



Press and Information

Court of Justice of the European Union

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Judgment in Joined Cases C-399/06 P and C-403/06 P
Faraj Hassan and Chafiq Ayadi v Council

The Court of Justice annuls the Council regulation, as it stood before October 2009, freezing Mr Hassan and Mr Ayadi's funds

Mr Faraj Hassan, a Libyan national residing in the United Kingdom, and Mr Chafiq Ayadi, a Tunisian national residing in Ireland, were designated by the Sanctions Committee of the United Nations Security Council as being associated with Usama bin Laden, Al-Qaeda or the Taliban. In accordance with a number of resolutions of the Security Council, all the Member States of the United Nations must freeze the funds and other financial assets directly or indirectly controlled 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 appeared in a list annexed to that regulation. That list is duly updated in order to take account of changes in the summary list drawn up by the Sanctions Committee, a body of the Security Council. Thus, on 19 October 2001 Mr Ayadi's name, and on 12 November 2004 Mr Hassan's name, were added to the summary list and then included in the list annexed to the Community regulation.

The actions for annulment brought before the Court of First Instance by Mr Hassan and Mr Ayadi were dismissed on 12 July 2006². In so doing, the Court of First Instance relied, in the main, on its judgments in *Yusuf* and *Kadi*³ in which it held, in particular, that the Community judicature had, in principle, no jurisdiction (save with regard to certain overriding fundamental rights recognised in international law as falling within the ambit of *jus cogens*) to review the lawfulness of the regulation in question because, according to the terms of the Charter of the United Nations, an international treaty which prevails over Community law, the Member States are bound to comply with resolutions of the Security Council.

In September 2006 Mr Hassan and Mr Ayadi brought appeals before the Court of Justice against those judgments.

In September 2008 the Court of Justice ruled on the appeal brought against the judgments in *Yusuf* and *Kadi* at first instance ('*Kadi* on appeal')⁴. It held that the Community judicature does have jurisdiction to review the measures adopted by the Community to give effect to resolutions of the United Nations Security Council. Thus it set aside the judgments of the Court of First Instance. Then it annulled the fund-freezing regulation, considering that the latter had been adopted in breach of the fundamental rights of the persons concerned, but maintaining its effects for a period of three months to allow the Council to remedy the infringements found.

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 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ 2002 L 139, p. 9).

² Cases [T-253/02](#) *Ayadi v Council* and Case [T-49/04](#) *Hassan v Council and Commission* (see Press Release [57/06](#)).

³ Case [T-306/01](#) *Yusuf and Al Barakaat International Foundation v Council and Commission* and Case [T-315/01](#) *Kadi v Council and Commission* (see Press Release [79/05](#)).

⁴ Joined Cases [C-402/05 P](#) and [C-415/05 P](#) *Kadi and Al Barakaat International Foundation v Council and Commission* (see Press Release [60/08](#)).

On 13 October 2009 the Commission adopted a new regulation⁵ amending the fund-freezing regulation by which the decisions to include Mr Hassan and Mr Ayadi in the fund-freezing list were replaced by new decisions confirming their inclusion. According to the preamble to this Regulation, the Commission adopted that regulation in the light of the Court's decision in *Kadi* on appeal, after apprising Mr Hassan and Mr Ayadi of the grounds for their inclusion in the list, as provided by the Sanctions Committee and after examining the comments made by the appellants concerning those grounds. That regulation, which entered into force on 15 October 2009, applies with retroactive effect as from the original inclusion of Mr Hassan and Mr Ayadi in the list. That regulation has not been challenged in these proceedings.

The Court considers that the adoption of Regulation No 954/2009 cannot be regarded as equivalent to annulment pure and simple of the contested regulation. In conclusion, the Court finds that the appeals have not become devoid of purpose and that it is necessary for the Court to adjudicate on them.

On the substance of the cases, the Court finds that, inasmuch as the grounds in law of **the judgments under appeal** are the same as those relied on in *Yusuf* and *Kadi* at first instance, which have been set aside by the Court, those judgments are marred by the same error in law and **must, therefore, be set aside**.

Next, the Court points out that the actual circumstances giving rise to the inclusion of Mr Hassan and Mr Ayadi's names in the fund-freezing list are identical to those of Mr Kadi. The Court's conclusion in *Kadi* on appeal, that the rights of defence – in particular, the right to be heard and the right to effective judicial review of observance of those rights – and the fundamental right to property had not been respected must, therefore, also be reached in these cases.

In those circumstances, **the Court annuls the Council regulation** in the version before the regulation of 2009 was adopted **in so far as it freezes Mr Hassan and Mr Ayadi's funds**.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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⁵ Commission Regulation (EC) No 954/2009 of 13 October 2009 amending for the 114th time Regulation No 881/2002 (OJ L 269, p. 20).