

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 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	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	Anghel Viorel v. The Republic of Cyprus through the Ministry of the Interior [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

Legal basis in national law of the rights under dispute	<ul style="list-style-type: none"> Articles 29-35 Law N. 7(I)/2007¹ transposing the Free Movement Directive (corresponding to Directive articles 27-33); Article 146 of the Cypriot Constitution² which provides for the right to apply for judicial review of an administrative act.
Key facts of the case (max. 500 chars)	<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 law³ 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 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.</p>
Main reasoning / argumentation (max. 500 chars)	<p>The national immigration law entitles the immigration authorities to declare a foreigner as a prohibited migrant where there is testimony that this person <i>may</i> behave in a manner posing a risk to public order.⁴ 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</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)(g), available at http://cylaw.org/nomoi/enop/non-ind/0_105/full.html, accessed on 20 April 2017.

⁴ Cyprus, Aliens and immigration law (Ο περί Αλλοδαπών και Μεταναστεύσεως Νόμος), Cap 105 article 6(1)(g), available at http://cylaw.org/nomoi/enop/non-ind/0_105/full.html, accessed on 20 April 2017.

	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 of the case (max. 500 chars)	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.
Key quotations in original language and translated into English with reference details (max. 500 chars)	<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 A.A.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 A.A.Δ. 1479).</p> <p>[Unofficial translation below]</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 as 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 (1999) 4 AA 443</i>, 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 (1995) 4 AA 1479</i>].</p>
<p>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</p>	<p>Yes, 45 and 52</p>