



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 143/11

Luxembourg, 21 December 2011

Judgment in Case C-72/11
Afrasiabi and Others

Court of Justice clarifies EU rules intended to combat nuclear proliferation in Iran

The supply and installation in Iran of a sintering furnace in working condition but not yet ready for use for the benefit of a third party which intends to use it to manufacture nuclear missile components for an entity subject to restrictive measures are prohibited

In December 2006 the United Nations Security Council adopted a resolution¹ which institutes a certain number of restrictive measures against Iran to apply pressure on it to end its proliferation-sensitive nuclear activities and the development of nuclear weapon delivery systems (missiles).

In order to implement that resolution, the Council of the EU adopted a regulation in 2007² which, in particular, prohibits the making available, directly or indirectly, of funds or economic resources to or for the benefit of the natural or legal persons, entities or bodies listed in annexes to the regulation. Inter alia, that list includes Shahid Hemmat Industrial Group (SHIG). In addition, the regulation prohibits participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to circumvent, inter alia, that prohibition. Furthermore, the regulation regards controlled atmosphere heat treatment furnaces capable of operation at temperatures above 400°C as likely to be proliferation sensitive and therefore makes their export, direct or indirect, to Iran subject to prior authorisation.

The Generalbundesanwalt beim Bundesgerichtshof (Federal Public Prosecutor General at the Federal Court of Justice, Germany) brought criminal proceedings before the Oberlandesgericht Düsseldorf (Higher Regional Court) against Mr Afrasiabi, Mr Sahabi and Mr Kessel whom he suspects of having infringed that regulation by participating in the supply from Germany and installation in Iran of a ceramic sintering furnace.

The manufacture of long range missiles, which can be used as delivery systems for weapons of mass destruction, requires the use of sintering furnaces, enabling the application of refractory linings to some components. In order to acquire such a furnace for his Iranian company Emen Survey – but, according to the allegations of the Public Prosecutor General, for the benefit of SHIG, which acts as the central procurement agent for the Iranian missile programme – Mr Afrasiabi contacted, through Mr Sahabi, Mr Kessel, Director of the German manufacturing company FCT Systeme GmbH. That company supplied the furnace to Emen Survey in July 2007. In addition, Mr Kessel sent two engineers to Teheran who installed the furnace but not the software necessary for it to be used. Mr Afrasiabi intended to manufacture, at a later date, using that furnace, nuclear missile components for SHIG, which in the end did not happen, since Mr Kessel had not made the furnace ready to use. The Oberlandesgericht Düsseldorf, which is called upon to rule on the opening of the substantive criminal proceedings, is doubtful as to the interpretation of the regulation and has referred questions to the Court of Justice in that regard.

By its judgment delivered today, the Court states that a sintering furnace constitutes an economic resource within the meaning of the regulation. Having regard to the risk it may be diverted in order to support proliferation-sensitive nuclear activities in Iran, it is not necessary that that furnace be

¹ Resolution 1737 (2006) of 23 December 2006.

² Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1), adopted on the basis of Common Position 2007/140/CFSP of 27 February 2007 concerning restrictive measures against Iran (OJ 2007 L 61, p. 49).

immediately ready for use. The acts of supplying from a Member State and installing in Iran such a furnace for the benefit of a person and, similarly, the acts relating to the preparation and follow-up of the supply or installation of that furnace or even the organisation of contact between the persons involved are likely to fall within the scope of the concept of 'making available'. Having regard to the fact that it is SHIG and not Mr Afrasiabi which is listed in the annex to the regulation, the Court points out that, if Mr Afrasiabi acted on behalf, under the control or on the instructions of SHIG and intended to use the furnace for the benefit of SHIG, which it is for the Oberlandesgericht Düsseldorf to ascertain, that court is entitled to conclude that the furnace was indirectly made available to SHIG.

Furthermore, although the prohibition laid down in the regulation encompasses all persons implicated in the prohibited acts, it applies only to those who knew or, at least, should reasonably have suspected that those acts infringe that prohibition.

In conclusion, the Court's answer is that the prohibition on indirectly making available an economic resource, within the meaning of the regulation, encompasses acts relating to the supply and installation in Iran of a sintering furnace in working condition but not yet ready to use for the benefit of a third party which, acting on behalf, under the control or on the instructions of a person, an entity or a body listed in the annexes to that regulation, intends to use that furnace to manufacture, for the benefit of such a person, entity or body, goods capable of contributing to nuclear proliferation in that State.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355

Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106