

THE EUROPEAN COURT OF JUSTICE: CHYZH PLAYS HOCKEY WITH LUKASHENKO, SO WHAT?

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Once again, the Court of Justice of the EU has made it clear to the Council of the EU's lawyers that they need to provide more cogent arguments why sanctions must be imposed on Belarusian citizens and companies. The EU's legislative branch requires incontrovertible evidence of mutually beneficial connections between Belarusian tycoons and the country's political regime; implicit arguments are insufficient.

In December 2014, Vladimir Peftiev and three companies associated with him – BelTexExport, Sport-Pari, BT Telecommunications – won four cases against the Council of the EU. More recently, Belarusian plaintiffs have celebrated yet another two favorable verdicts.

In the [first case](#), Yury Chyzh, Triple Holding, and 12 other companies acted together as one plaintiff. While in the [second case](#), the football club Dynamo-Minsk – Chyzh heads its Steering Committee – was the sole plaintiff challenging the EU's decision on the club's inclusion in the sanctions list. In both cases, the Court of Justice of the EU ruled that the Council of the EU made erroneous decisions and has to reimburse the Belarusian plaintiffs' judicial expenses.

What were the arguments of the legislative branch of the EU, and why the lawyers of the Council of the EU could not present convincing arguments for the scrupulous Court?

The validity of imposing limitations on Chyzh's companies and the football club Dynamo depended on the evidence that "Chyzh is associated with President [Lukashenko] and his sons and benefits from and supports the [Lukashenko] regime". The Council of the EU contended that Yury Chyzh is one of the leading Belarusian businesspeople, and that Lukashenko's regime has close and mutually beneficial relations with influential businesspeople. The lawyers of the Council of the EU stated that it is difficult to give material evidence of the payment of bribes, but that it is 'most unlikely' that the favours granted by the regime to the applicants would not have been returned in one way or another. The Council adduced the following facts. First, Lukashenko, by presidential edict, granted him land in his native village of Sabali for the construction of a tourist and cultural centre. In addition, Chyzh obtained 99-year lease of land and was exempted from paying the related mandatory contributions and benefited from the assistance of the local administration to complete his construction project. Second, Triple obtained a contract to build housing for the army and real estate for the Belarusian Ministry of Defence, which is unique for its scale and length. The Council of the EU noted that Chyzh's businesses gained the favorable contract conditions not through public procurement procedures but thanks to his close connections with Lukashenko's regime.

The Court of Justice of the EU did not agree with such argumentation. Its verdict implies that the Council of the EU was expected to provide more concrete proof that Triple was granted the beneficial state contracts exactly because of the connections between Chyzh and Lukashenko, enabling to circumvent the required procedures. Furthermore, according to the Court, other precedents of the Belarusian president's decrees on investment projects demonstrate that the cases of the state's goodwill to Triple are not exceptional. The judges pointed out that the lawyers of the Council of the EU relied on circular reasoning: on the one hand, tenders won by Chyzh's companies show his closeness to the regime; on the other hand, the companies could win because Chyzh has close ties with Lukashenko.

According to the ruling of the Court of Justice of the EU, taxes paid by Triple and Chyzh cannot be considered as provision of financial support for the regime, because tax paying is obligatory for all Belarusian taxpayers. And regarding Chyzh's alleged bribes to Belarusian officials, indirect evidence does not suffice to confirm them; facts are needed.

To prove Chyzh's special relations with the people atop the country's political elite, the Council of the EU provided the case when the businessperson accompanied one of Lukashenko's sons during an official visit to Russia, which aimed to promote Belarusian economic interests. However, that fact did not convince the Court of Justice of the EU: participation of leading businesspeople in state delegations is common international practice. Besides, discussions focused on prospects of cooperation in the field of heavy industry, in particular the production of Belarusian dump trucks in Russia without establishing the benefit which Mr Chyzh drew from his participation in the delegation.

Finally, the Council of the EU adduced "sport arguments" to demonstrate special contacts between Chyzh and Lukashenko. The Council argues that, given President Lukashenko's attachment to sport, the fact of playing a role in sports bodies is one way of developing links with the regime and supporting it. The Council argues in that regard, first, that one of President Lukashenko's sons is Chair of the central council of the President's Sports Club and that another of his sons is a member of that club, like Mr Chyzh; second, that the latter is Chair of the football club FC Dynamo Minsk and Chair of the Belarusian Federation of wrestling, which confirms his association to the regime; third, that Mr Chyzh is President Lukashenko's regular hockey partner. It adds that the fact that there may be also other reasons for Mr Chyzh's sporting positions than attempts to please the President Lukashenko does not exclude or diminish the relevance of his association to the regime. Mr Chyzh's relations with President Lukashenko and his sons, both personally and through his business interests, demonstrate that Mr Chyzh is associated with the Belarusian leadership, the Council concludes.

However, the "sports arguments" also did not satisfy the Court of Justice of the EU. The Court holds that being a member or chair of sports clubs cannot, as such, establish that Mr Chyzh supports or benefits from the regime on the sole ground that President Lukashenko has an attachment to sport.

As a result, the Court of Justice of the EU required from the Council of the EU more substantial evidence of close economic ties between Chyzh and Lukashenko which it had not been able to present. At the current stage of the legal battles, the Council of the EU definitely lost. Still, in case the Council obtains weighty proof, it can lodge an admissible and well-founded appeal.

The decisions of the Court of Justice of the EU regarding Chyzh and his companies coincided with a rapprochement between Belarus and the EU. It may lead to the spurious conclusion that the legislative branch of the EU is driven by political considerations. The Court is indeed an independent branch of power and its verdicts are based solely on legal analysis and legal precedents of earlier "sanctions" cases.