

3 SEPTEMBER 2008



GRAND CHAMBER OF EUROPEAN COURT OF JUSTICE ORDERS ANNULLING OF EUROPEAN REGULATIONS FREEZING FUNDS OF SHEIKH YASSIN ABDULLAH KADI

The Grand Chamber of the European Court of Justice (ECJ) in Luxembourg has today delivered a landmark decision allowing Mr Kadi's appeal to the European Court of Justice.

Mr Kadi's appeal was against the 2005 decision of the Court of First Instance (CFI) upholding the freezing of Mr Kadi's assets, which were first frozen 7 years ago in the immediate aftermath of the 9/11 atrocities.

The 14 judges of the ECJ today ruled that the earlier judgment of the CFI must be **set aside** and the contested freezing regulation must be **annulled** insofar as it relates to Mr Kadi.

The judgement has historic and far-reaching significance, as it is the first time that the Courts of the European Communities have held that community legislation derived from a UN Security Council Resolution must comply with fundamental human rights.

In their decision the ECJ ruled that:

- The **Community Courts have jurisdiction** to review the lawfulness of the asset freezing regulation in question notwithstanding that it is intended to give effect to a resolution of the UN Security Council. The Court rejected the argument of the European Commission that the Court must not intervene in any way whatsoever. Accordingly the ECJ ruled it has jurisdiction to review whether the contested regulation complies with **fundamental human rights**.

P
R
E
S
S
R
E
L
E
A
S
E

- The provisions of the EU treaty **do not authorise any derogation** from the principles of liberty, democracy and respect for human rights and fundamental freedoms, which are enshrined as a foundation of the European Union.
- Mr Kadi's fundamental right to be heard and his right to effective judicial review were "**patently not respected**". The procedure before the UN Sanctions Committee enabling the listed person or entity to approach that committee and submit a request to be removed from the committee's list is "**still in essence diplomatic and intergovernmental, the persons or entities concerned having no real opportunity of asserting their rights**". Thus the Community courts "**must ensure the review, in principle the full review, of the lawfulness of all Community acts in the light of the fundamental rights forming an integral part of the general principles of Community law... including review of measures designed to give effect to resolutions of the [UN] Security Council**".
- In addition the freezing regulation constitutes an unjustified restriction of Mr Kadi's right to property and Mr Kadi's plea that his fundamental right to respect for property has been infringed is also "**therefore well founded**".
- These infringements of Mr Kadi's **fundamental rights to property, his right to a fair hearing, and his right to effective judicial review** have not been remedied.
- The Court has **set aside** the earlier judgment of the Court of First Instance (CFI) and **annulled** the contested freezing regulation insofar as it relates to Mr Kadi. The Council and the Commission have been ordered to pay Mr Kadi's legal costs both before the Court of First Instance and in the appeal before the ECJ.

The decision of the ECJ follows the **bold and forceful** opinion delivered by Advocate General Maduro on 16 January 2008 where he:

- (1) Rejected the proposition that judicial review by the courts would be inappropriate because of the "*political*" nature of the issues, considering that "*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*";

- (2) Considered that "when the risks to public security are believed to be extraordinarily high the pressure is particularly strong to take measures that disregard individual rights, especially in respect of individuals who have little or no access to the political process. Therefore in those instances the courts should fulfil their duty to uphold the rule of law with increased vigilance";
- (3) Stated, "still the Community institutions refuse to grant him [Mr Kadi] an opportunity to dispute the grounds for his continued inclusion on the list. They have, in effect, levelled extremely serious allegations against him and have, on that basis, subjected him to severe sanctions. Yet, they entirely reject the notion of an independent tribunal assessing the fairness of these allegations and the reasonableness of these sanctions. As a result of this denial, there is a real possibility that the sanctions taken against the appellant [Mr Kadi] within the Community may be disproportionate or even misdirected, and might nevertheless remain in place indefinitely. The Court has no way of knowing whether that is the case in reality, **but the mere existence of that possibility is anathema in a society that respects the rule of law**" [our emphasis].

Mr Kadi expressed his delight at these developments and added:

" I am an innocent man. Whenever I have been given a fair opportunity to state my case I have been able to show that the allegations against me are untrue. I reiterate what I have said from the outset: that in all my individual, business and charitable activities I have never supported, nor have I ever intended to support in any manner whatsoever, Osama bin Laden or al-Qaeda.

It is now nearly 7 years since, at the request of the US, and without any due process, I was first listed. I appeal to the UN Secretary General whose organisation listed me to end this continued gross injustice, which has caused me, my family and my businesses incalculable damage and suffering. "