

1988 April 28

(DEMETRIADES, J.)

IN THE MATTER OF ERDINC UCKAC,

AND

IN THE MATTER OF AN APPLICATION FOR A WRIT OF  
HABEAS CORPUS AD SUBJICIENDUM.

(Civil Application No. 66/88).

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*Constitutional Law—Arrest and detention of aliens—Constitution, Art. 11.2(f)—Once an alien is declared undesirable and an order of deportation is made, it is permissible to detain him for such period as it is necessary for arrangement of his deportation.*

5 *Aliens—Status of, under International Law.*

The applicant, who is an alien, was declared by the Minister of Interior under s.6 of Cap. 105 as a prohibited immigrant. The Minister issued, also, an order for his deportation. As a result the applicant was arrested.

10 By means of this application for Habeas Corpus ad subjiciendum the applicant prays for his release, alleging that his detention is contrary to Art. 11 of the Constitution.

15 Held, dismissing the application: (1) By Article 32 of the Constitution, the Republic is given the right to regulate, by means of laws, any matter relating to aliens, in accordance with International Law.

(2) Art. 11.2(f) of the Constitution allows the arrest or detention of an alien against whom action is being taken with a view to deportation or extradition.

20 (3) It is internationally accepted that when an alien enters into a State he falls under the territorial supremacy of that state and is under its jurisdiction and is responsible to it for all acts he commits on its territory.

25 (4) The right of States to expel aliens is recognized internationally and this applies whether the alien is only on a temporary visit or has even settled down for professional or business purposes on the territory of the State, having taken his domicile therein.

(5) The provisions of Article 11(2)(f) of our Constitution are clear and unambiguous and they give the right to the Republic, once an alien is declared an undesirable immigrant and an order for his deportation is made, to detain him for such period as it is necessary for arrangements to be made for his deportation.

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*Application dismissed.*

*Cases referred to:*

*Karaliotas v. Republic* (1987) 3 C.L.R. 1701.

**Application.**

Application by Erdinc Uckac for an order of habeas corpus ad subjiciendum praying for his release from detention. 10

M. Schizas with N. Pirillides, for the applicant.

P. Clerides, for the respondent.

*Cur. adv. vult.*

DEMETRIADES J. read the following judgment. This is an application made by the applicant Mr. Erdinc Uckac for an order of habeas corpus ad subjiciendum by which he prays for his release from detention. 15

The facts of this case are in brief the following:

On the 22nd March, 1988, the Minister of Interior, on the basis of information given to him by the Chief of the Police and the Information Service, declared the applicant to be a prohibited immigrant under powers vested in him by section 6 of Cap. 105 and, also, ordered his deportation under the provisions envisaged by section 14 of the same Law. 20  
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As a result of the decision taken by the Minister, he authorised the Director-General of his Ministry to sign a deportation order and the detention of the applicant pending his deportation.

The applicant is not a citizen of the Republic, but according to Mr. Jonathan Kelly Dieter, who has sworn the affidavit in support of the application, the applicant is a Kurd from Turkey; that he came to the Turkish occupied part of Cyprus in 1976 and that being unsatisfied there he defected to the free area of the Republic; that he was then arrested and after being kept in custody he was sent back from where he came. However, he again, on the 15th October, 1986, managed to defect to this side of the Republic 30  
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and after being kept for five months in detention he was released and moved to Limassol where he found work.

5 On the 26th March, 1988, the applicant was arrested and since detained as a result of being declared an undesirable immigrant and of the order for his deportation.

Counsel for the applicant argued that his detention is illegal in that it offends Article 11 of the Constitution.

10 By Article 32 of the Constitution, the Republic is given the right to regulate, by means of laws, any matter relating to aliens in accordance with International Law and Article 11 which the applicant alleges that its provisions have been violated, provides:

«1. Every person has the right to liberty and security of person.

2. No person shall be deprived of his liberty save in the following cases when and as provided by law:-

15 (a) the detention of a person after conviction by a competent court;

(b) the arrest or detention of a person for non-compliance with the lawful order of a court;

20 (c) the arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

25 (d) the detention of a minor by a lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the detention of persons for the prevention of spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

30 (f) the arrest or detention of a person to prevent him effecting an unauthorised entry into the territory of the Republic or of an alien against whom action is being taken with a view to deportation or extradition.

35 3. Save when and as provided by law in case of a flagrant offence punishable with death or imprisonment, no person shall be arrested save under the authority of a reasoned

judicial warrant issued according to the formalities prescribed by the law.

..... »  
 Cap. 105 which is the Law that regulates matters relating to aliens is not attacked by the applicant. What, however, he submitted through his counsel is that the Republic has no right to detain him after the Minister of Interior declared him an undesirable immigrant and an order for his deportation was made. It was further submitted that the detention of the applicant for a long period, that is as from the 26th March, 1988, was an unreasonable one.

As regards the first submission, the Republic relies on Article 11(2)(f) of the Constitution the provisions of which appear earlier in my judgment.

It is internationally accepted that every State exercises territorial supremacy over all persons on its territory, whether they are its subjects or aliens and there is no obligation by it to accept an alien. When an alien enters into a state he falls under the territorial supremacy of that State, he is under its jurisdiction and is responsible to it for all acts he commits on its territory.

The right of States to expel aliens is recognized internationally and this applies whether the alien is only on a temporary visit or has even settled down for professional or business purposes on the territory of the State having taken his domicile thereon.

(See Oppenheim's International Law 8th ed. Vol. 1, Chapters VI, VII and VIII).

Relevant to the issue of the rights of the Republic with regard to aliens is the case of *Karaliotas v. The Republic* (1987) 3 C.L.R. 1701.

The provisions of Article 11(2)(f) of our Constitution, in my view, are clear and unambiguous and they give the right to the Republic, once an alien is declared an undesirable immigrant and an order for his deportation is made, to detain him for such period as it is necessary for arrangements to be made for his deportation. This philosophy has been followed by the interpretation given to Article 5 of the European Convention on Human Rights to which Cyprus is a signatory and which has been ratified by Law 39/62 (see *Jacobs: The European Convention on Human Rights*, 1975

at pp. 46, 49, 50 and *Fawcett: The Application of the European Convention, 1969, at pp. 86, 87*).

In the result, the application is dismissed with no order as to costs.

- 5 Applicant's detention to continue till arrangements are made for his deportation.

10 Before concluding, however, I would like to point out to the authorities that in every European country persons detained for reasons similar to the one for which the Republic seeks to deport the applicant are neither kept in Police cells or in prisons but in special places which are under the control of the Immigration Authorities. However, since no such places exist in Cyprus, I am forced to make an order that the applicant is detained in the Central Prisons until arrangements are made for his deportation.

- 15 In the circumstances, there will be no order as to costs.

*Application dismissed.  
No order as to costs.*