

Subject-matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to Article 16 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
Decision date	20.03.2014
Deciding body (in original language)	Curtea de Apel București
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 București (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	<p>Romania, Government Emergency Ordinance No.194/2002 on the regime of foreigners in Romania (<i>Ordonanța de Urgență a Guvernului nr.194/2002 privind regimul străinilor în România</i>), , republished 5 June 2008, Art. 85(2)</p> <p>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 (<i>Ordonanța de Urgență a Guvernului nr. 102 din 14 iulie 2005 privind libera circulație pe teritoriul României a cetățenilor statelor membre ale Uniunii Europene, Spațiului Economic European și a cetățenilor</i></p>

	<i>Confederației Elvețiene</i>), republished 2 November 2011, Art.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 he will be expelled. The defendant declared that he is 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 organization Noua Gardă Maghiară (New Hungarian Guard) and participation to a peaceful march on Hungarian's National Day are unfounded because this organization is lawful, it did not carry out any illegal activities, and his participation to the march was peaceful. He complains that the expulsion out of Romania will breach his right to family life because he is the breadwinner of his family, the child in his family is seriously ill and his family cannot 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 duly substantiated, a lawful restriction of the right of residence according to Art.16 of the 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 proved.
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 Art.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 (<i>Înalta Curte de Casație și Justiție</i>) upheld this solution by Decision No. 1953 of 15 April 2014.
Key quotations in original language	"[...] invocarea în prezenta cauză a prevederilor art 8 din CEDO privind dreptul la respectarea vieții private și de familie nu este de natură să conducă, <i>de plano</i> la rămânerea pârâtului pe teritoriul României.

<p>and translated into English with reference details (max. 500 chars)</p>	<p>[...]Fără a contesta existența unei vieți de familie a pârâtului pe teritoriul României în accepțiunea prevederilor art. 8 din CEDO, curtea reține că dreptul la viață privată și de familie protejat de art. 8 din Convenția Europeană a Drepturilor Omului face parte din categoria drepturilor condiționale, drepturi care, în opoziție cu drepturile intangibile protejate de Convenție, cum ar fi spre exemplu dreptul la viață sau dreptul de a nu fi supus la tratamente inumane sau degradante, pot fi supuse unor limitări.</p> <p>În sensul acestei condiționări sunt și 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 țin de ordinea publică sau de siguranța publică. [articol transpus prin art.27(1) din OUG 102/2005]”</p> <p>“[...] 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.</p> <p>[...] 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.</p> <p>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]”</p>
<p>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</p>	<p>No.</p>