Council Implementing Regulation (EU) 2019/459 of 21 March 2019 implementing Regulation (EU) No 270/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt

COUNCIL IMPLEMENTING REGULATION (EU) 2019/459

of 21 March 2019

implementing Regulation (EU) No 270/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EU) No 270/2011 of 21 March 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt[(1)], and in particular Article 12(4) thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

(1) On 21 March 2011, the Council adopted Regulation (EU) No 270/2011.

(2) Annex I should be supplemented with information regarding the rights of defence and the right to effective judicial protection.

(3) Annex I to Regulation (EU) No 270/2011 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EU) No 270/2011 is amended as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 21 March 2019.

For the Council

The President

G. CIAMBA

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) 2019/459. (See end of Document for details)*

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ANNEX

Annex I to Regulation (EU) No 270/2011 is replaced by the following:

ANNEX IA.List of natural and legal persons, entities and bodies referred to in Article 2(1)

B. Rights of defence and right to effective judicial protection under Egyptian law:
The rights of defence and the right to effective judicial protection

It follows from Articles 54, 97 and 98 of the Egypt Constitution, Articles 77, 78, 124, 199, 214, 271, 272 and 277 of the Egypt Criminal Procedures Act and Articles 93 and 94 of the Egypt Advocacy Act (Law No 17 of 1983) that the following rights are guaranteed under Egyptian law:

— to any individual suspected of or charged with a criminal offence:

1. the right to judicial review of any act or administrative decision;

2. the right to defend himself/herself in person or through legal assistance of his/her own choosing or, if he/she has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

— to any individual charged with a criminal offence:

1. the right to be informed promptly, in a language which he/she understands and in detail, of the nature and cause of the accusation against him/her;

2. the right to have adequate time and facilities for the preparation of his/her defence;

3. the right to examine or have examined witnesses against him/her and to obtain the attendance and examination of witnesses on his/her behalf under the same conditions as witnesses against him/her;

4. the right to have the free assistance of an interpreter if he/she cannot understand or speak the language used in court.

Application of the rights of defence and the right to effective judicial protection

1. Mohamed Hosni Elsayed Mubarak

The information on the Council's file shows that the rights of defence and the right to effective judicial protection of Mr Mubarak were respected in the criminal proceedings on which the Council relied. This is demonstrated in particular as follows:
First case

On 27 June 2013, Mr Mubarak was charged together with two other individuals with misappropriation of public funds and proceedings were initiated before the Cairo Criminal Court on 17 November 2013. On 21 May 2014, that Court convicted the three defendants. The defendants challenged this judgment before the Court of Cassation. On 13 January 2015, the Court of Cassation quashed the verdict and ordered a retrial. On retrial, on 4 and 29 April 2015, verbal and written pleadings of the parties were presented. On 9 May 2015, the Cairo Criminal Court convicted the defendants, ordered the restitution of the misappropriated funds and ordered the payment of a fine. On 24 May 2015, an appeal was lodged with the Court of Cassation. On 9 January 2016, the Court of Cassation upheld the convictions. On 8 March 2016, the defendants reached a settlement within the Experts Committee set up by Prime Ministerial Decree No 2873 of 2015. That settlement was approved by the Cabinet of Ministers on 9 March 2016. That settlement was not submitted to the Court of Cassation for final approval by the Prosecutor General because the Experts Committee was not the competent committee. It is open

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to the defendants to submit a request for settlement to the competent committee, the National Committee for Recovery of Assets Located Abroad (NCRAA).
Second case

The investigation relating to facts of misappropriation of public funds or assets is still ongoing. The Council has found no indication that the rights of defence or the right to effective judicial protection of Mr Mubarak were not respected.

3. Alaa Mohamed Hosni Elsayed Mubarak

The information on the Council's file shows that the rights of defence and the right to effective judicial protection of Mr Alaa Mubarak were respected in the criminal proceedings on which the Council relied. This is demonstrated in particular as follows:
Freezing order

On 28 February 2011, the Prosecutor General issued an order prohibiting Mr Alaa Mubarak and other individuals from disposing of their assets and funds in accordance with Article 208 bis/a of the Egypt Criminal Procedures Act, which allows the Prosecutor General to prohibit the defendant, his wife and his children from disposing of their assets if there are any doubts that such assets are the illegal proceeds of the crimes committed by that defendant. On 8 March 2011, the competent Criminal Court upheld the prohibition order. Pursuant to the laws of the Arab Republic of Egypt, defendants have the right to challenge the court ruling on the prohibition order before the same court. Mr Alaa Mubarak has not challenged the ruling of 8 March 2011.
First case

The defendant was referred together with another individual to the trial court (Cairo Criminal Court) on 30 May 2012. On 6 June 2013, the Court returned the case to the public prosecution for further investigations. After the conclusion of the investigations, the case was referred again to the Court. On 15 September 2018, the Cairo Criminal Court delivered a judgment by which: (i) it requested the expert committee it had appointed to complement the expert report it had submitted to the court in July 2018; (ii) ordered the arrest of the defendants; and (iii) asked to refer the defendants to the National Committee for Recovery of Assets Located Abroad (NCRAA) with a view to a possible reconciliation. The defendants successfully challenged the order of arrest and, following a motion of recusal of the judicial panel, the case was referred to another circuit of the criminal court to review the merits.
Second case

On 27 June 2013, Mr Alaa Mubarak was charged together with two other individuals with misappropriation of public funds and proceedings were initiated before the Cairo criminal court on 17 November 2013. On 21 May 2014, that Court convicted the three defendants. The defendants challenged this judgment before the Court of Cassation. On 13 January 2015, the Court of Cassation quashed the verdict and ordered a retrial. On retrial, on 4 and 29 April 2015, verbal and written pleadings of the parties were presented.

On 9 May 2015, the Cairo Criminal Court convicted the defendants, ordered the restitution of the misappropriated funds and ordered the payment of a fine. On 24 May 2015, an appeal was lodged with the Court of Cassation. On 9 January 2016, the Court of Cassation upheld the convictions. On 8 March 2016, the defendants reached a settlement within the Experts Committee set up by Prime Ministerial Decree No 2873 of 2015. This settlement was approved by the Cabinet of Ministers on 9 March 2016. This settlement was not submitted to the Court of Cassation for final approval by the Prosecutor General because the Experts Committee was not the competent committee. It is open to the defendants to submit a request for settlement to the competent committee, the National Committee for Recovery of Assets Located Abroad (NCRAA).
Third case