

1986 February 20

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

YEZID JASPER SAYIGH,

Applicant,

v.

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

Respondents.

(Case No. 113/86).

5 *Revisional Jurisdiction—Provisional Order—Refusal to renew
an alien's permit to stay in Cyprus as a visitor—Recourse
impugning the validity of such refusal—Application for
provisional order restraining the organs of the Republic
from deporting the applicant—No jurisdiction to grant
such an order, the purpose of which is not to suspend
the sub judice decision, but to forestall possible future
action by the Administration—Constitution, Article 146
and 135—The Supreme Constitutional Court Rules 1962,
10 Order 13—Further as the sub judice refusal is a negative
act, its effect cannot be suspended by means of a provi-
sional order.*

15 *Constitutional Law—Constitution, Article 30—The right safe-
guarded by Article 30 would normally require opportunity
to brief counsel and attend the trial—It does not necessi-
tate stay in the Country of the applicant, an alien, whose
application for renewal of his visitor's permit had been
refused by the Administration, until the hearing of his
case, i.e. the recourse impugning the validity of the said
20 refusal.*

The applicant, an alien, has been staying in Cyprus since August, 1984 on a visitor's permit. In December, 1985 he applied for a renewal of his permit, which was due to expire on 31.12.85. His application was refused. As a result he filed the present recourse, impugning the validity of the said refusal. Following the filing of this recourse, he applied for a provisional order restraining organs of the Republic "from deporting the applicant until final determination of the recourse or until further order of this Court".

Held, dismissing the application: (1) The application is not for an order suspending the sub judice decision, but for an order intended to forestall possible future action by the Administration to deport the applicant. The Court has no jurisdiction to grant such a relief. A Court, exercising jurisdiction under Article 146 of the Constitution, can only assume competence in relation to a matter within its jurisdiction referred to it in the manner envisaged therein. The jurisdiction to grant an interlocutory order is incidental thereto. Order 13 of the Supreme Constitutional Court Rules 1962 is not designed or intended to extent the jurisdiction. Indeed, Article 135 of the Constitution specifically provides that the rules made thereunder be confined to the regulation and exercise of the jurisdiction "conferred upon it by the Constitution".

(2) The sub judice decision is a negative act and, therefore, its effect cannot be suspended by means of a provisional order.

(3) The right safeguarded by Article 30 of the Constitution would normally require amenity to brief counsel and to attend the proceedings at the trial. It does not necessitate stay in the country until the hearing of the case. The Court has no doubt that the Authorities will afford applicant opportunity to attend the hearing when the case comes on for trial. The Court has no jurisdiction to direct the Authorities to allow the applicant to remain in the country.

Application dismissed.

Cases referred to:

Georgiades (No. 1) v. The Republic (1965) 3 C.L.R. 392;

Sofocleous v. The Republic (1971) 3 C.L.R. 345;

Miliadous v. The Republic (1972) 3 C.L.R. 341;

5 *Procopiou and Others v. The Republic* (1979) 3 C.L.R. 686;

Sofocleous v. The Republic (1981) 3 C.L.R. 360;

Frangos and Others v. The Republic (1982) 3 C.L.R. 53.

Application for a provisional order.

10 Ex parte application by applicant for a provisional order
restraining organs of the Republic from deporting the ap-
plicant pending the final determination of the recourse
filed by the applicant against the refusal of the respon-
dents to renew applicant's visitor's permit or until further
15 order.

Chr. Christofides, for the applicant.

Cur. adv. vult.

PIKIS J. read the following judgment. The applicant, an
American citizen with family roots in the Lebanon, has
20 been staying in Cyprus since August, 1984, on a visitor's
permit. Initially, permission was given for six months, re-
newed thereafter until 31st December, 1985. In December,
1985, he applied afresh for a renewal of his permit. His
application was refused after careful consideration on the
25 part of the Authorities, as stated in their letter of 30.1.86,
communicating the decision. Applicant was, therefore, re-
quested to make arrangements to leave the country.

The refusal of the Authorities to renew his permit is the
subject-matter of this recourse. It is challenged as ill-
30 founded and liable to be set aside for abuse of power.
Following the institution of the proceeding, an application
was made for a provisional order restraining organs of the

Republic "from deporting the applicant until final determination of the recourse, or until further order of this Court". In view of the urgency of the matter the application was made ex parte. It is supported by an affidavit wherein it is alleged that déportation of the applicant from Cyprus will upset his studies—presently he is writing a thesis—and will force him to go back to the uncertain situation in Lebanon. Neither the subject of his studies nor the University with which he is associated are specified in the affidavit. Why he cannot pursue his studies in the U.S.A. is not indicated.

It must be noticed at the outset, the application is not for an order suspending the sub judice decision, but intended to forestall possible future action of the Authorities to deport him. Counsel referred me to a number of authorities, explaining the principles governing the exercise of the discretion of the Court to grant a provisional order pursuant to the provisions of Ord. 13 of the Supreme Constitutional Court Rules 1962¹. In none of the authorities cited, or any other case, was suspension approved of a decision or act other than the one under judicial review; in fact, such a course would be impossible in view of the nature of the jurisdiction under Article 146 of the Constitution, on the one hand and, the provisions of Ord. 13, on the other. A Court exercising jurisdiction under Article 146, can only assume competence in relation to a matter within its jurisdiction, referred to it in the manner envisaged therein. The jurisdiction to grant a provisional or an interlocutory order, is incidental thereto. Order 13 is not designed or intended to extend the jurisdiction of the Court under Article 146. Article 135 of the Constitution specifically provides that the ambit of rules thereunder be specifically confined to regulation of the practice and exercise of the jurisdiction "conferred upon it by the Constitution". Consequently, there is no jurisdiction to make the order sought by the applicant.

It is no coincidence that applicant applies for the sus-

¹ Made applicable in proceedings before the Supreme Court by Law 33/64.

pension of an act or order other than the one here under review for stay of execution of the decision impugned would be of no assistance to the applicant. It would not confer to him a right to stay in Cyprus. It is by its nature a negative decision stay of which is un consequential and, for that reason, not an order made by Courts exercising revisional jurisdiction.¹ The principles established by caselaw², referable to the exercise of the jurisdiction to grant a provisional order, are exclusively referable to positive acts. The jurisdiction to make a provisional order is exercised with great circumspection. It is an exceptional measure that can only be sanctioned in face of - (a) evidence of irreparable damage or (b) clear indication that the decision is vitiated by flagrant illegality. Discussion of its application would, in view of what was earlier said, be a fruitless exercise.

At the end of his address counsel reminded me of the remarks I made in another application of a similar nature³ to the effect that the right to appear at one's trial is interwoven with the fundamental human right of access to the Court, and that nothing should be done to hinder the exercise of this right. I wholly subscribe to this appreciation of the right safeguarded under Article 30.1 of the Constitution, upholding a man's right to ventilate a grievance before the Courts of law. The exercise of the right is not confined to the citizens of the country; it extends, like every human right, to all human beings. This right, like every right, must be viewed and applied in its proper perspective; that would normally require amenity to brief counsel and opportunity to attend the proceedings at the trial. Certainly, it does not necessitate stay in the country until the hearing of the case. I have no doubt the Authorities will afford the applicant every opportunity to attend the hearing of the case when it comes on for trial. I have no jurisdiction to direct the Authorities to allow the ap-

¹ See, *inter alia*, Tsatsos—Application for Annulment 3rd ed., pp. 424-428.

² See, *Georghiades (No. 1) v. The Republic* (1965) 3 C.L.R. 392; *Sofocleous v. Republic* (1971) 3 C.L.R. 345; *Miltiadous v. Republic* (1972) 3 C.L.R. 341; *Procopiou & Others v. Republic* (1979) 3 C.L.R. 686; *Sofocleous v. Republic* (1981) 3 C.L.R. 360; *Frangos & Others v. Republic* (1982) 3 C.L.R. 53.

³ Case No. 405/85—See minutes of the proceedings of 6.4.85.

plicant to remain in the country; assumption of such jurisdiction would constitute a usurpation of the powers of the authorities charged with the enforcement of the provisions of the Aliens Law, Cap. 105.

To recapitulate, the order sought is beyond the jurisdiction of this Court. Further, it is not directed towards suspending an existing act. A deportation order is not at issue in these proceedings nor has any order been made. If such order is made and applicant is detained in furtherance thereto, applicant would not be remediless; he could challenge the order by means of habeas corpus under Article 155.4 of the Constitution. 5 10

For the above reasons, the application is dismissed.

Application dismissed.