

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

YIANNOULLA F. TYROKOMOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH

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

Respondents.

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YIANNOULLA
F. TYROKOMOU
v.
REPUBLIC
(MINISTER
OF INTERIOR
AND ANOTHER)

(Case No. 110/76).

Provisional Order—Rule 13 of the Supreme Constitutional Court Rules, 1962—Recourse against decision refusing applicant to remain in Cyprus beyond a certain period—Application for provisional order suspending effect of such decision—Said decision a negative administrative decision—Which cannot be suspended by means of a provisional order—If the order is granted this would have amounted in effect to the granting of a residence permit to the applicant by the Court.

Administrative Law—Negative administrative decision—Cannot be suspended by means of a provisional order.

This was an application under rule 13 of the Supreme Constitutional Court Rules, 1962 for a provisional order suspending the effect of a decision of respondent 2 whereby in relation to her application for an extension of her permit to reside in Cyprus, she was informed that she had been granted a final extension up to May 2, 1976, that under no circumstances she would be granted a further extension, and that she had to leave Cyprus on or before May 2, 1976.

Held, (1) that it is not possible at all, for this Court to make a provisional order, because of the fact that what is sought thereby is the suspension of effect of a decision of respondent 2 which is, in essence, a negative decision of the Administration; and that it is not possible to suspend by means of a provisional order, under rule 13 of the Supreme Constitutional Court Rules, a negative administrative decision (see *Artemiou (No. 2)*

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v. *The Republic* (1966) 3 C.L.R. 562, at p. 569 and *Goulelis v. The Republic* (1969) 3 C.L.R. 583. *Georghiou (No. 1) v. The Republic* (1968) 3 C.L.R. 401 *distinguished*).

Application dismissed.

Per curiam: Had this Court made a provisional order it would have amounted, in effect, to the granting, itself a residence permit to the applicant in this case, and so it would have acted as an organ of the Administration.

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Cases referred to:

Artemiou (No. 2) v. The Republic (1966) 3 C.L.R. 562 at p. 569;

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Goulelis v. The Republic (1969) 3 C.L.R. 583 at p. 585;

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

Application for a provisional order.

Application for a provisional order suspending the effect of a decision of respondent 2 whereby applicant was granted an extension of her permit to reside in Cyprus up to May 2, 1976 and that she had to leave Cyprus on/or before that date pending the final determination of a recourse against the above decision.

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E. Lemonaris, for the applicant.

R. Gavrielides, Counsel of the Republic, for the respondents.

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Cur. adv. vult.

The following decision was delivered by:—

TRIANTAFYLIDIS, P.: The applicant has applied for a provisional order suspending the effect of a decision of respondent 2, which was communicated to her by means of a letter dated April 5, 1976 (see *exhibit 1*); by such letter she was informed, in relation to her application for an extension of her permit to reside in Cyprus, that she had been granted a final extension up to May 2, 1976, that under no circumstances she would be granted a further extension, and that, therefore, she had to leave Cyprus on or before May 2, 1976.

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The above decision is the only remaining subject matter of this recourse; and its validity is challenged by means of claim (B) in the motion for relief in the Application. As has been stated by counsel for the applicant he does not wish to pursue the recourse in so far as claim (A) in the motion for relief is concerned, because he has been satisfied that, in this respect, the recourse is out of time.

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I have reached the conclusion, in relation to the present application for a provisional order, that it is not possible, at all; for me to make it, because of the fact that what is sought thereby is the suspension of the effect of a decision of respondent 2 which is, in essence, a negative decision of the Administration; and as has been held in, *inter alia*, *Artemiou (No. 2) v. The Republic*, (1966) 3 C.L.R. 562, 569, it is not possible to suspend by means of a provisional order, under rule 13 of the Supreme Constitutional Court Rules, a negative administrative decision.

10 It is to be noted, in this connection, that the decision communicated by the letter which is *exhibit 1* is, in fact, only a refusal to allow the applicant to remain here beyond May 2, 1976, and it cannot be treated as being an order for the expulsion from Cyprus of the applicant; there is not mentioned at all therein even any intention to take steps for the expulsion of the applicant; and expulsion is not, inevitably, the only course open to the Administration when an alien overstays his residence permit, because, for example, the Administration may decide not to do more, at first, than to prosecute such alien for staying here without a permit.

20 I was faced, in the present case, with a situation which is very similar to the one with which I had to deal in *Goulelis v. The Republic*, (1969) 3 C.L.R. 583; there I refused a provisional order on the ground—which I think is valid in the present instance as well—that had I made it, it would have amounted, in effect, to my granting, myself, a residence permit to the applicant in that case, and so I would have acted as an organ of the Administration (see *Goulelis, supra*, p. 585).

30 On the other hand, the present case is distinguishable from that of *Georghiou (No. 1) v. The Republic*, (1968) 3 C.L.R. 401, because in that case the applicant was informed in express terms that she was about to be expelled and she, therefore, applied to the Court seeking a provisional order restraining the Administration from taking steps to expel her from Cyprus; so, when in that case a provisional order restraining her expulsion was applied for, there was before the Court a positive, and not a negative, decision of the Administration; and in the light of the particular circumstances of that case it was necessary to exercise the Court's relevant discretion in favour of the applicant.

40 It is a fact that in the present case the application for a provisional order is framed in such a way that it appears that there

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is being sought an order restraining the respondents from expelling the applicant from Cyprus, but, as already pointed out, I have before me only a refusal to extend her residence permit, and not an order of expulsion or, even, a declared intention of the respondents to expel her.

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For these reasons this application for a provisional order has to be refused.

Application refused.