

Romania, ORNISS CLUSTER

Member State

 Romania

Topic

Rule of law conditionality; trust – judicial transparency;

Access to and efficient functioning of justice; Procedural safeguards relating to expulsion of aliens

Deciding Court English translation

1. ECHR - Adeel Muhammad et Ramzan Muhammad v Romania
2. ECHR - S.L. v Romania,
3. ECHR - Amine Hassine v Romania

Registration N

1. App. 80982/12, (Adeel Muhammad et Ramzan Muhammad v Romania)
2. App. 52693/12 (S.L. v Romania)
3. App. 36328/13 (Amine Hassine v Romania)

Date Decision

1. 15 October 2020
2. - no ruling was made by the ECHR
3. - no ruling was made by the ECHR

ECLI (if available)

ECLI:CE:ECHR:2020:1015JUD008098212

EU legal sources and CJEU jurisprudence

- Article 12 (1) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning

illegally staying third-country nationals;

- The relevant Articles of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, read as follows: Article 28 - Protection against expulsion; Article 31 - Procedural safeguards

Council of Europe Documents:

- Protocol No. 7 to the Convention, Explanatory Report;
- European Convention on the Legal Status of Migrant Workers;
- European Convention on Establishment

Other International Materials;

- International Covenant on Civil and Political Rights;
 - Declaration on the Human Rights of Individuals who are not Nationals of the Country in which They Live;
 - The General Recommendation No. 30 (2004) of the Committee on the Elimination of Racial Discrimination;
 - International Law Commission's Draft Articles on the Expulsion of Aliens; Judgment of the International Court of Justice (ICJ) of 30 November 2010 in the case of Ahmadou Sadio Diallo
-
- European Union law - ZZ v. the United Kingdom (case C-300/11, 4 June 2013) - the Court of Justice of the European Union (CJEU)

ECtHR Jurisprudence

S.C. c. Roumanie, 2015, app.no 9356/11)

N.M. c. Roumanie, 2015, app. no 75325/11

A. and others v. the United Kingdom, app no 3455/05, 19 02 2009

Lupsa v. Romania, app no. 10337/04, 08 09 2006

Regner v. The Czech Republic, App. no. 35289/11

Case of de Souza libeiro v. France, App no. 22689/07

Case of Ilias and Ahmed v. Hungary, App.no. 47287/15

Case of Al-Dulimi and Montana Management Inc. v. Switzerland,

App. no. 5809/08.

Case of Ljatifi v. The Former Yugoslav Republic Of Macedonia, App. no. 19017/16

Case of C.G. and others v. Bulgaria, app. no. 1365/07

Subject Matter

1. **Adeel Muhammad et Ramzan Muhammad v Romania**, (violation of Article 1 of Protocol No. 7 to the Convention for the Protection of Human Rights).

The case concerns the lack of sufficient safeguards in expulsion proceedings based on national security grounds conducted in 2012, in which the applicants, Pakistani nationals lawfully residing in Romania at the material time, were declared undesirable and denied access to the Romanian territory for a period of fifteen years.

The European Court noted that the applicants had received no information about the reasons for their expulsion and that they could not access the classified documents in the file underlying both the application for their expulsion and the domestic courts' decision to order their removal from Romania. These significant limitations of their rights under Article 1 of Protocol No. 7 had not been attended by sufficient counterbalancing safeguards in the proceedings at issue: the applicants had received no information about the factual reasons for the expulsion nor about the conduct of the domestic proceedings and their procedural rights, including that of accessing classified documents in the file through a lawyer holding security clearance; they had not benefitted from an effective representation, because their chosen lawyers did not possess the appropriate clearance that would have allowed them to consult the classified documents and the information and ascertain the accusations to secure the applicants an effective defence, and the relevant domestic courts had failed to exercise a sufficient degree of scrutiny of the classified documents in the file and the credibility and veracity of the facts submitted in support of the expulsion, which transpired both from the way the procedures had been conducted and from the reasoning of the decisions allowing the expulsion.

2. **S.L. v Romania**, Denial of a Tunisian citizen's right to enter Romania for 15 years. The applicant's proceedings for the annulment of the decision to ban him from Romania was rejected based on strictly classified documents, which were never made available to the applicant or his lawyer. The applicant claimed that Article 6 paragraph 1 and article 8 of the ECHR were breached, because his family was in Romania, where he was also a physician.
3. **Amine Hassine v Romania**, Expulsion of a Tunisian citizen following his being declared undesirable for 5 years. While he attempted to challenge the measure, he was not informed on the grounds, nor was he given access the documents based on which such measure was taken. Such documents were categorised as strictly classified and were, thus, unavailable to the applicant or his lawyer for examination. The applicant claimed that Articles 5, 6, 8 of the ECHR and Art. 1 of Protocol 7 to the Convention were breached.

Legal issue(s)

Rule of law conditionality; trust – judicial transparency;

Access to and efficient functioning of justice:

Procedural safeguards relating to expulsion of aliens • Expulsion on national security grounds

decided by court on the basis of classified information not disclosed to applicants, without sufficient counterbalancing safeguards • Right to be informed of the relevant factual elements underlying the expulsion decision • Right of access to the content of the documents and the information relied upon by the competent national authority • Requirement that limitations on these rights are duly justified by competent independent authority and sufficiently compensated for by counterbalancing factors, including procedural safeguards • Strict scrutiny of counterbalancing factors, in absence of stringent domestic examination of the need for significant limitation of the applicants' rights • Inadequate information disclosed to applicants on grounds for expulsion, conduct of proceedings and their rights • Ineffective defence by lawyers without access to case file information • Involvement of highest judicial authority a significant safeguard, but insufficient in absence of information on nature and degree of scrutiny applied.

National Law Sources

Government Emergency Ordinance no. 194/2002 on the legal status of aliens in Romania published in the Official Journal of Romania, Part I, no. 955 of 27 December 2002

Law no.182/2002 on the protection of classified information, published in the Official Journal of Romania, Part I, no. 248 of 12 April 2002

The Law No. 51/July 29, 1991 - Law on the National Security of Romania, published in the Official Journal of Romania, Part I, No. 163, of 7 August 1991

Law on prevention and combating terrorism no. 535/2004, published in the Official Journal of Romania, Part I, No. 1161 of 8 December 2004.

Facts of the case

Adeel Muhammad et Ramzan Muhammad v Romania

1. Adeel Muhammad entered Romania in September 2012, on a student visa he had obtained on 7 September 2012 and which was valid until 2015. He received an "Erasmus Mundus" scholarship and studied in the economic sciences faculty of Lucian Blaga University in Sibiu.
2. Ramzan Muhammad entered Romania on 17 February 2009 on a long-stay student visa. He completed his first year of preparatory studies in Pitești before being transferred to Lucian Blaga University in Sibiu on being granted an "Erasmus Mundus" scholarship. His wife arrived in Romania on 14 April 2012, having obtained a long-stay visa for family reunification purposes.
3. On 4 December 2012 the Romanian Intelligence Service (Serviciul român de informații – "the SRI") asked the public prosecutor's office at the Bucharest Court of Appeal (the "public prosecutor's office") to apply to the appropriate court to assess whether the applicants should be declared "undesirable persons" in Romania for a fifteen-year period. In support of its request, the SRI provided classified documents at the "secret" (strict secret) level.
4. On 4 December 2012 the public prosecutor's office submitted an application to the Administrative Division of that court (the "Court of Appeal") asking it to declare the two applicants undesirable in Romania. The application stated that, according to the "secret"

classified intelligence transmitted to the public prosecutor by the SRI, there were serious indications that the applicants intended to engage in activities capable of endangering national security. The public prosecutor's office also stated that the safeguards provided for under Article 1 of Protocol No. 7 to the Convention would not be breached by the measure, given that an alien could be expelled before exercising the rights enumerated in paragraph 1 (a)-(c) of that Article where such expulsion was necessary in the interests of public order or for national security reasons. The public prosecutor's office based its application on Article 85 § 2 and Article 97 § 3 of OUG no. 194/2002.

5. In support of its application, the public prosecutor's office submitted to the Court of Appeal the "secret" classified documents it had received from the SRI.
6. The president of the Administrative Division of the Court of Appeal was informed that the public prosecutor's office had filed a "document" classified as "secret" with the classified information department at the Court of Appeal so that it could be studied by the judge who would be examining the applicants' case.
7. According to the Government's observations, the classified document transmitted by the SRI to the public prosecutor's office gave details and examples of the activities of the two applicants in support of a fundamentalist Islamist group linked ideologically to al-Qaeda, showing their connections with various terrorist entities and their training. It also contained specific data and information concerning the two applicants' involvement in activities which endangered national security, as collected by the SRI using its technical intelligence gathering resources.
8. On 4 December 2012, after 5.20 p.m., the Sibiu police summoned the applicants to appear the next day, at 9 a.m., in the Court of Appeal, in connection with proceedings for the purpose of examining the application of the public prosecutor's office. The summonses were not accompanied by any documents.
9. On 5 December 2012, after travelling overnight by bus the applicants reached Bucharest at 5 a.m. They arrived at the Court of Appeal at the time indicated.
10. The case was allocated to a judge who did not have authorization required by the law no. 182/2002 on the protection of secret information to have access to the classified documents. In an interlocutory judgement of 5 December 2012 the bench comprised of one single judge, relinquished the case to a different bench which had the required authorization. (ORNISS authorization).
11. A hearing took place on 5 December 2012 during which the applicants were present, assisted by an Urdu interpreter.
12. The applicants had the right to see only the application by which the case had been referred to the court. In the application it was mentioned that the applicants had planned to carry out activities capable of endangering national security. The applicants didn't have the right to see the classified documents and they asked to see them. The Court of Appeal replied that the documents in the file were classified and that only the judge was authorized to consult them.
13. The public prosecutor's office and the Inspectorate General for Immigration (IGI), parties in the proceedings, requested the admission in evidence of the classified documents.
14. The Court of Appeal decided that the classified documents should be admitted in evidence, indicating that such evidence was conclusive, pertinent and useful for the resolution of the case. It then opened the proceedings on the merits of the case.
15. The applicants requested legal assistance, but the Court of Appeal rejected it as out of time, on the ground that such a request should have been submitted before the opening of the proceedings on the merits of the case.
16. In a judgment of the same date, the Court of Appeal declared the applicants undesirable for

a fifteen-year period and ordered that they be placed in administrative custody (luare în custodie public?) pending their deportation.

17. Also on 5 December 2012 the applicants were informed, by a letter from the Inspectorate General for Immigration (IGI) of Bucharest in Romanian and English, that they had been declared undesirable persons and that they would be removed from Romania under escort. They were placed in the Otopeni immigration holding facility pending their deportation.
18. The applicants, who engaged two lawyers to represent them in the proceedings, appealed to the High Court of Cassation and Justice (the “High Court”) against the Court of Appeal’s judgment of 5 December 2012. Those lawyers did not hold an ORNISS certificate and thus did not have access to the classified documents in the file.
19. In their grounds of appeal, the applicants complained that they had not been informed by the Court of Appeal of the procedure to be followed and more specifically of the conditions in which they could have sought legal assistance. They further submitted that the Court of Appeal had not informed them of the facts “underlying the proposal” to have them declared undesirable, merely referring to the “secret” level of classification of the documents in the file. They submitted that there was no mention in the file of classified documents at any level of classification and in their view, even assuming that it did contain classified documents, the Court of Appeal had a legal obligation to inform them of the case against them. That failure to inform them of the precise accusations against them had deprived them of the possibility of defending themselves and had thus breached their right to a fair hearing and to an effective remedy.
20. A hearing took place on 20 December 2012 before the High Court. The applicants, who were present at the hearing, assisted by their two lawyers and an interpreter, sought permission to produce documents attesting to their conduct at the university.
21. On the merits of the case, the applicants submitted that they were mere students and had not committed terrorist acts. They reiterated that the Court of Appeal had not communicated the facts underlying the public prosecutor’s application. They had not been informed of their right to be assisted by a lawyer or of the accusations against them. They had not been afforded the procedural safeguards of a fair trial as the proceedings had been a mere formality.
22. In a final judgment of 20 December 2012 the High Court dismissed the applicants’ appeal. After summing up the decision of the Court of Appeal, the High Court found that it could be seen from the classified documents available to it that the court below had rightly taken account of the existence of indications that the applicants had intended to engage in activities capable of endangering national security.
23. The High Court further noted that the provisions of Article 1 of Protocol No. 7 to the Convention were applicable to the case. The applicants were legally in Romania when the expulsion procedure was initiated but the provisions of paragraph 2 of that Article were not applicable to them, given that they had not been expelled before the exercise of their rights. After referring to the Court’s findings in *Ahmed v. Romania* (no. 34621/03, 13 July 2010), *Kaya v. Romania* (no. 33970/05, 12 October 2006), and *Lupsa v. Romania* (no. 10337/04, ECHR 2006-VII), where a breach of Article 1 of Protocol No. 7 to the Convention had been found because the competent authorities had not notified the aliens concerning the document initiating the proceedings or the slightest information as to the accusations against them, the High Court found that the circumstances of the present case were different.
24. The applicants left Romania on 27 December 2012.

Note:

(1) According to the Emergency Ordinance no. 153/2002 on the organization and functioning of the National Registry Office for Classified Information, The National Registry Office for Classified Information, hereinafter ORNISS, is organized and functions as a public institution with legal power, subordinated to the Government and directly coordinated by the Prime Minister, with authority at national level in the field of classified information security. ORNISS ensures the unitary implementation at national level of the security measures for national classified information, as well as for the equivalent information which is subject to bilateral or multilateral treaties, conventions and agreements to which Romania is part of.

The ORNISS authorization must be obtained by any person who has access to classified information.

Lawyers can obtain this authorization after information vetting. There is no public information with lawyers who have this authorization.

S.L. v Romania,

1. The applicant is a Tunisian citizen born in 1984, currently living in Tunisia.
2. In 2002, the applicant settled in Romania. Between 2003 and 2009, he attended the classes of the Cluj-Napoca Faculty of Medicine and Pharmacy. He was admitted after having passed the examination for residency and started specialising in cardiology at the Cluj-Napoca University of Medicine and Pharmacy.
3. In 2010, he married a Romanian citizen. After the marriage was concluded, he was awarded a residence permit, as a member of a European Union citizen's family, valid until September 2015.
4. On 14 august 2011, when the applicant and his wife returned from a trip to Tunisia, the border police declined the applicant the right to enter Romania. A protocol was drawn up then, noting that he was declined access to Romania based on Emergency Ordinance no. 194/2002, and that his name was on a national list indicating that he be declined the right to enter Romania. He was informed on the possibility of challenging the measure by filing proceedings to the Bucharest Court of Appeal.
5. According to the applicant, neither he, nor his lawyer were able to get information from the authorities as to the facts that substantiated his being refused access to Romania.
6. On 18 August 2011, the applicant, through a lawyer, filed administrative proceedings against the General Inspectorate of Border Police, requesting cancellation of the refusal to allow his entering Romanian territory, and to remove the applicant's name from the list of individuals without a right to enter Romania.
7. The applicant maintained that the measure taken against him was illegal and unsubstantiated de facto and de jure. Furthermore, the time during which such measure was to remain valid had not been indicated.

8. The applicant also maintained that lack of substantiation of the decision injured his right to defend himself, that he was unable to efficiently challenge the taken measure, which enabled the authorities to take arbitrary and abusive measures. Furthermore, according to the applicant, his personal and professional lives were related to the Romanian territory, and he had never undergone criminal prosecution, nor broken the Romanian laws.
9. On filing such proceedings, he requested that the defendant filed the proof justifying such measure being taken, so that he could examine it and prepare his defence.
10. The Court of Appeal informed the applicant that the measure (ban of entry) against him, had been taken for 15 years, on the request of the Romanian Intelligence Service (SRI). The applicant was not provided with any document in this respect.
11. The Court of Appeal asked the Romanian Intelligence Service to file the strictly classified documents concerning the applicant which substantiated taking the measure of banning him from entering Romania and of including the applicant's name in such national records.
12. SRI sent the documents to the Court of Appeal. Pursuant to the law, only the judge had access to the documents in question, and the applicant was not able to access them as part of the proceedings.
13. The hearing took place on 21 February 2012, and the claimant's lawyer pointed out that he was unaware of the actual facts that the applicant was accused of, that the latter had never broken the Romanian laws, that he was married to a Romanian citizen and was professionally active in Romania, for which reason he invoked violation of Art. 8 of the Convention by the entry ban.
14. The defendant did not appear in court.
15. The final decision ruled by the Court of Appeal on 21 February 2012 rejected the applicant's action. The ruling noted that the measure of banning his access on Romanian territory was based on art. 8 paragraph 1 (b), art. 2, art. 3 of GEO 194/2002. Pursuant to these legal provisions, access on Romanian territory may be denied to aliens who organise, support in any way or perpetrate acts of terrorism, notice of which is given by international organisations Romania is a party to, as well as by institutions specialising in combating terrorism.
16. The Court of Appeal's ruling showed that the measure of banning the applicant from Romania had been taken for 15 years on the request of the SRI, based on strictly classified documents. The fact that the applicant had only been given an overview of the measure was justified by the public interest of protecting confidential information and hence state security. The facts indicated by the classified documents proved the gravity of the situation and were under the scope of art. 8 paragraph 1 of GEO 194/2002. As to the gravity of the indicated facts, interference with the applicant's life seemed necessary and proportional.
17. The applicant now lives in Tunisia and is making efforts to obtain equivalency of his Romanian medicine diploma. His wife lives in Romania.
18. The applicant's claim before the Court was that the guarantees of a fair trial (art. 6 paragraph 1) were not observed during the proceedings before the Bucharest Court of Appeal, given that he was not informed on what the allegations against him were.
19. His complaint is also that his being banned from entering Romania injured his right to private life and family. According to him, the reasons which caused such measure to be taken were not notified to him, and he was thus unable to defend his rights before the Court of Appeal.

Amine Hassine v Romania,

1. The applicant is a Tunisian citizen born in 1982 and is currently living in Tunisia. He arrived in Romania in 2007, and legally settled in Cluj-Napoca. In 2009, he married a Romanian citizen, and had a child together. The applicant was the holder of a residence permit issued for the purpose of his family life in Romania, valid until 2015.
2. On 7 November 2012, 5 p.m., he was summoned to appear before the Bucharest Court of Appeal on 9 November 2012, 9 a.m. The scope of the proceedings in relation to which he was summoned was represented by proceedings launched by the Prosecutor's Office under the Bucharest Court of Appeal aiming at declaring him undesirable on Romanian territory, for national security reasons.
3. On 8 November 2012, the applicant faxed a request to the Court of Appeal, asking that the trial be postponed, so that he could have time to hire a lawyer and prepare his defence. The applicant's wife filed a request for intervention to give weight to her husband's defence and to support rejection of the Prosecutor's Office proceedings on grounds relating to family life.
4. The Court of Appeal tried the case on 9 November 2012 in the presence of the Prosecutor's Office representative, a representative from the Ministry of Internal Affairs, claiming that the applicant had no intention of hiring a lawyer, that he intended to leave Romania anyway. The Ministry of Internal Affairs was part of the process, which was represented by a legal adviser who made this claim.
5. The Court of Appeal rejected the request for postponement on grounds of the urgency characteristic of the procedure, rejecting also the applicant's wife's request for intervention.
6. The Prosecutor's Office filed documents issued by the Romanian Intelligence Service supporting that the applicant was a danger to national security. Such documents were defined as strictly classified, and were thus available to neither the applicant, nor his lawyer.
7. A ruling of the Court of Appeal, given on the same day, allowed the Prosecutor's Office request and declared the claimant undesirable on Romanian territory for 5 years. Instruction of his arrest was given for the purpose of expulsion. The Court of Appeal further noted that none of the documents or data on which it substantiated its ruling could be made public, for national security reasons.
8. On the evening of 9 November 2012, the applicant was taken into police custody and taken to the detention centre in Arad, for the purpose of expulsion. He was expelled on 5 December 2012.
9. The applicant's lawyer challenged the Bucharest Court of Appeal's ruling on 9 November 2012, maintaining that several ECHR provisions relating to the right of defence and the right to family life had been breached.
10. The appeal was tried by the High Court of Cassation and Justice (HCCJ), and it was rejected on grounds that the rejection of the request for postponement was justified and that the summoning procedure had been correctly completed. It was also noted that the documentary evidence issued by the Romanian Intelligence Service on which the Court of Appeal

substantiated its ruling could not be made available to the applicant. The HCCJ also maintained that the Prosecutor's Office's request was subject to an actual examination based on "strictly classified evidence" to the case file.

11. As for the violation of the right to family life, the HCCJ maintained that the measure was necessary in the context of national security, as well as proportional.
12. In his application to the Court, the applicant filed claims in relation to Articles 5 and 6 of the ECHR. He also claimed that he was illegally detained for the purpose of expulsion, and the ruling in the proceedings aiming at his being declared undesirable was not based on equal arms principle, such as both parties being heard.
13. He also maintained that his expulsion and banning from staying in Romania breached his right to family life, as guaranteed by Art. 8 of the ECHR.
14. The applicant also invoked Art. 1 of Protocol 7 to the Convention, claiming that during the proceedings to declare him undesirable he did not benefit from the adequate procedural guarantees protecting him against arbitrariness.

Reasoning (role of the Charter or other EU, ECHR related legal basis)

Adeel Muhammad et Ramzan Muhammad v Romania

The Grand Chamber made a comparative legal research over the law applicable in forty member States of Council of Europe.

The Court reiterates that, as a matter of well-established international law and subject to their treaty obligations, the States have the right to control the entry, residence and expulsion of aliens.

Article 6 of the Convention did not apply to procedures for the expulsion of aliens and for this reason, the States are obliged to take special measures which defines the procedural safeguards applicable to this type of procedure.

According to the Explanatory Report on Protocol No. 7, in adopting Article 1 of Protocol No. 7 the States agreed to "minimum" procedural safeguards in the event of expulsion:

- the person concerned may be expelled only "in pursuance of a decision reached in accordance with law". This phrase has a similar meaning throughout the Convention and its Protocols. It concerns not only the existence of a legal basis in domestic law, but also the quality of the law in question: it must be accessible and foreseeable and must also afford a measure of protection against arbitrary interference by the public authorities with the Convention rights.
- aliens must be able to submit reasons against their expulsion,
- to have their case reviewed
- to be represented for these purposes before the competent authority

The rights asserted by the applicants, namely the right to be informed of the reasons for their

expulsion and the right to have access to the documents in the case file, are not expressly mentioned in the text of Article 1 of Protocol No. 7.

The Court finds that Article 1 § 1 of Protocol No. 7 requires in principle that the aliens concerned be informed of the relevant factual elements which have led the competent domestic authorities to consider that they represent a threat to national security and that they be given access to the content of the documents and the information in the case file on which those authorities relied on when deciding on their expulsion.

These rights are not absolute. The Court accepted limitations of an applicant's rights to access the file and to be informed of the accusations in cases concerning expulsion proceedings where national security was invoked.

The Court reiterates that it is acutely conscious of the extent of the danger represented by terrorism and the threat it poses to society, and consequently of the importance of counter-terrorism considerations.

Nevertheless, any limitations of the rights in question must not negate the procedural protection guaranteed by Article 1 of Protocol No. 7 by impairing the very essence of the safeguards enshrined in this provision. Even in the event of limitations, the alien must be offered an effective opportunity to submit reasons against his expulsion and be protected against any arbitrariness.

The Court established a series of criteria to determine whether limitations imposed on the right to be informed of the relevant factual elements underlying the expulsion decision and the right of access to the content of the documents and the information relied upon by the competent national authority are compatible with Article 1 § 1 of Protocol No. 7 and applied these criteria when analysing the case.

1. The limitation on the applicants' procedural rights.

As regards the applicants' right to be informed of the content of the documents and the information in the case file on which the case against them was based, the Court notes that, from the outset of the proceedings, in applying the relevant legal provisions, the domestic courts found that the applicants were not entitled to access the documents in the file as they were classified.

2. Whether the limitations of the applicants' procedural rights were duly justified

The national courts ruled from the outset that the applicants could not have access to the file on the grounds that the documents were classified. The national security reasons which, in the authorities' opinion, precluded the disclosure of the classified evidence and intelligence concerning the applicants were not clarified by the national courts. Consequently, in the absence of any examination by the courts hearing the case of the need to limit the applicants' procedural rights, the Court must exercise strict scrutiny in order to establish whether the counterbalancing factors

put in place were capable of effectively mitigating the limitations of the applicants' procedural rights in the present case. In this context, the Court will take account of its finding that the limitations at stake were significant.

3. The existence of counterbalancing factors in the present case.

According to the Government, a number of factors must be taken into consideration by the Court when it examines whether the applicants' rights were upheld in the present case. The Court examined the concrete impact of each of the factors submitted by the Government in the present case.

1. The extent of the information provided to the applicants as to the factual elements underlying their expulsion

The Court noted that no specific accusations were stated and no specific information was provided to the applicants in the context of the proceedings by an independent authority. This fact is not a factor which is capable of counterbalancing the limitation of the applicant's procedural rights.

2. Whether the applicants were informed about the conduct of the domestic proceedings and about their procedural rights

When the applicants were summoned on the evening of 4 December 2012 any documents or information concerning the conduct or purpose of the proceedings were attached to the summons.

At the hearing of 5 December 2012 the Court of Appel did not consider it necessary to inform the applicants about the possibility of being represented by a lawyer, if they want.

In the Court's view, this failure to provide the applicants with information about the conduct of the domestic proceedings in the Court of Appeal and the rights that they should have enjoyed, combined with the rapidity of the procedure, had the effect of negating the procedural safeguards to which the applicants were entitled before that court.

3. The applicants' representation in the proceedings

Under domestic law the national authorities had no obligation to ensure that the applicants were assisted by a representative in the proceedings. It was nevertheless open to the applicants, if they so wished, to be represented by a lawyer.

The domestic authorities, both judicial and administrative, were not required under domestic law to inform the applicants that they were entitled to be represented by a lawyer holding an ORNISS certificate. It also notes that very few lawyers held such a certificate and that the names of those lawyers were not published by the Bar.

Before the Court of Appel the applicants were not afforded an effective possibility of obtaining representation by a lawyer, still less a lawyer holding an ORNISS certificate. Before the High Court the applicants were represented by two lawyers whom they themselves had chosen and who did not hold an ORNISS certificate. In these circumstances the lawyers chosen by the applicants did not have access to the classified documents in the file. As regards the possibility for those lawyers to request the adjournment of the High Court proceedings in order to obtain such a certificate, the

Court notes that the period imposed by domestic law for that purpose exceeded the normal length of the proceedings to establish whether the alien should be declared undesirable. In the present case, the presence of the applicants' lawyers before the High Court, without any possibility of ascertaining the accusations against their clients, was not capable of ensuring their effective defence. In the light of the foregoing, the applicants' representation was not sufficiently effective to be able to counterbalance, in a significant manner, the limitations affecting the applicants in the exercise of their procedural rights.

4. Whether the expulsion decision was subjected to independent scrutiny

The Court notes that the proceedings under Romanian law with a view to declaring a person undesirable were of a judicial nature. The competent courts in such matters, namely the Court of Appeal and the High Court, enjoyed the requisite independence within the meaning of the Court's case-law, and this has not been questioned by the applicants

The Court also attaches particular weight to the fact that the proceedings took place before the superior courts in the hierarchy of the Romanian legal system; the High Court is in fact the highest judicial authority. In the Court's view, these are significant safeguards to be taken into account in the assessment of the factors capable of mitigating the effects of the limitations imposed on the applicants' enjoyment of their procedural rights.

Before those courts, in view of the very limited and general information available to them, the applicants could only base their defence on suppositions and on general aspects of their student life or financial situation without being able specifically to challenge an accusation of conduct that allegedly endangered national security.

In the Court's view, faced with a situation such as this, the extent of the scrutiny applied by the national courts as to the well-foundedness of the requested expulsion should be all the more comprehensive.

Under Romanian law, it was the Court of Appeal which decided whether the measure requested by the public prosecutor's office was necessary and justified. In the light of these legal provisions, the Court of Appeal and the High Court – the latter by way of judicial review – should in principle have had access to all the classified documents on which the public prosecutor's application was based. The judges were thus, in principle, supposed to be duly informed of the case against the applicants as contained in the classified information. It was for the domestic courts to verify on that basis whether the applicants genuinely represented a danger for national security.

In ordering the expulsion, the Court of Appeal could confine itself, merely to verifying that there was "sufficient information" or "indications" that the alien in question intended to engage in activities which endangered national security. The Court would observe that the national court which is competent to decide on an expulsion should verify whether the expulsion application under examination is substantiated by the supporting evidence submitted.

In the present case, the public prosecutor's office submitted in evidence before the Court of Appeal a "document" which, in the Government's submission, provided details of the applicants' alleged activities and referred to the specific data and intelligence obtained by the SRI concerning

the involvement of the two applicants in activities which threatened national security. It is not clear whether the domestic courts actually had access to all the classified information underlying the expulsion application or only to that one “document”. Even though they were invited to do so, the Government failed to clarify this point.

When the applicants expressed their doubts before the High Court about the presence of classified documents in the file, that court did not provide any clarification on this point. In addition, the High Court refused to order the addition to the file of the only item of evidence that was requested by the applicants with the aim of rebutting the allegations that they had financed terrorist activities. In other words, there is nothing in the file to suggest that any verification was actually carried out by the national courts as to the credibility and veracity of the facts submitted to them by the public prosecutor’s office.

The domestic courts gave very general responses in dismissing the applicants’ pleas that they had not acted to the detriment of national security. They merely indicated that it could be seen from the evidence in the file that there were strong indications showing that the applicants intended to engage in activities capable of endangering national security, without any verification of the credibility of the document submitted to them by the public prosecutor’s office.

The Court thus accepts that the examination of the case by an independent judicial authority is a very weighty safeguard in terms of counterbalancing any limitation of an applicant’s procedural rights. However, as in the present case, such a safeguard does not suffice in itself to compensate for the limitation of procedural rights if the nature and the degree of scrutiny applied by the independent authorities do not transpire, at least summarily, from the reasoning of their decisions.

The documents in the file do not show that in the present case the domestic courts effectively and adequately exercised the powers vested in them for such purpose.

4. Conclusion as to compliance with Article 1 of Protocol No. 7 in the present case

In this case despite the fact that the expulsion decision was taken by independent judicial authorities at a high level, without it being possible to establish that they actually used the powers vested in them under Romanian law, does not suffice to counterbalance the limitations that the applicants sustained in the exercise of their procedural rights.

In conclusion, having regard to the proceedings as a whole and taking account of the margin of appreciation afforded to the States in such matters, the Court finds that the limitations imposed on the applicants’ enjoyment of their rights under Article 1 of Protocol No. 7 were not counterbalanced in the domestic proceedings such as to preserve the very essence of those rights.

Accordingly, there has been a violation of Article 1 of Protocol No. 7 to the Convention.

Use of Judicial Interaction technique(s)

Consistent interpretation

(Link to) full text

1. ECtHR Adeel Muhammad et Ramzan Muhammad v Romania

<http://hudoc.echr.coe.int/eng?i=001-205509>

2. ECtHR S.L. v Romania

<http://hudoc.echr.coe.int/eng?i=001-121053>

This case is communicated to the Romanian Government. No ruling was made by the ECHR until the drawing up of the case presentation. This case is presented by ECHR in cluster with Adeel Muhammad et Ramzan Muhammad v Romania.

3. ECtHR Amine Hassine v Romania

<http://hudoc.echr.coe.int/eng?i=001-141725>

This case is communicated to the Romanian Government. No ruling was made by the ECHR until the drawing up of the case presentation. This case is presented by ECHR in cluster with Adeel Muhammad et Ramzan Muhammad v Romania.

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