

1988 July 19.

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS VLACHOS,

Applicant.

v.
THE REPUBLIC OF CYPRUS, THROUGH
MINISTRY OF FINANCE AND/OR
DIRECTOR OF CUSTOMS DEPARTMENT,

Respondents.

(Case No. 527/88),

Provisional order—The prerequisites for granting it—Flagrant illegality—Irreparable damage—Flagrant illegality militates strongly in favour of making the order, even if irreparable damage has not been proved—Generally, pecuniary loss is not considered as irreparable damage.

5 The facts of this case appear sufficiently in the judgment of the Court.

*Provisional order granted ex parte discharged.
No order as to costs.*

Cases referred to:

Aspri v. The Republic, 4 R.S.C.C. 57;

10 *Georgiades v. The Republic* (1965) 3 C.L.R. 392;

Prokopiou and Others v. The Republic (1979) 3 C.L.R. 686.

Application.

15 Application by Counsel for applicants for a direction of the Court making absolute a provisional order suspending the decision of the respondents by which the licence for importation and use of a duty free motor car would be terminated on 30.6.88.

C. Melas with A. Christofidou (Miss), for the applicant.

S. Matsas, for the respondent.

MALACHTOS. J. gave the following decision. In view of the nature of this case I shall proceed to deliver judgment forthwith.

The applicant in this recourse filed on 22.6.88 the present re- 5
course claiming:

1. A declaration of the court that the act and/or decision of the re-
spondent authority, which is contained in a letter dated 2.6.88,
addressed to the applicant, and by which his claim for exemption 10
from import duty of his motor car was dismissed, should be de-
clared null and void and of no legal effect whatsoever.

2. A declaration of the court that the omission and/or refusal of
the respondent to accept the claim of the applicant for exemption
from import duty of his motor car, is null and void and without 15
legal effect whatsoever and whatever has been omitted should
have been performed, and

3. A declaration of the court by which the act and/or decision of
the respondent, which came to the notice of the applicant on
8.6.88 and by which he was given a licence to use his vehicle 20
free of import duty up to 30.6.88, should be declared null and
void and of no legal effect whatsoever.

At the same time the applicant applied and obtained a provision-
al order to the effect that-

(a) the decision of the respondent dated 2.6.88 by which the li- 25
cence for importation and use of a duty free motor car would be
terminated on 30.6.88, was suspended till further order of this
court, and

(b) it was also ordered that the payment of import duty for the
motor car under No. D461HYH is also suspended till further or-

der of this court.

5 The order was made returnable on 2.7.88 and counsel for the respondent on appearing on that date stated that he opposes the application and so the application was adjourned to 18th July, 1988, for hearing. In the meantime the opposition to the order being made absolute was filed together with the relevant affidavit in support thereof. Due to the continuation of hearing of Revisional Jurisdiction Appeals Nos. 610 and 612 on 18.7.88 the hearing of this application was shifted for today.

10 The basis of the case of the applicant, which appears in the affidavit in support of his application, is that he has an arguable case, that there is flagrant illegality on the part of the respondent authority and that if the provisional order is refused, there will result irreparable damage to him.

15 The principles on which a provisional order is granted and is made absolute, are stated in a considerable number of cases decided by this Court beginning with the case of *Aspri v. The Republic*, 4 R.S.C.C.57, *Georghiades v. The Republic* (1965) 3 C.L.R. 392, up to the case of *Gedeon Prokopiou and Others v. The Republic* (1979) 3 C.L.R. 686 where all these cases are enumerated. In the case of *Prokopiou*, (supra), at page 691, the following is stated:

20

25 "It is clear from the above that an applicant in order to succeed in an application for a provisional order under rule 13 of the Supreme Constitutional Court Rules, 1962, must show to the Court that his application is likely to prevail on the merits and that the non making of the order will cause him irreparable damage. It goes without saying that flagrant illegality of an administrative act militates strongly to the making of a provisional order even though irreparable damages has not been proved.

30 As it appears from Louis L. Jaffee on 'Judicial Control of Administrative Actions' the above principles are accepted in American Jurisprudence more clearly. In Chapter 18 under the heading of 'Temporary Judicial Stays of Administrative Action

Pending Judicial Review' of this book, at page 689, it is stated that:

Despite the silence or variant wording of applicable statutes permitting stays ' upon good cause shown' or upon 'a finding' of irreparable 'damage', the power remains a discretionary and equitable one to be exercised according to tradinional standards. The District of Columbia Circuit, with an extensive experience in motions for stays, has attempted to cast them into a formula in *Vigninia Petroleum Jobbers Assn. v. FPC* (259 F. 2d 921 (D.C.Cir. 1958)), which has since been widely referred to in the lower federal Courts. The applicant must show 1) that he is very likely to prevail on the merits; 2) that if he should prevail on the merits he will suffer irreparable injury if the stay is not granted; 3) that the other parties will not suffer harm; and 4) that the public interest will not be harmed."

From the material placed before me in the present case it can neither be said that there exists a flagrant illegality on the part of the administrative authority, a feature militating strongly to the making of the order absolute nor that the claim of the applicant is so unfounded as to lead the court to the conclusion that it is not proper in any case to grant the provisional order applied for. The merits of the case, therefore, cannot have a decisive effect on the outcome of the present application.

Coming to the question of irreparable injury, it is clear from the affidavits in support of the application and opposition that the injury alleged by the applicant is only pecuniary loss which is generally recoverable. In *Recourse for Annulment of the Greek Council of State by Tsatsos*, 3rd edition, page 428, paragraph 255, we read:

"Pecuniary loss is generally recoverable. In some cases, however, pecuniary loss is considered as irreparable if it is going to endanger a commercial business or the ability of providing the means of support of the applicant. Furthermore, in cases where the extent of the damage in conjunction with the

5 conditions under which the injured party is living, does not confer the above case, the pecuniary loss may amount to irreparable injury if the person who is liable to pay is insolvent, or the damage that will result from the execution of the administrative act, cannot be ascertained."

In the present case this situation does not arise.

For the reasons stated above, I have reached the conclusion that the provisional order, which was made on the 25.6.88 should not remain in force and it is hereby cancelled.

10 On the question of costs I make no order.

The recourse to take its usual course and is adjourned to 3rd September, 1988 at 9 a.m. for mention.

Opposition to be filed within 15 days as from today and any reply thereto, within one month thereafter:

15 *Order accordingly.*