

1985 September 5

[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).

Administrative Act—"Acts of Government"—The modern tendency is to restrict the category of "acts of government"—The refusal to renew the applicant's (an alien Greek citizen) temporary residence permit and the decision to prevent him from entering the Republic on the ground that he is a security risk are not "acts of government," as the international relations between Cyprus and Greece are not involved.

5

10

15

The point in issue at this stage of the proceedings is whether the refusal to renew the temporary residence permit of the applicant, who is an alien (Greek Citizen) married to a Cypriot and the decision to prevent him thereafter from entering Cyprus on the ground that he is a security risk amount to "Acts of Government" which, in the light of the general principles of administrative law cannot be challenged by a recourse under Article 146 of the Constitution.

20

Held, (1) In recent years there is a tendency not to enlarge, but to restrict, the category of "acts of government". On each occasion it is up to the Court to decide whether a particular act is an "act of Government".

(2) Expulsion of an alien is not normally an "act of

Government". As in the present case there are not involved consideration of international relations between Cyprus and Greece, the sub judice decisions are not "acts of Government".

Cases referred to:

Louca v. The President of the Republic (1983) 3 C.L.R. 783;

Stokkos v. The Republic (1983) 3 C.L.R. 1411;

Decisions of the Greek Council of State Nos.: 31/34, 602/36 and 2438/66.

Recourse to be heard on its merits.

Recourse.

Recourse against the refusal of the respondents to allow applicant to enter Cyprus on the 21st December, 1984 and against respondents' decision to treat applicant thereafter as a prohibited immigrant.

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

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

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following decision. At this stage of these proceedings I have to decide whether the complained of administrative action of the respondents, namely their decision to refuse to renew the temporary residence permit of the applicant, which was communicated to him by means of a letter dated 2nd April, 1984, and the decision to prevent him thereafter from entering Cyprus, amounts to an "act of Government" and, therefore, in the light of the relevant general principles of administrative law, such action of the respondents could not be challenged by this recourse under Article 146 of the Constitution.

The applicant who is a alien—a Greek citizen—has been married to a Cypriot. From 1977 until 1984 he had come repeatedly to Cyprus and had remained here for long periods of time, but after he had left for the last time in April 1984 he has been refused entry on the ground that he is a security risk.

I have had the opportunity to deal with the notion of "act of Government" in *Louca v. The President of the Republic*, (1983) 3 C.L.R. 783, and in *Stokkos v. The Repu-*

blic, (1983) 3 C.L.R. 1411, and I need not repeat in this Decision what I have already stated on those two previous occasions.

5 It must be borne in mind that in recent years there is a tendency not to enlarge, but to restrict, the category of "acts of Government"; and, of course, on each occasion it is up to the Court to decide whether a particular act of the administration is an "act of Government".

10 It is to be derived, by way of guidance, from the case-law of the Council of State in Greece that the expulsion of an alien is not treated normally as an "act of Government", even though a relevant statute may have laid down that such expulsion should be so treated (see, in this respect, *inter alia*, the decisions of the said Council in cases
15 602/1936 and 2438/66).

It is correct that in a much earlier decision in case 31/1934 the Greek Council of State had held that the refusal to allow an alien to reside further in Greece was to be treated as an "act of Government", but it is clear from
20 the reasoning of that decision that the ground on which such a course was adopted was that the alien in question was refused residence for the sake of good international relations between Greece and the U.S.A.; and, therefore,
25 as allowing the alien concerned to reside in Greece would have had repercussions on the international relations between Greece and the U.S.A. the refusal to allow such residence was exceptionally treated as an "act of Govern-
ment" (see, also, in this respect, Kyriacopoulos on Greek Administrative Law, 4th ed., vol. C, p. 109, and Conclu-
30 sions from the Case-Law of the Council of State in Greece, 1929 - 1959, p. 231).

As there is nothing before me showing that there are involved, in the present instance, considerations of inter-
national relations between Cyprus and Greece which ne-
35 cessitated the refusal of a temporary residence permit to, and the refusal to permit the entry into Cyprus of, the applicant I have reached the conclusion that this case should not, and cannot, be treated as an instance of an

“act of Government”, but as an occasion on which there was taken administrative action which is subject to judicial control under Article 146 of the Constitution and which, therefore, could be challenged by means of the present recourse.

5

I have, therefore, decided to proceed to hear this recourse on its merits.

Order accordingly.