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Advocate General's Opinion in Case C-402/05

*Yassin Abdullah Kadi v Council of the European Union and
Commission of the European Communities*

**ADVOCATE GENERAL POIARES MADURO SUGGESTS THAT THE COURT
ANNUL THE COUNCIL REGULATION FREEZING THE FUNDS OF MR KADI**

In his opinion, the Community Courts have jurisdiction to review measures enacted by the Community in order to implement UN Security Council Resolutions. Exercising that jurisdiction, he considers that the regulation infringes Mr Kadi's fundamental rights under Community law.

Yassin Abdullah Kadi, a resident of Saudi Arabia, has been designated by the Sanctions Committee of the UN Security Council as a person suspected of supporting terrorism. Pursuant to a number of UN Security Council Resolutions, the Member States of the UN are required to freeze the funds and other financial resources controlled directly or indirectly by such persons.

Within the European Community these resolutions were given effect by a Council regulation¹ ordering the freezing of funds of persons included in a list annexed to the regulation. This list is reviewed on a regular basis, taking into account amendments made to the list drawn up by the UN Security Council. On 19 October 2001, following his inclusion on the UN list, Mr Kadi was included on the Community list of persons whose funds were to be frozen.

Mr Kadi brought an action for annulment of this regulation before the Court of First Instance, arguing that the Council lacked competence to adopt the regulation and that the regulation breached several of his fundamental rights, notably the right to property and the right to a fair hearing. By judgment of 21 September 2005 the Court of First Instance rejected all of Mr Kadi's pleas and upheld the regulation². In so doing the Court ruled that the Community Courts had only limited jurisdiction to review the regulation in question given that the Member States were required to comply with the UN Security Council resolutions by the terms of the UN Charter, an international treaty which took precedence over Community law.

Mr Kadi has appealed that decision to the Court of Justice of the European Communities.

¹ 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).

² Judgment in Case T-315/01 Kadi v Council and Commission (see CP 79/05
<http://curia.europa.eu/en/actu/communiqués/cp05/aff/cp050079en.pdf>)

In his Opinion today, **Advocate General Miguel Poiares Maduro suggests that the Court set aside the judgment of the Court of First Instance and annul the contested Regulation insofar as it concerns Mr Kadi.**

In particular, the Advocate General is of the opinion that **the Court of First Instance erred in finding that the Community Courts had only limited jurisdiction to review the regulation.** Advocate General Poiares Maduro argues that it is the Community Courts that determine the effect of international obligations within the Community legal order by reference to conditions set by Community law. He notes that the relationship between international law and the Community legal order is governed by the Community legal order itself and that international law can only take effect under the conditions prescribed by the constitutional principles of the Community. Foremost of these principles is that the Community is based on respect for fundamental rights and the rule of law.

Furthermore, the Advocate General rejects the proposition that judicial review would be inappropriate given the “political” nature of the matter in question. In his view, the claim that a measure is necessary for the maintenance of international peace and security cannot operate so as to silence the general principles of Community law and deprive individuals of their fundamental rights. On the contrary, he argues that when the risks to public security are believed to be extraordinarily high and the pressure to take measures that disregard individual rights is particularly strong, it is the duty of the courts to uphold the rule of law with increased vigilance.

Advocate General Poiares Maduro also dismisses the argument that if the Court were to accept jurisdiction over such a matter it would be acting beyond the boundaries of the Community legal order. In this respect he notes that the legal effects of a ruling by the Court would be confined to the legal order of the Community.

Consequently, **in his opinion, the Community Courts have jurisdiction to review whether the contested regulation complies with fundamental rights as recognised by Community law.**

The Advocate General proposes that, rather than refer the matter back to the Court of First Instance, the Court itself should give final judgment on the question of whether the regulation infringes Mr Kadi’s fundamental rights.

Advocate General Poiares Maduro concludes that the regulation in question infringes Mr Kadi’s right to property, his right to be heard and his right to effective judicial review.

In his opinion, all three of these rights are closely linked. The indefinite freezing of a person’s assets constitutes a far-reaching interference with that person’s right to property where there are no procedural safeguards requiring the authorities to justify such measures, such as review before an independent tribunal. In this case, Mr Kadi has been subject to severe sanctions on the basis of serious allegations, yet has been denied any possibility to have the fairness of the allegations or the reasonableness of the sanctions reviewed by an independent tribunal. The Advocate General states that, given that there is no mechanism of judicial control by an independent tribunal at the level of the United Nations, **the Community cannot dispense with proper judicial review proceedings when implementing the Security Council resolutions. In so doing, the resulting absence of any possibility for Mr Kadi to seek an independent review infringes his fundamental rights and cannot be permitted in a Community based on the rule of law. Consequently the regulation should be annulled in so far as it concerns him.**

IMPORTANT: The Advocate General's Opinion is not binding on the Court. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court of Justice are now beginning their deliberations in this case. Judgment will be given at a later date.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: ES, DE, EN, FR, IT, PL, PT, SV

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

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-402/05>

It can usually be consulted after midday (CET) on the day of delivery.

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