

1985 May 18

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

YIANNIS KARALIOTA,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTRY OF INTERIOR,
2. THE MIGRATION OFFICER,
3. THE COMMANDER OF POLICE,

Respondents.

(Case No. 188/85).

5 *Provisional Order—Recourse against refusal to allow applicant to enter the Republic and against decision to treat him as prohibited immigrant—Application for provisional order allowing applicant to come to Cyprus for the purpose of enabling applicant to instruct his advocate and give evidence in support of his recourse—Unless the interests of Justice permit no other course, the Court should not grant by way of interlocutory order what the applicant has been refused by the administration—On the facts of this case*
10 *the application is not justified.*

Constitutional Law—Constitution—Articles 28 and 30.2—The European Convention on Human Rights Article 6 (2)—“Equality of arms”.

The European Convention on Human Rights—Article 6 (2).

15 The applicant complains against the refusal of the respondents to allow him to enter Cyprus on the 21.12.1984 and their decision to treat him thereafter as prohibited immigrant.

On the 13.2.1985 applicant filed this recourse and on

the 5.4.1985 he applied for an order allowing him to come to Cyprus and stay here for as long as the Court would deem fit for the purpose of enabling him to give instructions to his advocate and to testify in support of his recourse. In his address to the Court counsel for the applicant referred to Article 30 of the Constitution and argued that, if the application is not granted, there will not be "equality of arms" between the parties to the present proceedings.

5

Held, dismissing the application (1) The principle of "equality of arms" is a vital element of the notion of fair trial in the sense of Article 30.2 of the Constitution and of Article 6 (1) of the European Convention on Human Rights. It is, moreover, safeguarded by Article 28 of the Constitution.

10

15

(2) As the material on the basis of which this Court will decide the outcome of the recourse consists of documents in the possession of the parties, as any testimony by the applicant, if necessary, can be given in Greece, where he is at present and as in view of the adequate communications between Cyprus and Greece there is no real difficulty in the communication between the applicant and his counsel, the application would be dismissed. It must be borne in mind that the Court, should not, unless the interests of Justice permit no other course, grant to the applicant by way of interlocutory order what he has been refused by the administration.

20

25

Application dismissed.

Cases referred to:

Kouppis v. The Republic (1977) 3 C.L.R. 361;

30

Tyrokomou v. The Republic (1976) 3 C.L.R. 403;

Karram v. The Republic (1983) 3 C.L.R. 199.

Recourse.

Application for an Intelocutory Order allowing the applicant who filed the above recourse against the refusal of the respondents to allow applicant to enter Cyprus on the

35

21st December, 1984 and against respondent's decision to treat applicant thereafter as a prohibited immigrant, to come and stay in Cyprus in order to enable him to give instructions to his advocate.

5 L. *Papaphilippou* with *Ph. Valiantis*, for the applicant.

 D. *Papadopoullou (Mrs.)*, for the respondents.

Cur. adv. vult.

 TRIANTAFYLIDIS P. read the following decision. The applicant in this recourse complains, primarily, against the
10 refusal of the respondents to allow him to enter Cyprus on the 21st December 1984 and against their decision to treat him thereafter as a prohibited immigrant.

 He filed this recourse on the 13th February 1985 and on the 5th April 1985 he applied for an order of this Court
15 allowing him to come to Cyprus and stay here for as long as the Court would deem fit for the purpose of enabling him to give instructions to his counsel and to testify in support of his recourse.

 The said application appears to be based on rules 10(2),
20 13(1) and 19 of the Supreme Constitutional Court Rules and on the inherent powers of the Court.

 Also, during its hearing, counsel for the applicant referred to Article 30 of the Constitution and he went on to argue that if the applicant is not allowed to come to
25 Cyprus, as applied for by him, then there will not be "equality of arms" between the applicant and the respondents in the present proceedings.

 The principle of "equality of arms" is a vital element of the notion of fair trial in the sense not only of Article
30 30.2 of our Constitution but, also, of Article 6(1) of the European Convention on Human Rights, which, having been ratified by Cyprus, is applicable in our country. Moreover, the principle of "equality of arms" is safeguarded, too, by Article 28.1 of our Constitution (see, inter alia, in
35 this respect, *Kouppis v. The Republic*, (1977) 3 C.L.R. 361, 381 - 389).

 I have perused the contents of the Application and of

the Opposition in this case and there emerges from them that most of, if not all, the material on the basis of which this Court will decide the outcome of the present recourse consists of documents in the possession of the parties. If in addition to such documents it becomes, eventually, necessary to have before me the testimony of the applicant, such testimony can be given in Greece, where he is at present; and I shall consider what procedural arrangements have to be made, in this connection, if and when the need for such testimony is established to my satisfaction in the course of the exercise of my inquisitorial powers as a Judge of the Supreme Court dealing with the present recourse under Article 146 of the Constitution.

As regards the matter of instructions about this case which may have to be given by the applicant while he is in Greece to his counsel here in Cyprus I am of the opinion that there cannot exist any real difficulty in this respect in view of the adequate communications of all kinds between Cyprus and Greece.

In the light of all the foregoing I see no reason, at present, to make the order applied for by the applicant; and it must, also, be borne in mind that this Court should not, unless the interests of justice permit no other course, grant to the applicant by way of an interlocutory order, such as that applied for by him, what he has been refused by the administration, thus substituting the Court in the place of the administration (see, in this respect, by analogy, *Tyromou v. The Republic*, (1976) 3 C.L.R. 403, and *Karram v. The Republic*, (1983) 3 C.L.R. 199).

In the result, the application of the applicant, dated 5th April, 1985, has to be dismissed but there is nothing to prevent counsel for the applicant from renewing it if in his view new developments warrant such a course.

Application dismissed.