



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

4 June 2013*

(Freedom of movement for persons — Directive 2004/38/EC — Decision refusing a citizen of the European Union admission to a Member State on public security grounds — Article 30(2) of the directive — Obligation to inform the citizen concerned of the grounds of that decision — Disclosure contrary to the interests of State security — Fundamental right to effective judicial protection)

In Case C-300/11,

REQUEST for a preliminary ruling under Article 267 TFEU from the Court of Appeal (England and Wales) (Civil Division), made by decision of 19 May 2011, received at the Court on 17 June 2011, in the proceedings

ZZ

v

Secretary of State for the Home Department,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, R. Silva de Lapuerta, T. von Danwitz (Rapporteur), G. Arestis, M. Berger and E. Jarašiūnas, Presidents of Chambers, E. Juhász, J.-C. Bonichot, M. Safjan, D. Šváby and A. Prechal, Judges,

Advocate General: Y. Bot,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 19 June 2012,

after considering the observations submitted on behalf of:

- ZZ, by H. Southey QC, S. Cox, Barrister, instructed by R. Singh, Solicitor,
- the United Kingdom Government, by S. Behzadi-Spencer, acting as Agent, and T. Eicke, Barrister,
- the Czech Government, by D. Hadroušek, acting as Agent,
- the French Government, by G. de Bergues and B. Beaupère-Manokha, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and G. Palatiello, avvocato dello Stato,

* Language of the case: English.

— the Slovak Government, by B. Ricziová, acting as Agent,
— the European Commission, by C. Tufvesson and M. Wilderspin, acting as Agents,
— the EFTA Surveillance Authority, by X. Lewis, G. Mathisen and F. Cloarec, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 12 September 2012,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 30(2) of 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, 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), read in the light, in particular, of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The request has been made in proceedings between ZZ and the Secretary of State for the Home Department ('the Secretary of State') concerning the latter's decision excluding ZZ from the United Kingdom of Great Britain and Northern Ireland on grounds of public security.

Legal context

European Union law

- 3 Chapter VI of Directive 2004/38 contains provisions relating to restriction by the Member States of the right of entry and the right of residence of citizens of the European Union on grounds of public policy, public security or public health.
- 4 In this regard, Article 27(1) of Directive 2004/38 provides:

'Subject to the provisions of this Chapter, Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends.'
- 5 Article 30(1) and (2) of Directive 2004/38 provide:

'1. The persons concerned shall be notified in writing of any decision taken under Article 27(1), in such a way that they are able to comprehend its content and the implications for them.
2. The persons concerned shall be informed, precisely and in full, of the public policy, public security or public health grounds on which the decision taken in their case is based, unless this is contrary to the interests of State security.'
- 6 Article 31(1) and (3) of Directive 2004/38 are worded as follows:

'1. The persons concerned shall have access to judicial and, where appropriate, administrative redress procedures in the host Member State to appeal against or seek review of any decision taken against them on the grounds of public policy, public security or public health.'

...

3. The redress procedures shall allow for an examination of the legality of the decision, as well as of the facts and circumstances on which the proposed measure is based. They shall ensure that the decision is not disproportionate, particularly in view of the requirements laid down in Article 28.'

United Kingdom law

Admission to and exclusion from the United Kingdom

7 The Immigration (European Economic Area) Regulations 2006 ('the Immigration Regulations') transpose Directive 2004/38 into United Kingdom law. Regulation 2 of the Immigration Regulations provides:

'(1) In these Regulations–

...

"EEA [European Economic Area] decision" means a decision under these Regulations that concerns a person's:

(a) entitlement to be admitted to the United Kingdom;

...'

8 Regulation 11(1) and (5) of the Immigration Regulations provide:

'(1) An EEA national must be admitted to the United Kingdom if he produces on arrival a valid national identity card or passport issued by an EEA State.

...

(5) But this regulation is subject to regulations 19(1) ...'

9 Regulation 19, headed 'Exclusion and removal from the United Kingdom', states in paragraph (1):

'A person is not entitled to be admitted to the United Kingdom by virtue of regulation 11 if his exclusion is justified on grounds of public policy, public security or public health in accordance with regulation 21.'

10 Regulation 25 of the Immigration Regulations provides:

'(1) In this Part–

...

"Commission" has the same meaning as in the Special Immigration Appeals Commission ["SIAC"] Act 1997;

...'

11 Regulation 28 of the Immigration Regulations states:

‘(1) An appeal against an EEA decision lies to [SIAC] where paragraph (2) or (4) applies.

...

(4) This paragraph applies if the Secretary of State certifies that the EEA decision was taken wholly or partly in reliance on information which in his opinion should not be made public–

(a) in the interests of national security;

...

(8) The Special Immigration Appeals Commission Act 1997 [“the SIAC Act”] shall apply to an appeal to [SIAC] under these Regulations as it applies to an appeal under section 2 of that Act to which subsection (2) of that section applies (appeals against an immigration decision) but paragraph (i) of that subsection shall not apply in relation to such an appeal.’

The rules applicable to appeals against an exclusion decision

12 Under section 1 of the SIAC Act, SIAC is to be a superior court of record.

13 Section 5(1), (3) and (6) of the SIAC Act provide:

‘(1) The Lord Chancellor may make rules ...

...

(3) Rules under this section may, in particular–

(a) make provision enabling proceedings before [SIAC] to take place without the appellant being given full particulars of the reasons for the decision which is the subject of the appeal,

...

(6) In making rules under this section, the Lord Chancellor shall have regard, in particular, to–

(a) the need to secure that decisions which are the subject of appeals are properly reviewed, and

(b) the need to secure that information is not disclosed contrary to the public interest.’

14 Section 6 of the SIAC Act provides for the appointment of ‘special advocates’. Under section 6(1), the Attorney General may appoint a person who has a right of audience before the High Court of Justice of England and Wales to represent the interests of an appellant in any proceedings before SIAC from which the appellant and any legal representative of his are excluded. Section 6(4) further provides that the person appointed ‘shall not be responsible to the person whose interests he is appointed to represent’.

15 The Special Immigration Appeals Commission (Procedure) Rules 2003 (‘the SIAC Procedure Rules’) state in rule 4(1) and (3):

‘(1) When exercising its functions, [SIAC] shall secure that information is not disclosed contrary to the interests of national security ...

(3) Subject to paragraphs (1) and (2), [SIAC] must satisfy itself that the material available to it enables it properly to determine proceedings.’

16 Rule 10 of the SIAC Procedure Rules provides:

‘(1) Where the Secretary of State intends to oppose an appeal, he must file with [SIAC]–

- (a) a statement of the evidence on which he relies in opposition to the appeal; and
- (b) any exculpatory material of which he is aware.

(2) Unless the Secretary of State objects to the statement being disclosed to the appellant or his representative, he must serve a copy of the statement of evidence on the appellant at the same time as filing it.

(3) Where the Secretary of State objects to a statement filed under paragraph (1) being disclosed to the appellant or his representative, rules 37 and 38 shall apply.’

17 Rule 35 of the SIAC Procedure Rules states as follows as regards the functions of the special advocate provided for in section 6 of the SIAC Act:

‘The functions of a special advocate are to represent the interests of the appellant by–

- (a) making submissions to [SIAC] at any hearings from which the appellant and his representatives are excluded;
- (b) adducing evidence and cross-examining witnesses at any such hearings; and
- (c) making written submissions to [SIAC].’

18 As regards communication between the appellant and a special advocate, rule 36 of the SIAC Procedure Rules provides:

‘(1) The special advocate may communicate with the appellant or his representative at any time before the Secretary of State serves material on him which he objects to being disclosed to the appellant.

(2) After the Secretary of State serves material on the special advocate as mentioned in paragraph (1), the special advocate must not communicate with any person about any matter connected with the proceedings, except in accordance with paragraph (3) or (6)(b) or a direction of [SIAC] pursuant to a request under paragraph (4).

(3) The special advocate may, without directions from [SIAC], communicate about the proceedings with–

- (a) [SIAC];
- (b) the Secretary of State, or any person acting for him;
- (c) the relevant law officer, or any person acting for him;
- (d) any other person, except for the appellant or his representative, with whom it is necessary for administrative purposes for him to communicate about matters not connected with the substance of the proceedings.

(4) The special advocate may request directions from [SIAC] authorising him to communicate with the appellant or his representative or with any other person.

(5) Where the special advocate makes a request for directions under paragraph (4)–

(a) [SIAC] must notify the Secretary of State of the request; and

(b) the Secretary of State must, within a period specified by [SIAC], file with [SIAC] and serve on the special advocate notice of any objection which he has to the proposed communication, or to the form in which it is proposed to be made.

(6) Paragraph (2) does not prohibit the appellant from communicating with the special advocate after the Secretary of State has served material on him as mentioned in paragraph (1), but–

(a) the appellant may only communicate with the special advocate through a legal representative in writing; and

(b) the special advocate must not reply to the communication other than in accordance with directions of [SIAC], except that he may without such directions send a written acknowledgment of receipt to the appellant’s legal representative.’

19 Rule 37 of the SIAC Procedure Rules defines the term ‘closed material’ and provides in this connection as follows:

‘(1) In this rule, “closed material” means–

(a) material upon which the Secretary of State wishes to rely in any proceedings before [SIAC];

(b) material which adversely affects his case or supports the appellant’s case, or

...

but which he objects to disclosing to the appellant or his representative.

(2) The Secretary of State may not rely upon closed material unless a special advocate has been appointed to represent the interests of the appellant.

(3) Where the Secretary of State is required by rule 10(2) or 10A(8) to serve on the appellant, or wishes to rely upon, closed material and a special advocate has been appointed, the Secretary of State must file with [SIAC] and serve on the special advocate–

(a) a copy of the closed material, if he has not already done so;

(b) a statement of his reasons for objecting to its disclosure; and

(c) if and to the extent that it is possible to do so without disclosing information contrary to the public interest, a statement of the material in a form which can be served on the appellant.

(4) The Secretary of State must, at the same time as filing it, serve on the appellant any statement filed under paragraph (3)(c).

(4A) Where the Secretary of State serves on the special advocate any closed material which he has redacted on grounds other than those of legal professional privilege–

- (a) he must file the material with [SIAC] in an unredacted form, together with an explanation of the redactions; and
 - (b) [SIAC] must give a direction to the Secretary of State as to what he may redact.
- (5) The Secretary of State may, with the leave of [SIAC] or the agreement of the special advocate, at any time amend or supplement material filed under this rule.'

20 As regards consideration of the Secretary of State's objections, rule 38 of the SIAC Procedure Rules states:

'(1) Where the Secretary of State makes an objection under rule 36(5)(b) or rule 37, [SIAC] must decide in accordance with this rule whether to uphold the objection.

(2) [SIAC] must fix a hearing for the Secretary of State and the special advocate to make oral representations ...

...

- (5) A hearing under this rule shall take place in the absence of the appellant and his representative.
- (6) [SIAC] may uphold or overrule the Secretary of State's objection.
- (7) [SIAC] must uphold the Secretary of State's objection under rule 37 where it considers that the disclosure of the material would be contrary to the public interest.
- (8) Where [SIAC] upholds the Secretary of State's objection under rule 37, it must–
 - (a) consider whether to direct the Secretary of State to serve a summary of the closed material on the appellant; and
 - (b) approve any such summary, to secure that it does not contain any information or other material the disclosure of which would be contrary to the public interest.
- (9) Where [SIAC] overrules the Secretary of State's objection under rule 37 or directs him to serve a summary of the closed material on the appellant–
 - (a) the Secretary of State shall not be required to serve that material or summary; but
 - (b) if he does not do so, [SIAC] may at a hearing at which the Secretary of State and the special advocate may make representations–
 - (i) if it considers that the material or anything that is required to be summarised might adversely affect the Secretary of State's case or support the appellant's case, direct that the Secretary of State shall not rely on such points in his case, or shall make such concessions or take such other steps, as [SIAC] may specify; or
 - (ii) in any other case, direct that the Secretary of State shall not rely in the proceedings on that material or (as the case may be) on that which is required to be summarised.'

21 Rule 47(2) to (4) of the SIAC Procedure Rules provide as follows in relation to SIAC's decision:

'(2) [SIAC] must record its decision and the reasons for it.

(3) [SIAC] must, within a reasonable time, serve on the parties a written determination containing its decision and, if and to the extent that it is possible to do so without disclosing information contrary to the public interest, the reasons for it.

(4) Where the determination under paragraph (3) does not include the full reasons for its decision, [SIAC] must serve on the Secretary of State and the special advocate a separate determination including those reasons.'

The dispute in the main proceedings and the question referred for a preliminary ruling

- 22 ZZ has dual French and Algerian nationality. He has been married to a British national since 1990 and the couple had eight children, aged from 9 to 20 years old, when the request for a preliminary ruling was lodged. ZZ resided lawfully in the United Kingdom from 1990 to 2005. In 2004 the Secretary of State granted him a right of permanent residence in the United Kingdom.
- 23 In August 2005, after ZZ had left the United Kingdom to go to Algeria, the Secretary of State decided to cancel his right of residence and to exclude him from the United Kingdom on the ground that his presence was not conducive to the public good. SIAC stated in its judgment that ZZ had no right of appeal against that decision cancelling his right of residence.
- 24 In September 2006 ZZ travelled to the United Kingdom, where a decision refusing him admission was taken by the Secretary of State under regulation 19(1) of the Immigration Regulations, on grounds of public security ('the decision refusing entry at issue in the main proceedings'). Following that decision, ZZ was removed to Algeria. On the date when the present request for a preliminary ruling was lodged he was residing in France.
- 25 ZZ lodged an appeal against the decision refusing entry at issue in the main proceedings, which was dismissed by SIAC on the basis that that decision was justified by imperative grounds of public security. Before SIAC, ZZ was represented by a solicitor and a barrister of his own choosing ('his personal advisers').
- 26 In those appeal proceedings, the Secretary of State objected to the disclosure to ZZ of material upon which he relied in opposition to ZZ's appeal. In accordance with the rules of procedure applicable before SIAC, two special advocates were appointed to represent ZZ's interests. These special advocates had consultations with ZZ based upon the 'open evidence'.
- 27 Subsequently, the information not disclosed to ZZ upon which the decision refusing entry at issue in the main proceedings was based was disclosed to those special advocates, who were from then on precluded from seeking further instructions from, or providing information to, ZZ or his personal advisers without the permission of SIAC. Subject to those limitations, the special advocates proceeded to represent ZZ's interests before SIAC as regards that 'closed evidence'.
- 28 For the purposes of considering the Secretary of State's objection to the disclosure of material to ZZ, SIAC held a hearing which took place in private, in the absence of ZZ and his personal advisers, but in the presence of his special advocates. SIAC determined the extent to which disclosure to ZZ of the 'closed evidence' relied upon by the Secretary of State would be contrary to the public interest.
- 29 Subsequently, a hearing devoted to ZZ's appeal took place, both in open and in closed sessions. The closed sessions took place in the absence of ZZ and his personal advisers, but in the presence of his special advocates, who made submissions on his behalf.

- 30 SIAC dismissed ZZ's appeal, and gave an 'open' judgment and a 'closed' judgment, the latter being provided only to the Secretary of State and ZZ's special advocates. In its open judgment, SIAC held, in particular, that 'little of the case against' ZZ had been disclosed to him and that that which had been disclosed did not concern 'the critical issues'.
- 31 It is also apparent from the open judgment that SIAC is satisfied that ZZ was involved in activities of the Armed Islamic Group network and in terrorist activities in 1995 and 1996. As regards the facts that were disclosed to ZZ, according to that judgment items which ZZ admitted owning or to have owned were discovered in 1995 in Belgium, in premises rented by a known extremist where, inter alia, a quantity of arms and ammunition were found. In relation to other facts alleged by the Secretary of State, such as, in particular, stays in Italy and in Belgium, contact with certain persons and the possession of large sums of money, SIAC to a certain extent considered the position adopted by ZZ and the evidence adduced by him to be credible and pertinent. However, his denials of involvement in activities of the aforesaid network were not accepted by SIAC, for reasons which are explained in the closed judgment.
- 32 SIAC concluded therefrom, in its open judgment, that, 'for reasons which are explained only in the closed judgment', it was 'satisfied that the personal conduct of ZZ represents a genuine present and sufficiently serious threat which affects a fundamental interest of society[,] namely its public security[,] and that it outweighs his and [his family's] right to enjoy family life in the [United Kingdom]'.
- 33 ZZ filed a notice of appeal against that judgment with the referring court, which granted him permission to appeal. In its judgment of 19 April 2011 delivered in the appeal proceedings and deciding that it was necessary to make the present request for a preliminary ruling, the Court of Appeal (England and Wales) (Civil Division) found that SIAC's judgments read together contained findings of fact and reasoning easily sufficient to support that conclusion on the part of SIAC. Accordingly, the grounds stated by SIAC for its decision were sufficient. However, the Court of Appeal is uncertain whether it was permissible for SIAC not to disclose to ZZ the essence of the grounds which constitute the basis of the decision refusing entry at issue in the main proceedings.
- 34 It was in those circumstances that the Court of Appeal (England and Wales) (Civil Division) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Does the principle of effective judicial protection, set out in Article 30(2) of Directive 2004/38, as interpreted in the light of Article 346(1)(a) [TFEU], require that a judicial body considering an appeal from a decision to exclude a European Union citizen from a Member State on grounds of public policy and public security under Chapter VI of Directive 2004/38 ensure that the European Union citizen concerned is informed of the essence of the grounds against him, notwithstanding the fact that the authorities of the Member State and the relevant domestic court, after consideration of the totality of the evidence against the European Union citizen relied upon by the authorities of the Member State, conclude that the disclosure of the essence of the grounds against him would be contrary to the interests of State security?'

Consideration of the question referred

Admissibility

- 35 In the Italian Government's submission, the request for a preliminary ruling is inadmissible in two respects. First, ZZ's appeal before the referring court against the decision refusing entry at issue in the main proceedings is inadmissible, as annulment of that decision cannot procure for him a real advantage given that he would in any event be prevented from entering the United Kingdom by the decision of August 2005, which must be regarded as valid. It follows that the question referred has no

actual relevance in the main proceedings and is therefore inadmissible. Second, it is clear from Article 4(2) TEU and Article 346(1)(a) TFEU that State security remains the responsibility of solely the Member States. The question referred thus relates to an area governed by national law and, for that reason, does not fall within European Union competence.

- 36 In that regard, the Court's settled case-law should be recalled according to which, in proceedings under Article 267 TFEU, which are based on a clear separation of functions between the national courts and the Court of Justice, the national court alone has jurisdiction to find and assess the facts in the case before it and to interpret and apply national law. Similarly, it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the judicial decision to be made, to determine, in the light of the particular circumstances of the case, both the need for and the relevance of the questions that it submits to the Court. Consequently, where the questions submitted concern the interpretation of European Union law, the Court is in principle bound to give a ruling (Case C-553/11 *Rintisch* [2012] ECR, paragraph 15 and the case-law cited).
- 37 The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of European Union law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (Joined Cases C-188/10 and C-189/10 *Melki and Abdeli* [2010] ECR I-5667, paragraph 27 and the case-law cited).
- 38 That is not the case here. First, the question referred relates to the interpretation of Article 30(2) of Directive 2004/38, read in the light, in particular, of Article 47 of the Charter. Second, that question arises in the context of a genuine dispute relating to the legality of a decision refusing entry taken, pursuant to the directive, by the Secretary of State against ZZ. Furthermore, although it is for Member States to take the appropriate measures to ensure their internal and external security, the mere fact that a decision concerns State security cannot result in European Union law being inapplicable (see, to this effect, Case C-387/05 *Commission v Italy* [2009] ECR I-11831, paragraph 45).
- 39 Accordingly, the request for a preliminary ruling is admissible.

Substance

- 40 By its question, the referring court asks, in essence, whether Article 30(2) of Directive 2004/38, read in the light in particular of Article 47 of the Charter, must be interpreted as requiring a national court hearing an appeal of a Union citizen against a decision refusing entry taken under Article 27(1) of that directive to ensure that the essence of the public security grounds which constitute the basis of that decision is disclosed to the person concerned where the competent national authority contends before that court that such disclosure is contrary to the interests of State security.
- 41 It should be noted at the outset that, in the case in point, it is not in dispute that the Secretary of State, the competent national authority, did not inform ZZ precisely and in full of the grounds that constituted the basis of the decision refusing entry at issue in the main proceedings, a decision which was taken under Article 27 of Directive 2004/38. In the context of proceedings before SIAC whereby, under the system set up by United Kingdom legislation, judicial review of such decisions is carried out, the Secretary of State invoked the confidentiality of material upon which he relied in opposition to ZZ's appeal.
- 42 Under rule 4(1) of the SIAC Procedure Rules, SIAC is required to ensure that information is not disclosed contrary to the interests of State security. Also, under rule 10(3) of those rules, read in conjunction with rule 37(2), SIAC is to appoint a special advocate to represent the interests of the appellant where the Secretary of State requires before that court that material relied upon in the

appeal proceedings be treated as closed material. In accordance with rule 35, the special advocate makes submissions at hearings from which the appellant is excluded, adduces evidence, cross-examines witnesses and makes written submissions to SIAC.

- 43 The Secretary of State is required, by virtue of rule 37(3) of the SIAC Procedure Rules, to produce and send to SIAC and the special advocate a copy of the closed material and a statement of his reasons for opposing its disclosure. In addition, it is incumbent upon the Secretary of State, by virtue of rule 37(4), to produce a statement of the closed material in a form which can be served on the appellant if and to the extent that it is possible to do so without disclosing information contrary to the public interest. The Secretary of State's objection to disclosure of that material to the appellant is, under rule 38, the subject of an examination by SIAC in the course of which the Secretary of State and the special advocate are able to make representations.
- 44 By virtue of rule 36 of the SIAC Procedure Rules, the special advocate may not communicate with the appellant about matters connected with the proceedings once material whose disclosure the Secretary of State opposes has been served on him. However, he may request directions from SIAC authorising such communication.
- 45 It is in the light of that national procedure that the Court of Appeal has referred the question to this Court for a preliminary ruling.
- 46 Article 30(1) of Directive 2004/38 provides, so far as concerns the requisite content of, and statement of reasons for, a decision taken under Article 27 of that directive, such as the decision refusing entry at issue in the main proceedings, that the person concerned must be notified of the decision in writing and in such a way that he is able to comprehend its content and the implications for him. In addition, Article 30(2) provides that the person concerned must be informed, precisely and in full, of the public policy, public security or public health grounds which constitute the basis of such a decision, unless this is contrary to the interests of State security.
- 47 Article 31 of Directive 2004/38 obliges the Member States to lay down, in domestic law, the measures necessary to enable Union citizens and members of their families to have access to judicial and, where appropriate, administrative redress procedures to appeal against or seek review of any decision restricting their right to move and reside freely in the Member States on the grounds of public policy, public security or public health (see, to this effect, Case C-249/11 *Byankov* [2012] ECR, paragraph 53). In accordance with Article 31(3), the redress procedures must include an examination of the legality of the decision, as well as of the facts and circumstances on which the proposed measure is based.
- 48 In order that the person concerned may make effective use of the redress procedures thereby established by the Member States, the competent national authority is required, as is laid down as a principle by Article 30(2) of Directive 2004/38, to inform him in the administrative procedure precisely and in full of the public policy, public security or public health grounds on which the decision in question is based.
- 49 It is only by way of derogation that Article 30(2) of Directive 2004/38 permits the Member States to limit the information sent to the person concerned in the interests of State security. As a derogation from the rule set out in the preceding paragraph of the present judgment, this provision must be interpreted strictly, but without depriving it of its effectiveness.
- 50 It is in that context that it must be determined whether and to what extent Articles 30(2) and 31 of Directive 2004/38, the provisions of which must be interpreted in a manner which complies with the requirements flowing from Article 47 of the Charter, permit the grounds of a decision taken under Article 27 of the directive not to be disclosed precisely and in full.

- 51 It is to be borne in mind that interpretation in compliance with those requirements must take account of the significance, as resulting from the system applied by the Charter as a whole, of the fundamental right guaranteed by Article 47 thereof. In particular, it should be taken into account that, whilst Article 52(1) of the Charter admittedly allows limitations on the exercise of the rights enshrined by the Charter, it nevertheless lays down that any limitation must in particular respect the essence of the fundamental right in question and requires, in addition, that, subject to the principle of proportionality, the limitation must be necessary and genuinely meet objectives of general interest recognised by the European Union.
- 52 Therefore, the interpretation of Articles 30(2) and 31 of Directive 2004/38, read in the light of Article 47 of the Charter, cannot have the effect of failing to meet the level of protection that is guaranteed in the manner described in the preceding paragraph of the present judgment.
- 53 According to the Court's settled case-law, if the judicial review guaranteed by Article 47 of the Charter is to be effective, the person concerned must be able to ascertain the reasons upon which the decision taken in relation to him is based, either by reading the decision itself or by requesting and obtaining notification of those reasons, without prejudice to the power of the court with jurisdiction to require the authority concerned to provide that information (Joined Cases C-372/09 and C-373/09 *Peñarroja Fa* [2011] ECR I-1785, paragraph 63, and Case C-430/10 *Gaydarov* [2011] ECR I-11637, paragraph 41), so as to make it possible for him to defend his rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any point in his applying to the court with jurisdiction, and in order to put the latter fully in a position in which it may carry out the review of the lawfulness of the national decision in question (see, to this effect, Case 222/86 *Heylens and Others* [1987] ECR 4097, paragraph 15, and Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation v Council and Commission* [2008] ECR I-6351, paragraph 337).
- 54 Admittedly, it may prove necessary, both in administrative proceedings and in judicial proceedings, not to disclose certain information to the person concerned, in particular in the light of overriding considerations connected with State security (see, to this effect, *Kadi and Al Barakaat International Foundation v Council and Commission*, paragraph 342).
- 55 As regards judicial proceedings, the Court has already held that, having regard to the adversarial principle that forms part of the rights of the defence, which are referred to in Article 47 of the Charter, the parties to a case must have the right to examine all the documents or observations submitted to the court for the purpose of influencing its decision, and to comment on them (Case C-450/06 *Varec* [2008] ECR I-581, paragraph 45; Case C-89/08 P *Commission v Ireland and Others* [2009] ECR I-11245, paragraph 52; and Case C-472/11 *Banif Plus Bank* [2013] ECR, paragraph 30; see also, as regards Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, the judgment of the European Court of Human Rights in *Ruiz-Mateos v. Spain*, 23 June 1993, § 63, Series A no. 262).
- 56 The fundamental right to an effective legal remedy would be infringed if a judicial decision were founded on facts and documents which the parties themselves, or one of them, have not had an opportunity to examine and on which they have therefore been unable to state their views (*Commission v Ireland and Others*, paragraph 52 and the case-law cited).
- 57 However, if, in exceptional cases, a national authority opposes precise and full disclosure to the person concerned of the grounds which constitute the basis of a decision taken under Article 27 of Directive 2004/38, by invoking reasons of State security, the court with jurisdiction in the Member State concerned must have at its disposal and apply techniques and rules of procedural law which accommodate, on the one hand, legitimate State security considerations regarding the nature and sources of the information taken into account in the adoption of such a decision and, on the other

hand, the need to ensure sufficient compliance with the person's procedural rights, such as the right to be heard and the adversarial principle (see, by analogy, *Kadi and Al Barakaat International Foundation v Council and Commission*, paragraph 344).

- 58 To that end, the Member States are required, first, to provide for effective judicial review both of the existence and validity of the reasons invoked by the national authority with regard to State security and of the legality of the decision taken under Article 27 of Directive 2004/38 and, second, to prescribe techniques and rules relating to that review, as referred to in the preceding paragraph of the present judgment.
- 59 In the context of the judicial review, provided for in Article 31 of Directive 2004/38, of the legality of the decision taken under Article 27 thereof, it is incumbent upon the Member States to lay down rules enabling the court entrusted with review of the decision's legality to examine both all the grounds and the related evidence on the basis of which the decision was taken.
- 60 As for the requirements to be met by judicial review of the existence and validity of the reasons invoked by the competent national authority with regard to State security of the Member State concerned, it is necessary for a court to be entrusted with verifying whether those reasons stand in the way of precise and full disclosure of the grounds on which the decision in question is based and of the related evidence.
- 61 Thus, the competent national authority has the task of proving, in accordance with the national procedural rules, that State security would in fact be compromised by precise and full disclosure to the person concerned of the grounds which constitute the basis of a decision taken under Article 27 of Directive 2004/38 and of the related evidence (see, by analogy, Case C-284/05 *Commission v Finland* [2009] ECR I-11705, paragraphs 47 and 49). It follows that there is no presumption that the reasons invoked by a national authority exist and are valid.
- 62 In this connection, the national court with jurisdiction must carry out an independent examination of all the matters of law and fact relied upon by the competent national authority and it must determine, in accordance with the national procedural rules, whether State security stands in the way of such disclosure.
- 63 If that court concludes that State security does not stand in the way of precise and full disclosure to the person concerned of the grounds on which a decision refusing entry taken under Article 27 of Directive 2004/38 is based, it gives the competent national authority the opportunity to disclose the missing grounds and evidence to the person concerned. 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.
- 64 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, as provided for in Article 31(1) of Directive 2004/38, of the legality of a decision taken under Article 27 thereof must, having regard to what has been stated in paragraphs 51, 52 and 57 of the present judgment, 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.
- 65 In this connection, first, in the light of the need to comply with Article 47 of the Charter, 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, in any event, of the essence of the grounds on which a decision refusing entry taken under Article 27 of Directive 2004/38 is based,

as the necessary protection of State security cannot have the effect of denying the person concerned his right to be heard and, therefore, of rendering his right of redress as provided for in Article 31 of that directive ineffective.

- 66 Second, the weighing up of the right to effective judicial protection against the necessity to protect the security of the Member State concerned – upon which the conclusion set out in the preceding paragraph of the present judgment is founded – 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.
- 67 In that context, the national court with jurisdiction has the task of assessing whether and to what extent the restrictions on the rights of the defence arising in particular from a failure to disclose the evidence and the precise and full grounds on which the decision taken under Article 27 of Directive 2004/38 is based are such as to affect the evidential value of the confidential evidence.
- 68 Accordingly, it is incumbent upon the national court with jurisdiction, first, to ensure 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, to draw, pursuant to national law, the appropriate conclusions from any failure to comply with that obligation to inform him.
- 69 In the light of the foregoing considerations, the answer to the question referred is that Articles 30(2) and 31 of Directive 2004/38, read in the light of Article 47 of the Charter, must be interpreted as requiring the national court with jurisdiction to ensure that failure by the competent national authority to disclose to the person concerned, precisely and in full, the grounds on which a decision taken under Article 27 of that directive is based and to disclose the related evidence to him is limited to that which is strictly necessary, and that he is informed, in any event, of the essence of those grounds in a manner which takes due account of the necessary confidentiality of the evidence.

Costs

- 70 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Articles 30(2) and 31 of 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, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as requiring the national court with jurisdiction to ensure that failure by the competent national authority to disclose to the person concerned, precisely and in full, the grounds on which a decision taken under Article 27 of that directive is based and to disclose the related evidence to him is limited to that which is strictly necessary, and that he is informed, in any event, of the essence of those grounds in a manner which takes due account of the necessary confidentiality of the evidence.

[Signatures]