

Cases C-402 and 415/05 Kadi and Al Barakaat International Foundation v Council and Commission [2008] ECR I-6351

Facts: A resolution was adopted which aimed to implement a resolution from the United Nations Security Council. The resolution set out a list of alleged terrorists whose assets were subject to freezing injunctions. Terrorists identified had no recourse to judicial review via the United Nations, and were not permitted to reasons for their inclusion on the list. The plaintiff sought to challenge the freezing order and recover his assets.

Held: The freezing orders were unlawful and struck down as they breached the right to defence and the right to property. Fundamental rights were considered to form an integral part of the general principles of law whose observance the Court ensures. For that purpose, the Court would draw inspiration from the constitutional traditions common to the Member States and from the guidelines supplied by international instruments for the protection of human rights on which the Member States collaborated or to which they were signatories. In that regard, the European Convention for the Protection of Human Rights and Fundamental Freedoms were deemed to hold special significance. Respect for human rights was therefore determined to be a condition of the lawfulness of Community acts, and measures incompatible with respect for human rights were not acceptable in the Community.

However, obligations imposed by an international agreement could not have the effect of prejudicing the constitutional principles of the Treaty. The applicant had never been given reasons for his inclusion on the list, and so could not judicially review the decision. Moreover, as there was no procedural guarantee for the violation of his right to property, it amounted to a disproportionate violation. Therefore, the European institutions cannot escape their fundamental rights obligations even where a finding of a breach might put the EU in breach of international law.

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