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Belgium evades judicial review of frozen Russian billions
The Department of Finance puts judges aside once affected Russians oppose

Numerous Russians who are not themselves sanctioned and whose assets Belgium nevertheless were blocked after the invasion of Ukraine, are challenging those sanctions. But the federal public Finance Department is doing everything in its power to prevent the Council of State from ruling on the merits.
With 80 billion euros in frozen assets and 192 billion euros in blocked transactions, Belgium takes the crown in implementing international financial sanctions against Russia after the invasion of Ukraine. The bulk of that €272 billion in cash, shares, bonds and the like is at Euroclear, the Brussels-based financial institution that settles international securities transactions.
Investigations by De Tijd into the proceedings already initiated before the Council of State regarding those frozen assets, reveal that the Finance Department evades court actions when unsanctioned Russians try to establish that their assets should be released. Those Russians are not themselves on the sanctions list, but the Russian financial institution where their assets were held, is. The Russians' lawyers are frustrated that they cannot have these matters reviewed by the Council of State, which can rule on the proper application of the sanctions regime.

A Treasury department is continuously using a legal trick to avoid a ruling by the Council of State on the release of assets.
The Treasury, the competent department of the Finance Department, continuously uses the same legal trick to evade a ruling by the Council of State. As soon as such a procedure is initiated against the Treasury's refusal to release the assets, the Treasury withdraws its own decision of refusal again. As a result, the proceedings before the Council of State are devoid of object, and the Council can no longer rule on the substance. In practice, the assets remain frozen and the Treasury can again refuse a new request for release with a new decision.

Pyrrhic victory
An example. On 11 April last year, a Russian went to the Council of State to appeal a refusal by the Treasury to release his frozen funds. The Russian is not on the sanctions list, but his frozen funds passed through the National Settlement Depository (NSD) in Moscow, the Russian counterpart of Brussels-based Euroclear. The NSD has, however, been sanctioned since June 2022, so its accounts are blocked at Euroclear.
In this case, the Treasury had already refused on 10 February last year to release the funds the Russian had deposited with NSD, which had been frozen at Euroclear. A year later, on 7 February this year, while the case was still pending before the Council of State, the Treasury withdrew the appealed decision. '*The present appeal has therefore lost its object and has thus become without purpose*,' concluded the Council of State, which on 4 June this year had no choice but to dismiss the appeal.
'*As a result of the withdrawal of the appealed decision, the defendant* (the Treasury/Finance, ed.) *must be regarded as the party which was unsuccessful on the merits and the costs must be charged to it,*' the judgment reads. The Department of Finance, as the 'losing party', therefore had to pay the costs and the litigation fee, but that is a pyrrhic victory for the other party, as the assets remained frozen.

Million-dollar files
The same strategy has already been used in numerous other proceedings before the Council of State, initiated both by non-sanctioned Russians living in Moscow or in Europe, and by companies that are also not sanctioned. The files often concern millions, and sometimes billions, of frozen funds such as a €2.25 billion transfer owed by a US bank to Russia's central bank. The US bank went to the Council of State in October and the following month the Treasury revoked the refusal decision.

‘*We are obliged to comply with European regulations and the general rule is the freezing of assets. The exemption regime is the exception.*’ Treasury's reaction

In April last year, the Treasury's top executive said that barely a handful of proceedings had been initiated before the Council of State at the time. But at the request of De Tijd, the Finance Department now reports that last year, in the end, 72 procedures were initiated before the Council of State against refusals by the Treasury to release frozen assets. Out of these, as many as 63 decisions were withdrawn again, the Finance Department reports. This year, 75 new procedures have also been initiated before the Council of State and have yet to be heard. In addition, 11 cases have been started at the Brussels Court of First Instance, eight of them in summary proceedings.

In its answers to our questions, the Treasury gives little guidance on the strategy used. In none of the proceedings before the Council of State in which the Treasury withdrew its decision, a subsequent release of the frozen assets followed, she stresses. '*We are obliged to comply with European regulations and the general rule is the freezing of assets. The exemption regime is the exception.*'

Lawyer: 'This is about people who have nothing to do with the war'

The lawyers of the affected Russians are frustrated that they cannot have the asset freeze reviewed by the Council of State. '*The legal trick used by the Treasury seems to be for tactical reasons. Our clients feel they are just being kept busy and that the Treasury is doing everything it can to avoid having to release the funds,*' lawyer Roeland Moeyersons responds to our enquiry.

'*We don't even get the chance to go to the European Court, to have the way the Belgian government deals with European sanctions rules, reviewed. After all, it is already impossible to have this reviewed by the Council of State in Belgium.*'

'*However, these are people who have not been sanctioned and have nothing at all to do with the war. They are usually wealthy Russian individuals who have been living and working in Europe for years, including in Switzerland, the Czech Republic, Spain, the UK and Italy, but who were still using Russian banking or investment services. This ranges from millions to tens of millions of euros blocked for each individual. They also used Western banks, with which they had no problem. Unlike for example their investments made on the Moscow Stock Exchange, which were held at the NSD (the Russian counterpart of Euroclear, ed.). The NSD is sanctioned, but the people who - indirectly and without their knowledge - hold securities and assets with the NSD usually are not.*'

'*I also act for sanctioned individuals, and that is a totally different story: their assets are indeed legally frozen. But a Russian millionaire who held his investments in a Russian bank using the NSD, but is himself not involved in sanctions at all, is not targeted by the sanctions and is entitled to the release of his money. What if a Western bank is sanctioned by the Russian government and you can no longer get your savings as a result, that's not right either, is it?*'