ПЪРВОИНСТАНЦИОНЕН СЪД НА ЕВРОПЕЙСКИТЕ ОБЩНОСТИ
TRIBUNAL DE PRIMERA INSTANCIA DE LAS COMUNIDADES EUROPEAS
SOUD PRVNÍHO STUPNĚ EVROPSKÝCH SPOLEČENSTVÍ
DE EUROPÆISKE FÆLLESSKABERS RET I FØRSTE INSTANS
GERICHT ERSTER INSTANZ DER EUROPÄISCHEN GEMEINSCHAFTEN
EUROOPA ÜHENDUSTE ESIMESE ASTME KOHUS
ΠΡΩΤΟΔΙΚΕΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ
COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES
TRIBUNAL DE PREMIÈRE INSTANCE DES COMMUNAUTÉS EUROPÉENNES
CÚIRT CHÉADCHÉIME NA GCÓMHPHOBAL EORPACH
TRIBUNALE DI PRIMO GRADO DELLE COMUNITÀ EUROPEE
EIROPAS KOPIENU PIRMĀS INSTANCES TIESA
EUROPOS BENDRIJŲ PIRMOSIOS INSTANCIJOS TEISMAS
EURÓPAI KÖZÖSSÉGEK ELSŐFOKÚ BÍRÓSÁGA
IL-QORTI TAL-PRIMI ISTANZA TAL-KOMUNITAJIET EWROPEJ
GERECHT VAN EERSTE AANLEG VAN DE EUROPESE GEMEENSCHAPPEN
SĄD PIERWSZEJ INSTANCJI WSPÓLNOT EUROPEJSKICH
TRIBUNAL DE PRIMEIRA INSTÂNCIA DAS COMUNIDADES EUROPEIAS
TRIBUNALUL DE PRIMĂ INSTANȚĂ AL COMUNITĂȚILOR EUROPENE
SÚD PRVÉHO STUPŇA EURÓPSKYCH SPOLOČENSTIEV
SODIŠČE PRVE STOPNJE EVROPSKIH SKUPNOSTI
EUROOPAN YHTEISÖJEN ENSIMMÄISEN OIKEUSASTEEN TUOMIOISTUIN
EUROPEISKA GEMENSKAPERNAS FÖRSTAINSTANSRÄTT

CVRIA
LUXEMBOURG

BY FAX
- 391242 -

Luxembourg, 30/03/2009
T-341/07-116

Mr Jean Fermon
Mr Antoine Comte
Mr Hans Schultz
Mr Dündar Gürses
Mr Wolfgang Kaleck
Chaussée de Haecht 55
B - 1210 Bruxelles

Case: T-341/07

Jose Maria Sison
v
Council of the European Union
Kingdom of the Netherlands, intervener
United Kingdom of Great Britain and Northern Ireland, intervener
Commission of the European Communities, intervener

The Registrar of the Court of First Instance hereby informs you that the Court has decided to open the oral procedure and to fix the hearing to take place in the courtroom of the Court of First Instance, Kirchberg-Luxembourg, on

30/04/2009 - 09:30.

Please find enclosed a copy of the Report for the Hearing (Reg. No **391239**). This document, drawn up by the Judge Rapporteur, is an objective summary of the case. It does not set out every single detail of the parties' arguments, but is meant to enable the parties to check that their pleas and arguments have been properly understood and to facilitate study of the documents before the Court by the other Members of the bench hearing the case.

If you consider it to be necessary, you may submit observations on that report either orally at the hearing or, preferably, in writing in due time before the hearing. Your attention is however drawn to the fact that any written observations must reach the Registry one week before the hearing so that they may be communicated to the judges and to the other parties to the proceedings.

Your attention is drawn to section II, Oral Procedure, of the **Practice Directions to Parties** (OJ 2007 L 232, p. 7).

A few minutes before the start of the hearing, the lawyers and agents will be received by the judges of the Chamber in the deliberation room in order to prepare the conduct of the hearing.

The lawyers and agents of the parties are kindly requested to limit their oral submissions to 15 minutes (or 10 minutes in respect of any intervener). If circumstances so require, a request for leave to exceed the speaking time normally allowed, giving reasons and indicating the speaking time considered necessary, may be made to the Registry at least 15 days before the date fixed for the hearing.

If you do not intend to attend the hearing in person but to have the party represented by another representative, you are kindly requested to inform the Registrar and to ensure that an authority signed by yourself and, if necessary, a certificate that your replacement is entitled to practise before a court, are submitted before the hearing.

for E. COULON
Registrar

COMMVNITATVM EVROPAEARVM
CVRIA

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ПЪРВОИНСТАНЦИОНЕН СЪД НА ЕВРОПЕЙСКИТЕ ОБЩНОСТИ
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EUROPEISKA GEMENSKAPERNAS FÖRSTAINSTANSRÄTT

LUXEMBOURG

– 391239 –

REPORT FOR THE HEARING *

(Common foreign and security policy – Restrictive measures against certain persons and entities with a view to combating terrorism – Freezing of funds – Action for annulment – Rights of the defence – Statement of reasons – Review by the courts)

In Case T-341/07,

Jose Maria Sison, residing in Utrecht (Netherlands), represented by J. Fernon, A. Comte, H. Schultz, D. Gürses and W. Kaleck, lawyers,

applicant,

v

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

defendant,

supported by

United Kingdom of Great Britain and Northern Ireland, represented by S. Behzadi Spencer, acting as Agent,

by

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

and by

Commission of the European Communities, represented by P. Aalto and S. Boelaert, acting as Agents,

interveners,

* Language of the case: English.

APPLICATION, initially, for, first, annulment in part of Council Decision 2007/445/EC of 28 June 2007 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decisions 2006/379/EC and 2006/1008/EC (OJ 2007 L 169, p. 58) and, secondly, compensation.

Background to the dispute

1 For a summary of the early background to this case, reference is made to the judgment of the Court of First Instance of 11 July 2007 in Case T-47/03 *Sison* v *Council*, not published in the ECR, '*Sison*'), in particular paragraphs 46 to 70, which describe the administrative and judicial proceedings relating to the applicant in the Netherlands which gave rise to the judgments of the Raad van State (Netherlands Council of State) of 17 December 1992 and of 21 February 1995 ('the judgment of the Raad van State') as well as the decision of 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') of 11 September 1997 ('the decision of the Rechtbank').

2 In *Sison*, the Court of First Instance annulled 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 (OJ 2006 L 144, p. 21), in so far as it concerned the applicant, on the grounds that no statement of reasons was given for the decision, that it had been adopted in the course of a procedure during which the applicant's rights of defence had not been observed and that the Court of First Instance itself was not in a position to undertake the judicial review of the lawfulness of that decision (see *Sison*, paragraph 226).

3 After the hearing in *Sison*, which was held on 30 May 2006, but before the judgment was delivered, the Council adopted Decision 2007/445/EC of 28 June 2007 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decisions 2006/379/EC and 2006/1008/EC (OJ 2007 L 169, p. 58). By that decision, the Council maintained the applicant's name in the list in the Annex to Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 70) ('the list at issue').

4 Prior to the adoption of that decision, by letter of 23 April 2007 (Annex 19 to the application), the Council informed the applicant that, in its view, the reasons for including him in the list at issue were still valid, and that it therefore intended to

maintain him in that list. Enclosed with that letter was the Council's statement of reasons. The applicant was also informed that he could submit observations to the Council on the latter's intention to continue to maintain him in the list and on the reasons stated in that regard, and any supporting documents, within a period of one month.

5 In the statement of reasons enclosed with that letter, the Council noted the following:

'*SISON, Jose Maria (alias Armando Liwanag, alias Joma, head of the Communist Party of the Philippines, including the NPA) born on 8.2.1939 in Cabugao, Philippines*

Jose Maria Sison is the founder and leader of the Philippine Communist Party, including the New People's Army (NPA) (Philippines), which is put in the list of groups involved in terrorist acts in the meaning of Article 1, paragraph 2, of the Common [Position] 2001/931/[CFSP]. He has repeatedly advocated the use of violence for the realisation of political aims and has given leadership to the NPA, which is responsible for a number of terrorist attacks in the Philippines. These acts fall under Article 1, paragraph 3, point iii, letters i) and j) of Common [Position] 2001/931/[CFSP] (hereafter "the Common [Position]") and have been perpetrated with the intention as meant in Article 1, paragraph 3, point iii) of the Common [Position].

The [Rechtbank] confirmed on 11 September 1997 ... [the judgment of the Raad van State]. The Administrative Law Division of the Raad van State came to the decision that the status of asylum seeker in the Netherlands was legitimately refused, because the proof was delivered that he gave leadership – or has tried to give – to the armed wing of the CPP, the NPA, which is responsible for a number of terrorist attacks in the Philippines, and because it also turned out that he maintains contacts with terrorist organisations throughout the whole world.

The Minister of Foreign Affairs and the Minister of Finance [of the Netherlands] decided, through ministerial ruling ('regeling') No DJZ/BR/749-02 of 13 August 2002 (Sanction regulation terrorism 2002 III), which was published in the Netherlands Gazette on 13 August 2002, that all means which belong to Jose Maria Sison and the Philippine Communist Party, including the Philippine New People's Army (NPA) be frozen.

The American Government named Jose Maria Sison as "Specially Designated Global Terrorist" (specifically named as a world ["mondial"] terrorist person pursuant to US Executive Order 13224. This decision can be reviewed according to American law.

Thus with regards to Jose Maria Sison, decisions have been taken by [competent authorities] in the meaning of Article 1, paragraph 4, of the Common [Position].

The Council is convinced that the reasons to put Jose Maria Sison on the list of persons and entities to which the stated measures in Article 2, paragraphs 1 and 2 of Regulation (EC) No 2580/2001 are applicable, remain valid.'

6 By letter of 22 May 2007 (Annex 20 to the application), the applicant submitted to the Council its observations in response. He claimed, inter alia, that neither the judgment of the Raad van State nor the decision of the Rechtbank satisfied the requirements laid down by the relevant Community legislation to serve as a basis for a decision to freeze funds. The applicant also requested that the Council, first, give him an opportunity to be heard prior to the adoption of a new decision to freeze funds and, secondly, send a copy of his written observations and all the procedural documents in Case T-47/03 to all the Member States of the Council.

7 Decision 2007/445 was notified to the applicant under cover of a letter from the Council of 29 June 2007 (Annex 21 to the application). Enclosed with that letter was a statement of reasons identical to that enclosed with the letter from the Council of 23 April 2007.

8 By Decision 2007/868/EC of 20 December 2007 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2007/445 (OJ 2007 L 340, p. 100), the Council adopted a new updated list of the persons, groups and entities to whom and to which that regulation applies. 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 Decision 2007/445.

9 Decision 2007/868 was notified to the applicant under cover of a letter from the Council of 3 January 2008 (Annex 2 to the applicant's observations of 21 January 2008). Enclosed with that letter was a statement of reasons identical to that enclosed with the letters from the Council of 23 April and 29 June 2007.

10 By Decision 2008/343/EC of 29 April 2008 amending Decision 2007/868 (OJ 2008 L 116, p. 25), the Council maintained the applicant in the list at issue, although it amended the entries for the applicant and the Communist Party of the Philippines in the Annex to Decision 2007/868.

11 Under Article 1 of Decision 2008/343:

'In the Annex to Decision 2007/868/EC, the entry for Mr Sison, Jose Maria (a.k.a. Armando Liwanag, a.k.a. Joma), shall be replaced by the following:

"SISON, Jose Maria (a.k.a Armando Liwanag, a.k.a. Joma), born 8.2.1939 in Cabugao (Philippines) – person playing a leading role in the 'Communist Party of the Philippines', including the 'NPA"".'

12 Under Article 2 of Decision 2008/343:

'In the Annex to Decision 2007/868/EC the entry for the Communist Party of the Philippines shall be replaced by the following:

"'Communist Party of the Philippines', including the 'New People's Army' – 'NPA', Philippines, linked to SISON, Jose Maria (a.k.a Armando Liwanag, a.k.a. Joma, who plays a leading role in the 'Communist Party of the Philippines', including the 'NPA')".'

13 Prior to the adoption of that decision, by letter of 25 February 2008 (Annex 2 to the applicant's observations of 8 July 2008), the Council informed the applicant that, in its view, the reasons given for including him in the list at issue were still valid and that, therefore, it intended to maintain him in that list. First, the Council referred to the statement of reasons notified to the applicant by letter of 3 January 2008. Secondly, the Council stated that it had been provided with new information regarding decisions by a competent authority within the meaning of Article 1(4) of Common Position 2001/931, information which led it, after examination, to amend that statement of reasons. Enclosed with that letter was an updated statement of the reasons given by the Council. The applicant was also informed that he could submit observations to the Council on the latter's intention to maintain him in the list and on the reasons stated in that regard, and any supporting documents, within a period of one month.

14 The statement of reasons enclosed with the letter of 25 February 2008 essentially reproduces the statement of reasons previously notified to the applicant. The Council also added the following:

'The [Rechtbank] found, in its judgment of 13 September 2007 (LJN:BB3484), that there were many indications that Jose Maria Sison had been involved in the Central Committee (CC) of the CPP and its armed wing, the NPA. The court also concluded that there were indications that Jose Maria Sison was still playing a prominent role in the underground activities of the CC, the CPP and the NPA.

On appeal, the Gerechtshof (Court of Appeal), the Hague, concluded, in its judgment of 3 October 2007 (LJN:BB4662), that the case file contains numerous indications that Jose Maria Sison continued to play a prominent role in the CPP, as leader or otherwise, throughout his many years in exile' (unofficial translation).

15 By letter of 24 March 2008 (Annex 3 to the applicant's observations of 8 July 2008), the applicant submitted to the Council his observations in response. While reiterating the arguments he had previously raised before the Council, he claimed, in particular, that neither the judgment of the Rechtbank nor the judgment of the Gerechtshof satisfied the requirements laid down by the relevant Community legislation to serve as a basis for a decision to freeze funds.

16 Decision 2008/343 was notified to the applicant under cover of a letter from the Council of 29 April 2008 (Annex 1 to the applicant's observations of 8 July

2008). Enclosed with that letter was a statement of reasons identical to that enclosed with the letter from the Council of 25 February 2008.

17 By Decision 2008/583/EC of 15 July 2008 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2007/868 (OJ 2008 L 188, p. 21), the Council adopted a new updated list of the persons, groups and entities to whom and to which that regulation applies. 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 Decision 2007/868, as amended by Decision 2008/343.

18 Decision 2008/583 was notified to the applicant under cover of a letter from the Council of 15 July 2008 (Annex 2 to the applicant's observations of 15 September 2008). Enclosed with that letter was a statement of reasons identical to that enclosed with the letters from the Council of 25 February and 29 April 2008.

19 By Decision 2009/62/EC of 26 January 2009 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2008/583 (OJ 2009 L 23, p. 25), the Council adopted a new updated list of the persons, groups and entities to whom and to which that regulation applies. 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 Decision 2007/868, as amended by Decision 2008/343.

20 Decision 2009/62 was notified to the applicant under cover of a letter from the Council of 27 January 2009 (Annex 2 to the applicant's observations of 18 February 2009). Enclosed with that letter was a statement of reasons identical to that enclosed with the letters from the Council of 25 February, 29 April and 15 July 2008.

Procedure and forms of order sought by the parties

21 The applicant brought this action by application lodged at the Registry of the Court of First Instance on 10 September 2007. The initial purpose of the action was, first, annulment in part of Decision 2007/445 under Article 230 EC and, secondly, compensation under Articles 235 EC and 288 EC.

22 By separate document lodged at the Registry of the Court of First Instance on the same day, the applicant applied for the case to be decided under an expedited procedure pursuant to Article 76a of the Rules of Procedure of the Court of First Instance. The Council submitted its observations on that application on 28 September 2007.

23 Before giving a ruling on that request, the Court of First Instance (Seventh Chamber) decided, on 11 October 2007, to summon the parties' agents to an informal meeting before the Judge-Rapporteur pursuant to Article 64 of the Rules of Procedure. That meeting was held on 8 November 2007.

24 On 13 November 2007, the Court of First Instance (Seventh Chamber) decided to adjudicate under an expedited procedure, as regards the application for annulment under Article 230 EC, provided that the applicant submitted, within seven days, an abbreviated version of his application and a list of only those annexes which had to be taken into consideration, in accordance with the draft he had prepared for the informal meeting and in compliance with the *Practice directions to parties*. The applicant complied with that condition.

25 At the request of the parties, by order of 13 November 2007, the President of the Seventh Chamber of the Court of First Instance stayed the proceedings, in respect of the action for damages under Articles 235 EC and 288 EC, until delivery of the forthcoming judgment on the action for annulment under Article 230 EC.

26 In the abbreviated version of his application, lodged at the Registry of the Court on 19 November 2007, the *applicant* claims that the Court should:

– annul Decision 2007/445 and, in particular, points 1.33 and 2.7 of the Annex thereto, in so far as those provisions concern the applicant;

– order the Council to pay the costs.

27 In its defence, lodged at the Registry of the Court on 5 December 2007, the *Council* contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

28 By document lodged at the Registry of the Court on 24 January 2008, the *applicant* sought leave to amend the forms of order sought, his pleas in law and arguments so that they were directed against Decision 2007/868. In that document, he claims that the Court should:

– declare that amendment admissible and regard the application for annulment as being directed against Decision 2007/868;

– annul in part Decision 2007/868 and, in particular, points 1.33 and 2.7 of the Annex thereto, in so far as those provisions concern him;

– order the Council to pay the costs.

29 In its observations lodged at the Registry of the Court on 15 February 2008, the *Council* indicated its agreement to that request.

30 By orders of 12 February and 22 April 2008, after the parties had been heard, the President of the Seventh Chamber of the Court of First Instance granted the United Kingdom of Great Britain and Northern Ireland, the Kingdom of the

Netherlands and the Commission leave to intervene in support of the form of order sought by the Council.

31 By letter of 7 May 2008, the Council lodged at the Registry of the Court a copy of Decision 2008/343, of the letter by which it had notified the applicant of that decision and of the new statement of reasons enclosed with that letter. Those documents were placed in the file.

32 The applicant submitted his observations in response by document lodged at the Registry of the Court on 11 June 2008.

33 By document lodged at the Registry of the Court on 8 July 2008, the *applicant* sought leave to amend the forms of order sought, his pleas in law and arguments so that they were directed against Decision 2008/343. In that document he claims that the Court should:

- declare that amendment admissible and regard the application for annulment as being directed against Decision 2008/343;
- annul in part Decision 2008/343 and, in particular, Article 1 of that decision as well as Article 2 thereof, in so far as it refers to the name of the applicant;
- annul in part Decision 2007/868 and, in particular, points 1.33 and 2.7 of the Annex thereto, in so far as those provisions concern him;
- annul in part Decision 2007/445, in accordance with the forms of order initially sought by him;
- order the Council to pay the costs.

34 In its observations, lodged at the Registry of the Court on 29 July 2008, the *Council* indicated its agreement to that request and responded to the arguments set out in that document.

35 By document lodged at the Registry of the Court on 15 September 2008, the *applicant* sought leave to amend the forms of order sought, his pleas in law and arguments so that they were directed against Decision 2008/583. In that document, he claims that the Court should:

- declare that amendment admissible and regard the application for annulment as being directed against Decision 2008/583;
- annul in part Decision 2008/583 and, in particular, points 1.26 and 2.7 of the Annex thereto, in so far as those provisions concern him;
- annul in part Decisions 2007/445, 2007/868 and 2008/343, in accordance with the previous forms of order sought by him;

– order the Council to pay the costs.

36 In its observations, lodged at the Registry on 10 October 2008, the *Council* indicated its agreement to that request.

37 By document lodged at the Registry of the Court on 26 February 2009, the *applicant* sought leave to amend the forms of order sought, his pleas in law and arguments so that they were directed against Decision 2009/62. In that document, he claims that the Court should:

– declare that amendment admissible and regard the application for annulment as being directed against Decision 2009/62;

– annul in part Decision 2009/62 and, in particular, points 1.26 and 2.7 of the Annex thereto, in so far as those provisions concern him;

– annul in part Decisions 2007/445, 2007/868, 2008/343 and 2008/583, in accordance with the previous forms of order sought by him;

– order the Council to pay the costs.

38 In its observations, lodged at the Registry on 18 March 2009, the *Council* indicated its agreement to that request.

39 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Seventh Chamber) decided to open the oral procedure.

The claims for annulment of Decisions 2007/445 and 2007/868

40 In this expedited procedure, the *applicant* essentially puts forward four pleas in law in support of his claims for annulment of Decision 2007/445. The first alleges infringement of the obligation to state reasons and a manifest error of assessment. The second alleges infringement of Article 2(3) of Regulation No 2580/2001 and Article 1(4) of Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism (OJ 2001 L 344, p. 93). The third alleges infringement of the principle of proportionality. The fourth alleges infringement of the general principles of Community law and fundamental rights.

41 Moreover, the applicant submits that those pleas and the arguments underpinning them also justify, *mutatis mutandis*, annulment of Decision 2007/868.

42 Lastly, the applicant asserts, by reference to the judgment of the Court of First Instance of 3 April 2008 in Case T-229/02 *PKK* v *Council*, not published in the ECR, paragraph 49 and case-law cited, that he continues to have an interest in obtaining the annulment of all the decisions which included or maintained him in the list at issue, notwithstanding their repeal.

The first plea: infringement of the obligation to state reasons and a manifest error of assessment

43 The *applicant* submits that the statement of reasons enclosed with the letters from the Council of 23 April and 29 June 2007 failed to meet the requirement to state reasons as set out in Article 253 EC and referred to in the case-law (see *Sison*, paragraphs 156, 185, 188 and 191).

44 In the first place, the Council failed to respond or even refer to the detailed observations sent by the applicant on 22 May 2007, which would suggest that they were not taken into consideration.

45 In the second place, the statement of reasons enclosed with the letter of notification is manifestly erroneous, and as such cannot be considered to be adequate in law. First, the statement of reasons is based on a series of unfounded and inaccurate allegations (see, in that regard, paragraph 47 below). Secondly, the Council misinterpreted the judgment of the Raad van State and the decision of the Rechtbank (see, in that regard, paragraphs 49 and 52 below). Thirdly, none of the four decisions relied on by the Council to justify the adoption of Decision 2007/445 meets the requirements of Article 2(3) of Regulation No 2580/2001 and Article 1(4) of Common Position 2001/931 (see, in that regard, paragraphs 48, 53 and 54 below).

46 In the third place, the statement of reasons enclosed with the notification letter is not 'actual and specific' for the purposes of *Sison* (paragraphs 198 and 217). First, the Council made only general assertions. Secondly, the Council did not explain why the freezing of the applicant's funds should remain justified 10 years after the decision of the Rechtbank and 12 years after the judgment of the Raad van State, which themselves referred to facts even further into the past. Thirdly, the Council did not explain how the freezing of the applicant's funds could contribute, in a concrete manner, to combating terrorism. It did not provide any evidence reasonably to demonstrate that the applicant could use his funds to perpetrate or facilitate terrorist acts in the future.

47 The *Council*, which also refers to its arguments in response to the second plea (paragraphs 56 to 59 below), submits that it complied with the requirement to state reasons for the decisions to freeze the funds as set out in *Sison*, by providing the applicant with precise information which indicated that appropriate decisions had been taken in respect of the applicant by competent national authorities within the meaning of Article 1(4) of Common Position 2001/931. The statement of reasons enclosed with the notification letter also states that the Council is satisfied that the reasons for including the applicant in the list at issue remain valid.

48 In that regard the Council considers that the assessment of whether restrictive measures should be maintained against a terrorist or terrorist organisation is a policy matter for which the legislature alone is responsible. It must take all

relevant considerations into account, including, inter alia, the person's past record of involvement in terrorist acts and the perceived future intentions of the person. The status of the decisions of the competent national authorities must also be taken into account. All these matters concern the security of individuals and the preservation of public order, in respect of which the Council enjoys broad discretion.

49 The Council adds that the freezing of any person's assets, where that person has been determined to have been involved in terrorist acts, can be useful in combating terrorism. That is the very purpose of Regulation No 2580/2001 (see recital 2 in its preamble). Equally, any decision to end an asset freeze could render it possible for the owner of those assets to commit, or attempt to commit terrorist acts again. The Council does not agree that either of those points calls for the provision of any specific reasons on its part.

The second plea: infringement of Article 2(3) of Regulation No 2580/2001 and Article 1(4) of Common Position 2001/931

50 The *applicant* argues that the legal requirements set out in Article 2(3) of Regulation No 2580/2001 and Article 1(4) of Common Position 2001/931 have not been fulfilled in the present case.

51 In the first place, the factual allegations made by the Council are erroneous and unfounded. They therefore do not constitute 'precise information or material in the relevant file', within the meaning of the relevant provisions. First, the Council incorrectly and without any evidence claims that the applicant is Armando Liwanag. Secondly, the Council incorrectly and without any evidence claims that the applicant is the leader or the head of the 'CPP [Communist Party of the Philippines], including the NPA [New People's Army]'. Thirdly, the Council incorrectly and without any evidence states that the applicant 'advocates the use of violence', despite his role in the Philippines peace process. Fourthly, the Council incorrectly and without any evidence claims that the applicant gave instructions to the NPA concerning alleged terrorist attacks in the Philippines.

52 In the second place, neither the Raad van State in 1995 nor the Rechtbank in 1997 had jurisdiction to open an investigation or bring criminal proceedings in connection with a terrorist act. In that regard, although the Raad van State and the Rechtbank are judicial authorities, they cannot be regarded as 'competent authorities' pursuant to the relevant provisions.

53 Moreover, the Council completely misinterpreted the judgment of the Raad van State and the decision of the Rechtbank.

54 First, the Rechtbank had not 'confirmed' the judgment of the Raad van State, since the question before it was totally different from that before the Raad van State. On the one hand, the Raad van State had to determine whether or not the Netherlands Minister for Justice could apply to the applicant Article 1(F) of the

Geneva Convention of 28 July 1951 relating to the Status of Refugees, as amended by the New York Protocol of 31 January 1967 ('the Geneva Convention'), in order to deny him refugee status. The Raad van State answered that question in the negative and recognised that the applicant had refugee status, pursuant to Article 1(A) of that convention. On the other hand, the Rechtbank had to determine whether the Netherlands Minister for Justice could lawfully refuse to grant the applicant a Netherlands residence permit, although he had been recognised as a refugee, on grounds of public interest. The Rechtbank 'confirmed' the judgment of the Raad van State only insofar as it ruled that Article 1(F) of the Geneva Convention does not apply to the applicant.

55 Secondly, the Netherlands courts did not actually find or state that the applicant was 'responsible for a number of terrorist attacks in the Philippines', since that issue was never brought before them. The Rechtbank was required to rule on whether the Minister for Justice could refuse to grant a residence permit to the applicant 'on important grounds of public interest' and, in particular, 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'. It is clear that the concept of 'public interest' is not equivalent to that covered by the expression 'to perpetrate or facilitate a terrorist act'. Similarly, the Raad van State had to rule on the applicability of Article 1(F) of the Geneva Convention. On that occasion, the Raad van State took the view that the evidence produced by the Netherlands security services 'd[id] not provide support for the conclusion that the [applicant had] directed the [NPA terrorist] operations [in the Philippines] and [wa]s responsible for them to such an extent that it may be held that there [we]re serious reasons to suppose that the [applicant] ha[d] actually committed the serious crimes referred to in [Article 1(F) of the Geneva Convention].'

56 Thirdly, the Netherlands courts did not find that the applicant 'maintains contacts with terrorist organisations throughout the whole world'. In its decision, the Rechtbank merely referred, as an incidental matter, to 'indications of personal contacts between the appellant and representatives of terrorist organisations'. The applicant denies having had such contacts and points out that he has not had access to the documents of the Netherlands security services on which that finding of the Rechtbank is based, which, in his submission, constitutes a violation of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ('the ECHR'). In any event, the applicant claims that mere contacts with members of an organisation regarded as terrorist by the national authorities does not, in itself, constitute an act of participation in or facilitation of a terrorist act, for the purposes of Article 1(4) of Common Position 2001/931.

57 In the third place, with regard, first, to the rules on combating terrorism adopted on 13 August 2002 by the Netherlands Minister for Foreign Affairs (Sanctieregeling Terrorisme 2002 III, Staatscourant No 153; see *Sison*, paragraph 80), which places the CPP, the NPA and the applicant on a list of individuals and

groups subject to economic sanctions, and, secondly, to the decision of the United States authorities to categorise the applicant as a 'Specially Designated Global Terrorist', pursuant to Executive Order No 13224 (see *Sison*, paragraph 79), the applicant points out that they are decisions taken by administrative authorities, and not decisions taken by judicial or equivalent authorities. Those decisions cannot, therefore, be regarded as having been taken by a 'competent authority' within the meaning of the relevant provisions.

58 With regard to the fact, relied on by the Council, that the United States decision 'can be reviewed according to American law', the applicant submits that that does not make that decision that of a judicial authority. He adds that the fact that he has not yet challenged that decision is precisely due to his lack of financial means to do so, on account of the freezing of funds imposed by Decision 2007/445, and not because he accepts it.

59 The *Council* submits that the legal requirements laid down in Article 2(3) of Regulation No 2580/2001 and Article 1(4) of Common Position 2001/931 are fulfilled in the present case.

60 In the first place, it argues, first, that all the factual allegations made in the statement of reasons annexed to the letter of notification are accurate and, second, that it correctly interpreted the judgment of the Raad van State and the decision of the Rechtbank. It contends that the way in which the applicant presented those facts, the judgment and the decision is inaccurate and misleading.

61 In that regard, the Council refers to the description of the administrative and judicial procedures relating to the applicant in the Netherlands and to the summary of the judgment of the Raad van State and of the decision of the Rechtbank set out in paragraphs 49, 50 and 56 to 70 of *Sison*. In the light of that information, it would be incorrect of the applicant to regard as unfounded the Council's assertions that: (i) he is the leader of the CPP, including the NPA; (ii) he has advocated the use of violence; (iii) he has directed or sought to direct the NPA, a group responsible for numerous terrorist attacks in the Philippines; and (iv) he has maintained contacts with terrorist organisations all over the world. It is also misleading for the applicant to claim that he has been recognised as a refugee by the Raad van State and the Rechtbank. In fact, the applicant has never been granted refugee status or a residence permit in the Netherlands, as was confirmed by the Rechtbank.

62 With regard to the applicant's claim that he was not properly able to defend himself before the Rechtbank, because he had not had access to some information in the file, which was treated as confidential (see paragraph 52 above), the Council contends, first, that that argument is concerned with the procedure before the competent national court and, secondly, that the applicant had at the time consented to the examination of the information in the file in question by the president of the Rechtbank and to consideration of it by the Rechtbank without his

being notified of it, as is apparent from paragraph 6 of the decision of the Rechtbank (see also *Sison*, paragraph 62).

63 In the second place, the Council argues that the Raad van State and the Rechtbank regarded as established the facts referred to in the statement of reasons annexed to the letter of notification and reproduced in paragraph 57 above. Those facts, in its submission, fall within the scope of Article 1(3)(i) (threatening to commit terrorist acts) and (j) (directing a terrorist group) of Common Position 2001/931. The Council therefore submits that Article 2(3) of Regulation No 2580/2001 was correctly applied to the applicant's situation and that in that regard it did not make a manifest error of assessment, the only ground for review by the Court of First Instance (*Sison*, paragraph 206).

64 In the third place, the Council argues, with regard to the decisions taken by the Netherlands and United States administrative authorities as regards the applicant (see paragraph 53 above), that Article 1(4) of Common Position 2001/931 does not require that the decision of the competent national authority must be taken by a judicial authority. Moreover, it points out that those decisions are open to review by the Netherlands and the United States courts. In any event, the Council submits that it based Decision 2007/445 not on the decisions in question, but on the judgment of the Raad van State and on the decision of the Rechtbank.

The third plea: infringement of the principle of proportionality

65 The *applicant* claims that the Council has provided no evidence which can reasonably lead to the conclusion that he could use any funds in order to perpetrate terrorist acts. At the hearing of 31 May 2006 in *Sison*, the Agents for the Netherlands Government, in response to questions from the Court of First Instance, admitted that no suspect transactions had been observed from the applicant's bank accounts. Bank statements of those accounts showed that the frozen funds were used for essential needs.

66 The *Council* submits that Decision 2007/445 is consistent with the principle of proportionality. First, it is necessary to freeze the assets of individuals such as the applicant in order to combat the funding of terrorism and terrorism itself. Second, the restrictive measures imposed by the Council go no further than is necessary to achieve that purpose. The Council refers, inter alia, to Case C-84/95 *Bosphorus* [1996] ECR I-3953, paragraph 26, the 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 36, and Case T-315/01 *Kadi* v *Council and Commission* [2005] ECR II-3649, paragraph 245 *et seq.*) and Case T-49/04 *Hassan* v *Council and Commission* [2006] ECR II-52, paragraphs 98 to 102.

67 The Council also points out that the restrictive measures imposed pursuant to Regulation No 2580/2001 are those required by United Nations Security Council

Resolution 1373 (2001). Therefore, even if it is the Council itself which decides which persons and entities should be subject to those measures, the type and extent of those measures are prescribed by the resolution in question.

68 Finally, the Council points out that it has taken due account of the interests of the persons targeted, by including, in Article 5 of Regulation No 2580/2001, a provision whereby specific authorisations may be granted in order to take care of the essential needs of those persons.

The fourth plea: infringement of the general principles of Community law and fundamental rights

69 The *applicant* alleges, in the light of Article 6 EU and the general principles of Community law, several breaches of his fundamental rights and freedoms as guaranteed by the ECHR.

70 In the first part of the plea, the applicant submits that Decision 2007/445 infringes the right to a fair trial before an impartial court, guaranteed by Article 6(1) of the ECHR and recognised by the Court of Justice in its case-law (Case C-97/91 *Oleificio Borelli* v *Commission* [1992] ECR I-6313, paragraph 14; Case C-185/95 P *Baustahlgewebe* v *Commission* [1998] ECR I-8417, paragraph 21; Case C-7/98 *Krombach* [2000] ECR I-1935, paragraph 26; and Case C-1/99 *Kofisa Italia* [2001] ECR I-207, paragraph 46).

71 He argues in that regard that his inclusion in the list at issue is tantamount to being accused of 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 v Belgium*, 27 February 1980, Series A No 35, § 44).

72 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 penalty imposed.

73 In the present case, those three criteria are satisfied. First, Decision 2007/445 is concerned with combating 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 Regulation No 2580/2001 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.

74 By Decision 2007/445, 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.

75 In the second part of the plea, the applicant submits that Decision 2007/445 infringes the principle of the presumption of innocence, enshrined in Article 6(2) of the ECHR.

76 By that decision, which has the force of law in all the Member States, the applicant is actually suspected or accused by the Council, a key institution of the European Union which enjoys significant authority and unquestionable prestige, of the offence of committing, or attempting to commit, participating in or facilitating the commission of any act of terrorism, but his guilt has not been established by law (see *Minelli v Switzerland*, 25 March 1983, Series A No 62, § 37, and *Allenet de Ribemont v France*, 10 February 1995, Series A No 308, § 36). The applicant points out that, prior to his inclusion in the list at issue, he had not been charged with any specific act of terrorism and that no civil or criminal proceedings had been brought against him.

77 In the third part of the plea, the applicant maintains that Decision 2007/445 was taken in breach of his rights of defence, in particular the right to be heard (see *Sison*, paragraph 184), even though the Council gave the appearance of providing him with the opportunity to make known his views.

78 First, the Council failed to communicate to the applicant any evidence to support its assertions.

79 Secondly, the Council did not give the applicant the opportunity to be heard, despite his request for a hearing in his observations of 22 May 2007. In his submission, the case-law and the general principles relating to the rights of the defence required that he be heard in person and with the assistance of his counsel, in order effectively to exercise his right to defence.

80 Thirdly, the applicant submits that the Council had already taken the decision to maintain him in the list at issue when it informed him, by letter of 23 April 2007, of its 'intention' in that regard. That is clear from the actual wording of the statement of reasons annexed to that letter, in which the Council declared that it was 'convinced' that the reasons for maintaining him in that list remained valid and 'ha[d] decided' that the measures referred to in Article 2(3) of Regulation No 2580/2001 '[had to] remain applicable' to him.

81 Fourthly and finally, the applicant argues that the Council had no intention of submitting that decision to any form of contradiction or challenge, despite the apparent possibility it had, in a formalistic manner, given him to put forward his observations in reply. He adduces as evidence of that claim the fact that those observations were completely disregarded in Decision 2007/445, the statement of reasons for which is absolutely identical to that communicated on 23 April 2007. In the applicant's submission, following the judgments in Case T-228/02 *Organisation des Modjahedines du peuple d'Iran* v *Council* [2006] ECR II-4665

and *Sison*, the Council established a purely formal mechanism which only appears to observe the rights of the defence.

82 In response to the first two parts of the plea, the *Council* argues, first, that Article 6(1) of the ECHR is irrelevant at the stage of the administrative procedure before the Council (*Sison*, paragraph 142) and, secondly, that the applicant's line of argument based on the premiss that his inclusion in the list at issue is tantamount to a criminal charge has already been rejected by the Court of First Instance (*Sison*, paragraph 101). The Council recalls, furthermore, that the purpose of the present proceedings is precisely to provide the judicial oversight which is required pursuant to Article 6(1) of the ECHR.

83 In response to the third part of the plea, the Council submits that it has taken great care to comply with the requirements of the judgment in *Sison* (paragraphs 141 and 184), with regard to observance of the rights of the defence, by communicating to the applicant the evidence against him and by providing him with the opportunity effectively to make known his view on that evidence prior to the adoption of Decision 2007/445.

84 With regard, in particular, first to the applicant's assertion that no evidence was communicated to him, the Council responds that it fulfilled its obligations by notifying him of the decisions of the competent national authorities on which it intended to base its decision and by specifying the terrorist acts in question.

85 With regard, secondly, to the applicant's argument that he should have been heard in person and with the assistance of his lawyer, the Council responds that there is no suggestion in *Sison* that the obligation to provide the person concerned with a hearing goes so far. It is sufficient that the applicant has been placed in a position to make his observations in writing, as he did on 22 May 2007. Moreover, an examination of those observations shows that the applicant had the opportunity to make known his views on the evidence and on all other aspects of his inclusion in the list at issue.

86 With regard, thirdly, to the applicant's assertion that the Council had in April 2007 already decided to maintain him in the list at issue, the Council responds that it is obvious that, in the context of the periodic review of the list at issue, it prepares a statement of reasons only in respect of those persons and entities which the Council considers, in principle, must be maintained in that list. Accordingly, the fact that a statement of reasons was sent to the applicant at that time in no way indicates that the final decision on whether or not to maintain the applicant in that list had already been taken. On the contrary, the applicant's observations of 22 May 2007 were notified to all the delegations of the relevant preparatory body and considered by that body before the adoption of Decision 2007/445.

87 With regard, fourthly, to the applicant's argument based on the fact that the statement of reasons communicated in April 2007 was not amended following the

submission of his observations, the Council responds that it is obliged only to consider any observations received from persons concerned. It is not, however, obliged to respond in turn to those observations. The Council's response is in fact contained in Decision 2007/445 and in the statement of reasons sent as an annex to the letter of notification. It is apparent from that letter that the Council took into consideration the applicant's observations. The fact that the statement of reasons was not amended simply shows that the Council was not persuaded by any of the arguments put forward by the applicant.

The claims for annulment of Decisions 2003/343, 2008/583 and 2009/62

88 Whilst relying, *mutatis mutandis*, on the pleas in law and arguments already put forward in support of its claims for annulment of Decisions 2007/445 and 2007/868, the *applicant* puts forward a new line of argument in support of its claims for annulment of Decisions 2008/343, 2008/583 and 2009/62. That line of argument refers more specifically to the new evidence relied on by the Council in the statement of reasons annexed to its letter of 25 February 2008 (see paragraph 14 above).

89 In that regard, the applicant submits, in the first place, that the Council has manifestly misinterpreted and misrepresented the decision of the Rechtbank of 13 September 2007 and the judgment of the Gerechtshof of 3 October 2007, which are related to a criminal investigation initiated against him in the Netherlands, on 28 August 2007, for incitement to commit certain murders in the Philippines.

90 First, in those two decisions, produced as Annexes 4 and 5 to the document lodged at the Registry of the Court on 8 July 2008, the courts concerned ruled that there was no concrete indication of the applicant's direct criminal involvement in the acts at issue, such as to justify keeping him in preventive detention. Moreover, the judgment of the Rechtbank was nullified and superseded by the judgment of the Gerechtshof and is therefore irrelevant.

91 Secondly, as the applicant pointed out to the Council prior to the adoption of Decision 2008/343, the charges in question had already been rejected on substantive grounds as being 'politically motivated' by the Supreme Court of the Philippines in its ruling of 2 July 2007 (Annex 9 to the application). It is therefore inadmissible for the same acts to be the subject-matter of a criminal investigation in the Netherlands.

92 Thirdly, the Council also failed to take into consideration the decision of the rechter-commissaris (examining magistrate) of 21 November 2007 closing the preliminary criminal investigation on account of the lack of serious evidence (Annex 6 to the document lodged at the Registry of the Court on 8 July 2008).

93 The applicant submits, in the second place, that the above decisions of the three Netherlands judicial authorities, in the criminal proceedings relating to him, like the decision of the Supreme Court of the Philippines, disclose no evidence or serious and credible indication of his participation in any terrorist activity whatsoever, but quite the contrary. Moreover, the acts referred to in the context of the criminal proceedings in the Netherlands are not terrorist acts within the meaning of Common Position 2001/931.

94 The *Council* contends that the Rechtbank found, in its judgment of 13 September 2007, that there were many indications that the applicant had been involved in the Central Committee of the Communist Party of the Philippines and its armed wing, the NPA. That court also concluded that there were indications that the applicant was still playing a prominent role in the underground activities of the Central Committee of the Communist Party of the Philippines and of the NPA. On appeal, the Gerechtshof concluded, in its judgment of 3 October 2007, that the case file contained numerous indications that the applicant had continued to play a prominent role in the Communist Party of the Philippines, throughout his many years in exile.

95 The Council considers that those two decisions provide direct corroboration of its position that the applicant has been involved in terrorist acts and that decisions in respect of the applicant have been taken by competent authorities within the meaning of Common Position 2001/931.

96 As regards the finding of the Gerechtshof that no direct connection has been established between the applicant's role within the Communist Party of the Philippines and the murder attacks in the Philippines referred to in the charges against him, the Council submits that it is irrelevant since it seeks to rely not on the applicant's guilt in connection with those crimes, but on the leading role he has played in the Communist Party of the Philippines, notwithstanding his exile in the Netherlands. The same applies to the closure of the preliminary criminal investigation.

N. J. Forwood
Judge-Rapporteur