

1985 November 8

[KOURRIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ABDO KHALIL DAMIAN,

Applicant,

v.

THE REPUBLIC OF CYPRUS. THROUGH

1. THE COUNCIL OF MINISTERS
2. THE MINISTER OF INTERIOR,

Respondents.

(Case No. 576/85).

Administrative Law—Reasoning—Specific reason given in support of sub judice act—In the circumstances the reasoning cannot be supplemented from the material in the file—The Aliens and Immigration Law, Cap. 105 s.14(1)—Deportation order—On the ground that applicant stayed in Cyprus after his permit had expired—Such order cannot be supported on other grounds under s. 6(1)(g), namely material concerning applicant's involvement in trafficking of narcotic drugs. 5

Legitimate interest—Deportation order—As on the day it was issued applicant's stay in Cyprus was lawful, applicant possessed such an interest to file this recourse—Applicant's departure from Cyprus does not deprive him of his legitimate interest because he departed on his own free will and not because he accepted the order. 10 15

The Aliens and Immigration Law, Cap. 105 s. 14(1), 14(5) and 6(1)(g).

The applicant, a Lebanese subject, came to Cyprus in 1980. From 1980 to 1982 he was residing in Cyprus with his family as a visitor. In 1982 the applicant established an off-shore company and obtained a permit to reside and 20

work in Cyprus. The permit was renewed yearly until the 14.5.1985 when the Authorities refused to renew it.

5 On 11.6.1985 the applicant was arrested in connection with trafficking of narcotic drugs, but he was released three days later as no sufficient evidence was disclosed against him.

10 On 14.6.1985 the Minister of Interior signed a deportation order which was served on the applicant on the same day. As a result the applicant filed the present recourse together with an application for a provisional order suspending the execution of the deportation order. The provisional order was granted, but the applicant on the 15.6.1985 left Cyprus for Athens on his own free will.

15 It should be noted that from 9.5.85 until 22.8.85 the applicant had visas to stay in Cyprus. There were, however, during the said period certain periods during which his stay in Cyprus was unlawful. On the day when the deportation order was issued he had a visa to stay in Cyprus. The deportation order was made under s. 14(1)
20 of the Aliens and Immigration Law, Cap. 105 on the ground that the applicant although he had permission to stay in Cyprus for a limited period, i.e. until 9.5.85, has remained in Cyprus after the said period has expired.

25 Counsel for the respondents submitted that as there was ample material to deport the applicant in view of his involvement in the trafficking of narcotic drugs, the deportation order could have been made because of the provisions of s. 14(5) under s. 6(1)(g) of Cap. 105 and, therefore, the order can be supported under the said
30 provisions.

Counsel for the respondent raised also the following preliminary objections, namely that the applicant has no legitimate interest, because: (a) His stay in Cyprus after the 9.5.85 was unlawful, (b) He left Cyprus on his own free will on the 15.6.85 and (c) The annulment of the de-
35 portation order will not benefit the applicant.

Held, annulling the sub judice deportation order:

(1) As the applicant's stay in Cyprus at the time of the

issue of the deportation order was lawful, the applicant had a legitimate interest to file this recourse. The applicant was not deprived of his legitimate interest by reason of the fact that he left Cyprus on the 15.6.85 as he did so on his own free will and, therefore, his said act does not amount to an acceptance of the deportation order. The applicant will be benefited by the annulment of the deportation order by residing in Cyprus and looking after his business. 5

(2) Once the sub judge decision was taken for a specified reason, namely that the applicant remained in Cyprus after the expiration of the period in respect of which he had a permit to stay, this Court cannot examine the issue of applicant's involvement in the trafficking of narcotics. This is not a case where the reasoning may be found not only in the sub judge decision, but also in the file or where the reasoning can be supplemented from the material in the file. 10 15

*Sub judge decision annulled.
No order as to costs.*

Cases referred to: 20

Tomboli v. C.Y.T.A. (1982) 3 C.L.R. 149;

Savvides v. The Public Service Commission (1985) 3 C.L.R. 1749;

Karapataki v. The Republic (1982) 3 C.L.R. 88;

Kalos v. The Republic (1985) 3 C.L.R. 135; 25

Christodoulides v. The Republic (1984) 3 C.L.R. 1297;

Oryctaco Ltd. v. The Republic (1981) 3 C.L.R. 174;

Sofocleous v. The Republic (1982) 3 C.L.R. 786;

Damianou v. The Republic (1984) 3 C.L.R. 1488.

Recourse. 30

Recourse against the decision of the respondents whereby the applicant was declared as a prohibited immigrant and against the order of his deportation from Cyprus.

L. Clerides with P. Liveras, for the applicant.

A. *Papasavvas*, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

5 KOURRIS J. read the following judgment. This is a recourse against the decision of the respondents whereby the applicant was declared as a prohibited immigrant and against an order for his deportation from Cyprus as a prohibited immigrant.

10 The applicant complains, in effect, against a decision of the Council of Ministers by means of which the applicant was declared as a prohibited immigrant under s. 14 of the Aliens and Immigration Law, Cap. 105, and also against an order for his deportation from Cyprus as a prohibited immigrant, which was issued by the Minister of
15 Interior, as Chief Immigration Officer under s. 14 of Cap. 105.

The legal grounds on which this recourse is based are the following:

20 a) The decision and the order lack validity in law and/or contravene the Aliens and Immigration Law, Cap. 105, as amended, because the applicant is working in Cyprus and the prerequisites set down by law 54/76 are non-existent for his deportation.

25 b) The said decision and order were taken in excess and/or abuse of authority.

c) The said decision and order are not duly and/or at all reasoned, and

30 d) The said decision and order are contrary to the spirit and letter of Articles 8, 9, 11 and 13 of the Constitution, and the provisions of Cap. 105 on which they are based, are unconstitutional.

The facts of this case as they appear from the statement of facts of the recourse, shortly, are as follows:-

35 The applicant is a Lebanese subject and came to Cyprus in/or about March, 1982 and he resides, since then, in Cyprus. On 26.4.82 he established Damian Company Ltd.,

an off-shore company. He is the main shareholder and the Managing-Director of the company and he resided in Cyprus as a temporary resident by virtue of working permit ARC 89125.

On 10.6.1985 the applicant was arrested for interrogation in connection with trafficking of narcotic drugs and on 11.6.1985 he was remanded in custody for three days by virtue of a Court warrant and he was released at the end of the three days as no sufficient evidence was disclosed against him to charge him. 5 10

On 13.6.85 counsel for the applicant, having received information that the applicant was about to be deported, he sent a telegram to the Minister of Interior with copy to the Chief of the Police asking for time to enable the applicant to protect his interests. Nevertheless, on 14.6.85 at 9.00 p.m. the applicant was arrested and detained at Limassol Police Station having been informed that there was a deportation order against him and that he would be kept in custody until his deportation. 15 20

The applicant alleged that he didn't know if he was declared as a prohibited immigrant and that there was no valid reason to be declared a prohibited immigrant and, in any event, he is protected by the Aliens and Immigration Laws because he is working in Cyprus and that he can only be deported for special reasons which, in his case, do not exist. 25

The applicant alleged that he is suffering hardship and damage by reason of the deportation order; furthermore he alleged that if the deportation order is executed he will suffer irreparable loss because his life will be endangered if he is deported to Lebanon and because he has arranged to sign a commercial contract for 500.000 U.S. Dollars and his deportation will cancel the conclusion of the agreement. 30

The respondents filed an opposition consisting of 42 paragraphs setting out in chronological order from the time the applicant came to Cyprus until the deportation order against him was signed by the Minister of Interior. 35

It appears that the applicant came to Cyprus for the first time in August, 1980 and not in 1982 as alleged by the applicant in his recourse and that from 1980 till 1982 he was residing in Cyprus with his family as a visitor and that in 1982 he established an off-shore company and applied to the proper Authorities for a working permit which was granted to him and which was renewed yearly until 14.5.1985 when the Authorities refused to renew his permit to reside and work in Cyprus and the Minister of Interior signed a deportation order dated 14.6.85 and served on him on the same day. (See appendix Q5, in exhibit 1, the personal file of the applicant No. A802960).

On 15.6.85 the applicant filed the present recourse together with an application for provisional order and the Court granted the application suspending the execution of the deportation order against the applicant.

On the same day i.e. 15.6.85 the applicant left Cyprus for Athens on his own free will.

It appears from the narrative so far that the applicant was not declared a prohibited immigrant by the Council of Ministers but, that a deportation order was issued against him.

The respondents, in their opposition, raised the following preliminary points:

1) The applicant has no legitimate interest because he left Cyprus on his own free will whilst he had in his possession an order of the Court suspending his deportation. In support he relied on the case of *Tomboli v. The Cyprus Telecommunications Authority* (1982) 3 C.L.R. 149.

2) The applicant has no legitimate interest because his residence permit expired on 9.5.85.

3) The applicant is estopped from claiming the reliefs by his recourse because he stayed unlawfully in Cyprus after the 9.5.85, and

4) He also alleged that there is no legitimate interest because in case of the annulment of the decision in question will not benefit the applicant. In support he cited the

case of *Savvides v. The Public Service Commission*, recourse 214/81 where the judgment was delivered on 5.7.85, and it is still unreported.*

With regard to the substance of the case counsel for the respondent maintained that the sub judice decision was taken lawfully and that the discretion of the respondents was properly exercised within the provisions of the Constitution and of the relevant laws.

With regard to 2) and 3) above he stated in his written address that in spite of the fact that the applicant from 9.5.85 up to 22.8.85 had visas to stay in Cyprus during short periods between 9.5.85 and 22.8.85, nevertheless, there were periods during which he was unlawfully in Cyprus and he contended that, in any event, his permit to stay in Cyprus expired on 22.8.85 and consequently his recourse is without legitimate interest because the legitimate interest must exist at the time the sub judice decision is taken, the recourse is filed and at the trial. In support he cited the case of *Karapataki v. The Republic* (1982) 3 C.L.R. 88 at p. 93.

Counsel for the applicant, with regard to the preliminary points, contended that the applicant left on his own free will and not on the basis of the deportation order issued against him. Further, it was contended that if the deportation order was issued unlawfully and the Court will have to set it aside, applicant was free to travel to any other countries as he was lawfully residing in Cyprus prior to his departure.

At the time of the issue of the deportation order, i.e. on the 14th June, 1981, applicant was in possession of a visa to stay in Cyprus and, if his stay was lawful, he had a legitimate interest. The departure of the applicant from Cyprus was not permanent and the applicant did not accept the deportation order and, consequently, he is not estopped from filing the recourse.

It should be pointed out that applicant did not pursue legal ground (d) of his application to the effect that the de-

* Now reported in (1985) 3 C.L.R. 1749.

portation order is contrary to the provisions of Articles 8, 9, 11 and 13 of the Constitution and that the provisions of Cap. 105, on which the said order is based, are unconstitutional.

5 I propose to deal first with the preliminary points raised in this Application to the effect that the applicant has no legitimate interest, that he is estopped from claiming the reliefs sought and that in case of the annulment of the decision in question no benefit will be derived by the applicant.
10

The short answer to this is that the applicant has legitimate interest in this Application because at the time of the issue of the deportation order against him he was residing in Cyprus lawfully. (See photocopies of visas in the passport of the applicant and admitted by the respondents).
15 Since the applicant was entitled to remain in Cyprus lawfully, therefore, he has legitimate interest and can pursue the present recourse. It would have been otherwise if the applicant was not residing lawfully in Cyprus at the time of the issue of the deportation order. If the applicant had no visa permitting him to stay in Cyprus at the time of the issue of the deportation order then I would have agreed with counsel for the respondents that the applicant would have no legitimate interest. The fact that the applicant from
20 14th May, 1985 until 22nd August, 1985 when his visa would have expired there were periods during which the visas did not cover his stay in Cyprus and consequently during those periods his stay in Cyprus was unlawful it does not help the respondents because as I said hereinabove at the
25 time of the issue of the deportation order against the applicant he was lawfully residing in Cyprus.
30

Again, the fact that the applicant left Cyprus on 15th June, 1985 on his own free will it does not deprive the applicant of the right to apply to the Court, and, it is not
35 a bar to the right of challenging such administrative act, because on the facts of this case the applicant left on his own free will and this does not amount to an acceptance or acquiescence of the deportation order. The applicant on 15th June, 1985 did not leave Cyprus permanently by virtue of the deportation order against him. He left on his
40

own free will and not under the threat of the deportation order against him because at the material time there was an order of the Court suspending the execution of the deportation order. This is apparent from the fact that the applicant returned to Cyprus and left Cyprus on several occasions after the 15th June, 1985. 5

In these circumstances the departure of the applicant from Cyprus in no case it can be considered as unreserved and, therefore, acceptance of the sub judice decision which could render the application for recourse unacceptable on the ground of lack of legitimate interest. (See, Conclusions of the Greek Council of State 1929-1959, 261, *Karapavaki v. The Republic* (1982) 3 C.L.R. 88, *Kalos v. The Republic* (1985) 3 C.L.R. 135 at p. 143). 10

The last preliminary point raised by the respondents is that in case of annulment of the decision in question the applicant will not be benefited and therefore, the recourse should be dismissed. He relied on the case of *Savvides v. The Public Service Commission*, Case No. 214/81 delivered on 5.7.1985 and yet unreported* I do not share the view of counsel for the respondents and I find substance in the argument advanced by counsel for the applicant that in case of the annulment of the decision applicant will be benefited by residing in Cyprus and looking after his business. 15 20 25

For all these reasons the preliminary points raised by counsel for the respondents cannot stand. Regarding the substance of the case the crux of the matter are the reasons given when the deportation order issued against the applicant which is marked as "Q 5" in the personal file of the applicant and was produced as exhibit 1 before the Court. The deportation order was made under s. 14 of the Aliens and Immigration Law, Cap. 105 and the reason given therein is that the applicant although he had permission to stay for a limited period i.e. until 9th May, 1985 has remained in Cyprus after the said period has expired. 30 35

Counsel for the applicant contended that if the Immigra-

* Now reported in (1985) 3 C.L.R. 1749.

tion Officer wanted to rely on s. 6(1) (g) of the said law he could have done so.

Counsel for the respondents, on the other hand, stated that although the deportation order was issued by virtue of s. 14 of the said law nevertheless the Immigration Officer could also rely on s. 6(1) (g) of the law because of the provisions of s. 14(5) where it is stated that the power of the deportation order conferred by s. 14 notwithstanding anything in the law contained, extends to deportation of any person coming within all the categories enumerated in paragraphs (f) (g) and (h) of sub-section (1) of s. 6. He contended that since the personal file as well as the police file which are exhibits 1 and 2 before the Court were before the Immigration Officer at the time of making the decision there was ample material before him to deport the applicant because he was involved in the trafficking of narcotic drugs and the Court has power if it is satisfied that there is ample material in the said files to support the deportation order under s. 14(5) i.e. on the ground of narcotics trafficking then the Court should uphold the decision. He relied on the case of *Christodoulides v. The Republic* (1984) 3 C.L.R. 1297 at p. 1303.

On the other hand counsel for the applicant said that once the Immigration Officer relied on s. 14(1) the Court cannot examine whether the applicant was said to be trafficking in narcotics because it is as if asking at this late stage to substitute s. 6 to s. 14 of Cap. 105 and change the reasoning on a totally different basis i.e. that he is an undesirable immigrant with the result that the applicant has been deprived of his right to defend himself by evidence.

He contended that all the paragraphs in the opposition which set out allegations of narcotics trafficking should be ignored as irrelevant.

Having considered the facts of this case carefully I am of the opinion that once the Immigration Officer relied on s. 14(1) of Cap. 105 and the decision to deport the applicant was because having entered Cyprus with permission to remain therein for a limited period remained in Cyprus after that period has expired the Court cannot

examine the personal file and the police file of the applicant and satisfy itself that the applicant was involved in narcotics trafficking and substitute s.6(1)(g) of the law to s. 14 on which the decision was taken. It is not a case where the reasoning may be found not only in the sub 5
judice decision but also in the relevant minutes of the administrative organ concerned or where it can be supplemented by the material in the file. (See, *Oryctaco Ltd. v. The Republic* (1981) 3 C.L.R. 174, *Sofocleous v. The Republic* (1982) 3 C.L.R. 786, *Damianou v. The Republic* 10
(1984) 3 C.L.R. 1488.

For all the above reasons the sub judice decision is annulled. In exercising my discretion I propose to make no order as to costs.

Sub judice decision annulled. 15
No order as to costs.