

1986 July 14

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

NICOS KYRIACOU MILIOTIS.

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE,

Respondents.

(Case No. 471/85).

Practice—Recourse for annulment—Act or omission complained of must be described with certainty—In considering the question the recourse has to be considered as a whole.

5 *Legitimate interest—Principles applicable, review of—The interest may be either material or moral.*

10 *Government lotteries—The Government Lotteries Regulations 1956-1972—Regulations 9 and 10 and in particular Reg. 9(v)—They are not ultra vires the enabling law—Section 5(1) and 5(2) of the Government Lotteries Laws—The time prescribed for the presentation for payment of the winning tickets in question, though short, is not so unreasonably short as to justify interference by this Court.*

15 *Subsidiary legislation—Invalid, if ultra vires the enabling law—The answer to the relevant question depends on the true construction of the enabling law—The Courts are averse to treat by-laws as bad on the ground of their being unreasonable.*

20 *Time within which to file a recourse—Submitting a request under Article 29 of the Constitution in respect of the same subject matter as the decision—The two schools of thought as regards the effect of such submission on computing*

the 75 days' period—Decision communicated on 7.1.85—Request submitted on 18.1.85—Reply to such request by letter dated 25.1.85—Further letter by applicant to the competent organ dated 8.2.85—Reply confirming the earlier one dated 2.3.85—The decision of 2.3.85 is confirmatory of an earlier one and, therefore, as it lacks executory character, cannot be attacked by recourse—This recourse, which was filed on 22.4.85 is out of time, whatever view is taken as to the effect of the request of 10.1.85.

On the 7.1.85 the applicant presented for payment to the office of the Government Lotteries two tickets winning 30 cents each. The official refused payment on the ground that the last day prescribed for payment was the 31.12.84.

On 10.1.85 the applicant sent a petition to the Director of Lotteries requesting payment. The request was rejected on the same ground as aforesaid and the relevant decision was communicated to the applicant by letter dated 25.1.1985. On 8.2.85 the applicant sent another letter to the Director. On 2.3.85 a reply, repeating and confirming the previous decision. was sent to the applicant.

As a result the applicant on 22.4.85 filed the present recourse. The impression from its first reading is that the applicant seeks the amendment of the relevant Regulations prescribing the time within which and the manner in which prizes for "double chance" Lotteries have to be claimed and paid. This led counsel for the respondents to contend that (a) the applicant has no legitimate interest and (b) the act, the validity of which is challenged, is not an administrative act. The grounds of the recourse are that the Regulations are unreasonable, ultra vires the Law and discriminatory.

Held, dismissing the recourse: (1) The decision or omission sought to be annulled must be described with certainty. In order to consider the subject matter of a recourse the recourse has to be considered as a whole. A vague recourse, which does not with some certainty. state the act attacked, cannot be entertained. In this case the act challenged is ascertainable from consideration of the whole

recourse. It is the refusal to pay the prize of the two tickets.

5 (2) The legitimate interest of an applicant may be either material or moral. In this case the applicant has a material interest in the annulment of the said refusal.

10 (3) A sub judice decision has to be declared null and void and of no effect, if it was based on an invalid enactment. Subsidiary legislation must be intra vires the enabling statute. The answer to the relevant question depends on the construction of the relevant enabling enactment. If such enactment interferes with a fundamental right any doubt must be resolved in favour of the Citizen. The Courts are now averse from declaring by-laws bad on the ground of their being unreasonable. The question in this case is whether the second leg of Reg. 9(b) of the above Regulations is ultra vires the enabling enactment, namely section 5(1) of the Government Lotteries Laws.

15 Sections 5(1) empowers the Council of Ministers to make Regulations prescribing all matters necessary or convenient to be prescribed for giving effect to the provisions of the law and in particular the Council is empowered by s. 5(1)(e) to make regulations for prescribing the time within which and the manner in which prizes shall be claimed and by s. 5(1)(f) to make regulations providing for the disposal of unclaimed prizes; and s. 5(2) specifically provides that Regulations may prescribe that in certain events and after such time as it shall be specified the proceeds of unclaimed prizes shall be forfeited to the Republic.

20 The Regulation in question is not inconsistent to or contrary to the enabling enactment. Though the time appointed for the presentation of the kind of tickets in question is short, nevertheless is not so unreasonably short as to justify interference by this Court.

25 (4) The decision complained of was taken and communicated to the applicant on 7.1.85. The applicant exercised his right under Article 29 of the Constitution and submitted a request to the Director of Lotteries, who replied by letter dated 25.1.85. Whatever view is taken as to the

effect on computing the 75 days' period of submitting a request to the competent authority on the same subject matter under Article 29, there can be no doubt that this recourse is out of time. The letter dated 2.3.1985 contains only a confirmation of an earlier decision. It is a confirmatory act, which cannot be made the subject of a recourse. 5

*Recourse dismissed.
No order as to costs.*

Cases referred to: 10

- Koufettas v. The Republic* (1978) 3 C.L.R. 225;
- Aristidou v. The Republic* (1984) 3 C.L.R. 503;
- Avgoloupis v. The Republic* (1985) 3 C.L.R. 1525;
- Kritiotis v. The Municipality of Paphos and Others* (1986) 3 C.L.R. 322; 15
- Constantinou v. The Republic* (1974) 3 C.L.R. 416;
- Kourris v. The Supreme Council of Judicature* (1972) 3 C.L.R. 390;
- Geodelekian and Another v. The Republic* (1969) 3 C.L.R. 428; 20
- PA.SY.DY. and Others v. The Republic* (1978) 3 C.L.R. 27;
- Christodoulou v. The Republic*, 1 R.S.C.C.1;
- Fina (Cyprus) Ltd. v. The Republic*, 4 R.S.C.C. 26;
- Spyrou and Others (No. 2) v. The Republic* (1973) 3 C.L.R. 627; 25
- Chester v. Bateson* [1920] 1 K. B. 829;
- Newcastle Breweries Ltd. v. The King* [1920] 1 K. B. 854;
- Commissioners of Customs and Excise v. Cure and Deeley Ltd.* [1962] 1 Q.B.D. 340; 30
- Slattery v. Naylor* [1888] 13 App. Cas. 446;
- Ioannou v. The Republic*, (1983) 3 C.L.R. 80;
- Cases 727/61 and 2674/64 of Greek Council of State*;

Moran v. The Republic, 1 R.S.C.C. 10;

Protopapas v. The Republic (1967) 3 C.L.R. 411;

Irrigation Division "Katzillos" v. The Republic (1983) 3 C.L.R. 1072;

5 *Demetriou v. The Republic* (1984) 3 C.L.R. 888;

Colokassides v. The Republic (1965) 3 C.L.R. 542;

Kyprianides v. The Republic (1982) 3 C.L.R. 611;

Spyrou v. The Republic (1983) 3 C.L.R. 354.

Recourse.

10 Recourse against the refusal of the respondents to pay applicant the value of two winning tickets of 30 cents each of the Government Lotteries which were presented after the last day prescribed for payment.

Applicant appeared in person.

15 *St. Theodoulou*, for the respondents.

Cur adv. vult

20 STYLIANIDES J. read the following judgment. The applicant, a person of advanced age, agent of Government lotteries for over 20 years, on 7.1.85 presented to the office of the Government lotteries two tickets winning 30 cents each and claimed to be paid. As the last day prescribed for payment was the 31st December, 1984, the officials refused payment.

25 On 10.1.85 he sent a very long petition to the Director of Lotteries requesting payment. His request, as he wrote, was made under Article 29 of the Constitution. He alleged that the Regulations governing time of payment were unreasonable, contrary to Law and the Constitution and that the refusal to pay him was discriminatory. The said request was answered by the Director on 25.1.85. The request was rejected as the claim for payment was made out of time; the Regulations governing State lotteries were in

operation as from 1972; and there was no discrimination against the applicant.

On 8.2.85, the applicant, who appears to be a very prolific layman writer, sent another long letter to the Director on the same matter. On 2.3.85 a reply, repeating and confirming the previous decision, was sent to the applicant. 5

The applicant on 22.4.85 filed this recourse. The drafting of the recourse leaves much to be desired. The impression from its first reading is that the applicant seeks solely the amendment of the relevant Regulations prescribing the time within which and the manner in which prizes for "double chance" lotteries have to be claimed and paid. This obviously led counsel for the respondents to contend that (a) the applicant has no legitimate interest and (b) the act, the validity of which is challenged, is not an administrative act within the ambit of Article 146.1 of the Constitution and, therefore, not justiciable. 10 15

The basic question is how to construe a recourse in order to ascertain at what it is aimed. In a recourse the act, decision or omission sought to be annulled must be described with certainty as the whole procedure and jurisdiction of this Court is with reference to a specific act, decision or omission attacked. In order to ascertain the subject-matter, the recourse has to be considered as a whole—(*Koufettas v. The Republic*, (1978) 3 C.L.R. 225; *Aristidou v. The Republic*, (1984) 3 C.L.R. 503; *The Case-Law of the Greek Council of State, 1929-1959*, p. 271). 20 25

A vague recourse, which does not, with some certainty, state the act attacked, cannot be entertained—(*Cases of the Greek Council of State 727/61 and 2674/64*)—as the function of the administrative Court is to determine the validity of an administrative act. 30

The recourse was drafted and pursued by the layman applicant. Though it lacks complete certainty, it is not so uncertain as to be dismissed at this stage. The act challenged is ascertainable from consideration of the whole recourse. It is the refusal on the basis of the existing Regu- 35

lations to pay the prize of two small winning tickets presented by the applicant on 7.1.85.

The grounds of the recourse are that the Regulations are unreasonable, ultra vires the Law and discriminatory.

5 Article 146, paragraph 2, of the Constitution provides that a recourse may be made by a person whose any existing legitimate interest is adversely and directly affected. A recourse for annulment requires in respect of an applicant a legitimatio ad causum—(*Odent—Contentieux Administratif*— Fascicule IV, pp. 1280-1281; Tsatsos—The
10 Recourse for Annulment Before the Council of State, 3rd Edition, p. 30).

The existence of legitimate interest creates jurisdiction for the Court. Lack of legitimate interest deprives the Court
15 of the power to deal with a recourse. The legitimate interest must exist at the time of the filing of the recourse until the determination of it—(*Avgoloupis v. The Republic*, (1985) 3 C.L.R. 1525; *Kritiotis v. The Municipality of Paphos and Others*, (1986) 3 C.L.R. p. 322).

20 The presence of an existing legitimate interest has to be inquired into ex proprio motu by the administrative Court (*Constantinou v. The Republic*, (1974) 3 C.L.R. 416).

The jurisprudence of the administrative law casts on the applicant the initial burden to satisfy the Court that
25 he has a legitimate interest for interference with the challenged administrative act. The legitimate interest may be either material or moral. In the present case the applicant has at least a material interest in the annulment of the act at which his recourse aims.

30 It was argued by counsel for the respondent that the Regulations, being a legislative act, cannot be the subject of examination as they are outside the ambit of the jurisdiction created by Article 146 of the Constitution. He bases his such proposition on the decisions of this Court
35 in *Antonis Kourris v. The Supreme Council of Judicature*, (1972) 3 C.L.R. 390; *Vahan Geodelekian and Another v. The Republic*, (1969) 3 C.L.R. 428; and *Pankyprios Syn-*

technia Dimosion Ypullilon and Others v. The Republic of Cyprus, (1978) 3 C.L.R. 27.

This Court, however, in considering the validity of a sub judge decision, has to declare it null and void and of no effect if it was based on an invalid enactment—*Christodoulou v. The Republic*, 1 R.S.C.C. 1; *Spyrou and Others (No. 2) v. The Republic*, (1973) 3 C.L.R. 627). 5

Subsidiary legislation must be intra vires the enabling statute. When subsidiary legislation is examined with a view to determining whether it is intra or ultra vires, the answer to the question depends, in every case, on the true construction of the relevant enabling enactment. If it interferes with a fundamental right, such as the right to property, any doubt arising as to the ambit and effect of the relevant enactment must be resolved in favour of the citizen—(*Fina (Cyprus) Ltd. v. The Republic*, 4 R.S.C.C. 26; *Chester v. Bateson*, [1920] 1 K.B. 829, at p. 838; *Newcastle Breweries, Ltd. v. The King*, [1920] 1 K.B. 854). Delegated legislation may be challenged for substantive ultra vires, that is, on the ground that it goes beyond the powers granted by the legislature—(*Commissioners of Customs and Excise v. Cure and Deeley Ltd.*, [1962] 1 O.B.D. 340). 10 15 20

The act complained of was based on Regulation 9(b) of the Government Lotteries Regulations, 1956-1972. Regulations 9 and 10 read as follows:- 25

“9—Prizes shall be paid by the Director of Lotteries in respect of winning tickets in a lottery in accordance with the following provisions—

- (a) payment shall be claimed by presenting and delivering up the ticket in respect of which the claim is made at the place and during the hours appointed for the purpose in the notice published in pursuance of Regulation 5 of these Regulations; 30 35
- (b) payment shall be claimed within six months after the day of the draw at which the ticket in respect of which the claim is made was declared a

winning ticket or within such shorter period as the *Director of Lotteries*, having regard to the circumstances, would prescribe, in respect of any winning numbers by inclusion in the Official Gazette of the Republic:

- 5
- (c) no payment shall be made before the day next following that of the draw at which the ticket was declared a winning ticket or, if that day is a Sunday or public holiday, before the next following day not being a Sunday or public holiday:
- 10
- (d) payment shall be made to the person who presents the ticket for payment of the prize won by that ticket and such payment shall absolutely discharge the *Director of Lotteries*, the Government, its servants and agents in respect of the payment of that prize.
- 15

10.—If payment of a prize is not claimed in the manner and within the period prescribed by Regulation 9 of these Regulations, and if the number of the ticket in respect of which the prize was payable shall have been duly published as provided in Regulation 8 of these Regulations, the proceeds of that prize shall upon the expiry of the period aforesaid be forfeited to the Republic of Cyprus and paid into the Consolidated Fund of the Republic for purposes of development”.

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The Regulation under attack is the second leg of regulation 9(b) that was made by the Council of Ministers and published in the 3rd Supplement of the Official Gazette, 27.1.72 page 141.

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The Council of Ministers is empowered by s. 5(1) to make Regulations prescribing all matters which are necessary or convenient to be prescribed for giving effect to the provisions of the Law and in particular by s. 5(1)(e) for prescribing the time within which and the manner in which prizes shall be claimed, and by s. 5(i)(f) for providing for the disposal of unclaimed prizes or money or of prizes or money as to which any dispute has arisen.

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The applicant based his argument that the Regulations are ultra vires on the ground that the prize of a winning ticket is always the property of the possessor and it cannot be forfeited or taken away from him by the Republic. Section 5(1)(f) clearly makes provision for the forfeiture of prizes and their disposal. 5

Section 5(2) specifically provides that Regulations made under this section may prescribe that in certain events to be specified and after such time as shall be specified the proceeds of unclaimed prizes shall be forfeited to the Republic and paid into the "Consolidated Fund of the Republic for development purposes"—(«η Δημοκρατία της Κύπρου και καταβάλλονται εις το Πάγιον Ταμείον της Δημοκρατίας δια σκοπούς αναπτύξεως»). 10

The applicant submitted further that the time appointed by the Director of Lotteries, printed on the ticket (Appendix "ST") and published in the Official Gazette, that is, the 31st December, 1984, three weeks from the day of the draw and 7 days from the day of the sale (See Official Gazette 14.12.81, p. 1410, for the Draw No. 51/84) is unreasonably short and, therefore, invalid. 15 20

The Courts are now averse from declaring by-laws bad on the ground of their being unreasonable. In *Slattery v. Naylor*, [1888] 13 App. Cas. 446, 453, which turned on the validity of a by-law made by a local authority in New South Wales, it was said:- 25

"Their lordships feel strong reluctance to question the reasonable character of by-laws made under such circumstances, and doubt whether they ought to be set aside as unreasonable by a court of law, unless it be in some very extreme case". 30

The applicant mentioned a number of examples in which the holder of a winning ticket may not be able to present for payment his ticket within the short time prescribed by the Regulations. For the other draw the time appointed by the Regulations is 6 months. 35

Though the time appointed by the Director of Lotteries for these tickets and for this kind of draw is short, never-

theless, it is not unreasonably short as to justify the interference of this Court. The realities of life in Cyprus nowadays are such that in a very extreme exceptional case the holder of a winning ticket may not be able to claim
5 the prize within the appointed time

The Regulations are not inconsistent with or contrary to the statute under which they were made. Relevant on the subject is the judgment of the Full Bench in *Annie Ioannou v The Republic of Cyprus*, (1983) 3 CLR 80

10 Article 146.3 of the Constitution provides that a recourse shall be made within 75 days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse. This provision is a pe-
15 remptory one and the public policy compels the Court not to entertain any recourse filed after the expiration of such period—(See, inter alia, *John Moran v. The Republic*, 1 R.S.C.C 10, *Protopapas v The Republic*, (1967) 3 CLR 411; *Irrigation Division "Katzilos" v The Republic*, (1983)
20 3 CLR 1072; *Demetriou v The Republic* (1984) 3 C.L.R. 888)

The decision complained of was taken and communicated to the applicant on 7.1.85. The applicant after that decision, exercising his right under Article 29 of the Con-
25 stitution, submitted a request to the competent authority—the Director of Lotteries. The Director on 25.1.85 sent his duly reasoned decision on the request to the applicant

The 75 days' period runs from the date the decision comes to the knowledge of the citizen. What is the effect
30 of the submission of the request to the competent authority on the same subject-matter under Article 29 of the Constitution? There are two schools of thought on the subject. The one is that the period is interrupted and has to be computed afresh from the date of the expiry of the
35 30 days provided in the Constitution for reply by the competent authority or if a reply is given earlier, from such earlier date. The other view is that a request to the competent authority only suspends the computation of the period which continues to run after the expiration of the

aforesaid time. The request under Article 29, however, in both cases should be addressed to the competent public authority before the lapse of the 75 days' period—Case-Law of the Greek Council of State, 1929-1959, p. 256; Dendia—Administrative Law. 2nd Edition, Volume 3, pages 293-294; Stassinopoulos—Law of Administrative Disputes, pages 208-209; Tsatsos—Application for Annulment, pages 95-98). 5

The letter of the Director of 2.3.85 contains only a confirmation of the earlier decision. It is a confirmatory act that lacks executory nature and, therefore, it cannot be the subject-matter of a recourse—(*Colokassides v. The Republic*, (1965) 3 C.L.R. 542; *Kyprianides v. The Republic*, (1982) 3 C.L.R. 611; *Spyrou v. The Republic*, (1983) 3 C.L.R. 354). 10 15

On any view of the matter, in the present case the 75 days elapsed before the date of the filing of the recourse. This recourse is plainly out of time.

The applicant is a person of advanced age and physical disability. He had 12 children, two of whom were the victims of atrocious fatal acts. He was uprooted from Famagusta by the Turkish invaders and lives at Chakkileri refugee settlement. Indeed he worked hard to meet the needs of life. In very dark colours describes his personal and family circumstances. He stated that he did not raise this recourse for the 60 cents but as a matter of principle and adherence to the principles of justice. 20 25

For the reasons I endeavoured to explain, this recourse fails and it is hereby dismissed but in all the circumstances let there be no order as to costs. 30

Recourse dismissed.
No order as to costs.