1984 April 26

[TRIANTAFYLLIDES, P., HADJIANASTASSIOU, MALACHTOS, DEMETRIADES, SAVVIDES, JJ.]

ANDREAS HADJICONSTANTINOU AND OTHERS,
Appellants,

v.

THE REPUBLIC OF CYPRUS,
THROUGH THE MINISTER OF FINANCE,
Respondent.

(*Revisional Jurisdiction Appeal No.* 225).

Legitimate interest—Article 146.2 *of the Constitution—Acceptance of an administrative act without protest—No legitimate interest to make a recourse against it in the sense of the above Article.*

The appellants were prior to their appointment to the permanent post of Fireman engaged as casual Firemen. As from 1969 the salary of the temporary post was either £552 or £558 per annum and that of the permanent post £510x18-582x24-750. On their appointment to the permanent establishment they were put on the starting point of the salary scale with the result that their salary was by about £5 per month lower than what they were getting whilst employed on a casual basis, but none of them complained about this nor did they make any reservation when accepting the offer for appointment. When applicants came to know of a decision of the respondents by means of which the salary of certain Firemen who were appointed to the permanent establishment was brought in line with what they were getting whilst serving on a temporary basis they protested against such decision and requested reconsideration of their case and equal treatment with those of their colleagues who had been benefited by the said decision. The respondent rejected their claim and the appellants challenged this decision by means of recourses.

Upon appeal, which was directed against the decision of the trial Judge dismissing their said recourses.

Held, that if a person accepts an administrative act or decision

without protest, he no longer possesses a legitimate interest entitling him to make a recourse against it in the sense of Article 146.2 of the Constitution; that after taking into consideration the fact that the appellants had accepted freely and unconditionally their appointments in which their salary scales were explicitly set out and although they had been appointed to their posts a long time ago, such period ranging from two to twelve years, and were receiving their salaries regularly, they never protested or raised the issue, this Court has come to the conclusion that they have no legitimate interest to pursue their recourses and even if such legitimate interest might have existed at any time it has been lost by the expiration of more than 75 days from the date when their first salary was paid to them; accordingly the appeal must fail.

Appeal dismissed.

Cases referred to:

Neocleous and Others v. Republic (1980) 3 C.L.R. 497;

Tomboli v. CY.T.A. (1980) 3 C.L.R. 266 and on appeal (1982) 3 C.L.R. 149;

Georghiades v. Republic (1981) 3 C.L.R. 431;

Aniliades and Others v. Republic (1981) 3 C.L.R. 21;

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

Ionides v. Republic (1979) 3 C.L.R. 679;

Christofides v. CY.T.A. (1980) 3 C.L.R. 498;

Ioannou and Others v. Republic (1983) 3 C.L.R. 150;

Shamassian and Others v. Republic (1973) 3 C.L.R. 341;

Savvides v. Republic (1975) 3 C.L.R. 48.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court (L. Loizou, J.) given on the 21st March, 1980 (Revisional Jurisdiction Case Nos. 337/74 and 331/74)* whereby appellants' recourses against the refusal of the respondent to grant additional increments to applicants were dismissed.

S. Spyridakis with *A. Xenophontos*, for the appellants.

A. Evangelou, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

* Republic in (1980) 3 C.L.R. 184.

TRIANTAFYLLIDES P.: The judgment of the Court will be delivered by Mr. Justice Savvides.

SAVVIDES J.: The appellants are 58 out of 84 applicants in three recourses heard together by a Judge of this Court sitting in the first instance, as presenting common questions of law and fact, by which they were challenging the decision of the respondents refusing to grant to them additional increments and/or emplacing them in the same salary scale as they did in other cases. Their appeal is directed against the decision of the trial Judge whereby their said recourses were dismissed.

The facts as appearing in the judgment of the learned trial Judge and which have not been contested, are briefly as follows:

All the applicants were prior to their appointment to the permanent establishment engaged as casual Firemen. The dates of their appointment on a temporary basis range from 1956 to March, 1971 and the dates of their appointment to the permament establishment range from December, 1961 to April, 1972. The salary of the temporary post and that of the permanent post during the years 1957–1973 appear in an annex to exhibit 6. As from 1969 the salary of the temporary post was either £552 or £558 per annum and that of the permanent post £510x18–582x24–750. On their appointment to the permanent establishment they were put on the starting point of the salary scale with the result that their salary was by about £5 per month lower than what they were getting whilst employed on a casual basis, but none of them complained about this nor did they make any reservation when accepting the offer for appointment.

On the 22nd March, 1973, one Andreas Eraklides, who was until then serving as a Fire Serviceman on a temporary basis was appointed to the permanent establishment. He accepted the offer for appointment without any reservation and like all others, he was put on the lower point of the scale. When he noticed, however, after receiving his first monthly salary in the established post, that this resulted in the reduction of his salary he addressed a letter dated 12th May, 1973 exhibit 1, to the Chief Fire Service Officer complaining about the matter and requesting that the necessary steps be taken so that his salary would be brought in line with what he was getting whilst serving on a temporary basis. He was orally advised by the

Chief Fire Service Officer to apply to the Chief of Police and this he did through the Chief Fire Service Officer by his letter dated 21.5.1973, exhibit 2. Eventually, the Chief of Police under cover of a letter dated 26.5.1973, exhibit 4, remitted the request to the Director-General of the Ministry of Finance. On the 13th July, 1973, the Ministry of Finance replied to the Chief of Police by the letter exhibit 5 informing him that it had been approved that Mr. Eraklides be put on the point of £546 of salary scale Γ1 £510x18-582x24-750 as from the date of his appointment to the permanent establishment (22.3.1973).

In consequence of the above the Chief Fire Service Officer addressed a letter to the Chief of Police dated 6th August, 1973, together with a list of all Fire Servicemen affected by the decision of the Ministry of Finance. The list contained the names of some 125 Fire Servicemen who had served on a casual basis and had been appointed to the permanent establishment on various dates from 1st December, 1961 to the 1st July, 1973. The Chief of Police by a letter dated 16th August, 1973, exhibit 6, forwarded the letter to the Director-General of the Ministry of finance for any necessary action. On the 17th April, 1974, the Director-General of the Ministry of Finance addressed the following reply to the Chief of Police, exhibit 7.

" 'Ενετάλην ὅπως ἀναφερθῶ εἰς τὴν ἐπιστολήν σας ὑπ' ἀριθμὸν 156 καὶ ἡμερομηνίαν 16ην Αὐγούστου 1973 ἐν σχέσει πρὸς τὴν μισθοδοσίαν ἀριθμοῦ προσωρινῶν Πυροσβεστῶν οἱ ὁποῖοι διωρίσθησαν εἰς τὴν μόνιμον θέσιν Πυροσβέστου κατὰ διαφόρους ἡμερομηνίας ἀπὸ τοῦ 1962 καὶ σᾶς πληροφορήσω ὅτι ἐνεκρίθη ὅπως τὰ κάτωθι πρόσωπα τοποθετηθῶσι ἐπὶ τῆς βαθμίδος τῶν £546 τῆς κλίμακος Γ1 – £510x18–582x24–750 ἀπὸ τῆς ἡμερομηνίας τοῦ διορισμοῦ των εἰς τὴν ὡς ἄνω θέσιν (νοουμένου ὅτι εὑρίσκονται νῦν ἐν ὑπηρεσία)—

Αἱ λεπτομέρειαι ὡς ἀνωτέρω ἀντεγράφησαν ἐκ τοῦ καταλόγου τὸν ὁποῖον ἡτοίμασεν ὁ Διευθυντὴς τῆς Πυροσβεστικῆς Ὑπηρεσίας δέον ὅπως ἐπαληθευθῶσι προτοῦ γίνῃ ἡ ἀναπροσαρμογή.

2. Όσον άφορᾶ τούς διορισθέντας πρὸ τῆς 22.3.1973 τὸ Ὑπουργεῖον τοῦτο λυπεῖται διότι δὲν δύναται νὰ ἐπεκτείνῃ τὴν παροῦσαν παραχώρησιν. Πρόκειται περὶ παραχωρήσεως ἡ ὁποία ἀφοῦ ἠγέρθη καὶ ἐξητάσθη τὸ πρῶτον τὴν 22.3.1973 ἐπεξετάθη ἀπὸ τῆς ὡς ἄνω ἡμερομηνίας εἰς τὸ προσωπικὸν τῆς Πυροσβεστικῆς Ὑπηρεσίας".

The English translation of which is:

"I have been instructed to refer to your letter number 156, dated the 16th August, 1973, with regard to the salaries of a number of temporary Firemen (Constables) who have been appointed to the permanent post of Fireman (Constable) on various dates since 1962 and to inform you that it was approved that the following persons be placed on the point of £546 of scale C1—£510x18½—582x24—750 from the date of their appointment to the above post (provided they are now in the service)—

.....

.....

The details as above copied from the list prepared by the Chief Fire Officer should be verified before the readjustment in scale.

2. With regard to those appointed before 22.3.1973 this Ministry regrets that it cannot extent the present concession. It is a concession which after being raised and considered for the first time on 22.3.1973, was extended from the above date to the staff of the Fire Service".

The list in the above exhibits contains the names of 39 Fire Servicemen all of whom were placed on the permanent establishment on or after the 22.3.1973.

When applicants came to know about the decision contained in the said letter of the 17th April, 1974, they wrote, through their advocates, three letters to the Director-General of the Ministry of Finance, dated the 9th May, 1974, 13th May, 1974 and 20th May, 1974, protesting against such decision and requesting reconsideration of the case and equal treatment with those of their colleagues who had been benefited by the decision.

The Director-General of the Ministry of Finance replied

to such protests by identical letters dated 5th June, 1974, as follows:

'Ενετάλην ὅπως ἀναφερθῶ εἰς τὴν ἐπιστολήν σας ὑπὸ ἡμερομηνίαν 9ην Μαΐου, 1974, ἐν σχέσει πρὸς αἴτημα ἀριθμοῦ Πυροσβεστῶν διὰ τὴν παραχώρησιν εἰς αὐτοὺς προσαυξήσεων, καὶ σᾶς πληροφορήσω μετὰ λύπης μου ὅτι τὸ αἴτημα τῶν ἐν λόγῳ Πυροσβεστῶν δὲν κατέστη δυνατὸν νὰ ἐγκριθῆ. 'Η παραχώρησις προσαυξήσεων εἰς ἐκτάκτους Πυροσβέστας ἐπὶ τῷ διορισμῷ αὐτῶν ἐπὶ μονίμου βάσεως ἠγέρθη, ἐξητάσθη καὶ ἐνεκρίθη τὸ πρῶτον τὴν 22.3.1973 οὐδεὶς δὲ ἐκ τῶν πελατῶν σας ἤγειρε τοιοῦτο θέμα κατὰ τὸν χρόνον τῆς ἀποδοχῆς τοῦ διορισμοῦ του.

2. 'Εξ ἄλλου ἡ παραχώρησις προσθέτων προσαυξήσεων εἰς ὑπηρετοῦντας Πυροσβέστας καὶ γενικῶς εἰς δημοσίους ὑπαλλήλους ἀντίκειται πρὸς τὴν ἀπόφασιν τοῦ 'Υπουργικοῦ Συμβουλίου ὑπ' ἀριθμὸς 3697, ἡμερ. 27.2.1964. Διὰ τῆς ἐν λόγῳ ἀποφάσεως ἐτερματίσθη ἡ τακτικὴ τῆς παραχωρήσεως προσθέτων προσαυξήσεων".

The English translation of which reads as follows:

("I have been instructed to refer to your letter dated the 9th May, 1974, with regard to a request of a number of Firemen (Constables) for the grant of increments to them, and to inform you with regret that the request of the said Firemen could not be approved. The grant of increments to casual Fireman upon their appointment on a permanent basis was raised, considered and approved for the first time on 22.3.1973 and none of your clients raised such a matter at the time of acceptance of his appointment.

2. Moreover, the granting of additional increments to Firemen in the service and to public officers generally, is contrary to the decision of the Council of Ministers, number 3697, dated 27.2.64. By the said decision an end was put to the practice of granting additional increments").

At the commencement of the hearing of the recourses learned counsel for the respondents raised a preliminary objection in that the applicants had no legitimate interest, in the sense of Article 146.2 of the Constitution, to pursue such recourses on the ground that they had accepted the offers for their appoint-

ment in which the salary scale of the post was clearly shown, without any reservation, and that although most of them had been appointed to the permanent establishment a long time ago and were receiving their salaries continuously, they never protested or raised the issue of receiving additional increments.

The learned trial Judge in dealing with such objection, said the following:

"With all respect to counsel it is quite clear to me that the *Piperis* case (supra)* is clearly distinguishable from the present case. In that case what the Applicant was claiming was additional increments above the top of the salary scale which was fixed by law and it was applicable to the post to which he had been promoted having accepted the offer for promotion without any reservation. The decision, therefore, in the Piperis case can have no application to the cases in hand. A case more to the point that the free and without any reservation acceptance of an administrative act or decision deprives someone from the right to challenge it by an administrative recourse is the case of *Myrianthis* v. *The Republic* (1977) 6 J.S.C. 841. And although the decision in that case seems to support the view that the Applicants in the present cases may, in fact, not possess a legitimate interest to pursue the present recourses yet, in view of the different and peculiar circumstances of the cases in hand, I have eventually decided to consider the matter as doubtful and to determine this issue in their favour".

Then, the learned trial Judge proceeded to examine whether the applicants were entitled to their claims as set out in the prayer in their respective recourses and concluded as follows:

"At the conclusion of the address of learned counsel for the Respondent all counsel appearing in these cases made a joint statement which I think I should record for what it is worth. It reads as follows:

'The Applicants concede that the provisions of G.O. III/I.2(e) was not applied to members of the Fire Service prior to the 22nd March, 1973 and that it

* *Piperis* v. *The Republic* (1967) 3 C.L.R. 295.

was first applied to members of the Fire Service a a result of a decision taken by the Minister of Finance dated 7th July, 1973, embodied in exhibit 5 in a letter dated 13th July, 1973. There are, however, other instances in which matters not provided for in the Police Law and Regulations when raised were dealt with in the same way as provided by General Orders but such decision is not given retrospective effect'.

If I do not deal with all the arguments raised by learned counsel it is not out of disrespect to them but because I am of the opinion that the issue in these cases should be decided on other grounds and more particularly on the basis of the two decisions of the Council of Ministers (exhibits 10 and 11).

Regarding the status of the Applicants in the Government service it is quite clear to me both from Article 122 of the Constitution and s.2 of the Public Service Law, 1967 that they are not 'public officers' and their office is not a 'public office' and that consequently neither the General Orders, which in fact embody the conditions of service for 'public officers' nor the Public Service Law are applicable to them. The General Orders as well as the existing practice relating to the public service and public officers continue in force, in so far as they are not inconsistent with the Public Service Law, by virtue of the proviso to s.86(1) thereof.

This being the position, none of the applicants could avail himself of the provisions of the General Orders relating to increments and, therefore, none of them could have any claim to any increments other than the normal annual increments of the salary scale applicable to his post prior to the 3rd February, 1966. But on the 3rd February, 1966, decision No. 5361 was taken by the Council of Ministers. Although there is clear reference both in the submission and in the statement of the Minister of Justice appearing in exhibit 11 to the General Orders as being the source from which the discretionary powers of the Minister of Finance to grant increments in certain cases emanates, there is nothing in the decision itself to indicate that it

was not meant to apply to all persons in the Government service and one may, therefore, reasonably assume that it is applicable both to public officers and other persons in the Government service. But under this decision the discretion of the Minister of Finance is certainly limited to the grant of emplacement increments to officers first entering the service and, at the most, to officers first appointed to the permanent establishment but in either case 'upon their appointment'.

It is in the exercise of his discretionary powers under this decision that the Minister granted the two emplacement increments to Eraklides and those other Fire Servicemen who were placed on the permanent establishment on or after the 22nd March, 1973.

The remedy sought by the Applicants in these cases, on the face of it, is to be put on the same step of the salary scale i.e. £546 as from the dates of their respective appointments to the permanent establishment in the same way that Eraklides and the other 39 Fire Servicemen were. But when they raised this matter with the Minister, through their counsel, the time that had elapsed from such dates was a period of between about two and twelve years. In substance, therefore, what they were claiming was additional increments; and the Minister could only satisfy their claim by granting additional increments to them. And this he had no power to do in view of the bar placed to the payment of additional increments as from the 27th February, 1964, by decision No. 3697 of the Council of Ministers.

The net result, therefore, is that at the relevant time neither emplacement increments could be paid to the applicants under decision No. 5361 because such increments are payable in the Minister's discretion only 'upon their appointment' in the service and, as I said earlier on, very likely, in the permanent establishment, nor additional increments because of the bar in decision No. 3697. And as the respondent Minister had no discretion nor, indeed, power to entertain applicants' claim it does not seem to me that these recourses can succeed on any of the grounds raised.

Even if it could be conceivably argued—and no such allegation was made—that the decision of the Minister in granting emplacement increments to Eraklides and the others was erroneous and illegal on the ground that they were not first entrants in the service in the strict sense, the Applicants in these cases would not be in any better position because this would not entitle them to the same error or illegality nor would it create an obligation on the Minister to repeat it. (See Conclusions from the Case Law of the Greek Council of State (1929–1959) p. 158 and *Voyiazianos* v. *The Republic* (1967) 3 C.L.R. 239)".

In arguing the case for the respondents before us, learned counsel on their behalf elaborated on his argument before the trial Court that the appellants had no legitimate interest to pursue their recourses once they had accepted their appointment in which their salary scales were explicitly set out, without any reservation.

It has been held by this Court time and again that if a person accepts an administrative act or decision without protest, he no longer possesses a legitimate interest entitling him to make a recourse against it in the sense of Article 146.2 of the Constitution (see, inter alia, *Neokleous and others* v. *The Republic* (1980) 3 C.L.R. 497, *Tomboli* v. *CYTA* (1980) 3 C.L.R. 266 and on appeal (1982) 3 C.L.R. 149, *Georghiades* v. *The Republic* (1981) 3 C.L.R. 431, *Aniliades and others* v. *The Republic* (1981) 3 C.L.R. 21).

The following passage from the judgment of Triantafyllides, P., in the case of *Myrianthis* v. *The Republic* (1977) 3 C.L.R. 165 at p. 168 has been adopted in a number of cases including *Tomboli* v. *CYTA* (supra) both by the first instance judge and the Full Bench on appeal:

"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".

It is also well settled that an acceptance of an administrative act or decision with reservation of rights does not deprive the acceptor of his legitimate interest. In *Ionides* v. *The Republic* (1979) 3 C.L.R. 679, Triantafyllides, P. in delivering the judgment of the Full Bench had this to say at pages 684, 685:

"We are of the opinion that what was, in effect, done is that the appellant has exercised the right of election under section 5 in order to evade the application of the sections of Law 9/67, and of the regulations in the Schedule to such Law, which are referred to in the said section 5, but, at the same time, he reasserted his vested rights under Article 192 of the Constitution, one of which was that the terms and conditions of his service, as were applicable to him before the date of the coming into operation of the Constitution, including his right to pension and gratuity, would not be altered to his disadvantage; and the reduction of his pension and gratuity by virtue of the operation of regulation 19A does constitute an alteration to his disadvantage, contrary to the provisions of paragraphs 1 and 7 of Article 192.

For all the foregoing reasons, we have reached the conclusion, as has already been mentioned in this judgment, that there has not been on the part of the appellant, an exercise of his right of election under section 5 of Law 18/67 which could bring into operation, in relation to him, the provisions of regulation 19A and, therefore, the decision concerning the computation of the pension and gratuity payable to him on his retirement, which has been challenged in the present proceedings, has to be declared to be null and void and of no effect whatsoever".

(see, also *Christofides* v. *CYTA* (1980) 3 C.L.R. 498, *Ioannou and others* v. *The Republic* (1983) 3 C.L.R. 150).

Bearing in mind the above principles and in the light of the material before us we find ourselves unable to share the doubts expressed by the learned trial Judge as to whether the appellants

had a legitimate interest to pursue their recourse in view of the unconditional acceptance by them of the terms of the offer of their appointment. In the result, having taken into consideration the fact that the appellants had accepted freely and unconditionally their appointments in which their salary scales were explicitly set out and although they had been appointed to their posts a long time ago, such period ranging from two to twelve years, and were receiving their salaries regularly, they never protested or raised the issue, we have come to the conclusion that they have no legitimate interest to pursue their recourses and even if such legitimate interest might have existed at any time it has been lost by the expiration of more than 75 days from the date when their first salary was paid to them.

Notwithstanding the doubt expressed by the learned trial Judge as to the existence of a legitimate interest, in dealing with appellants' prayer for emplacement on a higher scale he found that the lapse of a period between two to twelve years from their respective appointments to their permanent established posts was a bar to such claims and treated their cases as in substance being claims for additional increments.

Though we have come to the conclusion that the appellants have no legitimate interest to pursue their recourses, nevertheless out of respect to the learned trial Judge, we wish to add that we agree with the reasons given by him, in dismissing their recourses that at the relevant time neither additional increments could be paid to them by virtue of Decision No. 3697 of the Council of Ministers, dated 27th February, 1964, nor emplacement increments by virtue of Decision No. 5361 of the Council of Ministers, dated 3rd February, 1966. The former was to the effect that - "in view of the present situation - (a) no acting allowance should be paid in accordance with the relevant general orders; and (b) no application for additional increments should be entertained" and the latter - "though the Council considers that the Minister of Finance already possesses the power mentioned in the proposal, nevertheless in order to alleviate any doubt, it decided to grant to the Minister of Finance the power it has regarding the placing of certain officers *upon their appointment* in the Service, at any point above the starting point of the approved scale of their post" (the underlining is ours). As to the effect of the said decisions of the Council of Ministers reference may be made to

Bedros Shamassian and Others v. *The Republic* (1973) 3 C.L.R. 341 and *Savvides* v. *The Republic* (1975) 3 C.L.R. 48.

For all the above reasons this appeal fails and is hereby dismissed with no order for costs.

Appeal dismissed with no order as to costs.