



Reports of Cases

Judgment of the General Court (First Chamber) of 21 December 2022 – Pshonka v Council

(Case T-242/21)¹

(Common foreign and security policy – Restrictive measures taken in view of the situation in Ukraine – Freezing of funds – List of the persons, entities and bodies covered by the freezing of funds and economic resources – Maintenance of the applicant’s name on the list – Council’s obligation to verify that the decision of an authority of a third State was taken in accordance with the rights of the defence and the right to effective judicial protection)

1. *European Union – Judicial review of the legality of the acts of the institutions – Restrictive measures taken having regard to the situation in Ukraine – Freezing of funds of persons involved in the misappropriation of public funds and of natural or legal persons, entities or bodies associated with them – Scope of the review*

(Art. 275, second para., TFEU; Charter of Fundamental Rights of the European Union, Arts 47 and 48; Council Decision (CFSP) 2021/394; Council Regulation 2021/391)

(see paragraphs 60, 61)

2. *Common foreign and security policy – Restrictive measures taken having regard to the situation in Ukraine – Decision to freeze funds – Adopted or maintained on the basis of a judicial procedure carried out by the authorities of a third State concerning the misappropriation of public funds or abuse of office by a public office-holder – Whether permissible – Condition – National decision adopted in accordance with the rights of the defence and the right to effective judicial protection – Council’s verification obligation – Obligation to state reasons – Scope – Third State that has acceded to the European Convention on Human Rights – Irrelevant – Purpose of the restrictive measures aimed at consolidating the rule of law and respect for human rights*

(Art. 21(2)(b) TEU; Decision 2014/119/CFSP, as amended by Decision (CFSP) 2021/394, recital 2 and Annex; Council Regulations No 208/2014, Annex I, and 2021/391)

(see paragraphs 62-68)

3. *Common foreign and security policy – Restrictive measures taken having regard to the situation in Ukraine – Decision to freeze funds – Adopted or maintained on the basis of a judicial procedure carried out by the authorities of a third State concerning the*

¹ OJ C 263, 5.7.2021.

misappropriation of public funds or abuse of office by a public office-holder – Conditions – National decision adopted in accordance with the rights of the defence and the right to effective judicial protection – Obligation on the competent EU authority to establish, in the event of challenge, that the reasons relied on against the persons or entities concerned are well founded – Council’s obligation to verify observance of the rights in question – Infringement

(Decision 2014/119/CFSP, as amended by Decision (CFSP) 2021/394, Annex; Council Regulations No 208/2014, Annex I, and 2021/391)

(see paragraphs 73, 75-83, 86-91, 111)

4. *Common foreign and security policy – Restrictive measures taken having regard to the situation in Ukraine – Decision to freeze funds – Adoption or maintenance on the basis of a national fund-freezing decision of an authority of a third State – Whether permissible – Condition – National decision adopted in accordance with the rights of the defence and the right to effective judicial protection – Council’s verification obligation – Proof of verification – Burden of proof*

(Council Decision 2014/119/CFSP, as amended by Decision (CFSP) 2021/394; Council Regulations No 208/2014 and 2021/391)

(see paragraphs 90-92, 110)

5. *EU law – Principles – Right to effective judicial protection – Duty to act within a reasonable time – Restrictive measures taken having regard to the situation in Ukraine – Judicial procedure in a third country serving as the basis for the decision to adopt the restrictive measures – Council’s verification obligation – Scope*

(Charter of Fundamental Rights of the European Union, Arts 47 and 52(3))

(see paragraphs 94-107)

Operative part

The Court:

1. Annuls Council Decision (CFSP) 2021/394 of 4 March 2021 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, and Council Implementing Regulation (EU) 2021/391 of 4 March 2021 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, in so far as the name of Mr Artem Viktorovych Pshonka was maintained on the list of persons, entities and bodies subject to those restrictive measures;

2. Orders the Council of the European Union to pay the costs.