

The Netherlands, Court of first instance of The Hague, branch Zwolle, n. 14/4276, 27 January 2015

Deciding bodies and decisions

- Netherlands, Court of first instance of The Hague, branch Zwolle, n. 14/4276, 27 January 2015
 - CJEU, C-300/11, ZZ, 4 June 2013, ECLI:EU:C:2013:363
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Area of law

Asylum and immigration law

Subject matter

Core legal issues:

- Revocation of a refugee status and entry ban of 20 years based on involvement in terrorist activities;
 - Limited access to evidence based on national security grounds interpreted in the light of Article 47 CFR;
 - Use of secret information and urgent procedure when national security is at stake in asylum and return proceedings.
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Summary Facts Of The Case

An Iranian national's refugee status was revoked and an entry ban for 20 years was issued against him because research by the Dutch intelligence agency showed he was an agent of an Iranian intelligence agency and he had continued to work for that agency during his residency in The Netherlands. The research by the Dutch intelligence agency had resulted in an individual report on the applicant, on the basis of which the decision was taken. The individual report stated that the applicant was to be regarded as a danger to national security. The underlying documents and sources of the individual report were not disclosed to the applicant, but they were reviewed by the court. A separate chamber of the court had decided earlier that the limited disclosure of the documents underlying the individual report to the applicant was justified, among others to protect the sources, methods and techniques of the conducted research. According to that chamber, the interests of state security outweighed those of the applicant. In the main proceedings, the court had to decide whether the Dutch authorities were allowed to base the decision taken against the applicant on this 'secret' information.

The court explicitly referred to and cited the judgment of the CJEU in ZZ[1], and held that its

judgment could only be based on facts and documents that had not been disclosed to the applicant insofar as this was absolutely necessary for reasons of state security, and that the applicant would always have the right to be informed of the essence of the grounds on which the decision against him was based, whereby taking into account the necessary confidentiality of the evidence.

The court ruled that the national procedure, consisting of two judgments – one on the limited disclosure of the documents and one on the decision taken against the applicant – satisfied the requirement of the CJEU concerning an effective judicial remedy. The court further held that, in conformity with the judgment in ZZ, the essence of the grounds for the decision had been disclosed to the applicant in the individual report by concrete facts, so that it was clear to him why the Dutch authorities considered him to be a danger to national security. Article 47 had thus not been violated.

[1] ECJ, ZZ, C-300/11, 4 June 2013, EU:C:2013:363

Relation to the scope of the Charter

In assessing the legality of the limitation of Article 47 EU Charter, the Dutch court based its reasoning on the rules set out by the CJEU in ZZ (Case C-300/11). However, Article 47 was more relevant in ZZ in light of the specific rules of the SIAC Procedure which establish rules on requirement and procedure to be followed by advocates representing the claimant before the administration and courts, which was not the issue in the present case, concerning only the scope of disclosure of evidence (reports, documents) proving the involvement in terrorist activities. The conclusion of the Dutch Court was that unlike ZZ, the Dutch authorities provided the applicant with an individual report where the essential grounds on which the decision against him was based. The fact that he was not given full access to all reports and document is a proportionate limitation necessary in light of protecting the identity of the sources.

Diagram

Vertical (Dutch First Instance Court - CJEU)

At a glance

Country	Area	Reference to EU law	Legal and/or judicial body	Judicial intervention/technique	Remedy
• Netherlands	• asylum • irregular migration	• article 47 CFR	• Court of first instance of the Hague	• reference to CJEU ruling (ZZ)	• /

Timeline representation



Sources - EU and national law

- Art 47 EU Charter
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Sources - CJEU Case Law

- CJEU, C-300/11, ZZ, 4 June 2013, ECLI:EU:C:2013:363
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Comments

- Role of the Charter

The scope of disclosure of evidence and access to fair trial and effective remedy in cases where national security concerns are incidental is a sensitive topic, which came up before many domestic courts. The domestic legal provisions of these Member States seem to provide for similar “fast track” emergency procedures governing the assessment of claims from individuals considered as threat to national security, access to evidence limited to special security cleared advocates, immediate detention followed by expulsion and entry bans. Variances exists in regard to the precise time period of the approval of the special advocates and emergency procedure and the level of detail in the evidence released to the individual concerned. However, the conformity of the domestic practice(s) on the level of disclosure of evidence, e.g. in procedures on revocation of the refugee status and extradition of asylum seekers, has to be reviewed by national courts in light of the right to a fair trial and effective remedy. Some courts thus decide to explicitly rely on Article 47 CFR.
