

1984 October 16

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PANTELIS PANTELOURIS AND OTHERS AS REPRESENTATIVES OF THE INHABITANTS OF ARADHIPPOU AND/OR IN THEIR OFFICIAL CAPACITY AS REPRESENTATIVES OF THE COMMUNITY OF ARADHIPPOU AND/OR AS INHABITANTS OF ARADHIPPOU VILLAGE AND/OR PERSONALLY,

*Applicants,*

v.

THE COUNCIL OF MINISTERS,

*Respondent.*

(Case No. 229/72).

*Administrative law—Misconception of fact—Burden of proof is on the applicant—Extension of Municipal limits—Applicants not only failed to establish misconception but all the facts were before the respondents and were properly considered—No contravention of Article 28.1 of the Constitution which safeguards the principle of equality.*

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*Constitutional Law—Equality—Article 28.1 of the Constitution—Principles applicable.*

On the 18th May, 1972 the Council of Ministers decided to approve the extension of the Municipal limits of Larnaca for the purpose of including within these limits the Larnaca Industrial Area which lies entirely within the territorial area of Aradhippou. Hence this recourse by the applicants who are the Chairman of the Community of Aradhippou, Members of the Village Authority and of the Improvement Board. Before taking the sub judice decision the respondents considered the question of the provision of the required services to the industrial area and arrived at the conclusion that the Municipality of Larnaca was in a position to provide much better services and facilities than the Aradhippou Improvement Board.

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5 Counsel for the applicants, mainly argued that the sub judge  
decision should be annulled as in reaching it the respondent  
failed to carry out the necessary inquiry as to whether the appli-  
cants were able to provide and undertake the necessary services  
such as health services, refuse collection, street lighting and  
maintenance, which are required by the new industrial area.  
He also argued that as it was thus considered that the applicants  
were not able to provide the above services, the sub judge  
10 decision was taken under a misconception of fact; and that the  
sub judge decision constituted discrimination against the  
applicants as it was taken for the sole purpose of benefiting  
the Municipality of Larnaca which by the extension of its limits  
would benefit greatly, to the detriment of the applicants.

15 *Held*, that it is clear that the respondents fully inquired into  
the applicants' ability to provide and undertake the necessary  
services, before reaching their decision; that the burden is on  
the applicants to prove misconception of fact; that the applicants,  
not only have failed to establish misconception but also there  
is ample evidence that all the facts were before the respondent  
20 and were properly considered; that equality before the Law in  
paragraph 1 of Article 28 of the Constitution, does not convey  
*the notion of exact arithmetical equality but it safeguards only*  
*against arbitrary differentiations and does not exclude reason-*  
*able distinctions which have to be made in view of the intrinsic*  
25 *nature of things; that, further, the principle of equality entails*  
*the equal or similar treatment of all those who are found to be*  
*in the same situation and excludes only the making of differ-*  
*entiations which are arbitrary and totally unjustifiable; and*  
*is not contravened by regulating differently matters which*  
30 *were different from each other; and that applying these prin-*  
*ciples to the facts of this case it cannot be said that the respon-*  
*dent acted contrary to Article 28.1 of the Constitution; accord-*  
*ing the recourse must fail.*

*Application dismissed.*

35 Cases referred to:

- Xapolitos and Others v. Republic* (1967) 3 C.L.R. 703;
- Savva v. Republic* (1979) 3 C.L.R. 205 at p. 257;
- Mikrommatis v. Republic*, 2 R.S.C.C. 125;
- Republic v. Arakian and Others* (1972) 3 C.L.R. 294.

**Recourse.**

Recourse against the decision of the respondent Council of Ministers whereby the municipal limits of Larnaca town were extended to include part of the Aradippou area.

*E. Efstathiou*, for the applicants. 5

*N. Charalambous*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

MALACHTOS J. read the following judgment. The applicants, who are the Chairman of the Community of Aradhippou, Members of the Village Authority and of the Improvement Board, claim as representatives of the entire community of Aradhippou village and/or personally, a declaration of the Court that the decision of the respondent, published in Part III of the Official Gazette dated 26th May, 1972, under Notification No. 330, by which the municipal limits of Larnaca town were extended to include part of the Aradhippou area, is null and void and of no legal effect whatsoever. 10 15

The relevant facts of the case are as follows:

On the 3rd May, 1968 the Mayor of Larnaca wrote to the District Officer of Larnaca proposing that the Municipal limits of Larnaca be extended as the town was continuously expanding in all directions and as a result conversion of land into building sites and crection of buildings were being carried out without any control by the village authorities. This proposal was forwarded by the District Officer to the Director-General of the Ministry of Interior. 20 25

On 10th April, 1970 a meeting was held at the Ministry of Commerce and Industry where it was decided that if the limits of the Municipality were to be extended in order to include the industrial area of Larnaca, then, the road maintenance and street lighting of the said area should be undertaken by the Municipality. To this proposal the Municipal Corporation of Larnaca agreed. As a result of this meeting the Minister of Commerce and Industry wrote on the 1st May, 1970 to the Minister of Interior recommending the proposed extension of boundaries which was considered to be to the benefit of the industrial area. 30 35

The matter was also referred to the Department of Town Planning and Housing for their views as well as to the Department of Lands and Surveys.

Subsequently, on the 10th February, 1971, the Director-  
5 General of the Ministry of Interior asked the District Officer  
of Larnaca to supply him with certain information in respect  
of the proposed extension of the town limits and in particular  
to inform him of the possible benefits to the Municipality of  
10 Larnaca and the repercussions that would result to the Ara-  
dhippou Improvement Board. Furthermore, the Director wanted  
to be informed as to the ability of the Board to provide all the  
necessary services that might be required for the said industrial  
area.

The District Officer replied to the Director-General of the  
15 Ministry of Interior on the 18th February, 1971, that the benefit  
to the Municipality as a result of the annexation would be far  
greater than any loss which might be caused to the Improvement  
Board of Aradhippou. Moreover, although in the future the  
Board might be able to offer the required services, at that time  
20 the Municipality was in a position to provide much better  
services and facilities, both as regards quality and organization.

After these inquiries the Ministry of Interior on the 24th  
May, 1971, referred the matter to the Council of Ministers  
which, however, at its meeting of the 5th July, 1971, decided  
25 to postpone consideration of this matter for a later date.

The case was again put before the Council of Ministers which  
on the 4th November, 1971, decided to set up a committee  
which would be composed by the Ministers of Interior, Com-  
merce and Industry, Finance and Communications and Works  
30 in order to consider the matter—in consultation with the  
Attorney-General—and to examine whether it would be possible  
for the required services to be provided by the Improvement  
Board of Aradhippou or, if not, whether they would be so pro-  
vided by the Municipality but without annexing the area to  
35 Larnaca.

The Director-General of the Ministry of Interior informed  
the District Officer of Larnaca of the above decision, on the 3rd  
November, 1971, and requested him to submit a detailed report  
in respect of this matter. The report of the District Officer,

which is contained in a letter dated 13th December 1971 is as follows:-

“In connection with the provision of the usual services to the said industrial area which evidently consist of services of refuse collection, street cleaning, health inspection, weighing facilities and the hiring of a public telephone, the Improvement Board of Aradhippou is able to provide same, however with the clarification that certain of them, as for instance, refuse collection and health inspection, at least for the time being, will be inferior to those provided by the Municipality of Larnaca as regards extent, quality and organization. In particular, it is pointed out that in the area of the Improvement Board refuse collection is presently carried out by the use of a cart, despite the fact that the Board is about to purchase a refuse vehicle, whereas the Municipality of Larnaca has for this purpose a proper service. Moreover, the Municipality has its own sanitary unit, whereas in the case of the Board the respective services are provided by the Government Health Department.

As regards, in particular, street lighting and road maintenance within the industrial area, the Board is able to provide full facilities with the clarification again that the Municipality has its own road construction units, whereas the Improvement Board may assign the construction of road works to Government units or to private individuals”.

It should be noted here that the Municipality of Larnaca informed the Director-General of the Ministry of Interior that it was not willing to provide any facilities or services to the industrial area unless this was included within the Municipal limits of Larnaca town.

On the 18th May, 1972 the sub judice decision was taken by the Council of Ministers which, inter alia, provided as follows:

*“Extension of the Municipal limits of Larnaca*

**The Council**

- (a) decided to approve the extension of the Municipal limits of Larnaca for the purpose of including within these the Larnaca Industrial Area, which lies entirely within the territorial area of Aradhippou.....”

This decision was published in Supplement III to the Official Gazette dated 26th May, 1972, under Not. 330.

The present recourse is based on the following grounds of law:

- (a) The sub judge decision was taken in abuse of power;
- 5      (b) The respondent exercised its discretionary powers in a manner which was legally wrong and/or unacceptable.
- 10      (c) The sub judge decision constitutes discrimination against the applicants and/or the inhabitants of Aradhippou, and
- (d) The sub judge decision was based on misconceived criteria and/or was under a misconception of fact.

15      The hearing of this recourse commenced on the 29th January, 1977, and was completed on the 15th December, 1983 and judgment was reserved. During the aforementioned period this recourse was adjourned for twenty-four times but in no case any adjournment was ordered at the instance of the Court either for want of time or otherwise.

20      Counsel for the applicants argued that the sub judge decision should be annulled as in reaching it the respondent failed to carry out the necessary inquiry as to whether the applicants were able to provide and undertake the necessary services such as health services, refuse collection, street lighting and maintenance, which are required by the new industrial area.

25      He also argued that as it was thus considered that the applicants were not able to provide the above services, the sub judge decision was taken under a misconception of fact.

30      He further contended that the sub judge decision constitutes discrimination against the applicants as it was taken for the sole purpose of benefiting the Municipality of Larnaca which by the extension of its limits would benefit greatly, to the detriment of the applicants.

35      In view of the above, he argued, on the authority of *Styllis Xapolytos & Others v The Republic* (1967) 3 C.L.R. 703, it is clear that the respondents exercised their discretion in a defective manner and contrary to the principles of proper administration and so they acted in abuse of powers.

In support of the applicants' case the Chairman of the Community of Aradhippou, Mr. Pantelis Pantelouris, gave evidence as to the steps taken by the applicants in protest against the proposed establishment of the industrial area near their village (this, however, is not attacked in the present recourse) and against the proposed annexation. He stated that the applicants were never consulted in respect of this matter, or as to whether they were able to provide the services required, but he accepted as correct the contents of the report of the 13th December, 1971 of the District Officer to the Minister of Interior.

Counsel for the respondent contended that in reaching the sub judge decision the Council of Ministers carried out a Full and proper inquiry into all the relevant circumstances of the case.

From the contents of the file exhibit 2, and the other evidence adduced it is crystal clear that the respondent fully inquired into the applicants' ability to provide and undertake the necessary services, before reaching their decision.

The applicants have also been unable to establish misconception of fact. The burden is on the applicant to prove such allegation. In the present case the applicants, not only have failed to establish misconception but also there is ample evidence that all the facts were before the respondent and were properly considered.

The respondent in reaching the sub judge decision took into consideration that the services of the Aradhippou Improvement Board were inadequate and that the Larnaca Municipality was able to provide proper services to the industrial area. This has been admitted by Mr. Pantelouris in giving evidence on behalf of the applicants.

Lastly, what remains to be considered is the allegation that the respondent in taking the decision complained of acted contrary to Article 28.1 of the Constitution which provides that all persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby.

As stated in *Savva v. Republic* (1979) 3 C.L.R. 250 at p. 257:

"The application of the principle of equality has been

considered in the case of *Mikrommatis v. The Republic*,  
2 R.S.C.C. 125 where it was stated that equality before  
the Law in paragraph 1 of Article 28 of the Constitution,  
5 does not convey the notion of exact arithmetical equality  
but it safeguards only against arbitrary differentiations  
and does not exclude reasonable distinctions which have  
to be made in view of the intrinsic nature of things.

In the case of the *Republic v. Nishan Arakian and Others*  
(1972) 3 C.L.R. 294, the authorities on this principle were  
10 reviewed by the Full Bench of this Court. At page 299  
of the Report we read:

'In Case 1273/65 it was stated that the principle of  
equality entails the equal or similar treatment of all  
those who are found to be in the same situation.

15 In Case 1247/67 it was held that the principle of  
equality safeguarded by Article 3 of the Greek Consti-  
tution of 1952—which corresponds to Article 28.1  
of our Constitution—excludes only the making of  
differentiations which are arbitrary and totally un-  
20 justifiable and exactly the same was held in Case 1870/  
67.

In Case 2063/68 it was held that the principle of  
equality was not contravened by regulating differently  
matters which were different from each other.

25 In Case 1215/69 it was held that the principle of  
equality is applicable to situations which are of the  
same nature'".

Applying the above principles to the facts of the present  
recourse it cannot be said that the respondent acted contrary  
30 to Article 28.1 of the Constitution.

For all the above reasons, this recourse fails and is hereby  
dismissed, with no order as to costs.

*Recourse dismissed. No order  
as to costs.*