

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;

- 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 pleas and main arguments raised by the applicant are the same as in Case T-75/07 *Hamdi v Council*, apart from the last plea, which is not raised by the applicant in the present case.

Action brought on 14 March 2007 — KG Holding (in liquidation) v Commission

(Case T-81/07)

(2007/C 117/37)

Language of the case: Dutch

Parties

Applicant: Jan Rudolf Maas, acting in his capacity as receiver in the liquidation proceedings relating to K.G. Holding N.V. (Rotterdam, Netherlands) (represented by: G. van der Wal and T. Boesman, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- annul the Commission's decision of 19 July 2006 in Case C 30/2005;
- order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant is challenging Commission Decision 2006/939/EC of 19 July 2006 on the aid measure notified by the Netherlands for KG Holding NV (⁽¹⁾).

The aid measure mentioned related to restructuring aid which the Netherlands wished to grant to KG Holding NV by converting a previously approved rescue loan and the interest due thereon into equity capital. In the contested decision, the Commission declares the aid measure, in the form of restructuring aid, to be incompatible with the common market.

The Commission also ruled that the Netherlands had to recover from KG Holding NV and its subsidiary Kliq BV that portion of the aid which KG Holding NV had transferred to Kliq BV as a rescue loan and which had been converted into equity capital, and that the Netherlands were required to register with the receiver their claim against KG Holding NV and/or Kliq Reïntegratie as a creditor in the liquidation proceedings.

In support of his application, the applicant submits, first, that the Commission committed errors of appraisal, as a result of which the contested decision is inadequately reasoned and at variance with Article 87(1) EC. The applicant claims in particular that the Commission erred in deciding that the Netherlands had to register with the receiver their claim in the amount of EUR 35.75 million against KG Holding and Kliq Reïntegratie as a creditor in the liquidation proceedings. It is, the applicant contends, unclear whether the Commission concluded in the contested decision, in regard to KG Holding, that there was unlawful aid in the amount of EUR 35.75 million that had to be claimed back by the Netherlands or whether what was in issue was rescue aid which the Commission approved in the contested decision on the basis of point 23(d) of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty (⁽²⁾). Further, it is alleged that the Commission, in its decision of 16 December 2003 (⁽³⁾), had agreed that this amount was to be used to finance the redundancies of staff members and the redemption of the redundant contracts of Kliq Reïntegratie, and that Kliq Reïntegratie was thereafter to be placed in liquidation.

The applicant submits, second, that the Commission erred in its claim regarding the full payment of KG Holding's shares in Kliq BV through set-off of the obligation to make full payment against KG Holding's claim against Kliq BV under the loan agreement. That, it is claimed, did not form any part of the decision of 5 August 2005 (⁽⁴⁾) which initiated the proceedings. The Commission, it is alleged, misused its powers and acted in a manner contrary to the rights of the defence and the principle of *audi alteram partem*.

Third, it is alleged that the Commission wrongly failed to establish that the alleged aid might be liable to have an adverse effect on competition and trade between Member States; at any rate, the Commission's findings in this regard are not adequately reasoned.

Fourth, the Commission is alleged to have erroneously determined that the alleged aid of EUR 9.25 million must be recovered by the Netherlands from KG Holding and Kliq BV. It is submitted that the Commission also erred in finding that the alleged aid of EUR 35.75 million had to be recovered from KG Holding and/or Kliq Reïntegratie by registering those claims in the liquidation proceedings. By reason of the liquidation of KG Holding, Kliq Reïntegratie and Kliq BV, recovery of the amounts of alleged aid will, it is argued, be permanently impossible and has in any event become pointless in the sense that recovery through registration in the liquidation of those companies is unnecessary and, indeed, has become entirely superfluous for the purpose of putting an end to the distortion of competition.

Fifth, it is argued that the Commission erred in its statements and findings in law with regard to a current-account credit facility of EUR 17 million already provided by the Netherlands to KG Holding when the latter was established and in accordance with the rules on State aid and which did not form part of the measure under examination in the contested decision.