

1982 December 21

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

RIAD KARRAM,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTRY OF INTERIOR,

2. THE MIGRATION OFFICER,

*Respondents.*

(Case No. 528/82).

5 *Provisional order—Negative administrative decision—Cannot be suspended by means of a provisional order—Alien—Refusal to renew his temporary residence permit and to grant him permission to take up employment in Cyprus with an offshore company—A negative administrative decision which cannot be suspended by means of a provisional order.*

10 The applicant, who was born in Syria was on the 29th July, 1982 granted by the respondents a visitor's permit for temporary residence in the Republic pursuant to the Aliens and Immigration Regulations of 1972. On 25.8.1982 he applied to the respondents for a renewal of his temporary residence permit and for permission to take up employment in Cyprus with an offshore company. The respondents turned down his application and hence this recourse which was accompanied by an application  
15 for a provisional order "prohibiting the Respondents by themselves and/or through police officers or other organs of the Republic of Cyprus from taking any steps to force the applicant to leave the country, until final determination of this recourse or until further order".

20 *On the application for a provisional order:*

*Held*, that it is not possible to suspend by means of a provisional order, under rule 13 of the Supreme Constitutional

Court Rules, a negative administrative decision; that in this case the sub judice decision is a negative administrative decision and as such it cannot be suspended by means of a provisional order; accordingly the application for a provisional order must fail.

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*Application dismissed.*

Cases referred to:

*C T.C. Consultants Ltd. v. Cyprus Tourism Organization* (1976)  
3 C.L.R. 390 at p. 393;

*Aspri v. Republic*, 4 R.S.C.C. 57; 10

*Georgiades (No. 1) v. Republic* (1965) 3 C.L.R. 392;

*Frangos v. Republic* (1982) 3 C.L.R. 53 at pp. 57, 60-61;

*Sophocleous v. Republic* (1971) 3 C.L.R. 345 at p. 353;

*Papadopoulos v. Republic* (1975) 3 C.L.R. 89;

*Yerasimou v. Republic* (1978) 3 C.L.R. 36; 15

*Procopiou and Others v. Republic* (1979) 3 C.L.R. 686;

*Michaelides v. Republic* (1980) 3 C.L.R. 430;

*Prodromou v. Republic* (1981) 3 C.L.R. 38;

*Soteriou v. Republic* (1981) 3 C.L.R. 70;

*Sophocleous v. Republic* (1981) 3 C.L.R. 360; 20

*Artemiou (No. 2) v. Republic* (1966) 3 C.L.R. 562;

*Tyrokou v. Republic* (1976) 3 C.L.R. 403;

*Goulelis v. Republic* (1969) 3 C.L.R. 583 at p. 585;

*Georghiou (No. 1) v. Republic* (1968) 3 C.L.R. 401.

**Application for a provisional order.** 25

Application for a provisional order suspending the effect of the decision of the respondents, whereby applicant was refused a permit to stay and work in Cyprus and was ordered to leave Cyprus, pending the final determination of a recourse against the validity of the said decision. 30

*L. Papaphilippou*, for the applicant.

*N. Charalambous*, Senior Counsel of the Republic, for the respondents.

*Cur. adv. vult.*

**LORIS J.** read the following decision. The applicant in the present recourse, who was born in Syria in 1955, entered Cyprus 35

on the 29th July 1982, furnished with a travel document, (exh. 5 (a-d) purported to have been issued by the Syrian Government, on the face of which (exh. 5(a)) there appears, in French, the heading: "Travel document for Palestinian Refugees".

5 The respondents granted to the applicant a visitor's permit for temporary residence in the Republic pursuant to the Aliens and Immigration Regulations of 1972 issued under the Aliens and Immigration Law, Cap. 105 as amended: the said permit was valid up to 13.9.1982.

10 On 25.8.1982 the applicant forwarded to the respondents two applications: In the first (exh. A) he was seeking renewal of his temporary residence permit and in the other (exh. B) he was asking for permission to take up employment in Cyprus with IMANOR OFFSHORE MANAGEMENT COMPANY LTD.

15 The respondents addressed to the applicant letter dated 17.11.1982 (exh. 2) turning down both his said requests: the said letter of the respondents went further and in paragraph 2 thereof the following were stated: "In view of the above  
20 you are hereby notified under regulation 9(4) of the Aliens and Immigration Regulations of 1972 to make arrangements to leave Cyprus within 14 days from to-day".

On 26th November 1982, counsel for applicant addressed to respondents a letter (exh. 3) asking them to reconsider their  
25 decision in the light of the additional facts submitted therein.

On 1.12.1982 respondents by their letter (exh. 4) addressed to counsel of applicant, denoted again their refusal both to renew the temporary visitor's permit of his client and to grant to him a permit to work.

30 The said letter of the respondents in paragraph 2 thereof states the following:

"In the light of the above, your client, Mr. Karram must leave the Island without any delay otherwise the necessary criminal proceedings will be taken against him".

35 The applicant filed the present recourse on the 3.12.1982 praying for "A Declaration of the Court that the acts or decisions of respondents dated 17.11.1982 and 1.12.1982 whereby the

respondents refused to grant to the applicant permit to stay and work with IMANOR OFFSHORE MANEGEMENT COMPANY LTD., and asked him to leave Cyprus, is null and devoid of any legal result and whatever was omitted should be done".

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Together with his recourse the applicant filed the present application applying for "(a) A provisional order prohibiting the respondents by themselves and/or through police officers or other organs of the Republic of Cyprus from taking any steps to force the applicant to leave the country, until final determination of this recourse or until further order. (b) Short date of hearing.

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Before proceeding to examine the facts relied upon in support of the present application for provisional order I consider it necessary to deal with the legal aspect governing the issue of provisional orders as briefly as possible.

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The making of a provisional order under r. 13 of the Supreme Constitutional Court Rules 1962, which continue in force under s. 17 of the Courts of Justice (Miscellaneous Provisions) Law 1964, Law No. 33/64, 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 application. (*C.T.C. Consultants Ltd. v. The Cyprus Tourism Organisation*, (1976) 3 C.L.R. 390, at page 393).

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Such principles have been expounded and applied as early as 1962 in the case of *Aspri v. The Republic*, 4 R.S.C.C. 57, by the then Supreme Constitutional Court, and after the enactment of Law No. 33/64 by our Supreme Court commencing from the case *Cleanthis Georghiades (No. 1) v. The Republic* (1965) 3 C.L.R. 392, and in a great number of cases thereafter.

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"A provisional order is an extraordinary measure designed to forestall the enforcement of administrative action in the interests of justice and administrative legality..... With the exception of instances of flagrant illegality in the sense above outlined, the likelihood of irreparable damage is a prerequisite to the grant of an interlocutory

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order. Such damage must be specifically and succinctly pleaded in the application..... The merits of the case are not evaluated at this stage except to the extent they undisputably emerge on the face of the proceedings. The  
5 forum for the evaluation of the merits is the trial of the recourse". (*Frangos and others v. The Republic* (1982) 3 C.L.R. 53 at pp. 60-61).

The principle that the flagrant illegality of an administrative act is a ground for granting a provisional order even if no  
10 irreparable damage will be caused, if it is not granted, and even where serious obstacles would be caused to the administration, was enunciated in the case of *Sophocleous v. The Republic*, (1971) 3 C.L.R. 345. This principle is to be found also in the cases of *Papadopoulos v. The Republic*, (1975) 3 C.L.R. 89;  
15 *Yerassimou v. The Republic* (1978) 3 C.L.R. 36; *Prokopiou & Others v. The Republic* (1979) 3 C.L.R. 686; *Michaelides v. The Republic*, (1980) 3 C.L.R. 430 and recently in the cases of *Prodromou v. The Republic* (1981) 3 C.L.R. 38, *Soteriou v. The Republic*, (1981) 3 C.L.R. 70, and *Sofocleous v. The*  
20 *Republic*, (1981) 3 C.L.R. 360.

It was stressed though on several occasions that flagrant illegality is a ground to be approached with the utmost caution, as it may tantamount to disposing of the case on its merits, something discouraged by rule 13 of the Supreme Constitutional  
25 Court Rules, though this rule cannot be held as divesting this Court from being the watch-dog of legality. (Vide *Sophocleous v. The Republic*, (1971) 3 C.L.R. 345, at p. 353).

Of course before proceeding to examine whether essential  
30 requisites for the granting of a provisional order exist, it must always be borne in mind (a) that every applicant for a provisional order must have exercised a parallel application for annulment (vide *Provisional Protection in Revisional Litigation* by Skouris 1979 ed. p. 28).

(b) No application for a provisional order can be entertained  
35 for negative administrative acts or decisions. (Vide *Skouris* (supra) at p. 31-33).

This latter principle was followed in a number of cases amongst which I shall confine myself in referring to *Artemiou*

(No. 2) v. *The Republic* (1966) 3 C.L.R. 562 and the case of *Tyrokoumou v. The Republic* (1976) 3 C.L.R. 403.

In the latter case which is almost identical with the case in hand the President of this Court in delivering his decision stated, inter alia, the following at p. 405.

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“I have reached the conclusion, in relation to the present application for a provisional order, that it is not possible, at all, for me to make it, because of the fact that what is sought thereby is the suspension of the effect of a decision of respondent 2 which is, in essence, a negative decision of the Administration; and as has been held in, inter alia, *Artemiou (No. 2) v. The Republic* (supra) it is not possible to suspend by means of a provisional order, under rule 13 of the Supreme Constitutional Court Rules, a negative administrative decision”.

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With the above principles of the law in mind I shall now proceed to examine the present application for provisional order.

Relying mainly on the affidavit sworn by the applicant, for the purposes of the application for provisional order, and his travel document (exh. 5 (a-d) ), learned counsel for applicant argued that his client is a Palestinian refugee who although born and residing in Syria he is in substance a homeless person who comes within the definition of “refugee” as envisaged by the Convention relating to the Status of Refugees signed at Geneva on 28.7.1951 (which was extended by a protocol deposited at the United Nations General Assembly at its 1495th plenary to cover persons who became refugees after the 1.1.1951). The said protocol to which Cyprus is a signatory having been confirmed by law 73/68 acquired superior force to any municipal law pursuant to the provisions of Article 169.3 of our Constitution, counsel argued, and thus the decisions of the respondents being in direct conflict to Articles 16, 17, 28, 31 and 32 of Convention, are being tainted with flagrant illegality which calls for the immediate intervention of the Court by means of a provisional order.

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Counsel submitted further that applicant will suffer irreparable damage if the provisional order is not made; on this topic he referred the Court to the affidavit sworn by the applicant

in support of his present application, and in particular to paragraph 18 thereof which reads as follows:

5           “18. As a Palestinian refugee I have no place to go and in case I am forced to leave the country I will suffer really irreparable loss and damage”.

Learned counsel appearing for the respondents relying mainly on *Oppenheim's International Law* (ed. Lauterpacht) 8th ed. Vol. I para. 314 pp. 675 and 676 and *Schwarzeberger on International Law* 3rd ed. Vol. I p. 360, submitted that every State  
10 has absolute discretion to refuse the admission of foreigners and is by reason of its territorial supremacy competent to exclude aliens from its territory. Counsel conceded though, that the above principles may be read subject to obligations arising from International Treaties to which a State is a signa-  
15 tory, but maintained that in this particular case the applicant is not covered by the definition of “refugee” set out in the Geneva Convention as he is residing in Syria where he was born and educated and where he can return at any time in order to reside and work; counsel referred the Court to a “Handbook on proce-  
20 dures and criteria for determining Refugee Status” under the 1951 Convention and the 1967 Protocol issued by the Office of the United Nations High Commissioner for Refugees in September 1979 where at pages 23 and 24 the phrase “or who not having a nationality and being outside the Country of his  
25 former habitual residence as a result of such events is unable or, owing to such fear is unwilling to return to it” occurring in part A(2) of Article 1 of the Geneva Convention is being commented upon. Thus in the “Handbook” in para. 102 at p. 24 the following are stated.

30           “102. It will be noted that not all stateless persons are refugees. They must be outside the country of their former habitual residence for the reasons indicated in the definition. Where these reasons do not exist, the stateless person is not a refugee”.

35           Counsel for respondents went on to submit that the decision of the respondents is not in any way illegal nor will it cause any damage whatsoever to the applicant.

Pausing here for a moment I shall now revert to the sub judge

decisions set out in exh. 2 and 4 in order to examine them for the purposes of the present application.

Although it is apparent that the decision contained in the letter of respondents dated 17.11.1982 (exh. 2) has merged into the decision of 1.12.1982 (exh. 4) as the latter was taken by the administration after a new enquiry which took place following the submission of exh. 3 by counsel for applicant, yet for the purposes of the present application I am going to treat them as if they were two distinct decisions. The substance of both is the decision of the respondents to refuse (a) to renew the temporary residence permit of the applicant, (b) to grant a working permit to the applicant for employment in Cyprus.

I hold the view, and it was so conceded by counsel for respondents during the hearing of the present application, that the second paragraph in both letters (exh. 2 and exh. 4) does not contain a decision of the administration of executory character; both such paragraphs are merely informative ones; they express the views of the administration in the matter and inform the applicant accordingly. (Vide *Kyriacopoulos on Greek Administrative Law* 4th ed. Vol. III p. 95). In short the decision of the respondents contained in both exhibits is a negative administrative decision; and as such cannot be suspended by means of a provisional order. (Vide *Skouris* (supra) at p. 31-33, *Tsatsos—Application for Annulment* 3rd ed. p. 424, *Tyrokomou v. The Republic* (supra) ).

It is significant to note that the respondents nowhere in their said decisions mention expulsion of the applicant from Cyprus and as stated in *Tyrokomou v. The Republic* (supra) “expulsion is not, inevitably, the only course open to the Administration when an alien overstays his residence permit, because, for example, the Administration may decide not to do more, at first, than to prosecute such alien for staying here without a permit”. And in the present case, if we revert to the second paragraph of exh. 4, we shall see that counsel for applicant is being informed that “criminal proceedings will be taken against his client”.

Perhaps after the institution of criminal proceedings, further steps will be taken for the deportation of the applicant; if deportation measures are taken the applicant of course is



at liberty to seek a provisional order then, in a new recourse, attacking the validity of such deportation. This is a completely different matter which has nothing to do with the present proceedings; what I have to examine for the purposes of the present application for a provisional order is the actual situation at present as well as all the relevant principles governing an application of this nature. (Vide *Coulelis v. The Republic* (1969) 3 C.L.R. 583 at p. 585).

Counsel for applicant has invited the Court to follow the case of *Georghiou (No. 1) v. The Republic* (1968) 3 C.L.R. 401 and grant the provisional order applied for. I wish to emphasize that the facts of the present case are completely different from the case of *Georghiou (No. 1) (supra)* where the danger of imminent expulsion was palpable.

It is clear from the above that the application for a provisional order fails and it is accordingly dismissed. I would like to say few more things in connection with flagrant illegality and irreparable damage.

The alleged illegality in the present case does not appear on the face of the decisions in question, it is not palpably identifiable. (*Frangos and others v. The Republic* (1982) 3 C.L.R. 53 at p. 57). The subtle legal argument by counsel set out above indicates that a Court has to go deep into the merits of the recourse in order to decide whether there is illegality or not; in effect this may lead to disposing of the main recourse on its merits, something discouraged by rule 13 of the Supreme Constitutional Court Rules.

As regards irreparable damage I shall confine myself in saying that definitely in the present application, same was not "specifically and succinctly pleaded" (*Frangos and Others v. The Republic* (supra)).

Concluding I repeat that I did not go into the merits of the recourse; but I understand that there are quite substantial issues to be tried in particular if the applicant is a "refugee" within the meaning envisaged by Article 1 of the *Geneva Convention* (supra) a matter which I leave entirely open. If such is the case I would like to draw the attention of the responsible

authorities to the provisions of Article 32 of the Geneva Convention referred to above in connection with "expulsion" from the Republic. I want to make it clear that I am not pronouncing on this matter at all; I leave the matter entirely in the hands of the responsible authorities trusting that they will weigh the situation according to the principles of sound administration. 5

The main recourse is hereby fixed for directions on the 7th January, 1983 at 9.00 a.m.; if the applicant is here on that date and depending on how much longer he will be permitted to stay in Cyprus, I shall be able to decide whether to grant an early date of trial. 10

*Application for provisional order dismissed.*