

The defendant's objection relating to capacity due to alleged PKK dissolution is contrary to Article 114(1) (formerly Article 91) of the rules of procedure as it goes to the substance of the application. In short, the objection should not have been considered or dealt with at the admissibility stage.

Likewise, the Court's ruling on capacity, arising out of a provisional construction of the first applicant's case concerning dissolution, constituted an irregular *de facto* ruling upon a matter of substance which should not have been made at this state of proceedings. Such a ruling contradicts the Court's injunction that the 'reality of PKK's existence' was a matter of substance not to be examined at the admissibility stage.

The Court's construction of the first applicant's case on dissolution is wholly misplaced in any event. A close reading of Mr Ocalan's statement does not confirm that the PKK had dissolved for all purposes, including the purpose of challenging proscription.

Even if the Court was correct in construing the first applicant's case as conclusively resting upon an unreserved assertion of dissolution, it is submitted that the issue of residual rights, including the right to an effective remedy to challenge proscription, remained live as a matter of substance which should have been dealt with at a later stage.

It is also submitted that the Court's criteria concerning admissibility, including 'capacity' and the test regarding 'individual and direct concern', is far too restrictive in cases concerning the operation of fundamental freedoms. In particular, the narrow and restrictive criteria applied by the Court breach Articles 6, 13 and 34 of the European Convention on Human Rights and related jurisprudence concerning *locus standi*.

Further, irrespective of the test to be applied, it is oppressive, disproportionate and contrary to the rules of natural justice for a court to completely shut out an applicant asserting a breach of fundamental rights solely upon a provisional construction of the applicant's case.

The Second Applicant submits that:

The Court of First Instance erred in its application of the admissibility criteria and in relying upon an assumption that the PKK no longer exists, thereby assuming a substantive issue in order to defeat the claim on admissibility.

(<sup>(1)</sup>) OJ C 143, 11.06.2005, p. 34

**Reference for a preliminary ruling from the Rechtbank Rotterdam by interim decision of that court of 8 June 2005 in the criminal proceedings against OMNI Metal Service**

**(Case C-259/05)**

(2005/C 243/05)

*(Language of the case: Dutch)*

Reference has been made to the Court of Justice of the European Communities by interim decision of the Rechtbank Rotterdam of 8 June 2005, received at the Court Registry on 20 June 2005, for a preliminary ruling in the criminal proceedings against OMNI Metal Service on the following questions:

1. Can cable scrap such as that in issue in the present case (in part with a diameter of 15 cm) be classified as 'electronic scrap (e.g. ... wire, etc.)' within the terms of Code GC 020 of the green list? (<sup>(1)</sup>)
2. If the Court of Justice should answer Question 1 in the negative, can or must a combination of green list materials, which is not as such mentioned in the green list, be regarded as a green list material and may that combination of materials be transported for purposes of recovery without the notification procedure being applicable?
3. Is it necessary in this connection that the waste materials be offered or transported separately?

(<sup>(1)</sup>) Annex II to Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (OJ 1993 L 30, p. 1)