

Zine El Abidine Ben Ali (European Union)

Case ID:

ARW-202

Jurisdiction of Origin of Public Official or Entity Allegedly Involved:

Tunisia

Position of Public Official(s) (yrs in office):

President (1987-2011)

Jurisdiction of Asset Recovery:

European Union

Jurisdiction of Asset Recovery ? Description:

Undertaking Recovery Effort

Asset Recovery Start:

2011

Asset Recovery End:

Ongoing

UNCAC Offenses Implicated:

Art.17

Art.23

Money laundering Implicated:

Yes

Legal Basis for Asset Recovery:

Case in Investigatory/Asset Restraint Stage

Intl.Cooperation: MLAT/Letter of Request?:

No

Contributing Factors in Asset Recovery:

Ongoing Case

Status of Asset Recovery :

Ongoing

Stage in Asset Recovery Chain:

Investigation/Asset Tracing/Asset Restraint

Agreement for Returned Assets:

Ongoing

Agreement for Returned Assets - Description:

N/A

Case Summary:

The Council Regulation and Implementing Regulations were subsequently amended, including in early 2015. See Council Implementing Regulation (EU) No. 2015/147 (OJL 26, January 31, 2015, at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2015_026_R_0002).

As summarized in an article by Edwards Wildman Palmer attorneys, "On 28 May 2013, the EU General Court (?the Court?), attached to the European Court of Justice, gave three judgments in Cases T-187/11 Trabelsi, T-188/11 Chiboub and T-200/11 Al Matri, in which it annulled the sanctions listing of three relatives of former President Ben Ali of Tunisia.

Mr Al Matri and Mr Chiboub are the sons-in-law of former President Ben Ali and Mr Mohamed Trabelsi is the nephew of his wife. The three individuals and other persons connected to Mr Trabelsi brought proceedings contesting the freezing of their assets pursuant to Council Decisions 2011/72/CFSP and 2011/79/CFSP.

The Court reached similar conclusions in each of the three cases annulling the sanctions. In reaching a decision, the Court noted that Article 1(1) of 2011/72/CFSP required that only persons "responsible for misappropriation of Tunisian State funds" and those associated with them may be subject to an asset freeze, while Decision 2011/79/CFSP froze the assets of the applicants on the basis that they were subject to "judicial investigation by the Tunisian authorities in respect of the acquisition of movable and immovable property, the opening of bank accounts and the holding of financial assets in several countries as part of money laundering operations."

The Court held that the Council had not established that under Tunisian law, "misappropriation of public funds" encompassed "money laundering" (offences for which the Tunisian authorities were stated to be investigating the applicants). The Court held that the Council had not established that the investigations had been launched in relation to the laundering of public rather than private funds. The Court further held that the fact that the applicants were related to Ben Ali was not sufficient to imply that the money laundering investigations related to the misappropriation of state funds, since there was no such presumption in any of the legislation.

In all three cases, the Court annulled Decision 2011/79/CFSP insofar as it related to them. The funds will not be immediately released because the European Council has two months to challenge the decision. If this does not happen, the freeze will end." (Source: Antonio Suarez-Martinez and Nicole Grow, Edwards Wildman Palmer LLP, "Tunisian asset recovery efforts: one step forward and two steps back?," June 11, 2013.) The applications, judgments and orders in these and other related cases are listed in the source field and may be accessed at European Union Case-Law website at http://europa.eu/eu-law/case-law/index_en.htm.

According to the statement issued by the Tunisian-European Union Task Force at the conclusion of its first meetings on September 28-29, 2011 in Tunis, the group stressed the importance of recovering stolen assets, including overcoming barriers and challenges related to it, as part of their joint work. (Source: Meeting of the Tunisia - European Union Task Force, September 28-29, 2011 in Tunis, Co-chairs Conclusions.) On February 7, 2011, the Council of the European Union had announced that they had "adopted a decision and a regulation imposing the freezing of assets owned or controlled by persons deemed to be responsible for the misappropriation of state funds in Tunisia and persons associated with them." The decision and regulation, "which target a list of 48 persons, including former president Zine El Abidine Ben Ali and his wife, were published on 5 February 2011 in the EU Official Journal. The decision amends and updates decision 2011/72/CFSP, adopted on 31 January." (Source: Council of The European Union Press Release, "Tunisia: Council imposes assets freeze," February 7, 2011. Council Regulation (EU) No 101/2011- concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Tunisia.) The Council Regulation and Implementing Regulations were subsequently amended, including in early 2015. See Council Implementing Regulation (EU) No. 2015/147 (OJL 26, January 31, 2015, at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2015_026_R_0002.

Disposition of Criminal Case(s):

According to a January 26, 2011 media release by INTERPOL, Mr. Ben Ali's arrest was sought by Tunisia on charges of alleged property theft and illegal transfer of foreign currency. (Source: INTERPOL media release, "Tunisia seeks ousted President and family via INTERPOL," January 26, 2011, accessed at <http://www.interpol.int/public/ICPO/PressReleases/PR2011/PR007.asp>.) According to secondary sources, Mr. Ben Ali was convicted in absentia in June 2011 on theft and unlawful possession of cash and jewelry; in July 2011, he was convicted of property related charges. (Source: BBC News, "Tunisia's Ben Ali guilty on drugs and gun charges," July 4, 2011 and "Tunisia's Ben Ali guilty of corrupt property deals," July 29, 2011) and in June 2012, he was sentenced by a Tunisian military court to life imprisonment for his complicity in the murder and attempted murder of demonstrators; Human Rights Watch noted that Mr. Ben Ali has been tried and convicted in absentia and if he returned to Tunisia, he would be entitled to a new trial. (Source: Clive Baldwin, "After Ben-Ali's Conviction: The State of Tunisian Justice," Human Rights Watch, June 16, 2012.)

Jurisdiction of Origin: Investigative Agency:




Commission for the Investigation of Corruption and Embezzlement; Attorney Enrico Monfrini (asset recovery)

Documents:

- Ben_Ali_European_Union_Council_Decision_Feb_4_2011.pdf
- Ben_Ali_European_Union_Council_PR_Feb_7_2011.pdf
- Ben_Ali_Tunisia_EU_Taskforce_Meeting_Statement_Sep_29_2011
- Ben_Ali_Conviction_Property_BBC_Jul_29_2011
- Ben_Ali-Conviction_Drugs_Weapon_BBC_Jul_4_2011

Documents:

Attachment

	Size
 Ben_Ali_EU_Edwards_Wildman_Article_EU_General_Court_Judgments_Jun_11_2013.pdf	213.8 KB
 Ben_Ali_EU_General_Court_Judgment_Cases_Trabelsi_Choboub_Al_Matri_May_28_2013.pdf	810.6 KB
 Ben_Ali_EU_Council_Impl_Reg_2015_147_Jan_30_2015.pdf	312.8 KB

Other Sources:

Council Implementing Regulation (EU) No. 2015/147 (OJL 26, January 31, 2015, at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2015_026_R_0002;

Judgments, EU General Court, Case T-187/11 Trabelsi, Case T-188/11 Chiboub and T-200/11 Al Matri at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:225:0068...>

Trabelsi and Others v. Council (Case T-187/11); Chiboub v. Council (Case T-188/11); El-Matri v. Council (Case T-200/11); Ben Ali v. Council (Case T-301-11); Ben Ali v. Council (Case T-133/12); CW v. Council (Case T-162/12); Al Matri v. Council (Case T-545/13); Ben Ali v. Council (Case T-200/14); Mabrouk v. Council (Case T-218/14) - Orders, Judgments and Applications accessible at European Union Case-Law, http://europa.eu/eu-law/case-law/index_en.htm;

Antonio Suarez-Martinez and Nicole Grow, Edwards Wildman Palmer LLP, "Tunisian asset recovery efforts: one step forward and two steps back?," June 11, 2013, accessed at <http://www.lexology.com/library/detail.aspx?g=796ed555-372b-4c78-ac1a-0b...>

Meeting of the Tunisia - European Union Task Force, September 28-29, 2011 in Tunis, Co-chairs Conclusions, accessed at http://www.eeas.europa.eu/tunisia/docs/20110929_taskforce_en.pdf; Council of The European Union Press Release, "Tunisia: Council imposes assets freeze," February 7, 2011, at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/... Text of Decision at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:031:0040...> Text of Regulation at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:031:0001...> INTERPOL Alert, "Tunisia seeks ousted President and family via INTERPOL," January 26, 2011, accessed at <http://www.interpol.int/public/ICPO/PressReleases/PR2011/PR007.asp>; BBC News, "Tunisia's Ben Ali guilty on drugs and gun charges," July 4, 2011, accessed at <http://www.bbc.co.uk/news/world-africa-14014757> and "Tunisia's Ben Ali guilty of corrupt property deals," July 29, 2011, accessed at <http://www.bbc.co.uk/news/world-africa-14340863>.