EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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Violation of Convention in view of significant limitations imposed on applicants' right to be informed of reasons for expulsion

In today's **Grand Chamber** judgment[1] in the case of Muhammad and Muhammad v. Romania (application no. 80982/12) the European Court of Human Rights held, by a majority, that there had been:

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

The case concerned proceedings as a result of which the applicants, Pakistani nationals living lawfully in Romania, were declared undesirable and deported.

The Court found that the applicants had received only very general information about the legal characterisation of the accusations against them, while none of their specific acts which allegedly endangered national security could be seen from the file. Nor had they been provided with any information about the key stages in the proceedings or about the possibility of accessing classified documents in the file through a lawyer holding authorisation to consult such documents.

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 found that the limitations imposed on the applicants' enjoyment of their rights under Article 1 of Protocol No. 7 had not been counterbalanced in the domestic proceedings such as to preserve the very essence of those rights.

Principal facts

The applicants, Adeel Muhammad and Ramzan Muhammad, are Pakistani nationals who were born in 1993 and 1982 and live in Tehsil Karor (Pakistan) and Dubai (UAE) respectively.

Adeel Muhammad arrived in Romania in September 2012 on a student visa. Having obtained a scholarship, he began his studies in the economic sciences faculty of Lucian Blaga University in Sibiu. Ramzan Muhammad entered Romania on 17 February 2009 on a long-stay student visa. He completed his first year of preparatory studies before going to the same university in Sibiu on being granted a scholarship. His wife joined him in Romania in April 2012.

On 4 December 2012 the Romanian Intelligence Service (*Serviciul român de informaţii* – "the SRI") asked the public prosecutor's office at the Bucharest Court of Appeal to apply to the appropriate court to assess whether the applicants should be declared undesirable in Romania. In support of its request the SRI provided classified documents. On 4 December 2012 the public prosecutor's office submitted an application to the Administrative Division of the Bucharest Court of Appeal asking it to declare the two applicants undesirable in Romania. The application stated that, according to the intelligence from the SRI, there were serious indications that the applicants intended to engage in activities capable of endangering national security. The classified documents were forwarded to the Court of Appeal. Also on 4 December 2012 the Sibiu police summoned the applicants to appear the next day in the Court of Appeal.

1. Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In an interlocutory judgment of 5 December 2012, the bench to which the case had first been allocated relinquished it on the grounds that the judge did not have the statutory authorisation to access the classified document forwarded by the public prosecutor's office. The case was allocated to a different bench, which had been issued by the Office of the National Register for State Secret Information ("ORNISS") with authorisation to access such documents. A hearing took place on the same day at which the applicants were present, assisted by an Urdu interpreter. The applicants indicated that they did not understand the reasons why they had been summoned, as the initiating application merely contained references to legal provisions. The Court of Appeal replied that the documents in the file were classified. The public prosecutor asked the court to declare them undesirable on the ground that, according to the classified intelligence, they had engaged in activities capable of undermining national security.

In a judgment of the same date the Court of Appeal declared the applicants to be undesirable persons in Romania for a 15-year period and ordered that they be placed in administrative custody pending deportation.

On 6 December 2012 the SRI published a press release on the case, which gave details and examples of the activities of which the applicants were accused, in support of an Islamist group ideologically affiliated to al-Qaeda. The information in the press release was reported in certain newspapers, indicating the applicants' names and the details of their university studies.

The applicants appealed to the High Court of Cassation and Justice against the Court of Appeal's judgment, but their appeals were dismissed. The High Court took the view that it could be seen from the classified documents available to it that the court below had rightly taken account of the indications that the applicants had intended to engage in activities capable of endangering national security. It further observed that, pursuant to the law, where a decision to declare an alien undesirable was based on reasons of national security, the data and information, together with the factual grounds underlying the judges' opinion, could not be mentioned in the judgment. They had thus been in a position to know, with the help of an interpreter, the reason why they had been summoned to court in the exclusion and expulsion proceedings.

The applicants left Romania on 27 December 2012.

Complaints, procedure and composition of the Court

Relying on Article 1 § 1 of Protocol No. 7 (procedural safeguards relating to expulsion of aliens) to the Convention and Article 13 (right to an effective remedy) of the Convention, the applicants complained that they had not been afforded due procedural safeguards and had not been able to defend themselves effectively in the proceedings. More specifically they alleged that they had not been notified of the actual accusations against them, whilst they did not have access to the documents in the file.

The application was lodged with the European Court of Human Rights on 19 December 2012. On 26 February 2019 the Chamber relinquished jurisdiction in favour of the Grand Chamber. A public hearing was held on 25 September 2019.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Robert **Spano** (Iceland), *President*,
Linos-Alexandre **Sicilianos** (Greece),
Jon Fridrik **Kjølbro** (Denmark),
Ksenija **Turković** (Croatia),
Angelika **Nußberger** (Germany),
Paul **Lemmens** (Belgium),
Ganna **Yudkivska** (Ukraine),

Paulo **Pinto de Albuquerque** (Portugal),
Faris **Vehabović** (Bosnia and Herzegovina),
Iulia Antoanella **Motoc** (Romania),
Carlo **Ranzoni** (Liechtenstein),
Pauliine **Koskelo** (Finland),
Georgios A. **Serghides** (Cyprus),
Marko **Bošnjak** (Slovenia),
Jovan **Ilievski** (North Macedonia),
Péter **Paczolay** (Hungary),
María **Elósegui** (Spain),

and also Johan **Callewaert**, *Deputy Grand Chamber Registrar.*

Decision of the Court

Article 1 of Protocol No. 7

The Court first had to determine the circumstances in which the limitations imposed on the applicants' right to be informed of the reasons for their expulsion would be compatible with Article 1 of Protocol No. 7. It then had to ascertain whether those limitations had been counterbalanced by sufficient legal safeguards.

As to the justification for the limitations imposed on the applicants' procedural rights, the Court noted that the domestic courts, applying the relevant statutory provisions, had found at the outset that the applicants had not been able to access the file because the documents were classified as "secret". Domestic law did not enable the courts to ascertain whether or not the protection of national security imposed non-disclosure of the file in a given case. Nor had the domestic courts assessed the need to restrict the applicants' procedural rights by not disclosing the confidential documents to them. They had not explained the concrete reasons for withholding the classified information and evidence. Lastly, the fact that the SRI had published a press release the day after the judgment, with detailed factual information, contradicted the argument that it had been necessary to deprive the applicants of any concrete information on the factual reasons given in support of their expulsion.

As to whether the limitations had been offset by counterbalancing factors, the Court noted that, at the hearing of 5 December 2012 before the Court of Appeal, the applicants had been notified, through an interpreter, of the application initiating the proceedings, but only the numbers of the legal provisions which governed the alleged misconduct had been referred to in that document, not the allegations themselves. In the proceedings before the Court of Appeal, no specific information as to the factual reasons for the expulsion had been provided to the applicants. The Court further noted that, on the day after the delivery of the Court of Appeal's judgment, while the appeal was pending, the SRI had issued a press release setting out some of the accusations against the applicants. Even assuming that the information contained in the press release had been sufficient for the applicants to prepare their defence, the Court took the view that the press release could not be regarded as a valid source of information. First, the SRI press release did not appear to have been added to the case file before the High Court. It had not been established that the public prosecutor's office had considered the facts stated in that press release to form the basis of its application, or that the High Court had confirmed to the applicants that those were the facts which had given rise to the accusations against them. Third, while the applicants had pleaded their case before the High Court after becoming aware of the acts of which they stood accused according to the press release, it could not be seen from the file or from the wording of its final judgment that the court had relied on the press release in its reasoning. Lastly, and most importantly, a press release could not be

regarded as an appropriate means of providing parties to judicial proceedings with the information that they needed in order to plead their case.

Consequently, in the High Court proceedings also, the applicants had not been informed of the allegations against them such as to be able effectively to exercise their procedural rights under Article 1 of Protocol No. 7. Such significant limitations on the disclosure of concrete information called for robust counterbalancing safeguards.

As to whether the applicants had been informed about the conduct of the proceedings and about their procedural rights, the Court noted that on the evening of 4 December 2012 the applicants had been summoned to appear the following day, at 9 a.m., before the Bucharest Court of Appeal. No documents or information concerning the conduct or purpose of the proceedings had been attached to the summons. Subsequently, the Court of Appeal had made sure that the applicants were provided with an interpreter and had informed them that the documents in the file were confidential and that only the court had access to them by virtue of the authorisation given to the judge. The Court of Appeal had thus informed the applicants of the limitation of their right of access to the file and of the counterbalancing safeguard, namely the court's access to those documents.

The Court of Appeal had not considered it necessary to make sure that the applicants were well informed about the conduct of the proceedings before it or about the existence in domestic law of other safeguards that could counterbalance the effects of the limitation on their procedural rights. Thus the Court of Appeal had not enquired whether the applicants knew that they could be represented by a lawyer or provided any information to them about lawyers holding an ORNISS certificate who would be authorised to access the classified documents. In the Court's view, this failure to provide the applicants with information had had the effect of negating the procedural safeguards to which the applicants were entitled.

The Court further noted that the High Court had not, of its own motion, informed the applicants of the procedural safeguards available under domestic law, with the result that this counterbalancing factor had not had any impact in mitigating the limitation of their procedural rights.

As to the applicants' representation in the proceedings, the Court noted that, as the lawyers chosen by them did not hold an ORNISS certificate, they had not been able to access the classified documents in the file. They could have requested the adjournment of the proceedings in order to obtain such a certificate, but the statutory period prescribed for that purpose exceeded the normal length of the proceedings. A request for adjournment would not therefore, in principle, have enabled the applicants' lawyers to obtain such a certificate for use in the appeal proceedings. The presence of the applicants' lawyers before the High Court, without any possibility of ascertaining the accusations against their clients, had not therefore ensured their effective defence. Accordingly, the applicants' representation had not been effective enough to counterbalance, to any significant degree, the limitations to which their procedural rights had been subjected.

As to whether the expulsion decision had been subjected to independent scrutiny, the Court observed 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. The proceedings had taken place before the superior courts, the High Court in fact being the highest judicial authority. These were 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' procedural rights.

Before those courts, in view of the very limited and general information available to them, the applicants had only been able to 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, the extent of the scrutiny

applied by the national courts as to the well-foundedness of the expulsion should have been all the more comprehensive.

The public prosecutor's office had 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. It was not clear, however, whether the domestic courts had actually had access to all the classified information underlying the expulsion application or only to that one "document". Moreover, when the applicants had expressed their doubts before the High Court about the presence of classified documents in the file, that court had not provided any clarification on this point. In addition, the High Court had refused to order the addition to the file of the only item of evidence that had been requested by the applicants with the aim of rebutting the allegations that they had been financing terrorist activities. Thus there was nothing in the file to suggest that any verification had actually been 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 Court accepted that the examination of the case by an independent judicial authority was a very weighty safeguard in terms of counterbalancing any limitation of the applicants' procedural rights. However, such a safeguard did not suffice in itself to compensate for such limitation if the nature and degree of any scrutiny applied by the independent authorities did not transpire, at least summarily, from the reasoning of their decisions.

In any event, it could not been seen from the domestic courts' decisions in the present case that they had effectively and adequately exercised the powers vested in them for the present purposes.

The Court concluded that the applicants had sustained significant limitations in the exercise of their right to be informed of the facts underlying the decision to deport them and their right to have access to the content of the documents and the information relied upon by the competent authority which had made that decision. It did not appear from the file that the need for such limitations had been examined and identified as duly justified by an independent authority.

The Court observed that the applicants had received only very general information about the legal characterisation of the accusations against them, while none of their specific acts which allegedly endangered national security could be seen from the file. Nor had they been provided with any information about the key stages in the proceedings or about the possibility of accessing classified documents in the file through a lawyer holding an ORNISS certificate.

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 found that the limitations imposed on the applicants' enjoyment of their rights under Article 1 of Protocol No. 7 had not been counterbalanced in the domestic proceedings such as to preserve the very essence of those rights.

There had accordingly been a violation of Article 1 of Protocol No. 7.

Just satisfaction (Article 41)

The Court held that Romania was to pay each applicant 10,000 euros (EUR) in respect of non-pecuniary damage and to pay the applicants EUR 1,365 jointly for costs and expenses.

Separate opinions

Judges Nußberger, Lemmens et Koskelo expressed a joint concurring opinion; Judge Pinto de Albuquerque expressed a concurring opinion, joined by Judge Elósegui; Judge Serghides expressed a concurring opinion; Judge Elósegui expressed a concurring opinion; Judges Yudkivska, Motoc and Paczolay expressed a joint dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

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