

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 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	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	Borislav Borisov v. The Republic of Cyprus through the Ministry of the Interior [in original language: Borislav Borisov v. Κυπριακής Δημοκρατίας μέσω Υπουργείου Εσωτερικών]
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	<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; • Article 11 of the Constitution² (right to liberty) and article 5 of the ECHR • Articles 29, 30, 32 and 34 of Law N.7(I)/2007³ transposing the Free Movement Directive which corresponds to Directive articles 27, 28, 30 and 32 respectively.
Key facts of the case (max. 500 chars)	<p>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 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>
Main reasoning / argumentation (max. 500 chars)	<p>The applicant argued that:</p> <p>a. The decision for his expulsion infringed his right to a fair hearing under the principles of natural justice;</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, The Constitution of the Republic of Cyprus, available at <http://cylaw.org/nomoi/enop/ind/syntagma/section-sc62767a97-151c-8a5b-49e5-a4a6c37065e3.html> accessed on 12 July 2017.

³ 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

- b. His expulsion was ordered merely upon the recommendations of the police without the authorities ever verifying the information invoked by the police;
- c. 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);
- d. 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 law⁴ (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.
- e. The ten-year re-entry ban infringed article 34(1) of the free movement law (corresponding to Directive article 32.1).

The Court found that

- a. 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.
- b. 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 law⁵ (corresponding to Directive article 27).
- c. 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

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) Ν. 7(Ι)/2007, available at http://cyllaw.org/nomoi/enop/non-ind/2007_1_7/index.html

⁵ 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, available at http://cyllaw.org/nomoi/enop/non-ind/2007_1_7/index.html

	<p>which the applicant was suspected of were usual offences under the Criminal Code which did not appear to affect the safety of the Republic.</p> <p>d. 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.</p> <p>e. 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>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>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<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	<p>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</p>

<p>English with reference details (max. 500 chars)</p>	<p>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.</p> <p>...</p> <p>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 (<i>«it was considered that your personal conduct represents a genuine present and sufficiently serious threat affecting the public order of the Republic.»</i>)</p> <p>Αυτός ο λόγος είναι έκδηλα ανεπαρκής και καθόλου δεν μπορεί να θεωρηθεί ότι ικανοποιεί τη νομοθετική απαίτηση όπως ο αιτητής ενημερώνεται <i>«επακριβώς και πλήρως για τους λόγους δημόσιας τάξης»</i> 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 καμμία 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 βρίσκει 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.</p> <p>[Unofficial translation below]</p> <p>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</p>
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	<p>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.</p> <p>...</p> <p>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 (<i>"it was considered that your personal conduct represents a genuine and sufficiently serious threat to the public order of the Republic."</i>)</p> <p>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 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 abovementioned letter despite the legislative requirement to the contrary.</p>
<p>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</p>	<p>No.</p>