

ANNEX III: Selected national case law

Judgment Title: Naasan Saiedi

Neutral Citation: [2006] 3 AAΔ

High Court Record Number: 2006 1241/2006

Date of Delivery: 28/07/2006

Court: Supreme Court

Composition of Court: Nicolaides J.

Judgment by: Nicolaides J.

Status of Judgment: Approved

Supreme Court of Cyprus
Review Jurisdiction
Case 1241/06

Regarding Article 146 of the Constitution

Between/

Naasan Saiedi
Applicant

and

The Republic of Cyprus through the Ministry of Interior, Archive of Population and Immigration
Department,
Respondents

Judgment of Mr. Justice Nicolaides, delivered on the 28th day of July, 2006

“The applicant is a national of Syria who arrived at the Republic on 29.11.2001, at a time when he was given a temporary residence permit as a visitor. The permit’s duration ended on 6.12.2001. As of then he resides illegally in the Republic. On 1.12.2005 he married with the Greek Cypriot Eleni Constantinou and some days later he asked for a temporary work and residence permit as a husband of a Cypriot citizen. His application was rejected by a decision of the Director of the Archive of Population and Immigration Department, dated 13.2.2006 and he was asked to arrange his departure. On 30.6.2006 he was arrested by order of arrest and deportation.

The applicant filed an application by which he disputed the respondent’s decision to reject his application for a residence permit and also disputed the arrest and deportation orders. The present *ex parte* application by which the suspension of validity of arrest and deportation is requested.

The applicant supports that he was a right to reside in Cyprus based on the free movement and residence of the Member States’ citizens and the members of their families, Law of 2003, L. 92(I)/2003. This law secures the right of free movement and residence of citizens of Member States and the members of their families, either for

paid work or for provision of services. This right is extended to persons that have seized to exercise its professional activity.

According to Articles 4 and 15, the citizens of Member States who reside or wish to reside in the Republic have a right to move and reside freely. The spouse and children under 21 years of age have the same right to reside irrespective of their nationality. Also, the depended older and younger persons and their spouses.

The Applicant supported that the same right of residence and work in Cyprus that the spouses of EU citizens have, the same right should apply to the spouses of Cypriot citizens, in the context of equal treatment of the citizens of EU states.

The respondents support that the contested decision to arrest and deport is lawful because the particular law, as proved by not only the relevant directives upon which the law is based but also Directive 2004/38 which has not yet been incorporated in domestic law, is applied for all EU citizens who move or reside in a Member State, other than the one of which they are nationals. The respondents support that the applicant can move and reside freely with his wife, lawfully, in any other country of the EU, except for Cyprus.

With all due respect, I cannot agree with this view. Of course the directives upon which Law 92(I)/2003 is based refer to citizens of the EU who move or reside in another Member State. The purpose of the directives, and the Law, was securing the free movement and residence of EU citizens and members of their families in any country of the EU they wish to do so. Of course it is not expected that the Directive would provide for a right to Cypriots to reside in their own country and surely we would come down to absurd results if we would accept that the applicant could reside lawfully in any other country of the EU except for Cyprus.

The above are reinforced by the preamble of Directive 2004/38 where it is emphasized that citizenship of the Union confers on every citizen of the Union a primary and individual right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaty and to the measures adopted to give it effect. It is noted that the phrase used “citizenship of the Union” emphasizes, in my opinion the notion of common European citizenship and the need for equal treatment of all nationals of Europe.

The applicant’s right is based on the right conferred by law to the relatives of nationals of EU member States to reside with them in any Member State. Clearly for reasons of equal treatment of Cypriot citizens with other EU citizens, we cannot but accept that the rights conferred to relatives of nationals of other member states are granted to the relatives of Cypriots, too.

The aforementioned view is independent of any probable arguments for violating the right to family life. As it has been decided (Ioannou v Republic, Case 68/2001) getting married is not sufficient to accept the argument for interference to family life. It is noted that the Ioannou judgment was issued before the promulgation of Law 92(I)/2003 and before our accession to the EU and was decided upon the general principle of the jurisprudence of the ECtHR, as protected under article 8 of the ECHR and article 15 of our Constitution.

I conclude that the orders of arrest and deportation are a result of obvious illegality since the provisions of a particular rule are violated.

An order of suspension of the said orders is issued as requested in paragraph A of the application.”