



Press and Information

Court of Justice of the European Union

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Judgment in Case C-239/12 P

Abdulbasit Abdulrahim v Council and Commission

A person who was the subject of a measure freezing funds retains an interest in it being annulled by the Courts of the EU despite its repeal

Recognition of the illegality can constitute a form of reparation for the non-material harm suffered

On 21 October 2008, Mr Abdulrahim's name was entered on the list, established in 1999, drawn up by the Sanctions Committee¹ of the United Nations Security Council relating to the situation in Afghanistan, on the basis that he had been involved in fundraising on behalf of the Libyan Islamic Fighting Group ('the LIFG') and had held senior positions within the LIFG. Consequently, Mr Abdulrahim was included on the list drawn up under the EU legislation² adopted in respect of persons and entities whose funds must be frozen, by virtue of a regulation imposing certain restrictive measures directed against persons associated with Usama bin Laden³ ('the list at issue').

In 2009 Mr Abdulrahim brought an action before the Court of First Instance of the EU (now 'the General Court') for annulment of the EU legislation concerning him. He submitted that the Council and the Commission had not explained the reasons for his inclusion and that he had not been informed of the evidence used against him or been heard in that regard. He argued that the freezing of funds, which infringed his right to property and to private life, was a disproportionate measure. Finally, he contended that he had never been associated with Usama bin Laden, the Al-Qaida network or the Taliban.

When the case was in the course of being examined by the General Court, Mr Abdulrahim's name was first removed from the Sanctions Committee list and then, by a 2002 regulation⁴, from the list at issue. Since it considered that the application for annulment had therefore become devoid of purpose, the General Court, despite Mr Abdulrahim's opposition, ruled by an order⁵ that there was no longer any need to adjudicate.

In support of his appeal to the Court of Justice against the order, Mr Abdulrahim has submitted that the General Court erred in law in holding that he no longer had an interest in bringing proceedings because the annulment of the regulation by which he had been included on the list at issue could not procure him any advantage.

He has pleaded in particular that he has a clear interest in a judicial decision being delivered in order to annul the measure which designates him as a person associated with a terrorist organisation. Specifically, his action for annulment before the General Court had the aim of ending the continuous breach of his right to private and family life, of restoring his reputation, of removing

¹ Committee established by United Nations Security Council Resolution 1267 (1999) of 15 October 1999 on the situation in Afghanistan.

² Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban (OJ 2002 L 139, p. 9).

³ Commission Regulation (EC) No 1330/2008 of 22 December 2008 (OJ 2008 L 345, p. 60).

⁴ Commission Regulation (EU) No 36/2011 of 18 January 2011 amending for the 143rd time Regulation No 881/2002 (OJ 2011 L 14, p. 11).

⁵ Case [T-127/09](#). Under Article 113 of its Rules of Procedure, the General Court may, by order, decide whether there exists any absolute bar to proceeding with an action or declare that the action has become devoid of purpose and that there is no need to adjudicate on it.

bars to employment and travel, and of removing the effects of his inclusion on the list at issue on him and his family.

In its judgment delivered today, the Court first of all recalls its case-law by which it has acknowledged that an applicant's interest in bringing proceedings does not necessarily disappear because the act being challenged has ceased to have effect in the course of proceedings. On the contrary, the person concerned by that act retains an interest in its annulment in order to be restored to his original position, in order to induce the author of the contested act to make suitable amendments in the future, and thereby avoid the risk that the unlawfulness will be repeated, or in order to bring any proceedings for damages.

The Court then confirms the distinction drawn by the General Court between the repeal of an act (which does not entail retroactive recognition of its illegality) and a judgment annulling an act (by virtue of which the act is removed retroactively from the legal order and is deemed never to have existed). The Court holds that the General Court wrongly concluded that that distinction would not be able to substantiate an interest on the part of Mr Abdulrahim in securing the annulment of the regulation affecting him.

The Court points out that restrictive measures have concrete negative consequences on the rights and freedoms of the persons covered; the freezing of funds seriously disrupts their working and family life and impedes their freedom to conclude legal acts. Furthermore, restrictive measures result in opprobrium and social suspicion.

The Court draws the conclusion that, **despite the removal of his name from the list, Mr Abdulrahim retains an interest in having the Courts of the EU recognise that he should never have been included on it.**

In the light of the extent of the damage to Mr Abdulrahim's reputation, he retains his interest in bringing proceedings for the purpose of seeking annulment of Regulation No 1330/2008 in so far as it concerns him and of securing, should his action be upheld, his rehabilitation and, thus, some form of reparation for the non-material harm suffered by him.

Consequently, **the General Court erred in law in holding that Mr Abdulrahim no longer had an interest in bringing proceedings.**

Since the General Court did not examine the substance of the dispute, the Court of Justice holds that the state of the proceedings do not permit final judgment to be given in the matter and **refers the case back to the General Court.**

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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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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