

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SOTERIOS GOULELIS,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF INTERIOR,
2. THE MIGRATION OFFICER,

*Respondents.*

—  
SOTERIOS  
GOULELIS  
v.  
REPUBLIC  
(MINISTER  
OF INTERIOR  
AND ANOTHER)

(Case No. 403/69).

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*Provisional Order—Rule 13 of the Supreme Constitutional Court Rules, 1962—Recourse for annulment of a decision of the Minister of Labour to the effect that no permit to work in Cyprus will be granted to the Applicant as well as of a decision of the Migration Officer to the effect that it was not found possible to grant him a permit to reside in Cyprus and that he (the Applicant) has to leave Cyprus on or before December 31, 1969—Application for a provisional order under said Rule 13 preventing Respondents from deporting him until final determination of his aforesaid recourse—Application refused on the ground that granting the order would not be within the proper exercise of the Court's powers—In view of the fact that there is nothing on record showing that any action had been taken or even decided upon administratively with a view to deporting Applicant—The case of Georghiou (No. 1) v. The Republic (1968) 3 C.L.R. 401 distinguished.*

In refusing the application for a provisional order the Court:—

*Held:* (1) It may well be that if Applicant does not leave Cyprus by December 31, 1969, when his visitor's permit expires (*supra*), steps for his deportation will be taken.

(2) But bearing in mind the actual situation, at present, in this case, as well as all relevant principles governing an application such as the present one, and notwithstanding the wide terms, indeed, in which Rule 13 (*supra*) is framed, I cannot see how I could properly make, *at this stage* a Provisional Order

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preventing the Respondents from deporting the Applicant or from taking any steps for such purpose.

(3) If I were to do so I would, in effect, be granting to the Applicant a visitor's permit enabling him to stay in Cyprus after December 31, 1969 (*supra*) and I would be, thus, acting under Rule 13 as an organ of administration. Such a course would, in the circumstances, be beyond the proper exercise of the relevant powers of this Court.

(4) For the above reasons the application for a Provisional Order is refused and dismissed.

*Application dismissed.*

Cases referred to:

*Georghiou (No. 1) v. The Republic* (1968) 3 C.L.R. 401, distinguished.

#### **Application for Provisional Order.**

Application for a provisional order preventing the Respondents from deporting Applicant from Cyprus until the determination of a recourse against the refusal of the Respondents to grant him an employment permit enabling him to be employed in Cyprus after 31st December, 1969 and the refusal to allow him to reside in Cyprus, after such date, without being employed.

*N. Charalambous*, for the Applicant.

*K. Talarides*, Senior Counsel of the Republic, for the Respondents.

The following decision was delivered by:—

TRIANTAFYLIDIS, J.: In this recourse the Applicant seeks two remedies: The annulment of a decision, communicated to him by a letter of the Minister of Labour, dated the 18th December, 1969 (*exhibit 2*), to the effect that no permit to work in Cyprus will be granted to him, and the annulment of a decision of the Migration Officer (Respondent 2 who comes under Respondent 1) communicated to him by letter dated the 13th December, 1969 (*exhibit 1*), to the effect that it was not found possible to grant him a permit to reside and work in Cyprus and that he has to leave Cyprus on or before the 31st December, 1969.

As a matter of fact on the 6th December, 1969, a visitor's permit was granted to the Applicant enabling him to stay in Cyprus until the 31st December, 1969.

This recourse was filed on the 23rd December, 1969. On the same date the Applicant applied for a Provisional Order preventing the Minister of Interior and the Migration Officer—the Respondents—from deporting Applicant from Cyprus, or from taking any measures towards deporting him, until the determination of this recourse, and for a Provisional Order enabling the Applicant to stay and work in Cyprus until the determination of this recourse. During, however, the hearing of this application, counsel for the Applicant stated that he no longer insists on the making of a Provisional Order enabling him to stay and work in Cyprus; so we are today concerned only with the first of the two Provisional Orders applied for by the Applicant.

There is nothing on record to show that any action has been taken, or even decided upon, administratively with a view to deporting the Applicant; and it is in this respect that the present case is distinguishable from *Georghiou (No. 1) v. The Republic* (1968) 3 C.L.R: 401. All that there appears on record is that he has been warned that he has to leave Cyprus when his visitor's permit expires.

It may well be that if he does not do so then steps for his deportation will be taken. But, bearing in mind *the actual situation, at present, in this case*, as well as all the relevant principles governing an application such as this one, and notwithstanding the wide terms, indeed, in which rule 13 of the Supreme Constitutional Court Rules, 1962, is framed, I cannot see how I could properly make, *at this stage*, a Provisional Order preventing the Respondents from deporting the Applicant or from taking any measures for such a purpose; if I were to do so I would, in effect, be granting myself to the Applicant a visitor's permit enabling him to stay in Cyprus after the 31st December, 1969, and I would be, thus, acting, under rule 13, as an organ of administration; I do think that such a course would, in the circumstances, be beyond the proper exercise of the relevant powers of this Court.

Of course, if and when deportation measures are taken against the Applicant, then he might seek a Provisional Order suspending the effect of such measures pending the determina-

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tion, in a new recourse, of the validity of the deportation; this is a matter which I leave entirely open now.

It follows from the foregoing that the application for a Provisional Order is dismissed. But I would like to draw the attention of the responsible authorities to the following:

The Applicant has been in Cyprus for quite some time, with his family. He is, at present, a litigant in a civil action before the District Court of Limassol (No. 2635/69). The Applicant is, also, an accused person in a criminal case before the District Court of Limassol (No. 15691/69) which is fixed for hearing on the 21st of January, 1970. Furthermore, the Applicant has filed the present recourse, before this Court, in which there appear to arise quite substantial issues. In relation to all these proceedings the Applicant might claim certain fundamental rights which are safeguarded under Articles 12 and 30 of the Constitution, as the case may be.

This is an aspect which I trust will be duly studied by the responsible authorities; in ordinary circumstances one would expect that such authorities would not be in any great hurry to force the Applicant to leave Cyprus, while he has all this litigation pending; unless, of course, there exist very serious reasons which demand that he should leave Cyprus and be allowed only to return when each of his cases is about to be heard. I am not pronouncing on this matter at all. I am leaving it, entirely, in the hands of the said authorities; they have to weigh the situation and decide whether to permit the Applicant to stay on, after the 31st December, 1969.

I fix the present recourse for Directions on the 7th January, 1970, at 9 a.m.; on that date if the Applicant is still here, and depending on how much longer he will be allowed to stay in Cyprus, I shall be able to decide on whether to grant an early date of trial.

*Order in terms.*