

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 43/07

26 June 2007

Judgment of the Court of Justice in Case C-305/05

Ordre des barreaux francophones et germanophone, Ordre français des avocats du barreau de Bruxelles, Ordre des barreaux flamands, Ordre néerlandais des avocats du barreau de Bruxelles v Conseil des Ministres

RIGHT TO A FAIR TRIAL NOT INFRINGED BY THE IMPOSITION ON LAWYERS OF THE OBLIGATIONS TO INFORM AND COOPERATE WITH THE AUTHORITIES RESPONSIBLE FOR COMBATING MONEY LAUNDERING WHEN PARTICIPATING IN CERTAIN FINANCIAL TRANSACTIONS WITH NO LINK TO JUDICIAL PROCEEDINGS

Such obligations are justified by the need to combat money laundering effectively

The directive on prevention of the use of the financial system for the purpose of money laundering is one of the main international instruments in the fight against money laundering¹. In 2001, it was updated in the light of the findings of the Commission and the wishes expressed by the European Parliament and the Member States². From now on, notaries and independent legal professionals, as defined by the Member States, are subject to the provisions of the directive when they participate in financial or real estate transactions or when they act on behalf of and for companies in any financial or real estate transaction.

By two applications made on 22 July 2004 by a number of bar association societies, the Cour d'arbitrage (Constitutional Court, Belgium) was asked to annul certain articles of the Belgian legislation transposing that directive.

The applicants maintain, in particular, that the extension to lawyers of the obligations to inform the competent authorities when they come across facts which they know or suspect to be linked to money laundering and to transmit to those authorities additional information which those authorities consider useful, unjustifiably impinges on professional secrecy and the independence of lawyers, principles which are a constituent element of the fundamental right of every individual to a fair trial and to the respect of his rights of defence.

Against that background, the Cour d'arbitrage asked the Court of Justice of the European Communities whether the imposition on lawyers of the obligations of information and

¹ Council Directive 91/308/EEC of 10 June 1991 (OJ 1991 L 166, p. 77)

² Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 (OJ 2001 L 344, p. 76)

cooperation with the authorities responsible for combating money laundering infringes the right to a fair trial³.

The Court observes that the obligations of information and cooperation **apply to lawyers only in so far as they advise their client in the preparation or execution of certain transactions essentially of a financial nature or concerning real estate**, or when they act for and on behalf of their client in any financial or real estate transaction. As a rule, those **activities, by their very nature, take place in a context which has no link to judicial proceedings**, and consequently, fall outside the scope of the right to a fair trial.

As soon as a lawyer is called upon for assistance in defending a client or in representing him before the courts, or for advice as to the manner of instituting or avoiding judicial proceedings, that lawyer is exempt from the obligations of information and cooperation, regardless of whether the information has been received or obtained before, during or after the proceedings. **An exemption of that kind safeguards the right of the client to a fair trial.**

On the other hand, the requirements relating to the right to a fair trial do not preclude the obligations of information and cooperation laid down in the directive from being imposed on lawyers acting specifically in connection with those financial and real estate transactions with no link to judicial proceedings, where those obligations are justified by the need to combat money laundering effectively, in view of its evident influence on the rise of organised crime, which itself is a particular threat to society in the Member States.

The Court therefore holds that the obligations of information and of cooperation with the authorities responsible for combating money laundering, imposed on lawyers where they participate in certain financial transactions with no link to judicial proceedings, do not infringe the right to a fair trial.

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

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

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-305/05>

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

³ As guaranteed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Liberties (ECHR) and by Article 6(2) EU.