

1987 July 22

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PATRICK MAWRICE C. THYSSEN,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH

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

Respondents.

(Case No. 570/87).

Executory act — Informatory act — Forewarning of applicant, a foreign citizen, that his residence permit due to expire on a future day would not be renewed — Prima facie it is of an informatory nature.

Provisional order — Negative act — Cannot be suspended by such an order — Decision not to renew a foreign citizen's residence permit — A negative act.

5

Provisional order — Application for, to restrain authorities from deporting a foreign citizen in furtherance of a decision not to renew his residence permit — In the absence of a deportation order the order applied for is designed to suspend effect of a non-existent act.

The applicant, a Belgian national, was granted a temporary residence (employment permit) in order to manage an offshore company.

10

As a result the applicant established his home in Cyprus. The permit was renewed in six monthly intervals.

On 8.5.87 the Immigration Authorities forewarned the applicant that his current permit, which was due to expire on 20.8.87, would not be renewed.

15

Hence the present recourse and this application for a provisional order restraining the respondent from deporting the applicant, when the permit will expire on 20.8.87, in furtherance of the decision not to renew the permit.

Held, *dismissing the application*: (1) Prima facie the sub judice act is of an informatory nature, signifying the future intention of the authorities.

20

(2) No deportation order has so far been made and, therefore, the

provisional order is designed to suspend a non-existent act.

5 (3) Supposing that the sub-judice act is of an executory nature, the application is again doomed to failure, because the act in question is a negative act. The suspension of the refusal of the decision not to renew the permit would not entail a right of the applicant to stay in Cyprus. Such a right can only be acquired by a positive administrative decision.

Application dismissed.

No order as to costs.

Cases referred to:

10 *Sayigh v. Republic* (1986) 3 C.L.R. 277;

Suleiman v. Republic (1987) 3 C.L.R. 224;

Amanda Marga Ltd. v. Republic (1985) 3 C.L.R. 2583.

Application for provisional order.

15 Application for a provisional order restraining the respondents from deporting the applicant from Cyprus in furtherance to their decision to refuse permission to stay in Cyprus until the final determination of the recourse filed against the said decision.

N. Kaniias for C. P. Erotocritou, for the applicant.

Cur. adv. vult.

20 PIKIS J. read the following judgment. Patrick Thyssen, a Belgian national, is the Manager and main shareholder of an offshore company that operates from Cyprus since 1982. He was given a temporary residence (employment permit) in order to manage the company that was renewed at six monthly intervals.
25 Following the permission given him, he established his home in Cyprus where he resides with his family. The residence permit currently in force is due to expire on 20th August, 1987.

30 On 8th May, 1987, the Immigration Authorities forewarned the applicant that his permit would not be renewed after 20th August, 1987, and invited the applicant to leave the country on or before that date. His protestations were of no avail. The Immigration Authorities reiterated on 7th July, 1987, they did not contemplate the renewal of the permit and reminded the applicant of the need to make the necessary arrangements to leave the country before the 20th August, 1987. The present proceedings
35 are directed against the act or omission of the respondents of 8th May, 1987, to refuse further extension of the permit of the

applicant. Following the initiation of the proceedings an application for a provisional order was made to restrain the respondents from deporting the applicant from the country in furtherance to their decision to refuse permission to stay in the country after the 20th August, 1987. In an affidavit supporting the application, the applicant asserts that persistence in the decision of the Immigration Authorities will have ruinous financial consequences for himself and will greatly unsettle his family. Before examining the merits of the application for a provisional order, there are two preliminary observations to be made. First, it is doubtful whether the subject-matter of the recourse is justiciable inasmuch as the communication of 8th May, 1987, does not prima facie appear to be anything other than an informatory act signifying to the applicant the future intention of the authorities to act along certain lines. Second, no order of deportation was made; consequently, the provisional order sought is designed to suspend the enforcement of an inexistent act.

Supposing that the recourse is directed against an executory decision to refuse permission to stay in the country after the 20th August, 1987, the provisional order can at its highest, be treated as an application to suspend the enforcement of a negative administrative act; a course doomed to failure. A provisional order cannot convert a negative administrative act into a positive one for in that situation the judiciary would be assuming administrative functions. If that were to happen the Courts would act in the place of the Administration. If we suspended the refusal to extend the permit after the 20th, the applicant would acquire no right to stay in the country. Such a right could only be acquired through administrative act. As explained in *Saying v. Republic** and *Suleiman v. Republic*** a provisional order cannot be employed as a means of side stepping refusal to renew permission to an alien to stay in the country***.

The application is dismissed.

Application dismissed.

* (1986) 3 C.L.R. 277.

** (1987) 3 C.L.R. 224.

*** *Amanda Marqa Ltd. v. Republic* (1985) 3 C.L.R. 2583.