

1982 July 9

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MODESTOS PITSILLOS AND OTHERS,

*Applicants,*

v.

THE MUNICIPALITY OF NICOSIA,

*Respondents.*

(Case No. 61/80).

*Hawking—Prohibition of, by Municipal Corporation along a number of Streets in Nicosia—In exercise of powers under section 163 of the Municipal Corporations Law, Cap. 240 (as re-enacted)—Not unconstitutional as being contrary to Article 25.2 of the Constitution.*

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*Constitutional Law—Article 78.2 of the Constitution—Rendered inoperative because of the circumstances prevailing in this Country.*

*Constitutional Law—Written requests or complaints to competent public authorities—Omission to reply to them, as provided by Article 29 of the Constitution—Recourse relating to substance of the complaint—No redress for violation of Article 29 unless applicant suffers material detriment through such violation.*

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The applicants were licensed hawkers selling their goods along the streets of Nicosia. On the 27th December, 1979, the respondents, who are the Municipal Committee of Nicosia, decided to prohibit hawking of goods in a number of streets, avenues and squares of Nicosia and this decision of theirs was published in "Philelephtheros" daily newspaper on the 30th January, 1980. The decision published was in the form of an announcement in which the names of each street, square and avenue, where hawking was prohibited, were set out in detail. On the 6th February, 1980, and the 29th February, 1980, "the leader" of a so-called "Justice Party" wrote to the respondents

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complaining about their said decision. The respondents did not reply to these letters and on April 14, 1980, the applicants challenged the validity of the above decision by means of the above recourse.

5 Counsel for the applicants mainly contended:

- (a) That the sub judice decision was taken by virtue of bye-laws which are ultra vires the Municipal Corporations Law, Cap. 240, (as amended).
- 10 (b) That the Municipal Corporations Laws are unconstitutional as offending Article 78.2 of the Constitution which provides that for the adoption of such laws a separate simple majority of the Representatives elected by the Greek and the Turkish Communities respectively taking part in the vote is required.
- 15 (c) That the sub judice decision is unconstitutional as offending Article 25\* of the Constitution which safeguards the right of work.
- 20 (d) That the refusal of the respondents to reply to their complaints is unconstitutional as contravening Article 29 of the Constitution, which provides that an authority has to give reasons within a period of 30 days, if a request or complaint is made, with regard to a decision taken by it.

25 *Held*, (1) that the sub judice decision was taken in exercise of powers under the provisions of s. 163 of the Municipal Corporations Law, Cap. 240 (as re-enacted by section 8(2) of Law 64/64 and repealed and replaced by section 17 of Law 73/79) and not by virtue of any bye-law; accordingly contention (a) should fail.

30 (2) That it is well known that since the coming into force of the Constitution, many tragic events took place in this country, which rendered certain constitutional provisions inoperative; that considering the circumstances prevailing in this country at present, necessity renders inoperative Article  
35 78.2, which requires a separate simple majority of the Representatives elected by the Greek and Turkish Communities respectively taking part in the vote for the adoption of any law

\* Article 25 is quoted at p. 761 *post*.

relating to the Municipalities, otherwise we would have been led to absurd results; accordingly contention (b) should fail.

(3) That it is clear from the wording of Article 25.2 of the Constitution that the right to practise any profession or to carry on any occupation, trade or business is not an absolute one, but may be restricted as prescribed by law for the reasons referred to in the said Article; that the respondents, acting under the provisions of section 163 of Cap. 240, as amended by section 17 of Law 73/79, have a discretionary power to grant or not a hawking licence and they may prohibit or restrict hawking during certain hours or along certain streets situated within the municipal limits and, further, they may impose on the licence conditions as regards the time and the type of goods that can be hawked; that in the present case, the applicants are not prevented from hawking along the streets of Nicosia; that the respondents, by the sub judice decision, restricted hawking in a number of streets, squares and avenues where such hawking may hinder the smooth flow of traffic, cause annoyance and inconvenience to the public using the streets or may interfere with the safety and easy movement along them; that it is clear, therefore, that the respondents' decision was taken in the public interest, for the safety of the public and for the protection of the rights and liberties guaranteed by the Constitution to the public; accordingly contention (c) should fail.

(4) That since the applicants themselves never complained to the respondents for the sub judice decision; and that since they have come to the Court regarding the substance of their complaint and have not established that they have suffered material detriment through a violation of Article 29 the ground of annulment relating to this Article cannot succeed.

*Application dismissed.*

Cases referred to:

- Kontos v. Republic* (1974) 3 C.L.R. 112 at p. 124;  
*District Officer Nicosia v. Ioannides*, 3 R.S.C.C. 107 at p. 109;  
*Ioannides v. The Nicosia Municipality* (1968) 3 C.L.R. 551 at p. 554;  
*Sofocleous v. The Republic* (1974) 3 C.L.R. 63 at p. 70.

**Recourse.**

Recourse against the decision of the respondents prohibiting the hawking of goods along a number of streets and squares of Nicosia.

5        *E. Vrahimi (Mrs.)*, for the applicants.

*K. Michaelides*, for the respondents.

*Cur. adv. vult.*

10        DEMETRIADES J. read the following judgment. This is a recourse by 37 street hawkers, by which they pray for a declaration that -

- (a) the act and/or decision of the respondents taken on the 28th January, 1980, prohibiting the hawking of goods along a number of streets, avenues and squares of Nicosia, is null and void and of no legal effect,
- 15        (b) they have the right to work in Nicosia as hawkers as they used to do till the publication of the decision of the respondents, and
- 20        (c) the respondents had an obligation to decide on and/or reply to the complaints submitted by their representative, after the publication of the sub judge decision, contained in the letters sent to the respondents on the 6th February, 1980 and the 29th February, 1980.

The applicants base their recourse on the following grounds of law:

- 25        (1) That the respondents had acted under the Municipal bye-laws whilst they were ultra vires the Municipal Corporations Law, 1964 (Law 64/64) and/or the Municipal Corporations Law, Cap. 240, because the said laws do not give power of making bye-laws.
- 30        (2) The Municipal Corporations Laws 64/64 and 73/79 are unconstitutional as offending Article 28.2 of the Constitution which provides that for the adoption of such laws a separate simple majority of the Representatives elected by the Greek and the Turkish Communities respectively taking part in the vote is required.
- 35        (3) The sub judge decision is unconstitutional as offending

Article 25 of the Constitution which safeguards the right of work.

- (4) The refusal of the respondents to reply to the complaints of the applicants is unconstitutional as contravening Article 29 of the Constitution, and 5
- (5) the sub judge decision is unreasonable and unjust in that it deprives the applicants of their right to work and earn their income.

The facts of the case which are undisputed by the parties are: All applicants were licensed hawkers selling their goods along the streets of Nicosia. On the 27th December, 1979, the respondents, who are the Municipal Committee of Nicosia, decided to prohibit hawking of goods in a number of streets, avenues and squares of Nicosia and this decision of theirs was published in "Philelephtheros" daily newspaper on the 30th January, 1980. The decision published was in the form of an announcement in which the names of each street, square and avenue, where hawking was prohibited, were set out in detail. On the 6th February, 1980, and the 29th February, 1980, "the leader" of a so-called "Justice Party" wrote to the respondents complaining about their said decision. Though photocopies of these letters are attached to the recourse of the applicants, I do not intend to embody them in my judgment as, to a certain extent, their contents are defamatory and insulting. As it appears from the record, the above-mentioned letters were neither considered, nor answered by the respondents. 10 15 20 25

The applicants filed the present recourse on the 14th April, 1980.

It is the allegation of the respondents that the streets, squares and avenues where hawking was prohibited are traffic congested and that as a result hawking along them hinders the smooth flow of traffic, causes annoyance and inconvenience to persons using the streets, who are entitled to a safe and easy movement along them, is likely to cause accidents, and that the decision taken will free the streets, squares and avenues from slow moving vehicles and will make the traffic flow easier and safer. In other words, it is the allegation of the respondents that the decision was taken in the public interest for the public safety. 30 35

The above allegations of the respondents, though not expressly admitted by the applicants, were not challenged. On the contrary, it is the allegation of the applicants in their statement of facts that the respondents are by their decision preventing them from working in the market where there are usually people buying goods from hawkers.

I now come to the grounds of law on which the applicants base their recourse.

By ground (1), the applicants alleged that the sub judice decision was taken by virtue of bye-laws which are ultra vires Cap. 240, as re-enacted and later amended (see Laws 64/64, 15/66, 9/70, 47/70, 89/70, 87/72 and 73/79), as such Law does not give to the respondents power to enact bye-laws. The decision of the respondents was taken under section 163 of Cap. 240, as re-enacted by section 8(2) of Law 64/64 and repealed and replaced by section 17 of Law 73/79. This section, as amended, reads:

“163-(1) Οὐδὲν πρόσωπον δύναται, ἐντὸς τῶν δημοτικῶν ὁρίων νὰ πλανοδιοπωλῆ οἰαδήποτε ἀγαθὰ οἰασδήποτε φύσεως, ἄνευ τῆς πρὸς τοῦτο ἐγγράφου ἀδείας τοῦ Συμβουλίου.

(2) Τὸ Συμβούλιον κέκτηται διακριτικὴν ἐξουσίαν διὰ τὴν χορήγησιν ἢ μὴ ἀδείας δυνάμει τοῦ ἔδαφίου (1), δύναται δὲ νὰ ἀπαγορεύσῃ ἢ περιορίσῃ τὴν πλανοδιοπώλησιν εἰς ὠρισμένας περιοχὰς ἢ ὁδοὺς ἐντὸς τῶν δημοτικῶν ὁρίων καὶ νὰ ἐπιβάλλῃ ἐν τῇ ἀδείᾳ ὅρους ὡς πρὸς τὰς ὥρας καὶ τὰ ἀγαθὰ πλανοδιοπωλήσεως ἢ τοιούτους ἐτέρους παρεμφερεῖς, παρεμπύπτονας ἢ συμπληρωματικούς ὅρους ὡς ἤθελε θεωρήσει σκόπιμον.

(3) -----”.

“(1) No person shall, within any municipal limits, hawk any articles, goods or things without a licence in that behalf first obtained from the council.

(2) The Council has discretionary power for the granting or not of a licence under sub-section (1), and it can also prohibit or restrict the hawking in certain areas or streets within the municipal limits and to impose conditions on the licence with regard to the hours and the goods for

hawking or such other similar, incidental or supplementary conditions as it may deem expedient.

(3) \_\_\_\_\_”).

From the provisions of the above-quoted section 163, it is abundantly clear that it is by this section that Municipal Corporations and/or Committees are given the right to regulate hawking and not by virtue of any bye-law. This ground of law, therefore, relied upon by the applicants, must fail.

The second ground of law is based on Article 28.2 of the Constitution and with regard to it I have to observe that there must obviously be a typing error, because this Article has nothing to do with Municipal Corporations, as it is one providing for the equality of persons before the law, the administration and justice. The relevant Article of the Constitution which deals with the adoption of any law relating to the Municipalities is Article 78.2 of the Constitution.

It is well known that since the coming into force of the Constitution, many tragic events took place in our country, which rendered certain constitutional provisions inoperative. Triantafyllides, J., as he then was, in the case of *The Attorney-General of the Republic v. Ibrahim and Others*, 1964 C.L.R. 195 (at p. 240) said:

“..... It is not logical or proper to hold that measures designed to ensure continuance of essential functions of the State, and being otherwise valid in substance, are invalid or not in force because of lack of formalities arising out of the very situation which the measures taken were designed to meet”.

Considering the circumstances prevailing in our country at present, necessity renders inoperative Article 78.2, which requires a separate simple majority of the Representatives elected by the Greek and Turkish Communities respectively taking part in the vote for the adoption of any law relating to the Municipalities, otherwise we would have been led to absurd results.

The third legal ground on which the applicants base their application is that the sub judice decision is unconstitutional

as offending Article 25 of the Constitution, which safeguards the right of work. Article 25 reads as follows:-

“1. Every person has the right to practise any profession or to carry on any occupation, trade or business.

5     2. The exercise of this right may be subject to such formalities, conditions or restrictions as are prescribed by law and relate exclusively to the qualifications usually required for the exercise of any profession or are necessary  
10     only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person or in the public interest”.

15     It is clear from the wording of para. 2 of this Article that the right to practise any profession or to carry on any occupation, trade or business is not an absolute one, but may be restricted as prescribed by law for the reasons referred to in the said Article.

20     As I have mentioned earlier, the respondents, acting under the provisions of section 163 of Cap. 240, as amended by section 17 of Law 73/79, have a discretionary power to grant or not a hawking licence and they may prohibit or restrict hawking during certain hours or along certain streets situated within  
25     the municipal limits and, further, they may impose on the licence conditions as regards the time and the type of goods that can be hawked.

30     In the case of *Kontos v. The Republic*, (1974) 3 C.L.R. 112 (at p. 124) Mr. Justice Hadjianastassiou cited with approval what has been stated in the *District Officer Nicosia v. Ioannides*, 3 R.S.C.C. 107, which (at p. 109) reads:

35     “Article 25 safeguards the right to practise any profession or to carry on any occupation, trade or business subject to such formalities, conditions or restrictions as provided for therein. What is guarded against are infringements in the exercise of this right as such; but controls in respect of objects which might be necessary for the exercise of such right are not excluded by this Article”.



In the present case, the applicants are not prevented from hawking along the streets of Nicosia. The respondents, by the sub judice decision, restrict hawking in a number of streets, squares and avenues where such hawking may hinder the smooth flow of traffic, cause annoyance and inconvenience to the public using the streets or may interfere with the safety and easy movement along them. It is clear, therefore, that the respondents' decision was taken in the public interest, for the safety of the public and for the protection of the rights and liberties guaranteed by the Constitution to the public.

As my above findings answer, also, ground of law 5 in the application, I feel that I need not deal with it further.

Lastly, by ground of law 4, the applicants submitted that the refusal of the respondents to reply to their complaints is unconstitutional as contravening Article 29 of the Constitution, which provides that an authority has to give reasons within a period of 30 days, if a request or complaint is made, with regard to a decision taken by it.

I am of the opinion that this ground cannot be upheld for two reasons.

- (a) As I have said earlier on in my judgment, the applicants themselves never complained to the respondents for the sub judice decision, and
- (b) the applicants have come to the Court regarding the substance of their complaint and have not established that they have suffered material detriment through a violation of Article 29. If authority is needed in this respect, reference may be made to the cases of *Ioannides v. The Nicosia Municipality*, (1968) 3 C.L.R. 551, 554; and *Sofocleous v. The Republic*, (1974) 3 C.L.R. 63, 70.

In view of my above findings, the recourse is dismissed with costs against the applicants.

*Application dismissed with costs.*