

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SOTERIOS GOULELIS,

*Applicant;*

*and*

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SOTERIOS  
GOULELIS  
v.  
REPUBLIC  
(MINISTER OF  
INTERIOR  
AND ANOTHER)

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF INTERIOR;
2. THE MIGRATION OFFICER,

*Respondent.*

(Case No. 403/69).

*Alien—Refusal to grant a further employment permit—Reasonably and lawfully open to the Respondents—In view of the material on record and, also, in view of the wide discretionary powers granted under the relevant legislation and the principles governing the exercise of the Court's jurisdiction on a recourse under Article 146 of the Constitution—The Aliens and Immigration Law, Cap. 105 and Aliens and Immigration Regulations, 1953 (see Volume II of the 1953 ed. of the Subsidiary Legislation).*

*Alien—Refusal to allow Applicant to stay in Cyprus as a temporary non-working resident until July 1970 i.e. until the schooling of his children is completed for the school-year 1969/1970—Decision reached without paying due regard to all essential factors of the matter, as well as under the influence of wrong considerations—Contrary to the presumption of innocence safeguarded under Article 12.4 of the Constitution, the fact of a pending criminal case against Applicant was taken into account—Further, no weight was given to, or reasons stated for disregarding, the family situation of the Applicant concerning the schooling of his two minor children—Nor the possession by Applicant of sufficient financial means to sustain him for the aforesaid further limited period (viz. until July 1970), appears to have been gone into.*

*Administrative acts or decisions—Discretionary powers—Defective exercise of—Decision reached without paying due regard to all*

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*essential factors of the matter—As well as under the influence of wrong considerations—Decision annulled.*

*Presumption of innocence—Article 12.4 of the constitution—See supra.*

*Constitutional Law—Presumption of innocence—Safeguarded under Article 12.4 of the Constitution—See supra.*

In this case the Applicant, who is an alien, complains, in essence, against two things: Firstly, against a refusal to grant him an employment permit enabling him to be employed in Cyprus, as a specialist technician, after December 31, 1969, and, secondly, against a refusal to allow him to reside in Cyprus, after such date, without being employed, at any rate until July 1970—as requested by him in his letter of December 1, 1969—by which time his two minor children would have completed their studies for the school-year 1969/70.

Dismissing the recourse as to the first part, but granting it as to the second part and annulling accordingly the *sub judice* decision, the Court:—

*Held, I. As to the refusal to grant him an employment permit (supra):*

(1) From all the material before the Court, and bearing in mind the wide discretionary powers granted to the Respondents under the relevant legislation (*supra*) I find that it was reasonably and lawfully open to them to refuse a further employment permit to the Applicant. Especially as his employment in Cyprus had become, due to his own behaviour to a certain extent, a matter of dispute and controversy between competing employers, past and prospective, and it led even to litigation in Court between him and one of his employers.

(2) It follows that in so far as this recourse concerns the aforesaid refusal of a further employment permit after December 31, 1969, is hereby dismissed.

*Held, II. As to the refusal to allow the Applicant to stay in Cyprus as temporary non-working resident until July 1970:*

(1) Regarding this second refusal, I have reached the conclusion that the *sub judice* decision was reached by the Respondent without paying due regard to all essential factors of the matter and under the influence of wrong considerations.

It is therefore, hereby declared to be *null and void* and of no effect whatsoever.

(2) Firstly, it was not at all permissible to take into account, as a factor against the Applicant, the pending criminal case against him; doing so was contrary to the presumption of innocence, safeguarded under Article 12.4 of the Constitution; and, eventually, the Applicant was acquitted.

(3) Secondly, no weight appears to have been given to, or any reasons are stated for disregarding, the family situation of the Applicant, in relation to the schooling of his children; no doubt considerable hardship would have been caused if his children had to leave Cyprus in the middle of the school-year. What seems to have been practically the sole reason taken into account was the fact that the Minister of Labour had refused to renew the Applicant's employment permit. But this factor obviously does not dispose of the matter. Another factor which does not appear to have been duly, or at all, gone into is the possession of sufficient financial means to sustain himself during such further period (*supra*) either by special permit or as a non-working visitor.

(4) (a) The matter ought to have been decided upon by the Respondents on the basis of the totality of the relevant considerations. This was not done.

It follows that the recourse partly succeeds i.e. in so far as the decision to refuse a temporary residence permit to the Applicant is concerned.

(b) The outcome of these proceedings does in no way determine, by itself, that the Applicant should be allowed to stay until the end of the current school-year or until any other date. It is up to the Respondents to re-examine the matter afresh in its proper context.

*Recourse succeeds in part as aforesaid. No order as to costs.*

#### **Recourse.**

Recourse against the refusal of the Respondents to grant Applicant an employment permit in Cyprus after the 31st December 1969 and against the refusal to allow him to reside in Cyprus after such date without being employed.

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*L. Papaphilippou*, for the Applicant. .

*K. Talarides*, Senior Counsel of the Republic, for the Respondents.

*Cur. adv. vult.*

The following judgment was delivered by:

TRIANTAFYLIDIS, J.: In this case the Applicant, who is an alien, complains, in essence, against two things: Firstly, a refusal to grant him an employment permit enabling him to be employed, in Cyprus, as a specialist technician, after the 31st December, 1969, and, secondly, against a refusal to allow him to reside in Cyprus, after such date, without being employed.

These two decisions were communicated to him by a letter dated the 13th December, 1969 (*exhibit 1*).

At the time of the filing of this recourse, on the 23rd December, 1969, the last employment permit, which had been granted to the Applicant (who started being employed here in relation to the making of bus-bodies in 1967) had expired on the 6th December, 1969, and his temporary residence permit, as a visitor, was due to expire on the 31st December, 1969, (see documents numbered, in red, 67 and 71, in the relevant official file, *exhibit 7*).

From all the material before the Court (see, particularly, *exhibits 4, 5, 6, 7, 8, 10, 11, 12, 13, 14 and 15* and the oral evidence adduced by both sides) to which I need not refer in detail in this judgment, and bearing in mind the wide discretionary powers granted to the Respondents under the relevant legislation (see mainly the Aliens and Immigration Law, Cap. 105, and the Aliens and Immigration Regulations, in vol. II of the 1953 ed. of the Subsidiary Legislation) as well as the principles governing the exercise of the jurisdiction under Article 146 of the Constitution, I find that it was reasonably and lawfully open to the Respondents to refuse a further employment permit to the Applicant. Especially, as his employment in Cyprus had become, due to his own behaviour to a certain extent, a matter of dispute and controversy between competing employers, past and prospective, and it led even to litigation in Court between him and one of his employers.

In so far, therefore, as this recourse concerns the refusal to grant to the Applicant a further employment permit, after December, 1969, I am of the opinion that it should be, and it is hereby, dismissed.

Regarding, however, the refusal to allow the Applicant, who has settled here with his family, to stay in Cyprus, as a temporary non-working resident, after the 31st December, 1969, and until, at any rate, July, 1970—as requested by him in his letter of the 1st December, 1969, (see “red” 70 in *exhibit 7*)—by which time his two minor children would complete their studies for the school-year 1969/1970, I have reached the conclusion that the *sub-judice* decision was reached by the Respondents without paying due regard to all essential factors of the matter and under the influence of wrong considerations. It is, therefore, hereby declared to be *null* and *void* and of no effect whatsoever.

No less high a functionary than the Director-General of the Ministry of Interior made a note, on the said letter of the Applicant—on the 2nd December, 1969—that his request seemed to be “very reasonable” and asked to be informed, by the Migration Officer, whether there existed any serious reasons for which the Applicant had to be sent out of Cyprus.

The Assistant Migration Officer replied on the 5th December, 1969 (by minute 29 in *exhibit 7*) stating that there existed serious reasons for which the Applicant had to leave Cyprus and he based this (see, also, his evidence) on the insistence of the Minister of Labour that the Applicant should be expelled from Cyprus, once it had been irrevocably decided not to renew his employment permit (see in this respect “red” 69 in *exhibit 7*); also, the Assistant Migration Officer mentioned in his reply that there was a criminal case pending against the Applicant, in relation to the terms of his employment permit.

Eventually, the matter was referred to the Minister of Interior who after discussing it with the Minister of Labour (see “reds” 75 and 76 in *exhibit 7*) decided that the Applicant had to leave Cyprus.

Firstly, it was not at all permissible to take into account, as a factor against the Applicant, the fact of the pending against him criminal case; doing so was contrary to the presumption of innocence, as expressly provided for in Article 12.4 of

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the Constitution; and actually, in the end, the Applicant was acquitted of the charges against him (see the record, *exhibit 3*).

Secondly, no weight appears to have been given to, or any reasons are stated for disregarding, the family situation of the Applicant, in relation to the schooling of his children; no doubt there would have been entailed considerable hardship if his children had to leave Cyprus in the middle of the school-year. What seems to have been practically the sole decisive reason taken into account was the fact that the Minister of Labour had refused to renew the Applicant's employment permit and, furthermore, he insisted that the Applicant should leave the country. The attitude of the Minister of Labour was, of course, something to be paid due regard to, but the question as to whether or not the Applicant should have been allowed to stay on in Cyprus, as a non-working visitor, or by special permit, for a limited period of time, for personal reasons, had to be decided upon—and this was not done—on the basis of the totality of the relevant considerations, including the aspect of the possession by the Applicant of means to sustain himself during such period; an aspect which does not appear to have been duly gone into.

In the circumstances, as already indicated, this recourse succeeds as against the decision to refuse a temporary residence permit to the Applicant, allowing him to stay until, at any rate, the end of the current school-year 1969/1970.

The outcome of these proceedings does in no way determine, by itself, that the Applicant should be allowed to stay until the end of the current school-year, or until any other date. It is up to the Respondents to re-examine the matter afresh in its proper context.

As to costs, there shall be no order made, as the Applicant has succeeded only regarding part of his recourse.

*Recourse succeeds in part;  
no order as to costs.*