



## The applicant, who was expelled from Romania on national-security grounds, was denied protection of his procedural rights: violation of the Convention

In today's **Chamber judgment**<sup>1</sup> in the case of [Hassine v. Romania](#) (application no. 36328/13) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 1 of Protocol No. 7** (procedural safeguards relating to expulsion of aliens) of the European Convention on Human Rights.

The case concerned administrative proceedings following which the applicant was expelled from Romania on national-security grounds.

The Court held that substantial limitations had been imposed on the applicant's procedural rights without the need for those limitations having been examined and duly justified by an independent authority at national level. The applicant had not been provided with any information about the specific conduct on his part that was capable of endangering national security, or about the key stages in the proceedings. As to the extent of the scrutiny performed, the Court took the view that the mere fact that the expulsion decision had been taken by independent judicial authorities at a high level did not suffice to counterbalance the limitations that the applicant had sustained in the exercise of his procedural rights.

### Principal facts

The applicant, Amine Hassine, is a Tunisian national who was born in 1982. He stated that he was living in Cluj-Napoca (Romania).

Mr Hassine arrived in Romania in 2007 and settled in Cluj-Napoca. In 2009 he married a Romanian national, with whom he had a child. He obtained a residence permit "on family grounds", which was valid until 2015.

On 6 November 2012 the public prosecutor's office at the Bucharest Court of Appeal applied to that court asking it to declare Mr Hassine an "undesirable person" and to prohibit him from residing in Romania for five years. The public prosecutor's office stated that, according to the information it had received from the Romanian intelligence services, which was classified as secret, there were strong indications that the applicant was engaged in activities capable of endangering national security. In support of the application the prosecutor sent a document to the Court of Appeal that was classified as secret. In a judgment of 9 November 2012 the Court of Appeal declared Mr Hassine an undesirable person in Romania for a five-year period and ordered his placement in administrative detention pending his removal from the country. On the evening of 9 November 2012 Mr Hassine was arrested and taken to the Arad administrative detention centre. On 5 December 2012 he was removed from Romania and sent back to Tunisia.

On 20 November 2012 the applicant's lawyer lodged an appeal with the High Court of Cassation and Justice ("the High Court") against the Court of Appeal judgment of 9 November 2012. As he did not hold an ORNISS certificate – issued by the Office of the national register for State secret information

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

and authorising the holder to access documents classified as secret – the lawyer was unable to consult the classified documents in the case file.

In a judgment of 12 December 2012 the High Court dismissed Mr Hassine's appeal. It held that the Court of Appeal had correctly ruled that the procedure for summoning the parties had been carried out in the proper manner and that the first-instance court had rejected the request for adjournment properly and giving reasons. The proceedings had been conducted with due respect for the adversarial principle, and the measure declaring Mr Hassine an undesirable person on national-security grounds had been taken after verification of compliance with the statutory procedures, and had struck a fair balance between the need to take measures to prevent terrorism and the obligation to respect human rights.

The High Court found that the Court of Appeal had carried out an effective examination of the public prosecutor's application and the documents in the case file classified as secret. The applicant had had access to a court and had been afforded the relevant procedural safeguards. The High Court observed that in its Grand Chamber judgment in [Maaouia v. France](#), the Court had ruled that decisions regarding the entry, stay and deportation of aliens did not concern the determination of civil rights or obligations or of a criminal charge, within the meaning of Article 6 § 1 of the Convention. The High Court noted that under Article 1 § 2 of Protocol No. 7 to the Convention an alien could be expelled where the expulsion was based on reasons of public order or national security.

The measure prohibiting the applicant from entering Romania came to an end in November 2017.

## Complaints, procedure and composition of the Court

Relying on Article 5 §§ 1 and 4 (right to liberty and security/right to a speedy review of the lawfulness of detention), the applicant alleged that his placement in administrative detention with a view to his expulsion amounted to an unlawful deprivation of liberty and that he had had no effective remedy in that regard. Relying on Article 1 of Protocol No. 7 (procedural safeguards relating to expulsion of aliens), the applicant complained that he had not been afforded any safeguards against arbitrariness. Lastly, he alleged that the measure taken against him had breached his right to respect for his private and family life under Article 8.

The application was lodged with the European Court of Human Rights on 30 April 2013.

Judgment was given by a Chamber of seven judges, composed as follows:

Yonko **Grozev** (Bulgaria), *President*,  
Tim **Eicke** (the United Kingdom),  
Faris **Vehabović** (Bosnia and Herzegovina),  
Iulia Antoanella **Motoc** (Romania),  
Armen **Harutyunyan** (Armenia),  
Pere **Pastor Vilanova** (Andorra),  
Jolien **Schukking** (the Netherlands),

and also Ilse **Freiwirth**, *Deputy Section Registrar*.

## Decision of the Court

### [Article 5 §§ 1 and 4](#)

The applicant had been deprived of his liberty for a short period prior to his removal from the country. Although he had been represented by a lawyer, he had not contested the administrative detention measure as such in the High Court, but had merely challenged the declaration that he was

an undesirable person. The Court therefore found that the applicant had had available to him a remedy by which to complain of the measure, which he had not exercised.

The complaint under Article 5 § 4 was manifestly ill-founded and had to be rejected. The complaint under Article 5 § 1 had to be rejected for failure to exhaust domestic remedies.

#### Article 1 of Protocol No. 7

The Court observed that under Article 85 § 5 of Emergency Ordinance no. 194/2002 on the status of aliens in Romania, as in force at the relevant time, the data and information, together with the factual grounds underlying the judges' opinion, could not be mentioned in the judgment. The legal provisions in force prohibited the disclosure of information classified as secret to persons who did not hold a certificate authorising them to access documents of that kind. Under the relevant provisions, as noted by the High Court, the applicant had not been entitled to consult the documents in the case file that had been classified as secret. This had resulted in a substantial limitation of the applicant's rights under Article 1 of Protocol No. 7. The Court therefore had to assess the necessity of the restrictions imposed on the applicant's procedural rights and the measures taken by the national authorities to counterbalance those restrictions.

The Court noted that the national courts had held at the outset that the applicant was not entitled to access the case file, without themselves having examined the necessity of restricting his procedural rights. Hence, the applicant had been summoned to appear in the proceedings and the application initiating the proceedings had been attached to the summons. Only the numbers of the legal provisions which, according to the public prosecutor's office, governed the applicant's alleged conduct were referred to in that document, without any mention of the conduct itself. In its judgment the Court of Appeal had reproduced the parts of Law no. 51/1991 which it considered relevant, thus circumscribing the legal framework of the accusations against the applicant, namely an intention to commit acts of terrorism and the aiding and abetting of such acts by any means. No additional information had been provided to the applicant's lawyer.

During the proceedings the applicant had received only very general information about the legal characterisation of the accusations against him, while no specific actions on his part capable of endangering national security were apparent from the file.

The Court also noted that the very short interval before the Court of Appeal had resumed the hearing after rejecting the applicant's request for an adjournment – despite the fact that he lived in a town some distance away from the Court of Appeal – and the decision to examine the case in the applicant's absence, had had the effect of negating the procedural safeguards to which he had been entitled before that court.

Lastly, the Court noted that the applicant had been represented before the High Court by a lawyer of his own choosing who had been unable to access the classified documents in the case file. Given the very limited and general information available to the applicant, he could only base his defence on suppositions, without being able specifically to challenge an accusation of conduct allegedly endangering national security. The public prosecutor's office had produced a classified document before the Court of Appeal. Both that court and the High Court stated that they had based their decisions on that document, but had nevertheless given very general responses in dismissing the applicant's pleas that he had not acted to the detriment of national security. In other words, there was nothing in the file to suggest that the national courts had actually verified the credibility and veracity of the information submitted by the public prosecutor's office.

The Court therefore held that substantial limitations had been imposed on the applicant's procedural rights without the need for those limitations having been examined and duly justified by an independent authority at national level. The applicant had not been provided with any information about the specific conduct on his part that was capable of endangering national security or about the key stages in the proceedings. As to the extent of the scrutiny performed, the Court

took the view that the mere fact that the expulsion decision had been taken by independent judicial authorities at a high level did not suffice to counterbalance the limitations that the applicant had sustained in the exercise of his procedural rights.

The Court considered that the limitations imposed on the applicant's enjoyment of his rights under Article 1 of Protocol No. 7 had not been counterbalanced in the domestic proceedings in such a way as to preserve the very essence of those rights. There had therefore been a violation of Article 1 of Protocol No. 7 to the Convention.

### Article 8

In view of its findings under Article 1 of Protocol No. 7 to the Convention, the Court held that it was unnecessary to examine the complaint under Article 8 of the Convention.

### Just satisfaction (Article 41)

The Court held that Romania was to pay the applicant 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,300 in respect of costs and expenses.

### Separate opinion

Judge **Motoc** expressed a separate opinion which is annexed to the judgment.

*The judgment is available only in French.*

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#### **Denis Lambert**

Tracey Turner-Tretz

Inci Ertekin

Neil Connolly

**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.