The *Kadi*-case or the Legal Protection of Persons Included in the European Union “Anti-terror List”*

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1. Introduction

Following the September Eleven Terror attacks, the United Nations immediately reacted with a resolution in which the attacks were condemned and preventive as well as repressive measures were called upon. However, the question whether or not the United Nations had already preceded the actual objectives in the war against terrorism with the so-called “Anti-terror list” still remains. For some time now, the Security Council of the United Nations has been adding specific sanctions, on the basis of Chapter VII of the Charter of the United Nations, against certain individuals or organizations. The principal objective of these financial sanctions is

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* As well as an annotation on the “Kadi-Judgement” of the European Court of Justice (ECJ). Joined cases C-402/05 P and C-415/05 P of 3 September 2008.

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2) *Ohler*, EuZW 2008, 630 takes these measures as a “main instrument” of the Security Council by fighting against international Terrorism.

of preventive nature.\textsuperscript{4} The \textit{Al Quaida and Taliban Sanctions Committee}, an organ of the Security Council, has been in charge of supervision and administration of the “Anti-terror list”.\textsuperscript{5} This committee decides by consensus\textsuperscript{6} whose name will appear on the list.\textsuperscript{7} The Information on these persons or entities is provided by the Member States of the United Nations and regional organizations.\textsuperscript{8} A questionable aspect of this matter is that it does not necessarily need a judicial charge or conviction to be named on the list.\textsuperscript{9} Although the possibility of being “de-listed” exists,\textsuperscript{10} this request may only be made by the state of origin of the person concerned.\textsuperscript{11} If the person himself wishes to file a request to have his name removed from the list, his application can only be issued by a focal point.\textsuperscript{12} This procedure only activates a diplomatic process but does not provide a legally protected position of the individual in the “De-listing” process.\textsuperscript{13} European courts have been dealing with the question of the lawfulness of these proceedings in the past years.\textsuperscript{14}

\textsuperscript{4) The Al-Quaida and Taliban Sanctions Committee, Guideline of the Committee for the conduct of its work, amended on 12 February 2007, para. 6 (c) page 3.}
\textsuperscript{5) The Al-Quaida and Taliban Sanctions Committee (sanctions committee). The sanctions committee is a subordinate organ of the United Nations. The Al-Quaida and Taliban Sanctions Committee, Guideline of the Committee for the conduct of its work, para. 1.}
\textsuperscript{6) The Al-Quaida and Taliban Sanctions Committee, Guideline of the Committee for the conduct of its work, para. 4.}
\textsuperscript{7) The Al-Quaida and Taliban Sanctions Committee, Guideline of the Committee for the conduct of its work, para. 6, 7.}
\textsuperscript{8) The Al-Quaida and Taliban Sanctions Committee, Guideline of the Committee for the conduct of its work, para. 6 (a), 7.}
\textsuperscript{9) The Al-Quaida and Taliban Sanctions Committee, Guideline of the Committee for the conduct of its work, para. 6 (c), page 3 “A criminal charge or conviction is not necessary for inclusion on the Consolidated List as the sanctions are intended to be preventive in nature.”}
\textsuperscript{10) The Al-Quaida and Taliban Sanctions Committee, Guideline of the Committee for the conduct of its work, para. 8.}
\textsuperscript{11) The Al-Quaida and Taliban Sanctions Committee, Guideline of the Committee for the conduct of its work, para. 8 (e).}
\textsuperscript{12) The Al-Quaida and Taliban Sanctions Committee, Guideline of the Committee for the conduct of its work, para. 8 (d).}
\textsuperscript{14) Judgement of the European Court of First Instance (ECFI), 21 September 2005, Cases T-306/01, (“Yusuf”) and T-315/01, (“Kadi”).}