

1965  
Nov. 12, 15

—  
ANDREAS  
MALAIS  
and OTHERS  
and  
THE REPUBLIC  
OF CYPRUS  
THROUGH THE  
MINISTER OF  
INTERIOR

[TRIANTAFYLIDIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

ANDREAS MALAIS AND OTHERS,

*Applicants,*

and

THE REPUBLIC OF CYPRUS THROUGH  
THE MINISTER OF INTERIOR,

*Respondent.*

\_\_\_\_\_ (Cases No. 20/65-25/65).

*Administrative Law—Practice—Evidence—Applicants’ Counsel intention to call as a witness a person, who was in substance, in the position of a Respondent organ—Respondent’s Counsel objection—Ruling.*

*Held, I.* I have decided, to uphold, at this stage, the objection of counsel for Respondent, without however laying down thereby that an Applicant in proceedings under Article 146 before this Court, is precluded, in all eventualities, from summoning as a witness a Respondent officer.

*II.* The evidence of the Commander of Police in these present proceedings, is indeed required in order to elucidate certain issues which have arisen. Had the parties not intended to call him as a witness for the purpose, the Court itself would have directed such a course. So it cannot but approve of the initiative taken by counsel for Applicants in the matter. On the other hand, I have no doubt in my mind that in the particular circumstances of these Cases and in spite of the reference in the title of the proceedings to the Minister of Interior (under whom the Commander of Police comes), the Commander of Police is, in substance, in the position of a Respondent organ, and once counsel for Respondent has declared his intention to call himself the Commander as a witness, as part of the case for Respondent, I think it is proper to allow him to do so and disallow calling him at this stage by counsel for Applicants. Such a course would not, in any sense, be prejudicial to Applicants; on the contrary it would be more advantageous because the Commander of Police when called as a witness for Respondent will be subject

to cross-examination by Applicants.

*III.* I direct, further, that the deposit lodged by Applicants on the 23rd October, 1965, for the purpose of summoning the Commander of Police to give evidence, be, in the circumstances, refunded to their counsel.

*Order in terms.*

Cases referred to:

*Kyriakides and The Republic*, (1 R.S.C.C. p. 66);

*Kalisperas and The Republic*, (3 R.S.C.C. p. 146);

*The Case of Barel decided by the French Council of State on the 28th May, 1954.*

### **Ruling.**

Ruling on an objection taken by Counsel for the respondent, when counsel for applicants called as a witness the Commander of Police, mainly on the ground that the Commander was in substance and in fact a respondent in the proceedings.

*L.N. Clerides* for the applicants.

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

*Cur. adv. vult.*

The following Ruling was delivered by:

TRIANTAFYLLIDES, J.: At the resumed hearing of these Cases, on the 12th November, 1965, counsel for Applicants called as a witness the Commander of Police. He did so having duly summoned him for the purpose; as a matter of fact, as far back as the previous hearing, on the 17th September, 1965, he had declared his intention of making the evidence of the Commander part of his case and, actually, a long adjournment was granted because at the time the Commander was away abroad.

When the Commander was called to give evidence counsel for Respondent objected to such course, mainly on the ground that the Commander was in substance and in fact a Re-

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spondent in these proceedings and as such he should not be called to give evidence on the initiative of Applicants. He stated that he intended to call the Commander, to give evidence as part of the case for the Respondent.

I have duly considered the matter and I have decided, for the reasons given in this Ruling, to uphold, at this stage, the objection of counsel for Respondent, without however laying down thereby that an Applicant, in proceedings under Article 146 before this Court, is precluded, in all eventualities, from summoning as a witness a Respondent officer.

For the purposes of this Ruling it would be useful to remember that in this kind of proceedings the Court has both the power and responsibility to regulate the production of evidence in accordance with the requirements of the due discharge of its competence under Article 146. This is so because of the nature of such competence. Such a view has guided the relevant decisions in *Kyriakides and The Republic*, (1 R.S.C.C. p. 66) and *Kalisperas and The Republic*, (3 R.S.C.C. p. 146) and has also led to the making of rules 11 and 12 of the Supreme Constitutional Court Rules. It is also well supported by foreign jurisprudence, in *pari materia*, such as the case of *Barel* decided by the French Council of State on the 28th May, 1954.

The Court in these present proceedings is of the opinion that the evidence of the Commander of Police is indeed required in order to elucidate certain issues which have arisen. Had the parties not intended to call him as a witness for the purpose, the Court itself would have directed such a course. So it cannot but approve of the initiative taken by counsel for Applicants in the matter. On the other hand, I have no doubt in my mind that in the particular circumstances of these Cases and in spite of the reference in the title of the proceedings to the Minister of Interior (under whom the Commander of Police comes), the Commander of Police is, in substance, in the position of a Respondent organ (vide also in this respect the motion for relief in all six Applications in these proceedings), and once counsel for Respondent has declared his intention to call himself the Commander as a witness, as part of the case for Respondent, I think it is proper to allow him to do so and disallow calling him at this stage by counsel for Applicants. Such a course would not, in any sense, be prejudicial to Applicants; on the

contrary it would be more advantageous because the Commander of Police when called as a witness for Respondent will be subject to cross-examination by Applicants.

I direct, further, that the deposit lodged by Applicants on the 23rd October, 1965, for the purpose of summoning the Commander of Police to give evidence, be, in the circumstances, refunded to their counsel.

*Order in terms.*

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