

1985 July 27

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

GEORGHIOS AVGOLOUPI,

*Applicant,*

v.

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

*Respondents.*

(Case No. 366/83).

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*Administrative Law—Object of trial before an administrative Court—Legitimate interest, Art. 146.2 of the Constitution—Meaning of “existing”—Legitimate interest should exist both at the time of the filing of the recourse and at the time of the hearing of the recourse.*

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On 23.5.1985 the applicant, a citizen of Australia, whose name had been earlier placed on the stop list, submitted through his counsel an application to enter the Republic for the purpose of “settling” an application filed earlier by his wife before the District Court of Nicosia for the guardianship and custody of the three infant children of the marriage.

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The above application was rejected. As a result applicant filed the present recourse. Both in the recourse and the written address on behalf of the applicant it is stated that the applicant applied for the permit to enter Cyprus for the purpose of defending his wife’s application in the District Court.

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In the course of the hearing of the present recourse the said application before the District Court of Nicosia was withdrawn and dismissed. Thereupon the Court invited counsel to argue the legal effect of the withdrawal and dismissal of the said application.

*Held* (1) The competence of this Court as an admini-

strative Court is to make inquiry and to determine the validity of the sub judice decision; the interest or right of a person is not the cause of the trial; the cause of trial before the administrative Court is the violation of the Law by the administrative organ and the object is the restoration of legality by the extinguishment of the administrative act. 5

(2) In accordance with Article 146.2 of the Constitution the basic condition precedent of the annulment jurisdiction of the Court is the presence of a legitimate interest of an applicant. The word "existing" in Art. 146.2 of the Constitution denotes that such interest must exist at the time that the recourse is filed and at the hearing. It need not exist at the time the administrative act is taken. 10

(3) In the present case as by the sub judice decision the applicant was refused entry permit to Cyprus for the purpose of enabling him to defend District Court application 23/83 and as those proceedings came to an end by withdrawal and dismissal, there can be no doubt that the subject-matter of this recourse ceased to exist. The applicant suffered neither moral nor material injury. Any legitimate interest that he may have had does not continue to exist. 15 20

*Recourse dismissed.*

*No order as to costs.*

Cases referred to:

*Christofides v. CY.T.A.* (1979) 3 C.L.R. 99; 25

*Maliotis and Others v. Municipality of Nicosia* (1965) 3 C.L.R. 75;

*Decisions of the Greek Council of State Nos: 407/56, 521/55, 1743/57, 2424/64 and 260/65.*

**Recourse.** 30

Recourse against the decision of the respondents whereby applicant was refused permit to enter the Republic.

*C. Pamballi* for the applicant.

*A. Vladimirou*, for the respondents.

*Cur. adv. vult.* 35

STYLIANIDES J. read the following judgment. The applicant by this recourse seeks the annulment of the decision of the Immigration Officer, respondent No. 2, commun-

icated to him by letter dated 28.6.83 whereby he was refused permit to enter the Republic.

The applicant was born in Greece in 1946. He emigrated to Australia and acquired Australian nationality. There he met a Cypriot girl whom he married in 1970. Out of this marriage he acquired three children. On 20.2.80 the family came to Cyprus, the Authorities having granted to the applicant a temporary residence permit to work as a moulder with XEKTE. He left the country on 2.5.81, leaving his wife and children in Cyprus. The wife in the meantime in statements to the Police and to the Welfare Officer made serious accusations against him. The Authorities, after investigation, placed the name of the applicant on the stoplist of prohibited immigrants.

By applications dated 16.6.81 and 6.7.81 the applicant applied for permit to enter the country. After investigation, those applications were rejected and he was notified of such decision by letter dated 26.9.81.

On 17.3.83 the wife took out a summons in Application No. 23/83 of the District Court of Nicosia whereby she prayed for the guardianship and custody of the three infant children. When the summons was duly served on the applicant, his counsel on 23.5.83 addressed exhibit No. 2 to the Immigration Officer whereby in substance and effect he applied for permit to enter Cyprus for "settlement" of the said Court application. This application was rejected and respondent No. 2 communicated the sub judice decision to the applicant by letter dated 28.6.83 that runs as follows:-

«Κύριε,

Επιθυμώ να αναφερθώ στην επιστολή σας ημερομηνίας 23ης Μαΐου, 1983, που αποτεινέσθε εκ μέρους του πελάτη σας, Γεωργίου Αυγολούπη, από την Αυστραλία για να επιτραπεί η είσοδος του στην Κύπρο και να σας πληροφορήσω ότι η αίτηση σας εξετάσθηκε πολύ προσεκτικά αλλά δεν εγκρίθηκε.

2. Όσον αφορά την αίτηση για κηδεμονία, αριθμός

Υποθέσεως 23/83, ο πελάτης σας μπορεί να αναθέσει σε σας να χειρισθείτε την υπόθεση».

(“Sir,

I would like to refer to your letter dated 23.5.1983, whereby on behalf of your client, Georghios Avgoloupi, of Australia you applied for an entry permit to Cyprus, and to inform you that your application has been very carefully examined, but it was not accepted.

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2. As regards the application for guardianship Number 23/83 your client may retain you to handle the case”).

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Both in the recourse and in the written address it is stated that the applicant applied for permit to enter Cyprus to defend the District Court application. In his written address it was contended that Article 30.1 of the Constitution was violated as he was prevented from exercising his right of access to the Court.

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Counsel for the respondents submitted that the sub judice decision was confirmatory and not executory and, therefore, not amenable to the jurisdiction of this Court, and further that the applicant had no legitimate interest.

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In the course of the hearing of this recourse the District Court application for guardianship and custody of the children (No. 23/83) was withdrawn and dismissed. Thereupon the Court invited counsel to argue on the legal effect of the withdrawal and dismissal of the said application.

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Counsel for the respondents submitted that thereby the factual substratum of the ground on which the applicant purported to base his case has ceased to exist. The recourse is left with no object.

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Mr. Pamballis for the applicant contended that though the pendency of the District Court Application No. 23/83 was the ground for the application for a permit for his client to enter Cyprus and though it is true and correct that this fact no more exists, the decision not to permit the applicant to enter the country is still operative and the act challenged is still in existence. Furthermore in April,

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1984, Application No. 1/84 was filed with the See of Paphos for an ecclesiastical adoption of one of the children and, therefore, the applicant has an interest to enter the country due to this adoption application.

- 5 The competence of this Court as an administrative Court is to make inquiry and to determine the validity of the sub judice decision. The interest or right of a person is not the cause of the trial before the administrative Court. The cause of the trial is the violation of the Law by the  
10 administrative organ and the object is the restoration of legality by the extinguishment, i.e. the annulment, of the administrative act.

This jurisdiction is exercised under Article 146 of the Constitution. Paragraph 2 thereof reads as follows:-

- 15 “Such a recourse may be made by a person whose any existing legitimate interest, which he has either as a person or by virtue of being a member of a Community, is adversely and directly affected by such decision or act or omission”.

- 20 The basic condition precedent of the annulment jurisdiction of an administrative Court, is the existence of an interest of an applicant. A recourse for annulment is not an actio popularis; it requires in respect of the applicant a legitimatio ad causum—(*Fleiner on Administrative Law*,  
25 8th Edition, translated by Stymphaliades, p. 243).

- The provision of Article 146.2 is analogous to the corresponding provision in Greece, which is s. 48 of Law 3713/28. The presence of the legitimate interest is essential for the jurisdiction of the Court. The word “existing”  
30 denotes, according to the Case-Law, that it must exist -

- (a) at the time that the recourse is filed, and,
- (b) at the hearing.

- It need not exist at the time the administrative act is taken. (*Application of Annulment* by T. Tsatsos, 3rd Edition, pp. 34, 48, 49 and 51; *Conclusions from the Case-Law of the Greek Council of State, 1929-1959*, p. 260; *Christofides v. CY.T.A.* (1979) 3 C.L.R. 99; *Decisions of*  
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*the Greek Council of State* 407/1956, 521/55, 1743/55, 2424/64, 260/65).

In the present case by the sub judice decision the applicant was refused entry permit to Cyprus for the purpose of enabling him to defend District Court Application No. 23/83. The application for entry and the sub judice decision refer to the pendency of District Court Application No. 23/83. Those proceedings came to an end by withdrawal and dismissal. As a result of the event that took place during the hearing of this case, there can be no doubt that this recourse cannot continue as its subject-matter has ceased to exist—(*Christos Maliotis and Others v. Municipality of Nicosia*, (1965) 3 C.L.R. 75). There is no any more legal relationship of the applicant with the challenged act. He suffered neither moral nor material injury; any legitimate interest that he may have had does not continue to exist.

For these reasons this recourse cannot proceed as it has been abated due to an event that occurred after its filing and in the course of the hearing.

Application dismissed. Let there be no order as to costs.

*Recourse dismissed.  
No order as to costs.*