

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 and 30 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	9 July 2015
Deciding body (in original language)	Ανώτατο Δικαστήριο Κύπρου, Αναθεωρητική Δικαιοδοσία
Deciding body (in English)	Cyprus Supreme Court, Review Jurisdiction
Case number (also European Case Law Identifier (ECLI) where applicable)	483/2015
Parties	Ioannis Karomenou from Greece v. Republic of Cyprus through the Minister of the Interior and the Department of Population Archives and Immigration Ιωάννη Καρομένου εξ Ελλάδος v. Κυπριακής Δημοκρατίας μέσω του Υπουργού Εσωτερικών και του Τμήματος Αρχείου Πληθυσμού και Μετανάστευσης]

Web link to the decision (if available)	http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2015/4-201507-483-2015.htm&qstring=%E1%F0%E5%EB%E1%F3%2A%20and%20%E5%F5%F1%F9%F0%E1%2A
Legal basis in national law of the rights under dispute	Articles 29, 30 and 32 of Law N. 7(I)/2007 transposing the Free Movement Directive ¹ (corresponding to Directive articles 27, 28 and 30 respectively).
Key facts of the case (max. 500 chars)	<p>The applicant was a Greek national who came to Cyprus in 2010 and married a Cypriot woman in 2011, following which he applied for and was issued a registration certificate. In 2013 he was convicted for drug related offence and was jailed for four years, following which his Cypriot wife divorced him and secured, through mutual consent, exclusive custody of their daughter and alimony rights. In 2015 the applicant's former wife informed the immigration authorities that she divorced him because she suspected him of having an extra marital affair, that he had in the past been violent and she was afraid for the physical integrity and safety of herself and her daughter, and that the applicant also had a record in Greece, where he had been violent against his former fiancée whilst pregnant causing her to a miscarry. Upon the recommendation of the immigration authorities, the Minister of the Interior ordered his expulsion as a threat to public security. The expulsion order was issued one day prior to the applicant completing his prison sentence. He filed an application for judicial review of the detention and expulsion orders on the grounds, inter alia, that</p> <ul style="list-style-type: none"> ○ His right to a hearing, safeguarded by national administrative law² and by article 1 of the Seventh Protocol to the ECHR, was infringed; ○ There was a violation of articles 29, 30 and 32 of Law N. 7(I)/2007 transposing the Free Movement Directive³ (corresponding to Directive articles 27, 28 and 30 respectively); ○ The justification of the decision was contradictory and erroneous;

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 accessed on 25 April 2017.

² Cyprus, Law on general principles of administrative law of 1999 (Ο περί των Γενικών Αρχών του Διοικητικού Δικαίου Νόμος του 1999) article 43(2) N. 158(I)/99, available at http://cylaw.org/nomoi/enop/non-ind/1999_1_158/index.html accessed on 25 April 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 accessed on 25 April 2017.

	<ul style="list-style-type: none"> ○ There was a violation of article 5 of the ECHR (corresponding to article 11 of the Cypriot Constitution) because of his unlawful arrest and arbitrary deprivation of liberty; ○ There was a violation of the proportionality principle and a disproportionate restriction of his right to private and family life, safeguarded by article 15 of the Cypriot Constitution; ○ There was a violation of articles 2, 3, 9 and 16 of the UN Convention on the rights of the child; ○ Administrative discretion was wrongly exercised. <p>The Court rejected all the above arguments and dismissed the application.</p>
Main reasoning / argumentation (max. 500 chars)	<p>The allegations of the applicant's former wife did not constitute the operative reason for the decision to expel him. The major reason for the expulsion decision was his conviction for drug dealing which, according to legal precedent from the CJEU,⁴ amounted to serious public security risk. Given that the former wife's allegations did not play any role in the decision, then there was no need for the applicant to be given the right to a hearing in order to disprove those allegations. Given that the applicant had the right to file a judicial review application to challenge the decision for his expulsion, during which he had the opportunity to present his position and his arguments, his claim as regards the violation of the right to be heard is groundless. The decision for his expulsion relied on the data in his file which the police had compiled for the purpose of his criminal prosecution and on his personal and family situation. Taking into consideration the applicant's personal information, the Court agreed with the Administration that the applicant did not demonstrate such family and personal situation and links with Cyprus so as to counter-balance the duty to safeguard public order. The justification for the decision can be complemented from the administrative file.</p> <p>The procedural safeguards foreseen in Law N. 7(I)/2007 (articles 28-32) were observed.</p> <p>There was no violation of article 5 of the ECHR or article 11 of the Cypriot Constitution because an exception to this right is foreseen where the purpose of detention is the expulsion of a person against whom an expulsion order has been issued.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>In those cases where a criminal conviction on its own does not conclusively lead to a public security risk, then the Administration must demonstrate a sufficiently justified and reasoned decision, in compliance with the principles of proportionality and good administration, assessing the nature, the circumstances of the offence and any other relevant element of the applicant's family and personal situation. This however does not imply an obligation on the part of the Administration to explicitly contrast the family circumstances of the expelled citizen with the overriding reasons of public interest. It will suffice to show that all the relevant factors have been investigated and taken into account.</p>

⁴ Court of Justice of the European Union (CJEU), *C-145/09, Land Baden-Württemberg v Panagiotis Tsakouridis* J 23 November 2010.

Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The application was rejected and the administrative orders for the applicant's detention and expulsion were confirmed. This was a single judge bench.</p>
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p>Η κατά το άρθρο 29 του Ν.7(Ι)/2007 «πραγματική, ενεστώσα και επαρκής σοβαρή απειλή», συναρτάται κατά τεκμήριο με υφιστάμενη κατάσταση πραγμάτων, η οποία, εφόσον συνοδεύεται και με προηγούμενες καταδίκες, ενισχύει την ανεπιθύμητη συμπεριφορά και καθιστά πιο δικαιολογημένη την απέλαση (βλ. <i>Anghel Viorel, Υπ.αρ.1064/2012, ημερομηνίας 20.5.2014</i>)...</p> <p>Ο αιτητής, με τα όσα ισχυρίσθηκε, δεν απέδειξε τις εξαιρετικές εκείνες οικογενειακές περιστάσεις που θα μπορούσαν να αντισταθμίσουν τον καλά τεκμηριωμένο από τη Διοίκηση λόγο περιφρούρησης της δημόσιας τάξης... Η νομολογία θέτει ως υποχρέωση της διοίκησης στις περιπτώσεις απέλασης που υπεισέρχεται θέμα εφαρμογής του Ν. 7(Ι)/2007, όχι μόνο τη διερεύνηση του συνόλου των προσωπικών παραγόντων του Ευρωπαίου πολίτη, αλλά και το καθήκον εξειδίκευσης του δημόσιου συμφέροντος από την απέλαση ώστε να καταφαίνεται ότι η διασφάλιση του, αντισταθμίζει το δικαίωμα του ατόμου για την εξασφάλιση της οικογενειακής του ζωής (βλ. <i>Κωνσταντίνου ν. Δημοκρατίας (1996) 3 Α.Α.Δ. 474, Υπόθεση Αρ. 290/2006, Sari Tekin ν. Δημοκρατίας κ.ά., ημερομηνίας 27.7.2007, Υπόθεση Αρ. 5918/13 Dimitrina Mihaylova Andonova ν. Δημοκρατίας, ημερομηνίας 24.1.2014, Moustaquim ν. Belgium 18/2/91, Series A, No. 193, σελ. 19</i>).</p> <p>Ωστόσο, οι πιο πάνω αποφάσεις δεν υποδηλώνουν υποχρέωση της Διοίκησης να αντιπαραβάλει ρητά τις οικογενειακές περιστάσεις του προς απέλαση πολίτη με τους επιτακτικούς λόγους δημοσίου συμφέροντος. Αρκεί να προκύπτει ότι διερευνήθηκαν και λήφθηκαν υπόψη όλοι οι σχετικοί παράγοντες (βλ. <i>Υπόθεση αρ. 5944/13, Χρίστος Τσαλικίδης ν. Δημοκρατίας, ημερομηνίας 26.9.2013</i>).</p> <p>[Unofficial translation below]</p> <p>The genuine, present and sufficiently serious threat referred to in Article 29 of Law 7 (I) / 2007 is presumably based on an existing state of affairs which, if accompanied by previous convictions, strengthens unwanted conduct and renders deportation even more justified (see <i>Anghel Viorel, Case No. 1064/2012, dated 20.5.2014</i>) ...</p> <p>The applicant, in his allegations, did not prove the extraordinary family circumstances that could offset the justified reason put forward by the Administration for safeguarding public order ... Legal precedent casts a duty on the administration in expulsion cases falling under Law 7(I)/2007 not only to investigate all personal factors of the European citizen, but also to specify the public interest safeguarded through the</p>

	<p>expulsion and to show that this safeguarding compensates for the right of the individual to secure his / her family life (see <i>Constantinou v. The Republic</i> (1996) 3 AD 474; Case No. 290/2006, <i>Sari Tekin v. The Republic et al.</i>, dated 27.7. 2007; Case No. 5918/13, <i>Dimitrina Mihaylova Andonova v. Republic</i>, dated 24.1.2014, <i>Moustaquim v. Belgium</i> 18/2/91, Series A, No. 193, p. 19).</p> <p>However, the above decisions do not imply an obligation on the part of the Administration to expressly contrast the family circumstances of the expelled citizen with the overriding reasons of public interest. It is sufficient to show that all relevant factors have been investigated and taken into account (see Case No 5944/13, <i>Christos Tsilikidis v. Republic</i>, dated 26.9.2013).</p>
<p>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</p>	<p>No</p>