



Press and Information

General Court of the European Union

**PRESS RELEASE No 182/18**

Luxembourg, 22 November 2018

Judgments in Cases T-274/16 Saleh Thabet v Council and T-275/16 Mubarak and Others v Council

## **The General Court upholds the Council's decision to freeze the assets of members of the Mubarak family, on the basis of judicial proceedings relating to misappropriation of Egyptian State funds**

*The Council had sufficient information at its disposal with regard to the political and judicial context in Egypt, and the judicial proceedings to which members of the Mubarak family were subject, to adopt the decision*

In the wake of the political events which took place in Egypt from January 2011, the Council of the European Union adopted, on 21 March 2011, a decision concerning restrictive measures directed against certain persons identified as being responsible for misappropriation of Egyptian State funds and persons associated with them. The decision, which sought to freeze all the funds of those individuals in the European Union, was part of a policy of support for a peaceful transition to a civilian and democratic government in Egypt based on the rule of law.

That decision, which was renewed in the years following 2011, concerns, inter alia, Ms Suzanne Saleh Thabet, the wife of the former Egyptian President Mr Muhammad Hosni Mubarak, their sons, and their sons' wives, on the ground that they are subject to judicial proceedings initiated by the Egyptian authorities for misappropriation of State funds. Those individuals asked the General Court to annul the acts renewing the freezing of their assets in 2016 and in 2017, arguing that there is no legal basis for them, that the judicial proceedings in Egypt do not respect the right to an effective remedy and the presumption of innocence protected by the Charter of Fundamental Rights of the European Union, and that the Council infringed the criteria laid down by the decision, the rights of the defence and the principle of proportionality.

In today's judgments, the General Court **dismisses the actions and upholds the Council's decisions to renew the freezing of the applicants' assets.**

The Court examines, first of all, the lawfulness of the renewal of the restrictive measures as a whole, which the applicants challenged on the basis of Article 277 TFEU.

It recalls, first, that the choice of legal basis for an EU measure must rest on objective factors amenable to judicial review. The purpose of the Council's decisions, which is to freeze the assets of persons responsible for misappropriation of Egyptian State funds and of persons associated with them, meets the objectives of consolidation of and support for democracy, the rule of law, human rights and the principles of international law. Therefore, those decisions can be regarded as falling within the common foreign and security policy of the EU and could be adopted on the basis of Article 29 TEU.

The Court goes on to point out that, even on the assumption that the situation in Egypt has evolved since 2011, and in a manner contrary to the democratisation process, that does not affect the Council's power to renew its original decision.

Second, in examining whether, for the purpose of renewing its decision, the Council did not manifestly disregard the importance and gravity of the material concerning the political and judicial context in Egypt, the Court finds that the restrictive measures must, in principle, be maintained until the conclusion of the judicial proceedings in Egypt in order to ensure their effectiveness.

Consequently, they do not depend on successive changes of government in Egypt, in the context of the process of political transition.

The Court notes, third, that the evidence provided by the applicants does not, in itself, support the conclusion that the capacity of the Egyptian authorities to ensure that the rule of law and fundamental rights are upheld in the context of the judicial proceedings on which the Council's decision is based is definitively compromised by the political and judicial developments referred to.

The Council did not, therefore, make a manifest error of assessment in finding that it had sufficient information at its disposal with regard to the political and judicial context in Egypt to continue to cooperate with the Egyptian authorities.

Next, the Court examines the arguments put forward by the applicants specifically to challenge the lawfulness of the individual decisions renewing the freezing of their assets.

As regards, first, the applicants' arguments in relation to infringements by the Egyptian authorities of the applicants' right to an effective remedy and the presumption of innocence, the Court observes, as a preliminary point, that the Council can rely on the judicial proceedings pending in Egypt only if it is reasonable to assume that the decisions taken at the end of those proceedings will be reliable, that is to say, free from any denial of justice or arbitrariness. The Council can therefore be required to verify the applicants' allegations concerning infringements of the rights in question, if they give rise to legitimate questions.

The Court observes, in this case, that the information put forward by the applicants in relation to infringements of their right to an effective remedy and the presumption of innocence relates partly to the general situation as regards fundamental rights in Egypt in the period from 2013 to 2017 or to the judicial treatment of the former Egyptian President and is not directly linked to their own situation. Moreover, the evidence relating to the criminal proceedings brought against the sons of Mr Mubarak does not reflect a lack of impartiality or independence on the part of the Egyptian authorities. Consequently, it does not constitute sufficiently precise, specific and consistent evidence such as to give rise to legitimate questions on the part of the Council.

Second, as regards infringement of the general criteria of the decision, the Court notes as a preliminary point that, according to the case-law, those criteria are to be interpreted broadly. Thus, it is sufficient that the applicants are subject to ongoing judicial proceedings in respect of conduct that could be characterised as misappropriation of State funds. Moreover, in the context of cooperation with the Egyptian authorities, it is not for the Council, in principle, to verify the accuracy and relevance of the information on which the criminal proceedings involving the applicants are based. The Court also finds that the concept of judicial proceedings covers proceedings taken to enforce a final judicial decision.

In the present case, as regards, first of all, Ms Saleh Thabet, the Court notes that she is mentioned in the documents provided by the Egyptian Prosecutor General's Office as being subject to several sets of ongoing judicial proceedings concerning, in particular, the distribution of luxury gifts purchased by State-owned newspapers. In so far as it is sufficiently clear from those documents that the prosecutor characterised the conduct in question, in essence, as misappropriation of State funds, the Court considers that Ms Saleh Thabet satisfied the decision criteria. In the case of Mr Mubarak's sons, the Court finds, in particular, that the Council was entitled to rely on judicial proceedings relating to the use of State funds for the renovation of private residences, since, as at the date of the contested decisions, the sons had not succeeded in reaching a settlement. Last, in the case of the sons' wives, the Court finds, in particular, that they are subject to precautionary measures that are in force and that are linked to the criminal proceedings involving their husbands.

Third, as regards the rights of the defence, the Court states that, in order for the existence of an irregularity relating to the rights of the defence to result in annulment of a disputed act, it must have been possible for the procedure to have resulted in a different outcome due to that irregularity, thus adversely affecting an applicant's rights of defence, which is not the case here.

Fourth, as to the alleged breach of the principle of proportionality, the Court considers that the restrictive measures taken by the Council in the context of its decision do pursue an objective of general interest, which is to support the rule of law. They are necessary and proportional to that objective, being, by nature, temporary and reversible.

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**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 EU 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 judgments [T-274/16](#) and [T-275/16](#) are published on the CURIA website on the day of delivery*

*Press contact: ☎ (+352) 4303 3355*

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