ORDER OF THE PRESIDENT OF THE COURT
13 November 2000 *

In Case C-317/00 P(R),

'Invest' Import und Export GmbH, established in Neuss (Germany),

Invest Commerce SARL, established in Alfortville (France),

represented by R. Wägenbaur, Rechtsanwalt, Brussels, with an address for service in Luxembourg at the offices of Messrs Arendt & Medernach, 8-10 Rue Matthias Hardt,

appellants,

APPEAL against the order of the President of the Second Chamber of the Court of First Instance of the European Communities of 2 August 2000 (Case T-189/00 R *'Invest' Import und Export and Invest Commerce* v *Commission* [2000] ECR II-2993) seeking annulment of that order, and:

— suspension of the operation of Commission Regulation (EC) No 1147/2000 of 29 May 2000 amending Annex II to Council Regulation (EC) No 1294/1999 concerning a freeze of funds and a ban on investment in

* Language of the case: German.

relation to the Federal Republic of Yugoslavia (OJ 2000 L 129, p. 15) in so far as the names of the applicants were included in Annex II to Council Regulation (EC) No 1294/1999 concerning a freeze of funds and a ban on investment in relation to the Federal Republic of Yugoslavia (FRY) and repealing Regulations (EC) Nos 1295/98 and 1607/98 (OJ 1999 L 153, p. 63), as amended by Council Regulation (EC) No 723/2000 of 6 April 2000 (OJ 2000 L 86, p. 1), and,

— an order that costs be reserved,

the other party to the proceedings being:

Commission of the European Communities, represented by M.J. Jonczy, Legal Adviser, and B. Brandtner, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, also of the Legal Service, Wagner Centre, Kirchberg,

defendants at first instance,

THE PRESIDENT OF THE COURT

makes the following

Order

Legal framework

1 By an application lodged at the Court Registry on 24 August 2000 'Invest' Import und Export GmbH and Invest Commerce SARL appealed, under Article 225 EC and Article 50 of the EC Statute of the Court of Justice, against the order of 2 August 2000 by 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 — hereinafter 'the order appealed against') turning down their interlocutory application for the suspension of operation of Commission Regulation (EC) No 1147/2000 of 29 May 2000 amending Annex II to Council Regulation (EC) No 1294/1999 concerning a freeze of funds and a ban on investment in relation to the Federal Republic of Yugoslavia (OJ 2000 L 129, p. 15) in so far as the names of the applicants were included in Annex II to Council Regulation (EC) No 1294/1999 of 15 June 1999 concerning a freeze of funds and a ban on investment in relation to the Federal Republic of Yugoslavia (FRY) and repealing Regulations (EC) Nos 1295/98 and 1607/98 (OJ 1999 L 153, p. 63), as amended by Council Regulation (EC) No 723/2000 of 6 April 2000 (OJ 2000 L 86, p. 1, hereinafter 'the basic regulation').

2 In addition to the setting aside of the order appealed against, the applicants claim that the Court should:

— suspend operation of the contested regulation pending judgment on the merits, since their names were included in Annex II to the basic regulation;

— reserve the costs.

3 By a document lodged at the Registry on 29 September 2000 the Commission submitted its written observations to the Court.

Legislative framework, facts and procedure

4 The legislative framework, facts and procedure underlying the dispute and the procedure before the Court of First Instance are set out in the order appealed against as follows:

'Legal framework

1 Having regard to several common positions under Title V of the Treaty on European Union concerning provisions on a common foreign and security policy, the Council on 15 June 1999 adopted Regulation (EC) No 1294/1999... That was intended to step up the economic pressure on the governments of the Federal Republic of Yugoslavia and the Republic of Serbia against which continuous infringements of the relevant resolutions of the United Nations Security Council and serious violations of human rights were alleged.

2 By Council Regulation (EC) No 723/2000... the Community further reinforced its economic sanctions in order to exert the greatest possible pressure on Mr Milosevic in his capacity of President of the Federal Republic of Yugoslavia.

3 The sanctions provided for concern the "Government of the Federal Republic of Yugoslavia" and the "Government of the Republic of Serbia". Under Article 1(1) and (2) of the basic regulation those governments are defined as including:

"— any company, undertaking, institution, including any financial institution, and entity owned or controlled by [one of those] government[s],

— any socially-owned entity organised in the Federal Republic of Yugoslavia [or Serbia]

— any successor to such companies, undertakings, institutions and entities as of 26 April 1999,

— any subsidiary or branch, wherever located, of such companies, undertakings, institutions and entities".

4 Under Article 2(2) of the basic regulation companies located, registered or incorporated outside the territory of the Federal Republic of Yugoslavia and listed in Annex II to the regulation (so-called "black list" broken down by Member State of the Community), are deemed to be owned or controlled by the respective governments.

5 Under Article 2(5)...

"— companies, undertakings, institutions or entities located, registered or incorporated in the FRY, with the exception of the Province of Kosovo and the Republic of Montenegro, and listed in Annex VI shall be deemed to be neither owned or controlled by the Government of the FRY or the Government of the Republic of Serbia nor socially owned,

— all other companies, undertakings, institutions or entities located, registered or incorporated in the FRY, with the exception of the Province of Kosovo and the Republic of Montenegro, shall be deemed to be owned or controlled by the Government of the FRY or the Government of the Republic of Serbia or to be socially owned".

Under Article 1 of Council Regulation (EC) No 1059/2000 of 18 May 2000 amending Regulation No 723/2000 (OJ 2000 L 119, p. 1) those provisions are to apply only as from 30 June 2000 as the drawing up of Annex VI ("white list") required a considerable amount of time.

6 Under Article 3 of the basic regulation all funds held outside the territory of the Federal Republic of Yugoslavia and belonging to the Government of the FRY and/or to the Government of the Republic of Serbia are to be frozen, and no funds are to be made available, directly or indirectly, to or for the benefit of those governments.

7 Article 7 provides for exceptions to the prohibition under Article 3 for certain funds intended for example to cover the expenses of Yugoslav or Serbian diplomatic missions, social security payments, the payment of taxes and fees or for normal salaries in the Community.

8 Under Article 8, the Commission is empowered to grant authorisations in specific cases if not to do so would cause serious damage to the interests of the Community, and also to amend Annexes II and VI.

9 Under Article 8(4) [of the basic regulation], inserted by the amending regulation, applications for exemptions or to alter the annexes are to be made to the competent authorities of the Member States listed in Annex III, which are to verify with the greatest possible care the information given by applicants.

Facts and procedure

10 By a letter from the German Bundesausfuhramt (Federal Office for Exports) dated 8 September 1999 the Federal Republic of Germany requested the Commission to include Invest Import und Export GmbH in Annex II to Regulation No 1294/1999 since that undertaking was directly owned by the firm, Invest-Import Belgrade. By a letter from the French Ministry for the Economy, Finances and Industry dated 27 October 1999 the French Republic made an analogous request in regard to Invest Commerce SARL on the ground that it belonged to Invest-Import Belgrade and its German subsidiary company, Invest Import und Export GmbH.

11 On 29 May 2000 the Commission adopted [the contested regulation] pursuant to which the applicants were included in Annex II to the basic regulation.

12 In substantiation reference was made to the relevant requests by Germany and France. On the applicants' argument that their parent companies were owned by the workers and former workers of those parent companies, it is stated in the ninth recital in the preamble to the regulation that that argument disregards the fact that a company owned by its workers and former workers is a "socially owned" entity (French version: entité détenue collectivement) and that, as a result, such a company is subsumed under the definition of the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia, irrespective of factors such as the composition of its board, the stake in the social capital held, directly or indirectly, by the Federal Republic of Yugoslavia or the Republic of Serbia.

13 In an application which was received at the Registry on 18 July 2000 the applicants sought the annulment under the fourth paragraph of Article 230 EC of the contested regulation in so far as they were included in Annex II to the basic regulation.

14 In a separate document received at the Registry on the same date the applicants sought suspension of the operation of the contested regulation, in so far as it concerned them, and requested that their application be decided as a matter of urgency under Article 105(2) of the Rules of Procedure.

15 Since the President of the Court of First Instance is prevented from sitting, he is replaced, in accordance with the directions contained in Article 106(2) of the Rules of Procedure, by the President of the second chamber.

16 By order of 25 July 2000 and in accordance with Article 105(2) of the Rules of Procedure, the President of the Second Chamber, prior to lodgment of the Commission's observations, suspended the operation of the contested regulation, in so far as it concerned the applicants, until the adoption of the order terminating the proceedings for interim relief, to the extent that the

Commission was required to grant without delay an authorisation for each import and export operation notified to it by the applicants — without complying with the procedure under Article 9 of the basic regulation, as amended in the amending regulation — and the applicants, notwithstanding Article 3(1) of that regulation, were to have at their disposal the funds necessary for each of the corresponding operations.'

The order appealed against

5 By the order appealed against the President of the Second Chamber of the Court of First Instance refused the interlocutory application and set aside his order of 25 July 2000 in the same case.

6 First of all, the President of the Second Chamber examined whether there was *prima facie* justification under the *fumus boni juris* criterion for granting the measure sought. To that end he analysed the various pleas raised by the applicants in support of their main action.

7 The applicants claimed, first, that the contested regulation was in breach of the basic regulation, inasmuch as their parent company, Invest-Import, Belgrade, has for a long time been majority-owned by the workers and former workers of the undertaking, which precluded the Yugoslavian and Serb Governments from having recourse to the financial resources of that company.

8 In that connection the President of the Second Chamber found, at paragraph 34 of the order appealed against, that the applicants are subsidiaries established in the Community of a parent company which, even if not constituted in Belgrade as a socially-owned entity, at any rate on 26 April 1999 constituted a successor to

such an entity. Thus the applicants came under the definition 'Government of the Federal Republic of Yugoslavia' and 'Government of the Serb Republic' in Article 1(1) and (2) of the basic regulation, as amended in the amending regulation, and within the scope of Article 2 of the basic regulation. Contrary to the applicants' arguments, the basic regulation focused neither on the ownership arrangements of the parent companies established in Yugoslavia or Serbia nor on their legal form. The privatisation which had apparently occurred in the meantime and the factual independence from the Milosevic regime of the applicants' Belgrade parent company were thus of no significance in regard to the criteria for the application of the basic regulation.

9 At paragraph 35 of the order appealed against the President of the Second Chamber emphasised the significance, in that context, of Article 2(5) of the basic regulation inasmuch as it elucidated the legal position in such a way that all companies, undertakings, institutions or entities located, registered or incorporated in the rest of Yugoslavia, i.e. Yugoslavia with the exception of Montenegro and Kosovo, were deemed to be owned or controlled by the Government, if they were not entered on the white list under Annex VI. Even though that provision only became applicable after adoption of the contested regulation, it already formed part of Regulation No 723/2000 adopted on 6 April 2000 and enabled the applicants as early as the beginning of April 2000 to ascertain that, after the fresh strengthening of the sanctions, nothing would turn on the actual ownership arrangements concerning its Belgrade parent company.

10 In so far as the contested regulation is based on the fact that the applicants' parent company is a 'socially owned' undertaking and thus refers to the basic regulation, the applicants also alleged on an ancillary basis under Article 241 EC the inapplicability of the basic regulation. The latter regulation is said to be in breach of the Community-law principle of proportionality, inasmuch, on the one hand, as less stringent means could be considered, such as a system of selective export bans or the imposition of conditions on export licences could be envisaged and, on the other, as their parent company in Belgrade, being a privatised company outside the state sector, was wrongly included in the sanctions regime.

11 In that connection the President of the Second Chamber considered, at paragraph 38 of the order appealed against, that on the adequate summary review available in the context of interim legal protection, no manifest infringement by the Council of the principle of proportionality was discernible, regard being had to the legislative context and of the objective pursued by Regulations Nos 1294/1999 and 723/2000. The President of the Second Chamber considered that the applicants had not precisely demonstrated the extent to which the less stringent sanctions proposed by them including an individual examination of the ownership arrangements of the undertakings concerned were practicable and might be consistent with the specific purpose of the measures, which was further to strengthen the existing sanctions and to close any loopholes. Also unsubstantiated, the President considered, was the allegation made at the hearing that the basic regulation breached elementary principles of law and constituted an 'abuse of power' by the Council.

12 Secondly, the applicants alleged a breach of their defence rights, inasmuch as the Commission did not fulfil its duty to afford them the opportunity of effectively presenting their views prior to adoption of the measures adversely affecting them.

13 In that connection the President of the Second Chamber considered, at paragraphs 40 to 42 of the order appealed against that no manifest breach of the rights of the defence could be established in the present case, without its being necessary in the context of proceedings for interim legal protection to examine whether the undertakings affected by the sanction measures at issue are in that connection entitled to a prior lawful hearing. The President of the Second Chamber pointed out that an undertaking was included in Annex II to the basic regulation on the initiative of the competent national authorities in a two-stage administrative procedure in which, under Article 8(4) of the basic regulation, those authorities played a considerable part. In such a procedure, he considered, the right of the undertaking concerned to be heard had actually to be secured in the first place in the relations between that undertaking and the competent national administrative authority. However, the President of the Second Chamber found that Invest Import und Export GmbH had been able to make known its

point of view to the German authorities which had called for its inclusion in the 'black list', whilst Invest Commerce SARL was also informed of its imminent inclusion in the 'black list'.

14 Thirdly and lastly, the applicants contended that the reasoning on which both the contested regulation and, in the alternative, the basic regulation, were based was inadequate, inasmuch as there was no discussion of the applicants' actual legal situation or of the possibilities of public-sector involvement with their parent company.

15 In that connection, the President of the Second Chamber considered, at paragraphs 43 to 46 of the order appealed against, that the basic regulation and the contested regulation satisfied the requirements of the settled case-law of the Court according to which, although the statement of reasons required by Article 253 EC must show clearly and unequivocally the reasoning of the Community authority which adopted the contested measure so as to inform the persons concerned of the justification for the measure adopted and to enable the Court to exercise its powers of review, the statement of the reasons on which regulations are based cannot be required to specify the various matters of detail dealt with in the regulations, provided that the latter fall within the general scheme of the body of measures of which they form part. In the present case, the President pointed out that the purpose pursued by the strengthened sanction measures is apparent from the measures as a whole and that the contested regulation in its recitals expressly refuted the applicants' arguments. Moreover, the application for interim relief and the application showed that the applicants were perfectly able to defend their interests before the Court and to claim that the regulations at issue were unlawful.

16 The President of the Second Chamber concluded that, for all the foregoing reasons, the arguments put forward by the applicants did not amount to a *prima facie* case for the suspension of operation sought. Consequently, since the condition relating to the *fumus boni juris* was not met, the president of the Second Chamber rejected the application for suspension of operation, without examining the other pleas and arguments invoked in support by the applicants.

The parties' arguments

The applicants' arguments

17 The applicants are basing their appeal on infringements of Community law by the Court of First instance; first, they claim breaches of their fundamental property rights and of the freedom to carry on business and, secondly, an infringement of the principle of proportionality.

18 In the first plea it is alleged that the President of the Second Chamber was wrong to take the view that the applicants' right to property and freedom to pursue a trade or profession were not infringed by the sanctions adopted against them.

19 In the present case they were. In fact, since their names were included under the contested regulation in the list appearing in Annex II to the basic regulation, the applicants were no longer in a position, owing to the freezing of their accounts, to devote themselves to their business or to honour their contractual commitments. Although their right to property and freedom to pursue a trade or profession have not been totally taken away from them, they have in any event suffered an extremely serious infringement.

20 It is true that the Court has held, particularly in its judgment in Case 265/87 *Schräder* [1989] ECR 2237, paragraph 15, that the right to property and freedom to pursue a trade or profession do not constitute unfettered prerogatives but must be viewed in the light of their social function. Consequently, the right to property and the freedom to pursue a trade or profession may be restricted, particularly in the context of a common organisation of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the

Community and that they do not constitute, as regards the aim pursued, a disproportionate and intolerable interference which impinges upon the very substance of the rights thus guaranteed. The possibility of imposing restrictions on property rights in the general interest is also provided for under the first Protocol to the European Human Rights Convention.

21 However, the applicants claim in the present case that the infringements of their right to property and freedom to pursue a trade or profession cannot be justified.

22 The applicants do not dispute that the sanctions at issue pursue 'objectives of general interest' in the terms of the case-law cited above, namely the objectives of stepping up pressure on the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia in response to the continuing violation by those governments of the relevant resolutions of the United Nations Security Council and of securing a policy change by those governments.

23 However, the applicants stress that under the basic regulation the sanctions adopted must be proportionate to the objectives pursued and not severely damage the interests of the Community. Moreover, under Regulation No 723/2000 the strengthening of sanctions should not penalise the Serbian people.

24 Yet the sanctions based on the basic regulation constitute a disproportionate and intolerable interference with the very substance of the applicants' right to property and freedom to pursue a trade or profession far in excess of the objectives pursued.

25 In fact, on the one hand, the very substance of the applicants' right to property and freedom to pursue a trade or profession is affected by the sanctions adopted against them, inasmuch as even if they continue to exist in their legal form as companies, they are deprived of their means of existence, condemned to inactivity and will soon be faced with closure.

26 On the other hand, the sanctions at issue are a totally inappropriate means of achieving the objectives pursued. Those measures do not merely affect all the institutions in the broadest sense owned or controlled in a given manner by the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia, and benefiting from financial intervention by State bodies, but are aimed at any institution which is a successor to an institution existing on 26 April 1999 which previously was owned by those governments or controlled by them or which was a socially-owned entity, irrespective of the identity of the owners of the institution concerned, of its legal form and the legal or substantive possibilities of supervision and intervention by those governments.

27 Following adoption of the contested regulation the applicants were subject to the abovementioned sanctions whereas their parent company, founded in 1950 as a State undertaking and subsequently given a new legal form as a 'socially-owned entity', has been engaged since 1991 in a privatisation process. Thus, its share capital is henceforth owned as to 71.92% by its staff and former employees. The undertaking is privately managed and, owing to the majorities required, the Yugoslav and Serb Governments can neither influence its policy nor is in a position to interfere with its financial assets.

28 According to the applicants, the President of the Second Chamber ought to have noted that the sanctions at issue constitute a totally inappropriate means of achieving the objectives pursued.

29 As to the legal nature of their parent company, the applicants go on to state that the Yugoslav and Serb Governments have no opportunity of influencing the policy of a 'socially-owned entity' or of appropriating its assets. Therefore, the President, it is claimed was wrong in his appraisal of the particular features of the legal form of the 'socially-owned entity' when he assimilated such an entity to undertakings which are State property or whose property is merely subject to 'direction' or 'control' by those governments.

30 According to the applicants, the freezing of accounts of private undertakings like the applicants or their parent company cannot be assimilated to the freezing of assets of the Yugoslav and Serb Governments held abroad since those governments were not entitled, *de jure* or *de facto*, to avail themselves of the assets of those three undertakings. The sanctions adopted against the applicants and their parent undertaking were not therefore such as to increase the pressure on the Yugoslav and Serb Governments but, in addition to the applicants, affect mainly their suppliers and customers in Western Europe as well as the Serbian people.

31 The applicants therefore conclude that, even though the sanctions arising in their case from adoption of the contested regulation merely constitute the application of Articles 1 and 2 of the basic regulation, the President of the Second Chamber ought to have found, even in the course of a provisional examination proper to interlocutory proceedings, that is to say *prima facie*, that Regulations Nos 1294/1999 and 723/2000 breach 'higher-ranking provisions'.

32 In their second plea the applicants allege that the President of the Second Chamber was wrong to take the view that the sanctions applied against them and the Council Regulations on which they are based did not run counter to the principle of proportionality.

33 The sanctions applied against the applicants are, it is claimed, manifestly inappropriate for achieving the objectives pursued since sanctions imposed

against private undertakings carrying on their activities abroad are not apt to exert any pressure on the Yugoslav and Serb Governments, since the latter do not have any means of taking action in regard to the applicants.

34 The Council could have adopted measures less stringent than a sudden freezing of bank accounts, such as a system of selective export bans, or authorisation subject to conditions compliance with which would be for the competent national authorities to police. The applicants criticise the President of the Second Chamber for regarding the less stringent measures which it had proposed as general and imprecise allegations. The applicants consider that they must be allowed merely to state that such measures are feasible. They stress that the drawing up of those measures is not a matter for them. The requirement that there be 'an individual examination of the capital composition of the undertakings concerned', which the less stringent measures would imply could easily be satisfied by the insertion in the relevant regulations of a provision to the effect that undertakings able to show that they primarily operate under the private sector regime are exempt from the sanctions. By failing to adopt less stringent sanctions which respected the private property of the undertakings, the Council and the Commission overstepped the limits of their margin of discretion and the President of the Second Chamber failed to observe the principle of proportionality.

Arguments of the Commission

35 According to the Commission, the first plea based on the right to property and freedom to pursue a trade or profession is manifestly inadmissible inasmuch as it constitutes a new plea which was raised neither in the interim proceedings nor in the main proceedings.

36 In the proceedings for interim relief the applicants at no time raised a plea based on infringement by the Commission or the Council of those fundamental rights.

They merely alleged a serious infringement of their right to pursue a trade or profession as an ancillary argument in the weighing of competing interests.

37 It was in the appeal that the applicants for the first time claimed against the yardstick of the *fumus boni juris* criterion, an infringement of their right to pursue a trade or profession, presenting it as a breach of their fundamental property rights and of the freedom to carry on business.

38 Before the Court of First Instance the applicants merely claimed on an ancillary basis in the framework of an analysis of whether the basic regulation was proportionate that that regulation seriously infringed fundamental legal principles or higher-ranking rules of law and constituted an abuse of power on the part of the Council.

39 In those circumstances the order appealed against rightly ruled only on those allegations formulated in very general terms.

40 Accordingly, the Commission concludes that the first plea must be rejected as manifestly inadmissible.

41 In the alternative, should the Court consider that observance of fundamental rights in the Community legal order is a matter of public policy which it must raise of its own motion, the Commission argues that the first plea is in any event unfounded.

42 Indeed, it is settled case-law that restrictions may be imposed on the exercise of fundamental rights under systems of sanctions if those restrictions are justified by objectives in the general interest pursued by the Community.

43 That is true of the freezing of undertakings' accounts provided for in the basic regulation which seeks to exercise the maximum pressure on the regime of President Milosevic so as to induce him to pay heed to the requirements of the international community and put an end to the serious violations of human rights and international humanitarian law of which he stands accused.

44 Such a fundamental objective pursued in the general interest is such as to justify negative consequences, even of a substantial nature, for some operators. Any infringement of the right to property and freedom to pursue a trade or profession cannot be regarded as inappropriate or disproportionate in relation to that objective (see, to that effect, Case C-84/95 *Bosphorus* [1996] ECR I-3953).

45 The Commission adds in that connection that the sanctions regime put in place by the basic regulation provides for certain exceptions and rights of action which it is for the undertakings affected by the sanctions to pray in aid.

46 As to the second plea based on an infringement of the principle of proportionality by the basic regulation and the contested regulation, the Commission contends that it must be rejected as manifestly unfounded.

47 In fact, as the President of the Second Chamber found at paragraph 38 of the order appealed against the Council could not be accused of a manifest infringement of the principle of proportionality in view of the legislative context

and the purpose of the Community system of sanctions. The application of such a criterion based on the manifest nature of the infringement in the context of interlocutory proceedings is in conformity with the Court's settled case-law.

48 Moreover, as regards the applicants' argument that less stringent means could have been adopted by the Council, the Commission considers that the order appealed against properly confined itself, in its appraisal of the facts and evidence, to finding that the applicants had not precisely demonstrated to what extent such sanctions could have been compatible with the purpose of the sanctions regime.

49 The applicants cannot seek to establish *a posteriori* in their appeal the disproportionate nature of the sanctions regime at issue in the present case in relation to its purpose since before the Court of First Instance they did not express a view on the purpose of that regime.

50 Finally, as to the application for suspension of operation of the contested regulation repeated by the applicants in their appeal, the Commission considers that it is manifestly inadmissible or, at least, manifestly unfounded.

51 In the present case, the state of the proceedings does not permit final judgment to be given in the matter, under the first paragraph of Article 54 of the EC Statute of the Court of Justice.

52 Since the parties' written observations contain all the information necessary for determination of the appeal, it is not necessary to hear oral argument from the parties.

Findings of the Court

53 In their appeal the applicants claim, in their first plea, that the order appealed against infringes their fundamental right to property and freedom to pursue a trade or profession and, in their second plea, that the order infringes the principle of proportionality.

54 Before the Court of First Instance the applicants alleged, solely on an ancillary basis, that the basic regulation was inapplicable on the ground that it infringed the principle of proportionality, inasmuch as means less stringent than the sanctions adopted against them, such as selective export bans or conditional export licences, would be more appropriate in light of the objective pursued by that regulation, namely a stepping up of the pressure on the regime of President Milosevic.

55 However, at paragraph 25 of the order appealed against, it is stated that, at the hearing, the applicants went on to submit that if the basic regulation were to be interpreted as being independent of the ownership arrangements of the parent company and the latter's legal form, then that regulation was in serious breach of fundamental principles of law. Such discriminatory and sweeping conduct of the Council constituted an abuse of power.

56 As regards the Commission's allegation that the first plea on appeal is new and therefore manifestly inadmissible, it should be stated that the first and second pleas are closely linked since in those pleas the applicants are essentially alleging that the President of the Second Chamber did not take the view that the sanctions adopted under the basic regulation constituted a disproportionate and intolerable interference which impinged upon the very substance of their fundamental right to property and the freedom to pursue a trade or profession.

57 It falls therefore to examine whether the Court of First Instance committed an error of law in assessing the infringement alleged by the applicants of the principle of proportionality and fundamental legal principles amongst which are the fundamental right to property and freedom to pursue a trade or occupation.

58 In that connection it should be borne in mind that, in accordance with settled case-law, the fundamental rights relied on by the applicants are not absolute and their exercise may be subject to restrictions justified by objectives of general interest pursued by the Community (see Case 44/79 *Hauer* [1979] ECR 3727, paragraphs 19, 20 and 32; Case 5/88 *Wachauf* [1989] ECR 2609, paragraph 18; Case C-280/93 *Germany* v *Council* [1994] ECR I-4973, paragraph 78; and the abovementioned *Bosphorus* judgment, paragraph 21).

59 First, any measure imposing sanctions has, by definition, consequences which affect the right to property and the freedom to pursue a trade or business, thereby causing harm to persons who are in no way responsible for the situation which led to the adoption of the sanctions (*Bosphorus*, paragraph 22).

60 Secondly, the importance of the aims pursued by the regulation at issue is such as, *prima facie,* to justify negative consequences, even of a substantial nature, for some operators (*Bosphorus*, paragraph 23). Accordingly, those consequences cannot be regarded as manifestly disproportionate in relation to the aims pursued.

61 Furthermore, it is important to note that before the Court of First Instance the applicants did not specifically allege an infringement of their fundamental right to property and freedom to pursue a trade of profession; nor did they accurately show to what extent the less stringent sanctions which they had proposed including individual examination of the capital composition of the undertakings

concerned were feasible and likely to be consistent with the specific purpose of the sanctions regime.

62 In those circumstances, and in light of the general nature of the applicants' allegations, the President of the Second Chamber was correct in considering, at paragraph 38 of the order appealed against, that, *prima facie*, the allegation based on infringement of fundamental legal principles and abuse of power was in no way proven and that no manifest infringement of the principle of proportionality was discernible on the adequate summary review available in the context of interim legal protection.

63 It follows from all the foregoing considerations that the pleas relied on by the applicants in support of their appeal cannot be upheld and that their appeal must consequently be dismissed.

Costs

64 Under Article 69(2) of the Rules of Procedure, applicable under Article 118 to appeal proceedings, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleadings. Since the Commission sought an order against the applicants and the latter have been unsuccessful, they must be ordered to pay the costs.

On those grounds,

THE PRESIDENT OF THE COURT

hereby orders:

1. **The appeal is dismissed.**

2. **'Invest' Import und Export GmbH and Invest Commerce SARL are ordered to pay the costs.**

Luxembourg, 13 November 2000.

R. Grass — Registrar

G.C. Rodríguez Iglesias — President