

1984 October 24

[L. Loizou, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

P.C. 3616 COSTAS PARPOULLIS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR AND DEFENCE,

Respondent.

(Case No. 97/81).

P.C. 1571 ANDREAS VIOLARIS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR AND DEFENCE,

Respondent.

(Case No. 106/81).

*Constitutional Law—Equality—Discrimination—Principle of equality
—Article 28.1 of the Constitution—“Equal before the law”
in the said Article 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 5
made in view of the intrinsic nature of things—Discrimination
can only arise if different treatment is meted out in two cases
which are similar in all material respects—Refusal to pay rent
allowance to applicants under regulation 24(1)(c) of the Police
(General) Regulations, 1958–1980—And payment of such allow- 10
ance to other officers—Latter, inter alia, living in houses built
on their own land and registered in their own names which they*

5 *have built with financial assistance not granted to them gratis—Applicants living in houses not owned by them but by the Government which were constructed mainly at Government expense—In the light of the above circumstances differentiation between the two groups of officers not unreasonable and does not offend against the provisions of Article 28.1 of the Constitution.*

10 Both applicants, who were police officers, were receiving, before 1974, a rent allowance on the basis of regulation 24(1)(c)* of the Police (General) Regulations 1958–1980 which makes provision for the payment of rent allowance under certain conditions to a police officer, living either himself or his wife or a member of his family for the maintenance of whom he is responsible, in a house or flat belonging to him or his wife or such member of his family. In 1974, after the Turkish invasion and the occupation by the Turkish troops of a large area in the territory of the Republic both applicants and their families were forced to leave their houses and thus they became displaced persons.

20 Applicant in Case No. 97/81 and the wife of applicant in Case No. 106/81 were granted, on the basis of the self-housing scheme introduced by government in order to assist displaced persons to acquire a place to live in, licences to built houses on government land. They were, also, granted financial assistance, gratis, in the region of £2,700 for each one of them; and they have paid a sum over and above that granted to them gratis which in the case of applicant in Case No. 97/81 was about £1,800 and in the case of applicant in Case No. 106/81 was about £1,500.

30 The houses they have constructed were government property since the land on which they were built was government land.

35 The respondent refused applicants' claim for a rent allowance, under the above regulation and hence this recourse in which the sole issue for consideration was whether the said regulation 24(1) and the sub judice refusal created any discrimination against the applicants vis-a-vis other members of the force. These members of the force were, also, displaced, and owned

* Regulation 24(1)(c) is quoted at p. 1003 post.

building sites on which they built their houses, again with financial assistance with the result that the houses so built were registered in their own names; and they, thus, received a rent allowance. The financial assistance which was granted to them though equal to that granted to the applicants was not granted to them gratis, as in the case of applicants, but 7/15ths of it has to be repaid to government within ten years at 3% interest. 5

Held, "equal 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 reasonable distinctions which have to be made in view of the intrinsic nature of things; that, also, an instance of discrimination can only arise if different treatment is meted out in two cases which are similar in all material respects; that in the light of the circumstances of each group of officers and having regard to the proper application of the principle of equality as expounded by this Court the differentiation between the two groups of officers cannot be said to be unreasonable and does not, therefore, offend against the provisions of Article 28.1 of the Constitution; accordingly the recourses must fail. 10 15 20

Applications dismissed.

Cases referred to:

- Mikrommatis v. Republic*, 2 R.S.C.C. 125;
Constantinou v. Republic (1966) 3 C.L.R. 572;
Lordos & Sons (Limassol) Ltd. v. Water Board of Limassol 25
 (1978) 3 C.L.R. 215;
Republic v. Arakian and Others (1972) 3 C.L.R. 294;
Larkou v. Republic (1974) 3 C.L.R. 57.

Recourses.

Recourses against the refusal of the respondent to grant applicants rent allowance. 30

N. Andreou, for the applicants.

M. Florentzos, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult. 35

L. LOIZOU J. read the following judgment. These two recourses were, on the application of the parties, heard together

as they present common questions of law and are based on the same facts. Applicants by their applications apply for the following relief:

- 5 (a) A declaration of the Court that the decision and/or reply and/or act of the respondent Minister dated 3rd January, 1981, file No. 159/9 is void ab initio and of no legal effect whatsoever; and
- 10 (b) A declaration that the applicants are entitled to rent allowance by virtue of regulation 24(1)(c) of the Police (General) Regulations in force.

The facts are not in dispute and are briefly as follows:

Both applicants are police officers and were receiving, before 1974, a rent allowance on the basis of regulation 24(1)(c) of the Police (General) Regulations, 1958–1980 which makes
15 provision for the payment of rent allowance under certain conditions to a police officer living either himself or his wife or a member of his family for the maintenance of whom he is responsible in a house or flat belonging to him or his wife or such member of his family.

20 In 1974, after the Turkish invasion and the occupation by the Turkish troops of a large area in the territory of the Republic both applicants and their families were forced to leave their houses and thus they became displaced persons.

Applicant in Case No. 97/81 and the wife of applicant in
25 Case No. 106/81 were granted, on the basis of the self-housing scheme introduced by government in order to assist displaced persons to acquire a place to live in, licences to built houses on government land; financial assistance was also granted to
30 them for the purpose of building the said houses. Both applicants, however, had to pay a sum over and above that granted to them in order to complete the building of their respective houses which sum in the case of applicant in Case No. 97/81 amounted to about £1,800.– and in the case of applicant in
35 Case No. 106/81 to about £1,500.– The houses in question are government property since the land on which they are built is government land. This is also expressly provided in clauses 3(i) and 8 of the relative agreements incorporating the terms of the licences (exhibit 7) which provide that both the land and

the buildings are the property of the government. By clause 7 of the same agreements the duration of the licences is for a period of one year but they are automatically renewed unless terminated by either of the parties giving to the other two months' notice.

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In 1978, another member of the force who was in the same position as the applicants applied for the grant of rent allowance and the police department sought the advice of the Attorney-General on the matter (exhibit 8). The office of the Attorney-General by letter dated 21st September, 1978 (exhibit 9) signed by a counsel of the Republic advised the Chief of Police that in his opinion on the basis of the relevant regulations in force there was no obligation for the grant of rent allowance to the officer in question.

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Thereafter the matter was discussed with the Ministry of Finance (Personnel Department) and it would appear that it was decided that the following policy with regard to the payment of rent allowance would apply:

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- (a) In the cases of houses built on self-owned building sites a rent allowance will be granted as in the case of members of the force who owned their own houses.
- (b) In the cases of houses built on government building sites no rent allowance will be granted and
- (c) In the cases where a house is provided in government housing estates which are built by government again no rent allowance will be granted.

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This decision was incorporated in the Police Weekly Orders dated 11th February, 1980, and was published for the information of the members of the police force (exhibit 6).

Both applicants then applied by similar letters dated 21st November, 1980 (exhibits 1 and 2) addressed to the Minister of the Interior for the grant of rent allowance to them setting out the following grounds:

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- (1) That they are displaced persons to whom a licence was granted to built on government land.
- (2) That a sum was granted to them for the purpose of building their houses to which they had to add a sum

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of their own over and above the grant given in order to complete the houses.

5 (3) That the houses in question are not their own property but government property, and compared with the position of other colleagues of theirs, who, being displaced persons also and the owners of building sites were granted a sum by the government for the purpose of building thereon they are discriminated against because a rent allowance is paid to the other officers who built on their own land and are, therefore, the owners of the houses so built.

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The applicants were informed by facsimile letters dated 3rd January, 1981 (exhibits 3 and 4) that, on the basis of the advice of the Attorney-General their applications were not approved.

15 As a result they filed the present recourses which are based on the ground that the decision of the respondent is unjust and/or arbitrary and/or was taken in excess and/or abuse of discretionary powers and/or amounts to discrimination and/or is contrary to the provisions of Article 28.1 and 2 of the Constitution and/or contrary to regulation 24(1)(c) of the Police (General) Regulations.

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The recourses were duly fixed for hearing but were adjourned several times on the application of both counsel as negotiations were in progress with a view to an out of Court settlement. In the meantime counsel of the Republic who was appearing for the respondent in both cases wrote to the Director-General of the Ministry of the Interior informing him that at a meeting which he had together with another counsel of the Republic who was initially dealing with one of the two recourses and counsel for the applicants and a representative of the police force they arrived at the conclusion that it was possible that the refusal to grant the rent allowance in question might be considered as discriminatory treatment by the Supreme Court for the following reasons:

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35 (a) A rent allowance is granted on the basis of regulation 24(1)(c) to married members of the police force who own a house.

(b) A rent allowance is also granted to married members

of the police force who pay rent exceeding 3% of their basic salary on the basis of regulation 24(1)(b).

- (c) In the case of the applicants in the present case no rent allowance is granted, although they live in houses built at their own expense including the sum granted to them as a loan on the basis of the self-housing scheme on government land provided for the purpose. It should be noted that on the basis of such grant and the known terms of the self-housing contracts the building sites do not belong to the applicants. As a result the buildings also do not belong to them although they are in the end burdened with the greatest part of the expenses for the building of the houses. In the result the members of the police force who built houses on the basis of the self-housing schemes capitalize their own money instead of paying a monthly rent.

Counsel concluded his letter by stating that the above were put before the Minister of the Interior at a meeting between them who asked him to write this letter.

The Minister then asked for the personal advice of the Attorney-General who by a letter dated 25th September, 1982, informed him that he was inclined to the view that the legal position was correctly stated in the letter of counsel of the Republic, exhibit 5.

Pausing here for a moment it may be pointed out that the statement at paragraph (c) of the above letter (exhibit 5) to the effect that the grant to the applicants was by way of a loan is not quite accurate.

It was at a later stage of the proceedings ascertained and clarified by counsel after a question put by the Court to that effect, that the financial assistance received by the applicants is gratis and not by way of a loan whereas in the cases of other members of the force who built on their own land and have received the same financial assistance, 7/15ths thereof is by way of a loan with interest at 3% repayable in ten years and only 8/15ths is gratis (exhibit 11).

Counsel for applicants has argued that there is discriminatory treatment in the case of the applicants who have built their

houses on government land partly at their own expense and partly with financial assistance granted to them by the government, vis-a-vis other members of the force, also displaced, who, because they owned building sites and have built on them, again with government financial assistance, with the result that the houses so built are registered in their own names, receive a rent allowance.

Counsel for the respondents argued that there is no discrimination against the applicants in the application of the law since they do not belong to the groups of persons covered by regulation 24(1) or by the decision published in the "Weekly Order" exhibit 6. The question therefore, to be decided, it was counsel's submission, is whether regulation 24(1) and/or exhibit 6 create discrimination against the applicants.

The sole point, therefore, that has to be decided is whether regulation 24(1) of the Police General Regulations, 1958-1980 and exhibit 6 create any discrimination against the applicants.

Regulation 24(1) of the Police (General) Regulations, 1958 as amended reads as follows:

"24(1): Any married police officer who is not separated from his wife and

- (a) is not provided by government with quarters; and
- (b) pays rent in excess of 3% of his basic salary; or
- (c) either he or his wife or any member of his family for the maintenance of whom he is responsible resides in a house or flat owned by him or his wife or such member of his family in respect of which the rental of a comparable house or flat in the same locality exceeds 3% of his basic salary (hereinafter called 'notional rent') shall be eligible for assistance from government in the form of rent allowance".

Article 28.1 and 2 of the Constitution reads as follows:

"28.1: All persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby.

2: Every person shall enjoy all the rights and liberties provided

for in this Constitution without any direct or indirect discrimination against any person on the ground of his community, race, religion, language, sex, political or other convictions, national or social descent, birth, colour, wealth, social class, or on any ground whatsoever, unless there is express provision to the contrary in this Constitution". 5

It has been held in a number of cases that "equal 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 reasonable distinctions which have to be made in view of the intrinsic nature of things. See *Mikrommatis and The Republic*, 2 R.S.C.C., 125 which has been followed in a great number of other cases. 10

It has also been held that an instance of discrimination can only arise if different treatment is meted out in two cases which are similar in all material respects. (See *Constantinou v. The Republic* (1966) 3 C.L.R. 572 following in this respect the case of *Mikrommatis*. Also *Lordos & Sons (Limassol) Ltd. v. The Water Board of Limassol* (1978) 3 C.L.R. 215). 15 20

In the case of *The Republic v. Arakian and Others* (1972) 3 C.L.R. 294 a claim by a number of pensioner public officers that they should be paid a cost-of-living allowance tied to the cost of living index in the same manner as in the case of serving public officers was dismissed as not contravening the principle of equality, safeguarded by Article 28.1 of the Constitution, on the ground that the applicants were not found in the same situation as serving public officers. The relevant part of the judgment is to be found at pp. 298-302 of the report where reference is made to a number of other cases on the subject. Likewise, in the case of *Larkou v. The Republic* (1974) 3 C.L.R. 57 a refusal to pay rent allowance to a public officer who was residing in a town other than his station whilst such allowance was paid to other officers residing within five miles from their station, was found not to amount to discrimination and the differentiation was held to be a reasonable one. At p. 61 of the above report it is stated: 25 30 35

"I cannot accept the view that the paragraph in question discriminates against public officers in the same position as the applicant. On the contrary it seems to me that the 40

distinction made between the officers who rent a house in their station and reside therein from those who, for whatever reason, choose not to reside in their station but in another town is a reasonable one; and does not in any way offend against the principle of equality safeguarded by Article 28.1 of the Constitution. (See the *Republic v. Nishan Arakian and two Others* (1972) 3 C.L.R. 294".

Reverting to the facts of the present case one may see from the documentary evidence produced that the applicants do not belong to the group of officers to whom a rent allowance is paid under regulation 24(1)(c) of the Police (General) Regulations and there are certain differences between the group of officers to which the applicants belong and the other group of officers with whom comparison is sought to be made. In the case of the applicants they do not own the houses they live in, they belong to government and although they have spent a sum of their own they were mainly constructed at government expense. They have paid a sum over and above that granted to them by the government which, as stated earlier on, in the case of applicant in Case No. 97/81 was about £1,800 and in the case of applicant in Case No. 106/81 was about £1,500. The sum granted to each by way of assistance gratis was £2,700. The other group of officers with whom comparison is sought to be made are also displaced but they have built their houses on their own land. It is true that a sum was granted to them by the government with a view to assisting them in building the said houses under the government self-housing scheme but this amount which was equal to that granted to the applicants was not, however, granted to them gratis, as in the case of the applicants, but 7/15ths of it has to be repaid to government within ten years at 3% interest.

In the light of the above circumstances and having regard to the proper application of the principle of equality as expounded by this Court I have to conclude that the differentiation between the two groups of officers cannot be said to be unreasonable and does not, therefore, offend against the provisions of Article 28.1 of the Constitution.

In the result these recourses fail and they are hereby dismissed. There will be no order as to costs.

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Recourses dismissed. No order as to costs.