

1988 February 29

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS CLEANTHOUS AND ANOTHER,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE REGISTRAR OF COMPANIES,

*Respondent.*

*(Case No. 71183).*

*Recourse for annulment—Abatement—Refusal to register a company—  
Subsequent registration of same company—Financial loss emanating  
from such refusal continued to exist—The recourse has not been abated.*

5 *Due inquiry—The Companies Law, Cap. 113, section 11—"Printed"—  
Refusal to register a company because the Articles of Association, which  
had been prepared by a Word Processor System were not "printed"—  
Failure to consult an expert on Word Processor Systems—Lack of due in-  
quiry.*

10 *Companies—The Companies Law, Cap. 113, Section 11—Articles of Associ-  
ation—"Printed"—Once they are printed, no matter by what method, the  
Registrar has no discretion in the matter.*

15 The applicant impugned by means of this recourse the decision of the  
Registrar of Companies, whereby their application for the registration of a  
company under the name of Moresco Ltd. was turned down on the ground  
that the Articles of Association, which had been prepared by a word proces-  
sor system, were not "printed" in the sense of section 11 of the Companies  
Law, Cap. 113.

Counsel for the respondent raised the preliminary objection that the applicants have no legitimate interest to pursue this recourse in view of the fact that the company was subsequently registered and the recourse has, as a result been abated.

As regards the merits of the recourse counsel for the respondent submitted that the word "printed" in s.11 of the Law must be construed to mean "printed in the usual and conventional method of the printing process" and that the sub judge decision was reasonably open to the Registrar. 5

Held, annulling the sub judge decision: (1) There is no doubt that legitimate interest must exist both at the time of the filing and at the time of the hearing of a recourse. Since, however, the applicants have sustained damage that is financial loss, (the cost of printing the documents in the conventional way) because of the sub judge decision, which still continues to exist, this recourse has not been abated. 10 15

(2) The Registrar has no discretion to accept one method of printing or another. All he has to do is to satisfy himself that the particular document before him is actually "printed", no matter by what method. It does not have to be printed by a "conventional method" as put by him. Once it is printed, the Registrar has no discretion to accept or reject it. 20

(3) The Court has not been satisfied, that the respondent carried a thorough inquiry into the matter, e.g. he did not consult an expert in Word Processor Systems.

*Sub judge decision annulled.*  
*No order as to costs.* 25

*Cases referred to:*

*Karapataki v. Republic* (1982) 3 C.L.R. 88.

**Recourse.**

Recourse against the refusal of the respondent to register the company under the name of Moresco Ltd. 30

*G. Mouaimis for G. Cacoyannis, for the applicants.*

*St. Ioannides (Mrs.)*, for the respondent.

*Cur. adv. vult.*

DEMETRIADES J. read the following judgment. On the 25th January, 1983, the applicants applied, through their advocates, to the respondent for the registration of a company under the name of Moresco Ltd. As the Memorandum and Articles of Association  
5 of the company were prepared by means of a word processor system, the respondent refused to register the company on the ground that the Articles of Association were not "printed".

The decision of the respondent was communicated to the applicants by letter dated the 1st February, 1983. As a result, this re-  
10 course was filed, by which the applicants pray that the decision of the respondent be declared null and void and of no effect.

Counsel for the respondent raised the preliminary objection that the applicants have no legitimate interest to pursue this re-  
15 course in view of the fact that the company was subsequently registered and the recourse has, as a result, been abated.

This objection was based on the fact that on the 24th February, 1983, the applicants applied again for registration of the same company, which was registered on the 2nd March, 1983, after  
20 submitting, this time, copies of the Memorandum and Articles of Association which were printed in the conventional way in a printing office.

Before the applicants applied for the registration of their company, their advocate addressed a letter to the respondent, which is dated the 2nd August, 1982, by which he explained in his own  
25 words the functions of a word processor system and, more specifically, of the "Wang Word Processor System 20", which he was using in his office. In his view, the Articles and Memoranda of Association of Companies prepared on that system were actually "printed" and ought to be accepted by the Registrar as such.

On the 31st August, counsel for the applicants addressed another letter to the respondent, attaching photocopies from the "Words and Phrases Legally Defined" and "Black's Law Dictionary" as to the meaning of the word "printing".

On the 12th January, 1983, the respondent addressed the following letter to counsel for the applicants (reference to which is made in the sub judge decision). 5

"Re: Word Processor System 20.

With reference to the above subject and the recent correspondence and discussions we had about the preparation of Memoranda and Articles of Association of Companies with the above word processor system, I wish to inform you that having carefully considered the whole system, I have come to the conclusion that the system is not 'printing' within the meaning of the Companies Law Cap. 113. 10 15

2. Consequently you are kindly requested to submit in future documents which are required to be printed under the Companies Law Cap. 113, in the conventional printing process."

Following the receipt of the above letter the applicants applied for the registration of their company by submitting the Memo and Articles of Association which were prepared by means of the word processor system. As I have earlier said, the application of the applicants was turned down by the respondent by his letter dated the 1st February, 1983, and the applicants then filed the present recourse. 20 25

Before proceeding to deal with the merits of the case, I feel that I must deal with the preliminary objection raised by the respondent to which I have earlier referred.

Counsel for the applicants maintained that the applicants have sustained damage because they had to print the documents again in the conventional way and as a result they possess a legitimate 30

interest to pursue this recourse to the end.

There is no doubt that legitimate interest must exist both at the time of the filing and at the time of the hearing of a recourse. (See *Karapataki v. The Republic*, (1982) 3 C.L.R. 88). Since, however, the applicants have sustained damage, that is financial loss, because of the sub judice decision, which still continues to exist, I find that this recourse has not been abated and the applicants have a legitimate interest to pursue it to the end. The preliminary point is, therefore, dismissed.

10      Having found so I will proceed to consider the merits of the case.

The position of counsel for the applicants is that the Word Processor System consists of three separate parts one of which is the printer which actually prints the documents prepared on the other parts of the system. Counsel maintained that there is no difference in the results produced by this method of printing as compared to any other method of printing known to the Registrar and submitted that the word "printed" appearing in s. 11 Cap. 113 should be given its ordinary grammatical meaning. Counsel filed, as exhibits, the correspondence exchanged between his office and the Registrar, the leaflets of the manufacturers of the "Wang Word Processor System" which explain its operation, extracts from various dictionaries as to the meaning of the word "printing", a copy of the Articles and Memorandum of Association printed on the Wang Processor System, and a copy of the same document printed in the conventional way which was finally accepted by the Registrar. This he did in order to show that there is no difference between the two copies. Counsel finally submitted that the law does not give the Registrar any discretion to choose the method of printing and that the sub judice decision is not duly reasoned.

Counsel for the respondent argued that the Registrar has reached the sub judice decision properly after considering all aspects of the case and obtaining expert and technical information about the system which he also visited and inspected at the office

of applicants' counsel. She submitted that the word "printed" in s.11 of the Law must be construed to mean "printed in the usual and conventional method of the printing process" and that the sub judice decision was reasonably open to the Registrar.

Evidence was adduced on both sides in order to establish their position. The Court then visited, in the presence of counsel on both sides, the respondent Registrar and the representative of the Wang Word Processor System, the Government Printing Office as well as the Offices of the representative of the Wang System in order to watch a demonstration of the operation of the printing machines and the Wang System. 5 10

The witness, who gave evidence on behalf of the applicants is Mr. Nicos Paschalis, the representative in Cyprus of the Wang System. This witness explained the method of operation of the Wang System and compared it with the printing machines of the Government Printing Office, stating that the Wang System does the same work but more speedily. He also explained that the system is composed of three parts, the first of which (the keyboard) is used for imputing the text, the other part, which is the master, edits the text and the last part, which is the printer, prints the text prepared by the other two parts. 15 20

Counsel for the respondent called two witnesses, Mr. Chr. Orphanides, who is a Supervisor in the Government Printing Office and Mr. T. Christodoulides, who is the Registrar of Companies and the respondent in the present proceedings. 25

The first witness for the respondent testified as to the methods of printing in printing offices in Cyprus. He said that three methods are used, namely the letter press, the off set and the gravure methods and explained the procedure and mechanism used in each one of them. The second witness, that is the Registrar, explained the steps he took in order to resolve the issue and the procedure followed in his office. 30

What emanates from the evidence, especially that of Mr. Orphanides in cross-examination is that the printing process of the word processor has all the characteristics of either one or another system of what the respondent described as being "the conventional methods". He finally admitted that if the same ink and the same paper as those used by printing offices, are used for printing on a word processor, the results will be the same. If I have correctly understood the evidence of this witness, the only difference between printing by means of a word processor and the conventional methods is that you cannot print photographs and similar material on a Word Processor and that you do not have a great variety of characters (shapes and sizes of them), unless you have certain other devices or spare parts fixed on the machine. The witness also admitted that there are, also, other methods of printing which are not used in Cyprus or in the Government Printing Office.

The respondent in his evidence stated that he visited the Government Printing Office and sought the opinion of the officers in charge. He also visited the offices of Messrs. Cacoyannis & Co. the firm of advocates acting for the applicants, and inspected the Wang Word Processor System used by them. He finally stated that he was not satisfied as to the durability of this "printing" method since it has not been tested through years. The permanence and durability of the print, however, is not in issue. What is in issue is whether the particular text was printed or not.

In my view, as the Law stands, the Registrar has no discretion to accept one method of printing or another. All he has to do is to satisfy himself that the particular document before him is actually "printed" or not, no matter by what method. It does not have to be printed by a "conventional method" as put by him. Once it is printed, the Registrar has no discretion to accept or reject it.

From the material before me, I am not satisfied that the respondent carried a thorough inquiry into the matter before reaching the sub judice decision. He did not for instance consult any expert in Word Processor Systems, but he limited his inquiry in this re-

spect to visiting the offices of Messrs. Cacoyannis & Co. and inspecting the system. As I understand from the evidence, the matter is such that every expert evidence available ought to have been sought by the Registrar before reaching his decision, and the officer of the Government Printing Office whom he consulted cannot be considered as expert in Word Processors generally. It does not, also, emanate from the material before me that the respondent has made an adequate search as to the legal or ordinary meaning of the term.

10 In view of the above, I find that the respondent did not carry out a due inquiry into the matter and as a result he exercised his discretion wrongly.

In the result, this recourse succeeds and the sub judice decision is hereby annulled.

15 As to the costs of these proceedings, I find that in view of the novelty of the case, each party should bear its own costs.

*Sub judice decision annulled.*