

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CONSTANTINOS
IOANNIDES
v.
REPUBLIC
(COUNCIL
OF MINISTERS
AND OTHERS)

CONSTANTINOS IOANNIDES,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE COUNCIL OF MINISTERS,
2. THE MINISTRY OF INTERIOR,
3. THE MIGRATION OFFICER,

Respondents.

(Cases Nos. 344/70, 377/70).

*Aliens and Immigration Law, Cap. 105—“ Prohibited immigrants ”—
Deportation order—Cancellation of Cyprus passport—Section
6 (1) (f) and (g) and section 14 of the Law—Recourse against
decision declaring applicant a “ prohibited immigrant ”, as well
as (a) against order deporting him from Cyprus, and (b) against
cancellation of his Cyprus passport—Interim judgment leaving
open the ground for the respondents to re-examine the case
in the light of such interim judgment.*

Cyprus Citizenship—See infra, passim.

*Citizenship—Whether issue of a Cyprus passport amounts to grant
of Cyprus citizenship under the provisions of section 4 (1)
of Annex D of the Treaty of Establishment of the Cyprus Repu-
blic—Applicant having not used the appropriate procedure,
prescribed under the Citizenship of the Republic of Cyprus
(Forms, Fees and Offences) Law, 1961 (Law No. 11 of 1961),
when applying for a passport, was not, on being issued with
such Cyprus passport in 1964, granted thereby Cypriot citi-
zenship under said section 4 (1) of Annex D as well.*

*Citizenship—Entitlement to Cyprus citizenship—Section 3 of the
Republic of Cyprus Citizenship Law 1967 (Law No. 43 of 1967)
as being a person entitled to Cyprus citizenship under section 4
of Annex D of the said Treaty of Establishment of the Republic
of Cyprus—Section 3 of the said Law, read together with section
13 thereof, envisaging an application for the purpose to be made
by any person so entitled under said section 4 of Annex D does
not render the applicant a citizen of Cyprus who in order to*

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become a citizen he had to apply for the purpose under a particular provision in section 4 (1) of Annex D (supra), but he had not yet done so on the date of the coming into operation of the said Law No. 43 of 1967 (supra).

Citizenship—Entitlement to Cyprus Citizenship—Applicant's claim to Cyprus citizenship under section 2(1) of Annex D of the Treaty of Establishment of the Cyprus Republic—Applicant's alleged entitlement to the Cyprus passport issued to him in 1964 (supra), based, inter alia, on such claim under said section 2(1).

Administrative acts and decisions—Powers of the Court on a recourse under Article 146 of the Constitution—Factual position, on which the respondent Council of Ministers based its assumptions regarding applicant's said claim to Cyprus citizenship under section 2(1) of Annex D (supra), as well as regarding his disputed entitlement to the said passport issued to him in 1964, found to be incorrect and incomplete in certain material respects—And, thus, the said assumptions were not premises which could be safely relied on in reaching the sub judice decisions—In the circumstances, the Court refrained from finally deciding the matter as doing so would involve deciding on the applicant's relevant contention, not only by resolving pure legal issues, but by reaching conclusions of fact which should, in the first instance, be reached by the Government in the light of full knowledge of the relevant facts—The Government should be given the opportunity of doing so before the final judicial determination of the matter.

Practice—Recourse under Article 146 of the Constitution—Factual position on which the respondent Council of Ministers based its assumptions found to be incorrect and incomplete—Government should be given the opportunity to re-examine the applicant's claim to Cyprus citizenship under section 2(1) of Annex D (supra) etc. before the final judicial determination of the matter—See also immediately hereabove.

Cases referred to :

Pikis v. The Republic (1965) 3 C.L.R. 131, at p. 149.

The facts of this case sufficiently appear in this Interim Judgment of the Court, whereby the Court gave the Government the opportunity to re-examine certain vital aspects of this case pending final judicial determination of the matter.

Recourse.

Recourse against the decision of the respondents whereby applicant was declared as a prohibited immigrant and against an order for his deportation from Cyprus as a prohibited immigrant.

F. Markides with L. Papaphilippou, E. Markidou (Mrs.) and C. Velaris, for the applicant.

A. Frangos, Senior Counsel of the Republic, for the respondents.

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Cur. adv. vult.

The following decision was delivered by:—

TRIANTAFYLLIDES, P.: These two recourses are being heard together in view of their being closely interrelated.

The applicant, by recourse 344/70, complains, in effect, against a decision of the Council of Ministers (*exhibit 1*), which was reached on the 6th November, 1970, and by means of which the applicant was declared to be a prohibited immigrant, under paragraphs (*f*) and (*g*) of subsection (1) of section 6 of the Aliens and Immigration Law (Cap. 105), and, also, against an order for his deportation from Cyprus as a prohibited immigrant (*exhibit 2*), which was issued by the Minister of Interior, as Chief Immigration Officer, on the aforesaid date, under section 14 of Cap. 105.

Cap. 105 being a Law which was in force on the date of the coming into operation of the Constitution, *viz.* the 16th August, 1960, is to be read, by virtue of Article 188.3 of the Constitution, with such modifications as may be necessary to bring it into accord with the existence of the Republic of Cyprus.

By recourse 377/70 the applicant complains, once again, against the aforesaid decision of the Council of Ministers, and, also, against the cancellation of his Cypriot passport No. 70064 (*exhibit 4*), which was issued to the applicant on the 21st February, 1964. Such cancellation was communicated to the applicant by a letter of the Migration Officer dated the 6th November, 1970 (*exhibit 3*).

From the material before the Court it appears that the applicant filed recourse 344/70 on having been informed orally of the matters complained of by him, but before any official documents relating thereto had been served on him; then, after service of such documents, he filed recourse 377/70.

It is clear that the most vital of the administrative acts or decisions complained of by the applicant is the aforementioned decision of the Council of Ministers of the 6th November, 1970 (No. 10.081) which reads as follows :—

« Κήρυξις τοῦ Κώστα Π. Ἰωαννίδη ἐκ Κυρηνείας ὡς ἀπηγορευμένου μετανάστου.

Τὸ Συμβούλιον, λαμβάνον ὑπ' ὄψιν ὅτι ὁ Κώστας Π. Ἰωαννίδης ἐκ Κυρηνείας δὲν εἶναι πολίτης τῆς Κυπριακῆς Δημοκρατίας καὶ ὅτι τὸ κατὰ 1964 ἐκδοθὲν εἰς αὐτὸν διαβατήριον ὑπὸ τῆς Δημοκρατίας ἐξεδόθη ἐσφαλμένως, καὶ βάσει τῶν ἐνώπιον αὐτοῦ τεθέντων στοιχείων καὶ ἀποδείξεων, θεωρεῖ αὐτὸν ὡς ἀνεπιθύμητον πρόσωπον καὶ ὡς ἐπικίνδυνον εἰς τὴν εἰρήνην, δημοσίαν τάξιν καὶ καλὴν διακυβέρνησιν τῆς Δημοκρατίας καὶ ὡς τείνοντα νὰ διεγείρῃ ἔχθραν μεταξὺ τοῦ λαοῦ τῆς Δημοκρατίας καὶ τῆς Κυβερνήσεως αὐτῆς καὶ κηρύττει αὐτὸν ὡς ἀπηγορευμένον μετανάστην.»

(This decision translated into English reads as follows :—

“ *Declaration of Costas P. Ioannides of Kyrenia as a prohibited immigrant.*

The Council, having taken into account that Costas P. Ioannides of Kyrenia is not a citizen of the Cyprus Republic and that the passport issued to him by the Republic in 1964 was issued to him erroneously, on the basis of the data and proof placed before it considers him to be an undesirable person and to be dangerous to the peace, good order and good government of the Republic and as tending to excite enmity between the people of the Republic and its Government and declares him to be a prohibited immigrant).”

It was directed, with the consent of both sides, that the matter of the citizenship of the applicant be dealt with first, because it is a matter closely related to the decision to deport the applicant from Cyprus as a prohibited immigrant, especially in view of Article 14 of the Constitution which lays down that :—

“ No citizen shall be banished or excluded from the Republic under any circumstances.”

Accordingly these cases were heard in relation to the citizenship aspect and the decision thereon has been reserved until today ; as it will appear from what is stated hereinafter this is only an Interim Decision by which, for the reasons given herein, it has not been possible to resolve entirely the question of the applicant's citizenship.

Learned counsel for applicant, by a very erudite and forcefully presented argumentation, have tried to establish that the applicant was wrongly treated by the Council of Ministers (see the Council's aforementioned decision) as not being a citizen of the Cyprus Republic ; applicant's counsel have relied in this respect on alternative submissions with each one of which I will have to deal separately.

Before I do so it is necessary to refer to certain salient facts :—

The applicant possesses Greek citizenship ; but it appears to be common ground between the parties to these proceedings that the applicant, if found to be a Cypriot citizen too, will then be a person with dual citizenship.

I might, at this stage, explain that in this Decision I am using the expression "citizenship", instead of the expression "nationality", which is used as a rule in International Law in order to convey the notion of citizenship, because as the applicant is a Greek Cypriot, born in Cyprus from Greek Cypriot parents, there can be no doubt that his nationality, in the wider sense and as distinguished from citizenship in the narrower legal sense, is Greek, irrespective of whether he possesses only Greek citizenship or both Greek citizenship and Cypriot citizenship.

The applicant was born in Kyrenia on the 3rd March, 1938 ; his father, Polycarpos Ioannides, of Kyrenia, became a Cypriot citizen by virtue of section 2 of Annex D to the Treaty of Establishment of the Republic of Cyprus, which came into force on the 16th August, 1960, together with the Constitution of the Republic ; and wherein (see Article 198 thereof) the provisions of the said Annex D were incorporated.

On the 9th July, 1955, the applicant, being seventeen years old and having just graduated from the Greek Gymnasium in Kyrenia, went to Athens with a view to becoming a cadet at the Greek Military Academy in Athens (Σχολή Εὐελπίδων).

He sat for the relevant entrance examination in early September, 1955, and he was informed, about the middle of that month, that he had failed. Then, about the middle of October, 1955, a special examination was held for 20 additional entrants and this time the applicant succeeded in the examination and became a cadet at the said Academy on the 15th November, 1955. He graduated therefrom in August, 1958 (see *exhibit* 5) and became an officer in the Greek

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Army. He stayed in Greece all along until 1964, except for a short visit to Cyprus, on leave, from April to June, 1960.

He had travelled to Greece in 1955 by using British passport No. 61905, which was issued to him by the then British Colonial Government of Cyprus. At that time he was a British subject, but on admission to the Military Academy he became, also, a Greek citizen by operation of law.

In March, 1964, he came to Cyprus to serve as a Greek Army officer in the armed forces which were formed (such as the Cyprus National Guard) for the defence of Cyprus. About the end of 1967, he disobeyed orders of the Greek military authorities to return to Greece ; at the time he was serving in the Cyprus National Guard as an officer ; and he left the National Guard in January, 1968, after he had disobeyed the said orders.

After that he remained in Cyprus and became in September, 1968, the editor of a weekly newspaper, and he was still the editor of that newspaper when the events which gave rise to these proceedings took place ; actually, in June, 1969, he was issued by the Cyprus Government with an identity card (No. 501095) in which he is described as a " Citizen of the Republic " and as a " Newspaper-Director " (see *exhibit* 14).

Having applied twice to be discharged from the Greek Army he was, eventually, dismissed from its ranks in the summer of 1969.

Then, he was deported to Greece in November, 1970, on the strength of the sub judice deportation order, such order having been initially enforced notwithstanding the existence of a provisional judicial order to the contrary which was granted after recourse 344/70 had been filed (see, in this respect, the contempt of Court case reported as *Ioannides v. The Republic*, at p. 8 in this Part *ante*). While in Greece he was tried by a Greek military Court for his earlier, already referred to, misconduct as a Greek Army officer and was sentenced to a year's suspended imprisonment. After that, and on the strength of an arrangement reached between the parties to these proceedings on the 14th November, 1970—which amounts to substantial compliance with the said provisional order—he has been allowed to come to, and stay in, Cyprus for the purposes of the present proceedings.

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Coming, now, to deal with the alternative contentions put forward by the applicant's counsel in support of his claim that he is, also, a citizen of Cyprus, I find it convenient to commence with the contention that he was granted citizenship of Cyprus when the aforementioned Cypriot passport No. 70064—about the cancellation of which he complains—was issued to him on the 21st February, 1964. It was issued in Nicosia while the applicant was in Athens (in circumstances which are stated in the next paragraph) and its validity was due to expire on the 20th February, 1969; but it was renewed, on the 13th January, 1970, (the applicant living and working in Cyprus at the time) until the 20th February, 1974. Then, as already stated, it was cancelled on the 6th November, 1970, during the course of events which gave rise to the present recourses.

The applicant applied for this passport, while he was still in Greece, in February, 1964, (see the application numbered 7 in red in the relevant file *exhibit* 8). According to the evidence of Mr. D. Pierides, who was at that time the Consular Officer at the Embassy of Cyprus in Athens, the application form, as well as a relevant declaration (which is dated the 20th February, 1964, and is attached to an affidavit of Mr. Pierides filed on the 8th February, 1971, for the purposes of these proceedings), were filled in by the applicant in his office at the Embassy in Athens.

In the application the applicant stated that he had resided in Athens from the 16th August, 1955, to the 16th August, 1960, (which is the period of five years specified in the provisions of section 2(1) of Annex D to the Treaty of Establishment) and in the declaration he stated that on the 16th August, 1960, he was residing temporarily in Athens for studies («Πρὸς τὸν σκοπὸν σπουδῶν»); though, as a matter of fact, he had already graduated from the Military Academy in 1958.

As it appears from the material before me the aforesaid documents were sent to Cyprus where the passport in question (No. 70064) was issued; it was sent to our Athens Embassy where it was delivered to the applicant on or about the 22nd February, 1964.

The applicant stated in evidence—and has not been contradicted—that he did not use this passport when in March, 1964, he came to Cyprus in order to serve as a Greek Army officer; he came, as he explained, together with other officers, using military travelling documents.

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The contention of the applicant—with which I am dealing at present—that he was granted Cypriot citizenship on being issued with a Cypriot passport in February, 1964, is based on section 4 of Annex D, paragraph 1 of which reads as follows :—

“ 1. A person who immediately before the date of this Treaty was a citizen of the United Kingdom and Colonies and possessed any of the qualifications specified in paragraph 2 of Section 2 of this Annex but does not under that Section become a citizen of the Republic of Cyprus shall be entitled, on application to the appropriate authority of the Republic of Cyprus, to be granted on or after the agreed date citizenship of the Republic of Cyprus if—

- (a) he was immediately before the date of this Treaty ordinarily resident in any country or territory specified in sub-paragraph (j) of paragraph 2 of Section 3 of this Annex ; or
- (b) he was immediately before that date ordinarily resident in Greece or Turkey ; or
- (c) he was immediately before that date ordinarily resident elsewhere than in a country or territory mentioned in sub-paragraphs (a) and (b) of this paragraph, and became or may become stateless by reason of this Annex.”

In putting forward this contention the applicant's counsel have stated that they proceeded on the assumption that the applicant did not become a citizen of Cyprus by virtue of section 2 of Annex D, but they stressed that they were not conceding that such assumption was a correct one ; on the contrary, they relied primarily on the alternative contention that the applicant had become a Cypriot citizen by virtue of such section 2.

For the moment, however, I am dealing only with the contention based on paragraph 1 of section 4 of Annex D :

In my opinion, it emerges most clearly from the wording of the aforequoted paragraph 1 of section 4 that the applicant would be entitled to be granted Cypriot citizenship—if all the relevant requirements were satisfied—only “ on application to the appropriate authority of the Republic of Cyprus ”.

It was, indeed, stated in evidence by Mr. D. Karakoulas, the Migration Officer—and it so appears to be on the material at present before me—that the applicant could have been

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granted Cypriot citizenship if he had duly applied for it under section 4(1) of Annex D in February, 1964, and that he could be granted such citizenship even if he were to apply, under such provision, now, because the relevant quota (prescribed under paragraph 7 of section 4 of Annex D) has not been exhausted.

But, what has to be decided is whether the application on the strength of which the applicant obtained his Cypriot passport No. 70064 can be treated in law as an application for the purpose of section 4(1) of Annex D:

At that time there was in force The Citizenship of the Republic of Cyprus (Forms, Fees and Offences) Law, 1961 (11/61), a Law prescribing, *inter alia*, forms for applying for the grant of Cypriot citizenship under section 4(1) of Annex D (see section 3(1) of, and the First Schedule to, such Law). It is quite clear that the applicant did not use the form prescribed under Law 11/61 when applying for a Cypriot passport in February, 1964, and as such form differs in material respects from the application form which he used at the time there can be no doubt that the applicant did not duly comply, in 1964, with the appropriate procedure for being granted Cypriot citizenship under section 4(1) of Annex D. There is, in my view, not merely a difference regarding immaterial formalities, but a substantial difference between a mere application for a Cypriot passport and a specific application made for a grant of Cypriot citizenship; and the applicant, in fact, never applied for such a grant.

I am bound, therefore, to hold that the applicant, on being issued in February, 1964, with Cyprus passport No. 70064 was not granted, thereby, Cypriot citizenship under the provisions of section 4(1) of Annex D.

I shall deal, next, with the other alternative contention of the applicant, *viz.* that he became a citizen of Cyprus by virtue of the provisions of section 3 of the Republic of Cyprus Citizenship Law, 1967 (43/67), as being a person entitled to Cyprus citizenship under section 4 of Annex D:

Section 3 of Law 43/67—which came into operation as from December, 1968—reads as follows:—

“ 3. Citizens of the Republic are the persons who, on the date of the coming into operation of this Law, either have acquired or are entitled to acquire citizenship of the Republic under the provisions of Annex D or who acquire thereafter such citizenship under the provisions of this Law.”

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A part of a Law, such as section 3, above, has to be construed within the framework of the Law as a whole ; and when one reads section 13 of the same Law there can be, in my view, no doubt that what is meant by the phrase " entitled to acquire citizenship of the Republic under the provisions of Annex D " envisages an application for the purpose by any person so entitled under section 4 of Annex D ; the said section 13 reads as follows :—

" 13. Where any person whose acquisition of citizenship of the Republic under Annex D depended upon the doing of any act or the making of any application within a limited time, has not acquired such citizenship by reason or failure or omission to do the required act or make the required application, that person shall, if he would but for that failure have been a citizen of the Republic immediately before the commencement of this Law, be entitled, on doing the required act or making the required application within two years of the date of the coming into operation of this Law, become a citizen of the Republic as if the time limited under the relative provisions of Annex D had not expired."

In my opinion, therefore, the effect of section 3 of Law 43/67 is merely to define the persons who are to be citizens of Cyprus, and not to render any specific person a citizen of Cyprus who in order to become a citizen he had to apply for the purpose under a particular provision (such as section 4 (1) of Annex D) and had not yet done so on the date of the coming into operation of Law 43/67 ; otherwise section 13 of the Law would be superfluous.

Thus, this alternative contention of the applicant fails, too.

There remains to be dealt with his main alternative contention, *viz.* that he became a Cypriot citizen under section 2 (1) of Annex D :

Section 2 reads as follows :—

" 1. Any citizen of the United Kingdom and Colonies who on the date of this Treaty possesses any of the qualifications specified in paragraph 2 of this Section shall on that date become a citizen of the Republic of Cyprus if he was ordinarily resident in the Island

of Cyprus at any time in the period of five years immediately before the date of this Treaty.

2. The qualifications referred to in paragraph 1 of this Section are that the person concerned is—

- (a) a person who became a British subject under the provisions of the Cyprus (Annexation) Orders in Council, 1914 to 1943 ; or
- (b) a person who was born in the Island of Cyprus on or after the 5th of November, 1914 ; or
- (c) a person descended in the male line from such a person as is referred to in subparagraph (a) or (b) of this paragraph.

3. Any citizen of the United Kingdom and Colonies born between the date of this Treaty and the agreed date shall become a citizen of the Republic of Cyprus at the date of his birth if his father becomes such a citizen under this Section or would but for his death have done so."

It is not in dispute that the applicant is a person possessing all other qualifications for becoming a Cypriot citizen under section 2 (1), except the qualification of having been ordinarily resident in the Island of Cyprus at any time in the period of five years immediately before the Treaty of Establishment, viz. between the 15th August, 1955, and the 16th August, 1960 ; applicant alleges that, in the circumstances of his case, he possesses such qualification, but the respondents deny this.

It is relevant, in this respect, to bear in mind section 1 (e) of Annex D which reads as follows :—

(e) It is understood that a person shall not be regarded as having ceased to be ordinarily resident in a country if it can be shown to the satisfaction of the authorities concerned that his absence from that country was temporary and for the purpose of receiving medical treatment or education."

It is to be derived from the provisions of section 1 (e), when read together with the provisions of section 2 (1), that in the case of a person who claims to be treated as having been ordinarily resident in Cyprus, during any part of the period in question, even though he was absent from Cyprus during the whole said period, it must "be shown to the satisfaction of the authorities concerned"

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that his absence from Cyprus, for the whole or any part of the said period, was temporary and for the purpose of medical treatment or education.

Mr. Karakoulas has stated, in an affidavit dated the 9th February, 1971, that when he dealt in February, 1964, with the application of the applicant for a passport and saw that the applicant described himself as a student (see the declaration attached, as already stated, to the affidavit of Mr. Pierides of the 8th February, 1971) he considered "his absence from Cyprus as temporary and for the purpose of education" and authorized the issue of a passport to him.

The said affidavit of Mr. Karakoulas, dated the 9th February, 1971, reads as follows :—

"1. I am the Migration Officer in charge of the Migration Department of the Ministry of Interior. I keep in my custody all the documents and records respecting migration matters, passport matters and matters relating to citizenship.

2. In February, 1964, I received on behalf of applicant an application for the issue of a passport to him.

3. In his application applicant described himself as a student. Viewing this description of applicant I considered his absence from Cyprus as temporary and for the purpose of education and I authorized the issue of a passport to him.

4. At the time I did not know all the facts of applicant's case and I dealt with applicant's application favourably and with all speed, upon information that he would come to Cyprus to fight against the Turkish insurgents. This I did in the case of a great number of other Greek Cypriot students who came to Cyprus for the same purpose."

It appears that at the time Mr. Karakoulas was misled by the applicant's relevant declaration, because the applicant was not a student on the 16th August, 1960, as stated therein ; he had graduated from the Military Academy two years earlier, in 1958 ; and it is, indeed, strange that Mr. Pierides certified the correctness of the declaration, even though, as he very candidly said in evidence, he knew at the time that the applicant was not then a student, but an officer of the Greek Army.

On the other hand, it is equally clear that Mr. Karakoulas would in February, 1964, have issued the passport to the applicant, as he did, even if he knew the true position

regarding the date of graduation of the applicant from the Military Academy and his true status as a Greek Army Officer, because he regarded, then, studies such as those of the applicant as coming within the ambit of section 1 (e) of Annex D, and consequently as not putting an end to ordinary residence in Cyprus for the purpose of section 2 (1) of Annex D. This is to be derived from the following passage of his evidence in the present proceedings :—

“ Two or three days before the 7th November, 1970,— I would say *possibly* two or three days because my recollection as to the exact time is not clear—I was summoned to a meeting of the Council of Ministers to express an expert opinion. I was called to the Presidential Palace where most of the Ministers were holding a meeting and I was asked to express my views regarding the status of the applicant from the point of view of citizenship only. I was not in any way involved in the decision to deport him and I know nothing about the reasons for such decision. At that meeting, at the Presidential Palace, I expressed the view that the applicant was a Cyprus citizen because I was regarding education at the Military Academy as equivalent to university education abroad. In expressing this view at that meeting I was following the policy applicable to the cases of all Cypriot students who study anywhere in the world. I was asked at that meeting whether I was conversant with the provisions of the legislation in Greece regarding citizenship but I said that I only knew about these provisions in general terms. I left that meeting and then I received instructions from the Minister of Interior through our Director-General that the applicant was an alien and that his passport had been issued to him erroneously and that he should be deported as an undesirable person.”

Earlier on in his evidence Mr. Karakoulas had said the following, too :—

“ I have before me the affidavit which I swore with regard to this case on the 9th February, 1971. Regarding paragraphs 3 and 4 of my affidavit I would add this : If I knew that the applicant at the time was not a student but an officer in the Greek Army a different procedure would have to be followed. He would have to apply for registration as a Cyprus citizen under section 4 of Annex D of the Treaty of Establishment. If he had applied for such registration he

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would have obtained immediately registration as a Cyprus citizen, because he is entitled to such registration under the provisions of paragraph 1 of section 4 of Annex D.

I must make it clear that in swearing my affidavit of the 9th February, 1971, I did not want to convey in the least that the applicant had misled me with any fraudulent intent."

I find myself unable to accept the view expressed by Mr. Karakoulas in this part of his evidence, to the effect that if he knew that in February, 1964, the applicant was an officer the applicant would have to apply for Cypriot citizenship under section 4—(apparently paragraph (1) thereof)—of Annex D ; this course does not seem to me, as at present advised, to be the procedure which Mr. Karakoulas need have, then, in February, 1964, required to be followed, because, as stated, until November, 1970, he considered studies at the Military Academy in Greece as education in the sense of section 1 (e) of Annex D, and, thus, as not being incompatible, pending their duration, with ordinary residence in Cyprus for the purpose of section 2 (1) of Annex D.

A few days after the aforementioned meeting of Mr. Karakoulas with Ministers at the Presidential Palace he swore a new affidavit, which is dated the 9th November, 1970 (after recourse 344/70 had been filed). It reads as follows :—

" 1. I am the Migration Officer in charge of the Migration Department of the Ministry of Interior. I keep in my custody all the documents and records respecting migration matters, passport matters and matters relating to citizenship.

2. From the file of Costas Ioannides kept at my Office, it appears that he was born in Cyprus on the 3rd March, 1938, and that on the 31st May, 1955, he applied for the issue of a passport in order to proceed to Greece for studies. Cyprus Passport under number 61905 was issued to him on the 29th June, 1955, and he then proceeded to Greece where he arrived at some time prior to the 16th August, 1955.

3. In Greece he was admitted to the Military Academy (Σχολή Εὐελπίδων) intending to become an Officer in the Greek Army. Before admission to the Military Academy he obtained by his own voluntary act the Greek nationality as only Greek nationals are admitted to the Military Academy.

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4. The applicant was graduated from the Greek Military Academy and he became an Officer in the Greek Army.

5. As from the day he arrived in Greece he became an ordinary resident in Greece and he ordinarily resided in Greece, until the year 1964, when he came to Cyprus together with other Greek Army Officers in order to assist in the defence of the country.

6. Viewing the nature of applicant's studies and his status as a Greek Army Officer it becomes obvious that he gave up his ordinary residence in Cyprus as from the day he arrived in Greece and became an ordinary resident in Greece as from that day.

7. The fact that applicant was ordinarily resident in Greece as from the 16th August, 1955, to the 16th August, 1960, is admitted by him in a document signed and submitted by him to the Migration Officer.

8. Due to the abnormal political situation prevailing in 1964, Cyprus Passport No. 70064 was then issued to applicant in order to enable him to stay in Cyprus and serve as an Army Officer. This was also done in the case of other Greek Army Officers who at that time came to Cyprus and assisted in the defence of the country.

The issue of a Cyprus Passport did not confer citizenship of Cyprus to applicant and to the other Greek Army Officers as this was done simply for the purpose of covering their presence in Cyprus and showing that such presence was not illegal.

9. Applicant's case is not covered by para. 1 of Section 2 of Annex D of the Treaty of Establishment, as he was not ordinarily resident in the Island of Cyprus at any time in the period of five years immediately before the date of the Treaty.

10. Cyprus Passport No. 70064 having been issued to applicant on wrong premises and against the law and only for the purposes hereinabove described has been cancelled by the Minister of Interior.

11. Applicant is not 'a native of the Colony' within the meaning of section 2(1) of the Aliens and Immigration Law, Cap. 105.

12. By a decision of the Council of Ministers taken on the 6th November, 1970, applicant was declared

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a prohibited immigrant under and by virtue of the provisions of section 6 (1) (f) and (g) of Chapter 105 and in conformity with the said provisions and the principles of international law.

13. Under section 14 of Chapter 105 and the principles of international law a deportation order was issued against applicant by the Minister of the Interior as Chief Immigration Officer.

14. Applicant's immediate deportation from Cyprus was considered most necessary viewing the danger to peace and good order on account of his conduct."

The contents of this affidavit of Mr. Karakoulas are of a vital nature in these proceedings because—as it will be shown by what is stated hereinafter—it contains essential elements on the basis of which the Council of Ministers reached its sub judice decision of the 6th November, 1970, (*exhibit 1*) and on the basis of which the Attorney-General of the Republic gave advice regarding the citizenship of the applicant :—

On the 31st December, 1970, counsel for the respondents filed a statement to the effect, *inter alia*, that no relevant minutes—other than the text of the said decision—were kept at the meeting of the Council of Ministers on the 6th November, 1970, and that no relevant written submission was made to the Council.

On the 15th January, 1971, counsel for the respondents told this Court that the Council of Ministers, in reaching its decision in question (*exhibit 1*), took into account regarding the citizenship of the applicant the contents of the Migration Department file (*exhibit 8*), the relevant facts as explained orally by the Minister of Interior, *viz. the same in substance as the facts set out in the affidavit of the Migration Officer of the 9th November, 1970*—(which is the just quoted affidavit of Mr. Karakoulas)—and the effect of legal advice by the Attorney-General of the Republic, which had been given orally; and counsel for the respondents confirmed the above on the 11th February, 1971, in the course of these proceedings.

It is clear that the Attorney-General was not present at the meeting of the Council of Ministers on the 6th November, 1970 : In a statement filed on his behalf on the 12th February, 1971, it is stated that he was not present at any meeting of the Council of Ministers when discussion took place, and a decision was taken, about the applicant

being an undesirable person, but that he gave oral advice, regarding the citizenship of the applicant, on the basis of material placed before him ; and, in particular, on the basis of the relevant file of the Migration Department and of oral information given to him by the Minister of Interior (who, presumably, conveyed to the Council of Ministers, on the 6th November, 1970, the advice of the Attorney-General).

It is not in dispute that the file of the Migration Department referred to in the statement of the Attorney-General is the file *exhibit* 8 and that the information given to the Attorney-General by the Minister of Interior was based on the facts which the said Minister laid before the Council of Ministers on the 6th November, 1970 ; which facts, as already pointed out, are the same, in substance, as those set out in the affidavit of Mr. Karakoulas of the 9th November, 1970.

It follows from the foregoing that the validity of two material assumptions in the light of which the sub judice decision of the Council of Ministers was reached, *viz.* that the applicant is not a Cypriot citizen and that the Cypriot passport issued to him in 1964, was issued erroneously, is very closely connected with the correctness or not of what is stated in the said affidavit of Mr. Karakoulas.

I shall, therefore, proceed to deal now with this aspect of the matter :—

In paragraph 3 of the affidavit in question of Mr. Karakoulas it is stated that the applicant before admission to the Military Academy in Greece obtained “ by his own voluntary act ” Greek citizenship, as only Greek citizens are admitted to the Military Academy. Had the applicant done so this fact (apart from entailing any other possible legal consequences) would have constituted a factor relevant to the issue of the ordinary residence, at the time, of the applicant. But, the correct position is that the applicant did not obtain Greek citizenship on his own application, but automatically, by operation of law, on his admission to the Academy (see, *inter alia*, section 12 of the Greek Citizenship Code—Κώδιξ Ἑλληνικῆς Ἰθαγενείας). That this is so has been conceded, by counsel for the respondents, in the course of his fair and able handling of these cases, when he stated, on the 11th February, 1971, that he no longer relied on the relevant allegation contained in the said paragraph 3.

Regarding, next, what is stated in paragraph 6 of the same affidavit, to the effect that “ viewing the nature of

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applicant's studies"—at the Military Academy in Greece—"and his status as a Greek Army Officer" the applicant gave up his ordinary residence in Cyprus and became an ordinary resident of Greece "from the day he arrived in Greece", it does not appear from any official records produced before this Court, nor, indeed, has it so been alleged on behalf of the respondents, that either the affiant Migration Officer, Mr. Karakoulas, or the other respondents, knew of certain facts which would have to be weighed together with all other relevant considerations in reaching a conclusion as to the ordinary residence of the applicant for the purpose of the application of the provisions of section 2 of Annex D to the Treaty of Establishment; such facts, which were disclosed by counsel for the applicant during the hearing of these cases on the 4th January, 1971, are that the applicant *did* arrive in Greece on the 9th July, 1955 (before the commencement, on the 16th August, 1955, of the period of the five years envisaged in section 2 (1) of Annex D) for the purpose of enrolling himself as a cadet at the Military Academy *but* he failed to pass the relevant entrance examination in September, 1955, and, then, when he apparently had no prospect of entering the Academy in 1955, a new special entrance examination was held in October, 1955 (see *exhibit 7*) which the applicant passed successfully and was admitted to the Academy on the 15th November, 1955.

As it is the case for the respondents that the applicant "was not ordinarily resident in Cyprus at any time in the period of five years immediately before the 16th August, 1960" and that "during the aforesaid period he was an ordinary resident in Greece" (see paragraph 2 of the Opposition), it is clearly a vital question—to be answered on the basis of a complete knowledge of all relevant factors—whether or not the applicant ceased to be ordinarily resident in Cyprus, for the purposes of section 2 (1) of Annex D, on the 9th July, 1955, or in September 1955, when he sat for the first time for the entrance examination of the Military Academy, or in October, 1955, when he sat for the second time for such examination, or in November, 1955, when he became a cadet at such Academy.

In the next paragraph of the said affidavit (paragraph 7) it is stated that the applicant admitted "in a document signed and submitted" to the Migration Officer that he was "ordinarily resident in Greece as from the 16th August, 1955, to the 16th August, 1960". This document is, admittedly, the application form for a Cypriot passport

which was filled in, as aforementioned, by the applicant in Athens in February, 1964 (see "red 7" in exhibit 8). On that form, in answer to a printed question which reads :

«Παραμονή διαρκούσης της περιόδου μεταξύ 16.8.55 και 16.8.1960 » ("Stay during the period 16.8.55 to 16.8.1960"), the applicant stated that during that period he was in Athens. This statement, as made, cannot, in my opinion, be regarded as an admission on the part of applicant to the effect that during the said period he "was ordinarily resident in Greece", as it is alleged in the paragraph in question.

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In the first part of paragraph 8 of the affidavit we come across the important assertion that "due to the abnormal political situation prevailing in 1964 Cyprus passport No. 70064 was then issued to applicant in order to enable him to stay in Cyprus and serve as an Army Officer"; and that "this was done in the case of other Greek Army Officers who at that time came to Cyprus and assisted in the defence of the country"; and the same contention is put forward in the Opposition of the respondents (see paragraph 3).

Yet, Mr. Karakoulas, who put forward the above allegation in that affidavit on the 9th November, 1970, stated in evidence on this point on the 3rd March, 1971, the following :—

"I see an affidavit which I have sworn earlier on in relation to this case on the 9th November, 1970. Comparing the first part of paragraph 8 of my affidavit of the 9th November, 1970, and paragraphs 3 and 4 of my affidavit of the 9th February, 1971, I say that perhaps the true position, as I have ascertained it in the meantime, is the one set out in paragraphs 3 and 4 of my affidavit of the 9th February, 1971."

So, it is not correct that the Cypriot passport issued in 1964, was issued in order to cover up applicant's stay and service in Cyprus as a Greek Army officer, but the true position is—as stated in the already quoted affidavit of Mr. Karakoulas, dated 9th February, 1971—that Mr. Karakoulas, acting as Migration Officer and being then of the view that at the material time the applicant had been temporarily absent from Cyprus as a student, issued a Cypriot passport to the applicant; that, as Mr. Karakoulas has stated, he dealt with the applicant's relevant application "favourably and with all speed, upon information that he would come to Cyprus to fight against the Turkish insurgents", as Mr. Karakoulas "did in the case of a great number of other Greek Cypriot students who came to Cyprus for

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the same purpose", is a materially different position from the one presented by the first part of paragraph 8 of the earlier affidavit of Mr. Karakoulas, dated the 9th November, 1970.

Also, the applicant in an affidavit filed in these proceedings on the 26th January, 1971—and he was not really contradicted on this point—gave a version as to the issue to him of the Cypriot passport different than that set out in the first part of paragraph 8 of the said affidavit of Mr. Karakoulas, adding that only Cypriot identity cards with false names were issued for the purpose of covering up the presence, at the time, of Greek Army officers, like himself, in Cyprus.

From the foregoing it is, I think, abundantly clear that in many respects the affidavit of Mr. Karakoulas, dated the 7th November, 1970, contains either incorrect statements about some matters or statements giving an incomplete and, therefore, inaccurate picture about other matters.

Of course, by saying this I should not be taken as doubting in the least the good faith of Mr. Karakoulas; on the contrary, I have been impressed very much during these proceedings by the very sincere way in which he tried to enlighten the Court regarding any matter within his knowledge; I am sure that he swore the affidavit of the 9th November, 1970, while labouring under honest misapprehensions in certain material respects.

His said affidavit presents an incomplete picture for another reason, too: It does not refer to certain matters, apparently not within his knowledge at the time, which were disclosed by the applicant's side during the hearing before the Court and which might be found to be relevant, to a certain extent, when deciding, on the basis of the totality of all material considerations, whether or not the applicant was ordinarily resident in Cyprus for any part of the period envisaged under section 2 (1) of Annex D; such matters are, *inter alia*, the abortive attempt of the applicant (which was forcibly frustrated while he was on his way here) to come to Cyprus in 1956, and take part in the Liberation Struggle against the Colonial regime in Cyprus and, also, his stay in Cyprus from April to June, 1960, for the purpose—as he stated on oath—of exploring the possibility of enlisting in the about to be formed Army of the Republic of Cyprus.

As already mentioned in this Decision the factual position presented by the affidavit of Mr. Karakoulas, dated the 9th November, 1970, is in substance the same as the factual position on which the respondent Council of Ministers

based its assumptions regarding the applicant not being a Cypriot citizen and the erroneous issue of his Cypriot passport in 1964. It follows, therefore, that as the said factual position has been found to be incorrect and incomplete in certain material respects the two assumptions in question were not, in the circumstances, premises which could be safely relied on.

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Being of this view I have formed the opinion that I should not proceed to pronounce now, myself, at this stage, on the matter of the claim by applicant to Cypriot citizenship under section 2 (1) of Annex D and on the related matter of his disputed entitlement to the passport issued to him in 1964 ; because, my doing so would involve deciding on the applicant's relevant contention, not only by resolving pure legal issues, but by reaching conclusions of fact which should, in the first instance, be reached by the Government.

Had the Council of Ministers at its meeting of the 6th November, 1970, proceeded to examine the substance of, and decide on, the matters in question, then I could have proceeded to pronounce on the validity of the relevant decisions of the Council. But what has, actually, happened is that no such decisions were reached but only certain assumptions in connection with these matters were relied on in the process of making the applicant a prohibited immigrant. As already found by me in this Decision the said assumptions were not, in the circumstances, safely reliable. It is, in my view, up to the Government to examine, in the first instance, the position regarding the matters involved in such assumptions and reach its conclusions in the light, now, of full knowledge of the relevant facts and, I would trust, of new advice to be given by the Attorney-General on the basis of the said facts. At this stage I cannot forestall the action to be taken by Government in this connection ; as pointed out in the case of *Pikis v. Republic* (1965) 3 C.L.R. 131, at p. 149: " After all it must not be lost sight of that it is for the Government to govern and for the Court only to control, to the extent necessary, and it is not up to the Court to determine in the first instance matters of administration before Government has itself dealt with such matters on the merits." To do otherwise would be to act, in this respect, beyond my powers under Article 146 of the Constitution.

As far as the future course of these proceedings is concerned I would like to hear counsel further before I decide, in the light of my conclusions which are set out in this Decision, whether or not to annul the decision of the Council

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of Ministers declaring the applicant a prohibited immigrant, the deportation order against him and the cancellation of his Cypriot passport ; in relation, in particular, to the cancellation of the passport I wish to hear counsel about the validity of the relevant decision of the Migration Officer (see minute No. 8 in the file *exhibit 8*), as counsel have not yet addressed me specifically regarding such decision.

If I find that the decision of the Council of Ministers to declare the applicant a prohibited immigrant is not to be annulled, notwithstanding my above conclusions about the assumptions on which it has been based, then I will proceed to hear this recourse further regarding its second aspect, *viz.* the merits of the decision of the Council to declare the applicant a prohibited immigrant.

It might, also, be useful to hear counsel further—if they have anything to add to what they have already submitted on this point—regarding the possibility in law (in view of Article 14 of the Constitution) of deporting from Cyprus the applicant, who is the citizen of another State, even if he is also a Cypriot citizen.

In concluding I would like to observe that the Government may choose to wait until after the final outcome of these proceedings before re-examining the position concerning the claims of the applicant to Cypriot citizenship and to a Cypriot passport. But I should stress that there is nothing to prevent the Government from proceeding with such re-examination at once, before the further hearing and determination of these recourses, in which case it might decide, too, to consider afresh, after, and depending on the outcome of, such re-examination, the matter of the declaration of the applicant as a prohibited immigrant, of the making of a deportation order against him and of the cancellation of the Cypriot passport issued to him in 1964 ; and if the Government chooses to adopt such a course then there may be (subject, of course, to what counsel may submit) no reason for these cases to be heard further and be finally determined. In any event, at whatever stage the Government decides to re-examine the question of the entitlement of the applicant to Cypriot citizenship, it will, also, have to be examined, if the conclusion is reached that he is not so entitled, whether or not, in the light of the relevant history of events as well as of the appropriate principles of Administrative Law, the Cypriot passport issued to the applicant in 1964, or any other administrative action treating him as if he were a citizen of Cyprus, could be validly revoked.

Order accordingly.