

1985 May 3

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

GEORGHIOS P. KARATZIA,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR,

Respondent.

(Case No. 10/70).

Legitimate interest—Article 146.2 of the Constitution—Acceptance of or acquiescence to an act or decision of the administration freely and without any reservation—Deprives an applicant of his legitimate interest to pursue a recourse directed against such act or decision.

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The applicant joined the Police Force on the 14th April, 1950 and in 1955, upon his own application, he was transferred to the Police Fire Service. Whilst serving in the Police Force he was working eight hours a day but since his transfer to the Fire Service he was working twelve hours per day, i.e. 24 hours service and 24 hours off duty, as all other members of that service, without payment of any overtime allowance, until July, 1969. Applicant did not complain until the 15th October, 1969, when he wrote, through his counsel, a letter to the Chief of Police requesting the payment of overtime allowance due to him for the period between 1955 and July, 1969. The Chief of Police rejected his claim; and hence this recourse.

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Held, that acceptance of or acquiescence to an act or decision of the administration freely and without any reservation deprives an applicant of his legitimate interest to pursue a recourse directed against such act or decision; that since the applicant was transferred to the Fire Service

upon his own application and accepted the duty time table in force, which did not provide for payment of overtime allowance, without any reservation or protest and without any complaint within a reasonable time, but only a long time later and presumably after he had ceased working extra hours he lost his legitimate interest; and that, therefore, his recourse must fail (*Superman and Others v. Republic* (1981) 3 C.L.R. 572 distinguished). 5

Application dismissed.

Cases referred to: 10

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

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

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

Aniliades v. Republic (1981) 3 C.L.R. 21; 15

HadjiConstantinou and Others v. Republic (1984) 3 C.L.R. 319 at p. 330;

Superman and Others v. Republic (1981) 3 C.L.R. 572.

Recourse.

Recourse against the decision of the respondent rejecting applicant's claim for overtime allowance concerning the period between 1955 and July 1969. 20

E. Efsthathiou, for the applicant.

S. Georghiadis, Senior Counsel of the Republic, for the respondent. 25

Cur. adv. vult.

L. LOIZOU J. read the following judgment. The applicant by this recourse prays for a declaration that the decision of the Chief of Police rejecting applicant's claim for overtime allowance concerning extra hours of work by him during the period between 1955 when he was appointed in the Police Fire Service, until July, 1969, is null and void and of no legal effect. 30

The applicant joined the Police Force on the 14th April, 1950 and in 1955, upon his own application, he was transferred to the Police Fire Service. Whilst serving in the Police Force he was working eight hours a day but
5 since his transfer to the Fire Service he was working twelve hours per day, i.e. 24 hours service and 24 hours off duty, as all other members of that service, without payment of any overtime allowance, until July, 1969. Applicant did not, however, complain until the 15th October, 1969,
10 when he wrote, through his counsel, a letter to the Chief of Police requesting the payment of overtime allowance due to him for the period between 1955 and July, 1969 (exhibit 1). On the 29th October, 1969, the Acting Chief of Police replied as follows (exhibit 2):

15 "2. Police Officer 629 was enlisted in the Police Force on the 14th April, 1950 and was transferred to the Fire Service, upon his own application, on the 1st May, 1955. Since his transfer to the Fire Service he continued working in accordance with the existing duty
20 time table i.e. 24 hours service and 24 hours off duty without any written complaint.

3. The above mentioned duty time table is based on regulations 15(2) (c) (ii) of the Police (General) Regulations 1958-1968 and is generally accepted by
25 all members of the Fire Service as a condition of service in the Force.

4. Therefore, the said officer is not entitled, in my view, to any overtime allowance."

30 The recourse is based on several grounds of Law to the effect that the sub judice decision was taken in excess and/or abuse of powers and contrary to regulation 15 of the Police (General) Regulations; that it was taken under a misconception and/or mistake as to the real basis of applicant's application; and that it is contrary to Article 28
35 of the Constitution and affects vested rights of the applicant.

Although not specifically raised by counsel, I feel that, in view of the provisions of Article 146.2 of the Constitution, I am bound to examine, ex proprio motu, the question

of whether the applicant has a legitimate interest to pursue this recourse.

It is a principle of administrative Law that acceptance of or acquiescence to an act or decision of the administration freely and without any reservation deprives an applicant of his legitimate interest to pursue a recourse directed against such act or decision. See, in this respect, *Neocleous and Others v. The Republic* (1980) 3 C.L.R. 497; *Tomboili v. C.Y.T.A.* (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 v. The Republic* (1981) 3 C.L.R. 21 and *HadjiConstantinou and Others v. The Republic* (1984) 3 C.L.R. 319 at p. 330 where it was held by the Full Bench of this Court that the failure of the applicants for a number of years since their appointment to claim any emplacement increments amounted to an acceptance, on their part, of the conditions of service regarding their emoluments and they were, therefore, deprived of their legitimate interest to pursue their recourses against the refusal of the respondents to grant to them such emplacement increments when they claimed them at a much later stage.

The applicant in the present recourse was transferred to the Fire Service upon his own application and accepted the duty time table in force, which did not provide for payment of overtime allowance, without any reservation or protest and without any complaint within a reasonable time, but only a long time later and presumably after he had ceased working extra hours. He has, therefore, in the light of the above authorities, lost his legitimate interest.

If his claim had been based on any future overtime allowance I would have accepted it for the same reasons that such claims were accepted by the judgment of this Court in the case of *Superman and Others v. The Republic* (1981) 3 C.L.R. 572 where the question of the hours of work of and the payment of overtime allowance to members of the Fire Service was raised and decided in their favour. The claim of the applicants in that case however, was not a retrospective one, as it is in the present case, but was based on the refusal of the respondents to reduce their hours of work or pay them an overtime allowance

instead so as to bring them in line with members of the Police Force. And, although it was decided in the above case that Police Standing Order No. 30, regulating the hours of work of members of the Fire Service was not in force after 1958, when the Police Law and Regulations were enacted, and the Fire Servicemen were, therefore, entitled to payment of overtime allowance, this cannot apply to any retrospective claim concerning hours of work about which there has been no protest or reservation on the part of the applicant at the proper time as in the present case.

It is clear from the above that the *Superman* case (supra) is clearly distinguishable from the case in hand in which the applicant, for the reasons already stated, has lost his legitimate interest to pursue his recourse which, as a result, must fail on this ground.

In view of my finding on this issue, I consider it unnecessary to deal with any of the other grounds raised by the applicant.

In the result this recourse fails and it is hereby dismissed. There will be no order as to costs.

*Recourse dismissed.
No order as to costs.*