

Subject-matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence - linked to articles 33, 27 and 28 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	29-10-2009
Deciding body (in original language)	Supremo Tribunal de Justiça
Deciding body (in English)	Supreme Court of Justice
Case number (also European Case Law Identifier (ECLI) where applicable)	508/05.1GBLLE.S1
Parties	Defendants 'appeal (two Romanian citizens) against the decision of the Court of Appeal (<i>Tribunal da Relação de Évora</i>)
Web link to the decision (if available)	www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/0ed5241cccc6824b8025766300303e3b?OpenDocument
Legal basis in national law of the rights under dispute	Decree-Law 244/98 of 8 August: regulates the entry, stay, exit and removal of foreigners (this Decree-Law has been repealed by Law 23/2007 of 4 July) ¹ . and Criminal Code ² and Law 37/2006 of 9 August, which transposed Directive 2004/38/EC into the legal system national ³

¹ Portugal, Decree-Law 244/98 regulating the entry, stay, exit and removal of foreigners. This Decree-Law has been repealed by Law 23/2007 of 4 July. (*Decreto-Lei n.º 244/98, de 8 de agosto, que regula a entrada, saída, permanência e afastamento de estrangeiros do território nacional. Este Decreto-Lei foi entretanto revogado pela Lei n.º 23/2007, de 4 de julho*), 8 August. Available at: www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=303&tabela=lei_velhas&nversao=6&so_miolo=.

Key facts of the case (max. 500 chars)	Two Romanian citizens were sentenced (for theft and murder) to 18 years' imprisonment and to the accessory penalty of expulsion from Portuguese territory for a period of 10 years. The defendants appealed for the reduction of this sentence.
Main reasoning / argumentation (max. 500 chars)	The Prosecutor's Office of Supreme Court invoked that Romania is a Member State of the EU, so the accused cannot be charged with an additional penalty of expulsion under Decree-Law 244/98 of 8 August. The applicable sanction is the removal from the national territory, in accordance with Law 37/2006 of 9 August, which transposed Directive 2004/38/EC into the national legal order.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Romania is a Member State of the EU. Accordingly, the accused cannot be charged with an additional penalty of expulsion under Decree-Law 244/98 of 8 August. The penalty of removal from the national territory should be applied, in accordance with Law 37/2006 of 9 August, which transposed Directive 2004/38/EC into the national legal order.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The Court considered that the defendants were dangerous. So, after serving the sentence, they were likely to disturb public safety and public order again. Hence the need to decree their move away from the national territory. The Court upheld the main criminal sanction but replaced the accessory sentence of expulsion with the penalty of removal from the national territory, with the guarantees contained in Directive 2004/38/EC and Law 37/2006 of 9 August, which transposed it into the legal system national. These guarantees include the possibility for the accused to submit a request to lift the ban in the terms and deadlines defined by law.
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>"A Roménia, país de onde são originários os recorrentes, pertence à União Europeia desde 1 de Janeiro de 2007, pelo que não se lhes pode aplicar a pena acessória de expulsão nos termos apontados, mas a de afastamento do território nacional, nos termos do art.º 28.º da Lei n.º 37/2006, de 9 de Agosto".</i></p> <p>Romania, the defendants 'country, has been a member of the EU since 1 January 2007. So, an additional penalty of expulsion cannot be imposed on the accused. The appropriate measure is the removal from the national territory, in accordance with article 28 of Law 37/2006 of 9 August.</p> <p>See: www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/0ed5241cccc6824b8025766300303e3b?OpenDocument</p>

² Available at: www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=109&tabela=leis&ficha=1&pagina=1&so_miolo=.

³ www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=873&tabela=leis&ficha=1&pagina=1&so_miolo=&

**Has the deciding
body refer to the
Charter of
Fundamental Rights.
If yes, to which
specific Article.**

No.