

1983 July 4

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS ANASTASSIADES AND OTHERS,

Applicants.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS,

Respondent.

(Cases Nos. 129/75-136/75 and 143/75-147/75).

Damages under Article 146.6 of the Constitution—Annulment of administrative act a prerequisite for a claim thereunder—Recourse against dismissal from the Police Force—Dismissal revoked by the Administration and recourse struck out as abated—Respondents refusing to pay damages to applicants—Such refusal not an executive act in the domain of public law and cannot be made the subject of a recourse under Article 146.1 of the Constitution—The remedy of the applicants lies before a Civil Court.

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The applicants, members of the Police Force, were dismissed from the Force by a decision of the Council of Ministers taken on 30.7.73 and they challenged the validity of this decision by means of recourse No. 97/73 the hearing of which was concluded on the 1.3.74 and judgment was reserved. Following the coup d'état of July 15, 1974 a government under N. Sampson was set up and assumed power in defiance to the Constitution and legal order. On 23.7.74 Glafkos Clerides, the President of the House Representatives assumed office as President. Soon afterwards, the Council of Ministers, appointed by Nicos Sampson sitting under the chairmanship of Gl. Clerides, decided to revoke the decision for the dismissal of the applicant and his colleagues. This decision was published in the Gazette on 2.8.74.

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The judgment of the Full Bench remained reserved until 4.4.75. On that day, counsel for the applicant and Mr. Loucaides on

behalf of the Attorney-General, representing the Republic, appeared and declared that in view of the aforesaid decision published on 2.8.74, the recourse had been abated.

5 Counsel for the two sides agreed that the decision of 30.7.73 should be treated as having been revoked; and thereupon the Supreme Court struck out the recourse as having been abated. The respondents refused to pay to the applicants the emoluments to which they were entitled and were deprived of by the decision of 30.7.73; and hence these recourses.

10 *Held*, that the annulment of an administrative act is a prerequisite for a claim of damages under Article 146.6 of the Constitution; that since the decision to dismiss the applicants, which was taken on 30.7.73 was nullified by the decision of the Supreme Court their remedy lay exclusively before a civil Court; 15 that the refusal of the administration to pay them damages was not an executory act in the domain of public law in that it left unaffected their right of damages, that crystallized after the decision of the Supreme Court; that, consequently, the recourses are directed towards an act not litigable under Article 146.1 and 20 must be dismissed.

Applications dismissed.

Cases referred to:

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

25 *Frangoulides v. Republic* (1982) 1 C.L.R. 462.

Recourses.

Recourses against the refusal of the respondent to pay applicants their salaries in view of the fact that the previous decision of the respondents to dismiss applicants from the police force 30 had been revoked.

A. Markides with I. Typographos for N. Anastassiades, for applicants in cases 129/75–136/75.

I. Typographos with Ph. Valiandis, for applicants in case 143/75.

35 *M. Pierides with C. Adamides*, for applicant in case 144/75.

M. Pierides for Fr. Saveriades and C. Adamides, for applicants in cases 145/75 and 146/75.

G. Michaelides with M. Pierides for C. Adamides, for applicants in case 147/75.

N. Charalambous, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult. 5

HADJIANASTASSIOU J. read the following judgment. The applicant was one of the members of the police force, there was a number of them, who were dismissed from the service by a decision of the Council of Ministers of 30.7.1973, (Decision No. 12456). The decision was taken in exercise of the powers vested in the Council of Ministers by virtue of the provisions of the Pensions Law, Cap. 311 to dismiss persons in the employment of the Republic, if considered necessary in the public interest. 10

The applicant challenged the validity of the decision by recourse 97/73. Others prejudicially affected by the aforesaid decision lodged recourses asking as the applicant for the annulment of the decision. 15

Because of the importance of the issues raised, the recourses were taken by the Full Bench of the Supreme Court. The hearing of the recourses was concluded on the 1.3.1974 whereupon judgment was reserved. In the meantime, grave events afflicted the country, the coup d' etat of 15.7.1974 and the Turkish invasion that followed soon afterwards, on the 20.7.1974. Following the coup d' Etat a government under N. Sampson was set up and assumed power in defiance to the Constitution and legal order. They were clearly usurpers of powers of the State. 20 25

On 23.7.1974 Glafkos Clerides, the President of the House of Representatives assumed office as President. The lawfully elected President of the Republic Archbishop Makarios was at the time outside the country for reasons beyond his will. 30

Soon afterwards, the Council of Ministers appointed by Nicos Sampson sitting under the chairmanship of Gl. Clerides decided to revoke the decision for the dismissal of the applicant and his colleagues. (Decision 13421). The decision was published in the Gazette on 2.8.1974. 35

The judgment of the Full Bench remained reserved until 4.4.1975. On that day, counsel for the applicant and Mr. Loucaides on behalf of the Attorney-General, representing

the Republic, appeared and declared that in view of the aforesaid decision published on 2.8.1974, the recourse had been abated.

5 Counsel for the two sides agreed that the decision of 30.7.1973 should be treated as having been revoked—adopting a passage from Tsatsos—Application for Annulment, 3rd ed. pp. 370–372.

10 The Full Bench of the Supreme Court agreed with the submission of counsel and struck out the recourses on the ground that they had been abated (see the decision of the Supreme Court of 4.4.1975, on cases 73/73, 74/73, 97/73 etc. unreported).

15 The aforesaid decision by necessary implication treated the decision of 30.7.1973 as revoked and extinguished, as non-existent and in consequence declared the recourses as deprived of their subject matter i.e. abated. The extinction of the subject matter caused the Court to dismiss the recourses.

20 Notwithstanding the stand taken by the Republic voiced through Mr. Loucaides appearing on behalf of the Attorney-General that the decision of 30.7.1973 was revoked in its entirety and the decision of the Full Bench to the same effect, the authorities refused to pay to the applicants the emoluments, to which they were entitled and were deprived of by the aforesaid decision. In consequence the present recourse was instituted, challenging the validity of the refusal to pay them. Mr. Charalambous, who supported the decision before the Court, argued inter alia, that 25 the decision published on 2.8.1974, was illegal because the Council of Ministers was illegally constituted. This submission evidently conflicts with the stand taken by the Office of the Attorney-General in recourse 97/73 when Mr. Loucaides submitted that the decision of 2.8.1974 revoked the previous one. 30 Pressed to disclose the opinion of the Attorney-General himself on the matter Mr. Charalambous refused at first to do so for the reason that it was “most secret”. When informed that it was published in the “Nomikon Vima”, a legal periodical, he realized it would be idle to insist on withholding it. He, 35 therefore, made it available for consideration.

I reproduce the opinion of the Attorney-General on the subject of the legality of the Council of Ministers appointed by

Nicos Sampson after his replacement and their continuance in office under Glafkos Clerides:

“ Η άπάντησις εις τὸ ἐρώτημα ἐάν ἡ Βουλὴ τῶν Ἀντιπροσώπων δύναται νὰ ἀποδεχθῆ κατάρθεσις νομοσχεδίων ἀποσπelloμένων πρὸς αὐτὴν ὑπὸ τῶν σήμερον κατεχόντων τὸ ὑπουργικὸ ἀξίωμα προσώπων εἶναι καταφατικὴ. 5

Οἱ ὑπουργοὶ οὗτοι διορισθέντες ὡς φαίνεται ἐκ τῆς ὑπ’ ἀριθμὸν γνωστοποιήσεως 1257 εἰς τὴν ἐπίσημον ἐφημερίδα τῆς Δημοκρατίας τῆς 18 Ἰουλίου 1974 ἐκρατήθησαν εἰς τὰς θέσεις των ὑπὸ τοῦ Προέδρου τῆς Βουλῆς ἀσκούντος σήμερον 10 τὸ λειτούργημα τοῦ Προέδρου τῆς Δημοκρατίας (ἀριθμ. γνωστοποιήσεως 1278 εἰς τὴν ἐπίσημον ἐφημερίδα τῆς Δημοκρατίας τῆς 25 Ἰουλίου 1974) καὶ ἀσκοῦν τὰ ὑπουργικὰ καθήκοντα.

Συνεπῶς συμφώνως πρὸς τὰς παραδεδεγμένας ἀρχὰς τοῦ 15 δημοσίου δικαίου ἐξακολουθοῦν νὰ εἶναι ὑπουργοὶ μέχρι τερματισμοῦ τῆς ἀσκήσεως τῶν λειτουργιῶν τοῦ ἀξιώματος αὐτῶν (πρβλ.)”

And in English it reads:-

“The answer to the question whether the House of 20 Representatives can accept the lodgment of Bills submitted to the House by persons presently holding the office of a Minister, is in the affirmative. (Ministers appointed by N. Sampson continuing in office after the assumption of office by Glafkos Clerides). 25

The aforementioned Ministers appointed as Ministers under notification 1275 in the official Gazette of 15.7.1974, were retained in their position by the President of the House of Representatives presently exercising the function of President of the Republic (notification 1278, Official 30 Gazette of 25.7.1974) and carry on Ministerial duties.

Consequently, according to accepted principles of public law they continue being Ministers until the termination of their services. (See *Playtay: Traite protique de la fonction publique* 1 Paris 1971 p. 46 seq.)” 35

In the submission of Mr. Charalambous the claim of the applicants in the present recourse is in any event a monetary

one and as such not a proper subject for the jurisdiction of Supreme Court under Article 146. In support he cited the following authorities and publications. Stassinopoulos: Civil Liability of the State 1950 p. 232–233. Conclusions from Jurisprudence of the Greek Council of State—1929—59 p. 236.

In the submission of Mr. Chalambous by its very nature the claim is referable to the jurisdiction of a civil Court being in essence a monetary dispute.

Mr. Markides submitted that the Court has competence under Article 146 to determine the issues and invited the Court to hold that the decision published on 2.8.1974 was valid and had the effect of nullifying the previous decision of dismissal. He was highly critical of the contradictory stand taken by the office of the Attorney-General on the effect of the decision of 2.8.1974 leading to confusion and uncertainty. A great part of this argument was devoted to matters relevant to the legitimacy of the government under Mr. Glafkos Kleides.

Unlike Greece, where under certain circumstances there is room for parallel recourse to an administrative and a civil Court, in Cyprus it is settled by authority that the annulment of an administrative act is a prerequisite for a claim of damages under Article 146.6. The *Attorney-General of the Republic v. Andreas Markoullides and Another* (1966) 1 C.L.R. p. 242, *Frangoulides v. Republic* (1982) 1 C.L.R. p. 462).

In my opinion counsel complicated unnecessarily with respect, the issues raised for adjudication. The dismissal of the applicants was nullified by the decision of the Full Bench of the Supreme Court on 4.4.1975, in recourse 97/73 etc. Thus it is unnecessary to go into any of the issues argued in these proceedings.

The reasons for the nullification appear in the unanimous judgment of the Full Bench delivered by Triantafyllides, P. Thereupon the applicant became entitled to damages under Article 146.6. Their remedy lay exclusively before a civil Court. The refusal of the administration to pay them damages was not an executive act in the domain of public law in that it left unaffected their right of damages, that crystallized after the decision of 4.4.1975.

Consequently the recourses are directed towards an act not litigable under Article 146.1. Their rights must be sought before a civil Court. What damages they are entitled to is a matter of a civil Court.

I would repeat that having regard to the issues raised for consideration and the agreement of all interested parties, this judgment is equally binding in all these recourses. 5

Recourses dismissed. No order as to costs.

Recourses dismissed.
No order as to costs. 10