

## **Summary**

### **Legal opinion by**

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### **The People's Mojahedin of Iran and the terrorist lists?**

#### **Legal impact of including the People's Mojahedin of Iran in the EU terrorist lists?**

1. With their "smart sanctions" against individuals and public bodies within the framework of the fight against international terrorism the UN Security Council, and consequently also the EU, made something possible that should not be allowed in a liberal legal system: interference in individual rights without, at the same time, providing appropriate legal appeal. Neither the Ordinance of 13 June 2002 nor the Resolution of 17 June 2002 envisages any possibility of legal protection against the listing by the Council of the European Union. The affected persons and public bodies were not even informed about the listing or the reasons why they were included in the lists.

2. The inclusion of the People's Mojahedin of Iran in the lists has numerous negative impacts on individual persons as well as organisations working on behalf of the People's Mojahedin of Iran and the national resistance council. Very few of the people are explicitly affected by the measures for fighting terrorism. Most measures have indirect impacts. Here it can be determined that there is a tendency in both the commercial and financial service sector and in immigration and aliens authorities to recognise the decision at EU level, and that in many cases reference can be made to this in justifying behaviour. Here it is particularly problematic that individual persons – from a practical and legal perspective – can hardly be able to take any effective legal action against the blocking of a bank account or a decision regarding naturalisation or asylum that is based on the inclusion of the People's Mojahedin of Iran in the EU's terrorist list.

3. Inclusion in the EU's terrorist list without legal protection violates European law, amongst other things the Committee of Ministers' Guidelines on human rights and the fight against terrorism, which were adopted during 53rd session of the UN Commission on Human Rights. This rules that a person who is accused of terrorist activities has a right to have the case brought before an independent and unbiased court that is based on the rule of law, and that this case should be subjected to a fair trial within an appropriate period of time. (IX.1. of the guidelines) This basic principle is explicitly mentioned under Section XIV. of the guidelines. The EU acts for listing violates the Treaty Establishing the European Community (TEC). Section 253 of the TEC regulates the obligation to provide reasons for legal acts. Furthermore Section 301, 60, 308 of the TEC, as the legal basis for freezing assets of natural persons and groups of persons. Section 301 stipulates that the Community may only act to restrict, respectively completely restrict economic relations with third countries, while embargo measures against individual persons are not mentioned. In other words, the European Community is only empowered to enforce sanctions against countries.

4. The following basic human rights are violated:

Violation of the right to legal hearings: Section 6, sub-section 1 of the European Convention on Human Rights; Section 14, sub-section 1 of the International Covenant on Civic and Political Rights (ICCPR) – Violation of the right to defence: Section 6, sub-section 3 c of the European Convention on Human Rights; Section 14, sub-section 3 b of the ICCPR - Violation of the right to legal remedy: Section 13 European Convention on Human Rights, Section 2, sub-section 1 Protocol No. 7 on the European Convention on Human Rights; Section 14, sub-section 5 of the ICCPR; Section 47 of the Human Rights Charter – Violation of the right to property: Section 1 Additional Protocol to the European Convention on Human Rights; Section 1, sub-section 2 International Covenant on Economic, Social and Cultural Rights – Violation of the principle of proportionality in connection with the guarantee of property (Section 1 of the Additional Protocol to the European Convention on Human Rights).

5. Terrorism is a political concept. Terrorism research has up to now brought forward more than 100 definitions of the term terrorism. However, this effort has in no way managed to provide us with a recognised definition or even a binding concept of terrorism.

So what is terrorism?

One of the main problems is that formal, juristic terror definitions are applied to any facts of a case. In the case of the inclusion of the People's Mojahedin of Iran in the list, there was a complete failure to mention the fact that Iran has been one of the most notorious violators of human rights in the world, and that every type of opposition in Iran is eradicated through violent, undemocratic means that violate the rule of law. Consequently, from the very outset there was no debate on whether the policy of the People's Mojahedin of Iran – namely to engage in an armed struggle within Iran within limits that it defines itself, and outside the immediate battleground to engage in a purely political struggle – can be defined as terrorism.

6. Therefore the EU listings, and consequently the measures applied in connection with them, are based on political decisionism without any legal character and fairness. The entire context of the measures hence not only represents a flagrant violation of the character of the human rights set out in the European Convention on Human Rights regarding rights to defence, but they must also be rejected on the basis of a legal philosophical examination of their legal character. In democratic systems the underlying principle is that the rule of law must restrict state power and political decisions. However this basic principle distinguishes between law based on the rule of law and law not based on the rule of law. Should the EU fail to correct the situation they have created through their terror lists – where law is no longer based on the rule of law – and instead continue it and even expand it, there would be a danger of a disastrous development towards "law" that was merely based on the name and had no proper legal basis, and in reality represented a law based on political enemies. Following the end of the East-West confrontation and the fall of the Iron Curtain, this would be a return to the legal understanding of the old political systems, which we believed had been overcome.

## **Dr. Jörg Arnold**

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Worked for several years in the administration of justice as a judge and as a scientist at the Humboldt University; doctorate on youth criminal law in 1986; post doctoral thesis on legal remedies in criminal proceedings in 1989.

Since 1991 at the Max Planck Institute for Foreign and International Criminal Law, Freiburg; executive lecturer and head of research group; supervision of international research projects on the protection of human rights through criminal law, in particular with regard to state criminality, respectively the criminality of the powerful and organised criminality.

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