

1968  
Aug. 31  
—  
IOANNIS  
PAPAPETROU  
v.  
REPUBLIC  
(MINISTRY OF  
FINANCE)

[TRIANTAFYLIDIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

IOANNIS PAPAPETROU,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTRY OF FINANCE,

*Respondent.*

(Case No. 311/62).

---

*"Entitled Officers"—Option—Compensation—Safeguard of rights of persons holding offices in the public service before Independence (16th August, 1960), under Article 192 of the Constitution—The Compensation (Entitled Officers) Law, 1962 (Law No. 52 of 1962), as amended by the Compensation (Entitled Officers) (Amendment) Law, 1962 (Law No. 68 of 1962)—Option thereunder—Compensation under section 4(1)(b) of the Law—Applicant's application for compensation under the said Law rightly refused—Because Applicant does not come within the definition of "entitled officer" for the purposes of the Law—Section 2—The issue whether or not Applicant is entitled to compensation as being an officer, as alleged, within the ambit of Article 192 of the Constitution, has not to be decided in the present case; since Applicant applied under Law No. 52 of 1962—This Law cannot, and should not, be treated as being exhaustive of the scope of the application of Article 192.*

*Public Officers—"Entitled Officers"—Option—Compensation—See above.*

*Constitutional Law—Article 192 of the Constitution—Whether the definition of "entitled officer" in section 2 of the said Law No. 52 of 1962 contravenes Article 192—See above.*

*Words and Phrases—"Entitled Officer" in section 2 of the Compensation (Entitled Officers) Law, 1962 (Law No. 52 of 1962) (as amended by Law No. 68 of 1962)—"Includes" in the same section—When construed in the context of the said Law, the word "includes" in the definition of "entitled officer" in section 2 has an exhaustive meaning.*

*Statutes—Construction—“Includes”—Meaning of the word in section 2 of Law No. 52 of 1962 supra—See under Words and Phrases above.*

Before the 16th August, 1960, when the Constitution came into force and the Republic of Cyprus was established, the Applicant was a Supervisor of Co-operative Societies, working under the then Department of Co-operation; he was not holding such post in a permanent capacity (see the relevant circular of the 20th January, 1947).

On the 6th October, 1962, exercising an option, by means of the appropriate form prescribed for the purpose by the Compensation (Entitled Officers) Law 1962 (Law No. 52 of 1962), sought to be paid compensation under the provisions of section 4(1)(b) of the Law. His application was rejected on the ground that he was “not an entitled officer under the said Law” and could not “therefore exercise the option in question”. It is against this decision that the Applicant complains by the present recourse.

An “entitled officer” under the said Law No. 52 of 1962 is defined in section 2 thereof “as including an entitled pensionable officer or an entitled Provident Fund officer”; both the said kinds of officers are defined—again in section 2— as meaning persons who were holding office in a *permanent capacity* under the Government of the Colony of Cyprus, on the 15th August, 1960.

It was argued by counsel for the Applicant that, to the extent to which the definition of “entitled officer” under the said Law No. 52 of 1962 prevented the Applicant from being compensated, Law No. 52 of 1962 was unconstitutional, as contrary to Article 192 of the Constitution, because the post which the Applicant was holding on the 15th August, 1960, was, on a proper construction of Article 192, a post within the ambit of such Article; and the Applicant was, therefore, entitled thereunder to exercise his option and be compensated accordingly.

Dismissing the recourse, the Court:—

*Held*, (1). In my view the word “includes” in the definition of “entitled officer” in section 2 of the said Law No. 52 of 1962, has, when construed in the context of that Law, an exhaustive meaning. (See *Dilworth v. Commissioner of Stamps* [1899] A.C. 99, at p. 106).

1968  
Aug. 31  
—  
IOANNIS  
PAPAPETROU  
v.  
REPUBLIC  
(MINISTRY OF  
FINANCE)

1968  
AUG. 31

IOANNIS  
PAPAPETROU  
v.  
REPUBLIC  
(MINISTRY OF  
FINANCE)

(2) It cannot be disputed that the Applicant was not holding on the 15th August, 1960, a post *in a* permanent capacity; therefore, he was not on that date a public officer coming within the definition of "entitled officer" for the purposes of the aforesaid Law No. 52 of 1962 under which he applied for compensation.

(3) The issue of constitutionality raised by counsel for Applicant does not have to be resolved in the present Judgment. As already stated, the Applicant had applied for compensation under Law No. 52 of 1962 (*supra*) since this Law cannot, and should not, be treated as being exhaustive of the scope of the application of Article 192 of the Constitution—which does not envisage a Law as being necessary for its application—I cannot see how the definition of "entitled officer" in the said Law, if it falls short of the whole scope of the application of Article 192, should be held to be unconstitutional; nor does it have to be decided, in this case, whether or not the Applicant is an officer within the ambit of Article 192, once he has not applied, by means of his application of the 6th October, 1962 for compensation under such Article. It is up to the Applicant, if he thinks that he is within the ambit of Article 192—though not within the ambit of the said Law No. 52 of 1962—to apply accordingly.

*Recourse dismissed.*

*No order as to costs.*

Cases referred to:

*Dilworth v. Commissioner of Stamps* [1899] A.C. 99 at p. 106.

**Recourse.**

Recourse against the decision of the Respondent not to pay Applicant compensation under the Compensation (Entitled Officers) Law, 1962 (Law 52/62) (as amended).

*A. Triantafyllides*, for the Applicant.

*L. Loucaides*, Counsel of the Republic, for the Respondent.

*Cur. adv. vult.*

The following Judgment was delivered by:—

TRIANTAFYLLIDES, J.: In this case the Applicant complains, in effect, that the decision of the Respondent not to pay

him compensation under the Compensation (Entitled Officers) Law, 1962 (Law 52/62), as amended by the Compensation (Entitled Officers) (Amendment) Law, 1962 (Law 68/62), is erroneous and should be annulled.

The hearing of this case commenced together with the hearing of several other similar cases, but, during such hearing, most of the other cases—except this one and four other cases—were settled out of Court, and, as a result, they were withdrawn.

The Applicant, before the 16th August, 1960, when the Constitution came into force, was a Supervisor of Co-operative Societies, working under the then Department of Co-operation. By operation of the Constitution his Department, to the extent to which it was concerned with Greek Co-operative Societies, came under the Greek Communal Chamber.

On the 7th July, 1962, Law 52/62 was promulgated. Such Law was undoubtedly intended to promote the application of provisions of Article 192 of the Constitution, which safeguards the rights of persons holding offices in the public service before the date of the coming into operation of the Constitution. But Law 52/62, being an ordinary legislative enactment, could not validly amend Article 192, which is part of the Fundamental Law of the Republic. Nor can Law 52/62, be, necessarily, treated as dealing fully with all matters within the ambit of such Article; it is to be observed, for example, that the definition of “entitled officer”, in section 2 of Law 52/62, is, on the face of it, different—in wording at any rate—from the definition of what was a public officer before the 16th August, 1960, for the purposes of Article 192, as such definition is to be derived from the definition of “public service” in paragraph 7(a) of Article 192; and, whether or not the two definitions should be treated as being the same, though differently worded, is a matter which I leave entirely open at the moment, but about which I should say that, as at present advised, I do have some doubt.

The Applicant, after the enactment of Law 52/62, exercised an option, on the 6th October, 1962,—by means of the appropriate form prescribed, for the purpose, by such Law—and he sought to be paid compensation under the provisions of section 4(1)(b) of the Law; a copy of the said application

1968  
Aug. 31  
—  
IOANNIS  
PAPAPETROU  
v.  
REPUBLIC  
(MINISTRY OF  
FINANCE)

1968  
AUG. 31

IOANNIS  
PAPAPETROU  
v.  
REPUBLIC  
(MINISTRY OF  
FINANCE)

of the Applicant has been made available, to the Court and to the other side, by Respondent.

The Applicant received a reply from the Director of the Personnel Department—who comes under the Respondent Minister—dated the 15th October, 1962, to the effect that, as on the 15th August, 1960, he “did not hold an office in the public service of the Government of Cyprus” he was “not an entitled officer under the said Law” and could not “therefore exercise the option in question”.

An “entitled officer” under Law 52/62 is defined, in section 2 thereof, “as including an entitled pensionable officer or an entitled Provident Fund officer”; both the said kinds of officers are defined—again in section 2 of Law 52/62—as meaning persons who were holding office in a permanent capacity under the Government of the Colony of Cyprus, on the 15th August, 1960.

I might point out that, in my view, the word “includes” in the definition of “entitled officer”, in section 2 of Law 52/62, has, when construed in the context of the Law, an exhaustive meaning. (See *Dilworth v. Commissioner of Stamps* [1899] A.C. 99, at p. 106).

It cannot be disputed that the Applicant was not a public officer, on the 15th August, 1960, coming within the definition of an “entitled officer” for the purposes of Law 52/62; he was not holding a post in a permanent capacity (see the relevant circular of the 20th January, 1947, *exhibit* 1).

I find, therefore, that his application for compensation, under Law 52/62, was rightly rejected; and it is under that Law only that he had applied for compensation.

During lengthy argument before the Court, counsel for the Applicant has contended that, to the extent to which the definition of “entitled officer”, for the purposes of Law 52/62, prevented the Applicant from being compensated, Law 52/62 was unconstitutional, as contrary to Article 192 of the Constitution, because the post which the Applicant was holding on the 15th August, 1960, was, on a proper construction of Article 192, a post within the ambit of such Article.

After carefully considering this case—on its proper, in my opinion, basis—I have reached the conclusion that the

said issue of constitutionality does not have to be resolved in the present Judgment. As already stated, the Applicant had applied for compensation under Law 52/62; since Law 52/62 cannot, and should not, be treated as being exhaustive of the scope of the application of Article 192—which does not envisage a Law as being necessary for its application—I cannot see how the definition of “entitled officer” in Law 52/62, if it falls short of the whole scope of the application of Article 192, should be held to be unconstitutional; nor does it have to be decided, in this case whether or not the Applicant is an officer within the ambit of Article 192, once he has not applied, by means of his application of the 6th October, 1962, for compensation under such Article.

I, therefore, leave the issue, of whether or not the Applicant is entitled to compensation under Article 192, entirely open. It is up to the Applicant, if he thinks that he is within the ambit of such Article—though not within the ambit of Law 52/62—to apply accordingly.

For these reasons this recourse fails and it is dismissed; but in the circumstances there shall be no order as to costs.

*Application dismissed.*

*No order as to costs.*

1968  
Aug. 31  
—  
IOANNIS  
PAPAPETROU  
v.  
REPUBLIC  
(MINISTRY OF  
FINANCE)