



Reports of Cases

Case T-262/15

Dmitrii Konstantinovich Kiselev
v
Council of the European Union

(Common foreign and security policy — Restrictive measures in respect of actions undermining or threatening Ukraine — Freezing of funds — Restrictions on entry into the territories of the Member States — Natural person actively supporting or implementing actions undermining or threatening Ukraine — Obligation to state reasons — Manifest error of assessment — Freedom of expression — Proportionality — Rights of defence)

Summary — Judgment of the General Court (Ninth Chamber), 15 June 2017

1. *International agreements — Communities-Russia Partnership Agreement — Measures necessary for protecting a party's essential security interests — War or serious international tension constituting threat of war — Definition — Actions of the Russian Federation concerning the situation in Ukraine in 2015 and 2016 — Inclusion — No obligation of prior information or consultation*

(Communities-Russia Partnership Agreement, Art. 99, point 1(d))

2. *Acts of the institutions — Statement of reasons — Obligation — Scope — Restrictive measures taken against certain persons and entities in view of the situation in Ukraine — Prohibition of entry and passage and freezing of funds — Obligation to communicate the reasoning to the person concerned at the same time as the measure adversely affecting him or immediately thereafter — Limits — Safety of the Union and the Member States or conduct of their international relations — Decision falling within a context known to the person concerned, enabling him to understand the scope of the measure taken against him — Whether summary statement of reasons sufficient*

(Art. 296, second para., TFEU; Charter of Fundamental Rights of the European Union, Art. 41(2); Council Decisions (CFSP) 2015/432, 2015/1524 and 2016/359; Council Regulations 2015/427, 2015/1514 and 2016/353)

3. *Common foreign and security policy — Restrictive measures against certain persons and entities in view of the situation in Ukraine — Prohibition of entry and passage and freezing of funds — Active support for actions or policies undermining or threatening the territorial integrity, sovereignty and independence of Ukraine — Definition — Media support given by the director of a news agency described as a unitary enterprise of the Russian State — Inclusion*

(Council Decisions (CFSP) 2014/145, Arts 1(1)(a), and 2(1)(a), 2015/432, 2015/1524 and 2016/359; Council Regulations 269/2014, Art. 3(1)(a), 2015/427, 2015/1514 and 2016/353)

4. *Actions for annulment — Grounds — Lack of or inadequate statement of reasons — Separate ground from the one concerning substantive legality*

(Arts 263 TFEU and 296 TFEU)

5. *European Union — Judicial review of the legality of the acts of the institutions — Restrictive measures taken having regard to the situation in Ukraine — Ambit of the review — Proof the measure well-founded — Obligation on the competent EU authority to establish, in the event of challenge, that the grounds held against the persons or entities concerned well-founded*

(Charter of Fundamental Rights of the European Union, Art. 47; Council Decisions (CFSP) 2015/432, 2015/1524 and 2016/359; Council Regulations 2015/427, 2015/1514 and 2016/353)

6. *Common foreign and security policy — Restrictive measures against certain persons and entities in view of the situation in Ukraine — Freezing of the funds of a physical person actively supporting actions or policies undermining or threatening Ukraine — Restriction of the right to freedom of expression — No breach of principle of proportionality*

(Charter of Fundamental Rights of the European Union, Arts 11 and 52(1); Council Decisions (CFSP) 2015/432, 2015/1524 and 2016/359; Council Regulations 2015/427, 2015/1514 and 2016/353)

7. *Judicial proceedings — Application initiating proceedings — Formal requirements — Identification of the subject-matter of the dispute — Brief summary of the pleas in law on which the application is based — Similar requirements for submissions made in support of a plea — Mandatory — Examination by the EU judicature of its own motion*

(Rules of Procedure of the General Court, Art. 76(d))

8. *Common foreign and security policy — Restrictive measures taken having regard to the situation in Ukraine — Freezing of funds — Rights of defence — Notification of inculpatory evidence — Subsequent decision maintaining the name of the applicant on the list of persons covered by those measures — No new grounds — No infringement of the right to be heard*

(Charter of Fundamental Rights of the European Union, Art. 41(2)(a); Council Decision (CFSP) 2015/432; Council Regulation 2015/427)

9. *EU law — Principles — Rights of defence — Restrictive measures taken against certain persons and entities in view of the situation in Ukraine — Freezing of funds — Right of access to documents — Rights subject to an application in that behalf before the Council*

(Charter of Fundamental Rights of the European Union, Art. 41(2)(a); Council Decision (CFSP) 2015/432; Council Regulation 2015/427)

1. As regards the situation in Ukraine in March and September 2015 and March 2016, it may be considered that the actions of the Russian Federation constitute ‘war or serious international tension constituting threat of war’ within the meaning of Article 99(1)(d) of the Agreement on partnership and cooperation between the European Communities and their Member States, of the one part, and the Russian Federation, of the other part (‘the Partnership Agreement’). In view of the interest of the European Union and its Member States in having, as a neighbour, a stable Ukraine, it could be considered necessary to adopt restrictive measures in order to exert pressure on the Russian Federation to cease its activities undermining or threatening the territorial integrity, sovereignty or independence of Ukraine. It must be observed that, under the Partnership Agreement, a party that wishes to take measures on the basis of that provision is not required to inform the other party beforehand, nor to consult it or provide it with reasons for its action.

(see paras 32, 33)

2. See the text of the decision.

(see paras 39-41, 45, 50)

3. In view of the important role played by the media, in particular the audiovisual media, in modern society, it was foreseeable that large-scale media support for the actions and policies of the Russian Government destabilising Ukraine, provided, in particular during very popular television programmes, by a person appointed by a decree of President Putin as Head of a news agency described as a ‘unitary enterprise’ of the Russian State, could be covered by the criterion since it refers to natural persons actively supporting actions or policies which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine.

The concept of ‘active support’ can only be understood as covering persons who — without being themselves responsible for the actions and policies of the Russian Government destabilising Ukraine and without themselves implementing those actions or policies — provide support for those policies and actions. The criterion at issue does not cover all forms of support for the Russian Government, but rather concerns forms of support which, by their quantitative or qualitative significance, contribute to the continuance of its actions and policies destabilising Ukraine. Interpreted, subject to review by the Courts of the European Union, by reference to the objective of exerting pressure on the Russian Government in order to force it to put an end to those actions and policies, the criterion at issue thus objectively establishes a limited category of persons and entities which may be subject to fund-freezing measures. When interpreting that criterion, account must be taken of the case-law of the European Court of Human Rights which has recognised the impossibility of attaining absolute precision in the framing of laws, especially in fields in which the situation changes according to the prevailing views of society, and has accepted that the need to avoid rigidity and keep pace with changing circumstances means that many laws are couched in terms which are to some extent vague and whose interpretation and application are questions of practice. The condition that offences must be clearly defined in law is satisfied where a person can know from the wording of the relevant provision — if need be, with the assistance of the courts’ interpretation of it — what acts and omissions will render him or her criminally liable.

(see paras 43, 73-76)

4. See the text of the decision.

(see para. 52)

5. See the text of the decision.

(see paras 61-63)

6. See the text of the decision.

(see paras 66, 67, 69-72, 80-82, 84-88, 122-125)

7. See the text of the decision.

(see paras 137, 138)

8. See the text of the decision.

(see paras 139, 145, 146)

9. See the text of the decision.

(see paras 139, 151)