



Judgment in Case C-300/11

ZZ v Secretary of State for the Home Department

The essence of the reasons for a decision refusing entry into a Member State must be disclosed to the person concerned

However, a Member State may, so far as is strictly necessary, refuse to notify the person concerned of ground, the disclosure of which might compromise State security

Nationals of a Member State may enter and, subject to certain conditions, reside in the territory of the other Member States. Nevertheless, a Member State may deny them that right on grounds of public policy, public security or public health.

In the United Kingdom, administrative decisions refusing entry into national territory that are adopted on the basis of information whose disclosure would be liable to prejudice national security may be contested before the Special Immigration Appeals Commission ('SIAC'). In proceedings before SIAC, neither the person who has contested such a decision nor his own lawyers have access to the information upon which the decision was based when its disclosure would be contrary to the public interest. However, in such a case, a special advocate, who has access to that information, is appointed to represent the interests of the person concerned before SIAC. The special advocate cannot communicate with the person concerned about matters connected with the proceedings once material which the Secretary of State (the competent United Kingdom authority) objects to being disclosed has been served on the special advocate. The special advocate may, however, request directions from SIAC authorising such communication.

ZZ has dual French and Algerian nationality. He has been married since 1990 to a British national, with whom he has eight children. ZZ resided lawfully in the United Kingdom from 1990 to 2005. However, in August 2005, after he had left the United Kingdom, the Secretary of State cancelled his right of residence on the ground that his presence was not conducive to the public good. In September 2006 ZZ travelled to the United Kingdom, where a decision refusing him entry was taken by the Secretary of State.

ZZ appealed to SIAC against the decision refusing entry. In those proceedings he was able to have consultations with his two special advocates on the public evidence only.

SIAC dismissed ZZ's appeal, and gave a 'closed judgment' with exhaustive grounds and an 'open judgment' with summary grounds. Only the 'open judgment' was provided to ZZ. It is apparent from the 'open judgment' that SIAC was satisfied, for reasons explained in the 'closed judgment', that ZZ was involved in activities of the Armed Islamic Group (GIA) network and in terrorist activities in 1995 and 1996.

ZZ appealed against SIAC's judgment to the Court of Appeal (England and Wales), which has asked the Court of Justice to what extent SIAC is obliged to inform the person concerned of the public security grounds which constitute the basis of a decision refusing entry.

In its judgment delivered today, the Court of Justice notes, first of all, that under Directive 2004/38¹ the person concerned must be notified in writing of a decision refusing entry, and in such a way

¹ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC,

that he is able to comprehend its content and the implications for him. In addition, he must be informed, precisely and in full, of the public policy or public security grounds which constitute the basis of the decision, unless this is contrary to the interests of State security.

In that context, the Court of Justice explains that the Member States are required to provide for effective judicial review of the merits of both the decision refusing entry and the reasons regarding State security invoked in order not to inform the person concerned of the grounds on which that decision is based. Thus, first, the court entrusted with review of the legality of the decision refusing entry must be able to examine all the grounds and evidence underlying that decision. Second, a court must be entrusted with verifying whether the reasons connected with State security stand in the way of disclosure of those grounds and that evidence.

In this connection, the Court of Justice states that the competent national authority must prove that State security would in fact be compromised by precise and full disclosure of the grounds to the person concerned. Consequently, **there is no presumption that the reasons invoked by a national authority in order to refuse disclosure of those grounds exist and are valid.**

If, accordingly, the court concludes that State security does not stand in the way of precise and full disclosure of the grounds on which a decision refusing entry is based, it gives the competent national authority the opportunity to disclose the missing grounds and evidence to the person concerned. However, **if that authority does not authorise their disclosure, the court proceeds to examine the legality of such a decision on the basis of solely the grounds and evidence which have been disclosed.**

On the other hand, if it turns out that State security does stand in the way of disclosure of the grounds to the person concerned, judicial review of the legality of the decision refusing entry must be carried out in a procedure which strikes an appropriate balance between the requirements flowing from State security and the requirements of the right to effective judicial protection **whilst limiting any interference with the exercise of that right to that which is strictly necessary.**

That procedure must ensure, to the greatest possible extent, that the adversarial principle is complied with, in order to enable the person concerned to contest the grounds on which the decision in question is based and to make submissions on the evidence relating to the decision and, therefore, to put forward an effective defence. In particular, **the person concerned must be informed of the essence of the grounds on which a decision refusing entry is based, as the necessary protection of State security cannot have the effect of denying him his right to be heard and, therefore, of rendering his right of redress ineffective.**

The Court of Justice also points out that the weighing up of the right to effective judicial protection against the necessity to protect the security of the State concerned **is not applicable in the same way to the evidence** underlying the grounds that is adduced before the national court with jurisdiction. In certain cases, disclosure of that evidence is liable to compromise State security in a direct and specific manner, in that it may, in particular, endanger the life, health or freedom of persons or reveal the methods of investigation specifically used by the national security authorities and thus seriously impede, or even prevent, future performance of the tasks of those authorities.

Finally, the Court of Justice states that the United Kingdom court has the task, first, of ensuring that the person concerned is informed of the essence of the grounds which constitute the basis of the decision in question in a manner which takes due account of the necessary confidentiality of the evidence and, second, of drawing the appropriate conclusions from any failure to comply with that obligation to inform him.

75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda at OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34).

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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