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TRIBUNAL DE PRIMEIRA INSTÂNCIA DAS COMUNIDADES EUROPEIAS  
SÚD PRVÉHO STUPŇA EURÓPSKYCH SPOLOČENSTEV  
SODIŠČE PRVE STOPNJE EVROPSKIH SKUPNOSTI  
EUROOPAN YHTEISÖJEN ENSIMMÄISEN OIKEUSASTEEN TUOMIOISTUIN  
EUROPEISKA GEMENSKAPERNAS FÖRSTAINSTANSRÄTT

## Press and Information

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Judgments of the Court of First Instance in Case T-306/01 and Case T-315/01

*Ahmed Ali Yusuf and Al Barakaat International Foundation and Yassin Abdullah Kadi v  
Council of the European Union and Commission of the European Communities*

### **THE COURT OF FIRST INSTANCE GIVES ITS FIRST JUDGMENTS CONCERNING ACTS ADOPTED IN THE FIGHT AGAINST TERRORISM**

*The European Community is competent to order the freezing of individuals' funds in connection with the fight against international terrorism. In so far as they are required by the Security Council of the United Nations, these measures fall for the most part outside the scope of judicial review. They do not infringe the universally recognised fundamental human rights*

According to the Charter of the United Nations, the Security Council is responsible for the maintenance of international peace and security. The Members of the United Nations must implement its decisions directly and through the international bodies of which they form part.

Both before and after the terrorist attacks of 11 September 2001, the Security Council adopted several resolutions aimed at the Taliban, Usama bin Laden and the Al-Qaeda network, and at individuals and entities associated with them. All the Member States of the United Nations are called on to freeze the funds and other financial resources controlled directly or indirectly by those individuals and entities. A UN Sanctions Committee has the task of identifying the persons concerned and the financial resources to be frozen and of considering requests for exemption.

Those resolutions were put into effect in the Community by Council regulations<sup>1</sup> ordering the freezing of the funds of the persons and entities concerned. Those persons and entities are included in a list annexed to the regulations, regularly reviewed by the Commission, on the basis of updating by the Sanctions Committee<sup>2</sup>. Derogations from the freezing of funds may be granted by States on humanitarian grounds.

<sup>1</sup> Currently 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 Regulation (EC) No 467/2001 (OJ 2002 L 139, p. 9).

<sup>2</sup> See, most recently, Commission Regulation (EC) No 1378/2005 of 22 August 2005 amending for the 52nd time Council Regulation (EC) No 881/2002 (OJ 2002 L 219, p. 27).

Several of the persons and entities concerned have requested annulment of those regulations before the Court of First Instance<sup>3</sup>. Today the Court of First Instance has given its first two judgments in these cases.

### **The Council's competence to impose economic sanctions on individuals**

The EC Treaty<sup>4</sup> empowers the Council to impose economic and financial sanctions on *third countries*, when a common position adopted by the European Union under the common foreign and security policy so provides.

The Court of First Instance rules that the Council is competent also, under similar conditions<sup>5</sup>, to impose economic and financial sanctions such as the freezing of funds on *individuals*, in connection with the fight against international terrorism.

### **The paramouncy of United Nations law over Community law**

The Court of First Instance finds that, according to international law, the obligations of the Member States of the United Nations under the Charter of the United Nations prevail over any other obligation, including their obligations under the European Convention for the Protection of Human Rights and Fundamental Freedoms and under the EC Treaty. This paramouncy extends to decisions of the Security Council.

Although it is not a member of the United Nations, the Community must also be considered to be bound by the obligations flowing from the Charter of the United Nations, in the same way as are its Member States, by virtue of the Treaty establishing it. First, the Community may not infringe the obligations imposed on its Member States by virtue of the Charter or impede their performance. Second, it is required to adopt all the provisions necessary to allow its Member States to fulfil those obligations.

### **The scope of the review of lawfulness carried out in this instance by the Court of First Instance**

The Court observes that the contested regulation is limited to putting into effect at Community level decisions of the Security Council. Any review of the internal lawfulness of the regulation would therefore involve the Court in examining, indirectly, the lawfulness of the decisions in question. Having regard to the rule of paramouncy set out above, those decisions fall, in principle, outside the ambit of the Court's judicial review and the Court has no authority to call into question, even indirectly, their lawfulness in the light of Community law or of fundamental rights as recognised in the Community legal order. On the contrary, the Court is bound, so far as possible, to interpret and apply that law in a manner compatible with the obligations of the Member States under the Charter of the United Nations.

Nevertheless, the Court is empowered to check the lawfulness of the contested regulation and, indirectly, of the Security Council resolutions implemented by that regulation in the light of the higher rules of general international law falling within the scope of *jus cogens*, understood as a peremptory norm of public international law from which neither the Member States nor

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<sup>3</sup> A second group of cases, currently being dealt with, concerns the restrictive measures taken by the Community against persons and entities involved in terrorism, but not linked to Usama bin Laden, Al-Qaeda or the Taliban, and not specifically identified by the Security Council.

<sup>4</sup> Articles 301 EC and 60 EC.

<sup>5</sup> On the basis of Articles 301 EC and 60 EC, together with Article 308 EC.

the bodies of the United Nations may derogate. It includes, in particular, the mandatory provisions intended to secure universal protection of fundamental human rights.

### **The applicants' fundamental rights protected by *jus cogens***

The Court finds that the freezing of funds provided for by the contested regulation does not infringe the applicants' fundamental rights as protected by *jus cogens*. Indeed, the contested regulation makes express provision for possible derogations, at the request of interested persons, allowing access to funds necessary to cover basic expenses. It is therefore neither the purpose nor the effect of those measures to subject the applicants to inhuman or degrading treatment.

Nor have the applicants been arbitrarily deprived of their right to property, in so far as that right is protected by *jus cogens*. Indeed, the freezing of funds constitutes one aspect of the United Nations' legitimate fight against international terrorism and is a precautionary measure which, unlike confiscation, does not affect the very substance of the right of the persons concerned to property in their financial assets but only the use thereof. Furthermore, the resolutions of the Security Council provide for a means of reviewing, after certain periods, the overall system of sanctions and for a procedure enabling the persons concerned to present their case to the Sanctions Committee for review, through their State.

As regards the rights of defence, the Court finds that no rule of *jus cogens* appears to require a personal hearing of those individuals concerned by the Sanctions Committee. Since the regulation is a precautionary measure restricting the availability of property, observance of the fundamental rights of the persons concerned does not require the facts and evidence adduced against them to be communicated to them, where the Security Council is of the view that there are grounds concerning the international community's security that militate against it. The Court notes, however, that the persons concerned may at any time address a request to the Sanctions Committee, through their national authorities, to be removed from the list of persons affected by the sanctions<sup>6</sup>.

The Court finds furthermore, that the Community institutions were not required to hear the persons concerned, given that they had no discretion in the implementation of the sanctions decided by the Security Council.

As regards the right to effective judicial review, the Court states that, in respect of the action brought by the applicants, it has carried out a complete review of the lawfulness of the contested regulation with regard to observance by the Community institutions of the rules of jurisdiction and the rules of lawfulness and the essential procedural requirements which bind their actions. It has also reviewed the lawfulness of the regulation from the viewpoint of procedural and substantive appropriateness, internal consistency and whether the regulation is proportionate to the Security Council's resolutions. The Court has also reviewed the lawfulness of the regulation and, indirectly, the lawfulness of the resolutions of the Security Council in the light of *jus cogens*.

On the other hand, it is not for the Court to review indirectly whether the Security Council's resolutions are compatible with fundamental rights as protected by the Community legal order, or to verify that there has been no error of assessment of the facts and evidence relied

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<sup>6</sup> In this instance, that re-examination procedure made it possible to unfreeze the funds of two persons, Messrs Aden and Ali, who have in consequence withdrawn their actions before the Court.

on by the Security Council in support of the measures it has taken or to check indirectly the appropriateness and proportionality of those measures. To that extent, and in the absence of an international court with jurisdiction to rule on actions brought against decisions taken by the Sanctions Committee, there is no court procedure available to the applicants.

However, that lacuna in the judicial protection available to the applicants is not in itself contrary to *jus cogens*. The Court points out that the right of access to the courts is not absolute. In this instance, it is curtailed by the immunity from jurisdiction enjoyed by the Security Council. The applicants' interest in having a court hear their case on its merits is not enough to outweigh the essential public interest in the maintenance of international peace and security in the face of a threat clearly identified by the Security Council.

Consequently, the Court of First Instance rejects the actions as unfounded.

**REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.**

*Unofficial document for media use, not binding on the Court of First Instance.*

*Languages available: All*

*The full text of the judgment may be found on the Court's internet site*

*<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>*

*It can usually be consulted after midday (CET) on the day judgment is delivered.*

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