

Press Release

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Carter-Ruck

EU Court of Justice annuls sanctions imposed on former Egyptian President Hosni Mubarak and his family

- The highest court in the European Union, the Court of Justice of the EU (CJEU), has annulled sanctions imposed on the late former President of Egypt, Mohamed Hosni Elsayed Mubarak, and members of his family, ruling that the sanctions were unlawful from the outset.
- This bold and forceful judgment is the conclusion of a legal battle which started nearly ten years ago with the imposition of ‘targeted’ sanctions upon the Mubarak family on 21 March 2011.
- The Mubarak family reserves the right to claim damages against the EU Council.
- The CJEU has set aside the judgment of the General Court (the Court below the CJEU). The EU Council has been ordered to pay the Mubarak family’s legal costs both before the General Court and the CJEU.

Under the *Kafkaesque* system of so-called “targeted sanctions”, the Mubarak family were afforded none of the usual legal protections which apply to defendants who are the subject of criminal proceedings. Moreover, the Mubarak family’s fundamental rights have been treated with total disregard by the authorities of the European Union, an institution founded on the principles of democratic freedom, the rule of law and respect and protection for human rights.

The Mubarak family has always asserted, supported by detailed objective evidence, that the imposition of these sanctions was unlawful. They have also consistently maintained that the EU Council was under a legal obligation to verify that the underlying proceedings relied upon to impose sanctions respected their fundamental rights; a principle clearly established by the European Courts and now applied in this case by the CJEU. The EU Council has consistently failed to abide by this legal obligation.

The CJEU judgment fully vindicates the family’s position in that regard.

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The CJEU has today reaffirmed the principle that:

“...in a review of restrictive measures, the Courts of the European Union must ensure the review, in principle a full review, of the lawfulness of all Union acts in the light of the fundamental rights forming an integral part of the EU legal order, which include, in particular, observance of the rights of the defence and the right to effective judicial protection.”

And that where sanctions are based on decisions of a third State (here Egypt):

“The [EU] Council cannot conclude that a listing decision is taken on a sufficiently solid factual basis before having itself verified that the rights of the defence and the right to effective judicial protection were observed at the time of the adoption of the decision by the third State in question.”

The CJEU held that:

“In the present case, the mere reference by the [EU] Council to letters and a memorandum from the Egyptian authorities, in which those authorities set out the manner in which the applicants’ fundamental rights had been observed and gave assurances in that regard....cannot suffice.”

Despite the CJEU’s welcome decision to annul these sanctions, the Mubarak family will continue to pursue legal proceedings in the European General Court in relation to sanctions imposed on them on later dates. The family is determined to pursue these cases until their conclusion, in order to obtain further judicial recognition that all of the EU’s measures were unlawful from the outset.

The Mubarak family has suffered severe reputational harm as a result of the EU designations and therefore continues to reserve the right to claim damages against the EU Council at the appropriate juncture.

The members of President Mubarak’s family are his wife, Suzanne Thabet, his two sons, Alaa and Gamal Mubarak, and their respective wives, Hedy Rassekh and Khadiga El Gammal. Gamal Mubarak stated that:

“These unlawful sanctions were imposed on my late father President Mubarak and my mother, even though neither of them ever owned any assets in the EU, or for that matter any assets outside of Egypt. The most basic of investigations by the EU and by other non-EU authorities would have uncovered this fact. Moreover, and after ten years of false allegations and intrusive investigations, not a single judicial authority in any EU member state, nor indeed in any other foreign jurisdiction, has discovered any legal violation of any sort by me or my family. I have thus instructed our legal counsel to reserve all our rights to claim damages against the Council of the EU in due course.”

The European Court has in the past recognised the draconian nature of the system of international targeted sanctions, repeating legal rulings previously made by the former Deputy President of the UK Supreme Court Lord Hope of Craighead KT QC PC FRSE when he stated in relation to designated persons:

“It is no exaggeration to say that persons designated in this way are effectively “prisoners” of the State: their freedom of movement is severely restricted without access to their funds and the effect of the freeze on both them and their families can be devastating”.

The Mubarak family was represented in these appeals by the former Independent Reviewer of Terrorism Legislation Lord Anderson of Ipswich KBE QC, as well as by Brian Kennelly QC and Jason Pobjoy of Blackstone Chambers and Guy Martin of London based solicitors Carter-Ruck.

In the words of Lord Anderson (in the context of his independent review of UK terrorism legislation, which are equally applicable to the Mubaraks' case):

“Trust in powerful institutions depends not only on those institutions behaving themselves (though that is an essential prerequisite), but on there being mechanisms to verify that they have done so.

...in an age where trust depends on verification rather than reputation, trust by proxy is not enough. Hence the importance of clear law, fair procedures, rights compliance and transparency: not just fashionable buzzwords, but the necessary foundation for the trust between government and governed upon which the existence of coercive and intrusive powers depends in a modern democracy.”

Carter-Ruck's International Law department, led by partner Guy Martin, with senior associates Charles Enderby Smith and François Holmey, has been advising the Mubarak family in relation to the EU's sanctions measures since 2013.

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Background note for editors:

The members of the Mubarak family listed above have been the subject of what are known as “targeted sanctions” for almost 10 years. Targeted sanctions are directed to specific named individuals and entities alleged to meet the ‘listing criteria’ of the relevant sanctions regime.

Targeted sanctions are restrictive measures which result in the individual or entity immediately, and without any prior notice, having their assets frozen. Targeted sanctions are draconian. In the words of former UN Secretary General Kofi Annan:

“The international community should be under no illusion: these humanitarian and human rights policy goals cannot easily be reconciled with those of a sanctions regime. It cannot be too strongly emphasized that sanctions are a tool of enforcement and, like other methods of enforcement, they will do harm. This should be borne in mind when the decision to impose them is taken, and when the results are subsequently evaluated.”

Targeted sanctions are in theory meant to be temporary administrative measures and not of a criminal or punitive nature; but in practice, far from being temporary they can last for many years (as the Mubarak family’s case shows). Moreover, they can have the same practical impact on the victim as punitive measures, without affording them the same levels of due process and judicial protection as are provided to the subjects of criminal proceedings. While a designated person can challenge an EU designation in the European courts, the evidential thresholds and standards of proof applicable fall well below that which would be applied in criminal proceedings. Proceedings can also continue for years before a final determination from the court is obtained.

A sanctioned person can find themselves in a *Kafkaesque* situation whereby suddenly and without any prior notification they are subjected to highly draconian measures, yet they are given little information about the grounds for their listing or the evidence said to justify such action. They are then faced with a lengthy uphill struggle in order to restore their position and reputation. These measures are generally implemented without judicial oversight, as an administrative and bureaucratic act, and often as a result of political rather than legal considerations.

It is open for a victim of erroneous sanctions measures to apply to the European courts for damages to compensate for harm suffered as a result of those measures. The Mubarak family have a strong case for damages given the way they have been treated by the EU Council over the past decade.