

**The European Union Court of Justice rules that the Kurdistan Workers' Party (PKK) was wrongly on the list of terrorist organisations. Interview with Civaka Azad.**

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Mahmut Şakar, Co-Chairman of MAF-DAD e.V., in an interview with Civaka Azad on the decision of the EU Court in Luxembourg

**The European Union Court of Justice ruled on Thursday that the Kurdistan Workers' Party (PKK) was wrongly on the list of terrorist organisations between 2014 and 2017. The court in Luxembourg declared the underlying decisions of the EU states null and void due to procedural errors. How do you assess this decision and the reasons for it?**

I consider the decision of the Court of Justice of the European Union announced on 15 November 2018 to be extremely important and historic. It is the most significant case against the terror list to date. This case was opened against the EU list on 10 February 2014. The six-monthly renewal of the list has also been challenged. Thus the main subject is the listing from 2014 to 2017. The decision shows that all lists in this timeframe were not legal. To date, the Council of the European Union has put forward arguments in four main categories to justify the PKK's place in the terror list. The Court dealt with all these arguments and declared them null and void. In the Court's view, there is insufficient justification as to why the PKK is on the list. In this context, I can say that, with this decision, the arguments of the Council of Member States in favour of the PKK's inclusion on the terrorist list no longer have any legal basis. If this procedure had been initiated before 2014, there would probably have been such a decision for past years as well. I think that, in the long term, the PKK can no longer be included on the EU terror list with this ruling. The Council of Member States is forced to find new arguments for the regulations and decisions that have been declared null and void. Otherwise the PKK list cannot be continued.

**What practical consequences does this decision have, if we remember that the EU terror list was the basis for trials against Kurdish activists in European countries?**

There are many trials against Kurdish activists and institutions in different European countries. Many trials have been concluded, some are continuing. On the basis of concrete examples that I myself know of, I can say that in most of these trials the EU terror list is the only basis. If the list of terrorists did not exist and the PKK was not listed, a large number of proceedings would not have been initiated in Europe. Because even the most ordinary democratic activities, such as demonstrations and rallies, are included in the terrorist discourse on the basis of the list and turned into offences. With this decision, the legal basis of such proceedings, which were opened between 2014 and 2017, has been abolished and has lost its validity. This would be a legal interpretation of the court ruling and could develop into a legal discussion. The defendants of these proceedings could now initiate new legal proceedings in discussion with their attorneys and with reference to this court ruling. Beyond these practical consequences, I think that with this decision the prohibitions, repressions and efforts to criminalize the democratic actions and struggles of the Kurds in Europe have lost their effect. At least this is legally true, politically these repressions can be continued. But from a legal point of view, I think that these aspirations have lost their validity. I propose that all activists brought to justice in any European country as a result of democratic events or actions should make this decision their defence basis. In this respect, the court ruling is an important judgment in favour of democracy and the rights of the Kurds.

### **Why is the PKK still on the terror list despite this decision?**

The scope of the proceedings includes the lists between 2014 and 2017. Actually, the lawyers also took action against the list from 2018, but the court wanted to limit the proceedings. As long as the proceedings were open, it would have been possible to lodge a complaint for every renewal of the list and this would have made a court decision more difficult. The court itself has basically determined the duration of the proceedings from 2014 to 2017. It has declared no more objections after that time to accept and thus closed the file. She inspected the lists within these three years and declared that the PKK's leadership in these lists is wrong. However, as the PKK was also included in the list in 2018 and this was not the case, the PKK was not included in the list.

The list from 2018 and in the case of the further listing of the PKK for the next years will be the subject of a new procedure. I would like to emphasise one thing in particular; the four main arguments put forward so far by the Council of Member States for listing the PKK are the same as those put forward for the decision in 2018. If the court had accepted that the 2018 list would also become the subject of the proceedings, then the decision would very probably have been valid for the current list as well. Thus, the legal battle against this 2018 judgment and other judgments will continue separately. The legal basis for the future leadership of the PKK in the terror list is abolished, even if it practically continues.

### **Two PKK leadership members, Murat Karayılan and Duran Kalkan, were the plaintiffs. Recently, the U.S. has put a bounty on these two politicians. Is there a connection between the two decisions?**

On behalf of the PKK, Murat Karayılan and Duran Kalkan brought the case before the court. For four years, lawyers led the trial on their behalf. Recently, the U.S. suspended a bounty on these two plaintiffs and on Cemil Bayik. Of course, there is no legal connection between these proceedings and the decision of the USA. But I think the following can be said about this; the USA has put a bounty on these three politicians through a discourse on terror. The most important pillar of this discourse was, of course, the EU terror list. This ruling by the Court of Justice of the European Union has greatly weakened this terrorist discourse towards the Kurds, Kurdish politics and the PKK. The US decision therefore has a weak basis. Indirectly, the decision of the Court of Justice of the European Union leaves the US approach in vain. I believe that this court ruling is important in this sense, and that it has at least made it clear that the US decision has no legal basis and that the terrorist discourse has no substance.

### **In the reasoning, the court stated that, although the list is explained by several incidents, these are not sufficiently substantiated by the EU from a legal point of view. The new role of the PKK in the Middle East had not been taken into account. What exactly is meant by the new role of the PKK?**

In the court case, the lawyers also expressed the PKK's transformation process. For example, at the beginning of the trial there was an ongoing negotiation process in Turkey. This process was also supported by official European representatives. The court emphasizes this fact in its decision. In 2012 the PKK was included in the list, but the court questions why this process was not included in the decisions of the European states. What were these changes? First of all, of course, the negotiation process. The PKK has taken very serious steps towards a peaceful solution. Mr Öcalan's message in 2013, which was read in front of millions of people at the Newroz festival, is also noted by the court. The support of EU representatives for this process is also mentioned. Furthermore, the Islamic State

(IS) has emerged during the negotiation process and the PKK has played an effective role in the fight against the IS in Iraq, Sengal, Kerkuk, Maxmur and many other places. In the Middle East it has taken on a new positive role that cannot be overlooked. All this has been taken to court and the court is questioning why the Council of the European Union is ignoring it. These factors were not sufficiently assessed, which would not have indirectly made the PKK's leadership on the terror list tenable. The Court, with an open and more progressive attitude than politics, has stated that a decision can be revised over time and that changes in the subject matter must be taken into account. The list of terrorists was in itself also harmful for a possible phase of peace in Turkey and democratization of the Middle East. In a very indirect way, the court also raised the issue of a peace phase, a democratisation phase in the Middle East. That is an extremely positive approach. We hope that the Council of the European Union will take this approach into account and refrain from dealing with such an historic issue as the Kurdish question in a terrorist discourse, in which the PKK is completely removed from the list and thus makes its contribution to the democratisation of Turkey and a peaceful and democratic solution in the Middle East.