



The General Court annuls the extension of Mr Mehdi Ben Ali's inclusion on the list of persons whose funds are to be frozen in view of the situation in Tunisia

The effects of the annulled decision are maintained however, at least until the date of expiry of the period for bringing an appeal, in order to ensure the effectiveness of any future freezing of funds

On 31 January 2011, the Council provided for the funds of persons responsible for misappropriation of Tunisian State funds, and persons or entities associated with them, to be frozen¹.

On 4 February 2011, the name of Mr Mehdi Ben Ali, nephew of the former Tunisian President Zine el-Abidine Ben Ali, was entered on the list of persons whose funds were to be frozen², on the ground that he was subject to judicial investigation by the Tunisian authorities in respect of the acquisition of movable and immovable property, the opening of bank accounts and the holding of financial assets in several countries as part of money-laundering operations. Consequently, the funds and economic resources of Mr Ben Ali were frozen until 31 January 2012.

An initial action for annulment brought before the General Court by Mr Ben Ali was dismissed for being out of time³. The Council subsequently extended Mr Ben Ali's listing from 31 January 2012 to 31 January 2013⁴. Mr Ben Ali then brought an action seeking annulment of that extension and damages in the amount of €50 000.

Mr Ben Ali submits in particular that his funds were frozen because he is subject to a 'judicial investigation', whereas the freeze was introduced in respect of persons declared 'responsible' for certain matters, not persons who are merely the subject of proceedings. In examining that argument, the General Court notes that the investigation initiated in respect of Mr Ben Ali concerns **money laundering**, whereas the restrictive measures were taken against persons responsible for **misappropriation of Tunisian State funds** and those associated with them. The General Court considers that the Council has not established or even maintained that an individual may be described, under Tunisian criminal law, as being 'responsible for misappropriation of State funds' (or as being associated with one of those responsible for such acts) merely because he is subject to a 'judicial investigation' for 'money-laundering' offences. The General Court therefore considers that the Council maintained Mr Ben Ali's listing on the basis of criteria other than those it had itself drawn up.

The General Court also points out that, owing to the lack of a legal basis, the conditions required in order for the extension of the freezing of funds to be compatible with the right to property are not satisfied.

¹ Decision 2011/72/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia (OJ 2011 L 28, p. 62).

² Council Implementing Decision 2011/79/CFSP of 4 February 2011 implementing Decision 2011/72 (OJ 2011 L 31, p. 40) and Council Regulation (EU) No 101/2011 of 4 February 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Tunisia (OJ 2011 L 31, p. 1).

³ Order of 11 January 2012 in [Case T-301/11 Ben Ali v Council](#). The action for annulment was directed against Regulation No 101/2011.

⁴ Council Decision 2012/50/CFSP of 27 January 2012 amending Decision 2011/72 (OJ 2012 L 27, p. 11). It should be noted that, by Decision 2013/72/CFSP, the Council again extended Mr Ben Ali's listing from 31 January 2013 to 31 January 2014. Mr Ben Ali has brought an action for annulment against that decision also (Case [T-166/13](#)).

On those grounds, the General Court has decided to annul the extension of Mr Ben Ali's listing, so that he is deemed no longer to be mentioned on the list of restrictive measures between 31 January 2012 and 31 January 2013. However, the General Court considers that, if the judgment were to take effect immediately, Mr Ben Ali could transfer all or part of his assets out of the EU as soon as judgment had been delivered, with the result that serious and irreparable harm might be caused to the effectiveness of any freezing of funds that might, in the future, be decided on by the Council in his case. According to the General Court, the possibility remains that the retention of the applicant's name on the list is justified for reasons other than those stated in the contested decision. The General Court has therefore decided to maintain the effects of the contested decision until the date of expiry of the period for bringing an appeal or, if an appeal is brought within that period, until the date of its dismissal.

As regards the action for damages, Mr Ben Ali submits that the freezing of his assets has resulted in a number of missed payments and has plunged him into an intolerable and unwarranted situation, since no bills (water, electricity, gas...) can be paid. Furthermore, his daughter's school fees could not be paid, as a result of which the seven-year-old child has been threatened with exclusion (and, moreover, it has not been possible to re-register her at the school). However, the General Court dismisses the action for lack of proof of the facts alleged.

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.

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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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