

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 the Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	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	Dimitrova Iordanka Arahangelova v. The Republic of Cyprus through the Chief Immigration Officer of the Ministry of the Interior [Dimitrova Iordanka Arahangelova v. Κυπριακής Δημοκρατίας μέσω της Διευθύντριας του Τμήματος Αρχείου Πληθυσμού και Μετανάστευσης του Υπουργείου Εσωτερικών]
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	<ul style="list-style-type: none"> Article 30 of Law N.7(I)/2007¹ transposing Directive 2004/38 (corresponding to Directive article 28) Article 146 of the Cypriot Constitution² which provides for the right to apply for judicial review of an administrative act. 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).
Key facts of the case (max. 500 chars)	<p>The applicant 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.³ 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 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>
Main reasoning / argumentation (max. 500 chars)	<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>

¹ 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, available at http://cylaw.org/nomoi/enop/non-ind/2007_1_7/index.html

² Cyprus, The Constitution of the Republic of Cyprus, available at <http://cylaw.org/nomoi/enop/ind/syntagma/section-sc26b4a5c6-5493-b01e-9d76-560d2e45d284.html> accessed on 20 April 2017.

³ Cyprus, Aliens and immigration law (*Ο περί Αλλοδαπών και Μεταναστεύσεως Νόμος*), Cap 105 article 6(1)(e), available at http://cylaw.org/nomoi/enop/non-ind/0_105/full.html, accessed on 20 April 2017

<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>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The administrative orders for the detention and expulsion of the applicant were annulled. The respondents were ordered to pay the applicant's costs.</p> <p style="text-align: center;">Our comment on the case</p> <p>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.</p>
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<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</p>

	<p>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 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>[Unofficial translation below]</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 refer to the Charter of Fundamental Rights. If yes, to which specific Article.</p>	<p>No.</p>