

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 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 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)	Case No. 300/2015
Parties	Panayiotis Triantafyllou and Lana Ambou Al Taher v The Republic of Cyprus through the Minister of the Interior and the Chief Immigration Officer 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	<ul style="list-style-type: none"> ○ Article 146 of the Cypriot Constitution¹ 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)/2007² transposing articles 28.3(a) and 33 of Directive 2004/38 respectively
Key facts of the case (max. 500 chars)	<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, for 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>
Main reasoning / argumentation (max. 500 chars)	<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 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>

¹ 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.

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

	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.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<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>,³ 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>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The expulsion order was annulled and the respondents were ordered to pay the applicant's costs. This was a single judge bench.
Key quotations in original language and translated into English with reference details (max. 500 chars)	<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</p>

³ Court of Justice of the European Union (CJEU), C-145/09, *Land Baden-Württemberg v Panagiotis Tsakouridis* J 23 November 2010.

	<p>ότι η προσβολή αυτή είναι ιδιαιτέρως 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 μεταγενέστερής του στάσης, ώστε να γίνουν συγκεκριμένες διαπιστώσεις και σε περίπτωση που αυτές θα κατέληγαν σε απέλαση, να δοθεί αιτιολογία που να 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 συνεργάσθηκε 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>[Unofficial translation below]</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>
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	No