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|  | <p>TRIBUNAL DE PRIMERA INSTANCIA DE LAS COMUNIDADES EUROPEAS Soud prvního stupně Evropských společenství DE EUROPÆISKE FÆLLESSKABERS RET I FØRSTE INSTANS GERICHT ERSTER INSTANZ DER EUROPÄISCHEN GEMEINSCHAFTEN EUROOPA ÜHENDUSTE ESIMESE ASTME KOHUS ΠΡΩΤΟΔΙΚΕΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES TRIBUNAL DE PREMIÈRE INSTANCE DES COMMUNAUTÉS EUROPÉENNES CÚIRT CHÉADCHÉIME NA GCOMHPHOBAL EORPACH TRIBUNALE DI PRIMO GRADO DELLE COMUNITÀ EUROPEE EIROPAS KOPIENU PIRMĀS INSTANCES TIESA</p> | <p>EUROPOS BENDRIJŲ PIRMOSIOS INSTANCIJOS TEISMAS EURÓPAI KÖZÖSSÉGEK ELŐFOKÚ BÍRÓSÁGA İL-QORT TAL-PRIMĪSTANZA TAL-KOMUNITAJIET EWROPEJ GERECHT VAN EERSTE AANLEG VAN DE EUROPESE GEMEENSCHAPPEN SĄD PIERWSZEJ INSTANCIJ WSPÓLNOT EUROPEJSKICH TRIBUNAL DE PRIMEIRA INSTÂNCIA DAS COMUNIDADES EUROPEIAS SÚD PRVÉHO STUPŇA EURÓPSKÝCH SPOLOČENSTEV SODIŠČE PRVE STOPNJE EVROPSKIH SKUPNOSTI EUROOPAN YHTEISÖJEN ENSIMMÄISEN OIKEUSASTEEN TUOMIOISTUIN EUROPEISKA GEMENSKAPERNAS FÖRSTAINSTANSRÄTT</p> |
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Press and Information

PRESS RELEASE No° 97/06

12 December 2006

Judgment of the Court of First Instance in Case T-228/02

Organisation des Modjahedines du peuple d'Iran v Council of the European Union

THE COURT OF FIRST INSTANCE ANNULS THE COUNCIL'S DECISION ORDERING THE FREEZING OF THE FUNDS OF THE ORGANISATION DES MODJAHEDINES DU PEUPLE D'IRAN IN THE FIGHT AGAINST TERRORISM

The contested decision infringes the right to a fair hearing, the obligation to state reasons and the right to effective judicial protection

On 28 September 2001, the United Nations Security Council adopted a resolution calling on all Member States of the UN to combat terrorism and the financing of terrorism by all means, in particular by freezing the funds of persons who commit, or attempt to commit, terrorist acts. That resolution did not, however, identify the persons and entities in question, leaving that assessment to the Member States to determine.

That resolution has been implemented in the Community through a common position¹ and a regulation² of the Council, adopted on 27 December 2001, which ordered the freezing of the funds and other financial assets or economic resources of persons and entities included in a list established and regularly updated by Council decisions. Inclusion on the list is to be done on the basis of precise information or material in the file which indicates that a decision has been taken by a competent national authority, usually a judicial authority, in respect of the persons and entities concerned, irrespective of whether it concerns the instigation of investigations or prosecution for a terrorist act, an attempt to perpetrate, participate in or facilitate such an act based on serious and credible evidence or clues, or a finding of guilt in respect of such deeds. The names of persons and entities on the list are to be reviewed at regular intervals and at least once every six months to ensure that there are still grounds for keeping them on the list.

The Organisation des Modjahedines du peuple d'Iran (OMPI, People's Mujahidin of Iran), was founded in 1965 and set itself the objective of replacing the regime of the Shah of Iran, then the mullahs' regime, by a democracy. In the past, it has had an armed branch operating

¹ Common Position 2001/931/CFSP on the application of specific measures to combat terrorism (OJ 2001 L 344, p. 93).

² Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 70).

inside Iran. It has stated, however, that it has expressly renounced all military activity since June 2001.

By a common position and a decision of 2 May 2002, the Council updated the list of persons and entities whose funds were to be frozen as part of the fight against terrorism, including, among others, the OMPI. Since then, the Council has adopted a number of common positions and decisions updating the list in question. The OMPI has always been maintained on the list.

The OMPI brought an action before the Court of First Instance seeking annulment of those common positions and decisions, in so far as those acts concern it.

The Court **finds that certain fundamental rights and safeguards, including the right to a fair hearing, the obligation to state reasons and the right to effective judicial protection, are, as a matter of principle, fully applicable in the context of the adoption of a Community decision to freeze funds under Regulation No 2580/2001.**

In this respect, the Court draws **a distinction between the present case and** the cases concerning the freezing of funds of persons and entities linked to Osama bin Laden, Al-Qaeda and the Taleban, which were the subject-matter of the **judgments in Yusuf and Kadi** of 21 September 2005³ and also the judgments in *Ayadi* and *Hassan* of 12 July 2006.⁴ In those cases, the Council and the Commission had merely transposed at Community level resolutions of the Security Council and decisions of its Sanctions Committee which identified the persons concerned by name, without the Community institutions having any discretionary power as to the appropriateness or well-foundedness of those measures. By contrast, in the system at issue in the present case, the Security Council left it to the discretion of the UN Members to carry out the specific identification of the persons and entities whose funds are to be frozen. That identification thus involves the exercise of the Community's own powers, entailing a discretionary appreciation by the Community. In those circumstances, the Council is in principle bound to observe the fundamental rights guaranteed by the Community legal order.

Next, the Court defines the scope of those rights and safeguards, and also the restrictions which may be imposed on them when a Community measure freezing funds is adopted.

The Court holds that **the general principle of observance of the right to a fair hearing** does not require that the persons concerned be heard by the Council when an initial decision to freeze their funds is adopted, as it must be able to benefit from a surprise effect. However, that principle does **require** that, unless precluded by overriding considerations concerning the security of the Community and its Member States, or the conduct of their international relations, **the parties concerned must be informed of the specific information** or material in the file which indicates that a decision has been taken in respect of them by a competent authority of a Member State, in so far as reasonably possible, either concomitantly with or as soon as possible after the adoption of such a decision. Subject to the same reservations, the parties concerned must be afforded the opportunity to make known effectively their view on any subsequent decision to maintain a freeze on funds.

Likewise, unless precluded by overriding considerations concerning the security of the Community and its Member States, or the conduct of their international relations, **the**

³ See Press Release No 79/05 of 21 September 2005.

⁴ See Press Release No 57/06 of 12 July 2006.

statement of reasons for an initial or subsequent **decision** to freeze funds **must at least make actual and specific reference to the specific information or material in the file which indicates that a decision has been taken in respect of them by a competent authority of a Member State. That statement must also state the reasons why the Council considers, in the exercise of its discretion, that such a measure must be taken in respect of the parties concerned.**

Lastly, the right to effective judicial protection is effectively ensured by the right the parties concerned have to bring an action before the Court against any decision to freeze their funds or maintain the freeze on their funds. However, given the broad discretion enjoyed by the Council in this area, the review carried out by the Court of the lawfulness of such decisions must be restricted to checking that the rules governing procedure and the statement of reasons have been complied with, that the facts are materially accurate, and that there has been no manifest error of assessment of the facts or misuse of power.

Applying those principles to the facts of the present case, the Court notes, first, that **the relevant legislation does not explicitly provide for any procedure for notification of the evidence adduced or for a hearing of the parties concerned**, either before or concomitantly with the adoption of an initial decision to freeze their funds or, in the context of the adoption of subsequent decisions, with a view to having them removed from the list.

Next, **the Court finds that at no time before the action was brought was the evidence adduced against the OMPI notified to it.** Neither the initial decision to freeze its funds nor subsequent decisions to maintain that freeze even mention the specific information or material in the file showing that a decision justifying its inclusion on the disputed list was taken in respect of it by a competent national authority.

The Court infers therefrom that the decisions in question do not contain sufficient statements of reasons.

Not only has the OMPI been unable effectively to make known its views to the Council but, in the absence of any statement, in the contested decision, of the actual and specific grounds justifying that decision, it has not been placed in a position to avail itself of its right of action before the Court.

Moreover, neither the file material produced before the Court, nor the responses given at the hearing by the Council and the United Kingdom in response to the questions put by **the Court, enable it to conduct its judicial review, since it is not even in a position to determine with certainty exactly which is the national decision on which the contested decision is based.**

In conclusion, the Court finds that the decision ordering the freezing of the OMPI's funds does not contain a sufficient statement of reasons and that it was adopted in the course of a procedure during which the right of the party concerned to a fair hearing was not observed, and that it is not in a position to review the lawfulness of that decision. Accordingly that **decision must be annulled** in so far as it concerns the OMPI.

REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.

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

Languages available: ES CS DE EN FR HU PL SK SL

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=T-228/02>

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

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