

THE COURT OF FIRST INSTANCE ANNULS THE COUNCIL ACTS FREEZING JOSE MARIA SISON'S FUNDS

The national decisions relied upon by the Council in order to freeze the applicant's funds did not relate either to the instigation of investigations or prosecution or to a conviction for terrorist activity, contrary to the requirements of Community law

Jose Maria Sison, a national of the Philippines, has lived in the Netherlands since 1987. He applied there for refugee status and a residence permit. That application was three times rejected by the Secretary of State for Justice on the grounds that Mr Sison was the head of the Communist Party of the Philippines ('the CPP'), that the military wing of the CPP, the NPA ('the New People's Army'), answered to the Central Committee of the CPP and that Mr Sison in fact directed the NPA, which was responsible for a large number of acts of terrorism in the Philippines. The first two decisions refusing the application were annulled by two judgments of the Raad van State of 1992 and 1995, but the third was upheld in 1997 by decision of the Arrondissementsrechtbank te 's-Gravenhage (*The Hague District Court, 'the Rechtbank'*).

On 11 July 2007 the Court of First Instance annulled a Council decision ordering the freezing of Mr Sison's funds, on the grounds that that decision had been taken in breach of the rights of defence, the obligation to state reasons and the right to effective judicial protection¹.

In June 2007, before that judgment was delivered, the Council adopted a new decision² maintaining the freezing of Mr Sison's funds. This time, the grounds of that decision were communicated to him. The Council considered, inter alia, that the judgments of the Raad van State and the decision of the Rechtbank constituted decisions taken by competent national authorities to instigate investigations or prosecution for terrorist activity.

Since then the Council has adopted several acts maintaining the freezing of Mr Sison's funds, the latest being a regulation of June 2009³. On each occasion, the Council provided a statement of reasons very similar to that communicated in June 2007.

On 10 September 2007 Mr Sison brought an action before the Court of First Instance seeking annulment of the decision of June 2007 and compensation⁴. During the proceedings, he has regularly adapted his action so as to seek annulment of the subsequent acts maintaining the freezing of his funds.

The Court notes that, in accordance with the relevant Community legislation⁵, any decision to freeze funds must be taken on the basis of precise information or material in the file which

¹ Case T-47/03 *Sison v Council*; see also Press Release No 47/07.

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

³ Regulation (EC) No 501/2009 of 15 June 2009 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2009/62 (OJ 2009 L 151, p. 14).

⁴ In November 2007 the Court stayed proceedings so far as the claim for compensation was concerned. Accordingly, today's judgment relates only to the claim for annulment. The claim for compensation will be dealt with in another judgment.

⁵ 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).

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indicates that a decision has been taken by a competent authority, in principle judicial, in respect of

the persons and entities concerned, whether it concerns the instigation of investigations or prosecution for a terrorist act, or an attempt to perpetrate, participate in or facilitate such an act, based on serious and credible evidence or facts, or conviction for such deeds. The names of the persons and entities appearing in that list must be reviewed at regular intervals, at least once every six months, to ensure that there are still grounds for continuing the freezing of their funds.

The Court states that, having regard both to the wording, context and objectives of the provisions at issue and to the major part played by the national authorities in the fund-freezing process, a decision to 'instigat[e] ... investigations or prosecut[e]' must, if the Council is to be able validly to invoke it, form part of national proceedings seeking, directly and chiefly, the imposition on the person concerned of measures of a preventive or punitive nature, in connection with the combating of terrorism and by reason of that person's involvement in terrorism. That requirement is not satisfied by a decision of a national judicial authority that rules only incidentally and indirectly on the possible involvement of the person concerned in such activity, in relation to a dispute concerning, for example, rights and duties of a civil nature.

The Court finds that the procedures before the Raad van State and the Rechtbank clearly do not involve any 'conviction' of Mr Sison, nor do they amount to decisions to 'instigat[e] ... investigations or prosecut[e] for a terrorist act'. In fact, they were solely concerned with the review of the lawfulness of the decision of the Secretary of State for Justice refusing to grant him refugee status and a residence permit in the Netherlands.

While it is true that the Raad van State and the Rechtbank, in the course of those procedures, studied the file of the Netherlands internal security service ('the BVD') relating to Mr Sison's alleged involvement in certain terrorist activities in the Philippines, neither those judicial bodies nor the Netherlands prosecuting authority decided to open an investigation in respect of Mr Sison in the Netherlands in connection with those activities.

In those circumstances, the Court considers that neither the judgments of the Raad van State of 1995 nor the decision of the Rechtbank constitute national decisions capable of serving as a basis for a Community decision to freeze funds. The Court therefore annuls the contested decisions and regulation in so far as they freeze Mr Sison's funds.

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

NOTE: An action for annulment seeks the annulment of acts of the Community institutions that are contrary to Community law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the Court of First Instance. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

NOTE: According to the Statute of the Court of Justice, a decision of the Court of First Instance declaring a regulation void takes effect only as from the date of expiry of the period allowed for bringing an appeal before the Court of Justice, that is to say, two months and ten days from notification of the judgment or, if an appeal has been brought, as from the date of its dismissal.

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Press contact: Christopher Fretwell ☎ (+352) 4303 3355

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