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Press and Information

PRESS RELEASE No 29/08

6 May 2008

Judgment of the Court of Justice in Case C-133/06

Parliament v Council

**THE COURT OF JUSTICE ANNULS CERTAIN PROVISIONS OF THE DIRECTIVE
ON PROCEDURES FOR GRANTING AND WITHDRAWING REFUGEE STATUS**

By making the future adoption of common lists of safe countries subject to mere consultation of the Parliament instead of the co-decision procedure, the Council exceeded the powers conferred on it by the Treaty in relation to asylum.

On 1 December 2005, the Council adopted a directive¹ on minimum standards on procedures in Member States for granting and withdrawing refugee status. The directive states that the Council, acting by a qualified majority, after consultation of the European Parliament, is to adopt a minimum common list of third countries which are to be regarded by Member States as safe countries of origin, and a common list of European safe third countries. The amendment of those two lists is also subject to the Council acting by a qualified majority after consultation of the Parliament.

The Parliament brought an action for annulment in respect of the provisions of the directive which provide for the Parliament merely to be consulted. It takes the view that those provisions should have provided for the lists to be adopted by the co-decision procedure, under which the Parliament acts as co-legislator. According to the Parliament, the Council unlawfully made use, in an act of secondary legislation (the directive), of legal bases enabling it to adopt those lists, thereby ‘reserving to itself a right to legislate’.

The Council, conversely, submits that the use of secondary legal bases is an established legislative technique and that nothing in the EC Treaty precludes it. The Council refers also to the sensitivity of this area, which requires quick and effective reactions to changes in the situation of the third countries in question. Finally, it takes the view that the conditions laid down for transition to the co-decision procedure have not been fulfilled.

In essence, the question before the Court is whether the Council could lawfully provide in the directive for the adoption and amendment of the lists of safe countries by a qualified majority on a proposal from the Commission and after consulting the Parliament.

¹ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13).

The Court observes that each institution is to act within the limits of the powers conferred upon it by the Treaty. The procedure for the adoption of the lists introduced by the directive differs from that which is laid down in the Treaty. However, the rules regarding the manner in which the Community institutions arrive at their decisions are laid down in the Treaty and are not at the disposal of the Member States or of the institutions themselves. The Court goes on to say that to acknowledge that an institution can establish secondary legal bases is tantamount to according that institution a legislative power which exceeds that provided for by the Treaty.

Therefore, the Council exceeded the powers conferred on it by the Treaty by including secondary legal bases in the directive. In those circumstances, the Court annuls the contested provisions.

The Court adds that, as regards the future adoption of the lists of safe countries and their amendment, the Council will have to comply with the procedures established by the Treaty. The Court holds that the co-decision procedure is applicable both to the adoption and amendment of the lists of safe countries through legislation and to any decision to apply the third indent of Article 202 EC concerning implementing powers.

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

Languages available: BG ES CS DE EL EN FR HU IT NL PL PT RO SK SL

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-133/06>

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

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