

1980 December 18

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS AZINAS,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION.

Respondent.

(Case No. 175/80).

*Co-operative Development—Commissioner of Co-operative Development
—Power of interdiction—Lies with the Public Service Commission
under section 19 of the Interpretation Law, Cap. 1 notwithstanding
the absence of a provision for interdiction in the Co-operative
5 Producers and Consumers and Credit Establishments (Exercise
of Control) Communal Law, 1960 (Law 1/60 of the Greek Communal
Chamber) and in the Competence of the Greek Communal
Chamber (Transfer of Exercise) and Ministry of Education Law,
1965 (Law 12/65).*

10 The applicant in this recourse has been holding the post of
Commissioner of Co-Operative Development since the 2nd
December, 1960, when he was appointed to such post by the
Greek Communal Chamber under the provisions of the Co-
Operative Producers and Consumers and Credit Establishments
15 (Exercise of Control) Communal Law, 1960 (Law 1/60 of the
Greek Communal Chamber) and continued to hold such post
till the dissolution of the Greek Communal Chamber in 1965
and the enactment of the Competence of the Greek Communal
Chamber (Transfer of Exercise) and Ministry of Education
20 Law, 1965 (Law 12/65) which was a law “providing for the
transfer of the functions of the Greek Communal Chamber
and the establishment of a Ministry of Education”. After
the dissolution of the Greek Communal Chamber applicant
was, by virtue of the provisions of section 16(1)* of Law 12/65,

* Quoted at pp. 671-72 *post*.

transferred to the employment of the Republic and emplaced to the post of Commissioner of Co-Operative Development. He accepted such emplacement without protest or any reservation of rights and continued to exercise his duties as Commissioner of Co-Operative Development in the same way as prior to the enactment of Law 12/65. On June 6, 1980 he was notified by the respondent Commission that it was decided to interdict him from his post in view of the fact that criminal proceedings were pending against him concerning offences under the Criminal Code, Cap. 154 and the Co-operative Societies Law, Cap. 114. Hence this recourse.

Counsel for the applicant contended that the respondent Commission had no power to interdict the applicant in the absence of any provision for interdiction or dismissal under the Greek Communal Chamber Law, by virtue of which he was appointed, or the provisions of section 16 of Law 12/65 whereby the previous terms and conditions of service for employment of the applicant were preserved.

Held, that the absence of express provision in Greek Communal Chamber Law 1/60 or in section 16(6) of Law 12/65 for suspension or interdiction, does not make the applicant or any other person previously employed by the Greek Communal Chamber under section 4(1) and (2) of the said Law 1/60 immune of any disciplinary proceedings against them or irremovable from their posts because power for interdiction and suspension of such officers exists under the provisions of section 19 of the Interpretation Law, Cap. 1; that the applicant, having become a civil servant, under the provisions of section 16(1) of Law 12/65, is subject to the provisions of section 84 of the Public Service Law, 1967 (Law 33/67) by virtue of which there is power in the respondent Commission to interdict a civil servant; that, therefore, the respondent Commission had power to interdict the applicant; and accordingly his recourse must fail (*Azinas v. The Republic* (1980) 3 C.L.R. 510 *adopted*).

Application dismissed.

Cases referred to:

Azinas v. The Republic (1980) 3 C.L.R. 510;

Veis and Another v. The Republic (1979) 3 C.L.R. 390.

to him prior to the enactment of the Law. In this respect, section 16(2) of Law 12/65, provides as follows:—

“(2) Ἡ παρά τῆ Δημοκρατία ὑπηρεσία παντός τοιοῦτου προσώπου τελεῖ ὑπὸ τοὺς αὐτοὺς ὄρους ὑπηρεσίας οἷτινες ἴσχυον δι’ αὐτὸ πρὸ τῆς ἡμερομηνίας ταύτης:

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Νοεῖται ὅτι ἡ ἀντιμισθία τῆς θέσεως ἦν τὸ πρόσωπον τοῦτο κατεῖχε ὡς ἐμφαίνεται ἐν τῷ προϋπολογισμῷ τῆς Συνελεύσεως θεωρεῖται ὡς προσωπικὴ ἀντιμισθία τοῦ προσώπου τούτου.”

(“ (2) The service of any such person with the Republic shall be on the same conditions of service which were in force in respect of him before that date:

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Provided that the salary of the post held by such person as appearing in the last budget of the Chamber shall be deemed to be a personal salary of such person.”).

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According to the facts set out in the application which have not been disputed, applicant continued to exercise his duties as Commissioner of Co-operative Development in the same way as prior to the enactment of Law 12/65 till 28.12.1967 when he was emplaced to the same post under the provisions of section 16(1) of Law 12/65. There is no allegation by the applicant that he accepted such emplacement under protest or with any reservation of rights. On the facts before me, it is clear that the applicant accepted such emplacement without any reservation and continued carrying on the duties attached to such post.

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Applicant continued holding the said post till the 6th of June, 1980 when he was notified by the respondent Commission by letter dated 6.6.1980 of its decision to interdict him from his post as from such date, in view of the fact that criminal proceedings were pending against him concerning offences under the Criminal Law, Cap. 154 and the Co-operative Societies Law, Cap. 114. The present recourse is directed against such interdiction.

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Applicant was at the same time holding the post of the Registrar of the Greek Co-operative Societies since 9.3.1961, to which he was appointed by the Council of Ministers under the provisions of the Co-operative Societies Law, Cap. 114,

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as amended by Law 28/59. His position as Registrar of the Co-operative Societies is not connected with the present recourse and, therefore, I find it unnecessary to make any further mention in this respect other than that he was also interdicted from
5 such post on the same grounds as in the present case and his interdiction was the subject matter of another recourse before me (Case No. 174/80 *Azinas and The Republic*) in which judgment has been delivered and to which judgment reference will be made in the course of this judgment.

10 The present recourse is based on the following grounds of law which are set out in the application:—

“1. There is a legislative lacuna as to which is the competent organ to interdict applicant from the post of Commissioner of Co-operative Development.

15 2. In Articles 86–108 of the Constitution there was no provision for interdiction of the Commissioner of Co-operative Development nor in any Law passed by the Greek Communal Chamber regarding Co-operatism.

20 3. When the Greek Communal Chamber was dissolved and Law 12/65 was passed, the Constitutionality of which is challenged provision was made in section 3(3)(c) of the Law that on matters relating to the exercise of control over producers and consumers Co-operative Societies as well as Credit Societies, the administrative powers
25 vested in the chamber are delegated to the Minister of Commerce and Industry.

4. The Public Service Commission is not a competent organ to direct the interdiction of applicant because his status is sui generis.

30 5.(a) The applicant never in law became a public officer by virtue of his emplacement under section 16(1) of Law 12/65 but on the contrary the original terms and conditions of his service were retained.

35 (b) Since in the original terms and conditions of his service under the Communal Chamber there was no power to interdict, such power cannot be exercised by the Public Service Commission.”

By its opposition the respondent Commission alleges that

the decision was lawfully taken relying on the facts and circumstances of the case and in the proper exercise of the discretionary power vested in the respondent Commission. The following additional facts are set out in the opposition which have not been contested:-

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The Minister of Commerce and Industry, by letter dated 5th June, 1980 addressed to the Chairman of the Public Service Commission to which a copy of a note of the Attorney-General dated 4.6.1980 was attached, brought to the notice of the respondent Commission that criminal proceedings were to be instituted against the applicant and that the respondent Commission could take any action it might consider necessary under section 84 of the Public Service Law, 1967 (Law 33/67). By a second letter of the same date, the Minister informed the Chairman of the Public Service Commission that the Council of Ministers at their meeting of the same day, decided to interdict the applicant from his post as Registrar of Co-operative Societies. Also, the Attorney-General of the Republic by a letter dated the 5th June, 1980 advised the respondent Commission that as soon as the fact that criminal proceedings are pending against any civil servant was brought to the knowledge of the respondent Commission, the respondent Commission could, in the exercise of its discretionary powers, interdict such servant, if the public interest so required and provided that all necessary facts had been put before the respondent Commission for the exercise of such power.

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The respondent Commission after considering carefully the facts contained in the note of the Attorney-General which was attached to the letter of the Minister of Commerce and Industry dated the 5th June, 1980, in which details were given as to the investigation of criminal offences against the applicant under the Criminal Code, Cap. 154 and the Co-operative Societies Law, Cap. 114, reached to conclusion that as a matter of public interest the applicant should be interdicted and decided to interdict him pending the final determination of the criminal proceedings. At the same time the respondent Commission decided to approve payment to the applicant of half of his emoluments during the period of his interdiction. Copy of the minutes of the said decision, appears as *exhibit 4* attached to the opposition.

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Counsel for applicant in addressing the Court submitted

that the respondent Commission had no competence and/or jurisdiction to interdict the applicant and hence its decision to interdict him must be declared null and void for the following reasons:-

- 5 (a) There is a legislative lacuna as to which is the competent organ to interdict the applicant from the post of Commissioner of Co-operative Development.
- (b) Upto the time when Law 13/65 was promulgated and published in the Gazette all matters relating to Co-operative Societies were governed by:
- 10 (i) The Co-operative Societies Law, Cap. 114,
(ii) Articles 86 and 108 of the Constitution and
(iii) All laws passed by the Greek Communal Chamber and particularly Laws 1/60, 2/60, 3/60 and 4/60.
- 15 (c) Although there was provision for the appointment of a Commissioner of Co-operative Development in Law 1/60 (section 4) and applicant was so appointed by letter of the Chairman of Greek Communal Chambers dated 2.12.1960 (*exhibit 2* in Recourse 174/80) yet no such provision exists anywhere either
- 20 for the termination of his services or for interdiction.
- (d) In the absence of such legislative provision the Court cannot fill the lacuna by correcting a glaring omission in the legislation (Halsbury's Laws of England, 3rd
- 25 edition, Vol. 36, paras 584, page 353 at page 358).

Counsel for the applicant further submitted that sections 19 and 20 of the Interpretation Law, cannot cure the situation because the organ which appointed applicant to the post of Commissioner of Co-operative Development does not exist

30 any more and no other organ can in law exercise such authority. He further contended that after the enactment of Law 12/65, provision was made by section 16 for the employment in the public service of all persons employed as members of the staff of the offices of the Greek Communal Chamber subject to

35 the same terms and conditions of service which they enjoyed prior to such employment.

Finally, counsel for applicant submitted that the legal status

of the applicant was *sui generis* and that since no provision existed prior to the enactment of Law 12/65 either for the termination of applicant's services or for his interdiction, the decision of the respondent Commission to interdict him is manifestly illegal and was taken in excess of its powers and that the power given to the Minister of Commerce and Industry under section 3(3)(b) of Law 12/65 does not cover the present case. 5

Counsel for the respondent Commission in his address submitted that even if there is no express provision in the Co-operative Societies Law, Cap. 114 and all laws passed by the Greek Communal Chamber, the respondent Commission had full competence to interdict the applicant by virtue of the provisions of sections 19 and 20 of the Interpretation Law, read in conjunction with Law 1/60 of the Greek Communal Chamber and Law 12/65. 10 15

Before considering the legal issue, I find it necessary to deal briefly with the creation and subsequent history of the post of the Registrar of Co-operative Development. Under the provisions of Articles 87 and 89 of the Constitution, all matters relating to the exercise of the authority of control of Producers' and Consumers' Co-operative and Credit Establishments, was expressly reserved within the competence of the Communal Chambers created under Article 86 of the Constitution. In the exercise of such powers, Law 1/60 was enacted by the Greek Communal Chamber. By the aforesaid Law, the post of the Commissioner of Co-operative Development was created for the purpose of exercising the powers and duties vested in such post by the said Law. Section 4(1) reads as follows:- 20 25

“4.-(1) ‘Η Συνέλευσις διορίζει αρμόδιον και κατάλληλον πρόσωπον ως Διοικητήν τῆς Συνεργατικῆς Ἀναπτύξεως ὅστις θὰ διευθύνῃ τὸ Γραφεῖον Συνεργατικῆς Ἀναπτύξεως και θὰ ἀσκῆ τὰς ἐξουσίας και καθήκοντα ἅτινα ἀνατίθενται εἰς αὐτὸν ὑπὸ τοῦ παρόντος κοινοτικοῦ νόμου”.

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(“4(1) The Chamber appoints a competent and suitable person as Commissioner of Co-Operative Development who will be in charge of the Department of Co-operative Development and will exercise the powers and duties which are assigned to him under this Communal Law”.) 35

There is no provision as to the termination of employment

of such officer or the exercise of any disciplinary powers over him and the definition of the "Commissioner" is given in section 2 as follows:-

5 "Διοικητής σημαίνει τὸ ὑπὸ τῆς Κοινοτικῆς Συνελεύσεως διοριζόμενον πρόσωπον πρὸς ἄσκησιν τῶν ὑπὸ τοῦ παρόντος νόμου προβλεπομένων ἐξουσιῶν καὶ καθηκόντων".

("Commissioner means the person appointed by the Communal Chamber to exercise the powers and duties provided by this Law").

10 It was in the exercise of these powers that applicant was appointed as Commissioner of Co-operative Development. In 1965 the Greek Communal Chamber was dissolved and in view of the fact that the exercise of the functions of such Chamber and its operation became impossible, Law 12/65 was enacted
15 making provision, amongst others, for the transfer of the exercise of the control of Co-operative Societies of Producers and Consumers and the Co-operative Credit Institutions to the Ministry of Commerce and Industry. (See section 3(3)(c) of Law 12/65).
20 Concerning the employees of the Greek Communal Chamber, provision was made under section 16 transferring them to the employment of the Government of the Republic. Section 16(1) provides as follows:-

25 "Τηρουμένων τῶν διατάξεων τῶν ἐδαφίων (4) καὶ (5), πᾶν πρόσωπον ὄπερ ἀμέσως πρὸ τῆς ἡμερομηνίας ἐνάρξεως ἰσχύος τοῦ παρόντος Νόμου ἐτέλει ἐν τῇ ὑπηρεσίᾳ τῆς Συνελεύσεως ὡς μέλος τοῦ προσωπικοῦ τῶν γραφείων αὐτῆς μεταφέρεται ἀπὸ τῆς ἡμερομηνίας ταύτης, εἰς τὴν ὑπηρεσίαν τῆς Δημοκρατίας καὶ εἶτα τοποθετεῖται ὑπὸ τῆς ἀρμοδίας ἀρχῆς τῆς Δημοκρατίας ἐν αὐτῇ ἐφ' ὅσον τοῦτο εἶναι πρακτικῶς δυνατόν, εἰς θέσιν αἱ λειτουργίαι τῆς ὁποίας εἶναι ἀνάλογοι πρὸς τὰς λειτουργίας τῆς κατεχομένης θέσεως ἐν τῇ ὑπηρεσίᾳ τῆς Συνελεύσεως".

35 ("16.-(1) Subject to the provisions of sub-sections (4) and (5), any person who, immediately before the date of the coming into operation of this Law, was in the service of the Chamber as a member of the staff of its offices shall be transferred, as from that date, to the service of the Republic and be thereafter posted by the appropriate authority of the Republic therein, if practically possible,

to a post the functions of which are comparable to the functions of the post held in the service of the Republic:

Provided that any such person shall, until he is posted under this subsection, continue to hold the post which he held immediately before the coming into operation of this Law").

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Sections 4 and 5 refer to the posts of educationalists and do not concern the present case. Further provision was made under section 16(2) to the effect that the previous employment of such employees was to be treated as continuing in the employment of the Republic without interruption and under subsection (6) of section 16, the following provision was included, concerning the terms of employment:-

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“Διὰ τοὺς σκοποὺς τοῦ παρόντος ἄρθρου, ὅροι ὑπηρεσίας’ περιλαμβάνουσι, ἐπιφερομένων τῶν ἀναγκαίων προσαρμογῶν συμφώνως πρὸς τὴν διὰ τοῦ παρόντος Νόμου δημιουργημένην διάρθρωσιν, τὰ ἀφορῶντα εἰς τὴν ἀντιμισθίαν, ἄδειαν, παῦσιν ἢ ἀποχώρησιν, καὶ τὰ ἐπὶ ἀποχώρησει χορηγούμενα ὠφελήματα.”

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(“For the purposes of this section, ‘conditions of service’ include, with the necessary adaptations to the organizational structure established by this Law, matters relating to the salary, leave, dismissal or retirement and the benefits granted on retirement”).

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The legal issue in the present case may be briefly summarized as mentioned in the address of counsel for applicant, as follows:-

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Whether the respondent Commission had power to interdict the applicant in the absence of any provision for interdiction or dismissal under the Greek Communal Chamber Laws by virtue of which applicant was appointed, or the provisions of section 16 of Law 12/65, whereby the previous terms and conditions of service for employment of the applicant were preserved.

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It was the submission of counsel for applicant that the respondent Commission did not have such power over the applicant in the absence of any express provision in Law 1/60 (of the Greek Communal Chamber) for termination of appoint-

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ment or interdiction and that this position in this respect remained unchanged under the provisions of Law 12/65, whereby the terms of his previous employment were preserved.

I find myself unable to agree with the submission of counsel
 5 for the applicant. The absence of express provision in Law
 1/60 (of the Greek Communal Chamber) or in section 16(6)
 of Law 12/65 for suspension or interdiction, does not make
 the applicant or any other person previously employed by the
 Greek Communal Chamber under section 4(1) and section
 10 4(2) of Law 1/60 (of the Greek Communal Chamber) immune
 of any disciplinary proceedings against them or irremovable
 from their posts. The said Laws must be read in conjunction
 with the Interpretation Law, Cap. 1, and in particular with
 section 19 which provides as follows:—

15 “Where any Law confers upon any person or public authority
 power to make appointments to any office or place the
 power shall be construed as including the power to deter-
 mine any such appointment and to suspend any person
 appointed, and to re-appoint or reinstate him, and to
 20 appoint another person temporarily in the place of any
 person so suspended, and to appoint another person to
 fill any vacancy in the office or place arising from any
 other cause:

25 Provided that where the power of the person or public
 authority to make any such appointment is only exercisable
 upon the recommendation or subject to the approval,
 consent or concurrence of some other person or authority
 the power of determination or suspension shall, unless
 the contrary intention appears, only be exercisable upon
 30 the recommendation or subject to the approval, consent
 or concurrence of that other person or authority”.

I had to deal with a similar argument in Case No. 174/80
*Azinas and The Republic** which was a recourse by the same
 applicant in respect of his interdiction from the post of Registrar
 35 of Co-operative Societies in which similar arguments were
 advanced. I adopt my finding in that case to the effect that
 the absence of a provision in a specific law for the suspension
 or interdiction of a civil servant does not make such servant
 or officer immune but such powers do exist under the provisions

* Reported in (1980) 3 C.L.R. 510.

of the Interpretation Law, Cap. 1. The applicant, having become a civil servant under the provisions of section 16(1) of Law 12/65, is subject to the provisions of the Public Service Law, 1967 (Law 33/67) under which (section 84), there is power in the respondent Commission to interdict a civil servant. Section 84(1) provides as follows:- 5

“Ἐὰν ἔρευνα πειθαρχικοῦ ἀδικήματος διαταχθῆ, δυνάμει τῶν διατάξεων τῆς παραγράφου (β) τοῦ ἄρθρου 80, κατὰ τινος ὑπαλλήλου ἢ ἐπὶ τῇ ἐνάρξει ἀστυνομικῆς ἐρεύνης ἐπὶ σκοπῶ ποινικῆς διώξεως κατ’ αὐτοῦ ἢ Ἐπιτροπῇ δύναται, ἔὰν τὸ δημόσιον συμφέρον ἀπαιτῇ τοῦτο, νὰ θέσῃ εἰς διαθεσιμότητα τὸν ὑπάλληλον διαρκούσης τῆς ἐρεύνης καὶ μέχρι τῆς τελικῆς συμπληρώσεως τῆς ὑποθέσεως”. 10

(“84.-(1) When an investigation of a disciplinary offence is directed under the provisions of paragraph (b) of section 80 against an officer or on the commencement of a police investigation with the object of criminal proceedings against him, the Commission may, if public interest so requires, interdict the officer from duty pending the investigation and until the final disposal of the case”). 15 20

As to the difference between “διαθεσιμότης” and “ἀργία” under the Greek Administrative Law and that in Cyprus “διαθεσιμότης” (interdiction) corresponds to “δυσητική ἀργία” (“discretionary interdiction”) of the Greek Administrative Law, I wish to adopt what I have said in Case No. 174/80 *Azinas and The Republic* (supra) in which reference is made to *Veis and another v. The Republic*, (1979) 3 C.L.R. 390 which clarifies the distinction in this respect between the Greek Administrative Law and our Law. 25

I, therefore, find that the respondent Commission had power to interdict the applicant, having been satisfied from the facts before it that criminal proceedings were to be instituted against the applicant and after having considered such facts. 30

For the aforesaid reasons, this recourse fails and is hereby dismissed but taking into consideration all the circumstances of the case, I make no order for costs. 35

*Application dismissed.
No order as to costs.*