



Press and Information

Court of Justice of the European Union

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Judgment in Case C-376/10 P
Pye Phyo Tay Za v Council

Sanctions adopted by the Council in relation to a third country cannot be applied to natural persons solely on the ground of their family connection with persons associated with the leaders of that country

The Court of Justice annuls the European regulation freezing the funds of Mr Pye Phyo Tay Za, in so far as the regulation concerns him

On account of the failure to make progress towards democracy and persistent human rights violations in Burma/Myanmar¹, the Council has adopted, since 1996, a number of restrictive measures against that country. Those measures have been maintained and strengthened on a regular basis. They comprise, inter alia, the freezing of the funds of the members of the Government of Myanmar and of the persons and entities associated with them, whose names are included on a list drawn up by the Council.

The name of Mr Pye Phyo Tay Za was included on that list as a person who benefits from the government's economic policies, together with the information 'Son of Tay Za', and the name of his father was accompanied by the information 'Managing Director, Htoo Trading Co.; Htoo Construction Co.'

In May 2008, Mr Pye Phyo Tay Za brought an action before the General Court for annulment of the European regulation² in which his name appeared on the list annexed thereto.

By judgment of 19 May 2011³, the General Court dismissed his action, holding, inter alia, that it may be presumed that the family members of leading business figures benefit from the functions exercised by those businessmen, so that it may be concluded that such family members also benefit from the economic policies of the government. The General Court also held that that presumption could be rebutted if Mr Pye Phyo Tay Za successfully demonstrated that he did not have a close link with the business man who is part of his family.

Mr Pye Phyo Tay Za subsequently lodged the present appeal against that judgment. In this case, the Court is asked to give a ruling on the conditions under which a system of sanctions introduced by the Council against a third country may apply to natural persons, and on how close the link between those persons and the governing regime has to be.

In its judgment today, the Court refers to its case-law⁴ to the effect that restrictive measures imposed on a third country must be directed only – in so far as natural persons are concerned – against the leaders of that country and the persons associated with them.

¹ The first action taken by the European Union took the form of Common Position 96/635/CFSP of 28 October 1996 defined by the Council on the basis of Article J.2 of the Treaty on European Union, on Burma/Myanmar (OJ 1996 L 287, p. 1).

² Council Regulation (EC) No 194/2008 of 25 February 2008 renewing and strengthening the restrictive measures in respect of Burma/Myanmar and repealing Regulation (EC) No 817/2006 (OJ 2008 L 66, p. 1).

³ Case [T-181/08 Pye Phyo Tay Za v Council](#).

⁴ Joined Cases [C-402/05 P](#) and [C-415/05 P](#) *Kadi and Al Barakaat International Foundation v Council and Commission*; see also Press Release No [60/08](#).

Accordingly, by finding that such restrictive measures could not be directed at persons associated with that country 'in some other way', the Court intended to restrict the categories of natural persons at whom targeted restrictive measures may be directed to those whose connection with the third country concerned is quite obvious, namely the leaders of third countries and the individuals associated with those leaders.

Therefore, the application of such measures to natural persons on the sole ground of a family connection with such persons who are associated with the leaders of the third country concerned – irrespective of the personal conduct of such natural persons – is contrary to EU law. It is difficult to establish a link, even an indirect link, between the absence of progress towards democratisation and the continuing violation of human rights in Myanmar – which is one of the reasons which led to the adoption of the restrictive measures – and the conduct of the family members of those in charge of businesses, which, in itself, has not been criticised.

Consequently, a measure freezing the funds and economic resources of Mr Pye Phyo Tay Za could have been adopted only in reliance upon precise, concrete evidence which would have enabled it to be established that he benefited from the economic policies of the leaders of Myanmar.

It follows from those considerations that the General Court erred in law by finding that it may be presumed that the family members of leading business figures benefit from the functions exercised by those businessmen, so that such family members also benefit from the economic policies of the government, and that there is therefore a sufficient link between Mr Pye Phyo Tay Za and the military regime of Myanmar.

Accordingly, the Court sets aside the judgment of the General Court and the provisions of the contested regulation which concern Mr Pye Phyo Tay Za.

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.

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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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