

Case T-284/08

People's Mojahedin Organization of Iran

v

Council of the European Union

(Common foreign and security policy — Restrictive measures directed against certain persons and entities with a view to combating terrorism — Freezing of funds — Actions for annulment — Rights of the defence — Judicial review)

Judgment of the Court of First Instance (Seventh Chamber), 4 December
2008 II - 3492

Summary of the Judgment

1. *Community law — Principles — Rights of the defence*
(*Council Regulation No 2580/2001, Art. 2(3); Council Decision 2008/583*)

2. *Actions for annulment — Pleas in law — Misuse of powers*
(Art. 230 EC)
3. *European Union — Common foreign and security policy — Specific restrictive measures directed against certain persons and entities with a view to combating terrorism*
(Art. 10 EC; Council common position No 2001/931, Art. 1(4); Council Regulation No 2580/2001, Art. 2(3))
4. *European Communities — Judicial review of the legality of the acts of the institutions — Economic and financial sanctions on the basis of Articles 60 EC, 301 EC and 308 EC*
(Arts 60 EC, 301 EC and 308 EC)
5. *European Union — Common foreign and security policy — Specific restrictive measures directed against certain persons and entities with a view to combating terrorism*
(Council common position No 2001/931, Art.1(4))
6. *European Union — Common foreign and security policy — Specific restrictive measures directed against certain persons and entities with a view to combating terrorism*
(Council Regulation No 2580/2001, Art. 2(3))

1. The Council adopted Decision 2008/583 implementing Article 2(3) of Regulation No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism without first informing the interested party of the new information or new material in the file which, in its view, justified maintaining it on the list of persons, groups and bodies whose funds had to be frozen. A fortiori, it did not enable that party to effectively make known its view of the matter, prior to the adoption of that decision.

The Council acted in that way even though urgency is not in any way established, and it does not cite any material or legal obstacle to communicating to the interested party the 'new material' which it claims justified it being kept on the list.

Therefore, the continued freezing of the interested party's funds by Decision

2008/583 was the result of a procedure during which that party's rights were not respected. That finding cannot but lead to the annulment of the contested decision, in so far as it concerns the interested party.

(see paras 36, 40, 41, 47)

2. The Council's omission to comply in the present case with a procedure clearly defined in an earlier judgment involving the same parties and designed to ensure compliance with defence rights, such omission being made with full knowledge of the facts and without any reasonable justification, may be material to any consideration of a plea based on the exceeding or misuse of powers.

(see para. 44)

3. The procedure which may culminate in a measure to freeze funds under the rules concerning specific measures with a view to combating terrorism takes place at two levels, one national, the other Community.

Under Article 10 EC, relations between the Member States and the Community institutions are governed by reciprocal duties to cooperate in good faith. In a case of application of Article 1(4) of Common Position 2001/931 on the application of specific measures to combat terrorism and Article 2(3) of Regulation No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, provisions which introduce a specific form of cooperation between the Council and the Member States in the context of combating terrorism, that principle entails, for the Council, the obligation to defer as far as possible to the assessment conducted by the competent national authority, at least where it is a judicial authority, in particular in respect of the existence of 'serious and credible evidence or clues' on which its decision, referred to in Article 1(4) of Common Position 2001/931, is based.

It follows from the foregoing that, although it is indeed for the Council to prove that freezing of the funds of a person, group or entity is or remains legally justified, in the light of the relevant legislation, that burden of proof has a relatively limited purpose in respect of the Community procedure for freezing funds. In the case of an initial decision to freeze funds, the burden of proof essentially relates to the existence of precise information or material in the relevant file which indicates that a decision by a national authority meeting the definition laid down in Article 1(4) of Common

Position 2001/931 has been taken with regard to the person concerned. Furthermore, in the case of a subsequent decision to freeze funds, after review, the burden of proof essentially relates to whether the freezing of funds is still justified, having regard to all the relevant circumstances of the case and, most particularly, to the action taken upon that decision of the competent national authority.

evidence relied on is factually accurate, reliable and consistent, but must also ascertain whether that evidence contains all the relevant information to be taken into account in order to assess the situation and whether it is capable of substantiating the conclusions drawn from it. However, when conducting such a review, it must not substitute its own assessment of what is appropriate for that of the Council.

(see paras 51-54)

(see para. 55)

4. The Council has broad discretion as to what to take into consideration for the purpose of adopting economic and financial sanctions on the basis of Articles 60 EC, 301 EC and 308 EC, consistent with a common position adopted on the basis of the common foreign and security policy. This discretion concerns, in particular, the assessment of the considerations of appropriateness on which such decisions are based.
5. The literal wording of Article 1(4) of Common Position 2001/931 on the application of specific measures to combat terrorism provides that a decision must have been taken 'in respect of the persons, groups and entities concerned' before a Community measure freezing funds can be adopted against them.

However, although the Court acknowledges that the Council possesses broad discretion in that sphere, that does not mean that the Court is not to review the interpretation made by the Council of the relevant facts. The Community judicature must not only establish whether the

Even assuming that one should not follow a literal interpretation of that provision, if a national decision preceding the adoption of a Community measure has been taken not against an organisation but against some of its members, it would still be necessary that the Council or the competent national authority concerned should provide an explanation as to the actual and

specific reasons why, in the circumstances of the case, the acts ascribed to individuals allegedly members or supporters of an organisation should be imputed to the organisation itself.

(see paras 64, 65)

6. The Council is not entitled to base a funds-freezing decision under Article 2(3) of Regulation No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism on information or material in the file communicated by a Member State, if the said Member State is not willing to authorise its communication to the Community judicature whose task is to review the lawfulness of that decision.

In that regard, the judicial review of the lawfulness of a decision to freeze funds extends to the assessment of the facts and circumstances relied on as justifying it, and to the evidence and information on which that assessment is based. The Court must also ensure that the right to a fair hearing is observed and that the requirement of a statement of reasons is satisfied and also, where applicable, that the overriding considerations relied on exceptionally by

the Council in order to justify disregarding those rights.

That review is all the more essential because it constitutes the only safeguard ensuring that a fair balance is struck between the need to combat international terrorism and the protection of fundamental rights. Since the restrictions imposed by the Council on the rights of the parties concerned to a fair hearing must be offset by a strict judicial review which is independent and impartial, the Community courts must be able to review the lawfulness and merits of the measures to freeze funds without its being possible to raise objections that the evidence and information used by the Council is secret or confidential.

Thus, refusal by the Council and by national authorities to communicate, even to the Court alone, the information contained in a document sent by those authorities to the Council has the consequence that the Court is unable to review the lawfulness of the funds-freezing decision.

(see paras 73-76)