OPINION OF ADVOCATE GENERAL KOKOTT

delivered on 27 September 2006 [1]

I — Introduction

1. The present appeal was lodged by Mr Osman Ocalan on behalf of the Kurdistan Workers' Party (Partiya Karkerên Kurdistan, the 'PKK') and Mr Serif Vanly for the Kurdistan National Congress (Kongra Netewiya Kurdistan, the 'KNK'). Mr O. Ocalan is the brother of the leader of the PKK, Mr Abdullah Ocalan, who is imprisoned in Turkey.

2. Both appellants take issue with the Council's action in placing the PKK on a list of terrorist organisations. The Court of First Instance dismissed the PKK's action, on the ground that, according to its own submissions, the PKK no longer exists and Mr O. Ocalan could therefore not prove that he represented it. The KNK's action was also dismissed as being inadmissible, on the ground that it was not individually concerned by the Council's decision.

II — Legal and factual background to the dispute

3. The Court of First Instance sets outs the legal and factual background to the dispute in paragraphs 1 to 9 of the contested order of 15 February 2005 in Case T-229/02 [2] as follows:

'1 It is apparent from the documents before the Court that the Kurdistan Workers' Party (PKK) emerged in 1978 and engaged in an armed struggle against the Turkish Government to obtain recognition of the Kurds' right to self-determination. According to Mr O. Ocalan's written evidence, the PKK declared a unilateral ceasefire, whilst reserving the right to self-defence, in July 1999. According to that evidence, in April 2002, in order to reflect that reorientation, the Congress of the PKK decided that "all activities under the name of 'PKK' would cease as of 4 April 2002 and that any activities taken under the name of the 'PKK'

1 — Original language: German.

2 — *PKK and KNK* v *Council* [2005] ECR II-539.

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

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

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

4 Article 2 of Common Position 2001/931 states:

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

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

6 Article 2 of Regulation No 2580/2001 provides:

"(1) Except as permitted under Articles 5 and 6:

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

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

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

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

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

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

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

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

7 On 2 May 2002, the Council adopted Decision 2002/334/EC implementing Article 2(3) of Regulation (EC) No 2580/2001 and repealing Decision 2001/927/EC (OJ 2002 L 116, p. 33). That decision included the PKK in the list referred to in Article 2(3) of Regulation No 2580/2001 ("the disputed list").

8 By application registered under number T-206/02, the KNK brought an action for annulment of Decision 2002/334.

9 On 17 June 2002, the Council adopted Decision 2002/460/EC implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2002/334/EC (OJ 2002 L 160, p. 26). The PKK's name was kept on the disputed list. That list has since been regularly brought up to date by Council decisions.'

4. To supplement the statements of the Court of First Instance, it will be helpful, for the appraisal of the present case, to recall the wording of Article 1(6) of Common Position 2001/931:

'The names of persons and entities on the list in the Annex shall be reviewed at regular intervals and at least once every six months to ensure that there are grounds for keeping them on the list.'

5. The KNK first brought the action in Case T-206/02 [3] against Decision 2002/334 and, subsequently, the action in Case T-229/02 against Decisions 2002/334 and 2002/460 jointly with Mr Ocalan, who appeared on behalf of the PKK. The latter joint action alone is the subject of the present appeal.

3 — See the order in Case T-206/02 *KNK* v *Council* [2005] ECR II-523.

III — The order of the Court of First Instance

6. By the order under appeal the Court of First Instance dismissed the action in relation to both applicants on the basis of a plea of inadmissibility raised by the Council.

7. The Court accepted in paragraph 27 of the order that the PKK was directly and individually concerned by Decisions 2002/334 and 2002/460. It pointed out in paragraph 28 that in cases of this kind no 'excessive formalism' in respect of admissibility should be allowed to apply, since otherwise no effective legal protection would be possible.

8. The Court stated, however, in paragraphs 34 to 41, that Mr O. Ocalan had not demonstrated that he effectively represented the PKK, but that he maintained, on the contrary, that the PKK has already been dissolved and declared any activity under its name to be illegitimate. The Court therefore found that Mr O. Ocalan had brought the proceedings on behalf of the PKK on his own authority and that the action was therefore inadmissible.

9. The Court examined the locus standi of the KNK in paragraphs 45 to 56 insofar as an association formed for the protection of the collective interests of a category of persons can be considered to be individually con-

cerned, for the purposes of the fourth paragraph of Article 230 EC, by a measure affecting the general interests of that category only if its members can be so regarded individually. As the PKK no longer exists, it is also no longer a member of the KNK and cannot establish individual concern in this regard. The successor organisation to the PKK, KADEK, is not a member of the KNK. Further restrictions on the activities of the KNK or its members in respect of cooperation with the PKK or its successor organisation, resulting from Decisions 2002/334 and 2002/460, would not concern it individually, but in the same way as any other.

10. Finally, the Court of First Instance held that it was also not necessary for the KNK to have locus standi to open up the possibility of challenging the decisions, as at least the successor organisation to the PKK would be able to bring an action, as had in fact already happened in the case of *KONGRA-GEL* (Kongra Gelê Kurdistan — Kurdistan Peoples' Congress). [4]

IV — Forms of order sought

11. The appellants claim that the Court should:

(1) declare the application of Osman Ocalan on behalf of the organisation formerly known as the PKK to be admissible;

(2) declare the application of Serif Vanly on behalf of the organisation known as the KNK to be admissible;

(3) make an order for costs relating to the admissibility proceedings.

12. The Council claims that the Court should:

(1) dismiss the appeal by both appellants as inadmissible;

(2) in the alternative, dismiss the appeal by both appellants as unfounded;

(3) if necessary, refer the case back to the Court of First Instance;

(4) order the appellants to pay the costs of the proceedings.

4 — The Court refers to the proceedings pending in Case T-253/04 *Aydar and Others* (OJ 2004 C 262, p. 28).

V — Assessment

13. The appeal concerns the dismissal of the action in respect of both appellants. The appeal on behalf of the PKK will be examined first, followed by the appeal of the KNK.

A — *The appeal of Mr O. Ocalan on behalf of the PKK*

14. The first appellant puts forward a total of seven grounds of appeal on behalf of the PKK, which in part can be dealt with together.

1. The first ground of appeal — recognition of the power of attorney

15. The first appellant complains that the Court of First Instance acted in a contradictory manner in finding that he had brought proceedings not on behalf of the PKK but on his own authority. According to the appellant, by serving the application rather than taking action under Article 44(6) of its Rules of Procedure, [5] the Court of First Instance had already accepted that the appellant was effectively representing the PKK. This provision reads as follows:

'If an application does not comply with the requirements set out in paragraphs 3 to 5 of this Article, the Registrar shall prescribe a reasonable period within which the applicant is to comply with them whether by putting the application itself in order or by producing any of the abovementioned documents. If the applicant fails to put the application in order or to produce the required documents within the time prescribed, the Court of First Instance shall decide whether the non-compliance with these conditions renders the application formally inadmissible.'

16. In relation to the lawyer's power of attorney and that of the person authorising him to act, Article 44(5) of the Rules of Procedure of the Court of First Instance is of particular interest:

'An application made by a legal person governed by private law shall be accompanied by:

(a) ...

(b) proof that the authority granted to the applicant's lawyer has been properly conferred on him by someone authorised for the purpose.'

5 — The first appellant incorrectly refers to the numbers of the articles in the Rules of Procedure of the Court of Justice.

17. The first appellant refers to a case in which the Court of First Instance, in response to the Commission's allegation that the person who had authorised the lawyer to act was not empowered to represent the company bringing the action, put questions to the applicant in this regard. [6] In the present case neither the Council nor the Court of First Instance itself challenged the authorisation of Mr O. Ocalan in this way before the order was delivered.

18. The Council, however, is entirely correct in its response that the fact of service of the application could not prevent the Court of First Instance from establishing later that Mr O. Ocalan's power of attorney was defective. Indeed, this was how the Court of First Instance clarified the authorising party's power of attorney, in the case referred to by the first appellant, only after the Commission had made its allegation. [7]

19. Further, according to the first appellant, it was something of a contradiction for the Court of First Instance to hear him in relation to admissibility and then to deny him, for the rest of the proceedings, the power of attorney in respect of the organisation which he represented.

20. This submission is also not convincing, since — as the Council has pointed out — the law requires a party to be heard on issues of admissibility even when it is still unclear whether the persons who appear for that party are actually authorised to represent it. Otherwise there could be no fair hearing in relation to the power of attorney. This is also in practice the only sensible way to proceed, since the ostensible representatives are supposedly those among the participants who are best able to furnish the evidence in question.

21. Insofar as the partial complaint that the Court of First Instance failed to request the first appellant to prove that he was authorised to act is contained in this plea, this should be discussed in relation to the seventh ground of appeal, concerning the failure to afford the appellant an opportunity to clarify his position.

22. The first ground of appeal must therefore be rejected.

2. The second and third grounds of appeal — anticipation of issues of substance

23. By these two grounds of appeal the first appellant submits that the existence of the PKK should not have been raised and assessed in the context of a plea of inad-

6 — Case T-180/00 *Astipesca* v *Commission* [2002] ECR II-3985, paragraph 44 et seq.

7 — Judgment in *Astipesca*, cited in footnote 6 above.

missibility in isolation, but in relation to the substance of the application. In this connection, the first appellant invokes the first subparagraph of Article 114(1) of the Rules of Procedure of the Court of First Instance.

24. The Council considers this ground of appeal to be inadmissible, on the ground that it merely consists of a repetition of arguments made in the proceedings before the Court of First Instance. However, provided that the appellant challenges the interpretation or application of Community law by the Court of First Instance, the points of law examined at first instance may be discussed again in the course of an appeal. Indeed, if an appellant could not thus base his appeal on pleas in law and arguments already relied on before the Court of First Instance, an appeal would be deprived of part of its purpose. [8] In the present ground of appeal the first appellant indeed repeats his arguments made at first instance, but does so in the course of challenging the decision of the Court of First Instance. The ground is thus admissible.

25. This ground of appeal, however, is not well founded. It is debatable as to what extent the existence of the PKK is actually relevant to the substance of the application, as the first subparagraph of Article 114(1) of the Rules of Procedure of the Court of First Instance does not preclude basing a plea of inadmissibility on arguments which are also relevant to the substance.

26. The German version of this provision reads as follows:

'Will eine Partei vorab eine Entscheidung des Gerichts über die Unzulässigkeit, die Unzuständigkeit oder einen Zwischenstreit herbeiführen, so hat sie dies mit besonderem Schriftsatz zu beantragen.'

27. The English [9] and French [10] versions, by contrast, provide, in essence, that a plea of inadmissibility, lack of competence or other preliminary plea *not going to the substance of the case* may be raised.

28. The first appellant deduces from this that a plea of inadmissibility cannot be raised and the Court of First Instance cannot rule

8 — Order in Case C-488/01 P *Martinez* v *Parliament* [2003] ECR I-13355, paragraph 39, and judgment in Case C-234/02 P *European Ombudsman* v *Lamberts* [2004] ECR I-2803, paragraph 75.

9 — 'A party applying to the Court of First Instance for a decision on admissibility, on lack of competence or other preliminary plea *not going to the substance of the case* shall make the application by a separate document.'

10 — 'Si une partie demande que le Tribunal statue sur l'irrecevabilité, l'incompétence ou sur un incident, *sans engager le débat au fond*, elle présente sa demande par acte séparé.'

on it, if, in so doing, an issue has to be decided upon which goes to the substance of the case.

29. In fact the French and English versions of the first subparagraph of Article 114(1) could be readily understood as meaning that all the pleas provided for therein should not extend to those questions requiring an assessment of the substance of the action. It is not inconceivable that this proviso in the two language versions should be applied to all three pleas, but it seems more natural, in line with the context, to limit the provision to the third variant of the plea, the 'Zwischenstreit', or the 'incident' or the 'other preliminary plea'.

30. The latter construction of the first subparagraph of Article 114(1) of the Rules of Procedure of the Court of First Instance also corresponds to the scheme of the provision. If the Court of First Instance is to assess admissibility without a plea having been raised, it is not prevented from examining issues which may also be relevant to the substance of the action in question. Under Article 113 the Court of First Instance may at any time, of its own motion, after hearing the parties, decide whether there exists any absolute bar to proceeding with a case. Where the action is manifestly inadmissible, the Court of First Instance may under Article 111, by reasoned order and without taking further steps in the proceedings, dismiss that action. In both cases there can be no question of a limitation to issues which do not go to the substance.

31. An unrestricted examination of issues of admissibility also corresponds to the scheme of the provisions on procedure as a whole, since a discussion on the substance presupposes that the Court of First Instance has jurisdiction and that the action is admissible. [11]

32. Furthermore, the purpose of Article 114 of the Rules of Procedure of the Court of First Instance militates against limiting the examination of a plea of inadmissibility to issues which are not relevant to the substance. As the Council has correctly pointed out, a plea of inadmissibility enables extensive discussions on the substance to be avoided. Such discussions are irrelevant to the proceedings if the action is inadmissible. Even if issues, which are also relevant to the substance, are to be examined in the context of admissibility, it does not follow that an extensive examination of the substance must be undertaken.

11 — Advocate General Ruiz-Jarabo Colomer, in his Opinion of 4 October 2001 in Case 23/00 P *Council* v *Boehringer Ingelheim Vetmedica and Others* [2002] ECR I-1873, at point 28 et seq., went as far as to consider it to be an error of law to decide on the substance when the action is inadmissible. The Court, however, (in paragraph 52 of the judgment) did not regard this method of proceeding as inconveniencing the Council, with the result that it dismissed its appeal.

33. Issues which may be relevant to the substance of an action may therefore also be addressed in connection with a plea of inadmissibility under Article 114 of the Rules of Procedure of the Court of First Instance. Consequently, the possible relevance of the existence of the PKK to the substance of the application precluded neither the plea of inadmissibility nor the decision of the Court of First Instance on that plea.

34. The second and third grounds of appeal should consequently be rejected.

3. The fourth and fifth grounds of appeal — distortion of Mr O. Ocalan's statement and continuing legal capacity of the PKK

35. With the fourth ground of appeal the first appellant argues that the Court of First Instance erred in its interpretation of his statement. According to the first appellant, it is clear from the application and evidence of Mr O. Ocalan that the PKK ceased its activities under this name and created a new, allied organisation by the name of KADEK. Mr O. Ocalan admitted nowhere, for the purposes of the application, that the PKK no longer existed or that it had been dissolved.

36. In relation to the fifth ground of appeal, the first appellant maintains that even if the PKK basically no longer exists, it ought at least to be recognised as having a continuing legal capacity for the purposes of the present proceedings. In the event that the PKK were to be banned, it would also have to be recognised as having sufficient legal capacity to be able to bring judicial proceedings against that ban.

37. The Council regards these grounds of appeal as inadmissible on the ground that they merely repeat the arguments made before the Court of First Instance and challenge its assessment of the facts.

38. As already explained, it is permissible to raise arguments made at first instance again where — as in this case — in so doing they challenge the legal assessment of the Court of First Instance. Conversely, the appraisal of the facts by the Court of First Instance does not constitute a question of law which is subject, as such, to review by the Court of Justice. This rule, however, applies only in so far as the Court of First Instance has not *distorted* the evidence presented to it. [12] Both these grounds of appeal are therefore admissible in so far as the first appellant alleges that the Court of First Instance distorted the evidence before it.

12 — Case C-237/98 P *Dorsch Consult* [2000] ECR I-4549, paragraphs 35 and 36, and Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland and Others* v *Commission* [2004] ECR I-123, paragraph 49.

39. There may be some doubt, however, as to whether these grounds of appeal are sound, namely as to whether they are appropriate for challenging the order of the Court of First Instance. If they are not so appropriate, they will then constitute what French terminology refers to as a 'moyen inopérant', that is to say, a ground of appeal which cannot secure the objective of the appeal and is therefore unfounded.

40. In order to ascertain whether the arguments as to the existence of the PKK are potentially sound, it should be recalled that the Court of First Instance did not — according to the Council's plea — reject the application because of the PKK's lack of legal capacity or its capacity to be a party to proceedings, but because Mr O. Ocalan was not the PKK's representative.

41. The Court of First Instance, however, based its rejection of Mr O. Ocalan's power of attorney exclusively on his ostensible submissions that the PKK no longer exists. If the first appellant succeeds on these grounds of appeal, then the whole substance falls away on this decisive point. Thus these grounds of appeal are potentially valid.

42. It is thus necessary to ascertain whether the Court of First Instance distorted evidence. Such distortion must be obvious — without any need for a new assessment of the facts and the evidence — from the documents on the Court's file. [13] This formulation is unclear, however, as establishing whether evidence has been distorted requires a minimum level of assessment. Rather, there will be a distortion of evidence where, without recourse to new evidence, the assessment of the evidence appears to be clearly incorrect.

43. Until now the Court of Justice has based its findings of distortion of evidence mainly on the fact that the Court of First Instance construed the content of certain evidence in a way that is objectively inaccurate. [14] The Court of Justice has also based its reasoning on the correlation of certain statements both to establish that the content of a document has been distorted [15] and to reject an allegation of distortion of evidence. [16]

13 — Case C-8/95 P *New Holland Ford* v *Commission* [1998] ECR I-3175, paragraph 72, and Case C-551/03 P *General Motors Nederland and Opel Nederland* v *Commission* [2006] ECR I-3173, paragraph 54).

14 — See Case C-164/98 P *DIR International Film and Others* v *Commission* [2000] ECR I-447, paragraph 43 et seq., concerning a reference in the grounds of a Commission decision which was misunderstood; Case C-277/01 P *Parliament* v *Samper* [2003] ECR I-3019, paragraph 45 et seq., concerning the incorrect reproduction of minutes; Joined Cases C-172/01 P, C-175/01 P, C-176/01 P and C-180/01 P *International Power and Others* v *NALOO* [2003] ECR I-11421, paragraph 156, concerning misinterpretation of the grounds of a decision; and Joined Cases C-442/03 P and C-471/03 P *P&O European Ferries (Vizcaya) and Diputación Foral de Vizcaya* v *Commission* [2006] ECR I-4845, paragraph 63 et seq., concerning distortion of the grounds of a decision.

15 — *Parliament* v *Samper* (cited in footnote 14, paragraph 40) and Case C-197/99 P *Belgium* v *Commission* [2003] ECR I-8461, paragraph 64 et seq.

16 — Joined Cases C-65/02 P and C-73/02 P *ThyssenKrupp* v *Commission* [2005] ECR I-6773, paragraph 83 et seq.; Joined Cases C-2/01 P and C-3/01 P *BAI and Commission* v Bayer [2004] ECR I-23, paragraph 53 et seq.; and Case C-136/02 P *Mag Instrument* v *OHIM* [2004] ECR I-9165, paragraph 63.

44. On the basis of these criteria, it is necessary to examine whether the finding that Mr O. Ocalan had argued that the PKK no longer existed and the conclusion that it could therefore not have authorised him to bring proceedings amounted to a distortion of evidence.

45. The finding of the Court of First Instance can be based on paragraph 16 of the application and paragraph 27 of Mr O. Ocalan's statement,[17] where in each case the PKK's dissolution is discussed. This event is, however, set out more precisely elsewhere in the statement. As the Court of First Instance stated in paragraph 1 of the order under appeal, referring to paragraph 16 of the written evidence, the Congress of the PKK decided in April 2002, in order to reflect the PKK's new reorientation, that 'all activities under the name of "PKK" would cease as of 4 April 2002 and that any activities taken under the name of the PKK would be deemed illegitimate'.

46. Furthermore, according to paragraph 18 of that statement, a new constitution was adopted, altering the structure and organisation of the PKK. A coordinating organisation was to accommodate the various organisations which were created in parts of Kurdistan. It was for those reasons that KADEK was founded.

47. It is, moreover, apparent from paragraph 29 et seq. of the statement that the inclusion of the PKK on the list of terrorist organisations is in particular being challenged because it would hamper the activities of KADEK.

48. Finally, Mr O. Ocalan produced the full authorisation for the lawyers involved to act on behalf of the organisation formerly known as the PKK.

49. It is also to be borne in mind that the organisation which is the subject of this dispute could not, by reason of its nature, have a definitive and formalised statute in which the beginning and end of its legal existence can be clearly determined.

50. Accordingly, it cannot simply be concluded from the evidence that the PKK no longer exists and was thus no longer able to authorise Mr O. Ocalan. There are stronger grounds for understanding KADEK as being merely the new name of the PKK.

51. Even if the organisation designated as KADEK is regarded — as the Council did at the hearing — as the legal successor to the PKK, which no longer exists, one would have to assume — unlike the Council — that in any event the present application was

17 — Annex II to the application at first instance.

actually lodged by KADEK under the name of the PKK and in order to protect the rights acquired by the PKK.

52. The change in the name or the legal succession is also supported by the fact that the Council — as the Court of First Instance recalled in paragraph 55 of the order — by its Decision 2004/306/EC of 2 April 2004 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2003/902/EC [18] included KADEK and the KONGRA-GEL, *as aliases* of the PKK, on the disputed list. The organisations bearing those names thus continue to exist.

53. Furthermore, the first appellant correctly points out, in the context of the fifth ground of appeal, that the continuing reference to the PKK as a terrorist organisation on the disputed list makes it necessary at least to grant it legal capacity and capacity to be a party to proceedings for the purposes of bringing an action against inclusion on the list. It must therefore also be in a position to appoint persons able to bring an action on its behalf.

54. This is not a purely formal argument. It is clear that the Council continues up to the present to assume that the PKK still exists, as it maintains measures against it to combat terrorism. As the Court of First Instance established in paragraph 44, this is based on an ongoing review pursuant to Article 2(3) of Regulation No 2580/2001 as to whether there are grounds for continuing to keep such organisations on the list. This review must be conducted at least once every six months, in accordance with Article 1(6) of Common Position 2001/931 [19] referred to therein.

55. As regards the statement that any activities taken under the name of the PKK would be deemed illegitimate, that evidence — as the PKK stated at the hearing — must also be seen in the context of its desire — at least at the material time — to distance itself from acts of violence. Those types of activities were no longer to be authorised politically by the PKK. That, however, cannot be applied to the present application.

56. Indeed it is thus not yet certain whether Mr O. Ocalan rightfully appears on behalf of the PKK. At the very least, however, the findings of the Court of First Instance as to Mr O. Ocalan's lack of any power of attorney distort his statement. On this ground alone, the order of the Court of First Instance is legally flawed and must therefore be annulled.

18 — OJ 2004 L 99, p. 28.

19 — The provision is set out in point 4 above.

4. The sixth ground of appeal — effective legal protection

57. The sixth ground of appeal is directed at the conditions which applications by individuals to the Community Courts must fulfil, in particular the need to demonstrate individual concern. The first appellant argues that this condition breaches the European Convention for the Protection of Human Rights and Fundamental Freedoms, on the ground that despite a direct breach of human rights an application will be denied where the person concerned is not at the same time individually concerned.

58. The Council regards this ground of appeal as inadmissible inasmuch as the Court of First Instance did not deal with the matter in the corresponding proceedings at first instance. This objection is not convincing, however, as the failure of the Court of First Instance to examine arguments or to examine arguments sufficiently may also amount to an error of law.

59. However, it is not clear from this ground of appeal which part of the Court of First Instance's judgment it is directed against, that is to say, it is not clear at what point the Court of First Instance should have dealt with these arguments. Thus in this respect the ground of appeal is inadmissible. Moreover, the conditions as to individual concern in connection with the application on behalf of the PKK cannot provide the basis for a ground of challenge, as the Court of First Instance expressly recognised that organisation's individual concern at paragraph 27 and Mr O. Ocalan was not bringing proceedings in his own right.

60. Against the background of effective legal protection it is further argued that the Court of First Instance's decision as to the existence of the PKK deprived it of effective legal protection. However, this argument too is unconvincing. Effective legal protection does not require persons to be allowed to bring proceedings on behalf of others if they are not authorised to represent them.

61. This plea must therefore be rejected in its entirety.

5. The seventh ground of appeal — the opportunity to provide clarification

62. The first appellant concludes by submitting that the Court of First Instance should have given him the opportunity to clarify his power of attorney. The Court of First Instances' manner of proceeding was, he argues, oppressive, disproportionate and contrary to the rules of natural justice.

63. The first appellant did, however, have sufficient opportunity in principle to give a clear explanation of his power of attorney — that is, first of all in his application and subsequently in his response to the objections of the Council. Since the Council founded the objection of inadmissibility on the fact inter alia that, according to the

arguments of the first appellant, the PKK no longer existed and therefore had neither legal capacity nor standing to be a party to legal proceedings, this also presented an opportunity to provide clarification on this point. The first appellant also made use of this opportunity.

64. When questioned on this point at the hearing, the first appellant pointed out, however, that he had not made comments to the Court of First Instance on the legal appraisal which it finally applied to his actual arguments. Unlike the Council in its objection of inadmissibility, the Court of First Instance left open the question of the PKK's legal capacity and its capacity to be a party to legal proceedings, but did reject Mr O. Ocalan's power of attorney.

65. The first appellant accordingly states that the Court of First Instance should have informed him of the legal assessment it was contemplating, that is to say, of the doubts concerning his power of attorney, in order to allow him to dispel those doubts.

66. As a general rule, courts need not allow parties to be heard on every point of their legal assessments before delivering their judgment. The Community Courts are in fact restrained in this respect. This restraint ensures their neutrality. Since it is provided that parties be represented by a lawyer, guidance is generally not required. For the European Court of Human Rights in Strasbourg (the 'ECHR') as well, even in the case of potentially misleading guidance given by a court in criminal proceedings, there would be no breach of the right to a fair trial if the person concerned has legal representation. [20]

67. The need to provide guidance may, however, be derived from the principle of the right to be heard. This principle seeks inter alia to prevent the judicial decision from possibly being influenced by an argument which could not have been discussed by the parties. [21] In this way, a decision of an unexpected nature should be avoided.

68. The submission that was decisive for the Court of First Instance, namely the statements on the existence of the PKK, was, however, discussed by the parties, so that in principle there was no further need for them to be heard on that point.

69. In relation to whether the power of attorney was sufficient, the Rules of Procedure of the Court of First Instance contain a

20 — See the judgment of the ECHR of 29 November 2004 on the admissibility of complaint 8535/02, *Coghlan* v *United Kingdom*, page 18. However, the opposite is true in relation to the unexpected change in the charges in criminal proceedings in the judgment of the ECHR of 20 April 2006 concerning complaint 42780/98 *I. H. and Others* v *Austria*, paragraph 32 et seq.

21 — Order in Case C-17/98 *Emesa Sugar* [2000] ECR I-665, paragraph 18.

special rule which requires, on an exceptional basis, guidance to be given on potentially unclear matters and an opportunity to be provided for clarification. Where an application by a legal person governed by private law is not accompanied by proof that the authority granted to the applicant's lawyer has been properly conferred on him by someone authorised for the purpose, the Registrar, pursuant to Article 44(5) and (6), is to prescribe a reasonable period within which the applicant is to comply with those provisions, whether by putting the application itself in order or by producing any of the prescribed documents. [22] It does not appear unusual for the Court of First Instance to request pertinent information also at a later point in time. [23]

70. In the present case it is not argued that the PKK is a legal person governed by private law. The Court of First Instance was, however, correct to recognise, in paragraph 28 of the order, that producing the evidence required for admissibility can be particularly difficult for groups and entities which are on the disputed list. These groups and entities should thus be able at least to benefit from the same protective provisions as legal persons governed by private law, who can normally provide with relative ease the evidence of sufficient power of attorney on the part of the person who has authorised the lawyer to act.

71. Consequently, groups which are on the disputed list, where there is insufficient evidence of the power of attorney of the person bringing the action, should also be given a further opportunity to try to obtain that evidence.

72. This did not happen in the present case, as the Court of First Instance did not at any point before handing down its decision intimate to the first appellant the doubts which it had concerning his power of attorney.

73. The dismissal by the Court of First Instance of the plea in relation to the first appellant is therefore procedurally flawed in this respect, as it failed to afford Mr O. Ocalan any opportunity to clarify his power of attorney. On this ground as well the order of the Court of First Instance must be set aside.

B — *The decision on the admissibility of Mr O. Ocalan's application on behalf of the PKK*

74. It is now necessary to examine whether the Court of Justice, according to the application of the first appellant, is able to decide conclusively on the admissibility of Mr O. Ocalan's application on behalf of the PKK or whether it must — as the Council contends in the alternative — refer the case back in full to the Court of First Instance.

22 — The wording of these provisions is set out in points 15 and 16 above.

23 — See the judgment in *Astipesca*, cited in footnote 6.

The second sentence of Article 61(1) of the Statute of the Court of Justice provides for final judgment in the matter, where the state of the proceedings so permits.

75. The admissibility of the application on behalf of the PKK raises further doubts on four points.

76. First, no decision has as yet been taken on the Council's plea that the PKK cannot be regarded as having legal capacity or capacity to bring proceedings in the present case. Secondly, the Council is of the view that it has not yet been clarified whether the application in relation to Decision 2002/334 was submitted in good time. Both these questions were the subject of the incidental plea before the Court of First Instance. These issues are therefore ready to be decided upon.

77. The third problem of admissibility is closely connected with the second plea, namely whether the second subject of the application, Decision 2002/460, amounts, in relation to the PKK, to a challengeable legal act or a merely confirmatory act. The Commission raised this issue in the proceedings at first instance. In this respect, the Court of First Instance made comments in relation to the KNK. This question can thus also be decided upon.

78. Finally, the fourth issue arises as to whether Mr O. Ocalan can be recognised as the representative of the PKK. This issue was first raised and decided upon in the order of the Court of First Instance — in breach of the procedural rights of the first appellant — without providing an opportunity for clarification. Therefore, at the time when the order was made, it was not ready to be decided upon. However, the appeal proceedings have afforded the first appellant and the other participants sufficient opportunity to advance arguments as to Mr O. Ocalan's power of attorney, with the result that the matter may also now be decided upon in this respect.

1. The PKK's legal capacity and its capacity to be a party to proceedings

79. It has already been stated that the PKK must be recognised as having legal capacity and capacity to be a party to proceedings at least in relation to its inclusion on the disputed list.[24] The Council's objection in this regard must therefore be rejected.

2. Compliance with the time-limit for bringing an action

80. At first instance the Council complained that the action against Decision 2002/334

24 — See point 45 et seq. above.

had not been lodged in proper time. Although the time-limit for lodging an action was 29 July 2002, the application was not lodged until 31 July 2002.

81. As both appellants also argued before the Court of First Instance, a document described as an application had, however, been received at the Court of First Instance already on 24 July 2002, and thus within the time-limit. The appellants claim to be of the firm conviction that they sent a signed original of the application to the Court of First Instance; however, they do not offer any evidence to this effect.

82. The appellants further submitted that they were informed by the Court of First Instance late in the afternoon of 29 July 2002 that no version of the application contained original signatures. The only version of this document still accessible in the Court Registry is a copy of the application signed by one of the party's three representatives, showing the initials of a further representative of the party. Furthermore, page 4 contains the copy of a correction in manuscript.

83. The application sent after that information was obtained from the Court of First Instance was only received on 31 July 2002. It is signed by *two* representatives of the party and initialled by a third.

84. In view of these circumstances, it must be assumed that the first document described as an application indeed contained no original signatures, and that it was presumably a copy of a draft of the application.

85. An application provided in due form — the second document — was therefore received at the Court of First Instance only after the time-limit for lodging an application had passed.

86. The documents received on 24 July 2002 can also not be recognised as a telefax or other copy complying with the time-limits in accordance with Article 43(6) of the Rules of Procedure of the Court of First Instance. The time-limits for taking steps in proceedings are complied with, in the case where a copy is sent, only where the copy of the original also arrives at the Court of First Instance within 10 days. In the present case, the copy of the original was not sent, however, but another application with a further signature.

87. The application brought against Decision 2002/334 was therefore out of time and for that reason inadmissible. The order of the Court of First Instance under appeal can therefore be upheld in so far as it relates to Decision 2002/334.

3. The challengeability of Decision 2002/460

88. As regards Decision 2002/460, the time-limit for bringing proceedings was indisputably complied with. The Commission, however, argued before the Court of First Instance that this was only a confirmatory act in respect of the PKK. The PKK was listed in exactly the same way in Decision 2002/334.

89. A merely confirmatory act is not a legal act which can be challenged by way of an action for annulment. [25] The situation is different, however, where the contested decision is the definitive outcome of a reconsideration of the situation. [26]

90. In relation to the KNK, the Court of First Instance stated in paragraph 44 of the order under appeal that this was a new, and therefore separately challengeable, decision:

'As regards Decision 2002/460 (hereinafter "the contested decision"), it is clear that that decision is a new decision in relation to Decision 2002/334 which it repeals. First, Article 2(3) of Regulation No 2580/2001 provides that the Council is to establish, review and amend the list of persons, groups and entities to which that regulation applies. It follows that the Council, in each new act, reviews the disputed list. Secondly, such a review cannot be limited to the inclusion of new persons or entities or the removal of certain persons or entities since, in a community governed by the rule of law, it cannot be accepted that an act establishing continuing restrictive measures in respect of persons or entities could be applicable without limitation unless the institution which has promulgated them readopts them regularly following a review. Therefore, the fact that it has challenged Decision 2002/334, which included the PKK on the disputed list for the first time, cannot, on the basis of *lis pendens*, prevent the KNK from challenging Decision 2002/460, which keeps the PKK on the list.'

91. In the same way as both parties, I also agree with this assessment of Decision 2002/460, in particular because the review referred to in Article 2(3) of Regulation No 2580/2001 must be carried out according to the criteria in Article 1(6) of Common Position 2001/931. Under this provision, the names of persons and entities on the list in the annex are to be reviewed at regular intervals and at least once every six months

25 — Case C-123/03 P *Commission* v *Greencore* [2004] ECR I-11647, paragraph 39; Case C-180/96 *United Kingdom* v *Commission* [1998] ECR I-2265, paragraphs 27 and 28; Joined Cases 42/59 and 49/59 *SNUPAT* v *High Authority* [1961] ECR 53, at p. 85; Joined Cases 166/86 und 220/86 *Irish Cement* v *Commission* [1988] ECR 6473, paragraph 16; Case C-480/93 P *Zunis Holding and Others* v *Commission* [1996] ECR I-1, paragraph 14; and Case C-12/90 *Infortec* v *Commission* [1990] ECR I-4265, paragraph 10.

26 — Joined Cases C-138/03, C-324/03 and C-431/03 *Italy* v *Commission* [2005] ECR I-10043, paragraph 37.

to ensure that there are grounds for keeping them on the list. [27]

92. Decision 2002/460 is therefore a challengeable legal act also in relation to the PKK.

4. The power of attorney

93. Finally, it remains to be ascertained whether Mr O. Ocalan was in fact empowered to authorise the lawyers at the proceedings to bring the application on behalf of the PKK.

94. For the purposes of assessing this point, the findings of the Court of First Instance in paragraph 28 of the order under appeal should be recalled:

'It is appropriate, next, to make clear that the rules governing the admissibility of an action for annulment as regards a person mentioned in the disputed list — namely the list of persons, groups and entities to which specific restrictive measures for combating terrorism apply — must be construed according to the circumstances of the case. As regards, in particular, those groups or entities it may be that they do not exist legally, or that they were not in a position to comply with the legal rules which usually apply to legal persons. Therefore, excessive formalism would amount to the denial, in certain cases, of any possibility of applying for annulment, even though those groups and entities were the object of restrictive Community measures.'

95. I am convinced by these considerations, particularly in relation to the assessment of the power of attorney as a procedural precondition. This assessment should not prevent proceedings from being brought where there is direct and individual concern. Rather, it is designed to ensure that it is the actual organisation concerned which brings proceedings and not some other third party which is in fact bringing a popular action or is even acting against the interests of the organisation which is ostensibly bringing the action.

96. It would therefore be disproportionate to require full proof of the power of attorney of the person who is bringing the action on behalf of such an organisation. Rather, it must basically be sufficient if that person's authorisation is credibly argued. If, however, the defendant institution has doubts as to whether that person represents the organisation bringing the action, then it is for that institution to invalidate the applicant's arguments by adequately substantiating those doubts.

27 — The provision is reproduced in point 4 above.

97. If these criteria are applied to the arguments made in the first-instance proceedings, then considerable doubts nevertheless arise as to whether Mr O. Ocalan represents the PKK. He is indeed the brother of A. Ocalan, the leader of the PKK imprisoned in Turkey, and is supposed to have been a member of the PKK leadership. [28] He described himself, however, in the power of attorney, as a *former* member of the PKK. In the meantime, Mr O. Ocalan is supposed to have left, along with several others, the organisation now referred to as KONGRA-GEL. [29] Therefore one would have good reason to doubt whether he represented the PKK, or in his words, 'the organisation formerly known by the name of the PKK', when he authorised the lawyers to bring proceedings on behalf of the PKK.

98. As already stated, these doubts did not permit the Court of First Instance, however, to dismiss the application without hearing the then applicant in this regard. Rather, those doubts should have induced the Court of First Instance to grant the first appellant an opportunity to provide clarification. [30]

99. In the present appeal proceedings, the first appellant submitted a clarification from Mr Mark Muller, one of the lawyers, which sought to clarify the fact that the application was in fact being conducted on behalf of the PKK. Mr Muller is representing Mr A. Ocalan in proceedings before the ECHR. [31] Mr A. Ocalan is the central leading figure of the PKK and according to the evidence of Mr A. Ocalan was also elected as president of KADEK. [32] Mr Muller states that Mr A. Ocalan instructed him to challenge the PKK's inclusion on the disputed list. Other leading members of the PKK and of the alleged successor organisation, KADEK, have apparently given him the same instructions.

100. In order to comply with the procedural requirements of the Court of First Instance, Mr Muller sought authorisation to act through Mr O. Ocalan, who at that time was a high-ranking representative both of the organisation formerly known as the PKK and of KADEK.

101. According to that statement, the leadership of the organisation formerly known as the PKK requested the application to be made. If the interests of the PKK and the media reports at the time of its inclusion on the list [33] are considered, it must be assumed

28 — See the entry in the Terrorism Knowledge Base of the National Memorial Institute for the Prevention of Terrorism, http://www.tkb.org/KeyLeader.jsp?memID=121, and the BBC report on the inclusion of the PKK on the disputed list, http://news.bbc.co.uk/2/hi/europe/1964954.stm.

29 — Bundesministerium des Innern (Deutschland) (the Federal Ministry of the Interior) (Germany) *Verfassungsschutzbericht 2004* (2005), S. 228, http://www.verfassungsschutz.de/de/publikationen/verfassungsschutzbericht/vsbericht_2004/vsbericht_2004.pdf. See also the entry referred to in footnote 28.

30 — See point 69 et seq. above.

31 — This is apparent from the judgments of the ECHR of 12 May 2005 and 12 March 2003, each one concerning complaint 46221/99 (*Ocalan* v *Turkey*).

32 — Paragraph 19 of the statement in Annex II to the application at first instance.

33 — See the BBC report cited in footnote 28.

that the challenge to the disputed list does indeed reflect the will of the PKK.

102. The fact that Mr O. Ocalan is supposed to have left the PKK, or now the KONGRA-GEL, also does not lead to the conclusion that the application was no longer being made on behalf of the PKK. The lawyers are acting not for Mr O. Ocalan but for the organisation formerly known as the PKK. Their power to act cannot be called into question on the ground that the representative of the PKK who authorised them in the past possibly no longer represents that organisation.

103. This evidence must be sufficient for the — rebuttable — assumption to be made that the application was correctly brought on behalf of the PKK. The Council has not advanced any arguments to invalidate this assumption.

104. The application on behalf of the PKK is therefore admissible, in so far as it challenges Decision 2002/460.

C — The ground of appeal of Mr S. Vanly on behalf of the KNK

105. In relation to the application of the KNK, the ground of appeal is directed at the criteria laid down by the Court of Justice for individual concern under the fourth paragraph of Article 230 EC which must be fulfilled in order for an individual to be able to challenge a regulation.

106. According to settled case-law, natural or legal persons are individually concerned if the measure in question affects them by virtue of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and thus distinguishes them individually just as in the case of the person to whom a decision is addressed. [34]

107. The Court of First Instance held, in this connection, in paragraph 52 of the order under appeal, that the KNK and its members are bound to comply with the prohibition laid down by the contested decision concerning the PKK, like all other persons in the Community. The fact that, because of their political opinions, the KNK and its members are more likely than others to suffer the effects of that prohibition is not such as to differentiate them from all other persons within the Community. The fact that a measure of general application may have

34 — Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, 107; Case C-452/98 *Nederlandse Antillen* v *Council* [2001] ECR I-8973, paragraph 60; and Case C-50/00 P *Unión de Pequeños Agricultores* v *Council* [2002] ECR I-6677, paragraph 36.

specific effects which differ according to the various persons to whom it applies is not such as to differentiate them in relation to all the other persons concerned, where that measure is applied on the basis of an objectively determined situation.

108. The second appellant does not contest this application of the criterion of individual concern. Rather, he takes the view that the criterion of individual concern must be foregone where it is alleged that fundamental rights have been breached, since the Community's recent rules have been increasingly relevant to fundamental rights. In cases concerning fundamental rights the Court should rather focus on the criteria for admissibility required for complaints before the ECHR. In such proceedings it is sufficient to show direct concern, even if no loss or damage has been suffered. The KNK is directly concerned because its activities promoting the rights of the Kurds have been hampered because of its close links to the PKK.

109. This argument must be dismissed. The Court indeed stated — in my view, convincingly — in the judgment in *Unión de Pequeños Agricultores* that, as Community law currently stands, national courts and the Community Courts must together ensure effective legal protection against Community acts and thus no further development of the law is required in respect of individuals' power to bring actions:

'40 By Article 173 and Article 184 (now Article 241 EC), on the one hand, and by Article 177 [now Article 234 EC], on the other, the Treaty has established a complete system of legal remedies and procedures designed to ensure judicial review of the legality of acts of the institutions, and has entrusted such review to the Community Courts (see, to that effect, *Les Verts* v *Parliament*, paragraph 23). Under that system, where natural or legal persons cannot, by reason of the conditions for admissibility laid down in the fourth paragraph of Article 173 of the Treaty, directly challenge Community measures of general application, they are able, depending on the case, either indirectly to plead the invalidity of such acts before the Community Courts under Article 184 of the Treaty or to do so before the national courts and ask them, since they have no jurisdiction themselves to declare those measures invalid (see Case 314/85 *Foto-Frost* [1987] ECR 4199, paragraph 20), to make a reference to the Court of Justice for a preliminary ruling on validity.

41 Thus it is for the Member States to establish a system of legal remedies and procedures which ensure respect for the right to effective judicial protection.

42 In that context, in accordance with the principle of sincere cooperation laid

down in Article 5 of the Treaty [now Article 10 EC], national courts are required, so far as possible, to interpret and apply national procedural rules governing the exercise of rights of action in a way that enables natural and legal persons to challenge before the courts the legality of any decision or other national measure relative to the application to them of a Community act of general application, by pleading the invalidity of such an act.

43 ...

44 Finally, it should be added that, according to the system for judicial review of legality established by the Treaty, a natural or legal person can bring an action challenging a regulation only if it is concerned both directly and individually. Although this last condition must be interpreted in the light of the principle of effective judicial protection by taking account of the various circumstances that may distinguish an applicant individually (see, for example, Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219, paragraph 14, *Extramet Industrie* v *Council*, paragraph 13, and *Codorniu* v *Council*, paragraph 19), such an interpretation cannot have the effect of setting aside the condition in question, expressly laid down in the Treaty, without going beyond the jurisdiction conferred by the Treaty on the Community Courts.

45 While it is, admittedly, possible to envisage a system of judicial review of the legality of Community measures of general application different from that established by the founding Treaty and never amended as to its principles, it is for the Member States, if necessary, in accordance with Article 48 EU, to reform the system currently in force.' [35]

110. Since the KNK was not sufficiently distinguished individually by the contested decision, it cannot bring proceedings for annulment. Rather, it should have sought legal protection before its national courts instead. In practice, this should not be a problem for it, since it is represented by English lawyers and the courts of the United Kingdom, where they have doubts as to the validity of Community acts which directly concern the rights of individuals, may make a reference to the Court of Justice for a preliminary ruling. [36]

35 — *Unión de Pequeños Agricultores* v *Council*, cited in footnote 34.

36 — Case C-491/01 *British American Tobacco (Investments) and Imperial Tobacco* [2002] ECR I-11453; Case C-210/03 *Swedish Match* [2004] ECR I-11893; Joined Cases C-154/04 and C-155/04 *Alliance for Natural Health and Others* [2005] ECR I-6451; Joined Cases C-453/03, C-11/04, C-12/04 and C-194/04 *ABNA and Others* [2005] ECR I-10423; Case C-344/04 *IATA and ELFAA* [2006] ECR I-403; Case C-535/03 *Unitymark and Others* [2006] ECR I-2689.

111. The KNK's argument, advanced at the hearing, that it would be unable to bring proceedings seeking a preliminary reference from outside the European Community is not convincing. The Council's decision has legal effects only within the Community. In so far as these — for instance, the freezing of funds — concern the KNK, the latter may apply to courts within the Community for legal protection, and such courts must, in certain circumstances, make a reference to the Court of Justice for a preliminary ruling. More extensive possibilities of legal protection — for example, concerning the designation of the PKK as a terrorist organisation — need not, however, be granted to it.

112. Accordingly, the ground of appeal in relation to the application of the KNK must be rejected.

VI — Costs

113. Under the first paragraph of Article 122 of the Rules of Procedure of the Court of Justice, where the appeal is unfounded or where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to costs.

114. Since the appeal of the KNK must be dismissed, a decision on costs must be made in that respect.

115. Under the first subparagraph of Article 69(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. The second subparagraph of Article 69(2) provides that where there are several unsuccessful parties the Court is to decide how the costs are to be shared.

116. So far as the KNK is concerned, since it has been unsuccessful in these appeal proceedings and the Council has applied for costs, it must accordingly be ordered to pay the costs incurred in relation to its part of the appeal.

117. Although the appeal proceedings were brought, in strictly formal terms, by the PKK and the KNK together, the PKK should not be ordered to pay the costs of the KNK's appeal. The appeal involves in substance two separate sets of proceedings which are subject to distinct legal requirements.

VII — Conclusion

118. I therefore propose that the Court should:

(1) set aside paragraphs 1 and 2 of the operative part of the order of the Court of First Instance of the European Communities of 15 February 2005 in Case T-229/02 *PKK and KNK* v *Council*, insofar as they concern Mr O. Ocalan's application on behalf of the Kurdistan Workers' Party (PKK) against Decision 2002/460/EC implementing Article 2(3) of Regulation (EC) No 2580/2001 and repealing Decision 2002/334/EC;

(2) declare Mr O. Ocalan's application on behalf of the PKK admissible, in so far as it is directed against Decision 2002/460, and refer the case back to the Court of First Instance for judgment on the substance, and reserve costs in this respect;

(3) for the rest, dismiss the appeal;

(4) order the Kurdish National Congress to pay the costs of the proceedings incurred in relation to the ground of appeal which it submitted.