

1988 November 30.

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MOHAMED ABDUL RAHMAN TABALO,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR AND ANOTHER,

Respondents.

(Case No. 479/88).

Aliens—Their status and position vis-a-vis the state—Summary of principles emanating from the case-law.

Natural Justice—Right to be heard—Warrant of arrest—No right to be heard before its issue.

5 *Legitimate interest—Aliens—Deportation order—Hearing of recourse after expiration of applicant's permit to stay in Cyprus—Applicant had no legitimate interest directly and adversely affected by sub judice order.*

10 The applicant, who is a citizen of Syria, obtained a temporary residence permit to stay in Cyprus until 28.6.88. However, following information received through Interpol that he was wanted in Syria for illegal importation and forgery, an Order for his detention was issued under section 14 of Cap. 105, as a step towards his deportation under the same section.

15 The applicant challenged the order of detention by means of this recourse.

Held, dismissing the recourse:

(1) When an alien enters into a State he falls under the territorial supremacy of the State, he is under its jurisdiction, and he is responsible

to it for all acts which he commits on its territory. Further, the State has the right to expel an alien from its territory provided it does so in good faith. In this case the steps taken by the authorities in order to deport the applicant were taken in good faith.

- (2) A person has no right to be heard before the issue of a warrant of his arrest. 5
- (3) The Bilateral Convention between Cyprus and Syria, ratified by Law 160/86 and more particularly its provision for legal protection of personal and proprietary rights have not been violated.
- (4) In any event, as on the hearing of this recourse, applicant's permit to stay in Cyprus had expired, the applicant had no legitimate interest directly and adversely affected. 10

Recourse dismissed.
No order as to costs.

Cases referred to: 15

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

In the matter of E. Uckac (1988) 1 C.L.R. 271;

Uckac v. Republic (1988) 1 C.L.R. 271;

Moyo and Another v. The Republic (1988) 3 C.L.R. 1203;

Mohamed v. The Republic (1988) 3 C.L.R. 2072; 20

Papasavvas v. The Republic (1967) 3 C.L.R. 111;

Papadopoulos v. The Municipality of Limassol (1974) 3 C.L.R. 352;

Republic v. K M.C. Motors Ltd. (1986) 3 C.L.R. 1899;

Razis and Another v. The Republic (1982) 3 C.L.R. 45.

Recourse.

Recourse against the decision of the respondents whereby applicant was deported from Cyprus.

L. Papaphilippou, for the applicant.

5 *P. Clerides*, for the respondents.

Cur. adv. vult.

10 DEMETRIADES J. read the following judgment. The applicant in this recourse is a national of the Syrian Arab Republic. He arrived in Cyprus on the 24th April, 1988, and was granted a temporary permit to stay in the Republic until the 28th June, 1988, as a visitor.

15 On entering the Republic, the applicant declared that the purpose of this visit was to investigate the possibility of the registration of an offshore company. In fact applications to this end were made by advocates acting on his behalf and after the approval of the Central Bank was obtained, two (2) offshore companies were registered, in both of which he is the main shareholder.

20 On the 26th May, 1988, the Damascus Interpol by telex informed the Cyprus Police that the Economic Investigation Judge in Tartous had issued a warrant for the arrest of the applicant for illegal importation and forgery and requested his immediate arrest as his extradition was to be requested through diplomatic channels.

25 (Regarding the extradition of a Syrian citizen from the Republic, it is to be noted that there is no Convention between the two countries).

As a result, the Cyprus Police placed the applicant on the "Stop List" and at the same time the Chief of the Cyprus Police Force informed the Head of the Immigration Service of his Force

of the contents of the telex and asked him to take the necessary steps for the issue of Deportation and Detention Orders under section 14 of the Aliens and Immigration Law, Cap. 105.

The Director-General of the Ministry of Interior then, on the information supplied to him by the Immigration authorities, signed an Order for the detention of the applicant. However, no deportation Order was made as no such order was ever signed by the Minister of Interior who, under the provisions of Cap. 105, is the appropriate authority to order the deportation of a foreign national.

On the 27th May, 1988, the Police, purportedly acting under the powers given to them by virtue of the contents of the said Detention Order, arrested the applicant, seized his travelling documents and kept him in custody for some time.

It is pertinent here to mention that the Cyprus Authorities, after the applicant was arrested and kept in detention, at the request of the Syrian Embassy, which had informed them that it suspected that the passport of the applicant was forged, handed it to it. The Embassy then cancelled the passport and, as a result, the applicant can no longer make use of it in order to travel to a country of his choice.

On the 28th May, 1988, the applicant filed the present recourse by which he prayed for a declaration that the decision of the Chief Immigration Officer for the deportation of the applicant, and which was taken on or about the 27th May, 1988, was illegal, null and void and of no effect.

This prayer was later by consent of the parties amended and it now reads:

"Δήλωση ότι η απόφαση του Λειτουργού Μεταναστεύσεως ημερομηνίας κατά ή περί 27.5.1988 για έκδοση εντάλματος ή/και οδηγιών για κράτηση του Αιτητή με βάση το άρθρο 14 του Περί Αλλοδαπών και Μεταναστεύ-

σεως Νόμου και στη συνέχεια να απελάσει του αιτητή είναι παράνομη, άκυρη και στερημένη οποιουδήποτε αποτελέσματος."

5 ("Declaration that the decision of the Immigration Officer, which was taken on or about the 27.5.1988, for the issue of a warrant and/or directions for the detention of the applicant on the basis of the provisions of section 14 of the Aliens and Immigration Law and thereafter to deport him is unlawful, null and void and of no effect.")

10 The hearing of the recourse was delayed as several applications for interlocutory proceedings were filed by both sides. In addition, the Syrian Arab Republic applied to the Court to be granted leave to intervene as an interested party. Its application was heard but before this Court gave its Ruling as to whether it had a legitimate interest to intervene in the proceedings, its counsel applied for leave to withdraw the application of his clients
15 which was, as a result, dismissed.

20 Having dealt with the facts of the case, I shall now have to deal with the case of the two sides, namely that of the applicant and of the respondents.

The case of the applicant was originally based on the following grounds of law, that is, that the respondents

- (a) wrongly decided that he was an undesirable visitor,
- 25 (b) based their decision on information which is neither evidence nor can it allow the exercise of correct discretionary power,
- (c) wrongly applied the provisions of Cap. 105.

By leave and with the consent of the respondents, the following additional legal points were raised by the applicant:

1. The principles of natural justice were violated in that no opportunity was given to the applicant to be heard but without notice he was arrested and was placed under police detention and was deprived of his personal freedom.
2. Articles 11 and 12 of the Constitution were violated in that the applicant was found guilty for offences which he had not committed and of which he knows nothing about and/or which cannot stand. 5
3. The Applicant was arrested on false charges for offences that he had not committed and/or on the allegation that he is involved in criminal offences which were committed in Syria, punishable there with death, a sentence which has been abolished in Cyprus. 10
4. The respondents acted in contravention of the provisions of section 14 of Cap. 105 because they failed to give the notice provided by this section. 15
5. The respondents acted in violation of section 14A of the amending Law to Cap. 105 (Law 54/76).
6. The respondents acted under a misconception of facts in that they 20
 - (a) failed to carry out a due or any inquiry in order to ascertain the real facts;
 - (b) disregarded the fact that the applicant is a shareholder and the manager of a shipping as well as of an offshore company in Cyprus; 25
 - (c) failed to examine the consequences of the sub judice decision for the companies of the applicant;
 - (d) failed to investigate and ascertain the fact that the political beliefs of the applicant are not of the liking of the Syrian re-

gime, the government of which and/or its organs seek, by devious measures, to deprive the applicant of his freedom and/or life;

5 (e) failed to investigate and ascertain that the charges which the applicant faces (in Syria) are fabricated and/or that his extradition is sought without the existence of a bilateral convention and/or without provision of a law;

(f) failed to take into consideration that the applicant has committed no offence under the laws of the Republic.

10 7. The act and/or decision of the respondents lacks reasoning, is arbitrary and is based on extraneous factors.

15 8. The sub judice decision contravenes the letter and spirit of the Bilateral Convention signed between Cyprus and Syria which was ratified by Law 160/86 and in particular Article 1 of the Convention which provides for legal protection, more particularly its provision that citizens of the contracting parties enjoy in the other contracting party the same legal protection regarding personal and proprietary rights as nationals of the other contracting party.

20 The respondents opposed the recourse alleging that it was made against a non existent administrative decision and/or act; that it was a suggestion (meaning apparently that a deportation order had been suggested to be made) and thus it was not an executory decision or act; that in any event the sub judice decision was
25 correct and lawfully taken in accordance with the provisions of the Constitution, the laws and the regulations; that the respondents exercised the powers vested in them by legislation correctly and that the sub judice decision was duly reasoned and was taken after due inquiry. They further alleged that in any event the permit
30 given to the applicant to stay in Cyprus as a visitor had expired.

At the beginning of the hearing of the recourse counsel for the respondents withdrew his ground of opposition that the sub ju-

dice decision for the deportation of the applicant was not an executory one because, he said, although the deportation order was not signed, the procedure for the deportation of the applicant started and was put into effect by the signing of the order for the detention of the applicant.

5

I now come to the grounds of law on which the applicant bases his recourse: I shall take at first grounds 3 and 6(a), (d) and (e):

There is no evidence to substantiate these grounds. In the evidence that the applicant gave during the interlocutory proceedings, by which the respondents had applied for the discharge of a provisional order made by the Court on an ex parte application of the applicant for stay of execution of the order for his deportation, he stated that he did not know why the Government of Syria wanted his extradition to that country, but as he said, his guess was that it was for political reasons. No other explanation was given by him. Therefore, grounds of law 3, 6(a), 6(d) and 6(e) fail.

10

15

I shall now deal with the remaining grounds of law on which the applicant bases his recourse.

20

First ground:

The arguments put forward in support of this ground are unsupported by legal authority and to my knowledge and in the research that I have carried out I have not come across an authority supporting the view that a person against whom a warrant for his arrest had been issued has a right to be heard and give reasons why he should not be arrested. This ground, therefore, must, in view of my finding, fail.

25

Second ground:

With regard to this ground, there is apparently a misconception on the part of the applicant as to the interpretation of Articles 11 and 12 of the Constitution, as from the material before me, the

30

Immigration Authorities of Cyprus, which suggested the deportation of the applicant, based their decision on information provided to them by the Interpol and they never expressed an opinion as to the guilt of the applicant for the alleged offences they were informed that he had committed in Syria and for which his extradition was requested.

All other grounds of law, on which the recourse is based, except ground 8, turn on the issue of the rights of nationals of foreign countries to enter and stay in the Republic.

In a series of recent judgment, the Supreme Court of this country has endorsed what is internationally accepted on this matter and which I dare to summarize as follows:

Every state exercises territorial supremacy over all persons on its territory, whether they are its subjects or aliens and there is no obligation by it to accept an alien or to allow him to remain in it. When an alien enters into a state he falls under the territorial supremacy of the State, he is under its jurisdiction and is responsible to it for all acts he commits on its territory. Further, the State has the right to expel an alien from its territory provided it does so in good faith.

In support of the summary of the authorities that I have made, see:

- (i) *Oppenheim's International Law*, 8th Edition, Vol.1, Part II Chapter III, Sections VI, VII and VIII.
- (ii) *Karaliotas v. The Republic* (1987) 3 C.L.R. 1701.
- (iii) *In the matter of E. Uckac* (1988) 1 C.L.R. 271 and Civil Appeal No. 7616) (judgment issued on the 27th May, 1988).
- (iv) *Sydney Alfred Moyo and another v. The Republic*, (1988) 3 C.L.R. 1203.

(v) *Titi Abdel Aziz Mohamed v. The Republic*, (1988) 3 C.L.R. 2072.

Considering the fact that the authorities of Cyprus had reliable information that the applicant was wanted by the judicial authority of Syria for serious offences committed in that country by him, I find that the authorities of the Republic, in taking the steps that they took in order to deport him, acted in good faith. Therefore, all grounds of law under this heading fail. 5

As regards now ground of law 8, I find no merit in it. It is clear from the wording of the relevant Article of the Convention signed between Cyprus and Syria, that the applicant was not refused of legal protection regarding his personal and proprietary rights. A striking example of this is that he was allowed to take and pursue the present proceedings. In the result, this ground of law also fails. 10
15

Before dismissing this recourse, I would like to deal with an issue that was indirectly raised by the respondents and which is whether the applicant had a legitimate interest to proceed with his recourse.

It has been judicially decided that: 20

(1) A person, in order to be entitled to avail himself of the provisions of Article 146.2 of the Constitution, must have a legitimate interest which exists at the time

(a) the act or decision of the administrative organ was taken,

(b) the recourse was filed, and 25

(c) of the hearing of the recourse.

See *Papasavvas v. The Republic*, (1967) 3 C.L.R. 111, *Papadopoulos v. The Municipality of Limassol*, (1974) 3 C.L.R. 352.

(2) The existence of legitimate interest can be inquired into by an Administrative Court acting ex proprio motu.

5 In this respect reference may be made, amongst others, to the cases of *Republic v. K.M.C. Motors Ltd.*, (1986) 3 C.L.R. 1899; *P. Razis and another v. The Republic*, (1982) 3 C.L.R. 45.

10 As I have earlier said, the applicant was granted a temporary permit to stay in the Republic until the 28th June, 1988, and he, therefore, on the day the hearing of this recourse started, was not lawfully staying in Cyprus and thus he had no existing legitimate interest adversely and directly affected by the sub judice decision.

In the result, the recourse of the applicant fails also for this reason.

15 Recourse dismissed but, in the circumstances, I make no order as to costs.

*Recourse dismissed.
No order as to costs.*