JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)

11 July 2007 (*)

(Common foreign and security policy – Restrictive measures against certain persons and entities with a view to combating terrorism – Freezing of funds – Competence of the Community – Action for annulment – Rights of the defence – Statement of reasons – Right to effective judicial protection – Action for damages)

In Case T-47/03,

Jose Maria Sison, residing in Utrecht (Netherlands), represented by J. Fermon, A. Comte, H. Schultz, D. Gurses and T. Olsson, lawyers,

applicant,

supported by

Negotiating Panel of the National Democratic Front of the Philippines, established in Utrecht,

Luis G. Jalandoni, residing in Utrecht,

Fidel V. Agcaoili, residing in Utrecht,

Maria Consuelo K. Ledesma, residing in Utrecht,

represented by B. Tomlow, lawyer,

interveners,

v

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

defendant,

supported by

Kingdom of the Netherlands, represented by H. Sevenster, acting as Agent,

and by

United Kingdom of Great Britain and Northern Ireland, represented initially by R. Caudwell and subsequently by C. Gibbs, acting as Agents, and by S. Moore, Barrister,

interveners,

APPLICATION for, first, partial annulment of Council Decision 2002/974/EC of 12 December 2002 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2002/848/EC (OJ 2002 L 337, p. 85) and, secondly, compensation,

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

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

Registrar: K. Pocheć, Administrator,

having regard to the written procedure and further to the hearing on 30 May 2006,

gives the following

Judgment

Legal framework and background to the dispute

1 Article 301 EC states:

'Where it is provided, in a common position or in a joint action adopted according to the provisions of the Treaty on European Union relating to the common foreign and security policy, for an action by the Community to interrupt or to reduce, in part or completely, economic relations with one or more third countries, the Council shall take the necessary urgent measures.'

2 Article 60(1) EC provides:

'If, in the cases envisaged in Article 301, action by the Community is deemed necessary, the Council may, in accordance with the procedure provided for in Article 301, take the necessary urgent measures on the movement of capital and on payments as regards the third countries concerned.'

3 Article 308 EC provides:

'If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community, and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures.'

4 On 28 September 2001 the United Nations Security Council ('the Security Council') adopted Resolution 1373 (2001) laying down strategies to combat terrorism, in particular the financing of terrorism, by all possible means. Paragraph 1(c) of that resolution provides, in particular, that all States must freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled by such persons, and of persons and entities acting on behalf of, or at the direction of, such persons and entities.

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

6 Article 1(1) of Common Position 2001/931 provides that the latter applies 'to persons, groups and entities involved in terrorist acts and listed in the Annex'. The applicant's name does not appear in that list.

7 Article 1(2) and (3) of Common Position 2001/931 defines what is to be understood by 'persons, groups and entities involved in terrorist acts' and by 'terrorist act', respectively.

8 The first subparagraph of Article 1(4) of Common Position 2001/931 states that 'the list in the Annex shall be drawn up 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, an attempt to perpetrate, participate in or facilitate such an act based on serious and credible evidence or clues, or condemnation for such deeds'. The second subparagraph of Article 1(4) of Common Position 2001/931 states: '"competent authority" shall mean a judicial authority, or, where judicial authorities have no competence in the area covered by this paragraph, an equivalent competent authority in that area'.

9 Article 1(5) of Common Position 2001/931 provides that 'the Council shall work to ensure that names of natural or legal persons, groups or entities listed in the Annex have sufficient particulars appended to permit effective identification of specific human beings, legal persons, entities or bodies, thus facilitating the exculpation of those bearing the same or similar names'.

10 Article 1(6) of Common Position 2001/931 states that 'the names of persons and entities in the list in the Annex shall be reviewed at regular intervals and at least once every six months to ensure that there are grounds for keeping them in the list.'

11 Articles 2 and 3 of Common Position 2001/931 provide that the European Community, acting within the limits of the powers conferred on it by the EC Treaty, is to order the freezing of the funds and other financial assets or economic resources of persons, groups and entities listed in the Annex and is to ensure that funds, financial assets or economic resources or financial or other related services are not made available, directly or indirectly, for their benefit.

12 Taking the view that a regulation was required in order to implement the measures set out in Common Position 2001/931 at Community level, the Council adopted on 27 December 2001, on the basis of Articles 60 EC, 301 EC and 308 EC, Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 70). That regulation provides that, except as permitted thereunder, all funds belonging to a natural or legal person, group or entity included in the list referred to in Article 2(3) thereof are to be frozen. Likewise, it is prohibited to make funds available or provide financial services to those persons, groups or entities. The Council, acting unanimously, is to establish, review and amend the list of persons, groups and entities to which the regulation applies, in accordance with the provisions laid down in Article 1(4), (5) and (6) of Common Position 2001/931.

13 The original list of persons, groups and entities to whom and to which Regulation No 2580/2001 applied was established by Council Decision 2001/927/EC of 27 December 2001 establishing the list provided for in Article 2(3) of Council Regulation (EC) No 2580/2001 (OJ 2001 L 344, p. 83). The applicant's name is not included in that list.

14 On 28 October 2002 the Council adopted, under Articles 15 EU and 34 EU, Common Position 2002/847/CFSP updating Common Position 2001/931/CFSP and repealing Common Position 2002/462/CFSP (OJ 2002 L 295, p. 1). The Annex thereto updates the list of persons, groups and entities to which Common Position 2001/931 applies.

15 Part 1 of that Annex, headed 'Persons', includes inter alia the name of the applicant, who is described as follows:

'32. SISON Jose Maria (aka Armando Liwanag, aka Joma, in charge of NPA), born 8.2.1939 in Cabugao, Philippines.'

16 Part 2 of that Annex, headed 'Groups and Entities', includes the name of the New People's Army ('the NPA'), which is described as follows:

'17. New People's Army (NPA), Philippines, linked to Sison Jose Maria C. (aka Armando Liwanag, aka Joma, in charge of NPA).'

17 By Decision 2002/848/EC of 28 October 2002 implementing Article 2(3) of Regulation (EC) No 2580/2001 and repealing Decision 2002/460/EC (OJ 2002 L 295, p. 12), the Council adopted an updated list of the persons, groups and entities to whom and which that regulation applied. The names of the applicant and of the NPA are repeated in that list, in the same terms as those used in the Annex to Common Position 2002/847.

18 By Decision 2002/974/EC of 12 December 2002 implementing Article 2(3) of Regulation (EC) No 2580/2001 and repealing Decision 2002/848/EC (OJ 2002 L 337, p. 85), the Council adopted a fresh updated list of the persons, groups and entities to which that regulation applied. The names of the applicant and the NPA are repeated in that list, in the same terms as those used in the Annex to Common Position 2002/847 and the Annex to Decision 2002/848.

19 Since then, the Council has adopted several common positions and decisions updating the lists provided for under Common Position 2001/931 and Regulation No 2580/2001, respectively ('the lists at issue') (see, most recently, Council Common Position 2005/936/CFSP of 21 December 2005

updating Common Position 2001/931 and repealing Common Position 2005/847/CFSP (OJ 2005 L 340, p. 80); see also, in order of adoption, Council Decision 2003/480/EC of 27 June 2003 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2002/974 (OJ 2003 L 160, p. 81), Council Decision 2003/646/EC of 12 September 2003 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2003/480 (OJ 2003 L 229, p. 22), Council Decision 2003/902/EC of 22 December 2003 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2003/646 (OJ 2003 L 340, p. 63), Council Decision 2004/306/EC of 2 April 2004 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2003/902 (OJ 2004 L 99, p. 28), Council Decision 2005/221/CFSP of 14 March 2005 implementing Article 2(3) of Regulation (EC) No 2580/2001 and repealing Decision 2004/306/EC (OJ 2005 L 69, p. 64), Council Decision 2005/428/CFSP of 6 June 2005 implementing Article 2(3) of Regulation (EC) No 2580/2001 and repealing Decision 2005/221/CFSP (OJ 2005 L 144, p. 59), Council Decision 2005/722/EC of 17 October 2005 implementing Article 2(3) of Regulation (EC) No 2580/2001 and repealing Decision 2005/428/CFSP (OJ 2005 L 272, p. 15), Council Decision 2005/848/EC of 29 November 2005 implementing Article 2(3) of Regulation (EC) No 2580/2001 and repealing Decision 2005/722/EC (OJ 2005 L 314, p. 46), 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 2005 L 340, p. 64), and Council Decision 2006/379/EC of 29 May 2006 implementing Article 2(3) of Regulation (EC) No 2580/2001 and repealing Decision 2005/930 (OJ 2006 L 144, p. 21)). The acts thus adopted continued to include the applicant's name in the lists at issue, both in the list of persons and, associated with the name of the NPA, in the list of groups and entities.

Procedure

20 By application lodged at the Registry of the Court of First Instance on 6 February 2003, the applicant brought an action against the Council and the Commission for partial annulment of Decision 2002/974 and for compensation.

21 By separate document lodged at the Registry of the Court of First Instance on 28 February 2003, the applicant brought an application for interim measures against the same institutions, seeking, first, suspension of the operation of Article 1, point 1.25 and point 2.14, of Decision 2002/974 in so far as it mentions his name; secondly, that the Council and the Commission be prohibited from mentioning his name in any fresh decision implementing Article 2(3) of Regulation No 2580/2001 and, thirdly, an order requiring the Council and the Commission to inform all the Member States that the restrictive measures taken in his regard are without any legal basis.

22 By separate document lodged at the Registry of the Court of First Instance on 12 March 2003, the Commission raised, under Article 114 of the Rules of Procedure of the Court of First Instance, an objection of inadmissibility against the action in so far as it was directed against that institution.

23 By order of the President of the Court of First Instance of 7 May 2003, the application for interim measures against the Commission was removed from the register.

24 By order of 15 May 2003, the President of the Court of First Instance dismissed the application for interim measures against the Council on the ground that the requirement of urgency was not satisfied, reserving costs.

25 By documents lodged at the Registry of the Court of First Instance on 27 May 2003 and 11 June 2003 respectively, the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland sought leave to intervene in these proceedings in support of the forms of order sought by the Council and the Commission. By document lodged at the Registry of the Court of First Instance on 10 June 2003, the Negotiating Panel of the National Democratic Front of the Philippines, together with Messrs Jalandoni and Agcaoili and Ms Ledesma ('the Negotiating Panel and its members'), sought leave to intervene in these proceedings in support of the forms of order sought by the applicant. By orders of 16 July 2003 and 22 October 2003, the President of the Second Chamber of the Court of First Instance granted leave to intervene. The interveners lodged their statements and the other parties were able to lodge their observations on them within the prescribed periods.

26 By a document lodged at the Registry of the Court of First Instance on 11 July 2003, the applicant stated that he was abandoning his application in so far as it was directed against the Commission.

27 By order of the President of the Second Chamber of the Court of First Instance of 22 September

2003, Case T-47/03 was removed from the register in so far as it was directed against the Commission.

28 In his reply, lodged at the Registry of the Court of First Instance on 15 July 2003 and thereafter by document lodged at the Registry of the Court of First Instance on 29 September 2003, in his observations on the statements in intervention of the United Kingdom and of the Netherlands, lodged at the Registry of the Court of First Instance on 5 February 2004, by a document lodged at the Registry of the Court of First Instance on 7 May 2004, by a document lodged at the Registry of the Court of First Instance on 4 May 2005, by a document lodged at the Registry of the Court of First Instance on 7 July 2005, by a document lodged at the Registry of the Court of First Instance on 17 December 2005, and lastly by a document lodged at the Registry of the Court of First Instance on 16 February 2006, the applicant amended in turn the forms of order sought by him, his pleas in law and his arguments so as to refer in turn to Decision 2003/480 repealing Decision 2002/974, Decision 2003/646 repealing Decision 2003/480, Decision 2003/902 repealing Decision 2003/646, Decision 2004/306 repealing Decision 2003/902, Decision 2005/221 repealing Decision 2004/306, Decision 2005/428 repealing Decision 2005/221, Decision 2005/722 repealing Decision 2005/428, Decision 2005/848 repealing Decision 2005/722, and lastly Decision 2005/930 repealing Decision 2005/848. He relied, to that end, on the case-law which states that where a Community measure is replaced during the course of proceedings by another measure having the same object, the latter measure must be regarded as a new factor, enabling the applicant to adapt his claims and pleas in law. The applicant added that his application should be regarded as challenging the lawfulness of all decisions including him in the lists at issue.

29 The Council has stated that it has no objection to those amendments to the forms of order sought by the applicant and his pleas in law and arguments. In its written observations lodged at the Registry of the Court of First Instance on 22 March 2006, that institution took the view that this action must be regarded as directed against Decision 2005/930 or against any other decision having the same content and the same object, in so far as it concerns the applicant, that was in force on the date of the closure of the oral procedure.

30 By a letter lodged at the Registry of the Court of First Instance on 22 October 2003, the applicant asked to be allowed to lodge his observations on the rejoinder. That request was rejected both on the ground that the Rules of Procedure do not allow for such a possibility and on the ground that the applicant could submit his observations at the hearing.

31 In the document lodged at the Registry of the Court of First Instance on 17 December 2005 and referred to in paragraph 28 above, the applicant made certain remarks on the relevance, for the purposes of this case, of the judgment of the Court of First Instance of 21 December 2005 in Case T-306/01 *Yusuf and Al Barakaat International Foundation* v *Council and Commission* [2005] ECR II-3533 (now under appeal, '*Yusuf*'). Those remarks and the written observations made in response by the other parties were placed in the file.

32 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Second Chamber) decided to open the oral procedure and, by way of measures of organisation of procedure as laid down in Article 64 of the Rules of Procedure of the Court of First Instance, to put written questions to the Netherlands and the Council, inviting them to reply at the hearing.

33 The parties, other than the United Kingdom, which offered apologies for its absence, presented oral argument and their answers to the Court's written and oral questions at the hearing on 30 May 2006.

34 By document lodged at the Registry of the Court of First Instance on 5 June 2006, the applicant sought leave to amend the forms of order sought, his pleas in law and arguments so that they were directed against Decision 2006/379. This document was interpreted by the Court of First Instance as involving a request for the oral procedure to be reopened, with a view to the adoption of a measure of organisation of procedure enabling the applicant to amend his claims, pleas in law and arguments in the light of the adoption of that decision. That document was added to the file and notified to the other parties, the Court of First Instance's decision on the applications they contain being reserved to a later stage of the proceedings.

35 By order of 24 May 2007, the Court of First Instance (Second Chamber) decided to order the reopening of the oral procedure, in accordance with Article 62 of the Rules of Procedure. By letter of the Registrar of 30 May 2007, the other parties were requested to express their views on the application for the adoption of measures of organisation of procedure contained in the document referred to in paragraph 34 above. Those parties having been heard, the Court of First Instance's

decision on that application was reserved and the oral procedure was again closed by decision of 12 June 2007.

Concerning the procedural consequences of the repeal and replacement of the decision originally challenged

36 As is apparent from paragraphs 18 and 19 above, the act originally challenged in this action, namely, Decision 2002/974 ('the decision originally challenged'), has been repealed and replaced on various occasions since the application was lodged by acts which have always kept the applicant in the list at issue. These are Decision 2005/930, at the date on which the oral procedure was closed and Decision 2006/379, at the date of delivery of this judgment.

37 It is to be observed that where a decision is, during the proceedings, replaced by another decision 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 the sound administration of justice and to the requirements of procedural economy to oblige the applicant to make a fresh application to the Court (Case 14/81 *Alpha Steel* v *Commission* [1982] ECR 749, paragraph 8; Joined Cases 351/85 and 360/85 *Fabrique de Fer de Charleroi and Dillinger Hüttenwerke* v *Commission* [1987] ECR 3639, paragraph 11; Case 103/85 *Stahlwerke Peine-Salzgitter* v *Commission* [1988] ECR 4131, paragraphs 11 and 12; and Joined Cases T-46/98 and T-151/98 *CCRE* v *Commission* [2000] ECR II-167, paragraph 33).

38 In its judgments in *Yusuf*, paragraph 73, and Case T-315/01 *Kadi* v *Council and Commission* [2005] ECR II-3649 (now under appeal, '*Kadi*'), paragraph 54, the Court applied that case-law to the situation in which a regulation of direct and individual concern to an individual is replaced, during the proceedings, by a regulation having the same subject-matter.

39 In accordance with that case-law, it is therefore appropriate in the present case to allow the applicant's various requests, mentioned in paragraphs 28 and 34 above, and to consider that his action, on the date on which this judgment is delivered, seeks annulment of Decision 2006/379 ('the contested decision'), in so far as the latter concerns him, after allowing the parties to reformulate their claims, pleas and arguments in the light of those new factors.

40 In addition, the Court considers that only actions for annulment of an act in existence adversely affecting the applicant may be brought before it. Therefore, even if, as held in paragraph 39 above, the applicant may be permitted to reformulate his claims so as to seek annulment of acts which have, during the proceedings, replaced the decision originally challenged, that solution cannot authorise the speculative review of the lawfulness of hypothetical acts which have not yet been adopted (see order in Case T-22/96 *Langdon* v *Commission* [1996] ECR II-1009, paragraph 16, and case-law cited).

41 It follows that there are no grounds for allowing the applicant to reformulate his claims so that they are directed not only against the contested decision but also, as the case may be, against any other decisions capable of including him, in future, in the list at issue (see paragraph 28 above).

Forms of order sought by the parties

42 The applicant claims that the Court should:

- on the basis of Article 230 EC, annul Article 1 of Decision 2006/379 in so far as it mentions his name;
- declare Regulation No 2580/2001 to be unlawful on the basis of Article 241 EC;
- order the Community and the Council to compensate the applicant, on the basis of Article 235 EC and the second paragraph of Article 288 EC, in an amount to be fixed *ex aequo et bono* of not less than EUR 100 000;
- order the Council to pay the costs.

43 The Negotiating Panel and its members support the first two forms of order sought by the applicant

and claim in addition that the Council should be ordered to pay the costs of their intervention.

44 The Council contends that the Court should:

– dismiss the action in its entirety;

– order the applicant to pay the costs;

– order the Negotitating Panel and its members to pay the costs arising as a result of their intervention.

45 The Kingdom of the Netherlands and the United Kingdom support the first form of order sought by the Council.

Facts

Administrative and judicial proceedings relating to the applicant in the Netherlands

46 The papers before the Court indicate that the applicant, who has Filipino nationality, has resided in the Netherlands since 1987. In September 1988, after the Philippine Government withdrew his passport, he applied for refugee status and a residence permit in the Netherlands on humanitarian grounds. That application was refused by decision of the State Secretary for Justice ('the State Secretary') of 13 July 1990, on the basis of Article 1F of the Geneva Convention of 28 July 1951 on the status of refugees, amended by the New York Protocol of 31 January 1967 ('the Geneva Convention'), which states that the provisions of that Convention are not to apply to any person with respect to whom there are serious reasons for considering that:

'(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.'

47 His request for a review of that decision having been impliedly rejected by the State Secretary, the applicant brought an action before the Raad van State (Netherlands Council of State) against that implied decision to reject.

48 By judgment of 17 December 1992 ('the judgment of the Raad van State of 1992'), the Raad van State annulled the implied decision to reject. It held essentially that the State Secretary had not demonstrated to the requisite legal standard which of the acts allegedly committed by the applicant had led him to conclude that the applicant fell within the scope of Article 1F of the Geneva Convention. The Raad van State stated in that regard that the documents supplied to it on a confidential basis by the State Secretary were not sufficiently clear on the point. Since the confidential nature of the documents in question meant that that lack of clarity could not be remedied by an inter partes hearing, the Raad van State held that the information contained in those documents, in so far as it was unclear, could not be construed in a manner which was unfavourable to the applicant.

49 By decision of 26 March 1993, the State Secretary again rejected the applicant's request for a review of his decision of 13 July 1990. That decision to reject was taken primarily on the basis of Article 1F of the Geneva Convention and in the alternative on the basis of the second paragraph of Article 15 of the Vreemdelingenwet (Netherlands Law on Aliens), by reason of the overriding interests of the Netherlands State, that is to say the integrity and credibility of the Netherlands as a sovereign State, particularly with regard to its responsibilities towards other States.

50 In an action to challenge that brought by the applicant, the Raad van State annulled the State Secretary's decision of 26 March 1993 by judgment of 21 February 1995 ('the judgment of the Raad van State of 1995').

51 In that judgment, the Raad van State held that the State Secretary had reached his decision on the basis of the following factors:

– a letter from the Binnenlandse Veiligheidsdienst (Netherlands internal security service, 'the BVD') of 3 March 1993, which stated, first, that the applicant held the post of chairman and was the head of the Communist Party of the Philippines ('the CPP') and, second, that the military wing of the CPP, the NPA, was under the Central Committee of the CPP and, accordingly, the applicant;

– the findings of the BVD, first, that the applicant was, in fact, the head of the NPA and, second, that the NPA – and thus the applicant – was responsible for a large number of terrorist acts in the Philippines.

52 The Raad van State noted the following examples of such terrorist acts, given by the State Secretary in his decision of 26 March 1993:

– the murder of 40 inhabitants (mostly defenceless women and children) of the village of Digos, on the Island of Mindanao (Philippines) on 25 June 1989;

– the shooting of 14 people, including six children, in the village of Dipalog (Philippines) in August 1989 ;

– the execution of four inhabitants of the village of Del Monte (Philippines) on 16 October 1991.

53 The Raad van State also noted that the State Secretary had mentioned the purges carried out in 1985 in the CPP and the NPA, in the course of which it was estimated that 800 of their members were assassinated without any form of trial taking place.

54 Lastly, the Raad van State noted that, according to the State Secretary, the BVD had also determined that the CPP and the NPA maintained contacts with terrorist organisations throughout the world and that personal contacts between the applicant and representatives of those organisations had also been observed.

55 The Raad van State next examined by special procedure certain confidential evidence in the State Secretary's file together with the 'operational material' on which the letter sent to him by the BVD on 3 March 1993 (paragraph 51 above) was based.

56 Taking the above matters into account, the Raad van State went on to rule as follows:

'In the light of the above evidence, the [Raad van State] holds there to be sufficient indication that the [applicant] was, at the time the decision [of 26 March 1993] was taken, the chairman and the head of the CPP. In addition, the evidence supports the conclusion that the NPA is subject to the Central Committee of the CPP and the conclusion that, at the time the decision [of 26 March 1993] was taken, the [applicant] had at least attempted to effectively direct the NPA from the Netherlands. The [Raad van State] also holds there to be sufficient indication based on public sources alone, such as reports by Amnesty International, that the NPA is responsible for a large number of terrorist acts in the Philippines. The evidence also provides support for the conclusion that the [applicant] has at least attempted to direct the abovementioned activities carried out under the control of the NPA in the Philippines. The evidence supplied also provides support for the [State Secretary's] contention that the CPP/NPA maintain contacts with terrorist organisations throughout the world and that there have been personal contacts between the [applicant] and representatives of such organisations. However, the evidence does not provide support for the conclusion that the [applicant] directed the operations in question and is responsible for them to such an extent that it may be held that there are serious reasons to suppose that the [applicant] has actually committed the serious crimes referred to in [Article 1F of the Geneva Convention]. In that regard, the [Raad van State] has expressly taken into account the fact that, as it has already held in its judgment of 17 December 1992, Article 1F of the Geneva Convention must be narrowly construed.

The [Raad van State] considers accordingly that the [State Secretary] was not entitled to conclude, on the basis of the abovementioned evidence, that the [applicant] should be denied the protection afforded by the [Geneva] Convention.'

57 The Raad van State also held that the applicant had sound reasons to fear that he would be

persecuted if he was sent back to the Philippines and that he should accordingly be treated as a refugee for the purposes of Article 1(A)(2) of the Geneva Convention.

58 The Raad van State then considered the merits of the State Secretary's alternative reason for refusing the applicant admission to the Netherlands on grounds of public interest, on the basis of the second paragraph of Article 15 of the Netherlands Law on Aliens.

59 In that regard, the Raad van State held in particular as follows:

'While the [Raad van State] acknowledges the importance of the [State Secretary's] concern, particularly in view of the indications he has recorded of personal contacts between the [applicant] and representatives of terrorist organisations, that cannot justify recourse to the second paragraph of Article 15 of the Law on Aliens if there is no guarantee that the [applicant] will be permitted to enter a country other than the Philippines. It is precluded by the fact that such a refusal to admit the [applicant] must be regarded as being contrary to Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.'

60 Following that judgment, the State Secretary, by decision of 4 June 1996, again rejected the applicant's request for review of his decision of 13 July 1990. He ordered the applicant to leave the Netherlands, but decided at the same time that the applicant should not be deported to the Philippines for so long as he had a well-founded fear of being persecuted within the meaning of the Geneva Convention or of treatment contrary to Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ('the ECHR').

61 By decision of 11 September 1997 ('the decision of the Rechtbank'), the Arrondissementsrechtbank te 's-Gravenhage, Sector Bestuursrecht, Rechtseenheidskamer Vreemdelingenzaken (the Hague District Court, Administrative law section, Chamber responsible for the uniform application of the law, cases involving aliens, 'the Rechtbank') dismissed the action brought by the applicant against the State Secretary's decision of 4 June 1996 on the basis that it was unfounded.

62 In the course of the proceedings before the Rechtbank, all the documents relating to the investigation carried out by the BVD into the applicant's activities in the Netherlands, and in particular the letter from that organisation to the State Secretary of 3 March 1993 (paragraph 51 above), as well as the operational material on which that letter is based, were produced in confidence to the Rechtbank. The President of the Rechtbank examined them under a special procedure. On the basis of the report prepared by its President, the Rechtbank decided that the restriction on making those documents available to the applicant was justified. As the latter had given the consent to that effect required by the legislation, the Rechtbank none the less took account of the content of those documents in order to decide the case.

63 The Rechtbank then considered whether the decision contested before it could be upheld, in so far as it refused the applicant admission as a refugee and the granting to him of a residence permit.

64 With regard to the facts on which the decision was based, the Rechtbank referred back to the judgment of the Raad van State of 1995.

65 On the basis of that judgment, the Rechtbank considered that it must be regarded as settled in law that Article 1F of the Geneva Convention could not be invoked against the applicant, that the latter had a well-founded fear of being persecuted within the meaning of Article 1A of that Convention and of Article 15 of the Netherlands Law on Aliens and that Article 3 of the ECHR prevented the applicant from being deported, directly or indirectly, to his country of origin.

66 The Rechtbank next considered the question whether the judgment of the Raad van State of 1995 entitled the State Secretary to refuse the applicant admission as a refugee, pursuant to the second paragraph of Article 15 of the Netherlands Law on Aliens, which provides that 'admission can be refused only on important grounds of public interest if that refusal would compel the alien to go immediately to a country referred to in the first paragraph', when the State Secretary had failed to guarantee the applicant admission to a country other than the Philippines.

67 In that regard the Rechtbank quoted in full the paragraph of the judgment of the Raad van State of 1995 set out in paragraph 59 above.

68 The Rechtbank then ruled on the question whether the State Secretary had properly exercised his

power to derogate from the rule that an alien is normally to be admitted to the Netherlands as a refugee where he can establish a well-founded fear of being persecuted within the meaning of Article 1A of the Geneva Convention and no other country will admit him as an asylum seeker, as, in the Rechtbank's opinion, was the position in that case. In that regard, the Rechtbank held as follows:

'In the opinion of the Rechtbank, it cannot be argued that the [State Secretary] has not used this power reasonably in respect of the [applicant], taking into account the "essential interests of the Netherlands State, namely the integrity and credibility of the Netherlands as a sovereign State, particularly with regard to its responsibilities towards other States", also recognised by the [Raad van State]. The facts on which the [Raad van State] based that assessment are also of overriding importance as far as the Rechtbank is concerned. It has not been shown that a different significance should have been attributed to those facts by the [State Secretary] at the time the decision [at issue in the case] was taken. The [applicant's] observations on the changed political situation in the Philippines and on his role in the negotiations between the Philippine authorities and the [CPP] do not affect that, since the important reasons – as is clear from the judgment of the [Raad van State] – are based on other facts'.

69 The Rechtbank accordingly dismissed as unfounded the applicant's appeal against the refusal to admit him to the Netherlands as a refugee.

70 The Rechtbank also dismissed as unfounded the applicant's challenge to the refusal to grant him a residence permit. Ruling more particularly on the question whether the State Secretary had taken his decision after a reasonable weighing up of interests, the Rechtbank referred to its findings quoted in paragraph 68 above and added that the State Secretary had acted reasonably in attaching less weight to the interests invoked by the applicant in that regard.

Other factual allegations made by the parties

71 The applicant states that he is a Filipino intellectual and patriot, who has held various academic positions and received several literary awards. From the 1960s until the 1980s, he was, with President Ferdinand E. Marcos and Senator Benigno 'Ninoy' Aquino Jr., one of the three key personalities on the political scene in the Philippines.

72 He admits that he was chairman of the Central Committee of the CPP from 26 December 1968 until 10 November 1977, on which date he was replaced in that post by Rodolfo Salas, following his arrest and imprisonment by the Marcos regime, which lasted until 5 March 1986. After his release, he taught briefly at the University of the Philippines, under constant surveillance by the military authorities and without any opportunity of being involved in any underground activity. On 31 August 1986, he left the Philippines to start a lecture tour in universities, first in the Asia-Pacific region and then, from 23 January 1987, in Europe. Since then, he has lived in exile, carrying out research, writing and participating in various peaceful activities in the Filipino community. The applicant contends that at no point in his stay abroad from 1986 to the present has it been possible for him to assume the position of chairman of the Central Committee of the CPP, as the CPP Constitution requires that that person be present in the Philippines on a daily basis.

73 Following civil proceedings brought before the United States courts in 1986 with the assistance of the American Civil Liberties Union (ACLU), the estate of Ferdinand E. Marcos agreed in 1997 to a 'stipulated judgment' awarding the applicant USD 750 000 by way of damages. That sum has never been paid to the applicant.

74 The applicant states that he is not the subject of 'any valid criminal charge' anywhere in the world and that, historically, neither the Philippine Government nor the international community has ever regarded him as a terrorist or a common criminal. He adds, however, that recently the administration of Philippine President Mrs Gloria Macapagal-Arroyo has brought criminal charges against him. He maintains that those charges are baseless and form part of a campaign to persecute him.

75 With more particular regard to the Philippines, the applicant refers to two certificates confirming the absence of any criminal charges against him, issued to him on 2 March 1994 by the Office of the public prosecutor of the City of Manila (Philippines) and on 20 April 1998 by the Secretary of Justice of the Philippine Government. The latter document refers inter alia to a decision of a Philippine court of 22 September 1992 dismissing the charges brought against the applicant in October 1998 for subversive activities, following the repeal of the anti-subversion law in 1992. It also refers to a decision of 2 March 1994 dismissing for 'lack of sufficient evidence' the charges brought against the

applicant in 1991 by the Office of the public prosecutor of the City of Manila. According to the applicant, those charges involved an accusation of multiple murders in connection with a bombing in 1971.

76 With more particular regard to the Netherlands, the applicant refers to a statement by the Minister of Foreign Affairs, Mr J. De Hoop Scheffer, who confirmed, in reply to a parliamentary question put on 16 August 2002, that the public prosecutor's office was of the view there was no basis for instigating a criminal investigation against the applicant.

77 The applicant, supported by the Negotiating Panel and its members, states that he has been the chief political consultant of the National Democratic Front of the Philippines ('the NDFP') since 1990 and that in that capacity he plays an important role in the negotiations between the NDFP and the Philippine Government, seeking to find a peaceful solution to the continuing armed conflict in the Philippines. In resolutions adopted in 1997 and 1999, the European Parliament gave its support to those negotiations. They were also supported by the whole of the Filipino people and the international community, in particular the Netherlands, Belgian and Norwegian Governments.

78 The applicant concludes from the above that for over 25 years he has been prevented, both physically and for organisational reasons, from playing a leading role, or even participating, in the continuing civil war in the Philippines.

79 The applicant states, however, that on 9 August 2002 the United States Secretary of State designated the CPP and the NPA as 'foreign terrorist organisations' and that on 12 August 2002 the Office of Foreign Assets Control (OFAC) of the United States Treasury Department included the CPP and the NPA and the applicant in the list of individual and terrorist groups covered by Executive Order No 13224, signed by President George W. Bush on 23 September 2001, and ordered the freezing of their assets.

80 The applicant goes on to state that on 13 August 2002, the Netherlands Minister of Foreign Affairs adopted a regulation on the fight against terrorism (Sanctieregeling Terrorisme 2002 III, Staatscourant No 153) which places the CPP and the NPA and the applicant on a list of individuals and groups subject to economic sanctions. On the same day, the Netherlands Minister of Finance ordered, and subsequently put into effect, the freezing of the postal bank account held by the applicant jointly with his wife, and the cancellation of the social security benefits which he received as a refugee in the Netherlands. Those benefits were partially restored on 9 October 2002 on humanitarian grounds, and then suspended again on 13 December 2002.

81 Lastly, the applicant claims that in late January 2003 the Minister for Foreign Affairs of the Philippines made the following statement:

'Once there is a peace agreement, I will request the European Union, the United States and other countries to delist [the rebels] as terrorists. If they sign, they will no longer be terrorists.'

82 Messrs Jalandoni and Agcaoili and Ms Ledesma state that they are members of the Negotiating Panel of the NDFP. In that capacity, they have participated in peace negotiations between the NDFP and the Philippine Government. In the course of those negotiations, they have concluded, on behalf of the NDFP, various agreements with that Government.

83 At the hearing, the Council indicated, in answer to a written question asked by the Court, that it had taken no account at all of any criminal investigations or proceedings brought in the Philippines against the applicant, according to the latter (see paragraph 74 above), when adopting any of the acts that have successively updated the lists at issue.

84 At the hearing the Netherlands Government stated, moreover, in answer to a written question put by the Court, that no decision to open investigations, to prosecute or convict in respect of a terrorist act, for the purposes of Article 1(4) of Common Position 2001/931 and Article 2(3) of Regulation No 2580/2001, had been taken by any competent authority of the Netherlands vis-à-vis the applicant between the date on which the Rechtbank delivered its decision and the date of the hearing in this case.

85 Finally, the Netherlands Government stated at the hearing that the applicant had received no more social security benefits in the Netherlands since he had been included in the lists at issue. The requests for derogation from the freezing of funds, made pursuant to Articles 5 and 6 of Regulation No 2580/2001, were rejected by decisions of the Minister for Finance of 7 March and 16 May 2003,

subsequently confirmed by a judgment of the Raad van State of 28 September 2005. It states that the applicant's very existence is not in danger, for he is lodged and maintained by his wife, who is herself the holder of a residence permit and the recipient of social security benefits in the Netherlands.

The application for annulment

Preliminary observations

86 In support of his claim for annulment of the contested decision, the applicant puts forward eleven pleas in law. The first alleges infringement of Article 253 EC. The second is based on a manifest error of assessment and infringement of Article 2(3) of Regulation No 2580/2001. The third is based on breach of the principle of proportionality and the right to life. The fourth is based on infringement of Article 56 EC. The fifth alleges infringements of the right to a fair trial, the rights of the defence and of the presumption of innocence. The sixth alleges breach of the principle that every punishment must have a lawful basis. The seventh alleges infringement of the right to freedom of expression and of association. The eighth alleges infringement of the right to property. The ninth is a plea by way of objection based on the Council's lack of competence to adopt Regulation No 2580/2001. The tenth is a plea by way of objection based on breach of the principle of proportionality and of the principle of legal certainty. Finally, the eleventh is a plea by way of objection based on misuse of power. The Negotiating Panel and its members put forward arguments which, while seeking to establish their own interest in having the contested decision annulled, essentially aim to support the applicant's plea of misuse of powers.

87 Priority must be given to the examination of the heads of claims based on the Community's lack of competence to adopt the acts under challenge and, then, together to the heads of claim alleging breaches of the duty to provide reasons, of the rights of the defence and of the right to a fair trial.

The heads of claim based on the Community's lack of competence to adopt the acts under challenge

88 These heads of claim are formulated in connection with the ninth plea in law alleging, by way of objection, that the Council was not competent to adopt Regulation No 2580/2001.

Arguments of the parties

89 The applicant argues that the Council was not competent to adopt the contested regulation on the legal basis of Articles 60 EC, 301 EC and 308 EC.

90 First, Articles 60 EC and 301 EC authorise only the adoption of measures against third countries and not, as in the present case, against individuals and organisations within the Community.

91 Secondly, Article 308 EC does not authorise the Council, under the pretext of ensuring the effectiveness of Community action, to exercise powers inconsistent with its fundamental nature, which is that of an executive body. In that regard, the applicant states that Article 2(3) of Regulation No 2580/2001 confers on the Council the power to establish, unilaterally and without reference to any objective criteria, the list of individuals and groups allegedly linked to terrorism and to whom and to which sanctions of a penal nature are to apply. In so doing, Regulation No 2580/2001 confers on the Council, an institution already equipped with broad executive powers, a judicial role which is not provided for in the Treaty, resulting in an unprecedented concentration of powers.

92 In support of his arguments, the applicant refers to the Resolution of the European Parliament of 24 October 2002 on assessment of and prospects for the European Union strategy on terrorism one year after 11 September 2001. In that resolution, the Parliament expressed 'doubts that effective coordination of a European anti-terrorism policy is possible under the present structure of the Union' and urged the Convention on the Future of Europe to create 'the necessary legal basis to allow the European Union to freeze assets and cut off funds of persons, groups and entities of the European Union involved in terrorist acts and included in the European Union list'.

93 In his reply, the applicant adds that it is clear from Opinion 2/94 of the Court of Justice of 28 March 1996 ([1996] ECR I-1759, paragraphs 29 and 30) that Article 308 EC cannot be regarded as a sufficient legal basis for the adoption of the contested measures.

94 The Council and the intervening Governments recognise that Regulation No 2580/2001 refers inter alia to entities and individuals, such as the applicant, who are not necessarily linked to the government of or the regime controlling a third country. It is precisely for that reason that the legal basis of Articles 60 EC and 301 EC was supplemented by that of Article 308 EC. The Council and the intervening Governments maintain that, by proceeding in that way, the Community has been able to keep pace with the development of international practice, which has been to adopt 'smart sanctions' aimed at individuals and entities who pose a threat to international security, having regard in particular to the altered political circumstances after 11 September 2001. In that respect, Regulation No 2580/2001 is in line with Security Council Resolution 1373 (2001).

95 The Council adds that the use of Articles 60 EC and 301 EC to give effect to a common position adopted as part of the common foreign and security policy (CFSP) is in accordance with the requirement to ensure consistency in the activities of the Union laid down by Article 3 EU. Furthermore, one of the primary objectives of the CFSP is to preserve peace and strengthen international security, in accordance with the principles of the Charter of the United Nations (Article 11 EU). In addition, the EC Treaty itself includes a reference in the preamble to the Charter of the United Nations and expresses the resolve of the High Contracting Parties to preserve and strengthen peace and liberty. The Council deduces from that that the promotion of international peace and security is a principle of the Charter of the United Nations which is reflected in the general framework of the EC Treaty, and more specifically in Articles 60 EC and 301 EC. However, inasmuch as neither of those articles, nor any other specific Treaty provision, covers the situation of persons such as the applicant, the use of Article 308 EC is shown to be necessary and justified.

96 The United Kingdom submits that measures aimed at freezing the funds of individuals with a view to interrupting economic relations with international terrorist organisations, rather than with third countries, cannot be regarded as widening 'the scope of Community powers beyond the general framework created by the provisions of the Treaty as a whole', as stated in Opinion 2/94, cited in paragraph 93 above. Under the general framework of the Treaty the Community has competence to take action to regulate capital movements and, moreover, to do this by taking action against individuals.

97 The Netherlands claim that the areas of competence of the Community have frequently been supplemented on the occasion of Treaty amendments, with Article 308 EC having been used as a legal basis before those changes were adopted. According to that Government, when Article 301 EC was adopted, it was not possible to foresee that sanctions might have to be imposed on persons, groups and entities. As that necessity has subsequently become clear, recourse to Article 308 EC is justified pending amendment of the Treaty in the future. In that regard, the Netherlands point out that the draft constitutional treaty resulting from the preparatory work of the Convention on the Future of Europe (Doc. CONV 850/03) states at Article III-282(2) that the Council may adopt restrictive measures against natural or legal persons and non-State groups or bodies

Findings of the Court

98 Like Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban, and repealing Council Regulation (EC) No 467/2001 (OJ 2001 L 139, p. 9), which was at issue in the cases giving rise to the judgments in *Yusuf* and *Kadi*, Regulation No 2580/2001 was adopted on the basis of Articles 60 EC, 301 EC and 308 EC. As is made clear in the fifth recital in the preamble thereto, that regulation is designed to implement in the Community the CFSP aspects of Common Position 2001/931, itself adopted in order to give effect at Union level to Security Council Resolution 1373 (2001). Just like those provided for by Regulation No 881/2002, those measures consist in substance of the adoption of economic and financial sanctions (freezing of funds) directed at private parties (persons and entities) in connection with the combating of terrorism. The 14th recital in the preamble to Regulation No 2580/2001 expressly recognises that the measures in question may include persons and entities in no way linked or related to third countries.

99 The question whether the Community is competent to adopt such measures directed against private parties, without establishing any connection whatsoever between them and one or more third countries, was examined by the Court of First Instance in *Yusuf* (paragraphs 107 to 170) and *Kadi* (paragraphs 87 to 134). At the end of that examination, the Court concluded that 'the institutions and the United Kingdom [were] therefore right to maintain that the Council was competent to adopt [Regulation No 881/2002] which sets in motion the economic and financial sanctions provided for by Common Position 2002/402, on the joint basis of Articles 60 EC, 301 EC and 308 EC' (*Yusuf*, paragraph 170, and *Kadi*, paragraph 135).

100 On that occasion the Court provided exhaustive answers to arguments in substance the same as those put forward by the parties in relation to that question in this action (see, in respect of the similar arguments put forward by the parties in the cases giving rise to *Yusuf* and *Kadi*, paragraphs 80 to 106 of *Yusuf* and paragraphs 64 to 86 of *Kadi*).

101 The allegation that the Council has arrogated to itself a judicial role and powers in criminal matters not envisaged by the Treaty, which is the only allegation that can distinguish this case from those giving rise to *Yusuf* and *Kadi*, must be rejected without any other form of examination since it would appear to be a mere corollary of the applicant's other arguments relating to competence. It is after all based on the mistaken premiss that the restrictive measures at issue in this case are of a criminal nature. The assets of the persons concerned not having been confiscated as the proceeds of crime but rather frozen as a precautionary measure, those measures do not constitute criminal sanctions and do not, moreover, imply any accusation of a criminal nature (see, to that effect and by analogy, *Yusuf*, paragraph 299, and *Kadi*, paragraph 248).

102 The applicant's complaints alleging that the Community lacked competence to adopt Regulation No 2580/2001, set out in connection with the ninth plea, are accordingly to be rejected (with regard to the Community judicature's power to give reasons for its judgment by reference to an earlier judgment ruling on largely identical questions, see Case C-229/04 *Crailsheimer Volksbank* [2005] ECR I-9273, paragraphs 47 to 49, and Case T-253/02 *Ayadi* v *Council* [2006] ECR II-2139, under appeal, paragraph 90; see also the order of the Court of Justice of 5 June 2002 in Case C-204/00 P *Aalborg Portland* v *Commission*, not published in the ECR, paragraph 29).

The heads of claim alleging breaches of the duty to state reasons, the rights of the defence and right to a fair trial

103 These heads of claim are put forward in the first plea in law, on the one hand, as regards the alleged infringement of Article 253 EC, and in the fifth plea in law, on the other, as regards the breach of the right to a fair trial, the rights of the defence and the presumption of innocence.

Arguments of the parties

– Allegation of infringement of the duty to state reasons

104 The applicant maintains that the contested decision fails to satisfy the requirement to state reasons laid down by Article 253 EC, as the second recital merely states that it has been 'decided to adopt an updated list of the persons, groups and entities to which Regulation (EC) No 2580/2001 applies', without actually stating the reasons which led the Council to draw up that list in the form in which it is presented. In particular, the Council provides no links between the general criteria set out in Regulation No 2580/2001 and the personal situation of the person concerned and does not even mention the 'precise information' or the 'material in the relevant file' to indicate that a decision justifying his inclusion in the lists at issue has been taken in his respect by a competent authority. It is thus impossible for the applicant to know the justification for the serious sanctions imposed on him, in order that he may defend his rights, and the Community judicature cannot exercise its power of review of the lawfulness of the contested decision (Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219, Case C-350/88 *Delacre* v *Commission* [1990] ECR I-395, paragraph 15, and Case T-105/95 *WWF UK* v *Commission* [1997] ECR II-313, paragraph 66).

105 According to the applicant, the requirement to state adequate reasons applies with particular force in the present case since the Council has a broad discretion and the effects of the discretionary measure are severe (see Joined Cases 36, 37 and 38/59 and 40/59 *Geitling* v *High Authority* [1960] ECR 423; Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719; and Joined Cases T-44/01, T-119/01 and T 126/01 *Vieira and Vieira Argentina* v *Commission* [2003] ECR II-1209). In this connection, the applicant also points out, in his observations on *Yusuf*, that, unlike what was held in that case with regard to Usama bin Laden and the persons associated with him, the applicant has never been listed by the UN Security Council. The decision to freeze his funds was therefore taken on the initiative of the Council in the exercise of a discretionary power of assessment. Paragraph 225 of the judgment in *Yusuf* makes it clear that in such cases the Council itself acknowledges that judicial review must extend to examination of the evidence relied on against the persons on whom the sanctions are imposed. The attitude of the Council in the present case is in total contradiction with that statement, however. The Council has never presented the slightest evidence to enable the applicant to defend itself and the Court to exercise a full review.

106 The applicant adds that his various requests for access to the documents on the basis of which the Council adopted the contested decision, made under Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43), were systematically refused on the ground that those documents are classified as 'CONFIDENTIAL EU' and that their disclosure would undermine the protection of the public interest as regards security and international relations. In his reply, the applicant states that there is a clear contradiction between those reasons for the decisions to refuse access to the documents in question and the explanations given by the Council in its defence, from which it appears that the only basis for justifying the applicant's inclusion in the lists at issue is a public document, namely the decision of the Rechtbank. That contradiction affects the validity of the contested decision.

107 The Council and the Netherlands accept that the contested decision, which consists merely of an updated list of persons covered by Regulation No 2580/2001, does not itself contain a detailed statement of reasons. It is none the less clear, in their view, from the legal base cited and the recitals in the preamble that that implementing decision is based on that regulation, Article 2(3) of which sets out the criteria governing the inclusion of persons in the lists at issue and Article 1(4) of which defines a terrorist act by reference to Article 1(3) of Common Position 2001/931. Furthermore, the objective of Regulation No 2580/2001, namely, to combat any form of financing of terrorist activities, is made clear in the second recital.

108 The contested acts, taken together, satisfy the obligation to state reasons set out in Article 253 EC, as interpreted in the case-law. In that regard, the Council and the Netherlands point out that it is not necessary for details of all relevant factual and legal aspects to be given and that regard should be had to the context and to all the legal rules governing the matter in question. The degree of precision of the statement of reasons for a decision must also be weighed against practical realities and the time and technical facilities available for making the decision (*Delacre*, cited in paragraph 104 above, paragraphs 15 and 16).

109 In its rejoinder, the Council adds that it was not under any obligation to disclose the specific factual elements which led it to conclude that the applicant was involved in terrorist activities, since the applicable procedure involved the use of sensitive material which could not be made publicly available without seriously compromising public security.

110 In its observations on *Yusuf*, the Council acknowledges that it has a wider margin of discretion in this case than it had in the case giving rise to *Yusuf*. It also accepts that the scope for judicial review of the contested decision may be greater than it was in the circumstances of *Yusuf*. However, that does not mean that there are grounds for disclosing and reviewing, in these proceedings, all the evidence concerning the applicant. That applies particularly as regards the documents examined by the Raad van State and the Rechtbank, the confidential nature of which was accepted by those courts.

– Alleged infringements of the rights of the defence and of the right to a fair trial

111 In the first of these heads of claim, the applicant maintains that the contested decision was taken in breach of his rights of defence. In effect, the sanctions in question have been imposed on the applicant in the present case, and he has been accused of the crime of terrorism, without his previously having been heard or having had the opportunity of defending himself, without his having had any access to the confidential documents and information on the basis of which those measures were taken and without those measures having been subjected to the slightest judicial review. An irregularity of that kind cannot be remedied at the stage of proceedings before the Court of First Instance (Joined Cases T-305/94 to T-307/94, T-313/94 to T-316/94, T–318/94, T-325/94, T-328/94, T-329/94 and T-335/94 *LVM* v *Commission* [1999] ECR II-931, paragraph 1022).

112 In reply to the Council's argument that the legislation at issue in the present case does not provide for the right to be heard before a decision is taken, the applicant states that the right to be heard represents an application of the general principle that a person whose interests are perceptibly affected by a decision taken by a public authority must be given the opportunity to make his point of view known. He adds that observance of the rights of the defence in all proceedings which may result in sanctions being imposed is a fundamental principle of Community law which must be respected in all circumstances, even in the absence of any provision to that effect (*LVM*, cited in paragraph 111 above, at paragraph 1011).

113 The Council's argument based on the precedent of the sanctions taken against the former Federal

Republic of Yugoslavia (paragraph 128 below) is equally irrelevant because in that precedent, by contrast to the present case, the companies included in the 'black list' had had prior contacts with the German authorities, which had alerted them to their imminent inclusion in that list. They were thus in a position to submit their detailed observations to the German authorities and to the Commission. It was precisely for that reason that the Court of First Instance refused to declare that their rights of defence had been infringed (order of the President of the Second Chamber of the Court of First Instance in Case T-189/00 R *Invest Import und Export and Invest Commerce* v *Commission* [2000] ECR II-2993, paragraph 41).

114 In his observations on the judgment in *Yusuf*, the applicant acknowledges that in paragraph 308 of that judgment the Court found that it was unarguable that to have heard the persons concerned before their funds were frozen would have been liable to jeopardise the effectiveness of the sanctions and would thus have been incompatible with the public-interest objective pursued. The applicant considers, however, that the necessity of taking advantage of the effect of surprise must not lead to the removal of all guarantees. The effectiveness of the measure could thus be preserved by a hearing after the event. The applicant refers in this regard to the legal guarantees provided for by criminal procedural law in the Member States where prosecuting authorities or investigating magistrates decide to freeze funds.

115 In the second of those heads of claim, the applicant maintains that the contested decision infringes the right to a fair trial before an impartial court, guaranteed by Article 6(1) of the ECHR and recognised in the case-law of the Court of Justice.

116 He argues in that regard that his inclusion in the lists at issue is tantamount to being 'charged with a criminal offence' for the purposes of those provisions, as interpreted in a 'material' and not a 'formal' manner by the European Court of Human Rights (*Deweer*, ECHR judgment of 27 February 1980, Series A no 35, § 44). In that context, the applicant argues that the European Court of Human Rights considers that three criteria determine whether such a charge exists, namely, the legal classification of the infringement in national law, the nature of the charge, and the nature and degree of severity of the sanctions imposed. In the present case, those three criteria are satisfied. First, the contested decision is concerned with the fight against terrorism, which forms an integral part of Community criminal law, as is confirmed by the adoption of the Council Framework Decision of 13 June 2002 on combating terrorism (OJ 2002 L 164, p. 3). Secondly, the nature of the charge leaves no room for doubt, since the contested regulation refers to persons who 'commit, or attempt to commit, terrorist acts or who participate in or facilitate the commission of any such acts'. Thirdly, the freezing of funds is comparable to a total deprivation, for an unspecified duration, of the right of ownership of the frozen assets.

117 By the contested decision, the Council imposes, moreover, a criminal penalty on the applicant, without any judicial decision's having been taken upon the conclusion of a fair trial.

118 In reply to the Council's argument that the applicant's right to a fair trial was guaranteed in the present case under the national procedures leading to his inclusion in the lists at issue, the applicant submits that the proceedings before the Raad van State and the Rechtbank were wholly irrelevant in that regard, because they did not concern his involvement in terrorist acts, but only the recognition of his refugee status and the issuing of a residence permit. There was thus no national procedure guaranteeing the right to a fair trial.

119 In reply to the Council's argument that the right to a fair trial is also guaranteed in the present proceedings, the applicant states that they fail to provide such a guarantee, by reason of the nature and the limits of the Court's jurisdiction in actions for annulment.

120 The Council argues that the procedure leading to the inclusion of the applicant in the lists at issue is such that his rights of defence are guaranteed at both national and Community level.

121 First, the Council notes that Article 1(4) of Common Position 2001/931 provides that a person may be included in the lists at issue only where it is established that a decision has been taken in his respect by a competent national authority, that is to say, by a court or its equivalent (see paragraph 8 above). The Council states that that authority will naturally have had to respect the rights of defence of the person concerned. The Netherlands Government confirms that such a decision must be subject to all the guarantees required by the national legal order.

122 In the present case, the applicant was the subject of several sets of administrative and judicial proceedings in the Netherlands to determine his administrative status (see paragraphs 46 to 70

above) and he had ample opportunity to state his position effectively in the course of those proceedings, subject to the rules applied by the courts and tribunals concerned to safeguard the confidentiality of sensitive information.

123 In reply to the applicant's argument that those proceedings should not be taken into account because they concerned the issuing of a resident's permit and not his involvement in terrorist activities, the Council states that that involvement played a fundamental part in the decision of the State Secretary, confirmed by the decision of the Rechtbank, to refuse to issue such a permit to him. Far from being regarded as peripheral, the facts show that that involvement was held by the Rechtbank to be 'of overriding importance' (see paragraph 68 above).

124 Secondly, the Council points out that the applicant has had the opportunity of bringing the present action for annulment and compensation before the Court of First Instance. In a decision of 23 May 2002 in *Segi and Others and Gestoras pro Amnistía* v *The 15 Member States of the European Union* (Nos 6422/02 and 9916/02, *Reports of Judgments and Decisions*, 2002-V), the European Court of Human Rights dismissed the claim of certain entities included in the lists at issue for the very reason, inter alia, that the contested regulation is subject to review by the Community judicature.

125 On the other hand, the Council denies that the applicant should have been heard in person before the contested decision was adopted.

126 In that regard, the Council notes, first, that the case-law on which the applicant relies concerns the right to a hearing in regulated administrative procedures relating to competition and anti-dumping. Referring to paragraphs 326 and 327 of *Yusuf*, the Council adds that it did not have, in this case, 'extensive powers of investigation and inquiry' to determine whether the applicant's funds should be frozen. The Community institutions have neither the powers nor the resources to conduct the kind of investigation and inquiry which would be necessary to establish whether a person such as the applicant is involved in terrorist activities. For those matters they are therefore bound to rely on the assessment made by the national authorities. Consequently, it is also before those national authorities that the rights of defence of those concerned fall to be exercised.

127 Secondly, the Council and the United Kingdom contend that it would not have been possible in any event to provide for a procedure involving the prior consultation of the persons concerned where funds were to be frozen, as that would have rendered the measure wholly ineffective. The United Kingdom adds that there are likely to be compelling reasons of national security for not disclosing the information and evidence upon which a competent authority may take a decision finding that a person is involved in terrorism.

128 Thirdly, the Council submits that, according to the case-law of the Court of First Instance, there is no requirement for a hearing of the parties concerned by the Community institutions when the latter draw up, on the basis of names put forward by the national authorities, a 'blacklist' of persons subject to sanctions, such as the list drawn up under Council Regulation (EC) No 1294/99 of 15 June 1999 concerning a freeze of funds and a ban on investment in relation to the Federal Republic of Yugoslavia (FRY) and repealing Regulations (EC) No 1295/98 and (EC) No 1607/98 (OJ 1999 L 153, p. 63). Such a list is drawn up in a two-stage administrative procedure in which the national authorities play a considerable part and the right of parties concerned to be heard must actually be secured in the first place in their relations with the national administrative authority (order in *Invest Import und Export and Invest Commerce* v *Commission*, cited in paragraph 113 above, paragraph 40; see also *Yusuf*, paragraphs 315 and 316). In this case the applicant would have had ample opportunity to present his point of view before the Raad van State and the Rechtbank.

129 Fourthly, there is nothing in the case-law of the European Court of Human Rights to suggest that the guarantees laid down in Article 6 of the ECHR should have been made applicable to the procedure leading to the adoption of the contested decision. The Council notes, in particular, that the freezing of the applicant's funds is not a criminal conviction for the purposes of that case-law, since there has not been any classification as a criminal offence, since the measure in question concerns only a specific group of persons and since the severity of the measure is not sufficient for such purpose (see *Engel*, cited in paragraph 157 above, *Öztürk,* ECHR judgment of 21 February 1984, Series A no. 73, and *Campbell and Fell*, ECHR judgment of 28 June 1984, Series A no. 80).

130 The *United Kingdom* also denies that Article 6(1) of the European Convention on Human Rights concerns the adoption of legislative measures. It applies only to disputes regarding civil rights and obligations or criminal charges, and the guarantees laid down under it in the former case are applicable only to the extent that there is a dispute requiring a determination. Accordingly, it does

not confer on an individual the right to be heard before the adoption of legislation which affects his rights to property. In such a case, an individual is entitled to challenge the lawfulness of that legislation or its application to the circumstances at issue only after the measure has been adopted (see *Lithgow and Others*, ECHR judgment of 8 July 1986, Series A no. 102, § 192, and *James and Others*, ECHR judgment of 21 February 1986, Series A no. 98, § 81. The distinction between administrative and legislative acts for the purposes of the application of the right to be heard was recognised by the Court of First Instance in Case T-521/93 *Atlanta and Others* v *European Community* [1996] ECR II-1707, paragraphs 70 to 74).

131 In the present case, the United Kingdom maintains that neither the inclusion of the applicant in the lists at issue nor, accordingly, the freezing of his assets was covered by Article 6(1) of the ECHR. Those measures did not involve a determination of the applicant's civil rights or a criminal charge against him but the adoption of legislation by the Community institutions. The question of 'rights of the defence' therefore simply does not arise. However, the applicant's rights under Article 6(1) of the ECHR are protected by having access to a court or tribunal which can determine whether the legislation in question has been lawfully enacted and/or whether the applicant properly falls within its scope. Furthermore, the applicant has availed himself of those rights in bringing the present action before the Court of First Instance.

132 In its observations on *Yusuf*, the United Kingdom adds that the issue is whether the applicant's right of access to a court has been infringed by reason of the fact that he cannot challenge, before a court, the merits of the decision to list him. The United Kingdom considers that this does not amount to a violation of the applicant's fundamental rights.

133 First, the applicant is able to challenge the lawfulness of the decisions ordering the freezing of his funds, relying on the grounds set out in the second paragraph of Article 230 EC (see, to that effect, *Kadi*, paragraphs 278 and 279).

134 Secondly, although it is impossible for the applicant to challenge the merits of the policy decision to add his name to the list in question, the United Kingdom argues that, according to the case-law of the European Court of Human Rights, the fundamental right of access to a court or tribunal is an implied right which is subject to inherent limitations (see also, to that effect, *Kadi*, paragraph 287). According to that case-law, the right of access to the courts to contest the merits of a decision or piece of legislation is often restricted, and in those circumstances it is necessary to weigh up the interests of the individual and those of society as a whole in order to evaluate the lawfulness of such restrictions (see *Ashingdane*, ECHR judgment of 28 May 1985, Series A no. 93, and *Alatulkkila and Others* v *Finland*, ECHR judgment of 28 July 2005, no. 33538/96, not published in the Reports of Judgments and Decisions).

135 In the circumstances of this case, the limitation of the applicant's right of access to the courts is justified both by the nature of the decisions that the Council has been required to take in order to give effect to UN Security Council Resolution 1373 (2001) and by the legitimate objective pursued by those measures (see, to this effect, *Kadi*, paragraphs 284 and 289). The applicant's interest in having a court hear his case on its merits is not enough to outweigh the greater interest in the maintenance of international peace and security in the face of a threat identified by the security forces of the Member States. That is a sphere in which policy choices and political judgment clearly obtain and in which the competent authorities must enjoy the broadest discretion.

136 The United Kingdom stresses, however, that in this context the applicant is not deprived of all protection or of all means of redress. First, there are mechanisms to ensure that the list at issue is drawn up on the basis of precise and detailed information or material (see Article 1(4) and (5) of Common Position 2001/931). Secondly, the relevant measures provide for regular review of that list (see Article 1(6) of Common Position 2001/931). On that occasion, the Member States are able to raise the question of continuing to include one or more persons in that list if they believe that there are grounds for considering removal. It is thus open to the applicant to attempt to persuade the competent national authorities to reverse their decision and, if they refuse to do so, to bring an action for judicial review in accordance with domestic law (see, to that effect, *Kadi*, paragraph 270).

Findings of the Court

137 It is appropriate to begin by examining, together, the pleas alleging infringement of the rights of the defence, infringement of the obligation to state reasons and infringement of the right to effective judicial protection, for they are closely linked. First, the safeguarding of the rights of the defence helps to ensure the proper exercise of the right to effective judicial protection. Second,

there is a close link between the right to an effective judicial remedy and the obligation to state reasons. As held in settled case-law, the Community institutions' obligation under Article 253 EC to state the reasons on which a decision is based is intended to enable the Community judicature to exercise its power to review the lawfulness of the decision and the persons concerned to know the reasons for the measure adopted so that they can defend their rights and ascertain whether or not the decision is well founded (Case 24/62 *Germany* v *Commission* [1963] ECR 63, 69; Case C-400/99 *Italy* v *Commission* [2005] ECR I-3657, paragraph 22; Joined Cases T-346/02 and T-347/02 *Cableuropa and Others* v *Commission* [2003] ECR II-4251, paragraph 225). Thus, the parties concerned can make genuine use of their right to a judicial remedy only if they have precise knowledge of the content of and the reasons for the act in question (see, to that effect, Case C-309/95 *Commission* v *Council* [1998] ECR I-655, paragraph 18, and Case T-89/96 *British Steel* v *Commission* [1999] ECR II-2089, paragraph 33).

138 In the light of the principal arguments put forward by the Council and the intervening Governments, the Court will begin by considering whether the rights and safeguards alleged by the applicant to have been infringed may, in principle, apply in the context of the adoption of a decision to freeze funds on the basis of Regulation No 2580/2001. The Court will then determine the purpose of, and identify the restrictions on, those rights and safeguards in such a context. Lastly, the Court will rule on the alleged infringement of the rights and safeguards in question, in the specific circumstances of the present case.

Applicability of the safeguards relating to observance of the rights of the defence, the obligation to state reasons and the right to effective judicial protection in the context of the adoption of a decision to freeze funds on the basis of Regulation No 2580/2001

– Rights of the defence

139 According to settled case-law, observance of the rights of the defence is, in all proceedings initiated against a person which are liable to culminate in a measure adversely affecting that person, a fundamental principle of Community law which must be guaranteed even in the absence of any rules governing the procedure in question. That principle requires that any person on whom a penalty may be imposed must be placed in a position in which he can effectively make known his view of the evidence adduced against him on which the penalty is based (Case C-135/92 *Fiskano* v *Commission* [1994] ECR I-2885, paragraphs 39 and 40, and the case-law cited).

140 In the present case, the contested decision, by which an individual economic and financial sanction (freezing of funds) has been imposed on the applicant undeniably affects him adversely (see also paragraph 146 below). That case-law is, therefore, relevant to the present case.

141 It follows from that case-law that, subject to exceptions (see paragraph 174 et seq. below), the safeguarding of the rights of the defence comprises, in principle, two main parts. First, the party concerned must be informed of the evidence adduced against it to justify the proposed administrative sanction ('notification of the evidence adduced'). Second, he must be afforded the opportunity effectively to make known his view on that evidence ('hearing').

142 Understood in that way, the safeguarding of the rights of the defence in the context of the administrative procedure itself is to be distinguished from the safeguarding of the right to an effective judicial remedy against the act having adverse effects which may be adopted at the end of that procedure (see, to that effect, Case T-372/00 *Campolargo* v *Commission* [2002] ECR-SC I-A-49 and II-223, paragraph 36). The arguments of the Council and the United Kingdom relating to Article 6 of the ECHR (see paragraphs 77 to 79 above) are thus irrelevant to this head of claim.

143 Moreover, the safeguard relating to observance of the rights of the defence proper, in the context of the adoption of a decision to freeze funds on the basis of Regulation No 2580/2001, cannot be denied to the parties concerned solely on the ground, relied on by the Council and the United Kingdom (see paragraphs 78 and 79 above), that neither the ECHR nor the general principles of Community law confer on individuals any right whatsoever to be heard before the adoption of an act of a legislative nature (see, to that effect and by analogy, *Yusuf*, paragraph 322).

144 It is true that the case-law relating to the right to be heard cannot be extended to the context of a Community legislative process culminating in the enactment of legislation involving a choice of economic policy and applying to the generality of the traders concerned (*Atlanta and Others* v *European Community*, paragraph 130 above, paragraph 70, upheld on appeal in Case C-104/97 P *Atlanta* v *European Community* [1999] ECR I-6983, paragraphs 34 to 38).

145 It is also true that the contested decision, which maintains the applicant in the list at issue, after he had been included by the decision originally challenged, is of the same general application as Regulation No 2580/2001 and, like that regulation, is directly applicable in all Member States. Therefore, despite its title, it shares that act's legislative nature for the purposes of Article 249 EC (see, by analogy, order in Case T-45/02 *DOW AgroSciences* v *Parliament and Council* [2003] ECR II-1973, paragraphs 31 to 33, and case-law cited, and *Yusuf*, paragraphs 184 to 188).

146 However, that decision is not of an exclusively legislative nature. While being of general application, it is of direct and individual concern to the applicant, to whom moreover it refers by name as having to be included in the list of persons, groups and entities whose funds are to be frozen pursuant to Regulation No 2580/2001. Since it is an act which imposes an individual economic and financial sanction (see paragraph 140 above), the case-law cited in paragraph 144 above is therefore irrelevant (see, by analogy, *Yusuf*, paragraph 324).

147 It is, moreover, appropriate to mention the aspects which distinguish the present case from the cases which gave rise to the judgments in *Yusuf* and *Kadi*, in which it was held that the Community institutions were not required to hear the parties concerned in the context of the adoption and implementation of a similar measure freezing the funds of persons and entities linked to Usama bin Laden, Al-Qaeda and the Taliban.

148 That solution was justified in those cases by the fact that the Community institutions had merely transposed into the Community legal order, as they were bound to do, resolutions of the Security Council and decisions of its Sanctions Committee that imposed the freezing of the funds of the parties concerned, designated by name, without in any way authorising those institutions, at the time of actual implementation, to provide for any Community mechanism whatsoever for the examination or re-examination of individual situations. The Court inferred therefrom that the principle of Community law relating to the right to be heard could not apply in such circumstances, where to hear the person concerned could not in any case lead the institutions to review their position (*Yusuf*, paragraph 328, and *Kadi*, paragraph 258).

149 In the present case, by contrast, although Security Council Resolution 1373 (2001) provides inter alia in Paragraph 1(c) that all States must freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts, of entities owned or controlled directly or indirectly by such persons, and of persons and entities acting on behalf of, or at the direction of, such persons and entities, it does not specify individually the persons, groups and entities who or which are to be subject to those measures. Nor did the Security Council establish specific legal rules concerning the procedure for freezing funds, or the safeguards or judicial remedies ensuring that the persons or entities affected by such a procedure would have a genuine opportunity to challenge the measures adopted by the States in respect of them.

150 Thus, in the context of Resolution 1373 (2001), it is for the Member States of the United Nations (UN) – and, in this case, the Community, through which its Member States have decided to act – to identify specifically the persons, groups and entities whose funds are to be frozen pursuant to that resolution, in accordance with the rules in their own legal order.

151 In that connection, the Council and the United Kingdom have acknowledged, in substance, in their written observations on *Yusuf*, that, in the implementation of Security Council Resolution 1373 (2001), the measures adopted by the Council under circumscribed powers and thereby benefiting from the principle of primacy arising under Articles 25 and 103 of the Charter of the United Nations are essentially those provided for by the relevant provisions of Regulation No 2580/2001, which determine the content of the restrictive measures to be adopted in relation to the persons referred to in Paragraph 1(c) of that resolution. However, unlike the acts at issue in the case which gave rise to the judgment in *Yusuf*, the acts which specifically apply those restrictive measures to a given person or entity, such as the contested decision, do not fall within the exercise of circumscribed powers and accordingly do not benefit from the 'primacy' effect in question (see also paragraph 110 above). The Council submits that the adoption of those acts falls instead within the ambit of the exercise of the broad discretion it enjoys in the area of the CFSP.

152 Those considerations may, in substance, be approved by the Court, subject to the possible difficulties in applying Paragraph 1(c) of Resolution 1373 (2001) which may be caused by the absence, to date, of a universally accepted definition of the concepts of 'terrorism' and 'terrorist act' in international law (see, on this point, Final Document (A/60/L1) adopted by the UN General Assembly on 15 September 2005, on the occasion of the world summit celebrating the 60th

anniversary of the UN).

153 Last, it is to be noted that the Community does not act under powers circumscribed by the will of the Union or by that of its Member States as it may be expressed in a common position adopted in the sphere of the CFSP when, as in the present case, the Council adopts economic sanctions measures on the basis of Articles 60 EC, 301 EC and 308 EC. That point of view is, moreover, the only one compatible with the actual wording of Article 301 EC, according to which the Council is to decide on the matter 'by a qualified majority on a proposal from the Commission', and that of Article 60(1) EC, according to which the Council 'may take', following the same procedure, the urgent measures necessary for an act under the CFSP.

154 Since the identification of the persons, groups and entities contemplated in Security Council Resolution 1373 (2001), and the adoption of the ensuing measure to freeze funds, involve the exercise of the Community's own powers, entailing a discretionary assessment by the Community, the Community institutions concerned, in this case the Council, are as a rule bound to observe the rights of the defence of the parties concerned when they act with a view to giving effect to that resolution.

155 It follows that the safeguarding of the rights of the defence is, in principle, fully applicable in the context of the adoption of a decision to freeze funds under Regulation No 2580/2001.

– Obligation to state reasons

156 As a rule, the safeguard relating to the obligation to state reasons provided for by Article 253 EC is also fully applicable in the context of the adoption of a decision to freeze funds under Regulation No 2580/2001, which has not, moreover, been questioned by any of the parties.

– The right to effective judicial protection

157 As to the safeguard relating to the right to effective judicial protection, it should be borne in mind that, according to settled case-law, individuals must be able to avail themselves of effective judicial protection of the rights they have under the Community legal order, the right to such protection forming part of the general legal principles deriving from the constitutional traditions common to the Member States and being enshrined in Articles 6 and 13 of the ECHR (see Case T-279/02 *Degussa* v *Commission* [2006] ECR II-897, paragraph 421, and case-law cited).

158 That applies in particular to measures to freeze the funds of persons or organisations suspected of terrorist activities (see, to that effect, Article XIV of the Guidelines on Human Rights and the Fight against Terrorism, adopted by the Committee of Ministers of the Council of Europe on 11 July 2002).

159 In the present case, the only reservation expressed by the Council, in relation to the applicability of the principle of that safeguard, is that in its view the Court has no jurisdiction to review the internal lawfulness of the substantive provisions of Regulation No 2580/2001, because they were adopted by virtue of powers circumscribed by Security Council Resolution 1373 (2001) and therefore benefit from the principle of primacy referred to in paragraph 151 above.

160 It is not, however, necessary for the Court to rule on the merits of that reservation because the present dispute can be resolved, as will be explained below, solely on the basis of judicial review of the lawfulness of the contested decision, and none of the parties denies that that indeed comes within the Court's jurisdiction.

Purpose and limitations of the safeguards relating to observance of the rights of the defence, the obligation to state reasons and the right to effective judicial protection in relation to the adoption of a decision to freeze funds pursuant to Regulation No 2580/2001

– Rights of the defence

161 It is appropriate first, to define the purpose of the safeguarding of the rights of the defence in relation to the adoption of a decision to freeze funds under Article 2(3) of Regulation No 2580/2001, distinguishing between an initial decision to freeze funds referred to in Article 1(4) of Common Position 2001/931 ('the initial decision to freeze funds') and any one of the subsequent decisions to maintain a freeze of funds, following a periodic review, as referred to in Article 1(6) of that common position ('subsequent decisions to freeze funds').

162 In this context, it is first of all to be stressed that the rights of the defence fall to be exercised with regard only to the elements of fact and law which are capable of determining the application of the measure in question to the person concerned, in accordance with the relevant legislation.

163 In the instant case, the relevant rules are laid down in Article 2(3) of Regulation No 2580/2001, under which the Council, acting unanimously, 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 or entities concerned, irrespective of whether it concerns the instigation of investigations or prosecution for a terrorist act, an attempt to perpetrate, participate in or facilitate such an act based on serious and credible evidence or clues, or conviction for such actions. 'Competent authority' means a judicial authority or, where judicial authorities have no jurisdiction in the relevant area, an equivalent competent authority in that area. Moreover, the names of persons and entities in the list are to be reviewed at regular intervals and at least once every six months to ensure that there are still grounds for continuing to include them in the list, in accordance with Article 1(6) of Common Position 2001/931.

164 As rightly pointed out by the Council and the Member States which have intervened, the procedure which may culminate in a measure to freeze funds under the relevant rules takes place therefore at two levels, one national, the other Community. Initially, a competent national authority, generally judicial, must take in respect of the party concerned a decision complying with the definition in Article 1(4) of Common Position 2001/931. If that is a decision to instigate investigations or prosecution, it must be based on serious and credible evidence or clues. Secondly, the Council, acting unanimously, must decide whether to include the person concerned in the list at issue, on the basis of precise information or material in the relevant file which indicates that such a decision has been taken. Subsequently, the Council must, at regular intervals, and at least once every six months, ensure that there are still grounds for continuing to include the person concerned in the list. Verification that there exists a decision of a national authority meeting that definition appears to be 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 national level appears necessary in relation to the adoption of a subsequent decision to freeze funds.

165 Accordingly, the issue of observance of the rights of the defence in relation to the adoption of a decision to freeze funds may also arise at those two levels (see, to that effect and by analogy, *'Invest' Import und Export and Invest Commerce* v *Commission*, paragraph 113 above, paragraph 40).

166 The rights of the defence of the party concerned must first of all be effectively safeguarded in the national procedure which led to the adoption, by the competent national authority, of the decision referred to in Article 1(4) of Common Position 2001/931. It is essentially in that national context that the person concerned must be placed in a position in which he can effectively make known his view of the matters on which the decision is based, subject to possible restrictions on the rights of the defence which are legally justified in national law, particularly on grounds of public policy, public security or the maintenance of international relations (see, to that effect, ECHR judgment of 10 July 1998, *Tinnelly & Sons and Others and McElduff and Others* v *United Kingdom*, *Reports of Judgments and Decisions,* 1998-IV, §78.

167 Next, the rights of the defence of the person concerned must be effectively safeguarded in the Community procedure culminating in the adoption, by the Council, of the decision to include or maintain him in the disputed list, in accordance with Article 2(3) of Regulation No 2580/2001. As a rule, in that area, the party concerned need be afforded only the opportunity effectively to make known his views on the legal conditions of application of the Community measure in question, namely, where it is an initial decision to freeze funds, whether there exists specific information or material in the file which shows that a decision meeting the definition laid down in Article 1(4) of Common Position 2001/931 was taken in respect of him by a competent national authority or, where it is a subsequent decision to freeze funds, whether there are reasons for continuing to include him in the list at issue.

168 However, in so far as the decision in question was adopted by a competent authority of a Member State, observance of the rights of the defence at Community level does not usually at that stage require the party concerned again to be afforded the opportunity to express his views on the appropriateness and validity of that decision, for those questions may not be raised except at national level, before the authority in question or, where the party concerned brings an action,

before the competent national court. Likewise, as a rule, it is not for the Council to decide whether the proceedings instigated against the party concerned and resulting in that decision, as provided for by the national law of the relevant Member State, were correctly conducted, or whether the fundamental rights of the party concerned were respected by the national authorities. That power belongs exclusively to the competent national courts or, as the case may be, to the European Court of Human Rights (see, by analogy, Case T-353/00 *Le Pen* v *Parliament* [2003] ECR II-1729, paragraph 91, upheld on appeal in Case C-208/03 P *Le Pen* v *Parliament* [2005] ECR I-6051).

169 Nor, if the Community measure to freeze funds is adopted on the basis of a decision by a national authority of a Member State concerning investigations or prosecutions (rather than on the basis of conviction and sentence), does the observance of the rights of the defence require, as a rule, that the person concerned should be afforded the opportunity effectively to make known his views on whether that decision is 'based on serious and credible evidence or clues', as required by Article 1 (4) of Common Position 2001/931. Although that factor is one of the legal conditions of application of the measure in question, the Court finds that it would be inappropriate, having regard to the duty to cooperate in good faith referred to in Article 10 EC, to make it subject to the exercise of the rights of the defence at Community level.

170 The Court notes 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).

171 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, the Court finds that 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, both in respect of the issue of whether there are 'serious and credible evidence or clues' on which its decision is based and also in respect of recognition of potential restrictions on access to that evidence or those clues, legally justified under national law for overriding reasons of public policy, public security or the maintenance of international relations (see, by analogy, Case T-353/94 *Postbank* v *Commission* [1996] ECR II-921, paragraph 69, and case-law cited).

172 It must, however, be added that these considerations are valid only in so far as the evidence or clues in question have in fact been assessed by the competent national authority referred to in the preceding paragraph. If, on the other hand, in the course of the procedure before it, the Council bases its initial decision or a subsequent decision to freeze funds on information or evidence communicated to it by representatives of the Member States without having been assessed by the competent national authority, that information must be considered to be fresh incriminating evidence which must, as a rule, be the subject of notification and of a hearing at Community level, by reason of its not having already been so at national level.

173 It follows from the foregoing that, in the context of relations between the Community and its Member States, observance of the rights of the defence has a relatively limited purpose at the level of the Community procedure for freezing funds. In the case of an initial decision to freeze funds, it requires as a rule, first, that the party concerned should be informed by the Council of the specific information or material in the file which indicates that a decision meeting the definition given in Article 1(4) of Common Position 2001/931 has been taken in respect of it by a competent authority of a Member State, and also, where applicable, any new material as referred to in paragraph 172 above and, second, that that party should be placed in a position in which it can effectively make known its view on the information or material in the file. In the case of a subsequent decision to freeze funds, observance of the rights of the defence similarly requires, first, that the party concerned should be informed of the information or material in the file which, in the view of the Council, justifies continuing to include it in the lists at issue and also, where applicable, of any new material as referred to in paragraph 172 above and, second, that it should be afforded the opportunity effectively to make known its view on the matter.

174 At the same time, certain restrictions on the rights of the defence, so defined in terms of their purpose, may nevertheless legitimately be envisaged and imposed on the parties concerned, in circumstances such as those of the present case, where specific restrictive measures are at issue that consist of a freeze of the funds and financial assets of the persons, groups and entities

identified by the Council as being involved in terrorist acts.

175 Thus the Court finds, as was held in *Yusuf* and as submitted in the present case by the Council and the United Kingdom, that notification of the evidence adduced and a hearing of the parties concerned, before the initial decision to freeze funds was adopted, would be liable to jeopardise the effectiveness of the sanctions and would thus be incompatible with the public-interest objective pursued by the Community in accordance with Security Council Resolution 1373 (2001). An initial measure freezing funds must, by its very nature, be able to benefit from a surprise effect and to be applied with immediate effect. Such a measure cannot, therefore, be the subject-matter of a prior notification before it is implemented (*Yusuf*, paragraph 308; see also, to that effect and by analogy, the Opinion of Advocate General Warner in Case 136/79 *National Panasonic* v *Commission* [1980] ECR 2033, 2061, 2068, 2069).

176 However, if the parties concerned are to be able to defend their rights effectively, particularly in legal proceedings which might be brought before the Court of First Instance, it is also necessary that they should be notified of the evidence adduced against them, in so far as reasonably possible, either concomitantly with or as soon as possible after the adoption of the initial decision to freeze funds (see also paragraph 186 below).

177 In that context, the parties concerned must also have the opportunity to request an immediate re-examination of the initial measure freezing their funds (see, to that effect, in the case-law of the Community civil service, Case T-211/98 *F* v *Commission* [2000] ECR-SC I-A-107 and II-471, paragraph 34; Case T-333/99 *X* v *ECB* [2001] ECR-SC II-3021, paragraph 183, and *Campolargo* v *Commission*, paragraph 142 above, paragraph 32). The Court recognises, however, that such a hearing after the event is not automatically required in the context of an initial decision to freeze funds, in the light of the possibility that the parties concerned also have immediately to bring an action before the Court of First Instance, which ensures that a balance is also struck between observance of the fundamental rights of the persons included in the list at issue and the need to take preventive measures to combat international terrorism (see, to that effect and by analogy, the Opinion of Advocate General Warner in *National Panasonic* v *Commission*, paragraph 175 above, [1980] ECR 2069).

178 It must be emphasised, however, that the considerations just mentioned are not relevant to subsequent decisions to freeze funds adopted by the Council in connection with the re-examination, at regular intervals, at least every six months, of the justification for continuing to include the parties concerned in the list at issue, provided for by Article 1(6) of Common Position 2001/931. At that stage, the funds are already frozen and it is accordingly no longer necessary to ensure a surprise effect in order to guarantee the effectiveness of the sanctions. Any subsequent decision to freeze funds must accordingly be preceded by the possibility of a further hearing and, where appropriate, notification of any new incriminating evidence.

179 The Court cannot accept the argument that the Council need not hear the parties concerned, in the context of the adoption of a subsequent decision to freeze funds, unless they have previously made an express request to that effect. Under Article 1(6) of Common Position 2001/931, the Council may adopt such a decision only after ascertaining that continuing to include the parties concerned in the list at issue remains justified, which implies that it must first give them the opportunity effectively to make known their views on the matter.

180 Next, the Court recognises that, in circumstances such as those of this case, where what is at issue is a protective measure restricting the availability of the property of certain persons, groups and entities in connection with combating terrorism, overriding considerations concerning the security of the Community and its Member States, or the conduct of their international relations, may preclude the communication to the parties concerned of certain evidence adduced against them and, in consequence, the hearing of those parties with regard to such evidence, during the administrative procedure (see, by analogy, *Yusuf*, paragraph 320).

181 Such restrictions are consistent with the constitutional traditions common to the Member States. Thus, exceptions to the general right to be heard in the course of an administrative procedure are permitted in many Member States on grounds of public interest, public policy or the maintenance of international relations, or when the purpose of the decision to be taken would or could be jeopardised if that right were observed.

182 They are, moreover, consistent with the case-law of the European Court of Human Rights which, even in the more stringent context of adversarial criminal proceedings subject to the requirements

of Article 6 of the ECHR, acknowledges that, in cases concerning national security and, more specifically, terrorism, certain restrictions on the right to a fair hearing may be envisaged, especially concerning disclosure of evidence adduced or terms of access to the file (see, for example, *Chahal* v *United Kingdom*, judgment of 15 November 1996, Report 1996-V, § 131, and *Jasper* v *United Kingdom*, judgment of 16 February 2000, No 27052/95, not published in Reports of Judgments and Decisions, §§ 51 to 53, and case-law cited; see also Article IX.3 of the Guidelines adopted by the Committee of Ministers of the Council of Europe, referred to in paragraph 158 above).

183 In the circumstances of this case, those considerations apply above all to the 'serious and credible evidence or clues' on which the national decision to instigate an investigation or prosecution is based, in so far as they may have been brought to the attention of the Council, but it is also conceivable that restrictions on access may concern the specific content of or the particular reasoning of that decision, or even the identity of the authority that took it. It is even possible that, in certain, very specific circumstances, the identification of the Member State or third country in which a competent authority has taken a decision in respect of a person may be liable to jeopardise public security, by providing the party concerned with sensitive information which it could misuse.

184 It follows from all of the foregoing that the general principle of observance of the rights of the defence requires, unless this is precluded by overriding considerations concerning the security of the Community or its Member States, or the conduct of their international relations, that the evidence adduced against the party concerned, as identified in paragraph 173 above, should be notified to it, in so far as possible, either concomitantly with or as soon as possible after the adoption of an initial decision to freeze funds. Subject to the same reservations, any subsequent decision to freeze funds must, as a rule, be preceded by notification of any new incriminating evidence and a hearing. However, observance of the rights of the defence does not require either that the evidence adduced against the party concerned should be notified to it prior to the adoption of an initial measure to freeze funds, or that that party should automatically be heard after the event in such a context.

– Obligation to state reasons

185 According to settled case-law, the purpose of the obligation to state the reasons for an act adversely affecting a person is, first, to provide the person concerned with sufficient information to make it possible for him to determine whether the act is well founded or whether it is vitiated by an error which may permit its validity to be contested before the Community judicature and, second, to enable the latter to review the lawfulness of that act (Case C-199/99 P *Corus UK* v *Commission* [2003] ECR I-11177, paragraph 145, and Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P *Dansk Rørindustri and Others* v *Commission* [2005] ECR I-5425, paragraph 462). The obligation to state reasons thus set down constitutes an essential principle of Community law from which derogation is possible only on compelling grounds (see Case T-218/02 *Napoli Buzzanca* v *Commission* [2005] ECR-SC I-A-267 and II-1221, paragraph 57, and case-law cited)..

186 The statement of reasons must therefore as a rule be notified to the person concerned at the same time as the act adversely affecting him. Failure to state reasons cannot be remedied by the fact that the person concerned learns the reasons for the act during the proceedings before the Community judicature (Case 195/80 *Michel* v *Parliament* [1981] ECR 2861, paragraph 22, and *Dansk Rørindustri and Others* v *Commission*, paragraph 185 above, paragraph 463). In fact, the possibility of remedying the total absence of a statement of reasons after an action has been brought would prejudice the rights of the defence because the applicant would have only the reply in which to set out his pleas contesting the reasons which he would not know until after he had lodged his application. The principle of equality of the parties before the Community judicature would accordingly be adversely affected (Case T-132/03 *Casini* v *Commission* [2005] ECR-SC I-A-253 and II-1169, paragraph 33, and *Napoli Buzzanca* v *Commission*, paragraph 185 above, paragraph 62).

187 If the party concerned is not afforded the opportunity to be heard before the adoption of an initial decision to freeze funds, compliance with the obligation to state reasons is all the more important because it constitutes the sole safeguard enabling the party concerned, at least once that decision has been adopted, to make effective use of the legal remedies available to it to challenge the lawfulness of that decision (Case T-237/00 *Reynolds* v *Parliament* [2005] ECR SC I-A-385 and II-1731, paragraph 95; see also, to that effect, Joined Cases T-371/94 and T-394/04 *British Airways and British Midland Airways* v *Commission* [1998] ECR II-2405, paragraph 64).

188 The Court has consistently held that the statement of reasons required by Article 253 EC must be appropriate to the measure at issue and to the context in which it was adopted. It must disclose in a

clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review of the lawfulness thereof. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the statement of reasons to specify all the relevant matters of fact and law, since the question whether the statement of reasons meets the requirements of Article 253 EC must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question. In particular, the reasons given for an act adversely affecting a party are sufficient if it was adopted in circumstances known to the party concerned which enable him to understand the scope of the measure concerning him (Case 125/80 *Arning* v *Commission* [1981] ECR 2539, paragraph 13; Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 63; Case C-301/96 *Germany* v *Commission* [2003] ECR I-9919, paragraph 87; Case C-42/01 *Portugal* v *Commission* [2004] ECR I-6079, paragraph 66; and Joined Cases T-228/99 and T-233/99 *Westdeutsche Landesbank Girozentrale and Land Nordrhein-Westfalen* v *Commission* [2003] ECR II-435, paragraphs 278 to 280). Moreover, the degree of precision of the statement of the reasons for a decision must be weighed against practical realities and the time and technical facilities available for making the decision (see *Delacre and Others* v *Commission*, paragraph 104 above, paragraph 16, and case-law cited).

189 In the context of the adoption of a decision to freeze funds under Regulation No 2580/2001, the grounds for that decision must be assessed primarily in the light of the legal conditions of application of that regulation to particular circumstances, as set out in Article 2(3) thereof and, by reference, in Article 1(4) or Article 1(6) of Common Position 2001/931, depending on whether it is an initial decision or a subsequent decision to freeze funds.

190 The Court cannot accept that, as the Council and the Netherlands maintain, the statement of reasons may consist of no more than general and formulaic wording, modelled on the drafting of Article 2(3) of Regulation No 2580/2001 and Article 1(4) or (6) of Common Position 2001/931. In accordance with the principles referred to above, the Council is bound to state the matters of fact and law on which the legal reasoning of its decision depends and the considerations which led it to adopt that decision. The grounds for such a measure must therefore indicate the actual and specific reasons why the Council considers that the relevant rules are applicable to the party concerned (see, to that effect, Case T-117/01 *Roman Parra* v *Commission* [2002] ECR-SC I-A-27 and II-121, paragraph 31, and *Napoli Buzzanca* v *Commission*, paragraph 185 above, paragraph 74).

191 That means, as a rule, that the statement of reasons for an initial decision to freeze funds must at least refer to each of the aspects referred to in paragraph 163 above and also, where applicable, the aspects referred to in paragraphs 172 and 173 above, whereas the statement of reasons for a subsequent decision to freeze funds must indicate the actual and specific reasons why the Council considers, following re-examination, that there are still grounds for the freezing of the funds of the party concerned.

192 Moreover, when unanimously adopting a measure to freeze funds under Regulation No 2580/2001, the Council does not act under circumscribed powers. Article 2(3) of Regulation No 2580/2001, read together with Article 1(4) of Common Position 2001/931, is not to be construed as meaning that the Council is obliged to include in the list at issue any person in respect of whom a decision has been taken by a competent authority within the meaning of those provisions. This interpretation is confirmed by Article 1(6) of Common Position 2001/931, to which Article 2(3) of Regulation No 2580/2001 also refers, and according to which the Council is to conduct a 'review' at regular intervals, at least once every six months, to ensure that 'there are grounds' for keeping the parties concerned in the disputed list.

193 It follows that, as a rule, the statement of reasons for a measure to freeze funds under Regulation No 2580/2001 must refer not only to the legal conditions of application of that regulation, but also to the reasons why the Council considers, in the exercise of its discretion, that such a measure must be adopted in respect of the party concerned.

194 The considerations set out in paragraphs 190 to 193 above must nevertheless take account of the fact that a decision to freeze funds under Regulation No 2580/2001, whilst imposing an individual economic and financial sanction, is, like that act, also legislative in nature, as explained in paragraphs 145 and 146 above. Moreover, a detailed publication of the charges levelled at the parties concerned might not only conflict with the overriding considerations of public interest which

will be discussed in paragraph 195 below, but also jeopardise the legitimate interests of the persons and entities in question, in that it would be capable of causing serious damage to their reputations. Accordingly, the Court finds, exceptionally, that only the operative part of the decision and a general statement of reasons, of the type referred to in paragraph 190 above, need appear in the version of the decision to freeze funds published in the Official Journal, it being understood that the actual, specific statements of reasons for that decision must be formalised and brought to the knowledge of the parties concerned by any other appropriate means.

195 Moreover, in circumstances such as those of this case, it must be recognised that the overriding considerations concerning the security of the Community and its Member States, or the conduct of their international relations, may preclude disclosure to the parties concerned of the specific and complete reasons for the initial or subsequent decision to freeze their funds, just as they may preclude the evidence adduced against those parties from being communicated to them during the administrative procedure. In that connection the Court refers to the considerations set out above, in particular in paragraphs 180 to 184 above, regarding the restrictions on the general principle of observance of the rights of the defence which may be permitted in such a context. Those considerations are valid, mutatis mutandis, in respect of the restrictions which may be imposed on the obligation to state reasons.

196 Although it is not applicable to the circumstances of the present case, the Court also considers that inspiration may be drawn from the provisions of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, corrigendum OJ 2004 L 229, p. 35, corrigendum to the corrigendum OJ 2005 L 197, p. 34). Article 30(2) of that directive provides that 'the persons concerned shall be informed, precisely and in full, of the public policy, public security or public health grounds on which the decision [restricting the freedom of movement and residence of a citizen of the Union or a member of his family] taken in their case is based, unless this is contrary to the interests of State security'.

197 In accordance with the case-law of the Court of Justice (Case 36/75 *Rutili* [1975] ECR 1219, and Case 131/79 *Santillo* [1980] ECR 1585) concerning Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (OJ, English Special Edition 1963-1964, p. 117), repealed by Directive 2004/38, Article 6 of which was essentially identical to Article 30(2) of the latter, any person enjoying the protection of the provisions cited must be entitled to a twofold safeguard, consisting of notification to him of the grounds on which any restrictive measure has been adopted in his case, unless grounds related to the security of the State militate against it, and the availability of a right of appeal. Subject to the same reservation, this requirement means in particular that the State concerned must, when notifying an individual of a restrictive measure adopted in his case, give him a precise and comprehensive statement of the grounds for the decision, to enable him to take effective steps to prepare his defence.

198 It follows from all of the foregoing that, unless overriding considerations concerning the security of the Community and its Member States, or the conduct of their international relations, militate against it, and subject also to what has been set out in paragraph 194 above, the statement of reasons for an initial decision to freeze funds must at least make actual and specific reference to each of the aspects referred to in paragraph 163 above and also, where applicable, to the aspects referred to in paragraphs 172 and 173 above, and state the reasons why the Council considers, in the exercise of its discretion, that such a measure must be taken in respect of the party concerned. Moreover, the statement of reasons for a subsequent decision to freeze funds must, subject to the same reservations, state the actual and specific reasons why the Council considers, following re-examination, that the freezing of the funds of the party concerned remains justified.

– Right to effective judicial protection

199 Last, with respect to the safeguard relating to the right to effective judicial protection, this is effectively ensured by the right the parties concerned have to bring an action before the Court of First Instance against a decision to freeze their funds, pursuant to the fourth paragraph of Article 230 EC (see, to that effect, European Court of Human Rights, *Bosphorus* v *Ireland*, judgment of 30 June 2005, No 45036/98, not yet published in the Reports of Judgments and Decisions, § 165, and the decision in *Segi and Others and Gestoras pro Amnistía* v *The 15 Member States of the European Union*, paragraph 124 above.

200 In that context, the judicial review of the lawfulness of a decision to freeze funds taken pursuant to Article 2(3) of Regulation No 2580/2001 is that provided for in the second paragraph of Article 230 EC, under which the Community judicature has jurisdiction in actions brought on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the EC Treaty or of any rule of law relating to its application, or misuse of powers.

201 As part of that review, and having regard to the grounds for annulment put forward by the party concerned or raised by the court of its own motion, it is for the Court to ensure, inter alia, that the legal conditions for applying Regulation No 2580/2001 to particular circumstances, as laid down in Article 2(3) of that regulation and, by reference, in either Article 1(4) or Article 1(6) of Common Position 2001/931, depending on whether it is an initial decision or a subsequent decision to freeze funds, have been fulfilled. That implies that judicial review of the lawfulness of the decision in question extends to the assessment of the facts and circumstances relied on as justifying that decision, and to the evidence and information on which that assessment is based, as the Council expressly recognised in its written pleadings in the case giving rise to the judgment in *Yusuf*, (paragraph 225). The Court must also be satisfied that the rights of the defence have been observed and that the requirement of a statement of reasons has been complied with and also, where applicable, that the overriding considerations relied on exceptionally by the Council, in order to escape those obligations, are justified.

202 In the present case, that review is all the more imperative because it constitutes the only procedural safeguard capable of ensuring that a fair balance is struck between the need to combat international terrorism and the protection of fundamental rights. Since the restrictions imposed by the Council on the rights of the defence of the parties concerned must be offset by a strict judicial review which is independent and impartial (see, to that effect, Case C-341/04 *Eurofood* [2006] ECR I-3813, paragraph 66), the Community judicature must be able to review the lawfulness and merits of the measures to freeze funds without its being possible to raise objections that the evidence and information used by the Council is secret or confidential.

203 It must be emphasised that, although the European Court of Human Rights recognises that the use of confidential information may be necessary when national security is at stake, that does not mean, in its view, that national authorities are free from any review by the national courts simply because they state that the case concerns national security and terrorism (see Eur. Court H.R., *Chahal* v *United Kingdom*, paragraph 182 above, § 131, and case-law cited, and *Öcalan* v *Turkey*, judgment of 12 March 2003, No 46221/99, not published in the Reports of Judgments and Decisions, § 106, and case-law cited).

204 The Court finds that, here also, inspiration may be drawn from the provisions of Directive 2004/38. In accordance with the case-law referred to in paragraph 197 above, Article 31(1) of that directive provides that the persons concerned are to have access to judicial and, where appropriate, administrative means of redress in the host Member State to appeal against or seek review of any decision taken against them on the grounds of public policy, public security or public health. Moreover, Article 31(3) of that directive provides that the means of redress are to allow for an examination of the lawfulness of the decision, as well as of the facts and circumstances on which the proposed measure is based.

205 The question whether the applicant and/or his lawyers may be provided with the evidence and information alleged to be confidential, or whether they may be provided only to the Court, in accordance with a specific procedure which remains to be defined so as to safeguard the public interest at issue whilst affording the party concerned a sufficient degree of judicial protection, is a separate issue on which it is not necessary for the Court to rule in the present action (see nevertheless Eur. Court H.R., *Chahal* v *United Kingdom*, paragraph 182 above, §§ 131 and 144; *Tinnelly & Sons and Others and McElduff and Others* v *United Kingdom*, paragraph 166 above, §§ 49, 51, 52 and 78; *Jasper* v *United Kingdom*, paragraph 182 above, §§ 51 to 53; and *Al-Nashif* v *Bulgaria*, judgment of 20 June 2002, No 50963/99, not published in the Reports of Judgments and Decisions, §§ 95 to 97, and also Article IX.4 of the Guidelines adopted by the Committee of Ministers of the Council of Europe, cited in paragraph 158 above).

206 Lastly, it is to be recognised that the Council enjoys broad discretion in its assessment of the matters to be taken into consideration for the purpose of adopting economic and financial sanctions on the basis of Articles 60 EC, 301 EC and 308 EC, consistent with a common position adopted on the basis of the CFSP. Because the Community judicature may not, in particular, substitute its assessment of the evidence, facts and circumstances justifying the adoption of such measures for that of the Council, the review carried out by the Court of First Instance of the lawfulness of decisions to freeze funds must be restricted to checking that the rules governing procedure and the

statement of reasons have been complied with, that the facts are materially accurate, and that there has been no manifest error of assessment of the facts or misuse of power. That limited review applies, especially, to the assessment of the considerations of appropriateness on which such decisions are based (see paragraph 193 above and, to that effect, Eur. Court H.R., *Leander* v *Sweden* , judgment of 26 March 1987, Series A No 116, § 59, and *Al-Nashif* v *Bulgaria*, paragraph 205 above, §§ 123 and 124).

Application to the circumstances of the case

207 The Court notes, first, that the relevant legislation, namely Regulation No 2580/2001 and Common Position 2001/931 to which it refers, does not explicitly provide for any procedure for notification of the evidence adduced or for a hearing of the parties concerned, either before or concomitantly with the adoption of an initial decision to freeze their funds or, in the context of the adoption of subsequent decisions, with a view to having them removed from the list at issue. At the very most, Article 1(6) of Common Position 2001/931 states that 'the names of persons and entities in the list in the Annex shall be reviewed at regular intervals and at least once every six months to ensure that there are grounds for keeping them on the list', and Article 2(3) of Regulation No 2580/2001 provides that 'the Council … shall … review and amend the list …, in accordance with the provisions laid down in Article 1 … (6) of Common Position 2001/931'.

208 Next, the Court finds that at no time before this action was brought was the evidence adduced against the applicant notified to him. The applicant rightly points out that neither the initial decision to freeze his funds nor the subsequent decisions, up to and including the contested decision, even mention the 'specific information' or 'material in the file' showing that a decision justifying his inclusion in the disputed list was taken in respect of him by a competent national authority.

209 Both before this action was introduced and again later, during the proceedings, the applicant has attempted in vain to remedy that situation by making various requests to the Council under Regulation No 1049/2001 for access to the documents on the basis of which the Council adopted the decisions concerning him. The Council has consistently refused to allow his requests for access to those documents, including the decision of the national authority referred to in Article 1(4) of Common Position 2001/931, on the ground that they are classified 'CONFIDENTIAL EU' and that to disclose them would prejudice the protection of the public interest with regard to security and international relations. The Council has even gone so far as to refuse to inform the applicant of the identity of the Member State which was the author of that decision, on the ground that that State opposed such disclosure (see, on those matters, Joined Cases T-110/03, T-150/03 and T-405/03 *Sison* v *Council* [2005] ECR II-1429).

210 While the Court in that judgment did dismiss the actions for annulment brought by the applicant against the refusals in question, that was only under the provisions of Regulation No 1049/2001 governing the public's general right of access to documents held by the institutions, and not without ruling in paragraph 55 of that judgment that the issue whether the documents requested were necessary to the defence of the applicant's position in that case was a separate matter falling within the scope of the examination of that question.

211 As a result of that examination, which it is now appropriate to undertake, the Court of First Instance finds that, according to explanations offered by the Council and the Netherlands in their written pleadings, both the decision originally challenged and the contested decision are based first and foremost on the decision of the Rechtbank of 1997 and, indirectly, on the judgments of the Raad van State of 1992 and 1995, and also on the BVD's confidential file which was produced – but not communicated to the applicant – in the course of the proceedings before those courts. Thus the Council maintained in its rejoinder that it had taken due account 'not only [of] the abovementioned judgments of the Dutch courts, but also further … evidence as referred to therein', namely, information supplied by the BVD after investigating 'the applicant's participation in terrorist activities'. In paragraphs 21 to 24 of their statement in intervention, the Netherlands confirmed that the national decision on the basis of which the decision originally challenged was adopted was the decision of the Rechtbank of 1997, taken as a consequence of the judgment of the Raad van State of 1995 and on the basis of the BVD's file. The Netherlands have furthermore declared, in their statement in intervention, that 'other matters on file played a role in the decision taken by the Council'. According to the Netherlands, '[t]hese matters are confidential, the information has not been made public and was not kept by the Council'.

212 In accordance with the principles set out in paragraphs 161 to 183 above and summarised in paragraph 184 above, the Court finds that, in so far as the Council intended to base the measure freezing the applicant's funds on those matters, it was incumbent on the Council at the very least to

make the applicant aware, either simultaneously with the decision originally challenged or as soon as possible after it was adopted, that the judgments of the Raad van State of 1992 and 1995, and the decision of the Rechtbank of 1997 had been used against him as incriminating evidence. Since those were official acts adopted at the end of public judicial proceedings to which the applicant had been a party, it is plain that their communication to the applicant was not prevented by any requirement of confidentiality.

213 In accordance with those same principles, the Court considers furthermore that the subsequent decisions adopted with regard to the applicant, up to and including the contested decision, ought to have been preceded by communication of any new evidence adduced against him, subject to its being of a confidential nature, and also by a hearing.

214 Clearly that was not the case, in breach of the applicant's rights of the defence.

215 The foregoing considerations, ascertaining whether the rights of the defence have been observed, are also applicable, mutatis mutandis, to ascertaining whether the obligation to state reasons has been fulfilled.

216 In the circumstances of the present case, neither the contested decision nor any one of the subsequent decisions, up to and including the contested decision, satisfies the requirement of a statement of reasons as set out above, for they do no more than state, in the second recital in the preambles thereto, that it is 'desirable' or that it has been 'decided' to adopt an up-to-date list of the persons, groups and entities to which Regulation (EC) No 2580/2001 applies. Such general and formulaic wording is tantamount to a total failure to state reasons.

217 In accordance with the principles set out in paragraphs 185 to 197 above, and summarised in paragraph 198 above, the Court holds that, inasmuch as the Council intended to base the decision originally challenged on the factors referred to in paragraph 211 above, the statement of reasons given for that decision ought to have mentioned, at the very least, the judgments of the Raad van State of 1992 and 1995 and the decision of the Rechtbank of 1997 and, subject to their possibly being of a confidential nature, to have indicated the main reasons why the Council took the view, in the exercise of its discretion, that the applicant was to be the subject of such a decision on the basis of those judgments and that decision. Moreover, in stating the reasons for the subsequent decisions to freeze funds, the Council ought, subject to the same reservations, to have indicated the main reasons why, after re-examination, it considered that there were still grounds for the freezing of the applicant's funds.

218 Clearly that was not the case, in breach of Article 253 EC.

219 The applicant has not only been unable effectively to make his views known to the Council but also, given the lack of any statement, in the decision originally challenged or in the contested decision, of the actual and specific grounds justifying those decisions, has not been placed in a position to make good use of his right of action before the Court, given the aforementioned links between the guarantees of the rights of the defence, of the obligation to state reasons and of the right to an effective legal remedy. It is to be borne in mind that the possibility of regularising the total lack of a statement of reasons after an action has been brought is now considered in the case-law to be prejudicial to the rights of the defence and is therefore prohibited (see paragraph 186 above).

220 More specifically, the applicant has been unable to challenge, from the moment these proceedings were initiated, the Council's opinion that the judgments of the Raad van State of 1992 and 1995 and the decision of the Rechtbank satisfy the definition given in Article 1(4) of Common Position 2001/931, a challenge that he was not able to formulate, and that he indeed did not formulate, until the stage of the reply.

221 In this respect, the Court points out that, while the applicant himself made mention of the judgments of the Raad van State of 1992 and 1995 in his application, he seems not to have been aware that those two judgments were regarded by the Council as justification for his inclusion in the lists at issue. Quite the contrary: the applicant referred to those two judgments, in his application, in so far as the supreme administrative court of the Netherlands held therein, in opposition to the opinion of the State Secretary, that the applicant must be given refugee status in the Netherlands. Furthermore, it was only at the stage of the defence that the decision of the Rechtbank of 1997 was pleaded and produced by the Council.

222 The fact remains, moreover, that the parties' written pleadings and the documents in the case

produced before the Court do not make it possible to determine with any certainty whether the decision originally challenged was actually adopted having regard only to the matters contained in the judgments of the Raad van State of 1992 and 1995, the decision of the Rechtbank of 1997 and the BVD file to which those courts had access, as maintained by the Council in the course of the written procedure. Although the Council's pleadings do not imply any such thing, legitimate doubt arises in that regard on reading the Netherlands' statement in intervention, which declares that 'other matters on file played a role in the decision taken by the Council' and states that '[t]hese matters are confidential, the information has not been made public and was not kept by the Council' (see paragraph 211 above).

223 For want of any other information on that head supplied by the Council or the intervening Governments at the hearing, the Court is not in a position either to exclude the possibility that those 'other matters on file' exist and in fact 'played a role' in the Council's assessment, or to determine whether the applicant ought to have been informed of those matters, if they exist, or whether communication of them could legitimately be refused by reason of their confidential nature.

224 Lastly, the fact remains that at the hearing the Council maintained, in answer to the Court's questions, that the competent national authority in this case, for the purposes of Article 2(3) of Regulation No 2580/2001 and of Article 1(4) of Common Position 2001/931, was the State Secretary. It is hard to reconcile that argument with that proposed by the Council in its written pleadings, namely that the decision originally challenged was based, first and foremost, on the decision of the Rechtbank of 1997 (see paragraph 211 above). In contrast, the Kingdom of the Netherlands defended the argument that the competent national authority in the case in point was the Rechtbank. Even though the Council subsequently stated that the decision of the State Secretary was not to be considered in isolation, but together with the decision of the Rechtbank, the wavering of the defendant institution on that score makes impossible, even at this stage of the proceedings, judicial review of the actual grounds on which the contested decision is based.

225 In those circumstances, the Court considers that it is not in a position to carry out adequately its review of the lawfulness of the decision originally challenged or, in consequence, that of the contested decision, in light of the other pleas in law, grounds of challenge and substantive arguments invoked in support of the application for annulment.

226 In conclusion, the Court finds that no statement of reasons has been given for the contested decision and that the latter was adopted in the course of a procedure during which the applicant's rights of the defence were not observed. What is more, the Court is not, even at this stage of the procedure, in a position to undertake the judicial review of the lawfulness of that decision in light of the other pleas in law, grounds of challenge and substantive arguments invoked in support of the application for annulment.

227 Those considerations cannot but lead to the annulment of the contested decision, in so far as it concerns the applicant.

The application for compensation

Arguments of the parties

228 The applicant relies on the second paragraph of Article 288 EC and describes as follows the damage he has sustained by reason of the contested acts:

(a) the freezing of his financial assets, in particular of his bank account;

(b) the prohibition on any financial institution or insurance agency's providing him with services;

(c) the suspension of payment of his social security benefits and the refusal of the Netherlands Government to grant him a residence permit;

(d) the obstacle raised to payments due to the applicant on various scores, in particular as a creditor of the estate of Ferdinand E. Marcos (see paragraph 73 above), as author of books and articles, teacher, lecturer and heir to property left by members of his family;

(e) unwarranted restrictions on his freedom of movement, increased surveillance of his person and orders given to border police and customs authorities to hinder his passage;

(f) material and non-material damage caused by libel, slander and the applicant's being branded a 'terrorist' in official instruments, in the press and in public opinion;

(g) the endangering of his personal safety and physical integrity by the risks and threats arising from his being branded a 'terrorist';

(h) the prejudice to the applicant's role as chief political consultant to the NDFP in peace negotiations, and the resulting threats to the peace process as a whole.

229 In his reply, the applicant states that the wrongful conduct relied on in the present case consists in the manifest error of assessment committed by the Council in his regard by including him in the lists at issue and categorising him as a terrorist, without affording him any procedural guarantee and without providing any valid statement of reasons.

230 The Council submits that the Community can incur liability only where a sufficiently serious breach has occurred of a superior rule of law for the protection of individuals (Joined Cases C-104/89 and C-37/90 *Mulder and Others* v *Council and Commission* [1992] ECR I-3061, paragraph 12).

231 In the circumstances of this case the contested measures, in its view, offend against no rule of law.

Findings of the Court

232 It is settled case-law that, in order for the Community to incur non-contractual liability under the second paragraph of Article 288 EC for the unlawful conduct of its institutions, a number of conditions must be satisfied: the institutions' conduct must be unlawful, actual damage must have been sustained and there must be a causal link between the conduct and the damage pleaded (Case T-69/00 *FIAMM and FIAMM Technologies* v *Council and Commission* [2005] ECR II-5393, paragraph 85, and the case-law cited).

233 Since those three conditions for the incurring of liability are cumulative, failure to meet one of them is sufficient for an action for damages to be dismissed, without it being therefore necessary to examine the other conditions (see Case T-226/01 *CAS Succhi di Frutta* v *Commission* [2006] ECR II-0000, paragraph 27, and the case-law cited).

234 The unlawful conduct alleged against a Community institution must consist of a sufficiently serious breach of a rule of law intended to confer rights on individuals (Case C-352/98 P *Bergaderm and Goupil* v *Commission* [2000] ECR I-5291, paragraphs 40 to 42, and *FIAMM and FIAMM Technologies* v *Council and Commission*, paragraph 232 above, paragraph 86). Contrary to the Council's submission on the basis of the case-law as it stood before *Bergaderm and Goupil* v *Commission*, there are no longer grounds for drawing a distinction between a 'rule of law' and a 'superior rule of law'.

235 The decisive test for finding that that requirement is fulfilled is whether the Community institution concerned manifestly and gravely disregarded the limits set on its discretion. Where an institution has only a considerably reduced, or even no, discretion, the mere infringement of Community law may be sufficient to establish the existence of a sufficiently serious breach (*FIAMM and FIAMM Technologies* v *Council and Commission*, paragraph 232 above, paragraphs 88 and 89, and the case-law cited).

236 It is in the light of those observations that the applicant's claim for compensation falls to be examined.

237 In the instant case, the Court has already held, in connection with the application for annulment, that no adequate statement of reasons was given for the contested decision and that the latter was adopted in the course of proceedings in which the applicant's rights of the defence were not observed.

238 With regard to the first of those defects, the Court remarks that, in accordance with settled case-law, failure to fulfil the obligation to state reasons is not, in itself, such as to cause the Community to incur liability (Case 106/81 *Kind* v *EEC* [1982] ECR 2885, paragraph 14; Case C-119/88 *AERPO and Others* v *Commission* [1990] ECR I-2189; Case C-76/01 *Eurocoton and Others* v *Council* [2003] ECR I-10091, paragraph 98; Case T-164/94 *Nölle* v *Council and Commission* [1995] ECR II-2589, paragraph 57; Joined Cases T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others* v

Commission [ECR] II-2941, paragraph 104, and Case T-18/99 *Cordis* v *Commission* [2001] ECR II-913, paragraph 79).

239 With regard to the second of those defects, however, it is to be borne in mind that the fundamental principle of observance of the rights of the defence is a rule of law the purpose of which is to confer rights on individuals (see, to that effect, *Fiskano* v *Commission*, paragraph 139 above, paragraphs 39 and 40, and *Exporteurs in Levende Varkens and Others* v *Commission*, paragraph 238 above, paragraph 102).

240 In the circumstances of this case, the Court considers that the breach of the applicant's rights of the defence is sufficiently serious for the Community to incur liability.

241 Nevertheless, the fundamental principle that the rights of the defence must be observed being essentially a procedural guarantee (Case C-344/05 P *Commission* v *De Bry* [2006] ECR I-10915, paragraph 39), the Court considers that, in the circumstances, annulment of the contested act will constitute adequate compensation for the damage caused by that breach (see, to that effect, Joined Cases T-120/01 and T-300/01 *De Nicola* v *BEI* [2004] ECR-SC I-A-365 and II-1671, paragraphs 140 to 142, and the case-law cited).

242 For the rest, the Court has already held, in connection with the application for annulment, that it was not, at this stage of the procedure, in a position to undertake the judicial review of the lawfulness of the contested decision in light of the other pleas in law, grounds of challenge and substantive arguments invoked by the applicant. Nor, as a result, is it in a position in connection with the application for compensation to ascertain, even now, in the light of those same pleas in law, grounds of challenge and substantive arguments whether the condition relating to the unlawfulness of the conduct in question, as defined by the case-law, has in this instance been satisfied. In particular, it is unable to determine even now whether the Council committed a manifest error of assessment in deciding to freeze the applicant's funds on the basis of the information available to it or whether it manifestly and gravely disregarded the limits set on its discretion under Article 2(3) of Regulation No 2580/2001. That is precisely one of the reasons why the contested decision must be annulled.

243 However, the claim for compensation must, in any event, be dismissed, for neither the fact and extent of the damage alleged, as set out in paragraph 228 above, nor the existence of a causal link between that damage and the instances of material unlawfulness pleaded in support of that claim has been proved to the requisite legal standard.

244 The Court of First Instance recalls that, in an action based on Article 235 EC in conjunction with the second paragraph of Article 288 EC, the applicant has to prove not only the unlawfulness of the conduct of which the institution concerned is accused and the fact of the damage but also the existence of a causal link between that conduct and the damage pleaded (see Joined Cases 197/80 to 200/80, 243/80, 245/80 and 247/80 *Ludwigshafener Walzmühle and Others* v *Council and Commission* [1981] ECR 3211, paragraph 18; Case C-257/90 *Italsolar* v *Commission* [1993] ECR I-9, paragraph 33; Case T-175/94 *International Procurement Services* v *Commission* [1996] ECR II-729, paragraph 44, and Case T-72/99 *Meyer* v *Commission* [2000] ECR II-2521, paragraph 49). As for the latter condition, it is settled case-law that the damage must be a sufficiently direct consequence of the conduct complained of (Joined Cases 64/76, 113/76, 167/78, 239/78, 27/79, 28/79 and 45/79 *Dumortier Frères and Others* v *Council* [1979] ECR 3091, paragraph 21). A causal link for the purposes of the second paragraph of Article 288 EC is thus recognised where there is a direct link of cause and effect between the fault committed by the institution concerned and the damage pleaded (*CAS Succhi di Frutta* v *Commission*, paragraph 233 above, paragraph 37, and the case-law cited).

245 In the present case, with more particular regard to the damage referred to in (a), (b) and (d) of paragraph 228 above, it is appropriate to note that the freezing of the applicant's funds, financial assets and other economic resources is a temporary precautionary measure which, unlike confiscation, does not affect the very substance of the right of the person concerned to property in the assets in question but only the use (*Yusuf*, paragraph 299) and therefore the availability of those assets. The same is true so far as concerns interest and other income produced by those assets.

246 As regards the damage caused by the unavailability of those funds, financial assets or other economic resources, consisting of the loss of enjoyment, the fact remains that it doe not arise from the adoption of the Community measures at issue in these proceedings but from the adoption, first,

of the Office of Foreign Assets Control's decision of 12 August 2002 ordering the freezing of the applicant's assets in the United States and, second, of the decision of the Netherlands Minister of Finance of 13 August 2002 ordering the freezing of the applicant's assets in the Netherlands. The applicant having neither proved, nor even argued, that those two decisions have been repealed or withdrawn since the Community measures at issue in this instance were adopted, it must be concluded that there is no proof of any direct causal link between those measures and the various losses alleged.

247 The same finding must be made with regard to the material and non-material damage referred to in (f) of paragraph 228 above. In fact, that damage too originates in, first, the adoption of the national decisions mentioned in the previous paragraph and, second, the adoption of Common Position 2001/931, which falls outside the jurisdiction of the Court of First Instance in these proceedings (see, to that effect, the order in Case T-338/02 *Segi and Others* v *Council* [2004] ECR II-1647, paragraph 40, upheld on appeal by judgment in Case C-355/04 P *Segi and Others* v *Council* [2007] ECR I-0000). What is more, no evidence has been adduced of the existence of any additional damage directly and specifically attributable to the adoption of the Community measures at issue in this case.

248 With more particular regard to the damage referred to in (c) of paragraph 228 above, it may in addition be emphasised that the application of the derogations from the freezing of funds authorised under Articles 5 and 6 of Regulation No 2580/2001, which include social security benefits and extend to the grant of a work permit (*Ayadi*, paragraph 102 above, paragraphs 127 to 132), falls within the competence and, therefore, the responsibility of the Member States. Any difficulties encountered on that head by the applicant in his relations with the Netherlands authorities cannot, therefore, of themselves cause the Community to incur liability.

249 With more particular regard to the damage referred to in (d), (e), (g) and (h) of paragraph 228 above, in addition to there being no evidence of a causal link with the Community measures at issue here, which must be found to be the case for the reasons set out in paragraph 246 above, the inevitable conclusion is that their actual existence is itself not supported by any evidence. On the contrary, with more particular regard to the damage in (e) and (h), the Netherlands Government asserted at the hearing, without being effectively contradicted by the applicant, that the latter was regularly given laissez-passer so that he could participate in peace negotiations. Furthermore, with more particular regard to the damage in (h), even if that were proved, it would have been suffered by the NDFP and not by the applicant personally.

250 Finally, it is to be stressed that the applicant has not sought to evaluate, even approximately, the amount of those various heads of damage, in respect of which he does no more than claim compensation 'in an amount to be fixed *ex aequo et bono* of not less than EUR 100 000'. Now, every claim for compensation for damage, whether the damage is material or non-material, and whether the indemnity is symbolic or actual, must give particulars of the nature of the damage alleged in connection with the conduct at issue and must quantify the whole of that damage, even if approximately (see Case T-277/97 *Ismeri Europa* v *Court of Auditors* [1999] ECR II-1825, paragraph 81, and case-law cited).

251 In those circumstances, and subject to the considerations set out in paragraphs 240 and 241 above, the application for compensation must be rejected.

Costs

252 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Pursuant to Article 87(3) of the Rules of Procedure, the Court of First Instance may order that the costs be shared or that each party bear its own costs where each party succeeds on some and fails on other heads. In the circumstances of this case, the Council having been unsuccessful in its main submissions, it must be decided that the Council is to bear, in addition to its own costs, all the applicant's costs, including those incurred in the proceedings for interim measures, and all the costs of the Negotiating Panel and its members.

253 Under the first subparagraph of Article 87(4) of the Rules of Procedure, Member States which intervene in the proceedings are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby:

1. **Annuls Council 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 in so far as it concerns the applicant;**

2. **Rejects the application for compensation;**

3. **Orders the Council to bear, in addition to its own costs, the applicant's costs, including those incurred in the proceedings for interim measures, and also the costs of the Negotiating Panel of the National Democratic Front of the Philippines, Luis G. Jalandoni, Fidel V. Agcaoili and Maria Consuelo K. Ledesma;**

4. **Orders the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.**

Pirrung Forwood Papasavvas

Delivered in open court in Luxembourg on 11 July 2007.

E. Coulon J. Pirrung

Registrar President

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* Language of the case: English.