1987 November 23

[MALACHTOS DEMETRIADES SAVVIDES PIKIS KOURRIS, JJ]

YIANNIS KARALIOTAS,

Appellant-Applicant,

v

THE REPUBLIC OF CYPRUS, THROUGH
1 THE MINISTER OF INTERIOR,
2 THE IMMIGRATION OFFICER,
3 THE COMMANDER OF POLICE,

Respondents

(Revisional Jurisdiction Appeal No 564)

Aliens — The Aliens and Immigration Law, Cap 105 — Entry of an alien into Cyprus — Breadth of the discretion to refuse to an alien entry into Cyprus — Whether there is a right to refuse to an alien entry into Cyprus without declaring him a prohibited immigrant under section 6 of Cap 105 — Question answered in the affirmative — Section 10 of Cap 105 — Compatible with Articles 14 and 32 of the Constitution

Words and Phrases «Native of Cyprus» in s 2 of Cap 105 as amended by Law 2/7. — It does not include the husband of a wife native of Cyprus

Construction of Statutes — Unambiguous wording — No room for wide interpretation in order to expand the meaning of words used in the Statute

Constitutional Law — Constitution, Articles 14 and 32 — The Aliens and Immigration Law, Cap 105, section 10 — The provisions of the section are compatible with Article 14 and 32

Constitutional Law — Constitutionality of Statutes — Courts should not pronounce on issues of constitutionality of a Statute, if the pronouncement is not indispensable for the disposal of the case

Constitutional Law — Equality — The Aliens and Immigration Law, Cap 105, section 2 as amended by section 2 of Law 2/72 — Approach of trial Judge (Karaliotas v Republic (1986) 3 C.L.R 501) adopted — Question of constitutionality left open

The applicant, who is married to a citizen of the Republic, 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 the «stop list» and was prevented from entering Cyprus on 21 2 83

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»

It is an undisputed fact that the appellant was never formally made a prohibited immigrant under section 6 of the Aliens and Immigration Law, Cap 105

This is an appeal from the judgment dismissing appellant s recourse whereby the validity of the refusal to allow his entry in Cyprus was challenged

Held, *dismissing the appeal* (A) *Per Malachtos, J , Demetriades, Savvides, Pikis and Kourris, JJ concurring* (1) The respondent Authorities had the right under section 10 of Cap 105 to refuse entry to the appellant without making him a prohibited immigrant under section 6 of the same law Section 10 is fully compatible with Articles 14 and 32 of the Constitution

(2) The submission of counsel for the appellant that the finding of the trial Judge, that the sub judice decision was taken because applicant was considered as a security risk, was wrong, cannot be accepted The file of the administration justifies the aforesaid finding

(3) 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 submission of appellant's counsel that the term «native of Cyprus» should be given a wide interpretation so as to include the husband of a native of Cyprus cannot be accepted, because we are not faced here with a situation where the wording of a section of a law is not clear In the case in hand the wording of section 2(b) of the amending law is clear and unambiguous

(4) As regards the issue of constitutionality, namely whether section 2 of Law 2/1972 is inconsistent with or repugnant to Art 28 of the Constitution, the approach of the trial Judge was correct

(B) *Per Pikis, J , Kourris, J concurring* (1) The right to refuse entry to aliens as, an incident of the sovereignty of every State, it cannot be abridged except by a binding treaty or convention It is a right recognized in international law and safeguarded as an essential attribute of the territorial integrity of the State The only right of an alien applying for entry is to have his application considered in good faith If that is done, the Court will not inquire into the reasons of refusal of entry

(2) It is settled that pronouncements on the constitutionality of legislation are only made if indispensable for the determination of a case

In this case and as Triantafyllides P observed at first instance declaration of the law as unconstitutional would be of no assistance to the case of the applicant

Appeal dismissed

Cases referred to

Croxford v Universal Insurance Co [1936] 2 K B 253.

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

Suleiman v Republic (1987) 3 C L R 227

The Board for Regislation of Architects and Civil Engineers v Kynakides (1966) 3 C L R 640

Appeal.

Appeal against the judgment of the President of the Supreme Court of Cyprus (Triantafyllides, P.) given on the 11th January, 1986 (Revisional Jurisdiction Case No 188/85)* whereby appellant's recourse against the refusal of the respondents to allow applicant to enter the Republic of Cyprus was dismissed

L Papaphilippou, for the appellant

D Papadopoullou (Mrs.), for the respondents.

Cur adv. vult

The following judgments were read:

MALACHTOS J . This is an appeal by the applicant in Recourse No. 188/85 against the judgment of a judge of this Court where his claim to declare null and void the decision of the respondent authority to refuse on 21.12.84 entry of the appellant into the Republic of Cyprus, was dismissed.

The relevant facts of the case, as they appear in the documentary evidence adduced and as found by the trial judge, are the following:

The appellant, who is a Greek subject, was born in Salonika on 25.11.55 and on 22.3.75 went through a civil marriage in London to a Greek Orthodox girl, native of the Republic of Cyprus.

On 12.9.81 the appellant, who is the holder of a Greek passport, entered the Republic for the first time accompanied by his wife and their infant child and was allowed to stay temporarily

* *Reported in (1986) 3 C L R 501*

as a visitor up to 8 8 82, when he left with his family On 15 10 83 he returned to Cyprus alone and at Larnaca airport an entry permit was granted to him to stay as a temporary visitor for a period of two months On 1 12 83 he submitted an application to the authorities for renewal of his permit but by letter dated 2 4 84 his application was refused and so he left on 25 4 84

It should be noted here that it is an undisputed fact that the appellant was never formally made a prohibited immigrant under section 6 of the Aliens and Immigration Law, Cap 105, as he was not served by the Migration Officer with the relevant notice as provided by Regulation 19 of the Aliens and Immigration Regulations of 1972

On 2 5 84, however, the appellant's name was placed on the «Stop List» as a person to whom entry into the Republic was prohibited On 21 12 84 the appellant arrived at the Larnaca airport where he was not allowed to enter into the Republic He was there and then told that his name was on the «Stop List» and so he left on the same day

The grounds of appeal as argued by counsel for the appellant, may be summarised as follows

1 that the decision to place the appellant on the «Stop List» was not taken in accordance with the law,

2. that there is nothing in the file of the case to justify the finding of the trial judge that the appellant was not allowed to enter into the Republic because he was considered as a security risk, and

3 that wide interpretation should be given to the definition «native of Cyprus» contained in section 2 of the Aliens and Immigration Law, Cap 105, as amended by section 2 of Law 2 of 1972 so as to include not only the alien wife but also the alien husband of a citizen of the Republic of Cyprus If a literal interpretation is given to the said definition, then this amending section should be declared unconstitutional as offending Article 28 2 of the Constitution, which provides for equality of sexes

As regards the first ground of appeal, counsel for the appellant put forward the same arguments put forward before the trial judge, that since the provisions of section 6 of the Law and Regulation 19 were not followed in order to make the appellant a prohibited immigrant, the placing him on the «Stop List» was illegal

Consequently, the decision to refuse to the appellant entry into the Republic, should be declared null and void.

The short answer to this argument of counsel is that the trial judge decided that the appellant was refused entry by virtue of section 10 of the Law which provides that an alien who is not a prohibited immigrant and who may be the holder of a passport bearing the relevant visa, shall not have an absolute right to enter the Republic and, in any case, may be refused entry.

The relevant part of the judgment of the trial judge, with which I am in full agreement, is published in (1986) 3 C.L.R. 501, at page 504 and reads as follows:

«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.

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 (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).

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.

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

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)».

So, the respondent authorities had the right under the existing legislation to refuse entry to the appellant without making him a prohibited immigrant.

As regards the second ground of appeal, counsel submitted that the application of the appellant of 1.12.83, for renewal of his permit to stay as a temporary visitor was refused because during his stay was a guest of a certain journalist. The relevant part of the judgment of the trial judge appears at page 506 of the report and reads as follows:

> «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 *Pemaros v. The Republic* (1975) 3 C.L.R. 175).»

Irrespective, however, of the fact that the discretionary powers of the administration authorities to accept aliens on their territory are very wide and they are not bound to give any reasons as to why an alien is refused entry for security reasons, nevertheless, in the present proceedings the file of the case was made available for inspection before the trial Court. Having gone through this file it was made clear that the reason why the appellant was refused entry into the Republic was for security reasons and not because he was a guest of a certain journalist during his previous stay. This fact was inserted by him in his application form for renewal of his permit in answer to the question as to his means of maintenance. On that form there is also a note by the Police where it is stated that the applicant is characterised as a fanatic anarchist. Also in the relevant letter of 2.5.84, by the Chief Immigration Officer to the officer in charge of the Immigration Office to place the appellant's name on the «Stop List», it is stated that he should not be allowed to enter Cyprus for security reasons.

This ground of appeal, therefore, also fails.

Finally, we come to the third and last ground of appeal where counsel submitted that the term «native of Cyprus» in subsection (b) of section 2 of Cap. 105, as amended by section 2 of Law 2 of 1972, should be given a wide interpretation so as to cover the alien husband of a wife native of Cyprus.

This amending section reads as follows:

«2. The definition in subsection 1 of section 2 of the basic law, 'native of Cyprus' is replaced by the following:

'Native of Cyprus' means-

(a) *citizen of Cyprus*;

(b) alien wife of a citizen of the Republic not divorced from her husband by virtue of a judgment of the appropriate court and residing with him for a period not less than one year;

Provided that will be considered as a 'native of Cyprus' an alien wife of a citizen of the Republic who lived with him for a shorter period of one year if the Chief Immigration officer would, under the special circumstances of any particular case, consider this reasonable;

(c) .....

(d) ..... ».

The trial Judge on this issue had this to say at page 505 of the record:

«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 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'.

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 188(4) of the Constitution in order to be brought into accord with it »

I am of the view that this submission of counsel must also fail as here we are not faced with a situation where the wording of a section of a law is not clear In the case in hand the wording of section 2(b) of the amending law is clear and unambiguous In the case of *Croxford v Universal Insurance Co* [1936] 2 K B 253 at page 281, it is stated that «where the words of an act of Parliament are clear, there is no room of applying any of the principles of interpretation which are merely presumptions in cases of ambiguity in the Statute»

As regards the question of constitutionality of the amending section 2 of Law 2 of 1972, which was left open by the trial Judge, I fully agree with his approach in this matter

For all the above reasons I would dismiss the appeal with no Order as to costs

DEMETRIADES J I agree with the judgment just delivered by Mr Justice Malachtos

SAVVIDES J I agree with the judgment just delivered by Mr Justice Malachtos

PIKIS J.. I agree that the appeal should be dismissed Moreover, I am broadly in agreement with the reasons given by Malachtos, J , in support of the judgment The addition of these lines is primarily intended to. make two points. (a) indicate the breadth of the discretion of the authorities of the Republic to refuse entry to aliens, and (b) the absence of any compelling reasons to pronounce on the constitutionality of the definition of «native of Cyprus», particularly the provisions of para (b) thereof conferring citizenship on the female spouse of a Cypriot, while withholding the same right to a male spouse of a Cypriot female

With regard to the first, I had occasion to examine the power and nature of the discretion of the authorities of the Republic to refuse entry to an alien in two cases, *Amanda Marga Ltd. v. Republic** and *Suleiman v. Republic***. The right to refuse entry to aliens is, as explained in both judgments, an incident of the sovereignty of every State; a sovereign right that cannot be abridged except by a binding treaty or convention. It is a right recognized in international law and safeguarded as an essential attribute of the territorial integrity of the State. The only right acknowledged to an alien applying for entry is to have his application considered in good faith. If that is done, the Court will not inquire into the reasons of refusal of entry for that would, in an indirect way, compromise the principle of sovereignty and territorial integrity at issue. Afortiori the Court will not query reasons of security of State, the sole judge of which in this respect is the Executive branch of Government.

Coming to the constitutionality of s. 2(b) of the Aliens and Immigration Law, Cap. 105, as amended by Law 2/72, resolution of the case does require us to pronounce on the constitutionality of its provisions for as Triantafyllides, P., observed at first instance, declaration of the law as unconstitutional would be of no assistance to the case of the applicant. It is settled that pronouncements on the constitutionality of legislation are only made if indispensable for the determination of a case***.

Therefore, nothing said in this judgment should be construed as a pronouncement on the constitutionality of the relevant provisions of the law or as prejudging the outcome of any such issue should it arise for determination in any future case.

KOURRIS J.: I am in agreement with the Judgment of Pikis, J., and for the same reasons I dismiss the appeal.

Appeal dismissed.
No order as to costs.

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* *(1985) 3 C.L.R. 2583.*
** *(1987) 3 C.L.R. 227.*
*** *See, inter alia, The Board for Registration of Architects and Civil Engineers v Christodoulos Kyriakides (1966) 3 C L R. 640*