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JUDGMENT OF THE COURT OF FIRST INSTANCE (Seventh Chamber)

3 April 2008 (\*)

(Common foreign and security policy – Restrictive measures directed against certain persons and entities with a view to combating terrorism – Freezing of funds – Action for annulment – Statement of reasons)

In Case T-229/02,

**Osman Ocalan, on behalf of the Kurdistan Workers' Party (PKK)**, represented by M. Muller QC, E. Grieves and P. Moser, Barristers, and J.G. Pierce, Solicitor,

applicant,

v

**Council of the European Union**, represented initially by M. Vitsentzatos and M. Bishop, and subsequently by M. Bishop and E. Finnegan, acting as Agents,

defendant,

supported by

**United Kingdom of Great Britain and Northern Ireland**, represented initially by R. Caudwell, and subsequently by E. Jenkinson, acting as Agents, assisted by S. Lee, Barrister,

and by

**Commission of the European Communities**, represented initially by P. Kuijper and C. Brown, and subsequently by P. Hetsch and P. Aalto, acting as Agents,

interveners,

APPLICATION for, first, annulment of Council Decision 2002/460/EC of 17 June 2002 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2002/334/EC (OJ 2002 L 160, p. 26) and, secondly, damages,

THE COURT OF FIRST INSTANCE  
OF THE EUROPEAN COMMUNITIES (Seventh Chamber),

composed of N.J. Forwood (Rapporteur), President, D. Šváby and L. Truchot, Judges,

Registrar: C. Kristensen, Administrator,

having regard to the written procedure and further to the hearing on 31 January 2008,

gives the following

**Judgment**

## Legal framework and background to the dispute

- 1 On 28 September 2001, the United Nations Security Council ('the Security Council') adopted Resolution 1373 (2001) laying down strategies to combat terrorism by all means, in particular the financing thereof. Paragraph 1(c) of that resolution provides, inter alia, that all States are to freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of, such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities.
- 2 On 27 December 2001, taking the view that action by the Community was necessary in order to implement Security Council Resolution 1373 (2001), the Council adopted, under Articles 15 EU and 34 EU, Common Positions 2001/930/CFSP on combating terrorism (OJ 2001 L 344, p. 90) and 2001/931/CFSP on the application of specific measures to combat terrorism (OJ 2001 L 344, p. 93).
- 3 Article 1(1) of Common Position 2001/931 provides that it applies 'to persons, groups and entities involved in terrorist acts and listed in the Annex'. The applicant's name is not included in the list in the Annex.
- 4 Article 1(2) and (3) of Common Position 2001/931 defines 'persons, groups and entities involved in terrorist acts' and 'terrorist act', respectively.
- 5 Article 1(4) of Common Position 2001/931 provides that the list in the Annex is to be drawn up on the basis of precise information or material in the relevant file which indicates that a decision has been taken by a competent authority in respect of the persons, groups and entities concerned, irrespective of whether it concerns the instigation of investigations or prosecution for a terrorist act, an attempt to perpetrate, participate in or facilitate such an act based on serious and credible evidence or clues, or condemnation [sic] for such deeds. 'Competent authority' means a judicial authority, or, where judicial authorities have no competence in the area covered, an equivalent competent authority in that area.
- 6 Article 1(6) of Common Position 2001/931 states that 'the names of persons and entities on the list in the Annex shall be reviewed at regular intervals and at least once every six months to ensure that there are grounds for keeping them on the list'.
- 7 Articles 2 and 3 of Common Position 2001/931 provide that the European Community, acting within the limits of the powers conferred on it by the EC Treaty, is to order the freezing of the funds and other financial assets or economic resources of persons, groups and entities listed in the Annex and is to ensure that funds, financial assets or economic resources or financial services are not made available, directly or indirectly, for the benefit of those persons, groups and entities.
- 8 Taking the view that a regulation was required in order to implement the measures set out in Common Position 2001/931 at Community level, on 27 December 2001 the Council adopted, on the basis of Articles 60 EC, 301 EC and 308 EC, Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 70) ('the contested regulation'). Under that regulation, except as permitted thereby, all funds belonging to a natural or legal person, group, or entity included in the list referred to in Article 2(3) must be frozen. In the same way, it is prohibited to make funds or financial services available to those persons, groups or entities. The Council, acting unanimously, is to establish, review and amend the list of persons, groups and entities to which the Regulation applies, in accordance with the provisions of Article 1(4), (5) and (6) of Common Position 2001/931.
- 9 The original list of the persons, groups and entities to which the contested regulation applies was set out in Council Decision 2001/927/EC of 27 December 2001 establishing the list provided for in Article 2(3) of the contested regulation (OJ 2001 L 344, p. 83). The PKK does not appear on it.
- 10 On 2 May 2002, the Council adopted, under Articles 15 EU and 34 EU, Common Position 2002/340/CFSP updating Common Position 2001/931/CFSP (OJ 2002 L 116, p. 75).
- 11 The Annex to Common Position 2002/340 updates the list of persons, groups and entities to which

Common Position 2001/931 applies. Part 2, headed 'Groups and entities', includes the name of the applicant, as follows:

'9. Kurdistan Workers' Party (PKK).'

12 By Decision 2002/334/EC of 2 May 2002 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2001/927/EC, the Council adopted an updated list of the persons, groups and entities to which the contested regulation applies. The name of the applicant was repeated in that list, in the same terms as those used in the Annex to Common Position 2002/340.

13 Since then, the Council has adopted several common positions and decisions updating the lists provided for under Common Position 2001/931 and the contested regulation (see, initially, Council Common Position 2002/462/CFSP of 17 June 2002 (OJ 2002 L 160, p. 32) updating Common Position 2001/931/CFSP and repealing Common Position 2002/340, and Council Decision 2002/460/EC of 17 June 2002 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2002/334/EC (OJ 2002 L 160, p. 26), and, most recently, Council Common Position 2007/871/CFSP of 20 December 2007 (OJ 2007 L 340, p. 109) and Council Decision 2007/868/EC of 20 December 2007 (OJ 2007 L 340, p. 100).

14 The applicant's name continued to appear in those decisions under the heading 'Groups and entities'.

### **Facts**

15 It appears from the documents before the Court that the Kurdistan Workers' Party (PKK) emerged in 1978 and engaged in an armed struggle against the Turkish Government to obtain recognition of the Kurds' right to self-determination. According to Osman Ocalan's written statement, in July 1999 the PKK declared a unilateral ceasefire, whilst reserving the right to resort to self-defence, with the declared aim of working towards a peaceful and democratic solution to the question of Kurdish rights. According to that statement, the 8<sup>th</sup> Congress of the PKK convened between 4 and 10 April 2002 and on 17 April 2002 a resolution was reached which marked a 'new era of historical development'. It was decided by the Congress that in order to mirror the major transformations undergone by the PKK, 'all activities under the name of "PKK" would cease as of 4 April 2002 and that any activities taken under the name of the PKK would be deemed illegitimate'. A new constitution was adopted which altered the structure and organisation of the PKK. A coordinating organisation would accommodate the various different organisations to be created within parts of Kurdistan and the attendant countries. A new group, the Kongreya Azad Ó š Demokrasiya Kurdistan (Kurdistan Freedom and Democracy Congress – KADEK), was founded in order to attain political objectives democratically on behalf of the Kurdish minority. Abdullah Ocalan was appointed president of KADEK.

16 Osman Ocalan states that he is bringing this action on behalf of the organisation formerly known as the PKK. He states that KADEK emerged from the PKK and is linked to it economically, ideologically and through its membership and support.

### **Procedure and forms of order sought by the parties**

17 By application lodged at the Registry of the Court of First Instance on 31 July 2002, the applicant, represented by Osman Ocalan, and the Kurdistan National Congress (KNK), represented by Serif Vanly, brought an action, registered as Case T-229/02, against the Council for the annulment of Decision 2002/334/EC of 2 May 2002, of Decision 2002/460/EC of 17 June 2002 and/or of the contested regulation and for compensation.

18 By document lodged at the Registry of the Court on 15 November 2002, the United Kingdom of Great Britain and Northern Ireland sought leave to intervene in these proceedings in support of the form of order sought by the Council.

19 By document lodged at the Registry of the Court on 19 November 2002, the Commission of the European Communities sought leave to intervene in these proceedings in support of the form of order sought by the Council.

20 By a separate document lodged at the Registry of the Court on 25 November 2002, the Council raised,

pursuant to Article 114(1) of the Rules of Procedure of the Court of First Instance, an objection of inadmissibility against the action.

- 21 By order of 17 June 2003, the United Kingdom and the Commission were granted leave to intervene.
- 22 The applicants and the Commission lodged their observations on the abovementioned objection within the prescribed period. The United Kingdom waived its right to lodge such observations.
- 23 By order of 15 February 2005, the Second Chamber of the Court of First Instance dismissed the action as inadmissible and ordered the applicants to bear their own costs and pay those of the Council. The interveners were ordered to bear their own costs.
- 24 By application lodged at the Registry of the Court of Justice on 9 May 2005, Osman Ocalan, on behalf of the PKK, and Serif Vanly, on behalf of the KNK, brought an appeal, registered as Case C-229/05 P, against the order of 15 February 2005 claiming that the Court of Justice should set the order aside, declare the action brought by Osman Ocalan on behalf of the PKK and by Serif Vanly on behalf of the KNK admissible, and order the Council to pay the costs relating to the admissibility proceedings.
- 25 By judgment of 18 January 2007, the Court of Justice set aside the order of 15 February 2005 in so far as it dismissed the application of Osman Ocalan on behalf of the PKK, dismissed the appeal as to the remainder, dismissed the application of Osman Ocalan on behalf of the PKK as inadmissible in so far as it challenged Council Decision 2002/334/EC, declared the application of Osman Ocalan on behalf of the PKK admissible in so far as it challenged Council Decision 2002/460/EC (hereafter the 'contested decision') and referred the case back to the Court of First Instance for judgment on the substance. A decision on the costs of Osman Ocalan on behalf of the PKK was reserved.
- 26 By letter of 21 February 2007, the Court of First Instance requested the parties to the present case and to Case T-253/04 *KONGRA-GEL and Others v Council* to submit their observations, inter alia, on the possibility of joining the said cases.
- 27 By document lodged at the Registry of the Court on 2 May 2007, the applicants in both abovementioned cases raised no objection to the joinder of the cases.
- 28 By document lodged at the Registry of the Court on 2 May 2007, the Council raised no objection to the joinder. On the same day the Council also lodged its statement in defence in the present case.
- 29 By order of 23 May 2007, the President of the Second Chamber of the Court of First Instance joined Cases T-229/02 and T-253/04 for the purposes of the oral hearing.
- 30 On 8 August 2007, the United Kingdom lodged its statement in intervention in support of the Council in Case T-229/02. The United Kingdom supports the form of order sought by the Council. The Commission did not lodge a written statement in intervention.
- 31 The Court put questions to the parties by way of measures of organisation of procedure under Article 64 of the Rules of Procedure. The parties duly complied with those requests.
- 32 Following a change in composition of the Chambers of the Court, the Judge-Rapporteur was transferred to the Seventh Chamber, to which the present case has, in consequence, been assigned.
- 33 Upon hearing the report of the Judge-Rapporteur, the Court (Seventh Chamber) decided to open the oral procedure.
- 34 In its written pleadings, the applicant claims that the Court should:
- annul Article 1 of the contested decision in so far as it mentions the name of the applicant;
  - in the alternative, declare the contested regulation, in so far as it concerns the applicant, to be unlawful on the basis of Article 241 EC;
  - take such further action as the Court may deem appropriate;

- order the Council to pay damages;
- order the Council to pay the costs incurred by the applicant.

35 In its defence, the Council contends that the Court should:

- dismiss the applicant's request for the Court to take such further action as it deems appropriate as inadmissible;
- dismiss the applicant's action for annulment of the contested decision and regulation, in so far as they relate to the applicant, as unfounded;
- not rule on the applicant's plea of illegality in relation to the contested regulation;
- order the applicant to pay the costs.

36 In its statement in intervention, the United Kingdom supports the form of order sought by the Council.

37 Since the Commission did not lodge a statement in intervention it has not indicated explicitly the form of order it seeks.

38 Those parties who were in attendance presented oral argument and replied to the questions put by the Court at the hearing of 31 January 2008.

39 At the hearing, the applicant withdrew, first, its plea of illegality in relation to the contested regulation, second, its request that the Court take such further action as the Court may deem appropriate and, third, its claim for damages. Formal note was taken of those withdrawals in the minutes of the hearing.

## **General findings of fact**

### *Arguments of the parties*

40 As part of its outline of the material facts in the application, the applicant invites the Court to make certain general findings of fact in support of the applicant's claim. These facts concern the status of the Kurds, the policy and objectives pursued by the PKK, and the relationship between the Turkish State and the Kurds.

41 The Council submits that this request is inadmissible. It observes that in the context of an application pursuant to Article 230 EC the Court is not obliged to make such general findings of fact and is entitled to concentrate on those which are directly relevant to the contested acts, which is a matter for the Court's appreciation.

42 The Council takes the view that none of the 'facts' in question requires a determination by the Court for the purposes of the present proceedings. The applicant's request in this regard should therefore be dismissed as inadmissible.

43 To the extent that the applicant's request for the Court to take action may go beyond this request, the Council points out that it is settled case-law that the Community Courts' jurisdiction pursuant to Article 230 EC is limited to reviewing the legality of the act or acts challenged by means of such an application and does not extend to other measures, such as issuing directions to the institutions or assuming the role assigned to them (see, for example, Joined Cases T-374/94, T-375/94, T-384/94 and T-388/94 *European Night Services and Others v Commission* [1998] ECR II-3141, paragraph 53).

### *Findings of the Court*

44 The Court finds that the applicant's withdrawal of the head of claim by which it invited the Court to take such further action as the Court might deem appropriate covers the applicant's request that the Court make certain general findings of fact in support of the applicant's claim.

- 45 In any event, it must be observed that the Court does not have the power to grant such a request since such fact-finding goes beyond the scope of the present action for annulment of which the Court is seized. Thus, the applicant's request must be regarded as inadmissible.

### **The existence of a continuing interest**

#### *Arguments of the parties*

- 46 In reply to a question put to the parties by the Court the Council submits that, in view of the fact that it has adopted Council Decision 2007/445/EC of 28 June 2007 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decisions 2006/379/EC and 2006/1008/EC (OJ 2007 L 169, p. 58), which was adopted following a different procedure from that preceding the adoption of the contested decision, the applicant no longer has a continuing interest in pursuing its action for annulment in the present case.
- 47 The applicant argues that it has a real and continuing interest in its action for annulment of the contested decision despite the fact that the said decision has been repealed and replaced on numerous occasions by subsequent decisions of the Council maintaining it on the list. The applicant justifies its submission by the fact that it seeks the annulment of an illegal decision which otherwise would continue to exist in the Community order.

#### *Findings of the Court*

- 48 It is settled law that a claim for annulment is not admissible unless the applicant has an interest in seeing the contested measure annulled (see, for example, Case T-46/92 *Scottish Football Association v Commission* [1994] ECR II-1039, paragraph 14). Such an interest can be present only if the annulment of the measure is of itself capable of having legal consequences (see Case 53/85 *AKZO Chemie v Commission* [1986] ECR 1965, paragraph 21).
- 49 In that regard, it must be borne in mind that, under Article 233 EC, an institution whose act has been declared void is required to take the necessary measures to comply with the judgment. Those measures do not concern the elimination of the act as such from the Community legal order, since that is the very essence of its annulment by the Court. They involve, rather, the removal of the effects of the illegalities found in the judgment annulling the act. The annulment of an act which has already been implemented or which has in the mean time been repealed from a certain date is thus still capable of having legal consequences. Such annulment places a duty on the institution concerned to take the necessary measures to comply with the judgment. The institution may thus be required to take adequate steps to restore the applicant to its original situation or to avoid the adoption of an identical measure (see Case 92/78 *Simmenthal v Commission* [1979] ECR 777, paragraph 32; *AKZO Chemie*, cited above, paragraph 21; Case 207/86 *Apesco v Commission* [1988] ECR 2151, paragraph 16; Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills NV v Commission* [1995] ECR II-2305, paragraph 60; and Case T-327/03 *Stichting Al-Aqsa v Council* [2007] ECR II-0000, paragraph 39).
- 50 In the present case, it is sufficiently established that the contested act produced binding legal effects such as to affect the interests of the applicant by bringing about a distinct change in its legal position (see, to that effect, Case T-212/02 *Commune de Champagne v Council* [2007] ECR II-0000, paragraph 128), and that this change in its legal position had real effects on the applicant.
- 51 It follows that in the present case the applicant retains a continuing interest in the pursuit of its action.

### **The claim for annulment in part of the contested decision**

#### *Preliminary observations*

- 52 In support of its form of order seeking the annulment of the contested decision, the applicant relies on six pleas in law. The first alleges failure to apply objective and accessible criteria to the facts and, in particular, to have regard to international law on internal armed conflict. The second alleges breach of the right to



self-determination. The third alleges infringement of fundamental rights and of general principles of Community law. The fourth alleges misuse of power. The fifth is based on infringement of the obligation to state reasons. Finally, the sixth alleges use of an incorrect legal basis.

53 It is appropriate to examine first of all the plea alleging infringement of the obligation to state reasons.

*Plea based on the infringement of the obligation to state reasons*

Arguments of the parties

54 The applicant submits that the Council failed to give any 'or any adequate' reasoning for the inclusion of the PKK in the list at issue despite the fact that Article 1(4) of Common Position 2001/931/CFSP states specifically that the list in the Annex is to be drawn up on the basis of precise information or material in the relevant file which indicates that a decision has been taken by a competent authority in respect of it.

55 The applicant argues that, since the PKK was not among those organisations on the list adopted in December 2001, it is to be presumed that the PKK did not fulfil the criteria applied by the Council when adopting the contested regulation. It follows that the Council is under a greater duty to give reasons for the subsequent inclusion of the PKK in the 2002 list. The applicant further submits that due to the failure to hear the PKK prior to its inclusion in the list, the Council is under a greater duty to give reasons. There has been no material change of circumstances since the original list was published on 27 December 2001 which can justify its inclusion in the 2002 list.

56 According to the applicant, it follows that the Council has breached Article 253 EC.

57 The Council submits, in its written pleadings, that the obligation to state reasons must be considered in the light of the judgment of the Court in Case T-228/02 *Organisation des Modjahedines du peuple d'Iran v Council* [2006] ECR II-4665 ('*OMPI*'). Thus, the statement of reasons required by Article 253 EC must be appropriate to the measure at issue and to the context in which it was adopted. It must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review of the lawfulness thereof (paragraph 141). It must thus indicate the actual and specific reasons why the Council considers that the relevant rules are applicable to the party concerned (paragraph 143). It must inform the party concerned of the specific information or material in the file which indicates that a decision meeting the definition given in Article 1(4) of Common Position 2001/931/CFSP has been taken in respect of it by a competent authority and it must refer to relevant information or evidence which has not been assessed by the competent national authority but on which the Council has based its decision.

58 As regards subsequent decisions, the Court found in *OMPI* (paragraph 144) that the statement of reasons must indicate the actual and specific reasons why the Council considers, following re-examination, that the freezing of the funds of the party concerned remains justified.

59 The Council recalls that the Court also held that overriding considerations concerning the security of the Community and its Member States, or the conduct of their international relations, may preclude the communication to the parties concerned of certain evidence adduced against them (*OMPI*, paragraph 133).

60 The Council submits that it has recently finalised a statement of reasons in respect of the applicant which lists certain of the terrorist acts carried out by the applicant, identifies within which sub-points of Article 1(3) of Common Position 2001/931/CFSP these fall, and identifies the relevant decisions taken by competent authorities with respect to the PKK. It follows, according to the Council, that the statement of reasons complies with the obligations set out by the Court in *OMPI* and that it was made available to the applicant as soon as was reasonably possible after the adoption of the contested decision, in the light of the guidance provided by the Court in *OMPI* which was delivered after the adoption of the contested decision.

61 The United Kingdom supports the position of the Council in respect of the contested decision.

Findings of the Court

62 According to settled case-law, the statement of reasons required by Article 253 EC must disclose in a clear

and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review of the lawfulness thereof. It is not necessary for the statement of reasons to specify all the relevant matters of fact and law, since the question whether the statement of reasons meets the requirements of Article 253 EC must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question. In particular, the reasons given for an act adversely affecting a party are sufficient if it was adopted in circumstances known to the party concerned which enable him to understand the scope of the measure concerning him (*OMPI*, paragraph 141, and the case-law cited, and Case T-327/03 *Stichting Al-Aqsa v Council*, paragraph 49 above, paragraph 58).

- 63 In *OMPI* (paragraph 109), the Court held that, as a rule, the safeguard relating to the obligation to state reasons provided by Article 253 EC is fully applicable in the context of the adoption of a decision to freeze funds under the contested regulation. That principle has not been called into question by any of the parties.
- 64 Again in *OMPI* (paragraph 151 and, by reference, paragraphs 116, 125 and 126), the Court has inferred from that principle, interpreted in the light of the case-law, that the statement of reasons for an initial decision to freeze funds as referred to in Article 1(4) of Common Position 2001/931 must at least make actual and specific reference to the reasons why the Council considers, having regard to the precise information or material in the relevant file available to it, that a decision satisfying the definition given in Article 1(4) has been taken by a competent authority of a Member State in respect of the person or entity concerned, unless overriding considerations concerning the security of the Community and its Member States, or the conduct of their international relations, militate against it, and subject also to the possibility of publishing a non-confidential version of that decision in the *Official Journal*, in accordance with what was held in paragraph 147 of that judgment. The statement of the reasons for such a decision must, furthermore, indicate why the Council takes the view, in the exercise of its discretion, that the person or entity concerned must be the subject of such a measure. Moreover, the statement of reasons for a subsequent decision to freeze funds as referred to in Article 1(6) of Common Position 2001/931 must, subject to the same reservations, indicate the actual and specific reasons why the Council considers, following re-examination, that there are still grounds for the freezing of the funds of the party concerned, where appropriate on the basis of fresh information or evidence. Furthermore, when the grounds of such a subsequent decision are in essence the same as those already relied on when a previous decision was adopted, a mere statement to that effect may suffice, particularly when the party concerned is a group or entity.
- 65 In the circumstances of the present case, the contested decision, which is a subsequent decision to freeze funds, does not satisfy the requirement of a statement of reasons as set out above, since it does no more than state, in the second recital in the preambles thereto, that it is 'desirable' or that it has been 'decided' to adopt an up-to-date list of the persons, groups and entities to which the contested regulation applies. It makes no reference to the reasons why the Council considers that a decision satisfying the definition given in Article 1(4) has been taken by a competent authority of a Member State in respect of the PKK. Nor does it indicate why the Council takes the view, in the exercise of its discretion, that the PKK must be the subject of such a measure.
- 66 The finding is not called into question by the argument, advanced by the Council in its defence, that the obligation to state reasons was complied with in this case, since a statement of reasons in respect of the applicant was subsequently provided by the Council, which lists certain of the terrorist acts carried out by the applicant, identifies within which sub-points of Article 1(3) of Common Position 2001/931 these fall, and identifies the relevant decisions taken by competent authorities with respect to the applicant. According to the Council, that statement of reasons was made available to the applicant in April 2007, which was as soon as reasonably possible after the adoption of the contested decision, in the light of the guidance provided by the Court in *OMPI*, and therefore it complies with the obligations set out by the Court in *OMPI*.
- 67 That argument is based on the mistaken premiss that the statement of reasons can be provided to the party concerned after the action before the Community Courts has been commenced.
- 68 Indeed, according to the case-law, a failure to state reasons cannot be remedied by the fact that the person concerned learns the reasons for the act during the proceedings before the Community judicature (*OMPI*, paragraph 139, and the case-law cited). In fact, the possibility of remedying the total absence of a statement of reasons after an action has been brought would prejudice the rights of the defence because



the applicant would have only the reply in which to set out his pleas contesting the reasons which he would not know until after he had lodged his application. The principle of equality of the parties before the Community judicature would accordingly be adversely affected (*OMPI*, paragraphs 139 and 165, and the case-law cited, and *Stichting Al Aqsa v Council*, paragraph 49 above, paragraph 65).

69 In the present case, as a result of the absence of any reasoning expressly appearing in the contested decision or provided immediately thereafter, the applicant was not placed in a position in which it is able to understand, clearly and unequivocally, the reasoning by which the Council considered that the conditions laid down in Article 1(4) of Common Position 2001/931 and in Article 2(3) of the contested regulation had been satisfied in the circumstances of the case.

70 The foregoing considerations must lead to the annulment of the contested decision, in so far as it concerns the applicant, and there is no need to give a ruling on the other pleas in law and arguments advanced.

### Costs

71 The order of the Court of First Instance of 15 February 2005, ordering the applicants to pay the costs, having been set aside by the Court of Justice in so far as it concerned the application of Osman Ocalan on behalf of the PKK, the latter Court reserved the costs of Osman Ocalan on behalf of the PKK. It is therefore for this Court to rule on the costs of Osman Ocalan, on behalf of the PKK, relating to the various proceedings.

72 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. In this case, since the Council has been unsuccessful and the applicant has applied for costs, the Council must be ordered to pay the costs of Osman Ocalan on behalf of the PKK incurred before this Court and the Court of Justice.

73 Under the first subparagraph of Article 87(4) of those Rules, the Member States and institutions which have intervened in the action are to bear their own costs. The United Kingdom and the Commission must therefore bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Seventh Chamber)

hereby:

- 1. Annuls Council Decision 2002/460/EC of 17 June 2002 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2002/334/EC in so far as it concerns the Kurdistan Workers' Party (PKK);**
- 2. Orders the Council to bear, in addition to its own costs, all the costs incurred by Osman Ocalan on behalf of the PKK before the Court of First Instance and the Court of Justice;**
- 3. Orders the United Kingdom of Great Britain and Northern Ireland and the Commission of the European Communities to pay their own costs.**

Forwood

Šváby

Truchot

Delivered in open court in Luxembourg on 3 April 2008.

E. Coulon

N.J. Forwood

Registrar

President

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\* Language of the case: English.