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Press and Information

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Advocate General's Opinion in Case C-229/05 P

Kurdistan Workers' Party (PKK) and the Kurdistan National Congress (KNK) v Council of the European Union

ADVOCATE GENERAL KOKOTT CONSIDERS THAT OSMAN OCALAN IS ENTITLED TO BRING PROCEEDINGS ON BEHALF OF THE PKK

The Court of First Instance should not have dismissed the application against the inclusion of the PKK on a list of terrorist organisations as being inadmissible. The Court of First Instance will therefore still have to decide whether it was correct to include the PKK on that list.

The Council decided in 2002 to enter the PKK on a list of terrorist organisations.¹ Mr Osman Ocalan, on behalf of the Kurdistan Workers' Party (PKK), and Mr Serif Vanly, on behalf of the Kurdistan National Congress (KNK), brought an action against that decision. By order of 15 February 2005 the Court of First Instance dismissed that action. In the view of the Court of First Instance, the KNK was not individually concerned by the Council's decision concerning inclusion on the list. Mr Ocalan was himself unable to prove that he represented the PKK, as according to his own statements it no longer existed. Both applicants lodged an appeal with the Court of Justice against that order.

In her Opinion delivered today, Advocate General Kokott takes the view that the application brought by Osman Ocalan on behalf of the PKK is admissible in so far as it is directed against Decision 2002/460/EG. The finding of the Court of First Instance to the contrary must be set aside.

The Court of First Instance, she opines, made an error of law in its assessment of the application's admissibility. It was incorrect to conclude from Mr Ocalan's explanation that the PKK no longer existed that he could therefore no longer represent it. In so doing, the Court of First Instance distorted his evidence. In assessing the evidence, regard should have been had to the fact that the PKK, by reason of its nature, could not have had a formal statute, that its Congress had only decided that activities carried out in its name should be terminated,

¹ Council Decision 2002/334/EC of 2 May 2002. Decision 2002/460/EC of 17 June 2002 updated the list, on which the PKK continued to appear.

but that the organisation itself possibly continued to exist under the name of KADEK. In particular, since the Council continued to designate the PKK a terrorist organisation, the PKK had to be entitled to bring proceedings against its corresponding inclusion on the list.

In the Advocate General's view, the Court of First Instance also made a procedural error. In view of its doubts as to whether Mr Ocalan could represent the PKK, it ought to have given him the opportunity to clarify his power of attorney.

The Advocate General proposes that the Court should decide that Mr Ocalan is entitled to bring proceedings on behalf of the PKK and that his application should be referred back to the Court of First Instance for a decision on whether it is also well founded.

In Advocate General Kokott's view, by establishing that the application brought on behalf of the Kurdistan National Congress was inadmissible, the Court of First Instance did not, however, err in law. With respect to the decision incriminating the PKK, the situation of the KNK is in no way different from that of any other person in the Community and thus does not satisfy the conditions for bringing an application.

IMPORTANT: The Advocate General's Opinion is not binding on the Court. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court of Justice are now beginning their deliberations in this case. Judgment will be given at a later date.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: DE, EN, FR

The full text of the Opinion may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-229/05 P>

It can usually be consulted after midday (CET) on the day of delivery.

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