

Press Release

Date: 1st December 2014

Carter-Ruck

Sheikh Yassin Abdullah Kadi removed from US sanctions after 13 years

Saudi businessman and philanthropist Sheikh Yassin Kadi has been removed by the U.S. Treasury Department from its "specially designated nationals" (SDN) list.

This development marks the conclusion of Mr Kadi's challenges to the restrictive measures and comes after a thirteen year battle which started with the imposition of sanctions upon Mr Kadi in October 2001.

Mr Kadi had already been de-listed in 2012 by the United Nations Security Council and the European Union.

He was the successful applicant in the well-known Kadi litigation of 2008 and 2013 in the European Court of Justice in Luxembourg. The ECJ's judgment of 2008 caused the UN to change its procedures, leading to the creation in 2009 of the Office of Ombudsperson to the UN Sanctions Committee. That judgment is the leading decision on the relationship between international and EU law, and on due process in EU sanctions regimes, and creates a unique precedent in the field of international, European and human rights law.

Mr Kadi has always denied that he has ever supported in any manner any terrorist group. He was informed that his assets had been frozen by a press release. He was given no reasons why his name was included either by the U.S. or the U.N. Two days later his assets were frozen in Europe by an EC regulation again without giving him any reasons.

Under this *Kafkaesque* system of so called "targeted sanctions" Mr Kadi was entitled to none of the usual legal protections, such as right of access to an independent court or tribunal or the right to know the evidence against him, which protect defendants who are the subject of criminal proceedings.

An English judge hearing Mr Kadi's challenges described the system of sanctions as "*draconian*". Echoing these words the General Court in Luxembourg stated:

"it is no exaggeration to say that persons designated in this way are effectively "prisoners" of the State; their freedom of movement is severely restricted without access to their funds and the effect of the freeze on both them and their families can be devastating".

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Mr Kadi expressed his profound relief 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. Criminal investigations against me after my listing by the UN, including in Switzerland, Turkey and Albania, were all abandoned or discontinued.

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 only due to the integrity and independence of the judges of the European Court of Justice, the highest court in Europe, and their insistence on the fundamental principles of the rule of law, that I at last had a hearing before the UN to end this gross injustice. That Court reaffirmed the long established principle that the European Union's courts are required to act in accordance with the rule of law and fundamental rights. Their far-reaching decision created the political and diplomatic pressure which led to the creation of the Office of Ombudsperson to the UN Sanctions Committee.

But regrettably the UN system still falls far short of basic standards: the UN Ombudsperson, Judge Kimberly Prost, has no power to make binding judgments, only recommendations, and her Comprehensive Reports to the UN Sanctions Committee are not made available to the petitioner.

In the future I intend to devote substantial resources to the worldwide establishment of the principles of the rule of law so that these protections may be enjoyed by everyone and not only those who have the means of access to the courts of western democracies.

I have endured thirteen years of what can only be described as a financial Guantanamo, which has caused me, my family and my businesses incalculable damage, anxiety and suffering. My only consolation is that I helped establish such an important legal precedent in the highest court in Europe, which represents the biggest block of western democracies. I hope this will continue to be of benefit to other sanctioned persons.

Undoubtedly, the struggle against terrorism will never be won if basic human rights are ignored, if people are denied, and for so long, the opportunity to know the allegations against them and demonstrate their innocence before an independent tribunal."

Carter-Ruck's International Law department, led by partner Guy Martin, with consultant Maitre Saad Djebbar, has been coordinating Mr Kadi's challenges to sanctions on a worldwide basis ever since sanctions were first imposed on him in October 2001.

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Background note for editors:

Mr Kadi was the subject of what are known as “targeted sanctions”. This type of sanction first arose in the late 1990s after criticisms were levelled at the UN’s country based sanctions, such as those directed to Iraq, which were found to have an adverse effect on the poorest and most vulnerable in society.

Targeted sanctions are directed to specific named individuals and entities alleged to be part of, or associated with, the group or regime in question. They are restrictive measures which result in the individual or entity immediately, and without any prior notice, having their assets frozen and/ or their freedom to travel curtailed. Targeted sanctions are draconian: in the words of former UN Secretary General Kofi Annan:

“The international community should be under no illusion: these humanitarian and human rights policy goals cannot easily be reconciled with those of a sanctions regime. It cannot be too strongly emphasized that sanctions are a tool of enforcement and, like other methods of enforcement, they will do harm. This should be borne in mind when the decision to impose them is taken, and when the results are subsequently evaluated.”

Targeted sanctions are in theory supposed to be temporary administrative measures and not of a criminal or punitive nature; but in practice far from being temporary they can last for many years. And they can have the same practical impact on the victim as punitive measures without affording them appropriate levels of due process and judicial protection as are given to the subjects of criminal proceedings.

Thus a sanctioned person can find themselves in a Kafkaesque situation whereby suddenly and without any prior notification they are subjected to highly draconian measures yet they are given little or no information about the grounds for their listing or the evidence said to justify such action.

In 2001 Mr Kadi was nominated by the US for inclusion in the UN’s Al Qaeda sanctions regime. Mr Kadi has always denied that he has ever supported in any manner and whether directly or indirectly Al Qaeda or any terrorist group. Yet the system of targeted sanctions against him afforded none of the usual protections, such as right of access to an independent court or tribunal or the right to know the evidence against him, which apply to those who are the subject of criminal proceedings.

As a result of Mr Kadi’s successful appeal in 2008 to the ECJ in Luxembourg, pressure was brought to bear on the UN to improve its processes to allow individuals the subject of sanctions to petition the UN directly for delisting. In 2009 the Office of the Ombudsperson was established by the Security Council to provide for the independent review of delisting requests relating to the Al-Qaeda Sanction List. The UN resolution establishing the Office of Ombudsperson states that the Ombudsperson must be an individual of high moral character, with high qualifications and experience in the relevant field and must be independent and impartial.

In June 2010 Judge Kimberly Prost, a judge of the International Criminal Court for the former Yugoslavia, was appointed as Ombudsperson. Yet while the creation of the Office of Ombudsperson is a significant improvement in the UN’s processes, it still falls far short of meeting basic accepted standards of due process because the Ombudsperson has no power to make binding judgments, only recommendations, and her Comprehensive Reports to the Committee are not made available to the petitioner.