



NEWS REPORT

Date:	26 July 2010
Expert :	Corina Demetriou
Title:	Deportation of an EU national who is an HIV carrier
Country:	Cyprus
<u>Context</u>	
Issue at stake:	The Equality body criticises the deportation of an EU national who is a carrier of HIV
Ground of discrimination:	Disability, sexual orientation, racial or ethnic origin
Source:	Equality body report
Field:	Right of residence, freedom from deportation
Legislative provisions:	Law on the Right of citizens of the Union and the members of their families to move and reside freely in the Republic 2007(N7(I)/2007

Content

Case: A complaint was submitted to the Equality body by AW, a British national permanently residing in Cyprus, for the deportation order issued against his same-sex partner JM, a British national originating from Tanzania, with whom he had a steady relationship for the past nine years. At the time of submission of the complaint, JM was serving a prison sentence for drunk driving. The immigration police decided his deportation because he was an HIV carrier and thus suffering from an infectious disease threatening public health, as per article 6(1)(c) of the Aliens and Immigration Law. His name was also added on the stop list, banning his re-entry into Cyprus for the next 10 years from the date of deportation. The complainant challenged the legality of this decision, given that JM had never been ill with AIDS. The complaint was supported by a medical certificate from a doctor in UK certifying that JM had never had an AIDS event and because his virus is controlled medication, he could not be described as a ‘threat to the population of Cyprus’. The immigration department declared JM as an ‘unwanted immigrant’ who had to be deported due to: the “seriousness of the offence for which he was sentenced to imprisonment” ; his actions which show that he poses “a genuine, present and sufficiently serious threat affecting the public and legal order and public health”; and because “ he has no bond with Cyprus and his family

resides in the UK". The Equality body asked for a stay in the deportation proceedings until the complaint is investigated and the immigration department complied.

Decision of the Equality Body:¹ The Equality body found that any restrictions to the right to free movement amount to a deviation from EU principles and such deviations must be interpreted narrowly and restrictively and without discrimination on any ground. It added that national regulations providing that other EU nationals convicted for certain crimes must be automatically deported are contrary to the EU acquis and inevitably lead to discriminatory practices. The measures taken by the immigration authorities were, in this case, disproportionate to the conviction of JM (one month's imprisonment for drunk driving) and no investigation had been carried out in order to conclude that his behaviour was such so as to constitute a threat to public order. The report criticised the immigration authorities' allegation that JM has no bond with and no family in Cyprus, since it was known to them that JM had a long standing relationship with the complainant, who is a permanent resident of Cyprus. Overall, the handling of the case of JM by the authorities contained discrimination on multiple grounds, adding that the conclusion that JM was a danger to public health emanated not from a medical source but from a district immigration officer.

[http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/40F8C057F681EAE5C22577580037C2E0/\\$file/AKP69.2010-16062010.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/40F8C057F681EAE5C22577580037C2E0/$file/AKP69.2010-16062010.doc?OpenElement)

¹ A.K.P 69/2010, dated 16 June 2010,
[http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/40F8C057F681EAE5C22577580037C2E0/\\$file/AKP69.2010-16062010.doc?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/40F8C057F681EAE5C22577580037C2E0/$file/AKP69.2010-16062010.doc?OpenElement)