Reports of Cases

JUDGMENT OF THE GENERAL COURT (Third Chamber)

14 January 2015*

(Referral back after setting aside of order — Common foreign and security policy — Restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban — Regulation (EC) No 881/2002 — Freezing of funds and economic resources of a person named in a list drawn up by a body of the United Nations — Naming of that person in the list in Annex I to Regulation (EC) No 881/2002 — Action for annulment — Admissibility — Period allowed for commencing proceedings — Exceeded — Excusable error — Fundamental rights — Rights of the defence — Right to effective judicial protection — Right to respect for property — Right to respect for private and family life)

In Case T-127/09 RENV,

Abdulbasit Abdulrahim, residing in London (United Kingdom), represented by P. Moser QC, E. Grieves, Barrister, H. Miller and R. Graham, Solicitors,

applicant,

v

Council of the European Union, represented by E. Finnegan and G. Étienne, acting as Agents,

and

European Commission, represented by E. Paasivirta and G. Valero Jordana, acting as Agents,

defendants,

APPLICATION initially for (i) partial annulment of Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ 2002 L 139, p. 9), as amended by Commission Regulation (EC) No 1330/2008 of 22 December 2008 amending for the 103rd time Regulation No 881/2002 (OJ 2008 L 345, p. 60), or of Regulation No 1330/2008, in so far as it concerns the applicant, and (ii) compensation for the damage allegedly caused by those acts,

THE GENERAL COURT (Third Chamber),

composed of S. Papasavvas, President, N.J. Forwood (Rapporteur) and E. Bieliūnas, Judges,

Registrar: S. Spyropoulos, administrator,

* Language of the case: English.

having regard to the written procedure and further to the hearing on 4 February 2014,

gives the following

Judgment

Background to the dispute and the procedure preceding the referral back

1 On 21 October 2008 the name of the applicant, Mr Abdulbasit Abdulrahim, was added to the list drawn up by the Sanctions Committee established by United Nations Security Council Resolution 1267 (1999) of 15 October 1999 on the situation in Afghanistan ('the Sanctions Committee list' and 'the Sanctions Committee', respectively). That addition was the subject of a Sanctions Committee press release SC/9481 published on 23 October 2008.

2 By Commission Regulation (EC) No 1330/2008 of 22 December 2008 amending for the 103rd time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban (OJ 2008 L 345, p. 60), Mr Abdulrahim's name was consequently added to the list of persons and entities whose funds and other economic resources were to be frozen pursuant to Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ 2002 L 139, p. 9) ('the list at issue').

3 Point 1 of the annex to Regulation No 1330/2008 provides the following reasons for adding Mr Abdulrahim's name to the above list:

'…Other information: (a) … ; (b) Involved in fundraising on behalf of the Libyan Islamic Fighting Group ["the LIFG"]; (c) Held senior positions within the LIFG in the United Kingdom; (d) Associated with the Directors of the Sanabel Relief Agency, Ghuma Abd'rabbah, Taher Nasuf and Abdulbaqi Mohammed Khaled and with members of the LIFG in the United Kingdom, including Ismail Kamoka, a senior member of the LIFG in the United Kingdom who has been convicted and sentenced in the United Kingdom in June 2007 based on charges of terrorist funding.'

4 Recital 5 in the preamble of Regulation No 1330/2008 states: '[s]ince the [Sanctions Committee list] does not provide the current addresses for the natural persons concerned, a notice should be published in the Official Journal so that the persons concerned can contact the Commission and that the Commission can subsequently communicate the grounds on which this Regulation is based to the natural persons concerned, provide them with the opportunity to comment on these grounds and review this Regulation in view of the comments and possible available additional information'. The notice in question was published in the *Official Journal* of 30 December 2008 (C 330, p. 106).

5 By application, the signed original of which was received at the Court's Registry on 15 April 2009, Mr Abdulrahim brought an action against the Council of the European Union and the Commission of the European Communities, seeking, in essence, (i) annulment of Regulation No 881/2002, as amended by Regulation No 1330/2008, or of Regulation No 1330/2008, in so far as those acts concern him and (ii) compensation for the damage allegedly caused by those acts. The action was registered as Case T-127/09.

6 Having received notice of the application and thereby having become aware of Mr Abdulrahim's address, the Commission sent to him the grounds for his being named on the list at issue by letter dated 3 July 2009. The annex to that letter, headed 'Grounds for listing' ('the summary of reasons'), is worded as follows:

'Abdulbasit Abdulrahim … was listed [on the Sanctions Committee list] on 21 October 2008 pursuant to paragraphs 1 and 2 of [United Nations Security Council] resolution 1822 (2008) as being associated with the [LIFG] … for "participating in the financing, planning, facilitating, preparing or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf or in support" of this entity.

Additional information The [LIFG] is an Islamist extremist group formed in 1990. The LIFG's original aim was to replace Colonel Gaddafi's regime with a hard-line Islamic State. In the 1990s, the LIFG mounted several operations inside Libya, including the 1996 attempt to assassinate Colonel Gaddafi. Following Libyan government action, which led to a number of LIFG members being killed or arrested, many LIFG members left Libya. On 3 November 2007, the LIFG formally merged with Al-Qaida. The merger was announced through a Jihadist website affiliated with Al-Qaida (the Al-Saheb media group). The merger was announced by two video clips; the first by Al-Qaida second in command Ayman Al-Zawahiri, the second by Abu Laith Al Libi, then a senior member of the LIFG, and a senior mujahidin leader and trainer for Al-Qaida in Afghanistan killed in a US missile strike in January 2008. The LIFG is part of the Al-Qaida movement that continues to threaten global peace and security. Accordingly, on 6 October 2001, the United Nations added LIFG to its consolidated list of entities associated with Al-Qaida. The LIFG was proscribed as a terrorist organisation in the UK under the Terrorism Act 2000 with effect from 14 October 2005. Through his conscious involvement with an entity that has associated with Al-Qaida and its terrorist activities, [Mr Abdulrahim] meets the criteria for designation by [the Sanctions Committee]. According to information available to the UK government, Abdulbasit Abdulrahim is judged to be an Islamist extremist involved in terrorist-related activity. He has previously held senior positions within the [LIFG] and remains a close associate of senior UK members of LIFG. He is judged to have been involved in fundraising activities on behalf of the LIFG. He is a close associate of the Directors of the Sanabel relief charity — a Libyan charitable organisation which has been designated by the UN as a fundraising arm of the LIFG. … He is also a close associate of Ghuma Abd'rabbah, Tahir Nasuf and Abdulbaqi Mohammed Khaled, all of whom are the subject of existing UN designations. … Mr Abdulrahim's close associates include Ismail Kamoka, a leader of the LIFG in the UK. On 11 June 2007, Mr Kamoka pleaded guilty in the UK to the charge of "entering into or being concerned with an agreement to make property available to another contrary to Section 17 of the Terrorism Act 2000". The details of the offence were that Mr Kamoka, together with two other individuals, "on or before 3 October 2005, entered into or became concerned in an arrangement as a result of which property was made available and was to be made available to others, knowing or having reasonable grounds to suspect that it would or might be used for the purposes of terrorism". Mr Kamoka was sentenced to a period of imprisonment of three years and nine months. …'

7 The summary of reasons thus sent by the Commission corresponds to the 'statement of case' annexed to the letters sent to Mr Abdulrahim by the Foreign and Commonwealth Office of the United Kingdom of Great Britain and Northern Ireland ('the FCO') on 5 November 2008 and 23 February 2009. It also corresponds to the 'statement of case' which was the basis for the inclusion of Mr Abdulrahim's name on the Sanctions Committee list, as published on 9 March 2009.

8 By separate document lodged at the Court's Registry on 30 July 2009 the Commission raised an objection of inadmissibility under Article 114 of the Rules of Procedure of the Court.

9 Mr Abdulrahim replied to the Commission's letter of 3 July 2009 by means of a letter from his lawyers dated 19 August 2009, accompanied by a number of annexes aimed at rebuttal of the Commission's allegations.

10 By order of the Court (Seventh Chamber) of 17 December 2009, consideration of the objection of inadmissibility was reserved for the final judgment and the costs were reserved.

11 By order of the President of the Seventh Chamber of the Court of 26 October 2009, Mr Abdulrahim was granted legal aid and Mr J. Jones and Ms M. Arani were designated to represent him. By order of the President of the Seventh Chamber of the Court of 14 April 2010, the order of 26 October 2009 was amended in so far as it designated Mr Jones and Ms Arani as lawyers to act for Mr Abdulrahim. In point 2 of the operative part of that new order, Mr H. Miller and Mr E. Grieves were designated as the lawyers responsible for representing Mr Abdulrahim, with effect from 11 March 2010.

12 By decision of 3 March 2010 the President of the Seventh Chamber of the Court refused to admit to the court file an 'additional statement of defence' of the Council, received at the Court's Registry on 5 February 2010. The Council objected to that decision by letter of 16 March 2010.

13 The composition of the Chambers of the Court having changed at the beginning of the new judicial year, the Judge-Rapporteur was assigned to the Second Chamber, to which this case was accordingly allocated.

14 On 22 December 2010 the Sanctions Committee decided to remove Mr Abdulrahim's name from its list.

15 On 6 January 2011, Mr Abdulrahim's lawyers wrote to the Commission asking for his name to be removed from the list at issue.

16 By Commission Regulation (EU) No 36/2011 of 18 January 2011 amending, for the 143rd time, Regulation No 881/2002 (OJ 2011 L 14, p. 11), Mr Abdulrahim's name was removed from the list at issue.

17 By document received at the Court's Registry on 9 March 2011, Mr Abdulrahim brought a further application for legal aid under Article 94 of the Rules of Procedure for the purpose of pursuing the present action. That application was granted in part by order of the President of the Second Chamber of the Court of 10 June 2011.

18 By letter received at the Court's Registry on 27 July 2011, the Commission sent the Court a copy of Regulation No 36/2011.

19 By letter from the Court's Registry of 17 November 2011, the parties were requested to express their views in writing on the conclusions to be drawn, especially in the light of the purpose of Mr Abdulrahim's action, from the adoption of Regulation No 36/2011. The parties did so within the period prescribed.

20 By order of 28 February 2012 ('the order of no need to adjudicate'), the General Court (Second Chamber) decided that there was no longer any need to adjudicate on the application for annulment, and that it was therefore unnecessary first to rule on its admissibility. As regards the claim for damages, the General Court dismissed it as being, in any event, manifestly unfounded. The General Court also, first, apportioned the costs relating to the application for annulment and, second, ordered Mr Abdulrahim to pay the costs relating to the claim for damages in their entirety.

21 By application lodged at the Registry of the Court of Justice on 13 May 2012, Mr Abdulrahim brought an appeal against the order of no need to adjudicate.

22 By judgment of 28 May 2013 in Case C-239/12 P *Abdulrahim* v *Council and Commission* [2013] ECR ('the referral judgment'), the Court of Justice set aside the order of no need to adjudicate, in so far as it had held that there was no longer any need to rule on the action for annulment, and referred the case

back to the General Court for it to rule again on Mr Abdulrahim's action for annulment, while reserving the costs. The Court of Justice held, in essence, that the General Court had erred in law by concluding that Mr Abdulrahim had lost his interest in bringing an action for annulment, following the adoption of Regulation No 36/2011.

Procedure and forms of order sought by the parties after referral back

23 The case was allocated to the Second Chamber of the General Court. Following a change in the composition of the Chambers of the Court at the beginning of the new judicial year, the Judge-Rapporteur was assigned to the Third Chamber, to which this case was therefore allocated.

24 In accordance with Article 119(1) of the Rules of Procedure, the parties lodged statements of written observations.

25 In his observations, lodged at the Court's Registry on 13 August 2013, Mr Abdulrahim claims that the General Court should:

— annul Regulation No 1330/2008 in so far as it concerns him;

— award him costs in relation to the proceedings before the General Court (both prior to and subsequent to referral back by the Court of Justice) and, in any event, to the proceedings before the Court of Justice.

26 In its observations, lodged at the Court's Registry on 30 September 2013, the Council contends that the General Court should dismiss the action for annulment as being inadmissible and order Mr Abdulrahim to pay the costs of proceedings.

27 In its observations, lodged at the Court's Registry on 27 September 2013, the Commission contends that the General Court should declare the action for annulment to be inadmissible and order Mr Abdulrahim to pay the costs.

28 On hearing the report of the Judge-Rapporteur, the Court (Third Chamber) decided to open the oral procedure and, by way of measures of organisation of procedure provided for under Article 64 of its Rules of Procedure, requested the defendants to lodge, as appropriate, all information and evidence, confidential or not, which might be in their possession concerning the facts alleged in the summary of reasons of the Sanctions Committee and which they consider relevant to the judicial review to be carried out by the General Court, subject to the conditions and restrictions determined by the Court of Justice in the judgment of 18 July 2013 in *Commission and Others* v *Kadi* (C-584/10 P, C-593/10 P and C-595/10 P [2013] ECR; 'Kadi II'). The defendants did so within the period allowed.

29 The parties presented oral argument and answered the questions put by the Court at the hearing on 4 February 2014, after which the oral procedure was closed and the case was deliberated.

Facts

30 Mr Abdulrahim states that he is a British citizen born in Libya and that he was listed, first on the Sanctions Committee list, then on the list at issue, as a person suspected of supporting terrorism, on the initiative of the United Kingdom. The initial grounds for that listing were claimed, in a FCO letter dated 5 November 2008, to be the fact that he was a member of the Libyan Islamic Fighting Group ('LIFG'), that that entity was associated with Al-Qaida and that he therefore met the criteria for designation by the Sanctions Committee. However he claims that, from 4 November 2009, the FCO actively sought his de-listing from the Sanctions Committee list.

31 Mr Abdulrahim also submits that no criminal charges have been brought against him, in the United Kingdom or elsewhere, in relation to his alleged involvement in the Al-Qaida network or in terrorism. Consequently, he submits, he has never been in a position to prove his innocence.

Law

The scope of this action after the referral back by the Court of Justice

32 As correctly stated by the Council, no appeal was brought against the decision of the General Court, in the order of no need to adjudicate, on the application for damages and on costs incurred in respect of that application, and that decision has therefore acquired the force of *res judicata*. Accordingly, a ruling is now required only on the application for annulment.

Admissibility of the action

33 In this case, it is common ground that the period of two months for bringing proceedings laid down in the fifth paragraph of Article 230 EC, as calculated by the parties from the end of the fourteenth day following publication of Regulation No 1330/2008 in the *Official Journal*, in accordance with Article 102(1) of the Rules of Procedure, and extended by the single period of 10 days on account of distance provided for by Article 102(2) of those rules, expired on 16 March 2009.

34 It is also common ground that a copy of the signed application and its annexes was received by telefax at the Court's Registry on 16 March 2009, that certified copies of that application were received at the Registry on 26 March 2009, together with a version of that application bearing a second signature other than that on the copy received by telefax, and that the signed original of the application was received at the Court's Registry only on 15 April 2009, in other words after expiry of the period of 10 days after the date of transmission by telefax, as required by Article 43(6) of the Rules of Procedure.

35 It follows that the action was brought out of time, having regard to those provisions.

36 The action appears also to have been brought out of time if, instead of calculating the time-limit from the publication of Regulation No 1330/2008 in the *Official Journal*, on 23 December 2008, as the parties did in their written pleadings, it is calculated from the date of the notice published for the attention of the persons concerned in the *Official Journal* on 30 December 2008 (see paragraph 4 above), as ruled by the Court of Justice in the judgment of 23 April 2013 in Joined Cases C-478/11 P to C-482/11 P *Gbagbo and Others* v *Council* [2013] ECR, paragraphs 53 to 59).

37 It is however apparent, from material in the file and explanations from Mr Abdulrahim contained in, inter alia, a letter addressed to the Court's Registry on 8 May 2009, with supporting documents annexed to that letter, that on 16 March 2009 at about 17.00 hours his lawyers made use of a mail delivery service ('the mail delivery service') which is a subsidiary of the historic postal service operator in the United Kingdom, in order to effect delivery of the signed original of the application and its certified copies to the Registry of the General Court in Luxembourg. The postal address of the Registry is correctly stated on the envelope of the mail delivery service used on that occasion, and the price for the service, 37.29 Pounds Sterling (GBP), was duly paid.

38 Having been made aware on 25 March 2009, by a telephone call from the Court's Registry, that the Registry had not yet received the documents entrusted to the mail delivery service, Mr Abdulrahim's lawyers then sent on the same day further certified copies of the application to the Registry, using the DHL international mailing service. At the same time they sent to the Court's Registry a version of the application bearing a second original signature, which differed however from the signature borne by the original application. Those documents were received at the Court's Registry on 26 March 2009.

39 It subsequently turned out that, for hitherto unexplained reasons, the mail delivery service had not delivered the documents concerned, those documents being returned to Mr Abdulrahim's lawyers, with no other explanation, on 14 April 2009. On the same day, they again made use of DHL, who delivered the signed original of the application to the Court's Registry on the following day.

40 The President of the Seventh Chamber of the General Court considered, in his order of 26 October 2009 granting legal aid, that it was not inconceivable that those factors and explanations might prove the existence of unforeseeable circumstances or of *force majeure*, within the meaning of Article 45 of the Statute of the Court of Justice, or of an excusable error which prevented Mr Abdulrahim from lodging the signed original of the application at the Court's Registry within the period of 10 days after sending the copy of that original by telefax, as required by Article 43(6) of the Rules of Procedure.

41 The Council and the Commission maintain, however, that the circumstances pleaded by Mr Abdulrahim cannot be regarded as exceptional circumstances, unforeseeable circumstances or *force majeure*, within the meaning of the second paragraph of Article 45 of the Statute of the Court of Justice and settled case-law.

42 First, the defendants claim that Mr Abdulrahim chose to use the service of the mail delivery service which was less reliable, in terms of delivery time and tracking possibilities. The receipt attached to his lawyers' letter of 8 May 2009 indicates that the service chosen was a non-tracked service. According to the mail delivery service's website, moreover, that service has delivery times of at least four days, whereas the other two services provided by that company offer tracking and have delivery times of one to three days.

43 Secondly, Mr Abdulrahim did not check with the Court's Registry whether the original of the application had in fact been lodged before the deadline. He reacted only after he was telephoned by the Registry. At that time, the day before the period expired, it was already too late to retrieve the original of the application from the mail delivery service and to send it again to the General Court in time.

44 In those circumstances, Mr Abdulrahim cannot, in the Commission's view, rely on malfunctioning or failure of the postal service to avoid being barred from bringing proceedings.

45 In that regard, it must be recalled that, in accordance with settled case-law, Article 45 the Statute of the Court of Justice is applicable in cases of abnormal difficulties, independent of the will of the person concerned and apparently inevitable even if all due care is taken (the judgments in Case 284/82 *Acciaierie e Ferriere Busseni* v *Commission* [1984] ECR 557, paragraph 11 and in Case 42/85 *Cockerill-Sambre* v *Commission* [1985] ECR 3749, paragraph 10, and the order in Case C-242/07 P *Belgium* v *Commission* [2007] ECR I-9757, paragraphs 16 and 17). The Court of Justice has recently stated that it is for the party concerned to establish, first, that abnormal circumstances, unforeseeable and outside his control, made it impossible for him to comply with the time-limit for bringing proceedings laid down in the sixth paragraph of Article 263 TFEU and, secondly, that he could not guard against the consequences of those circumstances by taking appropriate steps without making unreasonable sacrifices (*Gbagbo and Others* v *Council*, paragraph 72). In particular, a trader must pay close attention to the course of the procedure set in motion and, in particular, demonstrate diligence in order to comply with the prescribed time-limits (see the judgment in Case C-426/10 P *Bell & Ross* v *OHIM* [2011] ECR I-8849, paragraph 48 and case-law cited).

46 In this case, it is clear from the facts and circumstances related in paragraphs 37 to 39 above and from the material in the file that Mr Abdulrahim's lawyers demonstrated all the diligence required and, in particular, that they complied to the letter with paragraph 7 of the Practice Directions to Parties, which states that the signed original of the application must be sent 'without delay, immediately after the dispatch of the copy [by telefax]'. The signed original of the application was entrusted to the mail delivery service on 16 March 2009, the very day when the copy was sent by telefax.

47 The Court considers, moreover, that those lawyers could reasonably expect that that signed original would arrive at the Registry within a period shorter than the ten days available to them to achieve it, counting from 16 March 2009. What they did to achieve it was to use a reputedly reliable service, a subsidiary of the historic postal service in the United Kingdom. The mail delivery service indicates moreover, on its website, that it normally guarantees delivery of a letter to Luxembourg, as part of its standard service, that being the service chosen by Mr Abdulrahim's lawyers, within a period of four to six days, a period considerably shorter than the ten days available to them, and leaving them a comfortable safety margin.

48 It is true that, as pointed out by the Commission and the Council, the mail delivery service offers two other international delivery services, which are significantly more expensive, which guarantee normally the delivery of such a letter within a period varying from two to three days and which allow, in addition, tracking.

49 It cannot however be required of any applicant, *a fortiori* one who, as in this case, is the recipient of legal aid, that he should choose the most expensive international delivery services offered by a postal operator, where a less expensive service offered by the same operator appears, in principle, adequately to ensure delivery of the signed original of the application to the Court's Registry within the prescribed period.

50 As regards the fact that Mr Abdulrahim's lawyers did not verify, by contacting the Court's Registry, that the Registry had duly received the signed original of the application, that is not a crucial factor according to the case-law, which does not specifically require that such a step be taken, the more so when time-limits are, in principle, laid down in order to be used to the full (the judgment in Case 71/87 *Inter-Kom* [1988] ECR 1979, paragraph 20, and the judgment of 20 June 2006 in Case T-251/04 *Greece* v *Commission*, paragraph 53).

51 In any event, there was nothing more that Mr Abdulrahim's lawyers could have done to remedy the failure of the mail delivery service, once the signed original of the application had been entrusted to that service, since, by the very fact of that failure, the original in question had been 'lost' and therefore could no longer be recovered by them, however diligent or active they might be, with a view to delivering it to the Court's Registry by other means.

52 More specifically, on 25 March 2009 as on the days which immediately preceded it, if Mr Abdulrahim's lawyers were unwilling simply to wait and hope that the mail delivery service would retrieve and deliver in good time the lost original, they had available to them, in reality, only one 'expedient' to attempt to remedy the failure of the mail delivery service, namely to send directly to the Court's Registry a version of the application bearing a second original signature, intended to replace the former original which was lost. That is precisely what they did, as they explained at the hearing.

53 The Court considers that, in such circumstances, Mr Abdulrahim's lawyers acted with due diligence to attempt to remedy the accidental loss of the signed original of the application and thereby to comply with the prescribed time-limits.

54 The circumstances of this case accordingly can, according to the case-law, be categorised as unforeseen circumstances, since the fact that the period for bringing proceedings was exceeded was entirely and exclusively attributable to a malfunctioning or failure, hitherto unexplained, of the mail delivery service, which was not normally foreseeable, and for which a remedy was sought with all due diligence.

55 It follows from all the foregoing that the objection of inadmissibility raised by the Commission and supported by the Council must be rejected.

Admissibility of the written observations lodged by Mr Abdulrahim after the referral back

56 The Council observes that Mr Abdulrahim's observations on the continuation of the proceedings were sent to the Court by e-mail on 26 July 2013, but the signed original of those observations was lodged after the expiry of the period of 10 days laid down in Article 43(6) of the Rules of Procedure. The date which is therefore deemed to be the date of lodging those observations is 13 August 2013. The Council considers, consequently, that those observations are inadmissible because they were lodged after the expiry of the period of two months laid down by Article 119(1)(a) of the Rules of Procedure.

57 In that regard, the Council's starting premise is that that period of two months from the date of service on the person concerned of the referral judgment, extended on account of distance by a single period of 10 days, had already expired before 13 August 2013.

58 However, it is clear from information in the file that that period expired in fact on that very day, 13 August 2013. Service on Mr Abdulrahim of the referral judgment was effected by the delivery to him of that judgment, by means of a registered letter of which he acknowledged receipt on 3 June 2013. Accordingly, the period of Article 119(1)(a) of the Rules of Procedure, extended on account of distance by a single period of 10 days, expired on 13 August 2013.

59 Consequently, the written observations of Mr Abdulrahim were lodged at the Court's Registry on the last day included within the period concerned, and they cannot be rejected as being inadmissible.

Substance of the action for annulment

60 Formally, Mr Abdulrahim relies on four pleas in law in support of his action for annulment. The first plea alleges an infringement of his right to be heard. The second is based on an infringement of his right to effective judicial review and/or his right to a fair hearing, those rights being protected by Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (ECHR), and proclaimed by Article 47 of the Charter of Fundamental Rights of the European Union. The third is based on an infringement of his right to peaceful enjoyment of his possessions and his property. The fourth is based on an infringement of his right to respect for his private and family life.

61 In substance, the Court of Justice stated, in paragraph 75 of the referral judgment, that Mr Abdulrahim had not solely relied on pleas alleging infringements of the rights of the defence, but that he 'also disputed that he had been associated with Al-Qaida' and 'contended that he had been included on the list at issue simply because he formed part of a community of Libyan refugees some of whom, according to the United Kingdom authorities, were involved in terrorist activities'.

62 As regards the procedure for review, the Court of Justice held, in *Kadi II* (paragraph 119), that, where the person concerned challenges the legality of the decision to list or maintain his listing on a list at issue, the Courts of the European Union must, as part of the review of the lawfulness of the grounds which are the basis of that decision, ensure that that decision is taken on a sufficiently solid factual basis. That entails a verification of the factual allegations in the summary of reasons underpinning that decision, with the consequence that judicial review cannot be restricted to an assessment of the cogency in the abstract of the reasons relied on, but must concern whether those reasons, or, at the very least, one of those reasons, deemed sufficient in itself to support that decision, is substantiated.

63 To that end, it is for the Courts of the European Union, in order to carry out that examination, to request the competent European Union authority, when necessary, to produce information or evidence, confidential or not, relevant to such an examination (*Kadi II*, paragraph 120; see also, by analogy, judgment of 4 June 2013 in Case C-300/11 *ZZ* [2013] ECR, paragraph 59). When the General

Court adopted the measure of organisation of procedure described in paragraph 28 above, it was precisely in order to comply, in this case, with those rules attached by the Court of Justice to the judicial review which it is the task of the Courts of the European Union to carry out.

64 That is because it is the task of the competent European Union authority to establish, in the event of challenge, that the reasons relied on against the person concerned are well founded, and not the task of that person to adduce evidence of the negative, that those reasons are not well founded (*Kadi II*, paragraph 121).

65 For that purpose, there is no requirement that that authority produce before the Courts of the European Union all the information and evidence underlying the reasons alleged in the summary provided by the Sanctions Committee. It is however necessary that the information or evidence produced should support the reasons relied on against the person concerned (*Kadi II*, paragraph 122).

66 If the competent European Union authority finds itself unable to comply with the request by the Courts of the European Union, it is then the duty of those Courts to base their decision solely on the material which has been disclosed to them, namely, in this case, the indications contained in the narrative summary of reasons provided by the Sanctions Committee, the observations and exculpatory evidence produced by the person concerned and the response of the competent European Union authority to those observations. If that material is insufficient to allow a finding that a reason is well founded, the Courts of the European Union are to disregard that reason as a possible basis for the contested decision to list or maintain a listing (*Kadi II*, paragraph 123).

67 If, on the other hand, the competent European Union authority provides relevant information or evidence, the Courts of the European Union must then determine whether the facts alleged are made out in the light of that information or evidence and assess the probative value of that information or evidence in the circumstances of the particular case and in the light of any observations submitted in relation to them by, among others, the person concerned (*Kadi II*, paragraph 124), applying when necessary techniques which accommodate, on the one hand, legitimate security considerations about the nature and sources of information taken into account in the adoption of the act concerned and, on the other, the need sufficiently to guarantee to an individual respect for his procedural rights, following the approach indicated by the Court of Justice in paragraphs 125 to 129 of *Kadi II*.

68 Having regard to the preventive nature of the restrictive measures at issue, if, in the course of its review of the lawfulness of the contested measure, as defined in paragraphs 117 to 129 of *Kadi II*, the Courts of the European Union consider that, at the very least, one of the reasons mentioned in the summary provided by the Sanctions Committee is sufficiently detailed and specific, that it is substantiated and that it constitutes in itself sufficient basis to support that decision, the fact that the same cannot be said of other such reasons cannot justify the annulment of that measure. In the absence of one such reason, the Courts of the European Union will annul the contested decision (*Kadi II*, paragraph 130).

69 It follows from the criteria set out above that, for the rights of the defence and the right to effective judicial protection to be respected, first, the competent European Union authority must (i) disclose to the person concerned the summary of reasons provided by the Sanctions Committee which is the basis for listing or maintaining the listing of that person's name in the list at issue, (ii) enable him effectively to make known his observations on that subject and (iii) examine, carefully and impartially, whether the reasons alleged are well founded, in the light of the observations presented by that person and any exculpatory evidence that may be produced by him (*Kadi II*, paragraph 135).

70 Second, respect for those rights implies that, in the event of a legal challenge, the Courts of the European Union are to review, in the light of the information and evidence which have been disclosed, inter alia, whether the reasons relied on in the summary of reasons provided by the Sanctions Committee are sufficiently detailed and specific and, where appropriate, whether the accuracy of the facts relating to the reason concerned has been established (*Kadi II*, paragraph 136).

71 However, the fact that the competent European Union authority does not make accessible to the person concerned and, subsequently, to the Courts of the European Union information or evidence which is in the sole possession of the Sanctions Committee or the Member of the United Nations (UN) concerned and which relates to the summary of reasons underpinning the decision at issue, cannot, as such, justify a finding that those rights have been infringed. However, in such a situation, the Courts of the European Union, which are called upon to review whether the reasons contained in the summary provided by the Sanctions Committee are well founded in fact, taking into consideration any observations and exculpatory evidence produced by the person concerned and the response of the competent European Union authority to those observations, will not have available to it supplementary information or evidence. Consequently, if it is impossible for the Courts to find that those reasons are well founded, those reasons cannot be relied on as the basis for the contested listing decision (*Kadi II*, paragraph 137).

72 In this case, by means of the grounds contained in the summary of reasons, as disclosed by the Sanctions Committee (see paragraph 6 above), the allegation made against Mr Abdulrahim essentially concerns his 'conscious involvement with an entity that has associated with Al-Qaida and its terrorist activities', namely the LIFG. More specifically, the allegation made is that Mr Abdulrahim, first, occupied senior positions within the LIFG, second, remained in close contact with senior members of the LIFG in the United Kingdom, third, is a close associate of the directors of the Sanabel relief charity, fourth, is a close associate of Mr Ghuma Abd'rabbah, Mr Tahir Nassuf and Mr Abdulbaqi Mohammed Khaled, and, fifth, counts Mr Ismail Kamoka as one of his close associates.

73 As regards, in the first place, the general ground thus relied on against Mr Abdulrahim, the assumption behind that ground has two related elements, explicitly stated in the summary of reasons, namely (i) that Mr Abdulrahim was 'involved' with the LIFG and (ii) that the LIFG was initially associated with Al-Qaida, then subsequently merged with that organisation, so that all its members and associates satisfy the criteria for designation by the Sanctions Committee, as persons associated with Al-Qaida. The alleged association of Mr Abdulrahim with Al-Qaida is thus exclusively based on his links with LIFG, on the one hand, and on the LIFG making common cause with Al-Qaida, with which it officially merged in November 2007, on the other.

74 Yet that twofold assumption does not appear to be firmly established and well founded, in the light of not only the detailed rebuttals advanced by Mr Abdulrahim, but also the findings of fact independently made by the English courts with jurisdiction, in judgments produced by Mr Abdulrahim and entered in the file.

75 As regards the substance of those rebuttals, particular attention should be paid to the witness statement of Mr Abdulrahim dated 13 March 2009 (Annex 11 to the application), to his lawyers' letter to the Commission dated 19 August 2009, in response to the summary of reasons (Annex 4 to the reply to the Council's statement of defence), and to his lawyers' letter to the Commission dated 16 April 2010, written in connection with the procedure for the reconsideration of Mr Abdulrahim's case (Annex 1 to the observations of Mr Abdulrahim after the referral back).

76 In that regard, Mr Abdulrahim claims, in essence, that he has never been associated with Al-Qaida, Usama Bin Laden or the Taliban network and that he has in no way been associated with terrorist activities. As regards his alleged involvement with Al-Qaida, he states more particularly that he fled Libya because he was opposed to the regime of Colonel Gaddafi and that his life was in danger, which was why he was granted asylum in the United Kingdom. He states that he joined the LIFG in 1996,

because it was opposed to Colonel Gaddafi and promoted Islam, but that he ceased to have any involvement whatsoever with it in late 2000 or early 2001. As regards the alleged association of the LIFG with Al-Qaida he claims that only some of the 'LIFG Afghan group' joined Al-Qaida in 2007, which was confirmed by Ayman Al-Zawahiri himself in an interview of 17 April 2008. He states that he would be able to call witnesses who would confirm what he claims, and to produce an expert opinion on the organisation and activities of the LIFG and the situation in Libya, if the Court deems it necessary.

77 In the absence of any other information or evidence advanced by the defendant institutions to support the allegation of Mr Abdulrahim being a member of the LIFG, that allegation is evidently established to the requisite legal standard only for the period from 1996 until late 2000 or early 2001, in other words a period not specifically covered by the allegation of an association between the LIFG and Al-Qaida, and even less by the allegation of a merger of those two entities, in November 2007. It must be observed, in that regard, that on his own account Mr Abdulrahim had ceased to be a member of the LIFG for almost a year when the LIFG was added to the Sanctions Committee list, on 6 October 2001. The Court must also note how far apart in time are the proven period of Mr Abdulrahim's membership of the LIFG, from 1996 until late 2000 or early 2001, and the date of his inclusion in the list at issue, on 22 December 2008 (see, to that effect, *Kadi II*, paragraph 156).

78 In so far as they contain certain findings of relevance on the LIFG and its members, account must also be taken of certain judgments of the English courts with jurisdiction, produced and entered in the file by Mr Abdulrahim, namely: the judgment of the Special Immigration Appeal Commission (SIAC) dated 27 April 2007 in *DD and AS* v *Secretary of State for the Home Department* SC/50/2005 and SC/42/2005; the judgment of the High Court of Justice (England & Wales) (Queen's Bench Division, Administrative Court) dated 14 November 2008 in *AU and Others* v *Secretary of State of the Home Department* [2008] EWHC 2789 (Admin), and the judgment of the High Court of Justice (England & Wales) (Queen's Bench Division, Administrative Court) dated 30 April 2009 in *AV* v *Secretary of State for the Home Department* [2009] EWHC 902 (Admin), (respectively Annexes 3, 4 and 5 of the reply to the Commission's statement of defence).

79 First, those judgments confirm, in essence, that, at least until March 2004, the LIFG was not considered by the United Kingdom security services to represent a threat to national security, since its principal objective was then the overthrow of the Libyan government. The SIAC judgment thus states, inter alia, that the LIFG was not proscribed as a terrorist organisation in the United States until 2004, or in the United Kingdom until 14 October 2005.

80 Secondly, what essentially emerges from those judgments is that, in the view of English courts with jurisdiction, even after 2001 and until 2007 and later, it was not the case that all members of the LIFG were associated with or members of Al-Qaida, but only a proportion of them. Those courts have accordingly refused to find that the fact that an individual was linked to the LIFG automatically proves that that individual was linked to Al-Qaida. Instead, the approach adopted by those courts is to say that some LIFG members may have been aligned with or linked with Al-Qaida, while others have remained exclusively focused on Libya. According to those courts, links to Al-Qaida should therefore be examined adopting a case-by-case approach, on the basis of the particular actions of each of the parties concerned.

81 It should be noted that two of those three judgments precede the listing of Mr Abdulrahim's name in the list at issue.

82 In such circumstances, the mere proven fact that Mr Abdulrahim was a member of the LIFG, for the period when he accepts that he was a member, was not capable of justifying the imposition, at the EU level, of restrictive measures on him, as a person linked to Al-Qaida.

83 As regards, in the second place, the more specific grounds relied on against Mr Abdulrahim in the statement of case provided by the Sanctions Committee and reproduced in the summary of reasons, they are either insufficiently detailed or specific to meet the requirements inherent in the obligation to state reasons and in effective judicial review, or, in any event, they are not supported by any information or evidence on the basis of which it can be established that they are well founded in fact, whereas they have, point by point, been subject to vigorous and detailed challenge by Mr Abdulrahim.

84 As regards the first specific ground relied on in the summary of reasons and summarised in paragraph 72 above, no information or evidence has been adduced to support the allegation on which it is based, even though Mr Abdulrahim has denied that 'he held senior positions within the LIFG'.

85 As regards the second specific ground relied on in the summary of reasons and summarised in paragraph 72 above, the allegation that Mr Abdulrahim 'remain[ed] a close associate of senior UK members of LIFG' is insufficiently detailed and specific, given that it contains no indication as to the identity of the persons concerned or as to the nature of that close association. In any event, the allegation is evidently not supported to the requisite legal standard in the light of the detailed explanations provided by Mr Abdulrahim, as summarised in paragraph 76 above.

86 As regards the third specific ground relied on in the summary of reasons and summarised in paragraph 72 above, no information or evidence has been adduced to support the allegation on which it is based, even though Mr Abdulrahim has denied being a 'close associate of the Directors of the Sanabel relief charity'.

87 As regards the fourth specific ground relied on in the summary of reasons and summarised in paragraph 72 above, namely that Mr Abdulrahim was 'a close associate of Ghuma Abd'rabbah, Tahir Nassuf and Abdulbaqi Mohammed Khaled', Mr Abdulrahim notably explained, in his written statement of 13 March 2009 and in his lawyers' letter to the Commission dated 19 August 2009, that he knew the first of those men (Ghuma) merely 'socially', since they came from the same part of Libya, that he had gone on one occasion to the home of the second man and had last seen him in 2003 or 2004, and that the third man, who was his father-in-law, had also wrongly been named on the list at issue, because of his association with the LIFG. In his written pleadings, Mr Abdulrahim further stated that he knew many members of the expatriate Libyan community in the United Kingdom, that being a small community where most of the refugees know each other and help each other, but that it was impossible to know whether a member of that community was involved in terrorism or not. In the absence of any other detailed explanation concerning those three individuals, the nature of their links to Mr Abdulrahim and their personal involvement in any terrorist activity of any kind, the fourth specific ground is evidently not supported to the requisite legal standard.

88 As regards the fifth specific ground relied on in the summary of reasons and summarised in paragraph 72 above, namely that Mr Abdulrahim's 'close associates' include 'Mr Ismail Kamoka', who had pleaded guilty in the United Kingdom, in June 2007, to charges concerning his participation in a terrorist undertaking, Mr Abdulrahim notably explained, in his written statement of 13 March 2009 and in his lawyers' letter to the Commission dated 19 August 2009, that he had met Mr Kamoka in Saudi Arabia while they were both university students, that Mr Kamoka had applied for asylum in the United Kingdom approximately two years before he himself did, that they had then met again, the last occasion being two years or two and a half years previously, but that he had no knowledge of any criminal convictions of Mr Kamoka. In the light of those detailed explanations, it cannot be considered to be established to the requisite legal standard that Mr Abdulrahim was a 'close associate' of Mr Kamoka. Further, any criminal conviction of Mr Kamoka related to terrorist activity, even were that established, cannot be deemed to inculpate Mr Abdulrahim, in the absence of any other material to explain how Mr Abdulrahim was personally involved in such activity. Consequently, the fifth specific ground is evidently not supported to the requisite legal standard.

89 In this case, there is no information to be extracted from the summary of reasons from which it is possible to establish to the requisite legal standard that Mr Abdulrahim was materially linked to Al-Qaida on the date when he was listed in the list at issue.

90 Nor do the documents annexed to the Commission's response to the measure of organisation of procedure, lodged at the Court's Registry on 20 January 2014, permit the Court to hold that the grounds applied to Mr Abdulrahim are well founded. It may be added that it is plain that those documents are a priori of no relevance since, for the most part, they post-date both the listing of Mr Abdulrahim's name in the Sanctions Committee list and the adoption of Regulation No 1330/2008 and since they consequently could not have been taken into consideration, by either the Sanctions Committee or the Commission, in order to assess whether the freezing of Mr Abdulrahim's funds was appropriate.

91 More specifically, the witness statement of 18 May 2011 of the Head of the Counter Terrorism department of the FCO before the High Court of Justice, in the case of *The Queen on the application of Abdulbasit Abdulrahim* v *Secretary of State for Foreign and Commonwealth Affairs* (Annex 1 to the Commission's response), reveals, essentially, that the FCO's initial decision to propose the listing of Mr Abdulrahim on the Sanctions Committee list, in July 2008, was essentially based on the fact that 'officials believed that … there was a convincing case that the [Mr Abdulrahim] was part of the [LIFG]' and, consequently, 'associated with Al Qaida' (paragraph 21). No information or evidence has however been adduced to support that belief, while the summary of reasons sent by the United Kingdom to the Sanctions Committee, following that decision, to justify that listing, is in terms which correspond exactly to the Sanctions Committee's statement of case.

92 Annex 2 to the Commission's response consists of a transcript of speeches by Ayman Al Zawahiri and Abu Laith Al Libi of 3 November 2007, announcing the formal merger of LIFG and Al-Qaida. That document is however evidently of no relevance to this case, in the light of the considerations set out above when examining the general ground relied on against Mr Abdulrahim (see paragraphs 73 to 82 above).

93 Annex 3 to the Commission's response consists of a letter dated 8 December 2010, sent by the Permanent Representative of the United Kingdom to the Chairman of the Sanctions Committee, which sets out, inter alia, the reasons why the United Kingdom supported the request for the delisting of Mr Abdulrahim from the Sanctions Committee list, but fails to specify the reasons why his listing on that list had been regarded as justified in July 2008.

94 Annex 4 to the Commission's response is an FCO letter of 18 January 2014 to the Commission, which accompanied the documents annexed as Annexes 1, 2 and 3.

95 Annexes 5 and 6 to the Commission's response are press articles which report the merger of LIFG and Al-Qaida in 2007. They are of no relevance to this case, in the light of the considerations set out above when examining the general ground relied on against Mr Abdulrahim (see paragraphs 73 to 82 above).

96 Last, Annexes 7, 8 and 9 to the Commission's response are articles or studies which contain, essentially, general information on either LIFG, Al-Qaida, or Islamic terrorism in the United Kingdom, and in no way concern the particular circumstances of Mr Abdulrahim.

97 It follows from the foregoing analysis and from the only material in the file available to the Court that none of the allegations made against Mr Abdulrahim in the summary of reasons provided by the Sanctions Committee was such as to justify the adoption, at EU level, of restrictive measures against him, either because the reasons stated are insufficient, or because information or evidence which might substantiate the reasons concerned, in the face of detailed rebuttals submitted by the party concerned, is lacking (see, to that effect, *Kadi II*, paragraph 163).

98 In those circumstances, Regulation No 1330/2008 must be annulled, on the legal grounds stated in the preceding paragraph (see, to that effect, *Kadi II*, paragraph 164), and there is therefore no need to rule on the other pleas, complaints and arguments of Mr Abdulrahim.

Costs

99 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Council and the Commission have been unsuccessful, they must be ordered to pay the costs incurred in respect of the action for annulment, including those incurred in the appeal before the Court of Justice, as applied for by Mr Abdulrahim in his pleadings.

100 In accordance with Article 97(3) of the Rules of Procedure, since Mr Abdulrahim was granted legal aid and the Court has ordered the defendant institutions to pay the costs, those institutions will be required to refund to the Court cashier the sums advanced by way of legal aid.

On those grounds,

THE GENERAL COURT (Third Chamber)

hereby:

1. **Annuls Commission Regulation (EC) No 1330/2008 of 22 December 2008 amending for the 103rd time Council Regulation No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, in so far as it concerns Mr Abdulbasit Abdulrahim;**

2. **Orders the Council of the European Union and the European Commission to bear their own costs and to pay both the costs incurred by Mr Abdulrahim in respect of the action for annulment and the sums advanced by the General Court by way of legal aid.**

Papasavvas Forwood Bieliūnas

Delivered in open court in Luxembourg on 14 January 2015.

[Signatures]