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Tunisian asset recovery efforts: one step forward and two steps back?

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There were mixed reports in the last few weeks of both advances and setbacks in relation to Tunisia's asset recovery efforts.

Following Tunisia's recovery in April 2013 of approximately US\$29 million of assets held in Lebanon by the family of ousted former Tunisian leader Ben Ali, it was reported that on 24 May Governor Chedly Ayari, Chairman of the National Commission of Recovery of Stolen Assets Placed Abroad, informed the National Constituent Assembly that procedures were in place to recover assets held in Switzerland worth 60 million Swiss Francs. He also reported that a new property had been discovered in Libya and that a yacht owned by the President's brother-in-law, Belhassen Trabelsi, was about to be recovered (and indeed it was returned to Tunisia on 28 April). So of all the Arab Spring countries it would be fair to say Tunisia appears to be making the most progress to date to recover assets held by the former regime and associates. Good news.



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However, whilst Mr Ayari's public statements were of a positive nature, certain court decisions in the European Union have been perceived as major stumbling blocks to Tunisia's asset recovery efforts.

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.

The decision has sparked outrage in Tunisia with some commentators accusing the EU of siding with Ben Ali at Tunisia’s expense. Tunisian media outlets have reported that Tunisia will challenge the decision, but the press officer of the Tunisian Justice Ministry has publicly confirmed that Tunisia does not have the right to challenge EU decisions. The Higher Council of the Fight against Corruption and Recovery of State Properties and Assets were reported to have met two days after the three judgments were handed down and are stated to have discussed the effects of the judgments at this meeting.

These judgments are the first in a series of challenges that have been brought by individuals from Arab Spring countries that have been named on EU sanctions lists. A number of cases arising out of the situation in Egypt remain pending before the Court, including the case of Ahmed El-Maghraby, the former Egyptian Housing Minister, and his wife.

Tags European Union, Tunisia, Litigation, White Collar Crime, Edwards Wildman Palmer LLP

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