

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 37 of Law N.7(I)/2007² transposing the Free Movement Directive which corresponds to Directive article 35.
Key facts of the case (max. 500 chars)	<p>The applicant was a Bulgarian woman who married a Pakistani man in 2009. In 2012 her marriage was declared to be one of convenience. She was informed of her right to appeal this decision which she did not. Her failure to appeal the administrative decision as regards the validity of her marriage within the time line foreseen rendered this decision final, upon which she was ordered to leave Cyprus because her action to conduct a marriage of convenience with a prohibited migrant rendered her a genuine, present and sufficiently serious threat to public order. She was subsequently arrested and detained whilst an expulsion order was issued against her. She filed an application seeking her release from detention and requesting that the expulsion procedure be suspended pending the adjudication of her application to the Court. This application was rejected on the ground that what she essentially sought was to challenge the decision for the falsity of the marriage which she was not entitled to do because the time limit had lapsed.³</p> <p>The applicant then filed a fresh application seeking to annul the administrative decision ordering her to leave Cyprus on the ground that she had concluded a marriage of convenience, arguing that this decision was taken without due investigation, it was based on an error of facts and was unjustified. The Court found that the administration had erred in its assumption that the marriage was false: it failed to investigate whether the applicant's husband was the father of her child, relying instead on unconfirmed allegations that the child's father was a Bulgarian man and that the child was conceived before the applicant married her Pakistani husband, both of which proved in fact to be incorrect. The dates of marriage and of birth show that the child was conceived after her marriage and the genetic test showed that her husband was the natural father of her child. The Court concluded that the decision to cancel the applicant's registration certificate was inadequately investigated and annulled it.</p>

¹ Cyprus, The Constitution of the Republic of Cyprus, available at <http://cyllaw.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://cyllaw.org/nomoi/enop/non-ind/2007_1_7/index.html

³ Cyprus, Supreme Court, Review Jurisdiction, Mitova Zoya Margaritova v. The Republic of Cyprus through the Department of Population Archives and Immigration, Case No. 67/13, 20 September 2013, available at http://cyllaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2013/4-201309-67-13endiam.htm&qstring=MITOVA accessed on 21 April 2017.

	The administrative decision which ordered the applicant to leave Cyprus on the ground of having conducted a marriage of convenience was annulled and set aside. The authorities were ordered to pay the applicant's legal costs.
Main reasoning / argumentation (max. 500 chars)	The arguments put forward by the authorities in order to justify their decision to declare the applicant's marriage as false, namely the suspicion that the husband was not the child's natural father and that the child was conceived before the marriage were incorrect. This error proved that the decision was not adequately investigated.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	An applicant seeking to annul an administrative decision does not need to prove the error itself; it suffices to prove a probability of an error. By looking into the facts relied upon by the authorities as well as the facts which the authorities failed to take into account, the Court essentially looks into the merits of the decision in order to establish that the investigation which preceded the decision was inadequate. Moreover, the Court did not restrict itself into examining solely the administrative act challenged, which was the cancellation of the applicant's right to reside, but went further to review the act on which the act challenged was premised upon, which was the declaration of the marriage as false.
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	The application was successful and the decision which cancelled the applicant's right of residence was annulled. The respondents were ordered to pay the applicant's costs. The applicant's marriage was, in essence, recognised as valid. This was a single judge bench but the judge was the President of the Supreme Court.
	Our comment on this case
	<p>The ruling does not avoid examining the merits of the administrative decision to declare the marriage false, in contrast with the ruling in <i>Acif Muhammad and Picioroaga Elena Alexandrina v. The Republic of Cyprus through the Director of the Department of population archives and immigration</i> (reported above) in spite of the fact that the decision concerning the marriage was not challenged.</p> <p>Although not explicitly stated, it was clear from the reasoning that the Judge thought the interests of justice would not be served if the Court had restricted itself to the formalistic approach followed in the <i>Acif Muhammad</i> case (reported above).</p>
Key quotations in original language and translated into	Ενόψει των προαναφερομένων αδυναμιών της απόφασης, δηλαδή ενόψει της μη επαρκούς διερεύνησης, εκ μέρους των καθ' ων η αίτηση, του χρόνου της εγκυμοσύνης της αιτήτριας, ενόψει της μή επαρκούς έρευνας τους αναφορικά με την πατρότητα της κόρης της αιτήτριας, αλλά και ενόψει της πεπλανημένης θέσης την οποίαν πήραν και/ή υιοθέτησαν οι καθ' ων η αίτηση ότι πατέρας της ανήλικης κόρης της αιτήτριας δεν ήταν ο σύζυγος της αλλά άλλο συγκεκριμένο πρόσωπο, χωρίς πλήρη διερεύνηση του θέματος, θεωρώ ότι η προσβαλλόμενη

English with reference details (max. 500 chars)	<p>απόφαση υπόκειται σε ακύρωση, ως απόφαση ληφθείσα χωρίς επαρκή έρευνα και με πλάνη περί τα πράγματα. Είναι θεμελιωμένο ότι η πλάνη δεν πρέπει να αποδειχθεί από τον αιτητή, σε αίτηση ακυρώσεως, αλλά είναι αρκετό εάν ο αιτητής αποδείξει πιθανότητα εμφιλοχώρησης πλάνης.</p> <p>[Unofficial translation]</p> <p>In view of the foregoing shortcomings of the decision, that is in view of the inadequate investigation by the respondents of the time of the pregnancy, of the insufficient research regarding the paternity of the daughter of the applicant, and in view of the erroneous position adopted by the respondents that the father of the minor daughter of the applicant was not her husband but another person without full investigation of the matter, I consider that the contested decision must be annulled as a decision taken without adequate investigation and as relying on factual error. It is established that the applicant need not prove the error but it is sufficient to prove a probability that an error may have crept in.</p>
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	No