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Judgment of the Court of Justice in Case C-229/05 P

PKK and KNK v Council of the European Union

**THE COURT OF FIRST INSTANCE MUST REEXAMINE THE INCLUSION OF THE
PKK ON A LIST OF TERRORIST ORGANISATIONS**

Hearing an appeal, the Court of Justice partially sets aside the order in which the Court of First Instance made a finding of inadmissibility and declares that the application made on behalf of the PKK to the Court of First Instance is partially admissible

In the context of implementation of Resolution 1373 (2001) of the United Nations Security Council, the Council of the European Union decided in 2002 to enter the Kurdistan Workers' Party (PKK) on a list of terrorist organisations,¹ resulting in the freezing of its funds. Osman Ocalan, on behalf of the PKK, and 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 the action as inadmissible. According to the Court of First Instance, the KNK was not individually concerned by the Council's decision concerning the PKK's inclusion on the list. It also held that Mr Ocalan had failed to prove that he represented the PKK as, according to his own statements, the PKK no longer existed. Both applicants lodged an appeal with the Court of Justice against that order.

In today's judgment, the Court of Justice has set aside the order of the Court of First Instance in so far as it dismissed Mr Ocalan's application on behalf of the PKK as inadmissible. The Court of First Instance wrongly deduced from examination of Mr Ocalan's statements that the PKK no longer existed and could thus no longer be represented by him.

With regard to the PKK's capacity to bring an action for annulment, the Court of Justice observed that that organisation cannot, simultaneously, have an existence sufficient for it to be subject to restrictive measures laid down by the Community legislature and not have an existence sufficient to contest those measures. The effect of any other conclusion would be that an organisation could be included in the list of terrorist organisations without being able to bring an action challenging its inclusion.

The Court of Justice concluded that Mr Ocalan is acting validly on behalf of the PKK and can also instruct lawyers to represent it.

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.

The Court of First Instance must now rule on the merits of the application made by Mr Ocalan on behalf of the PKK in so far as it relates to the decision of 17 June 2002, which kept the PKK on the list. So far as concerns the PKK's initial inclusion on the list by virtue of the decision of 2 May 2002, the Court of Justice held that the application was not made to the Court of First Instance within the time-limit.

The Court of Justice held that the Court of First Instance was right to dismiss the application made by Mr Vanly on behalf of the KNK. The KNK was in the same position as any other person in the Community as regards the Council decision affecting the PKK, and therefore did not satisfy the conditions for bringing an action for annulment. The Court of Justice held in this respect that no conflict between the European Convention of Human Rights and those conditions was established.

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Languages available: BL ES CS DE EL EN FR IT HU NL PT SK

The full text of the judgment 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>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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