

## Romania, High Court of Cassation and Justice, Judgement of 19 September 2012, N. 5473/2/2012

### Deciding bodies and decisions

- High Court of Cassation and Justice
- Court of Appeal of Bucharest
- European Court of Human Rights (pending)

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### Area of law

EU asylum law

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### Subject matter

Use of secret information and urgent procedure when national security is at stake in asylum and return cases - Limitation of the right to a fair trial and effective remedy in asylum and removal proceedings

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### Summary Facts Of The Case

A.M.N., a Pakistani citizen, entered Romania with a visa of studies of 90 days, which expired on February 2011. One month later, the Romanian Office for Immigration (ROI) caught A.M.N. to be illegally resident and issued a decision ordering him to leave the territory of Romania in 15 days. Two days later he lodged an asylum application on grounds of having been subject to persecution in Pakistan. His asylum application was rejected by both ROI and first instance court. During the asylum proceedings he married a Romanian citizen and consequently requested residence permit in Romania as family member of a Romanian citizen. Before the interview set by the ROI, the Romanian Intelligence Service (RIS) requested the Court of Appeal of Bucharest to declare him undesirable in Romania and he issue against him an entry ban of 10 years, in light of solid evidence indicating A.M.N. possible implication in activities that may constitute a threat to national security. The RIS also requested his placement in public custody until his removal. The evidence submitted by RIS were classified as 'top secret' and was made available only to the Court of Appeal of Bucharest (CAB). The request was judged in an emergency procedure by Court of Appeal Bucharest.

The CAB fully approved the request of the RIS, declaring the defendant undesirable and prohibited him to enter Romania and the EU for 10 years, including only an obligation that the public custody measure does not exceed 18 months. The day following his expulsion, a lawyer lodged an appeal against the judgment of the CAB before the High Court of Cassation and Justice requesting annulment of the measure declaring him undesirable and reduction of the entry ban. In support of his appeal, the lawyer argued that: 1) since he had less than one day to prepare his defence, he was thus placed in a situation where it was impossible to defend himself; 2) the translator present

during the court proceedings did not speak his mother tongue, Urdu, but only English and Nepalese; 3) very short prolongation, therefore he could not hire an attorney, who could have a special permit and access the 'top secret' documents.

By a definitive decision, the Supreme Court of Justice dismissed the applicant's appeal. It held that the CAB had correctly examined the aspects related to national security and the measures ordered were justified by the acts attributed to the applicant.

Following the final decision of the High Court of Cassation and Justice, the lawyers of A.M.N lodged a complaint before the European Court of Human Rights.

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#### Relation to the scope of the Charter

Although the case has some similarities to the CJEU decision in ZZ (C-300/11, 4 June 2013, ECLI:EU:C:2013:363), and could trigger the application of article 47 EU Charter, neither the applicant nor the national court consider such elements.

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#### Relation between the Charter and EHCR

The Application to ECHR concerns the right to good administration, fair trial and effective remedy, however since the ECHR does not recognise the right to a fair trial and effective remedy within asylum, entry, stay and deportation of aliens, the complaint of the applicant was lodged under Article 5(1)(f) and 4 and Article 8 ECHR, examining these issues implicitly under these provisions.

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#### Sources - ECHR

- Article 5 (1)(f)
  - Article 8
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#### Sources - CJEU Case Law

- C-300/11, *ZZ v Secretary of State for the Home Department*, 4 June 2013, ECLI:EU:C:2013:363
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