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Judgment of the General Court in Case T-536/21 | Belaeronavigatsia v Council

The General Court confirms the restrictive measures adopted against a State-owned enterprise managing the airspace in Belarus

The State-owned enterprise Belaeronavigatsia could not reasonably have been unaware that its activities carried out in order to divert flight FR4978 to Minsk contributed to the repression of civil society and democratic opposition in Belarus

Since 2004, restrictive measures have been adopted by the European Union in view of the situation in Belarus with regard to democracy, the rule of law and human rights. Accordingly, in May 2006, the Council of the European Union adopted Regulation (EC) No 765/2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus,¹ and then, in October 2012, Decision 2012/642/CFSP concerning restrictive measures against Belarus.² Those measures provide for, inter alia, the freezing of funds and economic resources belonging to persons, entities or bodies responsible for serious violations of human rights or the repression of civil society and democratic opposition, or whose activities otherwise seriously undermine democracy or the rule of law in Belarus.³

In the light of the intensification of the persistent violation of human rights and the repression of opponents of the regime following the Presidential elections of 9 August 2020, the Council adopted Decision (CFSP) 2021/1001 and Implementing Regulation (EU) 2021/999⁴ concerning restrictive measures in respect of Belarus, and then renewed those measures by Decision (CFSP) 2022/307 and Implementing Regulation (EU) 2022/300 concerning the same subject matter⁵ ('the contested acts').

The applicant, Belaeronavigatsia, is a Belarusian State-owned enterprise responsible for regulating airspace and providing air traffic assistance in Belarus. By the contested acts, it had its name included and then maintained on the lists of persons and entities targeted by those measures on the ground that it bore responsibility for diverting flight FR4978 to Minsk airport without valid justification on 23 May 2021. That diversion was motivated by political considerations, namely the arrest and detention of journalist and opponent Raman Pratasevich and Sofia Sapega,

¹ Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus (OJ 2006 L 134 p. 1).

² Council Decision 2012/642/CFSP of 15 October 2012 concerning restrictive measures against Belarus (OJ 2012 L 285, p. 1).

³ Point (a) of Article 4(1) of Decision 2012/642 and Article 2(4) of Regulation No 765/2006, as amended by Council Regulation (EU) No 1014/2012 of 6 November 2012 (OJ 2012 L 307, p. 1). The criterion thus set out is referred to as 'the general criterion at issue'.

⁴ Council Decision (CFSP) 2021/1001 of 21 June 2021 amending Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus (OJ 2021 L I 219, p. 67), and Council Implementing Regulation (EU) 2021/999 of 21 June 2021 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (OJ 2021 L I 219, p. 55).

⁵ Council Decision (CFSP) 2022/307 of 24 February 2022 amending Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus (OJ 2022 L 46, p. 97), and Council Implementing Regulation (EU) 2022/300 of 24 February 2022 implementing Article 8a of Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus (OJ 2022 L 46, p. 3).

who were passengers on that flight.

The applicant brought an action for annulment of those measures. It criticised the Council for having made an error of assessment and alleged, as regards the measures adopted against it, a failure to have regard to the principle of proportionality. The General Court, which was required for the first time to interpret the concept of ‘person responsible for the repression’ in the context of the restrictive measures adopted in view of the situation in Belarus, dismisses the action, taking the view that the adoption and maintenance of the restrictive measures against the applicant was justified.

Assessment of the General Court

As regards the first plea in law, alleging an error of assessment, according to which the Council wrongly considered that the criterion linked to the responsibility for the repression of civil society and democratic opposition was an objective criterion, linked to the activities of persons targeted by the restrictive measures, which did not require it to be established that the person or entity targeted by the restrictive measures had intended to participate in the act of repression committed, the General Court finds that the terms ‘responsible for the repression’ used in Decision 2012/642⁶ and Regulation No 765/2006⁷ are not defined in those measures. The meaning and scope of those terms must therefore be established according to their usual meaning in everyday language, taking into account the context in which they occur and the purposes of the rules at issue.

In that respect, the General Court notes, first, that the terms ‘responsible for’ refer to the person whose acts and/or activities have produced a consequence of which the perpetrator of those acts and/or activities is aware or cannot reasonably be unaware. Secondly, it follows from the context in which those terms are used, and in particular from the use of the wording ‘persons, entities or bodies responsible for ... the repression of civil society and democratic opposition, or whose activities otherwise seriously undermine democracy or the rule of law in Belarus’,⁸ that the Council intended to target, in general, any person, entity or body whose activities seriously undermine democracy or the rule of law in Belarus. The term ‘otherwise’ demonstrates, in addition, that the repression of civil society and democratic opposition is regarded as a type of activity seriously undermining democracy or the rule of law in Belarus. The use of the term ‘activities’ is, moreover, an indication of the Council’s intent to target persons, entities or bodies whose activities contribute to seriously undermining democracy or the rule of law in Belarus, irrespective of whether or not there is an intentional element in that regard.

Thirdly, as regards the objectives pursued by Decision 2012/642 and by Regulation No 765/2006, the General Court recalls that, according to the TEU,⁹ the consolidation of and support for democracy, the rule of law, human rights and the principles of international law on the international scene are among the objectives of the European Union in the framework of the common foreign and security policy (CFSP). In the present case, the restrictive measures against Belarus were adopted on account of the continued lack of respect for human rights, democracy and rule of law in that country. Those measures are intended to put pressure on the regime of President Lukashenko to put an end to human rights violations and the repression of civil society and democratic opposition. Those measures are therefore not inappropriate with respect to the objective pursued, including where no intentional element could be identified on the part of the perpetrators of the acts and/or activities targeted. Thus, according to the General Court, persons, entities or bodies whose acts and/or activities contribute to that repression are responsible for the repression of civil society and democratic opposition, irrespective of their intent, if they are aware or cannot reasonably be unaware of the consequences of their acts and/or activities.

In the present case, it is sufficient that the Council’s file includes a set of indicia sufficiently specific, precise and consistent to establish that the acts alleged against the applicant in connection with the diversion of flight FR4978

⁶ Point (a) of Article 4(1).

⁷ Article 2(4).

⁸ Point (a) of Article 4(1) of Decision 2012/642 and Article 2(4) of Regulation No 765/2006.

⁹ Article 21(2)(b) TEU.

contributed to the repression of civil society and democratic opposition in Belarus and that the applicant was aware or could not reasonably have been unaware of the consequences of its actions. The fact that the applicant is a legal person governed by public law responsible for regulating airspace and providing air traffic assistance in Belarus has, in that respect, no implications as regards the burden of proof borne by the Council or as regards the scope of judicial review carried out by the General Court. According to the General Court, the applicant could not reasonably have been unaware, having regard to the political context in Belarus at the material time, that its activities carried out in order to divert flight FR4978 to Minsk for reasons unrelated to aviation safety contributed to the repression of civil society and democratic opposition. Consequently, the Council did not make an error of assessment in finding that, by its involvement in the diversion of that flight, the applicant is responsible for the repression of civil society and democratic opposition in Belarus.

Lastly, the General Court makes clear that that interpretation of the general criterion at issue does not imply that any act and/or any activity which contributes in an equivalent manner to the repression of civil society and democratic opposition is covered by that criterion irrespective of its substantive classification. The objective nature thereof must necessarily be determined in accordance with Decision 2012/642 ¹⁰ and Regulation No 765/2006, ¹¹ which refer only to acts and/or activities that may be classified as acts of repression, excluding acts which, by their nature, lack any intrinsic connection with the repression of civil society and democratic opposition.

As regards the second plea in law, based on an alleged failure to have regard to the principle of proportionality, the General Court rejects the plea and, accordingly, dismisses the action in its entirety.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

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

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¹⁰ Point (a) of Article 4(1).

¹¹ Article 2(4).