Living in another Member State: barriers to EU citizens' full enjoyment of their rights

Romania

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Contractor: Human European Consultancy

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1. Subject matter concerned	☒ 1) non-discrimination on grounds of nationality ☐ 2) freedom of movement and residence - linked to which article of Directive 2004/38 ☐ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition
Decision date	17 September 2008
Deciding body (in original language)	Consiliul Naţional pentru Combaterea Discriminării (CNCD)
Deciding body (in English)	National Council for Combating Discrimination (NCCD)
Case number (also European Case Law Identifier	Decision No. 541

(ECLI) where applicable)	
Parties	S.T. (Complainant), Uniunea Naţională a Notarilor Publici din România (*National Union of Public Notaries from Romania*) (Defendant)
Web link to the decision (if available)	http://nediscriminare.ro/uploads_ro/docManager/4627/541.pdf
Legal basis in national law of the rights under dispute	Romania, Government Ordinance No. 137/2000 regarding the prevention and sanctioning of all forms of discrimination (*Ordonanţa Guvernului nr.137/2000 privind prevenirea şi sancţionarea tuturor formelor de discriminare*), republished 8 February 2007. Romanian Constitution (*Constituţia României*), republished 31 October 2003, Article 16(3), as amended by Law No. 429/2003 regarding the revision of the Constitution (*Legea nr.429/2003 privind revizuirea Constituţiei*), 29 October 2003, Article I(7).
Key facts of the case (max. 500 chars)	The complainant was not allowed to take the exam for admission to the profession of notary because she was Romanian with a double citizenship. Article 16(a) of the Law 36/1995 on notaries and notarial activities (*Legea 36/1995 privind notarii publici şi activităţile notariale*), 12 May 1995, stipulates that only persons that have "only Romanian citizenship" may take the exam for the admission in the profession of notary. In 1995, when Law 36/1995 was adopted, this condition was in line with the Constitution which stipulated this condition for all public officers. However, in 2003, Article 16(3) of the Constitution was amended and the term "only" was eliminated. The case is relevant for this report because it refers to nationality as a ground for discrimination in national legislation impacting EU citizens, too. The case is at the core of the discussion about the implications of EU membership on preserving national sovereignty.

Main reasoning / argumentation (max. 500 chars)	The complainant argued that with the 2003 constitutional amendment of Article 16(3), the condition "only Romanian citizenship" from Article 16(a) of the Law 36/1995 was implicitly abolished. By continuing to impose a requirement that is no longer in force, the defendant was allegedly discriminating on the ground of nationality. The defendant responded that this requirement was maintained after consultations with representatives of the state. The defendant argued that this is a reasonable restriction that may be imposed by a Member State of the EU in line with respecting its national identity (Article 6(3) of the TFEU) and ECJ jurisprudence. It their opinion, notarial activity is an expression of public authority which makes it inextricably linked to the citizenship and the Romanian State.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Romanian citizenship as precondition for accessing public office is a reasonable legal requirement. Notary work is a public service and involves the exercise of state power. Romanians who have double citizenship fulfil this precondition, too. Excluding persons who have double citizenship would not be in line with Romania's accession to the European Union. The case takes on the doctrine that clarifies what the implications of the 2003 Constitutional amendment of Article16(3) with regard to the conditions of citizenship for accessing public office are. From the point of view of being a public service that involves the exercise of state power, the profession of notary is similar to the professions of bailiff, judge, or other public officers. Therefore, the precondition regarding citizenship should apply similarly.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The CNCD found the precondition to have only Romanian citizenship discriminatory on the ground of nationality, in violation of Article 1(2)(c), (i) and Article 2(1) of Government Ordinance No.137/2000. It did not order any administrative sanction, only recommended the Ministry of Justice to amend the Law 36/1995 to bring it in compliance with the principle of equal opportunities and eliminate discriminatory treatment. Two months after the CNCD decision, the Government amended the above-mentioned Article 16(3) eliminating the term "only" (Emergency Ordinance No. 166 of 19 November 2008 (*Ordonanţa de Urgenţă nr. 166 din 19 noiembrie 2008*, 19 November 2008)). In March 2013, the provision was further amended to open the profession to EU and EEA citizens.

in original language and translated into English with reference details (max. 500 chars)	*"…[P]ornind de la premisa că, în opinia legiuitorului constituent, perspectivele ori situaţia actuală a României în Uniunea Europeană, nu mai justifică interdicţia accesului la funcţiile şi demnităţile publice a cetăţenilor români care au şi o altă cetăţenie, condiţia impusă de art.16 din Legea nr. 36/1995 a notarilor publici şi activitatea notarială ar putea fi interpretată ca venind în contradicţie cu principiul egalităţii statuat în Constituţia României, revizuită*." Translation: "[…] In the opinion of the Constitutional Legislator, prospects or current situation of Romania in the European Union no longer justify the ban on access to public offices and dignities of Romanian citizens who have another nationality. Based on this assumption, the CNCD finds that the condition imposed by Art.16 of Law No. 36/1995 regarding notaries and notarial activity could be interpreted as contradicting the principle of equality enshrined in the Romanian Constitution, revised."
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.

2. **Subject matter concerned**	☒ 1) non-discrimination on grounds of nationality ☐ 2) freedom of movement and residence - linked to which article of Directive 2004/38 ☐ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition
Decision date	8 June 2016
Deciding body (in original language)	Consiliul Naţional pentru Combaterea Discriminării
Deciding body (in English)	National Council for Combating Discrimination (NCCD)
Case number (also European Case Law Identifier (ECLI) where applicable)	400

Parties	S.N. (Complainant), Casa Naţională de Asigurări de Sănătate (CNAS) (*National Health Insurance House*), Casa de Asigurări de Sănătate a Municipiului Bucureşti (*Bucharest Municipality Health Insurance House*) (Defendants)
Web link to the decision (if available)	Not available
Legal basis in national law of the rights under dispute	Romania, Government Ordinance No. 137/2000 regarding the prevention and sanctioning of all forms of discrimination (*Ordonanţa Guvernului nr.137/2000 privind prevenirea şi sancţionarea tuturor formelor de discriminare*), republished 7 March 2014.
Key facts of the case (max. 500 chars)	The complainant claimed discrimination against her husband who was a Spanish citizen having his residence in Romania. She complained that the procedure for obtaining the certificate of insured person in case of foreigners was excessively burdensome. In particular, she complained that her husband was refused the issuance of the national card for public health insurance due to the fact that his domicile (permanent residence) was not in Romania. In Romanian law, there is a difference between residence and permanent residence. Permanent residence or domicile is the main residence of the person. The national authorities establish all aspects related to jurisdiction based on permanent residence/ domicile and not based on ordinary residence. Government Emergency Ordinance No. 102/2005 of 14 July 2005 on freedom of movement on the territory of Romania of citizens of EU, EEA and Swiss Confederation Member States (*Ordonanţa de Urgenţă a Guvernului nr. 102 din 14 iulie 2005 privind libera circulaţie pe teritoriul României a cetăţenilor statelor membre ale Uniunii Europene, Spaţiului Economic European şi a cetăţenilor Confederaţiei Elveţiene*) does not mention a procedure for establishing domicile in Romania for EU citizens, only the procedure for obtaining permanent residence, after five years of continuous residence in Romania (Article 20 and the following). Only Romanian citizens have the right to choose freely their domicile, according to Article 86(1) of the Law No.287/2009 regarding the Civil Code (*Legea nr.287/2009 privind Codul Civil*).

	The defendants responded that the procedure for obtaining the certificate of insured person was very easy, upon accessing the website of CNAS, like in the case of all insured persons. In their opinion, the procedure indicated by the complainant referred to non-EU citizens. Further, the defendants submitted that based on this certificate, the person may access all insured healthcare, without presenting the national health card.
Main reasoning / argumentation (max. 500 chars)	The refusal to issue a national health card to an insured person to the public health fund because he does not have his domicile (permanent residence), only his residence in Romania represents discrimination on the ground of domicile. For the purposes of the matter at hand, domicile and residence have the same legal value. The procedure for obtaining the certificate of insured person referred by the complainant are not applicable for obtaining the national health card; thus, they were not taken into consideration for the decision in the case.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	"Nationality" versus "domicile" as a criterion of discrimination. The national equality body CNCD found discrimination on the ground of domicile. It did not address the ground of nationality as a potential ground of discrimination in this case. This omission was despite the fact that it was persons who had a different nationality who were primarily in the situation of being refused the national card because, according to Romanian law, their domicile is outside Romania. Obtaining the national card is part of the set of services that fall under the public healthcare insurance.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The CNCD found direct discrimination on the ground of domicile in accessing public goods and services, in breach of Article 2(1) and Article 10(h) of the Government Ordinance No. 137/2000 regarding the prevention and sanctioning of all forms of discrimination (*Ordonanţa Guvernului nr.137/2000 privind prevenirea şi sancţionarea tuturor formelor de discriminare*), republished 7 March 2014. The case was appealed by the defendants before the Court of Appeal of Bucharest (*Curtea de Apel Bucureşti*) who rejected the case for procedural reasons (Civil Judgment No.3473 of 10 November 2016). The decision was further appealed on grounds of law in front of the High Court of Cassation and Justice (*Înalta Carte de Casaţie şi Justiţie*) and the case is still pending before this court.

Key quotations in original language and translated into English with reference details (max. 500 chars)	"*5.7 […]Colegiul director constată că, din datele aflate la dosar, se invocă un tratament diferenţiat în ceea ce priveşte acordarea cardului de sănătate pe criteriul domiciliu. Astfel, condiţia de emitere/eliberare/comunicare card national de sănătate care se realizează din oficiu de către Casa de Asigurări de Sănătate în colaborare cu Casa Naţională de Asigurări de Sănătate a Municipiului Bucureşti, prin neluarea în considerare a elementului de identificare a persoanei, respectiv reşedinţa, constituie discriminare. Elementul de identificare "reşedinţă" şi domiciliu au aceeaşi valoare juridică.*" Translation : "5.7. […] The Steering Committee notes that evidence on file suggest different treatment in terms of providing the health card on the basis of domicile. The condition of issue/release/communication of the national health card that is done automatically by the Health Insurance House (*Casa de Asigurări de Sănătate*) in cooperation with the Bucharest Health Insurance House (*Casa Naţională de Asigurări de Sănătate a Municipiului Bucureşti*), by disregarding the identifier of the person, in particular the residence of the person, constitutes discrimination. The identifier "residence" and domicile have the same legal value."
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.

3. **Subject matter concerned**	☐ 1) non-discrimination on grounds of nationality X 2) freedom of movement and residence - linked to Article 27 of Directive 2004/38 ☐ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition
Decision date	24 May 2007
Deciding body (in original language)	Înalta Curte de Casaţie şi Justiţie (ICCJ)
Deciding body (in English)	High Court of Cassation and Justice
Case number (also European Case Law Identifier (ECLI) where applicable)	4209
Parties	Direcţia Generală de Paşapoarte (*General Department for Passports*) (Complainant), G. (M.) D. L. (Defendant)

Web link to the decision (if available)	http://legeaz.net/spete-civil-iccj-2007/decizia-4209-2007
Legal basis in national law of the rights under dispute	Romania, Law 248/2005 on free movement regime of Romanian citizens abroad (*Lege nr. 248 din 20 iulie 2005 privind regimul liberei circulaţii a cetăţenilor români în străinătate*), 20 July 2005, Article 38.
Key facts of the case (max. 500 chars)	The defendant was expelled from Spain based on a readmission agreement between Spain and Romania (which usually applied to persons who live illegally in Spain). Upon defendant's return in Romania, the Romanian General Department for Passports filed a case in front of Vâlcea Tribunal asking for the restriction of the exercise of freedom of movement in Spain based on Article 38(a) of the Law 248/2005. Article 38(a) of the Law 248/2005 stipulated that in case of expulsion based on a readmission agreement between Romania and another state, the Romanian citizen could be restricted from leaving the home country (Romania) for a period of three years. Both the first instance court and first appeal court rejected the authorities' case based on Article 27 of Directive 2004/38. The courts found that Article 27 applies to Romanian citizens as EU citizens generally and it has priority over national law (Article 38 of Law 248/2005). The courts reiterated the argumentation of the European Court of Justice in its judgment on this particular matter in *Jipa* (C-33/07), originating from Romania: the right of freedom of movement includes both the right for citizens of the European Union to enter a Member State other than the one of origin and the right to leave the state of origin; the fundamental freedoms guaranteed by the EC Treaty would be rendered meaningless if the Member State of origin could, without valid justification, prohibit its own nationals from leaving its territory in order to enter the territory of another Member State (C-33/07, para.18). Nevertheless, the domestic courts did not mention explicitly the ECJ judgment in *Jipa*, only followed its reasoning. Moreover, the courts did not invoke a particular paragraph of Article 27 of Directive 2004/38. The highest court confirmed this legal reasoning and upheld the decisions issued by lower courts.

Main reasoning / argumentation (max. 500 chars)	Starting 1 January 2007, after Romania joined the EU, all restrictions to the exercise of the right to free movement of its nationals imposed according to national law (Law 248/2005) must comply with EU law, in particular Article 27 of Directive 2004/38 (the court did not indicate a certain paragraph); in the present case, the simple expulsion due to illegal stay in Spain is not evidence of a personal behaviour that is against public order, one of the acceptable cases of restriction of freedom of movement under the directive. The court did not develop more its reasoning.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	EU law has priority over national legislation that is not in compliance with the directives. Directive 2004/38 also applies to EU citizens who are returning to their state of nationality from another EU Member State. Restrictions on freedom of movement allowed are explicitly stipulated and limited to a list of cases. Restrictions aimed at protecting public order must involve personal conduct that is proven by the state.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The case was rejected; the restrictions on freedom of movement were not imposed. After a significant number of cases of courts rejecting the proposed restrictions on freedom of movement of Romanian citizens by the government, in November 2010, Article 38(a) of the Law 248/3005 was abolished by the adoption of Law No. 206 for the amendment of Law No. 248/3005 on free movement regime of Romanian citizens abroad (*Lege nr. 206 din 11 noiembrie 2010 pentru modificarea Legii nr. 248/2005 privind regimul liberei circulaţii a cetăţenilor români în străinătate*), 11 November 2010.
Key quotations in original language and translated into	"*Prin urmare, calitatea de membru al Uniunii Europene nu interzice României dreptul de a restrânge libertatea de circulaţie a cetăţenilor săi, numai că, limitarea trebuie supusă condiţiilor prevăzute de art. 27 din directiva 2004/38/CE, iar dispoziţiile Legii nr. 248/2005 trebuie interpretate în acord cu legislaţia comunitară.*

English with reference details (max. 500 chars)	*[…] faptele săvârşite nu sunt de natură a justifica restrângerea, iar o eventuală restrângere a dreptului la liberă circulaţie nu este proporţională cu scopul legitim urmărit.* *[…] În situaţia în care, după data aderării, cetăţenii români au dobândit dreptul la libertatea de circulaţie pe teritoriul statelor membre ale Uniunii Europene, şederea ilegală, constatată în alte condiţii decât cele prevăzute de legislaţia comunitară, nu poate constitui un temei al restrângerii dreptului la libertatea de circulaţie.*" Translation: "Therefore, membership in the European Union does not prohibit Romania the right to restrict the freedom of movement of its citizens, but the limitations should comply with the conditions specified in Art.27 of the Directive 2004/38/EC and the provisions of Law No. 248/2005 must be interpreted in conformity with Community law. […] the deeds perpetrated are not such as to justify the restriction and a possible restriction of the right to free movement is not proportionate with the legitimate aim pursued. […] Given that after accession, Romanian citizens have acquired the right to freedom of movement within Member States of the European Union, illegal residence, found in conditions other than those laid down by Community law, cannot constitute a basis for limiting the right to freedom of movement."
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.

4. **Subject matter concerned**	☐ 1) non-discrimination on grounds of nationality X 2) freedom of movement and residence - linked to Article 16 of Directive 2004/38 ☐ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition
Decision date	20 March 2014
Deciding body (in original language)	Curtea de Apel Bucureşti
Deciding body (in English)	Bucharest Court of Appeal
Case number (also European Case Law Identifier (ECLI) where applicable)	927

Parties	Parchetul de pe lângă Curtea de Apel Bucureşti (*Prosecutor office by the Bucharest Court of Appeal*) (Complainant), M.B., Inspectoratul General pentru Imigrări (*General Inspectorate for Immigrations*) (Defendant)
Web link to the decision (if available)	Not available
Legal basis in national law of the rights under dispute	Romania, Government Emergency Ordinance No.194/2002 on the regime of foreigners in Romania (*Ordonanţa de Urgenţă a Guvernului nr.194/2002 privind regimul străinilor în România*), republished 5 June 2008, Article 85(2). Romania, Government Emergency Ordinance No. 102/2005 of 14 July 2005 on freedom of movement on the territory of Romania of citizens of EU, EEA and Swiss Confederation Member States (*Ordonanţa de Urgenţă a Guvernului nr. 102 din 14 iulie 2005 privind libera circulaţie pe teritoriul României a cetăţenilor statelor membre ale Uniunii Europene, Spaţiului Economic European şi a cetăţenilor Confederaţiei Elveţiene*), republished 2 November 2011, Article 27(1).
Key facts of the case (max. 500 chars)	The complainant requested the court to declare the first defendant as undesirable person in Romania for a period of five years for reasons connected to national security and to place him in detention up until his expulsion. The defendant declared that he was an EU citizen from Hungary, lawfully resident in Romania for a period of five years. He argued that the allegations made against him with respect to posing threats to national security because of his membership to the organisation Noua Gardă Maghiară (*New Hungarian Guard*) and participation to a peaceful march on Hungarian's National Day were unfounded because this organisation was lawful, it did not carry out any illegal activities, and his participation to the march was peaceful. He complained that the expulsion out of Romania would breach his right to family life because he was the breadwinner of his family, the child in his family was seriously ill and his family could not join him in Hungary because of custody issues.

Main reasoning / argumentation (max. 500 chars)	Member States may declare an EU citizen undesirable for reasons of national security dully substantiated, a lawful restriction of the right of residence according to Article 16 of Directive 2004/38. The existence of a family life in the host Member State does not oppose in itself to this restriction when reasons of national security are proven.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The right to residence may be restricted for reasons connected to threats to national security. The court did not put into balance the right to family life and the reasons for restriction connected to national security; it did not carry out an actual check if the proportionality principle was fulfilled. It is difficult to make such an evaluation given that the actual substantive reasons connected to national security were classified information, made available only upon strict conditions; the defendant could have checked the classified information used against him only if he hired a lawyer holding a special permit for accessing such classified information. The court limited itself to motivating that the judicial procedure and the judicial review ensure the guarantees of protection against arbitrary expulsion contrary to Article 8 ECHR procedural safeguards.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The restriction was accepted by the court that declared the first defendant undesirable person in Romania for a period of five years for reasons connected to national security and placed him in detention in view of expulsion. The High Court of Cassation and Justice (*Înalta Curte de Casaţie şi Justiţie*) upheld this solution by Decision No. 1953 of 15 April 2014.
Key quotations in original language and	*"[…] invocarea în prezenta cauză a prevederilor art 8 din CEDO privind dreptul la respectarea vieţii private şi de familie nu este de natură să conducă, de plano la rămânerea pârâtului pe teritoriul României.*

translated into English with reference details (max. 500 chars)	*[…]Fără a contesta existenţa unei vieţi de familie a pârâtului pe teritoriul României în accepţiunea prevederilor art. 8 din CEDO, curtea reţine că dreptul la viaţă privată şi de familie protejat de art. 8 din Convenţia Europeană a Drepturilor Omului face parte din categoria drepturilor condiţionale, drepturi care, în opoziţie cu drepturile intangibile protejate de Convenţie, cum ar fi spre exemplu dreptul la viaţă sau dreptul de a nu fi supus la tratamente inumane sau degradante, pot fi supuse unor limitări.* *În sensul acestei condiţionări sunt şi prevederile art. 16 din DIRECTIVA 2004/38/CE …potrivit cărora măsura de expulzare nu ar trebui în nici un caz să se adopte … decât din motive ce ţin de ordinea publică sau de siguranţa publică. [articol transpus prin art.27(1) din OUG 102/2005]*" Translation: "[…] invoking the provisions of Art.8 ECHR in this case on the right to private and family life is not likely to lead *de plano* to the defendant remaining in Romania. […] Without disputing the existence of family life of the defendant in Romania in the sense of the provisions of Article 8 of the ECHR, the court held that the right to private and family life protected by Art.8 ECHR is part of the conditional rights. Different from absolute rights, such as the right not be subjected to inhuman and degrading treatment, conditional rights like the right to private and family life may be subject to limitations. These limitations fall under the provisions of Article 16 of Directive 2004/38 […] stipulating that the expulsion measure should not be adopted […] except on grounds of public order or public security. [provision transposed in Art.27(1) of the GEO 102/2005]"
Has the deciding body referred to the Charter of Fundamental Rights? If yes,	No.

to which specific article.	

5. **Subject matter concerned**	☐ 1) non-discrimination on grounds of nationality X 2) freedom of movement and residence - linked to Article 27 of Directive 2004/38 ☐ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition
Decision date	21 January 2015
Deciding body (in original language)	Curtea de Apel Bucureşti
Deciding body (in English)	Bucharest Court of Appeal
Case number (also European Case Law Identifier	105

(ECLI) where applicable)	
Parties	Z. G. Gyula (Complainant), Ministerul Afacerilor Interne – Inspectoratul General al Poliţiei de Frontieră (*Ministry of Internal Affairs – General Inspectorate of Border Police*) (Defendant)
Web link to the decision (if available)	Not available
Legal basis in national law of the rights under dispute	Romania, Government Emergency Ordinance No. 102/2005 on freedom of movement on the territory of Romania of citizens of EU, EEA and Swiss Confederation Member States (*Ordonanţa de Urgenţă a Guvernului nr. 102 din 14 iulie 2005 privind libera circulaţie pe teritoriul României a cetăţenilor statelor membre ale Uniunii Europene, Spaţiului Economic European şi a cetăţenilor Confederaţiei Elveţiene*), republished 2 November 2011, Articles 27, 31.
Key facts of the case (max. 500 chars)	The complainant, a Hungarian citizen, member of the Hungarian Parliament, was banned entry into Romania for reasons connected to national security provided to the authorities by Romanian Intelligence Service (*Serviciul Mând de Informaţii*). These reasons remained classified information throughout the trial. The complainant requested the court to declare null the defendant's decision to ban his entry into Romania and suspend this measure pending trial. He claimed that the allegations of him posing threats to national security were unfounded.
Main reasoning / argumentation (max. 500 chars)	The court found the complainant's personal behaviour reported by the authorities as not posing "a genuine, present and sufficiently serious threat to fundamental values of society", as required by Article 27(5) of the GEO 102/2005, thus, overturning the decision to ban entry as unfounded.

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The right of entry may be restricted for reasons connected to threats to national security. The actual check of proportionality and whether the measure was necessary in a democratic society are not explained in the judgment. The actual facts behind the intelligence service's decision remained classified information in the case, only accessible to persons involved in the case if they had a special authorisation from the intelligence services to consult classified information. Therefore, the description of the assessment made by the judge with respect to proportionality and necessity are not included in the judgment.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The court lifted the ban of entry for being unfounded. The decision is not final because the complainant appealed the case before the High Court of Cassation and Justice (*Înalta Curte de Casaţie şi Justiţie*) and the case is still pending. However, together with Case No. 924 of 20 March 2014 described above, it is illustrative of impediments which alleged grounds for restricting freedom of movement treated as classified information pose to the examination of proportionality and necessity of the measure under EU law during judicial review.
Key quotations in original language and translated into English with reference details (max. 500 chars)	"*Analiza documentelor clasificate şi a aspectelor reţinute în cuprinsul acestora cu privire exclusiv la situaţia reclamantului, prin prisma principiul proporţionalităţii măsurii şi a caracterului necesar într-o societate democratică al restrângerii antrenate, induce instanţei concluzia netemeiniciei măsurii de restrângere a dreptului reclamantului la libera circulaţie.* *Astfel, instanţa apreciază că nu este întrunită în speţă ipoteza normei legale cuprinsă în art. 27 alin. 5 din ordonanţă, comportamentul reclamantului – nota bene, cel reţinut prin referatul ce a fundamentat adoptarea de către pârât a măsurii – neconstituind "o ameninţare reală, actuală şi suficient de gravă pentru valorile fundamentale ale societăţii*." Translation:

	"The analysis of classified documents and their content regarding solely the applicant's situation, in light of the principle of proportionality and necessity in a democratic society, induces the conclusion of the court that the measure restricting the applicant's right to freedom of movement is unfounded. Thus, the court considers that the hypothesis stipulated by Art.27(5) of the Ordinance is not met in this case because the defendant's [sic applicant's] behaviour does not constitute "a genuine, present and sufficiently serious threat to fundamental values of society."
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.

6. **Subject matter concerned**	☐ 1) non-discrimination on grounds of nationality X 2) freedom of movement and residence - linked to Article 32 of Directive 2004/38 ☐ 3) voting rights ☐ 4) diplomatic protection

	☐ 5) the right to petition
Decision date	11 February 2013
Deciding body (in original language)	Curtea de Apel Bucureşti
Deciding body (in English)	Bucharest Court of Appeal
Case number (also European Case Law Identifier (ECLI) where applicable)	615
Parties	A. S. (Complainant), Ministerul Afacerilor Interne – Direcţia Generală de Paşapoarte (*Ministry of Internal Affairs – General Directorate Passports*), Ministerul Afacerilor Interne – Inspectoratul General pentru Imigrări (*Ministry of Internal Affairs – General Inspectorate for Immigrations*), MInisterul Afacerilor Interne – Inspectoratul General al Poliţiei de Frontieră (*Ministry of Internal Affairs – General Directorate of the Border Police*) (Defendants)
Web link to the decision (if available)	Not available

Legal basis in national law of the rights under dispute	Romania, Government Emergency Ordinance No. 102/2005 on freedom of movement on the territory of Romania of citizens of EU, EEA and Swiss Confederation Member States (*Ordonanţa de Urgenţă a Guvernului nr. 102 din 14 iulie 2005 privind libera circulaţie pe teritoriul României a cetăţenilor statelor membre ale Uniunii Europene, Spaţiului Economic European şi a cetăţenilor Confederaţiei Elveţiene*), republished 2 November 2011, Article 32(3). Romania, Government Emergency Ordinance No.194/2002 on the regime of foreigners in Romania (*Ordonanţa de Urgenţă a Guvernului nr.194/2002 privind regimul străinilor în România*), republished 5 June 2008, Article 85(2).
Key facts of the case (max. 500 chars)	The complainant is a Turkish citizen who was declared undesirable on the territory of Romania in 2006 for a period of 15 years for reasons of national security. He is married to a Romanian citizen and they have their residence and work in Norway. Due to family reasons, the complainant wanted to be able to come and visit Romania from time to time with his wife. He claimed that at that time he did not pose a threat to national security of Norway (who granted him the right of residence) or any state, including Romania.
Main reasoning / argumentation (max. 500 chars)	The court dismissed the complainant's argument that Directive 2004/38 applied to him as third country national, a spouse of a EU citizen, who was returning to her country of nationality after living in another Member State. The court accepted the defendants' claim that the directive did not apply in his case because his wife was Romanian citizen and not a citizen of another Member State. Thus, the court maintained that there was no right under national law (GEO 194/2002) to review the restriction measure of the right of entry after a period of time.
Key issues (concepts, interpretations) clarified by	Whether Directive 2004/38 also applies to EU citizens and their families who are returning to the Member State of their nationality after living and working in another Member State.

the case (max. 500 chars)	
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The case was rejected based on Article 85(2) of the Government Emergency Ordinance No.194/2002 on the regime of foreigners in Romania (*Ordonanţa de Urgenţă a Guvernului nr.194/2002 privind regimul străinilor în România*), republished 5 June 2008. As opposed to Government Emergency Ordinance No. 102/2005 regulating free movement, Government Emergency Ordinance No.194/2002 does not stipulate the right to review the restriction measure of the right of entry after a period of time. The complainant withdrew his case during the hearing of his appeal on points of law that he introduced in front of the High Court of Cassation and Justice (*Înalta Curte de Casaţie şi Justiţie*) (Decision No. 4070 of 30 October 2014). However, the case is illustrative of the fact that there are lower courts that do not conform with *Surinder Singh* jurisprudence on the application of Directive 2004/38 to EU citizens who are returning to the Member State of their nationality after living and working in another Member State.
Key quotations in original language and translated into English with reference details (max. 500 chars)	"*Or, reclamantul este cetăţean străin căsătorit cu un cetăţean român, nefiind nici cetăţean al Uniunii Europene, nici cetăţean al Confederaţiei Elveţiene şi nici membru de familie al unei asemenea persoane (care să aibă deci cetăţenia unui stat membru al Uniunii Europene, altul decât România).* *Întrucât soţia reclamantului este cetăţean român, nu este incidentă speţei OUG nr. 102/2005, ci OUG nr. 194/2002.* *Acest din urmă act normativ nu reglementează un drept al străinului de a solicita ridicarea interdicţiei, astfel cum prevede OUG nr. 102/2005, iar dispoziţiile acestui din urmă act nu pot fi aplicate nici prin analogie reclamantului.*" Translation:

	"However, the applicant is a foreign national married to a Romanian citizen, not being an EU citizen or citizen of Switzerland or family member of such person (which have the nationality of a Member State of the European Union other than Romania). Since the applicant's wife is Romanian citizen, the case does not fall under GEO 102/2005 (freedom of movement), but under GEO 194/2002 (Aliens Act). The latter law does not regulate the right of foreigners to seek the lifting of the ban, as opposed to GEO 102/2005 and the provisions of that act cannot be applied by analogy to the applicant."
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.

7. **Subject matter concerned**	☐ 1) non-discrimination on grounds of nationality X 2) freedom of movement and residence - linked to Article 2, 3, 7 of Directive 2004/38 ☐ 3) voting rights ☐ 4) diplomatic protection

	☐ 5) the right to petition
Decision date	29 November 2016
Deciding body (in original language)	Curtea Constitutională a României
Deciding body (in English)	Romanian Constitutional Court
Case number (also European Case Law Identifier (ECLI) where applicable)	78D/2016
Parties	Adrian Coman, Robert Clabourn Hamilton, Asociaţia ACCEPT (Complainants), Ministerul Afacerilor Interne, Inspectoratul General pentru Imigrări, Consiliul Naţional pentru Combaterea Discriminării (Defendants)
Web link to the decision (if available)	Not available
Legal basis in national law of	Romania, Government Emergency Ordinance No. 102/2005 on freedom of movement on the territory of Romania of citizens of EU, EEA and Swiss Confederation Member States (*Ordonanţa de Urgenţă a Guvernului nr. 102 din 14 iulie 2005 privind libera circulaţie pe teritoriul României a cetăţenilor statelor membre ale*

the rights under dispute	*Uniunii Europene, Spaţiului Economic European şi a cetăţenilor Confederaţiei Elveţiene*), republished 2 November 2011. Romania, Government Ordinance No. 137/2000 regarding the prevention and sanctioning of all forms of discrimination (*Ordonanţa Guvernului nr.137/2000 privind prevenirea şi sancţionarea tuturor formelor de discriminare*), republished 4 March 2014. Romanian Constitution (*Constituţia României*), republished 31 October 2003, Articles 4, 16, 26.
Key facts of the case (max. 500 chars)	The complainants are two gay men, a Romanian citizen and a US citizen, who married in Belgium in 2010, where M. Coman was living and working. In 2012, M. Coman wanted to return to Romania together with his spouse and they were seeking to exercise the right of residence for more than three months for M. Hamilton as spouse of an EU citizen. The immigration authorities refused to recognise the status of spouse for M. Hamilton invoking Article 277 of the Romanian Civil Code that bans the recognition of same-sex marriage concluded abroad.
Main reasoning / argumentation (max. 500 chars)	In the context of a national law ban on recognition of same-sex marriages concluded abroad, the question that came up was how the EU citizens' rights to freedom of movement together with their spouses were going to be ensured, especially the right of residence for more than three months. The Romanian Constitutional Court referred four preliminary questions to the Court of Justice of the European Union (published in OJ C 104 from 3 April 2017, p.29). The Romanian Constitutional Court argues that the term "spouse" from Article 2(2)(a) of Directive 2004/38 is vague and the CJEU jurisprudence has not defined it, in particular in relation to freedom of movement of EU citizens.
Key issues (concepts, interpretations) clarified by	The case is pending; a preliminary reference to the CJEU seeks clarification of the term "spouse" from Article 2(2)(a) of Directive 2004/38.

the case (max. 500 chars)	
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The case is suspended before the Romanian Constitutional Court waiting for the response of the Court of Justice of the European Union (pending C-673/2016).
Key quotations in original language and translated into English with reference details (max. 500 chars)	*"[T]oate întrebările pe care Curtea Constituţională a României le adresează pe această cale Curţii de Justiţie a Uniunii Europene urmăresc să* *se stabilească, în esenţă, cum se interpretează normele europene referitoare la libera circulaţie, astfel încât să asigure respectarea celor mai înalte standarde de protecţie ale vieţii de familie, reglementate de Carta Drepturilor Fundamentale a Uniunii Europene, în corelaţie cu statuările pe care Curtea Europeană a Drepturilor Omului le-a reţinut în aplicarea normelor privitoare la viaţa de familie şi nediscriminare din Convenţia* *pentru apărarea drepturilor omului şi libertăţilor fundamentale.*" Translation: "[I]n essence, all questions the Constitutional Court of Romania is referring in this way to the Court of Justice of the European Union aim to establish how the European law on freedom of movement is to be interpreted to ensure the respect of the highest standards of protection of the right to family life, regulated by the Charter of Fundamental Rights of the European Union, in correlation to the statements the European Court of Human

	Rights made in the application of the norms regarding family life and non-discrimination in the European Convention of Human Rights.”
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	Articles 7, 9, 21, 45.

8. **Subject matter concerned**	☐ 1) non-discrimination on grounds of nationality X 2) freedom of movement and residence - linked to Article 32 of Directive 2004/38 ☐ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition
Decision date	6 February 2015

Deciding body (in original language)	Curtea de Apel Bucureşti
Deciding body (in English)	Bucharest Court of Appeal
Case number (also European Case Law Identifier (ECLI) where applicable)	301
Parties	A. M. Mahmoud Khater (Complainant), Inspectoratul General pentru Imigrări (*General Inspectorate for Immigrations*) (Defendant)
Web link to the decision (if available)	Not available
Legal basis in national law of the rights under dispute	Romania, Government Emergency Ordinance No. 102/2005 on freedom of movement on the territory of Romania of citizens of EU, EEA and Swiss Confederation Member States (*Ordonanţa de Urgenţă a Guvernului nr. 102 din 14 iulie 2005 privind libera circulaţie pe teritoriul României a cetăţenilor statelor membre ale Uniunii Europene, Spaţiului Economic European şi a cetăţenilor Confederaţiei Elveţiene*), republished 2 November 2011. Romania, Government Emergency Ordinance No.194/2002 on the regime of foreigners in Romania (*Ordonanţa de Urgenţă a Guvernului nr.194/2002 privind regimul străinilor în România*), republished 5 June 2008.

Key facts of the case (max. 500 chars)	The complainant is a third-country national. Romanian courts declared him undesirable due to reasons connected to national security. Afterwards, he married to a Romanian citizen living in Egypt. He claimed that after EU accession, the provisions of GEO 102/2005 (national law transposing Directive 2004/38) applied in his case, being the spouse of an EU citizen; this was the legal basis for his claim of lifting the ban of entry into Romania. The defendant argued that GEO 102/2005 did not apply in his case because his wife was a national of the host Member State.
Main reasoning / argumentation (max. 500 chars)	The court dismissed the complainant's argument that Directive 2004/38 applied to him as a third-country national who was a spouse of an EU citizen (Romanian). The court accepted the defendants' claim that the directive did not apply in his case because it only applied to citizens of other EU Member States than Romania. Thus, there was no right under applicable national law (GEO 194/2002) to seek judicial order to lift the ban on the right of entry into Romania.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Personal scope of Directive 2004/38, in which circumstances it also applies to EU citizens and their families who are nationals of the host Member State. Dismissing *de plano* the claim that nationals of the host Member State may have rights under the directive under certain circumstances is questionable.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The case was rejected based on Government Emergency Ordinance No.194/2002 on the regime of foreigners in Romania (*Ordonanţa de Urgenţă a Guvernului nr.194/2002 privind regimul străinilor în România*) that does not stipulate the right to seek judicial order to lift the ban on the right of entry into Romania. The decision is final because it was not appealed. Together with Case No. 615 of 11 February 2013, described above, this case is illustrative of the fact that the immigration authorities and lower courts are not familiar with the *Surinder Singh* jurisprudence on the application of Directive 2004/38 to EU citizens who are returning to the Member State of their nationality in certain circumstances.

Key quotations in original language and translated into English with reference details (max. 500 chars)	"*Astfel, contrar susţinerilor reclamantului, coroborarea prevederilor art.32 alin.1 cu cele ale art.1 ale OUG nr.105/2002 [sic 102/2005] nu modifică domeniul personal de aplicare a actului normativ, care vizează cetăţenii Uniunii Europene […] şi membri acestora de familie, care îi însoţesc sau li se alătură, întrucât, în aplicarea OUG nr.105/2002 [sic 102/2005], conform art.2 alin.1 pct.1, prin cetăţean al Uniunii Europene se înţelege „orice persoană care are cetăţenia unuia dintre statele membre ale Uniunii Europene, altul decât România".*" Translation: "Thus, contrary to the statements made by the applicant, corroborating the provisions of Art.32(1) and Art.1 of the GEO 105/2002 [sic 102/2005], they do not alter the personal scope of the law aimed at EU citizens […] and family members who accompany or join them, whereas according to GEO 105/2002 [sic 102/2005], Art.2(1)(1), by EU citizen is understood "any person holding the nationality of a Member State of the European Union other than Romania"."
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.

9. **Subject matter concerned**	☐ 1) non-discrimination on grounds of nationality X 2) freedom of movement and residence - linked to Article 16 of Directive 2004/38 ☐ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition
Decision date	12 October 2012
Deciding body (in original language)	Curtea de Apel Bucureşti
Deciding body (in English)	Bucharest Court of Appeal
Case number (also European Case Law Identifier (ECLI) where applicable)	3554
Parties	Oficiul Român pentru Imigrări (*Romanian Bureau of Immigrations*) (Appellant-Defendant), F. A. and F. V. (Respondent-Applicant)

Web link to the decision (if available)	Not available
Legal basis in national law of the rights under dispute	Romania, Government Emergency Ordinance No. 102/2005 on freedom of movement on the territory of Romania of citizens of EU, EEA and Swiss Confederation Member States (*Ordonanţa de Urgenţă a Guvernului nr. 102 din 14 iulie 2005 privind libera circulaţie pe teritoriul României a cetăţenilor statelor membre ale Uniunii Europene, Spaţiului Economic European şi a cetăţenilor Confederaţiei Elveţiene*), republished 2 November 2011, Articles 22, 23.
Key facts of the case (max. 500 chars)	F.A., the first respondent-applicant, applied for permanent residence as a family member, being the child of two Greek citizens who hold permanent residence in Romania. The Romanian Bureau of Immigrations refused the request, based on Article 22 of the GEO 102/2005. This article requires that applicants for permanent residence fulfil the condition of continuous residence in Romania for a period of five years. Bucharest Tribunal (*Tribunalul Bucureşti*) declared null this administrative decision, invoking Article 23 of the GEO 102/2005. This article stipulates that lower periods of continuous residence are accepted as exceptions from the five-year rule under certain circumstances related to economic situation of the EU citizen. Article 23(4) stipulates that family members of these EU citizens can beneficiate from the same exemption from the five-year rule if they are sharing household with the respective EU citizen. The Romanian Bureau of Immigrations appealed the Bucharest Tribunal judgment before the Court of Appeal of Bucharest.
Main reasoning / argumentation (max. 500 chars)	The Court of Appeal of Bucharest dismissed the literal interpretation proposed by the immigration authorities. The Romanian Bureau of Immigration argued that only family members of those EU citizens that qualify under Article 23 exemption beneficiate from the exemption to prove continuous residence for five years, upon proving that they share household together with the EU citizen. According to the Romanian Bureau of Immigration, family members of permanent residents that qualified under the five years rule cannot beneficiate from the exemption despite sharing household together with the EU citizen. This submission was based on the argument that the reference to family members who share household was stipulated only in

	Article 23 and not in Article 22 (Article 22 contains the five years rule). The court made a systemic interpretation of the provision of Article 23(4). The court found that all family members of EU citizens who shared a household with an EU citizen were exempted from proving continuous residence for a period of five years, during which they had been sharing the household with the EU citizen, if this EU citizen had already obtained permanent residence after proving continuous residence for five years.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The issue in the case was whether the family members of permanent residents, sharing households with them, need to fulfil the condition of continuous residence for a period of five years in order to obtain permanent residence or not.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The court rejected the appeal introduced by the immigration authorities and maintained the decision to declare null their refusal to issue permanent residence to the respondent-applicant as a family member (descendant) of EU citizens who were permanent residents in Romania. The current version of the articles regulating the conditions for obtaining permanent residence clarified the situation by explicitly imposing the condition that all family members of EU citizens who are permanent residents also fulfil the condition of continuous residence for a period of five years in Romania (similar to the text of Article 16(2) of Directive 2004/38).
Key quotations in original language and translated into English with	*"… [E]xistenţa drepturilor de rezidenţă permanentă pe teritoriul României, drept recunoscut cetăţenilor U.E. de prev. art.22 alin.1 din OUG nr.102/2005 , este condiţionată de rezidenţa continuă şi legală pe acest teritoriu pt. o perioadă de cel puţin 5 ani, cu excepţiile prev. expres la art.22 (1) din acelaşi act normativ.*

reference details (max. 500 chars)	*Dispoziţiile alin.4 al art.23 din OUG nr.102/2005 stabilesc că membrii de familie ai cetăţenilor U.E. care dobândesc dreptul de rezidenţă permanentă în baza alin.7 (prin excepţie de la prev. art.22), indiferent de cetăţenie, au dreptul de rezidenţă permanentă numai dacă gospodăresc împreună cu aceasta pe teritoriul României.* *[…]În calitate de descendentă de prim grad a unor cetăţeni ai U.E., titulari ai drepturilor de rezidenţă permanentă pe teritoriul României, reclamanta avea dreptul de rezidenţă permanentă pe acelaşi teritoriu, fără îndeplinirea condiţiilor prev. la art.22 (1) din OUG nr.102/2005.*" Translation: "The existence of rights of permanent residence in Romania, as right of EU citizens stipulated in Art.22(1) of the GEO 102/2005, is subject to conditions of continuous and lawful residence in Romania for a period of minimum five years. The exceptions to this rule are stipulated explicitly in Art.22(1) of the same law. [sic Art.23] The provisions of Art.23(4) of GEO 102/2005 state that family members of EU citizens acquiring the right of permanent residence under paragraph 7 (by exception to Art.22), irrespective of nationality, are entitled to permanent residence. The only condition they need to fulfil is that they share household with the respective EU citizen in Romania. As a descendant of first degree of EU citizens who hold permanent residence in Romania, the applicant was entitled to permanent residence on the same territory without fulfilling the conditions stipulated in Art.22(1) of GEO 102/2005 [the five years rule]."
Has the deciding body referred to the Charter of Fundamental	No.

Rights? If yes, to which specific article.	

10. **Subject matter concerned**	☐ 1) non-discrimination on grounds of nationality ☐ 2) freedom of movement and residence ☒ 3) voting rights ☐ 4) diplomatic protection ☐ 5) the right to petition
Decision date	12 April 2014
Deciding body (in original language)	Curtea de Apel Bucureşti
Deciding body (in English)	Bucharest Court of Appeal
Case number (also European Case Law	142

Identifier (ECLI) where applicable)	
Parties	D. V. (Appelant-Complainant), P. P. (Respondent-Defendant)
Web link to the decision (if available)	Not available
Legal basis in national law of the rights under dispute	Romania, Law 33/2007 on the organization and carrying out of elections for the European Parliament (*Lege nr. 33 din 16 ianuarie 2007 privind organizarea şi desfăşurarea alegerilor pentru Parlamentul European*), republished 31 August 2012, Article14.
Key facts of the case (max. 500 chars)	The appellant-complainant contested the decision of the Central Electoral Office (*Biroul Electoral Central*) to allow the candidacy for European Parliament elections 2012 of a person with double citizenship, Romanian and German, among other reasons, for not presenting a certificate from competent German authorities that he did not candidate for the European Parliament in Germany, too. Article 14 of the Law 33/2007 stipulates that the candidate having the citizenship of another EU Member State should present a personal declaration that he does not candidate to European Parliament elections in another Member State of the EU. The respondent-defendant presented this personal declaration to Central Electoral Office .
Main reasoning / argumentation (max. 500 chars)	The allegation that the candidate must present a certificate from German authorities is unfounded. According to Article 14 of the Law 33/2007, the candidate must present a personal declaration and not a certificate; since the candidate must prove a negative hypothesis – in particular, that he did not file his candidacy in another Member State – his personal declaration is enough. The general rule in civil procedure law in Romania is that the person who makes an affirmation must prove that affirmation. Implicitly, there is also the rule that the defendant cannot be placed the burden of proving something that he did not do, only something that he did

	do. Thus, the court found that it was the duty of the appellant-complainant to prove that the respondent-defendant had filed his candidacy in another Member State.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	What the procedural rules are to ensure legal safeguards that candidates for the European Parliament elections from another EU Member State than the host Member State do not abuse their right and run for elections in more than one Member State.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The court rejected the appeal and upheld the first instance solution that the administrative decision to allow the candidacy was lawful because the candidate complied with the condition to present a personal declaration that he had not introduced his candidacy in another Member State, too.
Key quotations in original language and translated into English with reference details (max. 500 chars)	"*Declaraţia este dată pe proprie răspundere şi intră sub incidenţa prevederilor art.326 din Legea nr.286/2009 privind codul penal cu modificările şi completările ulterioare.* *Legea nr.33/2007 nu prevede ca această declaraţie să fie autentificată de notarul public şi nici însoţită de vreun alt act doveditor emis de autorităţile statului membru al Uniunii Europene al cărui cetăţean mai este intimatul.[…] în ceea ce priveşte primul motiv al contestaţiei, vizând inexistenţa declaraţiei prevăzută de art.14 din Legea nr.33/2007, că acesta este nefondat, declaraţia respectivă fiind ataşată la dosarul de candidatură.*

	În ceea ce priveşte celelalte susţineri din cadrul acestui motiv de contestaţie, acestea sunt nefondate, pe de o parte neexistând prevederi legale care să impună depunerea de către candidat a declaraţiei pretinse [sic adeverinţei], iar pe de altă parte neputându-se face dovada unui fapt negativ de către candidat (în acest caz, sarcina probei se inversează, contestatorului incumbându-i sarcina de a face dovada faptului pozitiv contrar)." Translation: "The statement is given on his own responsibility and subject to provisions of Art.326 of the Law 286/3009 on the Criminal Code as amended and supplemented. Law No.33/2007 does not require for this statement to be authenticated by a notary or accompanied by any other certificate issued by the authorities of the EU Member State of nationality of the defendant. […] as to the first ground of appeal, regarding the lack of statement stipulated by Art.14 of the Law No.33/2007, it is unfounded because the declaration is attached to the application. Regarding the other claims under this ground of appeal, they are unfounded. First, there are no legal provisions requiring submission of such statement [sic certificate] by the candidate. Second,, it is not possible to prove a negative fact by the candidate (in this case, the burden of proof is reversed and it is incumbent on the appellant to prove the opposite position, a positive fact)."
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.

11. **Subject matter concerned**	☐ 1) non-discrimination on grounds of nationality ☐ 2) freedom of movement and residence ☐ 3) voting rights ☒ 4) diplomatic protection ☐ 5) the right to petition
Decision date	4 June 2014
Deciding body (in original language)	Judecătoria Miercurea Ciuc
Deciding body (in English)	First Instance Court of Miercurea Ciuc
Case number (also European Case Law Identifier (ECLI) where applicable)	1164/2014
Parties	M. N. C. (Complainant), P. (Defendant)

Web link to the decision (if available)	Not available.
Legal basis in national law of the rights under dispute	The right to diplomatic assistance
Key facts of the case (max. 500 chars)	The complainant is a person deprived of liberty while executing the penalty of imprisonment in the Penitentiary of Miercurea Ciuc. He claimed, among others, that his right to diplomatic assistance as an EU citizen was breached by the penitentiary who refused to send his correspondence to diplomatic missions of EU Member States in Romania; specifically the penitentiary conditioned the sending of only four out of 120 letters he intended to send out.
Main reasoning / argumentation (max. 500 chars)	The complainant has the right to diplomatic assistance as an EU citizen, but this right does not apply in his situation because he is on the territory of Romania (an EU Member State) and not on the territory of a third country where Romania does not have a diplomatic representation.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Romanian citizens have the right to diplomatic assistance as EU citizens. The right to diplomatic assistance applies to Romanians when they are in a third county where Romania does not have diplomatic representation. The reasoning of the decision is worded with the intention of having an educative role on the content of the rights of EU citizens, in particular with respect to the parties.

Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The court rejected this part of the appeal based on the fact that the complainant's right to diplomatic assistance as EU citizen does not apply in his particular case.
Key quotations in original language and translated into English with reference details (max. 500 chars)	"*De asemenea, instanţa are în vedere că potrivit Tratatului asupra Uniunii Europene, cetăţenilor Uniunii Europene (este cetăţean al Uniunii orice persoană care are cetăţenia unui stat membru; cetăţenia Uniunii se adaugă cetăţeniei naţionale şi nu o înlocuieşte pe aceasta) le sunt recunoscute drepturi ce derivă din principii fundamentale unanim acceptate la nivel european, respectiv din norme expres instituite, după cum urmează: […]dreptul de a se bucura, pe teritoriul unei ţări în care statul membru ai cărui resortisanţi sunt nu este reprezentat, de protecţie din partea autorităţilor diplomatice şi consulare ale oricărui stat membru, în aceleaşi condiţii ca şi resortisanţii acestui stat.* *Aşadar, date fiind regulile în vigoare incidente materiei, instanţa reţine că pentru persoanele private de libertate cetăţeni români, care se află în unităţile penitenciare din România, nu este recunoscut un drept de a se adresa pentru obţinerea protecţiei reprezentanţelor diplomatice sau consulare în România ale tuturor statelor membre ale Uniunii Europene, astfel cum sugerează petentul. Dacă detenţia ar fi fost executată într-un stat terţ, în care România nu ar avea reprezentare diplomatică sau consulară, în baza Tratatului asupra Uniunii Europene, cetăţenia europeană ar permite accesul persoanei private de libertate la protecţie din partea autorităţilor diplomatice şi consulare ale oricărui stat membru, în aceleaşi condiţii ca şi resortisanţii acestui stat….*"

	Translation: “The court considers that under the Treaty on European Union, EU citizens (citizens of the Union are any persons who are holding the nationality of a Member State; Union citizenship is additional to national citizenship and shall not replace it) are recognized rights that derive from fundamental principles unanimously accepted in Europe, that the rules expressly establish as follows: […] the right to enjoy the protection of diplomatic and consular authorities of any Member State under the same conditions as nationals of that State, in the territory of a country in which the Member State of which they are nationals is not represented. Therefore, given the rules in force concerning the matter, the court finds that the detainees who are Romanian citizens, who are in penitentiaries in Romania are not recognized the right to appeal for diplomatic or consular protection to representations of all EU Member States in Romania, as suggested by the petitioner. If the detention was carried out in a third country in which Romania did not have diplomatic or consular representation, than based on the Treaty on European Union, the EU citizenship had allowed the person deprived of liberty access to protection from diplomatic and consular authorities of any Member State under the same conditions as nationals of the State […].”
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.

2. Table 2 – Overview

	non-discrimination on grounds of nationality	the right to **move and reside freely** in another Member State	the right to **vote** and to **stand as candidates**	the right to enjoy **diplomatic protection** of any Member State	the **right to petition**
Please provide the total number of national cases decided and relevant for the objective of the research if this data is available (covering the reference period)	12[1]	Official data not available	Official data not available	Official data not available	Official data not available

[1] Based on data provided by the Consiliul Naţional pentru Combaterea Discriminării (*National Council for Combating Discrimination*), email response of 9 February 2017.