

1987 July 31

(TRIANTAFYLLOIDES, P)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ABDO KHALIL DAMIAN,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR,

Respondent.

(Case No. 1024/85).

Recourse for annulment — Competence — The matter may be raised either by the Court ex proprio motu or by any of the parties.

Administrative Law — Competence — Lack of — Ground of annulment.

5 *Administrative Law — Competence — Aliens — Migration Officer sought approval of the Minister of Interior in respect of decision to refuse applicant a permit to enter Cyprus as well as a residence and a working permit — Reply communicating approval written by an Official of the Ministry on behalf of the Director-General of the Ministry — Such official did not have competencē on the matter.*

10 The applicant is a Lebanese subject. On 12.11.85 the Migration Officer decided not to approve the grant to the applicant of an entry permit, a temporary residence permit and a working permit. Before communicating his decision to the applicant the Migration Officer sought the approval of the Minister in his capacity as Chief Immigration Officer.

15 On 19 November 1985 an official of the Ministry of Interior replied, on behalf of the Director-General of the Ministry of Interior, to the Migration Officer, that he was in agreement with the decision.

Hence this recourse.

25 ~~Held, annulling the sub judice decision: (1) The issue of the competence of the organ concerned may be raised either by a party to a recourse or by the Court ex proprio motu. Lack of competence is a ground for the annulment of the decision concerned.~~

(2) Since the matter had on this particular occasion, been referred directly to the Minister of Interior, himself as Chief Immigration Officer, for a final decision by him, neither the Director-General of the Ministry of Interior nor any official acting on behalf of him could have taken such decision.

Sub judice decision annulled. 5

No order as to costs

Cases referred to.

Antoniades v The Chairman and Members of the Municipal Council of Paphos, (1982) 3 C.L.R. 844;

Andronikou v. The Republic (1983) 3 C.L.R. 209; 10

Paraskeva v The Municipal Committee of Limassol (1984) 3 C.L.R. 54;

Evlogimenos v. The Republic (1973) 3 C.L.R. 184;

Phaenicia Hotels Ltd. v. The Republic (1978) 3 C.L.R. 94

Recourse.

Recourse against the decision of the respondent whereby applicant's entry into Cyprus was prohibited. 15

L. Clerides with C. Clerides, and P. Liveras, for the applicant.

A. Papasavvas, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult. 20

TRIANTAFYLLIDES P. read the following judgment. By means of the present recourse the applicant seeks the annulment of a decision by means of which his entry into Cyprus is prohibited.

The applicant, who is a Lebanese subject, came to Cyprus in 1980 and till 1982 he was residing in Cyprus with his family as a visitor. In 1982 he secured a working permit and a temporary residence permit which were being renewed until May 1985. 25

On 4 May 1985 the applicant applied for a further renewal of his temporary residence permit and working permit for another year.

On 10 June 1985 the applicant was arrested for interrogation in connection with the commission of a criminal offence and was remanded in custody until 13 June 1985 when he was released without being charged with any offence. 30

On 14 June 1985 an order for his deportation from Cyprus as a prohibited immigrant was issued. Against this order the applicant filed recourse No. 576/85 on 15 June 1985 and subsequently the applicant left Cyprus for Athens on his own initiative.

- 5 On 8 November 1985 the aforesaid deportation order was annulled by the judgment delivered in case No. 576/85 (see *Damian v. The Republic* (1985) 3 C.L.R. 2714).

- 10 On the same day applicant's counsel sent a telegram to the respondent Minister of Interior informing him that after the judgment in his favour the applicant intended to return to Cyprus from abroad.

- 15 The respondent Minister replied, through the Director-General of his Ministry, that the applicant was being advised not to come to Cyprus until his case would be reconsidered and a final decision taken.

- 20 As it appears from minute No. 26 in the relevant file of the administration (A802960) the case of the applicant was reconsidered by the Migration Officer on 12 November 1985 who decided not to approve the grant to the applicant of an entry permit and a temporary residence permit and a working permit.

Before communicating his decision to the applicant the Migration Officer sought the approval of the Minister of Interior in his capacity as Chief Immigration Officer.

- 25 On 19 November 1985 an official of the Ministry of Interior replied, on behalf of the Director-General of the Ministry of Interior, to the Migration Officer, by means of minute No. 27 in the aforesaid file, that he was in agreement with the manner in which the Migration Officer was proposing to handle the matter and that the entry of the applicant into Cyprus should not be allowed.

- 30 On 20 November 1985 an official acting on behalf of the Migration Officer informed counsel for the applicant that his client's application for an entry permit had been examined very carefully but had not been approved.

As a result the applicant filed the present recourse.

- 35 After the hearing of the case was concluded I decided to re-open it in order to hear counsel as regards the issue of whether the sub-judice decision could have been taken not by the Minister of Interior himself, as the Chief Immigration Officer, but, as it appears

from the aforesaid minute No. 27, by an official of the Ministry of Interior acting on behalf of the Director-General of such Ministry.

It is well settled that the issue of the competence of the organ concerned may be raised either by a party to a recourse or by the Court *ex proprio motu* (see, *inter alia*, *Antoniades v. The Chairman and Members of the Municipal Council of Paphos*, (1982) 3 C.L.R. 844, 849, *Andronikou v. The Republic*, (1983) 3 C.L.R. 209, 214, 215, and *Paraskeva v. The Municipal Committee of Limassol*, (1984) 3 C.L.R. 54, 57) and that lack of competence is a ground for the annulment of the decision concerned (see, in this respect, *Evlogimenos v. The Republic*, (1973) 3 C.L.R. 184, 190, *Phaenicia Hotels Ltd. v. The Republic*, (1978) 3 C.L.R. 94, 98, the *Antoniades* case, *supra*, p. 849, and the *Andronikou* case, *supra*, p. 215).

As it appears from minute No. 26 in the relevant file the Migration Officer referred the matter in question to the Minister of Interior, as the Chief Immigration Officer, and it is clear from the contents of minute No. 27 in the same file that the sub *judice* decision was in effect reached by an official of the Ministry of Interior acting on behalf of the Director-General of such Ministry and not by the respondent Minister of Interior or by any official to whom the Minister had properly delegated his relevant powers. Since, however, the matter had on this particular occasion, been referred directly to the Minister of Interior, himself, as Chief Immigration Officer, for a final decision by him, neither the Director-General of the Ministry of Interior nor any official acting on behalf of him could have taken such decision.

In the light, therefore, of the foregoing I have reached the conclusion that the sub *judice* decision has to be annulled for lack of competence and, consequently, it is not necessary to deal with the merits of this case; but I shall not make any order as to its costs.

Sub judice decision annulled.
No order as to costs.