

СЪД НА ЕВРОПЕЙСКИТЕ ОБЩНОСТИ  
TRIBUNAL DE JUSTICIA DE LAS COMUNIDADES EUROPEAS  
SOUDNÍ DVŮR EVROPSKÝCH SPOLEČENSTVÍ  
DE EUROPÆISKE FÆLLESSKABERS DOMSTOL  
GERICHTSHOF DER EUROPÄISCHEN GEMEINSCHAFTEN  
EUROOPA ÜHENDUSTE KOHUS  
ΔΙΚΑΣΤΗΡΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ  
COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES  
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES  
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH  
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE  
EIROPAS KOPIENU TIESA



EUROPOS BENDRIJŲ TEISINGUMO TEISMAS  
AZ EURÓPAI KÖZÖSSÉGEK BÍRÓSÁGA  
IL-QORTI TAL-GUSTIZZJA TAL-KOMUNITAJIET EWROPEJ  
HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN  
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH  
TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS  
CURTEA DE JUSTIȚIE A COMUNITĂȚILOR EUROPENE  
SÚDNY DVOR EURÓPSKÝCH SPOLOČENSTEV  
SODIŠČE EVROPSKIH SKUPNOSTI  
EUROOPAN YHTEISÖJEN TUOMIOISTUIN  
EUROPEISKA GEMENSKAPERNAS DOMSTOL

Press and Information

**PRESS RELEASE No 16/07**

27 February 2007

Judgment of the Court of Justice in Case C-354/04 P and 355/04 P

*Gestoras Pro-Amnistía, Juan Mari Olano Olano and Julen Zenarain Enarrasti v Council of the European Union*  
*Segi, Aritz Zubimendi Izaga and Aritza Galarraga v Council of the European Union*

**THE COURT OF JUSTICE REJECTS THE APPEALS BROUGHT BY GESTORAS PRO-AMNISTÍA AND SEGI CLAIMING COMPENSATION FOLLOWING THEIR INCLUSION ON THE LIST OF PERSONS, GROUPS OR ENTITIES INVOLVED IN ACTS OF TERRORISM**

*The appellants are not deprived of all effective judicial protection and the orders of the Court of First Instance do not prejudice their right to such protection*

In 2001 the Council of the European Union adopted a common position <sup>1</sup> on the application of specific measures to combat terrorism. A list of persons, groups or entities involved in terrorist acts appears in the Annex to that common position. It was drawn up on the basis of precise information supplied by the judicial or police authorities of the Member States.

On 7 June 2004 the Court of First Instance rejected the actions brought by Gestoras Pro-Amnistía, Juan Mari Olano Olano and Julen Zenarain Enarrasti and by Segi, Aritz Zubimendi Izaga and Aritza Galarraga respectively, seeking damages for the harm allegedly suffered as a result of the inclusion of Gestoras Pro-Amnistía and Segi in the list of persons, groups or entities involved in terrorist acts. The appellants have brought two appeals before the Court of Justice seeking to have those orders set aside. They maintain, in particular, that they have no means of challenging the inclusion of Gestoras Pro-Amnistía and Segi in that list and that the orders of the Court of First Instance prejudice their right to effective judicial protection.

By today's judgment the Court of Justice upholds the orders of the Court of First Instance and dismisses the appeals.

First of all, the Court of Justice points out that, in accordance with the EU Treaty, the Union is founded on the principle of the rule of law and it respects fundamental rights as general principles of Community law.

---

<sup>1</sup> Council Common Position 2001/340/CFSP of 27 December 2001 (OJ 2001 L 344, p. 93). The list was updated by Council Common Positions 2002/340/CFSP of 2 May 2002 and 2002/462/CFSP of 17 June 2002; Gestoras Pro-Amnistía and Segi continued to be included in that list.

Next, it observes that in the sphere of police and judicial cooperation in criminal matters (the third pillar of the EU Treaty) the Council may adopt common positions. A common position requires the compliance of the Member States by virtue of the principle of the duty to cooperate in good faith, which means in particular that the Member States are to take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations under European Union law. The EU Treaty does not, however, enable national courts to refer questions to the Court for a preliminary ruling on a common position, for common positions are not supposed to produce of themselves legal effects in relation to third parties. In contrast, and still in the context of the third pillar, the Council may adopt decisions and framework decisions intended to produce legal effects in relation to third parties. Those may be the subject of a reference for a preliminary ruling.

Given that the procedure enabling the Court to give preliminary rulings is designed to guarantee observance of the law in the interpretation and application of the Treaty, the right to make a reference for a preliminary ruling in the context of the third pillar must therefore exist in respect of all measures adopted by the Council, **whatever their nature or form**, which are intended to have legal effects in relation to third parties.

**Therefore, a national court hearing a dispute which indirectly raises the issue of the validity or interpretation of a common position adopted in the context of the third pillar, and which has serious doubt whether that common position is really intended to produce legal effects in relation to third parties, may ask the Court to give a preliminary ruling.** It would then fall to the Court to find, where appropriate, that the common position is intended to produce legal effects in relation to third parties, to accord it its true classification and to give a preliminary ruling.

Consequently, the Court concludes that the appellants are not deprived of effective judicial protection and that the orders of the Court of First Instance do not prejudice their right to such protection.

*Unofficial document for media use, not binding on the Court of Justice.*

*Languages available: ES, DE, EN, FR*

*The full text of the judgment may be found on the Court's internet site*

*<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-354/04>*

*<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-355/04>*

*It can usually be consulted after midday (CET) on the day judgment is delivered.*

*For further information, please contact Christopher Fretwell*

*Tel: (00352) 4303 3355 Fax: (00352) 4303 2731*