JUDGMENT OF THE COURT OF FIRST INSTANCE (Seventh Chamber)

23 October 2008 *

In Case T-256/07,

People's Mojahedin Organization of Iran, established in Auvers-sur-Oise (France), represented by J.-P. Spitzer, lawyer, and D. Vaughan QC,

applicant,

v

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

defendant,

supported by

United Kingdom of Great Britain and Northern Ireland, represented initially by V. Jackson and T. Harris, and subsequently by V. Jackson, acting as Agents, and by S. Lee and M. Gray, Barristers,

* Language of the case: English.

by

Commission of the European Communities, represented initially by S. Boelaert and J. Aquilina, and subsequently by S. Boelaert, P. Aalto and P. van Nuffel, acting as Agents,

and by

Kingdom of the Netherlands, represented by M. de Grave and Y. de Vries, acting as Agents,

interveners,

APPLICATION, initially, for annulment of 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), so far as it concerns the applicant,

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: E. Coulon,

having regard to the written procedure and further to the hearing on 6 March 2008,

gives the following

Judgment

Background to the case

1 For a summary of the early background to this case, reference is made to the judgment in Case T-228/02 *Organisation des Modjahedines du peuple d'Iran* v *Council* [2006] ECR II-4665 ('*OMPI*', paragraphs 1 to 26.).

2 After the oral hearing in *OMPI*, which was held on 7 February 2006, but before the judgment was delivered, the Council adopted Decision 2006/379/EC of 29 May 2006 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 2005/930/EC (OJ 2006 L 144, p. 21). It is established that, by that decision, the Council continued to include the applicant's name in the list in the Annex to Council Regulation (EC) 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 70, 'the list at issue').

3 By the judgment in *OMPI*, paragraph 1 above, the Court annulled, in so far as it concerned the applicant, Council Decision 2005/930/EC of 21 December 2005 implementing Article 2(3) of Regulation (EC) No 2580/2001 and repealing Decision 2005/848/EC (OJ 2006 L 340, p. 64), on the ground that it did not contain a sufficient statement of reasons, that it had been adopted in the course of a procedure during which the applicant's right to a fair hearing was not observed and that the Court itself was not in a position to review the lawfulness of that decision (see the judgment in *OMPI*, paragraph 1 above, paragraph 173).

4 On 21 December 2006, the Council adopted Decision 2006/1008/EC implementing Article 2(3) of Regulation No 2580/2001 (OJ 2006 L 379, p. 123). By that decision, the Council added the names of certain persons, groups and entities to the list at issue.

5 By letter of 30 January 2007 the Council informed the applicant that, in its opinion, the reasons for including the applicant in the list at issue were still valid and that it therefore intended to maintain it in the list. Enclosed with that letter was the Council's statement of reasons. The applicant was also informed that it could submit observations to the Council on the latter's intention to continue to include it in the

list and on the reasons stated in that regard, and any supporting documents, within a period of one month.

6 In the statement of reasons enclosed with the letter, the Council pointed out, inter alia, that a decision had been taken with respect to the applicant by a competent authority within the meaning of Article 1(4) of Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism (OJ 2001 L 344, p. 93), namely, the order of the Secretary of State for the Home Department ('the Home Secretary') of the United Kingdom of Great Britain and Northern Ireland of 28 March 2001 proscribing the applicant as an organisation concerned in terrorism, under the Terrorism Act 2000 ('the Home Secretary's order'). After noting that that decision, which under the abovementioned law was subject to review, was still in force, the Council held that the reasons for including the applicant in the list at issue still applied.

7 By letters of 27 February, and 19, 20 and 26 March 2007, the applicant submitted to the Council its observations in response. It argued in particular that, following the judgment in *OMPI,* paragraph 1 above, no decision whatsoever to 'maintain' the applicant in the list at issue could validly be adopted. It also criticised both the reasons stated by the Council as justification for that decision and the procedure it had followed. Last, it requested access to the Council's file.

8 Under cover of a letter of 30 March 2007, the Council sent the applicant a set of 16 documents. It pointed out, with regard to communication of the other documents in the file, that the originating Member State(s) had first to be consulted.

9 By letter of 16 April 2007 the applicant stated that it was essential for it to have access to all the documents in the file and to have the opportunity to comment on them before a decision was adopted. On the same day, the applicant's lawyers sent a joint opinion to the Council, in which they reiterated the arguments put forward previously and also argued that the Home Secretary's order could not serve as a basis for the intended decision.

10 By notice published in the Official Journal (OJ 2007 C 90, p. 1) on 25 April 2007, the Council notified the persons, groups and entities listed in Decisions 2006/379 and 2006/1008 that it intended to maintain them in the list at issue. The Council also informed the parties concerned that it was possible to request the Council's statement of reasons for including them in the list in question (unless this had already been communicated to them).

11 By letter of 14 May 2007 the Council sent the applicant another document from the file. As regards the other documents not yet communicated, the Council indicated that the State which provided them did not consent to their disclosure. Furthermore, the Council enclosed with that letter a note from its general secretariat to the Committee of Permanent Representatives (Coreper) of 19 January 2007 (document 5418/1/07 REV 1), entitled 'Follow-up to the judgment [in OMPI]', which enclosed a draft letter and statement of reasons the content of which is identical to that of the Council's letter to the applicant of 30 January 2007, referred to in paragraph 5 above.

12 By letter of 29 May 2007 the applicant submitted additional observations, in which it analysed the documents provided by the Council. It also insisted that the exculpatory documents it provided should be included in the file.

13 By letter of 12 June 2007 the Council informed the applicant that copies of its correspondence and of all the exculpatory documents submitted by it had been distributed to the delegations of the Member States.

14 On 28 June 2007 the Council adopted Decision 2007/445/EC implementing Article 2(3) of Regulation No 2580/2001 and repealing Decisions 2006/379 and 2006/1008 (OJ 2007 L 169, p. 58). Under Article 1 of that decision, the list provided for in Article 2(3) of Regulation No 2580/2001 was replaced by the list contained in the annex to the decision. It is common ground that the applicant's name appears in that annex.

15 Decision 2007/445 was notified to the applicant under cover of a letter from the Council dated 29 June 2007 ('the first letter of notification'). The statement of reasons enclosed with that letter is in substance identical to that enclosed with the letter of 30 January 2007 (see paragraph 6 above).

Procedure and fresh developments during the proceedings

16 By application lodged at the Registry of the Court of First Instance on 16 July 2007, the applicant brought the present action.

17 By separate document lodged at the Registry on the same day, the applicant applied for the case to be decided under an expedited procedure pursuant to Article 76a

of the Rules of Procedure of the Court of First Instance. The Council presented its observations on that application on 30 July 2007.

18 Before giving a ruling on that request, the Court of First Instance (Second Chamber) decided, on 13 September 2007, to summon the parties' agents to an informal meeting before the Judge-Rapporteur pursuant to Article 64 of the Rules of Procedure. That meeting was held on 10 October 2007.

19 The composition of the Chambers of the Court of First Instance having been altered as from the beginning of the judicial year, the Judge-Rapporteur was attached to the Seventh Chamber, to which this case has therefore been assigned.

20 On 11 October 2007, the Court of First Instance (Seventh Chamber) decided to adjudicate under an expedited procedure, provided that the applicant submitted, within seven days, an abbreviated version of its application and a list of only those annexes which had to be taken into consideration, in accordance with the draft it had prepared for the informal meeting. The applicant complied with that condition.

21 By order of 20 November 2007, after the parties had been heard, the President of the Seventh Chamber of the Court of First Instance granted the United Kingdom, the Commission of the European Communities and the Kingdom of the Netherlands leave to intervene in support of the form of order sought by the Council.

22 By Open Determination No PC/02/2006 of 30 November 2007 the Proscribed Organisations Appeal Commission, United Kingdom ('the POAC') allowed an

appeal against the Home Secretary's decision of 1 September 2006 refusing to lift the proscription of the applicant as an organisation concerned in terrorism and ordered the Home Secretary to lay before the United Kingdom Parliament the draft of an Order removing the applicant from the list of organisations proscribed under the Terrorism Act 2000 ('the POAC's decision').

23 Under cover of a letter dated 5 December 2007, the applicant lodged at the Court Registry a copy of the POAC's decision and a copy of the letter it had sent the same day to the Council seeking removal from the list at issue in the light of the POAC's decision.

24 By letter of 12 December 2007, the Court of First Instance (Seventh Chamber) put written questions to the parties concerning the possible effect of the POAC's decision on the present case and the appropriateness of conducting the case under an expedited procedure.

25 By decision of 14 December 2007, the POAC refused an application by the Home Secretary for permission to lodge an appeal before the Court of Appeal (England and Wales) against the POAC's decision of 30 November 2007. In an addendum to that decision dated 17 December 2007, the POAC gave as the reason for its refusal the fact that none of the arguments advanced by the Home Secretary had a reasonable chance of succeeding.

26 On 20 December 2007 the Council adopted Council Decision 2007/868/EC implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2007/445 (OJ 2007 L 340, p. 100). In accordance with Article 1 of that decision, the list provided for in Article 2(3) of Regulation No 2580/2001 is replaced by the list in the annex. It

is common ground that the applicant's name is repeated in point 2.19 of that annex, under the heading 'Groups and entities'.

27 On 28 December 2007 the Home Secretary made an application to the Court of Appeal for leave to appeal against the POAC's decision.

28 Decision 2007/868 was notified to the applicant under cover of a letter from the Council of 3 January 2008 ('the second letter of notification'). According to the tenor of that letter, the Council took the view that the reasons for continuing to include the applicant in the list at issue, previously communicated to that party by the first letter of notification, still held good. With regard to the POAC's decision, the Council observed that the Home Secretary had sought to bring an appeal against it.

29 The statement of reasons enclosed with the second letter of notification is identical to that accompanying the first letter of notification (see paragraph 15 above).

30 By letter received at the Court Registry on 11 January 2008, the applicant informed the Court of the adoption of Decision 2007/868. It requested to be allowed to amend the form of order sought so that its application sought annulment of that decision too. Furthermore, it asked the Court to continue to adjudicate under the expedited procedure and maintained that this case was rendered all the more urgent by the adoption of the decision in question.

31 The Council, the United Kingdom and the Commission lodged their written observations at the Registry in response to the Court's questions of 12 December 2007 on 15 and 16 January 2008, respectively.

32 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Seventh Chamber) decided to open the oral procedure and, by way of measures of organisation of procedure pursuant to Article 64 of its Rules of Procedure, by letter of the Registrar of 5 February 2008:

— requested the Council and the interveners to submit their written observations on the request to amend the applicant's form of order referred to in paragraph 30 above;

— requested the Council and the United Kingdom to lodge all the documents relating to the procedure following which Decision 2007/868 was adopted, so far as it concerned the applicant;

— gave the United Kingdom leave to lodge a statement in intervention.

33 In their observations written in response to those measures of organisation of procedure, lodged at the Court Registry on 19 and 21 February 2008 respectively, the Council, the Commission and the Netherlands declared that they had no objection to the applicant's request to adapt its forms of order, referred to in paragraph 30 above.

34 In contrast, the United Kingdom, in its statement in intervention lodged at the Court Registry on 21 February 2008, maintained, referring to paragraph 34 of *OMPI*, paragraph 1 above, that in this case the Court should exercise its judicial review in relation to Decision 2007/868 alone. According to that intervener, Decision 2007/445 can no longer be subject to such review because it was repealed by Decision 2007/868.

35 Further, the Council and the United Kingdom complied with the Court's request that they should produce the documents relating to the procedure followed in the adoption of Decision 2007/868, in so far as it concerned the applicant. On that occasion, the United Kingdom requested, none the less, that the information in the documents it produced should not be disclosed to the public.

36 The parties' oral arguments and their answers to the questions put by the Court were heard at the hearing of 6 March 2008.

37 Under cover of a letter of 13 May 2008, the applicant lodged at the Court Registry a copy of the Court of Appeal's judgment of 7 May 2008 dismissing the Home Secretary's application for leave to bring an appeal before that court against the POAC decision ('the Court of Appeal's judgment'). In that letter, the applicant made several remarks on that judgment.

38 By order of 12 June 2008, the Court of First Instance (Seventh Chamber) decided to order the reopening of the oral procedure in accordance with Article 62 of the Rules of Procedure, in order to enable the other parties to express a view on those new factors.

39 By letter from the Registry of 12 June 2008, the other parties were requested to submit their observations on the applicant's letter of 13 May 2008 and on the Court of Appeal's judgment.

40 The Council having complied with that request by letter lodged at the Registry on 7 July 2008 and the applicant not being authorised to respond to it, the Court again closed the oral procedure by decision of 15 July 2008.

Forms of order sought by the parties

41 In its application, the applicant claims that the Court should:

— annul Decision 2007/445, in so far as it applies to the applicant;

— order the Council to pay the costs.

42 In its letter to the Court of 11 January 2008, the applicant also claims that the Court should annul Decision 2007/868 in so far as the latter applies to it.

43 The Council contends that the Court should:

— dismiss the application;

— order the applicant to pay the costs.

44 The United Kingdom, the Netherlands and the Commission support the first of the Council's heads of claim.

On the procedural consequences of the repeal and replacement of Decision 2007/445

45 As is made clear in paragraph 26 above, since the application was lodged Decision 2007/445 has been repealed and replaced by Decision 2007/868. The applicant has sought leave to adapt its original claims so that its action seeks annulment of those two decisions.

46 It is to be borne in mind in this connection that, when a decision or a regulation is replaced, during the proceedings, by another measure with the same subject-matter, this is to be considered a new factor allowing the applicant to adapt its claims and pleas in law. It would be contrary to the principle of due administration of justice and

to the requirements of procedural economy to oblige the applicant to make a fresh application. Moreover, it would be inequitable if the institution in question were able, in order to counter criticisms of a measure, contained in an application to the Community judicature, to amend the contested measure or to substitute another for it and to rely in the proceedings on such an amendment or substitution in order to deprive the other party of the opportunity of extending his original pleadings to the later measure or of submitting supplementary pleadings directed against that decision (*OMPI*, paragraph 1 above, paragraphs 28 and 29 and case-law cited).

47 It is therefore appropriate in the present case, in accordance with that case-law, to allow the applicant's request and to consider that, on the date on which the oral procedure was closed, its action sought annulment of Decision 2007/868 also, in so far as that act concerns it, and to allow the parties to reformulate their claims, pleas in law and arguments in the light of that new factor, which implies, for them, the right to submit supplementary claims, pleas in law and arguments (*OMPI*, paragraph 1 above, paragraph 30).

48 Furthermore, the applicant still has an interest in obtaining annulment of Decision 2007/445 so far as the latter concerns it, in that the repeal of an act of an institution does not constitute recognition of the unlawfulness of that act and has effect *ex nunc*, unlike a judgment annulling an act, by which the act is retroactively eliminated from the legal order and is deemed never to have existed (*OMPI*, paragraph 1 above, paragraphs 34 and 35 and case-law cited; see also, to that effect, the judgment in Joined Cases 16/59, 17/59 and 18/59 *Geitling and Others* v *High Authority* [1960] ECR 17, p. 26). It is therefore to be considered that the Court's review will extend to that decision too, contrary to the arguments of the United Kingdom based on a plainly incorrect reading of paragraphs 34 and 35 of *OMPI*, paragraph 1 above.

49 In this judgment the Court will rule in turn on the application for annulment of Decision 2007/445 and on the application for annulment of Decision 2007/868.

On the application for annulment of Decision 2007/445

50 In support of its claim for annulment of Decision 2007/445, the applicant raises, essentially, five pleas in law. The first, which falls into three parts, alleges infringement of Article 233 EC and of the principles laid down by the Court of First Instance in *OMPI*, paragraph 1 above. The second alleges infringement of the rights of the defence and of the obligation to state reasons. The third alleges infringement of Article 2(3) of Regulation No 2580/2001. The fourth alleges misapplication of the burden of proof and a manifest error of assessment of the evidence. The fifth alleges abuse or misuse of powers.

The first plea in law, alleging infringement of Article 23 EC and of the principles laid down by the Court of First Instance in OMPI

The first part of the first plea in law

51 In the first part of that plea in law, the applicant observes that, according to the recitals in the preamble to Decision 2007/445 and the statement of reasons contained in the letter of notification, the Council decided to 'maintain' the applicant in the list at issue on the basis of the fact that Decision 2006/379, which had not been annulled by the Court, was still in force. Decision 2007/445 is therefore based on the 'continued validity' of Decision 2006/379.

52 The applicant then argues, in essence, that it was not possible for the Council to 'maintain' the applicant in the list at issue, since Decision 2005/930 had been annulled by the judgment in *OMPI*, paragraph 1 above, and all the other Council decisions, in particular Decision 2006/379, must be held null and void *ipso jure* in so far as they apply to the applicant, by virtue of that judgment, inasmuch as they are vitiated by the same procedural flaws (infringement of the rights of the defence) and formal defects (absence of reasons) as those providing grounds for the annulment of Decision 2005/930.

53 The applicant relies, in particular, on paragraph 35 of the judgment in *OMPI*, paragraph 1 above, in which the Court held, on the one hand, that under a judgment annulling an act, 'the act is eliminated retroactively from the legal order and is deemed never to have existed' and, on the other hand, that if the contested acts were annulled, [the Council] w[ould] be obliged to take the measures necessary to comply with that judgment, pursuant to Article 233 EC, which may involve its amending or withdrawing, as the case may be, any acts which have repealed and replaced the acts contested subsequent to the close of the oral procedure. The applicant believes that, in those circumstances, the Council is not entitled to rely, in adopting the contested decision, on the fact that the Court had not annulled Decision 2006/379.

54 It is to be borne in mind here that by its judgment in *OMPI*, paragraph 1 above, the Court annulled Decision 2005/930 in so far as it concerned the applicant. On the other hand, the Court did not annul Decision 2006/379, the latter not, indeed, having been submitted to its judicial review, because it had been adopted after the closure of the oral procedure and because the applicant had not sought to have that procedure reopened with a view to adapting its claims in the light of the new factor constituted by its adoption (see, also, *OMPI*, paragraph 1 above, paragraph 33).

55 Moreover, according to settled case-law, measures of the Community institutions, even though irregular, are in principle presumed to be lawful and accordingly produce legal effects until such time as they are withdrawn, declared void in an action for

annulment or declared invalid following a reference for a preliminary ruling or a plea of illegality (see, to that effect, Case 11/81 *Dürbeck* v *Commission* [1982] ECR 1251, paragraph 17; Case 15/85 *Consorzio Cooperativo d'Abruzzo* v *Commission* [1987] ECR 1005, paragraph 10; Case C-137/92 P *Commission* v *BASF and Others* [1994] ECR I-2555, paragraph 48; Case C-245/92 P *Chemie Linz* v *Commission* [1999] ECR I-4643, paragraph 93; and Case C-475/01 *Commission* v *Greece* [2004] ECR I-8923, paragraph 18).

56 By way of exception to that principle, measures tainted by an irregularity whose gravity is so obvious that it cannot be tolerated by the Community legal order must be treated as having no legal effect, even provisional, that is to say, they must be regarded as legally non-existent. The purpose of this exception is to maintain a balance between two fundamental, but sometimes conflicting, requirements with which a legal order must comply, namely, stability of legal relations and respect for legality (*Commission* v *BASF and Others*, paragraph 55 above, paragraph 49; *Chemie Linz* v *Commission*, paragraph 55 above, paragraph 94; and *Commission* v *Greece*, paragraph 55 above, paragraph 19).

57 The gravity of the consequences attaching to a finding that a measure of a Community institution is non-existent means that, for reasons of legal certainty, such a finding may be reserved for quite extreme situations (*Commission* v *BASF and Others*, paragraph 55 above, paragraph 50; *Chemie Linz* v *Commission*, paragraph 55 above, paragraph 95 and *Commission* v *Greece*, paragraph 55 above, paragraph 20).

58 Decision 2006/379 cannot, however, be regarded as such a non-existent measure, even if it were vitiated by the same formal and procedural defects as those vitiating Decision 2005/930, as the applicant has claimed without being contradicted by the Council.

59 It follows that that decision could not be held by the Council to be 'null and void *ipso jure*' with regard to the applicant, contrary to the latter's argument.

60 For the rest, it is to be recalled that, in order to comply with an annulling judgment and to implement it fully, the institution that is the author of the measure is required to have regard not only to the operative part of the judgment but also to the grounds constituting its essential basis, in so far as they are necessary to determine the exact meaning of what is stated in the operative part. It is those grounds which, on the one hand, identify the precise provision held to be illegal and, on the other, indicate the specific reasons which underlie the finding of illegality contained in the operative part and which the institution concerned must take into account when replacing the annulled measure (Joined Cases 97/86, 99/86, 193/86 and 215/86 *Asteris and Others* v *Commission* [1988] ECR 2181, paragraph 27).

61 However, although a finding of illegality in the grounds of a judgment annulling a measure primarily requires the institution which adopted the measure to eliminate that illegality in the measure intended to replace the annulled measure, it may also, in so far as it relates to a provision with specific scope in a given area, give rise to other consequences for that institution (*Asteris and Others* v *Commission*, paragraph 60 above, paragraph 28).

62 In cases such as this, concerning the annulment for formal and procedural defects of a decision freezing funds which, by virtue of Article 1(6) of Common Position 2001/931, must be reviewed at regular intervals, the institution which adopted the measure is first of all under an obligation to ensure that subsequent fund-freezing measures adopted after the annulling judgment and governing periods subsequent to that judgment are not vitiated by the same defects (*Asteris and Others* v *Commission*, paragraph 60 above, paragraph 29).

63 In this instance, the Council has satisfied that obligation by introducing and then setting in motion, immediately after delivery of the judgment in *OMPI*, paragraph 1 above, a new procedure in order to observe the formal and procedural rules set out by the Court in that judgment, in particular in paragraphs 126 (rights of the defence) and 151 (statement of reasons), and to enable the applicant to enjoy the guarantees under that new procedure, before adopting Decision 2007/445 with regard to the applicant (see paragraph 88 et seq. below).

64 It is in addition to be acknowledged that, by virtue of the retroactive effect of annulling judgments, the finding of unlawfulness takes effect from the date on which the annulled measure entered into force (*Asteris and Others* v *Commission*, paragraph 60 above, paragraph 30). So, the Court stated in *OMPI*, paragraph 1 above, paragraph 35, that the measures necessary to comply with that judgment, in accordance with Article 233 EC, might involve the Council's amending or withdrawing, as the case may be, measures repealing and replacing the annulled Decision 2005/930, after the close of the oral procedure.

65 The Council and the United Kingdom were correct, however, in noting in their pleadings that it did not follow from paragraph 35 of *OMPI*, paragraph 1 above, that the Council was necessarily bound to amend or withdraw the measures in question. It is apparent from the case-law that, when a measure has been annulled for formal or procedural defects, as it has in this instance, the institution concerned is entitled to adopt afresh an identical measure, this time observing the formal and procedural rules in question, and even to give that measure retroactive effect, if that is essential to the attainment of the public-interest objective pursued and if the legitimate expectations of the persons concerned are duly protected (Case 108/81 *Amylum* v *Council* [1982] ECR 3107, paragraphs 4 to 17; Case C-331/88 *Fedesa and Others* [1990] ECR I-4023, paragraphs 45 to 47; and Case T-26/89 *de Compte* v *Parliament* [1991] ECR II-781, paragraph 66).

66 That case-law may be applied, by analogy, to the situation envisaged in paragraph 35 of *OMPI*, paragraph 1 above, on the understanding that, in such a case, the institution concerned has the right to maintain in force the measure repealing or replacing the annulled measure, after the oral procedure has been closed, for so long as is absolutely necessary for it to adopt a new measure satisfying the formal and procedural rules concerned. In this very particular situation, it would clearly run counter to the attainment of the public interest objective pursued to require the Council first to withdraw the measure inconsistent with those rules and then, subsequently, to authorise it to give retroactive effect to the measure newly adopted in keeping with those rules.

67 Thus, in this instance, and still on the assumption that Decision 2006/379 is vitiated by the same formal and procedural defects as those marring Decision 2005/930, it is not to be held against the Council that it refused to amend or withdraw it, so far as the applicant was concerned, for so long as was absolutely necessary for it to adopt a new measure, observing the formal and procedural rules the breach of which was found to be wrongful in *OMPI*, paragraph 1 above, if that institution believed that the grounds it relied on in order to include the applicant in the list at issue were still valid. In this regard, the Council has rightly noted that, in *OMPI*, paragraph 1 above, the Court did not give a decision on the merits of those grounds. Moreover, the legitimate expectations of the party concerned have been duly observed, for the Council informed it of its intentions by letter of 30 January 2007 (see paragraph 5 above).

68 Nor, in those circumstances, can the Council be criticised for having decided to 'maintain' the applicant in the list at issue, or for having relied, for that purpose, on the 'continued validity' of Decision 2006/379.

69 In any case, as the United Kingdom and the Council have rightly argued, Decision 2007/445 is neither based on, nor conditional on the validity of, Decision 2006/379. Although it is true that in *OMPI*, paragraph 1 above, the Court, for the purposes of determining the content and limitations of the guarantees relating to observance

of the rights of the defence and to the obligation to state reasons, distinguished the 'initial decision' to freeze funds, as referred to in Article 1(4) of Common Position 2001/931, from 'subsequent decisions' to continue the freezing of funds, after review, as provided for in Article 1(6) of that Common Position, the fact remains that each of those subsequent decisions constitutes a new decision taken pursuant to Article 2(3) of Regulation No 2580/2001 and resulting from review by the Council of the list at issue (see, to that effect, Case C-229/05 P *PKK and KNK* v *Council* [2007] ECR I-445, paragraph 103, expressly upholding on that point the order made by the Court of First Instance on 15 February 2005 in Case T-229/02 *PKK and KNK* v *Council* [2005] ECR II-539, paragraph 44).

70 In those circumstances, neither the fact that the Council referred, in the preamble to Decision 2007/445, to Decision 2006/379, nor the fact that it decided to 'maintain' the applicant in the list at issue, is such as to taint Decision 2007/445 with unlawfulness.

71 The first part of the first plea in law must, therefore, be rejected as unfounded.

The second part of the first plea in law

72 In the second part of the plea, the applicant observes that Decision 2007/445 is based, so far as it is applicable to the applicant, on the same order of the Home Secretary and on the same items of evidence as those which were the basis for Decision 2005/930.

73 Next, the applicant claims, in substance, that the Council had no right to 'reuse' or 'recycle' such matters to form the basis of Decision 2007/445. By relying on those matters alone, the Council proceeded by way of 'regularisation', in breach not only of the principles laid down by the Court in *OMPI*, paragraph 1 above, but also of the principles of legal certainty and the protection of legitimate expectations.

74 The applicant argues more particularly that, in so far as Decision 2005/930 was annulled in part for infringement of the rights of the defence and of the obligation to give reasons, it was incumbent on the Council to adopt a new decision with regard to the applicant, based on a new decision taken by a national authority or on new evidence, but certainly not on the Home Secretary's order or on pre-2001 evidence. In its view, Decision 2007/445, being based solely on this latter material, is null and void *ipso jure* so far as it concerns the applicant.

75 It suffices to note that annulment of a measure for formal or procedural defects in no way prejudices the right of the institution that was the author of the measure to adopt a new measure on the basis of the same matters of law and fact as those serving as the basis for the measure annulled, provided that on this occasion it observes the formal and procedural rules whose breach gave rise to the annulment and that the legitimate expectations of the persons concerned are duly protected (see paragraph 65 above).

76 In this instance, even if it were to be established that Decision 2007/445 is based, so far the applicant is concerned, on the same order of the Home Secretary and on the same items of evidence as those which were the basis for Decision 2005/930, that could have no bearing on the lawfulness of that decision. Furthermore, it has already been found, in paragraph 67 above, that the legitimate expectations of the party concerned had been duly protected in the circumstances.

77 The second part of the first plea in law must, therefore, be rejected as unfounded.

The third part of the first plea in law

78 In the third part of the first plea in law, put forward in the alternative, the applicant notes that in *OMPI*, paragraph 1 above, the Court distinguished the initial decision to include a person in the list at issue from the subsequent decisions to keep him in the list. It maintains that it is apparent from paragraphs 143 and 145 of that judgment that an initial decision may be adopted on the sole basis of a decision taken by a competent national authority. By contrast, subsequent decisions must state the actual and specific reasons relied on by the Council. It is equally clear from paragraphs 144 and 145 of *OMPI*, paragraph 1 above, that subsequent decisions must be preceded by a review of the situation of the person concerned, in order to establish whether he is still engaged in terrorist activities.

79 It follows, according to the applicant, that in order to continue to include the applicant in the list at issue, by Decision 2007/445, the Council could not rely simply upon an order of the Home Secretary or refer to events dating from 2001.

80 It must immediately be stated that the applicant's arguments proceed from a misinterpretation of *OMPI*, paragraph 1 above.

81 It follows in particular from paragraphs 143 to 146 and 151 of that judgment that both the statement of reasons for an initial decision to freeze funds and the statement of reasons for subsequent decisions must refer not only to the legal conditions of application of Regulation No 2580/2001, in particular the existence of a national decision taken by a competent authority, but also to the actual and specific reasons why the Council considers, in the exercise of its discretion, that the person concerned must be made the subject of a measure freezing funds.

82 Furthermore, it is clear from both paragraph 145 of that judgment and from Article 1(6) of Common Position 2001/931, also referred to by Article 2(3) of Regulation No 2580/2001, that, while subsequent fund-freezing decisions must indeed be preceded by 'review' of the situation of the person concerned, that is not solely for the purpose of establishing whether he is still engaged in terrorist activity, as the applicant incorrectly maintains, but in order to check whether continuing to include him in the list at issue 'remains justified', where appropriate on the basis of new information or evidence. In this regard, the Court has stated that, when the grounds of a subsequent decision to freeze funds 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 person concerned is a group or entity (judgment of 11 July 2007 in Case T-327/03 *Al-Aqsa* v *Council*, not published in the ECR, paragraph 54).

83 As to the remainder, the applicant's arguments clearly lack any factual basis. In the statement of reasons enclosed with its letter to the applicant of 30 January 2007, the Council did not merely rely on the Home Secretary's order. In the first paragraph of that statement of reasons, the Council referred to a series of acts, allegedly performed by the applicant, which it considered fell within the scope of Article 1(3)(iii)(a), (b), (d), (g) and (h) of Common Position 2001/931 and had been performed with the aims set out in Article 1(3)(i) and (iii) thereof. In the second paragraph of its statement of reasons, the Council drew the inference that Article 2(3)(ii) of Regulation No 2580/81 applied to the applicant. In the following paragraphs of that statement, the Council also pointed out that the Home Secretary's order, which was intended to proscribe the applicant as an organisation concerned in terrorism and which, under

the Terrorism Act 2000, could be the subject of judicial review, remained in force. Having thus stated that the grounds for including the applicant in the list at issue were still valid, the Council informed that party of its decision to continue to subject it to the measures provided for in Article 2(1) and (2) of Regulation No 2580/2001.

84 The Council thus stated, in accordance with the case-law cited in paragraphs 81 and 82 above, the actual and specific reasons why it considered, in the exercise of its discretion, that the applicant must continue to be the subject of a measure freezing its funds.

85 The question whether the grounds relied on by the Council were such as to provide legal justification, in fact as in law, for the adoption of Decision 2007/445, falls within the ambit of the review of lawfulness of the substance of that decision, which will be carried out when the third and fourth pleas in law are examined.

86 The third part of the first plea in law must therefore be rejected as unfounded and, with it, that plea in its entirety.

The second plea in law, alleging infringement of the rights of the defence and of the obligation to state reasons

87 With regard, first, to the alleged infringement of the rights of the defence, the applicant maintains that it was never able properly to put its case relating to the relevant

explanations put forward to justify its continued inclusion in the list at issue. It argues, more particularly, that the only information it has received from the Council dates from before 2001, that the Council has not sought in any way to respond to the criticisms submitted to it, that it has taken no account at all of the exculpatory material produced by the applicant and, furthermore, that the applicant has not been given the opportunity to express its views at a hearing.

88 It is to be borne in mind that the purpose of the safeguard relating to observance of the rights of the defence, in the context of the adoption of a decision to freeze funds taken pursuant to Article 2(3) of Regulation No 2580/2001, and the limitations of that safeguard which may lawfully be applied to the persons concerned, in such a context, have been defined by the Court in *OMPI*, paragraph 1 above, paragraphs 114 to 137.

89 In the present case, it is clear from the facts and circumstances set out in paragraphs 5 to 13 above that in adopting Decision 2007/445 the Council acted in due conformity with the principles laid down by the Court in *OMPI*, paragraph 1 above, paragraphs 114 to 137.

90 First, in an enclosure with its letter of 30 January 2007, the Council sent to the applicant a statement clearly and unambiguously explaining the reasons which, in its opinion, justified the applicant's continued inclusion in the list at issue (see also paragraph 83 above). That statement contained specific examples of acts of terrorism as referred to in the relevant provisions of Common Position 2001/931 for which the applicant was said to be responsible. It also stated that, because of those acts, a decision had been taken by a competent authority of the United Kingdom to proscribe the applicant as an organisation concerned in acts of terrorism, that that decision was subject to review under the applicable United Kingdom legislation and that it was still in force. The letter of 30 January 2007 further stated that the applicant might submit to the Council its observations on the latter's intention to maintain it in the list at issue and on the reasons adduced in that connection, and all supporting documents, within the period of one month.

91 Secondly, by letters of 30 March and 14 May 2007, the Council communicated to the applicant a number of documents from the file. As regards the other documents, the Council explained in its letter of 14 May 2007 that it was not in a position to forward them to the applicant, because the State which had provided them had not consented to their disclosure. In the present proceedings, the applicant has challenged neither that refusal to communicate certain incriminating documents, nor the reasons put forward to justify it.

92 Thirdly, the Council placed the applicant in a position to make its case properly regarding the evidence incriminating it, an opportunity of which it in fact availed itself in its letters of 27 February, 19, 20 and 26 March, 16 April and 29 May 2007.

93 With regard to the applicant's argument concerning the Council's refusal of its request to be heard at a formal hearing, it is sufficient to state that neither the legislation in question, namely, Regulation No 2580/2001, nor the general principle of observance of the rights of the defence, gives the persons concerned the right to such a hearing (see, to that effect and by analogy, Joined Cases T-134/03 and T-135/03 *Common Market Fertilisers* v *Commission* [2005] ECR II-3923, paragraph 108; see also *OMPI*, paragraph 1 above, paragraph 93).

94 The applicant's argument that the Council has not sought in any way to respond to the criticism levelled at it and that it has taken no account at all of the exculpatory material produced by the applicant proceeds from an incorrect appraisal of the obligations imposed on the Council in respect of observance of the rights of the defence. In this instance, as is apparent from the Council's letter of 12 June 2007 and from the first letter of notification, that institution has taken due account of the observations made, and the exculpatory evidence produced, by the applicant, in particular by ensuring that they were communicated to the delegations of the Member States before Decision 2007/445 was adopted.

95 On the other hand, the Council was not obliged to reply to those observations in the light of those documents, if it thought that they did not warrant the conclusions that the applicant claimed to infer from them. The Court considers in this respect that the word-for-word repetition of the statement of reasons attached to the Council's letter of 30 January 2007 in the statement of reasons enclosed with the first letter of notification in itself means only that the Council maintained its point of view. In the absence of any other relevant evidence, as is the case here, such similarity of texts does not establish that the Council failed, when assessing the case, to afford proper consideration to the arguments put forward by the party concerned in arguing its case (see, by analogy, Case T-141/94 *Thyssen Stahl* v *Commission* [1999] ECR II-347, paragraphs 117 and 118).

96 Moreover and in any case, the Council gave a specific reply, in the first letter of notification, to the main argument put forward by the applicant during the administrative procedure, that only present and current terrorist activity is capable of justifying its continued inclusion in the list at issue (see also paragraph 142 below).

97 It follows from the foregoing that the alleged infringement of the rights of the defence has not in the circumstances been established.

98 With regard, secondly, to the alleged infringement of the obligation to state reasons, the applicant maintains that Decision 2007/445 does not state the actual and specific reasons why the Council considered that the relevant rules were applicable to it (*OMPI*, paragraph 1 above, paragraph 143) and that, following re-examination, the freezing of its funds was still justified (*OMPI*, paragraph 1 above, paragraph 151). In particular, the Council had taken no account of the information provided by the applicant for the period after 2001, and Decision 2007/445 lacks any reasoning at all in relation to that period.

99 In this regard it is to be borne in mind that the purpose of the safeguard afforded by the obligation to state reasons, in the context of the adoption of a decision to freeze funds taken pursuant to Article 2(3) of Regulation No 2580/2001, and the limitations of that safeguard that may lawfully be imposed on the persons concerned in such a context, were defined by the Court in *OMPI*, paragraph 1 above, paragraphs 138 to 151.

100 In the present case, it is apparent from examination of the third part of the first plea in law (see paragraphs 83 and 84 above) that the Council duly observed the principles laid down by the Court in those paragraphs 138 to 151 of *OMPI*, paragraph 1 above, in the context of the adoption of Decision 2007/445.

101 With regard to the argument that the Council did not take into consideration the information provided by the applicant for the period after 2001 or give reasons for its decision in that respect, it must be recalled that although, by virtue of Article 253 EC, the Council is required to state all the factual circumstances justifying the measures it adopts and the legal considerations leading it to take them, that provision does not require the Council to discuss all the points of fact and law which may have been raised by the persons concerned during the administrative procedure (Joined Cases 43/82 and 63/82 *VBVB and VBBB* v *Commission* [1984] ECR 19, paragraph 22; Case C-338/00 P *Volkswagen* v *Commission* [2003] ECR I-9189, paragraph 127; and Joined Cases T-346/02 and T-347/02 *Cableuropa and Others* v *Commission* [2003] ECR II-4251, paragraph 232).

102 Moreover and in any case, it has already been found, in paragraph 96 above, that the Council had specifically answered, in the first letter of notification, the argument put forward by the applicant during the administrative procedure to the effect that only current and present terrorist activity could justify its continued inclusion in the list at issue.

103 It follows from the foregoing that the alleged infringement of the obligation to state reasons has not been established in the circumstances of the case.

104 Consequently, the second plea in law must be rejected as unfounded.

The third plea in law, alleging infringement of Article 2(3) of Regulation No 2580/2001

105 The applicant notes that both Article 2(3) of Regulation 2580/2001 and Article 1(2), (3) and (6) of Common Position 2001/931 are expressed in the present tense. It follows, in its view, that there must be some close and immediate temporal connection between the decision to include or maintain a person in the list at issue and the acts of terrorism taken into consideration for that purpose. A person can thus be included in the list at issue only if there is alleged to be some current or at least recent terrorist activity. Similarly, a person cannot be maintained in that list, following a review, on the basis of historical acts alone.

106 In this instance, Decision 2007/445 is not based on any act after 2001, so far as the applicant is concerned, and the latter has produced numerous exculpatory documents for the period after 2001.

107 With regard to that plea, the Court considers, like the United Kingdom and the Council, that the applicant's interpretation of the provisions of Regulation No 2580/2001 and of Common Position 2001/931 in question is unduly restrictive

and that nothing in those provisions precludes the imposition of restrictive measures on persons or entities that have in the past committed acts of terrorism, despite the lack of evidence to show that they are at present committing or participating in such acts, if the circumstances warrant it.

108 First, contrary to the applicant's arguments, that point of view is not undermined by the wording of the provisions in question. Although Article 1(2) of Common Position 2001/931 uses the present indicative ('persons who commit …') to define what is meant by 'persons, groups and entities involved in terrorist acts', that is in the sense of a general truth particular to the legal definition of offences, and not by reference to a given period of time. The same is true of the present participle used in the French ('les personnes … commettant') and English ('persons committing') texts of Article 2(3) of Regulation No 2580/2001, which is confirmed by the use of the present indicative for the equivalent form used in other language versions (see, in particular, the German 'Personen, die eine terroristische Handlung begehen', Italian 'persone che commettono', Dutch 'personen die een terroristische daad plegen' and Slovak 'osôb, ktoré páchajú'). Furthermore, Article 1(4) of Common Position 2001/931 permits the adoption of restrictive measures against, inter alia, persons who have been convicted of acts of terrorism, which would normally imply terrorist activity in the past and not actively pursued at the time the finding is made in the decision to convict. Lastly, Article 1(6) provides that the names of persons and entities in the list at issue are to be reviewed at regular intervals and at least once every six months to ensure that there are grounds for keeping them in the list. If that provision is not to be rendered redundant, it must be considered to allow the continued inclusion in the list at issue of persons and entities not having committed any fresh act of terrorism during the six-month period or periods before the review, if that continued inclusion is still justified in the light of all relevant circumstances.

109 Secondly, it must be emphasised that Regulation No 2580/2001 and Common Position 2001/931, like Resolution 1373 (2001) of the Security Council of the United Nations to which they give effect, are intended to combat the threats to international peace and security posed by acts of terrorism. Attainment of that objective, which is of fundamental importance to the international community, would be at risk of

being jeopardised if the measures to freeze funds provided for by those acts could be applied only to persons, groups or entities at present committing acts of terrorism or having done so in the very recent past.

110 Furthermore, those measures, being intended essentially to prevent the perpetration of such acts or their repetition, are based more on the appraisal of a present or future threat than on the evaluation of past conduct.

111 In this regard, the Council and the United Kingdom have explained that experience has shown that temporary cessation of activities by an organisation with a terrorist past is not in itself a guarantee that the organisation concerned will not resume them at any moment, and that a purported renunciation of violence expressed in that context ought not necessarily to be believed. That might in particular be the case if the absence of such activity is the result of the effectiveness of the sanctions imposed, or if it has been decided on because the organisation in question seeks to have the sanctions lifted in order to be able to resume its previous terrorist activities. It could also be ascribable to the difficulties encountered by the person concerned in committing fresh acts of terrorism, given the effectiveness of the preventative measures adopted by the competent authorities, or indeed to the time required for the preparation of such acts.

112 Those considerations appearing not unreasonable, it must be acknowledged that the broad discretion enjoyed by the Council with regard to the matters to be taken into consideration for the purpose of adopting or of maintaining in force a measure freezing funds (*OMPI*, paragraph 1 above, paragraph 159) extends to the evaluation of the threat that may be represented by an organisation having in the past committed acts of terrorism, notwithstanding the suspension of its terrorist activities for a more or less long period, or even their apparent cessation.

113 In this instance, the fact that the Council referred exclusively to past terrorist acts and to acts before 2001, in relation to the applicant, is therefore not enough on its own to indicate an infringement of Article 2(3) of Regulation No 2580/2001.

114 Whether, having regard to all the other relevant circumstances, by so doing the Council overstepped the bounds of its discretion is a question that falls to be considered with the fourth plea in law.

115 In light of the foregoing, the third plea in law must be rejected as unfounded.

The fourth plea in law, alleging misapplication of the burden of proof and manifest error in assessing the evidence

Arguments of the parties

116 The applicant claims that the decisions taken pursuant to Regulation No 2580/2001 constitute manifest and serious interference with the rights guaranteed by Articles 10 and 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), signed at Rome on 4 November 1950, and by Article 1 of

Protocol 1 of the ECHR. It stresses, in that regard, the draconian consequences for it of Decision 2007/445.

117 Consequently, the applicant submits that it is necessary for the Council to prove that the implementation of the measures taken against the applicant is prescribed in law, pursues a legitimate aim and is necessary in a democratic society.

118 The applicant also submits that the burden of proving that on 28 June 2007 there were grounds for freezing its funds rests with the Council, and that the requisite standard of proof for this purpose should be that applicable to criminal cases.

119 As for the role of the Court, the applicant argues that, in circumstances such as those of the present case, the Court must objectively review all the facts, both those relied upon by the Council and those relied upon by the applicant, so as to decide whether there were reasonable grounds for the Council's adoption in 2007 of Decision 2007/445.

120 The applicant maintains that, in the circumstances, Decision 2007/445 was adopted on the basis of incriminating material which was not precise or serious or credible, all pre-dating 2001, and without any proper consideration of the extensive exculpatory material relating to the years after 2001 adduced by the applicant.

121 As regards the exculpatory material, the applicant points out more particularly that, at an Extraordinary Congress held in Ashraf City (Iraq) in June 2001, its leadership took the unilateral decision to end the organisation's military activities inside Iran. That decision was ratified by two Ordinary Congresses, in September 2001 and in 2003. But for a few operations carried out by operational units which had

not received the message in time, the applicant has not engaged in any military operations since the summer of 2001 and its operational units have been definitively dissolved. Furthermore, it has disclosed the coordinates of all its bases to the United Nations, and to the Governments of the United Kingdom and the United States.

122 The applicant also refers to the documents contained in Annexes 2 and 6 to its application, which show that since 2001 it and all its members have voluntarily renounced violence and terrorism, surrendered their arms, signed an agreement with the coalition forces in Iraq and duly been recognised as 'protected persons'.

123 Finally, the applicant points out that there has never been any suggestion that it has committed any terrorist act whatsoever within the European Union.

124 The Council and the United Kingdom state first of all that in *OMPI*, paragraph 1 above (paragraph 135), the Court clearly indicated that the freezing of funds did not constitute a criminal sanction.

125 The Council and the United Kingdom next submit that freezing of funds does not constitute an interference with the right to freedom of expression and of association, since the alleged restrictions of these freedoms are an unintended or incidental consequence of a decision by the authorities. Furthermore, the freezing of funds does not affect the very substance of the right to property (Case T-315/01 *Kadi* v *Council and Commission* [2005] ECR II-3649, paragraph 248). In any event, the Council considers that there is no violation of Articles 10 and 11 of the ECHR or of Article 1 of the First Additional Protocol of the ECHR because the measures in question are

prescribed by law, have the legitimate aim of combating terrorism and are necessary in a democratic society in order to achieve that aim.

126 The Council and the United Kingdom therefore submit that, in accordance with the normal rule applicable to cases before the Community judicature (see, in that regard, Case T-106/95 *FFSA and Others* v *Commission* [1997] ECR II-229, paragraph 115, and Case T-48/00 *Corus UK* v *Commission* [2004] ECR II-2325, paragraph 125), it is the applicant that bears the burden of adducing proof of its claim that Decision 2007/445 is vitiated by a manifest error of assessment. In this regard the United Kingdom stresses that that decision enjoys a presumption of lawfulness and that the proceedings in which its validity is challenged are civil proceedings, with the result that the burden of proof is borne by the applicant and the standard of proof required is that applicable in civil cases. Moreover, the legislation applicable nowhere makes provision for any reversal or mitigation of the burden of proof.

127 As regards the extent of the Court's judicial review, the Council and the United Kingdom refer to *OMPI*, paragraph 1 above (paragraph 159), the judgment of the European Court of Human Rights of 21 February 1986 in *James* (A series, vol. 98) and to the opinion delivered by Advocate General Jacobs in Case C-84/95 *Bosphorus* [1996] ECR I-3953, point 65. Accordingly, the Council and the United Kingdom maintain that the Court has no jurisdiction to substitute its own assessment of the facts and evidence concerning the applicant for that of the Council. This applies in particular to the assessment of the circumstances in which the legislature may decide if and when restrictive measures should no longer be applied. In this connection, the United Kingdom stresses that, in so far as those responsible for taking the decision have the advantage of a wide range of advice on security and terrorist matters which, if not evaluated correctly, can have serious consequences, they are entitled to adopt a precautionary approach to the evaluation of the risk of such consequences. In that context, significant weight and deference should be accorded to their decision. In particular, the courts, national or Community, must not 'make up their own minds' concerning the grounds of the decision at issue.

128 The Council maintains, moreover, referring to its observation in answer to the third plea, that it assessed the relevant evidence properly in this case.

Findings of the Court

129 It is from the outset to be borne in mind, in response to the applicant's line of argument, that fund-freezing measures of the kind at issue in this case are prescribed by law, namely, Resolution 1373 (2001) of the Security Council of the United Nations and Regulation No 2580/2001 itself. Furthermore, as is apparent from the preambles to those acts, the measures serve the legitimate purpose of combating terrorism. Last, in the preamble to Resolution 1373 (2001), the Security Council reaffirmed the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts, and considered that it was necessary for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism. Unless that assessment is to be called in question, the measures at issue must, therefore, be considered to be necessary, in a democratic society, to the attainment of their objective.

130 Nevertheless, as the Court pointed out in paragraphs 115 and 116 of *OMPI*, paragraph 1 above, the matters of fact and law capable of affecting the application of a fund-freezing measure to a person, group or entity are determined by Article 2(3) of Regulation No 2580/2001. In the words of that provision, the Council, acting by unanimity, is to establish, review and amend the list of persons, groups and entities to which that regulation applies, in accordance with the provisions laid down in Article 1(4) to (6) of Common Position 2001/931. The list in question must, therefore, be drawn up, in accordance with Article 1(4) of Common Position 2001/931, 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, or an attempt to perpetrate, participate in or facilitate such an act, based on serious and credible evidence or clues [sic], or condemnation [sic] for such deeds. 'Competent authority' means a judicial authority or, where judicial authorities have no competence in that area, an equivalent authority in that sphere. In addition, the names of the persons and entities appearing in that list must be reviewed at regular intervals and at least once every six months to ensure that there are grounds for keeping them on the list, in accordance with Article 1(6) of Common Position 2001/931.

131 In paragraph 117 of *OMPI*, paragraph 1 above, the Court inferred from those provisions that the procedure which may culminate in a measure to freeze funds under the relevant rules therefore takes place at two levels, one national, the other Community. In the first phase, a competent national authority, in principle judicial, must take in respect of the party concerned a decision meeting the definition in Article 1(4) of Common Position 2001/931. If it is a decision to instigate investigations or to prosecute, it must be based on serious and credible evidence or 'clues'. In the second phase, the Council, acting by unanimity, must decide to include the party concerned in the disputed list, on the basis of precise information or material in the relevant file which indicates that such a decision has been taken. Next, the Council must, at regular intervals, and at least once every six months, be satisfied that there are grounds for continuing to include the party concerned in the list at issue. Verification that there is a decision of a national authority meeting that definition is an essential precondition for the adoption, by the Council, of an initial decision to freeze funds, whereas verification of the consequences of that decision at the national level is imperative in the context of the adoption of a subsequent decision to freeze funds.

132 In paragraph 123 of *OMPI*, paragraph 1 above, the Court noted, inter alia, that under Article 10 EC, relations between the Member States and the Community institutions are governed by reciprocal duties to cooperate in good faith (see Case C-339/00 *Ireland* v *Commission* [2003] ECR I-11757, paragraphs 71 and 72 and case-law

cited). That principle is of general application and is especially binding in the area of police and judicial cooperation in criminal matters (commonly known as 'Justice and Home Affairs') (JHA) governed by Title VI of the EU Treaty, which is moreover entirely based on cooperation between the Member States and the institutions (Case C-105/03 *Pupino* [2005] ECR I-5285, paragraph 42).

133 In paragraph 124 of *OMPI*, paragraph 1 above, the Court found that, in a case of application of Article 1(4) of Common Position 2001/931 and Article 2(3) of Regulation No 2580/2001, 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 is based.

134 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, as the applicant rightly maintains, that burden of proof has a relatively limited scope in respect of the Community procedure for freezing funds (see, by analogy, *OMPI*, paragraph 1 above, paragraph 126, concerning the purpose of the rights of the defence in the same procedure). 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.

135 Last, it follows from paragraphs 145, 146 and 151 of *OMPI*, paragraph 1 above, that, inasmuch as the Council, when unanimously adopting a measure to freeze funds under Regulation No 2580/2001, does not act under circumscribed powers, it enjoys discretion in assessing the reasons why the person concerned must be the subject of such a measure.

136 In this regard, it is none the less to be made clear that, when the Council is required to determine whether freezing of the funds of a person, group or entity is or remains justified, the prime consideration for the Council must be its perception or evaluation of the danger that, for want of such a measure, those funds might be used to fund or prepare acts of terrorism (see paragraph 129 above).

137 With regard to the part played by the Court, the latter has recognised, in paragraph 159 of *OMPI*, paragraph 1 above, that the Council has broad discretion as to what to take into consideration for the purpose of adopting economic and financial sanctions on the basis ofArticles 60 EC, 301 EC and 308 EC, consistent with a common position adopted on the basis of the CFSP. This discretion concerns, in particular, the assessment of the considerations of appropriateness on which such decisions are based.

138 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 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, by analogy, Case C-525/04 P *Spain* v *Lenzing* [2007] ECR I-9947, paragraph 57 and case-law cited).

139 In addition, it must be noted that, where a Community institution enjoys broad discretion, the review of observance of certain procedural guarantees is of fundamental importance. Thus, the Court of Justice has had occasion to specify that those guarantees include the obligation for the competent institution to examine carefully and impartially all the relevant elements of the individual case and to give an adequate statement of the reasons for its decision (see *Spain* v *Lenzing*, paragraph 138 above, paragraph 58 and case-law cited).

140 In connection with the present plea in law, the applicant requests the Court to determine whether, in the circumstances of the case and having regard to all relevant facts, both those adduced by the Council and those which it has itself adduced, the Council had reasonable grounds in 2007 for adopting Decision 2007/445 in relation to the applicant (see paragraph 119 above).

141 Such a determination, in the light of the objectives pursued by the legislation applicable (see paragraphs 130, 135 and 136 above), falls beyond all question within the bounds of the judicial review that the Community judicature may carry out of a decision to freeze funds taken pursuant to Article 2(3) of Regulation No 2580/2001. It corresponds, in essence, to the review of a manifest error of assessment (*OMPI*, paragraph 1 above, paragraph 159). Moreover, neither the Council nor the United Kingdom maintains that such review goes beyond the level of review which the case-law recognises as belonging to the Court in a sphere such as that of economic and financial sanctions.

142 In this instance, it is apparent from the Council's letter of 30 January 2007, from the first letter of notification and from the statement of reasons enclosed with each of those two letters that, essentially, the Council took as a basis the fact that the Home Secretary's order, which in its view met the definition in Article 1(4) of Common Position 2001/931, was still in force although, under the Terrorism Act 2000, it could have been the subject of an application for judicial review. It is likewise apparent from the first letter of notification and from the statement of reasons enclosed with it that the Council took into consideration the observations submitted, and the exculpatory

evidence adduced, by the applicant, so far as the period after 2001 was concerned, but that it took the view that they did not justify its request to be removed from the list at issue. In particular, the Council rejected the argument that it was entitled to maintain in force a decision to freeze funds only if the person concerned was at the time committing or attempting to commit acts of terrorism.

143 The Court considers that, in the light of all the relevant information thus taken into account, the Council had reasonable grounds and sufficient evidence for the adoption of the contested decision with regard to the applicant, that it committed no manifest error in its assessment of that information and that it has therefore justified to the required legal standard the continued inclusion of the applicant in the list at issue.

144 First, the Home Secretary's order does indeed appear, in the light of the relevant national legislation, to be a decision of a competent national authority meeting the definition in Article 1(4) of Common Position 2001/931. Furthermore, that classification has not been challenged by the applicant in this action.

145 Secondly, as regards the argument that the contested decision was adopted in relation to the applicant on the basis of incriminating material lacking in precision, seriousness and credibility, it follows from the principles recalled in paragraphs 133 and 134 above that the Council was not only justified in leaving, but even required to leave, as much as possible to the assessment of the competent national authority, in particular regarding the existence of the 'serious and credible evidence or clues' on which the latter's decision was based. While it is true that that national authority was not a judicial authority, the fact that its decision was open to judicial review and that such an action was either not brought or did not lead to a decision in the applicant's favour, placed the Council in the same position.

146 Thirdly, considerations analogous to those set out in paragraph 145 above apply to the argument that the contested decision was adopted in relation to the applicant on the basis of incriminating evidence all before 2001 and without any examination of the exculpatory document produced by the applicant for the subsequent period. Given that the Home Secretary's order could at any time since 2001 have formed the subject of challenge before the courts under domestic law, made either directly against the order or indirectly against any subsequent decision of the Home Secretary refusing to withdraw or repeal it, it was reasonable for the Council to treat the fact that the order was still in force as decisive for the purposes of its own assessment.

147 Fourthly, with regard to the weighing up of the incriminating and exculpatory evidence, the Court considers that the Council acts reasonably and prudently when, in a situation in which, as in the instant case, the decision of the competent national authority on which the Community decision to freeze funds is based may be or is the subject of challenge before the courts under domestic law, that institution refuses in principle to express an opinion on the validity of the arguments on substance raised by the party concerned in support of such an action, before it knows the outcome of the proceedings. If it acted otherwise, the assessment made by the Council, as a political or administrative institution, would run the risk of conflicting, on issues of fact or law, with the assessment made by the competent national court or tribunal.

148 Fifthly and last, as regards the argument that it has never been alleged that the applicant has committed any act of terrorism in the territory of the European Union, it suffices to point out that Regulation No 2580/2001 does not make the adoption of Community decisions to freeze funds in any way subject to the condition that the acts of terrorism relied on in that context should have been committed in that territory. Such a condition would, moreover, be contrary to the spirit and purpose of Security Council Resolution 1373 (2001), the preamble to which reaffirms, inter alia, 'the principle established by the General Assembly in its declaration of October 1970 (resolution 2625 (XXV)) and reiterated by the Security Council in its resolution 1189 (1998) of 13 August 1998, namely that every State has the duty to refrain from organising, instigating, assisting or participating in terrorist acts in another State or acquiescing in organised activities within its territory directed towards the commission of such acts' and calls on the States to 'suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism'.

149 In the light of the foregoing, the fourth plea in law must be rejected.

The fifth plea in law, alleging abuse or misuse of powers

150 The applicant maintains that, so far as it is concerned, Decision 2007/445 was adopted by the Council in circumstances amounting to an abuse or misuse of powers. In its view, the Council had decided in advance to continue to include it in the list at issue, despite the evidence totally exonerating it since 2001, for the sole reason that it wished to appease the current Iranian regime.

151 As the Court of Justice and the Court of First Instance have repeatedly held, a measure is vitiated by misuse of powers only if it appears on the basis of objective, relevant and consistent evidence to have been taken with the exclusive purpose, or at any rate the main purpose, of achieving an end other than those pleaded or of evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case (Case C-210/03 *Swedish Match* [2004] ECR I-11893, paragraph 75, and Case T-158/99 *Thermenhotel Stoiser Franz and Others* v *Commission* [2004] ECR II-1, paragraph 164 and case-law cited).

152 In this instance, nothing in the documents before the Court provides any ground for crediting the idea that the procedure leading to the adoption of Decision 2007/445 was initiated for a purpose other than that of combating terrorism and its funding. In particular, the applicant's allegation that the decision was taken with regard to it for the sole purpose of appeasing the current Iranian regime merely seeks to impugn the Council's motives without being supported by any objective evidence.

153 The fifth plea in law must therefore be rejected.

154 None of the pleas in law raised by the applicant in support of its application for annulment of Decision 2007/445 having been successful, that application must be dismissed as unfounded.

The application for annulment of Decision 2007/868

Arguments of the parties

155 In its letter lodged at the Court Registry on 11 January 2008, the applicant argues that the pleas in law raised in support of its application for annulment in part of Decision 2007/445 are also relevant to its application for annulment in part of Decision 2007/868.

156 The applicant emphasises that the POAC is the specialist body set up by the Parliament of the United Kingdom to hear and determine appeals brought against decisions proscribing, or refusing to lift the proscription of, organisations regarded as terrorist by the Home Secretary.

157 In its decision of 30 November 2007 (see paragraph 22 above), the POAC described as 'perverse' the Home Secretary's decision refusing to lift the applicant's proscription as a terrorist organisation. It also refused the Home Secretary leave to bring an appeal against that decision before the Court of Appeal. Furthermore, in the course of such an appeal before the Court of Appeal, the Home Secretary is not entitled to challenge the findings of fact made by the POAC.

158 In the case in point, the POAC examined the evidence, both confidential and non-confidential, adduced by the Home Secretary, and questioned in camera the witness summoned to speak on behalf of the latter. Its findings of fact demonstrate that all the factual evidence put forward by the applicant during the procedure leading to the adoption of Decision 2007/445 was correct and that there was no factual basis for maintaining that the applicant was still a terrorist organisation. The same applies to the adoption of Decision 2007/868.

159 The applicant therefore complains that the Council adopted Decision 2007/868 at a time when it was aware, not only of the decision of the POAC and of its findings of fact, but also of the POAC's refusal to grant the Home Secretary leave to bring an appeal before the Court of Appeal and of the terms in which that refusal was couched.

160 The applicant observes that although the Home Secretary did indeed make a fresh application to the Court of Appeal for leave to appeal against the POAC's decision, as she was entitled to do, the fact nevertheless remains that Decision 2007/868 is based, with respect to the applicant, solely on the Home Secretary's order of 28 March 2001 and takes no account of the POAC's decision.

161 According to the applicant, those factors show that Decision 2007/868 is plainly misconceived and, moreover, vitiated by misuse of powers so far as it is concerned.

162 In its observations lodged at the Court Registry on 15 January 2008, the Council made no comment on the relevance of the POAC's decision for the purposes of the present proceedings.

163 At the hearing, that institution argued, referring to the findings of fact made by the POAC, that even if the latter must be regarded as correct and as giving a generally accurate picture, it was still reasonable to believe that the applicant was involved in terrorist acts, in the sense intended in Regulation No 2580/2001, and that as a result the freezing of its funds was still justified. The Council maintained, in addition, that, while it had taken into consideration the Home Secretary's application for leave from the Court of Appeal to bring an appeal against the POAC's decision, it had not merely decided to await the outcome of that action before reassessing the applicant's situation.

164 In its observations lodged at the Court Registry on 16 January 2008, the Commission maintains that it would be premature to give due effect to the POAC's decision at Community level at the present time. In its view, it is necessary to wait for the Court of Appeal's decision on the Home Secretary's application for leave to appeal and then to await the outcome of any appeal before the Court of Appeal and of any subsequent appeal to the House of Lords, before determining whether that decision must have an effect on the lawfulness of decisions adopted at Community level.

165 In its observations lodged at the Court Registry on 16 January 2008, the United Kingdom notes that in any case the Home Secretary's order of 28 March 2001 is still in force. So, that order constitutes a sufficient legal basis for the purposes of the Council's adoption of Decision 2007/868 so far as it concerns the applicant. It also observes that, pursuant to section 6(3) of the Terrorism Act 2000, the POAC's decision does not require the Home Secretary to remove the applicant from the national list analogous to that drawn up by the Council, until all appeal processes have been exhausted, including an appeal to the House of Lords.

166 In its statement in intervention, the United Kingdom states, moreover, that Decision 2007/868 was adopted by the Council when it was fully aware of the POAC's decision

and of the Home Secretary's subsequent decision to appeal against that decision. The hearing before the Court of Appeal, dealing with both the application for leave to appeal and the substance of the case, took place from 18 to 20 February 2008.

Findings of the Court

167 In connection with the application for annulment in part of Decision 2007/868, the parties have devoted the core of their arguments to the relevance of the POAC's decision mentioned in paragraph 22 above for the purposes of the review of lawfulness carried out in this case by the Court.

168 In that decision, the POAC inter alia described as 'perverse' the Home Secretary's conclusion, in his decision of 1 September 2006 refusing to lift the applicant's proscription, that the applicant was, at that period, still an organisation 'concerned in terrorism' within the meaning of the Terrorism Act 2000. That means, according to the POAC's assessment, that no reasonable person could have reached such a conclusion and that, on the contrary, any reasonable person would have reached the opposite conclusion, on the basis of the evidence available to the Home Secretary.

169 In this connection, the POAC summarised as follows its main findings of fact and the legal conclusions that it drew from those findings, in paragraphs 347 to 349 of its decision:

'347. …. We have to examine all the material that was or could reasonably have been available to the Secretary of State in order to consider whether the PMOI was

or could honestly have been believed by him to be concerned in terrorism. We have subjected all the material to the intense scrutiny which we have indicated we believe to be the appropriate standard for our appraisal.

348. We have already set out in detail our conclusions on the material before us. In our view, intense scrutiny of the material requires the conclusion that:

348.1 With the possible exception of the single questioned incident in May 2002, the PMOI has not engaged in terrorist acts in Iran or elsewhere since August 2001;

348.2. Even if the PMOI had a military command structure at some point within Iran, the material demonstrates that such structure had ceased to exist by (at the latest) the end of 2002;

348.3. Even if the three reports in 2002 could amount to glorification [of terrorism] within section 3(5)(c) of the 2000 Act, all such activity ceased by August 2002;

348.4. In May 2003, the PMOI was disarmed;

348.5. There is no material which indicates that the PMOI has obtained or sought to obtain arms or otherwise reconstruct any military capability despite their capacity to do so after May 2003;

348.6. Further, there is no material to suggest that the PMOI has sought to recruit or train members for military or terrorist action.

In short, there is no evidence that the PMOI has at any time since 2003 sought to re-create any form of structure that was capable of carrying out or supporting terrorist acts. There is no evidence of any attempt to "prepare" for terrorism. There is no evidence of any encouragement to others to commit acts of terrorism. Nor is there any material that affords any grounds for a belief that the PMOI was "otherwise concerned in terrorism" at the time of the decision in September 2006. In relation to the period after May 2003, this cannot properly be described as "mere inactivity" as suggested by the Secretary of State in his Decision Letter. The material showed that the entire military apparatus no longer existed whether in Iraq, Iran or elsewhere and there had been no attempt by the PMOI to re-establish it.

349. In those circumstances, the only belief that a reasonable decision -maker could have honestly entertained, whether as at September 2006 or thereafter, is that the PMOI no longer satisfies any of the criteria necessary for the maintenance of their proscription. In other words, on the material before us, the PMOI is not and, at September 2006, was not concerned in terrorism.'

170 For the reasons set out, in paragraphs 130 to 139 above, the Court considers that the POAC's decision is of considerable importance for the purposes of these proceedings.

171 It is the first decision of a competent judicial authority ruling on the lawfulness, in the light of the domestic law applicable, of the Home Secretary's refusal to withdraw

the order of 28 March 2001 on the basis of which the Council adopted both the initial decision to freeze the applicant's funds and all the subsequent decisions, up to and including Decision 2007/868.

172 The POAC's decision therefore unarguably constitutes an action taken at national level in consequence of the Home Secretary's order of 28 March 2001.

173 The Court has already pointed out that verification of such consequences appeared to be imperative in the context of the adoption of a subsequent decision to freeze funds (see paragraph 131 above).

174 As regards the extent to which the Council was aware of the POAC's decision and took account of it, in the adopting of Decision 2007/868, the explanations put forward by that institution and by the United Kingdom and the documents relating to that procedure, produced by the parties in response to the measures of organisation of procedure adopted by the Court, make it clear that:

— on 13 November 2007 the representative of the United Kingdom orally informed the members of the Council's working group on Common Position 2001/931 ('the CP 931 working group') that the POAC would give its decision in the case concerning the applicant on 30 November 2007 and the United Kingdom would decide its position with regard to the applicant's proscription in the light of that decision;

— on 3 December 2007 the United Kingdom sent an email to the Portuguese Presidency of the Council informing it of the POAC's decision, which it summarised,

inviting the Presidency to examine the decision on the Internet site where it was available and informing it of its intention to raise the matter at the next meeting of the CP 931 working group;

— on 4 December 2007 the United Kingdom informed the Portuguese Presidency by email that the Home Secretary had clearly stated her intention of seeking leave to appeal against the POAC's decision; the United Kingdom thought that the decision as to that leave would be taken before 17 December 2007; if leave was granted, the hearing before the Court of Appeal would take place in early 2008; in that same e-mail, the United Kingdom proposed that the European Union should take no action relating to the applicant's continued inclusion in the list at issue until the appeals procedure in the United Kingdom had run its course, and stated that the proscription of the applicant in the United Kingdom would remain in force during that period;

— on 6 December 2007 a copy of the letter sent to the Council by the applicant on 5 December 2007 with a view to its removal from the list at issue in the light of the POAC's decision (see paragraph 23 above), and a copy of that decision, were forwarded by the Secretariat General of the Council to the delegations of the Member States in the Council;

— on 12 December 2007 the CP 931 working group held a meeting in order to prepare for the adoption of Decision 2007/868; according to the 'outcome of proceedings' of that meeting, forwarded by the Secretariat General of the Council to the delegations of the Member States in the Council on 20 December 2007, that working group was informed by the United Kingdom delegation of the POAC's decision; the United Kingdom delegation also informed the other delegations of the Home Secretary's intention to appeal against that decision and explained to them that if the POAC itself refused leave the Home Secretary meant to apply for leave directly to the Court of Appeal;

— on 17 December 2007 a draft decision and a draft common position reflecting the outcome of the meeting of the CP 931 working group were forwarded by the Secretariat General of the Council to the working group of external relations advisers; the applicant's name was included in the lists annexed to those drafts; on the same day, the working group of external relations advisers approved the drafts and invited Coreper to recommend that the Council should adopt them; the covering letter containing those facts ('note I/A') was sent by the Secretariat General of the Council to Coreper on 18 December 2007;

— on 19 December 2007 Coreper approved the recommendations in question;

— on 19 December 2007 the United Kingdom sent an email to the Portuguese Presidency, the Secretariat General of the Council and the delegations of the Member States having expressly so requested informing them that the POAC had refused the leave to appeal sought by the Home Secretary; it added that the Home Secretary intended to apply for that leave to the Court of Appeal, but was unable to say when the latter would give a ruling on that application.

175 Those were the circumstances in which the Council adopted Decision 2007/868 on 20 December 2007.

176 As regards the statement of the actual and specific reasons why the Council considered, after review, that the freezing of the applicant's funds was still justified, which is at the heart of the obligation to state reasons imposed on that institution when adopting a subsequent decision to freeze funds (*OMPI*, paragraph 1 above, paragraphs 143 and 144), it is made clear in the summary of the facts set out in paragraphs 28 and 29 above that in the second letter of notification the Council took the view that the reasons for continuing to include the applicant in the list at issue,

previously communicated to that party by the first letter of notification, still held good. Furthermore, the statement of reasons enclosed with the second letter of notification is strictly identical to that enclosed with the first letter of notification. With regard to the POAC's decision, the Council did no more than note, in the second letter of notification, that the Home Secretary had sought to bring an appeal.

177 Having regard to all the relevant information at the date when Decision 2007/868 was adopted, and taking account of the particular circumstances of the case, the Court considers that that statement of reasons is obviously insufficient to provide legal justification for continuing to freeze the applicant's funds.

178 In the first place, that statement of reasons does not make it possible to grasp how far the Council actually took into account the POAC's decision, as it was required to do (see paragraph 173 above).

179 In the second place, that statement did not explain the actual specific reasons why the Council took the view, in spite of the findings of fact made by the POAC against which no appeal lies and the legal conclusions, particularly severe for the Home Secretary, which that body drew from those findings, that the continued inclusion of the applicant in the list at issue remained justified in the light of the same body of facts and circumstances on which the POAC had had to rule (see, by analogy, Case C-360/92 P *Publishers Association* v *Commission* [1995] ECR I-23, paragraphs 39 to 44).

180 That is particularly the case in light of the POAC's conclusion that the only belief that a reasonable decision-maker could have honestly entertained, as from September

2006, was that the applicant no longer met any of the criteria necessary for the maintenance of its proscription as a terrorist organisation or that, in other words, it had not been involved in terrorism since that period. In those circumstances, the Council ought at the very least to have reevaluated its assessment of the existence of a decision taken by a competent national authority on the basis of 'serious and credible evidence' within the meaning of Article 1(4) of Common Position 2001/931.

181 At the hearing, the Council strove to make good the clear inadequacy of its statement of reasons by maintaining, with examples in support, that, even on the basis of the facts as found by the POAC, it was still reasonable to consider, when Decision 2007/868 was adopted, that the applicant was involved in acts of terrorism, as defined in Regulation 2580/2001, and that the freezing of its funds therefore remained justified (see paragraph 163 above).

182 In this regard, it is, however, to be borne in mind that the statement of reasons for a measure must in principle be notified to the person concerned at the same time as the act adversely affecting him and that failure to state the reasons, or the obvious inadequacy of the reasons stated, cannot be remedied by the fact that the person concerned learns the reasons for the measure during the proceedings before the Community courts (*OMPI*, paragraph 1 above, paragraph 139 and case-law cited).

183 In the third place, the Court considers that, while it is true that the Council could have regard to the existence of appeals against the POAC's decision and to the Home Secretary's actual recourse to them, it was not, in this instance, sufficient for the Council to state that the Home Secretary had sought to lodge an appeal in order to be relieved of the need to take into specific consideration the findings of fact made by the POAC against which no appeal lies and the legal conclusions which it drew from those findings.

184 That is all the more the case because, on the one hand, the POAC, the judicial authority competent to review the lawfulness of acts of the Home Secretary, had described the refusal to lift the applicant's proscription as 'unreasonable' and 'perverse' and, on the other, when Decision 2007/868 was adopted, the Council had been informed of the POAC's refusal to grant the Home Secretary leave to introduce such an appeal and of the grounds of that refusal, namely, that, according to the POAC, none of the arguments put forward by the Home Secretary stood a reasonable chance of prospering before the Court of Appeal.

185 In short, the Court finds that, in the light of all the relevant information and having regard to the particular circumstances of the case, proper and sufficient reasons have not been adduced for the continued freezing of the applicant's funds under Article 1 of Decision 2007/868, in conjunction with point 2.19 of the list annexed to that decision, under the heading 'Groups and entities'.

186 That finding cannot but lead to the annulment of those provisions, in so far as they concern the applicant.

187 For the rest, none of the pleas in law raised by the applicant can amount to good grounds for its application for annulment, so far as it is concerned, of the other provisions of that decision, in particular Article 2 thereof, by which Decision 2007/445 is repealed.

Costs

188 Under Article 87(3) of the Rules of Procedure, the Court may order the costs to be shared or the parties to bear their own costs if each party succeeds on some and fails

on other heads. In the circumstances of the present case, it must be decided that the Council should pay, in addition to its own costs, one third of the applicant's costs.

189 Under the first subparagraph of Article 87(4) of the Rules of Procedure, Member States and institutions intervening in the proceedings are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Seventh Chamber)

hereby:

1. **Dismisses the action as unfounded in so far as it seeks annulment of 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;**

2. **Annuls Article 1 of Council Decision 2007/868/EC of 20 December 2007 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 and repealing Decision 2007/445, and point 2.19 of the list annexed to that decision, in so far as they concern the People's Mojahedin Organization of Iran;

3. **Dismisses the action as unfounded in so far as it seeks annulment of the other provisions of Decision 2007/868, so far as the People's Mojahedin Organization of Iran is concerned;**

4. **Orders the Council to bear, in addition to its own costs, one third of the costs of the People's Mojahedin Organization of Iran;**

5. **Orders the United Kingdom of Great Britain and Northern Ireland, the Commission and the Kingdom of the Netherlands to pay their own costs.**

Forwood Šváby Truchot

Delivered in open court in Luxembourg on 23 October 2008.

Registrar President

E. Coulon N.J. Forwood