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**NATIONAL IMPLEMENTATION MEASURES OF UN SANCTIONS AND
RESPECT FOR HUMAN RIGHTS: EUROPEAN UNION/COURT OF JUSTICE**

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(EU) EU/COURT OF JUSTICE: EU must respect fundamental rights guaranteed by Community legal system when applying UN resolutions, says Advocate General

Brussels, 16/01/2008 (Agence Europe) -The European Communities must not trample their own principles into the ground, even when applying resolutions of the United Nations Security Council. This is the opinion of the Advocate General Poiares Maduro, contained in conclusions returned on 16 January in the case C-402/05. Consequently, the Advocate General advises the European Court of Justice to cancel the regulation of the Council which had conferred the status of terrorist on the Saudi Arabian resident Yassin Abdullah Kadi. The principal argument for this is that this regulation consists of the automatic transposition of a resolution of the United Nations Security Council, and failed to respect Mr Kadi's fundamental rights.

Mr Kadi's name was added to a list of people presumed by the UN to be related to the Al Qaeda network, and this list was then taken up by the Council of the European Union in October 2001 in regulation 467/2001 (which has since been updated by regulation 881/2002). This regulation had the effect of freezing his funds and assets within the EU. It is this regulation which Mr Kadi is challenging, on the grounds that it violates his right to property and defence by means of a fair trial. Mr Kadi brought the matter before the Court of First Instance, which rejected his case in 2005, upholding the position of the Council of the European Union, citing the lack of competence of the Community jurisdictions concerning controls over the regulation in question, as the Member States are obliged to comply with resolutions of the Security Council by the terms of the UN Charter, an international treaty which takes precedence over Community law.

In his conclusions, however, the Advocate General recommended that this argument should not be followed. Unlike the Court, he takes the view that Community law does have competence in this case, firstly because the regulation in question is part of the body of the Community legal order and that to take a position on the legality of its provisions is one of the competencies of the Court. Secondly, international law does not take precedence in such matters: it may be applied only under conditions laid down by the constitutional principles of the Community, i.e. to safeguard the fundamental rights of people subject to trial. If the Court goes along with these recommendations (which it is not obliged to do), it will accordingly overrule the challenged regulation as it regards Mr Kadi.

One controversial point raised by the Court, however, remains: the signatories of the UN Charter are obliged to implement resolutions of the organisation. In the EU, this implementation requires a transposition into Community rules. So even if the Council makes the necessary changes, and revises the regulation whilst respecting Mr Kadi's right to reply, it is hard to see how his name could be left off the list without the EU breaking its obligations towards the UN. (C.D.)