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

Information Note on the Court's case-law 218

April 2018

Ljatifi v. "the former Yugoslav Republic of Macedonia" - 19017/16

Judgment 17.5.2018 [Section I]

Article 1 of Protocol No. 7

Inadequate judicial scrutiny of order, based on undisclosed classified information, to leave country on grounds of national security: *violation*

Facts – In 1999 the applicant fled Kosovo to the former Yugoslav Republic of Macedonia, where, in 2005 she was granted asylum status. Her residence permit was extended each year until 2014, when the Ministry of the Interior terminated her asylum status, stating merely that she was "a risk to [national] security", and ordered her to leave the territory of the respondent State within twenty days of receipt of the final decision. The domestic courts upheld that decision, noting that it was based on a classified document obtained from the Intelligence Agency. They considered irrelevant the applicant's argument that the document had never been disclosed to her.

Law – Article 1 of Protocol No. 7

(a) *Applicability*: The Ministry's decision had the effect of terminating the applicant's asylum, which was her only ground for lawful residence. It contained an explicit order compelling her to leave the respondent State within a specified time-limit. It had not been revoked or suspended and the enforcement order was not subject to any further formal requirements. The applicant thus faced a risk of expulsion at any time. The fact that she had been granted a one-off permission to leave and return to the respondent State and that the order had not been enforced to date were insufficient to conclude that the order was no longer in force or that it could not lead to the applicant's expulsion. Both the permission to leave and the tolerance of the applicant's continued stay had arisen from decisions made in the exercise of the authorities' discretion and were not based on any statutory grounds. The Ministry's decision was therefore to be regarded as a measure of expulsion, which fell within the ambit of Article 1 of Protocol No. 7.

(b) *Merits*: Considering the grounds for the impugned decision, the only relevant fact, which emerged from the redacted version of the classified document that had been produced before the Court, was the applicant's alleged knowledge of and support for other people's involvement in the commission of multiple thefts and acts of concealment. However, there was no indication of the number or the identity of those people or their relationship, if any, to the applicant. No other factual details had been provided in support of those allegations and no criminal proceedings had been brought against the applicant for participating in the commission of any offence in the respondent State or any other country.

As the abovementioned classified document had not been available to the applicant and the Ministry's decision did not provide her with the slightest indication of the factual grounds for considering her a security risk, she had been unable to present her case adequately in the ensuing judicial review proceedings.

Moreover, there was nothing to suggest that the domestic courts had been provided with the classified document or any further factual details for the purpose of verifying that the applicant really did represent a danger for national security. They had thus confined themselves to a purely formal examination of the impugned order. The courts had furthermore not given any explanation of the importance of preserving the confidentiality of the classified document or indicated the extent of the review they had carried out. They had therefore failed to subject the executive's assertion that the applicant posed a national security risk to any meaningful scrutiny.

Conclusion: violation (unanimously).

Article 41: EUR 2,400 in respect of non-pecuniary damage.

(See also *C.G and Others v. Bulgaria,* 1365/07, 24 April 2008, Information Note 107; and *Lupsa v. Romania*, 10337/04, 8 June 2006)
