

1985 February 20

[TRIANTAFYLLOIDES, 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).

Provisional order—Aliens—Recourse for annulment against refusal to renew the working permit and the temporary residence permit of applicant 1—Application for provisional order—Attempt to force applicant to leave Cyprus made whilst said application was pending—Decision to force applicant 1 to leave Cyprus a positive, not a negative one—In the circumstances provisional order restraining respondents to take any steps to enforce such decision granted.

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By means of this recourse the applicants challenge the decision of the respondents to refuse to renew the working permit and the temporary residence permit of applicant 1 and the decision that applicant 1 should leave Cyprus. Applicant 1 applied for a provisional order restraining the respondents from deporting him or implementing their decision that he should leave Cyprus.

Whilst the application for provisional order was still pending an attempt was made to deport applicant 1 by means of a detention order and a deportation order.

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Held, granting a provisional order: (1) On a number of occasions this Court refused to make a provisional order

preventing the deportation of an alien who had been refused a permit to work or to reside in Cyprus (see, for example, *Goulelis v. The Republic* (1969) 3 C.L.R. 583). Moreover, this Court will not grant a provisional order suspending a refusal to allow the alien to reside in Cyprus, because by so doing, it would in effect be granting a residence permit. However, in *Georghiou (No. 1) v. The Republic* (1968) 3 C.L.R. 401 a provisional order was made because it appeared that the applicant might have been forced to leave Cyprus. 5
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(2) Unlike *Goulelis* case, where it was pointed out that there was nothing on record that any action had been taken or decided for deporting the applicant, in this case such decision was taken and an attempt to do so has already taken place. 15

(3) In the light of the above and the particular circumstances of this case a provisional order restraining the respondents to take any steps to enforce their decision to force the applicant to leave Cyprus—a decision of a positive, not a negative nature, would be granted. 20

Provisional Order in terms as above.

Cases referred to:

Goulelis v. The Republic (1969) 3 C.L.R. 583;

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

Karram v. The Republic (1983) 3 C.L.R. 199; 25

Georghiou (No. 1) v. The Republic (1968) 3 C.L.R. 401.

Application for a provisional order.

Application for a provisional order restraining the respondents from deporting applicant 1 from Cyprus, or from implementing their decision that applicant 1 should leave Cyprus, pending the determination of this recourse. 30

L. Papaphilippou, for the applicants.

A. Vladimirov, for the respondents.

Cur. adv. vult.

5 TRIANTAFYLLIDES P. read the following decision. When this recourse was filed on the 28th February 1984 applicant 1 applied for a provisional order restraining the respondents from deporting him from Cyprus, or from implementing their decision that he should leave Cyprus, pending the determination of this recourse.

10 By means of the present recourse there is being sought a declaration that the decision of the respondents to refuse to renew the working permit and the temporary residence permit of applicant 1 is null and void and that the decision of the respondents that applicant 1 should leave Cyprus, is, also, null and void.

15 The hearing in relation to the provisional order applied for as aforesaid by applicant 1 had to be adjourned repeatedly due to various developments in this case and after such hearing was, eventually, concluded it had to be reopened in order to hear counsel further. The last hearing in relation to this matter took place on the 11th February 1985.

20 I have been invited to take into account, too, the fact that after the application for a provisional order was filed and while it was pending an attempt was made to deport applicant from Cyprus by means of a detention order and a deportation order, issued on the 22nd May 1984, which
25 are being challenged in related case 269/84.

30 Though such orders were revoked on the 23rd May 1984, after there had been attempted on that same day to deport applicant 1 on the basis of such orders, nevertheless the making of the said orders indicates that the respondents do intend to implement their decision to expel applicant 1 from Cyprus, which is challenged by means of the present recourse, even while such recourse is pending.

35 Applicant 1 is an alien and he is a director of applicant 2, which is a company having its office in Nicosia. On a number of occasions in the past this Court has refused to make a provisional order preventing the competent authorities of the Republic from deporting an alien who had been refused a permit to work or to reside in Cyprus (see,

for example, *Goulelis v. The Republic*, (1969) 3 C.L.R. 583).

Moreover, this Court will not, in a case of this nature, make a provisional order suspending a refusal of the said authorities to allow an alien to reside in Cyprus, because by so doing the Court would, in effect, be granting judicially to such alien a residence permit to remain in Cyprus (see, for example, *Tyrokomou v. The Republic*, (1976) 3 C.L.R. 403 and *Karram v. The Republic*, (1983) 3 C.L.R. 199).

Unlike, however, the *Goulelis* case, supra, where it was pointed out, in refusing a provisional order, that there was nothing on record showing that any action had been taken, or even had been decided, by the authorities concerned for the purpose of deporting from Cyprus the applicant in that case, in the present case there has been, indeed, decided by the respondents to deport the applicant and an attempt to do so has already taken place.

In a similar case, *Georghiou (No. 1) v. The Republic*, (1968) 3 C.L.R. 401, a provisional order was made because it appeared that the applicant in that case might have been forced to leave Cyprus while her recourse against her intended expulsion from Cyprus was pending.

In the light of all the foregoing and of the particular circumstances of the present case I have decided to make a provisional order preventing the respondents, and any organ acting on orders from them, from taking any steps to enforce, while this recourse is pending, their decision to force the applicant to leave Cyprus; and there should be noted that such decision is a positive decision, and not merely a negative one, and, consequently, a provisional order can be made in respect of it.

Application granted.