

1979 November 15

[ΤΡΙΑΝΤΑΦΥΛΛΙΔΗΣ, Π.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MICHAËL VEIS AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMITTEE,

Respondent.

(Cases Nos. 34/79, 35/79, 36/79,
37/79, 40/79, 41/79, 42/79, 43/79,
44/79, 45/79).

5 *Stay of execution pending appeal—Revisional Jurisdiction case under Article 146 of the Constitution—Judgment in—Stay of execution pending appeal can be ordered under rules 18 and 19 of Order 35 of the Civil Procedure Rules applicable by virtue of rule 3 of the Appeals (Revisional Jurisdiction) Rules of Court of the Supreme Court, 1964—Section 11(2) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33/64)—Cf. the corresponding position in Greece.*

10 By means of a judgment delivered on July 30, 1979 the Court annulled the *sub judice* decision of the respondent Committee to interdict all the applicants as from November 11, 1978 and, in the exercise of its powers under rule 19 of the Supreme Constitutional Court Rules and section 47 of the Courts of Justice Law, 1960, ordered a stay of execution of its judgment for the period
15 of six weeks “during which an appeal may be made against it, so as to preserve the existing position while both sides will be considering such an eventuality”.

20 On August 21, 1979, counsel for the respondent Committee filed an appeal against the above judgment, which was fixed for hearing on December 3, 1979, and on September 6, 1979, he filed an application for an order staying the execution of the said judgment till the determination of the appeal.

Counsel for the applicants submitted that a judgment given in proceedings under Article 146 of the Constitution cannot be stayed either under the said rule 19 or under the said section 47 of Law 14/60; and that, moreover, it was not possible to be stayed under rules 18* and 19* of Order 35 of the Civil Procedure Rules because these Rules are not operative in relation to Revisional Jurisdiction Appeals in view of the nature of the proceedings under Article 146 of the Constitution. 5

Held, (after deciding not to pronounce, at this stage, on the issue whether the judgment could be stayed under r. 19 of the Supreme Constitutional Court Rules or under section 47 of Law 14/60 because, possibly, such issue might be raised and argued during the hearing of the appeal), that by virtue of the provisions of section 11(2) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33/64), there has been created sui generis first instance and appellate competences of this Court in revisional jurisdiction cases under Article 146 of the Constitution; that in view of the nature of such competences (see, inter alia, The Republic v. Vassiliades (1967) 3 C.L.R. 82 at p. 88) the position here is, in this respect, different from the corresponding position in Greece where, apparently, there cannot be ordered a stay of execution of decisions of the Council of State or of Administrative Courts; and that, consequently, there is no valid reason for not applying, mutatis mutandis, rules 18 and 19 of Order 35 of the Civil Procedure Rules in relation to Revisional Jurisdiction Appeals, as envisaged by means of rule 3 of the Appeals (Revisional Jurisdiction) Rules of Court of the Supreme Court, 1964. 10 15 20 25

(2) That as regards the applicants against whom the relevant disciplinary proceedings are still pending this Court, in the exercise of its relevant discretionary powers under the said rules 18 and 19 of Order 35, and having paid due regard to the principles applicable to the matter of stay of execution pending appeal, it has decided, for the reasons given in its judgment of July 30, 1979, and for which it, initially, stayed the execution of such judgment for a period of six weeks, to grant a further stay of execution of the said judgment until the determination of the appeal which has been made against it. 30 35

Application for stay of execution granted.

* Quoted at p. 543 *post*.

Cases referred to:

- Veis and Others v. The Republic* (1979) 3 C.L.R. 390;
Katarina Shipping Inc. v. The Cargo on board the Ship "Poly"
 (1978) 1 C.L.R. 355, 360, 361;
- 5 *Republic v. Vassiliades* (1967) 3 C.L.R. 82 at p. 88;
Pikis v. The Republic (1968) 3 C.L.R. 303 at p. 305;
Republic v. Georghiades (1972) 3 C.L.R. 594, at pp. 644, 690.

Application.

10 Application by the respondent for an order staying the execution of the judgment given on the 30th July, 1979, whereby the decision of the respondent to interdict the applicants was annulled, till the determination of the appeal filed by respondent against the above judgment.

15 E. *Markidou* (Mrs.) for applicants in cases 34/79, 35/79, 36/79, 37/79, 43/79, 44/79, and with *P. Angelides* for applicant in case 42/79.

A. *Markides*, for applicants in cases 40/79 and 41/79.

L. *Papaphilippou* with A. *Petoufas* for applicant in case 45/79.

20 A.S. *Angelides*, for the respondent.

Cur. adv. vult.

25 TRIANTAFYLIDES P. read the following decision. On July 30, 1979, when I delivered a judgment in the present cases (see *Veis and Others v. The Republic*, (1979) 3 C.L.R. 390) by means of which I annulled the *sub judice* decision of the respondent Committee to interdict all the applicants as from November 11, 1978, I ordered a stay of execution of the said judgment and I stated, in this connection, the following (at pp. 416-417):-

30 "Normally, this judgment, by virtue of which the interdictions of the applicants have been annulled; would take effect immediately as from today; but, in view of the nature and importance, from the point of view of public interest, of the grounds on which the interdictions of the applicants have been annulled, which entail the interpretation and application of basic provisions of Law 3/77 and Law 57/78, which have been specially enacted in order to ensure the purge from the public services of persons found guilty of disciplinary offences under Law 3/77, I have decided to

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take the exceptional course of staying, in the exercise of my powers under rule 19 of the Supreme Constitutional Court Rules, as well as under section 47 of the Courts of Justice Law, 1960 (Law 14/60), the execution of this judgment for the period of six weeks during which an appeal may be made against it, so as to preserve the existing position while both sides will be considering such an eventuality.” 5

Counsel for the respondent Committee filed on August 21, 1979, an appeal, Revisional Jurisdiction Appeal 216, against my said judgment of July 30, 1979, which is fixed for hearing on December 3, 1979. 10

Then, on September 6, 1979, counsel for the respondent filed an application by means of which, as it was amended on September 10, 1979, he seeks an order staying the execution of the aforementioned judgment which was delivered on July 30, 1979, till the determination of the said Revisional Jurisdiction Appeal 216. 15

After hearing arguments of counsel I made, on September 10, 1979, the following interim order:- 20

“The application for further stay of execution of the judgment which I have delivered in these cases on July 30, 1979, is refused in so far as case 40/79 is concerned, for reasons which I will give later.

My decision in relation to the said application in so far as it relates to cases 34/79, 35/79, 36/79, 37/79, 41/79, 42/79, 43/79, 44/79, and 45/79 is reserved sine die. 25

I have decided, at the request of counsel for the Educational Service Committee, to order, as an interim measure, that pending the delivery of my reserved, as above, decision there shall continue the stay of execution which I have ordered when I delivered my judgment on July 30, 1979, but this continuation of the stay of execution shall be on condition that, and for so long as, all the affected applicants, except the applicant in 44/79, receive, as from September 11, 1979, one quarter of their total emoluments in addition to the one half of their emoluments which they are receiving on the basis of the decision by means of which they were interdicted.” 30 35

The reasons for which I refused, on September 10, 1979, a further stay of execution in so far as case 40/79 is concerned are the following:-

5 The relevant disciplinary proceedings against the applicant in that case have, in the meantime, been concluded and one half of his emoluments of which he was deprived while he was interdicted, that is one quarter of his total emoluments, have already been paid to him; and as he was not dismissed from the educational service, but was only demoted by way of disciplinary
10 punishment, he has, after the conclusion of the disciplinary proceedings against him, returned to his post and resumed his duties. Since the decision to interdict him was annulled by the judgment of July 30, 1979, he has become entitled to be paid the remaining one quarter of his total emoluments of which he
15 has been deprived due to his interdiction.

In the circumstances, it could not be said that further stay of execution of the judgment of July 30, 1979, was necessary to prevent the applicant in the case in question from resuming his duties, and there existed no adequate reason for which to
20 prevent, by means of further stay of execution, the payment to him of the aforementioned remaining one quarter of his total emoluments of which he was deprived by his interdiction.

In case Revisional Jurisdiction Appeal 216 is allowed, and the annulment of his interdiction is set aside, the said one quarter
25 of his total emoluments can, after having been paid to him in due course, be deducted once again from future emoluments of his.

The applicant in case 44/79 has, in the meantime, been punished disciplinarily by means of compulsory retirement
30 from the service. At the conclusion of the disciplinary proceedings against him one half of the emoluments of which he was deprived while he was interdicted, that is one quarter of his total emoluments, was paid to him, and because of the annulment of his interdiction by means of the judgment delivered,
35 as aforesaid, on July 30, 1979, he has, also, become entitled to be paid the remaining one quarter of his total emoluments of which he was deprived by his interdiction.

Since, however, unlike the applicant in case 40/79, the applicant in case 44/79 is no longer in the educational service,

but he was compulsorily retired, and he is not receiving any emoluments as an educationalist, the course of deducting from future emoluments of his any amount paid in respect of the remaining one quarter of his total emoluments, of which he was deprived due to his interdiction and to which he has become entitled by virtue of the annulment of such interdiction on July 30, 1979, is obviously not feasible; consequently, I am of the opinion that I should make an order staying the execution, in relation to him, of the judgment which was delivered on July 30, 1979, until the determination of Revisional Jurisdiction Appeal 216.

As regards the applicants in cases 34/79, 35/79, 36/79, 37/79, 41/79, 42/79, 43/79 and 45/79, against whom, as far as I know on the basis of the material before me, the relevant disciplinary proceedings are still pending, I have decided, for the reasons given in my judgment of July 30, 1979, and for which I, initially, stayed the execution of such judgment for a period of six weeks, to grant a further stay of execution of the said judgment until the determination of Revisional Jurisdiction Appeal 216, which has been made against it; and, thus, till then these applicants will, of course, not resume the performance of their duties.

In adopting the above course, in the exercise of my relevant discretionary powers, I have paid due regard to the principles applicable to the matter of stay of execution pending appeal, as such principles are to be found summarized in *Katarina Shipping Inc. v. The cargo on board the ship "Poly"*, (1978) 1 C.L.R. 355, 360, 361, and in *The Supreme Court Practice* (1979), in England, vol. 1, pp. 909, 910.

When, initially, on July 30, 1979, I stayed the execution of the judgment which I delivered on that date, I did so in the exercise of the powers provided under rule 19 of the Supreme Constitutional Court Rules, as well as under section 47 of the Courts of Justice Law, 1960 (Law 14/60). As counsel appearing for the applicants submitted that a judgment given in proceedings under Article 146, such as in the present cases, cannot be stayed either under the aforementioned rule 19 or under the said section 47 of Law 14/60 and, as, possibly, this issue may be raised and argued during the hearing of Revisional Jurisdiction Appeal 216, I do not consider that it is proper for me to pronounce on such issue, at this stage, and thus appear to be anticipating

or influencing, in any way, its eventual determination by my learned brother Judges of this Court who will deal with the said Revisional Jurisdiction Appeal.

5 In ordering, as was stated above, a stay of execution of my judgment of July 30, 1979, until the determination of the aforementioned Revisional Jurisdiction Appeal, I do not have to resort to the powers granted by means of rule 19 of the Supreme Constitutional Court Rules or of section 47 of Law 14/60, as it suffices to exercise, in this connection, the powers
10 vested in me under rules 18 and 19 of Order 35 of the Civil Procedure Rules, which read as follows:-

“ 18. An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from except so far as the Court appealed from or the Court of Appeal,
15 or a Judge of either Court, may order; and no intermediate act or proceeding shall be invalidated, except so far as the Court appealed from may direct. Before any order staying execution is entered, the person obtaining the order shall furnish such security (if any) as may have been directed. If the security is to be given by means of a bond,
20 the bond shall be made to the party in whose favour the decision under appeal was given.

19. Wherever under these rules an application may be made either to the Court below or to the Court of Appeal,
25 or to a Judge of either Court, it shall be made in the first instance to the Court or Judge below.”

The said rules are applicable to the present proceedings by virtue of rule 3 of the Appeals (Revisional Jurisdiction) Rules of Court of the Supreme Court, 1964 (see No. 2 in the Second
30 Supplement to the Official Gazette of the Republic of November 19, 1964).

I cannot accept the submission of counsel for the applicants that once judgment has been delivered in proceedings under Article 146 of the Constitution annulling the *sub judice*
35 administrative decision, as it has happened in the present instance by means of my judgment of July 30, 1979, it is not possible to stay, pending the determination of an appeal against it, the execution of such judgment under rules 18 and 19 of Order 35 of the Civil Procedure Rules, because, allegedly, these rules

are not operative in relation to Revisional Jurisdiction Appeals in view of the nature of the proceedings under Article 146 of the Constitution.

I am well aware of the special nature of recourses under the aforesaid Article 146, such as the present cases, and, also, my attention has been drawn to the fact that, apparently, in Greece there cannot be ordered the stay of execution of decisions of the Council of State or of Administrative Courts (see, 'Αποφάσεις τῶν Ἐπιτροπῶν Ἀναστολῶν παρὰ τῷ Συμβουλίῳ Ἐπικρατείας τῶν ἐτῶν 1963-1970, "Decisions of Committees for Stay of Execution at the Council of State", p.p. 42,54).

But, by virtue of the provisions of section 11(2) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33/64), there has been created sui generis first instance and appellate competences of this Court in revisional jurisdiction cases under the said Article 146 of the Constitution, and in view of the nature of such competences, as it has been explained in, *inter alia*, *The Republic v. Vassiliades*, (1967) 3 C.L.R. 82, 88, *Pikis v. The Republic*, (1968) 3 C.L.R. 303, 305 and *The Republic v. Georgiades*, (1972) 3 C.L.R. 594, 644, 690, I am of the opinion that the position here is, in this respect, different from the corresponding position in Greece; consequently, there is no valid reason for not applying, mutatis mutandis, rules 18 and 19 of Order 35 of the Civil Procedure Rules in relation to Revisional Jurisdiction Appeals, as envisaged by means of rule 3 of the Appeals (Revisional Jurisdiction) Rules of Court of the Supreme Court, 1964.

So, in the exercise of my powers under the said rules 18 and 19, I have decided, as already stated in this Decision, to stay the execution of the judgment which I have delivered on July 30, 1979, until the determination of Revisional Jurisdiction Appeal 216, which has been made against it; as, however, explained earlier such stay does not affect case 40/79.

It is ordered, further, that the stay of execution is granted on condition that, and for so long as, all the applicants in these cases who are affected by it, except the applicant in case 44/79, will receive, as from September 11, 1979, when the stay of execution initially ordered by me on July 30, 1979, expired, one quarter of their total emoluments in addition to the one half of

their emoluments which they are receiving on the basis of the decision by means of which they were interdicted.

I have thought fit to impose the above condition because, for the time being, the applicants are successful litigants and they
5 cannot be treated, pending the determination of the aforementioned Revisional Jurisdiction Appeal, as if there did not exist at all the judgment of July 30, 1979, which has annulled the decision to interdict them.

The costs of these proceedings for stay of execution to be
10 costs in cause in the said Revisional Jurisdiction Appeal.

Application granted. Costs in cause.