

1982 April 10

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SPYROS PLOUSSIOU,

Applicant.

v.

THE CENTRAL BANK OF CYPRUS,

Respondents.

(Cases Nos. 425/81 and 474/81).

Time within which to file a recourse—Article 146.3 of the Constitution —Appointments in the Central Bank—Applicant not informed by respondents of his non-selection but came to know about it from other sources—Onus and burden of establishing pre-conditions for the setting in motion of the time provisions of the above Article on the decision taking body—Said Article not envisaging knowledge of the administrative decision from any particular source—All that it requires is that applicant should have adequate knowledge of the decision—In case of doubt as to whether applicant had adequate knowledge such doubt has to be resolved in his favour—Knowledge that applicant had gained with regard to three of the appointments adequate—Recourse against these appointments not filed within 75 days of the date when applicant gained such knowledge—And therefore it is out of time—But not proved beyond doubt by respondents that applicant had adequate knowledge of one of the appointments—Recourse against such appointment within time.

The applicant, a senior officer of the Central Bank, was one of six candidates for promotion to the post of Assistant Manager in the Bank. On August 6, 1981 the Personnel Committee of the respondents decided to appoint the four interested parties to the above post. On November 17, 1981 applicant challenged the validity of the appointment of three of the interested parties

by means of Recourse No. 425/81 and on December 12, 1981 he challenged the validity of the appointment of the fourth interested party by means of recourse No. 474/81.

5 The respondents and the interested parties raised the preliminary objection that the recourses were filed out of time, that is, after the lapse of the 75-day period envisaged by Article 146.3* of the Constitution.

10 As applicant was not informed of his non-selection and the appointment of the interested parties by the respondents the court, in order to resolve the dispute concerning the date on which applicant gained knowledge of the appointments heard evidence which was, inter alia, to the effect that the appointments became common knowledge among the staff of the Bank one day after they were made and found:

- 15 (a) That applicant became aware of his non-selection and the appointment of at least three of the four interested parties, the latest within a fortnight from 6.8.1981, and
- 20 (b) That the position was less clear with regard to the appointment of one of the interested parties, and certainly applicant was aware of his appointment by 14.9.1981.

25 *Held*, that the onus and burden of establishing the pre-conditions for the setting in motion of the time provisions of Article 146.3 vest on the decision taking body; that Article 146.3 of the Constitution does not envisage knowledge of the administrative decision from any particular source; that all it requires is knowledge of the decision, certain enough to enable a party affected thereby to pursue his rights; that a party, an existing

30 legitimate interest of whom is prejudiced by the decision, is deemed to be in such a position as soon as he gains adequate knowledge of the decision itself; that adequate is that kind of knowledge that comprises every material aspect of the decision; that in case of doubt whether applicant received sufficient know-

* Article 146.3 provides as follows:

"146.3 Such a recourse shall be made within seventy-five days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse".

ledge such doubt has to be resolved in favour of the applicant; that the knowledge that applicant gained with regard to the appointment of at least three of the four interested parties, was adequate to enable him to pursue, if he chose, his legitimate interests allegedly prejudicially affected by the decision in question; that applicant failed to do so within the time provided by Article 146.3 of the Constitution in so far as three of the interested parties are concerned; that, therefore, the recourses in so far as they are directed against the appointment of these interested parties are out of time and must be dismissed; that it has not been proved beyond doubt by the respondents that similar knowledge came to the knowledge of the applicant with regard to the appointment of the fourth interested party; and that, therefore, the recourse in so far as it is directed against his appointment is not out of time.

Order accordingly.

Cases referred to:

Neophytou v. The Republic, 1964 C.L.R. 280 at p. 290;

Moran v. Republic, 1 R.S.C.C. 10;

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

Papaioannou v. Republic (1982) 3 C.L.R. 103.

Recourse.

Recourse against the decision of the respondent to appoint the interested parties to the post of Assistant Manager in the Central Bank in preference and instead of the applicant.

L. N. Clerides, for the applicant.

R. Gavrielides, Senior Counsel of the Republic, for the respondent.

P. Polyviou, for the interested parties.

Cur. adv. vult.

PIKIS J. read the following judgment. The applicant, a senior officer of the Central Bank, was one of six candidates for promotion to the four posts of Assistant Manager. An

assistant manager was due to be appointed in each of the four departments of the Bank. The remaining candidates were, like Mr. Ploussiou, senior officers of the Bank, namely-

1. S. Sofroniou,
2. Y. Iacovou,
3. I. Pashos,
4. K. Pagdatis and
5. S. Stavrou.

On 6th August, 1981, the Personnel Committee of the respondents met under the chairmanship of the Governor of the Bank, Mr. I. Stefani, in order to decide who should be appointed assistant managers, pursuant to the powers vested by the Central Bank of Cyprus Law, 48/63, and the regulations made thereunder in 1964 (not published in the Official Gazette). After purporting to evaluate the suitability of the candidates for the new post, they decided to appoint the three interested parties in Recourse No. 425/81, Mr. Y. Iacovou, Mr. K. Pagdatis and Mr. S. Stavrou, and Mr. I. Pashos, interested party in Recourse No. 474/81. The appointments were made on 6.8.1981 with effect from 7.8.1981.

On 17th November, 1981, the decision to appoint the interested parties in Recourse No. 425/81 was challenged and a declaration was sought that their appointments were null and void, of no legal effect and should, on that account, be annulled. About three weeks later, on 12.12.1981, the appointment of the fourth appointee, Mr. Pashos, was questioned on similar grounds, in Recourse No. 474/81.

The respondents and the interested parties opposed the applications on substantive and procedural grounds. They questioned, in the first place, the viability of the proceedings, contending the recourses were made out of time, that is, after the lapse of the 75-day period envisaged by Article 146.3 of the Constitution. On the application of the parties the justifiability of the cause in both applications was set down for preliminary determination in view of the mandatory nature of the provisions of para. 3 of Article 146 of the Constitution and the absence of any discretion to extend the time within which a recourse must be filed. It is in the interests of justice

that common questions of fact and law, raised in two or more recourses, be jointly tried because multiplicity of proceedings is avoided and expense saved. Also, it enables the Court to evaluate in one spell the viewpoints of all interested parties.

In order to resolve the dispute between the parties concerning the date on which applicant gained knowledge of the appointments, oral and documentary evidence was received at the request of the parties, to elucidate the factual issues relevant thereto. Oral evidence was given on the subject by three of the four interested parties, the applicant, two secretaries of the Bank, namely, Miss Stella Kaniklidou and Mrs. Stavroulla Papaioannou, and Mr. G. Michaelides, the general secretary of the Trade Union of Bank Employces (E.T.Y.K.). In addition, a number of documents were produced, tending to shed light on the issue in dispute. On any view of the evidence the averment of the applicant that knowledge of the appointments was received on 1.11.1981 is ill-founded, a fact acknowledged by he applicant himself.

The interested parties testified that their appointment became common knowledge among the staff of the Bank, all of whom are housed in the same building, the day following their appointment. The immediate assumption of their new duties could not but confirm any rumours that might have circulated about their promotion. It is common ground that applicant congratulated, in no ascertain terms, the three interested parties, but there is disagreement as to when this happened. Mr. Iacovou and Mr. Stavrou testified that applicant congratulated them on the first occasion they met, within about a week from the date of their appointment. Mr. Pashos alleged he was congratulated by the applicant soon after his return from leave on 19.8.1981, whereas Mrs. Papaioannou testified to serving cakes to employees of the Bank, including the applicant, on 20.8.1981, on the occasion of the promotion of Mr. Pashos. Applicant admitted, when he congratulated his colleagues, that he entertained no doubts about their appointment to the post of assistant manager, but put the dates of congratulations much later than those suggested by the interested parties, some time towards the end of September, 1981. The evidence of the applicant comes in conflict with the unchallenged testimony of Mr. Michaelides who testified that on 14.9.1981 the applicant, as well as himself, raised, in a meeting they had with the Minister

of Finance, the matter of the non promotion of the applicant and his allegedly superior claims to promotion as compared to the interested parties who were named in the course of the interview. This evidence, coupled with the arbitrary statement
5 in the recourse of 1.11.1981 as the date on which he acquired knowledge, casts serious doubts on the reliability of the recollections of the applicant on the subject.

The evidence of Miss Kaniklidou strongly suggests that by 21.8.1981 the applicant could not be in any reasonable doubt
10 as to the fact that Mr. Pashos, who previously held a position of equal status to applicant in the same department, had been promoted to assistant manager. Mr. Pashos presided over a committee meeting held on 21.8.1981 and the minutes of the committee circulated by Miss Kaniklidou the following day,
15 record Mr. Pashos as assistant manager.

Other evidence of documentary provenance likewise suggests that Mr. Ploussiou became acquainted with the decision to appoint the interested parties, earlier than he suggested (see
20 exhibits b, c and d). The applicant played down the effect of such evidence, putting forward, what I regard as a strange contention that officers of the Bank were loosely apt to use titles they did not possess.

Addressing the Court, learned counsel for the applicant felt constrained to concede that on any view of the evidence it must
25 be accepted as a fact that by 14.9.1981 applicant had gained knowledge of the appointments and nurtured a grievance for his non appointment sufficient to complain to the Minister of Finance. Consequently, unless we hold that respondents were under an express duty to communicate their decision to the
30 applicant and intimate their reasons as well, as a necessary prelude to the activation of the time provisions of Article 146.3, as submitted by counsel for the applicant, Recourse No. 474/81 was manifestly filed out of time.

The onus and burden of establishing the pre-conditions for
35 the setting in motion of the time provisions of Article 146.3, rest on the decision-taking body. This is dictated by the need that decisions of administrative bodies, affecting the rights and interests of the subject, should be made known, as well as the need to safeguard effectively the right of the citizen to challenge

decisions affecting his rights. At the end of the day, if the court is in any doubt whether applicant received sufficient knowledge to enable him to vindicate his rights through the legal process, such doubt must be resolved in favour of the applicant. (See *Costas Neophytou v. The Republic*, 1964 C.L.R. 280, 290). Else, a citizen would be penalised for sleeping on his rights while interfered with in his slumber. 5

FINDINGS:

Enough was said in the course of this judgment to indicate that applicant's recollection of events is inaccurate. The lapses are such as to entitle one to disregard his testimony as to the date on which he gained knowledge of the decision to appoint the interested parties as unreliable. In my judgment, there is overwhelming evidence, and I so find, that applicant became aware of— 10 15

- (a) his non selection, and
- (b) the appointment of at least three of the four interested parties to the post of assistant manager, the latest within a fortnight, from 6.8.1981.

The position is less clear with regard to Mr. Pagdatis. Certainly he was aware of his appointment by 14.9.1981. That in itself, does not make his recourse against his promotion time barred. One may legitimately infer that the subject of the promotions became common knowledge to the extent that applicant may be presumed to have come to know of it within a matter of days. Such inferences are strengthened by the finding that he became aware of the selection of the other three appointees. If I were required to resolve the issue on a balance of probabilities I would unhesitatingly hold that the balance heavily tips in favour of holding that he came to know of all four promotions shortly after 6.8.1981. But that is not the test. The test is whether I can decide affirmatively, beyond doubt, that applicant became aware of such appointments. It would be injudicious on the part of the court to relax the standard in any way, a course that would inevitably encourage decision-making bodies to disregard their moral duty as a matter of proper administration to apprise all parties likely to be affected by their decision of the decision taken. In my judgment, the respondents failed to discharge this stringent burden and, 20 25 30 35

therefore, I rule that the recourse against the promotion of Mr. Pagdatis is not out of time.

*THE KNOWLEDGE NECESSARY TO SET IN MOTION
THE TIME PROVISIONS OF ARTICLE 146.3:*

5 Article 146.3 of the Constitution postulates knowledge of the decision as a necessary prerequisite for setting in motion the machinery for judicial review of the decision. The aggrieved party must challenge a decision within 75 days, the constitutional period of limitation.

10 Contrary to the submission of Mr. Clerides, the reasoning behind the decision need not come to the knowledge of the party affected thereby for the 75-day period to begin to run. This was settled by a series of decisions given soon after the introduction of administrative law as a separate branch of
15 our legal system. (See *John Moran v. The Republic*, 1 R.S.C.C. 10; *The Holy See of Kitium v. Municipal Council of Limassol*, 1 R.S.C.C. 15). Recently, I had occasion to review the relevant principles of administrative law on the factual background necessary to activate the time provisions of Article 146.3, notably
20 in *Panayiotis Papaioannou v. The Republic* (1982) 3 C.L.R. 103.

Article 146.3 does not envisage knowledge from any particular source. All it requires is knowledge of the decision, certain enough to enable a party affected thereby to pursue his rights. A party, an existing legitimate interest of whom is prejudiced
25 by the decision, is deemed to be in such a position as soon as he gains adequate knowledge of the decision itself. Adequate is that kind of knowledge that comprises every material aspect of the decision.

Administrative law does not cast a duty on the authors of
30 administrative acts to communicate them to the persons affected thereby. Of course, whenever they omit to communicate their decision they take a risk, they infuse an element of uncertainty in the administrative process, inasmuch as their decision may come up for review long after it is taken, whenever a prejudiced party happens to gain knowledge of it. But it is a risk
35 they may take without offending administrative law. Even where notification is required by law, acquisition of knowledge

of the decision from any other quarter, suffices to put in motion the time provisions of Article 146.3. Only where the notification forms a component element of the administrative act itself, is notification a necessary pre-condition for the running of time under Article 146.3. I need not debate in these proceedings whether the law makes notification a mandatory prerequisite where, by virtue of the decision, vested rights are taken away. The matter does not arise for consideration and reserve judgment for an opportune future occasion. 5

Reverting to the facts of the case, the knowledge that applicant gained with regard to the promotions of at least three of the four interested parties, was adequate to enable him to pursue, if he chose, his legitimate interests allegedly prejudicially affected by the decision in question. That he did not do so within the time provided by Article 146.3, he has only himself to blame. As earlier mentioned, it has not been proved beyond doubt that similar knowledge came to him with regard to the promotion of the fourth interested party, namely Mr. Pagdatis. As a result, Recourse No. 474/81 must be dismissed as being out of time; also Recourse No. 425/81 is likewise dismissed in so far as it is directed against the promotion of Mr. Stavrou and Mr. Iacovou. 10 15 20

Counsel for the respondents and the interested parties state that they claim no costs. Consequently, I shall make no order as to costs. 25

Recourse No. 425/81 is fixed for hearing on the merits, regarding the promotion of Mr. Pagdatis, on 25.5.1982 at 9.30 a.m.

Order accordingly.