

1982 September 18

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS IOANNOU AND OTHERS,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF INTERIOR,

*Respondent.*

(Cases Nos. 218/80, 219/80, 220/80).

*Legitimate interest—Article 146.2—Acceptance of an administrative act or decision—When does it deprive someone of the right to challenge it by an administrative recourse—Police constables applying for permission to resign from the Police Force—Required to pay compensation which they paid with reservation of their legal rights—Such reservation sufficient to preserve for them a legitimate interest entitling them to file these recourses.* 5

*Act or decision in the sense of Article 146.1 of the Constitution—Enlistments in the Police Force under regulation 7 of the Police (General) Regulations, 1958—Purposes of enlistment within the domain of public law—Requirement to pay compensation upon applying for permission to resign—Also within the domain of Public Law and as such it may be challenged by means of a recourse under the above Article.* 10

*Police Force—Enlistment in the Police Force under regulation 7 of the Police (General) Regulations, 1958—Resignation only with permission of Commander of Police—Who has, however, no power to require payment of compensation by police constable intending to resign—Such requirement in these cases in excess of powers—Regulation 8(1) of the above Regulations.* 15 20

The applicants enlisted in the Police as constables for an initial period of three years under regulation 7 of the Police (General) Regulations, 1958 (see No. 279 in the Subsidiary

5 Legislation of 1958). All the applicants signed declarations (on 24th March 1980, 12th March 1979, and 1st March 1979, respectively) accepting the conditions of service contained in notices given to them under regulation 5(h) of the aforesaid Regulations.

10 The applicants, in April 1980, applied in writing for permission to resign from the Police; applicant 1 (in case 218/80) stated that he had realized that he was not suited for a career in the Police and applicants 2 and 3 (in cases 219/80 and 220/80) stated that they were going to take up employment with the Cyprus Telecommunications Authority.

15 In May 1980 the Commander of Police informed the officer in charge of the unit of the applicants that their applications might be looked at favourably only if each applicant was ready to reimburse the State for its expenditure in respect of salary, uniform, meals etc.

The applicants accepted to pay the above expenses, but with reservation of their legal rights.

20 Eventually, applicant 1 was required to pay to the Government by way of compensation the amount of C£333.540 mils, applicant 2 the amount of C£394.970 mils and applicant 3 the amount of C£398.540 mils; hence these recourses.

25 *Held, (I) on the question whether in the light of all relevant circumstances the applicants possess a legitimate interest, in the sense of Article 146.2 of the Constitution, entitling them to file these recourses:*

30 That in order that the acceptance of an administrative act or decision should deprive someone of the right to challenge it by an administrative recourse for annulment such acceptance should take place unreservedly and freely and not because of fear of adverse consequences otherwise; that the reservation by the applicants of their rights, combined with the fact that they were virtually compelled to accept to pay compensation in order to be allowed to resign from the Police, was sufficient  
35 to preserve for the applicants a legitimate interest entitling them to file the present recourses.

(II) *On the question of whether or not the sub judice decisions*

*requiring the applicants to pay compensation come within the domain of public law or within that of private law:*

That taking into account that applicants have been appointed in the ordinary course of satisfying the needs of a public service and that the conditions of service of the applicants were laid down by the Government unilaterally under regulation 5(h) of the Police (General) Regulations, 1958 and were never negotiated between the Government and the applicants, and, moreover, that there is not to be found in such conditions any term providing for the payment by the applicants of compensation in case of their resignation from the Police, and having, furthermore, in mind that the purpose for which the applicants enlisted in the Police falls clearly and obviously within the domain of public law, this Court is of the opinion that the sub judge decisions come, also, within the domain of public law and that, therefore, the applicants may challenge them by means of the present recourses.

*Held, (III) on the merits of the recourses:*

That from the wording of regulation 8(1) of the Police (General) Regulations it is clear that the Commander of Police may permit or not the resignation of a police constable, but there is nothing in such regulation empowering the Commander to impose conditions such as those which were imposed in the present cases; and that, therefore, the sub judge decisions of the Commander to the extent to which the applicants were required to pay compensation should be annulled as having been reached in excess of powers.

*Sub judge decision annulled.*

Cases referred to:

*Myrianthis v. Republic* (1977) 3 C.L.R. 165 at p. 168;

*PapaKyriacou v. Health Services of Cyprus* (1970) 3 C.L.R. 351 at pp. 354, 355;

*Ioannou v. Republic* (1979) 3 C.L.R. 423 at pp. 451, 452;

*Georghiades v. Republic* (1980) 3 C.L.R. 486 at p. 490;

*Michael v. Republic* (1981) 3 C.L.R. 147 at p. 152.

#### **Recourses.**

Recourses against the decision of the respondent to demand

from applicants the payment of compensation as a condition for permitting them to resign from the Police Force.

*E. Markidou (Mrs.)*, for the applicants.

5 *Cl. Antoniadis*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

10 TRIANTAFYLIDES P. read the following judgment. By means of the present recourse the applicants challenge the decision of the Commander of Police, who comes under the respondent Minister of Interior, to demand from them the payment of compensation as a condition for their being permitted to resign from the Police Force.

15 The applicants enlisted in the Police as constables for an initial period of three years under regulation 7 of the Police (General) Regulations, 1958 (see No. 279 in the Subsidiary Legislation of 1958). All the applicants signed declarations (on 24th March 1980, 12th March 1979, and 1st March 1979, respectively) accepting the conditions of service contained in notices given to them under regulation 5(h) of the aforesaid  
20 Regulations.

25 The applicants, in April 1980, applied in writing for permission to resign from the Police; applicant 1 (in case 218/80) stated that he had realized that he was not suited for a career in the Police and applicants 2 and 3 (in cases 219/80 and 220/80) stated that they were going to take up employment with the Cyprus Telecommunications Authority.

30 In May 1980 the Commander of Police informed the officer in charge of the unit of the applicants that their applications might be looked at favourably only if each applicant was ready to reimburse the State for its expenditure in respect of salary, uniform, meals etc.

The applicants accepted to pay the above expenses, but with reservation of their legal rights.

35 Eventually, applicant 1 was required to pay to the Government by way of compensation the amount of C£333.540 mils, applicant 2 the amount of C£394.970 mils and applicant 3 the amount of C£398.540 mils.

As a result the applicants filed the present recourses which, in view of their nature, were heard together.

As regards the issue of whether, in the light of all relevant circumstances, the applicants possess a legitimate interest, in the sense of Article 146.2 of the Constitution, entitling them to file the present recourses, counsel for the applicants submitted that they possessed such an interest since they had agreed to pay compensation with reservation of their rights, and as, in any event, they had no choice but to accept to pay such compensation in order to be allowed to resign from the Police.

Counsel for the respondent was of the view that, unless it is found by the Court that the reservation of the rights of the applicants, as made, was not sufficient for such a purpose, they did possess the required legitimate interest.

In *Myrianthis v. The Republic*, (1977) 3 C.L.R. 165, this Court said the following (at p. 168):

“It is well established, by now, in the administrative law of Cyprus, on the basis of relevant principles which have been expounded in Greece in relation to a legislative provision there (section 48 of Law 3713/1928) which corresponds to our Article 146.2 above, that a person, who, expressly or impliedly, accepts an act or decision of the administration, is deprived, because of such acceptance, of a legitimate interest entitling him to make an administrative recourse for the annulment of such act or decision (see, inter alia, *Πορίσματα Νομολογίας του Συμβουλίου της Ἐπικρατείας*, 1929–1959, pp. 260–261, *Piperis v. The Republic*, (1967) 3 C.L.R. 295, 298, *Ioannou and others v. The Republic*, (1968) 3 C.L.R. 146, 153, *Markou v. The Republic*, (1968) 3 C.L.R. 267, 276 and *Pericleous v. The Republic*, (1971) 3 C.L.R. 141, 145, 146).

It is quite clear that in order that the acceptance of an administrative act or decision should deprive someone of the right to challenge it by an administrative recourse for annulment such acceptance should take place unreservedly and freely and not because of fear of adverse consequences otherwise (see, *Πορίσματα*, supra, p. 261, *Κυριακοπούλου Ἑλληνικὸν Διοικητικὸν Δίκαιον*,

4th ed., vol. C, p. 124, and the *Pericleous* case, supra—and it may be pointed out, at this stage, that though the in the first instance decision in the *Pericleous* case was reversed on appeal in *The Republic v. Pericleous*, (1972) 3 C.L.R. 63, there was not disapproved of, on appeal, that part of the first instance decision which is relevant for the purposes of this Interim Decision)".

I have reached the conclusion that the reservation by the applicants of their rights, combined with the fact that they were virtually compelled to accept to pay compensation in order to be allowed to resign from the Police, was sufficient to preserve for the applicants a legitimate interest entitling them to file the present recourses.

Regarding now the question of whether or not the sub judice decisions requiring the applicants to pay compensation come within the domain of public law or within that of private law, counsel for the respondent has argued that the matter falls within the domain of private law and that, in this connection, the provisions of sections 73 and 75 of the Contract Law, Cap. 149, are applicable.

In the case of *Papakyriacou v. The Health Services of Cyprus*, (1970) 3 C.L.R. 351 (at pp. 354, 355), there were stated the following:

"The proper approach to a situation of this nature has been laid down by this Court, on appeal, in *Paschalidou v. The Republic* (1969) 3 C.L.R. 297; it was held in that case that the employment of a nursery school teacher on contract, on a month to month basis, was within the realm of public law because the appointment had been made 'in the ordinary course of satisfying the needs of ..... a public service'. Likewise, the Applicant in the present case had been employed, for a very long and indefinite period of time, on a temporary basis, in the ordinary course of satisfying the needs of a public service, viz. the maternity service provided by the Nicosia General Hospital".

Useful reference may, also, be made to the judgment of Hadjianastassiou J. in *Ioannou v. The Republic*, (1979) 3 C.L.R. 423, 451, 452.

In the light of the above case-law and having taken into account that the conditions of service of the applicants were laid down by the Government unilaterally under regulation 5(h), above, and were never negotiated between the Government and the applicants, and, moreover, that there is not to be found in such conditions any term providing for the payment by the applicants of compensation in case of their resignation from the Police, and having, furthermore, in mind that the purpose for which the applicants enlisted in the Police falls clearly and obviously within the domain of public law, I am of the opinion that the sub judice decisions come, also, within the domain of public law and that, therefore, the applicants may challenge them by means of the present recourses (see, also, in this connection, the Conclusions from the Case-Law of the Council of State in Greece—Πορίσματα Νομολογίας τοῦ Συμβουλίου τῆς Ἐπικρατείας—1929–1959, pp. 321, 322).

As regards the merits of these cases it has been submitted by counsel for the applicants that the Commander of Police was not empowered by the relevant legislation—the Police Law, Cap. 285, and the Regulations made thereunder—to impose conditions for permitting the resignation of the applicants from the Police.

Regulation 8(1) of the already referred to Police (General) Regulations, 1958, reads—as modified under Article 188 of the Constitution—as follows:

“8.—(1) No member of the Force other than a special constable appointed under sub-section (1) of section 30 of the Police Law, 1958, shall be at liberty to resign from the Force unless expressly permitted to do so by the Chief Constable”,—now the Commander of Police—“and in the case of Gazetted Officers, with the approval of the Council of Ministers:

Provided that, in normal circumstances—

- (a) one month's notice will be required from members of the Force other than Gazetted Officers; and
- (b) three months' notice will be required from Gazetted Officers:

Provided further that the period of notice may be less if acceptable to the Chief Constable”—now the Commander of Police—“with the approval of the Council of Ministers”.

5 From the wording of regulation 8(1), above, it is clear that the Commander of Police may permit or not the resignation of a police constable, but there is nothing in such regulation empowering the Commander to impose conditions such as those which were imposed in the present cases. I have, therefore, reached the conclusion that the sub judice decisions of  
10 the Commander to the extent to which the applicants were required to pay compensation should be annulled as having been reached in excess of powers.

Counsel for the respondent has submitted that the aforesaid conditions as to the payment of compensation by the applicants  
15 were validly imposed as the relationship between the Republic and the applicants was contractual or quasi contractual. Even if, however, the contention of counsel for the respondent as to the nature of the said relationship could be found to be correct—and I do not agree with such contention—it is to  
20 be noted that in the declarations which were signed, as aforesaid, by the applicants, and by means of which they accepted their conditions of service, there is not to be found any term as regards any obligation on their part to pay compensation in case they resign from the Police; consequently, the submission  
25 in question of counsel for the respondent cannot be upheld.

In any event, even if it is assumed, contrary to all the foregoing, that the conditions as to the payment of compensation by the applicants were validly imposed by the Commander of Police, in exercising any relevant discretionary powers, his  
30 sub judice decisions ought still to be annulled for lack of due reasoning enabling this Court to test the propriety of the exercise of the said discretionary powers; because, particularly, there should have been stated in such decision the data on the basis of which the compensation demanded from each individual  
35 applicant was calculated (see, inter alia, *Georgiades v. The Republic*, (1980) 3 C.L.R. 486, 490 and *Michael v. The Republic*, (1981) 3 C.L.R. 147, 152).

In the result the present recurses succeed and the sub judice



decisions of the Commander of Police are declared to be null and void and of no effect whatsoever.

In the light of all relevant considerations I do not propose to make any order as to the costs of these cases.

*Sub judice decisions annulled. No order as to costs.* 5