# Statewatch Briefing

# “Terrorist" lists: monitoring proscription, designation and asset-freezing – Update

**March 2009**

## PMOI finally removed from EU "terrorist list"

In its latest update of the “terrorist list”, adopted on 26 January 2008, the EU has finally removed the People's Mujahadeen Organisation of Iran (PMOI) from the list of proscribed organisations. The EU placed the PMOI on the list in 2002 and has until now refused to remove the group - despite three rulings from the EU's Court of First Instance (CFI) that the PMOI’s proscription was unlawful.

The first successful challenge to EU terrorist list by PMOI in December 2006 led to modest reforms by the EU (the "statement of reasons" and the possibility of appeal to the EU's secret terrorist proscription working group). This was sufficient for the EU to argue that it had remedied the earlier human rights infringements and maintain the PMOI in the updated lists it adopts every six months; the PMOI appealed each of these decisions to the European Courts.

In 2007 a UK court also ruled that the PMOI's inclusion on the UK terrorist was unlawful and in 2008 the government lost its appeal. With the national decision that "justified" the EU decision in the first place now unlawful as well the Court accepted the PMOI’s application for an accelerated procedure (see case T-284/08) and following two further rulings by the CFI, the EU Council (comprised of member states governments) finally relinquished. Some ?7 million in frozen assets belonging to the PMOI will now be released.

France has appealed the latest Court ruling. An earlier request by France to delay the Court's annulment of the relevant EC measure was rejected (France had argued that the three months the Court gave the EU to respond to its ruling in Kadi (below) had set a precedent).

Here is a chronology of the seven year proceedings:

17 June 2002 - EU includes PMOI in list of "terrorist groups"

26 July 2002 - PMOI lodges first application (case T-228/02)

12 December 2006 - CFI rules PMOI inclusion on terrorist list unlawful (case T-228/02)
http://www.statewatch.org/news/2007/jan/04ecj-pmoi.htm

[EU maintains PMOI on the terrorist list]

9 May 2007 - PMOI submits new case (case T-157/07)

16 July 2007 - PMOI submits new case challenging continued inclusion (case T-256/07)

30 November 2007 - UK Court rules inclusion of PMOI on UK terrorist list unlawful
http://www.statewatch.org/terrorlists/PC022006%20PMOI%20FINAL%20JUDGMENT.pdf

7 May 2008 - UK government loses appeal against PMOI decision

21 July 2008 - PMOI submits new case at ECJ challenging continued inclusion on grounds of UK rulings (case T-284/08)

23 October 2008 - CFI rules PMOI inclusion on list unlawful (case T-256/07)

4 December 2008 - CFI rules PMOI inclusion on list unlawful (case T-284/08)

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62008A0284:EN:HTML
[See also Court press release:
http://curia.europa.eu/en/actu/communiques/cp08/aff/cp080084en.pdf]

22 December 2008 - CFI rejects request by EU Council and France to delay annulment of Council Decision (case T-284/08)

23 December 2008 - PMOI appeals parts of the judgment of the Court of First of 23 October 2008 (Case C-576/08 P): http://www.statewatch.org/terrorlists/docs/C-576-08p.pdf

21 January 2008 - France appeals CFI ruling (Case C-27/09 P, not yet reported)

26 January 2009 - PMOI "officially" removed from EU terrorist list

**Updated EU list of terrorist organisations adopted 26 January 2009**

Here is the latest consolidated version of the EU "terrorist list", now without the PMOI:
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:023:0037:0042:EN:PDF

**Kadi and Al Barakaat maintained in EU and UN terrorist lists - Commission considers the continued listing "justified"**

Despite the ruling of the European Court of Justice in September that the Council Regulation freezing their assets was unlawful, the European Commission has decided to maintain Yassin Abdullah Kadi and the Al Barakaat International Foundation in the EU "terrorist list" on the grounds that "the listing of [the parties] is justified for reasons of its association with the Al-Qaida network". In response to the ECJ's ruling, the European Commission "communicated the narrative summaries of reasons provided by the UN Al-Qaida and Taliban Sanctions Committee, to Mr Kadi and to Al Barakaat International Foundation and [gave] them the opportunity to comment on these grounds in order to make their point of view known". Mr Kadi's lawyers duly responded in a letter dated 10 November 2008, which the European Commission simply dismissed on the grounds that the "preventive nature of the freezing of funds and economic resources" justifies the ongoing violation of Mr. Kadi's fundamental rights.

The Commission, effectively acting as judge, jury and executioner, states that its response "compl[ies] with the judgment of the Court of Justice". With the Swiss Attorney General having dropped all investigations into Mr. Kadi's finances (a Swiss Court cleared him of any links to 9/11 in December 2005), the international courts to which the case will now inevitably return are unlikely to agree that this justifies the continued denial of access to his $9 million and other ongoing damages.

See Commission Regulation 1190/2008/EC of 28 November 2008:
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:322:0025:01:EN:HTML

For background see: http://www.statewatch.org/news/2008/sep/02ECJ-UN-ruling.htm

**Security Council 6043rd Meeting (AM), 15 December 2008 - no progress on implementing Kadi**

"Jan Grauls (Belgium), speaking as Chair of the Al-Qaida and Taliban sanctions Committee said that resolution 1822 (a milestone in the life of the Committee established pursuant to resolution 1267 (1999) on Al-Qaida and the Taliban - had introduced several important innovations with regard to the listing and de-listing procedures, the notification of sanctioned individuals and entities, the posting of narrative summaries of reasons for listing on the Committee's website and the review mechanisms. Those improvements had added to the transparency, fairness and clarity of the sanctions regime. He said Committee members had committed themselves to transposing resolution 1822 in a new framework for the practical implementation of the new mechanisms before the end of the year. The new framework would form a solid basis for the next Chair. However, one could not ignore the international context in which those developments had occurred. Security Council sanctions regimes, increasingly under pressure, had recently been questioned, especially in light of the need for fair and clear procedures for listing, de-listing and granting of humanitarian exemptions. *The Al-Qaida and Taliban sanctions Committee had not made significant progress in that regard, but everyone must remain committed to ensuring that more attention was given to those concerns.*

**Kadi sues Paulson and US Treasury**

Saudi citizen Yassin Abdullah Kadi has sued Henry Paulson, Adam Szubin, and the U.S. Treasury Department's Office of Foreign Asset Control challenging his "wrongful and unconscionable designation" as a "Specially Designated Global Terrorist" in October 2001. Kadi describes his experience as a "Kafkaesque journey without due process", as he argues that "the designation is not supported by the administrative record, and that the designation and review process violated his First, Fourth, and Fifth Amendment rights, the International Emergency Economic Powers Act (IEEPA) and the Administrative Procedure Act (APA).

See complaint filed 16 January 2009, full-text:
**http://www.nefafoundation.org/miscellaneous/FeaturedDocs/Kadi_v_Paulson_complaint.pdf**

**United Nations Human Rights Committee finds inclusion of Belgian citizens on UN "terrorist list" in violation of ICCPR**

This complaint was bought by Mr. Nabil Sayadi and Ms. Patricia Vinck (both Belgian citizens), the director and secretary of *Fondation Secours International* [reportedly the European branch of the *Global Relief Foundation*, an American association that has been on the sanctions list since 22 October 2002], against Belgium. Following a criminal investigation by the Belgian authorities, their names were placed on the lists appended to the Security Council resolution (23 January 2003), the European Union Council Regulation (27 January 2003) and a Belgian ministerial order (31 January 2003), but they were not given access to the relevant information justifying their listing. The authors submitted several requests in 2003 to Belgian ministers and the Prime Minister, the European authorities, the United Nations and the Belgian civil authorities. The ministers invoked the Belgian States international obligations, the European Commission said it had no authority to remove the names of the plaintiffs from a list drawn up by the Sanctions Committee, and the Prime Minister simply referred to the fact that an investigation was under way to examine new evidence - neither of the plaintiffs had been charged with a criminal offence.

On 11 February 2005, they obtained from the Brussels Court of First Instance an order requiring the Belgian State to initiate the procedure to have their names removed from the Sanctions Committees list. While there was relevant information to hand - namely the absence of any indictment of the authors in February 2004 - the Belgian State did not initiate the de-listing procedure. The Court ordered the Belgian State to urgently initiate a de-listing procedure with the United Nations Sanctions Committee and to provide the petitioners with proof thereof, under penalty of a daily fine of 250 euros for delay in performance. Pursuant

to this order, on 25 February 2005 the State party requested the Sanctions Committee to delist the authors.

Over a year later, no decision had been taken by the Sanctions Committee so their lawyers lodged a complaint with the UN Human Rights Committee asserting violations of their human rights under the International Covenant on Civil and Political Rights. The Judges Chambers of the Brussels Court of First Instance also confirmed the plaintiffs innocence, dismissing the case on 19 December 2005 after more than three years of criminal investigation. Neither of these two decisions has been appealed. In its Decision, published 29 December 2008, the Committee concluded that there had been breaches of the two Belgian's rights under articles 12 and 17 of the ICCPR [Article 12 covers freedom of movement and the freedom to leave any country while article 17 recognizes the right of everyone to protection against arbitrary or unlawful interference with his privacy, family, home or correspondence, and against unlawful attacks on his honour and reputation].

The Committee found that "the facts, taken together, do not disclose that the restrictions of the authors rights to leave the country were necessary to protect national security or public order" [article 12] and ruled that "even though the State party is not competent to remove the authors names from the United Nations and European lists, it is responsible for the presence of the authors names on those lists" and "an unlawful attack on the authors honour and reputation" [article 17].

See: HRC Decision, 29 December 2008, full-text:
**http://www.statewatch.org/terrorlists/docs/Vinck%20-%20Sayadi%20%28English%29.pdf**

**ACLU: Designating Non-Profits As Terrorist Organizations Without Due Process Undermines Security And Humanitarian Aid**

Several of the USA's top non-profit humanitarian and philanthropic organizations have submitted arguments to a federal court stating that the government's authority and conduct in freezing a charity's assets undermines critical humanitarian aid and the government's own anti-terrorism efforts. See Amicus Brief filed in support of due process rights for KindHearts for Charitable Humanitarian Development, Inc. in a case brought by the American Civil Liberties Union, the ACLU of Ohio and several civil rights lawyers.

See American Civil Liberties Union press release, 27 February 2002:
**http://www.aclu.org/safefree/discrim/38853prs20090227.html?s_src=RSS**

See also Amicus Brief: **http://www.aclu.org/pdfs/safefree/kindhearts_amicus.pdf**

**UK: Court of Appeal overturns High Court decision to quash Treasury asset-freezing regime**

In October 2008 the UK Court of Appeal overturned April's stunning High Court judgment, ruling that the statutory orders enacted by the government to implement UN regulations and facilitate domestic asset-freezing are lawful after all. Lawyers for A, K, M, Q and G have been given leave to appeal and the case is now headed for the Lords.

See judgment of 30 October 2008, full-text:
**http://www.statewatch.org/terrorlists/A-K-M-Q-G-ctappealjudg.pdf**

For background see “Britain's financial Guantanamo”:
**http://www.statewatch.org/news/2008/apr/04financial-guantanamo.htm**

**UK: “Britain’s financial Guantanamo” enshrined in Counter Terrorism Act 2008**

Following Justice Collins’ ruling in April 2008 (above) that measures introduced to freeze terrorist assets were unlawful because they had not been authorised or sanctioned by

Parliament, the government incorporated (and extended) the controversial Treasury asset-freezing regime into its latest Counter-Terrorism Bill (introduced 24 January 2008, the government's fifth Bill in eight years).

The-Counter Terrorism Act (2008) entered the statute on 26 November 2008. The relevant powers for the Treasury in respect to terrorist financing and money laundering (note the function creep) are set out in Parts 5 and 6 and Schedule 7 of the Act: http://www.opsi.gov.uk/acts/acts2008/ukpga_20080028_en_1. The Act applies to all existing Treasury powers in respect to terrorist financing: the "Terrorism" and "Al-Qa'ida" Orders (those struck down by Collins), Part 2 of the Anti-Terrorism, Crime and Security Act 2001 (ATCSA) and the new powers in Schedule 7. The Treasury is empowered to give directions - orders to freeze assets or prohibit financial and material support in respect to specific persons, entities or *countries* - on the grounds of designation of a "non-cooperating country" by the Financial Action Task Force (an unaccountable intergovernmental body) or where it "reasonably believes" that terrorism financing (very broadly defined in effect), money laundering or the development/production of CBRN [chemical, biological, radiological, nuclear] weapons is taking place. UN Security Council and EU decisions "designating" persons and entities as terrorist financers are also enforced by the Treasury.

In addition to orders to freeze assets and prohibit financial transactions mandated by the UN, the directions that the Treasury can impose on the commercial and public sector include obligations to perform or enforce "due diligence", surveillance, "systematic reporting" and winding-up orders (to shut-down businesses) in respect to designated persons. The directions that the Treasury can impose on the designated persons themselves, their families and associates are open-ended and draconian, see "Britain's Financial Guantanamo": **http://www.statewatch.org/news/2008/apr/04financial-guantanamo.htm**

The Act also allows police officers to enter and search any premises they suspect are being used by or for a designating person without a warrant.

The Act includes a right of judicial review of the Treasury's actions for any person affected by financial restrictions decisions. However, the rights the Act grants with one hand, it systematically dismantles with the other, introducing special proceedings (SIAC/POAC style tribunals), special non-disclosure rules (secret evidence) and special advocates (court appointed lawyers). The Act also allows, for the first time in British criminal proceedings, the use of telecommunications intercept evidence. In sum, the new Act has significantly extended the "exceptional" legal regime introduced by ATCSA, Control Orders and "national security" detentions and expulsions.

Finally, the Act reserved powers to the Government over implementation and future extension of the scope and function of the regime. This included powers for the Lord Chancellor to make changes to the UK's civil procedural law to implement the new Act's special procedures. See Statutory Instrument No. 3085 (L.26) 2008, made: 2 December; laid before Parliament: 3 December; entered into force: 4 December 2008: **http://www.justice.gov.uk/civil/procrules_fin/pdf/preview/cpr_update_49_amnd_2_si_20083085.pdf**

See also explanatory memorandum on SI 3085 (L.26) 2008: **http://www.opsi.gov.uk/si/si2008/em/uksiem_20083085_en.pdf**

According to information provided by the UK to a European Commission questionnaire on counter-terrorism policy and practice:

> *"In the UK, two people have had their British citizenship taken away on national security grounds. Thirty-eight individuals have been subject to control orders since the Prevention of Terrorism Act 2005 came into force in March 2005. All of them have been 'non-derogating' control orders. Asset freezing has been imposed on one hundred and one individuals and sixty-one entities designated under the Terrorism Order. Out of these, twenty six individuals and nine entities are listed by the*

*European Union. The UK also explains that fifteen British residents are subject to sanctions derived from their designation as individuals associated to Al Qaida or the Taliban by the UN Al Qaida and Taliban Sanctions Committee, including asset freeze, travel ban and arms embargo".*

The UK fails to mention that it many of the UN Sanctions Committee cases, it was the state responsible for proposing the designation in the first place. See page 20-21, SEC (2009) 225, Synthesis of the replies from the Member States to the Questionnaire on criminal law, administrative law/procedural law and fundamental rights in the fight against terrorism: **http://ec.europa.eu/justice_home/doc_centre/terrorism/docs/sec_2009_225_en.pdf**

**"Europe opens covert talks with blacklisted Hamas"**

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**See Independent, 19 February 2009:**
**http://www.independent.co.uk/news/world/politics/europe-opens-covert-talks-with-8216blacklisted8217-hamas-1625948.html**

**Commissioner for Human Rights: "Arbitrary procedures for terrorist black-listing must now be changed"**

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Thomas Hammarberg, Council of Europe Commissioner for Human Rights, adds to the critique of the international proscription regime, stating that "the UN and the EU must themselves respect the human rights standards on which they are based": **http://www.coe.int/t/commissioner/Viewpoints/081201_en.asp**

Washington Post: "Terrorism Financing Blacklists At Risk"

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Useful article on UN terrorist lists published 2 November 2008. Includes updates on the Kadi and Nada cases:
**http://www.washingtonpost.com/wp-dyn/content/article/2008/11/01/AR2008110102214_pf.html**

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**Source: Statewatch terrorist list site:**
http://www.statewatch.org/terrorlists/terrorlists.html

**Please send information on "terrorist" proscription, designation and asset-freezing to**
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