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JUDGMENT OF THE COURT (First Chamber)

18 January 2007 (*)

(Appeal – Specific restrictive measures directed against certain persons and entities with a view to combating terrorism – Action for annulment – Admissibility)

In Case C-229/05 P,

APPEAL under Article 56 of the Statute of the Court of Justice, brought on 9 May 2005,

Osman Ocalan, on behalf of the Kurdistan Workers' Party (PKK),

Serif Vanly, on behalf of the Kurdistan National Congress (KNK),

represented by M. Muller QC, E. Grieves and P. Moser, Barristers, and J.G. Peirce, Solicitor,

appellants,

the other parties to the proceedings being:

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

defendant at first instance,

United Kingdom of Great Britain and Northern Ireland, represented by R. Caudwell, acting as Agent, with an address for service in Luxembourg,

Commission of the European Communities,

interveners at first instance,

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, K. Lenaerts, E. Juhász, J.N. Cunha Rodrigues (Rapporteur) and M. Ileši•, Judges,

Advocate General: J. Kokott,

Registrar: J. Swedenborg, Administrator,

having regard to the written procedure and further to the hearing on 14 September 2006,

after hearing the Opinion of the Advocate General at the sitting on 27 September 2006,

gives the following

Judgment

1 By their appeal, Osman Ocalan, on behalf of the Kurdistan Workers' Party (PKK), and Serif Vanly, on behalf of the Kurdistan National Congress (KNK), request the Court to set aside the order of the Court of First Instance of the European Communities of 15 February 2005 in Case T-229/02 *PKK and KNK* v *Council* [2005] ECR II-539 ('the contested order'), by which the Court of First Instance dismissed as inadmissible their action for annulment of Council Decision 2002/334/EC of 2 May 2002 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2001/927/EC (OJ 2002 L 116, p. 33) and of Council Decision 2002/460/EC of 17 June 2002 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2002/334/EC (OJ 2002 L 160, p. 26).

Legal context

The European Convention for the Protection of Human Rights and Fundamental Freedoms

2 The European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 ('the ECHR'), provides in Article 6, which is headed 'Right to a fair trial', as follows:

> '1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
>
> ...'

3 Article 13 of the ECHR, headed 'Right to an effective remedy', states:

'Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.'

4 Article 34 of the ECHR, headed 'Individual applications', provides:

‘The [European] Court [of Human Rights] may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.’

Community law

5 Taking the view that action by the European Community was needed in order to implement Resolution 1373 (2001) of the United Nations Security Council, on 27 December 2001 the Council of the European Union 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 of Common Position 2001/931 provides:

‘1. This Common Position applies in accordance with the provisions of the following Articles to persons, groups and entities involved in terrorist acts and listed in the Annex.

...

4. 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. Persons, groups and entities identified by the Security Council of the United Nations as being related to terrorism and against whom it has ordered sanctions may be included in the list.

For the purposes of this paragraph “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.

5. 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.

6. The names of persons and entities on 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.’

7 Article 2 of Common Position 2001/931 states:

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

8 On 27 December 2001, the Council adopted Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 70).

9 Article 2 of that regulation provides:

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

(a) all funds, other financial assets and economic resources belonging to, or owned or held by, a natural or legal person, group or entity included in the list referred to in paragraph 3 shall be frozen;

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

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

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

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

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

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

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

Background

10 The contested order states as follows:

‘1 It is apparent from the documents before the Court that the [PKK] emerged in 1978 and engaged in an armed struggle against the Turkish Government to obtain recognition of the Kurds’ right to self-determination. According to Mr [Osman] Ocalan’s written evidence, the PKK declared a unilateral ceasefire, whilst reserving the right to self-defence, in July 1999. According to that evidence, in April 2002, in order to reflect that reorientation, the Congress of the PKK decided that “all activities under the name of ‘PKK’ would cease as of 4 April 2002 and

that any activities taken under the name of the PKK would be deemed illegitimate" (annex 2 to the application, paragraph 16). A new group, the Kongreya AzadÓ š Demokrasiya Kurdistan (Kurdistan Freedom and Democracy Congress – KADEK), was founded in order to attain political objectives democratically on behalf of the Kurdish minority. Mr [Abdullah] Ocalan was appointed president of KADEK.

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

11 On 2 May 2002 the Council adopted Decision 2002/334. This decision added the PKK to the list envisaged in Article 2(3) of Regulation No 2580/2001 ('the disputed list').

12 By application registered under number T-206/02, the KNK brought an action for annulment of Decision 2002/334. The Court of First Instance dismissed this action as inadmissible by order of 15 February 2005. No appeal was brought against this order.

13 On 17 June 2002 the Council adopted Decision 2002/460. This decision kept the PKK on the disputed list. The list was then regularly updated by various Council decisions.

Procedure before the Court of First Instance

14 By application lodged at the Registry of the Court of First Instance on 31 July 2002, the PKK, represented by Osman Ocalan, and the KNK, represented by Serif Vanly, brought an action for annulment of Decisions 2002/334 and 2002/460. The action was registered as Case T-229/02.

15 The application was accompanied by a power of attorney on behalf of the PKK, which reads as follows:

'I, Osman Ocalan, a former member, and on behalf of the organisation formerly known as the PKK hereby authorise

Mark Muller, a barrister at 10-11 [Gray's] Inn Square

Edward Grieves, a barrister at 10-11 [Gray's] Inn Square

Gareth Peirce, a partner at Birnberg Peirce solicitors

to commence and pursue proceedings in the Court of First Instance of the European Communities for the annulment of Decision 2002/334/EC and Regulation No 2580/2001 and take any other step, including the delegation of any matter to another person,

applying for interim relief and any necessary appeal to the Court of Justice of the European Communities, to that end.'

16 By document lodged on 27 November 2002, the Council raised an objection of inadmissibility pursuant to Article 114(1) of the Rules of Procedure of the Court of First Instance. The United Kingdom of Great Britain and Northern Ireland and the Commission of the European Communities were granted leave to intervene in support of the Council. The Commission lodged observations on the objection of inadmissibility. The United Kingdom waived its right to do so.

17 In the contested order the Court of First Instance, ruling on the objection of inadmissibility, dismissed the action as inadmissible.

The contested order

18 The Court of First Instance concluded that the application of Osman Ocalan on behalf of the PKK was inadmissible on the following grounds:

> '27 It must be held, first of all, that the PKK is to be regarded as being directly and individually concerned by [Decisions 2002/334 and 20002/460], since it is named therein.
>
> 28 It is appropriate, next, to make clear that the rules governing the admissibility of an action for annulment as regards a person mentioned in the disputed list – namely the list of persons, groups and entities to which specific restrictive measures for combating terrorism apply – must be construed according to the circumstances of the case. As regards, in particular, those groups or entities it may be that they do not exist legally, or that they were not in a position to comply with the legal rules which usually apply to legal persons. Therefore, excessive formalism would amount to the denial, in certain cases, of any possibility of applying for annulment, even though those groups and entities were the object of restrictive Community measures.
>
> ...
>
> 32 In accordance with the principles identified in paragraph 28 above, Mr [Osman] Ocalan, a natural person, is entitled to demonstrate, by any available evidence, that he is acting validly on behalf of the legal person, the PKK, whose representative he claims to be. However, such evidence must, at least, show that the PKK did indeed wish to bring this action and that it was not used as an instrument by a third party, albeit, as the case may be, one of its members.
>
> 33 It is appropriate, also, to make clear that it is not for the Court, when examining the admissibility of the action, to rule on the reality of the PKK's existence. The question raised in the course of that examination is strictly limited to whether Mr [Osman] Ocalan has the capacity to bring an action on behalf of the PKK.
>
> 34 First, it must be noted that the action is formally brought by Mr [Osman] Ocalan, "on behalf of" the PKK.

35 Secondly, the fact remains that the applicants firmly declare that the PKK was dissolved in April 2002. What is more, according to Mr [Osman] Ocalan's evidence annexed to the application, the PKK's Congress, having pronounced its dissolution, adopted, at the same time, the declaration that "all activities under the name of 'PKK' would [henceforth] be deemed illegitimate".

36 Thirdly, it must be pointed out that nowhere in the applicants' pleadings is Mr [Osman] Ocalan mentioned otherwise than as the PKK's representative. In particular, it is never claimed that he could have any individual interest in the annulment of [Decisions 2002/334 and 2002/460].

37 Far from demonstrating Mr [Osman] Ocalan's legal capacity to represent the PKK, the applicants state, on the contrary, that the PKK no longer exists. It cannot be accepted that a legal person which has ceased to exist, assuming that is so, may validly appoint a representative.

38 The impossibility of accepting that Mr [Osman] Ocalan validly represents the PKK is further strengthened by his own evidence that any activity under the name of the "PKK" is illegitimate after April 2002. According to that evidence, the action which Mr [Osman] Ocalan claims to bring on behalf of the PKK has been declared illegitimate by his principal itself.

39 Therefore, the applicants confront the Court with the paradoxical situation in which the natural person deemed to represent a legal person is not only unable to demonstrate that he represents it validly, but, further, explains why he is unable to represent it.

40 As to the applicants' argument that there are no other remedies available, that cannot lead to the admission of actions of any person who wishes to defend a third party's interests.

41 The Court is therefore bound to hold that Mr [Osman] Ocalan has, on his own authority, brought an action on behalf of the PKK. Therefore, the action brought by Mr [Osman] Ocalan on behalf of the PKK is inadmissible.'

19 The Court of First Instance held that the application of Serif Vanly on behalf of the KNK was inadmissible on the following grounds:

43 ... the KNK has already challenged Decision 2002/334 in its action in Case T-206/02. Therefore, because of the identity of the subject-matter, cause of action and parties, this action, in so far as it is brought by the KNK against Decision 2002/334, is inadmissible by virtue of *lis pendens*.

...

45 As regards the action brought against Decision 2002/460 by the KNK, it follows from settled case-law that an association formed for the protection of the collective interests of a category of persons cannot be considered to be individually concerned, for the purposes of the fourth paragraph of Article 230 EC, by a measure affecting the general interests of that category, and is therefore not

entitled to bring an action for annulment if its members cannot do so individually (Joined Cases 19/62 to 22/62 *Fédération nationale de la boucherie en gros et du commerce en gros des viandes and Others* v *Council* [1962] ECR 491, [at p. 499,] and Case T-69/96 *Hamburger Hafen- und Lagerhaus and Others* v *Commission* [2001] ECR II-1037, paragraph 49).

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

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

48 It must next be established whether the KNK can avail itself of the fact that one or more of its members would be entitled to bring an action for annulment of [Decision 2002/460].

49 As regards the PKK, it must be held that the applicants, by claiming that it no longer exists, acknowledge, at the very least, that the PKK is no longer a member of the KNK. In that regard, it cannot be accepted that a person's past membership of an association enables that association to avail itself of that person's possible right of action. To accept such reasoning would be tantamount to conferring on an association some sort of perpetual right to bring proceedings, despite the fact that that association can no longer claim to represent the interests of its former member.

50 As regards KADEK, the applicants rely on the fact, in essence, that that body, a potential member of the KNK, is affected by Decision 2002/460 to the point of not being able to join the KNK. Even if KADEK might have been entitled to challenge Decision 2002/460 at the date this action was brought, which seems possible, particularly if it could be regarded as the successor in law and/or in fact to the PKK, the KNK cannot avail itself of KADEK's membership of its organisation, since it is not a member.

51 The applicants allege, finally, that the KNK and its members in general are individually concerned on the ground that their activities are curtailed by the fear of having their assets frozen if they cooperate with an entity named on the disputed list. It must be recalled, in that regard, that the prohibition by [Decision 2002/460] on making funds available to the PKK is of general application, because it is addressed to all persons who are subject to Community law. [Decision 2002/460] thus applies to objectively determined situations and entails legal effects for categories of persons regarded generally and in the abstract (see, to that effect, Case 307/81 *Alusuisse Italia* v *Council and Commission* [1982] ECR 3463, paragraph 9).

52 It must be recalled that natural or legal persons can claim to be concerned individually by a measure of general application only if they are affected by reason of certain attributes which are peculiar to them or by reason of

circumstances in which they are differentiated from any other person (Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, at p. 107, and Case T-12/93 *CCE de Vittel and Others* v *Commission* [1995] ECR II-1247, paragraph 36). The KNK and its members are bound to comply with the prohibition laid down by [Decision 2002/460] concerning the PKK, like all other persons in the Community. The fact that, because of their political opinions, the KNK and its members are more likely than others to suffer the effects of that prohibition is not such as to differentiate them from all other persons within the Community. The fact that a measure of general application may have specific effects which differ according to the various persons to whom it applies is not such as to differentiate them in relation to all the other persons concerned, where that measure is applied on the basis of an objectively determined situation (see Case T-138/98 *ACAV and Others* v *Council* [2000] ECR II-341, paragraph 66, and the case-law there cited).

...

56 Since the KNK cannot avail itself of the fact that one of its members is entitled to bring an action for annulment of [Decision 2002/460], it must be held that it is not individually concerned by that decision.

57 Accordingly, the action, in so far as it is brought by the KNK against Decision 2002/460, is inadmissible.'

Procedure before the Court of Justice and forms of order sought

20 By application lodged at the Registry of the Court of Justice on 9 May 2005, Osman Ocalan, on behalf of the PKK, and Serif Vanly, on behalf of the KNK, brought an appeal against the contested order. They claim that the Court of Justice should set the order aside, declare the action brought by Osman Ocalan on behalf of the PKK and by Serif Vanly on behalf of the KNK to be admissible, and order the Council to pay the costs relating to the proceedings on admissibility.

21 The appellants adduce as an annex to their appeal a statement made on 9 May 2005 by Mark Muller, one of the lawyers representing them in the present proceedings, which reads as follows:

'1. I MARK MULLER, hereby confirm that I represent Abdullah Ocalan in proceedings before the European Court of Human Rights.

2. Throughout the course of those proceedings I have regularly visited Mr [Abdullah] Ocalan in prison on Imrali Island ... in Turkey. I can confirm that prior to the submission of the current application before the Court of First Instance Mr [Abdullah] Ocalan gave me instructions to challenge the proscription of the PKK in Europe. In addition I have also had cause to meet with other high ranking representatives of the PKK and its alleged successor organisation KADEK in Europe. Once again, I received instructions to pursue the present proceedings.

3. In order to comply with the rules of procedure of the Court [of First Instance] I requested that a power of attorney be obtained from Mr Osman Ocalan who was at that time a high ranking representative of both the

organisation formerly known as the PKK and KADEK.

4. Had the Court [of First Instance] sought clarification about this matter I would have immediately instituted steps to obtain all requisite evidence to confirm the aforesaid representations. I did not believe that this was necessary as the Court [of First Instance] had accepted the power of attorney submitted and had communicated the application to the Defendant.'

22 The Council contends that the Court should dismiss the appeal by both appellants as inadmissible, or in the alternative as unfounded, if necessary refer the case back to the Court of First Instance, and order the appellants to pay the costs of these proceedings.

23 The Commission and the United Kingdom, which intervened at first instance, have not submitted any written observations.

Consideration of the appeal

Admissibility of the application of Osman Ocalan on behalf of the PKK

24 Osman Ocalan on behalf of the PKK ('the first appellant') sets out seven grounds of appeal. It is appropriate to begin by examining the fourth of those grounds.

The fourth ground of appeal

– Arguments of the parties

25 In his fourth ground, the first appellant contends that the Court of First Instance distorted the clear sense of the evidence which he submitted so far as concerns the dissolution of the PKK. A close reading of the statement by Osman Ocalan submitted to the Court of First Instance does not show that the PKK has been dissolved in all regards, including for the purposes of challenging its proscription. On the contrary, Osman Ocalan consistently refers in the statement to the continued existence of the PKK and its creation of an allied organisation, KADEK. Accordingly, the Court of First Instance misread the evidence regarding the PKK's dissolution and existence.

26 The Council's primary submission is that the fourth ground of appeal is inadmissible because it consists of a repetition of the pleadings at first instance and because it relates to a finding of fact made by the Court of First Instance, namely that the PKK could not have validly appointed Osman Ocalan as its representative for the purposes of the proceedings at first instance.

27 In the alternative, the Council submits that this ground of appeal is clearly unfounded.

28 First of all, the Court of First Instance specifically stated, in paragraph 33 of the contested order, that it was not for it to rule on the reality of the PKK's existence. The question which the Court of First Instance answered in the negative was simply whether

Osman Ocalan had the capacity to bring an action on behalf of the PKK.

29 It was the appellants themselves who indicated that the PKK had officially dissolved. Paragraph 16 of Osman Ocalan's statement annexed to the application at first instance clearly indicates that any activities taken under the name of the PKK would be deemed illegitimate as of 4 April 2002.

30 Next, the submissions of the first appellant are confused in several respects. For example, paragraph 25 of the appeal states that Osman Ocalan is bringing the action on behalf of a subsisting organisation hitherto entitled the PKK. This statement implies that the action is in fact brought on behalf of another unnamed organisation which is no longer the PKK itself. However, the application does not explain what other organisation this might be.

31 Finally, the Court of First Instance made a careful examination of the applicants' pleadings. The Council considers that the Court's conclusion in paragraphs 37 to 41 of the contested order that the PKK could not validly appoint a representative was justified on the evidence before it, and submits that the first appellant has not adduced any new arguments in this appeal which cast doubt on that conclusion.

– Findings of the Court

32 In accordance with the Court's case-law, an appeal is inadmissible if, without even including an argument specifically identifying the error of law allegedly vitiating the decision under appeal, it merely repeats or reproduces verbatim the pleas in law and arguments previously submitted to the Court of First Instance. By contrast, provided that the appellant challenges the interpretation or application of Community law by the Court of First Instance, the points of law examined at first instance may be discussed again in the course of an appeal. Indeed, if an appellant could not thus base his appeal on pleas in law and arguments already relied on before the Court of First Instance, an appeal would be deprived of part of its purpose (see, to this effect, Case C-25/05 P *Storck* v *OHIM* [2006] ECR I-0000, paragraphs 47 and 48, and the case-law cited).

33 The fourth ground of appeal alleges that the Court of First Instance erred in finding that Osman Ocalan had asserted that the PKK lacked capacity to bring an action. This ground contains detailed criticism of the contested order. Furthermore, it relates to a finding made by the Court of First Instance in the contested order, so it could not have been put forward at first instance.

34 Accordingly, the Council's argument seeking the rejection of the fourth ground of appeal inasmuch as it repeats submissions made at first instance is unfounded and must therefore be rejected.

35 As to the Council's argument that the fourth ground of appeal is inadmissible because it relates to a finding of fact made by the Court of First Instance, it must be pointed out that, in accordance with the case-law of the Court of Justice, complaints based on findings of fact and on the assessment of those facts in the contested decision are admissible on appeal where the appellant contends that the Court of First Instance

has made findings which the documents in the file show to be substantially incorrect or that it has distorted the clear sense of the evidence before it (see, to this effect, Case C-82/01 P *Aéroports de Paris* v *Commission* [2002] ECR I-9297, paragraph 56). That is indeed the case here.

36 Consequently, the ground of appeal is admissible.

37 With regard to the ground's merits, it must be examined whether the Court of First Instance distorted the clear sense of the evidence. As the Advocate General has indicated in point 42 of her Opinion, there is such distortion where, without recourse to new evidence, the assessment of the existing evidence appears to be clearly incorrect (see, to this effect, Case C-551/03 P *General Motors* v *Commission* [2006] ECR I-3173, paragraph 54).

38 In light of this test, it is to be noted that the evidence adduced before the Court of First Instance concerning the PKK's existence comprises the statement by Osman Ocalan annexed to the application, the power of attorney which he gave to the lawyers to represent the first appellant, the positions adopted by the Council, and Serif Vanly's statement, which is also annexed to the application.

39 As regards, first, Osman Ocalan's statement, he indicates in paragraph 1 thereof that the PKK 'was, and remains, a political organisation of central importance to the Kurdish people'.

40 In paragraph 11, Osman Ocalan states:

'In July 1999 the PKK declared a unilateral ceasefire. The aim was to work towards a peaceful and democratic solution to the question of Kurdish rights. The PKK declared that all guerrilla activities would halt until further orders were received.'

41 Paragraphs 15 to 19 of the statement are worded as follows:

> '15. [The 8th Congress of the PKK, which took place between 4 and 10 April 2002,] described the PKK as the symbolic name of the "Apoist" movement ["Apo" being a term used for Abdullah Ocalan] in the period of Kurdish national awareness and resistance. It also declared that the PKK symbolised the Kurdish national spirit, conscience and identity.
>
> 16. It was decided by the Congress that in order to mirror the major transformations undergone by the PKK, all activities under the name of "PKK" would cease as of 4 April 2002 and that any activities taken under the name of the PKK would be deemed illegitimate.
>
> 17. The Congress resolved to carry forward the developments that had been carried out in a planned manner since the [1999] ceasefire and following the event of 7th Congress ["The Peace Project" incorporating the PKK position as evaluated at the 7th Congress on 10 January 2000 is exhibited to this statement].
>
> 18. A new constitution was adopted which altered the structure and organisation of the PKK and set out the strategy of the Apoist Movement. A

coordinating organisation would accommodate the various different organisations to be created within parts of Kurdistan and the attendant countries. It was therefore decided to found [KADEK].

19. A new Management Committee was elected and Abdullah Ocalan was elected as the President of KADEK.'

42 Rather than proclaiming the PKK's dissolution, this document appears to state that the PKK progressively abandoned violent means of action in favour of other means of action. Osman Ocalan explains in particular that the PKK declared a unilateral ceasefire in July 1999, participated in a 'Peace Project' at its 7th Congress, held on 10 January 2000, and decided at its 8th Congress, which took place from 4 to 10 April 2002, to cease 'all activities' from 4 April 2002. Read in their context, the words 'all activities' could simply refer to the abandonment by the PKK of all its violent activities.

43 Furthermore, it appears from paragraphs 18 and 19 of Osman Ocalan's statement that the structure and organisation of the PKK were simply altered and that the PKK continued to exist under the name KADEK, Abdullah Ocalan remaining its president.

44 Likewise, the verb 'remains' used in paragraph 1 of the statement indicates that the PKK continues to exist.

45 In any event, Osman Ocalan does not expressly state anywhere in his statement that the 8th Congress of the PKK pronounced the PKK's dissolution.

46 Accordingly, when this statement is read as a whole it cannot properly be interpreted as affirming that the PKK was entirely dissolved.

47 As regards, second, the power of attorney given to the lawyers to represent the first appellant, Osman Ocalan specifies therein that he is acting 'on behalf of the organisation formerly known as the PKK'. These words indicate only a change of name and not the PKK's dissolution.

48 As regards, third, the positions adopted by the Council, it is apparent that, from 2 April 2004, the decisions which in succession replaced Decisions 2002/334 and 2002/460 refer to the PKK as the 'Kurdistan Workers' Party (PKK) (a.k.a. KADEK, a.k.a. KONGRA-GEL' (see, in particular, Council Decision 2004/306/EC of 2 April 2004 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 2003/902/EC (OJ 2004 L 99, p. 28)). This shows that the Council regards the PKK as continuing to exist, but under other names.

49 As regards, finally, the statement by Serif Vanly, President of the KNK, which is annexed to the application at first instance, while it is true that he refers therein to the dissolution of the PKK, that is, however, in the context of the following passage:

'Since the KNK's inception the [PKK] has been a member organisation of the KNK. The PKK spearheaded the creation of the KNK and it has since been a central driving force

within the KNK, its aims and objectives being aligned with that of the KNK. The PKK is no longer an official member of the KNK after its dissolution in April 2002. However, the organisation born from the PKK, KADEK, seeks to join the KNK. The Honorary President of the KNK remains Abdullah Ocalan.'

50 This passage does not dictate the conclusion that the PKK ceased entirely to exist in April 2002. Read in its entirety, it suggests rather that the PKK retained a certain existence after this time in a reorganised form and under another name. Serif Vanly's statement therefore does not contradict the other evidence which has just been examined.

51 It follows that the finding in paragraph 35 of the contested order that, 'according to Mr [Osman] Ocalan's evidence annexed to the application, the PKK's Congress ... pronounced [the PKK's] dissolution' is incorrect and contrary to the wording of his statement to which the finding refers.

52 Likewise, the statement in paragraph 37 of the contested order that, 'far from demonstrating Mr [Osman] Ocalan's legal capacity to represent the PKK, the applicants state, on the contrary, that the PKK no longer exists' is not consistent with the evidence available to the Court of First Instance.

53 The findings of fact in paragraphs 35 and 37 of the contested order are therefore incorrect and distort the clear sense of the evidence available to the Court of First Instance. It follows that the fourth ground of appeal is well founded.

54 Accordingly, the contested order must be set aside in so far as it declares the first appellant's application to be inadmissible, and there is no need to consider the other grounds of appeal relied upon by him.

Admissibility of the application of Serif Vanly on behalf of the KNK

55 Serif Vanly on behalf of the KNK ('the second appellant') sets out two grounds of appeal (the eighth and ninth grounds of appeal).

The eighth ground of appeal

– Arguments of the parties

56 In the eighth ground of appeal, the second appellant observes that in the contested order the Court of First Instance held that the action was inadmissible in so far as it was brought by the KNK on the ground that it was not individually concerned, for the purposes of the fourth paragraph of Article 230 EC, by Decision 2002/460. The second appellant submits that that test is too restrictive when dealing with fundamental rights guaranteed under the ECHR. The test for admissibility in such circumstances should be applied more broadly, in line with the admissibility criteria of the European Court of Human Rights, in order not to bar the way to an effective judicial remedy.

57 The second appellant contends that if the Court of Justice were to rule that the KNK's application is inadmissible in the current proceedings, when, in the same

circumstances, the European Court of Human Rights would hold an action brought before it to be admissible, the second appellant would be denied access to the effective remedy to which he is entitled, that is to say, an application seeking examination of whether Regulation No 2580/2001 and Decision 2002/460 infringe his fundamental rights as set out in the ECHR. To refuse such an examination when there is an arguable and admissible case under the ECHR would be in contravention of Article 13 of that Convention in that the second appellant would be purely and simply denied the remedy to which he is entitled.

58 The Council observes that the second appellant does not seek to prove that the Court of First Instance applied incorrectly the provisions of the EC Treaty, as interpreted in Community case-law, when it held that the KNK was not individually concerned by Decision 2002/460. In reality, the second appellant is requesting the Court to disregard the fourth paragraph of Article 230 EC, as interpreted in Community case-law, and to adopt instead the rules on standing provided for by the ECHR.

59 In so far as this ground of appeal concerns the Court of First Instance's conclusion that the second appellant was not individually concerned, for the purposes of the fourth paragraph of Article 230 EC, by Decision 2002/460, the Council submits that the second appellant has failed to make any new arguments in the appeal and that, consequently, this part of the appeal is inadmissible. In the alternative, the Council pleads that this part of the appeal is unfounded since the Court of First Instance correctly applied settled case-law.

60 In so far as this ground of appeal develops an argument derived from the ECHR, the Council submits that this argument is inadmissible at the appeal stage, as it was not debated between the parties at first instance and the Court of First Instance did not make any finding in relation to it. In the alternative, the argument is unfounded because the European Union and the Community protect fundamental rights in a manner equivalent to that for which the ECHR provides.

– Findings of the Court

61 Regarding the admissibility of this ground of appeal, it is to be remembered that, under Article 118 of the Rules of Procedure of the Court of Justice, Article 42(2) of those rules, which prohibits generally the introduction of new pleas in law in the course of the procedure, applies to the procedure before the Court of Justice on appeal from a decision of the Court of First Instance. In an appeal the Court's jurisdiction is thus confined to review of the assessment by the Court of First Instance of the pleas argued before it (see Joined Cases C-199/01 P and C•200/01 P *IPK-München* v *Commission* [2004] ECR I•4627, paragraph 52).

62 At first instance the Council put forward in its objection of inadmissibility a plea alleging that the second appellant did not meet the conditions laid down in the fourth paragraph of Article 230 EC. In his observations on the objection of inadmissibility, the second appellant responded that that provision had to be interpreted in such a way that he was considered to meet those conditions. In this context, the second appellant submitted inter alia that there must be an effective remedy in the case of an act of the Community institutions which infringes fundamental rights and Community law. In the contested order, the Court of First Instance rejected the second appellant's

submissions, but without expressing a view on the consideration that the action brought before it was designed to defend the second appellant's fundamental rights.

63 It is clear that the interpretation of the fourth paragraph of Article 230 EC and its application to the second appellant's circumstances were discussed in the proceedings before the Court of First Instance. The present ground of appeal seeks to contest in a detailed manner the Court of First Instance's interpretation and application of that provision in relation to the second appellant. It follows that the present ground of appeal is not a new plea whose introduction at the appeal stage would be prohibited by Articles 42(2) and 118 of the Rules of Procedure.

64 Where a ground of appeal is admissible, it is in principle for the appellant to set out arguments in support of it as he sees fit, whether by relying on arguments already used before the Court of First Instance or by developing new arguments, in particular in relation to the positions adopted by that Court. If it were otherwise, an appeal would be deprived of part of its purpose (see, to this effect, *Storck*, paragraph 48, and the case-law cited).

65 It follows that the second appellant is not required to support the present ground of appeal exclusively with new arguments relating to the interpretation of the fourth paragraph of Article 230 EC in Community case-law. The Council's argument to that effect is unfounded and must be rejected.

66 As regards the admissibility of the arguments derived from the ECHR, it follows from Article 58 of the Statute of the Court of Justice, in conjunction with Article 113(2) of the Rules of Procedure of the Court of Justice, that, on appeal, an appellant may put forward any relevant argument, provided only that the subject-matter of the proceedings before the Court of First Instance is not changed in the appeal. Contrary to the Council's assertions, there is no requirement that each argument put forward on appeal must previously have been discussed at first instance. A restriction to this effect cannot be accepted because an appeal would thereby be deprived of a significant part of its purpose.

67 Since it is evident that the present ground of appeal does not change the subject-matter of the proceedings before the Court of First Instance, the Council's argument concerning the ground's inadmissibility in so far as it refers to the ECHR is unfounded and must be rejected.

68 It follows that the present ground of appeal is admissible in its entirety.

69 As to the merits of the ground of appeal, the second appellant submits that Decisions 2002/334 and 2002/460 are of concern to him since, in particular, the KNK provides a representative platform for the PKK and for any deemed successor organisation of the PKK.

70 It is settled case-law that a link of that kind is not sufficient to establish that an entity is individually concerned for the purposes of the fourth paragraph of Article 230 EC. An association which represents a category of natural or legal persons cannot be considered to be individually concerned, for the purposes of that provision, by a

measure affecting the general interests of that category (see, to this effect, *Fédération nationale de la boucherie en gros et du commerce en gros des viandes and Others* v *Council*, at p. 499, and the order in Case 117/86 *UFADE* v *Council and Commission* [1986] ECR 3255, paragraph 12).

71 The second appellant further submits that the KNK would be in danger of having its own funds frozen, pursuant to Decisions 2002/334 and 2002/460, if it dealt with the PKK.

72 In accordance with settled case-law, natural or legal persons can claim to be concerned individually by a measure of general application only if they are affected by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from any other person (see, to this effect, *Plaumann* v *Commission*, at p. 107, and Case C-50/00 P *Unión dePequeños Agricultores* v *Council* [2002] ECR I•6677, paragraph 36).

73 If the KNK runs the risk of having its funds frozen, that is by virtue of an objectively defined prohibition which applies in the same way to all persons subject to Community law. In those circumstances, the KNK cannot claim to be individually concerned, for the purposes of the fourth paragraph of Article 230 EC, by Decisions 2002/334 and 2002/460.

74 In concluding, in particular in paragraphs 45, 46, 51 and 52 of the contested order, that the KNK was not individually concerned for the purposes of the fourth paragraph of Article 230 EC, the Court of First Instance correctly applied that provision as interpreted by the case-law.

75 The second appellant contends, however, that when the fourth paragraph of Article 230 EC is interpreted in that way it lays down a condition of admissibility so restrictive that the provision conflicts with the ECHR.

76 Fundamental rights form an integral part of the general principles of law the observance of which the Court ensures. For that purpose, the Court draws inspiration from the constitutional traditions common to the Member States and from the guidelines supplied by international instruments for the protection of human rights on which the Member States have collaborated or to which they are signatories. The ECHR has special significance in that respect (see, inter alia, Case C-112/00 *Schmidberger* [2003] ECR I-5659, paragraph 71, and Case C•540/03 *European Parliament* v *Council* [2006] ECR I-0000, paragraph 35).

77 In addition, Article 6(2) EU provides:

‘The Union shall respect fundamental rights, as guaranteed by the [ECHR] and as they result from the constitutional traditions common to the Member States, as general principles of Community law.’

78 It is within that framework that the present argument must be considered.

79 As provided in Article 34 of the ECHR, the European Court of Human Rights may

receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the ECHR.

80 According to the case-law of the European Court of Human Rights, Article 34 of the ECHR requires as a general rule that, in order to be considered a victim within the meaning of that article, an applicant must claim to have been affected by a violation of the ECHR that has already taken place (see Eur. Court H.R., *Klass and Others v. Germany*, judgment of 6 September 1978, Series A no. 28, § 33). It is only in highly exceptional circumstances that an applicant may nevertheless claim to be a victim of a violation of the ECHR owing to the risk of a future violation (see Eur. Commission H.R., *Tauira and Others v. France*, no. 28204/95, decision of 4 December 1995, Decisions and Reports 83-B, p. 112, at p. 130). It is apparent, however, from the case-law of the European Court of Human Rights that persons who claim to be linked to an entity included in the list annexed to Common Position 2001/931, but who are not included in it themselves, do not have the status of victims of a violation of the ECHR within the meaning of Article 34 thereof and that, consequently, their applications are inadmissible (see Eur. Court H.R., *Segi and Gestoras Pro-Amnistia and Others v. 15 States of the European Union* (dec.), nos. 6422/02 and 9916/02, ECHR 2002-V).

81 The KNK's situation is comparable to that of the persons linked to the abovementioned entities Segi and Gestoras Pro-Amnistia. The KNK is not included in the disputed list and is therefore not subject to the restrictive measures envisaged by Regulation No 2580/2001.

82 In those circumstances, the case-law of the European Court of Human Rights, as it currently stands, appears to indicate that the KNK would not be able to establish that it has the status of a victim within the meaning of Article 34 of the ECHR and therefore would not be able to bring an action before that court.

83 Consequently, in the circumstances of the present case no conflict between the ECHR and the fourth paragraph of Article 230 EC has been established.

84 The present ground of appeal must accordingly be rejected as unfounded.

The ninth ground of appeal

– Arguments of the parties

85 The second appellant contends that paragraph 49 of the contested order is marred by an error since it is founded on the assumption that the PKK no longer existed, thus prejudging a matter of substance in order to reject an argument concerning the admissibility of the action.

86 The Council states that the Court of First Instance did not rule on the existence or otherwise of the PKK. For the purposes of assessing whether the KNK could rely on the fact that one or more of its members would be entitled to bring an action for annulment of the contested decision, it simply held that by claiming that the PKK no longer existed the second appellant had at the very least acknowledged that the PKK

was no longer a member of the KNK.

– Findings of the Court

87 It is apparent from paragraphs 69 to 82 of the present judgment that the KNK is neither individually concerned, for the purposes of the fourth paragraph of Article 230 EC, by Decisions 2002/334 and 2002/460 nor a victim of those decisions within the meaning of Article 34 of the ECHR, irrespective of whether the PKK exists or not. In those circumstances, an erroneous finding by the Court of First Instance that the PKK did not exist could not in any event result in the contested order being set aside as regards the second appellant.

88 The present ground of appeal is thus immaterial.

89 It follows that the appeal brought by the second appellant is unfounded and must be dismissed.

90 Since the second appellant has been unsuccessful, he must be ordered to pay the costs of the appeal which he brought, pursuant to Articles 69(2) and 122 of the Rules of Procedure of the Court of Justice.

Consideration of the action before the Court of First Instance

91 In accordance with the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice, if the decision of the Court of First Instance is set aside the Court of Justice may give final judgment in the matter where the state of the proceedings so permits. That is so in the case of the dispute between the first appellant and the Council so far as concerns the admissibility of the application.

92 The Council puts forward two pleas in support of its request that the first appellant's application be declared inadmissible. First, in so far as it relates to Decision 2002/334, the application was lodged out of time. Second, the PKK lacks the capacity to be a party to judicial proceedings because it no longer exists.

The first plea

Arguments of the parties

93 According to the Council, the deadline for bringing an action challenging Decision 2002/334 was 29 July 2002. The original of the application was lodged at the Registry of the Court of First Instance on 31 July 2002. Consequently, the application was lodged out of time in so far as it relates to that decision.

94 The Commission, as an intervener at first instance, supported this reasoning and added that the inadmissibility of the application challenging Decision 2002/334 means that the application challenging Decision 2002/460 is inadmissible, since the latter is merely a decision confirming the former.

95 The first appellant responds that his representatives are convinced that they lodged the original of the application, along with five copies, at the Registry of the Court of First Instance on 24 July 2002, even though they lodged a replacement original on 31 July 2002. In those circumstances, and since fundamental rights are at stake, to prevent the first appellant from seeking the annulment of Decision 2002/334 would be unduly formalistic.

96 In any event, in the first appellant's submission, Decision 2002/460 is an independent decision which was certainly contested within the time-limit.

Findings of the Court

97 Decision 2002/334 was adopted on 2 May 2002 and published in the *Official Journal of the European Communities* on 3 May 2002. In addition to the period of two months for bringing an action for annulment which is laid down in the fifth paragraph of Article 230 EC, it is necessary to include in the calculation a period of 14 days from the date of publication of the contested measure, pursuant to Article 102(1) of the Rules of Procedure of the Court of First Instance, and of a single period of 10 days on account of distance, pursuant to Article 102(2) of those rules. The final day of the period determined in accordance with these provisions was 27 July 2002. Since that was a Saturday, the period for bringing an action was extended until the end of Monday, 29 July 2002, pursuant to the first subparagraph of Article 101(2) of the Rules of Procedure.

98 Article 43(1) of the Rules of Procedure of the Court of First Instance requires the original of every pleading to be lodged.

99 It appears from the documents before the Court of First Instance that only copies, without an original, were lodged at the Registry of the Court of First Instance on 24 July 2002. Even though the first appellant asserts that his representatives lodged the original of the application together with the copies lodged on that date, he does not adduce any evidence of this. Furthermore, the text of the original lodged on 31 July 2002 displays some differences compared with the copies lodged on 24 July 2002. It must therefore be found that the original of the application was not lodged at the Registry of the Court of First Instance until 31 July 2002, as the Registry's stamp on it attests.

100 Since the original of the application was not lodged at the Registry of the Court of First Instance within the period required, the first appellant's application is inadmissible in so far as it challenges Decision 2002/334.

101 This conclusion is not affected by the circumstance, pleaded by the first appellant, that fundamental rights are at stake. Rules concerning time-limits for bringing proceedings are mandatory and must be applied by the court in question in such a way as to safeguard legal certainty and equality of persons before the law.

102 On the other hand, it is common ground that the first appellant challenged Decision 2002/460 within the time-limit laid down.

103 As the Court of First Instance correctly held in paragraph 44 of the contested order, that decision is a new decision in relation to Decision 2002/334. As provided in Article 2(3) of Regulation No 2580/2001 and Article 1(6) of Common Position 2001/931, each decision revising the disputed list results from a review by the Council of the situation of the persons, groups and entities covered.

104 It follows that Decision 2002/460 does not merely confirm Decision 2002/334 and that the inadmissibility of the application in so far as it challenges Decision 2002/334 does not prevent the first appellant from contesting Decision 2002/460.

The second plea

Arguments of the parties

105 The Council submits that the PKK does not have the capacity to bring an action for annulment because, according to the first appellant's own statements, it has been dissolved. Its non-existence is illustrated by the fact that it does not have headed notepaper. The power of attorney given to the lawyers to represent it is simply set out on a blank sheet of paper bearing Osman Ocalan's signature.

106 The first appellant contends, first, that he has not stated that the PKK was dissolved and, second, that the PKK retains at least a residual capacity sufficient to contest its inclusion in the disputed list.

Findings of the Court

107 As has been found in paragraphs 38 to 52 of the present judgment, the available evidence tends to indicate that the PKK was not dissolved at its Congress from 4 to 10 April 2002. It appears in fact, on examining that evidence, that the PKK continued to operate after the Congress, probably in a reorganised form and under other names.

108 Even though the field of the PKK's activities after 4 April 2002 cannot be defined absolutely precisely in the light of that evidence, it is in any event certain that it retains an existence sufficient to contest its inclusion in the disputed list

109 The European Community is a community based on the rule of law in which its institutions are subject to judicial review of the compatibility of their acts with the EC Treaty and with the general principles of law which include fundamental rights. Individuals are therefore entitled to effective judicial protection of the rights they derive from the Community legal order, and the right to such protection is one of the general principles of law stemming from the constitutional traditions common to the Member States. That right has also been enshrined in Articles 6 and 13 of the ECHR (see *Unión de Pequeños Agricultores* v *Council*, paragraphs 38 and 39).

110 It is particularly important for that judicial protection to be effective because the restrictive measures laid down by Regulation No 2580/2001 have serious consequences. Not only are all financial transactions and financial services thereby prevented in the case of a person, group or entity covered by the regulation, but also their reputation and political activity are damaged by the fact that they are classified as terrorists.

111 Under Article 2(3) of Regulation No 2580/2001, read in conjunction with Article 1 (4) to (6) of Common Position 2001/931, a person, group or entity can be included in the disputed list only if there is certain reliable information, and the persons, groups or entities covered must be precisely identified. In addition, it is made clear that the name of persons, groups or entities can be kept on the list only if the Council reviews their situation periodically. All these matters must be open to judicial review.

112 It follows that since, by Decision 2002/460, the Community legislature took the view that the PKK retains an existence sufficient for it to be subject to the restrictive measures laid down by Regulation No 2580/2001, it must be accepted, on grounds of consistency and justice, that that entity continues to have an existence sufficient to contest this measure. The effect of any other conclusion would be that an organisation could be included in the disputed list without being able to bring an action challenging its inclusion.

113 In order to be permitted to bring an action on behalf of such an organisation, it is necessary to show that the organisation concerned does indeed wish to bring the action and that the lawyers who claim to represent it have in fact been instructed for that purpose.

114 The Statute of the Court of Justice, in particular Article 21, the Rules of Procedure of the Court of Justice, in particular Article 38, and the Rules of Procedure of the Court of First Instance, in particular Article 44, were not devised with a view to the commencement of actions by organisations lacking legal personality, such as the PKK. In this exceptional situation, the procedural rules governing the admissibility of an action for annulment must be applied by adapting them, to the extent necessary, to the circumstances of the case. As the Court of First Instance rightly stated in paragraph 28 of the contested order, it is a question of avoiding excessive formalism which would amount to the denial of any possibility of applying for annulment even though the entity in question has been the object of restrictive Community measures.

115 It follows that Osman Ocalan is entitled to demonstrate, by any available evidence, that he is acting validly on behalf of the PKK whose representative he claims to be.

116 Regarding the validity of the representation of the PKK by Osman Ocalan, a doubt arises from the fact that he presents himself in the power of attorney as a former member of the PKK, without his entitlement to represent it being justified on any other basis.

117 However, in the appeal the first appellant has submitted to the Court a statement by Mark Muller, a lawyer, which tends to justify that power of attorney. As confirmed by the judgment of the European Court of Human Rights of 12 May 2005 in *Abdullah Ocalan v. Turkey*, no. 46221/99, not yet published, Mark Muller represents before that court Abdullah Ocalan who was the leader of the PKK and has been imprisoned in Turkey since 1999. Mark Muller states that, on a visit by him to Abdullah Ocalan in prison, the latter gave him instructions to challenge the proscription of the PKK in Europe. Mark Muller further states that several other high-ranking representatives of the PKK and its successor, KADEK, instructed him to pursue the proceedings brought by

the application made to the Court of First Instance.

118 Moreover, Mark Muller states that, when Osman Ocalan signed the power of attorney given to the lawyers to make the application, he was a high-ranking representative of both the PKK and KADEK.

119 These statements, made by a member of the bar of one of the Member States, who is subject as such to a code of professional conduct, are sufficient, in the particular circumstances of the case, to establish that Osman Ocalan is qualified to represent the PKK and in particular to instruct lawyers to act on its behalf.

120 This finding is not affected by the Council's argument relating to the absence of headed notepaper.

121 It is true that in the case of a legal person governed by private law it is customary for the power of attorney given to its lawyers to be set out on headed notepaper, although that is not required by the provisions relating to the procedure before the Court of Justice or the Court of First Instance. However, in the case of an organisation which is not established in accordance with the legal rules that usually apply to legal persons, this factor has little evidential value.

122 In those circumstances, it must be held that Osman Ocalan is authorised to represent the PKK and to instruct lawyers for that purpose.

123 It follows that the first appellant's application is admissible in so far as it challenges Decision 2002/460. The case must accordingly be referred back to the Court of First Instance for judgment on the substance.

124 Since the case is being referred back to the Court of First Instance for continuation of the proceedings in so far as they concern the first appellant, costs should be reserved in his regard.

On those grounds, the Court (First Chamber) hereby:

1. Sets aside the order of the Court of First Instance of the European Communities of 15 February 2005 in Case T-229/02 *PKK and KNK* v *Council* in so far as it dismisses the application of Osman Ocalan on behalf of the Kurdistan Workers' Party (PKK);

2. Dismisses the appeal as to the remainder;

3. Orders Serif Vanly on behalf of the Kurdistan National Congress (KNK) to pay the costs of the appeal brought by him;

4. Dismisses the application of Osman Ocalan on behalf of the PKK as inadmissible in so far as it challenges Council Decision 2002/334/EC of 2 May 2002 implementing Article 2(3) of Regulation (EC) No 2580/2001 on

specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2001/927/EC;

5. Declares that the application of Osman Ocalan on behalf of the PKK is admissible in so far as it challenges Council Decision 2002/460/EC of 17 June 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 2002/334/EC, and refers the case back to the Court of First Instance of the European Communities for judgment on the substance;

6. Reserves the costs of Osman Ocalan on behalf of the PKK.

[Signatures]

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* Language of the case: English.