

Subject-matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality X 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
Decision date	21.01.2015
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)	105
Parties	Z. G. Gyula (Complainant), Ministerul Afacerilor Interne – Inspectoratul General al Poliției 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 (<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 Confederației Elvețiene</i>), republished 2 November 2011, Arts.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 (<i>Serviciul Român de Informații</i>). 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 claims that the allegations of him posing threats to national security are 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 art.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 authorization 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 (<i>Înalta Curte de Casație și Justiție</i>) and the case is still pending. However, together with Case 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)	<p>"Analiza documentelor clasificate și a aspectelor reținute în cuprinsul acestora cu privire exclusiv la situația reclamantului, prin prisma principiul proporționalității măsurii și a caracterului necesar într-o societate democratică al restrângerii antrenate, induce instanței concluzia netemeinicii măsurii de restrângere a dreptului reclamantului la libera circulație.</p> <p>Astfel, instanța apreciază că nu este întrunită în speță ipoteza normei legale cuprinsă în art. 27 alin. 5 din ordonanță, comportamentul reclamantului – nota bene, cel reținut prin referatul ce a fundamentat adoptarea de către pârât a măsurii – neconstituind "o amenințare reală, actuală și suficient de gravă pentru valorile fundamentale ale societății".</p> <p>"The analysis of classified documents and their content regarding solely the applicant's situation, in light of the principle of proportionality</p>

	<p>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.</p> <p>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."</p>
<p>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</p>	<p>No.</p>