

[A. LOIZOU, J.]  
IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION  
LEFKI PAPASAVVA,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE COMMANDER OF POLICE,

*Respondent.*

(Case No. 431/72).

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*Recourse under Article 146 of the Constitution—Time—  
Within which a recourse has to be filed—Article 146.3  
of the Constitution—Omission—Omission of a 'conti-  
nuing' or 'non-continuing' nature—It is a prerequisite  
to the non-commencement of the running of the 75  
days period provided by the said Article that the  
omission be of a continuing nature—Otherwise the  
period commences to run from the date that a non-  
continuing omission or the termination of a continuing  
one (infra) comes to the knowledge of the person  
making the recourse—Termination of a continuing  
omission by re-examination of the matter—And com-  
munication of the relative decision taken upon such  
re-examination to the person concerned or his counsel  
—In the instant case the recourse is out of time as  
filed more than 75 days after such communication of  
the decision taken as aforesaid to applicant's counsel.*

*Omission—Omission of a 'continuing' or 'non-continuing'  
nature—Time within which a recourse regarding omis-  
sions has to be filed—Article 146.3 of the Constitu-  
tion—See supra.*

*Time—Article 146.3 of the Constitution—See supra.*

The learned Judge of the Supreme Court dismissed this recourse on a preliminary point taken by counsel for the respondent to the effect that the recourse is out of time, because it was filed after the 75 days period, prescribed by Article 146.3 of the Constitution, had elapsed in that it was

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filed more than 75 days after the omission complained of thereby ceased to be, to the knowledge of the applicant, an omission of a continuing nature. The facts of the case are briefly as follows :-

The applicant in this recourse joined in 1961 the Cyprus Police Force as a female Police Constable. In the year 1965 she was appointed to the rank of acting sergeant. But this acting appointment was terminated later with effect as from January 1, 1969, by a decision of the Chief of the Police. This decision was successfully challenged by the present applicant in Recourse No. 21/69 (see *Lefki (then) Nicolaou v. The Republic* (1969) 3 C.L.R. 520). The judgment in the said recourse was delivered by Mr. Justice Triantafyllides, as he then was, on the 28th November 1969. On the 1st May, 1970, the Chief of the Police wrote a letter to the Divisional Police Commander, Nicosia, stating, *inter alia*, that he does not intend to reinstate the applicant to the rank of acting sergeant for the reasons set out therein (see *post* in the judgment). On July 24, 1970, the applicant through her counsel addressed a letter to the Chief of the Police claiming, in the light of the judgment in the said recourse No. 21/69, payment of her allowances as an acting sergeant and the return of her insignia of the rank of acting sergeant. This request was turned down by a letter in reply dated August 3, 1970, in which the Chief of the Police stated, *inter alia*, that "since the post to which she was appointed has been filled", her re-appointment "as an acting sergeant is not considered as necessary". On October 17, 1970, the applicant instituted in the District Court of Nicosia action No. 5645/1970 claiming against the Republic damages under Article 146.6 of the Constitution "for the damage she suffered on account of the act and/or decision of the Chief of the Police which was annulled by the decision of the Supreme Court in Recourse No. 21/69" (*supra*).

That being the position, the applicant filed on November 16, 1972, the present recourse claiming a declaration that the *continuing omission* of the respondent to comply with the said judgment of the Supreme Court in the aforementioned recourse No. 21/69 (*supra*) ought not to have occurred.

It was objected by way of preliminary objection by counsel for the respondent that the present recourse is not maintainable because it "is out of time as the applicant became

aware of the stand of the administration on the delivery of the judgment of the Supreme Court in Recourse No. 21/69" (*supra*); and in any event, the argument went on, the applicant received knowledge of the concrete decision of the Chief of Police that she would not continue serving as an acting sergeant after the said judgment, delivered on November 28, 1969, *supra*; such knowledge having been received in May and/or August 1970 (*supra*).

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On this question of the recourse being out of time, counsel for the applicant has argued that the non-compliance with the said judgment of the Supreme Court in Recourse No. 21/69 (*supra*) is an omission of a continuing nature and that, therefore, the period of 75 days, prescribed by Article 146.3 of the Constitution, did not start running on the filing of the present recourse. Reliance in this respect was placed on the case *Hassan Mustafa and The Republic*, 1 R.S.C.C. 44, at p. 47C. (See the passage *post* in the judgment).

The learned Judge of the Supreme Court did not accept this argument advanced by counsel for the applicant and holding that the recourse is out of time, dismissed it in *limine litis*.

Held, (1) The present case is one where by the re-examination of the matter the continuing nature of the omission was terminated. This was done by the decision taken by the Chief of Police, in the light of the judgment of the Supreme Court in Recourse No. 21/69 (*supra*), by the 1st May, 1970 and as a result of which the said letter of May 1, 1970 was addressed to the Divisional Commander of Police (*supra*). The reasons given therein for not re-appointing the applicant to the rank of acting sergeant being that the post had already been filled permanently. This decision came to the knowledge of the applicant by the letter of August 3, 1970, received by her counsel on August 6, 1970.

(2) This communication was a complete one, as a comparison between the letter of May 1, 1970 and the letter of August 1, 1970, shows that the latter contained the full reasoning for the decision and so it can be considered as sufficient communication in law to set the period of 75

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days under Article 146.3 of the Constitution in motion (see *Decision of the Greek Council of State No. 701/1948*); and it may be pointed here that the communication of a decision to counsel acting on behalf of a person amounts to communication to the person concerned. (See *Decisions of the Greek Council of State, Nos. 1135/1957 and 182/1958*).

(3) In fact, in view of what was stated in the aforesaid letter dated August 3, 1970 of the Chief of the Police, the applicant filed on October 17, 1970, in the District Court of Nicosia Action No. 5645/1970 for damages (*supra*).

(4) In the light of the above, the present recourse having been filed on *November 16, 1972* must be considered as being out of time.

*Recourse dismissed.*

Cases referred to :

*Lefki Nicolaou v. The Republic* (1969) 3 C.L.R. 520;

*Hassan Mustafa and The Republic*, 1 R.S.C.C. 44, at p. 47C;

*Decisions of the Greek Council of State Nos. 701/1948, 1135/1957 and 182/1958.*

**Recourse.**

Recourse for a declaration that the continuing omission of the respondent to comply with the judgment of the Supreme Court in Case No. 21/69 *i.e.* to issue the necessary administrative acts for compliance with the aforesaid judgment is null and void and of no effect.

*A. Pandelides*, for the applicant.

*L. Loucaides*, Senior Counsel of the Republic,  
for the respondent.

*Cur. adv. vult.*

The following judgment \* was delivered by :-

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\* An appeal has been lodged against this judgment. The appeal has been heard and judgment thereon has been reserved.

A. LOIZOU, J.: The applicant joined the Cyprus Police Force in 1961 as a female Police Constable. In 1965 she was appointed as an acting sergeant in pursuance of a policy decision according to which a female acting sergeant should be in charge of the female Police Constables in each Police Division. At the time the applicant was posted in Nicosia, whereas in Limassol, Vrisiis Georghiadou held the corresponding post. When the latter was transferred to Nicosia, the Chief of the Police asked the Divisional Police Commander, of Nicosia, to state whether the acting appointments of the applicant or of the said female acting sergeant Vrisiis Georghiadou should be terminated. The Divisional Police Commander replied that there were no duties in the Nicosia Police Division that either of them could perform in the capacity of sergeant and both acting appointments thereupon were terminated. This decision was successfully challenged by the applicant in Recourse No. 21/69 (*exhibit 1*) the judgment thereof reported under her then name, *Lefki Nicolaou v. The Republic* (1969) 3 C.L.R. 520.

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In January, 1969 it was discovered that the non existence of any female acting sergeant in the Nicosia Police Division was contrary to the abovementioned policy, as a result of which the acting appointment of the applicant and of Georghiadou were originally made and as from the 21st January, 1969 female Police Constable Georghiadou was re-appointed as acting sergeant. The aforesaid recourse No. 21/69 had been filed prior to the said decision, and the validity of the reappointment of Georghiadou had not been challenged thereby, or afterwards.

The ground of annulment of the decision for the determination of the acting appointment of the applicant is to be found at page 522 of the report (*supra*) where Mr. Justice Triantafyllides, J., as he then was, said :-

“It is quite clear, from the foregoing, that such termination was made in ignorance of the existence of the relevant policy regarding female acting sergeants and that, therefore, the *sub judice* decision was reached under a misconception as to a material

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consideration, thus being rendered the product of a defective exercise of the relevant powers. Had the matter been decided on the proper basis and in its correct context then no doubt there would have been examined who of the two—the applicant or Georghiadou—was the most suitable and consequently there would not have been terminated the acting appointments of both, as being unnecessary (see *exhibit 3*).

In the circumstances, there is no other alternative open to me than to declare the *sub judice* decision as being null and void and of no effect whatsoever. It is up to the appropriate authority in the Police to decide as to whether the acting appointment of the applicant should be terminated, or, whether or not, in the light of existing requirements, the implementations of the spirit of the relevant policy renders it proper in the interests of the service—which are a primary consideration—to keep two female acting sergeants in the Nicosia Police Division, one of them being the applicant.”

This judgment was delivered on the 28th November, 1969 and the Chief of the Police received a copy thereof on the 30th March, 1970. On the 1st May, 1970 the Chief of the Police wrote to the Divisional Police Commander, Nicosia (*exhibit 3*) the following:-

“Re : *Woman P.C. 1690 Lefki Papasavva.*

(1) Attached I forward copy of the decision of the Supreme Court in Case 21/69 in relation to the recourse of the aforesaid woman Police Constable for the termination of her appointment as an acting sergeant.

(2) In view of the decision of the Supreme Court and the existing needs of the Force, I do not intend to appoint a woman police constable to the rank of acting sergeant at your Police Division, as there is already a woman sergeant, female Police Sergeant 718 Vrisiis Georghiadou who fulfils the requirements of your Police Division.

(Sgd.) Chief of Police.”

The applicant, through her then counsel, addressed to the Chief of Police letter dated the 24th July, 1970 asking that in the light of the judgment of the Supreme Court in Recourse No. 21/69 for the payment of her allowance as an acting sergeant and the return to her of the insignia of the rank of the acting sergeant in view of the annulment of the decision terminating same. On the 3rd August, 1970 the following letter (to be found in a bundle of documents forming *exhibit 5*) was addressed to applicant's then counsel:

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*"Woman/Police Constable 1690 Lefki Nicolaou  
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(1) Your letter under No. B.B. 57 dated the 24th July, 1970 on the aforesaid subject is relevant.

(2) In view of the fact that the appointment of your client as an acting sergeant was terminated as from the 1st January, 1969 and considering that she has not since acted in the capacity of acting sergeant, there is no question of payment to her of an allowance for an acting appointment and consequently I cannot order the payment of such allowance.

(3) In so far as the insignia you refer, your client stopped performing the duties of acting sergeant as from the 1st January, 1969, such insignia cannot be given to her since the post to which she was originally appointed has been filled and her appointment as an acting sergeant is not considered as necessary."

This letter was produced in the Nicosia District Court Action No. 5645/70 as *exhibit 4*. The said action was filed on the 17th October, 1970 and the applicant as plaintiff was thereby claiming —

"(a) Damages for the damage she suffered on account of the act and/or decision of the Chief of Police which was annulled and/or declared null and void by the decision of the Supreme Court of Cyprus in Recourse No. 21/69 on the 28th November, 1969.

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(b) Order of the Court ordering the defendant and/or the Chief of Police to comply with the aforesaid judgment and reinstate the plaintiff to the rank of acting sergeant.

(c) Further or other relief.

(d) Legal interest.

(e) Costs."

The writ of summons, the pleadings, as well as other relevant documents from the file of the said action have been produced as *exhibit 5*.

The claim for the order for compliance with the decision of the Supreme Court was abandoned in the course of the address of counsel for the applicant on the 3rd November, 1972 (vide *exhibit 5A*).

On the 16th November, 1972 the applicant filed the present recourse claiming —

"(1) Judgment and/or declaration of the Court that the continuing omission of the respondents to comply with the judgment of the Supreme Court in Case No. 21/69 which was delivered on 28.11.69 is null and/or that the said omission should not have occurred and/or that the respondents should have complied with the said decision retrospectively from its issue.

(2) Decision and/or declaration of the Court that the continuing omission of the respondents to issue the necessary administrative acts for compliance with the aforesaid judgment and for the reinstatement of the applicant to the rank of acting sergeant which she held before her demotion was declared void, is void and/or the said omission should not have occurred and/or the said administrative acts should have been issued retrospectively from the issue of the said decision.

Alternatively, declaration of the Court that by the aforesaid judgment of the Supreme Court (21/69) the applicant was reinstated automatically to the rank which it had before its termination on the



1st January, 1969 of her appointment as an acting sergeant.”

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The first objection raised by the respondent is that —“the recourse is out of time as the applicant became aware of the stand of the administration on the delivery of the judgment of the Supreme Court in Recourse No. 21/69 and in any event in May, 1970 the applicant received knowledge of the concrete decision of the Chief of Police that she would not continue serving as an acting sergeant after the said judgment”.

On this question of the recourse being out of time, learned counsel for the applicant has argued that the non compliance with the decision of the Supreme Court is an omission of a continuing nature. Therefore, this objection should be dismissed. Reliance in this respect is placed in the case of *Hassan Mustafa and The Republic of Cyprus*, 1 R.S.C.C. p. 44, where at page 47C it was stated —

“Leaving aside ‘decisions’ or ‘acts’, with which the Court is not concerned in this case and dealing only with ‘omissions’, a distinction must be made between a non-continuing omission (e.g. the failure of a competent authority to issue a permit in respect of something to be done on a particular date) and an omission which is of a continuing nature...”

With regard to the second submission of the counsel for the respondent referred to above, 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 cannot be any question of the application being filed out of time under paragraph 3 of Article 145.”

It is a prerequisite, therefore, to the non-commencement of the running of the time provided for by Article 146.3 of the Constitution as enunciated in the aforementioned judgment of the Supreme Constitutional Court, that the omission be of a continuing nature. Otherwise the period commences to run from the date that a non-continuing omission or when a re-examination takes

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place comes to the knowledge of the person making the recourse.

It appears, however, that the present case is one where by the re-examination of the matter the continuing nature of the omission was terminated. This was done by the decision taken by the Chief of Police in the light of the judgment of the Supreme Court in Recourse No. 21/69 by the 1st May, 1970 and as a result of which *exhibit* 3 hereinabove set out, was addressed to the Nicosia Divisional Commander of Police. The reasons given therein for non-reappointing the applicant to the rank of acting sergeant, being that the post in respect of which she was given acting appointment had already been permanently filled and the requirements of that Police Division were satisfied and there was no longer need for a female acting police sergeant.

This decision came to the knowledge of the applicant by the letter of the 3rd August, 1970—received by her counsel on the 6th August according to a note appearing thereon. This communication was a complete one, as a comparison between the letter, *exhibit* 3, and the letter of the 3rd August, 1970, shows that the latter contained the full reasoning for the decision and so it can be considered as sufficient communication in law to set the period under Article 146.3 of the Constitution in motion. (Vide Decision of the Greek Council of State 701/48).

In fact, in view of what was stated therein, the applicant filed the said civil action claiming, *inter alia*, an order of the Court for compliance with the judgment of the Supreme Court given in her favour. It may be pointed out here, that the communication of a decision to counsel acting on behalf of a person amounts to communication to the person concerned. (Vide Decisions of the Greek Council of State, 1135/57 and 182/58).

In the light of the above, the present recourse having been filed on the 16th November, 1972, is considered as being out of time. The fact that the applicant proceeded in the wrong forum by civil action, hence the withdrawal of that relief (see *exhibit* 5A), did not in my

view, suspend the running of the time under Article 146.3 of the Constitution.

In the circumstances, this recourse is dismissed with no order as to costs.

*Application dismissed.*  
*No order as to costs*

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