

<b>Subject-matter concerned</b>	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to Article 27 of the Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
<b>Decision date</b>	24.05.2007
<b>Deciding body (in original language)</b>	Înalta Curte de Casație și Justiție (ICCJ)
<b>Deciding body (in English)</b>	High Court of Cassation and Justice
<b>Case number (also European Case Law Identifier (<a href="#">ECLI</a>) where applicable)</b>	4209
<b>Parties</b>	Direcția Generală de Pașapoarte (General Department for Passports) (Complainant), G. (M.) D. L. (Defendant)
<b>Web link to the decision (if available)</b>	<a href="http://legeaz.net/spete-civil-iccj-2007/decizia-4209-2007">http://legeaz.net/spete-civil-iccj-2007/decizia-4209-2007</a>
<b>Legal basis in national law of the rights under dispute</b>	Romania, Law 248/2005 on free movement regime of Romanian citizens abroad ( <i>Lege nr. 248 din 20 iulie 2005 privind regimul liberei circulații a cetățenilor români în străinătate</i> ), 20 July 2005, Art.38
<b>Key facts of the case</b> (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.

	<p>Art.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 can be restricted from leaving the home country (Romania) for a period of three years. Both first instance court and first appeal court rejected the authorities' case based on Art.27 of Directive 2004/38. The courts found that Art.27 applies to Romanian citizens as EU citizens generally and it has priority over national law (Art.38 of Law 248/2005). The courts reiterated the argumentation of the European Court of Justice in its judgment on this particular matter in <i>Jipa Case</i> (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 (para.18, C-33/07). Nevertheless, the domestic courts did not mention explicitly the ECJ judgment in <i>Jipa Case</i>, only followed its reasoning. Moreover, the courts did not invoke a particular paragraph of Art.27 of Directive 2004/38. The highest court confirmed this legal reasoning and upheld the decisions issued by lower courts.</p>
<p><b>Main reasoning / argumentation</b> (max. 500 chars)</p>	<p>Starting with 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 art.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.</p>
<p><b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)</p>	<p>EU law has priority over national legislation that is not in compliance with the directives. The 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 proved by the State.</p>
<p><b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>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, Art.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 (<i>Lege nr. 206 din 11 noiembrie 2010 pentru modificarea Legii nr. 248/2005 privind regimul liberei circulații a cetățenilor români în străinătate</i>), 11 November 2010.</p>
<p><b>Key quotations in original language</b></p>	<p>“Prin urmare, calitatea de membru al Uniunii Europene nu interzice României dreptul de a restrânge libertatea de circulație a cetățenilor săi, numai că, limitarea trebuie supusă condițiilor prevăzute de art. 27 din directiva 2004/38/CE, iar dispozițiile Legii nr. 248/2005 trebuie</p>

<p><b>and translated into English with reference details</b> (max. 500 chars)</p>	<p>interpretate în acord cu legislația comunitară.</p> <p>[...] faptele săvârșite nu sunt de natură a justifica restrângerea, iar o eventuală restrângere a dreptului la liberă circulație nu este proporțională cu scopul legitim urmărit.</p> <p>[...] În situația în care, după data aderării, cetățenii români au dobândit dreptul la libertatea de circulație pe teritoriul statelor membre ale Uniunii Europene, șederea ilegală, constatată în alte condiții decât cele prevăzute de legislația comunitară, nu poate constitui un temei al restrângerii dreptului la libertatea de circulație.”</p> <p>“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.</p> <p>[...] 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.</p> <p>[...] 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.”</p>
<p><b>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</b></p>	<p>No.</p>