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INFORMATION NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee (Part 2)
Subject: **Case before the General Court**
Case T-168/12 (Georgias a.o. v. Council and Commission)

1. On 18 September 2014 the Council won Case T-168/12, which concerned a claim for non-contractual damages of €6.5 million resulting from the listing of Mr Georgias between 2007 and 2011.
2. Mr Georgias is a Zimbabwean Deputy Minister who was subjected to restricted measures imposed on Zimbabwe. At the time, the reasons given for his listing in Council Decision 2007/455/CFSP of 25 June 2007 were that he was "*Member of the Government and as such engaged in activities that seriously undermine democracy, respect for human rights and the rule of law*".

3. First, the applicants had argued that it was not enough for the Council to list Mr Georgias because he was a Deputy Minister without proof that he had himself violated human rights, since other (non-ZANU-PF) ministers had not been listed and other (deputy) ministers delisted. This proved, in their view, that it was incumbent on the Council to show that Mr Georgias had been involved in activities detrimental to human rights, democracy or the rule of law.
4. The General Court rejects this argument first, on the basis of a textual reading of the legislation involved and, secondly, on the basis of the *Tay Za* case law,¹ which clarifies that restrictive measures adopted against a country include measures taken against the “*rulers*” of the targeted country and also individuals and entities associated with or controlled, directly or indirectly, by them. The General Court considers that a Deputy Minister is one of the “*leaders*” of the country and one of the “*members of the Government*”. The Court thus finds that it is not necessary for each member of the Government to have engaged in activities detrimental to human rights, democracy or the rule of law. Rather, the decision imposed measures “*on the members of the government concerned as a body . . . on the sole ground of their status as government members, responsible, as such, for violations of human rights*”.

The fact that the Council from 2009 (when a coalition government took power in Zimbabwe) did not impose measures on each member of the government does not change this conclusion. The Court relies here on the change in circumstances and notably on the coalition government required by the 2008 Global Political Agreement (GPA).

5. As regards the complaint that the Council should have delisted Mr Georgias in 2009, the General Court approvingly refers to the Council’s assessment at the time that there had not been sufficient progress in implementing the GPA and that, in order to maintain pressure on the political forces in Zimbabwe which alone held power before the conclusion of the GPA, it was necessary to maintain in force the restrictive measures imposed on the incumbent members of the Government

¹ Case C-376/10 P, *Tay Za v. Council*, ECLI:EU:C:2012:138, point 53.

6. Secondly, the applicants claimed the Council misused its powers in drafting the listing criteria. However, the Court finds that these criteria fall within the Council's broad discretion. Moreover, the Council was entitled to consider that a person interested in participation in the democratic mechanisms of his country ought not to become a member of such a government until that government, or another in its place, rejected the policies that led to the suppression of human rights and freedom of expression and prevented good governance. The leaders and the persons associated with them are deemed to be responsible for the policies or actions which have led to the imposition of the restrictive measures concerned, irrespective of whether they are personally involved in the implementation of those policies and actions. The members of the government, regardless of their individual powers within that government, must assume collective responsibility for the policy pursued by that government and all the actions undertaken by it.
7. The General Court rejects the complaint of misuse of powers by noting that the applicants have not put forward any arguments or adduced any evidence in order to demonstrate that, in imposing the contested measures, the Council and the Commission pursued an objective other than that of encouraging the persons concerned to reject policies that led to the suppression in that country of human rights and freedom of expression and prevented good governance.
8. Lastly, the applicants claim a breach of the first applicant's rights of defence. However, the General Court found that the Council did review the measures annually. Moreover:

"in the context of an action for annulment, it is also settled case-law that, before such an infringement of the rights of the defence can result in the annulment of the act at issue, it must be demonstrated that, had it not been for that irregularity, the outcome of the procedure might have been different . . .

In a case such as this, where the applicant seeks, by means of an action for damages, compensation for the damage which he claims to have suffered because of the adoption of an act or the extension of its validity, in breach of his rights of defence, and where that party has not brought an action for annulment of the act concerned, it logically follows, both from the case-law . . . and from considerations relating to the requirement that there must be a causal link . . ., that the claim of an alleged breach of his rights of defence is not by itself sufficient to establish that his action for damages is well founded. It is also necessary to explain what arguments and evidence the person concerned would have relied on if his rights of defence had been respected and to demonstrate, where appropriate, that such arguments and evidence might have led in his case to a different result, in other words, in this case and as regards the first applicant, to the restrictive measure at issue, the freezing of his assets, not being renewed against him".

Since the applicants did not meet that requirement, the complaint relating to a breach of the rights of defence is rejected as well.

9. The General Court dismisses the action.
