

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDRÉAS A. HJIGREGORIOU,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

ANDREAS A.  
HJIGREGORIOU  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

(Case No 376/74).

*Time—Within which a recourse may be filed—Article 146. 3 of the Constitution—Running of time—Publication—Time runs from the date of publication in cases where the act or decision complained of was published—Irrespective of when the act or decision*  
5 *came to the knowledge of the person concerned—Force majeure—How does it affect running of time—Promotion of public officer—Time limit commences as from date of publication of promotion—Officer's leave of absence does not constitute exceptional circumstances preventing commencement of running of time.*

10 *Constitutional Law—Time—Article 146. 3 of the Constitution—Commencement of running of time.*

*Force majeure—How does it affect running of time under Article 146. 3 of the Constitution.*

15 By means of a decision, taken on the 10th July, 1974, the respondent Commission appointed the interested party to the post of Assessor in the Department of Inland Revenue. This decision was published in the official Gazette of the Republic of the 12th July, 1974 and it was received and circulated in Division I of the above Department where the applicant was serving,  
20 on the 13th July, 1974. As a result of the coup d' etat of the 15th July, 1974 and the Turkish invasion that followed the Supreme Court was closed on the 16th July and between 20th and 29th July, as well as from the 14th to the 17th August. The applicant who had been on leave from his work as from the 10th  
25 July, 1974, was called up as a reservist and joined the National Guard on the 20th of the same month; he was demobilized on the 4th September, 1974.

1976  
June 26

—  
ANDREAS A.  
HIGREGORIOU  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

The present recourse was filed on the 31st October, 1974 that is, not “within seventy-five days of the date when the decision was taken” as provided by Article 146.3 of the Constitution.

The sole question for consideration in these proceedings was whether the 49 days period, between the coup d’etat and applicant’s demobilization on the date aforesaid, during which there existed exceptional circumstances, should be added to the 75 days’ period that commenced running as from the date of publication, or whether once the said exceptional circumstances came to an end by the 4th September, 1974 and there remained another 21 days to go before the expiration of the 75 days’ period, they are not added to it and, therefore, the recourse was filed out of time.

*Held*, (1) that once there has been publication of an act, time begins to run from such publication, irrespective of when the act or decision in question came to the knowledge of the person concerned; and that in cases of promotion of a civil servant the time limit commences as from the date of publication of the promotion.

(2) That the time-limit is suspended by force majeure that they occur and last until after the expiration of the time limit (see *Porismata Nomologhias* of the Greek Council of State (1929–1959) and Decision No. 1430/59 of the Greek Council of State); that the force majeure in this case did not continue until after the expiration of the time limit in the present case; and that, accordingly, this recourse fails as having been filed out of time and is hereby dismissed.

*Application dismissed.*

Cases referred to:

*Pissas (No. 1) v. The Electricity Authority of Cyprus* (1966) 3 C.L.R. 634 at p. 637;

*Moran and The Republic*, 1 R.S.C.C. 10 at p. 13;

*Decisions Nos. 1430/59, 1449/65 of the Greek Council of State; Cariolou v. The Municipality of Kyrenia* (1971) 3 C.L.R. 455.

### **Recourse.**

Recourse against the decision of the respondent Public Service Commission to promote the interested party to the post of Assessor in the Department of Inland Revenue in preference and instead of the applicant.

*K. Talarides*, for the applicant.

*Cl. Antoniadis*, Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

The following judgment was delivered by:—

1976  
June 26

—  
ANDREAS A.  
HIGREGORIOU  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

5 A. LOIZOU, J.: It has been directed, with the consent of the parties, that the question whether this recourse which attacks the validity of the promotion of the interested party to the post of Assessor in the Department of Inland Revenue, has been filed within the time prescribed by Article 146.3 of the Constitution, be determined first.

10 The facts relevant to this issue are the following: The *sub judice* decision was taken by the respondent Commission on the 10th July, 1974 and it was published in the official Gazette of the Republic of the 12th July, 1974 under Not. No. 1212. This Gazette was received and circulated, in Division I in the Department of Inland Revenue where the applicant was serving, on Saturday the 13th July, 1974.

15 In the morning of the 15th July, a coup d'état started and the circulation of pedestrians and vehicles was prohibited as from the sunset of that date until the 6th hour of the morning of the 17th when the circulation of pedestrians and vehicles was allowed until 2 p. m. On the following two days the circulation  
20 was permitted during the day.

In the early hours of the 20th July, the Island was invaded by Turkish forces. Owing to the coup d'état and the war operations that followed, the Supreme Court was closed on the 16th between the 20th and 29th July, as well as from the 14th to the  
25 17th August, during which time the invading forces by new operations extended the area already occupied by them.

The applicant who had been on leave from his work as from the 10th July as he was preparing for his forthcoming wedding, was called up as a reservist and joined the National Guard on the  
30 20th of the same month. He was demobilised on the 4th September, 1974.

Under Article 146.3 of the Constitution, a recourse has to be made within 75 days when the decision or act was published, or, if not published, and in the case of an omission, when it came to  
35 the knowledge of the person making the recourse. As pointed out in the case of *Pissas (No. 1) v. The Electricity Authority of Cyprus* (1966) 3 C.L.R. 634 at p. 637, "Once there has been publication of an act, time begins to run for the purposes of the said paragraph, from such publication, irrespective of when the  
40 act or decision in question came to the knowledge of the person

1976  
June 26

—  
ANDREAS A.  
HJIGREGORIOU  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

concerned". The aforesaid proposition is also borne out from what was stated in the case of *Moran* and *The Republic*, 1 R.S.C.C., p. 10 at p. 13, where the following was said: "As in the present case the acts complained of were not published, in order to find as from when the period of 75 days began to run, it is necessary to ascertain when such acts came to the knowledge of the applicant". Therefore, the present recourse which was filed on the 31st October, 1974, normally would have been dismissed outright, as having been filed out of time. But the special circumstances pertaining to this case have given rise to a very interesting issue.

The point has been argued on the basis that on the said dates and during the aforesaid period of time, there existed a physical impossibility for the applicant to have access to the Court himself or through his duly authorized representative, which constituted a force majeure or exceptional circumstances affecting the running of the period of 75 days prescribed by Article 146.3 of the Constitution and which is mandatory for the filing of a recourse for the annulment of an administrative act or decision.

The principle that exceptional circumstances affect the running of such period, has been recognised in the case of *Moran* (*supra*) where at p. 13, it is stated:

" The Court is of the opinion that the period of time provided for in the said paragraph 3 is mandatory and has to be given effect to in the public interest in all cases. Such view is in accordance with the interpretation of analogous provisions given by administrative tribunals in a number of European countries and is also the view of authoritative writings on this subject. Exceptional circumstances recognized by the above authorities as affecting the running of such period do not arise on the facts of this case".

It has, however, to be considered whether the 49 days hereinabove set out during which there existed such exceptional circumstances, should be added to the 75 days' period that commenced running as from the date of publication, or whether once the said exceptional circumstances came to an end by the 4th September, 1974 and there remained another 21 days to go before the expiration of the 75 days' period, they are not added to it and, therefore, the recourse was filed out of time, once the applicant had the opportunity of filing the recourse before the expiration of the said period.

1976  
June 26

—  
ANDREAS A.  
HJIGREGORIOU  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

I have no difficulty in saying that the days during which there was a force majeure because of unforeseen events which happened before the expiration of the 75 days' period and which did not continue until after its expiration, are not added to the said period prescribed by Article 146.3 of the Constitution.

In Porismata Nomologhias of the Greek Council of State (1929-1959) by reference to decided cases, it is stated at page 256:

10 "In case of force majeure the progress of the time limit for the filing of a recourse is suspended. Force majeure is constituted by unforeseen events which happen before the expiration of the 60 days and continue after its expiration, so long as they prevent the action of the applicant even through a representative during the time that they last".

15 Reference is made therein to Decision No. 1430/59 of the Greek Council of State in which the unforeseen events which prevented any, even through an authorized representative, action of the applicant and which were considered as constituting force majeure, happened three days before the expiration of the sixty-day period prescribed by the Greek Law for the filing of a recourse and lasted until after the expiration of the said period and the recourse was filed on the day following the coming to an end of the said exceptional circumstances. It supports, therefore, the view that the time limit is suspended by force majeure that they occur and last until after the expiration of the time limit. In Decision No. 1449/65 of the Greek Council of State where a Royal Decree was published on the 24. 12. 1964, the period expired on 22. 2. 1965 and the applicant filed his recourse on 9. 3. 1965 which, on the face of it, shows that the recourse was out of time. It was held that the recourse was filed within the prescribed period because of the fact that the applicant fell severely ill on 20. 2. 1965, that is to say, two days before the expiry of the time limit and this suspended the progress of the time period. Again, it is a case where the exceptional circumstances commenced and lasted until after the expiration of the prescribed period. Furthermore, support for this proposition is to be found in Tsatsos, "The Application for Annulment before the Greek Council of State", 3rd ed. p. 97, where it is stated:

40 "In case of force majeure the expiration of the period for the filing of a recourse for annulment is suspended. For

1976  
June 26

—  
ANDREAS A.  
HIGREGORIOU  
v.

REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

this purpose, there should not simply appear force majeure during the period and lifted before its expiration, but the force majeure must last until the expiration of the period, so that there will be a direct loss of the period on account of force majeure".

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Before concluding, I would like to refer to the argument of learned counsel for the applicant to the effect that in view of the applicant's leave of absence and the supervening coup d'etat, the applicant could not have notice of the contents of the publication on the 13th July and he could not have had notice of its contents between the 15th and the 20th July, due to the abnormal conditions created by the coup d'etat and his continuous leave of absence.

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I have already said that once there has been publication of an act, the time begins to run, for the purposes of paragraph 146.3 of the Constitution, from such publication, irrespective of when the act or decision in question came to the knowledge of the person concerned and the leave of absence has not been claimed, and rightly so, as constituting exceptional circumstances to prevent the commencement of the running of the time, nor could the 17th, 18th and 19th of July be treated as days during which there were such exceptional circumstances as to constitute force majeure. His leave of absence does not change the legal situation.

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The case of *Pissas (No. 1) (supra)* invoked by learned counsel for the applicant, does not carry his case any further, as there, the point decided, was that there was no proper publication in the sense of fully and clearly containing the contents of the act or decision concerned, and not that the time did not commence to run as from the date of a proper publication, and there is nothing in our case to suggest that there was no proper publication of the *sub judice* decision. (See also *Cariolou v. The Municipality of Kyrenia* (1971) 3 C.L.R. p. 455). In cases of promotion of a civil servant attacked by a person not promoted, the time limit commences as from the date of publication of the promotion. (See Conclusions of the Greek Council of State (1929-1959) p. 251).

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In the result, the present recourse fails as having been filed out of time and is hereby dismissed with no order as to costs.

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

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