

COURT OF FIRST INSTANCE

Action brought on 12 March 2007 — Ahmed Hamdi v Council of the European Union

(Case T-75/07)

(2007/C 117/35)

Language of the case: Dutch

Parties

Applicant: Ahmed Hamdi (Amsterdam, Netherlands) (represented by: M.J.G. Uiterwaal, lawyer)

Defendant: Council of the European Union

Form of order sought

- The Common Position 2002/402/CSFP (OJ 2002 L 344, p. 93) is, in the case of the applicant, wrongly used as the basis for Regulation 2001/2580/EC (OJ 2001 L 344, p. 70) and so the regulation is not binding on the applicant;
- in any event, that regulation should not be applied as against the applicant;
- in any event, Decision 2006/1008/EC of 21 December 2006 (OJ 2006 L 379, p. 123) should be annulled;
- the Council should be ordered to pay the costs.

Pleas in law and main arguments

The applicant was sentenced to a period of imprisonment after the national court found that he had been proved to belong to a terrorist organisation, the Hofstadgroep. The applicant has appealed against that judgment.

In Decision 2006/1008/EC ⁽¹⁾ the Council added the applicant to the list of persons and entities to which Regulation (EC) No 2580/2001 ⁽²⁾ applies.

In support of his action the applicant submits that both the contested decision and the contested regulation were adopted in breach of essential procedural requirements and in particular with an inadequate statement of reasons. In the regulation, the Council has failed to explain why it was necessary in the framework of the common market. In the decision, there is no statement of the reasons why the Council considered that it had to apply Regulation No 2580/2001 to the applicant.

The applicant also submits that the contested decision lacks the necessary legal basis. Regulation No 2580/2001 conflicts with the EC Treaty in so far as the regulation is applied to the applicant. The contested regulation is not the necessary implementation of obligations flowing from a resolution of the UN Security

Council. There is no link between the applicant and third countries or other aspects of the Community foreign and security policy and thus the second pillar is not applicable to the applicant's case.

Article 308 EC is not a legal basis because there is no link with the implementation of the common market. Moreover, the contested regulation does not give effect to any Union objective and thus the combination of Articles 60, 301 and 308 is not an adequate legal basis.

Finally, the applicant submits that the contested decision infringes his fundamental rights, in particular the right to the peaceful enjoyment of property and his right to undisturbed private life, as follow from the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

⁽¹⁾ Council Decision 2006/1008/EC of 21 December 2006 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2006 L 379, p. 123).

⁽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 L 344, p. 70).

Action brought on 12 March 2007 — El Fatmi v Council of the European Union

(Case T-76/07)

(2007/C 117/36)

Language of the case: Dutch

Parties

Applicant: Nouriddin El Fatmi (Amsterdam, Netherlands) (represented by: M.J.G. Uiterwaal, lawyer)

Defendant: Council of the European Union

Form of order sought

- Common Position 2002/402/CSFP (OJ 2002 L 344, p. 93) is, in the case of the applicant, wrongly used as the basis for Regulation 2001/2580/EC (OJ 2001 L 344, p. 70) and so the regulation is not binding on the applicant;