

Use of preliminary reference and disapplication
by Polish judiciary: the role of Article 47 EU
Charter, general principles of EU law in asylum
and return adjudication

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Extention detention case

- Foreigner irregularly staying in Poland has been detained and got final return decision
- He made appeal to the court
- According to the Polish law appeal to the court against return decision has a suspensive effect
- But detention may be extended because of lodging appeal to the court

Extention detention case

- Court held that Polish law is inconsistent with EU law in this respect
- Article 15.6 of the return directive: basis for detention extension:
 - a lack of cooperation by the foreigner
 - delays in obtaining the neccessary documentation from third countries
- Reference to Kadzoev, El Dridri, COSTA ENEL, Simmenthal judgements

Visa refusal case

- foreigner – father and husband of the Polish citizens
- denied Schengen visa by the consul
- Polish law excludes judicial revision of the visa decisions issued by the consul

Visa refusal case

Art. 32.2 of the Visa Schengen Code:

Applicants who have been refused a visa shall have the right to appeal.

Appeals shall be conducted against the Member State that has taken the final decision on the application and in accordance with the national law of that Member State.

- Not clear whether there is right to appeal to the court

Visa refusal case

- Case referred to the CJEU – interpretation of the Art. 32.3 SVC in the light of the Art. 47 CFR (El Hassani C-403/16)
- AG Bobek opinion: there is no right to visa but there is procedural right to have one's application fairly and properly processed

National security case

- return decision was given to the foreigner and he immediately executed
- he was considered as dangerous to the national security
- he had no access to the files, factual reasons of the decision were limited – no information about factual grounds of the decision
- Appeal to the court lodged with reference to art. 47 CFR and ZZ judgement

National security case

- Appeal to the court contained request for preliminary reference
 - validity of the art. 12.1(2) of the return directive - "the information about the reasons in fact may be limited where national law allows for the right to information to be restricted in particular in order to safeguard national security"
 - interpretation of the art. 13.1 of the return directive in the light of the art. 47 CFR – effective remedy in return case

National security case

- Supreme Administrative Court dismissed appeal
- SAC: national safeguards provides sufficient guarantees of the right to defence (court has access to all files, court is not bound by the appeal)
- SAC: art. 12 of the return directive – lex specialis excluding art. 47 CFR

National security case – asylum refusal

- foreigner was denied asylum as he was considered as dangerous
- no access to files, factual reasons of the decision limited
- HFHR made appeal to the court
- Art. 11 of the RPD "where an application is rejected ... the reasons in fact and in law are stated in the decision"
- Art. 23 of the RPD: lawyer shall enjoy access to the files, exception possible in state security cases but procedures guaranteeing rights of defence must be established