

1982 February 25

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PAGKIPRIOS ORGANOSIS ELLINON DIDASKALON,
LIMASSOL BRANCH AND OTHERS,

Applicants,

v.

REGISTRAR OF TRADE UNIONS,

Respondent.

(Case No. 486/81).

ANDREAS TSOUNTAS AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE REGISTRAR OF TRADE UNIONS,

Respondent.

(Case No. 500/81).

Provisional Order—Principles applicable—Flagrant illegality of an administrative act—A ground for granting a provisional order even if no irreparable damage was proved and even where serious obstacles will be caused to the Administration—Registrar of Trade Unions—Refusing to register newly elected members of Committee of Trade Union and directing election of new Committee—No provision in the Trade Unions Law, 1965 (Law 71/65) conferring on Registrar right to direct holding of new elections—Therefore Registrar's decision which refers to the holding of new elections flagrantly illegal—Provisional order suspending

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its effect granted—Rule 13 of the Supreme Constitutional Court Rules 1962.

The Registrar of Trade Unions refused to register the newly elected officers and/or the new members of the Committee of Management of P.O.E.D. organization and, also, directed the election of a new Committee of Management to be conducted by the old Committee of Management. The applicants in recourse 486/81 and the applicants in recourse 500/81, allegedly constituting the absolute majority of the lawfully existing Committee of Management of P.O.E.D. Organization, after challenging the validity of the above decisions of the Registrar of Trade Unions, by means of these recourses, they also, applied for provisional orders, under rule 13 of the Supreme Constitutional Court Rules, 1962, suspending the effect of that part of the sub judice decision whereby the respondent directed the election of a new Committee of Management and the effect of that part of the sub judice decision whereby respondent directed that the election of a new Committee will be conducted by the old Committee.

Counsel for applicants contended, inter alia, that the respondent had no right whatsoever under the Trade Unions Law, 1965 (Law 71/65) to declare new elections and to direct further that new elections should be held by the old Committee of Management; and Counsel for the respondents conceded that there was no specific provision in such law conferring upon the Registrar the right to declare any elections at all.

Held, that the flagrant illegality of an administrative act is a ground for granting a provisional order even if no irreparable damage was proved and even where serious obstacles would be caused to the administration; that the part of the sub judice decision of the respondent directing the election of a new Committee of Management was not based on any Law conferring on him such a right and this Court is not satisfied that such a right can be conferred upon him by necessary implication; that, therefore, the part of the sub judice decision, which refers to the holding of new elections, is flagrantly illegal as it was made without any authority and was not based on any law conferring such a right upon the respondent; accordingly provisional orders are made as applied in both applications.

Applications granted.

Cases referred to:

- Georghiades (No. 1) v. Republic* (1965) 3 C.L.R. 392 at pp. 394-395;
- 5 *C.T.C. Consultants Ltd. v. The Cyprus Tourism Organization* (1976) 3 C.L.R. 390 at p. 393;
- Aspri v. The Republic*, 4 R.S.C.C. 57;
- Frangos and Another v. Minister of Interior and Others* (1982) 3 C.L.R. 53;
- 10 *Sofocleous v. Republic* (1971) 3 C.L.R. 345;
- Papadopoulos v. Republic* (1975) 3 C.L.R. 89;
- Yerasimou v. Republic* (1978) 3 C.L.R. 36;
- Prokopiou and Others v. Republic* (1979) 3 C.L.R. 686;
- Michaelides v. Republic* (1980) 3 C.L.R. 430;
- Prodromou v. Republic* (1981) 3 C.L.R. 38;
- 15 *Soteriou v. Republic* (1981) 3 C.L.R. 70;
- Sofocleous v. Republic* (1981) 3 C.L.R. 360.

Applications for provisional orders.

20 Applications for provisional orders suspending the effect of administrative decisions of the Registrar of Trade Unions whereby he refused to register the new officers and/or new members of the Committee of Management of P.O.E.D. and he directed that the new elections of the said trade union for a new Committee of Management be conducted by the old Committee of Management.

- 25 *Chr. Pourghourides*, for applicants in Case No. 486/81.
- A. Markides* with *Chr. Hadjianastassiou*, for applicants in Case No. 500/81.
- M. Kyprianou*, Senior Counsel of the Republic, for the respondent.

30 *Cur. adv. vult.*

LORIS J. read the following decision. The present applications were submitted by applicants in Recourses No. 486/81 and 500/81 praying for provisional orders suspending the effect of administrative decisions of the Registrar of Trade Unions, as they

will be hereinafter referred to, pending the final determination of the respective recourses for annulment.

As both applications present common questions of Law and are based mainly on almost similar facts, they were heard together.

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The applications are made under r. 13 of the Supreme Constitutional Court Rules, 1962, which continue in force under s. 17 of the Courts of Justice (Miscellaneous Provisions) Law, 1964 (Law No. 33/64).

Rule 13 reads as follows:-

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“13.-(1) The Court, or in proceedings under Article 146 any two Judges acting in agreement, may, at any stage of the proceedings, either ex proprio motu or on the application of any party, make a provisional order, not disposing of the case on its merits, if the justice of the case so requires.

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(2) A provisional order made under this rule may, either on the ground of urgency or of other special circumstances, be made without notice and upon such terms as it may be deemed fit in the circumstances:

Provided that all parties affected by an order made under this paragraph shall be served forthwith with notice thereof so as to enable them to object to it and upon such an objection the Court, after hearing arguments by or on behalf of the parties concerned, may either discharge, vary or confirm such order under such terms as it may deem fit”.

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Rule 13 is now being applied subject to and in conjunction with s. 11 of Law 33/64 “with the result that a Judge of this Court, sitting alone, can deal with an application for a provisional order under the said r. 13”.

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(Vide *Cleanthis Georghiades (No. 1) and The Republic*, (1965) 3 C.L.R. 392, at pp. 394-395).

I consider it useful to deal at this stage briefly with the history of the present proceedings.

1. Case No. 486/81 was filed on the 18th day of December, 1981, on behalf of six applicants, the first one being P.O.E.D

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(Limassol Branch); this recourse is attacking the decision of the Registrar of Trade Unions which is appended to it (exhibit 2), and prays for the following relief:-

- 5 “(A) Declaration by the honourable Court that the decision of the Registrar of Trade Unions dated 2.12.1981 is null and void and of no legal effect whatsoever.
- (B) Declaration by the Court that the Registrar of Trade Unions wrongly refused to register the change of officers submitted to him by applicant No. 1.
- 10 (C) Declaration by the Court that Regulation 16 of the Trade Unions Regulations, 1968, is ultra vires the enabling Law, i.e. The Trade Unions Law of 1965 (Law No. 71/65).
- (D) Declaration by the Court that the Trade Unions’ Registrar is not legally entitled to intervene in matters connected with the election and/or change of officers of the applicant trade union by reason of the provisions of Law No. 71/65, Law 17/66 and Law 65/80.
- 15 (E) Declaration by the Court that applicants 2-6, both inclusive, are entitled to be registered in the register kept by the trade unions’ Registrar as the lawful officers of the Limassol Branch of P.O.E.D.
- 20 (F) Declaration by the Court that no administrative organ can declare void the elections of a trade union and such matter is exclusively a judicial function”.
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Simultaneously with the recourse the applicants filed the present application under O.13 of the Supreme Constitutional Court Rules praying for a provisional order as follows:-

- 30 “(a) A provisional order whereby the decision of the Registrar of Trade Unions for holding new elections is stayed until the determination of the recourse for annulment;
- (b) A provisional order whereby the decision of the Registrar of Trade Unions directing the previous Executive Committee to take office and proceed with elections
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is stayed until the determination of the recourse for annulment;

- (c) A provisional order that the honourable Court considers just and equitable under the circumstances of the case".

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2. Case No. 500/81 was filed on the 23rd day of December, 1981, on behalf of 21 applicants, allegedly "constituting the absolute majority of the lawfully existing Committee of Management of P.O.E.D. Organization" (vide paragraph 1 of the statement of facts), praying for:-

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"(A) Declaration of the Court that the administrative decision and/or act of the respondent, communicated to the General Secretary of P.O.E.D. by letter dated 2.12.1981, photocopy of which is attached as exhibit "A", and by virtue of which, inter alia, the respondent refused to register the new officers and/or the new members of the Committee of Management of P.O.E.D. is null and devoid of any legal effect".

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On the same day of the filing of this recourse the applicants filed the application in hand under 0.13 of the Supreme Constitutional Court Rules, praying as follows:-

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- "(i) Provisional order suspending the effect of that part of the sub-judice decision whereby the respondent directed the election of a new Committee of Management ('diikitikon symboulion') of the trade union known as P.O.E.D. until final determination of the above Application No. 500/81.

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- (ii) Provisional order suspending the effect of that part of the sub-judice decision whereby the respondent directed that the new election in the said trade union for a new Committee of Management will be conducted by the old Committee of Management".

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The making of a provisional order under r. 13 involves the exercise of judicial discretion on the basis of the circumstances of the particular case and in the light of the principles which should guide an administrative Court when dealing with such an application. (*C.T.C. Consultants Ltd. v. The Cyprus Tourism Organization*, (1976) 3 C.L.R. 390, at page 393).

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Such principles have been expounded and applied as early as 1962 in the case of *Aspri v. The Republic*, 4 R.S.C.C. 57, by the then Supreme Constitutional Court, and after the enactment of Law No. 33/64 by our Supreme Court commencing
 5 from the case of *Cleanthis Georghiades (No. 1) v. The Republic*, (1965) 3 C.L.R. 392, and in a great number of cases thereafter.

I shall endeavour to summarize very briefly such principles emphasizing at the same time that these general principles are subject to certain qualifications and exceptions:

10 The personal interest of the citizen has to be subjected to the general interest of the public; flagrant illegality and irreparable damage are necessary prerequisites to the grant of a provisional order which is to be decided independently of the merits of the main recourse. (*Sub-Inspector Frangos & Another v. the Minister of Interior and others* (1982) 3 C.L.R. 53).
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The principle that the flagrant illegality of an administrative act is a ground for granting a provisional order even if no irreparable damage will be caused, if it is not granted, and even where serious obstacles would be caused to the administration,
 20 was enunciated in the case of *Sophocleous v. The Republic* (1971) 3 C.L.R. 345. This principle is to be found also in the cases of *Papadopoulos v. The Republic*, (1975) 3 C.L.R. 89; *Yerassimou v. The Republic*, (1978) 3 C.L.R. 36; *Prokopiou & Others v. The Republic* (1979) 3 C.L.R. 686; *Michaelides v. The Republic*, (1980) 3 C.L.R. 430, and recently in the cases
 25 of *Prodromou v. The Republic*, (1981) 3 C.L.R. 38, *Soteriou v. The Republic*, (1981) 3 C.L.R. 70, and *Sofocleous v. The Republic*, (1981) 3 C.L.R. 360.

It was stressed though on several occasions that flagrant illegality is a ground to be approached with the utmost caution,
 30 as it may tantamount to disposing of the case on its merits, something discouraged by rule 13 of the Supreme Constitutional Court Rules, though this rule cannot be held as divesting this Court from being the watch-dog of legality. (Vide *Sophocleous v. The Republic*, (1971) 3 C.L.R. 345, at p. 353).
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As stated earlier on, the sub-judice decision of the respondent in both applications is contained in exhibit "A" attached to

Case No. 500/81 and exhibit 2 attached to Application No. 486/81. Both decisions are substantially the same.

The first three paragraphs in exhibit "A" and the first two paragraphs in exhibit 2 refer to the decision of the respondent not to register, pursuant to the provisions of s. 22 of the Trade Unions Law (No. 71/65), the change of officers who were elected in the 1981 elections.

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The last two paragraphs in both exhibits incorporate the decisions of the respondent to the effect that (a) new elections should be held, and (b) that such new elections should be held by the old Committee of Management.

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I must say that the first part of the decision of the respondent in respect of non-registering the new Committee of Management is expressed in very clear and unambiguous terms whilst the latter parts referred to above have been on both occasions expressed with some equivocation, although it was the stand taken throughout by the respondent that these latter statements of his, contained in the aforesaid exhibits, were part and parcel of his decision.

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The aforesaid decisions of the respondent were attacked by the applicants in both cases on the ground of flagrant illegality coupled with allegations that irreparable damage will be caused to them if no provisional order is made suspending that part of the sub-judice decision whereby the respondent directed the election of a new Committee of Management and that such new elections will be conducted by the old Committee of Management.

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It was very strenuously argued on behalf of the applicants that the decision of the respondent is flagrantly illegal mainly for three reasons:-

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- (1) The respondent was obliged to register the new Committee of Management which emanated from the elections of 1981 pursuant to the provisions of s. 22 of the Trade Unions Law. Section 22, it was argued, gives no discretion whatsoever to the Registrar of Trade Unions (the respondent) but, on the contrary, it contains a mandatory provision to register. Rule 16 of the Trade

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Unions Regulations of 1968, which confers a discretion on the respondent, is ultra vires the enabling Law.

5 (II) It was further argued that even if we were to accept for a moment that Regulation 16 of the Trade Union Regulations was not ultra vires, the respondent exercised such discretion wrongly and illegally. (Votes were declared void in contravention of the provisions of the regulations of the trade unions concerned, the irregularities—if any—did not affect the electoral result, the decision of the respondent was not duly reasoned, etc.)

10 (III) The respondent had no right whatsoever to declare new elections and to direct further that new elections should be held by the old Committee of Management.

15 On behalf of the respondent as regards Grounds (I) and (II) it was argued that regulation 16 of the Trade Union Regulations was intra vires the parent Law and that he has exercised such discretion reasonably and lawfully and that he was perfectly entitled to reach the decisions he did as all his acts were based on the regulations of the Trade Unions concerned and that his primary object was to protect such regulations from being

20 interfered with and/or abused.

As regards Ground III, it was conceded on behalf of the respondent that there is no specific provision in the Law conferring upon him the right to declare any elections at all. It was argued though on his behalf that in spite of the fact that there was no express provision in the relevant Law, the combined effect of ss. 7(1), 9, 10, 16(1)(b) and 18 (Rule 4 in the First Schedule of the Law) and ss 49 and 51 read together with the remaining sections of Law 71/65, rendered him the watch-

25 dog of the regulations of the trade unions and would give him such enabling right by implication of Law

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In support of this proposition the following passage was cited from *Craies on Statute Law*, 7th edition, at p 111.—

35 “If a statute is passed for the purpose of enabling something to be done, but omits to mention in terms some detail which is of great importance (if not actually essential) to the proper and effectual performance of the work which the Statute has in contemplation, the Courts are at liberty

to infer that the statute by implication empowers that detail to be carried out.....”

As regards Grounds I and II, I do not have to and I am not going to pronounce at this stage in deciding whether a provisional order should be granted or not. These grounds refer substantially to the merits of the recourse which should not be touched at this stage but I must say that Ground III gave me great anxiety and concern. This latter part of the decision of the respondent was not based on any Law conferring to him such a right and I am not satisfied that such a right can be conferred upon him by necessary implication. 5 10

Craies (supra) at p. 117 states clearly that “rights cannot be conferred by mere implication from the language used in a statute but there must be a clear and unequivocal enactment”, in order to confer such rights. 15

For all the above reasons I hold the view that the sub-judice decision of the respondent, which refers to the holding of new elections, is flagrantly illegal as it was made without any authority whatsoever and was not based on any Law conferring such a right upon the respondent. 20

As already stated in *Sofocleous v. The Republic*, (1971) 3 C.L.R. 345:-

“The flagrant illegality of an administrative act is a ground for granting a provisional order even if no irreparable damage was proved and even where serious obstacles would be caused to the administration”. 25

Having pronounced on the issue of flagrant illegality, I need not go further; provisional orders are accordingly made as applied in both applications.

Regarding costs, they should be applicants’ costs in cause. 30

Applications granted. Order for costs as above.