

EU - Restrictive measures
Al-Bashir Mohammed Al-Faqih and
Others v the European Commission,
supported by the Council of the
European Union (Case T-134/11)

CASE OVERVIEW

This case centers around Regulations enacted by the Commission that place several restrictive measures on the Applicants such as freezing their funds and other financial assets. The first Regulations were enacted in February 2006 but were annulled by the General Court in September 2010. New regulations to the same effect were re-introduced in December 2010. In June 2011, the Commission implemented Regulations to de-list the Applicants.

The Applicants (Libyan nationals, a citizen of UK and a charity organisation) then commenced an action against the Council to have these Regulations annulled, which was heard on 23 April 2015.

Overview of the trial held on 23 April 2015 at the General Court

Applica's Arguments

Although the charity organisation ceased to exist in 2007, it does not make sense to divorce it from two of the Applicants who are its Directors. This is mainly because the Directors are accused of being associated to Al-Qaeda through it. Therefore, because of this connection, the organisation has the capacity to approach the Court. The Commission failed to provide any evidence to justify its assertions. No evidence was provided to contradict the exculpatory evidence submitted by the Applicants. The Applicants positively determined that the Libyan Islamic Fighting Group's (LFIG) association with Al-Qaeda was wrong. Therefore, any association of the Applicants to Al-Qaeda is also wrong. The Commission was not impartial in designating the Applicants because it did not properly review the exculpatory evidence in

Applicants favor. This is despite the fact that the UK, which made the initial designation, reversed its decision. The Commission did not review any evidence of the LFIG's link to Al-Qaeda. The Commission blindly accepted assertions of this apparent link the Applicants had to LFIG.

Commission's Arguments

The organization is a juridical person which has its own legal capacity. There was no mention of its Directors when it was listed. The Applicants were de-listed in 2011, therefore, there is no interest for them in continuing these proceedings. The Sanctions Committee can take action on the sole basis of suspicion. The Commission has an obligation to list any persons or entities that have been suspected. It does not have a duty to provide evidence to justify listing, but can take action only on the summary of reasons provided by the Sanctions Committee. The Commission complied with the three procedural safeguards in place to protect Applicants' rights.

Council's Arguments

The Council supported the points raised by the Commission. The Applicants cannot rely on the fact that the UK reversed its decision to designate them because the UK is not the only member of the Sanctions Committee.

Wadzanai Vudzijena (Intern at BSU Legal): *"The date when judgement will be delivered is still*



pending. The main issues the Court will consider is whether the Applicants still have an interest in the case since they were de-listed in 2011, and whether the Commission took necessary steps (e.g. review) to safeguard the rights of the Applicants before enacting the Regulations."