

JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)

31 January 2007*

In Case T-362/04,

Leonid Minin, residing in Tel-Aviv (Israel), represented by T. Ballarino and C. Bovio, lawyers,

applicant,

v

Commission of the European Communities, represented by E. Montaguti, L. Visaggio and C. Brown, acting as Agents,

defendant,

supported by

Council of the European Union, represented initially by S. Marquardt and F. Ruggeri Laderchi, and subsequently by S. Marquardt and A. Vitro, acting as Agents,

* Language of the case: Italian.

and by

United Kingdom of Great Britain and Northern Ireland, represented initially by R. Caudwell, and subsequently by E. Jenkinson, acting as Agents,

interveners,

ACTION principally, originally, for the annulment of Commission Regulation (EC) No 1149/2004 of 22 June 2004 amending Council Regulation (EC) No 872/2004 concerning further restrictive measures in relation to Liberia (OJ 2004 L 222, p. 17), and, subsequently, for the annulment in part of Commission Regulation (EC) No 874/2005 of 9 June 2005 amending Regulation No 872/2004 (OJ 2005 L 146, p. 5),

THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES
(Second Chamber),

composed of J. Pirrung, President, N.J. Forwood and S. Pappasavvas, Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 13 September 2006,

gives the following

Judgment

Legal context

- 1 Under Article 24(1) of the Charter of the United Nations, signed at San Francisco (United States of America) on 26 June 1945, the members of the United Nations ‘confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf’.
- 2 Under Article 25 of the Charter of the United Nations, ‘[t]he Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter’.
- 3 According to Article 41 of the Charter of the United Nations:

‘The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.’

- 4 In accordance with Article 48(2) of the Charter of the United Nations, the decisions of the Security Council for the maintenance of international peace and security ‘shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members’.
- 5 According to Article 103 of the Charter of the United Nations, ‘[i]n the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail’.
- 6 In accordance with Article 11(1) EU:

‘The Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy, the objectives of which shall be:

- to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter;
- to strengthen the security of the Union in all ways;
- to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter ...’.

7 Under Article 301 EC:

‘Where it is provided, in a common position or in a joint action adopted according to the provisions of the Treaty on European Union relating to the common foreign and security policy, for an action by the Community to interrupt or to reduce, in part or completely, economic relations with one or more third countries, the Council shall take the necessary urgent measures. The Council shall act by a qualified majority on a proposal from the Commission.’

8 Article 60 EC provides:

‘1. If, in the cases envisaged in Article 301, action by the Community is deemed necessary, the Council may, in accordance with the procedure provided for in Article 301, take the necessary urgent measures on the movement of capital and on payments as regards the third countries concerned.

2. Without prejudice to Article 297 and as long as the Council has not taken measures pursuant to paragraph 1, a Member State may, for serious political reasons and on grounds of urgency, take unilateral measures against a third country with regard to capital movements and payments. The Commission and the other Member States shall be informed of such measures by the date of their entry into force at the latest.

...’

- 9 Lastly, Article 295 EC provides that '[t]his Treaty shall in no way prejudice the rules in Member States governing the system of property ownership'.

Background to the dispute

- 10 In response to the serious threats to peace in Liberia, and having regard to the role played in that connection by Charles Taylor, the former president of that country, the United Nations Security Council ('the Security Council') has, since 1992, adopted a series of resolutions concerning that country on the basis of Chapter VII of the Charter of the United Nations.
- 11 The first of these is Resolution 788 (1992), adopted on 19 November 1992, paragraph 8 of which provides that 'all States shall, for the purposes of establishing peace and stability in Liberia, immediately implement a general and complete embargo on all deliveries of weapons and military equipment to Liberia until the [Security] Council decides otherwise.'
- 12 On 7 March 2001, noting that the conflict in Liberia had been resolved, the Security Council adopted Resolution 1343 (2001), in which it decided to terminate the prohibitions imposed by paragraph 8 of Resolution 788 (1992). However, the Security Council also found that the Liberian Government actively supported armed rebel groups in neighbouring countries, and accordingly it adopted a new series of sanctions against Liberia. As set out in paragraphs 5 to 7 of that resolution, all the Member States had, inter alia, to take the measures necessary to prevent the sale or supply to Liberia of arms and related materiel, the direct or indirect import from Liberia of all rough diamonds and the entry into or transit through their territories of certain persons linked to the Liberian Government or supporting it.

- 13 Paragraph 19 of Resolution 1343 (2001) provides for the establishment of a panel of experts responsible, *inter alia*, for investigating compliance with and violations of the measures imposed by that resolution and for reporting back to the Security Council in that regard. That report, bearing the number S/2001/1015, was transmitted to the President of the Security Council on 26 October 2001.
- 14 On 22 December 2003 the Security Council adopted Resolution 1521 (2003). Noting that the changed circumstances in Liberia, in particular the departure of former President Charles Taylor and the formation of the National Transitional Government of Liberia, and the progress achieved in the peace process in Sierra Leone, required it to revise its action under Chapter VII of the United Nations Charter, the Security Council decided to terminate the prohibitions imposed, in particular, by paragraphs 5 to 7 of its Resolution 1343 (2001). However, those measures were replaced by revised measures. Thus, under paragraphs 2, 4, 6 and 10 of Resolution 1521 (2003), all the Member States had, *inter alia*, to take the measures necessary to prevent the sale or supply to Liberia of arms and related materiel, the entry into or transit through their territories of individuals designated by the Sanctions Committee referred to in paragraph 15 below, the direct or indirect import of all rough diamonds from Liberia to their territories, and the import into their territories of all round logs and timber products originating in Liberia.
- 15 In paragraph 21 of Resolution 1521 (2003) the Security Council decided to establish, in accordance with rule 28 of its provisional rules of procedure, a committee of the Security Council composed of all its members ('the Sanctions Committee'), responsible, *inter alia*, for designating and updating the list of the individuals who, under paragraph 4 of that resolution, constitute a threat to the peace process in Liberia, or who are engaged in activities aimed at undermining peace and stability in Liberia and the subregion, including those senior members of former President Charles Taylor's Government and their spouses, those members of Liberia's former armed forces who retain links to Charles Taylor, those individuals acting in violation of the prohibitions on arms trafficking, and any individuals associated with entities providing financial or military support to armed rebel groups in Liberia or in countries in the region.

- 16 Taking the view that action by the Community was necessary in order to implement that resolution, on 10 February 2004 the Council adopted Common Position 2004/137/CFSP concerning restrictive measures against Liberia and repealing Common Position 2001/357/CFSP (OJ 2004 L 40, p. 35). Article 2 of that common position provides that, under the conditions set out in Resolution 1521 (2003) of the Security Council, Member States are to take the necessary measures to prevent entry into, or transit through, their territories of all the individuals designated by the Sanctions Committee.
- 17 On 10 February 2004 the Council adopted, on the basis of Articles 60 EC and 301 EC, Regulation (EC) No 234/2004 concerning certain restrictive measures in respect of Liberia and repealing Regulation (EC) No 1030/2003 (OJ 2004 L 40, p. 1).
- 18 On 12 March 2004 the Security Council adopted Resolution 1532 (2004), intended in particular to freeze the funds of Charles Taylor and certain members of his family, his allies and associates. In the words of paragraph 1 of that resolution, the Security Council '[d]ecides that, to prevent former Liberian President Charles Taylor, his immediate family members, in particular Jewell Howard Taylor and Charles Taylor, Jr., senior officials of the former Taylor regime, or other close allies or associates as designated by the [Sanctions] Committee from using misappropriated funds and property to interfere in the restoration of peace and stability in Liberia and the sub-region, all States in which there are, at the date of adoption of this resolution or at any time thereafter, funds, other financial assets and economic resources owned or controlled directly or indirectly by Charles Taylor, Jewell Howard Taylor, and Charles Taylor, Jr. and/or those other individuals designated by the [Sanctions] Committee, including funds, other financial assets and economic resources held by entities owned or controlled, directly or indirectly, by any of them or by any persons acting on their behalf or at their direction, as designated by the [Sanctions] Committee, shall freeze without delay all such funds, other financial assets and economic resources, and shall ensure that neither these nor any other funds, other financial assets or economic resources are made available, by their nationals or by any persons within their territory, directly or indirectly, to or for the benefit of such persons'.

- 19 Paragraph 2 of Resolution 1532 (2004) provides for a number of derogations from the measures referred to in paragraph 1, in particular as regards funds, other financial assets and economic resources necessary to cover the basic or extraordinary expenses of the persons concerned. Those derogations may be granted by States subject, depending on the case, to the non-opposition or approval of the Sanctions Committee.
- 20 In paragraph 4 of Resolution 1532 (2004), the Security Council placed the Sanctions Committee in charge of designating the individuals and entities referred to in paragraph 1, circulating to all States the list of the said individuals and entities, and of maintaining and regularly updating that list and reviewing it every six months.
- 21 In paragraph 5 of Resolution 1532 (2004), the Security Council decided to review the measures imposed in paragraph 1 at least once a year, the first review to take place at the latest on 22 December 2004, and to determine at that time what further action was appropriate.
- 22 Taking the view that action by the Community was necessary in order to implement that resolution, on 29 April 2004 the Council adopted Common Position 2004/487/CFSP concerning further restrictive measures in relation to Liberia (OJ 2004 L 162, p. 116). That common position requires the freezing of funds and economic resources held directly or indirectly by the individuals and entities referred to in paragraph 1 of Resolution 1532 (2004), subject to the same conditions as those laid down in that resolution.
- 23 On 29 April 2004 the Council adopted, on the basis of Articles 60 EC and 301 EC, Regulation (EC) No 872/2004 concerning further restrictive measures in relation to Liberia (OJ 2004 L 162, p. 32).

24 As provided in the fourth recital in the preamble to that regulation, the freezing of the funds of Charles Taylor and his associates is necessary ‘[i]n view of the negative impact on Liberia of the transfer abroad of misappropriated funds and assets, and the use of such misappropriated funds by Charles Taylor and his associates to undermine peace and stability in Liberia and the region’.

25 In the words of the sixth recital in the preamble to that regulation these measures ‘fall within the scope of the Treaty’ and, ‘therefore, in order to avoid any distortion of competition, Community legislation is necessary to implement them as far as the Community is concerned’.

26 Article 1 of Regulation No 872/2004 defines what is to be understood by ‘funds’, ‘freezing of funds’, ‘economic resources’ and ‘freezing of economic resource[s]’.

27 Under Article 2 of Regulation No 872/2004:

‘1. All funds and economic resources owned, or controlled, directly or indirectly, by former Liberian President Charles Taylor, Jewell Howard Taylor and Charles Taylor Jr, and by the following persons and entities, as designated by the Sanctions Committee and listed in Annex I, shall be frozen:

(a) other immediate family members of former Liberian President Charles Taylor;

- (b) senior officials of the former Taylor regime, and other close allies and associates;

- (c) legal persons, bodies or entities owned or controlled, directly or indirectly by the persons referred to above;

- (d) any natural or legal person acting on behalf or at the direction of the persons referred to above.

2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the natural or legal persons, entities or bodies listed in Annex I.

3. The participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to circumvent the measures referred to in paragraphs 1 and 2 shall be prohibited.'

²⁸ Annex I to Regulation No 872/2004 contains the list of natural or legal persons, bodies and entities referred to in Article 2. In its original version, the applicant's name does not appear.

²⁹ Under Article 11(a) of Regulation No 872/2004, the Commission is empowered to amend Annex I to that regulation on the basis of determinations made by either the Security Council or the Sanctions Committee.

30 Under Article 3 of Regulation No 872/2004:

‘1. By way of derogation from Article 2, the competent authorities of the Member States, as listed in Annex II, may authorise the release of certain frozen funds or economic resources or the making available of certain frozen funds or economic resources, if the competent authority has determined that the funds or economic resources concerned are:

- (a) necessary for basic expenses, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;
- (b) intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services;
- (c) intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources,

provided it has notified the intention to authorise access to such funds and economic resources to the Sanctions Committee and has not received a negative decision by the Sanctions Committee within two working days of such notification.

2. By way of derogation from Article 2, the competent authorities of the Member States, as listed in Annex II, may authorise the release of certain frozen funds or economic resources or the making available of certain frozen funds or economic

resources, if the competent authority has determined that the funds or economic resources are necessary for extraordinary expenses, and provided that competent authority has notified that determination to the Sanctions Committee and that the determination has been approved by that Committee.'

31 On 15 June 2004 the Sanctions Committee adopted the Guidelines for the application of paragraphs 1 and 4 of Resolution 1532 (2004) ('the Guidelines of the Sanctions Committee').

32 Section 2 of those guidelines, entitled 'Updating and Maintaining the Assets Freeze List', provides, in paragraph (b) thereof, that the Sanctions Committee will consider expeditiously requests to update that list, to be provided through Member States and, in paragraph (d) thereof, that the Sanctions Committee will review the assets freeze list every six months, including in connection with any outstanding requests to delist individuals and/or entities (see the following paragraph of this judgment).

33 Section 4 of the Guidelines of the Sanctions Committee, entitled 'Delisting', provides:

'(a) without prejudice to available procedures, a petitioner (individual(s), and/or entities on the 1521 [Sanctions] Committee's assets freeze list) may petition the government of residence and/or citizenship to request review of the case. In this regard, the petitioner should provide justification for the de-listing request, offer relevant information and request support for de-listing;

(b) the government to which a petition is submitted (the petitioned government) should review all relevant information and then approach bilaterally the

government(s) originally proposing designation (the designating government(s)) to seek additional information and to hold consultations on the de-listing request;

- (c) the original designating government(s) may also request additional information from the petitioner's country of citizenship or residency. The petitioned and the designating government(s) may, as appropriate, consult with the Chairman of the [Sanctions] Committee during the course of any such bilateral consultations;
- (d) if, after reviewing any additional information, the petitioned government wishes to pursue a de-listing request, it should seek to persuade the designating government(s) to submit jointly or separately a request for de-listing to the [Sanctions] Committee. The petitioned government may, without an accompanying request from the original designating government(s), submit a request for de-listing to the [Sanctions] Committee, pursuant to the no-objection procedure described in section 3(b) and 3(c) above;
- (e) the Chairman will send an interim response to any delisting request that is not considered within the standard two-day consideration period or a reasonable extension thereof'.

³⁴ On 14 June 2004 the Sanctions Committee decided to amend the list of individuals and entities to which the measures set out in paragraph 1 of Resolution 1532 (2004) of the Security Council apply. The applicant's name appears on that amended list, and he is designated on that list as the owner of Exotic Tropical Timber Enterprises and one of the main financial backers of former President Charles Taylor.

35 By Commission Regulation (EC) No 1149/2004 of 22 June 2004 amending Regulation No 872/2004 (OJ 2004 L 222, p. 17), Annex I to Regulation No 872/2004 was replaced by the Annex to Regulation No 1149/2004. That new Annex I includes, in paragraph 13, the applicant's name, identified as follows:

'Leonid Minin (alias (a) Blavstein, (b) Blyuvshtein, (c) Blyafshtein, (d) Bluvshstein, (e) Blyufshtein, (f) Vladimir Abramovich Kerler, (g) Vladimir Abramovich Popiloveski, (h) Vladimir Abramovich Popela, (i) Vladimir Abramovich Popelo, (j) Wulf Breslan, (k) Igor Osols). Date of birth: (a) 14 December 1947, (b) 18 October 1946, (c) unknown[]]. Nationality: Ukrainian. German Passports (name: Minin): (a) 5280007248D, (b) 18106739D. Israeli Passports: (a) 6019832 (6/11/94-5/11/99), (b) 9001689 (23/1/97-22/1/02), (c) 90109052 (26/11/97). Russian Passport: KI0861177; Bolivian Passport: 65118; Greek Passport: no details. Owner of Exotic Tropical Timber Enterprises.'

36 On 21 December 2004 the Security Council adopted Resolution 1579 (2004). After reviewing inter alia the measures imposed by paragraph 1 of Resolution 1532 (2004) and determining that the situation in Liberia continued to constitute a threat to international peace and security in the region, the Security Council noted that those measures would remain in force to prevent former President Charles Taylor, his immediate family members, senior officials of the former Taylor regime, or other close allies or associates from using misappropriated funds and property to interfere in the restoration of peace and stability in Liberia and the subregion, and reconfirmed its intention to review these measures at least once a year.

37 On 2 May 2005 the Sanctions Committee decided to include additional identifying information on the entries in the list of persons, groups and entities referred to in paragraph 1 of Security Council Resolution 1532 (2004).

38 By Commission Regulation (EC) No 874/2005 of 9 June 2005 amending Regulation No 872/2004 (OJ 2005 L 146, p. 5, 'the contested regulation'), Annex I to Regulation No 872/2004 was replaced by the Annex to the contested regulation. That new Annex I includes, in paragraph 14, the applicant's name, identified as follows:

'Leonid Yukhimovich Minin (alias (a) Blavstein, (b) Blyuvshstein, (c) Blyafshstein, (d) Bluvshstein, (e) Blyufshstein, (f) Vladamir Abramovich Kerler (g) Vladimir Abramovich Kerler, (h) Vladimir Abramovich Popilo-Veski, (i) Vladimir Abramovich Popiloveski, (j) Vladimir Abramovich Popela, (k) Vladimir Abramovich Popelo, (l) Wulf Breslan, (m) Igor Osols). Date[s] of birth: (a) 14.12.1947, (b) 18.10.1946. Place of birth: Odessa, USSR (now Ukraine). Nationality: Israeli. Forged German passports (name: Minin): (a) 5280007248D, (b) 18106739D. Israeli passports: (a) 6019832 (valid 6.11.1994 to 5.11.1999), (b) 9001689 (valid 23.1.1997 to 22.1.2002), (c) 90109052 (issued on 26.11.1997). Russian passport: KI0861177; Bolivian passport: 65118; Greek passport: no details. Other information: owner of Exotic Tropical Timber Enterprises.'

39 On 20 December 2005 the Security Council adopted Resolution 1647 (2005). After reviewing inter alia the measures imposed by paragraph 1 of Resolution 1532 (2004) and determining that the situation in Liberia continued to constitute a threat to international peace and security in the region, the Security Council noted that those measures would remain in force and reconfirmed its intention to review them at least once a year.

Procedure

40 By application lodged at the Registry of the Court of First Instance on 3 September 2004, registered under number T-362/04, Leonid Minin brought this action under the fourth paragraph of Article 230 EC.

- 41 By orders of the President of the Second Chamber of the Court dated 8 December 2004 and 21 February 2005 respectively, the Council and the United Kingdom of Great Britain and Northern Ireland were granted leave to intervene in support of the form of order sought by the Commission. The Council lodged its intervention within the prescribed period. By letter received at the Court Registry on 19 April 2005, the United Kingdom informed the Court that it would not be lodging a statement in intervention, whilst reserving the right to take part in any hearing.
- 42 Upon hearing the report of the Judge-Rapporteur, the Court (Second Chamber) decided to open the oral procedure and, by way of measures of organisation of procedure as laid down in Article 64 of the Rules of Procedure of the Court of First Instance, requested the parties to reply in writing to written questions for the purpose of the hearing. The applicant and the defendant complied with that request.
- 43 Save for the United Kingdom, which presented apologies for its absence, the parties presented oral argument and answered questions put by the Court at the hearing on 13 September 2006.

Forms of order sought by the parties

- 44 In his application, the applicant claims that the Court should:
- annul paragraph 13 of the Annex to Regulation No 1149/2004;
 - annul that regulation in its entirety;

- declare that Regulations Nos 872/2004 and 1149/2004 are inapplicable under Article 241 EC.

45 In its defence, the Commission contends that the Court should:

- dismiss the action as in part inadmissible and in part unfounded;
- reject as inadmissible or unfounded the new pleas in law put forward in the reply;
- order the applicant to pay the costs.

46 In its intervention, the Council contends that the Court should dismiss the action.

47 In his written answer to the questions put by the Court, the applicant stated that, in the light of the adoption of Regulation No 874/2005, he intended to amend his original heads of claim. Henceforth, the applicant claimed that the Court should:

- annul paragraph 14 of the Annex to the contested regulation;

- annul Regulation No 872/2004, as amended by the contested regulation, in so far as it provides, at Article 2, for the freezing of the applicant's funds and economic resources.

48 At the hearing, the applicant (i) withdrew the second head of his claim thus amended and (ii) applied for an order that the defendant pay the costs, formal note of which was taken in the minutes of the hearing.

The admissibility and the subject-matter of the action

49 The first head of the applicant's original claim, set out in the manner indicated in paragraph 44 above, sought the annulment of paragraph 13 of the Annex to Regulation No 1149/2004, which had replaced Annex I to Regulation No 872/2004.

50 Annex I to Regulation No 872/2004, thus replaced, having in turn been replaced, during the proceedings, by the annex to the contested regulation, the parties were requested to submit their written observations on the inferences to be drawn from that new factor for the pursuit of this action.

51 The applicant therefore reformulated his heads of claim in the manner indicated in paragraph 47 above. In the light of the circumstances of the present case, the Commission did not raise any objections as regards the principle of such a reformulation. In principle, that reformulation is in fact consistent with the case-law of this Court according to which, where one measure freezing the funds of an individual is replaced during the proceedings by another having the same subject-matter, this must be considered a new factor allowing the applicant to adapt its pleas

in law, claims for relief and arguments so that they relate to the later measure (see Case T-306/01 *Yusuf and Al Barakaat International Foundation v Council and Commission* [2005] ECR II-3533, currently under appeal, '*Yusuf*', paragraphs 71 to 74, and Case T-315/01 *Kadi v Council and Commission* [2005] ECR II-3649, currently under appeal, '*Kadi*', paragraphs 52 to 55, and the case-law cited).

52 Furthermore, since the applicant withdrew the second head of his claim thus reformulated at the hearing, the sole object of the action is henceforth a claim for annulment of paragraph 14 of the Annex to the contested regulation, which maintains the applicant's name on the list of persons whose funds must be frozen in accordance with Regulation No 872/2004.

53 In this respect, it must be borne in mind that the contested regulation is indeed a regulation within the meaning of Article 249 EC (see, to that effect and by analogy, *Yusuf*, paragraphs 184 to 188), and not a bundle of individual decisions, as the applicant incorrectly submits. Paragraph 14 of the Annex to that regulation is also legislative in nature and does not therefore constitute an individual decision addressed to the applicant, contrary to what the Commission submits. The fact remains that that act is of direct and individual concern to the applicant, in so far as he is expressly named in paragraph 14 of its Annex (see, to that effect and by analogy, *Yusuf*, paragraph 186, and Case T-253/02 *Ayadi v Council* [2006] ECR II-2139, currently under appeal, '*Ayadi*', paragraph 81). To that extent, the applicant's claim for annulment is admissible.

Substance

1. *Factual claims of the parties*

54 The applicant states that his name is Leonid Minin and that he is an Israeli citizen domiciled in Tel-Aviv (Israel), although he was resident in Italy at the time of the

facts giving rise to this action. The applicant adds that all his funds and economic resources in the Community were frozen following the adoption of Regulation No 1149/2004, so that he was not even able to look after his son or pursue his activities as manager of a timber import-export company. The applicant states, moreover, that he was acquitted of the charges brought against him in Italy for arms trafficking.

55 In this respect, the Commission and the Council refer however to the report dated 26 October 2001 of the group of experts referred to in paragraph 19 of Resolution 1343 (2001) (see paragraph 13 above). According to those institutions, it is apparent from paragraphs 15 to 17 and 207 et seq. in particular of that report that, when arrested by the Italian authorities, on 5 August 2000, the applicant was found in possession of several documents implicating him in arms trafficking. When questioned in prison by the group of experts the applicant admitted his role in several transactions relating to that trafficking. Furthermore, the grounds of the applicant's acquittal in Italy were based on the fact that the Italian courts lacked territorial jurisdiction to hear the proceedings brought against him in that Member State.

2. *Law*

56 In support of his heads of claim, the applicant relies on two pleas in law, the first alleging that the Community lacks competence to adopt Regulation No 872/2004, Regulation No 1149/2004 and the contested regulation (together 'the contested regulations'), the second alleging breach of his fundamental rights.

First plea: the Commission lacks competence to adopt the contested regulations

57 This plea may be broken down into two parts, the second of which was put forward at the stage of the reply.

The first part of the plea

— Arguments of the parties

58 In the first part of the plea, the applicant claims, first, that Security Council resolutions concern exclusively the States to which they are addressed and that they are not designed to apply directly to individuals, unlike Community Regulations, which produce direct effects *erga omnes* in the Member States. The contested regulations therefore conferred ‘added value’ on the sanctions provided for by the Security Council resolutions, the provisions of which they adopted, namely direct effect in the territory of the Union, which is not justified from a legislative point of view. The Community possesses only conferred powers. In particular, it is apparent from Article 295 EC that the Community does not have specific powers so far as concerns the rules governing the system of property ownership. It therefore lacks competence to adopt measures depriving individuals of their property. Responsibility for that lies with the Member States, which are, according to the applicant, alone competent to confer direct and binding effect on the individual economic sanctions adopted by the Security Council.

59 The applicant claims, second, that the addressees of measures provided for by Articles 60 EC and 301 EC are third countries. Consequently, those articles do not constitute an adequate legal basis for the purposes of adopting punitive or

preventative measures affecting individuals and producing direct effect on them. Such measures do not fall within the Community's competence, unlike, firstly, the restrictive measures of a commercial nature adopted against Liberia by Regulation No 234/2004 and, secondly, the trade embargo measures against Iraq reviewed by the Court in Case T-184/95 *Dorsch Consult v Council and Commission* [1998] ECR II-667.

- 60 The arbitrary nature of the body of rules established by the contested regulations is apparent from a comparison between those rules and the body of rules set up by 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) No 1295/98 and (EC) No 1607/98 (OJ 1999 L 153, p. 63). The applicant observes that the persons affected by that regulation were, under Article 2 thereof, deemed to be persons 'acting or purporting to act for or on behalf of' the governments concerned. He adds that Regulation No 1294/1999 contained rules addressed to the Member States and that it reformulated measures to freeze funds already applied by the Member States at the national level.
- 61 At the hearing the applicant put forward a variant of the second part of his argument by claiming that, since Charles Taylor had been ousted from power in Liberia before the contested regulations were adopted, those regulations could no longer be based on Articles 60 EC and 301 EC alone, but should also have been founded on the additional legal basis of Article 308 EC. He relied, in support of this, on paragraph 125 et seq. of *Yusuf*.
- 62 The applicant claims, third, that the freezing of his assets bears no relation to the objective of 'avoid[ing] any distortion of competition', set out in the sixth recital in the preamble to Regulation No 872/2004, since there is no agreement between undertakings. Similarly, the applicant states that he does not see how assets wrongfully acquired, but amounting to a derisory sum in relation to the economy of the Union, could undermine the rules on the free movement of capital.

63 The Commission and the Council dispute the merits of all the arguments put forward by the applicant during the written procedure. Identical or similar arguments were moreover rejected by the Court in *Yusuf*, *Kadi* and *Ayadi*.

64 As regards the argument put forward by the applicant at the hearing on the basis of paragraph 125 et seq. of *Yusuf* (see paragraph 61 above), the Commission takes the view that it constitutes a new plea in law, which, under Article 48(2) of the Rules of Procedure, may not be introduced in the course of proceedings since it is not based on matters of law or of fact which came to light in the course of the procedure.

— Findings of the Court

65 The applicant submits, in essence, that the Member States alone are competent to implement, by the adoption of measures having direct and binding effect on individuals, economic sanctions imposed against individuals by the Security Council.

66 It is necessary to reject that argument at the outset for the same reasons, in essence, as those set out in *Yusuf* (paragraphs 107 to 171), *Kadi* (paragraphs 87 to 135) and *Ayadi* (paragraphs 87 to 92) (with regard to the Community judicature's power to give reasons for its judgment by reference to an earlier judgment ruling on largely identical questions, see Case C-229/04 *Crailsheimer Volksbank* [2005] ECR I-9273, paragraphs 47 to 49, and *Ayadi*, paragraph 90; see also, to that effect, order of 5 June 2002 in Case C-204/00 P *Aalborg Portland v Commission*, not published in the ECR, paragraph 29, and, by analogy, Case C-155/98 P *Alexopoulou v Commission* [1999] ECR I-4069, paragraphs 13 and 15).

- 67 First, the Court of First Instance held, in *Yusuf, Kadi and Ayadi*, that, in so far as under the EC Treaty the Community has assumed powers previously exercised by the Member States in the area governed by the Charter of the United Nations, the provisions of that Charter have the effect of binding the Community (*Yusuf*, paragraph 253), and that the latter is bound, by the very Treaty by which it was established, to adopt, in the exercise of its powers, all the measures necessary to enable its Member States to fulfil their obligations under that Charter (*Yusuf*, paragraph 254).
- 68 Second, the Court held, in those judgments, that the Community is competent to adopt restrictive measures directly affecting individuals on the basis of Articles 60 EC and 301 EC, where a common position or a joint action adopted under the provisions of the EU Treaty relating to the CFSP so provides, and provided that those measures actually seek to interrupt or reduce, in part or completely, economic relations with one or more third countries (*Yusuf*, paragraphs 112 to 116). On the other hand, restrictive measures having no link with the territory or rulers of a third country cannot be based on those provisions alone (*Yusuf*, paragraphs 125 to 157). However, the Community does have the power to adopt such measures on the basis of Articles 60 EC, 301 EC and 308 EC (*Yusuf*, paragraphs 158 to 170, and *Ayadi*, paragraphs 87 to 89).
- 69 In this instance, the Council found in Common Position 2004/487, adopted pursuant to the provisions of Title V of the EU Treaty, that action by the Community was necessary in order to put into effect certain restrictive measures against Charles Taylor and his associates, in accordance with Security Council Resolution 1532 (2004), and the Community put those measures into effect by adopting the contested regulations (see, in support of this and by analogy, *Yusuf*, paragraph 255).
- 70 In the specific circumstances of the present case, it must none the less be observed that the contested regulations have as their legal basis only Articles 60 EC and 301 EC. Whether or not the argument put forward in this respect by the applicant at the

hearing is classified as a new plea in law, on the basis of paragraph 125 et seq. of *Yusuf* (see paragraph 61 above), it is therefore necessary to determine whether the sanctions imposed on the applicant, in his capacity as an associate of the former President of Liberia, Charles Taylor, actually seek to interrupt or to reduce, in part or completely, economic relations with a third country, which amounts to ascertaining whether the sanctions have a sufficient link with the territory or the rulers of such a country.

71 The Court considers that that is the case in view of the Security Council Resolutions, of the common positions of the CFSP and of the Community measures in question in the present case, even though Charles Taylor was removed from presidential power in Liberia in August 2003.

72 According to the settled assessment of the Security Council, which it is not for this Court to call in question, the situation in Liberia continues to constitute a threat to international peace and security in the region, and the restrictive measures taken against Charles Taylor and his associates remain necessary to prevent them from using misappropriated funds and property to interfere in the restoration of peace and stability in Liberia and the region (see, in particular, paragraphs 12, 14, 15, 18 and 36 above as regards the period 2001-2005, and paragraph 39 above as regards the period after 20 December 2005).

73 Similarly, as stated in the fourth recital in the preamble to Regulation No 872/2004, the freezing of the funds of Charles Taylor and his associates is necessary '[i]n view of the negative impact on Liberia of the transfer abroad of misappropriated funds and assets, and the use of such misappropriated funds by Charles Taylor and his associates to undermine peace and stability in Liberia and the region'.

- 74 The Court finds that, to the extent that the body to which the international community has entrusted the principal role of maintaining international peace and security considers that Charles Taylor and his associates continue to be able to undermine peace in Liberia and in neighbouring countries, the restrictive measures adopted against them have a sufficient link with the territory or the rulers of that country to be regarded as '[seeking] to interrupt or to reduce, in part or completely, economic relations with [a] ... third countr[y]'; for the purpose of Articles 60 EC and 301 EC. Therefore, the Community has the power to adopt the measures in question on the basis of those provisions.
- 75 The other arguments more specifically relied on by the applicant in the first part of the first plea are not capable of calling in question that assessment.
- 76 As regards the argument that the contested regulations wrongfully conferred 'added value' on the Security Council resolutions at issue, on account of the direct effect that they produce in the territory of the Community, the Commission is correct to dispute it by observing, first, that Articles 60 EC and 301 EC do not limit the choice of measures ensuring their application and, second, that Resolution 1532 (2004) does not impose any more specific limits on the form that can be taken by the implementing measures that the Member States of the UN must adopt, directly or, as in this case, by the intermediary of international bodies of which they are part. On the contrary, that resolution requires the adoption of 'necessary measures' for the purposes of its implementation. In this respect, the Commission and the Council rightly submit that the adoption of a Community regulation is justified by obvious reasons of uniformity and effectiveness and makes it possible to prevent the funds of the persons concerned from being transferred or concealed during the time that it takes the Member States to transpose a directive or a decision into national law.
- 77 As regards the argument that the Community infringes Article 295 EC by ordering the freezing of individuals' funds, even supposing that the measures in question in the present case do interfere with the rules governing the system of property

ownership (see, in this respect, *Yusuf*, paragraph 299), it is sufficient to observe that, notwithstanding the provision in question, other provisions of the Treaty empower the Community to adopt sanctions or preventative measures having an effect on the right of individuals to property. That is the case, in particular, in the fields of competition (Article 83 EC) and of commercial policy (Article 133 EC). That is also the case in respect of measures taken, as in the present case, under Articles 60 EC and 301 EC.

78 As regards, lastly, the argument that the freezing of the applicant's assets bears no relation to the objective of 'avoid[ing] any distortion of competition', set out in the sixth recital in the preamble to Regulation No 872/2004, it is true that the assertion that there is a risk of competition's being distorted, which according to that recital that regulation seeks to prevent, is unconvincing (see, to that effect and by analogy, *Yusuf*, paragraphs 141 to 150, and *Kadi*, paragraphs 105 to 114).

79 However, as the Court observed at paragraph 165 of *Ayadi*, the statement of reasons for a regulation must be examined as a whole. According to the case-law, even if one recital of a contested measure contains a factually incorrect statement, that procedural defect cannot lead to the annulment of that measure if the other recitals in themselves supply a sufficient statement of reasons (Case 119/86 *Spain v Council and Commission* [1987] ECR 4121, paragraph 51, and Joined Cases T-129/95, T-2/96 and T-97/96 *Neue Maxhütte Stahlwerke and Lech-Stahlwerke v Commission* [1999] ECR II-17, paragraph 160), which in this case they do.

80 In this connection, it is to be remembered that the statement of reasons required by Article 253 EC must show clearly and unequivocally the reasoning of the Council, so as to enable the persons concerned to ascertain the reasons for the measures and to enable the Community judicature to exercise its powers of review. In addition, the question whether a statement of reasons satisfies the requirements must be assessed with reference not only to the wording of the measure but also to its context and to the whole body of legal rules governing the matter in question. In the case of a

measure intended to have general application, as in this case, the preamble may be limited to indicating the general situation which led to its adoption, on the one hand, and the general objectives which it is intended to achieve, on the other (see Case C-344/04 *IATA and ELFAA* [2006] ECR I-403, paragraphs 66 and 67, and the case-law cited).

81 In the present case, the legal bases cited in Regulation No 872/2004 and the first to fifth recitals in the preamble thereto, in particular, fully satisfy those requirements, especially in so far as they refer, first, to Articles 60 EC and 301 EC and, second, to Security Council Resolutions 1521 (2003) and 1532 (2004), as well as to Common Positions 2004/137 and 2004/487.

82 Furthermore, in so far as the contested regulation expressly names the applicant in its annex, as a person to whom the freezing of funds must apply, sufficient reasons are supplied by the reference made in the second recital in the preamble to that regulation to the corresponding designation made by the Sanctions Committee.

83 It follows from the foregoing that the first part of the first plea must be rejected.

The second part of the plea

— Arguments of the parties

84 In the second part of the plea, put forward at the stage of the reply, the applicant alleges infringement of the principle of subsidiarity, which, in his submission, is central to this dispute.

- 85 Whilst taking the view that that complaint is inadmissible, as a new plea put forward for the first time in the reply, the Commission submits that the applicant has not, in any event, substantiated his claims.
- 86 In the Commission's submission, Articles 60 EC and 301 EC have brought about an unequivocal and unconditional transfer of competence in favour of the Community. That competence is of an exclusive nature, so that the principle of subsidiarity is not applicable in the present case.
- 87 Lastly, the Commission and the Council maintain that, even if the principle of subsidiarity were applicable in the present case, the entirely secondary role left to Member States by Article 60 EC implies recognition that the objectives of a measure freezing funds can be achieved more effectively at Community level. That is clearly the case here.

— Findings of the Court

- 88 It should be noted at the outset that the Community judicature is entitled to assess, depending on the circumstances of each individual case, whether the proper administration of justice justifies the rejection of a plea on the merits without ruling beforehand on its admissibility (see, to that effect, judgment of 13 September 2006 in Joined Cases T-217/99, T-321/99 and T-222/01 *Sinaga v Commission*, not published in the ECR, paragraph 68, and the case-law cited).
- 89 In the present case, the complaint alleging breach of the principle of subsidiarity must, in any event, be rejected as unfounded for the same reasons, in essence, as those set out in paragraphs 106 to 110, 112 and 113 of *Ayadi*, in response to a

substantially identical plea relied on by Mr Ayadi. The Court considers that that principle cannot be relied on in the sphere of application of Articles 60 EC and 301 EC, even on the assumption that it does not fall within the exclusive competence of the Community. In any event, even assuming that that principle finds application in circumstances such as those of this case, it is plain that the uniform implementation in the Member States of Security Council resolutions, which are binding on all members of the United Nations without distinction, can be better achieved at Community level than at national level.

- 90 It follows from the foregoing that the second part of the first plea and therefore that plea as a whole must be rejected.

Second plea: breach of fundamental rights

- 91 This plea may be broken down into three parts, the third of which was put forward at the stage of the reply.

The first and second parts of the plea

— Arguments of the parties

- 92 In the first part of the plea, the applicant alleges breach of the right to property which, in his submission, is one of the fundamental rights that the Community is

required to observe (Case 44/79 *Hauer* [1979] ECR 3727), in particular by taking account of the First Additional Protocol to the European Convention on Human Rights and Fundamental Freedoms (ECHR).

93 The applicant recognises that, according to the case-law, that right may be subject to restrictions if and in so far as those restrictions pursue a Community objective of general interest. He observes, however, that the contested regulations make no mention of any objective of that type. In particular, the objective of avoiding any distortion of competition, which is of no relevance in the present case (see paragraph 61 above), cannot be considered to be such an objective. The objective of punishing the thefts committed by “Taylor the dictator and his “henchmen”” is one of the tasks of the States, as addressees of Security Council resolutions, and not one of the tasks of the Community.

94 In his reply, the applicant submits that the principles laid down by the Court of Justice in Case C-84/95 *Bosphorus* [1996] ECR I-3953, relied on by the Commission, are not applicable in the present case. First, unlike the measures in question in *Bosphorus*, the proportionality of the measures provided for by the contested regulations was not reviewed before their adoption. Second, the situation of the Federal Republic of Yugoslavia (Serbia and Montenegro), where the civil war was raging, cannot be compared to that of Liberia, where a peace process had been set up. Third, according to Articles 46 and 53 of the Regulations attached to the Hague Convention of 18 October 1907 concerning the Laws and Customs of War on Land, means of transport, such as the aircraft seized by the Irish authorities in the case which gave rise to *Bosphorus*, cited above, enjoy, during times of war, a lesser degree of protection than other forms of private property.

95 The applicant further submits, in his reply, that none of the derogations from the right to property allowed by Article 1 of the First Additional Protocol to the ECHR is applicable in the present case. In any event, the European Court of Human Rights

has held that the conduct of a State which created a state of affairs such that an owner is prevented from making full use of his goods, without that owner receiving any benefit aimed at compensating the loss suffered, runs counter to that provision (Eur. Court H.R., *Papamichalopoulos v Greece*, judgment of 24 June 1993, Series A No 260-B).

- 96 In the second part of the plea, the applicant alleges breach of the rights of the defence, in so far as the Community adopted the contested regulations, which constitute, in essence, bundles of individual administrative decisions, without having conducted a real inquiry into the frozen funds, and in the absence of any adversarial procedure. In this respect, the applicant claims that observance of the rights of the defence is required in all administrative proceedings (Case T-11/89 *Shell v Commission* [1992] ECR II-757).
- 97 The Commission and the Council dispute the merits of all the arguments put forward by the applicant during the written procedure. Identical or similar arguments were moreover rejected by the Court in *Yusuf, Kadi and Ayadi*.

— Findings of the Court

- 98 In the present case, Regulation No 872/2004, adopted, in particular, in the light of Common Position 2004/487, constitutes the implementation at Community level of the obligation placed on the Member States of the Community, as Members of the United Nations, to give effect, if appropriate by a Community act, to the sanctions against Charles Taylor and his associates, which have been decided and later reinforced by several resolutions of the Security Council adopted under Chapter VII of the Charter of the United Nations. The recitals in the preamble to Regulation No 872/2004 refer expressly to Resolutions 1521 (2003) and 1532 (2004).

- 99 The same applies both to Regulation No 1149/2004, which was adopted following the inclusion of the applicant in the list of persons, groups and entities to which the sanctions in question must apply, that inclusion having been decided by the Sanctions Committee on 14 June 2004 (see paragraphs 34 and 35 above), and to the contested regulation, which was adopted following an amendment to that list, that amendment having been decided on 2 May 2005 by the Sanctions Committee (see paragraphs 37 and 38 above).
- 100 Furthermore, the Security Council resolutions and the contested regulations in the present case provide for economic sanctions (freezing of funds and other economic resources) against the persons concerned which are essentially the same in nature and scope as those which were at issue in the cases which gave rise to *Yusuf*, *Kadi* and *Ayadi*. All those sanctions, which are periodically reviewed by the Security Council or the competent sanctions committee (see, in particular, paragraphs 20, 21, 32, 36 and 39 above and *Yusuf*, paragraphs 16, 26 and 37), are coupled with similar derogations (see, in particular, paragraphs 19 and 30 above and *Yusuf*, paragraphs 36 and 40) and analogous mechanisms enabling the persons concerned to request review of their case by the competent sanctions committee (see, in particular, paragraphs 31 to 33 above and *Yusuf*, paragraphs 309 and 311).
- 101 In those circumstances, and in accordance with the case-law cited in paragraph 66 above, the applicant's arguments alleging breach of his fundamental rights, right to property and rights of defence must be rejected in the light of *Yusuf* (paragraphs 226 to 283, 285 to 303 and 304 to 331), *Kadi* (paragraphs 176 to 231, 234 to 252 and 253 to 276) and *Ayadi* (paragraphs 115 to 157), in which essentially identical arguments were rejected for reasons connected, in essence, with the supremacy of international law originating under the Charter of the United Nations over Community law, the corresponding restriction on the review of legality that the Court must carry out in respect of Community measures implementing decisions of the Security Council or of its Sanctions Committee, and the fact that there was no breach of *jus cogens* by measures to freeze funds of the type at issue in the present case.

¹⁰² Accordingly, the first and second parts of the second plea must be rejected.

The third part of the plea

— Arguments of the parties

¹⁰³ In the third part of the plea, put forward at the stage of the reply, the applicant alleges breach of the principle of territoriality. He relies, in support of this, on settled case-law according to which the exercise of the Community's powers of coercion in respect of conduct originating outside its territory is subject to the condition that that conduct produces effects within that territory (Joined Cases 89/85, 104/85, 114/85, 116/85, 117/85 and 125/85 to 129/85 *Ahlström Osakeyhtiö and Others v Commission* [1988] ECR 5193, and Case C-286/90 *Poulsen and Diva Navigation* [1992] ECR I-6019; Case T-102/96 *Gencor v Commission* [1999] ECR II-753).

¹⁰⁴ In addition, the contested regulations seek ultimately to produce their effects in the territory of Liberia, and not in the territory of the Community, as is apparent from the third and fourth recitals in the preamble to Regulation No 872/2004. According to the applicant, that factor distinguishes that regulation from Regulation No 1294/1999 (see paragraph 60 above), the objective of which was to 'significantly increase the pressure' on Serbia and which therefore had a 'generic purpose entirely detached from any territorial aspect'.

105 The Commission submits that, as a new plea, the applicant's complaint relating to the alleged extraterritoriality of the effects of the contested regulations is inadmissible. In any event, those regulations have no extraterritorial effect, since they apply only to funds and economic resources located in the territory of the Community.

— Findings of the Court

106 Without there being any need to rule on its admissibility (see, in this respect, paragraph 88 above), the complaint alleging infringement of the principle of territoriality must be rejected as unfounded, since the contested regulations apply only to funds and economic resources located in the territory of the Community and do not, therefore, have any extraterritorial effect.

107 As regards the fact that the conduct which gave rise to the adoption of the contested regulations produces its effects exclusively outside the Community, it is irrelevant since the measures adopted under Articles 60 EC and 301 EC are aimed precisely at the implementation, by the Community, of common positions or common action adopted under the provisions of the EU Treaty relating to the CFSP and providing for action in relation to third countries. It must be added that, under Article 11(1) EU, one of the objectives of the CFSP is to preserve peace and strengthen international security, in accordance with the principles of the Charter of the United Nations. Such an objective could quite clearly not be attained if the Community were to limit its action to cases in which the situation giving rise to its intervention produces effects on its territory.

108 The same applies in respect of the fact that the contested regulations seek ultimately to produce their effects in the territory of Liberia, since Articles 60 EC and 301 EC

precisely empower the Community to adopt measures involving economic sanctions intended to produce their effects in third countries.

- 109 It follows from the foregoing that the third part of the second plea and therefore that plea as a whole must be rejected.
- 110 Since none of the grounds raised by the applicant in support of its action is well founded, the action must be dismissed.

Costs

- 111 Under Article 87(2) of the Rules of Procedure, 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 applicant has been unsuccessful, it must, having regard to the form of order sought by the Commission, be ordered to pay the costs.
- 112 Under the first paragraph of Article 87(4) of the Rules of Procedure, the Member States and institutions which have intervened in the proceedings are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby:

- 1. Dismisses the action;**
- 2. Orders the applicant to bear, in addition to his own costs, those of the Commission;**
- 3. Orders the Council and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.**

Pirrung

Forwood

Papasavvas

Delivered in open court in Luxembourg on 31 January 2007.

E. Coulon

Registrar

J. Pirrung

President