

Romania, Court of first instance, Case no. 345494-2013

Area of law

Asylum and Immigration

Subject matter

Right to family reunification - Directive 2003/86/EC – Right to respect for family life – Taking into consideration the children’s best interest – conditions for the operation of the presumption of good faith – unmarried couple benefiting of family reunification

Legal issues

- Whether a presumption of good faith operates in the context of family reunification applications.
 - Whether an unmarried couple can benefit from provisions relating to family reunification.
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Summary Facts Of The Case

The complainant, BK, an Afghan citizen was granted refugee status. He then made a family reunification request. In his application he mentioned that he is married to Mrs GG and has 6 children with her, namely T, E, B, R, R and N. They are identified in Mrs GG’s ID, where the children are indicated only by their surnames. By Decision of the IGI, the family reunification request was refused on the grounds that the complainant did not establish a relationship and that his statements were inconsistent with an interview given in 2002 as part of the procedure awarding him refugee status.

Mr. BK began proceedings contesting the decision of the IGI during which he submitted evidence proving a biological relationship between him and five of the six children. The final child, B, could not be found in time for the medical test and therefore no DNA samples of B were available.

The Court found that the relevant provisions of the Romanian constitution should be interpreted consistently with international agreements to which Romania are a party, including the United Nations Convention on Human Rights.

Article 15 of Law no.122/2006 contains a presumption of good faith applicable in asylum applications in the absence of documentary evidence if a number of conditions are met.

In *Marckx v. Belgium* (request no.6833/74) the ECtHR recognized that support and

encouragement of the traditional family is in itself legitimate or even praiseworthy. However, in the pursuing this goal, recourse must not be had to measures whose object or result is, as in the present case, to prejudice the "illegitimate" family; members of an "illegitimate" family enjoy the guarantees contained in Article 8 ECHR on an equal footing with the members of the traditional family.

The Court noted that Mr BK enjoys refugee status and is present in Romania and that medical testing demonstrated a biological relationship with five of the six children. For the purposes of assessing whether the children were in fact minors, the date of the application should be taken into account rather than that of the judgment. The position of the applicant and his children should not be prejudiced by delays outside their control. Regarding the sixth child, B, the Court found that he should be recognised as the child of BK in light of the statements of Mr BK, the inclusion of B on the official identification and travel documents of Mrs GG and the issuance of a birth certificate in his name.

The Court found the presumption of good faith is applicable to a request for family reunification. While art 15 refers only to an application for asylum procedure, the Court held that that a request for reunification of the family is a first step in a possible asylum procedure concerning the family members not present in Romania.

Regarding Mrs. GG, the expert report states that she is the mother of the 5 children mentioned above. The above reasoning regarding the paternity of the sixth child, B, alongside the operation of the presumption of good faith would indicate that B was born from a relationship between Mrs GG and Mr BK. In any case, even assuming that the marriage is not proved, the Court holds that the complainant, Mrs GG and the six children form a natural family, which must benefit from the same protection as the legal family under the Romanian Constitution. A similar conclusion flows from the application of Art 8 ECHR, as interpreted in *Marckx v. Belgium*.

While national and European legislation allow different rules regarding cohabitants and to exclude them from the benefit of family reunification, these provisions doesn't apply in this case. These provisions however have the objective of preventing the arrival of persons who have no connection to the beneficiary of the international protection and who seek leave to enter and remain in Romania solely on the basis of a simple statement in the sense of the existence of a relationship of cohabitation. The facts alongside the operation of a presumption of good faith in the present case demonstrate a real family life up to and including the present day between the applicants.

Relation to the scope of the Charter

The Charter is not mentioned explicitly.
