

Subject-matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality X 2) freedom of movement and residence - Articles 6, 7, 16(1), and 28(3) of Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	31/07/2015
Deciding body (in original language)	The High Court
Deciding body (in English)	The High Court
Case number (also European Case Law Identifier (ECLI) where applicable)	[2015] IEHC 683
Parties	Ionel Sandu v Minister for Justice and Equality
Web link to the decision (if available)	http://www.courts.ie/Judgments.nsf/0/4384BC970736FD6E80257EFA004BDEC9
Legal basis in national law of the rights under dispute	European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. No. 656 of 2006), regulation 21(1)
Key facts of the case (max. 500 chars)	Note that this executive summary has the purpose to make us understand: 1. the facts of the case (so the “real life story”)

	<p>The applicant in this case is a Romanian national who sought asylum in Ireland on 26 March 2001. He and his partner, also a Romanian national, had a child in the state, an Irish citizen, on 21 April 2001.</p> <p>2. the legal background against which the case unfolded (what are the relevant legal norms that are applied)</p> <p>By virtue of his daughter's Irish citizenship, Mr. Sandu withdrew his application for refugee status and applied for residency on the basis of an Irish born child. His application for permission to remain in the state was confirmed by a letter dated 24 April 2002, based on his "parentage of an Irish citizen child." [para. 4] Over the years, Mr. Sandu accumulated a number of criminal offences, culminating in a conviction for assault causing harm, which attracted a 3.5-year prison sentence, which commenced in November 2011. Prior to his release from prison in June 2014, a removal order was issued. The applicant contended that the Minister had not correctly calculated his period of residence in Ireland prior to imprisonment, and that having being resident in Ireland for ten years, he should be able to avail of protections under Article 28(3) of the Directive, whereby expulsion is only permitted on imperative grounds of security.</p>
Main reasoning / argumentation (max. 500 chars)	<p>The Court reviewed relevant jurisprudence of the CJEU to conclude that any period of imprisonment will not be included in the calculation of residency, that all factors pertaining to each individual case must be taken into account, and that the ten-year period should be calculated from the date of issuance of the deportation or expulsion order.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>In the instant case, the respondent should have asked the question as to whether the applicant had resided in Ireland for ten years prior to the commencement of his prison sentence (16 November 2011). The respondent had "erred in the manner in which it addressed the question as to whether the applicant had resided in the State for ten years within the meaning of art. 28(3)(a) of the Citizenship Directive." [para. 41] As the applicant had legally been entitled to be in the state from March 2001, the ten year residency requirement prior to his incarceration in November 2011 was met. Furthermore, the Court found that the state did not give proper weight to the unusual circumstances of the applicant's asylum application and the ultimate grant of leave to remain.</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The Court ruled that the state erred in calculating the applicant's period of residence in the State, and made an order quashing the expulsion order.</p>

Key quotations in original language and translated into English with reference details (max. 500 chars)	<p>“For the sake of completeness, I should add that it is not enough for an applicant to establish physical continuous presence in the State for ten years. It is appropriate for the decision maker to ask: “what was the applicant doing?” The purpose of the enhanced protection from expulsion, according to the decisions of the E.C.J. is to protect the integration achieved by a migrant in a host state. The longer the presence, the deeper the integration, the greater the protection from expulsion. This is designed, according to the recitals in the directive to promote free movement of Union citizens within the territory of the Union. In this sense it is appropriate to examine the ten year period of residence as one which is related to the exercise of treaty rights. Thus, it is appropriate for the decision maker to inquire whether the migrant claiming ten years residence was, during the first five year period, exercising E.U. treaty rights and, in particular, whether the applicant was engaged in the activities or covered by the circumstances described in art. 7(1) of the directive. No such question may be asked in relation to the second five year period because a right of permanent residence is achieved after five years and, thereafter, one is not required to be art. 7(1) compliant in order to remain in the host state.” [para. 48]</p>
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	No