

1982 October 20

[HADJIANASTASSIOU, MALACHTOS AND DEMETRIADES, JJ.]

CHARALAMBOS KANTZIAIS,

Appellant-Plaintiff.

v.

MINISTRY OF INTERIOR, THROUGH THE
ATTORNEY-GENERAL OF THE REPUBLIC,

Respondent-Defendant.

(Civil Appeal No. 5921).

Damages—Wrongful administrative acts or omissions—Damage resulting therefrom—Cannot be pursued except in accordance with Article 146.6 of the Constitution—And after the nullification of an act or omission by the Supreme Court—Withholding leave payments to appellant after his interdiction—Amounts to administrative act or omission correctness of which can only be tested before the Supreme Court in the exercise of its revisional jurisdiction—And an action for damages before the District Court accrues thereafter if it is decided that act or omission a wrongful one. 5
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The applicant, a member of the Police Force, was criminally charged, while on leave prior to retirement, whereupon he was interdicted and leave payments were stopped. Following his disciplinary conviction he was dismissed from the service and the Police Authorities refused to make any payment to him after his interdiction. Hence an action by him before the District Court for the collection of the monies allegedly due to him for the last 166 days of the period of his leave prior to his retirement. 15

Upon appeal against the dismissal of his action for lack of jurisdiction: 20

Held, that damage or loss resulting from a wrongful administrative act or omission cannot be pursued except in accordance with Article 146.6; that the nullification of an act or omission is prerequisite to the sustainment of a civil action for damages flowing from such an act; that the propriety of the withholding 25

of leave payments to the appellant after his interdiction and generally the refusal to pay him the money in question in the context of the facts of this case amount to administrative acts or omissions, the correctness of which can only be tested before the Supreme Court in the exercise of its revisional jurisdiction; that thereafter, if it is decided they were ill-founded a right for an action for damages may accrue; that, consequently, the proceedings before the District Court were misconceived, and the appeal must fail.

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Appeal dismissed.

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Cases referred to:

Holy See of Kitium and Municipal Council of Limassol, 1 R.S.C.C. 15;

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Hussein Ramadan of Limassol and The Electricity Authority of Cyprus and Another, 1 R.S.C.C. 49;

The Attorney-General of the Republic v. Andreas A. Markoullides and Another (1966) 1 C.L.R. 242.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Limassol (Artemis, D.J.) dated the 12th December, 1978, (Action No. 20/78) whereby his claim for the payment to him of his salary for the last 166 days of the period of his leave prior to retirement was dismissed.

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V. Vassiliades, for the appellant.

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A. Frangos, Senior Counsel of the Republic, with *Gl. HjiPetrou*, for the respondent.

Cur. adv. vult.

HADJIANASTASSIOU J. read the following judgment of the Court. Charalambos Kantziaris a member of the Police Force submitted, while criminal proceedings were pending against him, his resignation on 18th October, 1976, due to take effect on 9th September, 1977. His resignation was accepted. In accordance with Police Regulations he was entitled to 310 days leave so he went on leave prior to retirement on 4th November, 1976. On 28th March, 1977, while on leave Kantziaris was criminally charged whereupon he was interdicted and leave payments were stopped. The power to interdict is not, prima facie, according to regulation 39 of the Police Regulations limited to policemen in active service. A shortwhile later on 9th May, 1977, Kantziaris was sent to prison. Finally, on 23rd

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August, 1977, he was dismissed from the service in the context of disciplinary proceedings brought against him. The police authorities refused to make any payment to the appellant after his interdiction. The present proceedings were raised before the District Court for the collection of the monies allegedly due for the last 166 days of the period of his leave prior to the retirement. 5

The learned trial Judge dismissed the claim on the ground he had no jurisdiction to take cognizance of the dispute. In essence he treated the complaint and matters incidental thereto as measures of an administrative character amenable exclusively to the jurisdiction of the Supreme Court under Article 146.1. See *Holy See of Kitium and Municipal Council of Limassol*, 1 R.S.C.C. 15; see also *Hussein Ramadan of Limassol and The Electricity Authority of Cyprus and Another*, 1 R.S.C.C. 49. It is well settled that damage or loss resulting from a wrongful administrative act or omission cannot be pursued except in accordance with Article 146.6. See *The Attorney-General of the Republic v. Andreas A. Markoullides and Another* (1966) 1 C.L.R. 242. The nullification of an act or omission is prerequisite to the sustainment of a civil action for damages flowing from such an act. 10 15 20

In our judgment the propriety of the withholding of leave payments to the appellant after his interdiction and generally the refusal to pay him the money in question in the context of the facts of this case amount to administrative acts or omissions, the correctness of which can only be tested before the Supreme Court in the exercise of its revisional jurisdiction. Thereafter, if it is decided they were ill-founded a right for an action for damages may accrue. Consequently, the proceedings before the District Court were misconceived, so the appeal fails. 25 30

Appeal dismissed with no order as to costs.

Appeal dismissed. No order as to costs.