

1985 June 25

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

DOROS PIERIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF FOREIGN AFFAIRS,
2. PUBLIC SERVICE COMMISSION,

Respondents.

(Case No. 60/76).

5 *Legitimate interest—Article 146.2 of the Constitution—Express
or implied acceptance of the act or decision challenged—
Deprives the acceptor of a legitimate interest to pursue a
recourse—Whether there can be implied or silent accept-
ance—Recourse against promotion—Subsequent dismissal
of applicant from the service by the Council of Ministers
as a result of his alleged conduct during the Coup et' etat of
July, 1974—Recourse against such dismissal withdrawn
10 by applicant who elected to receive his pension benefits,
without any reservation—All his other claims impliedly
abandoned—No legitimate interest to pursue the recourse
against promotion.*

15 By means of the above recourse the applicant challenged.
inter alia, the refusal and/or omission of the respondents
to promote him to the post of Counsellor "A" in the Mi-
nistry of Foreign Affairs. After the Court had reserved
judgment in this recourse the services of the applicant
were terminated* by decision of the Council of Ministers
as from the 1st February, 1980 and applicant filed re-
20 course No. 88/80 against the legality of that decision.

* Applicants' services were terminated as a result of his alleged conduct at the time of the coup t' etat of July 1974.

Recourse 88/80 was withdrawn by his counsel on the ground that the applicant decided to take the pension and other benefits of his retirement in accordance with the relevant decision of the Council of Ministers.

Held, that an applicant deprives himself of a legitimate interest where he has expressly or impliedly accepted the act or decision of the administration which acceptance in any event must be unreserved and free and must not have taken place under the pressure of forthcoming injurious consequences for such applicant; that it was as a result of the alleged conduct of the applicant at the time of the Coup d'etat that his services were terminated; that, moreover, the applicant in accepting his pension as calculated on the basis of the salary emoluments pertaining to the position he held in the service without taking into account any possible increase in salary through the promotion that he might have had as claimed in the present recourse, was acting without any reservation and consequently depriving himself of any legitimate interest; that he was thereby abandoning impliedly to say the least, all other claims that he might have had, had he stayed on in the service; that he, in other words, abandoned his legitimate interest in the present recourse by stopping being a civil servant without any reservation and there was indeed a recognition by him of this legal situation (see the Conclusions from the Case Law, of the Greek Council of State, 1929-1959 at p. 261, where it is stated that "the acceptance results not only, expressly, by a relevant declaration of the applicant but also silently being possible to be inferred and by various acts"); accordingly the recourse must be dismissed.

Application dismissed.

Cases referred to:

Christodoulides and Others v. Republic (1984) 3 C.L.R. 1297; 35

Ayoub v. Republic (1985) 3 C.L.R. 70.

Recourse.

Recourse against the refusal and/or omission of the

respondents to promote applicant to the post of Counsellor A in the Ministry of Foreign Affairs.

A. Markides, for the applicant.

5 *R. Gavrielides, Senior Counsel of the Republic, for the respondents.*

Cur. adv. vult.

10 A. LOIZOU J. read the following judgment. The applicant was a public servant serving in the Foreign Service of the Republic. In 1970 he was promoted to Counsellor B, and reached the top scale of his post on 1st August 1974. The post of Counsellor B, is a combined one with the post of Counsellor A.

15 On the 11th January 1975, the Director-General of the Ministry of Foreign Affairs by letter dated 11th January, 1975, (Enclosure No. 1), addressed to the Chairman of the respondent Commission, reported that seven officers were drawing the top of their salary scale as from 1st August 1974 and recommended that they might be promoted to the post of Counsellor or Consul/General A, under 20 the rules governing promotions within combined establishments. In the same letter it was added that although the applicant Counsellor or Consul-General B, was also drawing the top of his salary scale since 1st August 1974, yet he could not be recommended for promotion in view of a 25 case pending against him for disobedience and other disciplinary offences.

30 On the 6th March, 1975, the Acting Director-General of the Ministry of Foreign Affairs (Enclosure 2), requested that his aforementioned letter be considered as withdrawn and said that he would raise the matter later on in the light of the Government's policy regarding promotions. Obviously this course was necessitated by the prevailing at the time abnormal situation. On the 4th April, 1975, 35 the Acting Director-General of the Ministry of Foreign Affairs wrote to the Chairman of the respondent Commission the following letter, (Enclosure 3):

“Further to our letter of 6th March 1975, I have been instructed to submit, and I hereby submit a

proposal that Messrs. D. Pappasavvas, K. Loizou, M. Sherifis, B. Markides, K. Papademas, N. Agathocleous. A. Nicolaides, all Counsellor B, be placed as from the 1st August 1974, on the top of the salary scale of their post, be promoted to the combined post of Counsellor A, as it was the original proposal of our Ministry under the same number and date 11th January, 1975, letter." 5

The criteria governing the promotions within combined establishments are based on the provisions of Circular No. 1387 of 6th April 1957 (Enclosure No. 5) and of paragraph B of the Appendix to Circular No. 372 of 12th June, 1975, of the Ministry of Finance (Enclosure 6). The respondent Commission at its meeting of the 3rd October 1975, (Enclosure 7), considered the merits and qualifications of the above officers as reflected in their personal files and in their annual confidential reports in conjunction with the relevant recommendation made by the Director-General, Ministry of Foreign Affairs and the criteria set out in the Circulars referred to above and considered that the aforementioned officers were "in every respect suitable for promotion in accordance with paragraph (b) (ii) of the Appendix to Circular No. 372 of the 12th June, 1975". 10 15 20

The applicant by his letter dated 9th February 1976, (Enclosure 8), addressed to the Director-General, Ministry of Foreign Affairs and to the respondent Commission, requested that the question of his promotion might be considered. The Chairman of the respondent Commission asked to be informed by the Director-General of the Ministry of Foreign Affairs whether the reasons for the non-recommendation of Mr. Pierides for promotion to the post of Counsellor or Consul-General A, had ceased to exist and whether that officer might be recommended for promotion. The reply to the above letter was that the reasons for which the applicant was not recommended for promotion still existed and therefore the Ministry could not recommend him for same. 25 30 35

Before, however, the respondent Commission inquired into the matter with the Ministry of Foreign Affairs the 40

present recourse was filed by which the following reliefs are claimed:

5 “(a) Declaration that the promotion of the interested parties named in Schedule Appended hereto “A” to the post of Counsellor A in the Foreign Service instead of and in preference to the Applicant is null and void and of no effect whatsoever (Note: the said promotion was published in the Official Gazette of 5.12.1975).

10 (b) And/or Declaration that the refusal and/or omission of the respondents to promote applicant to the aforesaid post of Counsellor A is null and void and of no effect whatsoever, and/or the said omission ought not to have been made and whatever
15 has been omitted should have been performed.”

 This case came up before a Judge of this Court with an application for amendment of the grounds of Law relied upon which was granted. Then directions for written addresses were made but there was no compliance with the
20 said direction and extension of time was granted. Ultimately the written address of the applicant was filed on the 17th January 1978, but no written address was filed on behalf of the respondents and the case was fixed for directions before the learned trial Judge handling same at the time
25 on the 1st December 1980, when a further extension for the filing of the address on behalf of the respondents and the reply thereto was made.

 On the 23rd March, 1981, in response to an application by counsel for the applicant counsel for the respondent
30 made the following statement:

 “From the minute of the Court of the 26th January, 1981, I understand that Mr. Markides wants me to clarify the question whether we admit that at the
35 time of the decision attacked by the recourse no disciplinary proceedings were pending. I wish to state that at that time the complaint existed against the applicant concerning acts alleged to be disciplinary offences and referring to the period of the coup d’etat. Since the post to which he would be promoted was
40 a combined one, the respondent authority decided to

postpone its decision whether he would be recommended and/or promoted to that combined post pending the clarification of the whole thing. Finally, the applicant was dismissed by a decision of the Council of Ministers.” 5

The case thereupon was adjourned for further argument before the learned trial Judge but no date was given by him, but directed the case to be fixed by the Registrar at a convenient date to both counsel. On the 3rd December 1983, the case was taken over by me and it was subsequently adjourned as counsel for the applicant was trying to contact him and receive further instructions. Ultimately judgment was reserved on the 14th April 1984, but the hearing of the case was reopened by me and the following is the direction made for that purpose: 10 15

“Whereas after reserving judgment in this case on the 14.4.1984, it has come to my knowledge that the services of the applicant were terminated by decision of the Council of Ministers No. 18767 as from the 1st February, 1980, and 20

Whereas Recourse No. 88/80 was filed against the legality of that decision and whereas the said recourse was withdrawn by his counsel on the ground that the said applicant decided to take the benefits of his retirement in accordance with the relevant decision of the Council of Ministers; 25

The present recourse is fixed for argument by both sides as to the effect of this action of the applicant and for the supply by either side of any further information as to whether the applicant is receiving any pension or has received any money as from his said retirement, on Saturday, 1st December, 1984, at 9:30 a.m.” 30

In compliance to the aforesaid direction, Administrative Recourse No. 88/80 was produced as exhibit A, and a letter by counsel appearing for him in the said recourse dated the 6th April 1983, was also produced (exhibit B). 35

By recourse No. 88 of 1980, the applicant was praying for a declaration that the decision of the Council of Mini-

sters by which his services as a civil servant were terminated as from the 1st February 1980, was illegal, null and void and of no legal effect.

5 The facts set out in the said application refer to the disciplinary proceedings and instituted against the applicant before the Public Service Commission and that whilst awaiting its decision the Council of Ministers took the decision subject of that recourse. In the opposition
10 filed by the respondent Council of Ministers, it was claimed that the decision in question did not constitute a disciplinary measure but an administrative one taken lawfully in the public interest by virtue of sections 6(f) and 7 of the Pensions Law, Cap. 311 as amended and by virtue of any other lawfully possessed authority after all the circum-
15 stances of the case were taken into consideration.

It appears that this recourse was being heard together with a good number of other recourses by the Full Bench of the Court and the hearing before the Full Bench commenced on the 24th March, 1981.

20 Upon a direction made by the Court statements were made in respect of all applicants, the one for the present applicant being to the effect that after the completion of the relevant inquiry by the Inquiry Committee it was decided by the Council of Ministers to refer the applicant to
25 the Public Service Commission for trial of the acts attributed to him. After the applicant was charged and whilst the Public Service Commission was continuing the trial of the disciplinary case against him, (exhibit 1), his services were terminated by the Council of Ministers. From exhibits
30 1 to 15, it appears that the acts attributed to him were placed before the applicant.

On the 6th April, 1983, his counsel in that recourse wrote to the Chief Registrar of the Supreme Court stating that at the request and on instructions from his client he
35 was seeking leave to withdraw that recourse which was pending before the Full Bench of the Supreme Court for judgment and he added that his client decided to get the benefits of retirement given by Decision 18,767 of the Council of Ministers, hence he decided to withdraw the

recourse. Upon that, that recourse was dismissed as withdrawn.

The letter of the 6th April 1983, (exhibit B), referred to above was addressed to the Director-General of the Ministry of Foreign Affairs. After referring to the termination of the applicant's services and to the pending recourse No. 88/80 for the annulment of the said decision it reads:

“3. My client as it appears from the attached document submitted an application to the Supreme Court for the withdrawal of his recourse which must be considered as withdrawn by him.

4. The present prayer is that in execution of the said decision of the Council of Ministers, photocopy of which is attached hereto, you may take steps so that my client will receive the benefits to which he is entitled on account of his status, as having been an officer of the Ministry of Foreign Affairs by taking proper action regarding the present application.

Please act on the present application the soonest possible so that the case will be brought to an end and so my client will be able to face his serious economic needs and bring to an end the whole case for which he so much suffered.”

On the 14th April 1983, the applicant, by letter addressed to him personally, was informed, after a reference to his retirement from the Public Service as from 1st February, 1980, that in accordance with the Pensions Law, he was given as from the said date a yearly pension of £1,805.290 mils and that the Accountant General was requested to arrange payment. On the 20th April 1983, the applicant applied to the Central Bank of Cyprus for approval that his pension be sent to Greece where he was as he put it, permanent resident since 1980. He further stated therein that his monthly pension was in the sum of £212 and requested to be remitted in dollars as from 30th April 1983, to the address given.

It may be mentioned here that the judgment of the Full Bench in the remaining recourses by which the termination

of the services of a number of officers in the public interest, was challenged, was delivered and they were dismissed. Same is reported as *Petros Christodoulides and Others v. The Republic* (1984) 3 C.L.R. 1297.

5 At the reopening of the case counsel for the applicant after referring to the authorities and the relevant legal principles that can be discerned therefrom governing the question of acceptance of an administrative act and the consequential loss of one's legitimate interest, argued that
10 the acceptance should be in respect of the particular administrative act whereas in the present case what we had was an acceptance of another administrative act, whereby the applicant's services were terminated and we were not confronted with an expressed acceptance of the sub judice
15 administrative act. In support of his proposition and of the proposition that the acceptance of pension could not be considered as an acceptance of the administrative act, subject matter of the present recourse, he referred *inter alia*, to *Tsatsos The Application for Annulment*, 3rd edition
20 p. 43, where the following proposition is to be found by reference to decision No. 1683/63, "After the filing of the application for annulment the inference of acceptance of the administrative act already challenged is excluded from the receipt of compensation or other similar action of the
25 applicant seeking its annulment."

This Court had the occasion to state the legal principles governing the question of acceptance and its consequences in a number of cases, both at first instance and by the Full Bench and I need not re-state them except to say that
30 an applicant deprives himself of a legitimate interest where he has expressly or impliedly accepted the act or decision of the administration, which acceptance in any event is unreserved and free and must not have taken place under the pressure of forthcoming injurious consequences for
35 such applicant (see *Boulos Ayoub Ayoub v. The Republic* (1985) 3 C.L.R. p. 70 where reference is made to the relevant Case Law of this Court; see also *Tsatsos The Application for Annulment*, 3rd Edition p. 43, and Decisions 1926/49, 1765/52 of the Greek Council of State.)

40 It has, however, to be stressed that the loss of legitimate interest through express or implied acceptance of the act

or decision of the administration depends on the particular circumstances of each case and cannot be decided in abstracto.

In the instant case we have a series of acts which all have as a basis the alleged conduct of the appellant at the time of the Coup d' Etat. It was as a result of such conduct that his services were terminated in the public interest along with those of other officers who brought themselves in the same situation as it is apparent from the material hereinabove outlined, including the contents of Recourse No. 88/80 which was unreservedly withdrawn by the applicant and the relevant correspondence produced.

Moreover the applicant in accepting his pension as calculated on the basis of the salary emoluments pertaining to the position he held in the service without taking into account any possible increase in salary through the promotion that he might have had as claimed in the present recourse, was acting without any reservation and consequently depriving himself of any legitimate interest. He was thereby abandoning impliedly to say the least, all other claims that he might have had, had he stayed on in the service. He, in other words, abandoned his legitimate interest in the present recourse by stopping being a civil servant without any reservation. There was indeed a recognition by him of this legal situation.

As stated in the Conclusions from the Case Law, of the Greek Council of State, 1929-1959 at p. 261, "the acceptance results not only, expressly, by a relevant declaration of the applicant but also silently being possible to be inferred and by various acts."

Having looked at the totality of the sequence of events in the particular circumstances of this case, I have come to the conclusion that this recourse should and is hereby dismissed for the reasons above explained.

In the circumstances, however, there will be no order as to costs.

*Recourse dismissed.
No order as to costs.*