



LUXEMBOURG

ПЪРВОИНСТАНЦИОНЕН СЪД НА ЕВРОПЕЙСКИТЕ ОБЩНОСТИ
TRIBUNAL DE PRIMERA INSTANCIA DE LAS COMUNIDADES EUROPEAS
SOUĐ PRVNÍHO STUPNĚ EVROPSKÝCH SPOLEČENSTVÍ
DE EUROPÆISKE FÆLLESSKABERS RET I FØRSTE INSTANS
GERICHT ERSTER INSTANZ DER EUROPÄISCHEN GEMEINSCHAFTEN
EUROOPA ÜHENDUSTE ESIMESE ASTME KOHUS
ΠΡΩΤΟΔΙΚΕΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ
COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES
TRIBUNAL DE PREMIÈRE INSTANCE DES COMMUNAUTÉS EUROPÉENNES
CÚIRT CHÉADCHÉIME NA GCÓMHPHOBAL EORPACH
TRIBUNALE DI PRIMO GRADO DELLE COMUNITÀ EUROPEE
EIROPAS KOPIENU PIRMĀS INSTANCES TIESA

EUROPOS BENDRIŲ PIRMOSIOS INSTANCIJOS TEISMAS
Az EURÓPAI KÖZÖSSÉGEK ELSŐFOKÚ BÍRÓSÁGA
IL-QORTI TAL-PRIMISTANZA TAL-KOMUNITAJIET EWROPEJ
GERECHT VAN EERSTE AANLEG VAN DE EUROPESE GEMEENSCHAPPEN
SĄD PIERWSZEJ INSTANCIJ WSPÓLNOT EUROPEJSKICH
TRIBUNAL DE PRIMEIRA INSTÂNCIA DAS COMUNIDADES EUROPEIAS
TRIBUNALUL DE PRIMĂ INSTANȚĂ AL COMUNITĂȚILOR EUROPENE
SÚD PRVÉHO STUPŇA EURÓPSKYCH SPOLOČENSTEV
SODIŠČE PRVE STOPNJE EVROPSKIH SKUPNOSTI
EUROOPAN YHTEISÖJEN ENSIMMÄISEN OIKEUSASTEEN TUOMIOISTUIN
EUROPEISKA GEMENSKAPERNAS FÖRSTAINSTANSRÄTT

Press and Information

PRESS RELEASE No° 67/09

2 September 2009

Judgment of the Court of First Instance in Joined Cases T-37/07 and T-323/07

Mohamed El Morabit v Council

**THE COURT OF FIRST INSTANCE UPHOLDS THE COUNCIL'S DECISIONS
FREEZING THE FUNDS OF MR EL MORABIT**

Those decisions do not breach the principle of the presumption of innocence and the Council is not obliged to wait for a final conviction before freezing funds

Mohamed El Morabit, a Moroccan national, was convicted on 10 March 2006 by a court in Rotterdam of participating in a criminal organisation with terrorist aims (the so-called 'Hofstad Group'). He immediately appealed to the Court of Appeal of The Hague.

In December 2006, the Council added the name of Mr El Morabit to the Community list of persons and entities whose funds must be frozen, established by a common position¹ and a Community Regulation². He was informed of the reasons for his inclusion on the list by letter of 3 January 2007. By two Council decisions of 2007, his name was retained on the list.

By judgment of 23 January 2008, the Court of Appeal of The Hague acquitted Mr El Morabit. The public prosecutor lodged an appeal on a point of law against that judgment. Subsequently, by decision of 29 April 2008, the Council removed Mr El Morabit from the list relating to the freezing of funds.

In the meantime, Mr El Morabit brought two actions before the Court of First Instance. He submitted that by including him on the list without awaiting the decision on appeal, the Council breached his fundamental rights and, in particular, the presumption of innocence.

The Court of First Instance recalls, first, that respect for the presumption of innocence requires that any person accused of a crime is presumed innocent until his guilt has been legally established. However, that principle does not preclude, under certain conditions, the adoption of precautionary measures which, in principle, do not constitute a sentence or penalty and in no way pre-judge the innocence or guilt of the person concerned.

¹ Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism (OJ 2001 L 344, p. 93).

² Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 344, p. 70).

The Court finds that those conditions are met in the present case. It notes that the freezing of funds is provided for by Community legislation, that it was adopted by a competent authority (the Council), and that it has a limited temporal scope (since the list is revised at regular intervals). Furthermore, those restrictive measures do not involve a confiscation of assets which are the proceeds of crime, but rather an interim freezing of funds. Those measures do not therefore constitute a sentence or penalty; nor do they entail any accusation of that nature.

In those circumstances, the Court finds that there was no breach of the principle of the presumption of innocence.

Next, the Court finds that the Council is not required to wait for a final conviction before freezing funds. Given that the initiation of an enquiry into the facilitating of a terrorist act, based on sound and credible evidence, is sufficient to justify inclusion on the list – pursuant to the Community legislation in force – a conviction by a court of a Member State, which establishes a link with terrorist activities, can on its own justify inclusion on that list.

In addition, the Court considers that if the measures to freeze funds could be applied only to persons, groups and entities which are the subject of a final conviction, the maintenance of international peace and security – an objective of fundamental importance for the international community – might be jeopardised. The systematic requirement of a final decision would be liable to seriously and irreversibly undermine the effectiveness of the restrictive measures since, in the intervening period, persons likely to be included on the list could take steps to try and prevent the possibility of measures freezing funds being applied to them again.

In that context, the Court recalls that the Council is required, following the outcome of the appeal proceedings, to verify whether grounds exist justifying the maintenance of the freeze on the funds of the person concerned. In the present case, following the acquittal of Mr El Morabit, the Council drew the natural conclusion from that acquittal by removing him from the list, despite the fact that the public prosecutor had filed an appeal on a point of law. Thus, the Council adopted a consistent interpretation of the concept of a conviction.

Finally, the Court finds that the importance of maintaining peace and international security is such as to justify the negative financial consequences suffered by Mr El Morabit. Therefore, a decision to freeze funds does not breach the principle of proportionality.

Accordingly, the Court dismissed the action and upheld the Council's decisions.

REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.

Unofficial document for media use, not binding on the Court of First Instance.

Languages available: ES DE EN FR NL

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=T-37/07>

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