

Federal Court



Cour fédérale

Date: 20171221

Docket: T-293-17

Citation: 2017 FC 1178

[ENGLISH TRANSLATION]

Ottawa, Ontario, December 21, 2017

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

**DJILANI, ZOHRA, TRABELSI, SOUFIA,
TRABELSI, ZEIN, TRABELSI, ASMA AND
TRABELSI, MOHAMED**

Applicants

and

**DEPARTMENT OF FOREIGN AFFAIRS
AND INTERNATIONAL TRADE**

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application for judicial review of the decision made on February 10, 2017, by the Minister of Foreign Affairs [the Minister] refusing to recommend to the Governor in Council that the names of the applicants be removed from the list in Schedule 1 of the *Freezing Assets of Corrupt Foreign Officials (Tunisia) Regulations*, SOR/2011-78 [the Regulations]. The Minister essentially found at that time that the applicants were still “politically exposed foreign persons”

within the meaning of section 2 of the *Freezing Assets of Corrupt Foreign Officials Act*, SC 2011, c 10 [the Act] and that the criteria set out in section 4 of the Act were not met.

[2] This decision by the Minister was in response to the applicants' application submitted on April 18, 2016, under section 13 of the Act to have their names removed from this list. The relevant sections of the Act, the Regulations and Schedule 1 of the Regulations are reproduced in the appendix.

[3] In support of this application for judicial review, the applicants essentially submit that (1) the Act and Regulations violate their right to liberty and security as protected under section 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 [the Charter]; (2) the Act and Regulations violate paragraph 2(e) of the *Canadian Bill of Rights*, SC 1960, c 44 [the Bill]; (3) the Minister's decision is unreasonable; (4) the Minister has exceeded her jurisdiction; and (5) the application process under section 13 of the Act violates the principles of procedural fairness. Section 7 of the Charter and section 2 of the Bill are reproduced in the appendix.

[4] The respondent (the Department or the Minister) essentially responds that (1) the Act and the Regulations do not infringe on the right to liberty and security protected under section 7 of the Charter; (2) the Act and the Regulations do not violate section 2 of the Bill; (3) the Minister's decision is reasonable; (4) the argument regarding jurisdiction is unfounded; and (5) the process for reviewing an application under section 13 of the Act respects the principles of procedural fairness.

[5] In short, and for the reasons set out below, the Court will dismiss this application for judicial review.

II. FACTUAL BACKGROUND

[6] The applicants, Zohra Djilani and four of her children, Asma, Soufia, Zein and Mohamed Fares, are citizens of Tunisia and members of the same family. They are, respectively, the wife and children of Belhassen Trabelsi, who is also a citizen of Tunisia and the brother of Leila Trabelsi, wife of the ousted president of Tunisia, Zine El Abidine Ben Ali.

[7] In January 2011, in the wake of the fall of Ben Ali's regime, Mr. Trabelsi, his wife and four of their children fled Tunisia, arrived in Canada and claimed refugee status. The applicants based their fear of returning to Tunisia mainly on the fact that they are members of the Trabelsi "family," which is known to be close to the ousted president and, therefore, they fear certain elements of the civilian population and the government (decision by the Refugee Protection Division [RPD] on February 19, 2016). Given the possibility of Mr. Trabelsi being excluded under section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], his refugee claim was filed separately from that of the applicants.

[8] In March 2011, the government of Tunisia issued a decree-law and confiscated the assets of Leila Trabelsi's family, including those of her brother, Mr. Trabelsi, and those of other family members.

[9] In March 2011, the Act was passed in Canada. Section 4 of the Act allows the Governor in Council to make orders or regulations restricting or prohibiting certain activities in respect of the property of a person and to cause to be seized, frozen or sequestered any of the person's property situated in Canada. A written request must first be made to the Government of Canada by a foreign state, and the conditions set out in section 2 of the Act must be met. These conditions also require that the person be, in relation to the foreign state, a "politically exposed foreign person."

[10] According to section 2 of the Act, a politically exposed foreign person is a person who holds or has held one of the listed offices or positions, including the position of head of state or head of government (paragraph (a)). The definition includes "any person who, for personal or business reasons, is or was closely associated with such a person, including a family member" (emphasis added).

[11] On March 23, 2011, the Governor in Council made the Regulations, in accordance with the aforementioned section 4. Mr. Trabelsi's name was included in Schedule 1 as a "politically exposed foreign person."

[12] On December 16, 2011, the Regulations were amended, and the applicants' names were added to Schedule 1 as "politically exposed foreign persons." They were consequently prohibited from the activities listed in subsection 4(3) of the Act and section 3 of the Regulations.

[13] In February 2012, the applicants submitted an initial application to the Minister under section 13 and subsection 14(2) of the Act to be excluded from the application of the Regulations. They also attached an application under section 15 of the Act to exempt \$178,040 from the application of the Regulations. On June 14, 2012, the applicants were notified that these applications had been rejected, and they did not challenge these decisions.

[14] On December 17, 2012, the applicants submitted a new application to the Minister under section 15 of the Act to have \$109,680 exempted from the application of the Regulations so that they could pay for certain living expenses, including their solicitor costs. On June 26, 2013, the Minister rejected this application. On June 27, 2014, this Court dismissed the application for judicial review, finding that the Minister's decision was reasonable. The Court noted in passing that the father of the principal applicant was not listed in the Regulations and that he transferred funds to the trust accounts of the applicants' solicitors.

[15] On January 30, 2015, the RPD excluded Mr. Trabelsi, finding that he was a person referred to in section F of Article 1 of the *Refugee Convention*. The RPD concluded that there were serious reasons to believe that Mr. Trabelsi had committed serious non-political crimes such as fraud against the government (section 121 of the *Criminal Code of Canada* [*Criminal Code*]), fraud (section 380 of the *Criminal Code*) and laundering proceeds of crime (section 462.31 of the *Criminal Code*). It is worth noting at the outset that the reasons in the RPD's decision refer to wrongdoing characterized by using dummy corporations and shell companies to enable the Trabelsi/Ben Ali clan to pocket tremendous amounts of money.

[16] On March 11, 2016, the Governor in Council extended the duration of the Regulations by five years, effective March 24, 2016.

[17] On February 19, 2016, the RPD allowed the applicants' refugee claim, recognizing that they were Convention refugees within the meaning of section 96 of the IRPA. The RPD found that the applicants had established that there was a reasonable chance of persecution because of their family ties.

[18] On April 18, 2016, the applicants filed a new application under section 13 of the Act, under which a person who is subject to an order or regulation may apply in writing to cease being the subject of the order or regulation on the grounds that the person is not a politically exposed foreign person. Consequently, if the Minister has reasonable grounds to believe that the applicant is not a politically exposed foreign person, she must recommend to the Governor in Council that the order or regulation be amended or repealed, as the case may be, so that the applicant is no longer the subject of the order or regulation.

[19] In their application under section 13 of the Act, the applicants essentially claimed that (1) they did not have any involvement in Mr. Trabelsi's affairs; (2) they were in no way accused of economic crimes in any country; and (3) they were suffering undue hardship because their names remained on the list, all this even though they had been accepted as Convention refugees (Exhibit P-6 of the applicants' record). Along with their application, they submitted relatively extensive documentation of approximately 150 pages, including, among other documents, two affidavits by the principal applicant, the most recent of which was dated April 14, 2016,

statements from family members and a foreign lawyer, as well as records of assets and transactions abroad. Note that in her affidavit dated April 14, 2016, the principal applicant confirmed that she was indeed Mr. Trabelsi's wife.

[20] On February 10, 2017, the Minister rejected the application; that decision is the subject of this judicial review and is detailed below.

[21] On May 31, 2016, Mr. Trabelsi was to be removed from Canada, but he failed to report to the authorities and cannot be located.

III. IMPUGNED DECISION

[22] As previously noted, on February 10, 2017, the Minister rejected the applicants' application and decided not to recommend to the Governor in Council that their names be removed from the list in Schedule 1 of the Regulations. The Minister also considered the application based on the criteria in section 4 of the Act but found that those criteria were not met.

[23] The Minister subsequently approved the recommendations outlined in a memorandum and its Appendix A, both of which were prepared for the Minister by the Deputy Minister of Foreign Affairs. The reasons described in this memorandum and its Appendix A are therefore consistent with the Minister's decision, and it is appropriate to restate their substance.

[24] In the context of the application under section 13 of the Act, the Deputy Minister essentially considered that the applicants were still "politically exposed foreign persons" within

the meaning of section 2 of the Act, since they themselves had asserted their family ties in their application. The Deputy Minister found that, consequently, there was no basis to allow the application under section 13 of the Act.

[25] On his review under section 4 of the Act, the Deputy Minister noted that the Department had consulted Tunisian authorities, who requested that the applicants' names remain on the list. They noted that the applicants' family ties had not been broken, that they had unfairly benefited from their relationship with former president Ben Ali, that the order issued in Tunisia in 2011 for the seizure and confiscation of Mr. Trabelsi's and the principal applicant's property was still in effect and that the removal of the applicants' names from the list would likely negatively affect bilateral relations.

[26] In Appendix A, in the section relating to applications under section 13 of the Act, the Deputy Minister provided evidence establishing that the applicants were still "politically exposed foreign persons" within the meaning of section 2 of the Act.

[27] Also in Appendix A, in the section dealing with the issue of exempting the applicants from section 4 of the Act, the Deputy Minister set out the relevant factors that should be considered.

[28] On February 14, 2017, the Director of Criminal, Security and Diplomatic Law [the Director] notified the applicants that the Minister had decided not to recommend to the Governor in Council that their names be removed from the list in Schedule 1 of the Regulations under

section 13 of the Act, having found that they remained “politically exposed foreign persons” and that the Minister had also decided not to make a recommendation pursuant to section 4 of the Act.

[29] The Director informed the applicants that under subsection 15(1) of the Act they could apply for a certificate to exempt property from the application of the Regulations if the property was necessary to meet their reasonable expenses.

IV. POSITIONS OF THE PARTIES

A. *Applicants*

[30] The applicants argue that the reasonableness standard applies to the Minister’s decision.

[31] They raise five arguments: (1) the Act and Regulations violate their right to liberty and security protected under section 7 of the Charter; (2) the Act violates paragraph 2(e) of the Bill; (3) the decision to reject the application is not justified and intelligible and the process and reasons are not transparent within the meaning of *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*]; (4) the Minister did not have the jurisdiction to extend the Regulations in March 2016; and (5) the duty to act fairly toward them has not been met.

- (1) The Act and the Regulations violate their right to liberty and security protected under section 7 of the Charter

[32] The applicants refer to the Supreme Court's decision in *Carter v Canada (Attorney General)*, 2015 SCC 5 [*Carter*] and claim that a two-step analysis must be done in order to establish a violation of section 7 of the Charter. Thus, the applicants must first establish that the Act deprives them of "their life, liberty or security of the person" and must then show that the deprivation in question is not in accordance with the "principles of fundamental justice."

[33] With respect to the first step, the applicants submit that the Act and the Regulations violate their right to liberty and security because of certain effects on their life, namely:

- i. they are not allowed to open a bank account in their own name;
- ii. they are required to make all payments (rent, tuition, groceries, etc.) through a third-party trust account;
- iii. they are having trouble finding employment;
- iv. their privacy has been invaded as a result of the media coverage of their immigration case;
- v. they are experiencing extreme suffering caused by stress and psychological distress;
- vi. they are suffering the humiliation of being treated as "corrupt," without any basis.

[34] The applicants submit that there is infringement of their right to liberty provided for under section 7 of the Charter if they cannot "make fundamental personal choices free from state interference" (*Carter*, at paragraph 64) and that in this case the state is interfering with their potential to make such fundamental personal choices, essentially by not allowing them to open bank accounts, and that not having their own bank account negatively affects their daily lives.

[35] The applicants also argue that there is infringement of their right to security under section 7—not their physical security but their psychological integrity (*Carter*, at paragraph 64).

Specifically, relying on the affidavits and unsworn letters of the principal applicant and her daughters, the applicants claim that they are suffering great psychological distress as a result of state interference. To the respondent, who points to the lack of documentary evidence of this great distress, the applicants respond that the affidavits are sufficient and that they should be presumed to be true until proven otherwise (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (FCA) at paragraph 5).

[36] With respect to the second step, the applicants agree that sometimes it is necessary to enact laws that infringe on the rights set out in section 7 of the Charter, but these infringements cannot depart from the principles of fundamental justice according to the wording of section 7 itself.

[37] The principles of fundamental justice have been defined by the case law, and infringements must not be arbitrary, overbroad or have consequences that are grossly disproportionate to their object (*Carter*, at paragraph 72). The applicants therefore identify the object of the Act, which is, essentially, to quickly preserve allegedly misappropriated assets so that they are not dissipated while a country emerges from an uncertain political situation, completes criminal investigations and obtains the evidence required to support a request for seizure and recover the stolen property.

[38] According to the applicants, the Act is not arbitrary, but it is overbroad, grossly disproportionate and vague.

[39] Specifically, the applicants argue that the Act is overbroad, based on the parameters set out by the Supreme Court in *Canada (Attorney General) v Bedford*, 2013 SCC 72 [*Bedford*], because (1) section 2 of the Act could target too many persons; (2) it prevents the applicants from earning money in Canada; and (3) there is no mechanism to establish that the property was acquired with no connection to the person subject to paragraphs (a) to (j) of section 2 of the Act.

[40] They argue that the Act is completely disproportionate, essentially because of the effects on their lives, especially when they have been accused of nothing.

[41] Finally, the applicants also claim that the wording of the Act is overly vague, since it does not provide legitimate notice about what is prohibited and does not give clear requirements to individuals charged with its application. In addition, it does not define the concepts of “close associates,” “family,” “uncertain political situation,” and “foreign state,” with the result that the requirement that a provision be “an adequate basis for legal debate” is not met (*R v Nova Scotia Pharmaceutical Society*, [1992] 2 SCR 606 [*Nova Scotia Pharmaceutical*] at page 639).

(2) The Act violates paragraph 2(e) of the Bill

[42] The applicants argue that the Act violates paragraph 2(e) of the Bill because the four conditions established by the case law are met. Specifically, (1) the applicants are persons within the meaning of paragraph 2(e); (2) the Minister’s decision constitutes a hearing involving the rights and obligations of the applicants (*Hassouna v Canada (Citizenship and Immigration)*, 2017 FC 473 at paragraph 73); (3) the process violates the principles of fundamental justice

essentially because the decision-maker is not impartial or independent; and (4) the Act does not state that it shall operate notwithstanding the Bill.

- (3) The decision to reject the application is not justified or intelligible and the process and reasons are not transparent within the meaning of *Dunsmuir*

[43] The applicants submit that the decision is unreasonable because (1) it is unreasonable to find that the applicants, including minor children, are closely associated with president Ben Ali for family reasons; (2) the evidence did not support a finding that the conditions provided for in subsection 4(2) were met, in particular the condition set out in paragraph 4(2)(b) regarding “internal turmoil, or an uncertain political situation”; and (3) the evidence is insufficient to reasonably conclude that the applicants’ property constitutes misappropriated property, since it allegedly comes from the personal businesses of the principal applicant or her father, who was acquitted of all charges against him.

- (4) The Minister did not have the jurisdiction to extend the Regulations in March 2016

[44] The applicants argue that the Minister did not have the jurisdiction to extend the Regulations in March 2016, because there was no evidence that Tunisia faced an uncertain political situation, in accordance with paragraph 4(2)(b) of the Act.

- (5) The duty to act fairly toward the applicants has not been met

[45] The applicants submit that the impact of the decision and the rights at stake support the need for a higher degree of procedural fairness and that, in this case, their right to procedural

fairness was not respected, because a decision simply by application is unfair. They did not have the opportunity to challenge the evidence presented against them or to submit evidence that they are not corrupt and that their property was lawfully acquired.

B. *The Department (the respondent or the Minister)*

[46] In response to the applicants' arguments, the Minister submits that the reasonableness standard applies to the impugned decision and that (1) the decision is reasonable; (2) the Act and the Regulations are consistent with the Charter; (3) the Act and the Regulations are consistent with the Bill; (4) the argument on jurisdiction is unfounded; and (5) the Minister's decision is consistent with the duty of procedural fairness.

(1) The decision is reasonable

[47] With respect to the allegation of a lack of jurisdiction to extend the validity of the Regulations in 2016, the Minister submits that the applicants are on the wrong track about the issue of jurisdiction since it is the Governor in Council who extended the validity of the Regulations, being satisfied that the situation in Tunisia remained uncertain.

[48] The Minister submits that the decision not to recommend the removal of the applicants from the list of politically exposed foreign persons is reasonable given their close family ties with the Ben Ali clan, as well as the many financial benefits obtained through their connections with former president Ben Ali. She argues that the Act is intended to prevent money laundering using Canadian bank accounts of individuals with ties to the Ben Ali regime and that identifying

the applicants as politically exposed foreign persons is thus warranted, regardless of their age, because of their continued family ties.

[49] The respondent also notes that the applicants are able to both receive money from Tunisia and pay for their living expenses. The respondent argues that opening bank accounts would enable the applicants to deposit misappropriated funds in them, which would be contrary to the objectives of the Act, and that the Minister's decision is therefore justified in order to serve the objectives of the Act.

(2) The Act and the Regulations are consistent with the Charter

[50] The Minister uses the same two-step analysis identified by the applicants and argues that the Act and the Regulations do not limit their right to life, liberty and security and that, moreover, it cannot be determined that the Act is inconsistent with the principles of fundamental justice.

[51] With respect to the first step, the respondent argues that section 7 of the Charter protects neither economic rights (except in rare exceptions) nor the right to do business whenever one wishes or to generate income by any means. As a result, the respondent argues that being forced to transit money through a lawyer's trust accounts does not violate section 7 of the Charter.

[52] The respondent also submits that sections 5 and 15 of the Act are meant to reduce the impact of the restrictions on persons subject to the Regulations to avoid arbitrariness. The

respondent argues that these sections must be addressed in an analysis under section 7 of the Charter, which the applicants failed to do in their arguments.

[53] The respondent submits that it cannot be established that the Act is inconsistent with the principles of fundamental justice in light of the test set out in *Carter*. The parties do agree that the Act is not arbitrary. However, the respondent argues that the Act is also not overbroad, as argued by the applicants, since there is a rational connection between the definition “politically exposed foreign persons” and the objective of the Act, which is to prevent misappropriation through money laundering.

[54] Similarly, the respondent submits that the Act does not have any disproportional impact given that, on the one hand, the applicants did not submit any evidence of the Act’s alleged impact on them and, on the other hand, the effects have a rational basis. On this point, the respondent notes that the RPD found that it was highly probable that Mr. Trabelsi had committed various fraud-related crimes and that it was necessary that the members of his immediate family be included as politically exposed foreign persons to prevent fraudulently acquired money from being deposited in Canadian bank accounts belonging to them.

[55] Finally, the respondent argues that the wording of the Act is clear. The wording “closely associated” is easy to understand, and the Trabelsi family was closely associated with president Ben Ali because of its family ties. As for the term “family,” the respondent asserts that it is not defined in the Act because it is an example. The Act refers to a person who is “closely associated . . . , including a family member.” With respect to the term “uncertain political

situation,” the respondent submits that the section cited by the applicants deals with evidence required to reach the conclusion that such a situation exists and not the vagueness of the term. Finally, the Act clearly defines “foreign state.”

(3) The Act and the Regulations are consistent with paragraph 2(e) of the Bill

[56] The respondent submits that paragraph 2(e) of the Bill does not apply, because the third condition established by the case law for its application is not met, since the Act complies with the requirement to hold an impartial hearing. The respondent argues that, for decisions under section 13 of the Act, Parliament chose an informal administrative decision-making process. The respondent acknowledges that the decision is important to the applicants, but states that the Act contains provisions intended to reduce the impact on the individuals affected. The respondent submits that, while the Act does not provide for a right of appeal, it does not limit the number or frequency of applications that an applicant may submit under section 13. The respondent argues that the duty of procedural fairness under section 3 is limited and that it does not require an oral hearing.

[57] The respondent rebuts the applicants’ allegation that the Minister could not make a decision with respect to them because of a reasonable apprehension of bias. The respondent submits that such a finding would go against the operation of government and that the applicants did not submit any evidence to support their allegation.

(4) The decision is consistent with the duty of procedural fairness

[58] The respondent argues that the applicants submitted a record containing numerous documents, in accordance with standard procedures, and that this procedure is sufficient given the arguments relating to paragraph 2(e) of the Bill.

V. ISSUES

[59] According to the parties' submissions, the Court must first establish the standard of review applicable to the review of the Minister's decision and determine whether:

- sections 2 and 4 of the Act and section 3 of the Regulations violate the right to liberty and security guaranteed under section 7 of the Charter;
- sections 4 and 13 of the Act violate paragraph 2(e) of the Bill;
- the Minister's decision-making process complies with the duty of procedural fairness;
- the Minister's decision is reasonable; and
- the Regulations were validly extended in March 2016.

VI. ANALYSIS

A. *Standard of review*

[60] The Court agrees with the parties and will review the Minister's decision on a standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at paragraph 62; *Djilani v Canada (Foreign Affairs and International Trade)*, 2014 FC 631 at paragraphs 12–16).

[61] There is uncertainty as to the standard of review that applies to assessing compliance with the duty of procedural fairness, but the Court is prepared to use the most onerous standard, that is, the standard of correctness (*El-Helou v Canada (Courts Administration Service)*, 2016 FCA 273 at paragraph 43).

B. *Sections 2 and 4 of the Act and section 3 of the Regulations violate the right to liberty and security guaranteed under section 7 of the Charter*

[62] As the parties have explained, an analysis under section 7 of the Charter involves two steps. It must first be assessed whether the provisions of the Act and the Regulations infringe on the life, liberty or security of the person. If so, then it must be determined whether this infringement is in accordance with the principles of fundamental justice (*Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44 at paragraph 84; *Carter*, at paragraph 55).

[63] In this case, since the applicants argue that it is precisely their right to liberty and security that is restricted, the Court will assess these two concepts.

(1) Right to liberty and security

[64] It is important to note that the applicants submit that their right to liberty is being violated essentially because they cannot open or operate bank accounts in their own names, which requires them to move all payments (rent, tuition, groceries, etc.) through a third-party trust account, makes it difficult to find and maintain employment and also makes certain activities difficult, such as grocery shopping (paragraphs 29 and 32 of the applicants' memorandum).

[65] Thus, the inability to open and operate a personal bank account allegedly infringes on the applicants' psychological liberty, as opposed to their physical liberty, preventing them from making "fundamental personal choices free from state interference" (*Carter*, at paragraph 64).

[66] The Court cannot agree with the applicants' argument, as it cannot find that operating a bank account constitutes a "fundamental personal choice" according to the meaning developed in the case law. Indeed, Supreme Court decisions involving the right to liberty deal with personal choices such as whether to receive medical assistance to die with dignity (*Carter*), whether to carry a pregnancy to term without the threat of criminal sanctions (*R v Morgentaler*, [1988] 1 SCR 30 [*Morgentaler*]), a person's place of residence (*Godbout v Longueuil (City)*, [1997] 3 SCR 844), and whether a parent can make decisions on behalf of children regarding their education and health (*B (R) v Children's Aid Society of Metropolitan Toronto*, [1995] 1 SCR 315). The Court simply cannot conclude that operating a personal bank account, in the applicants' situation, constitutes a fundamental personal choice involving the liberty guaranteed under section 7 of the Charter.

[67] The applicants argue that their right to security guaranteed under section 7 is violated because the Act undermines their psychological integrity, causing them suffering due to stress and humiliation, in particular as a result of the media coverage of their situation. They blame these difficulties on the fact that they are identified as politically exposed foreign persons.

[68] The Court notes that the right to security of the person guaranteed under section 7 is at issue if the psychological harm results from state action and if it is serious. In *Blencoe*, it was

determined that the incessant publicity experienced by the applicant did not result from government action, but rather from the actions of third parties, including the media (*Blencoe v British Columbia (Human Rights Commission)*, [2000] 2 SCR 307, 2000 SCC 44 at paragraph 59). In this case, it has not been proved that the media attention and the insults directed at the applicants are attributable to their designation as “politically exposed foreign persons” and may instead be a result of their ties to Ben Ali’s deposed government. Furthermore, it is known that Mr. Trabelsi was found guilty of fraud in Tunisia and excluded by the RPD.

[69] With respect to the seriousness of the psychological distress cited by the applicants, it is, at the very least, difficult to assess, since the applicants did not submit any medical, objective or documentary evidence on this matter.

[70] Furthermore, the respondent correctly argues that “economic rights” are protected under section 7 of the Charter only if they have a fundamental impact on a person’s life and security. In this case, the applicants have not proved that they are suffering from financial hardship, and the Act allows them to apply to have money exempted from the application of the Regulations under section 15 of the Act, which they have not done in this case. On the contrary, they agree that they are able to pay their living expenses using the funds deposited in their lawyer’s trust account.

[71] The applicants also claim that they are unable to find employment as a result of their designation, but they did not submit any evidence to support this argument. They claim that they would be unable to deposit wages. However, subsection 5(1) of the Act allows persons subject to

the Regulations to apply for a permit in order to carry out a prohibited or restricted transaction, and the applicants have not availed themselves of this remedy.

[72] The Court therefore finds that the Act and the Regulations do not infringe on the applicants' right to liberty and security guaranteed under section 7 of the Charter.

(2) Principles of fundamental justice

[73] In the event that the Court errs in the first step and that the Act and the Regulations do infringe on the applicants' right to liberty and security, it becomes necessary to consider whether the infringement is in accordance with the principles of fundamental justice. Thus, the Supreme Court has established that the Act and Regulations must not be arbitrary, overbroad or have consequences that are grossly disproportionate to their object (*Rodriguez v British Columbia (Attorney General)*, [1993] 3 SCR 519, at page 584; *R v Beare*, [1988] 2 SCR 387, at page 401; *Morgentaler*, at page 53; *Singh v Minister of Employment and Immigration*, [1985] 1 SCR 177, at page 212).

[74] First, as the parties agree, the Act and the Regulations are not arbitrary. They are meant to fight corruption, protect potentially misappropriated property or funds when a state is faced with an unstable political situation, until the situation normalizes and the state carries out investigations and obtains the evidence necessary to recover the stolen assets if necessary. Thus, the purpose of the Act and the Regulations is to prevent potentially ill-gotten funds from being deposited in Canadian financial institutions.

[75] Contrary to the applicants' argument, the Court is satisfied that the Act and the Regulations are not overbroad, because they target conduct connected to their purpose (*Bedford*, at paragraph 112). The definition of a politically exposed foreign person in section 2 is consistent with the purpose of the Act set out in the previous paragraph.

[76] The applicants argue that the definition is overbroad and should include only persons who hold the offices or positions set out in paragraphs 2(1)(a) to (j) of the Act. As stated by the respondent, making such a finding would seriously undermine the scope of the Act, since it would prevent identifying persons not holding official positions within the state government and could therefore be easily circumvented. It seems justified that the Act allow identifying individuals who are closely associated with the persons subject to paragraphs (a) to (j). In this case, it is clear that the applicants are closely associated with the Ben Ali clan because of their family ties and their family's influence. Furthermore, the applicants availed themselves of these family ties, and their refugee claim was accepted based on these family ties and their potential consequences for the applicants were they to return to Tunisia.

[77] The applicants also argue that section 3 of the Regulations is overbroad, preventing them from earning money in Canada, because they would not be able to deposit pay cheques into a personal account. However, as noted above, subsection 5(1) of the Act does provide for the opportunity to apply for a permit.

[78] Nor can the Court find that the Act and its Regulations have consequences that are grossly disproportionate to their object. Identifying the applicants as politically exposed foreign

persons seems necessary mainly to prevent the laundering of illicitly acquired funds and to protect property at the request of a foreign state. It cannot be found that the effects of the Act on their liberty and security are so disproportionate that they cannot have a rational basis. At paragraph 120 of *Bedford*, the Supreme Court gives an example of grossly disproportionate consequences:

This idea is captured by the hypothetical of a law with the purpose of keeping the streets clean that imposes a sentence of life imprisonment for spitting on the sidewalk. The connection between the draconian impact of the law and its object must be entirely outside the norms accepted in our free and democratic society.

[79] In light of this example, the Court cannot find that such disproportionality exists. The effects of the Act and the Regulations on the applicants cannot be described as draconian. Thus, the Court is satisfied that the infringement, if it exists, is in accordance with the principles of fundamental justice.

[80] In the event that the Act and the Regulations violate section 7 of the Charter, the Crown must establish that the infringement of the rights is warranted under section 1 of the Charter, because the purpose of the Act is pressing and substantial and the means chosen are proportionate to that purpose. Neither the applicants nor the respondent made submissions on this point, but the Court can nonetheless conclude from the parties' arguments that the purpose of the Act is pressing and substantial and that the means chosen are proportionate to its purpose.

[81] Nor can the Court agree with the applicants' argument that subsection 2(1) of the Act is vague and, therefore, violates the principles of fundamental justice under section 7 of the

Charter. The applicants submit that the terms “closely associated,” “uncertain political situation,” “family” and “foreign state” are vague and make this provision unclear to the point of being unconstitutional.

[82] The threshold for establishing that a law is vague is very high. Thus, a law will be found unconstitutionally vague if it so lacks in precision as not to give sufficient guidance for legal debate (*Nova Scotia Pharmaceutical*, at page 609). The threshold has not been used often by the courts, which also recognize that statutory provisions must be sufficiently broad in order to apply to various situations (*R v Hall*, [2002] 3 SCR 309, 2002 SCC 64).

[83] The terms that the applicants deem to be unclear or vague are on the contrary easy to understand and intelligible. The term “foreign state” is clear and is even defined in the Act. The term “family” is provided only as an example in the definition in section 2, but it is nonetheless intelligible, and the applicants themselves used it in their refugee claim. “Closely associated” and “uncertain political situation” are clear enough to be intelligible and understandable.

[84] Consequently, the Court finds that the Act and the Regulations do not infringe on the applicants’ right to liberty and security protected under section 7 of the Charter.

C. *Sections 4 and 13 of the Act violate paragraph 2(e) of the Bill*

[85] The applicants submit that sections 4 and 13 of the Act violate paragraph 2(e) of the Bill, denying them the opportunity to a fair hearing. Their first argument is that the four recognized basic conditions (*Canadian National Railway Company v Canada (Attorney General)*,

2007 FC 371 at paragraph 22) are met and that paragraph 2(e) applies to the Minister's decision-making process. These four conditions are as follows:

1. The applicant must be a "person" within the meaning of paragraph 2(e).
2. The arbitration process under section 13 of the Act must constitute a "hearing . . . for the determination of [the applicant's] rights and obligations."
3. The process must be found to violate "the principles of fundamental justice."
4. The alleged defect in the process must arise as a result of a "law of Canada" which has not been expressly declared to operate notwithstanding the *Canadian Bill of Rights*.

[86] The first condition is met since the applicants are persons. The respondent does not challenge the applicants' position that the second condition is also met, and, therefore, the Court will not rule on that issue. Finally, the fourth condition is also met.

[87] However, the applicants did not convince me that the third condition was met and that the process provided for under the Act does not meet the requirement of a fair hearing in accordance with the principles of fundamental justice.

[88] The Court has examined this condition by considering that, in accordance with paragraph 2(e) of the Bill, the federal authority must "act fairly, in good faith, without bias and in a judicial temper" and must give a party the opportunity to adequately state its case (*Duke v The Queen*, [1972] SCR 917 at page 924). Furthermore, it is established that the level of duty of procedural fairness depends on the context. The Supreme Court developed a non-exhaustive list of factors that may be taken into account in determining the content of the duty of procedural fairness: (1) the nature of the decision being made and process followed in making it; (2) the nature of the statutory scheme and the terms of the statute pursuant to which the body operates; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate

expectations of the person challenging the decision; (5) the choices of procedure made by the agency itself (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at page 819 [*Baker*]).

[89] The applicants first allege that the Minister is biased because she is acting as a “judge” to decide their application and as a “party” as a member of Cabinet. However, it does not seem abnormal or unusual for Parliament to grant such decision-making authority to a minister, and her status as a minister does not result in an apprehension of bias. Furthermore, the applicants did not submit any evidence of the Minister’s alleged bias, and the Court cannot agree with their argument.

[90] The applicants also argue that the level of procedural fairness should be high given how important the decision is to them, indicating that this importance lies in the fact that the decision involves the loss of several fundamental rights. However, the Court has already found that the legislative scheme does not infringe on the applicants’ right to liberty and security protected under section 7 of the Charter, and no other fundamental right has been cited.

[91] However, even if the Court accepts that the decision is of great importance to the applicants, whose assets are frozen, the legislative scheme allows for some flexibility since it also gives affected persons the opportunity to apply for permits or certificates under sections 5 and 15 of the Act, remedies of which the applicants did not avail themselves in this case. As the respondent also argues, there is no possibility to appeal the Minister’s decision, but the applicants can submit an unlimited number of applications for exceptions.

[92] In considering an application under section 13 of the Act, the Minister must determine whether the applicant is a politically exposed foreign person according to the definition set out in the Act by assessing if that person has held one of the offices or positions listed in paragraphs (a) to (j) or if the person is closely associated with a person who has held such an office or position. Overall, the scope of the analysis is limited.

[93] Moreover, section 13 does not provide for any procedural requirements, except for issuing a notice to the applicant. This is an administrative process that therefore does not involve the same fairness and impartiality requirements as a judicial process.

[94] While it is true that the applicants submitted a voluminous record to the Minister, it did not contain any evidence to rebut the decision that they are “politically exposed foreign persons”; instead, they confirmed their family ties with the Trabelsi clan in their application.

[95] The Court cannot find that the principles of procedural fairness were violated.

D. *The Minister’s decision-making process complies with the duty of procedural fairness*

[96] The applicants submit that the Minister’s decision-making process violates procedural fairness because they only had the opportunity to apply in writing and were not entitled to a formal hearing. However, they had the “opportunity to produce full and complete written documentation” to the Minister (*Baker*, at page 819). The Court has considered the factual background, the definition of politically exposed foreign persons provided for in the Act, the context of the Act, the fact that Tunisia asked the Government of Canada to keep the applicants

on the list, the fact that the applicants confirmed their family ties in their application and that they had the opportunity to submit an extensive record. Consequently, given the wording of the sections in question and the fact that the applicants' credibility is not in issue, I find that a formal hearing is not necessary and that the process for reviewing an application submitted to the Minister under section 13 complies with the duty of procedural fairness.

E. *The Minister's decision is reasonable*

[97] Given the legislative scheme involved and the factual background, the Court finds that the Minister's decision to refuse to recommend to the Governor in Council that the names of the applicants be removed from the list of politically exposed foreign persons under section 13 of the Act is reasonable.

[98] The applicants do indeed appear to be "closely associated" with a person holding an office or position set out in section 2 given their family ties with ousted president Ben Ali and Mr. Trabelsi's business ties. The applicants' age cannot be a reason to exclude them from the definition, especially considering the Trabelsi clan's recognized propensity to use dummy corporations. Furthermore, according to the evidence on file, Canadian authorities consulted their Tunisian counterparts, who also confirmed that the ties between the applicants and Mr. Trabelsi remained intact and that the Trabelsi family had profited from numerous financial benefits and privileges as a result of its close ties to former president Ben Ali. The RPD reached the same conclusion in its decision regarding Mr. Trabelsi.

[99] If the applicants ceased to be identified as politically exposed foreign persons, they would be able to open bank accounts in Canada and receive potentially ill-gotten sums of money. They could also carry out financial transactions involving property in Canada that could eventually end up in Mr. Trabelsi's hands. Their designation as "politically exposed foreign persons" is warranted in respect of the objectives of the Act.

[100] The applicants also claim that the Minister's decision is unreasonable because the property that they want to access was legitimately acquired. However, it is not the Minister's responsibility to verify the lawfulness of the property. The Act was enacted to enable states faced with an uncertain political situation to ask Canada to freeze property that may have been misappropriated by certain individuals until the situation normalizes and that state can obtain evidence and carry out investigations of these persons or property. It seems reasonable that the Minister did not examine the lawfulness of the property to make her decision regarding the application submitted under section 13 of the Act.

F. *Extension of the Regulations in March 2016*

[101] The applicants then argue that the Minister's decision in March 2016 to extend the duration of the Regulations by five years was unreasonable because she did not have evidence that Tunisia was in an uncertain political situation. However, the respondent validly noted that it was not the Minister but rather the Governor in Council who extended the Regulations by adopting an order on March 11, 2016. Furthermore, in the whereas clauses of the *Regulations Amending the Freezing of Assets of Corrupt Foreign Officials (Tunisia and Egypt)* made by order on March 11, 2016, the Governor in Council noted that he was satisfied that there

“continues to be internal turmoil, or an uncertain political situation, in Tunisia” (*Canada Gazette*, Part II, Vol 150, No 6, SOR/2016-41 at page 563).

VII. CONCLUSION

For these reasons, the Court will dismiss the application for judicial review.

JUDGMENT in T-293-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. No costs are awarded.

“Martine St-Louis”

Judge

Certified true translation
This 29th day of June 2020

Lionbridge

APPENDIX

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act, 1982 (U.K.), 1982, c 11, section 7

Life, liberty and security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Canadian Bill of Rights, SC 1960, c 44, paragraph 2e)

Construction of law

2 Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the Canadian Bill of Rights, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to

(e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;

Freezing Assets of Corrupt Foreign Officials Act, SC 2011, c 10, sections 2, 3, 4, 13, 14 and 15

Definitions

Charte canadienne des droits et libertés, partie I de la Loi constitutionnelle de 1982, constituant l'annexe B de la Loi de 1982 sur le Canada (R-U), 1982, c 11, article 7

Vie, liberté et sécurité

7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

Déclaration canadienne des droits, SC 1960, ch 44), alinéa 2e)

Interprétation de la législation

2 Toute loi du Canada, à moins qu'une loi du Parlement du Canada ne déclare expressément qu'elle s'appliquera nonobstant la Déclaration canadienne des droits, doit s'interpréter et s'appliquer de manière à ne pas supprimer, restreindre ou enfreindre l'un quelconque des droits ou des libertés reconnus et déclarés aux présentes, ni à en autoriser la suppression, la diminution ou la transgression, et en particulier, nulle loi du Canada ne doit s'interpréter ni s'appliquer comme

e) privant une personne du droit à une audition impartiale de sa cause, selon les principes de justice fondamentale, pour la définition de ses droits et obligations;

Loi sur le blocage des biens de dirigeants étrangers corrompus, LC 2011, ch 10, articles 2, 3, 4, 13, 14 et 15

Définitions

2 (1) The following definitions apply in this Act.

Canadian means a person who is a citizen within the meaning of the *Citizenship Act* or a corporation incorporated or continued by or under the laws of Canada or of a province. (Canadien)

entity means a corporation, trust, partnership, fund, an unincorporated association or organization or a foreign state. (*entité*)

foreign state means a country other than Canada, and includes

(a) any of its political subdivisions;

(b) its government and any of its departments, or the government or any department of any of its political subdivisions; and

(c) any of its agencies or any agency of any of its political subdivisions. (*État étranger*)

Minister means the Minister of Foreign Affairs. (*minister*)

person means an individual or an entity. (*personne*)

politically exposed foreign person means a person who holds or has held one of the following offices or positions in or on behalf of a foreign state and includes any person who, for personal or business reasons, is or was

2 (1) Les définitions qui suivent s'appliquent à la présente loi.

bien Bien meuble, immeuble, personnel ou réel. (*property*)

personne Personne physique ou entité; l'une et l'autre notions sont visées dans des formulations générales, impersonnelles ou comportant des pronoms ou adjectifs indéfinis. (*person*)

entité Personne morale, fiducie, société de personnes, fonds, organisation ou association non dotée de la personnalité morale ainsi qu'un État étranger. (*entity*)

État étranger Pays autre que le Canada. Sont assimilés à un État étranger :

a) ses subdivisions politiques;

b) son gouvernement et ses ministères ou ceux de ses subdivisions politiques;

c) ses organismes ou ceux de ses subdivisions politiques. (*foreign state*)

étranger politiquement vulnérable Personne qui occupe ou a occupé l'une des charges ci-après au sein d'un État étranger ou pour son compte :

Y est assimilée toute personne qui lui est ou était étroitement associée pour des raisons personnelles ou d'affaires, notamment un membre de sa famille. (*politically exposed foreign person*)

closely associated with such a person, including a family member:

- | | |
|--|---|
| (a) head of state or head of government; | a) chef d'État ou chef de gouvernement; |
| (b) member of the executive council of government or member of a legislature; | b) membre du conseil exécutif de gouvernement ou membre d'une assemblée législative; |
| (c) deputy minister or equivalent rank; | c) sous-ministre ou titulaire d'une charge de rang équivalent; |
| (d) ambassador or attaché or counsellor of an ambassador; | d) ambassadeur, ou attaché ou conseiller d'un ambassadeur; |
| (e) military officer with a rank of general or above; | e) officier ayant le rang de général ou un rang supérieur; |
| (f) president of a state-owned company or a state-owned bank; | f) dirigeant d'une société d'État ou d'une banque d'État; |
| (g) head of a government agency; | g) chef d'un organisme gouvernemental; |
| (h) judge; | h) juge; |
| (i) leader or president of a political party represented in a legislature; or | i) leader ou président d'un parti politique représenté au sein d'une assemblée législative; |
| (j) holder of any prescribed office or position. (étranger politiquement vulnérable) | j) titulaire d'un poste ou d'une charge visés par règlement. |

prescribed means prescribed by regulation. (*Version anglaise seulement*)

ministre Le ministre des Affaires étrangères. (*Minister*)

property means any real, personal, movable or immovable property. (*bien*)

personne Personne physique ou entité; l'une et l'autre notions sont visées dans des formulations générales, impersonnelles ou comportant des pronoms ou adjectifs indéfinis. (*person*)

Property of a person

Biens d'une personne

(2) For the purposes of this Act, the property of a person includes property

(2) Pour l'application de la présente loi, les biens d'une personne s'entendent notamment des biens

controlled, directly or indirectly, by the person.

Binding on Her Majesty

3 This Act is binding on Her Majesty in right of Canada or a province.

Orders and Regulations

4 (1) If a foreign state, in writing, asserts to the Government of Canada that a person has misappropriated property of the foreign state or acquired property inappropriately by virtue of their office or a personal or business relationship and asks the Government of Canada to freeze property of the person, the Governor in Council may

(a) make any orders or regulations with respect to the restriction or prohibition of any of the activities referred to in subsection (3) in relation to the person's property that the Governor in Council considers necessary; and

(b) by order, cause to be seized, frozen or sequestered in the manner set out in the order any of the person's property situated in Canada.

Conditions

(2) The Governor in Council may make the order or regulation only if the Governor in Council is satisfied that

(a) the person is, in relation to the foreign state, a politically exposed foreign person;

(b) there is internal turmoil, or an uncertain political situation, in the foreign state; and

(c) the making of the order or regulation is in the interest of international relations.

qui sont directement ou indirectement sous son contrôle.

Obligation de Sa Majesté

3 La présente loi lie Sa Majesté du chef du Canada et des provinces.

Décrets et règlements

4 (1) Si un État étranger, par écrit, déclare au gouvernement du Canada qu'une personne a détourné des biens de l'État étranger ou a acquis des biens de façon inappropriée en raison de sa charge ou de liens personnels ou d'affaires et demande au gouvernement du Canada de bloquer les biens de la personne, le gouverneur en conseil peut :

a) prendre tout décret ou règlement qu'il estime nécessaire concernant la restriction ou l'interdiction, à l'égard des biens de la personne, des activités énumérées au paragraphe (3);

b) par décret, saisir, bloquer ou mettre sous séquestre, de la façon prévue par le décret, tout bien situé au Canada et détenu par la personne.

Conditions

(2) Il ne peut toutefois prendre le décret ou règlement que s'il est convaincu que les conditions ci-après sont remplies :

a) la personne est, relativement à l'État étranger, un étranger politiquement vulnérable;

b) il y a des troubles internes ou une situation politique incertaine dans l'État étranger;

c) la prise du décret ou règlement est dans l'intérêt des relations internationales.

Restricted or prohibited activities

(3) Orders and regulations may be made under paragraph (1)(a) with respect to the restriction or prohibition of any of the following activities, whether carried out in or outside Canada:

(a) the dealing, directly or indirectly, by any person in Canada or Canadian outside Canada in any property, wherever situated, of the politically exposed foreign person;

(b) the entering into or facilitating, directly or indirectly, by any person in Canada or Canadian outside Canada, of any financial transaction related to a dealing referred to in paragraph (a); and

(c) the provision by any person in Canada or Canadian outside Canada of financial services or other related services in respect of property of the politically exposed foreign person.

Exclusions

(4) An order or regulation made under subsection (1) may exclude, individually or by class, any person, property or transaction from the application of the order or regulation.

Permits

5 (1) The Minister may issue to any person in Canada or Canadian outside Canada a permit to carry out a specified activity or transaction, or any class of activity or transaction, that is restricted or prohibited by order or regulation

Activités interdites

(3) Les activités qui peuvent être visées par le décret ou règlement pris en vertu de l'alinéa (1)a) sont les suivantes, qu'elles se déroulent au Canada ou à l'étranger :

a) toute opération effectuée, directement ou indirectement, par une personne se trouvant au Canada ou par un Canadien se trouvant à l'étranger portant sur un bien de l'étranger politiquement vulnérable, indépendamment de la situation du bien;

b) le fait pour une personne se trouvant au Canada ou pour un Canadien se trouvant à l'étranger de conclure, directement ou indirectement, toute opération financière liée à une opération visée à l'alinéa a) ou d'en faciliter, directement ou indirectement, la conclusion;

c) la prestation par une personne se trouvant au Canada ou par un Canadien se trouvant à l'étranger de services financiers ou de services connexes relativement aux biens de l'étranger politiquement vulnérable.

Exclusions

(4) Le décret ou règlement pris en vertu du paragraphe (1) peut prévoir que sont soustraits à son application des personnes, opérations ou biens ou certaines catégories de personnes, opérations ou biens.

Permis

5 (1) Le ministre peut autoriser, par permis, une personne se trouvant au Canada ou un Canadien se trouvant à l'étranger à procéder à une opération ou catégorie d'opérations qui fait l'objet d'une interdiction ou d'une restriction

made under section 4. The permit may be subject to any terms and conditions that are, in the opinion of the Minister, consistent with this Act and any order or regulations made under section 4.

Suspension, revocation, etc.

(2) The Minister may amend, suspend, revoke or reinstate the permit.

[...]

Application

13 (1) A person who is the subject of an order or regulation made under section 4 may apply in writing to the Minister to cease being the subject of the order or regulation on the grounds that the person is not a politically exposed foreign person.

Recommendation

(2) If the Minister has reasonable grounds to believe that the applicant is not a politically exposed foreign person, the Minister must recommend to the Governor in Council that the order or regulation be amended or repealed, as the case may be, so that the applicant is no longer the subject of the order or regulation.

Notice if application rejected

(3) The Minister must give notice without delay to the applicant of any decision to reject the application.

Mistaken identity

14 (1) A person claiming not to be a politically exposed foreign person may apply to the Minister in writing for a certificate stating that they are not a politically exposed foreign person who

au titre d'un décret ou règlement pris en vertu de l'article 4. Il peut délivrer un permis sous réserve des modalités qu'il estime compatibles avec la présente loi et tout décret ou règlement pris en vertu de cet article.

Révocation

(2) Il peut modifier, annuler, suspendre ou rétablir le permis.

[...]

Demande

13 (1) Toute personne visée par un décret ou règlement pris en vertu de l'article 4 peut demander par écrit au ministre de cesser d'être visée par le décret ou règlement au motif qu'elle n'est pas un étranger politiquement vulnérable.

Recommandation

(2) S'il a des motifs raisonnables de croire que le demandeur n'est pas un étranger politiquement vulnérable, le ministre recommande au gouverneur en conseil de modifier ou d'abroger, selon le cas, le décret ou règlement de façon à ce que le demandeur n'y soit plus assujéti.

Avis

(3) Le ministre donne sans délai au demandeur un avis de sa décision éventuelle de rejeter la demande.

Erreur sur la personne

14 (1) Toute personne qui affirme ne pas être un étranger politiquement vulnérable peut demander par écrit au ministre de lui délivrer une attestation portant qu'elle n'est pas un étranger politiquement vulnérable visé par un

is the subject of an order or regulation made under section 4.

Certificate — time frame

(2) If the Minister determines that the person is not a politically exposed foreign person, the Minister must issue a certificate to the applicant as soon as feasible.

Reasonable expenses

15 (1) A person who is the subject of an order or regulation made under section 4 may apply to the Minister in writing for a certificate to exempt property from the application of the order or regulation if the property is necessary to meet the reasonable expenses of the person and their dependants.

Certificate — time frame

(2) If the Minister determines that the property is necessary to meet the reasonable expenses of the applicant and their dependants, the Minister must issue a certificate to the applicant as soon as feasible.

Freezing Assets of Corrupt Foreign Officials (Tunisia) Regulations, SOR/2011-78, section 1 and schedule 1

Prohibitions

Asset freeze

3 A person in Canada must not

(a) deal, directly or indirectly, in any property, wherever situated, of any politically exposed foreign person;

décret ou règlement pris en vertu de l'article 4.

Attestation — délai

(2) S'il décide que le demandeur n'est pas un étranger politiquement vulnérable, le ministre lui délivre l'attestation dans les meilleurs délais.

Dépenses

15 (1) Toute personne qui est visée par un décret ou règlement pris en vertu de l'article 4 peut demander par écrit au ministre de délivrer une attestation soustrayant à l'application du décret ou règlement certains biens qui sont nécessaires pour ses dépenses raisonnables et celles des personnes à sa charge.

Attestation — délai

(2) S'il décide que les biens sont nécessaires pour les dépenses raisonnables du demandeur et celles des personnes à sa charge, le ministre lui délivre l'attestation dans les meilleurs délais.

Règlement sur le blocage des biens de dirigeants étrangers corrompus (Tunisie), DORS/2011-78, article 3 et annexe 1

Activités interdites

Blocage des biens

3 Il est interdit à toute personne se trouvant au Canada :

a) d'effectuer toute opération, directement ou indirectement, portant sur un bien de tout étranger politiquement vulnérable, indépendamment de la situation du bien;

(b) enter into or facilitate, directly or indirectly, any financial transaction related to a dealing referred to in paragraph (a); or

(c) provide financial services or other related services in respect of any property of any politically exposed foreign person.

SCHEDULE 1

(Section 2)

Politically Exposed Foreign Persons (Tunisia)

1 to 4 [Repealed, SOR/2016-41, s. 4]

5 Fahd Mohamed Sakher Ben Moncef ben Mohamed Hafiz EL MATRI (also known among other names as Fahd Mohamed Sakher Ben Moncef Ben Mohamed Hfaiez MATERI), born on December 2, 1981, in Tunis, son of Naïma BOUTIBA and spouse of Nesrine BEN ALI

6 and 7 [Repealed, SOR/2016-41, s. 4]

8 Belhassen Ben Mohamed ben Rhouma TRABELSI (also known among other names as Belhassen Ben Mohamed Ben Rehouma TRABELSI), born on November 5, 1962, in Tunis, son of Saïda DHRIF

9 to 17 [Repealed, SOR/2016-41, s. 4]

18 Moez Ben Moncef ben Mohamed TRABELSI (also known among other names as Moez Ben Moncef Ben Mohamed TRABELSI), born on July 3, 1973, in Tunis, son of Yamina SOUIAÏ

19 to 71 [Repealed, SOR/2016-41, s. 4]

b) de conclure, directement ou indirectement, toute opération financière liée à une opération visée à l'alinéa a) ou d'en faciliter, directement ou indirectement, la conclusion;

c) de fournir des services financiers ou des services connexes relativement aux biens de tout étranger politiquement vulnérable.

ANNEXE 1

(article 2)

Étrangers politiquement vulnérables (Tunisie)

1 à 4 [Abrogés, DORS/2016-41, art. 4]

5 Fahd Mohamed Sakher Ben Moncef ben Mohamed Hafiz EL MATRI (connu notamment sous le nom de Fahd Mohamed Sakher Ben Moncef Ben Mohamed Hfaiez MATERI), né le 2 décembre 1981 à Tunis, fils de Naïma BOUTIBA et marié à Nesrine BEN ALI

6 et 7 [Abrogés, DORS/2016-41, art. 4]

8 Belhassen Ben Mohamed ben Rhouma TRABELSI (connu notamment sous le nom de Belhassen Ben Mohamed Ben Rehouma TRABELSI), né le 5 novembre 1962 à Tunis, fils de Saïda DHRIF

9 à 17 [Abrogés, DORS/2016-41, art. 4]

18 Moez Ben Moncef ben Mohamed TRABELSI (connu notamment sous le nom de Moez Ben Moncef Ben Mohamed TRABELSI), né le 3 juillet 1973 à Tunis, fils de Yamina SOUIAÏ

19 à 71 [Abrogés, DORS/2016-41, art. 4] [Abrogés, DORS/2016-41, art. 4]

72 Zohra Bent Hedi Ben Ali JILANI,
spouse of Belhassen TRABELSI

72 Zohra Bent Hedi Ben Ali JILANI,
épouse de Belhassen TRABELSI

73 [Repealed, SOR/2016-41, s. 4]

73 [Abrogé, DORS/2016-41, art. 4]

74 Sofia Bent Belhassen Ben Mohamed
TRABELSI, family member of Leila
TRABELSI

74 Sofia Bent Belhassen Ben Mohamed
TRABELSI, membre de la famille de
Leila TRABELSI

75 Zine Bent Belhassen TRABELSI,
family member of Leila TRABELSI

75 Zine Bent Belhassen TRABELSI,
membre de la famille de Leila
TRABELSI

76 Asma Bent Belhassen TRABELSI,
family member of Leila TRABELSI

76 Asma Bent Belhassen TRABELSI,
membre de la famille de Leila
TRABELSI

77 Mohamed Fares Ben Belhassen
TRABELSI, family member of Leila
TRABELSI

77 Mohamed Fares Ben Belhassen
TRABELSI, membre de la famille de
Leila TRABELSI

78 to 123 [Repealed, SOR/2016-41, s.
4]

78 à 123 [Abrogés, DORS/2016-41, art.
4]

Notes:

1 Uppercase letters indicate the
surname.

2 Unless there is an indication to the
contrary, the country of birth is Tunisia.

Remarques :

1 Les lettres majuscules représentent le
nom de famille.

2 À moins d'indication contraire, le
pays du lieu de naissance est la Tunisie.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-293-17

STYLE OF CAUSE: DJILANI, ZOHRA, TRABELSI, SOUFIA,
TRABELSI, ZEIN, TRABELSI, ASMA, AND
TRABELSI, MOHAMED v THE MINISTER OF
FOREIGN AFFAIRS AND INTERNATIONAL
TRADE

PLACE OF HEARING: MONTREAL, QUEBEC

DATE OF HEARING: OCTOBER 10, 2017

JUDGMENT AND REASONS: ST-LOUIS J.

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APPEARANCES:

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