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LUXEMBOURG

ΠΡΩΤΟΒΑΘΜΙΑ ΕΠΙΤΡΟΠΗ ΔΙΚΑΣΤΩΝ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΟΙΚΟΝΟΜΙΑΣ
 TRIBUNAL DE PRIMERA INSTANCIA DE LAS COMUNIDADES EUROPEAS
 SÚD PRVÉHO STUPNĚ EVROPSKÝCH SPOLEČENSTVÍ
 DE EUROPÆISKE FÆLLESSKABERS RET I FØRSTE INSTANS
 GERICHT ERSTER INSTANZ DER EUROPÄISCHEN GEMEINSCHAFTEN
 EUROOPA ÜHENDUSTE ESIMISE ASTME KOHUS
 ΠΡΩΤΟΔΙΚΕΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ
 COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES
 TRIBUNAL DE PREMIÈRE INSTANCE DES COMMUNAUTÉS EUROPÉENNES
 CÚIRT CHEADCHÉIME NA GCOMHCHOIBAL EORPACH
 TRIBUNALE DI PRIMO GRADO DELLE COMUNITÀ EUROPEE
 EIROPAS KOPIENŪ PIRMĀS INSTANČES TIESA

EUROPOS BENDRŲJŲ PIRMOSIOS INSTANCIOS TEISMAS
 EURÓPAI KÖZÖSSÉGEK ELSŐFOKÚ BÍRÓSÁGA
 IL-QORTI TAL-PRIMĪSTANZA TAL-KOMUNITAJET EWROPEJ
 GERECHT VAN EERSTE AANLEG VAN DE EUROPESE GEMEENSCHAPPEN
 SĄD PIERWSZEJ INSTANCIJ WSPÓLNOT EUROPEJSKICH
 TRIBUNAL DE PRIMEIRA INSTÂNCIA DAS COMUNIDADES EUROPEAS
 TRIBUNALUL DE PRIMĂ INSTANȚĂ AL COMUNITĂȚILOR EUROPENE
 SÚD PRVÉHO STUPNĚA EVROPSKÝCH SPOLEČENSTVÍ
 SODIŠČE PRVE STOPNJE EVROPSKIH SKUPNOSTI
 EUROOPAN YHTIŠÖJEN ENSIMMÄISEN OIKEUSASTEEN TUOMOISTUIN
 EUROPEISKA GEMENSKAPERNAS FÖRSTAINSTANSRÄTT

BY FAX

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Luxembourg, 03/10/2007
T-341/07-14

Mr Jean Fermon
 Mr Antoine Comte
 Mr Hans Schultz
 Mr Wolfgang Kaleck
 Mr Dündar Gürses
 Chuassée de Haecht 55
 B - 1210 Bruxelles

Case: T-341/07

Jose Maria Sison
 v
 Council of the European Union

The Registrar encloses herewith a copy of the observations on the request for the expedited procedure lodged by the defendant (Reg. No 334080).



Francis Coulon
 FRANCIS COULON
 Registrar



**COUNCIL OF THE
EUROPEAN UNION**

Brussels, 28 September 2007

LEGAL SERVICE

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TO THE PRESIDENT AND THE MEMBERS
OF THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES

OBSERVATIONS BY THE COUNCIL

lodged pursuant to Article 76a
of the Rules of Procedure of the Court of First Instance,
in Case T-341/07

JOSE MARIA SISON,

Represented by Messrs. J. Fermon, A. Comte, H.E. Schultz, D. Gurses, W. Kaleck
and R.T. Capulong

ORIGINAL RECD. 03.10.07
REGISTERED AT THE
COURT OF FIRST INSTANCE
UNDER NO. 334080
LUXEMBOURG 03.10.07
THE REGISTRAR
FAX RECD. 28.09.07

Applicant

against

COUNCIL OF THE EUROPEAN UNION,

Represented by Mr. Michael Bishop and Ms. Emer FINNEGAN, legal advisors in the Council
Legal Service, as Agents, having agreed that service may be effected on them at fax n°
+00.32.2.281.56.56 and, where necessary, at the following address: Council of the European
Union, Registry of the Legal Service, for the attention of Michael Bishop and Emer Finnegan,
rue de la Loi, 175, 1048 Brussels,

Defendant

Concerning the applicant's request for expedited procedure pursuant to Article 76a of the
Rules of Procedure of the Court of First Instance.
Observations of the Council in Case T-341/07

I. INTRODUCTION

1. By letter dated 13 September 2007, the Court invited the Council to lodge its observations on the applicant's request for expedited procedure pursuant to Article 76a of the Court's Rules of Procedure. The Council's position on this question is set out in sections II and III hereafter.

II. RESERVATIONS ON APPROPRIATENESS OF EXPEDITED PROCEDURE IN THIS CASE

2. The Council does not formally object to the applicant's request for expedited procedure. However, the Council has reservations, for the reasons set out under a), b) and c) below, on the appropriateness of having recourse to the expedited procedure in this case.
 - a) The applicant's reason for requesting expedited procedure is not valid
3. The applicant contends that the expedited procedure is the only way of ensuring that the Council will comply with the Court's final judgment in these proceedings. He claims that otherwise, the Council would avoid the effects of an annulment of the contested Decision 2007/445/EC, by adopting a new decision with regard to the applicant before the Court gives its judgment in this case.
4. This claim of the applicant is misconceived. Firstly, the Council recalls that according to Article 2(3) of the basic Regulation (EC) 2580/2001 and Article 1(6) of Common Position 2001/931/CFSP, it will have to review the contested Decision 2007/445 within six months of its adoption, i.e. before end-December 2007. Therefore, even if the expedited procedure were used in this case, it is by no means certain that the Court would give judgment before that date.
5. Secondly, the Council would point out that it will have to comply with the judgment of the Court in any event, in accordance with Article 233 EC. Therefore, even if it were assumed that the Court will annul the contested Decision 2007/445 and that the Council

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had adopted meanwhile a new decision replacing it, the Council would still have to re-consider the new decision in the light of the Court's judgment. That may or may not involve withdrawing such new decision with regard to the applicant, depending on the grounds of the judgment given by the Court.¹

6. Conversely, even supposing that the Court were to annul a Council decision concerning the applicant which was still in force on the date of the judgment, that would not necessarily prevent the Council from adopting a new decision subsequently with regard to the applicant, provided that it complied with the judgment of the Court and the grounds specified therein.
7. The use of the expedited procedure thus has no bearing on the question of whether the Council would be able to maintain or renew its decision to designate the applicant, following the judgment of the Court. That question will depend on the content and grounds of the Court's judgment. Therefore, since the argument put forward by the applicant is not a valid reason for using the expedited procedure, the Council submits that it should be disregarded.

b) Application for damages

8. The Council notes that the application in the main proceedings includes a claim for damages, pursuant to Articles 235 and 288 EC, as a consequence of the applicant being maintained on the list of persons, groups and entities subject to restrictive measures.²
9. The Council considers that in principle, the expedited procedure should not be used in applications for damages, especially given that the number of other pending cases at the Court of First Instance is already considerable. There is no reason why an application for damages should take priority over such other pending cases, which consist mainly of actions for annulment of acts of the Community institutions that adversely affect other persons or businesses. As far as the Council is aware, neither the Court of Justice nor the Court of First Instance has ever decided to apply the expedited procedure in an

¹ Cf. Joined Cases 97, 193, 99 and 215/86, [1988-4] ECR p. 2181, para. 27.

² See the last paragraph of the application for expedited procedure ("*the applicant requests the Court to adjudicate his application for annulment and compensation under an expedited procedure.*")

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application for damages. In the only other case known to the Council of a request for expedited procedure which concerned an application for damages (and which was also combined with an application for annulment), the Court of First Instance dismissed the applicant's request for expedition.³

c) Excessively lengthy application and annexes

10. The Council recalls that in the Practice Directions issued by the Court, it is stipulated that: "*An application in respect of which the expedited procedure is requested must not in principle exceed 25 pages*".⁴ However, the application lodged in this case is far in excess of the maximum recommended length: it runs to some 94 pages, plus 51 annexes which add another 469 pages. Indeed, the application is well in excess of the maximum length for applications that are not even the subject of a request for expedited procedure (50 pages).⁵ The Council notes in this connection that according to the same Practice Directions, the application will have to be regularised since it exceeds this maximum length by more than 40%.⁶
11. Equally, the Council notes that the application in this case does not comply with certain other conditions in the Practice Directions. Firstly, the application is not accompanied by an abbreviated version (point 64 of the Practice Directions). Secondly, the application does not specify which pleas or arguments are put forward only in the event that the case is not decided under the expedited procedure (ibid, point 63).
12. Finally, the Council would point out that the application includes certain pleas and arguments which the Court has already dismissed in the previous case T-47/03 brought by the same applicant (legal basis/lack of EC competence: see pages 77-81 of the application).

³ Case T-148/04, *TQ3 Travel*, Decision of the 2nd Chamber of 10 June 2004, referred to at para. 20 of the Court's judgment in the main action [2005] ECR II-7/8 p. 2637.

⁴ Practice Directions of 5 July 2007 (OJ L 232 of 4.9.2007, p.7), point 61. Cf. the Practice Directions previously in force: "*such an application [for expedited procedure] will be granted only if the pleading (application or defence) of the party requesting expedition is confined to a summary of the pleas relied upon and where its annexes are limited in number*" (OJ L 87 of 4.4.2002, p. 48).

⁵ Point 10 of the Practice Directions.

⁶ Ibid, point 59 §1. The Council would point out that according to point 59 §3, service of such an application on the defendant is to be delayed whilst the application is being regularised.

III. POSSIBILITY FOR INTERVENING MEMBER STATES TO LODGE WRITTEN OBSERVATIONS

13. If, despite the considerations set out above, the Court decided to grant the applicant's request for expedited procedure in this case, the Council would request that Member States which wish to intervene in the case should be allowed to submit a written statement in intervention, in accordance with Article 76a(2) § 2 of the Court's Rules of Procedure.⁷ The Council would point out in this connection that its decision to include the applicant on the list of persons, groups and entities subject to restrictive measures was taken on the basis of decisions by competent authorities of a Member State, in accordance with Article 1(4) of Common Position 2001/931/CFSP (judgments by the Netherlands Raad van State on 21 February 1995 and by the 'Rechtbank' in the Hague on 11 September 1997, as well as a decision by the Dutch Minister of Foreign Affairs and Minister of Finance on 13 August 2002 to freeze the applicant's funds).
14. The Council therefore considers that it is indispensable that Member States which wish to intervene in this case should be allowed to lodge written statements in intervention.

IV. CONCLUSION

15. The Council has reservations, for the reasons given in section II above, on the appropriateness of having recourse to the expedited procedure in this case. Despite these reservations, however, the Council does not formally object to the applicant's request for expedited procedure, and the Council defers to the wisdom of the Court on this question.

⁷ This provision stipulates that: "*Under the expedited procedure, the pleadings referred to in Article... 116(4) and (5) [statement in intervention and replies thereto] may be lodged only if the Court of First Instance, by way of measures of organisation of the procedure... so allows.*"

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16. In any event, the Council requests that if the Court decides to apply the expedited procedure, Member States which wish to intervene in the case should be allowed to lodge a written statement in intervention.

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The image shows two handwritten signatures in black ink. The signature on the left is for Michael Bishop, and the signature on the right is for Emer Finnegan. Both signatures are written over a circular seal of the Council of the European Union. The seal contains the text 'COUNCIL OF THE EUROPEAN UNION' around its perimeter.

Michael BISHOP

Emer FINNEGAN

Council Agents