



General Court of the European Union
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Press and Information

Judgment in Case T-358/17 Mubarak v Council

The General Court upholds the Council's decisions of 2017 and 2018 to renew the restrictive measures taken against Mr Mubarak, former President of Egypt, in the light of ongoing judicial proceedings relating to the 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 against Mr Mubarak, to adopt those decisions

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 decision¹ concerning restrictive measures directed against certain persons identified as being responsible for misappropriation of State funds and persons, entities or bodies associated with them.

That decision, which was renewed in the years following 2011, notably in 2017 and in 2018, designates, *inter alia*, Mr Hosni Mubarak, the former President of Egypt, on the ground that he is subject to judicial proceedings by the Egyptian authorities in respect of the misappropriation of State funds on the basis of the United Nations Convention against Corruption.

Mr Mubarak asked the General Court to annul the acts renewing the Council's decision.

In today's judgment, the General Court dismisses the action and upholds the Council's 2017 and 2018 decisions to renew the freezing of assets.

The Court examines, first of all, the lawfulness of the renewal of the restrictive measures overall, which Mr Mubarak had challenged on the basis of Article 277 TFEU.

It recalls, in the first place, that the choice of legal basis for an EU measure must rest on objective factors that are amenable to judicial review. In this case, the renewal decisions form part of a policy of support for the Egyptian authorities that is based, in particular, on 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 (CFSP) and could be adopted on the basis of Article 29 TEU.

In addition, the Court notes that, even on the assumption that the situation in Egypt has evolved since 2011, and in a manner contrary to the democratisation process, the Council's decisions nonetheless remain within the scope of the CFSP.

After 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 notes, first, that the restrictive measures support a peaceful transition to a civilian and democratic government in Egypt. Those measures must therefore, 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 that country since the adoption of the decision.

¹ Decision 2011/172/CFSP of the Council of the European Union (OJ 2011 L 76, p. 63)

The Court notes, in the second place, that it is not apparent from the evidence provided by Mr Mubarak that, as a result of the political and judicial developments to which he refers, respect for the rule of law and fundamental rights in the context of the Egyptian judicial proceedings would be systematically undermined. It is, moreover, apparent from the material provided by the Egyptian authorities that the judicial framework of those proceedings offers effective safeguards with respect to judicial protection and, in particular, with respect to appeals to the Egyptian Court of Cassation.

It finds, therefore, that Mr Mubarak has not established that the Council's acts are manifestly inappropriate in the light of their objectives.

The Court goes on to examine the arguments relating to alleged infringements of some of his fundamental rights in the context of the judicial proceedings in Egypt.

As regards the arguments in relation to infringements by the Egyptian authorities of the right to an effective remedy and the presumption of innocence, the Court states, 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, if they are not tainted by a denial of justice or by arbitrariness. The Council may, therefore, be obliged to carry out checks with the Egyptian authorities if there is information that is such as to raise legitimate questions.

In the present case, the Court observes that the evidence put forward by Mr Mubarak relates, in part, to the general situation as regards the rule of law and fundamental rights in Egypt, and has no apparent connection with the judicial proceedings against him. Furthermore, the evidence in relation to the criminal proceedings reflects neither a lack of impartiality nor of independence on the part of the Egyptian authorities. Consequently, it is not such as to raise legitimate questions on the part of the Council.

As regards the alleged infringement of the general criteria of the decision, the Court notes, as a preliminary point, that the concept of misappropriation of State funds encompasses any unlawful use of resources which belong to, or are under the control of, the Egyptian public authorities. It is not, in principle, for the Council itself to examine and assess the accuracy and relevance of the information on which the criminal proceedings involving Mr Mubarak are based. It is sufficient to verify whether he is subject to one or more sets of ongoing judicial proceedings that relate to criminal prosecutions for acts that could be characterised as misappropriation of State funds.

In the present case, the Court finds, in particular, that, even if Mr Mubarak did reach an agreement with the Egyptian authorities under which he repaid all the misappropriated funds in a case concerning the refurbishment of private residences, that conciliation procedure had not been concluded when the contested acts were adopted. The Egyptian Prosecutor General considers that Mr Mubarak's proposal to repay the misappropriated funds was not sent to the committee competent to conclude that agreement. Consequently, the Court notes that the Council was entitled to consider that, in that case, Mr Mubarak was still subject to judicial proceedings in respect of misappropriation of State funds.

The Council is, moreover, also entitled to take account of ongoing investigations to determine the relevant person's responsibility in the misappropriation of State funds, including investigations conducted by the Egyptian Prosecutor General, who is a judicial authority.

As regards Mr Mubarak's rights of defence, the Court finds that the Council sent him, in good time, information about him that was provided by the Egyptian authorities before the adoption of the contested acts. In addition, the fact that the Council did not expressly indicate to Mr Mubarak the relevance of the various judicial proceedings referred to by the Egyptian authorities as relating to him has no specific effect on his rights of defence. Lastly, the Council replied to the main objections raised by Mr Mubarak prior to the adoption of the contested acts.

Finally, as regards the allegedly unjustified and disproportionate restriction of Mr Mubarak's right to property and damage to his reputation, the Court recalls that the Council has a broad discretion

and that the legality of restrictive measures can be affected only if the measures are manifestly inappropriate, which is not the case here.

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 judgment is published on the CURIA website on the day of delivery

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