



Press and Information

Court of Justice of the European Union

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Judgment in Case C-158/14

A and Others v Minister van Buitenlandse Zaken

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**Actions by armed forces during periods of armed conflict, within the meaning of international humanitarian law, may constitute ‘terrorist acts’**

*The fact that the activities of the ‘Liberation Tigers of Tamil Eelam’ may constitute actions by armed forces does not affect the validity of the acts of the European Union relating to their inclusion on the list of those whose funds are to be frozen*

According to the Netherlands authorities, A, B, C and D were involved in collecting funds for the ‘Liberation Tigers of Tamil Eelam’ (‘the LTTE’), an entity which fought a civil war against the Sri Lankan Government with a view to creating an independent State for the Tamil people in the north and east of Sri Lanka and which has been categorised as a ‘terrorist’ organisation by the EU for approximately 10 years.

Pursuant to a piece of Netherlands legislation implementing Resolution 1373 (2001) of the United Nations Security Council, the Netherlands authorities placed A, B, C and D among the persons subject to restrictive measures with a view to combating terrorism. As a result of that designation, their financial resources were frozen. In that context, the Netherlands authorities concluded that the LTTE was a terrorist group. That conclusion took into account an implementing regulation of the Council of the European Union of 2010, which maintained the LTTE on a list of groups involved in terrorist activities and subject to restrictive measures.<sup>1</sup>

In their action before the Netherlands courts, A, B, C and D have argued that that regulation is invalid on the ground that the activities of the LTTE were not terrorist acts. In their view, the LTTE was in fact a non-State armed force engaged in a non-international armed conflict in Sri Lanka. Consequently, its activities were governed only by international humanitarian law and not by the EU and international rules on combating terrorism. It follows that the EU was incorrect to regard the attacks and kidnappings carried out by the LTTE between 2005 and 2009 as ‘terrorist acts’ justifying its inclusion in an EU list concerning groups involved in terrorist acts.

As the court of final instance, the Raad van State (Netherlands Council of State) asks the Court of Justice for clarification regarding the definition of ‘terrorist acts’. In particular, it seeks to ascertain whether possible inconsistencies between that definition in EU law and in international law may affect the validity of the implementing regulation in question. According to the Raad van State, there is an international consensus regarding the fact that actions by armed forces during periods of armed conflict, within the meaning of international humanitarian law, are not to be regarded as terrorist activities.

In today’s judgment, the Court refers, first of all, to its case-law according to which a regulation providing for restrictive measures must be interpreted in the light of its historical context.

The purpose of the acts of the EU in question<sup>2</sup> is the implementation of Resolution 1373 (2001) of the United Nations Security Council, adopted following the terrorist attacks carried out in the United

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<sup>1</sup> Council Implementing Regulation (EU) No 610/2010 of 12 July 2010 implementing Article 2(3) of Regulation No 2580/2001 and repealing Implementing Regulation (EU) No 1285/2009 (OJ 2010 L 178, p. 1).

<sup>2</sup> Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism (OJ 2001 L 344, p. 93); Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive

States on 11 September 2001. They are chiefly intended to prevent terrorist acts by means of measures for the freezing of funds in order to hinder, inter alia, the financing of persons and entities liable to carry out terrorist acts. In that context, the designation of the persons and entities who are to be included on the list does not constitute a sanction, but rather a preventative measure.

Furthermore, the Court considers that customary international law does not prevent actions by armed forces during periods of armed conflict from constituting 'terrorist acts'. It emphasises in that regard that international humanitarian law pursues different aims from EU law.

In addition, although some of the international conventions to which the Raad van State makes reference exclude from their scope actions by armed forces during periods of armed conflict within the meaning of international humanitarian law, they neither prohibit the State Parties from classifying some of those actions as terrorist acts nor preclude them from taking steps to prevent the commission of such acts.

Consequently, the Court finds that actions by armed forces during periods of armed conflict, within the meaning of international humanitarian law, may constitute 'terrorist acts' for the purposes of EU law.

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**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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