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Court of Justice of the European Union

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Judgment in Case C-872/19 P
Venezuela v Council

Venezuela has standing to bring proceedings against a regulation which introduces restrictive measures against it

The Court of Justice sets aside the judgment of the General Court which had held the contrary and refers the case back to the General Court for judgment on the merits of the action for annulment

In 2017, the Council of the European Union adopted restrictive measures against Venezuela, in view of the deterioration of democracy, the rule of law and human rights in that country. Articles 2, 3, 6 and 7 of Regulation 2017/2063¹ laid down, inter alia, a prohibition on selling or supplying military equipment and related technology which might be used for internal repression to any natural or legal person, entity or body in Venezuela, and a prohibition on providing certain technical, brokering or financial services connected with the supply of such equipment to those natural or legal persons, entities or bodies in Venezuela.

On 6 February 2018, Venezuela brought an action for annulment of Regulation 2017/2063, in so far as its provisions concern Venezuela. It subsequently adapted its application so that it also referred to Decision 2018/1656 and Implementing Regulation 2018/1653,² by which the Council had extended the restrictive measures adopted. By judgment of 20 September 2019, the General Court of the European Union dismissed that action as inadmissible, on the ground that the legal situation of Venezuela was not directly affected by the contested provisions.³

The Court of Justice, before which Venezuela lodged an appeal, rules on the application of the criteria for admissibility laid down in the fourth paragraph of Article 263 TFEU in relation to an action for annulment brought by a third State against restrictive measures adopted by the Council in view of the situation in that State. It sets aside the judgment of the General Court in so far as the latter had declared inadmissible the action brought by Venezuela for annulment of Articles 2, 3, 6 and 7 of Regulation 2017/2063 and refers the case back to the General Court for judgment on the merits of that action.

Findings of the Court

As a preliminary point, the Court notes that, since Venezuela's appeal does not relate to the part of the judgment under appeal in which its action for annulment of Implementing Regulation 2018/1653 and Decision 2018/1656 was dismissed as inadmissible, the General Court has given a final ruling in that respect. Next, the Court points out that, according to settled case-law, it may rule, if necessary of its own motion, whether there is an absolute bar to proceeding arising from disregard of the conditions as to admissibility laid down in Article 263 TFEU.

In the present case, it raises of its own motion the question whether Venezuela may be regarded as a 'legal person' within the meaning of the fourth paragraph of Article 263 TFEU.

¹ Council Regulation (EU) 2017/2063 of 13 November 2017 concerning restrictive measures in view of the situation in Venezuela (OJ 2017 L 295, p. 21).

² Council Decision (CFSP) 2018/1656 of 6 November 2018 amending Decision (CFSP) 2017/2074 concerning restrictive measures in view of the situation in Venezuela (OJ 2018 L 276, p. 10), and Council Implementing Regulation (EU) 2018/1653 of 6 November 2018 implementing Regulation (EU) 2017/2063 concerning restrictive measures in view of the situation in Venezuela (OJ 2018 L 276, p. 1).

³ Judgment of 20 September 2019, *Venezuela v Council* (T-65/18, EU:T:2019:649).

In that regard, it observes that it does not follow from that provision that certain categories of legal persons cannot avail themselves of the possibility of bringing an action for annulment provided for in that article. Nor, moreover, does it follow from its earlier case-law that the concept of a 'legal person', used in the fourth paragraph of Article 263 TFEU, is to be interpreted restrictively. The Court then points out that the principle that one of the European Union's founding values is the rule of law follows from both Article 2 TEU and Article 21 TEU, to which Article 23 TEU, relating to the Common Foreign and Security Policy (CFSP), refers. In those circumstances, it considers that, under the fourth paragraph of Article 263 TFEU, read in the light of the principles of effective judicial review and the rule of law, **a third State should have standing to bring proceedings as a 'legal person', within the meaning of the fourth paragraph of Article 263 TFEU, where the other conditions laid down in that provision are satisfied.** It states in that regard that **the European Union's obligations to ensure respect for the rule of law are not subject to a condition of reciprocity. Accordingly, Venezuela, as a State with international legal personality, must be regarded as a 'legal person' within the meaning of the fourth paragraph of Article 263 TFEU.**

Next, the Court holds that **the General Court erred in law in considering that the restrictive measures at issue did not directly affect the legal situation of Venezuela.** In that regard, it notes that the restrictive measures at issue were adopted against Venezuela. Prohibiting EU operators from carrying out certain transactions amounted to prohibiting Venezuela from carrying out those transactions with those operators. Furthermore, since the entry into force of Regulation 2017/2063 had the effect of immediately and automatically applying the prohibitions laid down in Articles 2, 3, 6 and 7 thereof, those prohibitions prevented Venezuela from obtaining numerous goods and services. The Court concludes from this that those provisions directly affect the legal situation of that State. It considers, in that regard, that it is not necessary to draw a distinction according to whether the commercial transactions of that State constitute acts carried out in a private capacity (*iure gestionis*) or acts carried out in the exercise of State sovereignty (*iure imperii*). Similarly, it notes that the fact that the restrictive measures at issue do not constitute an absolute obstacle preventing Venezuela from procuring the goods and services in question is irrelevant in that respect.

Subsequently, **the Court of Justice gives final judgment on the other grounds of inadmissibility initially raised by the Council before the General Court.** As regards the ground alleging that Venezuela has no interest in bringing proceedings, the Court considers that, since the prohibitions laid down in Articles 2, 3, 6 and 7 of Regulation 2017/2063 are liable to harm the interests, in particular the economic interests, of Venezuela, their annulment is, by itself, capable of procuring an advantage for it. As regards the ground that Venezuela is not directly concerned by the contested provisions, the Court considers that the prohibitions laid down by the articles of Regulation 2017/2063 at issue apply without leaving any discretion to the addressees responsible for implementing them and without requiring the adoption of implementing measures. Since it had already found that those provisions affect the legal situation of Venezuela, the Court rejects that ground.

Finally, the Court notes that **Regulation 2017/2063 constitutes a 'regulatory act'** within the meaning of the fourth paragraph of Article 263 TFEU. **Since, moreover, the articles of that regulation contested by Venezuela do not entail implementing measures, the Court concludes that that third State does indeed have standing to bring proceedings against those articles on the basis of that provision, without having to establish that those articles are of individual concern to it.**

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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