

1965  
March 3,  
May 27,  
June 19

—  
YIANNAKIS  
GEORGHIADES  
AND OTHERS  
and  
THE DISTRICT  
OFFICER

[TRIANTAFYLLOIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

YIANNAKIS GEORGHIADES AND OTHERS,

*Applicants,*

*and*

THE DISTRICT OFFICER LIMASSOL,

*Respondent.*

(Cases Nos. 322/62-326/62).

*Administrative Law—Municipal Employees—Recourses against failure of Respondent to approve, under sections 67 or 69, as the case may be, of the Municipal Corporations Law, Cap. 240, in force at the material time, the decisions of the then municipal council of Limassol, relating to the appointments or salaries of Applicants—Ruling on preliminary objection—Subject—matters of these recourses have not ceased to exist due to the cessation of the existence of the relevant legal situation—Therefore, the proceedings commenced are not abated.*

Applicants complain, in the present cases, against the failure of Respondent to approve, under section 67 or section 69, as the case may be, of the Municipal Corporations Law, Cap. 240, in force at the material time, the decisions of the then municipal council of Limassol relating to their appointments or salaries.

At the commencement of the hearing on the 27th May, 1965, counsel for Respondent raised the preliminary objection that the subject-matters of these recourses had ceased to exist due to the cessation of the existence after the 31st December, 1962, of the Limassol Municipality, as a result of Cap. 240 ceasing to be in force for the purpose, and that, therefore, the proceedings which were commenced on the 31st December, 1962, are consequently abated.

In support of this submission reliance was placed upon the case of *Malliotis and the Municipality of Nicosia* (reported in this Part at p. 75 *ante*).

Held, I. *On whether or not, it can be held on the strength of the case of Malliotis and the Municipality of Nicosia*

(*supra*) that the subject matters of these Cases have ceased to exist.

(a) These Cases should be distinguished from the *Malliotis* case. Its subject-matter was an administrative act which had been made by an organ of administration which ceased to exist while such act had not yet reached the stage of its ultimate finalization *by the said organ* and it was held, in the circumstances, that such act had also ceased to exist; on the other hand, the subject-matters of these Cases, be they decisions acts or omissions, are attributed to an organ, the Respondent, which has never ceased to exist at all. Thus, it cannot be held on the strength of the *Malliotis* case that the subject matters of these Cases have ceased to exist.

(b) It is correct that in the *Malliotis* case it has been found that no continuity exists between the municipal administrations which came to an end in 1962 and those which have been set up in 1964 under the Municipalities Law (Law 64/64). But in these Cases we are not concerned with matters depending on the continuity of municipal administration, but with decisions or omissions allegedly attributed to an organ of the central Government of the Republic, a District Officer, which has continued to exist all along, irrespective of the gap in municipal administration between 1962 and 1964. The said gap has not, in my opinion, sealed the fate of the subject-matters of these proceedings, as it happened with the subject-matter of the *Malliotis* case.

*Malliotis and the Municipality of Nicosia* (reported in this Part at p. 75 *ante*), distinguished.

3. *On whether or not the legal situation to which the sub-judice action, or failure to action, of the Respondent relates, has ceased to exist :-*

(a) Had the position been to-day—which it is not—that due to the end of municipal administration in Limasol on the 31st December, 1962—when the effect of Cap. 240 for the purpose came to an end—the Applicants ceased to be for all intents and purposes municipal employees, even then the relevant legal situation could not have been regarded as having ceased to exist because the exact status and salaries of Applicants before the 31st December, 1962

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would be relevant to whatever rights they might have had as ex-municipal employees after the 31st December, 1962.

(b) But Applicants by virtue of section 35 of Law 64/64 are now in the service of the new Limassol municipality—without, of course, the need having arisen for any new decisions rendering them employees of such municipality. Under section 35 their service is deemed to be continuous since the 31st December, 1962 and their service status (ὕπηρεσιακὴ κατάσταση) remains unchanged.

(c) So, the legal situation prevailing on the 31st December, 1962, in relation to Applicants' appointments and salaries continues to be of effect in view of the fact that the exact present status of Applicants, in the light of section 35, will have to be determined by reference, *inter alia*, to the said situation.

(d) I fail to see how the subject-matters of these recourses can be said to have ceased to exist, due to the cessation of the existence of the relevant legal situation.

3. I hold that the hearing of these Cases should proceed.

*Order in terms.*

Cases referred to:

*Malliotis and the Municipality of Nicosia* (reported in this Part of p. 75 *ante*).

### **Ruling.**

Ruling on a preliminary objection to the effect that the subject-matters of recourses, against failure of the Respondent to approve the decisions of the then Municipal Council of Limassol relating to the appointments or salaries of applicants, had ceased to exist due to the cessation of the existence after the 31st December, 1962, of the Limassol Municipality.

*Chrysses Demetriades* for the applicants.

*K.C. Talarides, Counsel of the Republic*, for the respondent.

*Cur. adv. vult.*

The following ruling was delivered by:

TRIANTAFYLLOIDES, J.: In these six consolidated Cases Applicants complain against the failure of Respondent to approve, under section 67 or section 69, as the case may be, of the Municipal Corporations Law, Cap.240—in force at the material time—the decisions of the then municipal council of Limassol relating to their appointments or salaries.

At the commencement of the hearing before me on the 27th May, 1965, counsel for Respondent raised the preliminary objection that the subject-matters of these recourses had ceased to exist due to the cessation of the existence after the 31st December, 1962, of the Limassol municipality, as a result of Cap. 240 ceasing to be in force for the purpose, and that, therefore, the proceedings which were commenced on the 31st December, 1962, are consequently abated.

In support of this submission reliance was placed upon a recent judgment of this Court in the case of *Malliotis and the Municipality of Nicosia* (reported in this Part at p. 75 ante).

In my opinion these Cases should be distinguished from the *Malliotis* case. Its subject-matter was an administrative act which had been made by an organ of administration which ceased to exist while such act had not yet reached the stage of its ultimate finalization by the said organ and it was held, in the circumstances, that such act had also ceased to exist; on the other hand, the subject-matters of these Cases, be they decisions acts or omissions, are attributed to an organ, the Respondent, which has never ceased to exist at all. Thus, it cannot be held on the strength of the *Malliotis* case that the subject-matters of these Cases have ceased to exist.

It is correct that in the *Malliotis* case it has been found that no continuity exists between the municipal administrations which came to an end in 1962 and those which have been set up in 1964 under the Municipalities Law (Law 64/64). But in these Cases we are not concerned with matters depending on the continuity of municipal administration, but with decisions or omissions allegedly attributed to an organ of the central Government of the Republic, a District Officer, which has continued to exist all along, irrespective of the gap in municipal administration between 1962 and 1964. The said gap has not, in my opinion, sealed the fate of the subject-matters of these proceedings, as it happened with the subject-matter of the *Malliotis* case.

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I have considered also whether or not it might be said that the legal situation to which the sub-judice action, or failure to take action, of the Respondent, as the case may be, relates, has ceased to exist in such a manner as to entail the cessation of the existence of the subject-matters of these six recourses.

The said legal situation at the material time was that the Limassol municipal council had taken certain decisions regarding Applicants' appointments or salaries which needed Respondent's approval.

Had the position been to-day—which it is not—that due to the end of municipal administration in Limassol on the 31st December, 1962—when the effect of Cap. 240 for the purpose came to an end—the Applicants ceased to be for all intents and purposes municipal employees, even then the relevant legal situation could not have been regarded as having ceased to exist because the exact status and salaries of Applicants before the 31st December, 1962 would be relevant to whatever rights they might have had as ex-municipal employees after the 31st December, 1962.

But Applicants by virtue of section 35 of Law 64/64 are now in the service of the new Limassol municipality—without, of course, the need having arisen for any new decisions rendering them employees of such municipality. Under section 35 their service is deemed to be continuous since the 31st December, 1962 and their service status (ὀργανισμιακή κατάσταση) remains unchanged.

So, the legal situation prevailing on the 31st December, 1962, in relation to Applicants' appointments and salaries continues to be of effect in view of the fact that the exact present status of Applicants, in the light of section 35, will have to be determined by reference, *inter alia*, to the said situation.

In the circumstances I fail to see how the subject-matters of these recourses can be said to have ceased to exist, due to the cessation of the existence of the relevant legal situation.

For all the above reasons I hold that the hearing of these Cases should proceed.

*Order in terms.*