

Living in another Member State: barriers to EU citizens' full enjoyment of their rights Cyprus 2017

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1. Table 1 – Case law

1.1. The *Stoyanov* case

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 Articles 27, 28(1) and 32 of 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	26 February 2014
Deciding body (in original language)	Ανώτατο Δικαστήριο Κύπρου, Αναθεωρητική Δικαιοδοσία

Deciding body (in English)	Supreme Court of Cyprus, Review Jurisdiction
Case number (also European Case Law Identifier (ECLI) where applicable)	718/2012
Parties	<p><i>Svetoslav Stoyanov v. The Republic of Cyprus through the Ministry of the Interior, the Department of population archives and immigration and the Chief of Police</i></p> <p>[In original language: Svetoslav Stoyanov v Κυπριακής Δημοκρατίας μέσω του Υπουργείου Εσωτερικών, του Τμήματος Αρχείου Πληθυσμού και Μετανάστευσης και του Αρχηγού της Αστυνομίας]</p>
Web link to the decision (if available)	http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201402-718-12.htm&qstring=2004%20w%2F1%2038%20w%2F1%20%E5%EA

<p>Legal basis in national law of the rights under dispute</p>	<p>Article 146 of the Cypriot Constitution¹ which provides for the right to apply for judicial review of an administrative act.</p> <p>Articles 29(3)(a), 30 and 35 of Law N.7(I)/2007 transposing Directive 2004/38. ²</p>
<p>Key facts of the case (max. 500 chars)</p>	<p>The applicant was a Bulgarian national who came to Cyprus, registered as a Union national and started work at a local company. The police informed the immigration authorities that according to confidential information he was a member of a criminal group which was involved in various crimes such as arson, assaults, blackmail, provision of ‘protection’ etc. and that the applicant was used and was intended to be used for such criminal activity. The immigration department declared the applicant to be an unwanted immigrant under the national immigration law and issued an arrest and expulsion order against him and a re-entry ban of ten years. The relevant provision in Cap 105 entitles the immigration authorities to deport any person who ‘appears on the basis of testimony which the Council of Ministers may consider adequate, that he may behave in such a way so as to pose a threat to peace, public order, lawful order or public morals’.³ The orders were executed and the applicant was expelled from Cyprus. He appealed against his expulsion and re-entry ban. Before this application was examined, the immigration authorities modified the legal basis of their expulsion order, which had originally relied on Article 35 of the law transposing Directive 2004/38,⁴ following advice from the Attorney General that Article 35, which corresponds to Directive Article 33 could not be used in the absence of a</p>

¹ Cyprus, [The Constitution of the Republic of Cyprus](#), accessed on 20 April 2017.

² Cyprus, [Law on the right of citizens of the Union and their family members to move and reside freely in the Republic \(Ο περί του Δικαιώματος των Πολιτών της Ένωσης και των Μελών των Οικογενειών τους να Κυκλοφορούν και να Διαμένουν Ελεύθερα στη Δημοκρατία Νόμος του 2007\)](#), N. 7(I)/2007, accessed on 20 April 2017.

³ Cyprus, [Aliens and immigration law \(Ο περί Αλλοδαπών και Μεταναστεύσεως Νόμος\)](#), Cap 105 Article 6(1)(g), accessed on 20 April 2017.

⁴ Cyprus, [Law on the right of citizens of the Union and their family members to move and reside freely in the Republic \(Ο περί του Δικαιώματος των Πολιτών της Ένωσης και των Μελών των Οικογενειών τους να Κυκλοφορούν και να Διαμένουν Ελεύθερα στη Δημοκρατία Νόμος του 2007\)](#), N. 7(I)/2007, accessed on 20 April 2017.

	<p>custodial sentence. The new legal basis was now Article 29 of the law transposing Directive 2004/38, which corresponds to Directive Article 27.</p> <p>The applicant sought to challenge the revised order against him through the procedure of judicial review under Article 146 of the Cypriot Constitution, on the grounds that the administrative orders issued against him were inadequately justified and investigated and because he was not offered the right to be heard as regards the allegations against him before the orders was issued. The court rejected this application and confirmed the expulsion order and re-entry ban to be valid and lawful.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The court has no power to investigate the veracity or validity of the public security reasons invoked by the authorities in order to justify an expulsion order; this is a matter within the exclusive jurisdiction of the executive, particularly when issues of state security and confidentiality are involved. The court is in no position to evaluate the risk posed by a foreign national; it can only check the lawfulness of the decision-making process.</p> <p>The expulsion order was proportionate and did take into account the personal circumstances of the applicant, who had no family in Cyprus, whose stay in Cyprus was short-term and whose only connection with Cyprus was his job which apparently led to his involvement in criminal activity.</p> <p>The administrative decision was found to have been duly justified. The administration is under no duty to provide details as to the reasons why it considers a person to be a threat to public security.</p>
<p>Key issues (concepts, interpretations) clarified by</p>	<p>A conduct which gives rise to deportation on the ground of a public order risk may be established even in the absence of a criminal conviction, so long as the authorities have information from reliable sources which raises concerns about the presence of a foreign national in Cyprus. The state is under no obligation to support its rejecting decision with proof that would justify the expulsion: 'general indications' justifying a foreign national's expulsion will suffice and any doubt must be assessed in favour of the state's sovereign right to control the stay of all persons in its territory.</p>

<p>the case (max. 500 chars)</p>	<p>The applicant's argument that Article 34 of Law 7(I)/2007, which transposes Directive Article 32, sets the limit of three years as the maximum permissible duration of the entry ban was rejected. The court clarified that this provision does not set the maximum limit of exclusion but rather creates a right for the person excluded from Cyprus to apply for the lifting of the re-entry ban on the ground of a material change in the circumstances.</p> <p>The national immigration law which vests the immigration authorities with wide powers to declare any foreign national as an unwanted person and order his expulsion does not infringe Directive 2004/38. Its scope includes all non-Cypriots, whether Union or third country nationals, and it provides an additional tool, over and above the provisions of the law transposing this Directive (Law N/ 7(I)/2007), in the hands of the authorities to expel persons posing a risk to public security.</p> <p>The court rejected the applicant's argument that the administrative decision ought to have been communicated to him in his mother tongue (Bulgarian), stating that there is no obligation on the state to communicate its decisions in the mother tongue of every foreign national in its territory.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The court rejected all arguments put forward by the applicant for the annulment of the administrative orders affecting him. The orders were confirmed to be valid and the applicant was ordered to pay the costs of the respondents.</p> <p>The decision established that, when seeking to rely on the ground of state security, the authorities have no duty to justify their decision by providing details that would enable the Union nationals affected to argue against the allegations which provided the basis for their expulsion. In the context, 'public security' is interpreted widely to include criminal activity of any scale.</p> <p>This was a single judge first instance decision that was cited in the <i>Viorel</i> case (see below 1.13), in the <i>Triantafyllou</i> case (see 1.12 below) and in the <i>Angelov</i> case (see 1.6 below). However, as it will be seen below,</p>

	<p>in other cases the court departed from this line of argument and found that Cap 105 ought not to be applied to Union citizens.</p>
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p>Στα πλαίσια της κυριαρχίας του κράτους και στη βάση της εξέτασης κατά πόσο συμπεριφορά συνιστά πραγματική, ενεστώσα και επαρκώς σοβαρή απειλή, υποδείχθηκε στην απόφαση <i>Svetlin Lilyanchov Dichev v. Δημοκρατίας</i>, υπόθ. _____ αρ. 309/2012, ημερ. 15.11.2013, ότι η συμπεριφορά αυτή μπορεί να διαπιστωθεί και χωρίς καταδικαστική απόφαση από Δικαστήριο. Αρκεί να υπάρχουν πληροφορίες και αξιόπιστες πηγές οι οποίες να προκαλούν ανησυχίες αναφορικά με την παρουσία του αλλοδαπού στη Δημοκρατία. Συναφώς στην <i>Eddine v. Δημοκρατία</i> (2008) 3 A.A.Δ. 95, αποφασίστηκε ότι «το κράτος δεν έχει την υποχρέωση να υποστηρίξει την απορριπτική του θέση με στοιχεία που θα δικαιολογούσαν με θετικό τρόπο τη μη συνέχιση της παραμονής του στην Κύπρο.». Αρκεί να παρέχεται επαρκώς πραγματικό έρεισμα για την αρνητική απόφαση εφόσον υπάρχουν και συγκεντρώνονται από κατάλληλες βέβαια πηγές πληροφορίες που προκαλούν ανησυχία. Ακόμη και γενικές ενδείξεις μπορούν δικαιολογημένα να αιτιολογήσουν αρνητική απόφαση, η οποία δε αμφιβολία επενεργεί υπέρ της Δημοκρατίας, στα πλαίσια του προεξάρχοντος κυριαρχικού της δικαιώματος να ελέγχει ποιοι διακινούνται και διαμένουν στο έδαφος της, (<i>Moyo v. Republic</i> (1988) 3 C.L.R. 1203 και <i>Ananda Marga Ltd v. Republic</i> (1985) 3 C.L.R. 2583).</p> <p>Σύμφωνα λοιπόν με τα στοιχεία που είχε ενώπιον της η διοίκηση, όπως αυτά καταγράφονται στην εμπιστευτική επιστολή, ημερ. 21.9.2011, η αστυνομία είχε αξιόπιστες πληροφορίες ότι μεταξύ άλλων προσώπων ο αιτητής φερόταν να ήταν μέλος φατρίας στη Λάρνακα με εμπλοκή σε εγκληματικές ενέργειες. Η ενεργός διοίκηση είναι κατ' εξοχήν το όργανο στο οποίο εναποτίθεται η ευθύνη για εκτίμηση των γεγονότων και δεν θα ήταν δυνατό να αναθεωρείται από το Ανώτατο Δικαστήριο η εκτίμηση αυτή στη βάση των γενικών αρχών του διοικητικού δικαίου, ιδιαιτέρως όταν υπεισέρχονται στην εικόνα εμπιστευτικές πληροφορίες από πρόσωπα τα οποία τις δίδουν στην αστυνομία. Το Δικαστήριο δεν μπορεί να ασκήσει ιδίαν κρίση περί της επικινδυνότητας του αιτητή. Ελέγχει μόνο τη νομιμότητα της όλης διαδικασίας.</p>

Η αποκάλυψη δημοσίως των πληροφοριών αυτών και η δυνατότητα να παρέχεται στο ενδιαφερόμενο πρόσωπο να εξετάζει και να ελέγχει αυτές τις πληροφορίες, θα παραβίαζε ζητήματα ασφάλειας της Δημοκρατίας που είναι ένας από τους λόγους που το άρθρο 29(1) δίδει την εξουσία στη διοίκηση να περιορίσει το δικαίωμα διαμονής κοινοτικού ατόμου... Οτιδήποτε αποκαλυπτόταν πέραν αυτών των ζητημάτων που παρουσιαζόταν από το διοικητικό φάκελο, Τεκμήριο «Α», να βρίσκονται καταχωρημένα σε άλλους φακέλους, θα παραβίαζε την εμπιστευτικότητα των πληροφοριών και θα ερχόταν ευθέως σε σύγκρουση με το δικαίωμα της Δημοκρατίας να ελέγχει κατά κυριαρχικό τρόπο τα άτομα τα οποία εισέρχονται ή παραμένουν στη Δημοκρατία, άλλα βέβαια από πολίτες της...

[Η] διοίκηση δεν έχει υποχρέωση παροχής οποιωνδήποτε εξηγήσεων για την έκδοση διατάγματος απαγόρευσης εισόδου αλλοδαπού για σκοπούς ασφάλειας. Το Δικαστήριο δεν ερευνά τους λόγους που συνάπτονται με θέματα κρατικής ασφάλειας που είναι κατ' εξοχήν έργο της εκτελεστικής εξουσίας. Τα ίδια λέχθηκαν και στην ***Kolomoets v. Δημοκρατίας*** (1999) 4 Α.Α.Δ. 443, στο ότι η διοίκηση έχει ευρεία διακριτική ευχέρεια και εξουσία για απέλαση αλλοδαπών, εξουσία η οποία όταν συναρτάται προς κίνδυνο στην εσωτερική τάξη και την εθνική ασφάλεια, είναι ακόμη πιο πλατειά, (***Mushtag v. Δημοκρατίας*** (1995) 4 Α.Α.Δ. 1479).

Translation:

In the context of the sovereignty of the state and on the basis of examining whether a certain behavior constitutes a real, present and sufficiently serious threat, it was indicated in *Svetlin Lilyanchov Dichev v. the Republic*, Case No. 309/2012, dated 15.11.2013, that this behavior can be established without a Court conviction. It suffices to establish that there is sufficient information and reliable sources which raise concerns regarding the presence of the alien in the Republic. In that regard, in *Eddine v. Republic* (2008) 3 AA 95, it was decided that "the state has no obligation to support its rejection with evidence justifying, in a positive manner, its decision to discontinue one's stay in Cyprus." It suffices to provide a factual basis for the negative decision provided of course that the information causing concern was collected from appropriate sources. Even general indications can justify a negative decision and any doubt must be interpreted in favor of the Republic,

	<p>in the context of its dominant sovereignty to control who moves and resides in its territory (<i>Moyo v. Republic</i> (1988) 3 CLR 1203 and <i>Ananda Marga Ltd v. Republic</i> (1985) 3 CLR 2583).</p> <p>According to the evidence before the administration, as recorded in the confidential letter of 21.9.2011, the police had reliable information that among others the applicant allegedly was a member of a faction in Larnaca with involvement in criminal activities. The active administration is, as a matter of principle, the body responsible for assessing the facts and it would not be possible for the Supreme Court to review that assessment on the basis of the general principles of administrative law, particularly when confidential information from persons who reported it to the police. The court cannot judge the risk posed by the applicant. It only checks the legitimacy of the whole process.</p> <p>Public disclosure of this information and the ability of the person affected to examine and review this information would violate the Republic's security, which is one of the reasons that Article 29 (1) empowers the administration to restrict the right of residence of a Union national [...] Anything revealed beyond those matters presented in the administrative file would violate the confidentiality of the information and come into direct conflict with the right of the Republic to control in a sovereign manner persons who enter or remain in the Republic, other than its citizens of course [...]</p> <p>[T]he administration has no obligation to provide any explanation for an entry ban issued for reasons of public security. The court does not look into reasons pertaining to public safety, which are primarily matters for the executive branch. This was established in <i>Kolomoets v. Republic</i> (1999) 4 AA 443, where it was said that the administration has a wide discretion and power to expel aliens, a power which, when related to risks to national security and order, is even wider (<i>Mushtag v. Republic</i> (1995) 4 AA 1479).</p>
<p>Has the deciding body referred to the Charter of</p>	<p>No.</p>

Fundamental Rights? If yes, to which specific article.	
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1.2. The *Acif Muhammad* case

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 31 of 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	2 December 2013

Deciding body (in original language)	Ανώτατο Δικαστήριο Κύπρου, Αναθεωρητική Δικαιοδοσία
Deciding body (in English)	Supreme Court of Cyprus, Review Jurisdiction
Case number (also European Case Law Identifier (ECLI) where applicable)	6296/2013
Parties	<p><i>Acif Muhammad and Picioroaga Elena Alexandrina v. The Republic of Cyprus through the Director of the Department of population archives and immigration</i></p> <p>[In original language: Acif Muhammad και Picioroaga Elena Alexandrina v. Κυπριακής Δημοκρατίας μέσω της Διευθύντριας του Τμήματος Αρχείου Πληθυσμού και Μετανάστευσης]</p>
Web link to the decision (if available)	http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2013/4-201312-6296-2013endiam.htm&qstring=2004%20w%2F1%2038%20w%2F1%20%E5%EA

Legal basis in national law of the rights under dispute	<p>Article 146 of the Cypriot Constitution⁵ which provides for the right to apply for judicial review of an administrative act.</p> <p>Article 47 of the Charter of Fundamental Rights.</p> <p>Directive 2004/38 and its transposing law N. 7(I)/2007.⁶</p> <p>Articles 5 and 13 of the ECHR.</p>
Key facts of the case (max. 500 chars)	<p>The first applicant, a Pakistani national, entered Cyprus with a student visa in 2006. In 2009, he married a Romanian national, the second applicant in this case, and applied for a residence certificate as a member of the family of a Union national. His first application was rejected and he reapplied. His second application was accepted but subsequently the authorities declared their marriage as one of convenience and ordered the first applicant to leave Cyprus, informing him that he had the right to appeal against this decision within 20 days. The letter was sent to the couple's last known address, however, the applicants had meanwhile moved to a new address and never received it. Since no appeal was filed against the decision which had declared their marriage unlawful, the immigration authorities issued orders of detention and deportation against the first applicant. The execution of these orders was suspended pending examination of this application. The applicant argued that his expulsion was prohibited under Article 31 of Directive 2004/38 which ought to be interpreted in light of Article 47 of the Charter of Fundamental Rights which safeguards the right to an effective remedy and to a fair trial. The court rejected the application and confirmed the validity of the expulsion order.</p>
Main reasoning / argumentation	<p>Since the decision which declared their marriage as unlawful was not appealed against, it became final and could no longer be challenged. In light of this, the applicant could not be treated as a member of the family of a Union national and fell outside the scope of Directive 2004/38. As a result, he lost the right to reside in Cyprus and was rendered an undocumented migrant.</p>

⁵ Cyprus, [The Constitution of the Republic of Cyprus](#), accessed on 20 April 2017.

⁶ Cyprus, [Law on the right of citizens of the Union and their family members to move and reside freely in the Republic](#) (*Ο περί του Δικαιώματος των Πολιτών της Ένωσης και των Μελών των Οικογενειών τους να Κυκλοφορούν και να Διαμένουν Ελεύθερα στη Δημοκρατία Νόμος του 2007*), Ν. 7(Ι)/2007.

<p>(max. 500 chars)</p>	<p>No manifest illegality was proven, in order to justify the issue of an order suspending the execution of the detention and deportation orders</p> <p>The applicant did not present evidence to show that the deprivation of his liberty will cause him any irreparable damage. To do that, the applicant would have to satisfy the court of the serious likelihood of damage which cannot be remedied by any of the remedies available in law, which he failed to do.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The failure of the applicants to appeal the decision by which their marriage was declared as false and unlawful renders this decision final. Given that each administrative act stands on its own, the finality of this decision triggered an automatic chain of consequences which removed the applicant from the ambit of the Free Movement Directive and rendered him an irregular migrant.</p> <p>Directive Article 31 prohibit expulsions which seek to rely on the grounds of public security, public safety or public health and did not apply in this case.</p> <p>The applicant was not denied the right to a fair trial as this is safeguarded by Charter Article 47, because he did exercise this right through this current judicial process.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The application was rejected and the applicant was ordered to pay the respondents' costs. The detention and deportation orders were confirmed as valid and lawful. This was a single judge deciding at first instance; however the decision has not as been overturned.</p> <p style="text-align: center;">Our comment on this case</p> <p>The court relied on a technicality in order to remove the administrative decision, which had pronounced the applicants' marriage as false, from the ambit of the judicial review process which is intended to check administrative decisions. The judge noted but failed to take into account the fact that the applicants had a child</p>

	<p>together who was living with the first applicant's father in Pakistan because of the financial difficulties which the couple was facing in Cyprus.</p> <p>The administrative act which triggered the detention and deportation, i.e. the annulment of the marriage, could not be challenged because the deadline has passed, through no fault of the applicants. Having no other options, the applicants decided to challenge the subsequent acts (detention and deportation) in the hope that the judge would see the manifest injustice in the procedure and cancel the consequences of the annulment of the marriage, i.e. the detention and deportation. The judge chose not to correct the injustice done to the applicants and to focus on the procedure, which resulted in denying the applicants protection under the Free Movement Directive. This had the effect of applying to Union nationals and their family members the provisions of the national immigration law, vesting the authorities with far reaching deportation powers which exceed those foreseen in the Free Movement Directive.</p>
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p>Η κήρυξη του γάμου του Αιτητή ως εικονικού έγινε με βάση τις πρόνοιες του Άρθρου 7 του Κεφαλαίου 105. Η έκδοση διαταγμάτων κράτησης και απέλασης, τα οποία και γνωστοποιήθηκαν στον Αιτητή στις 11/10/2013, ήταν αποτέλεσμα της απόφασης περί εικονικότητας του γάμου, η οποία και κατέστησε απαγορευμένο, πλέον, μετανάστη τον Αιτητή, δυνάμει της παραγράφου (Κ) του Εδαφίου (1) του Άρθρου 6 του Κεφαλαίου 105, αφού η άδεια παραμονής του ακυρώθηκε. Η κατάληξη της Αρμόδιας Αρχής περί εικονικότητας του υπό αναφορά γάμου ενεργοποίησε και τον μηχανισμό απέλασης του Αιτητή κατ' ακολουθία των προνοιών του Κεφαλαίου 105. Πεδίο εφαρμογής του Νόμου 7(Ι)/2007 δεν υφίστατο, αφού πλέον ο Αιτητής, ως μέρος σε εικονικό γάμο, δεν εντάσσεται στα πλαίσια του όρου «σύζυγος» και δεν καλύπτεται από τον ορισμό «μέλος της οικογένειας» του Άρθρου 2 του υπό αναφορά Νόμου. Εκ του περισσού καταγράφεται ότι στα πλαίσια της παρούσας διαδικασίας και δεδομένης της αυτοτέλειας που καλύπτει κάθε πράξη της Διοίκησης, οι Αιτητές κωλύονται να εγείρουν ζητήματα, τα οποία αφορούν την πράξη κήρυξης του γάμου ως εικονικού και/ή ακύρωσης του δελτίου διαμονής του Αιτητή.</p> <p>Translation:</p>

	<p>The declaration of the Applicant's marriage as a marriage of convenience was made on the basis of the provisions of Article 7 of Cap 105. The issuing of the detention and expulsion orders, which were notified to the applicant on 11/10/2013, resulted from the decision on the falsity of the marriage which thereafter rendered him as a prohibited migrant under Article 6(1) of Cap 105, since his residence permit was canceled. The conclusion of the Competent Authority on the falsity of the marriage in question also triggered the mechanism for the applicant's deportation pursuant to the provisions of Cap 105. Law 7 (I) / 2007 had no scope of application, since the Applicant being part of a marriage of convenience did not meet the definition of a "spouse" and a "member of the family" in Article 2 of the said Law. For the sake of completeness, it is recorded that in the course of the present procedure and given the autonomy of each act of the Administration, the Applicants are prevented from raising questions concerning the act of declaring the marriage unlawful and / or concerning the cancellation of the applicant's residence visa.</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>Yes, Article 47.</p>

1.3. The *Mitova* case

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 31 of 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	18 February 2013
Deciding body (in original language)	Ανώτατο Δικαστήριο Κύπρου, Αναθεωρητική Δικαιοδοσία
Deciding body (in English)	Supreme Court of Cyprus, Review Jurisdiction
Case number (also European Case Law Identifier)	67/2013

(ECLI) where applicable)	
Parties	<p><i>Mitova Zoya Margaritova v. The Republic of Cyprus through the Department of Population Archives and Immigration</i></p> <p>[In original language: Mitova Zoya Margaritova v. Κυπριακής Δημοκρατίας μέσω του Τμήματος Αρχείου Πληθυσμού και Μετανάστευσης]</p>
Web link to the decision (if available)	<p>http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201502-67-13apof.htm&qstring=ZOYA%20and%20MITOVA%20and%20MARGARITOVA</p>
Legal basis in national law of the rights under dispute	<p>Article 146 of the Cypriot Constitution⁷ which provides for the right to apply for judicial review of an administrative act.</p> <p>Article 37 of Law N.7(I)/2007⁸ transposing the Free Movement Directive which corresponds to Directive Article 35.</p>
Key facts of the case (max. 500 chars)	<p>The applicant was a Bulgarian woman who married a Pakistani man in 2009. In 2012, her marriage was declared to be one of convenience. She was informed of her right to appeal this decision which she did not. Her failure to appeal the administrative decision as regards the validity of her marriage within the time line foreseen rendered this decision final, upon which she was ordered to leave Cyprus because her action to conduct a marriage of convenience with a prohibited migrant rendered her a genuine, present and sufficiently</p>

⁷ Cyprus, [The Constitution of the Republic of Cyprus](#), accessed on 20 April 2017.

⁸ Cyprus, [Law on the right of citizens of the Union and their family members to move and reside freely in the Republic](#) (Ο περί του Δικαιώματος των Πολιτών της Ένωσης και των Μελών των Οικογενειών τους να Κυκλοφορούν και να Διαμένουν Ελεύθερα στη Δημοκρατία Νόμος του 2007), Ν. 7(Ι)/2007.

	<p>serious threat to public order. She was subsequently arrested and detained whilst an expulsion order was issued against her. She filed an application seeking her release from detention and requesting that the expulsion procedure be suspended pending the adjudication of her application to the court. This application was rejected on the ground that what she essentially sought was to challenge the decision for the falsity of the marriage which she was not entitled to do because the time limit had lapsed.⁹</p> <p>The applicant then filed a fresh application seeking to annul the administrative decision ordering her to leave Cyprus on the ground that she had concluded a marriage of convenience, arguing that this decision was taken without due investigation, it was based on an error of facts and was unjustified. The court found that the administration had erred in its assumption that the marriage was false: it failed to investigate whether the applicant's husband was the father of her child, relying instead on unconfirmed allegations that the child's father was a Bulgarian man and that the child was conceived before the applicant married her Pakistani husband, both of which proved in fact to be incorrect. The dates of marriage and of birth show that the child was conceived after her marriage and the genetic test showed that her husband was the natural father of her child. The court concluded that the decision to cancel the applicant's registration certificate was inadequately investigated and annulled it.</p> <p>The administrative decision which ordered the applicant to leave Cyprus on the ground of having conducted a marriage of convenience was annulled and set aside. The authorities were ordered to pay the applicant's legal costs.</p>
<p>Main reasoning / argumentation</p>	<p>The arguments put forward by the authorities in order to justify their decision to declare the applicant's marriage as false, namely the suspicion that the husband was not the child's natural father and that the child</p>

⁹ Cyprus, Supreme Court, Review Jurisdiction, [Mitova Zoya Margaritova v. The Republic of Cyprus through the Department of Population Archives and Immigration](#), Case No. 67/13, 20 September 2013, accessed on 21 April 2017.

(max. 500 chars)	was conceived before the marriage were incorrect. This error proved that the decision was not adequately investigated.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	An applicant seeking to annul an administrative decision does not need to prove the error itself; it suffices to prove a probability of an error. By looking into the facts relied upon by the authorities as well as the facts which the authorities failed to take into account, the court essentially looks into the merits of the decision in order to establish that the investigation which preceded the decision was inadequate. Moreover, the court did not restrict itself into examining solely the administrative act challenged, which was the cancellation of the applicant's right to reside, but went further to review the act on which the act challenged was premised upon, which was the declaration of the marriage as false.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The application was successful and the decision which cancelled the applicant's right of residence was annulled. The respondents were ordered to pay the applicant's costs. The applicant's marriage was, in essence, recognised as valid. This was a single judge bench but the judge was the President of the Supreme Court.
	Our comment on this case
	<p>The ruling does not avoid examining the merits of the administrative decision to declare the marriage false, in contrast with the ruling in <i>Acif Muhammad and Picioroaga Elena Alexandrina v. The Republic of Cyprus through the Director of the Department of population archives and immigration</i> (reported above) in spite of the fact that the decision concerning the marriage was not challenged.</p> <p>Although not explicitly stated, it was clear from the reasoning that the Judge thought the interests of justice would not be served if the court had restricted itself to the formalistic approach followed in the <i>Acif Muhammad</i> case (reported above).</p>

<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p>Ενόψει των προαναφερομένων αδυναμιών της απόφασης, δηλαδή ενόψει της μη επαρκούς διερεύνησης, εκ μέρους των καθ' ων η αίτηση, του χρόνου της εγκυμοσύνης της αιτήτριας, ενόψει της μη επαρκούς έρευνας τους αναφορικά με την πατρότητα της κόρης της αιτήτριας, αλλά και ενόψει της πεπλανημένης θέσης την οποίαν πήραν και/ή υιοθέτησαν οι καθ' ων η αίτηση ότι πατέρας της ανήλικης κόρης της αιτήτριας δεν ήταν ο σύζυγος της αλλά άλλο συγκεκριμένο πρόσωπο, χωρίς πλήρη διερεύνηση του θέματος, θεωρώ ότι η προσβαλλόμενη απόφαση υπόκειται σε ακύρωση, ως απόφαση ληφθείσα χωρίς επαρκή έρευνα και με πλάνη περί τα πράγματα. Είναι θεμελιωμένο ότι η πλάνη δεν πρέπει να αποδειχθεί από τον αιτητή, σε αίτηση ακυρώσεως, αλλά είναι αρκετό εάν ο αιτητής αποδείξει πιθανότητα εμφιλοχώρησης πλάνης.</p> <p>Translation:</p> <p>In view of the foregoing shortcomings of the decision, that is in view of the inadequate investigation by the respondents of the time of the pregnancy, of the insufficient research regarding the paternity of the daughter of the applicant, and in view of the erroneous position adopted by the respondents that the father of the minor daughter of the applicant was not her husband but another person without full investigation of the matter, I consider that the contested decision must be annulled as a decision taken without adequate investigation and as relying on factual error. It is established that the applicant need not prove the error but it is sufficient to prove a probability that an error may have crept in.</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

1.4. The *Langdon* case

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 28 of 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	23 September 2014
Deciding body (in original language)	Ανώτατο Δικαστήριο Κύπρου, Αναθεωρητική Δικαιοδοσία
Deciding body (in English)	Supreme Court of Cyprus, Review Jurisdiction

Case number (also European Case Law Identifier (ECLI) where applicable)	805/2012
Parties	<p><i>Bryan Bowden Langdon and Galyna Kylyenko v. The Republic of Cyprus through the Director of the Archives, Population and Immigration Department</i></p> <p>[In original language: Bryan Bowden Langdon και Galyna Kylyenko v. Κυπριακής Δημοκρατίας μέσω της Διευθύντριας του Τμήματος Αρχείου Πληθυσμού και Μετανάστευσης]</p>
Web link to the decision (if available)	<p>http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201409-805-12.htm&qstring=2004%20w%2F1%2038%20w%2F1%20%E5%EA</p>
Legal basis in national law of the rights under dispute	<p>Article 146 of the Cypriot Constitution¹⁰ which provides for the right to apply for judicial review of an administrative act.</p>

¹⁰ Cyprus, [The Constitution of the Republic of Cyprus](#), accessed on 20 April 2017.

	<p>Article 7A3(a) of the national immigration law (Cap 105)¹¹ which provides that where a couple does not live under the same roof this may be evidence of a marriage of convenience which may lead to the cancellation of the visa of the parties involved.</p> <p>Article 29(3) of the law transposing the Free Movement Directive,¹² which corresponds to Directive Article 27.</p>
<p>Key facts of the case (max. 500 chars)</p>	<p>The second applicant is a Ukrainian woman who first came to Cyprus on a working visa in 2000, then filed an asylum application in 2004 and subsequently married a British man (the first applicant) in 2005. Her application for a visa as a spouse of a Union citizen was rejected in 2007 on the ground that she was not living with her husband under the same roof. She applied again for the same visa and was once more rejected, on the ground that her marriage was found to be one of convenience. The couple appealed against this decision and the Minister of the Interior ordered a police investigation to assess the validity of the marriage. The result of the police investigation, which relied partly on anonymous informers, was that the couple did not live under the same roof. The Minister cancelled the visa of both applicants and ordered them to leave Cyprus on the ground of having conducted a marriage of convenience which was seen as amounting to a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. The applicants filed a judicial review application against his decision arguing that it was inadequately investigated and justified and that they were denied the right to a hearing. The court rejected all three arguments and confirmed the administrative decision as valid and lawfully taken.</p>
<p>Main reasoning / argumentation</p>	<p>The investigation which preceded the first decision to cancel the applicants' visas could be utilised by the authorities for the new examination of this case; there was no duty to conduct a new investigation each time the applicants challenged the administrative decision. The line of investigation followed was lawful and</p>

¹¹ Cyprus, [Aliens and immigration law](#) (Ο περί Αλλοδαπών και Μεταναστεύσεως Νόμος), Cap 105, accessed on 20 April 2017.

¹² Cyprus, [Law on the right of citizens of the Union and their family members to move and reside freely in the Republic](#) (Ο περί του Δικαιώματος των Πολιτών της Ένωσης και των Μελών των Οικογενειών τους να Κυκλοφορούν και να Διαμένουν Ελεύθερα στη Δημοκρατία Νόμος του 2007), Ν. 7(Ι)/2007.

<p>(max. 500 chars)</p>	<p>acceptable, since national immigration law does not prohibit the collection of information from anonymous third parties.</p> <p>The justification offered by the authorities to the applicants in support of the decision to cancel their visas did indeed appear short, as it merely reiterated the relevant legal provisions, however this should be seen as being complemented by the opinion of the Advisory Committee on Marriages of Convenience and the data from the police investigation</p> <p>The applicants were not denied the right to be heard; they had the opportunity to state their position both in the written statements made to the police and through the letters they sent to the Ministry of the Interior.</p> <p>The applicants' action in conducting a marriage of convenience in order to enable applicant 2 to stay in Cyprus was justly deemed to represent a genuine, present and sufficiently serious threat to public order within the meaning of Article 29(1) of law N.7(I)/2007¹³ (corresponding to Directive Article 27).</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The Aliens and Immigration Law, which bestows wide powers of deportation to the Chief Immigration officer, applies to third country nationals and Union citizens alike. The conditions set out in Article 7A and 7B of the Aliens and Immigration Law based on which a marriage may be held to be one of convenience do not necessarily have to be met exhaustively to declare a marriage false, but they are intended to serve as mere indications that a foreigner has conducted a marriage of convenience. These include information from the spouses themselves or from third parties, the only binding precondition being the prior consultation with the (governmental) Advisory Committee on Marriages of Convenience, set up under Article 7B of the same law.</p>

¹³ Cyprus, [Law on the right of citizens of the Union and their family members to move and reside freely in the Republic](#) (Ο περί του Δικαιώματος των Πολιτών της Ένωσης και των Μελών των Οικογενειών τους να Κυκλοφορούν και να Διαμένουν Ελεύθερα στη Δημοκρατία Νόμος του 2007), Ν. 7(Ι)/2007, Article 22.

	<p>Since the authorities followed strictly the procedure foreseen in the law, the decision is deemed to have been duly investigated.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The application seeking the annulment of the administrative act which had cancelled the applicants' right to reside in Cyprus was rejected. The administrative act was confirmed as valid and lawful. This was a single judge bench. Literature on free movement has criticised the judicial and administrative practice of connecting marriages of convenience to public order or public security, pointing out that categorising marriages of convenience as a public threat issue infringes the Free Movement <i>acquis</i>.¹⁴</p>
	<p style="text-align: center;">Our comment on this case</p>
	<p>This ruling is in line with the judicial trend which refrains from questioning acts of the administration when the latter seek to invoke confidential or anonymous information implicating the applicant to activities justifying expulsion, as was the case in <i>Stoyanov</i> (see 1.1., above).</p> <p>Contrary to the ruling in <i>Mitova</i> (see 1.3. above), the court chose not to question the administrative decision, ruling that whenever the information collected through the investigation is inconsistent, the authorities have discretion to evaluate it in its entirety and draw conclusions.</p>

¹⁴ Trimikliniotis, N. (2013), "[Migration and Freedom of Movement of Workers: EU Law, Crisis and the Cypriot States of Exception.](#)" *Laws* 2, No. 4, pp. 440-468, accessed on 20 April 2017; Trimikliniotis, N. (2013), [Report on the Free Movement of Workers in Cyprus in 2012-2013](#), National Expert Report for the European Network on Free Movement of Workers within the European Union coordinated by the University of Nijmegen's [Centre for Migration Law](#) under the European Commission's supervision, accessed on 20 April 2017.

Key quotations in original language and translated into English with reference details (max. 500 chars)

Η θέση του αιτητή ότι υπήρχαν στοιχεία όπως το περιεχόμενο των επιστολών και των από κοινού νομικών διαβημάτων των αιτητών ή η έλλειψη αντιφάσεων στις καταθέσεις τους που συνηγορούσαν υπέρ της γνησιότητας του γάμου τους, είναι ορθή. Πλην όμως μπορεί εύκολα να αντιπαρατεθεί το ότι τα πιο πάνω στοιχεία και οι επιμέρους ισχυρισμοί ή εξηγήσεις των αιτητών ήταν ενώπιον των καθ' ών η αίτηση και λήφθηκαν υπόψη, αλλά αξιολογήθηκαν με βάση το σύνολο των στοιχείων που προέκυψαν από την έρευνα και τυχόν πληροφορίες που προέρχονται από τρίτους και που ο Νόμος επιτρέπει να λαμβάνονται υπόψη (***Kateryna Telsenko κ.α. v. Δημοκρατίας Υποθ.αρ.1902/08 ημερ.14.5.10***)

Οι υποδείξεις του δικηγόρου των αιτητών ως προς τα είδη της συμπληρωματικής έρευνας που όφειλε να διεξαχθεί παραγνωρίζουν την αρχή σύμφωνα με την οποία το ακυρωτικό Δικαστήριο ελέγχει την επάρκεια της έρευνας, χωρίς να επεμβαίνει στους τρόπους ή στα μέσα που επιλέγει η Διοίκηση να διεξάγει την έρευνα της κατά περίπτωση. Η έκταση, ο τρόπος και η διαδικασία που θα ακολουθηθεί ποικίλλει ανάλογα με το υπό εξέταση ζήτημα, ανάγεται δε στη διακριτική ευχέρεια της διοίκησης (***Victor Abe v. Δημοκρατίας, Υποθ. αρ. 144/03, ημερ. 22/2/04, Δημοκρατία v. Κοινότητας Πυργών κ.ά. (1996) 3 Α.Α.Δ. 503, Επιτροπή Εκπαιδευτικής Υπηρεσίας v. Ζάμπογλου (1997) 3 Α.Α.Δ. 270 και Δημοκρατίας κ.α. v. Μαρίας Πανταζή Ελισσαίου κ.α. (2003) 3 Α.Α.Δ. 168***).

Translation:

The claimant's claim that there were elements such as the content of the letters and joint legal claims of the applicants or the lack of contradictions in their testimonies that justified the authenticity of their marriage is correct. However, it can easily be argued that the above elements and the individual allegations or explanations of the applicants were known to the respondents and were taken into account, but were evaluated on the basis of all the information obtained from the investigation and from third parties which the Law allows to be taken into account (*Kateryna Telsenko et al. v. The Republic, File no. 1902/08, dated 14.5.10*).

	<p>The suggestions of the claimants' lawyer regarding the types of supplementary investigation that ought to have been carried out ignore the principle that the reviewing Court checks the adequacy of the investigation without interfering with the ways or means chosen by the Administration to conduct its investigation, as the case may be. The extent, manner and procedure to be followed varies according to the issue under consideration and falls within the discretion of the administration (<i>Victor Abe v. Republic</i>, Case No. 144/03, dated 22/2/04, <i>Republic v. Pyrgos Community</i> (1996) 3 AAD 503; <i>Educational Service Committee v. Zamboglou</i> (1997) 3 AAD 270; <i>Republic et al v. Maria Pantazi Elisaïou</i> (2003) 3 ID No. 168).</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

1.5. The *Mendonca* case

<p>Subject matter concerned</p>	<p><input type="checkbox"/> 1) non-discrimination on grounds of nationality</p> <p><input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to Articles 33, 27 and 28 of Directive 2004/38</p> <p><input type="checkbox"/> 3) voting rights</p>
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	<input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	3 November 2014
Deciding body (in original language)	Ανώτατο Δικαστήριο Κύπρου, Αναθεωρητική Δικαιοδοσία
Deciding body (in English)	Supreme Court of Cyprus, Review Jurisdiction
Case number (also European Case Law Identifier (ECLI) where applicable)	1266/2014
Parties	<i>Joao Dionisio Mendonca v. The Republic of Cyprus through the Minister of the Interior and the Director of the Archives Population and Immigration Department</i>

	[In original language: Joao Dionisio Mendonca v. Κυπριακής Δημοκρατίας μέσω του Υπουργού Εσωτερικών και της Διευθύντριας του Τμήματος Αρχείου Πληθυσμού και Μετανάστευσης]
Web link to the decision (if available)	http://cyllaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201411-1266-14endiam.htm&qstring=2004%20w%2F1%2038%20w%2F1%20%E5%EA
Legal basis in national law of the rights under dispute	Law N.7(I)/2007 transposing the Free Movement Directive, ¹⁵ Articles 29(3)(b), 30(1) and 35(1) (corresponding to Directive Articles 27.2, 28.1 and 33.1 respectively).
Key facts of the case (max. 500 chars)	The applicant was a Portuguese national who arrived in Cyprus in 2008. In May 2014 he was found guilty to a number of charges relating to a burglary and was sentenced by the district criminal court to concurrent prison sentences of maximum six months. Prior to his release from jail, the immigration authorities declared him as an unwanted immigrant on the strength of Article 6(1)(d) of the national immigration law Cap 105. ¹⁶ On the same day, the immigration authorities issued detention and expulsion orders on the ground that his actions showed that he represented a genuine, present and sufficiently serious threat to public order and that he had no links with Cyprus. On the day of his release from prison he was arrested and placed under detention on the strength of these orders. He applied to the court for an order suspending his detention and deportation on the following grounds.

¹⁵ Cyprus, Law on the right of citizens of the Union and their family members to move and reside freely in the Republic (*Ο περί του Δικαιώματος των Πολιτών της Ένωσης και των Μελών των Οικογενειών τους να Κυκλοφορούν και να Διαμένουν Ελεύθερα στη Δημοκρατία Νόμος του 2007*), Ν. 7(I)/2007, available at http://cyllaw.org/nomoi/enop/non-ind/2007_1_7/index.html Accessed on 22 April 2017

¹⁶ Cyprus, [Aliens and immigration law](#) (*Ο περί Αλλοδαπών και Μεταναστεύσεως Νόμος*), Cap 105, accessed on 20 April 2017.

	<ul style="list-style-type: none"> • These orders are manifestly unlawful because they violate Articles 29(3)(b), 30(1) and 35(1) of Law N.7(I)/2007 transposing the Free Movement Directive, which correspond to Directive Articles 27.2, 28.1 and 33.1 respectively. • The decision failed to take into account his strong links with Cyprus where he had been living for the past six years, five of which with his Cypriot fiancé. • The authorities did not give him the right to a hearing or the right to an appeal or the right to be represented for such a hearing or appeal. • The decision which declared him an unwanted immigrant was never served to him. • If the court does not order the suspension of the detention and deportation orders, he will suffer irreparable damage. <p>The court accepted the applicant's arguments and ordered his release from detention and the suspension of the deportation order.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The administrative decision to declare the applicant an unwanted immigrant and to issue detention and deportation orders against him was premised upon his conviction by the criminal court. As such, the decision violated Articles 35, 29 and 30 Law N.7(I)/2007 transposing the Free Movement Directive, which correspond to Directive Articles 33, 27 and 28 respectively. Law N.7(I)/2007 ranks higher than Cap 105, and the application of Cap 105 by the authorities in the case of the applicant was wrong.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The national immigration law (Cap 105) and the extensive powers it grants to the Chief Immigration Officer to declare foreigners as 'unwanted immigrants' and to order their deportation cannot be applied in the case of Union citizens, whose right of residence is regulated by Law N.7(I)/2007 transposing Directive 2004/38.</p>

Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The court ruled the application was successful and ordered the suspension of the detention and deportation orders and the release of the applicant. This was a single judge bench.
	Our comment on this case
	The court’s decision to apply Law N.7(I)/2007 over the national immigration law (Cap 105) runs contrary to the decision in <i>Langdon</i> (1.4 above) and to a great number of other Court decisions which endorsed the authorities’ standard practice of deporting Union citizens, after having pronounced them as ‘unwanted immigrants’ under Article 6 of Cap 105. ¹⁷ This is a highly controversial legislative provision which entitles the authorities to declare as ‘unwanted immigrant’ any person who meets any one of the 13 criteria listed in Article 6 of Cap 105. The list includes persons with an intellectual or mental disability, persons who have been convicted of any crime for which a prison sentence of any duration has been imposed, prostitutes (without any exception made for victims of trafficking) and any person deemed by the Council of Ministers as unwanted based on ‘reliable information’. Article 6 infringes not only the free movement acquis but also the non-discrimination acquis, the CRPD and the Istanbul Convention. The decision to disapply Article 6 and the entire corpus of Cap 105 in the case of Union citizens remedies a long standing illegality that had been repeatedly endorsed by the court in other cases. Nevertheless, Court decisions delivered subsequent to this ruling applied Article 6 of Cap 105 to Union citizens, in disregard of this Court’s finding.
Key quotations in original language and translated into English with	Η περίπτωση του αιτητή ως Πορτογάλου πολίτη της Ένωσης, ο οποίος μάλιστα κατέχει και Βεβαίωση Εγγραφής, σύμφωνα με το άρθρο 10 του Ν. 7(Ι)/2007 (βλ. έννοια «Πολίτης της Ένωσης». Άρθρ. 2 του περί του Δικαιώματος των Πολιτών της Ένωσης και των Μελών των οικογενειών τους να Κυκλοφορούν και να Διαμένουν Ελεύθερα στη Δημοκρατία, Νόμου του 2007, Ν. 7(Ι)/2007) διέπεται από τις πρόνοιες του πιο πάνω Νόμου...Ο Νόμος, όπως ο ίδιος αναφέρει, είναι εναρμονιστικός της πράξης της Ευρωπαϊκής Κοινότητας με τίτλο «Οδηγία

¹⁷ Cyprus, [Aliens and immigration law](#) (Ο περί Αλλοδαπών και Μεταναστεύσεως Νόμος), Cap 105, Article 6 (1) (g), accessed on 20 April 2017.

reference details (max. 500 chars)

2004/38 ΕΚ του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου της 29^{ης} Απριλίου 2004 σχετικά με το δικαίωμα των πολιτών της Ένωσης και των μελών των οικογενειών τους να κυκλοφορούν και να διαμένουν ελεύθερα στην επικράτεια των κρατών μελών..» Έπεται ότι έχει αυξημένη ισχύ από τις πρόνοιες του Συντάγματος υπό τον όρο ότι αποτελεί νόμιμη μεταφορά στη Δημοκρατία, δηλαδή οι διατάξεις του Νόμου δεν είναι αντίθετες με τις πρόνοιες του Συντάγματος (βλ. ***Ιωάννου (Ρωσσίδης) ν. Γενικού Εισαγγελέα (2011) 1 (B) Α.Α.Δ. 1606, 1613***). Πέραν των πιο πάνω ο Νόμος είναι ειδικός νόμος ο οποίος, όπως ο ίδιος αναφέρει, σκοπό έχει να ρυθμίσει τα όσα αναφέρονται στο άρθρο 3 πιο πάνω και συνεπώς ως ειδικός νόμος εφαρμόζεται στην παρούσα υπόθεση αντί του περί Αλλοδαπών και Μετανάστευσης Νόμου, Κεφ. 105, που είναι γενικός νόμος και εφαρμόζεται επί παντός μη Κύπριου πολίτη. Άμεσο αποτέλεσμα αυτού είναι η χρήση από τους καθ' ων η αίτηση, προνοιών του Κεφ. 105, προκειμένου ν' αντιμετωπισθεί η περίπτωση του αιτητή να κρίνεται λανθασμένη.

Σύμφωνα με τα όσα τέθηκαν ενώπιον του Δικαστηρίου (βλ. τεκμ. 5, 6, 7(α), 7(β) στην ένσταση) η απόφαση να κηρυχθεί ανεπιθύμητος μετανάστης και να εκδοθούν τα προσβαλλόμενα διατάγματα, στηρίχθηκε στην καταδίκη του από το Επαρχιακό Δικαστήριο Πάφου (άνω). Η ενέργεια αυτή των καθ' ων η αίτηση είναι έκδηλα παράνομη αντίθετη προς τις πρόνοιες των άρθρων, 35, 29 και 30 του Νόμου.

Translation:

The case of the applicant as a Portuguese citizen of the Union who holds a Certificate of Registration in accordance with Article 10 of Law N. 7(I)/2007 (see the definition of "Citizen of the Union" in Article 2 of the Law on the right of citizens of the Union and their family members to move and reside freely in the Republic of 2007 N.7(I)/2007) is governed by the provisions of the aforementioned Law [...] The Law, as it states itself, transposes the act of the European Community entitled 'Directive 2004/38 / EC of the European Parliament and of the Council EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States .. ' It follows that it has increased effect over the provisions of the Constitution provided that it is a lawful transposition into the Republic, that is, the provisions of the Law are not contrary to the provisions of the Constitution (see *Ioannou (Rossidis) v. Attorney General*

	<p>(2011) 1 (B) A.A.D. 1606, 1613). In addition to the above, the Law is a special law which, as it states itself, aims to regulate the scope of Article 3 above and therefore as a special law it applies to the present case instead of the Aliens and Immigration Law , Cap 105, which is a general law applied to all non-Cypriot citizens. As a direct result, the use by the respondents of the provisions of Cap 105 in order to deal with the applicant's case is a mistake.</p> <p>According to the case before the Court of Justice (see exhibits 5, 6, 7 (a), 7 (b)), the decision to declare him as an unwanted immigrant and to issue the contested orders was based on his criminal conviction by the District Court of Paphos (above). This action of the respondents is manifestly illegal as it infringes Articles 35, 29 and 30 of the Law.</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

1.6 The *Angelov* case

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 Articles 27, 28, 30 and 32 of 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	17 July 2015
Deciding body (in original language)	Ανώτατο Δικαστήριο Κύπρου, Αναθεωρητική Δικαιοδοσία
Deciding body (in English)	Supreme Court of Cyprus, Review Jurisdiction
Case number (also European Case Law Identifier)	8/2013

(ECLI) where applicable)	
Parties	<p><i>Angelov Planimir Stanchev v. The Republic of Cyprus through the Ministry of the Interior and the Department of population archives and immigration</i></p> <p>[In original language: Angelov Planimir Stanchev v. Κυπριακής Δημοκρατίας μέσω του Υπουργού Εσωτερικών και του Τμήματος Αρχείου Πληθυσμού και Μετανάστευσης]</p>
Web link to the decision (if available)	<p>http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201507-8-13_4.htm&qstring=2004%20w%2F1%2038%20w%2F1%20%E5%EA</p>
Legal basis in national law of the rights under dispute	<p>Article 146 of the Cypriot Constitution¹⁸ which provides for the right to apply for judicial review of an administrative act.</p> <p>Articles 29, 30, 32 and 34 of Law N.7(I)/2007¹⁹ transposing the Free Movement Directive which corresponds to Directive Articles 27, 28, 30 and 36 respectively.</p>

¹⁸ Cyprus, [The Constitution of the Republic of Cyprus](#), accessed on 20 April 2017.

¹⁹ Cyprus, [Law on the right of citizens of the Union and their family members to move and reside freely in the Republic](#) (Ο περί του Δικαιώματος των Πολιτών της Ένωσης και των Μελών των Οικογενειών τους να Κυκλοφορούν και να Διαμένουν Ελεύθερα στη Δημοκρατία Νόμος του 2007), Ν. 7(Ι)/2007.

<p>Key facts of the case (max. 500 chars)</p>	<p>The applicant was a Bulgarian national who came to Cyprus in 2009 and obtained a registration certificate. In 2012 he was found working as a guard outside a casino without license, upon which he was arrested and charged. On the following day the police again located the applicant working as a guard at the same casino; he was arrested again and charged. He was found working at the same casino twice again at subsequent dates a few weeks later. The police claimed that at one of their visits to the casino, the applicant had warned the casino staff about the arrival of the police, whilst at the last visit, he prevented the police from entering the casino. Three months later, the immigration authorities issued orders of detention and deportation against him on the ground that his conduct rendered him a genuine, present and sufficiently serious threat. In addition to the events described above, the authorities cited their allegation that the applicant ‘appeared to belong’ to a group involved in organized crime. The applicant filed an <i>ex parte</i> application to the court for an order to suspend the execution of the detention and deportation order which was successful. Following that, he left Cyprus voluntarily for personal reasons. Because he had meanwhile been declared to be a prohibited migrant under the national immigration law,²⁰ the authorities lodged his name in the Stop List, prohibiting him from entering Cyprus for the next ten years. The applicant challenged this decision on a number of grounds including error of fact as regards his links with Cyprus, the failure to adequately investigate and the infringement of Articles 29, 30, 32 and 34 of the law transposing Directive 2004/38/EC²¹ which correspond to Directive Articles 27, 28, 30 and 36 respectively.</p>
<p>Main reasoning / argumentation</p>	<p>The administrative act which the applicant seeks to challenge in this case is merely assertive and informative of a previous administrative act which had declared him to be a prohibited immigrant under the national immigration law.²² It is on the basis of that decision that his re-entry into Cyprus was prohibited. There was no</p>

²⁰ Cyprus, [Aliens and immigration law](#) (Ο περί Αλλοδαπών και Μεταναστεύσεως Νόμος), Cap 105, Article 6 (1) (g), accessed on 20 April 2017.

²¹ Cyprus, [Law on the right of citizens of the Union and their family members to move and reside freely in the Republic](#) (Ο περί του Δικαιώματος των Πολιτών της Ένωσης και των Μελών των Οικογενειών τους να Κυκλοφορούν και να Διαμένουν Ελεύθερα στη Δημοκρατία Νόμος του 2007), Ν. 7(Ι)/2007, accessed on 23 April 2017.

²² Cyprus, [Aliens and immigration law](#) (Ο περί Αλλοδαπών και Μεταναστεύσεως Νόμος), Cap 105, Article 6 (1) (g), accessed on 20 April 2017.

(max. 500 chars)	<p>new fact or evidence submitted in order to render the entry ban a fresh executory act so that it can be challenged through judicial review.</p> <p>The applicant had lost his legitimate interest to challenge the administrative acts which resulted from having been declared to be a prohibited immigrant because through his voluntary departure he has essentially accepted these acts.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>Article 34 of Law N.7(1)/2007 (corresponding to Directive Article 32) does not place a ceiling to the duration of the re-entry ban. It merely gives the right to the excluded person to apply for the lifting of the ban due to new data that materially change the circumstances which justified the exclusion decision.</p> <p>Placing a person's name in the Stop List is not an executory act and therefore cannot be challenged through judicial review.</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The application for judicial review was rejected and the 10-year entry ban against the applicant was confirmed. The applicant was ordered to pay the respondents' costs.</p> <p style="text-align: center;">Our comment on this case</p> <p>The court essentially applied national immigration law and the wide deportation powers which this grants to the Chief Immigration Officer,²³ rather than check the compatibility of the administrative actions with the free movement acquis, contrary to the decision in <i>Mendonca</i> (reported above) which was delivered 8 months earlier. The ruling that the applicant had lost his legitimate claim to challenge the administrative act because of having been deemed to have previously accepted this act, relied on legal precedent from 1990 (before the</p>

²³ *Ibid.*

	<p>transposition of the free movement acquis) on a case concerning the imposition of import duties. The Judge did not examine the applicant's claim of violation of his rights under the law transposing Directive 2004/38.</p>
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p>Κατά τις διευκρινίσεις, όπως ήδη λέχθηκε, η ευπαίδευτη συνήγορος των καθ' ων πληροφόρησε το Δικαστήριο για την έκδοση απορριπτικής απόφασης στην προσφυγή υπ' αρ. 1430/2012 στις 28.1.2015. Η προσφυγή αυτή στρέφεται εναντίον των διαταγμάτων κράτησης και απέλασης ημερ. 9.9.2012 και εκεί ηγέρθησαν παρόμοιοι λόγοι ακύρωσης ως προς την ουσία της κήρυξης του αιτητή σε απαγορευμένο μετανάστη, όπως και στην παρούσα προσφυγή. Το Ανώτατο Δικαστήριο με την απόφαση του αποδέχθηκε προδικαστική ένσταση ως προς την απώλεια του αντικειμένου της προσφυγής λόγω της ακύρωσης των επιδικών διαταγμάτων και της οικειοθελούς αναχώρησης του αιτητή. Το Δικαστήριο έκρινε ότι ο αιτητής απώλεσε το έννομο συμφέρον του να προσβάλει πράξη, το περιεχόμενο της οποίας, έστω και εκ των υστέρων, οικειοθελώς αποδέχθηκε στη βάση σχετικής νομολογίας, με αναφορά στην <i>Κοζάκος v. Δημοκρατίας</i> (1990) 3 A.A.Δ. 3566 και των εκεί μνημονευθεισών αποφάσεων. Έκρινε επίσης ότι δεν παρέμειναν ζημιογόνα αποτελέσματα ως εκ της ακύρωσης των διαταγμάτων ώστε να καταστεί δυνατή η αναχώρηση του αιτητή στην πατρίδα του, δεδομένου ότι η πρωταρχική κήρυξη του ως απαγορευμένου μετανάστη ανήκε στη διακριτική ευχέρεια της διοίκησης, η οποία είναι ευρύτατη και άρρηκτα συνυφασμένη με την κρατική υπόσταση, (<i>Moyo v. Republic</i> (1988) 3 C.L.R. 1203 και <i>Eddine v. Δημοκρατίας</i> (2008) 3 A.A.Δ. 95).</p> <p>Η πιο πάνω απόφαση προσθέτει στα αιτιολογικά της απόρριψης της παρούσας προσφυγής εφόσον και εδώ ο αιτητής έχει παύσει να διατηρεί έννομο συμφέρον στην προώθηση της προσφυγής του, ιδιαιτέρως εφόσον η υπό κρίση προσβαλλόμενη πράξη είναι ακόλουθη της ουσιαστικής πράξης κήρυξης του αιτητή ως απαγορευμένου μετανάστη, την οποία έχει αποδεχθεί ο αιτητής με την οικειοθελή αναχώρηση του από τη Δημοκρατία.</p> <p>Translation:</p> <p>As already stated, according to the clarifications, the learned counsel for the defendants informed the Court of Justice of the rejection of application no. 1430/2012 on 28.1.2015. This appeal was directed against the</p>

detention and deportation orders dated 9.9.2012 where similar grounds came up for annulment as to the substance of the applicant's declaration as a prohibited immigrant, as in the present case. In its judgment, the Supreme Court accepted a preliminary ruling on the loss of the subject matter of the action as a result of the annulment of the disputed orders and the voluntary departure of the applicant. The Court held that the applicant had lost his legitimate interest in challenging an act the content of which, albeit ex post, he had voluntarily accepted, on the basis of relevant legal precedent, with reference to *Kozakos v. the Republic* (1990) 3 AAD 3566 and the judgments cited therein. It also ruled that no damaging effects remained as a result of the annulment of the orders so as to enable the applicant to depart for his home country, since his primary proclamation as a prohibited immigrant was at the discretion of the administration, which is very broad and inseparable from state sovereignty (*Moyo v. Republic* (1988) 3 CLR 1203; *Eddine v. Republic* (2008) 3 ID No 95).

The aforesaid decision adds to the grounds for the dismissal of the present action even though the applicant has ceased to have a legitimate interest in the promotion of his action, particularly since the contested act is a consequence of the substantive act of declaring the applicant as a forbidden immigrant, which the applicant has accepted through his voluntary departure from the Republic.

1.7. The *Bekefi* Case

Subject matter concerned	<ul style="list-style-type: none"> ☒ 1) non-discrimination on grounds of nationality ☒ 2) freedom of movement and residence - linked to articleArticle 27 of Directive 2004/38
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	<input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	30 June 2016
Deciding body (in original language)	Ανώτατο Δικαστήριο, Δευτεροβάθμια Δικαιοδοσία
Deciding body (in English)	Supreme Court, Appeal Jurisdiction
Case number (also European Case Law Identifier (ECLI) where applicable)	Appeal Nos. 42/2013, 43/2013, 44/2013 and 45/2013 (Case Nos. 290/2012, 291/2012, 292/2012, 293/2012)

Parties	<p><i>Kristian Bekefi et al. v. The Republic of Cyprus through the Minister of the Interior</i></p> <p>[In original language: Kristian Bekefi et al v. Κυπριακής Δημοκρατίας μέσω του Υπουργού Εσωτερικών]</p>
Web link to the decision (if available)	<p>http://cyllaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_3/2016/3-201606-42-13etcapof.htm&qstring=%F7%E1%F1%F4%2A%20and%202016</p>
Legal basis in national law of the rights under dispute	<p>Article 12 of the Cypriot Constitution and Article 6 of the ECHR, both of which safeguard the presumption of innocence.</p> <p>Article 29 of Law 7(I)/2007 which transposes Directive 2004/38 (corresponding to Directive Article 27).</p> <p>Articles 21.2, 45 and 48 of the EU Charter.</p>
Key facts of the case (max. 500 chars)	<p>The appellants were Union citizens lawfully residing in Cyprus. They were expelled from Cyprus in 2011, after the Minister of the Interior declared them to be 'prohibited immigrants' under the national immigration law²⁴ for posing a serious threat to public order. In 2012, the Interior Minister cancelled the expulsion orders which had been issued against the applicants, having established that they were premised upon the wrong legal provision. Article 29 of Law 7(I)/2007 which transposes Directive 2004/38 (corresponding to Directive Article 27) was added to the grounds for expulsion and a re-entry ban of 10 years was issued. The justification</p>

²⁴ *Ibid.*

attached to the administrative decision ordering the applicants' expulsion was a police letter stating that all the applicants were members of a 'criminal group' carrying out 'various criminal activities' such as blackmailing citizens for protection and assaults. The police letter claimed that information about the applicants' criminal activity was supplied to the police daily even though there was never any formal complaint. With regard to one of the applicants in particular, the police claimed he was believed to be the 'executioner' in a murder case where he was tried as main suspect but was acquitted by the court, even though there was 'scientific evidence' implicating him.

The applicants challenged this decision on the ground that it violated the free movement acquis and the presumption of innocence, safeguarded by the Cypriot Constitution (Article 12) and the ECHR (Article 6). The trial court rejected these applications on the ground that the contested decision was an expression and exercise of the administration's discretion which, in the case of deportations or entry bans, was wide enough so as to conform to the principle of state sovereignty. The court was satisfied that the public order concerns invoked by the authorities, relying on information supplied by the police regarding some criminal activity of the applicants, were valid and adequately investigated.

The applicants appealed the first instance decision on several grounds.

- The trial court had erred in its finding that the presumption of innocence and the right of free movement had not been infringed. The trial Court's finding ignored Article 45 of the EU Charter which safeguards the right to free movement, a fundamental right which can only be restricted exceptionally and under circumstances specified in the *acquis*.
- Article 21.2 of the EU Charter requires Member States to assess the conduct of Union citizens using the same criteria as when assessing its own nationals and that no Cypriot would have been deemed to be a threat to public order based solely on vague and unconfirmed information.

	<ul style="list-style-type: none"> The trial court's reliance on the legal precedents of <i>Eddine</i>²⁵ and <i>Moyo</i>,²⁶ in order to conclude that the respondents could evaluate information at their discretion and expel the applicants in the framework of such discretion and state sovereignty, was wrong because those cases involved third country nationals. The trial court was also wrong to apply the national immigration law (Cap 105) in the case of Union nationals whose right to move and reside is regulated by the EU acquis. <p>The court rejected all of the above arguments and dismissed the appeals.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The applicants cannot benefit from the principle of the presumption of innocence because they are not suspects or accused persons in a criminal procedure and therefore the trial court finding that the presumption of innocence had not been violated was correct.</p> <p>They all resided in Cyprus for under five years and therefore could not be afforded protection under Directive Article 27.1.</p> <p>The trial court was right to rely on judicial precedent relating to third country nationals (<i>Moyo</i> and <i>Eddine</i>) since information collected from appropriate sources can lawfully provide the premise for expulsion, provided the administration viewed the rights of the Union citizen affected in good faith.</p> <p>No issue of discrimination arose, since measures were also being taken against the Cypriot members of the same suspect group.</p>

²⁵ Cyprus, Supreme Court, [Mahmood Hussein Alaa Eddine v. The Republic of Cyprus](#), Case No. 99/2005, 14 February 2008, accessed on 24 April 2017.

²⁶ Cyprus, Revisional Jurisdiction [Sydney Alfred Moyo et al v. The Republic of Cyprus](#), Appeal No. 811, 10 June 1988, accessed on 24 April 2017.

<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The concepts of 'public order' and 'public safety' are not defined either in Directive 2004/38 or in CJEU case law and therefore state discretion in this field remains wide, vague and unspecified, precisely because there are sensitive issues at stake falling within the sphere of the sovereignty of the Member States and their rights to control the entry and stay of foreigners in their territory on an ad hoc basis. Citing the CJEU ruling in <i>Rutili</i> the court concluded that Member States are free to determine their own public order and public safety needs based on their own values and circumstances which may differ from state to state and from a certain period to another.</p> <p>The presumption of innocence, as safeguarded by Charter Article 48.1 and by ECHR Article 6 applies only to criminal proceedings and has no application to administrative procedures. This is obvious from the preamble to Directive 2016/343 of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, whose scope is restricted to criminal proceedings by virtue of preamble Article 11. (Author's note: The court may have missed the non-regression provision in Article 13 of this Directive.)</p> <p>There is no need for a prior conviction in order for a 'genuine, present and sufficiently serious threat' to exist. Indeed such a threat may exist even where there is no illegal activity at all. The participation in an organisation whose activities are considered by the member state as a social risk may be taken into account where a person evidently identifies with the aims and plans of such organisation.</p> <p>Given that states cannot expel their own nationals, expulsion forms an exception to the nondiscrimination rule of Charter Article 21.2.</p>
<p>Results (e.g. sanctions) and key consequences</p>	<p>The findings of the trial court were confirmed. The administrative decisions regarding the applicants' expulsion and re-entry ban were confirmed as lawful. This Court in this case was acting in its appellate jurisdiction: the decision is final and cannot be appealed again in Cyprus. This was a five-member bench and the decision was unanimous.</p>

or implications of the case (max. 500 chars)	Our comment on this case
	<p>The issue as to whether the national immigration law can or cannot be applied to Union nationals was extensively dealt with, concluding that the restrictions and safeguards afforded to Union nationals by Directive 2004/38 must be applied in addition to Cap 105, albeit the threshold was set very low; involvement in an organisation posing a ‘social risk’ suffices to meet the test of Directive Article 27.2 (genuine, present and sufficiently serious threat affecting one of the fundamental interests of society), no presumption of innocence applies and there can be no issue of equality with the host country’s nationals in the field of deportation.</p> <p>The case amounts to a clear departure from the principle established in <i>Mendonca</i> (see 1.5 above) that the rights of Union nationals are regulated only by the <i>acquis</i>.</p>
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p>Η απέλαση αποτελεί τον πιο σοβαρό περιορισμό στην ελευθερία κυκλοφορίας, αλλά και εξαίρεση, ταυτοχρόνως, της αρχής που διατυπώνεται στο Άρθρο 21.2 του Χάρτη της μη διάκρισης λόγω ιθαγένειας, αφού τα κράτη μέλη δεν έχουν την εξουσία να απομακρύνουν τους δικούς τους υπηκόους από την επικράτεια τους ή να απαγορεύσουν την είσοδο τους σ' αυτή, ενώ τέτοια μέτρα μπορούν να λαμβάνονται έναντι των υπηκόων άλλων κρατών μελών. Η απέλαση αλλοδαπών, είτε είναι Ευρωπαίοι πολίτες είτε όχι, παραμένει κυρίαρχο δικαίωμα των κρατών μελών της Ευρωπαϊκής Ένωσης.</p> <p>Ο Χάρτης δεσμεύει τα κράτη μέλη όταν αυτά ενεργούν, όπως εδώ, εντός του πεδίου εφαρμογής του δικαιού της Ευρωπαϊκής Ένωσης. Όπως ορθά επισημαίνεται από τον ευπαιδευτο συνήγορο των εφεσσιόντων, το Άρθρο 48.1 κατοχυρώνει την αρχή του τεκμηρίου της αθωότητας, προβλέποντας ότι κάθε κατηγορούμενος τεκμαίρεται ότι είναι αθώος μέχρι αποδείξεως της ενοχής του σύμφωνα με το νόμο. Σύμφωνα με το Άρθρο 52.3, το δικαίωμα αυτό έχει την ίδια έννοια και εμβέλεια με το δικαίωμα που κατοχυρώνεται στην ΕΣΔΑ.</p> <p>Η αναφορά σε «κατηγορούμενο» στο Άρθρο 48.1 του Χάρτη, προϋποθέτει την ύπαρξη ποινικής διαδικασίας εναντίον προσώπου στο οποίο αποδίδεται η διάπραξη ποινικού αδικήματος. Με αναφορά πάντα στη διοικητική</p>

διαδικασία που οδήγησε στη διοικητική απόφαση για την απέλαση τους, οι εφεσείοντες δεν ήταν κατηγορούμενοι, ούτε επρόκειτο για ποινική διαδικασία, ώστε να τίθεται θέμα εφαρμογής των προνοιών του Άρθρου 48 του Χάρτη. Ούτε το Άρθρο 6 της ΕΣΔΑ έχει εδώ εφαρμογή, το ΕΔΑΔ έχοντας καταστήσει σαφές πως το Άρθρο 6 δεν εφαρμόζεται σε υποθέσεις απέλασης. Κι αυτό, προφανώς, για το λόγο ότι αποφάσεις για την είσοδο, παραμονή και απέλαση αλλοδαπών δεν αφορούν στη διάγνωση των αστικών δικαιωμάτων ή υποχρεώσεων τους ή σε ποινική κατηγορία, υπό την έννοια του Άρθρου 6.1. Θεωρούνται, μάλλον, ως δημόσιες πράξεις οι οποίες διέπονται από το δημόσιο δίκαιο (βλ. *Mamatkulov and Askarov v. Turkey* 41 EHRR 494 (GC) και *Maoui v. France*, Application No. 39652/98, 12.1.1999). Η άποψη αυτή ευρίσκει απήχηση και στην αιτιολογική σκέψη της πολύ πρόσφατης Οδηγίας (ΕΕ) 2016/343 του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου της 9ης Μαρτίου 2016 για την ενίσχυση ορισμένων πτυχών του τεκμηρίου αθωότητας και του δικαιώματος παράστασης του κατηγορουμένου στη δίκη του στο πλαίσιο ποινικής διαδικασίας, σκοπός της οποίας είναι να ενισχυθεί το δικαίωμα σε δίκαιη δίκη στο πλαίσιο ποινικών διαδικασιών με τη θέσπιση κοινών ελάχιστων κανόνων για ορισμένες πτυχές του τεκμηρίου της αθωότητας και του δικαιώματος παράστασης του κατηγορούμενου στη δίκη. Συμπληρώνοντας, έτσι, η Οδηγία, το νομικό πλαίσιο που παρέχουν ο Χάρτης και η ΕΣΔΑ. Στην παράγραφο 1 της αιτιολογικής σκέψης της εν λόγω Οδηγίας μνημονεύεται η κατοχύρωση της αρχής του τεκμηρίου της αθωότητας και του δικαιώματος σε δίκαιη δίκη, μεταξύ άλλων, από το Χάρτη και το Άρθρο 6 της ΕΣΔΑ[.]

Translation:

Expulsion constitutes the most serious restriction to free movement, but it is also at the same time an exception to the principle of non-discrimination on grounds of nationality set out in Article 21.2 of the Charter, as Member States have no power to expel their own nationals from their territory or prohibit their entry into this, while such measures may be taken against nationals of other Member States. The expulsion of foreigners, whether they are European citizens or not, remains a sovereign right of EU Member States.

	<p>The Charter is binding on Member States when they are acting within the scope of EU law as was the case here. As rightly pointed out by learned counsel for the appellants, Article 48.1 safeguards the principle of presumption of innocence, providing that every accused person shall be presumed innocent until proved guilty according to the law. According to Article 52.3, this right has the same meaning and scope as the right guaranteed by the ECHR.</p> <p>The reference to an "accused person" in Article 48.1 of the Charter presupposes the existence of criminal proceedings against a person to whom the commission of a criminal offense is attributed. Referring always to the administrative procedure which resulted in the administrative decision on their expulsion, the appellants were not accused, nor were criminal proceedings instigated so as to trigger the operation of Article 48 of the Charter. Nor can ECHR Article 6 be applied here, since the ECtHR has made it clear that Article 6 does not apply to deportation cases. And this, obviously, because decisions on entry, stay and deportation of aliens do not relate to the diagnosis of their civil rights or obligations or in a criminal charge within the meaning of Article 6.1. Rather, they are considered as public acts governed by public law (see <i>Mamatkulov and Askarov v. Turkey</i> 41 EHRR 494 (GC) and <i>Maaouia v. France</i>, Application No. 39652/98, 12.1.1999). This position is in agreement with the preamble to the very recent directive (EU) 2016/343 of the European Parliament and the Council of March 9, 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, which aims to strengthen the right to a fair trial in criminal proceedings by establishing common minimum standards for certain aspects of the presumption of innocence and the accused person's legal standing in the proceedings. Complementing in this way the legal framework provided by Charter and the ECHR, paragraph 1 of the recital of that Directive records the establishment of the principle of the presumption of innocence and the right to a fair trial in the Charter and in Article 6 of the ECHR[.]</p>
<p>Has the deciding body</p>	<p>Yes, Articles 21.2, 45 and 48.</p>

referred to the Charter of Fundamental Rights? If yes, to which specific article.	
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1.8 The *Karomenou* case

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 Articles 27, 28 and 30 of 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	9 July 2015

Deciding body (in original language)	Ανώτατο Δικαστήριο Κύπρου, Αναθεωρητική Δικαιοδοσία
Deciding body (in English)	Cyprus Supreme Court, Review Jurisdiction
Case number (also European Case Law Identifier (ECLI) where applicable)	483/2015
Parties	<p><i>Ioannis Karomenou from Greece v. Republic of Cyprus through the Minister of the Interior and the Department of Population Archives and Immigration</i></p> <p>[In original language: Ιωάννη Καρομένου εξ Ελλάδος v. Κυπριακής Δημοκρατίας μέσω του Υπουργού Εσωτερικών και του Τμήματος Αρχείου Πληθυσμού και Μετανάστευσης]</p>
Web link to the decision (if available)	<p>http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201507-483-2015.htm&qstring=%E1%F0%E5%EB%E1%F3%2A%20and%20%E5%F5%F1%F9%F0%E1%2A</p>

Legal basis in national law of the rights under dispute	Articles 29, 30 and 32 of Law N. 7(I)/2007 transposing the Free Movement Directive ²⁷ (corresponding to Directive Articles 27, 28 and 30 respectively).
Key facts of the case (max. 500 chars)	<p>The applicant was a Greek national who came to Cyprus in 2010 and married a Cypriot woman in 2011, following which he applied for and was issued a registration certificate. In 2013, he was convicted for drug related offence and was jailed for four years, following which his Cypriot wife divorced him and secured, through mutual consent, exclusive custody of their daughter and alimony rights. In 2015, the applicant's former wife informed the immigration authorities that she divorced him because she suspected him of having an extra marital affair, that he had in the past been violent and she was afraid for the physical integrity and safety of herself and her daughter, and that the applicant also had a record in Greece, where he had been violent against his former fiancée whilst pregnant causing her to a miscarry. Upon the recommendation of the immigration authorities, the Minister of the Interior ordered his expulsion as a threat to public security. The expulsion order was issued one day prior to the applicant completing his prison sentence. He filed an application for judicial review of the detention and expulsion orders on the grounds, inter alia, that:</p> <ul style="list-style-type: none"> • his right to a hearing, safeguarded by national administrative law²⁸ and by Article 1 of the Seventh Protocol to the ECHR, was infringed;

²⁷ Cyprus, [Law on the right of citizens of the Union and their family members to move and reside freely in the Republic](#) (Ο περί του Δικαιώματος των Πολιτών της Ένωσης και των Μελών των Οικογενειών τους να Κυκλοφορούν και να Διαμένουν Ελεύθερα στη Δημοκρατία Νόμος του 2007), Ν. 7(I)/2007, accessed on 25 April 2017.

²⁸ Cyprus, [Law on general principles of administrative law of 1999](#) (Ο περί των Γενικών Αρχών του Διοικητικού Δικαίου Νόμος του 1999) , Ν. 158(I)/99, Article 43(2), accessed on 25 April 2017.

	<ul style="list-style-type: none"> • there was a violation of Articles 29, 30 and 32 of Law N. 7(I)/2007 transposing the Free Movement Directive²⁹ (corresponding to Directive Articles 27, 28 and 30 respectively); • the justification of the decision was contradictory and erroneous; • there was a violation of Article 5 of the ECHR (corresponding to Article 11 of the Cypriot Constitution) because of his unlawful arrest and arbitrary deprivation of liberty; • There was a violation of the proportionality principle and a disproportionate restriction of his right to private and family life, safeguarded by Article 15 of the Cypriot Constitution; • there was a violation of Articles 2, 3, 9 and 16 of the UN Convention on the rights of the child; • administrative discretion was wrongly exercised. <p>The court rejected all the above arguments and dismissed the application.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The allegations of the applicant's former wife did not constitute the operative reason for the decision to expel him. The major reason for the expulsion decision was his conviction for drug dealing which, according to legal precedent from the CJEU,³⁰ amounted to serious public security risk. Given that the former wife's allegations did not play any role in the decision, then there was no need for the applicant to be given the right to a hearing in order to disprove those allegations. Given that the applicant had the right to file a judicial review application to challenge the decision for his expulsion, during which he had the opportunity to present his position and his arguments, his claim as regards the violation of the right to be heard is groundless. The decision for his expulsion relied on the data in his file which the police had compiled for the purpose of his criminal prosecution and on his personal and family situation. Taking into consideration the applicant's personal information, the court agreed with the Administration that the applicant did not demonstrate such</p>

²⁹ Cyprus, [Law on the right of citizens of the Union and their family members to move and reside freely in the Republic](#) (Ο περί του Δικαιώματος των Πολιτών της Ένωσης και των Μελών των Οικογενειών τους να Κυκλοφορούν και να Διαμένουν Ελεύθερα στη Δημοκρατία Νόμος του 2007), Ν. 7(I)/2007, accessed on 25 April 2017.

³⁰ CJEU, C-145/09, *Land Baden-Württemberg v. Panagiotis Tsakouridis* J, 23 November 2010.

	<p>family and personal situation and links with Cyprus so as to counter-balance the duty to safeguard public order. The justification for the decision can be complemented from the administrative file.</p> <p>The procedural safeguards foreseen in Law N. 7(I)/2007 (Articles 28-32) were observed.</p> <p>There was no violation of Article 5 of the ECHR or Article 11 of the Cypriot Constitution because an exception to this right is foreseen where the purpose of detention is the expulsion of a person against whom an expulsion order has been issued.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>In those cases where a criminal conviction on its own does not conclusively lead to a public security risk, then the Administration must demonstrate a sufficiently justified and reasoned decision, in compliance with the principles of proportionality and good administration, assessing the nature, the circumstances of the offence and any other relevant element of the applicant's family and personal situation. This, however, does not imply an obligation on the part of the Administration to explicitly contrast the family circumstances of the expelled citizen with the overriding reasons of public interest. It will suffice to show that all the relevant factors have been investigated and taken into account.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The application was rejected and the administrative orders for the applicant's detention and expulsion were confirmed. This was a single judge bench.</p>

Key quotations in original language and translated into English with reference details (max. 500 chars)

Η κατά το άρθρο 29 του Ν.7(Ι)/2007 «πραγματική, ενεστώσα και επαρκής σοβαρή απειλή», συναρτάται κατά τεκμήριο με υφιστάμενη κατάσταση πραγμάτων, η οποία, εφόσον συνοδεύεται και με προηγούμενες καταδίκες, ενισχύει την ανεπιθύμητη συμπεριφορά και καθιστά πιο δικαιολογημένη την απέλαση (βλ. **Anghel Viorel, Υπ.αρ.1064/2012, ημερομηνίας 20.5.2014**)...

Ο αιτητής, με τα όσα ισχυρίσθηκε, δεν απέδειξε τις εξαιρετικές εκείνες οικογενειακές περιστάσεις που θα μπορούσαν να αντισταθμίσουν τον καλά τεκμηριωμένο από τη Διοίκηση λόγο περιφρούρησης της δημόσιας τάξης... Η νομολογία θέτει ως υποχρέωση της διοίκησης στις περιπτώσεις απέλασης που υπεισέρχεται θέμα εφαρμογής του Ν. 7(Ι)/2007, όχι μόνο τη διερεύνηση του συνόλου των προσωπικών παραγόντων του Ευρωπαίου πολίτη, αλλά και το καθήκον εξειδίκευσης του δημόσιου συμφέροντος από την απέλαση ώστε να καταφαίνεται ότι η διασφάλιση του, αντισταθμίζει το δικαίωμα του ατόμου για την εξασφάλιση της οικογενειακής του ζωής (βλ. **Κωνσταντίνου ν. Δημοκρατίας (1996) 3 Α.Α.Δ. 474, Υπόθεση Αρ. 290/2006, Sari Tekin ν. Δημοκρατίας κ.ά., ημερομηνίας 27.7.2007, Υπόθεση Αρ. 5918/13 Dimitrina Mihaylova Andonova ν. Δημοκρατίας, ημερομηνίας 24.1.2014, Moustaquim ν. Belgium 18/2/91, Series A, No. 193, σελ. 19**).

Ωστόσο, οι πιο πάνω αποφάσεις δεν υποδηλώνουν υποχρέωση της Διοίκησης να αντιπαραβάλει ρητά τις οικογενειακές περιστάσεις του προς απέλαση πολίτη με τους επιτακτικούς λόγους δημοσίου συμφέροντος. Αρκεί να προκύπτει ότι διερευνήθηκαν και λήφθηκαν υπόψη όλοι οι σχετικοί παράγοντες (βλ. **Υπόθεση αρ. 5944/13, Χρίστος Τσαλικίδης ν. Δημοκρατίας, ημερομηνίας 26.9.2013**).

Translation:

The genuine, present and sufficiently serious threat referred to in Article 29 of Law 7 (I) / 2007 is presumably based on an existing state of affairs which, if accompanied by previous convictions, strengthens unwanted conduct and renders deportation even more justified (see *Anghel Viorel*, Case No. 1064/2012, dated 20.5.2014) [...]

	<p>The applicant, in his allegations, did not prove the extraordinary family circumstances that could offset the justified reason put forward by the Administration for safeguarding public order [...] Legal precedent casts a duty on the administration in expulsion cases falling under Law 7(I)/2007 not only to investigate all personal factors of the European citizen, but also to specify the public interest safeguarded through the expulsion and to show that this safeguarding compensates for the right of the individual to secure his / her family life (see <i>Constantinou v. The Republic</i> (1996) 3 AD 474; Case No. 290/2006, <i>Sari Tekin v. The Republic et al.</i>, dated 27.7. 2007; Case No. 5918/13, <i>Dimitrina Mihaylova Andonova v. Republic</i>, dated 24.1.2014, <i>Moustaquim v. Belgium</i> 18/2/91, Series A, No. 193, p. 19).</p> <p>However, the above decisions do not imply an obligation on the part of the Administration to expressly contrast the family circumstances of the expelled citizen with the overriding reasons of public interest. It is sufficient to show that all relevant factors have been investigated and taken into account (see Case No 5944/13, <i>Christos Tsilikidis v. Republic</i>, dated 26.9.2013).</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

1.9. The *Tsilikides* case

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 28.3(a) of 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	28 February 2017
Deciding body (in original language)	Διοικητικό Δικαστήριο
Deciding body (in English)	Administrative Court
Case number (also European Case Law Identifier)	5944/2013

(ECLI) where applicable)	
Parties	<i>Christos Tsilikides v. The Republic of Cyprus through the Minister of the Interior and the Chief Immigration Officer</i> [In original language: Χρίστος Τσιλικίδης v. Κυπριακής Δημοκρατίας μέσω του Υπουργού Εσωτερικών και του Λειτουργού Μετανάστευσης]
Web link to the decision (if available)	http://cylaw.org/cgi-bin/open.pl?file=administrative/2017/201702-5944-2013.html&qstring=5944%20w%2F1%202013
Legal basis in national law of the rights under dispute	Articles 30(1), 30(3)(a), 32(2), 32(3), 35(1) and 35(2) of Law N.7(I)/2007, ³¹ corresponding to Directive Articles, 28.1, 28.3(a), 30.2, 30.3 and 33.2 respectively.
Key facts of the case (max. 500 chars)	The applicant was a Greek national who in 2000, at the age of 15, arrived in Cyprus together with his parents and remained in Cyprus until 2002 when he applied and was granted a temporary residence permit. In 2006 he was arrested for drug use and burglary, was sentenced to jail for 18 months and was subsequently expelled from Cyprus under Article 35 of Law N.7(I)/2007 (corresponding to Directive Article 33). ³² In 2009, he was

³¹ Cyprus, [Law on the right of citizens of the Union and their family members to move and reside freely in the Republic](#) (*Ο περί του Δικαιώματος των Πολιτών της Ένωσης και των Μελών των Οικογενειών τους να Κυκλοφορούν και να Διαμένουν Ελεύθερα στη Δημοκρατία Νόμος του 2007*), Ν. 7(Ι)/2007, accessed on 25 April 2017.

³² *Ibid.*

	<p>once again located in Cyprus and was arrested for unlawful entry and stay and was sentenced to six months' imprisonment. Prior to his release from jail, in 2010, fresh detention and expulsion orders were issued against him, which were subsequently annulled by the court and he was released. In 2011 he was arrested, charged and convicted of various crimes related to burglary and was sentenced to two years' imprisonment. Prior to his release, the authorities issued fresh orders for his detention and deportation. Following various administrative and judicial battles between the applicant and the authorities, the applicant was expelled again in 2013 and filed fresh applications seeking to annul his detention and deportation orders on the grounds that the administrative decision was unlawful because it failed to take into account his long stay in Cyprus and to specify the imperative grounds of public security required by Article 30(3) of Law 7(I)/2007 (corresponding to Directive Article 28.3). The court endorsed this argument and annulled the contested administrative orders on the ground that the administrative decision was inadequately investigated as regards the preconditions of application of Article 30(3)(a) of Law N.7(I)/2007 (corresponding to Directive Article 28.3).</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The detention and deportation orders were issued on the ground of safeguarding public and lawful order and not on imperative reasons of public security. Given the long stay of the applicant in Cyprus, which exceeded ten years, the authorities ought to have applied Article 30 (3) (corresponding to Directive Article 28.3) which introduces a more stringent test rather than the test applied to Union nationals with a shorter stay.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>In the absence of imperative security reasons, the justifications of a previous criminal conviction of representing a genuine, present and sufficiently serious threat, of not meeting the residence requirements as a working person or because of having sufficient resources so as not to be a burden on the state, cannot be invoked in order to expel a Union citizens who lived in Cyprus for over 10 years.</p>

<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The detention and deportation orders against the applicant were annulled. However, this does not prevent the authorities from issuing fresh orders against the applicant, as it has done in the past, which the applicant will have to file a fresh application to the court in order to challenge them.</p> <p>This was a single judge bench and one of the first free movement decisions examined by the Administrative Court, which was set up in 2015 to examine judicial review applications and thus alleviate the workload of the Supreme Court.</p>
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p>Η πρωτογενής αξιολόγηση των δεδομένων του αιτητή σε σχέση με τη χρονική διάρκεια διαμονής του αιτητή στην Κυπριακή Δημοκρατία, ενόψει και του ιστορικού της υπόθεσης (βλ. ανωτέρω, συμπεριλαμβανομένου πότε ο αιτητής εισήλθε στη Δημοκρατία αλλά και του χρονικού διαστήματος παραμονής του στην Ελλάδα σε μεταγενέστερο χρόνο) αποτελεί, βέβαια, πρωτογενές καθήκον της διοίκησης και όχι του Δικαστηρίου, το οποίο, βέβαια, καλείται να ελέγξει την ορθότητα τέτοιας διαπίστωσης, εφόσον τέτοια διερεύνηση και διαπίστωση λάβει χώρα από την διοίκηση. Με δεδομένο, ότι τα επίδικα διατάγματα εκδόθηκαν κατ' επίκληση της «διατήρησης της δημόσιας και έννομης τάξης της Δημοκρατίας» και όχι για «επιτακτικούς λόγους δημόσιας ασφάλειας» η έρευνα και διαπίστωση σε σχέση με τη διάρκεια παραμονής του αιτητή στη Δημοκρατία καθίστατο αναγκαία, ώστε να μπορεί με ασφάλεια να διαγνωστεί και να εφαρμοστεί η ορθή νομοθετική πρόνοια για την περίπτωση του αιτητή. Χωρίς τέτοια έρευνα, αρκεί ακόμη και η πιθανολόγηση πλάνης για την ακύρωση των επίδικων διαταγμάτων (βλ. <i>Κωνσταντίνου ν. Συμβ. Αμπελ. Προϊόντων (1992) 3 Α.Α.Δ. 228</i> και <i>Ιορδάνου ν. Ε.Δ.Υ. (1997) 3 Α.Α.Δ. 250</i>). Στην παρούσα περίπτωση, η διοίκηση δεν φαίνεται να διεξήγαγε τέτοια έρευνα, ως ανωτέρω.</p> <p>Translation:</p>

	<p>The primary assessment of the applicant's data with respect to the applicant's period of residence in the Republic of Cyprus, in view of the background to the case (see above, including when the applicant entered the Republic but also his residence in Greece at a later date) is, of course, a primary duty of the administration and not of the court, which, of course, is called upon to check the correctness of such a finding, provided that such an investigation and finding is made by the administration. Given that the disputed orders were issued on the basis of the 'preservation of the public and legal order of the Republic' and not on 'imperative grounds of public security', the investigation and finding in relation to the duration of the applicant's stay in the Republic was necessary to safely identify and apply the correct legal provision applied to the case of the applicant. Without such an inquiry, even the likelihood of an error in the annulment of the disputed decrees is sufficient (see <i>Konstantinou v. Vine Products Council</i> (1992) 3 AAD 228; and <i>Jordanou v. Public Service Commission</i> (1997) 3 AAD 250). In the present case, the administration does not appear to have carried out such investigation as described above.</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

1.10. The *O.F.U.* case

Subject matter concerned	<input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to Article 24.1 of 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	24 April 2013
Deciding body (in original language)	Ανώτατο Δικαστήριο Κύπρου
Deciding body (in English)	Cyprus Supreme Court
Case number (also European Case Law Identifier)	857/2010

(ECLI) where applicable)	
Parties	<i>O.F.U. v. The Republic of Cyprus through the Chief Immigration Officer and the Attorney General</i> [In original language: Ο.Φ.Υ. v. Κυπριακής Δημοκρατίας μέσω της Διευθύντριας του Τμήματος Αρχείου Πληθυσμού και Μετανάστευσης και του Γενικού Εισαγγελέα της Δημοκρατίας]
Web link to the decision (if available)	http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2013/4-201304-857-10.htm&qstring=857%20w%2F1%202010
Legal basis in national law of the rights under dispute	Article 146 of the Cypriot Constitution ³³ which provides for the right to apply for judicial review of an administrative act. Article 22 of Law N. 7(I)/2007 ³⁴ transposing Directive 2004/38 (corresponding to Directive Article 24.1).
Key facts of the case	The applicant was a Nigerian national who came to Cyprus in 2008 and applied for asylum. He was a carrier of Hepatitis B. The Asylum Service rejected his application and he filed an administrative appeal. Before his appeal was processed, he married a Latvian national and subsequently withdrew his appeal stating that he

³³ Cyprus, [The Constitution of the Republic of Cyprus](#), accessed on 20 April 2017.

³⁴ Cyprus, [Law on the right of citizens of the Union and their family members to move and reside freely in the Republic](#) (Ο περί του Δικαιώματος των Πολιτών της Ένωσης και των Μελών των Οικογενειών τους να Κυκλοφορούν και να Διαμένουν Ελεύθερα στη Δημοκρατία Νόμος του 2007), Ν. 7(I)/2007.

<p>(max. 500 chars)</p>	<p>does not have a fear of persecution in his country. He applied for a visa as a spouse of a Union national. The authorities asked him to undergo a blood test as a precondition for examining his application in order to ascertain that he was a carrier of Hepatitis B. The blood test was positive. The authorities rejected his visa application on the ground that he was a risk to public health and asked him to leave Cyprus, relying on Article 31(1) of Law N.7(I)/2007³⁵ which transposes Directive 2004/38 (corresponding to Directive Article 29.1). The applicant applied to the court seeking to annul this decision on the ground that it was inadequately investigated, it relied on an error of fact, it was taken in bad faith, it infringed the law transposing Directive 2004/38 and resulted in discrimination against him when compared with Cypriot carriers of the same disease. He argued that Hepatitis B is not a contagious illness and is endemic in many Asian and African countries. Cypriot carriers of Hepatitis B are not subjected to any restrictions in their movements, their only obligation being to report their illness to their district Medical Officer. The court concluded that the decision to reject the applicant's visa application solely on the ground of his illness amounted to nationality discrimination and should therefore be annulled.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The Administration failed in its duty to conduct an adequate investigation into the applicant's personal and other circumstances, the degree of his integration, the duration of his residence in Cyprus, his family situation etc. The Administration's decision to deport him solely on the ground of his illness, without taking into account any other data, infringes the principles of equality and proportionality and violates the duty to conduct an adequate investigation.</p>
<p>Key issues (concepts, interpretations) clarified by</p>	<p>The expulsion of a person on the sole ground that he is a carrier of Hepatitis B amounts to nationality discrimination in violation of Article 22 of Law N. N.7(I)/2007³⁶(corresponding to Directive Article 24.1).</p>

³⁵ *Ibid.*

³⁶ *Ibid.*

the case (max. 500 chars)	
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The decision to reject the applicant’s visa application was annulled and set aside. The respondents were ordered to pay the applicant’s costs.
	Our comment on this case
Key quotations in original language and translated into English with reference details (max. 500 chars)	This decision may be contrasted with <i>Bekefi</i> (see 1.7 above), delivered three years later, where a five-member bench in its appellate jurisdiction decided that expulsion forms an exception to the non-discrimination rule because states are not at liberty to expel their own nationals.
	<p>Η δυνατότητα απέλασης προσώπου σε σχέση μόνο με το γεγονός ότι είναι φορέας Ηπατίτιδας Β', είτε στο πλαίσιο του άρθρου 6(1)(γ) του Κεφ.105, περί Αλλοδαπών και Μετανάστευσης Νόμου, είτε δυνάμει του άρθρου 29(1) και 31(1) του Ν.7(Ι)/2007, κρίνω ότι καταλυτικά παραβιάζει την αρχή της ισότητας (<i>Leonie Marlyse, ανωτέρω</i>).</p> <p>Διαφορετική αντιμετώπιση όντως θα παραβίαζε την αρχή της απαγόρευσης των διακρίσεων, λόγω ιθαγενείας, που κατοχυρώνεται με το άρθρο 22 του Ν.7(Ι)/2007, η οποία καλύπτει μέλη της οικογένειας Ευρωπαίων πολιτών μη υπηκόων κράτους μέλους, όπως κατοχυρώνεται από την ίδια τη Συνθήκη για τη λειτουργία της Ευρωπαϊκής Ένωσης, άρθρο 18.</p> <p>Όσα λοιπόν έτυχαν συσχετισμού με την Ηπατίτιδα Β' θα έπρεπε να είχαν απασχολήσει την Αρχή η οποία είχε πλέον υποχρέωση να προχωρήσει να αιτιολογήσει την απόφασή της. Στο τέλος όμως της ημέρας ευσταθεί το</p>

παράπονο του αιτητή αναφορικά με το ελλειπές της έρευνας, πριν την έκδοση του σχετικού διατάγματος και της προσβαλλόμενης απόφασης, αλλά και την αιτιολογία της.

Η διοίκηση κατά τη λήψη της προσβαλλόμενης απόφασης φαίνεται ότι δεν προχώρησε στη δέουσα έρευνα κατά παράβαση των αρχών του διοικητικού δικαίου αλλά και του άρθρου 23 της Οδηγίας 2004/38/EK

Translation:

The possibility of deporting a person for the sole reason that he is a hepatitis B carrier either under Article 6 (1) (c) of Cap 105 of the Aliens and Immigration Law or under Article 29 (1) and Article 31 (1) of Law 7 (I) / 2007, I consider that it is in breach of the principle of equality (*Leonie Marlyse*, above).

Any different treatment would indeed violate the principle of non-discrimination on the ground of nationality enshrined in Article 22 of Law 7 (I) / 2007, which covers members of the family of European citizens who are non-nationals of a Member State, as guaranteed by the Treaty on the Functioning of the European Union, Article 18.

Therefore, those decisions which were premised upon Hepatitis B should have been a cause for concern for the Authorities, who was under an obligation to proceed to justify its decision. At the end of the day, however, the complainant's claim concerning the inadequate investigation was valid before the relevant decree and the contested decision were issued, but also as regards the justification.

When taking the contested decision, the administration appears not to have carried out an adequate investigation and was in breach of the principles of administrative law and of Article 23 of Directive 2004/38 /EC. (Author's note: The reference to Article 23 is probably an error, the correct reference is presumably Article 24.)

Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	No.
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1.11 The *Dimitrova* case

Subject matter concerned	<input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to Article 28.3(a) of Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
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Decision date	22 December 2016
Deciding body (in original language)	Διοικητικό Δικαστήριο
Deciding body (in English)	Administrative Court
Case number (also European Case Law Identifier (ECLI) where applicable)	1328/2014
Parties	<p><i>Dimitrova Iordanka Arahangelova v. The Republic of Cyprus through the Chief Immigration Officer of the Ministry of the Interior</i></p> <p>[In original language: Dimitrova Iordanka Arahangelova v. Κυπριακής Δημοκρατίας μέσω της Διευθύντριας του Τμήματος Αρχείου Πληθυσμού και Μετανάστευσης του Υπουργείου Εσωτερικών]</p>

Web link to the decision (if available)	http://cylaw.org/cgi-bin/open.pl?file=administrative/2016/201612-1328-2014.html&qstring=DIMITROVA%20and%20IORDANKA%20and%20ARAHANGUELOVA
Legal basis in national law of the rights under dispute	<p>Article 30 of Law N.7(I)/2007³⁷ transposing Directive 2004/38 (corresponding to Directive Article 28).</p> <p>Article 146 of the Cypriot Constitution³⁸ which provides for the right to apply for judicial review of an administrative act.</p> <p>The applicant also invoked Article 25 of the Constitution (the right to practice any profession) and Article 28 (the right to non-discrimination on any ground whatsoever) but these were not examined by the court, which decided in favour of the applicant solely on the basis of Directive Article 28.3(a).</p>
Key facts of the case (max. 500 chars)	<p>The applicant who was a Bulgarian national, came to Cyprus in 1998 with a working visa. Her temporary residence visa was repeatedly renewed until Bulgaria acceded to the EU, upon which she applied for and was granted a registration certificate as a Union national. In 2014, during a police inspection, she was found working as a prostitute. The police decided not to prosecute her for prostitution but recommended her expulsion from Cyprus. In October 2014, the authorities issued orders for her detention and expulsion on the ground that she was a genuine, present and sufficiently serious threat to public order, citing the national immigration law (Cap 105) which empowers the immigration authorities to declare all prostitutes as 'prohibited migrants' and deport them.³⁹ The applicant claimed that the administrative decision infringed the Constitution, the ECHR, Law N.7(I)/2007 (transposing Directive 2004/38), the general principles of administrative law, the</p>

³⁷ Cyprus, [Law on the right of citizens of the Union and their family members to move and reside freely in the Republic](#) (*Ο περί του Δικαιώματος των Πολιτών της Ένωσης και των Μελών των Οικογενειών τους να Κυκλοφορούν και να Διαμένουν Ελεύθερα στη Δημοκρατία Νόμος του 2007*), Ν. 7(I)/2007.

³⁸ Cyprus, [The Constitution of the Republic of Cyprus](#), accessed on 20 April 2017.

³⁹ Cyprus, [Aliens and immigration law](#) (*Ο περί Αλλοδαπών και Μεταναστεύσεως Νόμος*), Cap 105, Article 6 (1) (e), accessed on 20 April 2017.

	<p>principles of natural justice and it was inadequately justified and investigated, as it failed to take into account the fact that she owned immovable property in Cyprus, she was self-employed, she was a director in a construction company and was regularly paying her taxes and social insurance contributions. The court found in her favour and annulled the orders issued against her.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The decision for the applicant's expulsion relied on reasons of public order and not of 'imperative public security' as required by Directive Article 28(3)(a) for persons with a presence of over ten years in Cyprus. The conduct of the applicant was not such so as to amount to a public security risk.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The right to expel Union nationals on the ground that they represent a public order risk is subject to the safeguards foreseen in Article 30 of Law N.7(I)/2007 (corresponding to Article 28 of Directive 2004/38). For Union nationals who resided in Cyprus for over ten years, the expulsion must rely on imperative public safety reasons. This provision does not presuppose lawful residence, as is the case with right of permanent residence (Directive Article 16.1) where the lawfulness of prior residence is an explicit precondition. With references to paragraphs 23 and 11 of the preamble to Directive 2004/38, the court clarified that expulsion of Union citizens residing in Cyprus for over ten years can only be pursued exceptionally and provided there are strong national security reasons making such decision absolutely necessary due to the seriousness of the threat. The difference between public order and public security is fundamental and refers to the very content and substance of each term.</p> <p>The degree of integration of the Union national affected by the decision is not merely a criterion to be taken into account, but it increases the protection from expulsion: the higher the degree of integration, the more increased protection from expulsion.</p>

Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The administrative orders for the detention and expulsion of the applicant were annulled. The respondents were ordered to pay the applicant's costs.
	Our comment on the case
	There is no provision in the Cypriot legal order prohibiting the practising of the profession of prostitution. The Criminal Code criminalises a number of acts relating to prostitution (living off the earnings of a prostitute, forcing or promoting a woman to prostitution, operating premises where women are prostituted etc.) mainly targeting the pimp, but does not criminalise the woman who professes prostitution. Even the offences relating to the promotion of prostitution are categorised by the Criminal Code as 'Offences against Ethics' and not under 'Offences against Public Order'. Under these circumstances the argument of the authorities as to the reason for seeking the deportation of the applicant becomes even weaker and presumably inapplicable even in the cases of persons with a shorter stay in Cyprus than the applicant. However, the court did not follow this line of argument, focusing rather on the applicant's long stay and integration.
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p>Τα πιο πάνω είναι ενδεικτικά του υψηλού βαθμού προστασίας κατά της απέλασης πολιτών της Ε.Ε. από κράτος μέλος, σύμφωνα με το άρθρο 28 της Οδηγίας 2004/30/ΕΚ, ιδιαίτερα όταν πρόκειται περί πολιτών που έχουν διαμείνει πέραν των δέκα ετών στο κράτος υποδοχής, οπότε και η απέλαση χωρεί μόνο για επιτακτικούς λόγους δημόσιας ασφάλειας.</p> <p>Ωστόσο, στην υπό εξέταση υπόθεση, ως ήδη ελέχθη, οι καθ' ων η αίτηση, με την προσβαλλόμενη απόφασή τους ημερομηνίας 17.10.2014, προχώρησαν στην έκδοση διαταγμάτων κράτησης και απέλασης της αιτήτριας επειδή έκριναν ότι η συμπεριφορά της αποτελούσε πραγματική, ενεστώσα και επαρκώς σοβαρή απειλή για τη δημόσια τάξη και όχι τη δημόσια ασφάλεια της Δημοκρατίας. Είναι ξεκάθαρη και θεμελιώδης η διαφορά μεταξύ των δυο εννοιών και ανάγεται στο ίδιο το περιεχόμενό τους. Δεν θεωρώ ότι η συμπεριφορά της αιτήτριας, έτσι όπως προκύπτει από το σύνολο των ενώπιον μου εγγράφων και/ή στοιχείων, θα μπορούσε να δικαιολογήσει την απέλαση της για επιτακτικούς λόγους δημόσιας ασφάλειας. Εν πάση όμως περιπτώσει, τα επίδικα διατάγματα</p>

	<p>εκδόθηκαν, καθότι κρίθηκε ότι η αιτήτρια συνιστούσε πραγματική, ενεστώσα και επαρκώς σοβαρή απειλή για τη δημόσια τάξη και όχι τη δημόσια ασφάλεια της Δημοκρατίας.</p> <p>Translation:</p> <p>The above are indicative of the high level of protection against the expulsion of EU citizens from a member state under Article 28 of Directive 2004/38/EC, particularly in the case of citizens who have stayed in the host country for more than 10 years, so deportation is possible only for imperative reasons of public security.</p> <p>However, in the present case, as already stated, the respondents, in their contested decision of 17 October 2014, proceeded to the issuing of detention and deportation orders against the applicant because they considered that her conduct represented a real, present and sufficiently serious threat to public order rather than the public security of the Republic. The difference between the two concepts is clear and fundamental and goes back to their very content. I do not consider that the conduct of the applicant, as is apparent from all the documents and / or evidence before me, could justify her deportation on imperative grounds of public security. In any event, the disputed decrees were adopted because it was held that the applicant constituted a real, present and sufficiently serious threat to public policy and not to the public security of the Republic.</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

1.12. The *Triantafyllou* case

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 Articles 28.3(a) and 33 of 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	22 October 2015
Deciding body (in original language)	Ανώτατο Δικαστήριο Κύπρου, Αναθεωρητική Δικαιοδοσία
Deciding body (in English)	Supreme Court of Cyprus, Review Jurisdiction

Case number (also European Case Law Identifier (ECLI) where applicable)	300/2015
Parties	<i>Panayiotis Triantafyllou and Lana Ambou Al Taher v. The Republic of Cyprus through the Minister of the Interior and the Chief Immigration Officer</i> [In original language: Παναγιώτης Τριανταφύλλου και Lana Ambou Al Taher v Κυπριακής Δημοκρατίας μέσω του Υπουργού Εσωτερικών και της Διευθύντριας του Τμήματος Αρχείου Πληθυσμού και Μετανάστευσης]
Web link to the decision (if available)	http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201510-300-15.htm&qstring=300%20w%2F1%202015
Legal basis in national law of the rights under dispute	Article 146 of the Cypriot Constitution ⁴⁰ which provides for the right to apply for judicial review of an administrative act. Articles 30(3)(a) and 35 of Law N. 7(I)/2007 ⁴¹ transposing Articles 28.3(a) and 33 of Directive 2004/38 respectively.

⁴⁰ Cyprus, [The Constitution of the Republic of Cyprus](#), accessed on 20 April 2017.

⁴¹ Cyprus, [Law on the right of citizens of the Union and their family members to move and reside freely in the Republic](#) (Ο περί του Δικαιώματος των Πολιτών της Ένωσης και των Μελών των Οικογενειών τους να Κυκλοφορούν και να Διαμένουν Ελεύθερα στη Δημοκρατία Νόμος του 2007), Ν. 7(Ι)/2007.

<p>Key facts of the case (max. 500 chars)</p>	<p>The applicant was a Greek national who came to Cyprus in 2002 to work as a priest. In 2012, he was sentenced to five years' imprisonment for import and possession for the purpose of supply of a controlled substance (cannabis). While he was still serving his sentence, his Greek wife divorced him and he married a woman of Kuwaiti origin who had previously been naturalised as a Cypriot citizen. On the day of his release from prison he was arrested and deported to Greece on the basis of administrative orders issued under Articles 29(1) and 35 of Law N. 7(I)/2007 transposing Directive 2004/38 (corresponding to Articles 27.1 and 33 respectively). The authorities justified their decision on the grounds that his personal conduct represents a risk to public order and safety as a result of his criminal conviction and that, even though he had completed ten years of stay, his case is considered to be one of particularly serious criminality with a cross-border dimension. The justification supporting the decision did refer to his personal circumstances, namely that he was married to a naturalised Cypriot, that his parents had died and he had no other links with Greece, that he owned immovable property in Cyprus acquired through bank loans guaranteed by Cypriots which he must now repay in order for the debtors to be released, that he stands to receive money from debtors whom he has sued and that his expulsion would prevent him from settling these obligations. The authorities nevertheless decided that he ought to be expelled because the public interest in combating crime prevails over his private interest to reside in Cyprus. The court rejected the arguments of the authorities and found that the decision as to the applicant's expulsion was inadequately investigated and insufficiently justified, failing to take into account important dimensions from the applicant's personal circumstances, namely the fact that he had given testimony to the police about the drug traffickers for whom he was transporting the drugs and that his wife had shared custody of her children from a previous marriage and would have been unable to join him in Greece.</p>
<p>Main reasoning /</p>	<p>Although the authorities had listed the applicant's circumstances in the justification letter, the outcome in fact showed that these had been ignored in the final decision. The authorities decided for the applicant's expulsion</p>

<p>argumentation (max. 500 chars)</p>	<p>solely on the basis of his criminal conviction, in violation of Article 35 of Law N.7(I)/2007 (corresponding to Directive Article 33) without fulfilling the requirements of Articles of 29, 30 and 31 of Law N.7(I)/2007 (corresponding to Directive Articles 27, 28 and 29 respectively).</p> <p>The authorities' argument that there was a probability of a relapse was unfounded and unjustified, because no evidence was produced to show the factual premise of such a probability. On the contrary, the fact that the applicant had cooperated with the police in the prosecution of drug traffickers appears to suggest that such a relapse was not likely.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>A person's prior conviction can be taken into account only to the extent that the conduct leading to the conviction amounts to a public order risk. Convictions cannot automatically lead to expulsions; the authorities have to take into account the convicted person's present personal conduct and the risk which this poses to public order. Justifications which do not relate to the particulars of the case or which rely on general considerations regarding combating crime are not acceptable.</p> <p>In the CJEU ruling in <i>Tsakourides</i>,⁴² drug trafficking was held to meet the test of a public order threat, whilst the combating of drug trafficking by organised groups may be classified as 'an imperative public security reason'. This however does not lead to the conclusion that all persons convicted of drug related offences must automatically be expelled. The authorities must conduct an individual examination of the facts of each case and must establish that the expulsion is absolutely necessary due to the exceptional seriousness of the threat and ensure that this aim cannot be achieved with less serious measures. In assessing the seriousness of the public order threat, the authorities must take into consideration the degree of participation of the affected person in the crime and the potential risk of recurrence, which must be weighed against the risk of detaching a Union citizen from the state to which he is essentially integrated.</p>

⁴² CJEU, C-145/09, *Land Baden-Württemberg v. Panagiotis Tsakouridis* J, 23 November 2010.

<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The expulsion order was annulled and the respondents were ordered to pay the applicant's costs. This was a single judge bench.</p>
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p>Από τα όσα κοινοποιήθηκαν στον αιτητή ως αιτιολογία και γενικότερα από όσα φαίνονται στο φάκελο ως αιτιολογικά στοιχεία, προκύπτει ότι η αναφορά σε κίνδυνο υποτροπής τέθηκε σε συνάρτηση με τις πράξεις που οδήγησαν στην ποινή και μόνο, χωρίς να διερευνηθεί περαιτέρω και να ληφθεί υπόψη η μεταγενέστερη συμπεριφορά του... Ήδη, στην απόφαση του Κακουργιοδικείου είχε καταγραφεί ότι ο αιτητής ήταν απλώς μεταφορέας των ναρκωτικών που ανήκαν σε άλλο πρόσωπο, το όνομα του οποίου ο αιτητής είχε αποκαλύψει στην αστυνομία.</p> <p>Αυτή η πτυχή δεν απασχόλησε και έτσι δεν έχει εξηγηθεί η πιθανολόγηση υποτροπής επί της οποίας, κατ' ουσίαν, βασίστηκε η απόφαση για απέλαση, σε συνάρτηση με τη μετέπειτα θετική συμπεριφορά του αιτητή. Όταν η διοίκηση επικαλείται επιτακτικούς λόγους δημόσιας ασφάλειας, αναμένεται, όπως αποφασίστηκε στην υπόθεση Τσακουρίδη, να στοιχειοθετεί όχι μόνο ότι υπάρχει προσβολή της δημόσιας ασφάλειας, αλλά και ότι η προσβολή αυτή είναι ιδιαίτερος σοβαρή. Τούτο αποκλείει οποιαδήποτε γενικολογία και, αντιθέτως, επιβάλλει θετική και συγκεκριμένη στοιχειοθέτηση. Αναμενόταν, συνεπώς, να διερευνηθεί και να αξιολογηθεί η όλη συμπεριφορά του αιτητή, περιλαμβανομένης της μεταγενέστερης του στάσης, ώστε να γίνουν συγκεκριμένες διαπιστώσεις και σε περίπτωση που αυτές θα κατέληγαν σε απέλαση, να δοθεί αιτιολογία που να</p>

	<p>εξηγεί κατά συγκεκριμένο τρόπο γιατί η προσωπική συμπεριφορά του αιτητή, δεδομένου και του περιορισμένου βαθμού εμπλοκής του στην εγκληματική δραστηριότητα, συνιστά ενεστώσα απειλή κατά της δημόσιας τάξης, εάν όντως συνεργάστηκε με την αστυνομία και την έννομη τάξη σε βαθμό που να δώσει μαρτυρία εναντίον του ιδιοκτήτη των ναρκωτικών. Η διερεύνηση αυτής της πτυχής και η αιτιολόγηση της ήταν ανεπαρκής.</p> <p>Translation:</p> <p>It is clear from what was communicated to the applicant as a statement of reasons and generally from all that was on file by way of justification that the reference to a risk of relapse was made in relation only to the acts which led to his imprisonment without further investigation and without taking into account the applicant's subsequent conduct... Already, in the judgment of the Assize Court, it was recorded that the applicant was merely a carrier of drugs belonging to another person whose name the applicant had disclosed to the police.</p> <p>This aspect was not considered and therefore the probability of relapse, on which the expulsion decision was premised, was not justified by taking into account the subsequent positive conduct of the applicant. When the administration relies on overriding reasons of public security, it is expected, as decided in the case of <i>Tsakouridis</i>, to establish not only that there is a breach of public security but also that this violation is particularly serious. This excludes any generalities and instead imposes a duty for positive and concrete justification relying on facts. One would therefore expect that the authorities would investigate and assess the applicant's entire behaviour, including his subsequent conduct, in order to arrive at specific findings and, in the event that these would lead to expulsion, to provide justification explaining in a specific way why the applicant's personal conduct constitutes a present threat to public order, given his limited degree of involvement in criminal activity and if he indeed cooperated with the police to the extent of giving testimony against the owner of the drugs. The investigation of this aspect and the justification were insufficient.</p>
<p>Has the deciding body referred to the</p>	<p>No.</p>

Charter of Fundamental Right? If yes, to which specific article.	
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1.13 The *Viorel* case

Subject matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> freedom of movement and residence - linked to Article 28 of 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 May 2014

Deciding body (in original language)	Ανώτατο Δικαστήριο Κύπρου, Αναθεωρητική Δικαιοδοσία
Deciding body (in English)	Supreme Court of Cyprus, Review Jurisdiction
Case number (also European Case Law Identifier (ECLI) where applicable)	1064/2012
Parties	<i>Anghel Viorel v. The Republic of Cyprus through the Ministry of the Interior</i> [In original language: Anghel Viorel v. Κυπριακής Δημοκρατίας μέσω του Υπουργού Εσωτερικών]
Web link to the decision (if available)	http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2014/4-201405-1064-12apof.htm&qstring=viorel

<p>Legal basis in national law of the rights under dispute</p>	<p>Articles 29-35 Law N. 7(I)/2007⁴³ transposing the Free Movement Directive (corresponding to Directive Articles 27-33).</p> <p>Article 146 of the Cypriot Constitution⁴⁴ which provides for the right to apply for judicial review of an administrative act.</p>
<p>Key facts of the case (max. 500 chars)</p>	<p>The applicant, a Romanian national, came to Cyprus in 2007 and was arrested in 2012 on suspicion of serious violent crimes. A police investigation collected information against the applicant connecting him to conspiracy, assault, unlawful gathering, riot, theft, grievous bodily harm and working as a private guard without license. He was never prosecuted. Instead, the Minister of the Interior declared him to be an unwanted immigrant under the national immigration law⁴⁵ and issued orders for his detention, expulsion, and exclusion for ten years, on the ground that he represented a genuine, present and sufficiently serious threat to the Republic, taking into account that he was single, his family lived in Romania and had no ties with Cyprus. The orders were executed and he was expelled to Romania. He filed an application for judicial review claiming that the decision was inadequately investigated and was unjustified, that it relied on general and unconfirmed information as regards his involvement in crime, that mere suspicions without proof cannot trigger Article 29 of Law 7(I)/2007 (corresponding to Directive Article 27), that the principle of presumption of innocence was infringed. The court concluded that the applicant's expulsion was a lawful exercise of the state's sovereign right</p>

⁴³ Cyprus, [Law on the right of citizens of the Union and their family members to move and reside freely in the Republic](#) (*Ο περί του Δικαιώματος των Πολιτών της Ένωσης και των Μελών των Οικογενειών τους να Κυκλοφορούν και να Διαμένουν Ελεύθερα στη Δημοκρατία Νόμος του 2007*), Ν. 7(I)/2007.

⁴⁴ Cyprus, [The Constitution of the Republic of Cyprus](#), accessed on 20 April 2017.

⁴⁵ Cyprus, [Aliens and immigration law](#) (*Ο περί Αλλοδαπών και Μεταναστεύσεως Νόμος*), Cap 105, Article 6 (1) (g), accessed on 20 April 2017.

	to control the presence of foreigners in its territory and rejected this application, ruling that the administrative orders were duly investigated and justified and there was no violation of the applicant's rights.
Main reasoning / argumentation (max. 500 chars)	The national immigration law entitles the immigration authorities to declare a foreigner a prohibited migrant where there is testimony that this person may behave in a manner posing a risk to public order. ⁴⁶ The decision for his expulsion was duly investigated and justified, even though the applicant had refused to acknowledge receipt of the letter setting out these reasons and his rights. Article 30 of Law 7(I)/2007 (corresponding to Directive Article 28) was complied with and the principle of proportionality was adhered to. The authorities could only have relied on information which the applicant had given to them (that he was single and had no family in Cyprus) and did not have to consider information that he had a child in Cyprus attending school, which was subsequently offered by the applicant.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	A conduct may amount to a genuine, present and sufficiently serious threat even in the absence of a conviction from the court, so long as there is information from reliable sources which give rise to concern regarding the presence of a foreigner in Cyprus. Even mere general indications pointing to a potential problem may suffice. The state is under no obligation to support its decision to expel a foreign national with evidence to justify in a strict and affirmative manner that a person represents a genuine, present and sufficiently serious threat. The court is in no position to evaluate reasons of public security; this is a matter within the exclusive jurisdiction of the executive.
Results (e.g. sanctions) and key consequences or implications	The expulsion order and the re-entry ban were confirmed as valid. The applicant is prohibited from returning to Cyprus. This was a single judge bench.

⁴⁶ *Ibid.*

<p>of the case (max. 500 chars)</p>	
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p>Δεν υπάρχει καμιά παραβίαση του τεκμηρίου αθωότητας. Το άρθρο 6(1)(ζ) του Κεφ. 105, στο οποίο επίσης βασίστηκε η προσβαλλόμενη πράξη δίδει τη δυνατότητα κήρυξης ατόμου ως απαγορευμένου μετανάστη εφόσον από μαρτυρία το άτομο «ενδέχεται» να συμπεριφερθεί κατά τέτοιο τρόπο που να είναι επικίνδυνο για την ησυχία, τη δημόσια τάξη ή να προκαλέσει έχθρα μεταξύ των πολιτών της Δημοκρατίας, (<i>Adnan Ashgar v. Δημοκρατίας</i>, υπόθ. αρ. 726/2011, ημερ. 30.6.2011).</p> <p>Η απέλαση πρέπει βεβαίως να ιδωθεί υπό το πρίσμα των λόγων επί των οποίων αποφασίστηκε. Και αυτοί, όπως εξηγήθηκε ήδη συναρτώνται προς θέματα ασφάλειας και δημόσιας τάξης. Στην <i>Eddine v. Δημοκρατίας</i> - πιο πάνω -, η Ολομέλεια θεώρησε ακόμη και γενικές ενδείξεις περί ενδεχόμενου προβλήματος στη βάση πληροφοριών που ευλόγως προκαλούν ανησυχία, ως επαρκείς. Και, όπως λέχθηκε και στην <i>Kapsaskis κ.ά. v. Δημοκρατίας</i>, συνεκδ. υποθ. αρ. 290/2012, 291/2012 και 203/2012, ημερ. 20.2.2013, η διοίκηση δεν έχει υποχρέωση παροχής οποιωνδήποτε εξηγήσεων για την έκδοση διατάγματος απαγόρευσης εισόδου αλλοδαπού για σκοπούς ασφάλειας. Το Δικαστήριο δεν ερευνά τους λόγους που συνάπτονται με θέματα κρατικής ασφάλειας που είναι κατ' εξοχήν έργο της εκτελεστικής εξουσίας. Τα ίδια λέχθηκαν και στην <i>Kolomoets v. Δημοκρατίας</i> (1999) 4 Α.Α.Δ. 443, στο ότι η διοίκηση έχει ευρεία διακριτική ευχέρεια και εξουσία για απέλαση αλλοδαπών, εξουσία η οποία όταν συναρτάται προς κίνδυνο στην εσωτερική τάξη και την εθνική ασφάλεια, είναι ακόμη πιο πλατειά, (<i>Mushtag v. Δημοκρατίας</i> (1995) 4 Α.Α.Δ. 1479).</p> <p>Translation:</p>

	<p>There was no breach of the presumption of innocence. Article 6 (1) (g) of Cap 105, on which the contested act was also based, provides for the possibility of declaring a person a prohibited immigrant if it emerges from evidence that the person "is likely" to behave in such a way so as to be a threat to peace and public order or to create enmity among the citizens of the Republic (<i>Adnan Ashgar v. Republic</i>, Case No. 726/2011, dated 30.6.2011).</p> <p>Expulsion must of course be seen in the light of the reasons for which it was decided. And, as explained above, they are related to security and public order. In <i>Eddine v. Republic</i> - above, the Court's full bench ruled that even general indications of a possible problem on the basis of information that is reasonably worrying will suffice. And, as said in <i>Kapsaskis et al. v. The Republic</i>, Case No. 290/2012, 291/2012 and 203/2012, No. 20.2.2013, the administration is under no obligation to provide any explanation for the issue of an alien's entry ban for security reasons. The Court does not investigate reasons of public security, which are primarily issues of the executive branch. The same was said in <i>Kolomoets v. Republic</i> (1999) 4 AA 443, in that the administration has a wide discretion and power to expel aliens, a power which, when related to a risk to internal order and national security, is even wider (<i>Mushtag v. Republic</i> (1995) 4 AA 1479).</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>Yes, Articles 45 and 52.</p>

1.14 The *Ilieva* case

Subject matter concerned	<input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to Articles 24 and 7(1)(b) of 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	27 January 2017
Deciding body (in original language)	Διοικητικό Δικαστήριο
Deciding body (in English)	Administrative Court

Case number (also European Case Law Identifier (ECLI) where applicable)	232/2013
Parties	<i>Tatyana Ilieva and Petar Georgiev Petrov v. The Republic of Cyprus through the Director of Welfare Services</i> [In original language: Tatyana Ilieva and Petar Georgiev Petrov v. Κυπριακής Δημοκρατίας μέσω Διευθύντριας Υπηρεσιών Κοινωνικής Ευημερίας]
Web link to the decision (if available)	http://cylaw.org/cgi-bin/open.pl?file=administrative/2017/201701-232-2013.html&qstring=%E1%ED%E1%F0%E7%F1%2A%20and%202011
Legal basis in national law of the rights under dispute	Article 27(1) of Law N. 7(I)/2007 ⁴⁷ transposing the Free Movement Directive (corresponding to Directive Article 7(1)(b)). Article 146 of the Cypriot Constitution ⁴⁸ which provides for the right to apply for judicial review of an administrative act.

⁴⁷ Cyprus, [Law on the right of citizens of the Union and their family members to move and reside freely in the Republic](#) (Ο περί του Δικαιώματος των Πολιτών της Ένωσης και των Μελών των Οικογενειών τους να Κυκλοφορούν και να Διαμένουν Ελεύθερα στη Δημοκρατία Νόμος του 2007), Ν. 7(Ι)/2007.

⁴⁸ Cyprus, [The Constitution of the Republic of Cyprus](#), accessed on 20 April 2017.

	<p>Article 2 of the law on public benefits⁴⁹ which defines disability for the purpose of determining eligibility to public benefit.</p>
<p>Key facts of the case (max. 500 chars)</p>	<p>The applicant was a Bulgarian national who lived and worked in Cyprus for a number of years. In 2010 she stopped working for health reasons and applied for a public benefit. Although initially the authorities had found that she met the definition of disability in the relevant law,⁵⁰ they subsequently changed this finding and rejected her application on the ground that she had not worked for a year, which disqualified her from eligibility, and additionally her husband had high social insurance contributions who should therefore be responsible for his family's maintenance costs without resorting to the state for assistance. The Welfare Services pointed out that the family's right to reside in Cyprus as Union nationals had been granted on the explicit condition that the applicant's husband would undertake all maintenance and medical costs of himself and his family so as not to become a burden on the Cypriot welfare system. The Welfare Services sought to further justify their decision citing information from an anonymous source that the applicant was not confined to a wheelchair, as she was claiming. The anonymous source had further informed the Welfare Services that the applicant owned two apartments in Bulgaria and that her husband was, in addition to his main job, working extra in the afternoons and on holidays.</p> <p>The applicant applied for judicial review of the decision to reject her application for public benefit on the ground that it was inadequately investigated, unduly justified, issued in bad faith and amounted to an abuse of power. The applicant argued that administrative discretion was exercised for purposes other than those foreseen in the law, aiming to deprive her of her rights and to exclude her from welfare support. With</p>

⁴⁹ Cyprus, [Law on public benefits and services of 2006](#) (*Ο περί Δημοσίων Βοηθημάτων και Υπηρεσιών Νόμος του 2006*) as amended, N. 95(I)/2006.

⁵⁰ *Ibid.*

	<p>references to CJEU case law, to Article 18 of the Treaty for the Functioning of the EU and to the Free Movement Directive, counsel for the applicant argued that the Welfare Services' treatment of this case amounted to nationality discrimination prohibited by law. In response, the Welfare Services cited the CJEU ruling in <i>Dano</i>⁵¹ in order to claim that EU citizens cannot move to other countries with the sole purpose of acquiring benefits.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>Although there was medical evidence that the applicant was unable to work, the Welfare Services unjustifiably decided that she did not meet the definition of disability, as a result of having relied on anonymous and unverified allegations about the applicant's state of health. The administration's argument that the applicant's husband had undertaken his family's maintenance and medical costs as a precondition for being granted the right to residence was not supported by legal justification. The invocation of the ruling in <i>Dano</i> introduced by the respondents for the first time at the stage of the judicial process, were rejected by the court as <i>ex post</i> reasoning because no such reference was included either in the decision communicated to the applicant or in the pleadings. The Court therefore annulled the rejecting decision without commenting on the merits of <i>Dano</i> in relation to this case or on the applicant's claim of nationality discrimination. The Welfare Services' decision to reject the application was annulled because it had been poorly investigated and inadequately justified.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The court clarified that the public benefits law provides that persons with disabilities may be eligible for public benefit relying solely upon the element of disability, even if they are in gainful employment.⁵² The issue in the case at hand should therefore be solely whether the applicant met the definition of disability or not. Once this was established, all other reasons cited by the Welfare Services were irrelevant and non-consequential. The fact that the applicant had not worked for a year or that her husband had a well-paid job do not relate to the question whether or not the applicant was a person with disability. Having initially decided that the applicant met the definition of disability, the Welfare Services had an increased duty to introduce adequate and objective</p>

⁵¹ CJEU, C-333/13, *Elisabeta Dano, Florin Dano v. Jobcenter Leipzig*, 11 November 2014.

⁵² Cyprus, [Law on public benefits and services of 2006](#) (*Ο περί Δημοσίων Βοηθημάτων και Υπηρεσιών Νόμος του 2006*) as amended, N. 95(I)/2006, Article 3(10).

	<p>evidence to justify the reversal of their earlier finding. Such evidence could not be exhausted in a single visit to her house by a welfare officer or anonymous sources as to her health condition. The court pointed out that the public benefit law itself provides for a procedure of assessment by a medical council of an applicant's ability to work, which was not followed in this case.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The court found in favour of the applicant and annulled the decision of the Welfare Services by which the applicant's application for public benefit had been rejected. The applicant is hereafter free to file a fresh application, relying upon precedent that the previous rejection was ruled unlawful. However, the nature of the judicial review process is such that the Welfare Service may, upon receiving a fresh application, reject it again relying on a different justification. At the time of writing, there were no further developments in this regard.</p>
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p>Τα ίδια ισχύουν εν πολλοίς και αναφορικά με τη δεύτερη παράγραφο της προσβαλλόμενης απόφασης, όπου αναφέρεται ότι, σύμφωνα με σχετική επιστολή του Τμήματος Αρχείου Πληθυσμού και Μετανάστευσης, παραχωρήθηκε άδεια διαμονής στην αιτήτρια και τα παιδιά των αιτητών, αφού προηγουμένως ο αιτητής, με γραπτή δήλωσή του, είχε αναλάβει όλα τα έξοδα διατροφής, διαμονής, συντήρησης και ιατροφαρμακευτικής περίθαλψής τους <i>«ώστε να μην επέλθουν υπέρμετρο βάρος της Κυπριακής Δημοκρατίας»</i>. Από το συγκεκριμένο λεκτικό της απόφασης δεν εντοπίζονται ούτε οι νομικές διατάξεις επί των οποίων στηρίχθηκε αυτή η θέση της Διοίκησης, αλλ' ούτε και σε ποια διάταξη νόμου στηρίζεται ένα τέτοιο κριτήριο, ως αυτό που επικαλούνται οι καθ' ων η αίτηση για την απόρριψη της αίτησης της αιτήτριας, με αποτέλεσμα να υφίσταται και πάλι ζήτημα αδυναμίας διενέργειας του απαιτούμενου δικαστικού ελέγχου.</p>

Η κα Καρακάννα στην αγόρευσή της αναφέρει ότι η αιτιολογία της επίδικης απόφασης εδράζεται στο άρθρο 3(4) του Νόμου και εισηγείται ότι με βάση τη δέσμευση που έδωσε ο αιτητής ότι αναλαμβάνει εξολοκλήρου τη συντήρηση της αιτήτριας, ουδέποτε θα έπρεπε να παραχωρηθεί σε αυτήν **αναπηρικό** επίδομα. Παραπέμπει δε στην προαναφερθείσα απόφαση **Dano** του Δ.Ε.Ε., η οποία, σύμφωνα με τη συνήγορο των καθ' ων η αίτηση, αποτελεί νομικό έρεισμα της επίδικης απόφασης. Ωστόσο, τα πιο πάνω δεν αναφέρονται στην προσβαλλόμενη απόφαση. Οι ισχυρισμοί της συνηγόρου των καθ' ων η αίτηση συνιστούν εκ των υστέρων αιτιολογία, η οποία δεν είναι επιτρεπτή. Κατά πάγια και διαχρονική επί του θέματος νομολογία, η αιτιολογία πρέπει να δίνεται κατά τον ουσιώδη χρόνο της έκδοσης της πράξης και το περιεχόμενο της γραπτής αγόρευσης της δικηγόρου των καθ' ων η αίτηση δεν μπορεί να θεωρηθεί ως αιτιολογία της προσβαλλόμενης πράξης (βλ. **Στέφανος Φράγκου**, ανωτέρω, **Ελπινίκη Γεωργίου ν. Δημοκρατίας (1991) 4 Α.Α.Δ. 4104** και **Χριστίνα Τσιαντή κ.α. ν. Διευθυντή Τμήματος Πολεοδομίας και Οικήσεως (2008) 4 Α.Α.Δ. 824**).

Translation:

To a large extent, the same applies to the second paragraph of the contested decision, which states that, according to a letter from the Department of Population Archives and Immigration, the applicant's husband was granted a residence permit for himself and his family after the applicant had made a written statement that he would bear all the costs of food, accommodation, maintenance and medical care "*in order not become a disproportionate burden on the Republic of Cyprus*". It is not possible to locate in the wording of this decision the legal provisions on which this administrative position was based, nor the provision of the law on which such a criterion is based, such as that relied on by the respondents for the rejection of the application of the applicant, as a result of which there emerges a problem in carrying out the necessary judicial review.

In her statement, Mrs. Karakanna (counsel for the respondent) states that the reasoning of the contested decision is based on Article 3 (4) of the Law and suggests that, on the basis of the commitment of the applicant's husband to take full care of the applicant, she should never have been granted a disability allowance. She refers to the judgment in *Dano*, cited above, which, according to the respondents' lawyer,

	<p>constitutes the legal basis for the contested decision. However, <i>Dano</i> was not mentioned in the contested decision. The allegations made by the respondents' lawyer amount to <i>ex-post</i> reasoning, which is not allowed. According to established precedent, the statement of reasons must be given at the material time of the adoption of the act; the content of the respondents' statement of defence cannot be regarded as justification for the contested act (see <i>Stefanos Frangou</i>, above, <i>Elpiniki Georgiou v. the Republic</i> (1991) 4 AA 4104, and <i>Christina Tsianti et al v. The Deputy Director of the Department of Urban Planning and Housing</i> (2008) 4 AAD 824).</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

1.15 The *Borisov* case

<p>Subject-matter concerned</p>	<p><input type="checkbox"/> 1) non-discrimination on grounds of nationality</p> <p><input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to Articles 27, 28, 30 and 32 of Directive 2004/38</p>
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	<input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	29 July 2015
Deciding body (in original language)	Ανώτατο Δικαστήριο Κύπρου, Αναθεωρητική Δικαιοδοσία
Deciding body (in English)	Supreme Court of Cyprus, Review Jurisdiction
Case number (also European Case Law Identifier (ECLI) where applicable)	213/2013
Parties	<i>Borislav Borisov v. The Republic of Cyprus through the Ministry of the Interior</i>

	[In original language: <i>Borislav Borisov v. Κυπριακής Δημοκρατίας μέσω Υπουργείου Εσωτερικών</i>]
Web link to the decision (if available)	http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2013/4-201307-213-2013..htm&qstring=Borislav%20and%20Borisov
Legal basis in national law of the rights under dispute	<p>Article 146 of the Cypriot Constitution⁵³ which provides for the right to apply for judicial review of an administrative act.</p> <p>Article 11 of the Constitution⁵⁴ (right to liberty) and Article 5 of the ECHR.</p> <p>Articles 29, 30, 32 and 34 of Law N.7(I)/2007⁵⁵ transposing the Free Movement Directive which corresponds to Directive Articles 27, 28, 30 and 32 respectively.</p>
Key facts of the case (max. 500 chars)	The applicant was a Bulgarian national who lived in Cyprus since 2011 and worked in various jobs. In 2013, he was arrested on suspicion of conspiracy to commit a crime, blackmail, demanding property by threat, threat, and possession of weapons, carrying arms, participating in a criminal organisation and possession of drugs. Detention and expulsion orders were issued against him on the ground that he was a real and present threat to public order, having taken into account his relation with Cyprus and with his country of origin. The decision was taken relying on a two page report submitted by the police which set out information against five persons

⁵³ Cyprus, [The Constitution of the Republic of Cyprus](#), accessed on 20 April 2017.

⁵⁴ *Ibid.* accessed on 12 July 2017.

⁵⁵ Cyprus, [Law on the right of citizens of the Union and their family members to move and reside freely in the Republic](#) (*Ο περί του Δικαιώματος των Πολιτών της Ένωσης και των Μελών των Οικογενειών τους να Κυκλοφορούν και να Διαμένουν Ελεύθερα στη Δημοκρατία Νόμος του 2007*), Ν. 7(Ι)/2007.

	<p>including the applicant regarding their involvement in the aforesaid offences. The report was supported by a note describing the nature and quality of the police information, which emanated from three different named sources, two of which had personal knowledge of the activities and facts.</p>
<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The applicant argued that:</p> <ul style="list-style-type: none"> • the decision for his expulsion infringed his right to a fair hearing under the principles of natural justice; • his expulsion was ordered merely upon the recommendations of the police without the authorities ever verifying the information invoked by the police; • the decision for his expulsion infringed his right to be informed of the public policy grounds on which the expulsion decision was based (Directive Article 30); • his personal circumstances, his integration in Cyprus and his links with his country of origin were not taken into consideration, thus infringing Article 30 of the free movement law⁵⁶ (corresponding to Directive Article 28.1) (He argued that the administration failed to take into account the fact that he had his family in Cyprus, he was engaged to a woman residing in Cyprus and had no longer any links with his country of origin.); • the ten-year re-entry ban infringed Article 34(1) of the free movement law (corresponding to Directive Article 32.1).

⁵⁶ *Ibid.*

The court found that:

- the detention and expulsion decisions do not constitute sanctions nor are they of disciplinary character and therefore no right to a hearing arises; the applicant had the right, which he exercised, to present his views in the course of the judicial review proceedings which he initiated;
- the police information on which the expulsion decision was based was sufficient in order for the competent authority to conclude that the applicant was a threat to public order or safety, as foreseen under Article 29 of the free movement law⁵⁷ (corresponding to Directive Article 27);
- the authorities also failed to inform the applicant precisely and in full of the public policy grounds on which the expulsion decision relied upon (Even though counsel for the respondents insinuated that providing any additional details regarding the factual basis of the decision would run contrary to the interests of the state, this statement was not substantiated with arguments; in fact the offences which the applicant was suspected of were usual offences under the Criminal Code which did not appear to affect the safety of the Republic.);
- the justification offered by the administration purporting to satisfy Directive Article 28.1 was insufficient (The two page document merely stating that the applicant had no links with Cyprus and that his family lives in Bulgaria do not prove that all relevant data were investigated, collected and assessed, as required by the law. The authorities offered no reason to show how they arrived at the conclusion that he had no links with Cyprus.);

⁵⁷ *Ibid.*

	<ul style="list-style-type: none"> although the applicant's argument that the 10 year re-entry ban infringed Directive Article 32.1 was not correct, the authorities had a duty to inform the applicant of his right to apply for the lifting of this ban in three years.
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The information which might lead to an expulsion on public policy grounds under Article 27 of the directive does not need to be specific; even general indications about the existence of a problem would suffice and any doubt should be interpreted in favour of the Republic.</p> <p>The mere invocation of the legal basis of the expulsion decision without any information about the factual base of the decision does not satisfy the duty cast on the authorities by Directive Article 30.2. The duty to inform the applicant of the factual reasons leading to the decision for his expulsion is increased when the offences he is suspected of are common criminal law offences and there are no public safety implications at stake.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The application was successful and the challenged administrative acts for the applicant's detention and expulsion were annulled.</p>

Key quotations in original language and translated into English with reference details (max. 500 chars)

Οι πιο πάνω εξηγήσεις που προβάλλονται από πλευράς διοίκησης δεν είναι ικανοποιητικές ώστε να δείξουν συμμόρφωση προς τις πρόνοιες του Νόμου. Ούτε το λιτό περιεχόμενο ενός εντύπου για Βεβαίωση Εγγραφής που είχε υποβληθεί πολλούς μήνες προηγουμένως θα ήταν αρκετό, ούτε και το έντυπο που υπέγραψε ο Γενικός Διευθυντής του Υπουργείου αναφέροντας ότι ο αιτητής δεν έχει κανένα δεσμό με τη Δημοκρατία θα ήταν αρκετό, ούτε βέβαια και τα δύο αυτά έγγραφα μαζί συνθέτουν την εικόνα διερεύνησης, αποκόμισης και αξιολόγησης των στοιχείων που απαιτεί ο Νόμος να ληφθούν υπόψη. Το ότι ο αιτητής δεν έχει κανένα δεσμό με την Κύπρο, ή καλύτερα το εάν ο αιτητής έχει ή όχι δεσμούς με την Κύπρο, είναι ένα από τα ζητούμενα προς διακρίβωση και όχι ένα από τα δεδομένα. Πουθενά δεν εξηγείται πως ήχθη η διοίκηση στο συμπέρασμα ανυπαρξίας οποιουδήποτε δεσμού του αιτητή με την Κύπρο. Ο αιτητής αντίθετα, εισηγείται ότι από το 2006 έχει την οικογένεια του στην Κύπρο και όχι στη Βουλγαρία, με την οποία έχει αποκόψει δεσμούς, και ότι έχει αρραβωνιαστεί με κοπέλα η οποία διαμένει στην Κύπρο.

...

Όπως έκδηλα προκύπτει από το κείμενο της πιο πάνω επιστολής, ο μόνος λόγος τον οποίο δίδει το καθ' ου η αίτηση στον αιτητή για τη ληφθείσα απόφαση, είναι το γεγονός ότι θεωρήθηκε ότι η προσωπική του συμπεριφορά συνιστά πραγματική, ενεστώσα και επαρκώς σοβαρή απειλή επηρεάζουσα τη δημόσια τάξη της Δημοκρατίας (*«it was considered that your personal conduct represents a genuine present and sufficiently serious threat affecting the public order of the Republic.»*)

Αυτός ο λόγος είναι έκδηλα ανεπαρκής και καθόλου δεν μπορεί να θεωρηθεί ότι ικανοποιεί τη νομοθετική απαίτηση όπως ο αιτητής ενημερώνεται *«επακριβώς και πλήρως για τους λόγους δημόσιας τάξης»* επί των οποίων στηρίζεται η ληφθείσα απόφαση. Απλά με την πιο πάνω πληροφόρηση, δίνεται στον αιτητή μόνο η νομοθετική βάση στην οποία μπορούσε να ενεργήσει η διοίκηση, πλην όμως δεν του δίδεται καμιά πληροφόρηση ως προς τους λόγους για τους οποίους κρίθηκε στην περίπτωση του ότι στοιχειοθετείται αυτή η βάση. Για να το θέσω πιο απλά, στην προκείμενη περίπτωση, κρίθηκε ότι ο αιτητής συνιστούσε σοβαρή απειλή για τη δημόσια τάξη και αυτό του κοινοποιήθηκε. Όμως αυτή είναι η νομοθετική βάση στην οποία βρίσκεται

έρεισμα η προσβαλλόμενη απόφαση, οι δε λόγοι, επακριβείς και πλήρεις στους οποίους στηρίχθηκε η διοίκηση για να στοιχειοθετήσει την απαιτούμενη νομοθετική βάση, δεν γνωστοποιήθηκαν στον αιτητή με την προαναφερθείσα επιστολή, παρά την περί αντιθέτου νομοθετική επιταγή.

Translation:

The above explanations presented by the administration are not satisfactory so as to prove compliance with the provisions of the Law. Neither the simple content of a Registration Certificate submitted several months earlier would suffice, nor the form signed by the Permanent Secretary of the Ministry indicating that the applicant had no connection with the Republic would suffice and certainly not the combination of both can compose the image of having investigated, collected and evaluated the data which the Law requires to be taken into account. The fact that the applicant has no connection with Cyprus, or rather whether or not the applicant has links with Cyprus, is one of the queries for calibration rather than one of the data. Nowhere is it explained how the administration came to the conclusion that there is no link between the applicant and Cyprus. The applicant, on the contrary, suggests that since 2006 he has his family in Cyprus and not Bulgaria, that he has severed his links with Bulgaria and that is engaged to a girl who lives in Cyprus.

...

It is clear from the wording of that letter that the only reason given by the respondents to the applicant for their decision is that his personal conduct was deemed to constitute a genuine, present and sufficiently serious threat affecting the public order of the Republic ("it was considered that your personal conduct represents a genuine and sufficiently serious threat to the public order of the Republic.")

This reason is clearly inadequate and cannot in any way be deemed to satisfy the legislative requirement that the applicant be informed "precisely and in full of the public policy grounds" on which the decision was based. With the above information the applicant is given only the legislative basis on which the administration could act but has not been given any information as to the reasons why it was found in his case that such basis was

	<p>established. To put it more simply, in the present case, it was considered that the applicant constituted a serious threat to public policy and this was communicated to him. However, that is the legislative basis on which the contested decision is based, and the precise and complete reasons on which the administration relied in order to establish the requisite legal basis were not communicated to the applicant in the above-mentioned letter despite the legislative requirement to the contrary.</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.</p>	<p>No.</p>

2. Table 2 – Overview

Court decisions in Cyprus are not archived per subject and it is not possible to have an accurate number of cases decided on any particular ground.⁵⁸ From a key word search into the electronic databases, it emerges that the vast majority of cases concern the right to move and reside freely, however this method of search cannot lead to accurate results. There are no

⁵⁸ See for instance the [archives of the Supreme Court](#).

cases on the right to vote and stand as candidates, on the right to diplomatic protection of any member state or on the right to petition. There are two cases where nationality discrimination was examined amongst other grounds for seeking to annul administrative orders of expulsion. These were reported above and are listed below.

There were cases where it was clear from the facts that there was an issue of discrimination, but this was not taken into account in the decision of the court. Instead, applicants tend to rely on grounds which are easier to prove, such as inadequate investigation or justification of the decision. Such was the case of *Ilieva*, a Bulgarian national living in Cyprus who succeeded in annulling an administrative decision not to grant her a disability benefit, reported above. The administrative decision had sought to rely on a personal undertaking demanded from her husband that he would undertake all maintenance and medical costs of himself and his family, as a precondition for the right to reside in Cyprus.⁵⁹

	non-discrimination on grounds of nationality	the right to move and reside freely in another Member State	the right to vote and to stand as candidates	the right to enjoy diplomatic protection of any Member State	the right to petition
Please provide the total number of national cases	Two decisions, both reported above: the <i>Bekefi</i> Case (1.7) and the <i>O.F.U.</i> case (1.10).	n.a.	0	0 The law on diplomatic	0

⁵⁹ Cyprus, Administrative Court, [Tatyana Ilieva and Petar Georgiev Petrov](#), Case No. 232/2013, 27 January 2017.

<p>decided and relevant for the objective of the research if this data is available (covering the reference period)</p>	<p>There are also cases where discrimination was invoked, but the court did not examine this claim because the administrative decision was annulled on other grounds. Such is the case of <i>Dimitrova</i>, (1.11) and the case of <i>Ilieva</i> (1.14), both reported above.</p>			<p>protection in a third country, transposing Directive 2015/637 was only adopted in March 2017.</p>	
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