

As regards point (iii), the Commission — on grounds which are inappropriate, insufficient and the product of circular reasoning — adopted the view that it could not accept the justifications offered by the Italian State in the course of the procedure and before the Dispute Settlement Body, 'because the 4% reserve made available under Article 4(2) of Commission Regulation (EC) No 296/96 (Article 9 of Commission Regulation (EC) No 883/2006) should have been sufficient for bringing legal actions, for dealing with controversial cases and for introducing additional controls'. In that connection, the Italian Government states that the 4% limit is not to be understood as absolute: in view of the fact that its purpose is to protect the Community's finances from fraud, it can be exceeded whenever — as in the present case — there are sound reasons for fearing that there is a risk of fraud involving more than 4%. That is the only interpretation of that rule that is consistent with the rationale underlying it.

Action brought on 26 February 2009 — Kadi v Commission

(Case T-85/09)

(2009/C 90/56)

Language of the case: English

Parties

Applicant: Yassin Abdullah Kadi (represented by: D. Anderson, QC, M. Lester, Barrister, G. Martin, Solicitor)

Defendant: Commission of the European Communities

Form of order sought

— annul Regulation No 1190/2008, in so far as it concerns the applicant;

— order the Commission to pay the applicant's costs of this action.

Pleas in law and main arguments

In the present case the applicant seeks the partial annulment of Commission Regulation No 1190/2008 of 28 November 2008 amending for the 101st time Council Regulation No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban⁽¹⁾ in so far as the applicant is included on the list of natural and legal persons, entities and bodies whose funds and economic resources are frozen in accordance with this provision. Regulation n° 881/2002 was annulled by the Court of Justice in joined cases C-402/05 and C-415/05, *Kadi and al Barakaat v Council and Commission*⁽²⁾

The applicant puts forward four pleas in law in support of its claims.

First, the applicant submits that the contested regulation lacks a sufficient legal basis because it appears to amend Regulation 881/2002 without relevant determination by United Nations which, in the applicant's opinion, is precondition for the amendment of that regulation.

Second, the applicant claims that the contested regulation violates his rights of defence, both the right to an effective hearing and the right to effective judicial protection, and fails to remedy the infringements of those rights as found by the Court in joined cases C-402/05 and C-415/05. He further contends that the contested regulation provides no procedure for communicating to the applicant the evidence on which the decision to freeze his assets was based, or for enabling him to comment meaningfully on that evidence.

Third, the applicant submits that the Commission failed to provide compelling reasons for maintaining the asset freeze against the applicant, in violation of its obligation under Article 253 EC.

Fourth, it claims that the Commission failed to undertake an assessment of all relevant facts and circumstances in deciding whether to enact the contested regulation and therefore manifestly erred in its assessments.

Fifth, the applicant contends that the contested regulation constitutes an unjustified and disproportionate restriction on his right to property which is not justified by compelling evidence.

⁽¹⁾ OJ 2008 L 322, p. 25

⁽²⁾ Not yet reported in ECR

Action brought on 10 March 2009 — UCAPT v Council

(Case T-96/09)

(2009/C 90/57)

Language of the case: French

Parties

Applicant: Union des Coopératives Agricoles des Producteurs de Tabac de France (UCAPT) (Paris, France) (represented by: B. Peignot and D. Garreau, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003;