

CASES
DECIDED BY
THE SUPREME COURT OF CYPRUS
ON APPEAL
AND
IN ITS ORIGINAL JURISDICTION

Cyprus Law Reports
Volume 3 (Administrative)

1982 February 11

[MALAΧΤΟΣ, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MARIOS ARISTIDES,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR,

Respondent.

(Case No. 59/82).

5 *Provisional order—Rule 13 of the Supreme Constitutional Court*
Rules, 1962—Principles applicable—Discretion of the Court
—Applicant must show that he is likely to succeed on the merits
and that non-making of the order will cause him irreparable
damage—Flagrant illegality—Militates strongly to the making
of a provisional order even though irreparable damage has not
been proved—Particular caution should be exercised especially
where the granting of the order will virtually dispose of the case
on its merits—Application for provisional order suspending effect
19 *of decision prohibiting applicant's exit from Cyprus—No flagrant*
illegality—And no irreparable damage—Question whether act

*complained of illegal can only be solved after a full hearing—
Application dismissed.*

The applicant, a citizen of the Republic who was married with four minor children but was living apart from his wife, was prohibited from departing from Cyprus by the inclusion of his name in the so-called stop list^a. After challenging the decision prohibiting his exit he filed, also, an application, under rule 13 of the Supreme Constitutional Court Rules, 1962 for a provisional order suspending the effect of the said decision and allowing him to travel freely abroad, pending the final determination of the recourse.

On the application for a provisional order:

Held, that the making of a provisional order involves the exercise of judicial discretion on the basis of the circumstances of the particular case and in the light of the principles which should guide an administrative court when dealing with such an application; that it is clear from those principles that an applicant in order to succeed in an application for a provisional order must show to the court that his application is likely to prevail on the merits and that the non making of the order will cause him irreparable damage; that flagrant illegality of an administrative act militates strongly to the making of a provisional order even though irreparable damage has not been proved; that particular caution must be exercised, especially where the granting of the order will virtually dispose of the case on its merits; that it cannot be said that there exists flagrant illegality of the administrative act complained of, or that the claim of the applicant is so obviously unfounded as to lead the court to the conclusion that it is not proper in any case to grant the provisional order applied for; that the question as to whether the act complained of is illegal or not can only be solved after full hearing of the recourse on its merits and it is possible that the application of the applicant may succeed; that this Court has not been satisfied, from the material before it at this stage of the proceedings, that the non making of the

^a The inclusion in the stop-list was made under section 63(3) of the Children Law, Cap. 352 which is quoted at p. 5 *post*.

order applied for will cause the applicant any irreparable damage; accordingly the application must be dismissed.

Application dismissed.

Cases referred to:

- 5 *Aspri v. Republic*, 4 R.S.C.C. 57;
 Prokopiou and Others v. Republic (1979) 3 C.L.R. 686;
 Sofocleous v. Republic (1981) 3 C.L.R. 360;
 Georghiadou-Dekatri v. Republic (reported in this Part at
 p. 8 post.)

10 **Application for a provisional order.**

Application for a provisional order suspending the effect of the decision of the respondent by virtue of which applicant's exit from Cyprus was prohibited and his name was included in the stop-list pending the final determination of a recourse
 15 against the validity of such decision.

L.N. Clerides with *A. Saveriades*, for the applicant.

A. Vlademirou, for the respondent.

Cur. adv. vult.

20 MALACHTOS J. read the following judgment. On the third day of February, 1982, the applicant filed the present recourse claiming, as stated therein, a declaration of the court that the act and/or decision of the respondent to prohibit his exit from Cyprus by the inclusion of his name in the so called stop-list, be declared null and void and of no legal effect.

25 At the same time he filed an application under rule 13 of the Supreme Constitutional Court Rules, 1962, for a provisional order suspending the effect of the said decision and allowing the applicant to travel freely abroad, pending the final determination of the recourse.

30 The grounds of law on which the recourse is based are the following:

1. The act or decision complained of is contrary to the provisions of Article 13 of the Constitution.
2. The so called stop-list is illegal, and

Editor's note. The recourse was withdrawn on February 24, 1982 following the taking out of applicant's name from the stop-list upon his making satisfactory arrangements under s.63(3) of the Children Law, Cap. 352.

3. Irrespective and without prejudice to the allegations of the applicant under paragraphs 1 and 2 above, the act complained of amounts to abuse of power and/or violation of the Rules of proper administration, taking into account the facts in support of the recourse. 5

The relevant facts as regards the application for the issue of a provisional order, with which we are concerned, are the following:

The applicant is a citizen of the Republic of Cyprus and is married and has four minor children, their ages varying from 5 to 13 years. In 1978 the applicant deserted his wife and ever since resides alone in Limassol. 10

A claim of his wife for the maintenance and support of her and their children was settled by the Welfare Office of Limassol through which the applicant pays regularly the amount of £70.- per month to them. 15

In March, 1981, the respondent on the application of the wife placed the name of the applicant on the stop-list.

In spite of the above prohibition the applicant on several occasions, upon providing the relevant safeguards, was given leave by the respondent to travel abroad. 20

The applicant through his advocate protested to the respondent and as a result his name on 27.11.1981, was taken off the stop-list.

It is the allegation of the applicant, both in the statement of facts in support of the recourse, and in the affidavit in support of the application for the issue of a provisional order, that after his name was removed from the stop-list he decided to start industrial activities in Greece and he established there plant and machinery for manufacturing aluminium products and solar heaters. He has already received orders for making aluminium products and he got down payments. He shipped his private car to Greece and on the 2nd February, 1982, proceeded to Larnaca Airport in order to travel to Athens. There and then he was not allowed by the authorities to do so and he was informed that his name was again included in the stop-list at the end of January, 1982. 25
30
35

Finally, the applicant alleges that he will suffer irreparable damage if the provisional order applied for is not granted.

5 Counsel for applicant in support of his case argued that the inclusion of the name of the applicant in the stop-list is illegal as contravening Article 13.2 of the Constitution which provides that every person has the right to leave permanently or temporarily the territory of the Republic subject to reasonable restrictions imposed by law. He submitted that section 63(3) of the Children Law, Cap. 352, on which counsel for the respondent authority was expected to rely, is unconstitutional. This section reads as follows:

15 “63(3) It shall be the duty of the Director if he is satisfied that a person legally liable for the care and maintenance of any child or children under the age of sixteen years intends to leave Cyprus without taking such child or children with him to object to the Administrative Secretary (now Minister of Interior) against the grant of passport facilities until the person concerned has satisfied the Director that the child or children are not likely before they reach the age of sixteen years to become a charge on public funds or to be exposed to moral danger or neglect by reason of lack of care and maintenance”.

20 Counsel for applicant further argued that from the documentary evidence and other material put before the Court it was made clear that the case of the applicant is likely to prevail on the merits and that he will suffer irreparable damage if the provisional order is not granted.

25 On the other hand, counsel for the respondent submitted that the act of the respondent complained of is not contrary to Article 13.2 of the Constitution as the name of the applicant was placed again on the stop-list on the application of the Chief Welfare Officer on the basis of a social investigation report dated 7th December, 1981 by virtue of the provisions of section 63(3) of Cap. 352. He further submitted that the question of constitutionality of this section cannot be dealt with by the court at this stage of the proceedings. Finally, he submitted that if the order applied for is issued then the recourse will remain without any object since this is the only remedy sought by applicant in his recourse.

The principles on which a provisional order may be issued have been expounded and applied in a series of cases starting from the case of *Aspri v. The Republic*, 4 R.S.C.C. 57 up to the case of *Prokopiou and Others v. The Republic*, (1979) 3 C.L.R. 686 and the recent cases of *Agni Sofocleous v. The Republic* 5 (1981) 3 C.L.R. 360 and *Leda Georghiadou Dekatri v. The Republic* (reported in this Part at p. 8 post) and are the following: The making of a provisional order under rule 13 of the Supreme Constitutional Court Rules 1962 involves the exercise of judicial discretion on the basis of the circumstances 10 of the particular case and in the light of the principles which should guide an administrative court when dealing with such application. It is clear from the said principles that an applicant in order to succeed in an application for a provisional order under rule 13 must show to the court that his application is likely 15 to prevail on the merits and that the non making of the order will cause him irreparable damage. It goes without saying that flagrant illegality of an administrative act militates strongly to the making of a provisional order even though irreparable damage has not been proved. It is, however, well established 20 that particular caution must be exercised, especially where the granting of the order will virtually dispose of the case on its merits.

From the material placed before me in the present application, it can neither be said that there exists flagrant illegality 25 of the administrative act complained of, a factor militating strongly to the making of the order, nor that the claim of the applicant is so obviously unfounded as to lead the court to the conclusion that it is not proper in any case to grant the provisional order applied for. 30

The question as to whether the act complained of is illegal or not can only be solved after full hearing of the recourse on its merits and it is possible that the application of the applicant may succeed.

Coming to the question of irreparable damage, I must say 35 that from the documentary and other evidence adduced, at this stage of the proceedings, I have not been satisfied that the non making of the order applied for will cause the applicant any irreparable damage. But even if I were to hold that the

non making of the provisional order would cause to the applicant irreparable damage, yet, taking into consideration that the intention of the applicant, as it appears from the facts put before me in his application, as well as from the social investigation report, he is to leave permanently the territory of the Republic, I would not have exercised my discretion in his favour since this would amount to granting him the only relief claimed in his recourse.

For the reasons stated above, the application for the issue of a provisional order is hereby dismissed with no order as to costs.

In view of its urgency this recourse is fixed for directions on the 13th February, 1982, at 9.30 a.m.

Application dismissed. No order as to costs.