

1986 January 11

[TRIANTAFYLIDES, P.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

YIANNIS KARALIOTAS,

*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).

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5 *The Aliens and Immigration Law, Cap. 105—Section 10—  
Discretion of the Administration thereunder—Very wide—  
Consistent with Article 14 and 32 of the Constitution—  
Section 2 as amended by Law 2/72—“Native of Cyprus”  
in said s. 2 includes the wife, but not the husband of a  
citizen of the Republic.*

*Constitutional Law—Constitution, Articles 13, 14, 28, 32 and  
188.*

10 *Legitimate interest—Failure to reply to a letter by applicant's  
counsel requesting the reasons for the refusal to renew his  
residence permit—As applicant came to know, through his  
advocate, of the reasons of such refusal, he ceased to  
possess a legitimate interest to pursue the recourse against  
the omission to reply.*

15 *Constitutional Law—Constitution, Article 29—Failure to re-  
ply—Applicant proceeded with the substance of the case  
and did not allege any detriment by reason of such failure  
—Effect.*

*Words and Phrases: "Native of Cyprus" in s. 2 of Cap. 105 as amended by Law 2/72.*

The applicant, after having been earlier on granted a temporary resident's permit, applied on the 1.12.83 for its renewal. The renewal, however, was refused and as a result the applicant was placed on a "stop list" and was prevented from entering Cyprus on 21.12.83. 5

The reason of the refusal, as emanating from the material placed before the Court, was that the applicant, a citizen of Greece, was considered by the appropriate authorities to be a "security risk". 10

*Held*, dismissing the recourse: (1) The Aliens and Immigration Law, Cap. 105 existed prior to, and has been continued in force after, the 16th August 1960 when Cyprus became Independent and, consequently, it is applicable subject to the provisions of Article 188 of the Constitution. 15

(2) Under s. 10 of Cap. 105 an alien can be lawfully refused entry in Cyprus because, as provided therein, an alien does not have an absolute right of entry into Cyprus. The provisions of this section are fully consistent with Articles 14 and 32 of the Constitution. 20

(3) According to the relevant principles of International Law every state is by reason of its territorial supremacy competent to exclude aliens from its territory. 25

(4) The applicant could not have been excluded from the Republic, if he could be found to be a "native of Cyprus" in accordance with s. 2 of Cap. 105, as such section was amended by Law 2/72. But the definition of a "native of Cyprus" comprises only the wife, not the husband, of a citizen of Cyprus. The issue that this provision is discriminatory on the ground of sex and, therefore, contrary to Article 28 of the Constitution, even if upheld, cannot help the applicant, because it cannot lead to his being found to be a "native of Cyprus", but only to the nullity of the legislative provision as whole. (The said issue of constitutionality was left open). This provision cannot 35

be modified under Article 188.4 of the Constitution as it is not a provision pre-existing the Constitution.

5 (5) Article 13 of the Constitution safeguards only freedom of movement and freedom of residence throughout the territory of the Republic only to persons who are lawfully in Cyprus.

10 (6) In a matter of this nature the Administration has very wide discretionary powers and this Court will not interfere with the exercise of the discretion, if it is within the limits laid down by the Constitution and the relevant legislation.

15 (7) As regards the motion of relief against the omission to reply to the letter of counsel for the applicant, the applicant ceased to possess a legitimate interest as he came to know through his counsel, of the reasons of the refusal. In any event as the applicant proceeded with the substance of the case and did not allege that he suffered any detriment as a result of respondents' failure to reply, he cannot claim relief in respect of such failure.

20 *Recourse dismissed.*  
*No order as to costs.*

Cases referred to:

- Georghiou (No. 2) v. The Republic* (1968) 3 C.L.R. 411;  
*Musgrove v. Chun Teeong Toy*, [1891] A.C. 272;  
 25 *Santis v. The Republic* (1983) 3 C.L.R. 419;  
*Papaxenofontos v. The Republic* (1982) 3 C.L.R. 1037;  
*Voulpioti v. The Republic* (1974) 3 C.L.R. 313;  
*Savidou v. The Republic* (1970) 3 C.L.R. 118;  
*Pernaros v. The Republic* (1975) 3 C.L.R. 175;  
 30 *Kyriakides v. The Republic*, 1 R.S.C.C. 66;  
*Pitsillos v. The Municipality of Nicosia* (1982) 3 C.L.R. 754.

**Recourse.**

Recourse against the refusal of the respondents to allow applicant to enter Cyprus on the 21st December, 1984, as a result of their decision to place him on the stop list, thus treating him as an alien immigrant whose entry in Cyprus was prohibited. 5

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

*D. Papadopoulou (Mrs.)*, for the respondent.

*Cur. adv. vult.*

TRIANAFYLLIDES P. read the following judgment. The applicant complains, in effect, against the refusal of the respondents to allow him to enter Cyprus on the 21st December 1984, as a result of their decision to place him on a "stop list", thus treating him as an alien immigrant whose entry into Cyprus was prohibited. 10  
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In fact there is nothing before me to show that the applicant was formally made a prohibited immigrant, under section 6 of the Aliens and Immigration Law, Cap. 105, and regulation 19 of the Aliens and Immigration Regulations 1972 (No. 242, Third Supplement, Part 1, to the Official Gazette of 22nd December 1972). 20

What appears to have happened is that the applicant, after having been earlier on granted a temporary resident's permit, applied on the 1st December 1983 for its renewal but he was informed by means of a letter of respondent 2, the Migration Officer, dated 2nd April 1984, that such renewal was refused. That letter may not have reached the applicant at the time but it is, nevertheless, as a result of the decision which is set out in such letter that the applicant was placed on a "stop list" and was prevented from entering Cyprus on the 21st December 1984. 25  
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Under section 10 of Cap. 105 the applicant, being an alien, could be lawfully refused entry into Cyprus because, as provided therein, an alien does not have an absolute right of entry into Cyprus. 35

Of course, Cap. 105 is a Law which existed prior to,

and has been continued in force after, the 16th August 1960, when Cyprus became an independent Republic and, consequently, it is applicable subject to the provisions of Article 188 of the Constitution (see, inter alia, *Georghiou* 5 (*No. 2*) v. *The Republic*, (1968) 3 C.L.R. 411). Cap. 105 was amended, after 1960, by the Aliens and Immigration (Amendment) Law, 1972 (Law 2/72) and by the Aliens and Immigration (Amendment) Law, 1976 (Law 54/76).

10 Article 14 of the Constitution provides that only citizens of the Republic cannot, under any circumstances, be banished or excluded from it; and Article 32 of the Constitution provides that the Republic is not precluded from regulating by law any matter relating to aliens in accordance with International Law.

15 In my opinion, section 10 of Cap. 105 is a statutory provision which is fully consistent with Articles 14 and 32 of the Constitution.

20 According to the relevant principles of International Law the reception of aliens by a State is a matter of discretion; and every State is by reason of its territorial supremacy competent to exclude aliens from its territory (see Oppenheim's International Law, 8th ed., vol. 1, pp. 675, 676, para. 314, and *Murgrove v. Chum Teeong Toy* [1891] A.C. 272)

25 Of course, the applicant could not have been excluded from the Republic under section 10 of Cap. 105 if he could be found to be a "native of Cyprus", in accordance with section 2 of Cap. 105, as amended by section 2 of Law 2/72. As a matter of fact the applicant has been married 30 to a Cypriot citizen but the definition of a "native of Cyprus" comprises only a wife, and not also the husband, of a citizen of Cyprus and, therefore, the applicant cannot be regarded as a "native of Cyprus".

35 It has been contended by counsel for the applicant that the said definition is unconstitutional as being discriminatory on the ground of sex and, consequently, contrary to Article 28 of the Constitution; but, even if I would uphold this contention as correct—and I do not pronounce in this

respect in any way—this could not have led to the applicant being found to be a “native of Cyprus”, but only to the unconstitutionality, and, consequently, the nullity, of the legislative provision in question as a whole (see, inter alia, *Santis v. The Republic*, (1983) 3 C.L.R. 419), because its allegedly unconstitutional part cannot be severed from the rest of it (as in *Papaxenophontos v. The Republic*, (1982) 3 C.L.R. 1037). Nor is it a pre-Constitution provision which might have been modified by virtue of Article 138(4) of the Constitution in order to be brought into accord with it.

Counsel for applicant has relied, also, on Article 13 of the Constitution as implying that the applicant had a right to enter Cyprus. But, in my opinion, this Article safeguards only freedom of movement and freedom of residence throughout the territory of the Republic only to persons who are lawfully in Cyprus, and does not confer a right of entry into Cyprus to an alien, such as the applicant (see, in this respect, *Georgiou (No. 2)*, supra, and *Voulpioti v. The Republic*, (1974) 3 C.L.R. 313).

As it appears from the material which was placed before me by counsel for the respondents the applicant's temporary resident's permit was not renewed, and he was refused entry into Cyprus, because he was considered by the appropriate authorities of the Republic to be a security risk. In a matter of this nature the Administration has very wide discretionary powers, the exercise of which cannot be interfered with by this Court if it is within the limits laid down by the Constitution and the relevant legislation: and, in this respect, it must be borne in mind, too, that this Court cannot interfere with policy decisions of the Administration and substitute its own discretion in the place of that of the organ of the Republic concerned (see, in this connection, inter alia, *Savvidou v. The Republic*, (1970) 3 C.L.R. 118, the *Voulpioti* case, supra, and *Pernaros v. The Republic*, (1975) 3 C.L.R. 175).

Thus, even if, in the particular circumstances of this case, the sub judice decision might seem to be somewhat strict, I would still not be entitled, as an administrative Court, to interfere with such decision inasmuch as it has

been reached in the exercise of the very wide discretionary powers of the Administration and it appears to be within their proper limits.

5       In the motion for relief in the present recourse there is, also, a complaint against the failure of the respondents to answer a letter of counsel for the applicant, dated 5th January 1985, by which they were asked to inform counsel for the applicant of the reasons for which the applicant had been refused entry into Cyprus. It is a fact that no reply  
10       was given to this letter; but, as in the course of the present proceedings the applicant has come to know, through his counsel, of the reasons for which he has been refused entry into Cyprus, he ceased to possess a legitimate interest entitling him to pursue his recourse in this respect; and, in  
15       any event, since by such recourse the applicant has proceeded to claim relief about the substance of the matter in relation to which the aforesaid letter of the 5th January 1985 was written and as he does not allege that he has suffered some material detriment as a result of the failure  
20       of the respondents to reply to such letter, he cannot claim, too, in this recourse, relief in respect of the failure, presumably contrary to Article 29 of the Constitution, to reply to such letter (see, inter alia, *Kyriakides v. The Republic*, 1 R.S.C.C. 66, 77 and *Pitsillos v. The Municipality of Nicosia*, (1982) 3 C.L.R. 754, 762).  
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For all the foregoing reasons this recourse fails and has to be dismissed; but I will make no order as to its costs.

30       Before concluding I would like to observe that, as the applicant has special ties with Cyprus, I do hope that the respondents will keep under review his case in order to ensure that they will not go on refusing him entry into Cyprus even if in future they are satisfied that he is no longer a security risk.

35                               *Recourse dismissed.*  
                                  *No order as to costs.*