

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	6.02.2015
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)	301
Parties	A. M. Mahmoud Khater (Complainant), 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. 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</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</p>

Key facts of the case (max. 500 chars)	The complainant is a third-country national. Romanian courts declared him undesirable due to reasons connected to national security. Afterwards, he married to a Romanian citizen living in Egypt. He claimed that after EU accession, the provisions of GEO 102/2005 (national law transposing Directive 2004/38) apply in his case, being the spouse of an EU citizen; this is the legal basis for his claim of lifting the ban of entry into Romania. The defendant argues that GEO 102/2005 does not apply in his case because his wife is a national of the host Member State.
Main reasoning / argumentation (max. 500 chars)	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 (Romanian). The Court accepted the defendants' claim that the Directive does not apply in his case because it only applies to citizens of other EU Member States than Romania. Thus, there is no right under applicable national law (GEO 194/2002) to seek judicial order to lift the ban on the right of entry into Romania.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Personal scope of the Directive 2004/38, in which circumstances it also applies to EU citizens and their families who are nationals of the host Member State. Dismissing <i>de plano</i> the claim that nationals of the host Member State may have rights under the Directive under certain circumstances is questionable.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The case was rejected based on 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>) that does not stipulate the right to seek judicial order to lift the ban on the right of entry into Romania. The decision is final because it was not appealed. Together with Case 615 of 11 February 2013, described above, this case is illustrative of the fact that the immigration authorities and lower courts are not familiar with the <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 in certain circumstances.
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p>“Astfel, contrar susținerilor reclamantului, coroborarea prevederilor art.32 alin.1 cu cele ale art.1 ale OUG nr.105/2002 [sic 102/2005] nu modifică domeniul personal de aplicare a actului normativ, care vizează cetățenii Uniunii Europene [...] și membri acestora de familie, care îi însoțesc sau li se alătură, întrucât, în aplicarea OUG nr.105/2002 [sic 102/2005], conform art.2 alin.1 pct.1, prin cetățean al Uniunii Europene se înțelege „orice persoană care are cetățenia unuia dintre statele membre ale Uniunii Europene, altul decât România”.”</p> <p>“Thus, contrary to the statements made by the applicant, corroborating the provisions of Art.32(1) and Art.1 of the GEO 105/2002 [sic 102/2005], they do not alter the personal scope of the law aimed at EU citizens [...] and family members who accompany or join them, whereas according to GEO 105/2002 [sic 102/2005], Art.2(1)(1), by EU citizen is understood “any person holding the nationality of a</p>

	Member State of the European Union other than Romania.”
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	No.