

**Order of the General Court of 27 September 2010 —
Hidalgo v OHIM — Bodegas Hidalgo — La Gitana
(HIDALGO)**

(Case T-365/08) ⁽¹⁾

**(Community trade mark — Annulment of registration of the
national mark which was the subject-matter of the opposition
— No need to adjudicate)**

(2010/C 317/58)

Language of the case: Spanish

Parties

Applicant: Emilio Hidalgo SA (Jerez de la Frontera, Spain) (represented by: M. Esteve Sanz, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. Crespo Carrillo, Agent)

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Bodegas Hidalgo — La Gitana SA (Sanlúcar de Barrameda, Spain) (represented by: S. Rivero Galán and J.M. Sanjuán de Coca, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 11 June 2008 (Case R 1329/2007-4) relating to opposition proceedings between Emilio Hidalgo SA and Bodegas Hidalgo — La Gitana SA.

Operative part of the order

1. *There is no longer any need to adjudicate on the action.*
2. *Each of the parties is to bear its own costs.*

⁽¹⁾ OJ C 272 of 25.10.2008.

**Order of the General Court of 24 September 2010 —
Kerstens v Commission**

(Case T-498/09 P) ⁽¹⁾

**(Appeal — Civil service — Officials — Promotion — 2005
promotion year — Award of priority points — Burden of
proof — Rights of the defence — Appeal in part manifestly
inadmissible and in part manifestly unfounded)**

(2010/C 317/59)

Language of the case: French

Parties

Appellant: Petrus Kerstens (Overijse, Belgium) (represented by: C. Mourato, lawyer)

Other party to the proceedings: European Commission (represented by: C. Berardis-Kayser and G. Berscheid, acting as Agents, and B. Wägenbaur, lawyer)

Re:

Appeal brought against the judgment of the European Union Civil Service Tribunal (Second Chamber) of 29 September 2009 in Case F-102/07 *Kerstens v Commission* ECR-SC I-A-1-0000 and I-A-2-0000, seeking the setting aside of that judgment.

Operative part of the order

1. *The appeal is dismissed.*
2. *Mr Petrus Kerstens is ordered to bear his own costs and to pay those incurred by the European Commission in the appeal proceedings.*

⁽¹⁾ OJ C 51, 27.2.2010.

Action brought on 12 September 2010 — Hamas v Council

(Case T-400/10)

(2010/C 317/60)

Language of the case: French

Parties

Applicant: Hamas (represented by: L. Glock, lawyer)

Defendants: Council of the European Union

Form of order sought

- Annul Council Act C 188/13 of 13 July 2010;
- annul Council Decision 2010/386/CFSP of 12 July 2010;
- annul Council Implementing Regulation (EU) No 610/2010 of 12 July 2010;
- order the Council to pay all the costs and expenses.

Pleas in law and main arguments

The applicant seeks the annulment of Council Act 2010/C 188/09, ⁽¹⁾ of Council Decision 2010/386/CFSP ⁽²⁾ and also Council Implementing Regulation No 610/2010, ⁽³⁾ in so far as the applicant's name was retained on the list of persons,

groups and entities whose funds and economic resources are frozen pursuant to Articles 2, 3 and 4 of Council Common Position 2001/931/CFSP⁽⁴⁾ and Article 2(3) of Regulation No 2580/2001 with a view to combating terrorism.

The applicant puts forward seven pleas in law in support of its action. With respect to Council Act 2010/C 188/09 it alleges:

— infringement of the third subparagraph of Article 297(2) TFEU in that the applicant did not receive notification of that act and mere publication in the *Official Journal of the European Union* cannot be deemed to be notification of such an act;

— infringement of the second indent of Article 41(2) of the Charter of Fundamental Rights of the European Union in that that act was virtually inaccessible for the applicant;

— infringement of Article 6(3)(a) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) concerning the right of an accused person to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

With respect to Decision 2010/386/CFSP and Regulation No 610/2010 the applicant alleges:

— manifest error of assessment, as Hamas is a legitimately elected government and, in accordance with the principle of non-interference in the internal matters of a State, cannot be placed on lists of terrorists;

— infringement of the applicant's fundamental rights through the infringement of:

— its rights of defence, and the right to good administration, as the decision to retain the applicant on the list of persons, groups and entities whose funds and economic resources are frozen was not preceded by a notification of the evidence held against it and the applicant was not given the opportunity to present duly its submissions on that evidence;

— property rights, in that the freezing of the applicant's funds is an unjustified restriction on its property rights;

— infringement of the obligation to state reasons pursuant to Article 296 TFEU, in that the Council did not provide a specific statement of reasons either in Decision 2010/386/CFSP or in Regulation No 610/2010.

⁽¹⁾ Council Act 2010/C 188/09 of 13 July 2010: Notice for the attention of the persons, groups and entities on the list provided for in Article 2(3) of Council Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2010 C 188, p. 13).

⁽²⁾ Council Decision 2010/386/CFSP of 12 July 2010 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism (OJ 2010 L 178, p. 28).

⁽³⁾ Council Implementing Regulation (EU) No 610/2010 of 12 July 2010 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 and repealing Implementing Regulation (EU) No 1285/2009 (OJ 2010 L 178, p. 1).

⁽⁴⁾ Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism (OJ 2001 L 344, p. 93).

Action brought on 14 September 2010 — Republic of Hungary v European Commission

(Case T-407/10)

(2010/C 317/61)

Language of the case: Hungarian

Parties

Applicant: Republic of Hungary (represented by: M. Fehér and K. Szíjjártó, Agents)

Defendant: European Commission

Form of order sought

— Annulment of Article 1(3) and (4) of and Annex 2 to Commission Decision C(2010) 4593 of 8 July 2010 concerning the major project for 'reconstruction of the Budapest-Kelenföld Székesfehérvár-Boba railway line, Section I, phase 1' forming part of the 'Transport' operational programme for financial structural aid granted by the European Regional Development Fund and the Cohesion Fund, in so far as those provisions lay down the maximum quantity to which the co-financing rate should be applied in such a way as to exclude payments of VAT from eligible expenditure.

— Order the Commission to pay the costs.

Pleas in law and main arguments

The applicant contests in part Commission Decision C(2010)4593 of 8 July 2010 concerning the major project for 'reconstruction of the Budapest-Kelenföld Székesfehérvár-Boba railway line, section I, phase 1' forming part of the 'Transport' operational programme for financial structural aid granted by the European Regional Development Fund and the Cohesion Fund under the Convergence objective. In that Decision, the Commission authorises the payment of a contribution to that major project from the European Regional Development Fund and the Cohesion Fund. In addition, the Commission takes the view that recoverable VAT could not be included in the maximum quantity to which the priority co-financing rate of the operational programme for the major project in question was to be applied.