

1988 December 10

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

FARHAD SHABESTARI,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE DIRECTOR OF THE MIGRATION DEPARTMENT,
2. MINISTER OF INTERIOR,
3. MINISTRY OF INTERIOR,
4. CHIEF OF POLICE,

*Respondents.*

*(Case No. 899/88).*

*Provisional order—Negative decision—Cannot be suspended by such an order—Refusal to extend an alien's temporary residence permit—It is in essence a negative decision.*

The facts of this case sufficiently appear in the Judgment of the Court.

*Application dismissed.  
No order as to costs.*

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*Cases referred to:*

*Goulelis v. The Republic* (1969) 3 C.L.R. 583;

*Artemiou (No. 2) v. The Republic* (1966) 3 C.L.R. 562;

*Tyrokoumou v. The Republic* (1976) 3 C.L.R. 403;

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*Georghiou (No. 1) v. The Republic* (1968) 3 C.L.R. 401;

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

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

### Application for a provisional order.

5 Application for a provisional order suspending the decision of the respondents by which they refused renewal of applicant's temporary resident's permit and which refusal has as a consequence his immediate expulsion from Cyprus.

*S. Papaleontiou*, for the applicant.

10 *P. Clerides*, for the respondents.

*Cur. adv. vult.*

15 A.LOIZOU P. read the following judgment. The applicant is an Iranian subject. Upon his arrival in Cyprus on the 1st December, 1987 he was granted a temporary resident's permit as a visitor. His said permit was renewed from time to time until the 7th November 1988, when it was made valid until the 15th November 1988, and marked as "Final".

20 During his stay here he was maintained by the Special Mission in Cyprus of the United Nations High Commissioner for Refugees, the Cyprus Red Cross and the Anglican Church which undertook to support him until he left Cyprus. He was also supported by money sent by his brother from Canada. The support of the United Nations Mission continued until the end of September 1988, when he was duly notified by them that they no longer  
25 consider him a "political refugee". In fact the periodical renewals of the permits in question were made at the request of the Special Mission so that they would have time to arrange his emigration to Canada, where his brother also resides. The Canadian Government, however, on the 16th August refused to grant him a visa.

The applicant is a University graduate and an author, currently engaged in the writing of an Arabic Persian Dictionary.

On the 17th November 1988, the applicant filed the present recourse praying for "a declaration that the decision of the respondents communicated to him on or about the 14th November 1988, by which they decided not to extend his temporary resident's permit in Cyprus with the consequence of the immediate expulsion and/or violent removal of the applicant from Cyprus to Iran is null and void and with no legal effect and/or the omission to allow the applicant to remain in Cyprus for a longer period is null and void and of no legal effect".

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At the same time this interlocutory application was filed by which the applicant seeks a provisional order suspending the decision of the respondents by which they refused the further renewal of the temporary resident's permit of the applicant in Cyprus and which refusal has as a consequence the immediate expulsion and/or removal by force of the applicant from Cyprus until the final determination of his recourse.

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What the applicant is in effect seeking by this application by way of a provisional order amounts to this Court granting an extension of his stay in Cyprus beyond the date permitted by the appropriate Authorities. In other words if the duration of the temporary resident's permit granted is in effect a negative decision, as far as the duration is concerned to the applicant's application for one month stay which was filed on the 5th October 1988, I shall be turning myself into the appropriate Administrative Organ, if I were to grant this provisional order, as this would result in granting him a resident's permit for a period longer even than the one he applied for. In substance what is sought is the suspension of the effect of the decision of respondent 2, which is in essence a negative decision of the administration. Even if, however, it is considered to be a positive one, I would have then be substituting myself for the administration.

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The principle enunciated in a number of cases as regards the

granting of provisional orders against a negative decision, is that it is not possible to suspend negative administrative decisions by means of provisional orders under Rule 13 of the Supreme Constitutional Court Rules. This has been well settled in a number of cases, and reference may be made to *Goulelis v. The Republic* (1969) 3 C.L.R. 583, where a provisional order was refused on the ground that had it been made it would have amounted in effect to the Court itself granting a resident's permit to the applicant in that case and so the Court would have acted as an organ of the administration. Reference may also be made to the case of *Artemiou (No. 2) v. The Republic* (1966) 3 C.L.R. 562; *Tyrokomou v. The Republic* (1976) 3 C.L.R. 403, where the same principle is reiterated as that in *Goulelis* case (supra), and where the case of *Georghiou (No. 1) v. The Republic* (1968) 3 C.L.R. 401 was distinguished.

Relevant is also the approach of this Court in its judgment in *Moyo and Another v. The Republic* (1988) 3 C.L.R. 1203 and *Mohamed v. The Republic* (1988) 3 C.L.R. 2072) on an application for a provisional order.

On the basis of the aforesaid well settled principles of Law I refuse this application, but in the circumstances I make no order as to costs.

*Application dismissed.*  
*No order as to costs.*