

1988 November 18

[A. LOIZOU, P., MALAÇHTOS, STYLIANIDES, PAPADOPOULOS,  
HADJITSANGARIS, CHRYSOSTOMIS, JJ.]

1. ANTONIS BALALAS,  
2. MARILLIA BALALAS,

*Appellants/Applicants,*

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

*Respondents.*

*(Revisional Jurisdiction Appeal No. 752).*

*Legitimate interest—Husband and wife—Administrative action disrupting partnership (in this case refusal to allow husband to come to Cyprus in order to join his wife)—Either of them can challenge such an action.*

5 *Executory act—Confirmatory act—New facts and new inquiry into the matter—The new decision is of an executory nature.*

*Constitutional Law—Right to family life—Constitution, Art.15—Expulsion of the alien spouse of a citizen of Cyprus—No violation of such right, if family unit can be preserved by establishing family residence in the country where the expelled spouse resides.*

10 *The Convention for the Protection of Human Rights—(Law 39/62), Art.8—Right to family life—Expulsion of alien spouse of a citizen of Cyprus—No violation of such right, if family unit can be preserved by establishing family residence in the country where the expelled spouse resides.*

15 The second appellant's husband, a citizen of Greece, was expelled from the Republic, following complaints by the second appellant.

Later on, the second appellant informed the authorities that she was reconciled with her husband and asked that he be allowed to return to Cyprus.

As the application was turned down, both appellants filed a recourse to this Court. This is an appeal against the decision, dismissing the recourse.

The first appellant withdrew the recourse. The issues that remained for consideration were:

- (a) Whether the second appellant possesses a legitimate interest to impugn the sub judice decision, 5
- (b) Whether the act is confirmatory of the act of expulsion, and
- (c) Whether there has been an interference with the right to private life, protected by Art. 15 of the Constitution and Art. 8 of the Convention for the Protection of Human Rights. 10

Held, *dismissing the appeal*: (1) Family life is made up in the first place by the partnership of a husband and wife. Either of them has a legitimate interest to impugn administrative action that affects his share in the family unit. Therefore, the wife in this case has a legitimate interest to pursue the proceedings. 15

(2) The sub judice decision is of an executory nature, because new facts were put before the administration and there had been a new inquiry.

(3) It has been established that the appellant - wife, has no difficulty and there are not legal or other impediments in joining her husband in Greece of which he is a national, and as of right residing and living with him in that country. 20

It follows that the family unit could be preserved by establishing the family residence in Greece. In the light of this fact the State cannot be held as having interfered with the right to respect for family life. Such a limitation on the notion of interference is necessary, otherwise the expulsion or refusal of admission, whenever family life was established, would be prohibited. 25

*Appeal dismissed.*

*No order as to costs.*

*Cases referred to:*

- X and Y v. U.K. (Appl.5269/71, Year Book XV, p.564, Coll.39 p.104);
- Appl.3325/67. (Yearbook X, p.528);
- Dec. Adm, Com.Appl.5301/71, Coll.43, p.82.

**Appeal.**

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Loris, J.) given on the 22nd October, 1987 (Revisional Jurisdiction Case No. 476/84)\* whereby appellants' re-  
 5 course against the refusal by the respondents of a permit to appellant 1 to enter Cyprus was dismissed.

*A. Argyrides, for A. Efstychiou, for the appellants.*

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

*Cur. adv. vult.*

10 A. LOIZOU P. read the following judgment of the Court. This is an appeal from the judgment of a Judge of this Court by which he dismissed the application of the two appellants who are husband and wife, with which they were claiming "a declaration of  
 15 the Court that the act and/or decision of the respondents refusing a permit to the husband to enter Cyprus is null and void and with no legal effect."

The said decision was reached after counsel for the applicants addressed a letter on behalf of the wife to the Director of the Department of Immigration on the 14th June 1984, by which he was  
 20 informing the Authorities that the husband of his client had been deported from Cyprus as a result of a complaint lodged by her and as they had since then reconciled, she wanted a full restitution of her relations with him and was asking the addressee of that letter to take the necessary steps, so that her husband would be al-  
 25 lowed to return to Cyprus. To this request respondent 2, replied that the entry of her husband in Cyprus "was not at present desirable".

The husband is a Greek National who came to Cyprus for the first time in 1968. He married a Cypriot girl and a child was born

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\* Reported in (1987) 3 C.L.R. 1286.

out of that wedlock. During the subsistence of that marriage he was reported to the Police repeatedly for beating and deserting her. After several convictions for assaulting his first wife and obtaining money by false pretences he was deported from Cyprus and his name was placed on the Stop-List.

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Ultimately, however, he was allowed to return to Cyprus. His first marriage was dissolved on the 27th April 1972, and he married the present appellant in 1975. It seems that he could not, however, change his brutal and dishonest way of life and he was reported repeatedly by her for assaulting her and deserting her.

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On the 17th April 1981, the Immigration Authorities granted to the husband a final temporary permit to reside and work in Cyprus, valid until the 30th August 1981. On the 21st April 1982, he was declared by the Authorities as a prohibited immigrant. A deportation order was issued under Section 14 of the Aliens and Immigration Law, Cap. 105, and he was once more deported from Cyprus and his name was placed on the Stop List.

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A recourse was filed against that deportation order by the husband, but same was withdrawn on the 15th September 1982.

In the course of the hearing of this appeal learned counsel for the two appellants asked for leave to withdraw the appeal of the husband as the letter of the 14th July 1984, which caused the sub judice decision to be taken was not written on his behalf and the recourse has been based on that decision. The appeal of the first appellant was then struck out and learned counsel proceeded with that of the wife, i.e. the second appellant. He confined his grounds of appeal to the following two.

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"(a) That the decision of the trial Court that applicant 2, has never had legitimate interest as envisaged by Article 146.2 of the Constitution is wrong and/or not supported and/or unjustifiable, having regard to the evidence, and/or material and/or facts adduced and/or available to the Court. And

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(b) That the trial Court failed entirely and/or adequately to examine the submission of applicant 2, that by the sub judice decision the right to private and family life of this applicant as envisaged by Article 15 of the Constitution and Article 8(1)(2) of the European Convention of Human Rights ratified by Law No. 39 of 1962, is violated."

It has been argued on behalf of the respondents that the sub judice decision was a confirmatory one of the previous decision by which the husband was declared a prohibited immigrant and deported from Cyprus. This matter, however, is interwoven with the issue whether a wife has a legitimate interest to pursue on her own in such circumstances a recourse under Article 146 of the Constitution against the refusal of the Immigration Authorities to allow her husband to enter Cyprus by revoking or cancelling any decision declaring him a prohibited immigrant or refusing to remove his name from the Stop-List.

In our view, family life is made up in the first place by the partnership of a husband and wife. Therefore if the family life is violated by any measure of the administration aimed at one of them and in consequence thereof separating them or interfering with or disrupting an existing family unit, the right to respect for a person's family life is violated and either of them has a legitimate interest to challenge such a decision to the extent that it affects his share in the family unit. On this point therefore the appeal succeeds in that the appellant wife has a legitimate interest to proceed with this case.

As regards the issue whether the sub judice decision was a confirmatory one of the decision to declare him a prohibited immigrant and deport him from Cyprus the short answer is that the wife by her letter introduced new facts which called for a new inquiry, which indeed was carried out by the respondents and resulted in a new executory decision that could be made the subject of a recourse by the wife.

The second ground of Law was not examined by the learned

trial Judge who did not proceed to consider the recourse on the merits because of his conclusion on the preliminary objections, mainly that of lack of legitimate interest and that the sub judice decision was not executory but a confirmatory one and therefore could not be made the subject of a recourse, the original act being distant and certainly not having occurred before the lapse of sev- 5  
enty-five days from the date of the filing of the recourse.

In relation to this ground, it has been asserted to our satisfac-  
tion, that the appellant-wife, has no difficulty and there no legal  
or other impediment in joining her husband in Greece of which he 10  
is a national, and as of right residing and living with him in that  
country.

Article 8 of the European Convention and Article 15 of our  
Constitution which we shall set out in full hereinafter are for all  
intents and purposes in so far as we are concerned in this case the 15  
same, but the right to respect of correspondence is covered in our  
Constitution by Article 17.

"1. Everyone has the right to respect for his private and  
family life, his home and his correspondence.

2. There shall be no interference by a public authority with 20  
the exercise of this right except such as is in accordance with  
the law and is necessary in a democratic society in the interests  
of national security, public safety or the economic well-being  
of the country, for the prevention of disorder or crime, for the  
protection of health or morals, or for the protection of the 25  
rights and freedoms of others.

## ARTICLE 15

1. Every person has the right to respect for his private and  
family life.

2. There shall be no interference with the exercise of this 30  
right except such as is in accordance with the law and is neces-

5 sary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person."

10 Article 8 of the Convention has been the subject of interpretation by the organs entrusted with the supervision of its application. It prohibits in principle and subject to the provisions of paragraph 2, interference with an existing family unit and it has as its principal element the protection of the integrity of the family. One of the situations that have been raised under the said Article is the case where some action by the authorities, such as expelling a person from a country or refusing to admit someone may result in separation of husband and wife.

15 The matter therefore that needs to be inquired into, in relation to the facts of the present case, is whether the family unit could not be preserved by establishing the family's residence in the country to which the expelled member resides, or from which he seeks admission. If the family unit could be so preserved, then  
20 the State cannot be held as having interfered with the right to respect for family life. Such a limitation of the notion of interference is necessary otherwise the expulsion or refusal of admission whenever family life was established, would be prohibited.

25 Reference may be made to two decisions of the Commission, the first one is the case of *X and Y v. U.K.* Application No. 5269/71, YBXV p. 564 (572-574), Coll. 39 p. 104, at pp 107-108, where it was said:

30 "The Commission is of the opinion that the application primarily falls to be considered under Art. 8 which provides, inter alia, that everyone has the right to respect for his family life. It observed that it has previously held that the exclusion of a person from a country where close members of his family are living may amount to an infringement of this right. In a number of such cases the Commission has considered situa-

tions where, as in the present case, a married man is forced to leave a State in which he is living with his wife. The Commission has treated as a relevant factor in such cases the possibility for the wife to follow her husband (see e.g. Application No. 2535/65, Collection of Decisions 17, pp. 28-30 and the above-mentioned decision on Application No. 4403/70 and others at p. 120)."

This was a case of a Cypriot citizen then twenty-two years old who entered the United Kingdom as a student and married the second applicant, a United Kingdom citizen of Cypriot origin, in April 1970. Having become a part time student only he was refused permission by the Home Secretary to stay in the United Kingdom indefinitely and was asked to leave the country in January 1971. The appeal against this decision ultimately failed and he was again requested to leave the United Kingdom in August 1971. Among the reasons advanced was that for a number of personal reasons the wife might be reluctant to follow her husband. The Commission, however, was satisfied that there were no legal obstacles for the applicants effectively to establish their family life in Cyprus if the first applicant were to return to that country. A refusal by her to do this because she chooses to stay in the United Kingdom (as she is entitled to do) does not in the circumstances of the case mean that there has been thereby an interference by the United Kingdom authorities with the applicant's family life within the meaning of Article 8(1) of the Convention.

The Commission referred in this respect to the decision of admissibility of Application No. 3325/67, Yearbook 10 pp. 528, 536.

The second case (Dec Adm. Com Ap. 5301/71, 3 October 1972 Coll. 43 p.82(84) is that of a United Kingdom citizen married to an Indian citizen who after their marriage in 1965 settled in Kenya. The first applicant then went and lived in London with their child and they complained that the husband, the second applicant was refused permission to settle in England. There did not appear to be any legal obstacles preventing the applicant and his

wife from living together in India, but the second applicant had said only that as his wife preferred the United Kingdom to India and that he too desired to belong to that civilisation to which his wife has taken a liking, he should be permitted to settle in U.K. It was held that:-

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"The Commission would not suggest that, where a couple is refused residence in a country of which one of them is a national, there is no violation of Article 8 simply because they can find some legal residence elsewhere. If the only legal residence which they can find is in a country connected with either of them, the exclusion from residence in the 'home' country of one of them might constitute a violation of Article 8. But in the present case the applicant and his wife appear to be able to reside legally in India and India is the applicant's country of origin: Furthermore, the applicant and his wife were married in Kenya at a time when they were fully aware that the applicant might not be allowed to enter the United Kingdom.

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The Commission has thus considered the present application under both Articles 8 and 12 of the Convention. It can find no ground on which to distinguish it from Application No. 5269/71 and notes also that there is not even any suggestion in the present case (as there was in Application 5269/71) that the applicant's wife has other family ties in Britain.

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Dec. Adm. Com. Ap. 5301/71, 3 October 1972 Coll. 43 p. 82(84)."

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For all the above reasons the appeal is dismissed and the sub judice decision is confirmed in whole under Article 146.4(a) of the Constitution as on the merits also the sub judice decision was reasonably open to the administration. In the circumstances, however, there will be no order as to costs.

*Appeal dismissed.*

*No order as to costs.*