



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 64/10

Luxembourg, 29 June 2010

Judgment in Case C-550/09

Criminal proceedings against E and F

The Council decisions which included the DHKP-C on lists relating to measures for combating terrorism before June 2007, adopted in breach of basic procedural safeguards, cannot form any part of the basis for criminal proceedings against members of that organisation who are not on those lists

In order to implement a number of UN resolutions, the Council adopted a common position¹ and a regulation² under which the funds of persons and entities included on a list established and regularly updated by Council decisions are to be frozen. The regulation also prohibits funds from being made available, directly or indirectly, for the benefit of persons or entities on that list. German law provides that infringements of legislative acts of the European Union, such as that regulation, are punishable by criminal penalties.

On 2 May 2002, the organisation known as the Devrimci Halk Kurtulus Partisi-Cephesi (DHKP-C) was placed on the list in question. Since then, the Council has adopted various decisions updating that list. The DHKP-C has always been kept on the list.

Until June 2007, those decisions were adopted without the persons or entities on the list being provided with the specific reasons for their inclusion. Following a judgment of the General Court³ which ruled that the placing of a group on that list was illegal, one of the grounds for that ruling being that the Council had not provided a statement of reasons for the group's inclusion and substantive review by the Court was therefore impossible, the Council amended its procedure regarding entries on the list. At the time of the adoption of a new decision updating the list⁴, which entered into force on 29 June 2007, the Council provided the persons and groups concerned with a statement of the reasons for their inclusion.

E and F are accused of being members of the DHKP-C from 30 August 2002 until 5 November 2008. They have been placed in pre-trial detention for membership of a terrorist group and criminal proceedings have been brought against them. According to the indictment, throughout the duration of their membership of the DHKP-C, they organised annual campaigns for the collection of donations and sold publications, the proceeds from which went to the DHKP-C. During that period, one of the defendants collected and transferred to the executive authorities of the DHKP-C funds amounting to at least EUR 215 809, the other at least EUR 105 051. Being uncertain as to the legality of the DHKP-C's inclusion on the list, the Oberlandesgericht Düsseldorf (Germany) asked the Court of Justice whether, in view of the judgments of the General Court⁵ annulling the inclusion of certain persons and entities because of failure to comply with basic procedural safeguards, the inclusion of the DHKP-C must, as regards the period prior to 29 June 2007 should also be held illegal, despite the fact that the DHKP-C has not sought annulment of that inclusion.

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).

³ Case [T-228/02](#) *Organisation des Modjahedines du peuple d'Iran v Council* (see also CP [97/06](#)).

⁴ Council Decision 2007/445/EC of 28 June 2007 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decisions 2006/379 and 2006/1008 (OJ 2007 L 169, p. 58).

⁵ In subsequent judgments, the General Court has held the inclusion of a number of other entities to be illegal on the same grounds as those stated in its judgment in Case T-228/02.

The Court first points out that the case before the national court could lead to criminal penalties involving a custodial sentence. In that context, the Court states that the European Union is based on the rule of law and the acts of its institutions are subject to review by the judicature of the European Union of their compatibility with the Treaty on the Functioning of the European Union and general principles of law. In proceedings before national courts, every party has the right to plead the illegality of the provisions contained in legislative acts of the European Union which serve as the basis for a decision or act of national law relied upon against him and to prompt that court to put that question to the Court by means of a reference for a preliminary ruling, where he has no right of direct action before the General Court of the European Union in respect of those provisions.

In that regard, the Court points out that E and F are not themselves on the list relating to the freezing of funds, which concerns only the DHKP-C, and that the obligations and prohibitions laid down in the legislation of the European Union in relation to the fight against the financing of international terrorism are addressed to an indeterminate number of persons. In consequence, the defendants – unlike the DHKP-C – did not have an indisputable right to bring an action before the General Court for annulment of that listing.

As regards the legality of the Council decisions prior to June 2007, the Court notes that none of those decisions was accompanied by a statement of reasons relating to the legal conditions for the application of the Regulation to the DHKP-C, or an explanation of the actual and specific reasons for which the Council considered that the inclusion of DHKP-C on the list was justified, or remained so. E and F were therefore denied the information necessary to enable them to verify whether the inclusion of DHKP-C on the list during the period prior to 29 June 2007 was well founded and to check, in particular, the accuracy and relevance of the evidence on which that listing was based, despite the fact that it was one of the grounds of the indictment drawn up against them.

The lack of a statement of reasons which vitiates the listing is also liable to frustrate the attempts of the courts to carry out an adequate review of the substantive legality of that listing. Yet the possibility of an adequate review by the courts is indispensable if a fair balance between the requirements of the fight against international terrorism, on the one hand, and the protection of fundamental liberties and rights, on the other, is to be ensured.

On the question whether the decision of June 2007 legitimated *ex post facto* the inclusion of the DHKP-C on the list, the Court holds that that decision cannot, in any circumstances, be relied upon as a basis for a criminal conviction in respect of facts relating to the period before its entry into force. Otherwise, the principle of the non-retroactivity of provisions which may form the basis for a criminal conviction would be infringed.

Accordingly, the Court holds that **it is for the national court to decline to apply**, in the proceedings before it, **the Council decisions adopted before June 2007, which consequently cannot form any part of the basis for criminal proceedings against E and F in respect of the period prior to 29 June 2007.**

Lastly, the Court adds that the prohibition laid down in the Regulation on making available funds to persons or entities on the list covers the transfer to an entity on the list, by a member of that entity, of funds collected or obtained from third persons.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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