

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 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	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	<p>Tatyana Ilieva and Petar Georgiev Petrov v. The Republic of Cyprus through the Director of Welfare Services</p> <p>Tatyana Ilieva and Petar Georgiev Petrov v Κυπριακής Δημοκρατίας μέσω Διευθύντριας Υπηρεσιών Κοινωνικής Ευημερίας</p>
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	<ul style="list-style-type: none"> • Article 27(1) of Law N. 7(I)/2007¹ transposing the Free Movement Directive (corresponding to Directive article 7(1)(b)); • Article 146 of the Cypriot Constitution² which provides for the right to apply for judicial review of an administrative act; • Article 2 of the law on public benefits³ which defines disability for the purpose of determining eligibility to public benefit.
Key facts of the case (max. 500 chars)	<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,⁴ 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 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</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, Law on public benefits and services of 2006 (Ο περί Δημοσίων Βοηθημάτων και Υπηρεσιών Νόμος του 2006) as amended, N. 95(I)/2006, available at http://cylaw.org/nomoi/enop/non-ind/2006_1_95/full.html

⁴ Cyprus, Law on public benefits and services of 2006 (Ο περί Δημοσίων Βοηθημάτων και Υπηρεσιών Νόμος του 2006) as amended, N. 95(I)/2006, available at http://cylaw.org/nomoi/enop/non-ind/2006_1_95/full.html

	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> ⁵ in order to claim that EU citizens cannot move to other countries with the sole purpose of acquiring benefits.
Main reasoning / argumentation (max. 500 chars)	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 ex post 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.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	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. ⁶ 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 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.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	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.

⁵ Court of Justice of the European Union (CJEU), C-333/13, *Elisabeta Dano, Florin Dano v. Jobcenter Leipzig*, 11 November 2014.

⁶ 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), available at http://cylaw.org/nomoi/enop/non-ind/2006_1_95/full.html

<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 «ώστε να μην επέλθουν υπέρμετρο βάρος της Κυπριακής Δημοκρατίας». 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> <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).</p> <p>Unofficial translation:</p> <p>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 "<i>in order not become a disproportionate burden on the Republic of Cyprus</i>". 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.</p> <p>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 <i>Dano</i>, cited above, which, according to the respondents' lawyer, 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 ex-post reasoning, which is not allowed. According to established precedent, the statement of reasons</p>
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	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).
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	No.