

1985 October 14

[LORIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ANDREAS AGAPIOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTRY OF INTERIOR,
2. THE IMMIGRATION OFFICER,

Respondents.

(Case No. 496/82).

Administrative act—Executory—Recourse challenging the omission to reply to applicant's letter—As the prayer in such letter was too sweeping and abstract it could not lead to any executory decision.

Administrative Law—Administrative act—Applicant cannot impugn indirectly an earlier act by applying for a new inquiry into the earlier case on the ground that it is interwoven with the sub judice case. 5

Aliens and Immigration Regulations 1972, Reg. 11.

The applicant in the present case is an approved by 10
the Immigration Officer Artists' Agent. On 20.3.1982 he
applied to respondent 2 praying for a working permit in
Cyprus of a Philipppinese Ballet consisting of 9 artists. This
application was refused, whereas working permit in Cy-
prus was granted by respondent 2 to another artists' agent 15
for the same Ballet.

Though the applicant knew of this decision to grant
Ballet working permit to another agent and though he
knew of the arrival of the 9 artists in Cyprus on 20.5.1982
and 27.5.1982, he did not impugn the said decision by 20

means of a recourse to the Supreme Court, but he submitted instead through his advocates a letter addressed to respondent 2 on 29.7.1982 complaining, inter alia, that in spite of the fact that he did not receive a reply to his application dated 20.3.1982 a working permit was granted for the same artists to another agent.

The only prayer contained in the said letter dated 29.7.1982 was a prayer for reconsideration of the respondents' position towards the applicant by "allowing to him the same rights allowed to the aforementioned artists' agents".

By letter dated 10.8.1982 respondent 2 informed the applicant that his complaint will be examined. Having received no other reply the applicant filed the present recourse on 23.11.1982, challenging the validity of the omission of the respondents to decide and reply to his application dated 29.7.1982 and a declaratory judgment that the said omission constitutes a refusal, which is null and void.

Held, dismissing the recourse: (1) The applicant's application dated 20.3.1982 was dealt with by the granting of a permit for the same artists to another agent. The applicant cannot impugn this decision by applying indirectly for a new inquiry into that case on the ground that it is interwoven with the present case under consideration.

(2) The prayer contained in the letter dated 29.7.1982 was too sweeping and abstract and could not lead to any executory decision by respondent 2; this is a fortiori so in view of the provisions of Regulation 11 of the Aliens and Immigration Regulation 1972. Indeed the letter in question did not contain any information required as a consequence of Regulation 11.

Recourse dismissed. No order as to costs.

35 Recourse.

Recourse against the refusal by the respondents of a working permit in Cyprus of a Philippinese Ballet consisting of 9 artists, for which the applicant is acting as agent.

L. Papaphilippou, for the applicant.

M. Florentzos, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

LOUIS J. read the following judgment. The applicant in the present case is an approved (by the Immigration Officer) Artists' Agent. 5

In his aforesaid capacity the applicant may act as intermediary on behalf of cabaret proprietors with a view to securing foreign artists for their cabarets in Cyprus, provided always that a proper application on behalf of the artists in submitted to the Immigration Officer and a temporary permit for their entry, stay and work in Cyprus is secured from him pursuant to the Aliens and Immigration Law, Cap. 105, as amended and the Aliens and Immigration Regulations 1972 (published in Suppl. No. 3 of O.G. No. 980 of 22.12.72 under Not: 242/72). 10 15

As it transpires (a) from a letter addressed by the applicant himself to respondent No. 2 dated 13.4.1982 (vide Appendix 'B' attached to the opposition) as well as (b) from another letter addressed on behalf of the applicant by his advocates to respondent No. 2 on 29.7.82 (vide Appendix 'F' attached to the opposition) the applicant in the present recourse has applied on 20.3.82 to respondent No. 2 praying for a working permit in Cyprus of a Philippine Ballet consisting of 9 artists referred by name in the aforesaid application. 20 25

It is apparent from the opposition, the written address on behalf of the respondents and the relevant documents submitted therewith, that the aforesaid application of the applicant dated 20.3.82 was refused, whereas working permit in Cyprus was granted by respondent No. 2 to another artists' agent for that same Philippine Ballet consisting of 9 artists, whose names were referred to in the application submitted by applicant in the present recourse on 20.3.82. 30 35

These facts were known to the applicant, who knew further that the aforesaid nine Philippine artists arrived in

Cyprus on 20.5.82 and 27.5.82. (Vide para. 2 of letter of 29.7.1982 - Appendix 'Γ').

5 In spite of the fact that the applicant was aware of the aforesaid decision of respondent No. 2 he did not impugn same in Court (in fact the decision in question was never
10 20.3.82, a working permit was granted for the Philippine Ballet in question to another Artists' Agent.

To this letter addressed on behalf of the applicant on 29.7.82, respondent No. 2 replied on 10.8.82 acknowledging receipt of same and informing applicant's advocates that the complaint of their client will be examined.
15

Having received no other reply from the respondents the applicant filed the present recourse on 23.11.1982 praying for :

20 " A) Declaratory Judgment to the effect that the omission of the respondents to decide and reply to the application of the applicant dated 29.7.1982 in connection with granting a permit for entry and work in Cyprus to more than 7 artists from Thailand and more than 7 artists from Philippines, for whom the
25 applicant is acting as agent, is null and devoid of any result, and everything omitted ought to have been performed.

30 B) A Declaratory Judgment to the effect that, as the omission in prayer A constitutes refusal, such refusal is null and devoid of any regal effect, and everything omitted ought to have been performed."

The present recourse of the applicant is relying on the letter of 29.7.82 addressed on his behalf to respondent No. 2.

35 I have carefully considered this letter which is sub-divided into 7 paragraphs.

In paragraph 1 it is stated that the applicant is an ar-

tists' agent for the last 20 years and that he keeps an office at Ledra Street No. 231 "together" with Mr. Dinos Christoforou. I must confess that I do not fully comprehend the meaning of "together" in view of the fact that the said Dinos Christoforou is referred to by the applicant in the letter he himself has addressed to respondent No. 2 on 13.4.83 (Appendix "B") as his (applicant's) partner. If the agency in question is carried out by the applicant in partnership with Dinos Christoforou then of course I would have expected a different title of the present recourse; nevertheless the point was never raised by respondents and as there is no other relevant material before me I have decided to leave the matter at that.

Paragraphs 2 and 3 just submit complaints; complaints about the fate of the application 20.3.82 (para. 2) and a complaint about a similar occasion in the past for which no dates or details whatsoever are given.

In respect of the fate of the application of 20.3.82 referred to earlier on in the present judgment it must be stated at the outset that respondent No. 2 gave his decision by granting permit for the same Philippine Ballet, consisting of the same 9 artists referred to in the application of the applicant dated 20.3.82; as already stated the applicant knew of the aforesaid decision—he even knew details of the arrival of the Ballet—and he did not attack that decision till the present day. And definitely he cannot impugn same by applying indirectly for a new inquiry into that case, as it is allegedly interwoven with the case under consideration. (Vide Kyriakopoulos on Greek Administrative Law 4th edition Volume 'Γ' p. 129).

In paragraphs 4, 5 and 6 the applicant refers vaguely to complaints for discrimination against him by respondents and the single prayer he submits is contained in the last 3 lines of paragraph 5. The respondents are being thereby asked to reconsider their position towards the applicant by "allowing to him the same rights allowed to the aforementioned artists' agents" (χορηγοῦντες εἰς αὐτὸν τὰ ἴδια δικαιώματα τὰ ὁποῖα χορηγοῦνται εἰς τοὺς προαναφερθέντας καλλιτεχνικοὺς πράκτορας).

The prayer set out above, which is the only prayer of

the applicant in his aforesaid application, was too sweeping and abstract and could not lead to any executory decision by respondent No. 2; this is a fortiori so in view of the provisions of Regulation 11 of the Aliens and Immigration Regulation 1972 which reads as follows:

«11 - (1) "Άδεια άπασχολήσεως δύναται να έκδίδηται υπό λειτουργού μεταναστεύσεως εις άλλοδαπόν όστις προσάγει εις αυτόν την γραπτήν έγκρισιν του Τμηματάρχου διά την έκδοσιν της τοιαύτης άδειας:

10 Νοείται ότι εάν λειτουργός μεταναστεύσεως ικανοποιηται ότι άλλοδαπόσ τις συνήψε σύμβασιν έργασίας μετ' έργοδότου έν τη Δημοκρατία και κατέχει τά προσόντα δι' άνάληψιν άπασχολήσεως ώρισμένης τάξεως δι' ήν δέν ύπάρχουσι κατά τον έν λόγω χρόνον 15 διαθεσίμοι καταλλήλως προσοντούχοι κάτοικοι της Δημοκρατίας ούτος δύναται έν τη διακριτικη αύτου έξουσία να έκδώση προσωρινήν άδειαν διά περίοδον μη ύπερβαίνουσαν τάσ δεκαπέντε ήμέρας πρός διευκόλυνσιν του άλλοδαπού να έξασφαλίση την άπόφασιν 20 του Τμηματάρχου πρός έκδοσιν άδειας άπασχολήσεως.

(2) "Άδεια άπασχολήσεως παρέχει εις τον κάτοχον αύτης δικαίωμα να εισέλθη έν τη Δημοκρατία και παραμείνη έν αύτη πρός τον σκοπόν να άπασχοληθή εις την άπασχόλησιν την καθοριζομένην έν τη γραπτη έγκρίσει του Τμηματάρχου δύναμει των διατάξεων της 25 παραγράφου (1) του παρόντος κανονισμού διά τοιαύτην περίοδον, ώς θέλει αναφέρηται έν τη τοιαύτη άδεια.

30 (3) "Άδεια άπασχολήσεως παύει πάραυτα να ισχύη και λογίζεται άκυρωθείσα εάν ό κάτοχος αύτης παραλείπη να αναλάβη την άπασχόλησιν έν σχέσει πρός ήν έξεδόθη ή άδεια ή αναλαβών την τοιαύτην άπασχόλησιν παραλείπει να συνεχίση με την αύτην άπασχόλησιν ή τον αυτόν έργοδότην.»

35 ("11 (1) A working permit may be issued by an Immigration Officer to an alien who submits to him the written approval of the Head of the Department regarding the issue of such permit:

Provided that if the Immigration Officer is satisfied that an alien has entered into a contract of employment with an employer within the Republic and that he possesses the qualifications for the taking up of an employment of certain category for which no properly qualified persons who are domiciled in the Republic are at such time available he may in his discretionary power issue a temporary permit for a period not exceeding fifteen days in order to facilitate such alien to secure the decision of the Head of the Department for the issue of a working permit. 5 10

(2) A working permit affords its holder the right of entry and the right of remaining in the Republic for the purpose of occupying himself in the employment which is prescribed in the approval given in writing by the Head of the Department in accordance with the provisions of para. 1 of this regulation for such period as it is provided in such approval. 15

(3) If the holder of a working permit fails to take up the employment for which the working permit has been issued or if having taken up such an employment fails to continue with such employment or with the same employer, the working permit shall immediately cease to be in force and be deemed as having been revoked.”). 20 25

It must be emphasized that the vague application as aforesaid with a prayer in abstracto, did not contain any information required as a consequence of the provisions of Regulation 11 cited above, in order to enable respondent No. 2 to exercise his discretion; no name of intended employer was ever mentioned, no place of work or conditions of such work were ever placed before respondent No. 2. How was the latter expected under such circumstances to act? 30

I repeat: the letter addressed on behalf of the applicant to respondent No. 2 on 29.7.82 with the exception of complaints to which I have already referred, was submitting a vague prayer in abstracto without the required information, 35

which could not bring the whole matter within the competence of respondent No. 2 and could not lead to a decision of executory character on his behalf.

5 I hold the view that the letter in question as well as the present recourse have no subject-matter (συσπούντως αντικείμενου) and the recourse is therefore doomed to failure.

In the result present recourse is hereby dismissed. Let there be no order as to costs.

*Recourse dismissed.
No order as to costs.*

10