the applicant;

— annul Implementing Regulation No 363/2013 in so far as it concerns the applicant;

— annul Decision 2013/255 in so far as it concerns the applicant;

— order the Council to pay the costs.

30 The Council contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

Law

Admissibility of the applications for the amendment of pleadings

31 The applicant sought to extend the scope of her action for annulment to include Decision 2012/739, Implementing Regulation No 363/2013 and Decision 2013/255.

The application referring to Decision 2012/739 and the application referring to Decision 2013/255

32 It must be observed that, as appears from paragraphs 16 and 19 above, after the action was brought, first, Decision 2011/782, as amended by Implementing Decision 2012/172, was repealed and replaced by Decision 2012/739, and, secondly, that, as the latter was no longer applicable, Decision 2013/255 was adopted. The applicant's name appears on the lists constituting Annex I to Decision 2012/739 and Decision 2013/255, with the same grounds as those in Decision 2012/172, which are set out at paragraph 10 above.

33 In that connection, it must be observed that, where the decision which was originally contested is, during the proceedings, replaced by another decision with the same subject-matter, this is to be considered a new factor allowing the applicant to amend its claims and pleas in law. It is not acceptable for an EU institution or body, in response to criticism in an application directed against one of its decisions, to amend the decision or replace it by another and to use the amendment or replace it in the course of the proceedings in order to deprive the other party of the possibility of extending its original claims and pleas to the later decision or of presenting additional claims and pleas against it (Case 14/81 *Alpha Steel* v *Commission* [1982] ECR 749, paragraph 8, and judgment of 28 May 2013 in Case T-200/11 *Al Matri* v *Council,* not published in ECR, paragraph 80).

34 It must be held that the application concerning Decision 2012/739 and that concerning Decision 2013/255 are admissible. In view of the adoption dates, 29 November 2012 and 31 May 2013 respectively, of those decisions, by virtue of which the applicant continues to be covered by the restrictive measures against Syria, the applications lodged at the Registry of the General Court on 30 January and 30 July 2013 respectively were necessarily lodged within the time-limit for proceedings applicable to each of the decisions in question.

The application concerning Implementing Regulation No 363/2013

35 As is clear from paragraph 11 above, the applicant's name was added to the list in Annex II to Regulation No 36/2012 by Implementing Regulation No 266/2012.

36 It is not disputed that the application initiating the proceedings in the present case did not concern Regulation No 36/2012, as amended by Implementing Regulation No 266/2012.

37 It is also common ground that Implementing Regulation No 363/2013 modifies Regulation No 36/2012.

38 In that connection, it follows from the case-law cited in paragraph 33 above that the purpose of a request to amend claims is to enable the applicant to amend the scope of his action where the decision which was originally contested has been replaced or amended by another decision in the course of the proceedings.

39 In those circumstances, it must be held that the request concerning Implementing Regulation No 363/2013 is inadmissible because the applicant is extending the subject-matter of her action to a decision which she had omitted to contest in the application initiating the proceedings, and it is unnecessary to give a ruling on the question whether the request was submitted within the time-limit for bringing an action.

40 Consequently it must be held that the applicant may bring an action against Implementing Decision 2012/172 entering her name on the list in Annex I to Decision 2011/782, Decision 2012/739 and Decision 2013/255 in so far as those decisions relate to her (taken together, 'the contested decisions').

The substance of the case

41 In support of her action, the applicant relies, in essence, on the following four pleas in law:

— first, infringement of the rights of defence, the right to a fair hearing and the right to effective judicial protection;

— second, breach of the obligation to state reasons;

— third, lack of proof of a sufficient connection between herself and the situation giving rise to the adoption of restrictive measures against Syria;

— fourth, breach of the principle of proportionality, the right to property and the right to privacy.

42 It is appropriate to consider the second plea first, then the first, then the third and, finally, the fourth.

Second plea: breach of the obligation to state reasons

43 The applicant claims that the contested decisions do not give actual, specific reasons why the Council, in exercising its discretion, considered that she must be covered by the restrictive measures against Syria. The reasons given in the decisions are said to be vague and general and refer merely to her personal and family connections, instead of setting out objective factors justifying a finding that she takes part in the activities for which her relatives are said to be responsible.

44 In addition, she was not informed of any additional reasons following the adoption of the contested decisions.

45 The Council disputes the applicant's arguments.

46 First of all, it must be observed that the purpose of the obligation to state the reasons for an act adversely affecting a person, as provided for in the second paragraph of Article 296 TFEU, is, first, to provide the person concerned with sufficient information to make it possible to determine whether the act is well founded or whether it is vitiated by an error permitting its validity to be contested before the EU courts and, second, to enable the EU judicature to review the lawfulness of the act. The obligation to state reasons thus laid down constitutes an essential principle of EU law which may be derogated from only for compelling reasons. The statement of reasons must therefore in principle be notified to the person concerned at the same time as the act adversely affecting him, for failure to state the reasons cannot be remedied by the fact that the person concerned learns the reasons for the act during the proceedings before the EU judicature (see, to that effect, Case C-417/11 P *Council* v *Bamba* [2012] ECR, paragraph 49, and Case T-390/08 *Bank Melli Iran* v *Council* [2009] ECR II-3967, paragraph 80).

47 Consequently, unless there are compelling reasons touching on the security of the European Union or of its Member States or the conduct of their international relations which prevent the disclosure of certain information, the Council is required to inform the person or entity covered by restrictive measures of the actual and specific reasons why it considers that those measures had to be adopted. It must thus state the matters of fact and law which constitute the legal basis of the measures concerned and the considerations which led it to adopt them (see, to that effect, *Bank Melli Iran* v *Council*, cited above, paragraph 81).

48 Moreover, the statement of reasons must be appropriate to the measure at issue and to the context in which it was adopted. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the

reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the statement of reasons to specify all the relevant matters of fact and law, since the question whether the statement of reasons is adequate must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question. In particular, the reasons given for a decision are sufficient if it was adopted in circumstances known to the party concerned which enable him to understand the scope of the measure concerning him (*Council* v *Bamba*, cited above, paragraphs 53 and 54, and *Bank Melli Iran* v *Council*, cited above, paragraph 82).

49 In the present case, the reasons given by the Council since the inclusion of the applicant's name on the lists of restrictive measures against Syria have always been as follows:

'Sister of Bashar al Assad, and wife of Asif Shawkat, Deputy Chief of Staff for Security and Reconnaissance. Given the close personal relationship and intrinsic financial relationship to the Syrian President, Bashar Al Assad and other core Syrian regime figures, she benefits from and is associated with the Syrian regime.'

50 It must be observed that that statement of reasons made it clear to the applicant that her name was included on the lists of persons covered by the restrictive measures against Syria by reason of her personal and family connections.

51 Confirmation of the fact that the applicant did indeed understand that the Council took those connections into account is provided by the fact that, in the context of the present action, the applicant put forward a plea, the third, which disputes precisely the possibility that the Council could adopt restrictive measures against her solely on the basis of such connections.

52 Moreover, as the reasons for the Council's choice were clearly stated in the contested decisions, the Court is in a position to assess their merits.

53 In that connection, it must be borne in mind that the obligation to state reasons is an essential procedural requirement, as distinct from the question whether the reasons given are correct, which goes to the substantive legality of the contested measure. The reasoning of a decision consists in a formal statement of the grounds on which that decision is based. If those grounds are vitiated by errors, the latter will vitiate the substantive legality of the decision, but not the statement of reasons in it, which may be adequate even though it sets out reasons which are incorrect (see, to that effect, Case C-413/06 P *Bertelsmann and Sony Corporation of America* v *Impala* [2008] ECR I-4951, paragraph 181, and *Council v Bamba,* cited above, paragraph 60).

54 Consequently the plea concerning failure in the obligation to state reasons must be dismissed because the merits of the reasons given by the Council must be assessed in the context of the plea concerning the lack of proof of a sufficient connection between the applicant and the situation giving rise to restrictive measures against Syria.

First plea in law, concerning infringement of the rights of defence, the right to a fair hearing and the right to effective judicial protection

55 The applicant claims that she saw her name on the list of persons covered by the restrictive measures against Syria, which were of a penal nature, without having been informed beforehand of the reasons for the inclusion of her name and without having been given an opportunity to be heard in that connection. The need for those measures to have a surprise effect did not preclude a hearing before they were adopted.

56 In addition, according to the applicant, the Council failed in its obligation to notify her of Implementing Decision 2012/172, including the reasons for including her name, although her address must have been known. The publication of the Notice of 24 March 2012 had not given her an 'actual possibility' of submitting her observations on her inclusion on the list. The review procedure referred to by the Notice did not enable her to state her point of view effectively and did not offer sufficient safeguards. Therefore it was irrelevant that she had not submitted a request for that purpose.

57 Finally, the applicant claims that she has been unable to exercise her right to effective judicial protection as the Council has not informed her of the reasons why she was caught by the restrictive measures against Syria.

58 The Council disputes the applicant's arguments.

59 It must be observed that the fundamental right to observance of the rights of defence during a procedure preceding the adoption of a restrictive measure is expressly affirmed in Article 41(2)(a) of the Charter of Fundamental Rights of the European Union, recognised by Article 6(1) TEU as having the same legal value as the Treaties (see, to that effect, Case C-27/09 P *France* v *People's Mojahedin Organization of Iran* [2011] ECR I-13427, paragraph 66).

60 In addition, according to settled case-law, the principle of effective judicial protection is a general principle of EU law stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and which has also been reaffirmed by Article 47 of the Charter of Fundamental Rights of the European Union (Case C-432/05 *Unibet* [2007] ECR I-2271, paragraph 37, and Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation* v *Council and Commission* [2008] ECR I-6351, '*Kadi*', paragraph 335).

61 Furthermore, the effectiveness of judicial review, which it must be possible to apply to the lawfulness of the grounds on which a Union authority included the name of a person or entity in the lists of persons to whom restrictive measures adopted by that authority are applied, means that the Union authority in question is bound to communicate those grounds to the person or entity concerned, so far as possible, either when that inclusion is decided on or, at the very least, as swiftly as possible after that decision in order to enable those persons or entities to exercise, within the periods prescribed, their right to bring an action (see, to that effect, *Kadi*, paragraph 336).

62 Observance of that obligation to communicate the grounds is necessary both to enable the persons to whom restrictive measures are addressed to defend their rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any point in their applying to the EU judicature (see, to that effect, Case 222/86 *Heylens and Others* [1987] ECR 4097, paragraph 15), and to put the latter fully in a position in which it may carry out the review of the lawfulness of the EU measure in question which is its duty under the EC Treaty (*Kadi*, paragraph 337).

63 In accordance with the requirements laid down by that case-law, Article 21(2) and (3) of Decision 2011/782, Article 27(2) and (3) of Decision 2012/739 and Article 30(2) and (3) of Decision 2013/255 provide that the Council is to communicate its decision, including the grounds for their inclusion in the list, to the person concerned, either directly, if the address is known, or through the publication of a notice, providing such person with an opportunity to present observations. Where observations are submitted, or where substantial new evidence is presented, the Council must review its decision and inform the natural or legal person, entity or body concerned.

64 In the present case, following the adoption of Implementing Decision 2012/172, the notice of 24 March 2012 was published, thus giving the applicant the opportunity to submit her observations to the Council.

65 The fact that the notice was published after the applicant's name was first entered on the list of persons covered by the restrictive measures in question cannot be considered in itself as an infringement of the rights of defence.

66 On that point, the Court has consistently held that, so far as concerns the rights of the defence, in particular the right to be heard, with regard to restrictive measures, the Union authorities cannot be required to communicate those grounds before the name of a person or entity concerned is entered in that list for the first time (see, to that effect, *Kadi*, paragraph 338).

67 Such prior communication would be liable to jeopardise the effectiveness of the freezing of funds and resources imposed by those authorities (see, to that effect, *Kadi*, paragraph 339).

68 In order to attain the objective pursued by that regulation, such measures must, by their very nature, take advantage of a surprise effect and apply with immediate effect (see, to that effect, *Kadi*, paragraph 340).

69 Therefore the Council was not required to hear the applicant before placing her name for the first time on the lists of persons covered by the restrictive measures against Syria.

70 However, regarding the adoption of Decision 2012/739 and Decision 2013/255, which are subsequent decisions retaining the applicant's name on the lists of persons subject to restrictive measures, the argument concerning a surprise effect of those measures cannot in principle be put forward (see, to that effect and by analogy, *France* v *People's Mojahedin Organization of Iran,* cited above, paragraph 62.)

71 However, it follows from the case-law that the right to be heard prior to the adoption of decisions maintaining restrictive measures against persons already covered by them presupposes that the Council has new incriminating evidence against those persons (see, to that effect and by analogy, *France* v *People's Mojahedin Organization of Iran,* cited above, paragraph 63).

72 In the present case, it must be observed that the Council, when it retained the applicant's name on the lists of persons covered by the restrictive measures against Syria, had no new evidence which had not already been communicated to the applicant following the original inclusion of her name.

73 On that point, it should be noted that, in accordance with the provisions referred to in paragraph 63 above, it was open to the applicant, on her own initiative, to inform the Council of her views without being expressly invited to do so prior to the adoption of every subsequent decision, in the absence of new evidence concerning her.

74 However, the applicant did not avail herself of that option.

75 Furthermore, on the publication date of Decision 2012/739, the Council published in the *Official Journal of the European Union* a notice for the attention of persons and entities to which the restrictive measures provided for in Decision 2012/739 and in Regulation No 36/2012, as implemented by Council Implementing Regulation (EU) 1117/2012 (OJ 2012 C 370, p. 6) apply.

76 Likewise on 23 April 2013 the Council published in the *Official Journal of the European Union* a notice for the attention of persons and entities to which the restrictive measures provided for in Decision 2012/739, implemented by Council Implementing Decision 2013/185/CFSP and by Regulation No 36/2012, as implemented by Implementing Regulation No 363/2013 (OJ 2013 C 115, p. 5) apply.

77 The content of those notices corresponds in essence to that of the notice of 24 March 2012.

78 In those circumstances it must be held that the applicant had an opportunity for several months in which to dispute the evidence justifying the inclusion of her name and its retention in the annex referring to persons subject to restrictive measures.

79 With regard to the Council's refusal of the applicant's request to be heard at a formal hearing, it is sufficient to state that neither the legislation in question nor the general principle of observance of the rights of the defence give the persons concerned the right to such a hearing (see, by analogy, Case T-256/07 *People's Mojahedin Organization of Iran* v *Council* [2008] ECR II-3019, paragraph 93, and the case-law cited).

80 With regard to the applicant's argument concerning the absence of individual notification of Implementing Decision 2012/172, it must be observed that the applicant did not even attempt to question the Council's statement that it did not have her address at the date of adoption of that decision.

81 In any case, assuming that the Council must have known the applicant's address, it must observed, first, that the absence of individual notification of Implementing Decision 2012/172, although it affects the date on which the time-limit for bringing an action began to run, does not on its own justify the annulment of the decision in question. Secondly, the applicant does not put forward any arguments that would demonstrate that, in the present case, the failure to give individual notice of Implementing Decision 2012/172 resulted in an infringement of her rights which would justify the annulment of the decision in so far as it concerns the applicant.

82 Therefore it must be held that applicant's rights of defence were not infringed either when her name was entered or retained on the lists of persons covered by the restrictive measures against Syria.

83 Consequently, the present plea must be dismissed.

The third plea: no evidence of a sufficient connection between the applicant and the situation giving rise to the adoption of restrictive measures against Syria

84 The applicant complains that the contested decisions contain no evidence of the existence of a connection between, on the one hand, herself, her behaviour and her activities and, on the other hand, the objectives of the restrictive measures against Syria. As the applicant is only a mother at home who has no public or economic duties, the mere existence of the personal and family connections referred to in the abovementioned decisions do not justify the inclusion of her name on the lists of persons covered by those measures. In addition, she points out that in the meantime her husband has died.

85 According to the applicant, the Council unjustifiably presumed, from her personal and family connections, that she profited from the Syrian regime and was associated with it, although it should have included her name on the lists in question only if it had proof of actual activity establishing her personal responsibility. On that point, the applicant refers to Case C-376/10 P *Tay Za* v *Council* [2012] ECR. In addition, she submits that the General Court cannot confine itself to verifying the hypothetical probability of the grounds put forward by the Council, but must satisfy itself that the Council relied on actual and specific information and evidence, which is not the case here. The assessment must be of the same kind as that carried out by the Court in relation to restrictive measures against terrorists.

86 Finally, the applicant observes that the alleged absence of any proof in the contested decisions cannot be mitigated by the extracts from Internet sites produced by the Council before the Court in order to show that the applicant is involved in Syrian political life. The information in question is pure speculation.

87 The Council disputes the applicant's arguments.

88 It must be observed that, under Article 18(1) and Article 19(1) of Decision 2011/782, restrictions on admission to the territory of the Member States and the freezing of funds and economic resources apply not only to the persons responsible for the violent repression against the civilian population in Syria, but also to persons benefiting from or supporting the regime, and persons associated with them. Those provisions reappear in Article 24(1) and Article 25(1) of Decision 2012/739 and Article 27(1) and Article 28(1) of Decision 2013/255.

89 In proceeding in that way, the Council intended to fall back on a presumption that persons whose connections with members of the Syrian regime were proved were deemed to benefit from that regime or to support it and were therefore associated with it.

90 With regard to the applicant, the Council considered that she 'profited from the Syrian regime and [was] associated with it' because she was the sister of the president, Mr Bashar Al Assad, the wife of Mr Asif Shawkat, the Deputy Chief of Staff for Security and Reconnaissance, and she had close relations with other key members of the Syrian regime.

91 It is necessary to determine whether, by proceeding in that way, the Council erred in law.

92 First of all, it must be borne in mind that, regarding restrictive measures applying to a third country, it has consistently been held that the categories of natural persons at whom restrictive measures may be directed include those whose connection with the third country concerned is quite obvious, namely the leaders of third countries and the individuals associated with them. Therefore such a criterion may be used provided that it is provided for by the decisions containing the restrictive measures in question and that it is consistent with the objective of those decisions (see, to that effect, *Tay Za* v *Council*, cited above, paragraphs 68 and 69).

93 In the present case, first, the applicant is manifestly a person connected with the leaders of the Syrian regime by reason of her family connection with the President of that country and, while he was alive, the posts held by her husband.

94 On the other hand, first, after the latter's death, it was for the Council to modify Decision 2012/739 in that respect and to take account of that event when adopting Decision 2013/255.

95 Second, the reference to 'other key members of the Syrian regime' is too vague and is not sufficient to justify the inclusion of the applicant's name and retaining it on the lists of persons covered by the restrictive measures in question.

96 However, the mere fact that the applicant is the sister of Mr Bashar Al Assad is sufficient for the Council to consider that she is connected with the Syrian leaders within the meaning of the provisions mentioned in paragraph 88 above, particularly as the existence in that country of a tradition of the exercise of power by a family is a well-known fact which the Council was entitled to take into account.

97 Therefore, contrary to what the applicant in essence claims, the application to her situation of a presumption that she profits from the Syrian regime and is associated with it is not contrary to the implications of the *Tay Za* v *Council* judgment cited above. In that judgment the Court considered that the link between a State targeted by restrictive measures adopted by the Council and a natural person belonging to the family of a leading business figure deemed to be associated with the government of that State was not sufficient for that person to be targeted by the said restrictive measures (see, to that effect, *Tay Za* v *Council*, paragraphs 63 to 65). However, the Court accepted that persons whose connection with the third country concerned is quite obvious, namely the leaders of third countries and the individuals associated with them, may be included in the categories of

natural persons at whom targeted restrictive measures may be directed (see, to that effect, *Tay Za* v *Council*, paragraph 68). It is clear that the connection in question in the present case between the applicant and the Syrian regime is significantly more direct and is therefore not open to the same censure as that expressed by the Court in the abovementioned judgment.

98 Secondly, it is necessary to consider whether the Council's presumption that the applicant profits from the Syrian regime and is associated with it is proportionate to the objective which it pursues and whether it is rebuttable, since the question whether it preserves the applicant's rights of defence was considered in the context of the first plea.

99 As appears from the recitals of Decision 2011/273, the Council instituted restrictive measures against a non-member country, namely Syria, in reaction to the violent repression of the civil population by the authorities of that country. The same concern underlies the contested decisions, which succeeded Decision 2011/273. On that point, it must be observed that, if the restrictive measures in question targeted only the leaders of the Syrian regime, the objectives pursued by the Council could have been frustrated as the leaders can easily circumvent those measures by means of their relatives and associates. On that point, it has consistently been held that the concept of a non-member country may include not only the rulers of such a country, but also individuals and entities associated with them (see, to that effect and by analogy, *Tay Za* v *Council*, paragraphs 43 and 63, and the case-law cited).

100 In addition, the presumption in question is rebuttable. It follows from the provisions mentioned at paragraph 63 above that the Council gives the persons targeted by the restrictive measures in question the opportunity to submit observations and it reviews its decision if substantial new evidence is presented or if observations are formulated. Therefore the persons targeted by restrictive measures remain free to refute that presumption by showing that in spite of their personal or family connections with the leaders of the Syrian regime, they do not profit from it and are therefore not associated with it, relying in particular on facts and information available to them alone.

101 Although, according to settled case-law, it is the task of the competent European Union authority to establish, in the event of challenge, that the reasons relied on against the person concerned are well founded, and not the task of that person to adduce evidence of the negative, that those reasons are not well founded (Joined Cases C-584/10P, C-593/10 P and C-595/10 P *Commission and Others* v *Kadi* [2013] ECR, paragraph 121; see also, to that effect, *Bank Melli Iran* v *Council*, paragraphs 37 and 107), it must be observed that, in the present case, the applicant does not deny that she is the sister of Mr Bashar Al Assad, as the Council accepted, but merely criticises the conclusions drawn from that by the Council, namely that she profits from the Syrian regime and is associated with it.

102 However, the applicant has not taken the opportunity either to submit observations to the Council in order to explain why her family connection did not justify her inclusion on the list or to submit a request for review of her situation by presenting evidence that, in spite of her relationship to Mr Bashar Al Assad, she did not profit from the Syrian regime and was not associated with it.

103 Before the General Court, first, the applicant merely made statements concerning her alleged role as a mother at home, to which the Council replied by producing, for example, extracts from the Internet sites of certain media referring to the applicant's political role. The extracts do not serve to prove the applicant's direct involvement in the repression of the civilian population in Syria, but only to confirm that the Council was justified in presuming that she was associated with the regime.

104 Secondly, the applicant offered further evidence (see paragraph 20 above) concerning the fact that her children were then at school in the United Arab Emirates. Even if that justifies the conclusion that the applicant herself has left Syria, it is not in itself sufficient to find that the applicant has dissociated

herself from the Syrian regime and has therefore had to flee the country. As the Council observes, the applicant's change of residence, if any, may be explained by several other reasons, such as the deterioration in the security situation in Syria.

105 Third, the use of the presumption applied by the Council was provided for by the contested decisions (see paragraph 88 above) and it enables their objectives to be met (see paragraph 99 above).

106 Having regard to the foregoing, the present plea in law must be dismissed.

Fourth plea in law: breach of the principle of proportionality, the right to property and the right to privacy

107 The applicant claims that her inclusion on the lists of persons targeted by the restrictive measures against Syria is inconsistent with the principle of proportionality enshrined in Article 52(1) of the Charter of Fundamental Rights. In default of evidence of reprehensible conduct on her part, her inclusion was unnecessary and did not meet the objectives of those measures.

108 According to the applicant, the freezing of her assets as a result of the contested decisions also violates her right to property, protected by Article 17(1) of the Charter of Fundamental Rights, as it prevents her from freely enjoying her property, and such restriction was neither necessary nor appropriate for attaining the Council's objectives. In spite of their protective nature and their applicability only to economic resources situated within the Union, the restrictive measures against her deprive her of her right to property as she is unable to make dispositions of it.

109 For similar reasons, the restrictions imposed by the measures in question on her freedom to travel infringe her right to private life, recognised by Article 7 of the Charter of Fundamental Rights.

110 Finally, the applicant observes that the possibilities, laid down in the contested decisions, of allowing exceptions from those restrictions are not sufficient as they entail an additional request which has to be submitted *ex post facto*, after the actual substance of the rights in question has been impaired, and allowing exceptions is a matter for the discretion of the Council and the Member States.

111 The Council disputes the applicant's arguments.

112 It must be observed that the right to property is one of the general principles of Union law and is enshrined by Article 17 of the Charter of Fundamental Rights. Regarding the right to respect for private life, Article 7 of the Charter recognises the right to respect for private and family life (see, to that effect, Joined Cases C-356/11 and C-357/11 *O. and Others* [2012] ECR, paragraph 76).

113 It has consistently been held that in Union law those fundamental rights do not have absolute protection, but must be viewed in relation to their function in society (see, to that effect, *Kadi*, paragraph 355). Consequently, their exercise may be restricted, provided that those restrictions in fact correspond to objectives of general interest pursued by the Union and do not constitute a disproportionate and intolerable interference, impairing the very substance of the rights guaranteed (see, to that effect, Case C-84/95 *Bosphorus* [1996] ECR I-3953, paragraph 21, and Joined Cases C-539/10 P and C-550/10 P *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa* [2012] ECR, paragraph 121).

114 In addition, it is settled case-law that the principle of proportionality is one of the general principles of EU law and requires that measures implemented through provisions of EU law be appropriate for attaining the legitimate objectives pursued by the legislation at issue and must not go beyond what is necessary to achieve them (Case C-176/09 *Luxembourg* v *Parliament and Council* [2011] ECR I-3727, paragraph 61, and *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa* cited above, paragraph 122).

115 In the present case, the freezing of funds, financial assets and other economic resources of persons identified as being associated with the Syrian regime and the ban on their entering Union territory ('the measures in question') imposed by the contested decisions are precautionary measures which are not supposed to deprive those persons of their property or of the right to respect for their privacy (see, to that effect and by analogy, *Kadi*, paragraph 358). However, the measures in question undeniably entail a restriction of the exercise of the applicant's right to property and affect her private life (see, to that effect and by analogy, *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, paragraph 120).

116 As to whether the measures in question are appropriate for attaining the objectives pursued, with reference to an objective of general interest as fundamental to the international community as the protection of civilian populations, those measures cannot per se be regarded as inappropriate (see, to that effect, *Bosphorus*, paragraph 26; *Kadi*, paragraph 363, and *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, paragraph 123).

117 As regards the necessity of the measures, it should be noted that alternative and less restrictive measures, such as a system of prior authorisation or an obligation to justify, a posteriori, how the funds transferred were used, are not as effective in achieving the goal pursued, namely applying pressure to supporters of the Syrian regime persecuting civilian populations, particularly given the possibility of circumventing such restrictions (see, by analogy, *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, paragraph 125).

118 In addition, it must be borne in mind that Article 19(3) to (7) of Decision 2011/782, Article 25(3) to (11) of Decision 2012/739 and Article 28(3) to (11) of Decision 2013/255 provide for the possibility, first, of authorising the use of frozen funds in order to meet basic needs or to meet certain commitments and, secondly, of granting specific authorisations permitting the release of funds, other financial assets or other economic resources.

119 Likewise, under Article 18(6) of Decision 2011/782, Article 24(6) of Decision 2012/739 and Article 27(6) of Decision 2013/255, the competent authority of a Member State may authorise entry to its territory on urgent humanitarian grounds.

120 Finally, the maintenance of the appellant on the list at issue by the contested acts cannot be qualified as disproportionate for being allegedly potentially unlimited, since such lists are subject to periodic review so as to ensure that the persons who, and entities which, no longer meet the necessary criteria are removed from the list at issue (see, by analogy, *Kadi*, paragraph 365, and *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, paragraph 129).

121 It follows that, in view of the primary importance of protecting the civilian populations in Syria and the exceptions allowed by the contested decisions, the restrictions of the right to property and respect for the applicant's private life caused by the contested decisions are not disproportionate.

122 Consequently, the fourth plea must be dismissed and the action dismissed in its entirety.

Costs

123 Under Article 87(2) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the applicant has been unsuccessful, she must be ordered to pay the costs, in accordance with the forms of order sought by the Council.

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby:

1. Dismisses the action;

2. Orders Ms Bouchra Al Assad to pay the costs.

Kanninen Berardis Wetter

Delivered in open court in Luxembourg on 12 March 2014.

[Signatures]