

ORDER OF THE COURT OF FIRST INSTANCE (Second Chamber)

15 February 2005 *

In Case T-229/02,

Kurdistan Workers' Party (PKK),

Kurdistan National Congress (KNK), established in Brussels (Belgium),

represented by M. Muller and E. Grieves, barristers, instructed by J.G. Peirce,
solicitor,

applicants,

v

Council of the European Union, represented by M. Vitsentzatos and M. Bishop,
acting as Agents,

defendant,

* Language of the case: English.

supported by

United Kingdom of Great Britain and Northern Ireland, represented initially by J. Collins, and subsequently by R. Caudwell, acting as Agents, with an address for service in Luxembourg,

and by

Commission of the European Communities, represented by C. Brown and P. Kuijper, acting as Agents, with an address for service in Luxembourg,

APPLICATION for annulment of Council Decision 2002/334/EC of 2 May 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 2001/927/EC (OJ 2002 L 116, p. 33), and of Council Decision 2002/460/EC of 17 June 2002 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2002/334 (OJ 2002 L 160, p. 26),

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

composed of J. Pirrung, President, N.J. Forwood and S. Papasavvas, Judges,

Registrar: H. Jung,

makes the following

Order

Background to the dispute

- 1 It is apparent 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 Mr O. Ocalan's written evidence, the PKK declared a unilateral ceasefire, whilst reserving the right to self-defence, in July 1999. According to that evidence, in April 2002, in order to reflect that reorientation, the Congress of the PKK decided that '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' (annex 2 to the application, paragraph 16). 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. Mr A. Ocalan was appointed president of KADEK.

2 The Kurdistan National Congress (KNK) is an umbrella organisation comprising approximately 30 individual entities. The KNK's purpose is 'to strengthen the unity and cooperation of the Kurds in all parts of Kurdistan and [to] support their struggle based on the best interests of the Kurdish nation' (Article 7A of the KNK's Charter). According to the written evidence of Mr S. Vanly, President of the KNK, the leader of the PKK was among those who spearheaded the creation of the KNK. The PKK was a member of the KNK and the individual members of the PKK partly financed the KNK.

3 On 27 December 2001, taking the view that action by the Community was needed in order to implement Resolution 1373 (2001) of the United Nations Security Council, the Council adopted Common Position 2001/930/CFSP on combating terrorism (OJ 2001 L 344, p. 90) and Common Position 2001/931/CFSP on the application of specific measures to combat terrorism (OJ 2001 L 344, p. 93).

4 Article 2 of Common Position 2001/931 states:

'The European Community, acting within the limits of the powers conferred on it by the Treaty establishing the European Community, shall order the freezing of the funds and other financial assets or economic resources of persons, groups and entities listed in the Annex.'

5 On 27 December 2001, the Council adopted 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).

6 Article 2 of Regulation No 2580/2001 provides:

‘1. Except as permitted under Articles 5 and 6:

- (a) all funds, other financial assets and economic resources belonging to, or owned or held by, a natural or legal person, group or entity included in the list referred to in paragraph 3 shall be frozen;
- (b) no funds, other financial assets and economic resources shall be made available, directly or indirectly, to, or for the benefit of, a natural or legal person, group or entity included in the list referred to in paragraph 3.

2. Except as permitted under Articles 5 and 6, it shall be prohibited to provide financial services to, or for the benefit of, a natural or legal person, group or entity included in the list referred to in paragraph 3.

3. The Council, acting by unanimity, shall establish, review and amend the list of persons, groups and entities to which this Regulation applies, in accordance with the provisions laid down in Article 1(4), (5) and (6) of Common Position 2001/931/CFSP; such list shall consist of:

- (i) natural persons committing, or attempting to commit, participating in or facilitating the commission of any act of terrorism;

- (ii) legal persons, groups or entities committing, or attempting to commit, participating in or facilitating the commission of any act of terrorism;

- (iii) legal persons, groups or entities owned or controlled by one or more natural or legal persons, groups or entities referred to in points (i) and (ii); or

- (iv) natural [or] legal persons, groups or entities acting on behalf of or at the direction of one or more natural or legal persons, groups or entities referred to in points (i) and (ii).'

- 7 On 2 May 2002, the Council adopted Decision 2002/334/EC implementing Article 2 (3) of Regulation (EC) No 2580/2001 and repealing Decision 2001/927/EC (OJ 2002 L 116, p. 33). That decision included the PKK in the list referred to in Article 2(3) of Regulation No 2580/2001 (hereinafter 'the disputed list').
- 8 By application registered under number T-206/02, the KNK brought an action for annulment of Decision 2002/334.
- 9 On 17 June 2002, the Council adopted Decision 2002/460/EC implementing Article 2(3) of Regulation (EC) No 2580/2001 and repealing Decision 2002/334/EC (OJ 2002 L 160, p. 26). The PKK's name was kept on the disputed list. That list has since been regularly brought up to date by Council decisions.

Procedure and forms of order sought by the parties

- 10 By application lodged at the Court Registry on 31 July 2002, the KNK, represented by Mr S. Vanly, and the PKK, represented by Mr O. Ocalan, brought this action for annulment of Decisions 2002/334 and 2002/460 (hereinafter ‘the contested decisions’).
- 11 By order of 17 June 2003, the United Kingdom and the Commission were granted leave to intervene in support of the Council.
- 12 By separate document, the Council raised objections of inadmissibility in this case under Article 114(1) of the Rules of Procedure of the Court of First Instance. The applicants and the Commission lodged their observations on those objections within the prescribed period. The United Kingdom waived its right to lodge such observations.
- 13 The Council, supported by the Commission, claims that the Court should:
- declare the action inadmissible;
 - order the applicants to pay the costs.
- 14 The applicants contend that the Court should:

- reserve its decision on admissibility for the final judgment;
- declare the action admissible;
- annul the contested decisions or, alternatively, declare Regulation No 2580/2001 to be illegal;
- order the Council to pay the costs.

Admissibility

Arguments of the parties

- 15 The Council points out, at the outset, that the action is brought on behalf of the PKK and the KNK. There is no indication that Mr O. Ocalan and Mr S. Vanly are involved in their personal capacity.
- 16 The Council and the Commission submit that the action is out of time so far as Decision 2002/334 is concerned.
- 17 The Council submits that the PKK does not have capacity to bring legal proceedings since that applicant itself states that it no longer exists. The Council makes clear that that observation is without prejudice to the consequences which individual Member States may draw from the PKK's apparent dissolution. The Commission submits that there is insufficient evidence to conclude that Mr O. Ocalan can lawfully represent the PKK.

- 18 As regards the KNK, the Council raises an objection of *lis pendens* based on the identity of the parties, subject-matter and pleas in law relied upon in the actions in Cases T-206/02 and T-229/02. Decision 2002/460 only brings the disputed list up to date. The Commission argues that the applicants have submitted no proof of the existence of a new factor, or of a re-examination of their case which would prevent Decision 2002/460 being regarded as confirming the earlier decision. The Council submits that, while the correct procedure is for the applicants to extend or adjust their original pleadings, in order to cover the new act (Case 14/81 *Alpha Steel v Commission* [1982] ECR 749, paragraph 8), such amendments would be purely formal in that it would consist simply in replacing the references to the previous decision with references to the subsequent decision. The Council points out that Regulation No 2580/2001 is contested only incidentally and that that form of challenge cannot lead to the annulment of the said regulation.
- 19 In the alternative, the Council, supported by the Commission, submits that the KNK is not directly and individually concerned. The Council points out that the KNK is not included on the disputed list. The KNK's argument that the PKK's inclusion undermines its political effectiveness and credibility is much too vague and speculative. The scope of the prohibition against making funds available to the entities included on the disputed list is general. The fact that the KNK may have been quite likely, because of its close association with the PKK, to infringe that prohibition cannot differentiate it sufficiently in law. Finally, the KNK cannot claim that it is defending its members' collective interests, since its objective is much too general.
- 20 The applicants make four preliminary points. First, they emphasise the very broad legal scope of the contested decisions, the effect of which is to proscribe one political party and to severely curtail the KNK's political activity. Second, because it is not possible to use the preliminary reference procedure, this action for annulment is the only legal remedy available to the applicants. Third, the locus standi requirements under the EC Treaty must be interpreted in the light of fundamental rights and, more especially, in the light of the principle of effective judicial protection (Case C-50/00 P *Unión de Pequeños Agricultores v Council* [2002] ECR I-6677, paragraphs

38, 39 and 44). Fourth, it should be clear that the applicants are bringing these proceedings as the representatives of two political parties. Since it is not only the applicants but also the members whose rights and interests are affected, it would be inappropriate to be too formalistic.

21 The applicants assert that they lodged their application on 24 July 2002. As soon as they were informed of the fact that the Court had not received the original of the application, despite their belief that it had been sent, they immediately took the steps necessary to remedy that situation. In any event, the time-limits were observed in relation to Decision 2002/460. That decision constitutes a separate decision, resulting from fresh consideration of the merits of including the PKK on the disputed list.

22 As regards the PKK's capacity to bring proceedings, the applicants submit that the Council's argument relating to the PKK's existence goes to the substance of the case as regards its inclusion on the disputed list. Presumably the Council would be arguing that the PKK is still in existence at any substantive hearing to justify its inclusion, yet it seeks to rely on the assertion of its dissolution at the admissibility stage.

23 The PKK is entitled to bring proceedings for annulment since, first, no objection has been made to the locus standi of Mr O. Ocalan, a natural person, although he acts in a representative capacity. Secondly, the fact that it was decided, in 2002, that all activities under the name of the PKK would cease and a new constitution would be declared has no effect in Community law on the continuing legal capacity of the PKK to bring proceedings. The PKK is, for these purposes, similar to a company in liquidation (Case C-77/99 *Commission v Oder-Plan Architektur and Others* [2001] ECR I-7355). In addition, the Council clearly considered that the PKK had sufficient capacity to be proscribed. Fairness and logic require, in those circumstances, that the PKK be able to challenge the contested decisions.

24 As regards the KNK, the applicants submit that it is directly and individually concerned by the contested decisions. The PKK was the primary member organisation of the KNK and both have similar aims and objectives. The total ban on the PKK has a ‘profoundly chilling effect’ on the ability of the KNK to pursue those aims and objectives, although the KNK is the only entity capable of pursuing them. The KNK is, moreover, left in a state of uncertainty as to the position of its members and its own position. Its activities are severely curtailed by its fear of having its assets frozen or of being accused of assisting or providing assets to a proscribed organisation. Those fears are particularly acute as regards KADEK, which is a potential member of the KNK. The KNK is therefore acting on both its own behalf and on behalf of its members and potential members who are themselves directly and individually concerned by the contested decisions.

25 According to the applicants, the rules on locus standi before the Court of First Instance are designed to ensure that parties with no real link to an act of the institutions are not able to challenge it. It is clear from the dispute that that is not the case here. Moreover, the contested decisions have effects on the applicants automatically, without any action on the part of the Member States. The KNK is differentiated in unique fashion by reason of its historical link to the PKK. Finally, if the PKK were not to be regarded as being entitled to bring proceedings, only the KNK would be able to challenge the contested decisions.

Findings of the Court

26 Under Article 114(1) of the Rules of Procedure, if a party so applies, the Court may give a decision on admissibility without going to the substance of the case. Under Article 114(3), unless the Court of First Instance otherwise decides, the remainder of the proceedings are to be oral. The Court considers, here, that it has sufficient information from the documents in the file and that there is no need to open the oral procedure. In particular, the Court is in a position to give a decision on this objection of inadmissibility without reserving it for the final judgment.

27 It must be held, first of all, that the PKK is to be regarded as being directly and individually concerned by the contested decisions, since it is named therein.

28 It is appropriate, next, to make clear that the rules governing the admissibility of an action for annulment as regards a person mentioned in the disputed list — namely the list of persons, groups and entities to which specific restrictive measures for combating terrorism apply — must be construed according to the circumstances of the case. As regards, in particular, those groups or entities it may be that they do not exist legally, or that they were not in a position to comply with the legal rules which usually apply to legal persons. Therefore, excessive formalism would amount to the denial, in certain cases, of any possibility of applying for annulment, even though those groups and entities were the object of restrictive Community measures.

29 It is appropriate, finally, to state that the contested decisions have been repealed since the date this action was brought and replaced, on numerous occasions, by new decisions. According to settled case-law, the principle of the proper administration of justice requires that where an act that an applicant is challenging is replaced, in the course of the proceedings, by an act with the same subject-matter, he is not required to bring a new action but may expand or amend his original application so as to cover the new act (*Alpha Steel v Commission*, cited in paragraph 18 above, paragraph 8, and Case C-217/01 P *Hendrickx v Cedefop* [2003] ECR I-3701).

30 However, according to settled case-law, the admissibility of an action must be judged by reference to the situation prevailing when the application was lodged (Case 50/84 *Bensider and Others v Commission* [1984] ECR 3991, paragraph 8, and the Order of the President of the Court of First Instance of 8 October 2001 in Case T-236/00 R II *Stauner and Others v Parliament and Commission* [2001] ECR II-2943, paragraph 49). Therefore, even in the event of amendment of the forms of order sought by the applicants when new acts supervene during the proceedings, the requirements

governing the admissibility of the action, apart from that concerning the continuance of an interest in bringing the proceedings, cannot be affected by such amendment. As regards the admissibility of their action, it is therefore unnecessary to offer the applicants the opportunity of amending their pleadings in the light of the adoption of new decisions repealing the contested decisions.

- 31 It is appropriate to examine the admissibility of this action in relation to each applicant.

The PKK

- 32 In accordance with the principles identified in paragraph 28 above, Mr O. Ocalan, a natural person, is entitled to demonstrate, by any available evidence, that he is acting validly on behalf of the legal person, the PKK, whose representative he claims to be. However, such evidence must, at least, show that the PKK did indeed wish to bring this action and that it was not used as an instrument by a third party, albeit, as the case may be, one of its members.
- 33 It is appropriate, also, to make clear that it is not for the Court, when examining the admissibility of the action, to rule on the reality of the PKK's existence. The question raised in the course of that examination is strictly limited to whether Mr O. Ocalan has the capacity to bring an action on behalf of the PKK.
- 34 First, it must be noted that the action is formally brought by Mr O. Ocalan, 'on behalf of' the PKK.

- 35 Secondly, the fact remains that the applicants firmly declare that the PKK was dissolved in April 2002. What is more, according to Mr O. Ocalan's evidence annexed to the application, the PKK's Congress, having pronounced its dissolution, adopted, at the same time, the declaration that 'all activities under the name of "PKK" would [henceforth] be deemed illegitimate'.
- 36 Thirdly, it must be pointed out that nowhere in the applicants' pleadings is Mr O. Ocalan mentioned otherwise than as the PKK's representative. In particular, it is never claimed that he could have any individual interest in the annulment of the contested decisions.
- 37 Far from demonstrating Mr O. Ocalan's legal capacity to represent the PKK, the applicants state, on the contrary, that the PKK no longer exists. It cannot be accepted that a legal person which has ceased to exist, assuming that is so, may validly appoint a representative.
- 38 The impossibility of accepting that Mr O. Ocalan validly represents the PKK is further strengthened by his own evidence that any activity under the name of the 'PKK' is illegitimate after April 2002. According to that evidence, the action which Mr O. Ocalan claims to bring on behalf of the PKK has been declared illegitimate by his principal itself.
- 39 Therefore, the applicants confront the Court with the paradoxical situation in which the natural person deemed to represent a legal person is not only unable to demonstrate that he represents it validly, but, further, explains why he is unable to represent it.

- 40 As to the applicants' argument that there are no other remedies available, that cannot lead to the admission of actions of any person who wishes to defend a third party's interests.
- 41 The Court is therefore bound to hold that Mr O. Ocalan has, on his own authority, brought an action on behalf of the PKK. Therefore, the action brought by Mr O. Ocalan on behalf of the PKK is inadmissible.
- 42 As a result there is no need to rule on the other grounds of inadmissibility, such as the bringing of the action out of time as far as Decision 2002/334 is concerned.

The KNK

- 43 It must be noted, at the outset, that the KNK has already challenged Decision 2002/334 in its action in Case T-206/02. Therefore, because of the identity of the subject-matter, cause of action and parties, this action, in so far as it is brought by the KNK against Decision 2002/334, is inadmissible by virtue of *lis pendens*.
- 44 As regards Decision 2002/460 (hereinafter 'the contested decision'), it is clear that that decision is a new decision in relation to Decision 2002/334 which it repeals. First, Article 2(3) of Regulation No 2580/2001 provides that the Council is to establish, review and amend the list of persons, groups and entities to which that regulation applies. It follows that the Council, in each new act, reviews the disputed list. Secondly, such a review cannot be limited to the inclusion of new persons or entities or the removal of certain persons or entities since, in a community governed by the rule of law, it cannot be accepted that an act establishing continuing

restrictive measures in respect of persons or entities could be applicable without limitation unless the institution which has promulgated them readopts them regularly following a review. Therefore, the fact that it has challenged Decision 2002/334, which included the PKK on the disputed list for the first time, cannot, on the basis of *lis pendens*, prevent the KNK from challenging Decision 2002/460, which keeps the PKK on the list.

45 As regards the action brought against Decision 2002/460 by the KNK, it follows from settled case-law that an association formed for the protection of the collective interests of a category of persons cannot be considered to be individually concerned, for the purposes of the fourth paragraph of Article 230 EC, by a measure affecting the general interests of that category, and is therefore not entitled to bring an action for annulment if its members cannot do so individually (Joined Cases 19/62 to 22/62 *Fédération nationale de la boucherie en gros et du commerce en gros des viandes and Others v Council* [1962] ECR 491, and Case T-69/96 *Hamburger Hafen- und Lagerhaus and Others v Commission* [2001] ECR II-1037, paragraph 49).

46 In this case, it must be noted that, under Article 7A of its Charter, the KNK aims to strengthen the unity and cooperation of the Kurds in all parts of Kurdistan and to support their struggle, based on the best interests of the Kurdish nation. The KNK must therefore be considered to be an association formed for the protection of the collective interests of a category of persons.

47 That conclusion is also supported by the applicants' argument that the PKK's listing has a 'profoundly chilling effect' on the KNK's ability to pursue those aims and objectives. By virtue of the above-cited case-law, it cannot be concerned individually in that respect.

- 48 It must next be established whether the KNK can avail itself of the fact that one or more of its members would be entitled to bring an action for annulment of the contested decision.
- 49 As regards the PKK, it must be held that the applicants, by claiming that it no longer exists, acknowledge, at the very least, that the PKK is no longer a member of the KNK. In that regard, it cannot be accepted that a person's past membership of an association enables that association to avail itself of that person's possible right of action. To accept such reasoning would be tantamount to conferring on an association some sort of perpetual right to bring proceedings, despite the fact that that association can no longer claim to represent the interests of its former member.
- 50 As regards KADEK, the applicants rely on the fact, in essence, that that body, a potential member of the KNK, is affected by Decision 2002/460 to the point of not being able to join the KNK. Even if KADEK might have been entitled to challenge Decision 2002/460 at the date this action was brought, which seems possible, particularly if it could be regarded as the successor in law and/or in fact to the PKK, the KNK cannot avail itself of KADEK's membership of its organisation, since it is not a member.
- 51 The applicants allege, finally, that the KNK and its members in general are individually concerned on the ground that their activities are curtailed by the fear of having their assets frozen if they cooperate with an entity named on the disputed list. It must be recalled, in that regard, that the prohibition by the contested decision on making funds available to the PKK is of general application, because it is addressed to all persons who are subject to Community law. The contested decision thus applies to objectively determined situations and entails legal effects for categories of persons regarded generally and in the abstract (see, to that effect, Case 307/81 *Aluisi v Council and Commission* [1982] ECR 3463, paragraph 9).

- 52 It must be recalled that natural or legal persons can claim to be concerned individually by a measure of general application only if they are affected by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from any other person (Case 25/62 *Plaumann v Commission* [1963] ECR 95, at p. 107, and Case T-12/93 *CCE de Vittel and Others v Commission* [1995] ECR II-1247, paragraph 36). The KNK and its members are bound to comply with the prohibition laid down by the contested decision concerning the PKK, like all other persons in the Community. The fact that, because of their political opinions, the KNK and its members are more likely than others to suffer the effects of that prohibition is not such as to differentiate them from all other persons within the Community. The fact that a measure of general application may have specific effects which differ according to the various persons to whom it applies is not such as to differentiate them in relation to all the other persons concerned, where that measure is applied on the basis of an objectively determined situation (see Case T-138/98 *ACAV and Others v Council* [2000] ECR II-341, paragraph 66, and the case-law there cited).
- 53 Lastly, the applicants claim that this action is the only means by which the legality of the contested decision may be challenged in so far as it covers the PKK.
- 54 It must be stated that that assertion is erroneous. The fact that the KNK is not itself entitled to bring proceedings for annulment of the contested decision certainly does not mean that no other person to whom that decision is addressed or who is directly and individually concerned by it may bring such an action.
- 55 In that regard, it is a matter of public knowledge that the Council, by its Decision 2004/306/EC of 2 April 2004 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2003/902/EC (OJ 2004 L 99, p. 28), included KADEK and the KONGRA-GEL, as aliases of the PKK, on the disputed list. By action brought on 25 June 2004 in Case T-253/04 (OJ 2004 C 262, p. 28), the KONGRA-GEL has sought the annulment of that decision.

- 56 Since the KNK cannot avail itself of the fact that one of its members is entitled to bring an action for annulment of the contested decision, it must be held that it is not individually concerned by that decision.
- 57 Accordingly, the action, in so far as it is brought by the KNK against Decision 2002/460, is inadmissible.
- 58 It follows from all the foregoing that the entire action must be dismissed as inadmissible.

Costs

- 59 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the other party's pleadings. Since the applicants have been unsuccessful, and the Council so applied, the applicants must be ordered to pay the costs.
- 60 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 (Second Chamber)

hereby orders:

1. **The action is dismissed.**

2. **The applicants are to bear their own costs and pay those of the Council.**

3. **The United Kingdom of Great Britain and Northern Ireland and the Commission are to bear their own costs.**

Luxembourg, 15 February 2005.

H. Jung

Registrar

J. Pirrung

President