1987 October 22

[LORIS J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1. ANTONIS BALALAS,
2. MARILLIA BALALA,

Applicants,

v.

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

Respondents

(Case No. 476/84)

Executory act — Confirmatory act — Legitimate interest — Constitution, Art. 146.2 — Wife of an alien husband — Her request that her husband be allowed to enter the Republic turned down — She does not possess legitimate interest to challenge such refusal

Aliens — Entry of — In International Law the entry of aliens is a matter of discretion

Words and Phrases «Native of Cyprus», in section 2 of the Aliens and Immigration Law, Cap. 105, as amended by Law 2/72 — Alien husband of a Cypriot wife — He is not a «native of Cyprus» — Karaliotas v. Republic (1986) 3 C.L.R. 501 followed

On 21.4.82 applicant 1, a Greek National, was declared a prohibited immigrant. As a result he was deported and his name was placed on the stop list. Applicant 1 challenged by recourse to this Court the decision to deport him and place him on the stop list. On 15.9.82 the recourse was withdrawn.

Applicant 2 is the wife of applicant 1. She is a citizen of the Republic of Cyprus.

On 14.7.84 counsel for applicant No. 1 requested the Immigration Officer to allow applicant to enter Cyprus and on 20.8.84 applicant No. 2 addressed a similar written request in respect of applicant No. 1 to the Immigration Officer.

On 17.8.84 the Immigration Officer in a letter of even date addressed to counsel for applicant No. 1 turned down the request of his client for re-entry in Cyprus stating that the entry of applicant No. 1 to Cyprus is undesirable.

Hence this recourse

Held, *dismissing the recourse* (1) The sub judice decision is not of an executory, but of a confirmatory nature It confirms the decision of 21 4 82 to deport the applicant The joining of applicant 2 in this recourse does not carry the case any further, because applicant 2 has no legitimate interest, as envisaged by Art 146 2 of the Constitution

(2) Assuming that the sub judice decision is executory, the recourse has to be dismissed on the following grounds

(a) The contention that applicant 1 is a «native of Cyprus» according to section 2 of Cap 105, as amended by Law 2/72 cannot be accepted An alien husband of a wife, who is a citizen of Cyprus, is not a «native of Cyprus» (*Karaliotas v Republic* (1986) 3 C L R 501)

(b) In International Law the reception of aliens by a State is a matter of discretion

Recourse dismissed
No order as to costs

Cases referred to

Karaliotas v Republic (1986) 3 C L R 501,

Musgrove v Chun Teeong Toy [1891] A C 272

Recourse.

Recourse against the refusal of the respondents to allow applicant No 1 to enter Cyprus.

A Eftychiou, for the applicants.

D Papadopoulou (Mrs.), for the respondents.

Cur adv. vult.

LORIS J read the following judgment. Applicant No. 1, a Greek National, arrived in Cyprus for first time on 30.10.1967.

Whilst in Cyprus he got married to a Cypriot girl namely Martha Koumi on 14.7.68; a child was born out of the said wedlock on 2.12.68.

Applicant No. 1 who was unemployed during the said time, was repeatedly reported to the police by his said wife for beating her, demanding money from her and abandoning her. Police investigations revealed that applicant No. 1 had at the time relations with another Cypriot girl notably applicant No. 2, who became his lawful wife some ten years later.

After several convictions for assaulting his first wife, stealing and obtaining money by false pretences during the years 1968 and 1969 applicant No. 1 was deported from Cyprus on 13.3.70 and his name was placed on the stop list.

After the turning down by the Immigration Officer of several requests of applicant No. 1 for the removal of his name from the stop list, finally on 13.4.71 applicant's name together with the names of other persons were removed from the stop list (vide red. 45 in Ex. 1).

As a result applicant No. 1 returned to Cyprus; having divorced his first wife on 27.4.72 he got married to applicant No. 2 on 24.9.75.

Shortly after his second marriage applicant No. 1 started running the same life he was running prior to his deportation in 1970. He created illicit relations with another Cypriot girl (vide her statement to the police in reds 85, 86, 87 of Ex. 1) whom he started beating as well; at the same time his relations with applicant No. 2 were proceeding from bad to worse and he was repeatedly reported to the Police by applicant No. 2 for assaulting her and abandoning her.

Applicant No. 1 in parallel with his erotic life he continued to be mostly unemployed, demanding money from his wife and beating her brutally on occasions.

On 17.4.81 the Immigration Officer granted to the applicant his final temporary permit, to reside and work in Cyprus, valid until the 30th August 1981.

Applicant No. 1 throughout this last period was mostly unemployed and he continued running his previous unstable life.

On 21.4.82 applicant No. 1 was declared prohibited immigrant, he was deported (vide deportation Order under s. 14 of Cap. 105 - Red 118 in Ex. 1) through Larnaca airport on 23.4.82 and his name was placed on the stop list (vide red 123 in Ex. 1).

On 3.5.82 applicant's lawyer addressed a letter to the Cyprus Embassy in Athens protesting against the deportation order against his client and requesting permit of the latter to re-enter Cyprus.

At the same time applicant No. 1 addressed a letter to the Minister of Interior requesting

(a) reconsideration of the aforesaid decision and

(b) permit to re-enter Cyprus.

On 26.5.82 the Immigration Officer in reply to counsel for applicant No. 1 stated that the request was examined but «for reasons of public interest his re-entry in Cyprus is undesirable.»

On 6.7.82 applicant No. 1 filed recourse No. 274/82 seeking a declaration to the effect that the decision of the respondent (a) to deport applicant and (b) to place his name on the top list was null and void. This recourse was withdrawn on 15.9.82.

On 14.7.84 counsel for applicant No. 1 requested the Immigration Officer to allow applicant to enter Cyprus (vide red 156 in Ex. 1) and on 20.8.84 applicant No. 2 addressed a similar written request in respect of applicant No. 1 to the Immigration Officer.

On 17.8.84 the Immigration Officer in a letter of even date addressed to counsel for applicant No. 1 turned down the request of his client for re-entry in Cyprus stating that the entry of applicant No. 1 to Cyprus is undesirable (Vide Appendix 1) attached to the recourse.

The respondents in their opposition raise the preliminary objection that the letter of 17.8.84 (Appendix 1 attached to the recourse) does not contain a decision of an executory character.

Having carefully gone through the record and the material before me, including the two administrative files which are Exhibits 1 and 2 before me I hold the view that the letter addressed by the respondents to counsel for applicant No. 1 does not contain a decision of an executory character but it is merely a confirmatory decision which indicates their adherence to their executory decision of 21.4.82, whereby applicant No. 1 was declared a prohibited immigrant and was deported from Cyprus.

The aforesaid decision was impugned as aforesaid by recourse No. 274/82 which was later withdrawn and several requests of applicant No. 1 for re-entry in Cyprus were turned down by the administration, including the present one which resulted in the confirmatory decision under consideration.

The joining of applicant No. 2 in the present recourse does not carry the case of applicant No. 1 any further simply because

applicant No. 2 has never had legitimate interest, envisaged by Article 146.2, in order to render the recourse justiciable.

In the circumstances the present recourse is doomed to failure as the decision under consideration lacks executory character.

Assuming though, that the sub-judice decision is of an executory nature, I still hold the view that the present recourse cannot succeed for the following reasons:

Learned counsel for applicants submitted in his written address that applicant No. 1 who is a Greek National has become a «native of Cyprus» according to the provisions of s. 2 of Cap. 105 as amended by Law 2/72 having been married to applicant No. 2, a Cypriot citizen, and therefore he could not be excluded from the Republic under s. 10 of Cap. 105. Learned counsel maintained that s. 2 of Law 2/72 should be interpreted to comprise not only the alien wife of a husband who is a citizen of the Republic but it should be extended vice versa to an alien husband of a wife who is a citizen of the Republic, otherwise Law 2/72 -learned counsel submitted - should be held unconstitutional in this respect.

A submission to the same effect was answered in a similar case by the learned President of this Court; it is the case of *Karaliotas v. Republic* (1986) 3 C.L.R. 501 and the relevant part with which I fully agree and I adopt for the purposes of the present recourse is at pages 505 (lines 30-38 and 506 (lines 1-10).

It reads as follows:

«As a matter of fact the applicant has been married to a Cypriot citizen but the definition of a 'native of Cyprus' comprises only a wife, and not also the husband, of a citizen of Cyprus and, therefore, the applicant cannot be regarded as a 'native of Cyprus'.

It has been contended by counsel for the applicant that the said definition is unconstitutional as being discriminatory on the ground of sex and, consequently, contrary to Article 28 of the Constitution; but, even if I would uphold this contention as correct - and I do not pronounce in this respect in any way - this could not have led to the applicant being found to be a 'native of Cyprus' but only to the unconstitutionality, and, consequently, the nullity, of the legislative provision in question as a whole (see, inter alia, *Santis v. The Republic*, (1983) 3 C.L.R. 419), because its allegedly unconstitutional

part cannot be severed from the rest of it (as in *Papaxenophontos v. The Republic*, (1982) 3 C.L.R. 1037). Nor is it a pre-Constitution provision which might have been modified by virtue of Article 188.4 of the Constitution in order to be brought into accord with it.»

Concluding I feel that it must be stated that in International Law the reception of aliens by a State is a matter of discretion.

«It is uncontroversial that every State has absolute discretion to refuse the admission of foreigners» (Schwarzenberger on International Law 3rd ed. Vol I p. 360).

«The reception of aliens is a matter of discretion, and every State is by reason of its territorial supremacy competent to exclude aliens from the whole, or any part, of its territory» (Oppenheim's International Law 8th ed. Vol. I. pp 675, 676, para 314, and Musgrove v. Chun Teeong Toy [1891] A.C. 272).

In the result present recourse fails and is accordingly dismissed. Let there be no order as to costs.

Recourse dismissed.
No order as to costs.