



Press and Information

General Court of the European Union
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Judgment in Case T-85/09
Yassin Abdullah Kadi v Commission

The General Court annuls the regulation freezing Yassin Abdullah Kadi's funds

The regulation was adopted in breach of Mr Kadi's rights of defence and constitutes an unjustified restriction of his right to property

Yassin Abdullah Kadi, a Saudi Arabian national, was 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 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 17 October 2001, Mr Kadi's name was added to the summary list, then placed in the list annexed to the Community regulation.

The action for annulment brought by Mr Kadi before the Court of First Instance (now the General Court) was dismissed² on 21 September 2005. In dismissing his case, the Court held that the Community Courts did not, in principle, have jurisdiction – except with regard to certain mandatory fundamental rights recognised under international law as falling within the scope of *jus cogens* – to review the lawfulness of the regulation at issue, given that Member States are obliged to comply with resolutions of the Security Council under the Charter of the United Nations, an international treaty which has primacy over Community law.

In September 2008, the Court of Justice gave judgment in the appeal brought by Mr Kadi against the judgment of the General Court ('the judgment of the Court of Justice in *Kadi*')³. It held that the Community Courts have jurisdiction to review measures adopted by the Community which give effect to resolutions of the United Nations Security Council and, consequently, set aside the judgment of the General Court. Ruling on the action, the Court of Justice then annulled the regulation freezing Mr Kadi's funds, holding that it had been adopted in breach of his fundamental rights but maintaining its effects for a period of three months in order to allow the Council to remedy the infringements found.

In October 2008, the Commission sent Mr Kadi a letter, informing him that, for the reasons set out in the summary of reasons provided by the UN Sanctions Committee at the European Union's request and attached to that letter, it would adopt legislation with a view to maintaining his listing. The Commission also invited Mr Kadi to comment on the grounds included in the summary of reasons.

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 Case T-315/01 *Kadi v Council and Commission*; see also Press Release [79/05](#).

³ Joined Cases [C-402/05 P](#) and [C-415/05 P](#) *Kadi and Al Barakaat International Foundation v Council and Commission*; see also Press Release [60/08](#).

Mr Kadi replied to that letter, submitting his comments. In particular, he asked the Commission to disclose the evidence supporting the assertions and allegations made in the summary of reasons and requested a further opportunity to make representations on that evidence, once he had received it. He also attempted to refute, providing evidence in support of his refutation, the allegations made in the summary of reasons, in so far as he was able to respond to general allegations.

On 28 November 2008, the Commission adopted a new regulation⁴ maintaining the freeze of Mr Kadi's funds.

After that regulation had been adopted, the Commission replied to Mr Kadi, informing him that it had examined his observations. The Commission stated, in particular, that, in providing him with the summary of reasons provided by the UN Sanctions Committee and inviting him to comment on those reasons, it had complied with the judgment of the Court of Justice in *Kadi* and that that judgment did not require it to disclose the further evidence which he had requested.

Mr Kadi has sought annulment of this new regulation before the General Court.

As a preliminary point, the General Court notes that certain doubts may have been voiced in legal circles as to whether the judgment of the Court of Justice in *Kadi* is wholly consistent with, on the one hand, international law and, on the other, the EC and EU Treaties. Whilst acknowledging that those criticisms are not without foundation, the General Court does not consider it appropriate, in this case, to call into question the points of law decided by the Court of Justice itself in *Kadi*, stating that if those criticisms are to be addressed, it is for the Court of Justice itself to address them in the context of future cases before it.

The General Court considers that, in light of the judgment of the Court of Justice in *Kadi*, its task is to ensure in this case a full and rigorous review of the lawfulness of the regulation, without affording the latter any immunity from jurisdiction on the ground that it gives effect to resolutions adopted by the UN Security Council. That must remain the case, at the very least, so long as the re-examination procedure operated by the Sanctions Committee clearly fails to offer guarantees of effective judicial protection, as the Court of Justice considered to be the case in its judgment in *Kadi*. The review must concern, indirectly, the substantive assessments of the Sanctions Committee itself and the evidence underlying them. Such a review is all the more justified given that the measures in question have had a marked and long-lasting effect on the fundamental rights of Mr Kadi, all of whose funds have been indefinitely frozen for nearly ten years now.

In the context of that full review, the General Court finds that it is evident from the arguments and explanations advanced by the Commission that Mr Kadi's rights of defence have been 'observed' only in the most formal and superficial sense. The Commission failed to take due account of Mr Kadi's comments who, as a result, was not in a position usefully to make his point of view known.

Furthermore, the procedure followed by the Commission, in response to Mr Kadi's request, did not grant him even the most minimal access to the evidence against him. In fact, he was refused such access despite his express request, whilst no balance was struck between his interests, on the one hand, and the need to protect the confidential nature of the information in question, on the other.

In those circumstances, the limited information and the imprecise allegations in the summary of reasons appear clearly insufficient to enable Mr Kadi to launch an effective challenge to the allegations against him with regard to his alleged participation in terrorist activities.

Moreover, the Commission made no real effort to refute the exculpatory evidence advanced by Mr Kadi in the few cases in which the allegations against him were sufficiently precise to permit him to know what was being raised against him.

⁴ Commission Regulation (EC) No 1190/2008 of 28 November 2008 amending for the 101st time Council Regulation (EC) No 881/2002 (OJ 2008 L 322, p. 25).

It follows that **the regulation was adopted in breach of Mr Kadi's rights of defence.**

Furthermore, given the lack of any proper access to the information and evidence used against him, Mr Kadi has also been unable to defend his rights with regard to that evidence in satisfactory conditions before the Courts of the European Union, with the result that **it must be held that his right to effective judicial review has also been infringed.**

Lastly, the General Court finds that, given the general application and duration of the freezing measures, **the regulation also constitutes an unjustified restriction of Mr Kadi's right to property.**

Consequently, **the General Court annuls the regulation in so far as it concerns Mr Kadi.**

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

NOTE: According to the Statute of the Court of Justice, a decision of the General Court declaring a regulation void takes effect only as from the date of expiry of the period allowed for bringing an appeal before the Court of Justice, that is to say, two months and ten days from notification of the judgment or, if an appeal has been brought, as from the date of its dismissal.

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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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