

Subject-matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality X 2) freedom of movement and residence - linked to Article 32 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	11.02.2013
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)	615
Parties	A. S. (Complainant), Ministerul Afacerilor Interne – Direcția Generală de Pașapoarte (Ministry of Internal Affairs – General Directorate Passports), Ministerul Afacerilor Interne – Inspectoratul General pentru Imigrări (Ministry of Internal Affairs – General Inspectorate for Immigrations), Ministerul Afacerilor Interne – Inspectoratul General al Poliției de Frontieră (Ministry of Internal Affairs – General Directorate of the Border Police) (Defendants)
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>),

	<p>republished 2 November 2011, Art.32(3)</p> <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>
Key facts of the case (max. 500 chars)	<p>The complainant is a Turkish citizen who was declared undesirable on the territory of Romania in 2006 for a period of 15 years for reasons of national security. He is married to a Romanian citizen and they have their residence and work in Norway. Due to family reasons, the complainant wants to be able to come and visit Romania from time to time with his wife. He claims that in present he does not pose a threat to national security of Norway (who granted him the right of residence) or any State, including Romania.</p>
Main reasoning / argumentation (max. 500 chars)	<p>The Court dismissed the complainant's argument that Directive 2004/38 applies to him as third country national who is a spouse of a EU citizen who is returning to her country of nationality after living in another Member State. The Court accepted the defendants' claim that the Directive does not apply in his case because his wife is Romanian citizen and not a citizen of another Member State. Thus, the court maintained that there is no right under national law (GEO 194/2002) to review the restriction measure of the right of entry after a period of time.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>Whether Directive 2004/38 also applies to EU citizens and their families who are returning to the Member State of their nationality after living and working in another Member State.</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The case was rejected based on Art. 85(2) of the 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. As opposed to Government Emergency Ordinance No. 102/2005 regulating free movement, Government Emergency Ordinance No.194/2002 does not stipulate the right to review the restriction measure of the right of entry after a period of time.</p> <p>The complainant withdrew his case during the hearing of his appeal on points of law that he introduced in front of the High Court of Cassation and Justice (<i>Înalta Curte de Casație și Justiție</i>) (Decision No. 4070 of 30 October 2014). However, the case is illustrative of the fact that there are lower courts that do not conform with <i>Surinder Singh</i> jurisprudence on the application of the Directive 2004/38 to EU citizens who are returning to the Member State of their nationality after living and working in another Member State.</p>
Key quotations in original language and translated into English with	<p>"Or, reclamantul este cetățean străin căsătorit cu un cetățean român, nefiind nici cetățean al Uniunii Europene, nici cetățean al Confederației Elvețiene și nici membru de familie al unei asemenea persoane (care să aibă deci cetățenia unui stat membru al Uniunii Europene, altul decât România).</p>

reference details (max. 500 chars)	<p>Întrucât soția reclamantului este cetățean român, nu este incidentă speței OUG nr. 102/2005, ci OUG nr. 194/2002.</p> <p>Acest din urmă act normativ nu reglementează un drept al străinului de a solicita ridicarea interdicției, astfel cum prevede OUG nr. 102/2005, iar dispozițiile acestui din urmă act nu pot fi aplicate nici prin analogie reclamantului.”</p> <p>“However, the applicant is a foreign national married to a Romanian citizen, not being an EU citizen or citizen of Switzerland or family member of such person (which have the nationality of a Member State of the European Union other than Romania).</p> <p>Since the applicant’s wife is Romanian citizen, the case does not fall under GEO 102/2005 (freedom of movement), but under GEO 194/2002 (Aliens Act).</p> <p>The latter law does not regulate the right of foreigners to seek the lifting of the ban, as opposed to GEO 102/2005 and the provisions of that act cannot be applied by analogy to the applicant.”</p>
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	No.