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Press and Information

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Judgments of the Court of First Instance in Cases T-47/03 and T-327/03

Jose Maria Sison v Council of the European Union
Stichting Al-Aqsa v Council of the European Union

THE COURT OF FIRST INSTANCE ANNULS THE COUNCIL DECISIONS ORDERING JOSE MARIA SISON AND STICHTING AL-AQSA'S FUNDS TO BE FROZEN IN THE FIGHT AGAINST TERRORISM

The contested decisions infringe the rights of the defence, 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 the Member States of the United Nations to combat terrorism and the funding of terrorism by all possible means, in particular by freezing the funds of persons and entities that commit, or attempt to commit, acts of terrorism. The resolution did not, however, identify the persons and entities in question, it being left to the Member States to determine that identification.

That resolution was given effect in the Community by, inter alia, a common position¹ and a Council regulation², adopted on 27 December 2001, ordering the freezing of the funds of the persons and entities included in a list drawn up and regularly updated by Council decisions. Names must be entered in the list on the basis of precise information or material in the relevant file which indicates that a decision has been taken by a competent authority, as a rule judicial, in respect of the persons and entities concerned, whether that decision 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 sentence for such deeds. The names of persons and entities included in the list must be reviewed at regular intervals, at least once every six months, to ensure that there are still grounds for keeping them in the list.

Jose Maria Sison, a Filipino national, has resided in the Netherlands since 1987. When the Philippine Government withdrew his passport in September 1988 he applied for refugee status and a residence permit in the Netherlands on humanitarian grounds. That application was refused three times by decision of the State Secretary for Justice on the ground that Mr Sison was

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

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

the chairman of the Communist Party of the Philippines ('the CPP'), that the military wing of the CPP, the NPA (New People's Army), was under the Central Committee of the CPP and that Mr Sison was, in fact, the head of the NPA which was responsible for a large number of terrorist acts in the Philippines. The first two decisions were annulled by the Raad van State, but the third was upheld by decision of 11 September 1997 of the Arrondissementsrechtbank te's Gravenhage.

By a common position and a decision of 29 October 2002, the Council updated the list of persons and entities whose funds must be frozen in order to combat terrorism, including Mr Sison in particular. The Council has since then adopted various common positions and decisions updating the list in question. Mr Sison has always remained on the list.

Stichting Al-Aqsa is a foundation governed by Dutch law, which describes itself as an Islamic social welfare institution. One of its main objectives as a charitable institution is to help to alleviate the humanitarian emergencies in the West Bank and the Gaza Strip. To that end, it cooperates with several organisations in Israel and in the occupied territories, to which it gives financial support in order to carry out humanitarian projects. On 3 April 2003 the Minister for Foreign Affairs of the Netherlands adopted the Sanctieregeling Terrorisme 2003 (Regulation on sanctions for the suppression of terrorism 2003), which ordered, inter alia, the freezing of all Al-Aqsa's funds and financial assets on the ground that its transfers of funds were intended for organisations supporting terrorism in the Near East, in particular Hamas. An action against the Sanctieregeling was rejected by the competent national authority.

By a common position and a decision of 27 June 2003, the Council updated the list of persons and entities whose funds must be frozen in order to combat terrorism, including, in particular, Stichting Al-Aqsa. The Council has since then adopted various common positions and decisions updating the list in question. Al-Aqsa has always remained on the list.

Mr Sison and Al-Aqsa have brought actions before the Court of First Instance seeking annulment of the decisions ordering their funds to be frozen.

The Court finds, as it did previously in the 'Modjahedines' case³, that **certain fundamental rights and safeguards, especially the rights of the defence and the right to effective judicial protection, and also the obligation to state reasons, are in principle fully applicable to the adoption of a Community decision freezing funds pursuant to Regulation No 2580/2001.**

On the conclusion of its examination of the two cases Sison and Stichting Al-Aqsa, the Court finds that those rights and safeguards were not respected by the Council in its adoption of the contested decisions. Reasons were not given for those decisions, which were adopted in the context of procedures in which the rights of the defence of the persons concerned were not observed and the Court itself was unable to review the lawfulness of those decisions.

In those circumstances, **the Court concludes that the contested decisions must be annulled in so far as they concern Mr Sison and Al-Aqsa, respectively.**

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.

³ Judgment of 12 December 2006 in Case T.228/02 *Organisation des Modjahedines du peuple d'Iran v Council*, see Press Release 97/06 (<http://www.curia.europa.eu/en/actu/communiqués/cp06/aff/cp060097en.pdf>)

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

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

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

*<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-47/03>
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-327/03>*

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

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