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Press and Information

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Judgments of the Court of First Instance in Case T-253/02 and Case T-49/04

Chafiq Ayadi v Council of the European Union
Faraj Hassan v Council of the European Union and Commission of the European Communities

THE COURT OF FIRST INSTANCE CLARIFIES THE RIGHTS OF INDIVIDUALS WHOSE FUNDS HAVE BEEN FROZEN IN CONNECTION WITH THE FIGHT AGAINST INTERNATIONAL TERRORISM

The right of individuals to present a request to the Security Council of the UN to have their case reviewed is guaranteed by the Community legal order. In the examining of such a request the Member States are bound to observe the fundamental rights of those individuals

Following the terrorist attacks of 11 September 2001, the Security Council of the United Nations adopted several resolutions calling on all the Member States of the United Nations to freeze the funds and other financial resources of persons and entities associated with the Taliban, Usama bin Laden and the Al-Qaeda network. The Security Council gave a Sanctions Committee responsibility for identifying the persons concerned and for keeping the list up to date.

Those resolutions were put into effect within the Community by Council regulations¹ ordering the freezing of the funds of the persons and entities in question. Those persons and entities are entered in a list regularly reviewed by the Commission on the basis of updating carried out by the Sanctions Committee². Derogations from the freezing of funds may be granted by the States on humanitarian grounds with the consent of the Sanctions Committee. Following a specific procedure, a request to be removed from the list may be made to the Sanctions Committee through the State of residence or nationality of the person concerned.

On 19 October 2001 Chafiq Ayadi, a Tunisian national resident in Dublin, Ireland, and on 20 November 2003 Faraj Hassan, a Libyan national, held in Brixton Prison, United Kingdom, pending the outcome of extradition proceedings brought by the Italian authorities, were added

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 No 467/2001 (OJ 2002 L 139, p. 9).

² See, most recently, Commission Regulation (EC) No 674/2006 of 28 April 2006 amending for the 65th time Council Regulation (EC) No 881/2002 (OJ 2006 L 116, p. 58).

to the Community list in question. Those two men have asked the Court of First Instance to annul those measures.

First of all, the Court of First Instance confirms that, as it has held in *Yusuf and Kadi*³, the European Community has competence to order the freezing of individuals' funds in the context of the battle against international terrorism. Such a measure does not infringe the universally recognised fundamental rights of the human person (*jus cogens*).

In *Ayadi*, the Court goes on to recognise that freezing of funds constitutes a particularly drastic measure, but adds that that measure **does not prevent the individuals concerned from leading a satisfactory personal, family and social life, given the circumstances**. In particular, they are not forbidden to carry on a trade or business activity, it being however understood that the receipt of income from that activity is regulated. The grant of a taxi-driver's licence to Mr Ayadi and his hiring of a car may theoretically be the object of a derogation from the freezing of his funds. It is however for the national authorities to determine whether such a derogation may be granted and then to ensure that it is reviewed and implemented, in cooperation with the Sanctions Committee.

Last, with regard to the procedure for removal from the list, **the Court of First Instance finds that the Sanctions Committee's Guidelines and the contested Council regulation provide the right for an individual to present a request to the Sanctions Committee for review** of his case, through the Government of the country in which he lives or of which he is a national. **This right is also guaranteed by the Community legal order**. In examining such a request, the Member States are bound to observe the fundamental rights of the persons concerned. In particular, the Member States:

- must ensure so far as possible that the persons concerned are put in a position to argue their point of view effectively before the competent national authorities;
- may not refuse to initiate the review procedure solely because the persons concerned could not provide precise and relevant information, owing to their having been unable to ascertain the precise reasons for which they were included in the list in question, on account of the confidential nature of those reasons; and
- are bound to act promptly in order to ensure that such persons' cases are presented without delay and fairly and impartially to the Sanctions Committee, if that appears to be justified in the light of the relevant information supplied.

In addition, the persons concerned **may bring an action for judicial review before the national courts against any wrongful refusal** by the competent national authority **to submit their cases to the Sanctions Committee for re-examination**. The need to ensure the full effectiveness of Community law may lead the national court to refrain from applying, if need be, a national rule impeding the exercise of that right, such as a rule excluding from judicial review a refusal of the national authorities to take action with a view to guaranteeing the diplomatic protection of their nationals.

In the present case, the Court of First Instance considers that Mr Ayadi and Mr Hassan must avail themselves of the opportunities for judicial remedy offered by domestic law if they

³ Case T-306/01 *Yusuf and Al Barakaat International Foundation v Council* and Case T-315/01 *Kadi v Council*. See Press Release 79/05 (<http://www.curia.eu.int/en/news/pressreleases/pr05/case/pr050079en.pdf>)

mean to challenge the alleged failure of the Irish and United Kingdom authorities to cooperate in good faith with them.

The Court of First Instance concludes that there are no grounds for challenging the assessment that it made in *Yusuf* and *Kadi* and that **the actions must therefore be dismissed**.

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: EN FR CZ DE ES EL HU IT PL SK SL

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&Submit=rechercher&numaff=T-253/02>

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-49/04>

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

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