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Press and Information

PRESS RELEASE No° 84/08

4 December 2008

Judgment of the Court of First Instance in Case T-284/08

People's Mojahedin Organization of Iran v Council

THE COURT ANNULS, FOR THE THIRD TIME, A COUNCIL DECISION FREEZING THE FUNDS OF THE PEOPLE'S MOJAHEDIN ORGANIZATION OF IRAN

The Council has violated the rights of defence of the PMOI by not communicating to it the new information which, according to the Council, justified maintaining it on the European list of terrorist organisations; by refusing to communicate to the Court certain information about the case, the Council has equally infringed the fundamental right of the PMOI to effective judicial protection.

By decision of 2 May 2002, the Council included the People's Mojahedin Organization of Iran ("PMOI") in the Community list of persons and entities whose funds must be frozen in order to combat terrorism. Since then, the Council adopted several decisions giving effect to the list in question. The PMOI continued to be included in that list. These successive decisions freezing the funds of the PMOI have already resulted in two judgments of the Court of First Instance.

In its first judgment of 12 December 2006¹ (the OMPI judgment), the Court annulled one of the decisions on the grounds that it did not contain a sufficient statement of reasons, that it had been adopted in the course of a procedure during which the applicant's rights of defence had not been observed and that the Court itself was not in a position to review the lawfulness of that decision.

In a second judgment of 23 October 2008², (the PMOI judgment) the Court annulled a later decision on the grounds that the Council had failed to give sufficient reasons as to why it had not taken into account the judgment of a British judicial authority, the Proscribed Organisations Appeals Commission ("POAC"), ordering the removal of the PMOI from the British list of terrorist organisations. In this judgment the Court recalled that it was imperative when adopting Community fund-freezing measures that the Council ensure the existence of a decision of a competent national judicial authority, as well as verifying any consequences of this decision at the national level. In its judgment, the POAC described as 'perverse' and 'unreasonable' the Home Secretary's conclusion that the applicant was still an organisation concerned in terrorism.

¹ Judgment of the Court of First Instance in Case [T-228/02](#) *Organisation des Modjahedines du peuple d'Iran* (see also Press Release [97/06](#)).

² Judgment of the Court of First Instance in Case [T-256/07](#) *People's Mojahedin Organization of Iran* (see also Press Release [79/08](#)).

The Home Secretary's application for leave to bring an appeal against the POAC's decision was definitively rejected by the Court of Appeal on 7 May 2008 and on 24 June 2008 the UK Parliament approved the Home Secretary's Order removing the PMOI from the list of proscribed organisations under the national anti-terrorist legislation.

Nevertheless, on 15 July 2008 the Council adopted a new decision³ which maintained the PMOI's name on the updated Community funds-freezing list. The Council noted in that regard that, even if the Home Secretary's order was no longer in force, 'new information concerning the group [had] been brought to the Council's attention' which, according to the Council, justified keeping the PMOI on the Community list.

By letter dated the same day the Council notified the PMOI that it had been maintained on the list. In the statement of reasons enclosed with the letter, the Council notably referred to the opening of a judicial inquiry by the anti-terrorist prosecutor's office of the Tribunal de grande instance of Paris and to two supplementary charges brought in March and November 2007 against persons presumed to be members of the PMOI. According to the Council, these acts constituted a decision of a competent national judicial authority in accordance with the applicable basic Community legislation⁴.

On 21 July 2008 the PMOI brought an action for annulment against this decision.

At the PMOI's request the case has been dealt with using an **expedited procedure**. The hearing in this case took place on 3 December and today, only one day later, the Court has delivered its judgment. **This one-day period is the quickest that the Court has ever delivered its judgment following the hearing.**

It is common ground that the Council adopted the contested decision without first informing the PMOI of the new information or new material in the file which, in its view, justified maintaining it on the list. Consequently, the PMOI was not in a position to effectively make known its view of the matter, prior to the adoption of the contested decision. **The Court therefore finds, in the light of the principles already stated in the OMPI judgment, that the contested decision was adopted in breach of the PMOI's rights of defence.**

In this regard, the Court considers that, contrary to what the Council suggested, nothing prevented it from adopting the decision in accordance with a procedure in which the PMOI'S rights of defence were respected. In particular, the Court rejects the Council's argument that it was necessary to adopt a new funds-freezing decision so urgently that it was not possible to respect PMOI's rights of defence, as laid down in the OMPI judgment.

Consequently **the Court annuls the funds-freezing decision insofar as it concerns the PMOI.**

Even though it is not necessary in these circumstances to deliver judgment on the other arguments advanced by the PMOI, by virtue of their importance the Court also examines the arguments concerning: i) whether the conditions laid down in the basic Community legislation relating to the freezing of funds were respected, notably that a decision has been taken against the person or organisation concerned by a competent national judicial authority; ii) the burden of proof in this regard; and iii) the fundamental right to effective judicial protection.

In this regard, the Court holds notably that neither the information contained in the contested decision, its statement of reasons and the letter of notification, nor even those contained in the Council's answers to the Court's request for information, establish to the requisite legal standard that the judicial inquiry opened in France in 2001 and the supplementary charges brought in 2007 constitute a decision by a competent judicial authority, in respect of the PMOI itself. In

³ Decision 2008/583/EC

⁴ Common Position 2001/931/CFSP and Council Regulation (CE) No 2580/2001

particular, **the Council has failed to explain the specific reasons as to why the acts ascribed to the persons alleged to be members of the PMOI should be attributed to the PMOI.**

Finally the Court notes that at the request of the French authorities the Council refused to communicate to the Court certain extracts of a document containing a "summary of the main points which justify the keeping of [the PMOI] on the EU list", even though this information had been communicated to the Council and subsequently to the 26 other Member States.

The Court considers that **the Council is not entitled to base its funds-freezing decision on information or material in the file communicated by a Member State, if that Member State is not willing to authorise its communication to the Community judicature** whose task is to review the lawfulness of that decision.

The refusal by the Council and the French authorities to communicate, even to the Court alone, the information contained in this document has the consequence that the Court is unable to review the lawfulness of the contested decision, which infringes the PMOI's fundamental right to an effective judicial review.

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: EN, FR

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-284/08>

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

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