1988 October 24

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MAAMOUN MEIBAR,

Applicant,

v.

REPUBLIC OF CYPRUS, THROUGH THE
(a) MIGRATION OFFICER,
(b) CHIEF OF POLICE,
(c) MINISTER OF INTERIOR,

Respondents.

(Case No. 250/85).

Aliens—Reception of, under International Law—A matter of discretion—The breadth of the relevant discretionary power of the administration.

Human Rights—Aliens—The Convention for the Protection of Human Rights and Fundamental Freedoms (Ratified) by Law 39/62), Art. 5(1)(f)—The High Contracting Parties intended to reserve to themselves the powers to deport aliens—Limitations of such power arising out of the convention.

International Covenant on Civil and Political Rights, Art. 13—Aliens—Expulsion of—Ambit of Art. 13—Rights of the alien thereunder—Constitution, Art. 11.7 and 146.1

Competency—Of the organ that issued the sub judice decision—A matter that may be examined by the Court ex proprio motu.

Aliens—Competency to issue employment permits—The Aliens and Immigration Regulations, 1972, Regs. 9(6) and 2—Head of Department (Τμηματάρχης).

General principles of administrative law—The four steps in the making of an administrative act—The study and interpretation of the relevant legal provi-

sion, the ascertainment of the true factual situation, the application of the law to the facts and the decision on the course of action.

Judical control of the evaluation of the factual situation—Principles applicable.

Misconception of fact—It may constist of either the taking into consideration of non existing facts or the non taking into account of exisitng facts—Failure to make a due inquiry causing lack of knowledge of material facts amounts to misconception—Presumption in favour of the correctness of the findings of fact—Weakened by creating doubt in the mind of the Court in respect of such correctness.

Reasoning of an administraive act—What is due reasoning —It must contain the way of thinking of the administration on the relevant facts—It must, also, be clear—It may be supplemented by the material in the file.

This case concerns the refusal to renew applicant's temporary residence and employment permits. The facts need not be summarized here. Suffice to say that the applicant failed to substantiate the grounds of annulment put forward by him. The legal principles expounded by the Court in dismissing the recourse are sufficiently indicated in the hereinabove headnote.

Recourse dismissed.
No order as to costs.

Cases referred to:

AGEE v. The United Kingdom (Appl. 7729/76), 7 D.R. p. 164;

Karaliotas v. The Republic (1987) 3 C.L.R. 1701;

Georghiades v. The Republic (1966) 3 C.L.R. 252;

HjiStefanou v. The Republic (1966) 3 C.L.R. 289;

Christodoulou v. The Republic (1967) 3 C.L.R. 691;

Photos Photiades and Co. v. The Republic, 1964 C.L.R. 102;

Republic v. Georghiades (1972) 3 C.L.R. 594;

L. and G. Iacovides Enterprises Ltd. v. The Republic (1986) 3 C.L.R. 2101;

Skaros v. The Republic (1986) 3 C.L.R. 2109;

Panayis v. The Ports Authority of Cyprus (1988) 3 C.L.R. 1095;

Papaefstathiou v. Review Licensing Authority and Another (1988) 3 C.L.R. 1102;

HjiSavva v. The Republic (1972) 3 C.L.R. 174;

Tsouloftas and Others v. The Republic (1983) 3 C.L.R. 426;

Marangos v. The Republic (1983) 3 C.L.R. 682;

Co-operative Society of Alona v. The Republic (1986) 3 C.L.R. 222;

Decision 470/70 of the Greek Council of State.

Recourse.

Recourse against the refusal of the respondents to renew applicant's temporary resident and employment permit.

A. Eftychiou, for the applicant.

D. Papadopoulou (Mrs.), for the respondents.

Cur. adv. vult.

STYLIANIDES J. read the following judgment. The applicant by this recourse impugns the decision not to renew his temporary resident and employment permit, communicated to his advocate on 7th February, 1985.

The applicant is a Syrian national, a holder of Syrian passport No. 409981. He entered this country on a temporary visitor's

permit on 6th May, 1982. On 12th May, 1982, he submitted an application for renewal of his resident permit in order to stay and take up work as the Director of Ebla Trading Company Limited, an offshore company, he being the shareholder of 50% of its shares. He was granted temporary resident permit until 31st December, 1982—(see Exhibit 3, Red 4). On 5th June, 1983, on an application for further extension, he was granted temporary resident and employement permit until 3rd December, 1983. On 15th December, 1983, the aforesaid permits were renewed until 14th December, 1984. The nature of his residence, as described in the aforesaid permit, was Director of Ebla Trading Company Limited, an offshore company.

On 28th November, 1984, a report was prepared by P.S. 36 Th. Anastassiou (see Reds 34-29 in Exhibit 3). As a result the renewal of his permit was considered by the appropriate organ undesirable. On the expiration of his above permits he was notified orally by the Police to leave the country. But, notwithstanding such indication and request by the Police, he failed; he continued to stay in Cyprus and on 4th January, 1985, Deportation and Detention Orders were issued by the appropriate Authority. In the meantime, however, on 18th December, 1984, he submitted a petition in writing (see Red 27 in Exhibit 3), in which he referred to the Police action aforesaid and requested an appointment with the Migration Officer—Mr. Zavros—in order to discuss the problems arising out of the verbal request by the Authorities to leave the country the soonest. On 27th December, 1984, by letter addressed to the same Officer he admitted that he incurred debts and he stated that he would settle same in a period of two months. He filed Recourse No. 31/85, which was subsequently withdrawn.

On 18 January 1985 Mr. Eftychiou applied to the Minister of the Interior on behalf of the applicant for the grant to him of a resident and employment permit, to enable him to work as the Managing Director of Ebla Trading Company Limited. He attached thereto Certificate of Registration of the company and a document dated 13th April, 1982, emanating from the Central Bank in respect of Ebla Trading Company Limited, whereby permission,

under section 10 of the Exchange Control Law, Cap. 199, was granted to the said non-residence company.

On 7th February, 1985, the sub judice decision, whereby the application contained in letter dated 18th January, 1985, aforesaid, was turned down, on the ground that the applicant violated the conditions of his previous permit and for the protection of the public interest, was taken.

The applicant contends that the sub judice decision was taken by organ contrary to the law, without due inquiry and is the result of misconception of fact and lacks due reasoning; that is arbitrary and was taken in excess of power.

It was contended by Mr. Eftychiou that Article 13 of the Covenant on Civil and Political Rights, which was ratified by Law 14/69, and under International Law, his permit should have been renewed and that there was no legal foundation for the sub judice decision.

I think that it is pertinent at this stage to say a few words about the right of an alien and the right of a State with regard to aliens.

Article 32 of the Constitution provides that the Republic is not precluded from regulating by law any matters relating to aliens in accordance with International Law.

According to the principles of International Law the reception of aliens by a State is a matter of discretion; and every State is by reason of its territorial supremacy competent to exclude aliens from its territory—(Oppenheim's International Law, 8th ed., vol. 1, pp. 675-676).

The Administration has a very wide discretionary power in permitting an alient to enter and/or stay in the Republic.

Article 5(1)(f) of the Convention for the Protection of Human Rights and Fundamental Freedoms, which is part of our Law

with superior force, having been ratified by Law 39/62, and Article 11.2(f) of our Constitution are relevant on the matter.

The States of the Council of Europe, including the Republic of Cyprus intended to reserve to themselves the power to deport aliens from their territory.

In *AGEE v. The United Kingdom*, Application No. 7729/76, 7 D.R., p. 164, at pp. 172-173 it was said:

"9. The Commission observes firstly that it has constantly held that the right of an alien to reside in the territory of a High Contracting Party is not as such guaranteed by the Convention. Furthermore it is clearly implied by Art. 5(1)(f) of the Convention and Arts. 3 and 4 of Protocol No. 4 thereto that the High Contracting Parties intended to reserve to themselves the power to deport aliens from their territory. On the other hand the Commission has held that deportation may in exceptional circumstances involve violation of the Convention, for example where there is serious fear of treatment contrary to Art. 3 in the receiving State. The High Contracting Parties thus have a discretionary power to decide whether to expel an alien present in their territory but this power must be exercised in such a way as not to infringe the rights under the Convention of the person concerned."

(See, aslo, *Karaliotas v. Republic* (1987) 3 C.L.R. 1701).

Article 13 of the International Covenant on Civil and Political Rights, which came into force on 23rd March, 1976, provides that an alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before the competent authority or a person or persons especially designated by the competent authority.

This Article does no more than proclaim and enshrine the right safeguarded by paragraph 7 of Article 11 of our Constitution, that the decision for his expulsion shall be taken in accordance with the Law and that he shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a Court. The right for review of a decision of an administrative organ or authority is safeguarded and regulated by Article 146 of our Constitution.

In the present case, however, the validity of neither of the Deportation, nor of the Detention Order is impugned. The act under review is that contained in the letter of the Administration addressed to Mr. Eftychiou, dated 7th February, 1985, whereby his request for a resident and employment permit was refused.

The contention that the sub judice decision was taken by an incompetent organ has half heartedly been put forward by counsel for the applicant who did not elaborate on it.

An Administrative Court is entitled to examine ex proprio motu the competence of the particular organ, the decision of which is being challenged before it, in view of the nature of its revisional jurisdiction—*(Cleanthis Georghiades and The Republic of Cyprus* (1966) 3 C.L.R. 252; at p. 276; *Yiangos P. Hjistephanou and the Republic of Cyprus* (1966) 3 C.L.R. 289, at p. 300; *Annika Christodoulou v. Republic (Public Service Commission)* (1967) 3 C.L.R. 691, at p. 701).

The applicant is an alien, whose residence in the Republic is temporary. The categories of permits for temporary residence in the Republic are set out in Regulation 9(1) of the Aliens and Immigration Regulations of 1972. What the applicant in fact is asking for is an employment permit. Paragraph 6 of Regulation 9 reads:

"9 - (6) Ο Τμηματάρχης δύναται να επεκτείνη διά περαιτέρω χρονικήν περίοδον ή περιόδους, ως ούτος θεωρεί σκόπιμον, την περίδον δι' ην επιτρέπεται εις προσωρινόν

κάτοικον να παραμείνη εν τη Δημοκρατία δυνάμει αδείας εκδιδομένης δυνάμει των διατάξεων του παρόντος κανονισμού."

"Τμηματάρχης" (Head of Department) is defined in Regulation 2 as the Director of the Department of Passports, Nationality and Control of Aliens of the Ministry of the Interior and includes the Assistant Head and any other person duly authorized by the Head of the Department.

Counsel of the applicant did not substantiate his such allegation, and, having regard to the contents of the Regulations and the file of the Administration, I reach the conclusion that this ground fails.

On 28th November, 1984, a long and exhaustive report, after inquiries to all directions, was made by a Police Sergeant and this report was before the Administration at the time the sub judice decision was taken. Furthermore, it was in the file the licence given to the offshore company of which the applicant was a Director. The applicant was, also, contacted personally; further, they had his letter in which he admitted debts. Also, before the Administration was material that the applicant was in fact meddling and /or working and/or was connected with the issue of paper "ALLIQUAL". In this report it was, stated that Ebla Trading Company Limited had no activities at all in 1984. It had no employees or offices.

Mr. Eftychiou produced to the Court Certificate of Registration of Connection Publishing and Printing Company Limited and Certificate of its shareholders, dated 28th November, 1987.

There was no allegation in the file of the Administration and the Administration did not act under the impression or the false assumption that the applicant was a shareholder of this company.

Financial statements of Ebla Trading Company Limited, Profit and Loss Account for 1984 were, also, produced. They are dated

7th September, 1985, long after the sub judice decision was taken.

Even these documents do not in any way disprove, or create a doubt about the correctness of the findings of fact by the Administration.

'Note 2 to the Profit and Loss Account reads as follows:

"2. PROFIT AND LOSS ACCOUNT

2.1. Directors' emoluments £3,000 Maamoun Meibar

2.2 Rent £1,040 Avraam Andronicou - Envias 14B, Nicosia

'2.3 Expenses included in the accounts amounting to £7,155 are not supported by documentary evidence.

2.4 The company offer to the managing director Mr. Maamoun Meibar, free accommodation and private use of car."

'All the amounts spent by the company in the General Expenses for 1984 totalled £13,784- and are nothing but the amounts which are set out in Note 2, herein above quoted. Envias 14B is the residence of the applicant.

An Administrative Authority has a duty to make the reasonably necessary inquiry for the purposes of ascertaining the correct facts to which the relevant legislation is to be applied. The ascertainment of the correct facts; application of the law to the facts; and decision on the course of action. (Vide "The Law of Administrative Acts" by Stassinopoulos (1951) p. 249; *Photos Photiades and Co., and the Republic of Cyprus through the Minister of Finance,* 1964 C.L.R. 102, at pp. 112-113.)

The evaluation of the facts is within the discretionary power of the Administrative Authority. An Administrative Court can only

interfere if there exists an improper use of the discretionary power or a misconception concerning the factual situation or the non taking into account of material factors.

The Court cannot substitute its own evaluation for that of the Administration. There is a presumption in favour of the correctness of the findings of fact by the Administration. This presumption is weakened, once the applicant succeeds in rendering possible the existence of misconception of fact on the part of the Administration, even by creating doubts in the mind of the Court about the correctness of such findings of fact. *(Republic (Public Service Commission) v. Lefkos Georghiades* (1972) 3 C.L.R. 594; *L. & G. Iacovides Enterprises Ltd. v. The Republic* (1986) 3 C.L.R. 2101 and *Katerina Papaefstathiou, v. Review Licensing Authority and Another* (1988) 3 C.L.R. 1102.

Minsconception as to facts may consist of either the taking into consideration of non existing facts or the non taking into account of existing facts; failure to make a due inquiry causing lack of knowledge of material facts amounts to misconception of fact- (*Skaros v. The Republic* (1986) 3 C.L.R. 2109).

The requirement of due reasoning in administrative decisions has been stressed repeatedly by this Court. The requirement of reasoning is that its presence excludes arbitrariness on the part of the administrative organ and protects the administration against itself by preventing it from taking a hasty decision. At the same time it protects the persons affected by such decision. The reasoning must be clear, that is to say, the concrete factors on which the administration base its decision for the case under consideration must be specifically mentioned in such a manner as to render possible its judicial control. It must contain the way of thinking of the administrative organ on the relevant facts which constitute the foundation for the decision. A reasoning which does not satisfy these conditions cannot be considered as due reasoning. The reasoning may be supplemented from the material in the file of the administration. *(Soteris L. Panayis v. The Ports Authority of Cyprus,* (1988) 3 C.L.R. 1095; *Athos G. Georghiades and Others*

v. Republic (Public Service Commission (1967) 3 C.L.R. 653, 666; *Georghios HjiSavva v. Republic (Council of Ministers)* (1972) 3 C.L.R. 174; *Republic (Public Service Commission) v. Lefcos Georghiades* (1972) 3 C.L.R. 594; *Andreas Tsouloftas and Others v. The Republic of Cyprus* (1983) 3 C.L.R.426; *Marangos v. The Republic* (1983) 3 C.L.R. 682 and *Co-Operative Society of Alona v. The Republic of Cyprus* (1986) 3 C.L.R. 222. See, also, Decisions of the Greek Council of State, 470/1970, Volume A', p. 686 and Π.Δ. Δαγτόγλου - General Administrative Law, α' p. 1977, pp. 166-167 and γ'/1 1989, pp. 285-286.)

The Respondents carried out a reasonably due inquiry. They made the evaluation of the facts before them. The sub judice decision is reasoned and the reasoning is adequately supplemented from the material in the file. The sub judice decision is not arbitrary. There was sufficient material before the Administration. The sub jucide decision, which was taken pursuant to, and in accordance with the Law and the Regulations made thereunder, was in all the circumstances, having regard to all the material in the file, reasonably open to the Respondents.

In view of the foregoing, the recourse fails. The sub judice decision is confirmed under Article 146.4(a).

Let there be no order as to costs.

Recourse dismissed.
No order as to costs.