

Action brought on 18 September 2008 — Bank Melli Iran v Council

(Case T-390/08)

(2008/C 272/94)

*Language of the case: French***Parties***Applicant:* Bank Melli Iran (Tehran, Iran) (represented by: L. Defalque, lawyer)*Defendant:* Council of the European Union**Form of order sought**

- annul paragraph 4, section B, of the Annex to Council Decision 2008/475/EC of 23 June 2008 concerning restrictive measures against Iran, in so far as it relates to Bank Melli Iran, its subsidiaries and branches;
- in the alternative, declare the present action to be inapplicable under Article 241 EC and Articles 15(2) and 7(2) of Council Regulation No 423/2007 of 19 April 2007;
- in any event, order the Council to pay all of the costs in accordance with Article 87(2) of the Rules of Procedure of the Court of First Instance.

Pleas in law and main arguments

In this case, the applicant seeks the annulment of Council Decision 2008/475/EC of 23 June 2008 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran ⁽¹⁾ in so far as it is included in the list of natural and legal persons, entities and bodies whose funds and economic resources are frozen pursuant to that provision.

In support of its action, the applicant relies on seven pleas in law alleging:

- infringement of the essential procedural requirements of the EC Treaty and the rules of law relating to its application, misuse of powers and failure to comply with Article 7(2) of Common Position 2007/140/CFSP ⁽²⁾, as the contested decision was adopted in disregard of the rule of unanimity set out in Article 7(2) of Common Position 2007/140/CFSP;
- in the alternative, that Article 15(2) of Regulation No 423/2007 ⁽³⁾ providing for qualified majority voting is unlawful;
- infringement of the principle of equal treatment in so far as the Council imposed the freeze on the applicant's funds and economic resources without having applied that measure to other Iranian banks in the same situation;

- infringement of the principle of proportionality as the Council imposed the freeze on the applicant's funds and economic resources although Resolution 1803 (2008) of the United Nations Security Council merely called upon States to exercise vigilance over the activities of financial institutions in their territories with all banks domiciled in Iran, including the applicant;
- infringement of the rights of defence, the right to a fair hearing and the right to an effective legal remedy in so far as (i) States were merely called upon, in Resolution 1803 (2008), to exercise vigilance and (ii) the applicant had not been mentioned by the previous resolutions of the United Nations Security Council (Resolutions 1737 (2006) and 1747 (2007)); furthermore, the applicant was not informed of the evidence adduced against it;
- infringement of the fundamental right to respect for property;
- infringement of Article 15(3) of Regulation No 423/2007 in so far as the Council should have stated individual and specific reasons for its decision in view of the mere obligation of vigilance in Resolution 1803 (2008) and the treatment reserved for other Iranian banks;
- infringement of the competences of the Community as the freeze on the applicant's funds and economic resources constitutes a quasi-penal sanction, particularly since the present case does not involve the transposition of a resolution of the United Nations Security Council inasmuch as Resolution 1803 (2008) does not envisage that freeze measure.

⁽¹⁾ OJ 2008 L 163, p. 29.

⁽²⁾ Council Common Position 2007/140/CFSP of 27 February 2007 concerning restrictive measures against Iran (OJ 2007 L 61, p. 49).

⁽³⁾ Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran (OJ 2007 L 103, p. 1).

Order of the Court of First Instance of 2 September 2008 — Hamdi v Council**(Joined Cases T-75/07 and T-363/07) ⁽¹⁾**

(2008/C 272/95)

Language of the case: Dutch

The President of the Second Chamber has ordered that the case be removed from the register.

⁽¹⁾ OJ C 117, 26.5.2007.