

Case T-306/01 R

Abdirisak Aden and Others

v

**Council of the European Union
and Commission of the European Communities**

(Proceedings for interim relief — Common foreign and security policy —
Sanctions against the Taliban of Afghanistan — Freezing of funds — Urgency)

Order of the President of the Court of First Instance, 7 May 2002 II-2390

Summary of the Order

1. *Applications for interim measures — Requirements as to form — Presentation of applications — Summary of the pleas relied on — Pleas in law not set out in the application or other written pleadings — General reference to other documentation — Inadmissible*

(Arts 242 EC and 243 EC; Rules of Procedure of the Court of First Instance, Art. 104(2) and (3))

2. *Applications for interim measures — Suspension of operation — Conditions for granting — Urgency — Serious and irreparable damage — Burden of proof — Strictly financial damage*
(Art. 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))
3. *Applications for interim measures — Suspension of operation — Interim relief — Variation or cancellation — Condition — Change in circumstances — Meaning*
(Arts 242 EC and 243 EC; Rules of Procedure of the Court of First Instance, Art. 108)
4. *Applications for interim measures — Suspension of operation — Interim relief — Conditions for granting — Urgency — Serious and irreparable damage — Damage which may be caused to a third party to be taken into consideration only when balancing the interests at stake*
(Arts 242 EC and 243 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))

1. Since failure to comply with the Rules of Procedure of the Court of First Instance constitutes an absolute bar to proceedings, it is necessary for the Court to consider of its own motion whether the relevant provisions of those Rules have been complied with. Article 104(2) of the Rules of Procedure provides that applications for interim measures must state 'the pleas of fact and law establishing a prima facie case for the interim measures applied for'. Article 104(3) states that the application for interim relief is to be made 'by a separate document and in accordance with the provisions of Articles 43 and 44'. It follows, on reading those provisions of Article 104 together, that an application for interim relief must be sufficient in itself to enable the defendant to prepare his observations and the judge hearing the application to rule on it, where necessary, without other supporting information. In order to ensure legal certainty and the proper administration of justice, it is necessary, if such an application is to be admissible, that the essential elements of fact and law on which it is founded be set out in a

coherent and comprehensible fashion in the application for interim relief itself. While the application may be supported and supplemented on specific points by references to particular passages in documents which are annexed to it, a general reference to other written documentation, even if it is annexed to the application for interim relief, cannot make up for the absence of essential elements in that application.

A similar interpretation applies with regard to the presentation of observations on an application for interim relief which are lodged by a defendant. Thus, where some of the grounds contained in the application for interim relief and in the observations submitted in response are not set out in a manner consistent with the requirements of the abovementioned provisions of the Rules of Procedure, those grounds cannot be taken into consideration in

order to establish the points of fact and law to which they relate.

(see paras 43, 50-54)

2. The urgency of an application for the adoption of interim measures must be assessed in the light of the extent to which an interlocutory order is necessary in order to avoid serious and irreparable damage to the party seeking the adoption of the interim measure. It is for that party to prove that he cannot wait for the outcome of the main proceedings without suffering damage of that nature.

Purely financial damage cannot, in principle, be regarded as irreparable, or even as reparable only with difficulty, because financial compensation can be paid for it subsequently. Nevertheless, the judge hearing an application for interim relief must determine in the light of the circumstances of the individual case whether immediate implementation of the measure which is the subject of the application for suspension of operation may cause the applicant serious and immediate harm which no subsequent decision could repair.

(see paras 89, 92-93)

3. Article 108 of the Rules of Procedure of the Court of First Instance gives the judge in interim relief proceedings the power to vary or cancel the interim order at any time on account of a change in circumstances. By a 'change in circumstances', what are especially envisaged are factual circumstances capable of altering the assessment made in each particular case of the criterion of urgency.

(see para. 105)

4. Any damage which the operation of the contested measure may cause to a party other than the party seeking the interim relief can be taken into consideration by the judge hearing the application for interim measures only when balancing the interests at stake.

(see para. 118)