

1985 January 12

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

RAFOUL Y. SALEM AND ANOTHER,

Applicants,

v.

- THE REPUBLIC OF CYPRUS, THROUGH
- 1. THE MINISTER OF INTERIOR,
- 2. THE MIGRATION OFFICER,

Respondents.

(Case No. 116/84).

Practice—Recourse for annulment—Application for provisional order—Interim provisional order granted—Application by applicant 1 to re-open hearing of the application for provisional order—Principles applicable—Powers of Court—
 5 *The Supreme Constitutional Court Rules, Rule 19.*

An interim provisional order was made in this case restraining the respondents from making applicant 1 leave Cyprus while this recourse is pending. Counsel for the applicants applied for the re-opening of the hearing of
 10 the application for a provisional order in the present case.

Held, granting the application: (1) The power of the Court to re-open proceedings under Article 146 of the Constitution has never been doubted. This Court may adopt such a course by a direction to that effect under
 15 Rule 19 of the Supreme Constitutional Court Rules.

(2) In this case the re-opening of the hearing is sought by counsel for the applicant, but this Court is still duty bound to decide on its own whether or not, in the light of all relevant considerations, it is proper to reopen the
 20 hearing.

(3) In view of the nature of the proceedings in a case such as the present one this Court should, as a rule be always prepared to hear what the parties have to state.

(4) In the light of the material before the Court the hearing would be reopened.

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Application granted.

Cases referred to:

Dafnides v. The Republic. 1964 C.L.R. 180;

Soundia v. Town School Committee of Larnaca (1965)
3 C.L.R. 425 at p. 429;

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Angelidou v. Republic (1982) 3 C.L.R. 62 at p. 66;

Borchard Lines Ltd. v. Municipality of Limassol (1983)
3 C.L.R. 904.

Application.

Application by applicants for the re-opening of the hearing of an application for a provisional order.

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L. Papaphilippou, for the applicants.

A. Vladimirov, for the respondents.

Cur. adv. vult.

TRIANAFYLLIDES P. read the following judgment. In this case the applicants have challenged the refusal of the respondents to renew the working permit and the temporary residence permit of applicant 1, who is an alien, and, also, the decision of the respondents that applicant 1 should leave Cyprus.

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When this recourse was filed there was filed, also, an application for a provisional order restraining the respondents from implementing, pending the determination of this recourse, their decision that applicant 1 should leave Cyprus.

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Subsequently, applicant 1 filed another recourse. 269/84, against decisions of the respondents to detain him and deport him from Cyprus.

After the application for a provisional order in the present case was heard it was not finally determined because of the need to hear, also, arguments in respect of

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the application for a provisional order in related case 269/84, and, therefore, only an interim provisional order was made in the present case restraining the respondents from making applicant 1 leave Cyprus while this recourse is pending.

Quite some time was, then, lost by repeated adjournments which became necessary because of the fact that the respondents did not make available to counsel appearing for them copies of the detention and deportation orders against which case 269/84 was filed and the production of which was being sought for the purposes of the present case too. Eventually they were so produced on the 17th November 1984.

After certain further developments in the interrelated proceedings in the present case and in case 269/84 counsel for the applicants applied for the reopening of the hearing of the application for a provisional order in the present case.

The right of this Court to reopen a hearing in proceedings under Article 146 of the Constitution has never been doubted; and this Court may adopt such a course by a direction to that effect under rule 19 of the Supreme Constitutional Court Rules of Court.

In earlier cases such as those of *Dafnides v. The Republic*, 1964 C.L.R. 180, 185, *Soundia v. The Town School Committee of Larnaca*, (1965) 3 C.L.R. 425, 429, *Angelidou v. The Republic*, (1982) 3 C.L.R. 62, 66 and *Borchard Lines Ltd. v. The Municipality of Limassol*, (1983) 3 C.L.R. 904, 908, the Supreme Court, on its own motion, proceeded to direct the reopening of the hearing.

In the present instance the reopening of the hearing of the application for a provisional order has been applied for by counsel for the applicants, but this Court is still in duty bound to decide on its own whether or not, in the light of all relevant considerations, including those relied on by counsel for the applicants and those relied on, in opposition, by counsel for the respondents, it is proper to reopen the said hearing.

I am of the opinion that, in view of the nature of the proceedings in a case such as the present one, this Court should, as a rule, be always prepared to hear what the parties have to state, at any stage, in order to enable it to perform its task with full knowledge of all relevant legal and factual considerations. 5

It is to be noted, in particular, that, as it is to be derived from the contents of the application for a reopening of the hearing in relation to the provisional order in the present case, counsel for the applicants is relying on developments in related case 269/84; and, as such case is, also, before me and I am aware of the developments in it, I am in a position to say whether such application is prima facie justified. 10

In the light of the material at present before the Court I have decided to reopen the hearing of the application for a provisional order in this case; and I direct accordingly, under rule 19 of the Supreme Constitutional Court Rules of Court. 15

Order accordingly. 20