

Case C-550/09

Criminal proceedings

against

E and F

(Reference for a preliminary
ruling from the Oberlandesgericht Düsseldorf)

(Common foreign and security policy — Specific restrictive measures directed against certain persons and entities with a view to combating terrorism — Common Position 2001/931/CFSP — Regulation (EC) No 2580/2001 — Articles 2 and 3 — Inclusion of an organisation on the list of persons, groups and entities implicated in acts of terrorism — Transfer to an organisation, by members of that organisation, of funds originating from the collection of donations and the sale of publications)

View of Advocate General Mengozzi delivered on 17 May 2010 I - 6216

Judgment of the Court (Grand Chamber), 29 June 2010 I - 6249

Summary of the Judgment

1. *Acts of the institutions — Statement of reasons — Obligation — Scope — Specific restrictive measures directed against certain persons and entities with a view to combating terrorism — Decision to include an organisation on the list of persons and entities*
(Art. 296 TFEU; Council Common Position 2001/931, Art. 1(4); Council Regulation No 2580/2001, Art. 2(3))

2. *European Union — Common foreign and security policy — Specific restrictive measures directed against certain persons and entities with a view to combating terrorism — Prohibition of making available funds, financial assets and economic resources to those persons or entities — Scope*

(Council Common Position 2001/931, 5th recital in the preamble, and Art. 1(3); Council Regulation No 2580/2001, Art. 2(1)(b) and 3)

1. The inclusion of an organisation in the list provided for in Article 2(3) of Regulation No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, and its maintenance in that list, without providing, in the respective decisions, a statement of reasons relating to the legal conditions for the application of that regulation to the organisation in question, in particular, those relating to the existence of a decision taken by a competent authority within the meaning of Article 1(4) of Common Position 2001/931 on the application of specific measures to combat terrorism, or an explanation of the actual and specific reasons for which the Council considered that its inclusion in the list was justified, or remained so, is illegal and, accordingly, can form no part of the basis for a criminal conviction linked to an alleged infringement of that regulation.

Even if it were to be supposed that, by adopting Decision 2007/445, implementing Article 2(3) of Regulation No 2580/2001 and repealing the earlier decisions, the Council intended to remedy the lack of a statement of reasons for the listing in question during the period before the date on which that decision came into effect, viz., 29 June 2007, that decision may not, in any circumstances, be relied upon, in conjunction with national legislation, as a basis for a criminal conviction in respect of facts relating to that period, without infringing the principle of the non-retroactivity of provisions that may form the basis for a criminal conviction.

(see paras 55, 59, 62, operative part 1)

2. Article 2(1)(b) of Regulation No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism must be interpreted as covering the transfer to a legal person, group or entity on the list provided for in Article 2(3) of that regulation, by a member of that legal person, group or entity, of funds and other financial assets or economic resources collected or obtained from third persons.

encompassing all the acts necessary if a person, a group or an entity on the list provided for in Article 2(3) of Regulation No 2580/2001 is effectively to obtain full power of disposal in respect of the funds, other financial assets and economic resources concerned. That meaning is independent of the existence or absence of a relationship between the perpetrator of the act of 'making available' and the beneficiary.

The expression 'made available', in Article 2(1)(b), has a wide meaning,

(see paras 67, 68, 80, operative part 2)