

## CJEU - Case C-403/16, El Hassani

**Country of Applicant:**

Morocco

**Date of Decision:**

13-12-2017

**Citation:**

Case C-403/16

**Court Name:**

Court of Justice of the European Union (First Chamber)

**Keywords:**[Effective remedy \(right to\)](#) [1][Family member](#) [2][Visa](#) [3]**Relevant Legislative Provisions:**European Union Law

---

**Headnote:**

Article 47 CFR EU requires that a decision of an administrative authority that does not itself satisfy the conditions of independence and impartiality must be subject to subsequent control by a judicial body that must, in particular, have jurisdiction to consider all the relevant issues.

It follows that Article 47 CFR EU requires the Member States to guarantee, at a certain stage of the proceedings, the possibility to bring the case concerning a final decision refusing a visa before a court.

**Facts:**

The main proceedings concern Mr El Hassani, a Moroccan national who submitted an application for a Schengen visa to the Consul of the Republic of Poland in Rabat in order to visit his wife and son who are Polish nationals. The application and the subsequent request for review were rejected on the ground of a lack of certainty as to Mr El Hassani's intention to leave Poland before the visa expired. Following an unsuccessful appeal before the Regional Administrative Court, Mr El Hassani brought an appeal in cassation before the Supreme Administrative Court of Poland, who then asked the CJEU to clarify whether the Visa Code, read in the light of Article 47 Charter of

Fundamental Rights of the European Union (CFR EU), requires Member States to provide for a judicial appeal against a visa refusal.

---

### **Decision & Reasoning:**

First, the CJEU advanced that the EU legislature left to the Member States the task of deciding the nature and specific conditions of the remedies available to visa applicants. However, national procedural autonomy is subject to the principles of equivalence and effectiveness necessary to ensure judicial protection of an individual's rights under EU law, which is for the referring court to assess.

Secondly, the Court recalled that Article 47 of the CFR EU requires that any person whose rights and freedoms guaranteed by EU law are violated should have the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article. The CJEU further stated that compliance with that right assumes that a decision of an administrative authority that does not itself satisfy the conditions of independence and impartiality must be subjected to subsequent control by a juridical body that must, in particular, have jurisdiction to consider all the relevant issues. The concept of independence implies above all that the body in question acts as a third party in relation to the authority which adopted the contested decision.

Finally, the CJEU concluded that Article 32(3) of the Visa Code, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, requires the Member States to guarantee, at a certain stage of the proceedings, the possibility to bring the case concerning a final decision refusing a visa before a court.

---

### **Outcome:**

Article 32(3) of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas, as amended by Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that it requires Member States to provide for an appeal procedure against decisions refusing visas, the procedural rules for which are a matter for the legal order of each Member State in accordance with the principles of equivalence and effectiveness. Those proceedings must, at a certain stage of the proceedings, guarantee a judicial appeal.

---

### **Subsequent Proceedings :**

Following the CJEU's judgment, the Regional Administrative Court in Warsaw handed down a decision on 20 September 2018 relating to visa refusals. The Court stated that the consul's final decision on visa refusal (given after reconsideration of the visa application, when the first refusal was issued on the form provided by the Visa Code) issued on the form does not allow for an assessment of the refusal reasons. Therefore, the Court stated that the consul's duty is to provide a justification in which such reasons should be indicated. The Court referred to Article 41 EU Charter of Fundamental Rights in this respect.

### **Observations/Comments:**

The ruling is largely in line with Advocate General Bobek's [Opinion](#) [4].

### **Case Law Cited:**

CJEU - C-3/16, Aquino

CJEU - C-682/15, Berlioz Investment Fund

CJEU - C-506/04, Wilson

CJEU - C- 84/12, Rahmanian Koushkaki v Bundesrepublik Deutschland

[CJEU - Case C-239/14, Abdoulaye Amadou Tall](#) [5]

C 317/08 to C 320/08 Alassini and Others

C-418/11, TEXDATA Software GmbH

**Attachment(s):**



[CJEU - 403 16 El Hassani.pdf](#)[6]

---

**Other sources cited:**

Recital 29, Articles 1(1), 31(2) and 21(3) of the Visa Code.

**Authentic Language:**

English

**Country of preliminary reference:**

Poland

**National / Other Legislative Provisions:**

Poland ? Law on Foreign Nationals of 12 December 2013 - Article 76(1)

Poland ? Law on proceedings before the administrative courts of 30 August 2002 - Article 5

Poland ? Law on proceedings before the administrative courts of 30 August 2002- Article 58

---

**Links:**

[1] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A30](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A30)

[2] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A2481](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2481)

[3] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A2494](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2494)

[4] <http://www.asylumlawdatabase.eu/en/content/cjeu-opinion-ag-bobek-case-c-40316-el-hassani>

[5] <https://www.asylumlawdatabase.eu/en/content/cjeu-case-c-23914-abdoulaye-amadou-tall>

[6] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/CJEU%20-%20403%2016%20El%20Hassani.pdf>