

Netherlands - Raad van State (Council of State) - 201201220/1/A3, 201202328/1/A3, 201209742/1/A3 and 201209744/1/A3 - 2 April 2014 - ECLI:NL:RVS:2014:1148

Inclusion of LTTE on the EU terrorism list - Interpretation of the term ‘Acts of terrorism’ - Article 47 of the Charter of Fundamental Rights - Validity of regulation No 610/2010 - Article 263 TFEU - Regulation No 2580/2001 - Framework Decision 2002/475/JHA - Common Position 2001/931/CFSP

(A and Others against Minister of Foreign Affairs)

The Administrative Law Division of the Council of State referred questions to the ECJ for preliminary rulings concerning the decision of the Dutch Minister of Foreign Affairs to appoint four individuals as persons to which anti-terrorism sanctions apply. According to the Minister, this decision was *inter alia* based on the fact that these individuals were affiliated with the Liberation Tigers of Tamil Eelam (LTTE); a group included on the list of Article 2 (3) of Regulation 2580/2001. LTTE was placed on that list by the Council through Implementing Regulation 610/2010.

The Division would like to know if these individuals would have been admissible in a case before the General Court appealing the decision of the Council to list LTTE. Furthermore, the Division would like to know whether the actions of the combatants in this armed conflict can be qualified as ‘acts of terrorism’ within the meaning of the relevant European Union law and international humanitarian law, and ultimately, if the Implementing Regulation is valid.

Questions referred (ECJ Case C-158/14)

1. Having regard to, *inter alia*, Article 47 of the Charter of Fundamental Rights of the European Union, would an action for the annulment of Implementing Regulation No 610/2010, in so far as that regulation included the LTTE on the list referred to in Article 2(3) of Regulation No 2580/2001, brought before the General Court by the appellants in the present proceedings in their own name on the basis of Article 263 TFEU, undoubtedly have been admissible?
2. (a) Having regard to, *inter alia*, recital 11 in the preamble to Framework Decision 2002/475/JHA, can actions by armed forces during periods of armed conflict, within the meaning of international humanitarian law, be terrorist offences within the meaning of that Framework Decision?
2. (b) If the answer to Question 2(a) is in the affirmative, can actions by armed forces during periods of armed conflict, within the meaning of international humanitarian law, be terrorist acts within the meaning of Common Position 2001/931/CFSP and of Regulation No 2580/2001?
- 3 Are the actions which formed the basis of Implementing Regulation No 610/2010, in so far as it included the LTTE on the list referred to in Article 2(3) of Regulation No 2580/2001, actions by armed forces during periods of armed conflict within the meaning of international humanitarian law?
4. Having regard to, *inter alia*, the answers to Questions 1, 2(a), 2(b) and 3, is Implementing Regulation No 610/2010, in so far as the LTTE was thereby included on the list referred to in Article 2(3) of Regulation No 2580/2001, invalid?
5. If the answer to Question 4 is in the affirmative, does that invalidity then also apply to the earlier and later Council decisions updating the list referred to in Article 2(3) of Regulation No 2580/2001, in so far as those decisions resulted in the inclusion of the LTTE on that list?