

1988 December 17

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTOS LEVANTIS,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF INTERIOR,
2. THE MIGRATION OFFICER,

Respondents.

(Case No. 854/85).

International Law—Aliens—The power of a State to exclude them—The competency to exclude, includes competency to require work permits.

5 *Constitutional Law—Aliens—Constitution, Art. 32—The Aliens and Immigration Law, Cap. 105, as amended—It is a law as the one envisaged by Article 32.*

Constitutional Law—Freedom of religion—Constitution, Art. 18—Aliens—Refusal to grant work permit as a Religious Officer in the Church of God of Prophecy—Not unconstitutional, because Art. 18 does not impose an obligation to grant a person a work permit.

10 *The European Convention for the Protection of Human Rights—Freedom of religion—Art. 9—Refusal to grant work permit as a Religious Officer in the Church of God of Prophecy—Does not violate Art. 9—The opinion of the European Commission on Human Rights Art. 9 — "A Church of X against United Kingdom" (Application 3798/68) cited with approval.*

15 *Aliens—Work permits—The breadth of the discretion of the administration under the Aliens and Immigration Law, Cap. 105, as amended—Judicial control—Principles applicable.*

The applicant, who is an alien, impugned by means of this recourse, the decision, whereby his application for a permit to work as a Religious Officer of the Church of God of Prophecy, was turned down. The principles expounded and applied by the Court in determining the fate of the recourse appear sufficiently from the hereinabove headnote. Applying such principles to the facts of this case, the Court dismissed the recourse. 5

*Recourse dismissed.
No order as to costs.*

Cases referred to:

- Musgrove v. Chun Teeong Toy* [1891] A.C. 272; 10
- Amanda Marga Ltd. v. The Republic* (1985) 3 C.L.R. 2583;
- Karaliotas v. The Republic* (1987) 3 C.L.R. 170F;
- Savvidou v. The Republic* (1970) 3 C.L.R. 118;
- Voulpioti v. The Republic* (1974) 3 C.L.R. 313;
- Pernaros v. The Republic* (1975) 3 C.L.R. 175; 15
- Jammoul and Another v. The Republic* (1987) 3 C.L.R. 2088;
- Church of X. against United Kingdom*, Appl. 3798/68 (European Commission on Human Rights).

Recourse.

Recourse against the refusal the respondents to grant applicant a permit to work in Cyprus as a religious officer in the Church of God of Prophecy in Larnaca. 20

A. Efyrihiou, for applicant.

D. Papadopoulou (Mrs.), for the respondents.

Cur. adv. vult. 25

5 A. LOIZOU P. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that the act or decision of the respondents by which they refused his application for a permit to work in Cyprus as a Religious Officer in the Church of God of Prophecy, in Larnaca, is null and void and with no legal, effect whatsoever.

10 Before proceedings any further I would like to mention here that I took over this case on the 2nd February 1988 from a colleague who retired and I granted extension of time for the filing of the written address of the respondents which was ultimately filed on the 1st November 1988.

The said Church which is functioning in Cyprus since 1927, is registered as a Charity under the provisions of Section 2 of the Charities Law, Cap. 41.

15 The applicant who is Greek National born in Alexandria, Egypt, submitted on the 12th December 1984 an application to respondent No. 2 for the renewal of his temporary resident's permit in order to continue to stay with his fiance Maria Shiakalli a Greek Cypriot. On the 17th January 1985 the applicant was
20 granted as a visitor, temporary resident's permit valid until the 16th July 1985. On the 22nd December 1984 the applicant got married to Maria Shiakalli, the marriage was, as stated on the marriage certificate produced; solemnized in Nicosia according to the rites and ceremonies of the Church of God of Prophecy, by
25 Christos Shiakallis, who signed it as registered Minister.

Respondent 2 renewed the applicant's temporary resident's permit as a visitor periodically whenever the applicant applied for such renewal, but in respect of his application for work permit, respondent 2, after examining his application dated the 26th June
30 1985, wrote to him on the 28th August 1985 turning down his application for a permit to work as a Minister of the Church of God of Prophecy. Hence the present recourse.

The applicant relies on the following grounds of law:

1. That the sub-judice decision is not duly reasoned.

2. That the sub-judice decision and/or refusal of the respondents was taken after a misconception of facts as it was based on inaccurate and/or incomplete and/or wrong and/or inadequate and/or unreliable information and reports. 5

3. That the sub-judice decision and/or refusal of the respondents was taken without proper and due inquiry and/or proper appreciation and after taking into consideration all relevant facts.

4. The sub-judice decision and/or refusal of the respondents offends Article 18 of the Constitution, Article 9 of the European Convention of Human Rights which has been ratified by Law No. 49 of 1972 and also Article 18 of the Universal Declaration of Human Rights of the United Nations in as much as:
 - (a) The applicant is prevented to exercise and express his religious duties as a Religious Officer of the Church of God of Prophecy in Cyprus. 15

 - (b) There is discrimination and unequal treatment against the applicant as a religious officer of the said Church.

 - (c) The freedom of worship is violated.

 - (d) The applicant is compelled in a manner tantamount to the exercise of moral pressure to change his religion. 20

5. (a) The sub-judice decision and/or refusal of the respondents was taken in excess and abuse of power as there is no available properly qualified person of Cypriot origin to take over as a religious officer of the said Church in the District of Larnaca. They do not allow the applicant who has the suitable qualifications to assume the said Office. 25
 - (b) They prevent the applicant from offering his services as a religious officer to the congregation of the said Church which

needs them, without reasonable justification.

(c) Although they allow the applicant to live with his Cypriot wife in Cyprus they do not allow him to exercise the said office depriving him of the right to be employed in order to support his family, and,

6. The sub-judice decision was taken contrary to and after a wrong interpretation and application of Regulation 11 of the Aliens and Immigration Regulations of 1972, Notification No. 242 of 1972.

10 It is the case for the respondents that the sub-judice decision is, having in mind the special Constitutional and Statutory provisions, the wide discretion the administration enjoys on such matter, and the relevant case law, a lawful decision.

15 Under Article 32 of the Constitution the Republic is not precluded from regulating by law any matter relating to aliens in accordance with International Law.

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 *Musgrove v. Chun Teeong Toy* [1891] AC 272.)

25 Furthermore, "it is uncontroversial that every State has absolute discretion to refuse the admission of foreigners," Schwazenberg on International Law 3rd Ed. Vol. 1 at p. 360.

(The terms "competent to exclude aliens from its territory", includes the territorial right of a State to refuse not only applications for visitor's permits, but also applications for work permits.

30 The matter of the admission of aliens and their status in Cyprus has in fact been as envisaged by the Constitution regulated

by law, namely the Aliens and Immigration Law Cap. 105 as amended by Laws No. 2 of 1972, No. 54 of 1976 and No. 50 of 1988 and the Regulations made by virtue of the power granted to the Council of Ministers by s. 20 thereof, that is the Aliens and Immigration Regulations, 1972, published in Supplement No. 3 to the Official Gazette of the Republic under No. 980 dated 22nd December 1972.

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It is apparent from the provisions of s. 10 of Cap. 105 and Regulations 9 and 11 of the said Regulations, that the Immigration Officer has been granted a very wide discretion, consistent with the supremacy and sovereignty of the State, on matters of allowing an alien to either enter or work in the Republic.

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In the case of *Amanda Marga Ltd v. The Republic* (1985) 3 C.L.R. 2583 Pikiis J. at p. 2587 said the following:

"The discretion of the authorities, on the other hand, to exclude an alien is not abridged by the fact that its exercise is subject to judicial review. By the terms of the Aliens and Immigration Law, Cap. 105, the discretion of the State to exclude aliens is very wide, as broad as it can be in law, consistent with the supremacy and territorial integrity of the State; but not absolute. It is subject to the bona fide exercise of the discretion. So long as the discretion is exercised in good faith, the Court will query the decision no further. An alien, subject to any rights that may be conferred by convention or bilateral treaty, has no right to enter the country. His only right is that an application to enter the country should be considered in good faith. Acknowledgement of any further obligation on the part of the State would be inconsistent with the sovereign right of the State to exclude aliens".

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In the case of *Yiannis Karaliotas v. The Republic*, (1987) 3 C.L.R. 1701 the Full Court held at p. 1706:-

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"Irrespective, however, of the fact that the discretionary power 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...."

5 No doubt the aforesaid apply to the present case. In the case under consideration the administrative authority in exercising its very wide discretion refused permission to the alien to work as a Minister in the Church of God of Prophecy, such course being open to the respondents on the basis of the special statutory and Constitutional provisions applicable to aliens.

10 According to the relevant law an alien can not work in Cyprus unless he secures a work permit. An alien in fact, seeks special permission to do something forbidden by Cyprus Law and the appropriate authority's answer is that they do not allow him to work as a Minister in the Church of God of Prophecy.

15 In the case of *Yiannis Karaliotas v. The Republic* (supra) the Court held at page 1706, that:-" 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 born 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. Republic* (1970) 3 C.L.R. 118 and *Voulpioti v. Republic* (1974) 3 C.L.R. 313 and *Pernaros v. Republic* (1975) 3 C.L.R. 175." (See also *Ahmed Jammoul and Another v. The Republic* (1987) 3 C.L.R. 2088).

30 Learned counsel for the applicant submitted that the sub judice decision violates the provisions of Article 18 of the Constitution and the corresponding Article 9 of the European Convention on Human Rights.

Article 18 of our Constitution reads as follows:

- "1. Every person has the right to freedom of thought, conscience and religion.
2. All religions whose doctrines or rites are not secret are free.
3. All religions are equal before the law. Without prejudice to the competence of the Communal Chambers under this Constitution, no legislative, executive or administrative act of the Republic shall discriminate against any religious institution or religion. 5
4. Every person is free and has the right to profess his faith and to manifest his religion or belief, in worship, teaching, practice or observance, either individually or collectively, in private or in public, and to change his religion or belief. 10
5. The use of physical or moral compulsion for the purpose of making a person change or preventing him from changing his religion is prohibited. 15
6. Freedom to manifest one's religion or belief shall be subject only to such limitations as are prescribed law and are necessary in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person. 20
7. Until a person attains the age of sixteen the decision as to the religion to be professed by him shall be taken by the person having the lawful guardianship of such person. 25
8. No person shall be compelled to pay any tax or duty the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own."

Article 9 of the Convention provides: 30

5 "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

10 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

15 Article 9 has been the subject of extensive interpretation by the European Commission of Human Rights, but I find that the case *Church of X. against the United Kingdom*, Application No. 3798/68 is most helpful. Suffice it to refer to the following extract:

20 "Whereas the applicant corporation complains that the rights of the members in respect of religion and belief under Article 9, paragraph (1), of the Convention have been violated by the measures introduced by the responsible Minister; whereas the Commission observed that the measures concerned are confined, insofar as they affect the members of the CHURCH, to a denial or withdrawal of student status, the refusal or termination of work permits and employment vouchers, and to the refusal of extensions of stay within the United Kingdom to continue studies at X... establishments; whereas these measures do not prevent the members, whether resident or coming from abroad, from attending College of X... or other branches of the CHURCH in the United Kingdom, or otherwise manifesting their religion or belief; whereas, consequently, an examination of the case as it has been submitted does not disclose any appearance of a violation of the rights and freedoms set forth in the Convention and in Article 9; whereas it follows that this part of the application is manifestly ill-founded within 30 the meaning of Article 27, paragraph (2), of the Convention;

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Whereas, insofar as the members affected are foreign nationals outside the United Kingdom, or foreign nationals already resident in the United Kingdom, having student status, work permits or employment vouchers or foreign nationals admitted for temporary residence, and are prevented by the measures introduced from respectively entering the United Kingdom or continuing to reside therein, it is to be observed that the Convention, under the terms of Article 1, guarantees only the rights and freedoms set forth in Section 1 of the Convention; and whereas, under Article 25, paragraph (1) only the alleged violation of one of those rights and freedoms by a Contracting Party can be the subject of an application presented by a person, non-governmental organisation or group of individuals; whereas otherwise its examination is outside the competence of the Commission *ratione materiae*; whereas the Commission has already stated in a number of decisions that a general right of foreign nationals to enter or to reside in a country other than their own is not, as such, a right guaranteed by any provision of the Convention." 5 10 15

The answer to the arguments of counsel of the applicant on this ground is that the applicant is free to profess any religion he wishes. The refusal of a work permit to the applicant did not prevent him from attending his Church or otherwise manifesting his religion or belief. This right does impose on the administration the obligation to grant a person a work permit in order to work as a religious minister in the Church to which he belongs. Article 18 guarantees freedom of religion and not entitlement however to work permit. This latter matter is regulated specially by the Law enacted under the authority of Article 32 of the Constitution, and Regulations made thereunder as well as the general principles of International Law. 20 25 30

There remains to consider whether the sub judice decision is duly reasoned and reached after a due and proper inquiry. As regards the reasoning, same can be found in the material in the relevant file and which also shows that the decision was taken after a proper inquiry and there is neither misconception of law or of fact 35

in this case, nor any abuse of power.

For all the above reasons the present recourse should and is hereby dismissed and the sub judice decision is confirmed, but in the circumstances there will be no order as to costs.

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*Recourse dismissed.
No order as to costs.*