

Blacklisting Iranian Opposition Despite Court Order

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Global Politician, By Malcolm Fowler: On Wednesday, January 23, 2008 the Council of Europe voted on a resolution in relation to the United Nations (UN) and European Union (EU) terror blacklists. The report and the resolution in turn were a damning indictment of the way in which individuals and groups are blacklisted within the EU and UN.

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On Wednesday, January 23, 2008 the Council of Europe voted on a resolution in relation to the United Nations (UN) and European Union (EU) terror blacklists. This resolution was based on a report by Dick Marty, a Swiss investigator working for the Committee on Legal Affairs and Human Rights of the Council of Europe. The report and the resolution in turn were a damning indictment of the way in which individuals and groups are blacklisted within the EU and UN.

The report highlighted a number of cases that were of deep concern, the most significant of which was that of the People's Mojahedin Organisation of Iran (PMOI). The PMOI is the main Iranian opposition group, dedicated to bringing about the overthrow of the current regime by democratic means. The PMOI case has hit the headlines on a number of occasions for both its legal and political consequences.

In fact, Dick Marty is in good company when it comes to lambasting the way in which the PMOI has been treated. The Proscribed Organisations Appeals Commission (POAC) in November of last year and the European Court of First Instance (CFI) in December 2006 found in favour of the PMOI, ruling that the terror tag on the organisation must be removed.

The CFI case concentrated its findings on the procedural defects that were so major that their only choice was to annul the PMOI listing. The panel of judges had demanded that they be provided the evidence on which the EU conducted its decision. The EU failed to provide any evidence, while attempting to justify their stance with an argument that the information was classified.

The findings of the European Court were deeply worrying. It found that the process used in the terror listing of the PMOI fell considerably short of the norms associated with due legal process in the democratic world. The PMOI's right to a fair hearing, their right to effective judicial protection and their right to be given reasons as to their terror listing were all breached.

However, the PMOI remains on the EU blacklist, in direct defiance of the Court ruling. In reference to the PMOI's continued presence on the list, Dick Marty indicated, "it remains almost impossible, in practice, to be removed from the blacklist -- a situation that is illegal and unacceptable."

The judgment of the CFI has been compounded by the findings of the POAC in the United Kingdom. The POAC is a special Court set up by the British Government to hear appeals of organizations on the UK blacklist. The case was unprecedented on all levels. The appeal was brought by 35 distinguished members of both houses of the British Parliament. Included among them were a former Lord of Appeal in Ordinary, 6 QCs, 2 former Solicitor Generals and a former Home Secretary. Some of the top legal and political minds in the British Parliament taking Gordon Brown's Government to court over the terror listing of the PMOI.

The case was unprecedented for a second reason, the judgment. The failure of the British Government to remove the PMOI from the UK terror list was judged to be "perverse", "flawed" and "must be set aside". The judgment goes on to state, "We recognize that a finding of perversity is uncommon. We believe, however, that this Commission is in the (perhaps unusual) position of having before it all of the material that is relevant to this decision."

As is indicated within the judgment itself, the level of detailed analysis conducted into this case was unprecedented. No other case within the blacklist system has faced such in depth scrutiny. The POAC conducted 5 days of open hearings and 2 days of closed hearings, in which the judges were able to see and hear submissions on all material that was deemed classified. Furthermore, they analyzed over 15 lever arch files worth of evidence and 20 witness statements. After such analysis they found in favour of the PMOI, ordering the Government to lay an order before Parliament removing the PMOI from the UK terror list.

The Government's leave to appeal was rejected by the POAC, due to their being no real prospect of success in any appeal. This now leaves the PMOI with two legal authorities finding in their favour, but with the group still remaining on both the UK and EU list. Some analysts have termed such continuance of the PMOI terror listing as a continuing

attempt by the British Government to appease the Iranian regime. Such analysis may well be correct, but in any event such judgments by competent legal authorities must be implemented if the rule of law is to continue in the way that we know it today.

Not only will a failure to implement these judgments leave the independent authority of our judiciary in deep question, but it will make the general fight against terrorism through the use of blacklists wide open to attack. If terrorism legislation is to be respected and not brought into question, then it is critical that the Government implements the procedures that Parliament has put in place to deal with such matters.

A failure to remove the PMOI from the UK and EU blacklists will leave the entire procedure without a remedy once an organization is victorious in being found to be not concerned in terrorism. Such a situation is wholly unacceptable. For an organisation to face such a stance by the UK and EU, after deciding to take a legal route to justify their status, will leave others feeling disillusioned with our democratic system where the rule of law must prevail.

Let us hope that the British Government decides against such an action and decides to abide by the rule of law sooner rather than later, because a failure to do so will leave our entire fight against terrorism a shambles.

Malcolm Fowler is a partner at Junas Roy Bloom law firm and has been a Council Member of the National Law Society since 1999 and chaired its Criminal Law Committee for four years. He is a former President of the Birmingham Law Society, a Higher Courts' Advocate and Duty Solicitor.