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Press and Information

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Judgment of the Court of Justice in Joined Cases C-402/05 P and C-415/05 P

Yassin Abdullah Kadi and Al Barakaat International Foundation v Council and Commission

THE COURT ANNULS THE COUNCIL REGULATION FREEZING MR KADI AND AL BARAKAAT'S FUNDS

Setting aside the judgments of the Court of First Instance, the Court rules that the Community judicature has jurisdiction to review measures adopted by the Community giving effect to resolutions of the Security Council of the United Nations. In exercising that jurisdiction, it considers that the regulation infringes Mr Kadi and Al Barakaat's fundamental rights under Community law

Yassin Abdullah Kadi, a resident of Saudi Arabia, and Al Barakaat International Foundation, established in Sweden, were designated by the Sanctions Committee of the United Nations as being associated with Usama bin Laden, Al-Qaeda or the Taleban. In accordance with a number of resolutions of the Security Council, all States that are Members of the United Nations must freeze the funds and other financial resources controlled directly or indirectly by such persons or entities.

In order to give effect to those resolutions within the European Community, the Council adopted a regulation¹ ordering the freezing of the funds and other economic resources of the persons and entities whose names appear in a list annexed to that regulation. That list is regularly updated in order to take account of changes in the summary list drawn up by the Sanctions Committee, an organ of the Security Council. On 19 October 2001 the names of Mr Kadi and Al Barakaat were added to the summary list, then placed in the list annexed to the Community regulation.

Mr Kadi and Al Barakaat brought actions before the Court of First Instance for annulment of that regulation. They claimed that the Council was not competent to adopt the regulation at issue and that it infringed several of their fundamental rights, in particular, the right to property and the rights of the defence. In its judgments of 21 September 2005 the Court of First Instance rejected all the pleas in law raised by Mr Kadi and Al Barakaat and confirmed the validity of the regulation². In so doing, the Court of First Instance ruled, in particular, that the Community courts had, in principle, no jurisdiction (except in respect of certain overriding rules of

¹ Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban, and repealing Council Regulation (EC) No 467/2001 (OJ 2002 L 139, p. 9).

² Judgments of 21 September 2005 in Case T-306/01 *Yusuf and Al Barakaat International Foundation v Council* and Case T-315/01 *Kadi v Council and Commission* (see [press release 79/05](#)).

international law known as *jus cogens*) to review the validity of the regulation at issue, given that the Member States are bound to comply with the resolutions of the Security Council according to the terms of the Charter of the United Nations, an international treaty that prevails over Community law.

Mr Kadi and Al Barakaat brought appeals against those judgments before the Court of Justice.

First, the Court confirms that the Council was competent to adopt the regulation on the basis of the articles of the EC Treaty that it chose³. The Court finds that, even if the Court of First Instance made certain errors in its reasoning, its final conclusion that the Council was competent to adopt that regulation was not incorrect.

However, the Court finds that **the Court of First Instance erred in law in ruling that the Community courts had, in principle, no jurisdiction to review the internal lawfulness of the contested regulation.**

The review by the Court of the validity of any Community measure in the light of fundamental rights must be considered to be the expression, in a community based on the rule of law, of a constitutional guarantee stemming from the EC Treaty as an autonomous legal system which may not be prejudiced by an international agreement.

The Court emphasises that the review of lawfulness ensured by the Community courts applies to the Community act intended to give effect to the international agreement at issue, and not to the international agreement itself. A judgment given by the Community courts deciding that a Community measure intended to give effect to a resolution of the Security Council is contrary to a higher rule of law in the Community legal order would not entail any challenge to the primacy of that resolution in international law.

The Court concludes that the Community courts must ensure the review, in principle the full review, of the lawfulness of all Community acts in the light of the fundamental rights forming an integral part of the general principles of Community law, including review of Community measures which, like the contested regulation, are designed to give effect to resolutions adopted by the Security Council.

Consequently, the Court sets aside the judgments of the Court of First Instance.

Next, ruling on the actions for annulment brought by Mr Kadi and Al Barakaat, the Court concludes that, in the light of the actual circumstances surrounding the inclusion of the appellants' names in the list of persons and entities whose funds are to be frozen, it must be held that **the rights of the defence, in particular the right to be heard, and the right to effective judicial review of those rights, were patently not respected.**

On this point, the Court observes that the effectiveness of judicial review means that the Community authority in question is required to communicate to the person or entity concerned the grounds on which the measure at issue is based, so far as possible, either when that measure is decided on or, at the very least, as swiftly as possible after that decision in order to enable those persons or entities to exercise, within the periods prescribed, their right to bring an action.

The Court acknowledges that prior communication of the grounds would be liable to jeopardise the effectiveness of the measures freezing funds and economic resources which must, by their very nature, have a surprise effect and apply with immediate effect. Nor, for the same reasons,

³ Articles 60 EC and 301 EC jointly with Article 308 EC.

were the Community authorities required to hear the persons concerned before their names were included in the list.

Nevertheless, the regulation at issue provides no procedure for communicating the evidence justifying the inclusion of the names of the persons concerned in the list, either at the same time as, or after, that inclusion. At no time did the Council inform Mr Kadi and Al Barakaat of the evidence adduced against them in order to justify the initial inclusion of their names in the list. That infringement of Mr Kadi and Al Barakaat's rights of defence also gives rise to a breach of the right to a legal remedy, inasmuch as the appellants were also unable to defend their rights in satisfactory conditions before the Community courts.

The Court further concludes that **the freezing of funds constitutes an unjustified restriction of Mr Kadi's right to property.**

The Court considers that the restrictive measures imposed by the regulation constitute restrictions of that right which could, in principle, be justified. It notes that the importance of the aims pursued by the regulation is such as to justify negative consequences, even of a substantial nature, for some persons, and emphasises that the competent national authorities may unfreeze the funds necessary to cover basic expenses (payment of rent, medical expenses etc.).

The Court considers, however, that the regulation in question was adopted without furnishing any guarantee enabling Mr Kadi to put his case to the competent authorities. Such a guarantee was, however, necessary in order to ensure respect for his right to property, having regard to the general application and continuation of the freezing measures affecting him.

In consequence, **the Court annuls the Council regulation in so far as it freezes Mr Kadi and Al Barakaat's funds.**

Nonetheless, the Court recognises that annulling the regulation with immediate effect would be capable of seriously and irreversibly prejudicing the effectiveness of the restrictive measures, because in the period before the regulation is replaced, the person and entity concerned might take steps to prevent measures freezing funds from being applied to them again. Moreover, the Court notes that it is conceivable that, on the merits of the case, the imposition of those measures on Mr Kadi and Al Barakaat may all the same prove to be justified. As a result, **the Court maintains the effects of the regulation for a period of no more than three months running from today, in order to allow the Council to remedy the infringements found.**