

Romania, Court of Appeal Bucharest, Case no. 5473/2/2012, Judgement of 9 July 2012

Deciding bodies and decisions

- Court of Appeal Bucharest (Curtea de Apel București)
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Area of law

Asylum and immigration - Area of freedom, security and justice - education, vocational training and youth - protection of the rights of third-country nationals

Subject matter

Long term residence permit issued to students – Irregular stay – International protection claim denied – Application for an extension of the right to residence due to his marriage to a Romanian citizen – Application denied due to activities of the nature to present a threat to national security

Summary Facts Of The Case

The Court had to decide on the applicant's situation, who tried to regulate his stay in Romania, firstly by asking for international protection (asylum or subsidiary protection), the request being denied, and secondly, by marrying a Romanian lady (a decision on the application for visa being not issued at the time of this judicial decision).

The Court granted the Immigration Authority claim in order to remove the foreigner from the Romanian territory, as it was found that he was involved in activities that posed a threat to national security.

AMN, Pakistani citizen, resides in Romania on the basis of a study visit for the Medicine and Pharmacy University of Iasi, approved to begin with the date of 12.10.2010. On 15.03.2011, the Pakistani citizen was found with illegal residence by ORI Ialomita, being issued a decision to leave the country in 15 days that he did not respect. On 17.03.2011 the Respondent submitted an asylum application that was rejected by the decision no. 13/05.04.2012 handed by the Tribunal of Galati. From the content of the documents submitted by the Respondent, it stems that the Applicant has enjoyed the use of a temporary identity document issued for asylum seekers, between 17.01.2012 – 06.02.2012, emitted by the Romanian Bureau for Immigration. On 08.05.2012 he forwarded an application at the Romanian Bureau for Immigration – The Department of Immigration Galati, whereby he requested the extension of the right of residence as a family member in the marriage with a Romanian citizen, the term of settlement of this request being appointed on 08.08.2012. A solution was not issued at the time of the judicial decision.

Analysing the dates communicated by the Romanian Internal Intelligence Service (SRI), classified as top secret, the Court found that these documents provide the proof of the fact that the foreigner unfolds activities that are of the nature to threaten the national security.

There have been taken into account the provisions of article 3 letter i) and from Law no. 51/1991 according to which by threats to national security of Romania, one understands the following: (i) terrorism acts, as well as the initiation and suspicion in any way of any activities whose scope represent the act of such facts; ... (l) initiation or establishment of organisations or colligation and joining or supporting in any way of them, towards unfolding of one of the activities listed at the letters a) – k), as well as the unfolding in secret of such activities by organisations or colligations established under law.

The Court took into consideration equally the provisions of article 44 from the Law no. 535/2004 which provide that against the foreign citizens and the stateless persons whereof exists data or solid clues that he or she has the intention to run terrorist acts or to bias the terrorism it is disposed the measure of declaration as undesirable person for Romania or the disruption of the right of residence in the country if against them it was not disposed the measure of interdiction to leave the country, according to the law of the regime of foreigners in Romania.

Even if the foreigner submitted on 08.05.2012 a request to the Romanian Bureau for Immigration – the Department of Immigration Galati through which he requested the extension of the right of residence as a family member in the marriage with a Romanian citizen, and the term of settlement of this request was appointed on 08.08.2012, to this it can be disposed the measure of declaration as undesirable taking into consideration the incidence in the case of the legal texts cited forgoing and the circumstance that Romania, as a member of the United Nations Organisation, has undertaken the obligation to decline the residence on the national territory of the ones who fund, arrange, support or commit acts of terrorism nature.

Through the measure disposed in the case it does not occur a breach of article 8 from the European Convention of Human Rights, because, even if the measure is an intrusion in the private and family life, this intrusion is stipulated by the law, has a lawful purpose and it is necessary in a democratic society.

Hereby, the measure is stipulated by the rules of the article 85 from the Government Emergency Ordinance no. 194/2002, on which grounds it can be disposed the removal from the national territory and the interdiction of residence for the foreigner, normative act published in the Official Monitor, being fulfilled in this way the requirement of accessibility of the text of law.

Also, there are respected the procedural guaranties for the foreigner subject of the measure for declaration as undesirable, the measure being disposed by a court according to the article 6 from the European Convention on Human Rights in conditions of contradictory procedure and with the comply of the right of defence.

By the declaration as undesirable of the foreigner citizen it is aimed a lawful purpose, respectively the prevention of committing serious facts that can put in danger the national security of the Romanian state.

Regarding the necessity of enacting such measures for a foreigner, this is justified by the nature and the seriousness of the activity unfolded in relation to which it is appreciated the proportionality between the measure disposed and the purpose spotted.

Taking into account these considerations and towards the dispositions of article 85 para (5) from the Government Emergency Ordinance no. 194/2002 according to which when the declaration of the foreigner as undesirable is based on reasons of national security on the content of the decision there are not mentioned the data and the information that stood on the ground of the motivation, the Court will grant the request and will dispose the declaration of the said AMN as an undesirable person on the grounds of national security for a period of 10 years.

Therewith, it will dispose the taking into public custody of the foreigner, according to the provisions of article 97(3) from the Government Emergency Ordinance no. 194/2002, until the removal from the territory of Romania, but no more than 18 months.

Relation to the scope of the Charter

The case falls inside the scope of application of the EU Charter pursuant to Article 51 (1) therein, as the national legislation transposes the EU legislation in the field of international protection and in the field of migration

Sources - EU and national law

EU law

- Council Directive 2004/114/EC of 13 December 2004
- Directive no. 2004/83/EC (replaced by Directive no. 2011/95/EC)

National Law

- Law no. 51/1991
 - Law no. 535/2004
 - Emergency Government Ordinance no. 194/2002
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Sources - ECtHR Case Law

- Article 8 - Right to respect for private and family life

A reference was made to article 8 ECHR, even if the national Court did not relate to a specific case from the Court of Strasbourg
