

CASES

DECIDED BY

THE SUPREME COURT OF CYPRUS

IN ITS REVISIONAL JURISDICTION AND IN ITS
REVISIONAL APPELLATE JURISDICTION

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

THE POLICE ASSOCIATION AND OTHERS,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF INTERIOR AND ANOTHER.

Respondents.

(Cases Nos. 327/69, 334/69 & 335/69).

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*Recourse under Article 146 of the Constitution—Time—
Article 146.3—Omission in the sense of Article 146.1—
It denotes an omission to do something required by law,
as distinct from the non-doing of a particular act or
the non-taking of a particular course when such non-
action is the result of an exercise of a discretion—It
presupposes that no action has been taken by the admini-
stration in the matter in question—Stoppage of payment
of extra-duty allowance to members of the Police Force—
Effected by means of a circular letter of the Commander
of the Police—Not a case of continuous omission but
a 'decision' in the sense of Article 146.1 of the Consti-
tution—Which decision can only be challenged by a
recourse for annulment within the time limit of 75 days
provided by paragraph 3 of that Article 146.*

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Circulars—Government circulars—They may contain decisions of an executory nature and, thus, become the subject of a recourse for annulment under Article 146 (supra)—Circular letter by the Commander of Police effecting stoppage of payment of extra duty allowance to members of the Police Force—It contains a decision of an executory nature because it infringes the applicant's rights protected by the Police Regulations.

Executory act—As distinct from a merely confirmatory act—An act confirming a previous one may under certain circumstances become an executory act—New enquiry—When does a new enquiry exist.

In these proceedings the sole question raised as a preliminary point of law, is whether the recourses have been made after the period of 75 days provided for in paragraph 3 of Article 146 of the Constitution had expired.

The applicants claim in these recourses that the refusal or omission of the respondents to pay them an allowance for extra duty as from the period of July 8, 1964 till July 22, 1966, in accordance with the Police (General) Regulations 1958, is illegal.

The Court dismissed these recourses on the sole ground that they have been made long after the period of 75 days provided by Article 146.3 of the Constitution had elapsed. The facts sufficiently appear in the judgment of the learned Judge.

Cases referred to :

Hassan Mustafa and The Republic, 1 R.S.C.C. 44;

Eleni Vrahimi and Another and The Republic, 4 R.S.C.C. 121. at p. 123;

Sophocles Demetriades and Son v. The Republic (1968) 3 C.L.R. 727. at p. 734;

Turhan M. Ozturk and The Republic, 2 R.S.C.C. 35. at p. 41;

Vafeadis v. The Republic, 1964 C.L.R. 454, at p. 460;

Mourtouvanis and Sons Ltd. v. The Republic (1966) 3 C.L.R. 108. at p. 124;

Iacovides v. The District Officer (1966) 3 C.L.R. 191,
at p. 195;

Loizides and Another and The Republic, 1 R.S.C.C. 107;

Varnava v. The Republic (1968) 3 C.L.R. 566, at p. 575.

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Recourses.

Recourses against the refusal of the respondents to pay to applicants an allowance for extra duty as from the period of July 8, 1964 till July 22, 1966, in accordance with the Police (General) Regulations, 1958.

L. Papaphilippou, for the applicants.

K. Talarides, Senior Counsel of the Republic,
for the respondents.

Cur. adv. vult.

The following judgment was delivered by :-

HADJIANASTASSIOU, J. : In these proceedings the sole question raised as a preliminary point of law, is whether the applications before me have been filed in this Court after the period of 75 days, provided for in paragraph 3 of Article 146 of the Constitution.

All applicants, who are members of the Police Force of Cyprus, claimed, in these recourses, which have been heard together because they relate to the same legal and factual issues, that the act or omission of the respondents to pay them an allowance for extra duty as from the period of July 8, 1964 till July 22, 1966, in accordance with the Police (General) Regulations 1958, is illegal.

Just before Christmas Eve of 1963, Cyprus found itself in the midst of intercommunal troubles, and I think the present letter, I am about to quote, under the heading "Subsistence and Extra Duty Allowance", dated February 3, 1964, (*exhibit* 23), addressed to all Divisional Departmental Commanders, by Mr. Antoniou, the Ag. Commander of the Gendarmerie, makes the position clear without any further reference on my part as to the facts which brought about the unfortunate events in Cyprus.

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“In view of the present Emergency, as a result of which members of the Force are being employed or retained beyond their normal period of duty, at an average of 16 to 20 hours daily, I have suggested to Government that it would be fair and reasonable for a commuted allowance at the rate of £2 per week to be paid to each such member of the Force to cover both subsistence and extra duty allowances, in accordance with Regs. 15(3)(d) and 29(3)(a) of the Police (General) Regulations.

2. Government has approved the above suggestions wef 21.12.63. Arrangements will, therefore, be made for the payment of this commuted allowance to all eligible members of the Force. Officers who work extra hours for less than a week may draw subsistence allowance at the rate of 250 mils per day.

3. It is pointed out that the payment of this commuted allowance is in lieu of the normal subsistence and extra duty allowances, and these allowances should not be paid to any member who will receive the commuted allowance. In exceptional and deserving cases, however, where you feel that the payment of subsistence allowance at the usual rates should be made, the claims should be forwarded to this HQ for consideration.

4. Information Service personnel now drawing both the plain clothes and detective allowances will continue to do so and will not be entitled to receive the commuted allowance of £2.— per week. The remaining members of the Force now employed in *uniform*, including those in the Aliens and Immigration and the CID will be paid the commuted allowance of £2.— per week if eligible, in which case no plain clothes and/or detective allowance will be paid to any of them wef 1.2.64.

5. It is again emphasized that the payment of this commuted allowance is *not* automatic but it will be paid in cases where members of the Force have worked extra hours or have been retained

beyond their normal period of duty in accordance with regulations. A record should, therefore, be kept at each station, post or branch showing the working and stand-by period of each individual in support of claims for commuted allowance.

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6. Both this commuted allowance and the payment of subsistence allowance at the rate of 250 mils per day, where applicable, will be charged to Head 34A Gendarmerie, Sub-Head 1, Personal Emoluments, as shown below :

- (a) Payment of these allowances will be made on the enclosed pro-formas in quadruplicate and forwarded to this FHQ in triplicate and scrutiny before payment is effected.
- (b) Claims thereafter should be treated in the same way fortnightly in arrear.

7. It is assumed that in certain Divisions certain members of the Force were provided with food contributed by various institutions. In such cases the men concerned will not be entitled to the payment of these allowances for the period they were provided with food. Where special arrangements were made for feeding the men and the bills are still outstanding the expenditure involved should now be met from the allowances to be paid to the officers concerned."

Moreover, two days later, the Commander of Police, on February 5, thought fit to circulate an almost identical letter, HQ/159/8, to the same officers including the Commandant PGTS, the Director of Information Service and the Chief Fire Officer, under the same heading, viz., "Subsistence and Extra Duty Allowances" (see *exhibit 24*).

It is common ground that the Police Officers who had to carry out extra duties because of the troubles in Cyprus, were paid a commuted allowance of £2.— per week as from December 21, 1963, till July 8, 1964. However, for reasons which would appear in a moment, the Commander of Police (hereinafter called "the

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Commander”), issued on July 8, 1964 (*exhibit 2*), which was addressed to the Divisional/Departmental Police Commanders. It reads :

“THE FLAT RATE OF SUBSISTENCE AND EXTRA DUTY ALLOWANCE AMOUNTING TO £2.— PER WEEK AUTHORISED BY ME IN ACCORDANCE WITH REG. 15(2)(d) OF THE POLICE (GENERAL) REGULATIONS TO MEMBERS OF THE FORCE CONSTANTLY PERFORMING EXTRA DUTY WILL CEASE REPEAT WILL CEASE WITH EFFECT FROM 8.7.64.

2. MY CIRCULAR LETTER HQ/159/8 DATED 5.2.64 ON THE SUBJECT SHOULD THEREFORE BE REGARDED AS CANCELLED.

3. SUBSISTENCE ALLOWANCE IN DESERVING CASES MAY HOWEVER BE PAID BUT CLAIMS SHOULD BE SENT TO FORCE HQ FOR SCRUTINY AND APPROVAL. THIS WILL BE VERY SPARINGLY GRANTED.

4. THIS MEASURE HAS BEEN NECESSITATED OWING TO GOVERNMENT FINANCIAL STRINGENCY AND IT IS EXPECTED THAT EVERY MEMBER OF THE FORCE WILL SHOW UNDERSTANDING AND SACRIFICE THIS SMALL EXTRA ALLOWANCE IN THE COMMON EFFORT TO HELP OUR GOVERNMENT MEET HER HEAVY FINANCIAL COMMITMENTS DUE TO THE PRESENT EMERGENCY.

5. C.I.D. MEN WILL CONTINUE TO BE EMPLOYED IN UNIFORM AND NO UNIFORM ALLOWANCE WILL BE PAYABLE BUT THEY WILL CONTINUE DRAWING THE DUTY ALLOWANCE (.)

6. LETTER FOLLOWS.”

Then, on July 14, 1964, the Commander, because he has promised, in paragraph 6 of his circular letter (*exhibit 2*), under the heading “Subsistence and Extra Duty

Allowances", circulated a letter (*exhibit 3*), to the same officers, which is in these terms :

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"Please refer to my letter of even number dated 5th February, 1964, regarding the payment of £2 per week in the form of subsistence allowance to members of the Force who were being employed or retained for duty beyond their normal period of duty.

2. The payment of this allowance will cease as from 8.7.64, but subsistence allowance in deserving cases may however be paid in accordance with the provisions of regulation 29 of the Police (General) Regulations.

3. Any such claims should however be referred to this Headquarters for scrutiny and approval before payment is effected, which will be granted very sparingly.

4. This measure has been necessitated owing to Government financial stringency and it is expected that every member of the force will show understanding and sacrifice this small extra allowance in the common effort to help our Government to meet her heavy financial commitments due to the present emergency.

5. C.I.D. men will continue to be employed in uniform and no uniform allowance will be payable but they will be allowed to draw the duty allowance for which you should let me have a detailed list of those affected.

6. The Director of the Information Service should submit a revised list of personnel required to work in plain clothes and are recommended to draw the duty and/or plain clothes allowance."

In the light of these developments and, as apparently the members of the Police Force were feeling aggrieved because of the stoppage of the commuted allowance of £2.— per week, on October 5, 1964, the Police Associations established under section 52 of the Police Law,

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Cap. 285, convened a meeting and discussed the question of extra duties. An extract from the minutes (*exhibit 5*), is as follows :

«Θέμα :- Ύπερωρίαί

Ἡ ἀντιπροσωπεία τῆς Πυροσβεστικῆς ὑπηρεσίας, ὑπέβαλεν πρὸς τὴν ὀλομέλειαν τὸ θέμα ὑπερωριῶν δι' ὧν ἐπιφορτίσθη τὸ σῶμα τοῦτο ἐνεκεν τῆς ἐκτάκτου καταστάσεως.

Ἡ ὀλομέλεια ἀπεφάσισεν ὅπως συζητήσῃ τὸ ὑπερθεῖν θέμα ἐν συσχετισμῷ μὲ τὶς ὑπερωρίες δι' ὧν ἐπιβαρύνθη τὸ Ἀστυνομικὸν Σῶμα ὡς σύνολον συμπεριλαμβανομένης καὶ τῆς Πυροσβεστικῆς.

Ἡ ὀλομέλεια ὄθεν ἀπεφάσισεν κατὰ πλειοψηφίαν (27 ὑπὲρ ἐναντι 2 κατὰ) ὅπως ὑποβάλλῃ εἰσήγησιν εἰς τὴν ἀρμοδίαν ἀρχὴν νὰ ἐξεύρῃ τρόπον ἐλαττώσεως τῶν ὑπερωριῶν».

(*Subject :- Overtime duties.*

The delegation of the Fire Brigade submitted to all the members the subject of overtime duties with which the Force was burdened due to the emergency.

All the members decided to discuss the above subject in conjunction with the overtime duties with which the Police Force was burdened as a whole, including the Fire Brigade.

All the members decided by majority (27 voting for and 2 against) to submit to the appropriate authority submissions in order to find out a way for reducing the overtime duties").

On the following day, the Secretary of the Joint Committee of the Police Association, (hereinafter called "the Secretary") had addressed a letter to the Commander over the question of extra duties, attaching also a copy of the minutes of their meeting (see *exhibit 4*).

On October 12, 1964, the Commander in reply to the Secretary had this to say in *exhibit 6* :

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Ἐπιθυμῶ ὅπως γνωρίσω λήψιν ἐπιστολῆς ἡμερομηνίας 6.10.64 διὰ τῆς ὁποίας διαβιβάζεται ἀντιγραφὸν ἀποφάσεως τῆς ὀλομελείας τοῦ Συνδέσμου ἐπὶ τοῦ ἀνωθι θέματος, πληροφορῶ δὲ ὑμᾶς ὅτι λόγῳ τῆς ἐν τῇ νήσῳ ἐπικρατοῦσης καταστάσεως καὶ τῶν ἀναφυσμένων ποικίλων ὑπηρεσιῶν ὧν ἡ Ἄστυνομικὴ Δύναμις εἶναι ἐπιφορτισμένη νὰ ἐκτελέσῃ, θέματα ὡς ἡ παράτασις τῶν ὥρων ἐργασίας, ἡ ὑπερέντασις καὶ γενικὰ αἱ ἀντιξοότητες θεωροῦνται ἐν καιροῖς χалаιποῖς ὡς ἀπαραίτητα φαινόμενα ὑπὸ τῶν ἐντεταλμένων διὰ τὴν τήρησιν τῆς τάξεως καὶ τὴν ἀσφάλειαν τῆς Πολιτείας. Εἶναι δὲ καθῆκον τῆς Ἄστυνομίας ὡς καὶ παντὸς νομιμόφρονος πολίτου ὅπως μὴ φειδόμενος χρόνου καὶ συμφερόντων συμβάλλει κατὰ δύναμιν εἰς τὴν κατατρόπωσιν τῶν ὑπονομευτῶν τοῦ Κράτους.

2. Ἡ Κυβέρνησις ἀντιληφθεῖσα τὸ ἐπιτελούμενον ὑπὸ τῆς Ἄστυνομίας ὑπέροχον ἔργον ἐνέκρινε κατ' ἀρχὴν τὴν καταβολὴν ἐνὸς μικροῦ χρηματικοῦ χορηγήματος διὰ τὴν κάλυψιν μέρους τῶν ἀπαραίτητων ἀτομικῶν ἐξόδων ἅτινα συνεπέφερε μία κατάστασις παρατεταμένου συναγερμοῦ, καὶ τὸ ὁποῖον κατεβάλλετο δι' ἄρκετὸν χρονικὸν διάστημα. Μὴ δυναμένη ὅμως ν' ἀνθέξῃ εἰς τὴν καταβολὴν τοῦ ἐπιδόματος τούτου, λόγῳ τῶν ἄλλων ἀπαραίτητων καὶ σοβαρωτέρων ἐξόδων, διέταξε τὴν ἀποκοπὴν τῆς καταβολῆς τούτου.

3. Παρ' ὅλον ὅτι ἀναγνωρίζεται πλήρως ἡ συνεχῆς παρακράτησις μελῶν τῆς ὑπηρεσίας εἰς τοὺς τόπους τῆς ἐργασίας των, ἐν τούτοις δὲν δύναμαι νὰ προβῶ εἰς τὴν χαλάρωσιν τοῦ μέτρου τούτου, λόγῳ τῶν ὑπὸ τῆς ὑπηρεσίας ἀπαιτουμένων ἀναγκῶν.

4. Παρακαλεῖσθε δὲ ὅπως φέρητε τὰ ἀνωθι εἰς γῶσιν ὅλων τῶν μελῶν τοῦ Συνδέσμου».

("Overtime duties

I wish to acknowledge receipt of the letter dated the 6.10.64 forwarding copy of a decision of all the members of the Association, on the above subject, and to inform you that due to the prevailing situation in the Island, and the various duties that

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the Police Force is being burdened to perform, matters such as the *prolongation* of hours of work, overstrain, and generally the controversies, are considered to be, during hard times, essential qualifications by those entrusted with the keeping of the peace and the security of the State. It is the duty of the Police, as well as every law-abiding citizen, that, regardless of time and interest, should contribute within their power to the defeat of those who undermine the State.

2. The Government having appreciated the excellent task exhibited by the members of the Police has approved in principle the payment of a small monetary allowance to cover part of the essential personal expenses which were necessary due to the continued state of alert, and which was paid for quite a long period. However, the Government, due to the other necessary and serious expenses, being unable to stand the payment of such allowance decided to discontinue its payment.

3. Although it is fully acknowledged, the fact that members of the Force are retained at their places of work continuously, nevertheless, I cannot proceed to the relaxation of this measure, due to the exigencies of the service.

4. You are kindly requested to bring the above to the knowledge of all members of the Association").

It is observed that in this exhibit the Commander, in effect, in his reply was telling the police association that he was unable to relax his instructions for extra duty because of reasons of necessity due to emergency. He further requested that the contents of his letter should be communicated to all members of the police association.

Pausing here for a moment, I consider it incumbent on me to express also my appreciation for the excellent work carried out by members of the police force during the tragic days of Cyprus; and to express the hope that the police association will continue, not sparing any efforts and, responsibly in full co-operation with the appropriate authority to find ways and means to improve the conditions of service regarding the whole force.

However, it would be also desirable in my view, that the Government should not only express its appreciation, but to show more understanding and try through the machinery of negotiations to put its recognition into more practical effect in the interest of all concerned. Needless to add that the Police Regulations need a lot of amendments to meet the present day realities.

The matter, however, even after that letter (*exhibit 6*), continued to worry the police association, and on January 30, 1965, again the Secretary wrote to the Commander (*exhibit 7*), requesting him to re-examine the question for extra duty and to find ways and means to satisfy the members of the police force.

On February 11, 1965, Mr. Antoniou, on behalf of the Commander, in reply to the Secretary on the question of extra duty, said in *exhibit 8* that, the present conditions did not justify the relaxation of the extra duties carried out by members of the force. However, again it appears that, the matter has not been forgotten by the police association, and an extraordinary meeting was convened on June 11, 1965, in order to discuss the same pressing question of extra duties. On June 18, 1965, the Secretary wrote to the Commander (*exhibit 9*), putting forward the reasons of the decision reached at the meeting, and in paragraph 5, he has concluded as follows :

«5. Έν τέλει ό Σύνδεσμος λαμβάνων ύπ' όψιν τήν εύημερίαν τών άστυνομικών και τήν προάσπισιν τών έκ τών Κανονισμών τής Άστυνομίας άπορρεουσών δικαιωμάτων των παρακαλεί ύμās όπως προβήτε εις τās άναγκαίās διευθετήσεις ούτως ώστε άστυνομικοί και πυροσβέσται εργάζονται έφεξής συμφώνως του Κανονισμού 15 τών περι Άστυνομίας (Γενικών) Κανονισμών και εάν θεωρείται εισέτι σκόπιμον και άναγκαϊον οι άστυνομικοί και οι πυροσβέσται νά εξακολουθήσουν νά εργάζωνται ύπερωρίας τότε αι πρόνοιαι του έν λόγω Κανονισμού έφαρμοσθούν πλήρως.»

“5. Finally, the Association taking into consideration the welfare of the members of the Police and the safeguard of the rights emanating from the Police Regulations requests you to make the necessary

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arrangements so that the members of the Police and the Fire Brigade should work henceforth, in accordance with Regulation 15 of the Police (General) Regulations and if you think it fair and reasonable that the policemen and firemen should continue working overtime duties, then the provisions of the said regulation to be fully applied”).

There was further correspondence between the Commander and the Police Association as well as with the Director-General of the Ministry of Interior, who was informed about the complaints of the Police Association on the question of having to work overtime. And, on July 18, 1966, Mr. Antoniou, on behalf of the Commander, addressed a letter to the Director-General putting forward the complaints of the Police Association and in paragraph 5 he says in the clearest language—(*exhibit* 13) paragraph 5 (a) and (b) :

«5.(α) Την καταβολήν επιδόματος υπερωριών εις δικαιολογημένας περιπτώσεις συμφώνως τών κανονισμών ή

(β) τόν περιορισμόν τών ώρών εργασίας εις τό κανονικόν εβδομαδιαίον ώράριον μέ όλας τάς πρόσ τοῦτο έπιπτώσεις.»

“(5 (a) The payment of extra duty allowance in deserving cases, in accordance with the regulations, or

(b) the limitation of the hours of work within the regular weekly schedule of work with all repercussions as a result”).

There is no doubt that in both letters, *exhibits* 9 and 13, both writers had in mind the same pressing question that when members of the Police were called upon in the future to carry out again any extra duties then in each case the Police Regulations ought to have been followed regarding the allowances to be paid but nothing was said about the retrospective payment of the commuted allowance.

On July 20, 1966, the Director-General of the Ministry

of Interior, fully realising the difficulties of the Police Force, in reply to the Commander had this to say in exhibit 12 :

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«Ένετάλην ὅπως ἀναφερθῶ εἰς τὴν ἐπιστολήν σας ὑπ' Ἄρ. 159/8 ἡμερομηνίας 18.7.66 καὶ νὰ σᾶς πληροφωρῶ ὅτι ἡ Κυβέρνησις ἐκτιμᾷ πλήρως τὸ ἔργον τῆς Ἀστυνομίας ὡς καὶ τὰς δυσκολίας ἅτινας αὕτη ἀντιμετωπίζει μὲ τὴν παροῦσαν κατάστασιν.

2. Αἱ ὑπερωρίαὶ τῶν Ἀστυνομικῶν καὶ τὰ ἐπιμοχθα καθήκοντά των ἀπετέλεσαν προσφάτως ἀντικείμενον μελέτης ὑπὸ τῆς Κυβερνήσεως πρὸς τὸν σκοπὸν ὅπως αὐξηθῇ ἡ ἀριθμητικὴ δύναμις τῆς Ἀστυνομίας. Ἐλπίζεται ὅτι λίαν προσεχῶς ἡ Κυβέρνησις θὰ ἀποφασίσῃ ἐπὶ τοῦ θέματος τούτου ὅποτε ἡ κατάσταση θὰ βελτιωθῇ.

3. Ἐν τῷ μεταξὺ εἰσηγούμεθα ὅπως αἱ ὥραι ἐργασίας τῶν ἀστυνομικῶν τῶν ἐπιφορτισμένων μὲ καθήκοντα εἰς σημεία ἐλέγχου, ἅτινα εἶναι καὶ τὰ πλέον ἐπιμοχθα εἰς ὠρισμένα ἔξ αὐτῶν, περιορισθῶσι εἰς 4 ἀντὶ τῶν συνήθων 8 ὥρων, τὰς δὲ ὑπολοίπους ὥρας ἐργάζονται εἰς ἄλλα ὀλιγώτερον κοπιαστικὰ καθήκοντα. Τοῦτο θὰ ἄρῃ δικαιολογημένα παράπονα.

4. Ἐν ὄψει τῆς παραγράφου δύο ἀνωτέρω τὸ Ὑπουργεῖον δὲν φρονεῖ ὅτι δικαιολογεῖται ἡ προώθησις τοῦ ζητήματος τῆς πληρωμῆς ὑπερωριῶν, αἱ δαπάναι τῶν ὁποίων εἶναι, ὡς γνωρίζετε, ὑπέρογκοι, καὶ ἐκτὸς τῆς δυνατότητος τῆς Κυβερνήσεως νὰ ἀναλάβῃ. Τὸ γεγονός ὅτι μικρὸς ἀριθμὸς ὑπαλλήλων ἄλλων Τμημάτων πληρώνεται ὑπερωρίας δὲν εἶναι ἀρκετὸν νὰ δικαιολογῇ παρομοίαν μεταχείρισιν.»

("I am directed to refer to your letter No. 159/8 dated the 18.7.66 and to inform you that the Government appreciates fully the work of the Police Force as well as the difficulties encountered by it due to the present emergency.

2. The overtime duties of the members of the Police and their heavy duties have been recently the subject of consideration by the Government with

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a view to increasing the strength of the Force. It is hoped that the Government will very soon decide on this matter, when the situation will improve.

3. In the meantime we submit that the hours of work of members of the Force burdened with duties at checking points, which are of the heaviest tasks in some of them, should be limited to 4 instead of the usual 8 hours and to work the remaining hours in lighter duties. This will remove genuine complaints.

4. In view of paragraph 2 above the Ministry is of the opinion that the subject of the advancement of the subject of the payment of extra duty allowance is no longer justified, the expenditure of which is, as you know, very heavy, and not within the powers of the Government to undertake same. The fact that a small number of officers serving in other Departments is being paid overtime allowance is not enough to justify the same treatment").

Apparently, as a result of the correspondence I have just read and because the position in Cyprus had in the meantime improved, no extra duties were assigned to the members of the Police Force as from July 22, 1966, and for a period of nearly three years nothing more was heard regarding the past payment of the commuted allowances of £2 per week.

However, this question was again discussed at a meeting of the Police Association on January 24, 1969, and on April 18, 1969, and on May 19, 1969 the new Secretary, Mr. Karaolas, wrote to the Commander, *exhibit* 14, attaching also *exhibit* 15, which is an application form. *Exhibit* 14 reads as follows :

«Πληροφορῶ ὑμᾶς ὅτι τὸ ὡς ἄνω θέμα συνεζητήθη ὑπὸ τῆς Μικτῆς Ἐπιτροπῆς τῶν Συνδέσμων τῶν κατωτέρων τάξεων τῆς Ἀστυνομίας εἰς τὰς συνεδριάξεις τῆς 24.1.69 καὶ 18.4.69.

2. Κατόπιν γνωματεύσεως τοῦ Νομικοῦ Συμβούλου τοῦ Συνδέσμου ἀπεφασίσθη ὅπως ἕκαστον μέλος τῆς Δυνάμεως τὸ ὁποῖον διαρκούσης τῆς ὡς

άνω περιόδου ειργάσθη υπερωρίας υποβάλη κα-
τάστασι των υπερωριών του προς πληρωμήν συμ-
φώνως τής επιστολής του Υπουργείου Οικονομικών
371/59 ήμερ. 27.1.64 και των περι Αστ. Καν. 15(3)
και 29(3) (α).

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3. Η απόφασις αϋτη ήτις έκοινοποιήθη προς τὰ μέλη τής Αστυνομικής Δυνάμεως κατόπιν διαπιστώ-
σεως ότι τὸ παρεχόμενον δι' υπερωρίας έπίδομα έκ
£2.— εβδομαδιαίως έπαυσε πληρωνόμενον από τής
8.7.64 συμφώνως διαταγής Αρχ. 159/8 ήμερ. 14.7.64
καθ' όν χρόνον ή Αστυνομία εύρίσκετο συνεχώς εις
πλήρη συναγερμόν και έκαστον μέλος ειργάζετο
υπερωρίας ως και πρότερον, επιστολή Αρχ. Αρ.
Φακ. 159/8 ήμερομηνίας 22.7.66 ως και ή υπό τόν
ίδιον Αρ. Φακ. επιστολή ήμερομηνίας 18.7.66 του
Αρχηγού προς τὸ Υπουργείον Έσωτερικών και ή εις
αϋτήν απάντησις του Υπουργείου Αρ. Φακ. 228/60/11
ήμερ. 20.7.66 είναι σχετική.

4. Τὸ συνημμένον έντυπον είναι ό τύπος αιτήσε-
ως όστις θα υποβληθή ύφ' ένός έκάστου τών με-
λών τής Δυνάμεως δια τὰς υπερωρίας τής προανα-
φερθείσης περιόδου.»

("I inform you that the above subject was discussed
by the Joint Committee of the Associations of the
lower ranks of the Police at their meetings of the
24.1.69 and 18.4.69.

2. After legal advice from the legal adviser of the
Association, it was decided that each member of
the Force who, during the aforesaid period worked
overtime, should submit a statement of his hours of
overtime duties for payment in accordance with the
letter of the Ministry of Finance No. 371/59, dated
the 27.1.64 and the Police Regulations Nos. 15(3)
and 29(3)(a).

3. This decision has been communicated to all
members of the Police Force after it was ascertained
that the extra duty allowance of £ 2.-, weekly, ceased
to be paid w.e.f. 8.7.64 in accordance with the
Commander's letter No. 159/8 of the 14.7.64, at

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a time when the Police Force was in a state of full alert and each member worked overtime, as earlier on ; Commander's letter No. 159/8 of the 22.7.66 as well as letter dated the 18.7.66 under the same reference addressed by the Commander to the Ministry of the Interior and the reply to it of the Ministry under Reference No. 228/60/11 of the 20.7.66, refer.

4. The attached proforma is the specimen of the application which will be submitted by each member of the Force for overtime duties relating to the aforesaid period").

On May 28, 1969, Mr. Antoniou thought fit to place before the Director-General of the Ministry of Interior the views of the Police Associations and had this to say in *exhibit* 18 :

« Αποστέλλω πρὸς ὑμετέραν ἐνημέρωσιν ἀντίγραφον ἐπιστολῆς τοῦ Γραμματέως τοῦ Συνδέσμου Ἀστυνομίας Κύπρου ἐν σχέσει πρὸς ὑπερωρίας ἐργασθείσας ὑπὸ μελῶν τοῦ Συνδέσμου κατὰ τὴν περίοδον ἀπὸ 8.7.64—22.7.66, ὡς καὶ τῆς συναποσταλείσης ἐντύπου αἰτήσεως τὴν ὁποίαν ἤτοιμασε ὁ Σύνδεσμος.

2. Ὡς γνωστὸν τὸ ἐκ £2.— ἐβδομαδιαίως ἐπίδομα δι' ὑπερωρίας ἐπληρῶντο ἀπὸ 21.12.63 μέχρι 7.7.64 ὅτε ἡ Κυβέρνησις λόγῳ οἰκονομικῆς περισυλλογῆς ἀπεφάσισε τὴν διακοπὴν τούτου. Συναφῶς ἐξεδόθη τότε σχετικὴ ἐγκύκλιος — Ἀρχ. 159/8 ἡμερ. 14.7.64 ἀντίγραφον τῆς ὁποίας ἐκοινοποιήθη ὑμῖν — εἰς τὴν ὁποίαν ἀναφέρετο ὅτι ἀνεμένετο ἀπὸ πάντας ὅτι θὰ ἐπεδείκνυον κατανόησιν καὶ θὰ ἐθυσίαζον τὸ ἐπίδομα χάριν τῆς γενικῆς προσπάθειας δι' ἐνίσχυσιν τῆς Κυβερνήσεως νὰ ἀντεπεξέλθῃ εἰς τὰς βαρεῖας οἰκονομικὰς ἀνάγκας αἰτινες ἐδημιουργήθησαν λόγῳ τῆς καταστάσεως. Οὐδεμίᾳ διαμαρτυρία ὑπεβλήθη μετὰ τὴν ἔκδοσιν καὶ κυκλοφορίαν τῆς προαναφερθείσης ἐγκυκλίου.

3. Ἀρκετὰ μέλη τῆς Δυνάμεως ἔχουν ἤδη συμπληρώσει καὶ ὑποβάλλει πρὸς ἐμὲ τὴν ἄνω ἀναφερομένην ἐντυπον αἰτησίν, δι' ἀναδρομικὴν πληρωμὴν

ὑπερῶρων. Ἀφοῦ ἐλεγχοῦν θὰ ἀποσταλοῦν πρὸς ὑμᾶς διὰ περαιτέρω μελέτην καὶ ἀπόφασιν.»

“I am sending to you herewith for your information copy of the letter of the Secretary of the Cyprus Police Association in connection with overtime duties worked by members of the Association during the period 8.7.64—22.7.66 as well as the enclosed proforma prepared by the Association.

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2. As you know the weekly amount of £2:— being extra duty allowance, was paid for the period from 21.12.63 to 7.7.64 when the Government decided to discontinue payment due to financial stringency. In this connection a circular was issued — No. 159/8 dated the 14.7.64 copy of which was sent to you — in which it was stated that it was expected by all that they would show appreciation and would sacrifice the extra duty allowance for the general effort of reinforcing the Government to meet the great financial difficulties which were created due to the emergency. No protest was lodged after the issue and circulation of the above circular.

3. A great number of the members of the Force have already completed and sent to me the above proforma, for the payment of the allowance retrospectively. After they are scrutinised they will be forwarded to you for further consideration and decision”).

On June 7, 1969, Mr. Antoniou on behalf of the Commander in reply to the Secretary, said in *exhibit* 19 :-

«Ἐν συνεχείᾳ τῆς ἐπιστολῆς μου ὑπὸ τὸν αὐτὸν ὡς ἄνω Ἄρ. Φ., ἡμερομηνίας 26.5.69, πληροφορεῖσθε ὅτι ἀντίγραφον τῆς ἐπιστολῆς σας ὑπ' ἄρ. Φ. ΣΑΚ. 3, ἡμερομηνίας 19.5.69, ἐν σχέσει πρὸς τὸ ὑπερθεν θέμα, ἀπεστάλη εἰς τὸν Γενικὸν Διευθυντὴν Ὑπουργείου Ἐσωτερικῶν, ὅστις παρέθεσε τὴν κατωτέρω ἀπάντησιν :

Ἄρχηγὸν Ἀστυνομίας,

Ἐνετάλην νὰ ἀναφερθῶ εἰς τὴν ἐπιστολήν σας

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ὕπ' ἀρ. Φακ. 159/16 καὶ ἡμερομηνίαν 28ην Μαΐου 1969, ἐν σχέσει πρὸς τὴν πρόθεσιν μελῶν τοῦ Συνδέσμου Ἀστυνομίας Κύπρου ὅπως ὑποβάλουν αἰτησιν διὰ τὴν ἀναδρομικὴν πληρωμὴν εἰς αὐτοὺς ὑπερωριῶν, καὶ νὰ σᾶς πληροφορήσω ὅτι τὸ περιεχόμενον τῆς ἐν λόγῳ ἐπιστολῆς σας ἐσημειώθη ὑπὸ τοῦ Ὑπουργοῦ Ἑσωτερικῶν ὅστις φρονεῖ ὅτι θὰ ἦτο λίαν λυπηρὸν διὰ τὰ μέλη τῆς Ἀστυνομίας νὰ προβοῦν εἰς τοιαύτην ἐνέργειαν».

(“Further to my letter of even number dated the 26.5.69 you are hereby informed that copy of your letter No. Φ. ΣΑΚ. 3 of the 19/5/69, in connection with the above subject, was sent to the Director-General of the Ministry of the Interior, who replied as follows:-

‘Commander of Police,

I am directed to refer to your letter No. 159/16 of the 28/5/69, in connection with the intention of members of the Police Force to submit an application for the retrospective payment of extra duty allowance, and to inform you that the contents of the said letter were noted by the Minister of the Interior who is of the opinion that it is highly regrettable for members of the Force to proceed to such an action’”).

It is to be observed that on this exhibit there appears a long note made by Mr. Antoniou on the 9th of the same month to the effect that he saw the members of the Joint Committee in his office and that he explained to them their position with regard to the payment of extra duties to members of the Police Force.

On June 11, 1969, the Ag. Commander addressed a letter, *exhibit* 17, to the Police Divisional Commanders in these terms :

«Ὡς γνωστὸν κατόπιν ἀποφάσεως τῆς Μικτῆς Ἐπιτροπῆς τοῦ Συνδέσμου Ἀστυνομίας συνεληρώθησαν καὶ ἀπεστάλησαν μέσω ὑμῶν εἰς τὸ Ἀρχηγεῖον ὑπὸ ἀρκετῶν μελῶν τοῦ Συνδέσμου εἰδικαί

πρός τοῦτο ἔντυποι αἰτήσεις διὰ ἀναδρομικὴν πληρωμὴν ὑπερωριῶν ὡς πρὸς τὴν ὡς ἄνω ἀναφερομένην περιόδον.

2. Αἱ ἀποσταλεῖσαι αἰτήσεις ἐπιστρέφονται ὥδε ἵνα αὐταὶ ἐπανυποβληθοῦν ἀφοῦ προηγουμένως ἐλεγχθοῦν ὑφ' ὑμῶν πρὸς διαπίστωσιν καὶ ἐπιβεβαίωσιν ἢ ἄλλως τῶν ἐν αὐταῖς ἀναφερομένων στοιχείων.

3. Αἱ αἰτήσεις μελῶν ὅτινα κατὰ τὴν διάρκειαν τῆς ὑπὸ ἀναφορὰν περιόδου ὑπηρετοῦν εἰς ἑτέραν Ἐπαρχίαν δέον ὅπως ἀποσταλοῦν εἰς τὴν Ἀστυνομικὴν Διεύθυνσιν ὅπου εἰργάζοντο διὰ τὴν διεξαγωγὴν τοῦ νενομισμένου ἐλέγχου καὶ τὴν σχετικὴν ἐπιβεβαίωσιν. Κατόπιν τούτου νὰ ἐπιστραφοῦν εἰς τὴν Ἀστυνομικὴν Διεύθυνσιν ὅπου ἕκαστος τῶν αἰτητῶν νῦν ὑπηρετεῖ διὰ νὰ υποβληθοῦν μετὰ τῶν ὑπολοίπων αἰτήσεων τῆς Ἐπαρχίας.»

("As you know after a decision taken by the Joint Committee of the Police Association a great number of the members of the Force have completed and sent to Force HQs., through you, written applications, prepared for this purpose, for the retrospective payment of overtime duties relating to the aforesaid period.

2. The applications already submitted are returned to you herewith so that they should be submitted afresh after they are scrutinised and verified by you as to the information given therein.

3. Applications by members of the Force, who during the material time served in other districts, should be forwarded to the Police Division in which they served for verification. After this is done they should be returned to the Police Division where each one is serving at present so that they should be submitted with the other applications of the Division").

On September 23, 1969, the Secretary addressed a new letter (*exhibit 20*) to the Commander and said :

*2. Ὁ Σύνδεσμος εἰς τὴν τελευταίαν αὐτοῦ τακτι-

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κὴν συνεδρίαν τῆς 5.9.69, ἀπεφάσισε ὅπως διὰ τὸ θέμα τῶν ὑπερῶριων κατατεθῆ προσφυγὴ εἰς τὸ Ἄνωτατον Δικαστήριον.

3. Ἐπειδὴ ἀντιλαμβανόμεθα ὅτι εἶχατε διατάξει τὴν διεξαγωγὴν ἐρεύνης διὰ τὸ ζήτημα τῶν ὑπερῶριων προτοῦ προβῶμεν εἰς οἰασδήποτε ἐνεργείας, παρακαλοῦμεν ὅπως γνωστοποιηθῆ ἡμῖν τὸ πόρισμα τῆς τοιαύτης ἐρεύνης ὡς καὶ ἡ θέσις τοῦ Ἀρχηγείου ἐπὶ τοῦ ζητήματος.»

(“2. The Association at its last regular meeting of the 5.9.69 decided that a recourse should be filed in the Supreme Court in connection with the subject of the overtime duties.

3. Whereas, we understand that you ordered the carrying out of an enquiry in connection with the subject of the overtime duties, we shall be pleased if you kindly communicate to us the findings of such enquiry, as well as the stand of the HQs. on the subject, before we take any further action in the matter”)

On September 26, Mr. Antoniou on behalf of the Commander, in reply said in *exh.* 21 :

«3 Περαιτέρω φρονῶ ὅτι μία προσφυγὴ κατὰ τὸ παρὸν στάδιον δὲν θὰ ἐξυπηρετεῖ τὰ καλῶς νοούμενα συμφέροντα τῆς Δυνάμεως καθ’ ὅτι ἴσως αὕτη νὰ ἐδημιούργει ἀτμόσφαιραν παρεξηγήσεως, δυναμέθα ὁμως νὰ χρησιμοποιήσωμεν τὸ θέμα ὑπερῶριων ὡς ἐπιχειρημα διὰ νὰ ὑποστηρίξωμεν τὴν υἱοθέτησιν ὑπὸ τῆς Κυβερνήσεως εὐνοικωτέρων ὁρων ὑπηρεσίας Οὐδεὶς ἐξ ἡμῶν δύναται νὰ ἰσχυρισθῆ ὅτι ὅταν ἡ Κύπρος ἐκινδύνευε καὶ τὰ μέλη τῆς Δυνάμεως ἐκλήθησαν ὅπως προσφέρουν τὰς ὑπηρεσίας των πρὸς ἀντιμέτωπισιν τῆς Τουρκικῆς Ἄνταρσίας ἔπραξαν τοῦτο ἀποβλέποντες εἰς οἰαδήποτε οἰκονομικὰ ὀφέλη Συνεπῶς ἐὰν τώρα προσφύγωμεν εἰς τὸ Ἄνωτατον Δικαστήριον διὰ τὴν πληρωμὴν ὑπερῶριων ὑπάρχει τὸ ἐνδεχόμενον νὰ παρεξηγηθῶμεν καὶ οὕτω νὰ μειώσωμεν τὸ ὕψος καὶ τὴν ἀξίαν τῆς συμβολῆς τῆς Ἀστυνομίας εἰς τὸν κοινόν

Ἐθνικὸν Ἀγῶνα. Οὐδέποτε ὁ πατριωτισμὸς τῶν μελῶν τῆς Ἀστυνομίας ἐτέθη ἐν ἀμφιβόλῳ εἶμαι δὲ βέβαιος ὅτι καὶ ὑμεῖς δὲν θὰ ἠθέλατε νὰ θεωρηθοῦν αἱ ἐνέργειαι μας ὡς ἀποβλέπουσαι εἰς τὴν μείωσιν τοῦ γοήτρου ἢ τοῦ καλοῦ ὀνόματος τῆς Δυνάμεως.»

(“3. I am further of the opinion that the filing of a recourse at this stage would not serve the interests of the Force because it might create an atmosphere of misunderstanding, but, we could however, make use of the subject of overtime duties, as an argument for supporting the adaptation on behalf of the Government of better conditions of service. None of us can allege that, when Cyprus was running a danger and the members of the Force were called upon to offer their services to face the Turkish rebellion, have done so looking forward for any financial gains. Consequently, if we file a recourse in the Supreme Court for the payment of extra duty allowance, we run the possibility of being misunderstood and thus impairing the extent and value of the contribution of the Police towards the common National Struggle. Never the patriotism of the members of the Police was doubted and I am certain that you do not wish that your actions would be considered as tending to impair the dignity or the good name of the Force”).

I should have also added that the Police Association had also addressed a submission (*exhib. 25*) to the Minister of the Interior, regarding the payment of overtime from the period of 8.7.1964—22.7.1966, and at page 4 letter M had this to say :

«Οἱ Ἀστυνομικοὶ Ζητοῦν ἐπίδομα διατροφῆς καὶ τοῦτο οὐχὶ θάσσει τοῦ Κανονισμοῦ 29(3) (α) ἀλλὰ συντηρημένον ἐπίδομα διατροφῆς συμφώνως τοῦ Κανονισμοῦ 29(3) (δ) ἤτοι £2 — ἑβδομαδιαίως.»

(“The members of the Police request the payment of subsistence allowance and this not in accordance with Regulation 29(3)(a) but a commuted subsistence allowance in accordance with Regulation 29(3)(d) i.e. £2.— weekly”).

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I think that I should have added—in order to complete the whole picture—that in accordance with the evidence of Mr. Karaolas regarding the purpose of the enquiry, he admitted in evidence that the contents of *exhibit 19* were correctly presented by Mr. Antoniou in his handwriting. He further agreed that the said enquiry which was carried out by the Divisional Commanders was made in order to inform the Commander of the amount of extra hours worked by members of the police force, in order that the said information would be placed before the Government for the purpose of securing better terms during the negotiations between the Government and the police side. Moreover, in accordance with the evidence of the same witness, it is clear that because he was also the cashier and he was paying the commuted allowance of £2 to each police officer who carried out extra duties, when such payment was stopped, he would inform each member who claimed from him the said allowance, of the decision of the Commander. Be that as it may, the hearing of the three cases started on March 2, 1970, and on November 16, both counsel agreed that the Court should decide first the point of law raised in paragraph 2 of the opposition, *viz.*, that these recourses were filed out of time.

Counsel for the applicants made three propositions to which counsel for the respondent took exception. The first proposition was that, these recourses have not been filed out of time and are not contrary to paragraph 3 of Article 146, because there was a continuous omission on behalf of the respondents to pay the commuted allowance of £2 due to each member of the police force. In support of his proposition he relies on the case of *Hassan Mustafa and The Republic*, (Chief Revenue Officer) 1 R.S.C.C. 44.

Before dealing with the submission of counsel, I consider it constructive to quote paragraph 1 of Article 146 which reads as follows :-

“The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person exercising any executive or administrative authority is contrary to any of the provisions of the Constitu-

tion or of any law or is made in excess or in abuse of powers vested in such organ or authority or person.”

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It is to be observed that the words “act or decision” appearing in paragraph 1 of Article 146 have received judicial consideration, and in *Eleni Vrahimi and Another and The Republic*, 4 R.S.C.C. 121 at p. 123, the Court had this to say :-

“Without exhausting in full all aspects of the said terms, a course which is not necessary in the circumstances of this case, it is sufficient to state generally that a ‘decision’ or ‘act’, in the sense of paragraph 146, must be such as would directly affect a right or interest, protected by law of a particular person ascertainable at the time of taking such decision or doing such act.”

Regarding the word “omission”, which appears also in the same Article of our Constitution, it appears that such word denotes an omission to do something required by law, as distinct from the non-doing of a particular act or the non-taking of a particular course where such non-action is the result of an exercise of a discretion. See *Sophoclis Demetriades and Son v. The Republic* (1968) 3 C.L.R. 727 at p. 734. Again, an omission as envisaged in our Article 146.1 presupposes that no action has been taken by the administration in the matter in question. In *Turhan M. Ozturk v. The Republic*, 2 R.S.C.C. 35 at p. 41, the Court had this to say:-

“If, due to the non-securing of the special absolute majority prescribed by sub-paragraph 3, a decision in the sense of that sub-paragraph is not taken on a particular question, then the result is that the Public Service Commission has not been able to take a valid decision in the discharge of one of its aforesaid duties. Although the aforesaid result does not amount to a valid decision of the Public Service Commission in the sense of sub-paragraph 3, it is, nevertheless, the outcome of action having been taken in the matter, viz., the voting of the members of the Public Service Commission in a particular way, and,

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therefore, it does amount to an act of the Public Service Commission in the sense of paragraph 1 of Article 146 (hereinafter referred to as the act of the Public Service Commission), and is not an omission in the sense of the said paragraph."

In *Costas Vafeadis v. The Republic*, 1964.C.L.R. 454 at p. 460, the Court followed the principle formulated in the *Ozturk* case, and had this to say :-

"It may be stated at the outset that no question of an omission can arise, because it is common ground that there exists in this case an express refusal to transfer applicant; when the administration reaches a negative decision on an application made to it, this decision may be challenged as such by appropriate proceedings, but it is not possible to complain, at the same time, that such a course amounts also to an omission of the administration, because an omission, as envisaged under Article 146.1, pre-supposes that no action has been taken in the matter."

It may, of course, be necessary to distinguish between a decision and an omission for calculating the 75 days time limit under paragraph 3 of Article 146, because in the case of an act or a decision which has been published, this period begins to run from the date of the publication. If not published, however, and in the case of an omission, the said period of 75 days is calculated from the day it came to the knowledge of the person making the recourse. In the case of a continuing omission, relied upon by counsel for the applicants, the said period does not begin to run so long as the omission is continuing.

The facts which appear from the headnote of *Mustafa* case *supra*, are that in November 1956, unknown persons set fire to applicant's sheepfold at Morphou, destroying his sheep and other property. In January, 1957, the District Officer (then Commissioner) Nicosia, confirmed the list prepared by the Mukhtar in accordance with the Recovery of Compensation for Injury to Property Law, Cap. 84, but up to the date of the hearing of this case no warrant was issued under section 4 of the Tax Collection Law,

Cap. 329. The Court had this to say at p. 47 regarding the question of omission :-

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“The Court is of the opinion that the nature of the alleged omission in this case was such that it continued after the 16th August, 1960, and could be said to have continued till the date on which the application was filed, and indeed, even till the date of the hearing. Where the omission, therefore, as in the present case, is of a continuous nature, and has continued after the 16th August, 1960, and could Court has jurisdiction to adjudicate on a recourse concerning such a continuing omission notwithstanding that the omission originally commenced prior to the 16th August, 1960.”

Later on they said :-

“Once the Court has come to the conclusion that the alleged omission in question could be said to have continued up to the date of the hearing there can be no question of the application being filed out of time under paragraph 3 of Article 146.”

In *Mourtouvanis and Sons Limited v. The Republic* (1966) 3 C.L.R. 108, the Court had this to say at p. 124, where a distinction had been made between a non-continuing omission and an omission of a continuing nature :-

“I have given this issue careful consideration, and I am of the opinion that inasmuch as the nature of the complaint in respect of which this recourse has been made is an omission to return the disputed goods, and the exemption certificates, and such omission was still continuing on the date on which the application in this case was filed, the matter should be regarded as a continuing omission for the purposes of paragraph 3 of Article 146 of the Constitution, and I accordingly hold that this recourse is not out of time.”

See also *Michalakis Iacovides v. The District Officer* reported in (1966) 3 C.L.R. 191 at p. 195.

It is a well established principle of constitutional law

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that the Government of our country is conducted in virtue of powers conferred and duties imposed by law on the various agents of Government. All powers and authority are, therefore, derived from the law, and must be exercised in accordance with the law. A person who is invested with a power is not thereby exempted from the law, but is authorised by the law to exercise that power in the manner and for the objects contemplated by the law. If he acts outside that authority, he acts illegally, and the Courts of law will treat his act as they would any other illegal act. To this end, the Courts can control the acts of Government agents no less than those of private persons.

The Police Regulations deal *inter alia* with hours of duty and for extra duty. Regulations 15(1) reads as follows :-

"Every member of the Force shall carry out all lawful orders and shall at all times punctually and promptly perform all appointed duties and attend to all matters within the scope of his office as a police officer.

3(a) Subject to the provision of this regulation, where a member of the Force to whom paragraph (2) above applies, other than a member who is paid a detective allowance, remains on duty after his tour of duty ends or is recalled to duty between two hours of duty, he shall be granted as soon as exigencies of duty in the opinion of the Chief Constable permit, an equal period of time off. A strict record of time off granted must be kept.

(b) If, in respect of overtime, time off is not granted within a period not exceeding three months the member, if he is below the rank of sub-inspector, shall be granted an allowance of not less than the hourly rate paid to members of the Special Constabulary of appropriate rank.

(d) When a member of the Force to whom

paragraph (2) of this regulation applies constantly performs extra duty he may be paid a commuted extra duty allowance as approved by the Chief Constable."

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Regarding the payment for refreshment, subsistence and lodging allowances to a member of the Force, Regulation 29(3) (d) is in these terms :-

"If a member of the Force is so retained or engaged for a period exceeding one week, he may, if the Chief Constable is satisfied that the allowances specified in the First Schedule hereto would be excessive, be granted in lieu thereof a weekly allowance at such lower rate as may be necessary to cover his reasonable expenses."

The Commander exercising his powers derived from the combined effect of both the aforesaid regulations, decided, as I have reiterated earlier in this judgment, to order the payment of a commuted allowance at the rate of £ 2 per week to each member of the Force ; but later on, for reasons which are now well-known, he decided to stop the authorisation of the payment of such allowance as from July 8, 1964. And I entertain no doubts at all that, in doing so, the Commander has acted illegally and, in my view, it was open to all the applicants to seek their redress in this Court. I am afraid, however, that the applicants had decided to pursue that right after a long time and after being advised by their counsel to do so. But, counsel on behalf of the applicants, maintained that no decision was taken by the Commander.

In the light of the material before me, I have reached the view that, the first proposition of counsel is not right, since the case of *Hassan (supra)* can be distinguished from the facts of the present case because there is no question of a continuous omission, but on the contrary, of a decision taken by the Commander to stop the payment of the commuted allowance already granted and received by the applicants. Once, therefore, a decision was taken, and it was open to the applicants to challenge it because the amount of the commuted allowance was stopped, it is not now possible to complain at the same time, that

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such a course amounts also to an omission of the administration to pay. In my view, an omission presupposes that no action has been taken by the administration in the matter. For the reasons I have endeavoured to explain, I am of the opinion that these recourses are out of time and I would, therefore, dismiss this proposition of counsel.

The second proposition of counsel was that the contents of the message sent by the Commander to all Departmental Commanders does not amount to a decision or act, because it was in the nature of a circular which does not in any way affect the rights or interests protected by law.

In our country, as well as in other countries, the circulars are quite well known and are documents which administrative officers and heads of departments are well acquainted with. These circulars contain directions of a Minister given to his Ministry or directions by a Head of Department given to the department concerned, or directions issued by a Government department of another or others. See particularly the case of *Loizides and Another and The Republic*, 1 R.S.C.C. p. 107 et seq. referring to a scheme of eligibility and entitlement to education grants under circular No. 1286 dated December 6, 1955; and also referring to circular No. 6033/55 dated 23rd February, 1961, emanating from the Acting Chief Establishment Officer, informing the public service of the decision of the Council of Ministers to the effect that such a scheme under the said circular of 1955 should be discontinued, except in so far as it related to the public officers on the date of the coming into operation of the Constitution who were already in receipt of such grants. Such a discontinuance was held by the then Supreme Constitutional Court to be unconstitutional and certain adaptations were laid down to circular No 128/64. In view of their nature, therefore, the circulars cannot be made the subject of a recourse for annulment in this Court; unless, of course, they contain a decision which is of an executory nature when they may become the subject of a recourse under Article 146 of our Constitution. See the textbook of Dendias, on Administrative Law, 4th edn., 1957, Vol. A at pp. 40 and 41; also see under note 2 the Decisions of the Greek Council of State.

Irrespective, of course, whether one can call that document a circular or a letter, it certainly contains a decision of an executory nature because it infringed the rights of the applicants, protected by the Police Regulations, and, of course, once it became known, the applicants were entitled to file a recourse seeking its annulment within the time limit provided by paragraph 3 of Article 146. I would, therefore, dismiss this contention of counsel also.

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The third proposition was that once each applicant has applied on May 25, 1969, to the Commander by an application similar to *exhibit 1*, claiming payment for extra duty allowance under Regulation 15(1) (3) (b) and for subsistence allowance under Regulation 29(1) (a); and once the administration has embarked into new enquiry — as it appears from the reply given in *exhibit 26* — at least for those applicants who were working in Famagusta district, time does not run against the applicants until a reply by the Commander was given.

I have approached this proposition fully aware of the views expressed by the Commander in his personal handwriting in *exhibit 19*, that the enquiry was intended to collect information regarding the total amount of hours carried out as extra duty by each officer, as well as the total amount due from the Government to the police force calculated at the rate of £2 per week, in order that such information would be placed in the hands of the Government with a view to securing better terms of service for the force as a whole. Subject to this statement, and irrespective of the fact that Mr. Constantinides' reply to the members of the police force in Famagusta that their demand was under examination, this reply does not, in my view, show that it was intended to bind the Commander to start a new enquiry regarding the re-examination of the case of the applicants. However, the question which is posed is: Is there an omission on the part of the respondent to re-examine the case of the applicants. In my view, in the absence of legislation regulating such matter, there can be no question of an omission on the part of the respondent, because the administration had no duty to discharge, and because the Commander, to quote once again his own words, decided long ago that

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the commuted allowance of £ 2 which he had authorised earlier under the Regulations "will cease, repeat, will cease w.e.f. 8.7.64". Furthermore, the refusal of the administration to re-examine the case of the applicants with a view to revoking or withdrawing their previous administrative decision or act is not an act or decision of an executory nature, but only a confirmatory one and, therefore, it cannot become the subject of a recourse under Article 146 of the Constitution. See *Varnava v. The Republic* (1968) 3 C.L.R. 566 at p. 575.

On the other hand, I think that I should pose also this question: Does a new enquiry exist? On this point I would like to quote from the well-known textbook of Stasinopoulos on the Law of Administrative Disputes, (1964) 4th edn. at p. 176. The translation prepared by the Registrar of this Court reads as follows :-

"When does a new enquiry exist, is a question of fact. In general, it is considered to be a new enquiry, the taking into consideration of new substantive legal or real material, and the new material is judged severely because he who has lost the time limit for the purpose of attacking an executory act, should not be permitted to circumvent such a time limit by the creation of a new act, which has been issued nominally after a new enquiry, but in substance on the basis of the same material. There is, of course, a new enquiry when before the issue of the subsequent act, an investigation of newly produced or pre-existing but unknown material takes place, which are taken into consideration in addition to the others, but for the first time. Similarly, it constitutes a new enquiry, the carrying out of a local inspection or the collection of additional information in the matter under consideration."

With due respect to counsel's argument, in my view, in the present case an attempt was made to circumvent the time limit by the application made to the Commander by each applicant. Furthermore, in my opinion, all this material was known to the Commander from the lengthy correspondence which has been exchanged between the Commander and the police association. In these circum-

stances, and in view of the reasons I have advanced, I have reached the view that the Commander did not carry out a new enquiry with a view to the re-examination of the case of the applicants. Moreover, he was not bound to do so, and has made it quite clear what was the purpose of the collection of that information. I would, therefore, dismiss also this proposition of counsel, because in the absence of legislation regulating such matter, there can be no question of omission.

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In conclusion, I would like to state in fairness to counsel for the applicants, that the judgment I have just read has been delayed because counsel had applied to this Court to postpone its delivery owing to his instructions by the police association, probably because they were hoping that time would solve their differences with the Government through the machinery of negotiations. However, I entertain today substantial doubts that the judgment I have just delivered will serve the real ends of justice. That is to say the least, a most regrettable situation for any judge, but I see no escape from it. Its effect is to turn away empty handed from this Court the applicants, who, on any view, have been deprived of the commuted allowance of £2 per week when they carried out extra duties during the emergency. It is, therefore, a judgment which gives me no satisfaction, but because of the mandatory provisions of paragraph 3 of Article 146, I have no alternative.

In the light of the above, I am bound to come to the conclusion that these recourses have been filed in this Court out of time, and I would, therefore, dismiss them.

Regarding the question of costs, in view of the particular circumstances of these cases, I do not propose making an order for costs.

*Application dismissed;
no order as to costs.*