

[TRIANTAFYLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION.

NIKI CHR. GEORGHIOU (No. 2),

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF THE INTERIOR,
2. THE IMMIGRATION OFFICER,

Respondents.

(Case No. 254/68).

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*Alien—Nationality—Naturalization—Cyprus citizenship—Marriage
a means of naturalization only when, and as provided for,
by municipal legislation—In Cyprus no such legislation exists—
The Citizenship of the Republic Law, 1967 (Law No. 43 of
1967) not yet in force.*

*Alien—Residence in Cyprus—Right to—Right of an alien woman,
married to a Cypriot citizen, to reside permanently in Cyprus—
During the subsistence of the marriage—She is so entitled
as being then a “native” of Cyprus within section 2(1) of the
Aliens and Immigration Law, Cap. 105—But after the dissolu-
tion of the marriage such alien woman ceases being a “native”
as aforesaid and becomes an “alien” for the purposes of Cap.
105 and, as such, she cannot reside permanently in Cyprus
without the permit required thereunder—Article 2.7 (a) of
the Constitution is not applicable because it refers only to
married women who are citizens of the Republic—Nor does
Article 13 apply in view of Article 14.*

*Constitutional Law—Constitution of Cyprus—Alien—Residence—
Right of residence in Cyprus of an alien woman married to
a citizen of Cyprus after the dissolution of the marriage—
Governed by the Aliens and Immigration Law, Cap. 105—
Which Law is in force under Article 188.1 of the Constitution,
to be applied modified as per Article 188.4—Nothing in such
law being in conflict with Articles 2.7 (a), 13 (in view of Article
14), 32 or 198 of the constitution.*

Constitutionality of Statutes—See above.

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Statutes—Constitutionality—See above.

Administrative Law—Administrative decisions—Revocation—Revocation of a decision taken on wrong assumption, granting to an alien woman permanent residence in Cyprus—Wrong assumption being that her marriage to a Cypriot citizen still subsists whereas it had been previously dissolved—A typical case where revocation of a previous administrative decision was warranted.

Administrative decisions—Revocation of—See above.

Revocation—Revocation of an administrative decision—See above.

Nationality—See above.

Naturalization by marriage—See above.

Citizenship—Cyprus citizenship—See above.

Residence—Permanent residence in Cyprus—Right to—See above.

Immigration—The Aliens and Immigration Law, Cap. 105—See above.

Married woman—Alien woman married to a Cypriot citizen—See above.

Married woman—Membership to Communities—Article 2(1)(7)(a) of the Constitution—See above.

Communities—Membership—Married women—See above.

In this case the learned Judge granted on the 26th July last a provisional order suspending the effect of a decision to expel the Applicant from Cyprus till final determination of her present recourse (See *Niki Chr. Georghiou* (1) and *The Republic of Cyprus* etc. p. 401, *ante*). As it has been stated then (*ibid*), the Applicant complains against the decision of Respondent 2 (who comes under Respondent 1), communicated to her by letter dated the 15th July 1968 (*Exhibit 1*), to the effect that her stay in Cyprus without a permit is illegal, in view of the dissolution of her marriage to a Cypriot citizen—on the 31st May, 1968, and that, therefore, she should leave Cyprus within seven days, otherwise steps will be taken to expel her from Cyprus.

The Applicant was born in Greece and in 1967 she came to Cyprus as a Greek citizen. She married a Cypriot citizen,

Ch. Georghiou, of Limassol on the 11th March, 1967, at Beirut. The marriage was dissolved on the 31st May, 1968, by the Ecclesiastical Court of Limassol. The Respondent 2 came to know of this dissolution only a few days before he sent the said letter of the 15th July, 1968 (*Exhibit 1, supra*). On the 15th June, 1968, counsel appearing now for the Respondents made a statement (when he was appearing for the same Respondents in recourse No. 141/68, filed by the Applicant in the matter, again, of her residence in Cyprus) that it had been decided to allow the Applicant to stay in Cyprus as a permanent resident without any restrictions; as a result the said recourse 141/68 was withdrawn. As explained today, the said statement of the 15th June, 1968, was made on the assumption that the Applicant's marriage was still subsisting at the time.

The case turns on the point whether or not the Aliens and Immigration Law, Cap. 105, is applicable to the Applicant. Her claim is, in essence, that even if she were an "alien" within the ambit of the Law, she is, in any case, entitled to permanent residence in Cyprus either by virtue of the permit referred to in the statement made by counsel for the Respondents on the 15th June, 1968 (*supra*), or by virtue of the provisions of Article 2.7(a) of the constitution.

Paragraphs (1) and (7)(a) of Article 2 of the Constitution read as follows:

"1. The Greek Community comprises all citizens of the Republic who are of Greek origin and whose mother tongue is Greek or who share the Greek cultural traditions or who are members of the Greek - Orthodox Church.

7(a) a married woman shall belong to the Community to which her husband belongs."

On the other hand Articles 13, 14, 32 and 198 of the Constitution provide:

"13. 1. Every person has the right to move freely throughout the territory of the Republic and to reside in any part thereof subject to any restrictions imposed by law and which are necessary only for the purposes of defence or public health or provided as punishment to be passed by a competent court.

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2. Every person has the right to leave permanently or temporarily the territory of the Republic subject to reasonable restrictions imposed by law.

14. No citizen shall be banished or excluded from the Republic under any circumstances.

32. Nothing in this Part contained shall preclude the Republic from regulating by law any matter relating to aliens in accordance with International Law.

198. 1. The following provisions shall have effect until a law of citizenship is made incorporating such provisions –

- (a) any matter relating to citizenship shall be governed by the provisions of Annex D to the Treaty of Establishment;
- (b) any person born in Cyprus, on or after the date of the coming into operation of this Constitution, shall become on the date of his birth a citizen of the Republic if on that date his father has become a citizen of the Republic or would but for his death have become such a citizen under the provisions of Annex D to the Treaty of Establishment.

2. For the purposes of this Article 'Treaty of Establishment' means the Treaty concerning the Establishment of the Republic of Cyprus between the Republic, the Kingdom of Greece, the Republic of Turkey and the United Kingdom of Great Britain and Northern Ireland."

Dismissing the recourse, the Court:–

Held, (1). In my opinion, as the law stands at present, the Applicant has to be regarded as an "alien" within the relevant definition in section 2(1) of Cap. 105 (*supra*), for the following reasons:

- (a) The Applicant, a Greek citizen, married in 1967 a citizen of the Republic of Cyprus on the 11th March 1967; but as at present advised, I cannot find that there is any legislation by virtue of which she may be deemed to have acquired, automatically, as a result of her marriage, the citizenship of her husband, *i.e.* Cyprus citizenship.

(b) Nationality is a matter governed by the laws of a state and marriage is a means of naturalization only when, and as provided for, by national legislation (See Oppenheim on International Law, 8th ed., vol. 1 p. 654). In Cyprus we do not have legislation providing for naturalization, through marriage, of an alien woman married to a Cypriot citizen. (Law No. 43 of 1967 has not yet come into operation).

(c) After her marriage the Applicant ceased, for the time being, to be an "Alien" under Cap. 105 (*supra*) and she became entitled to reside in Cyprus because she qualified by her marriage to be regarded as a "native" of Cyprus within the relevant definition of section 2(1) of Cap. 105.

(d) But after her marriage was dissolved on the 31st May, 1968, she could no longer be regarded as a "native" of Cyprus, and she became, in the circumstances, an "alien", for the purposes of the Aliens and Immigration Law, Cap. 105.

(2) I cannot accept the argument that cap. 105 (*supra*) has ceased to be in force by operation of Article 188.1, of the Constitution as being inconsistent with Articles 32 and 198 of the Constitution (*supra*). I think Cap. 105 has continued in force, by virtue of the provisions of Article 188.1* of the Constitution; and I find nothing therein which is in conflict with either Article 32 or 198; of course Cap. 105 has to be applied modified, as per Article 188.4,** like all other pre-Republic legislation.

Article 188.1 and 4 reads as follows:

- * "1. Subject to the provisions of this Constitution and to the following provisions of this Article, all laws in force on the date of the coming into operation of this Constitution shall, until amended, whether by way of variation, addition or repeal, by any law or communal law, as the case may be, made under this Constitution, continue in force on or after that date, and shall, as from that date be construed and applied with such modification as may be necessary to bring them into conformity with this Constitution.
- ** 4. Any court in the Republic applying the provisions of any such law which continues in force under paragraph 1 of this Article, shall apply it in relation to any such period, with such modification as may be necessary to bring it into accord with the provisions of this Constitution including the Transitional Provisions thereof".

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(3) Once the Respondents few days before the 15th July, 1968, came to know of the dissolution of the marriage of the Applicant (*supra*) and that, consequently, she had ceased as from that dissolution (on May 31, 1968) being a "native" of Cyprus, in the sense of Cap. 105, I think that they were entitled to revoke their previous decision to treat Applicant as entitled to reside in Cyprus, which decision they have taken circa the 15th June, 1968, on the assumption that the aforesaid marriage was still subsisting at the time; this was, indeed, a typical case where revocation of a previous administrative decision was warranted (see Kyriakopoulos on Greek Administrative Law, 4th ed. Vol. II, p. 410).

(4) It was further argued that, because of her marriage the Applicant became a member of the Greek Community, under Article 2.7 (a) of the Constitution (*supra*) and that, therefore, as such, she is entitled to reside in Cyprus. I take the view that Article 2 deals with the classification into Communities of the citizens of the Republic (*supra*) and when it provides in paragraphs (7)(a) that a married woman shall belong to the Community where her husband belongs, it makes such provision with regard only to married women who are citizens of the Republic; thus, Article 2. 7(a) is not applicable at all to the Applicant.

(5) Nor does Article 13 of the Constitution (*supra*) have any application to this matter. In my view this Article 13 has to be read together with Article 14 which provides that no "citizen" shall be banished or excluded from the Republic (*supra*); this clearly shows that aliens may be excluded from the Republic.

Recourse dismissed.
No order as to costs.

Recourse.

Recourse against the decision of Respondent 2 to the effect that Applicant's stay in Cyprus without a permit is illegal.

Ch. Kyriakides, for the Applicant.

A. Frangos, Senior Counsel of the Republic, for the Respondents.

Cur. adv. vult.

The following Judgment was delivered by:-

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TRIANAFYLLIDES, J.: In this case the Applicant complains against a decision of Respondent 2—who comes under Respondent 1—communicated to her by means of a letter dated the 15th July, 1968 (see *exhibit 1*), to the effect that her stay in Cyprus, without a permit, is illegal, in view of the dissolution of her marriage to a Cypriot citizen—on the 31st May, 1968—and that she should leave Cyprus, otherwise steps will be taken to expel her from Cyprus.

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The Applicant's claim has been, in essence, that even if she were an "alien", in the sense of the Aliens and Immigration Law, Cap. 105, she is, in any case, entitled to permanent residence in Cyprus.

In my opinion, as the law stands at present, in Cyprus, the Applicant has to be regarded as an "alien", in the sense of the relevant definition in section 2(1) of Cap. 105, for the following reasons:-

It is admitted, and not in dispute, that she was born in Greece; and that in 1967, she came to Cyprus as a Greek citizen. She married a Cypriot citizen, Christos Georghiou, of Limassol, on the 11th March, 1967, at Beirut; but, as at present advised, I cannot find that there is any legislation by virtue of which she may be deemed to have acquired, automatically, as a result of her marriage, the citizenship of her husband, *i.e.* Cyprus citizenship.

Nationality is a matter governed by a State's laws and marriage is a means of naturalization only when, and as provided for, by national legislation (see in this respect Oppenheim on International Law, 8th ed., vol. I, p. 654).

In Cyprus we do not have legislation providing yet for naturalization, through marriage, of an alien married to a Cypriot citizen. A relevant enactment which could bring this about is The Citizenship of the Republic Law, 1967 (Law 43/67), which has not yet come into effect.

After her marriage the Applicant ceased, for the time being, to be an "alien" under Cap. 105, and she became entitled to reside in Cyprus, inasmuch as she qualified to be regarded as a "native" of Cyprus, in the sense of the relevant definition in section 2(1) of Cap. 105.

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But after her marriage was dissolved, on the 31st May, 1968, she could no longer be regarded as a "native" of Cyprus, and she has to be regarded, in the circumstances, as an "alien", for the purposes of Cap. 105.

It has been submitted by learned counsel for the Applicant—who has done very diligently his duty in a very difficult, for the Applicant, case—that Cap. 105 has ceased to be in force as being inconsistent with Articles 32, 188 and 198 of the Constitution, when they are taken together.

I cannot accept this argument: I think Cap. 105 has continued in force, by virtue of the provisions of Article 188.1, and I find nothing therein which is in conflict with Articles 32 or 198; of course, it has to be applied modified, as per Article 188.4, like all other pre-Republic legislation.

I pass on, next, to deal with the Applicant's alleged entitlement to permanent residence in Cyprus:

It has been argued by counsel for the Applicant that, in effect, there is a decision in force of Respondents granting to the Applicant permanent residence and that such decision is, in the circumstances, irrevocable. This argument has been based on a statement made, on the 15th June, 1968, by counsel appearing to-day for the Respondents, when he was appearing for the same Respondents in recourse 141/68, which was filed by the Applicant in the matter, again, of her residence; it was then stated (see *exhibit* 2) that it had been decided to allow the Applicant to stay in Cyprus as a permanent resident without any restrictions; and as a result recourse 141/68 was withdrawn.

As counsel for Respondents has explained, he made the statement in question, on the 15th June, 1968, on the assumption that the marriage of the Applicant was still subsisting at the time.

I am quite satisfied from the documentary and oral evidence before me, which I do accept, that on the 15th June, 1968, the Respondents, and their counsel, were not aware of the fact of the dissolution of the marriage of the Applicant, and that they came to know of this a few days before the letter of the 15th July, 1968 (*exhibit* 1) was written.

Once the Respondents came to know of the dissolution of the marriage of the Applicant, and that, consequently, she had ceased being a "native" of Cyprus, in the sense of Cap. 105, I think that they were, indeed, fully entitled to revoke their previous decision to treat the Applicant as entitled to reside in Cyprus; this was a typical case where revocation of a previous administrative decision was warranted (see Kyriakopoulos on Greek Administrative Law, 4th ed., Vol. II, p. 410).

Counsel for the Applicant has submitted, next, that by virtue of her marriage and for purposes of private international law the Applicant should be regarded as domiciled in Cyprus, even after her divorce. But, be that as it may, I do not think that this can affect either the question of nationality, or the question of her being an "alien", for the purposes of Cap. 105, and, therefore, not entitled to reside in Cyprus without the permission of the authorities of the Republic.

Another argument advanced by counsel for the Applicant has been that she became, because of her marriage, a member of the Greek Community, under Article 2.7 (a) of the Constitution and that, therefore, as such, she is entitled to reside in Cyprus. I take the view that Article 2 deals with the classification into Communities of the citizens of the Republic and when it provides, in paragraph 7 (a), that a married woman shall belong to the Community to which her husband belongs, it makes such provision with regard only to married women who are citizens of the Republic; thus, Article 2. 7(a) is not applicable at all to the Applicant.

Lastly, in support of Applicant's claim for a right of residence, her counsel has referred the Court to Article 13 of the Constitution. But, in my view, this Article has to be read together with Article 14 of the Constitution.

Article 13 of the Constitution provides about the freedom of movement in the Republic of "every person" and about the right of "every person" to leave the Republic. On the other hand, Article 14 provides that no "citizen" shall be banished or excluded from the Republic; this clearly shows that aliens may be excluded from the Republic.

For all the foregoing reasons, I find that this Court cannot annul the sub-judice decision. The recourse is, therefore, dismissed.

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Of course, the Applicant is still free to apply, as an alien, for an appropriate residence permit, and it is up to the authorities concerned to deal with such an application in the proper manner.

Regarding costs, I have decided not to make any order as to costs; this is a matter in which the Applicant was properly entitled to put her grievance before the Court for adjudication.

Application dismissed.
No order as to costs.