



Romania - Decision no. 362/28 May 2019

Constitutional Court

The claimant is a stateless person whose Romanian nationality was withdrawn by the National Citizenship Authority ("*Autoritatea Nationala a Cetateniei*") on the grounds that he is known to have links with terrorist groups or has supported, in any form, or has committed other acts that endanger national security. Romania law provides that in such cases, the order issued by the National Citizenship Authority can be appealed in court, and the decision issued by this court is final and irrevocable. The claimant raises an objection of unconstitutionality with regard to this law, because it violates the principle of the double degree of jurisdiction provided for in the EU law in criminal matters, assimilating the matter in question with a criminal matter as defined by the EU law.

Case name (in original language) : Decizia nr.362 din 28 mai 2019 referitoare la excepția de neconstituționalitate a dispozițiilor art.32 alin.(7) fraza finală din Legea cetățeniei române nr.21/1991

Case status: Decided

Case number: No. 362/28 May 2019

Citation: Constitutional Court - Decision no. 362/28 May 2019

Date of decision: 28/05/2019

State: Romania

Court / UN Treaty Body: Constitutional Court

Language(s) the decision is available in: Romanian

Applicant's country of residence: Romania

Legal instruments: 1997 European Convention on Nationality, European Convention on Human Rights (ECHR), European Union law, International Covenant on Civil and Political Rights (ICCPR)

Key aspects: Deprivation of nationality

Relevant Legislative Provisions:

- Article 32 para (7) and Article 35 of the Romanian Citizenship Law no. 21/1991 National Law;
- Article 129 of the Romanian Constitution, which provides the right to appeal the court decisions - National Law;
- Article 2 of Protocol no. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms providing the right to a double degree of jurisdiction in criminal matters - European Law;
- Article 6 regarding the right to a fair trial of the Convention for the Protection of Human Rights and Fundamental Freedoms - European Law;
- Article 12 of European Convention on Citizenship, ratified by Romania by Law no. 396/2002 - European Law.

Facts

The Romanian nationality of the applicant, Mr. Said Baaklini, was withdrawn by the National Citizenship Authority based on Article 35 of the Romanian Citizenship Law no. 21/1991 - he was known to have links with terrorist groups or supported in any form, or committed other acts that endanger national security.

The applicant challenged in court the order issued by the National Citizenship Authority, but his request was rejected as unfounded by the Bucharest Tribunal, Administrative and Fiscal Litigation Section II. This decision was also challenged to the higher court, the Bucharest Court of Appeal, but the legislation in force does not provide the right to appeal twice against the order withdrawing Romanian nationality issued by the National Citizenship Authority. While the case was pending before the Bucharest Court of Appeal, the applicant filed an application for declaring unconstitutional Article 32(7) of the Romanian Citizenship Law no. 21/1991 National Law, which provides that "The order may be appealed within 15 days from the date of notification to the administrative and tax disputes department of the court of the place of residence or the applicant's residence. If the applicant is not domiciled or resident in Romania, the order may be appealed within the same time limit to the Administrative and Fiscal Disputes Section of the Bucharest Tribunal. Decision of the court is final and irrevocable."

Legal arguments by the applicant

The applicant motivates the exception of unconstitutionality arguing that the decision of the court of first instance, which may or may not decide to declare null and void the order of the President of the National Citizenship Authority to withdraw Romanian nationality, is final and irrevocable. This means that it cannot be further challenged or appealed to another court. This provision is unconstitutional for two reasons. First, it is contrary to Article 129 of the Romanian Constitution, which enshrines the right to appeal against a court decision. Second, it is contrary to Article 2 of Protocol no. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the European Court of Human Rights which provides for the right to a double degree of jurisdiction in criminal matters.

In accordance with Romanian law, withdrawal of nationality for reasons related to terrorism or acts against national security, is considered to be an extra-criminal matter, having an administrative nature. The applicant considers that the measure of withdrawing Romanian nationality on these grounds meets two of the alternative criteria established by the European Court of Human Rights for its qualification as "criminal matter" in the autonomous European sense, independently of its classification as extra-criminal in the Romanian law. Thus, in the first place, withdrawal of nationality is based on extremely serious acts, namely acts linked to terrorism or which harm national security. These acts are classified by the Romanian law as crimes. The withdrawal of Romanian nationality is also punitive in nature, as all rights attached to Romanian nationality are lost. It follows that, having a "criminal" nature in the autonomous European sense, the withdrawal of Romanian nationality for terrorism or damage to national security makes Article 2 of Additional Protocol no. 7 to the Convention applicable, which imposes double jurisdiction in the present case.

In conclusion, the right to double jurisdiction is not respected, as the National Citizenship Commission of the National Citizenship Authority is not a jurisdiction or a "court" in the autonomous European sense, the procedure before it is not jurisdictional and the administrative procedure leads to the issuance of an administrative act, namely the order of withdrawal of nationality, which is not reasoned.

Legal arguments by the opposing party

In proceedings before the Constitutional Court there is no opposing party. A person who is a party to a case before a court may request the submission of an application for unconstitutionality to the Constitutional Court.

Decision & Reasoning

The Court dismisses the application as unfounded and finds that the provisions at issue are constitutional, holding that the procedure for the withdrawal of Romanian nationality for terrorism-related reasons or acts against national security is of an administrative nature and the legislator has provided for sufficient guarantees for the person concerned. Therefore, the double degree of jurisdiction is not imposed by legal or union law provisions.

"With regard to the right to citizenship, the European Court of Human Rights has established that it is not a right of a civil character within the meaning of Article 6, but arbitrary refusal to grant citizenship under certain conditions falls under the protection of the Convention, although the right to obtain nationality is not guaranteed as such by the Convention. Arbitrary revocation of citizenship may also interfere with the right to respect for private and family life, in which case the Court must examine whether the revocation of citizenship was arbitrary and what its consequences are for private life and family life"

"The Constitutional Court notes that the provisions of the European Convention on Nationality of 6 November 1997 are applicable to the member states of the Council of Europe. This Convention was ratified by Law no. 396/2002, published in the Official Gazette of Romania, Part I, No 490 of 9 July 2002. According to Article 12 (Right of appeal) of Chapter IV (Procedures relating to nationality) of this Convention, 'Each State Party shall ensure that decisions relating to the acquisition, retention, loss or restoration of its nationality or the issue of a certificate of nationality shall be subject to administrative or judicial review in accordance with its domestic law.'"

"The Court holds that the procedure for the withdrawal of Romanian citizenship has two stages: an administrative stage, which takes place before the Commission of the National Citizenship Authority, and a judicial stage, before the Administrative and Fiscal Disputes Department of the Bucharest Tribunal Court, as the single level of jurisdiction. The action to declare null and void the order of the President of the National Authority for Citizenship withdrawing Romanian citizenship is an

administrative dispute action, in which the legislator has provided that the court's decision is 'final and irrevocable'".

"With regard to the number of appeals, the Constitutional Court held that Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms does not expressly or implicitly enshrine the right to a double degree of jurisdiction, which is recognised only in criminal matters. Nor does Article 13 of the Convention, which refers to the right to an 'effective remedy', have the meaning of ensuring a double degree of jurisdiction, but only of the possibility of being tried by a national court."

Decision documents

[Romania, Constitutional Court - Decision no. 362/28 May 2019 regarding the objection of unconstitutionality of the final sentenc](#)

Outcome

The applicant's appeal to the second court of law was rejected and the order of the National Citizenship Authority which withdrew his Romanian nationality remains in full force.

Links to other relevant materials related to the case (blogs, analysis, articles, reports, etc.)

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Caselaw cited

The Constitutional Court's decision refers to numerous decisions of the Court of Justice of the European Union, which may be relevant in the context of nationality and statelessness, such as:

- Admissibility decision of December 3, 2002, pronounced in the Naumov Case against Albania;
- Decision no. 26828/06, S 208, of May 31 2007 - Makuc and others v Slovenia;
- Judgment of March 2, 2010 in case C-135/08, Janko Rottmann;
- Judgment of 20 September 2001, in case C-184/99, Grzelczyk;
- Judgment of 17 September 2002, in case C-413/99, Baumbast and R;
- Judgment of 20 February 2001, in case C-192/99, Kaur;
- Admissibility decision of July 6, 2006, pronounced in the Case of Smirnov v. Russia;

- Admissibility decision of 12 January 1999, pronounced in the Case of Karassev v. Finland;
- Decision on admissibility of April 16, 2002, pronounced in the Case of Penafiel Salgado against Spain.