

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ALEXIA VOULPIOTI,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTRY OF INTERIOR,
2. THE IMMIGRATION OFFICER,

Respondents.

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(Case No. 124/74).

Alien—Temporary resident's permit—Application for—Rejected on the ground of alien's illicit relations with a married man, citizen of the Republic—Entirely open to the respondents to take the decision complained of—Moreover, said decision should be upheld on another ground—Namely applicant's false statement in her application for such permit that the object of her application was to complete her studies of Byzantine monuments—Such false statement being an offence under section 19 (1) (a) of the Aliens and Immigration Law, Cap. 105—Cf. further immediately herebelow.

Administrative acts or decisions—Even if decision complained of is not valid for the reasons relied upon by the Administration—Still it can be judicially upheld if valid in law for some other reason (Pikis' case, infra).

Discretionary powers vested in the Administration—Principles upon which the Court will interfere with the exercise of such powers—Principles laid down in the Pissas' and Saruhan's cases, infra, applied.

Constitutional Law—Right to move freely throughout the territory of the Republic and reside in any part thereof—Article 13.1 of the Constitution—Scope of said provisions—They apply only in cases of persons who are lawfully in the Republic and whose right to move freely or reside as aforesaid has been improperly restricted by the Authorities—And not in cases such as the present one

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where the applicant alien was not lawfully in the Republic—Cf. supra, passim.

Right to move freely throughout the territory of the Republic—Article 13.1 of the Constitution—Scope—Application—See immediately hereabove.

This is an unsuccessful recourse made under Article 146 of the Constitution by the Applicant lady, a Greek national, directed against the decision of the respondents turning down her application for a temporary resident's permit in accordance with the provisions of the Aliens and Immigration Law, Cap. 105, on the ground of her illicit relations with a married man, a citizen of the Republic and residing with his minor children and wife in the island. It would seem that in the present case there was another legal reason—though not invoked by the respondents—on which the decision complained of should be upheld: It is a false statement made by the applicant in her application for the said temporary resident's permit, which false statement constitutes an offence contrary to section 19(1)(a) of the said Law, Cap. 105.

It was argued by counsel for the applicant that: (1) The refusal complained of offends against the provisions of Article 13.1 of the Constitution (*infra*) as it deprives her improperly of her right "to move freely throughout the territory of the Republic and to reside in any part thereof"; (2) the said refusal was reached in abuse or excess of powers in that it is not duly reasoned and/or, in any event, in that the respondents did not act on objective criteria, but in an arbitrary and revengeful way.

Article 13.1 of the Constitution reads as follows:

" 13.1 Every person has the right to move freely throughout the territory of the Republic and to reside in any part thereof subject to any restrictions imposed by law and which are necessary only for the purposes of defence or public health or provided as punishment to be passed by a competent Court".

Dismissing the recourse the learned Judge of the Supreme Court:-

Held, (1) (Regarding the issue of unconstitutionality; supra): It is clear from the wording of Article 13.1 of the Constitution

(*supra*) that this Article applies in the case of persons who are lawfully within the territory of the Republic and whose right to move freely or reside in any part thereof has been restricted by the authorities. In the present case the applicant is neither lawfully in the territory of the Republic nor the act complained of infringes any rights to which she might be entitled by virtue of the provisions of the said Article.

(2) The decision complained of is a matter within the competence and discretion of the respondents; and on the material before me I am satisfied that in exercising their discretion they have not acted in abuse or excess of power and that they have reached their said decision after paying due regard to all relevant factors and without taking into account irrelevant factors (*Salih Shukri Saruhan and The Republic*, 2 R.S.C.C. 133, at p. 136, *applied*).

(3) But even if we assume that the decision complained of in these proceedings could not be validly based on the above reasons, but is nevertheless valid in law for another reason, the relevant administrative law jurisprudence has gone so far as to lay down that such act or decision should be judicially upheld (see *Costas Pikiis v. The Republic* (1967) 3 C.L.R. 562, at p. 575).

(3bis) In the present case there is another such legal reason on which the decision complained of should be upheld. It is the admittedly false statement in her application for the temporary permit in question that the object of applying for the said permit was to complete her studies of Byzantine monuments. This is, in my view, an offence under section 19 (1) (a) of the Aliens and Immigration Law, Cap. 105 (see the text *post* in the judgment); and it goes without saying that an application of an alien for a permit to remain in the Republic should always be rejected if the said alien makes a false statement in connection with the said application as in the present case.

Recourse dismissed. No order as to costs.

Cases referred to:

Charalambos Pissas (No. 2) v. The Electricity Authority of Cyprus (1966) 3 C.L.R. 784;

Salih Shukri Saruhan and The Republic, 2 R.S.C.C. 133, at p. 136;

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Recourse.

Recourse against the decision of the respondents to refuse a permit to the applicant to remain in Cyprus.

L. Papaphilippou, for the applicant.

R. Gavrielides, for the respondents.

Cur. adv. vult.

The following judgment was delivered by:—

MALACHTOS, J.: The applicant in this recourse is an alien and is the holder of a Greek Passport No. 280232 issued to her on 30.10.70 and expiring on 29.10.75. As from the 13.5.73 she has paid about 13 short visits to the Republic of Cyprus as a visitor, their duration varying from two to seven days each. The last time that she has visited the Republic was on 15.12.73, when she was granted a visitor's permit to stay in Cyprus up to 14.3.74. By letter dated 13th March, 1974, (red 2 of the file of the case *exhibit 2*), addressed to the Migration Officer the applicant applied for a visitor's permit to remain in the Republic for a further period of six months giving as reasons thereof the fact that being a Byzantinologist she wished to visit Byzantine monuments and Museums in the country so that she would complete her studies. At the same time, she submitted an application for the renewal of her temporary resident's permit by filling up the relative form and submitting it to the Divisional Police Commander for Nicosia District, where she was residing at the time. This application, which is red 4 in *exhibit 2*, together with her aforesaid letter to the Migration Officer and other relevant documents, were transmitted by the Divisional Police Commander of Nicosia to the Chief of Police together with his report. The said report, which is red 5 of *exhibit 2* reads as follows:

“ The applicant arrived in Cyprus on 15.12.73 and she was granted a visitor's permit up to 14.3.74. She applies for renewal of such permit for a further period of six months to stay in Cyprus as a visitor. She is a Byzantinologist and will stay in order to study the Byzantine monuments and Churches in Cyprus. She will be supported by her own money. Her Greek passport under No. 280232 which expires on 29.10.75, is attached together with the relative

recognition. Her letter to the Migration Officer is also attached. Her application is approved”.

The Chief of Police by a Minute appearing on the said form, dated 14.3.74, states that there is no objection to the application of the applicant.

By letter dated 14.3.74 signed by the Migration Officer, the applicant was informed that her application was not approved. The said letter reads as follows:

“ I have been instructed to refer to your application dated 13th March, 1974, by which you apply for a permit to remain and work in Cyprus and to inform you that your application was carefully examined but was not approved. So, you are instructed to depart from Cyprus as soon as possible. Your Greek Passport under No. 280232/70 is enclosed”.

On 15.3.74 the applicant filed the present recourse claiming a declaration of the Court that the act and/or decision of the respondents dated 14.3.74, by which they refused a permit to the applicant to remain in Cyprus, is *null* and *void* and of no legal effect whatsoever. The application is based on the following grounds of law:

1. The decision complained of is contrary to Article 13.1 of the Constitution as it deprives the applicant, without any reason, of her right to move freely throughout the territory of the Republic of Cyprus and to reside in any part thereof.
2. The respondents acted under a misconception of fact since they mistook the application of the applicant, who is a Byzantinologist, as an application to stay and work in Cyprus whereas her application was for the renewal of a temporary resident's permit for six months in order to visit Byzantine monuments and to study them.
3. The decision and/or act complained of is not duly reasoned or at all.
4. The respondent 2 did not act on objective criteria but in an arbitrary and revengeful way.

As regards the first ground of law on which the application is based, I must say that I find no merit in the argument of

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counsel for applicant in support thereof. Article 13.1 of our Constitution is as follows:

“ 13.1 Every person has the right to move freely throughout the territory of the Republic and to reside in any part thereof subject to any restrictions imposed by law and which are necessary only for the purposes of defence or public health or provided as punishment to be passed by a competent Court”.

So, it is clear from its wording that this Article applies in the case of persons who are lawfully within the territory of the Republic and whose right to move freely or to reside in any part thereof has been restricted by the authorities. In the present case the applicant, after the expiration of her visitor's permit is neither lawfully in the territory of the Republic nor the act complained of infringes any rights to which she might be entitled by virtue of the provisions of the said Article.

As to the other grounds of law on which the application is based, counsel for applicant argued that the decision complained of is based on a misconception of fact since the Migration Officer decided on the application of the applicant by having in mind that she had applied not for a visitor's permit but for employment permit. He also argued that this decision is not duly reasoned or at all, in view of the fact that there has been a clear, unambiguous and unqualified recommendation of the Chief of Police in favour of the applicant and so the decision of the Migration Officer has no legal foundation but it has been dictated arbitrarily and without due cause.

Finally he submitted that the real reason as to why the application of the applicant was refused, is that the object of her visits to Cyprus was her illicit relations with a married man. This man, who is a citizen of the Republic of Cyprus, has got two minor children and his whole family is residing in Cyprus. In fact he was called as a witness and verified on oath the relations of the applicant with him.

Counsel for the respondents admitted that the real reasons for rejecting the application of the applicant for renewal of her visitor's permit, were her illicit relations with the said Cypriot.

This is also clear, he submitted, from the minute sheet appearing in the file, *exhibit 2*.

As a matter of fact in the file of the case, *exhibit 2*, there is a minute by the Migration Officer dated 15.1.74 addressed to the Director-General of the Ministry of Interior which ends with the following paragraph:

“ The alien is now in Cyprus and we suggest that she should be notified to depart as soon as possible in order that the dissolution of the said family be avoided”. So, as the case developed during the hearing no question of any misconception of facts on the part of the authority concerned arises; neither it can be said that the decision complained of is not duly reasoned, as it is common ground that the reason for such decision is the illicit relations of the applicant with a married Cypriot man. Consequently, the only point that now falls for consideration is whether the said illicit relations of the applicant is a valid ground on which the decision complained of could be taken by the respondent authority.

The decision of the respondent authority complained of in this recourse is a matter within the competence and discretion of the said authority. It is a well established principle of administrative law that on a recourse under Article 146 of the Constitution, the Court is not empowered to substitute its own discretion for that of the administration (*Charalambos Pissas (No. 2) v. The Electricity Authority of Cyprus (1966) 3 C.L.R. 784*).

In the case of *Salih Shukri Saruhan and The Republic*, 2 R.S.C.C. 133 at page 136 it is stated that when the authority or organ concerned “ has exercised its discretion in reaching a decision, after paying due regard to all relevant considerations and without taking into account irrelevant factors, this Court will not interfere with the exercise of such discretion unless it can be shown to the satisfaction of the Court that such exercise has been made in disregard of any provisions of the Constitution or of any law or has been made in excess or in abuse of powers vested in” the authority or organ concerned.

On the material before me I am satisfied that the respondent authority in exercising its discretion in the present case has not acted in abuse or in excess of the powers conferred upon it by law and so there is nothing to warrant interference of this Court with its decision. It was entirely open to it to take the decision complained of and reject the application of the applicant for the renewal of her temporary resident's permit. But even if we

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assume that the decision complained of could not be validly based on the above reasons but it is nevertheless valid in law for some other reason, the relevant administrative law jurisprudence has gone so far as to lay down that such act or decision should be judicially upheld. See in this respect *Costas Pikiis v. The Republic* (1967) 3 C.L.R. 562 at page 575. In the present case there is another legal reason on which the decision complained of should be upheld. It is clear from the material placed before the Court that the applicant is not a Byzantinologist and that her only object of visiting the Republic was her illicit relations with a married Cypriot man. Both in her letter to the Migration Officer and her application for the renewal of her temporary resident's permit, reds 2 and 4 of *exhibit 2* respectively, she states that the object of applying for renewal of her temporary resident's permit is to complete her studies of Byzantine monuments, which is admittedly a false statement. This is in my view an offence under section 19 (1) (a) of the Aliens and Immigration Law, Cap. 105, which reads as follows:

“ 19 (1) Any person who

- (a) makes any false return, statement or declaration in connection with an application for a licence or permit to remain in the Colony whether for himself or any other person

.....
shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding fifty pounds or to both such imprisonment and fine”.

It goes without saying that an application of an alien for a licence to remain in the Republic should always be rejected if the said alien makes a false statement or declaration in connection with the said application as in the present case.

It is, however, upon the authorities concerned to institute against the applicant legal proceedings, if they so wish.

For the reasons stated above this recourse fails.

As to the question of costs I have decided to make no order.

Application dismissed. No order as to costs.