1987 December 22

[A. LOIZOU, SAVVIDES, LORIS, STYLIANIDES AND KOURRIS, JJ.]

1. PHRINI PAPADOPOULLOU,
2. ALIKI FEREOU,

Appellants,

v.

THE CYPRUS BROADCASTING CORPORATION, THROUGH
1. THE BOARD OF CYPRUS BROADCASTING CORPORATION, AND
2. THE DIRECTOR - GENERAL OF CYPRUS BROADCASTING CORPORATION,

Respondents

(Revisional Jurisdiction Appeal No. 553)

Legitimate interest — Free and voluntary acceptance of an administrative act — Deprives acceptor of legitimate interest to challenge it.

Constitutional Law — Equality — Constitution, Art. 28 — Public Officers — Equal pay for equal work — Differential based on sex is inconsistent with the notion of equality — Differential based on seniority on the totality of the circumstances of a case is permissible.

The appellants are Announcers/Newsreaders (radio and television) in the employment of the respondent Corporation.

On 13.1.83 the appellants were appointed to the permanent post of Announcer/Newsreader radio and television with effect from 1.2.83 in the salary scale of A8/9.

By letter dated 21.2.83 offers of appointment with detailed terms of service, including date of commencement and salary, were given to them.

By letter dated 8.4.83 they asked for their appointments to be made retrospective, at the latest as from the 31st December, 1981 and for emplacement on scale A10, in order to be accorded equal treatment with their male counterparts, who had been emplaced on scale A10. That letter was not favoured with any reply.

As a result the appellants filed a recourse to this Court. The trial Judge found that the appellants did not possess a legitimate interest to challenge their emplacement to scale A8/9, because of their free and voluntary acceptance of their such emplacement. He further found that the appellants

were entitled to proceed with their complaint on the ground of sex and or other discrimination in violation of Article 28 of the Constitution is so far as they have not been accorded subsequently to the appointment equal treatment with their male counterparts At the end, however, the recourse was dismissed as the male counterparts of the appellants were emplaced on scale A10 because of their longer service

Hence this appeal The respondents cross-appealed, contending that the appellants did not possess a legitimate interest to pursue their complaint for sex discrimination

Held, *dismissing the appeal* (1) Voluntary and unreserved acceptance of an administrative act or decision deprives the person concerned of a legitimate interest entitling him to file a recourse for annulment under Article 146 2 of the Constitution The acceptance may be expressed or implied It must be free and voluntary, which it is not if it has been brought about by pressure of the prejudicial consequences of non-acceptance In the light of the facts of this case, the appellants were deprived of legitimate interest to challenge their emplacement to scale A8/9

(2) The notion of «equal pay for equal work» in relation to public officers is an integral part of the principle of equality The outmoded belief that a man because of his role in society, should be paid more than a woman, even though his duties are the same, is contrary to modern thought and inconsistent and contrary to our Constitution

Differential based on seniority on the totality of the circumstances of a case is permissible and does not infringe the principle of equality In this case there was no differentiation due to sex

(3) As the appeal is doomed to failure, there is no need to examine the issue raised by the cross - appeal Such issue is left open

Appeal and cross-appeal dismissed No order as to costs

Cases referred to

The Republic v Vassiliades (1967) 3 C L R 82,

Pikis v The Republic (1968) 3 C L R 303,

Republic v Lefkos Georghiades (1972) 3 C L R 594,

The President of the Republic v Louca and Another (1984) 3 C L R 241,

Paschali v Republic (1966) 3 C L R 593;

Pipens v Republic (1967) 3 C L R 295,

Ioannou and Others v Republic (1968) 3 C L R 146,

Antoniou v Republic (1968) 3 C L R 452,

Ioannou v The Grain Commission (1968) 3 C L R 612,

Markou v Republic (1968) 3 C L R 267,

Pencleous v Republic (1971) 3 C L R 141

Mynanthis v Republic (1977) 3 C L R 165,

HadjiConstantinou and Others v Republic (1980) 3 C L R 184,

Tomboli v CYTA (1980) 3 C L R 266, and on appeal (1982) 3 C L R 149,

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

Anniades v CYTA (1981) 3 C L R 21,

Georghiades v Republic (1981) 3 C L R 431,

Zambakides v Republic (1982) 3 C L R 1017,

Goulielmos v Republic (1983) 3 C L R 883,

Stylianides v Republic (1983) 3 C L R 672,

Ioannou and Others v Republic (1983) 3 C L R 150,

Hadjiconstantinou and Others v Republic (1984) 3 C L R 319,

Vlahou and Others v Republic (1984) 3 C L R 1319,

Michaelides v Republic (1984) 3 C L R 1419,

Mavrommatis and Others v Republic (1984) 3 C L R 1006,

Mavrogenis v Republic (1984) 3 C L R 1140,

Kalos v Republic (1985) 3 C L R 135,

Raftis Co v Municipality of Paphos (1985) 3 C L R 1664,

Nakis Bonded Warehouse v Republic (1985) 3 C L R 1179,

Vrahimis v Republic (1985) 3 C L R 2057,

Piendes v Republic (1985) 3 C L R 1275,

Chrysanthou and Others v Republic (1986) 3 C L R 1128,

Provita Ltd v Grain Commission of Cyprus (1986) 3 C L R 737,

Papadopoulos v. Republic (1986) 3 C L R 1073,

Republic v. Makaronopeion Carkotis (1987) 3 C.L.R. 72;

Xinari v. The Republic, 3 R.S.C.C. 98;

Appeal and Cross-appeal.

Appeal and Cross-appeal against the judgment of the President of the Supreme Court of Cyprus (Triantafyllides, P.) given on the 15th January, 1986 (Revisional Jurisdiction Case No 137/83)* whereby appellants' recourse against the decision of the respondents to appoint them to the post of Announcers/ Newsreaders with Salary Scale A8/9 and not A.10 was dismissed.

K. Talarides, for the appellants.

P. Polyviou, for the respondents.

Cur. adv. vult.

A. LOIZOU J.: The judgment of the Court will be delivered by Mr. Justice Stylianides.

STYLIANIDES J.: The appellants are Announcers/ Newsreaders (radio and television) in the employment of the respondent Corporation.

Before 1/2/83 their post was Announcer/Newsreader of radio only and their salary scale was A6. Prior to that date negotiations were carried out between the Corporation and the Staff Union for the reorganization, salary revision, etc., of the staff of the respondent Corporation. The appellants made representations for their elevation in the service, both with regard to their post and their salary.

Ultimately the Board of Management of the Corporation on 21/12/82 adopted and approved the reorganization agreement and proceeded to the issue of new schemes of service.

The posts of Announcer/Newsreader radio and television were increased from two to four. The new salary scale for these posts was fixed A 8/9, but the two employees of the Corporation holding the two posts - one since 1971 and the other since 1978 - were given personal scale A10, in view of the length of their past service in the same post.

* *Reported in (1986) 3 C.L.R. 1431.*

On 13/1/83 the appellants were appointed to the permanent post of Announcer/Newsreader radio and television with effect from 1/2/83 in the salary scale of A 8/9. They were given a number of increments and the salary of Papadopoullou was £3,336. - and as from 1/7/83 £3,382.-, and appellant Fereou was placed on £3, 271.-.

By letter dated 21/2/83 offers of appointment with detailed terms of service, including date of commencement and salary, were given in writing to them. (See Appendices F and G.)

Appellants by letters dated 16/3/83 and 17/3/83 respectively accepted the offers on the terms set out in the said offers.

By letter dated 8/4/83 they asked for their appointments to be made retrospective, at the latest as from the 31st December, 1981 and for emplacement on scale A10, in order to be accorded equal treatment with their male counterparts, who had been emplaced on scale A10. That letter was not favoured with any reply.

The appellants feeling aggrieved filed the recourse whereby they seek the annulment of the decision of the respondents to emplace them in the salary scale A 8/9 instead of scale A10 and the refusal of the respondents to appoint them retrospectively.

The learned President of this Court tried the recourse and by an interim decision he dismissed the first prayer, as the appellants by their unreserved and free acceptance of the aforesaid appointments have been deprived of legitimate interest in the sense of Article 146.2 of the Constitution entitling them to file a recourse against the sub judice decision of the respondents to appoint them in salary scale A 8/9.

As regards the applicants' complaint that on the ground of sex and or other discrimination in violation of Article 28 of the Constitution they have not been accorded subsequently to the appointment equal treatment with their male counterparts, he, prima facie, held that the applicants had not been deprived of a legitimate interest in the sense of Article 146.2 of the Constitution and heard their complaint on the merits.

In a final judgment the learned President dismissed this complaint as well, as the applicants failed to establish at all that they were victims of discriminating treatment contrary to Article 28 of the Constitution on the ground of their female sex, as the male counterparts of the applicants were emplaced on the salary scale

A10, because they were holding post of Announcers/ Newsreaders for longer period in the past and there was a reasonable differentiation as between the appellants and the two other employees.

Against this judgment the appellants took this appeal.

The respondents cross appealed against the part of the interim judgment, whereby the appellants were held to have, even prima facie, legitimate interest to proceed with their case on alleged discrimination.

The Court, in dealing with an appeal of this nature, has to decide whether or not there ought to succeed the recourse in which the judgment appealed from was given; because it is a recourse which, though made to the Court as a whole under Article 146 of the Constitution, was, in view of the provisions of s. 11(2) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33/64), determined, at first instance, by only one of the Judges of the Court (see, inter alia, *The Republic v. Vassiliades* (1967) 3 C.L.R. 82; *Pikis v. The Republic* (1968) 3 C.L.R. 303; *Republic v. Lefkos Georghiades* (1972) 3 C.L.R. 594; *The President of the Republic v. Yiannakis Louca and Another* (1984) 3 C.L.R. 241).

As provided by Article 146.2 of the Constitution a person making a recourse must be one whose any «existing legitimate interest» is «adversely and directly affected» by the decision, act or omission which is challenged by the recourse.

Mr. Talarides in his very able address referred to the French Jurisprudence and some cases of the Greek Council of State and the principle enunciated by our case-law that the free and voluntary acceptance of an act or decision deprives a person of the legitimate interest to challenge the said act or decision before the Administrative Court and invited the Court, either to depart from it, or to differentiate it, or to limit it to cases where only financial interest is involved.

For more than 20 years this Court repeatedly held that voluntary and unreserved acceptance of an administrative act or decision deprives the person concerned of a legitimate interest entitling him to file a recourse for an annulment under Article 146.2 of the Constitution. The acceptance may be expressed or implied. It must be free and voluntary, which it is not if it has been brought

about by pressure of the prejudicial consequences of non-acceptance. (See *Paschali v. Republic* (1966) 3 C.L.R. 593, at pp. 603-604; *Piperis v. Republic* (1967) 3 C.L.R. 295; *Stephanos Ioannou and Others v. Republic* (1968) 3 C.L.R. 146 at p. 153; *Antoniou v. Republic* (1968) 3 C.L.R. 452; *Ioannou v. Grain Commission* (1968) 3 C.L.R. 612, at p. 617; *Markou v. Republic* (1968) 3 C.L.R. 267; *Pericleous v. Republic* (1971) 3 C.L.R. 141, at p. 145; *Mynanthis v. Republic* (1977) 3 C.L.R. 165; *HadjiConstantinou and Others v. Republic* (1980) 3 C.L.R. 184; *Tomboli v. CYTA* (1980) 3 C.L.R. 266 and on Appeal (1982) 3 C.L.R. 149; *Neocleous and Others v. Republic* (1980) 3 C.L.R. 497, at p. 508; *Stavros Aniliades v. CYTA* (1981) 3 C.L.R. 21; *Lefkos Georghiades v. Republic* (1981) 3 C.L.R. 431; *Zambakides v. Republic* (1982) 3 C.L.R. 1017; *Goulielmos v. Republic* (1983) 3 C.L.R. 883; *Stylianides v. Republic* (1983) 3 C.L.R. 672; *Ioannou and Others v. Republic* (1983) 3 C.L.R. 150; *Hadjiconstantinou and Others v. Republic* (1984) 3 C.L.R. 319, F.B. case, at p. 328; *Vlahou and Others v. Republic* (1984) 3 C.L.R. 1319, at p. 1322; *G. Michaelides v. Republic* (1984) 3 C.L.R. 1419, at pp. 1423-1424; *Mavrommatis and Others v. Republic* (1984) 3 C.L.R. 1140, at pp. 1148-1149; *Kalos v. Republic* (1985) 3 C.L.R. 135, at pp. 142-143; *Raftis Co. v. Municipality of Paphos* (1985) 3 C.L.R. 1664; *Nakis Bonded Warehouse v. Republic* (1985) 3 C.L.R. 1179; *Vrahimis v. Republic* (1985) 3 C.L.R. 2057; *Pierides v. Republic* (1985) 3 C.L.R. 1275. at pp. 1282-1283; *Chrysanthou and Others v. Republic* (1986) 3 C.L.R. 1128, F.B. case, at p. 1136; *Provita Ltd., v. Grain Commission of Cyprus* (1986) 3 C.L.R. 737; *Theodoros Papadopoulos v. Republic* (1986) 3 C.L.R. 1073, at p. 1083; *Republic v. Makaronopeion Carkotis* (1987) 3 C.L.R. 72.)

This principle is of universal application. It is well embedded in our administrative law. We see no reason to depart from it.

Having considered the content of the offers of appointment and the written acceptance by the appellants, and in the light of all relevant circumstances of this case, we are in full agreement with the trial Judge, that the acceptance of the aforesaid appointments was unreserved and free, and, therefore, by such acceptance the appellants have been deprived of legitimate interest in the sense of Article 146.2 of the Constitution, entitling them to file their recourse against the sub judice decision to appoint them with salary scale A 8/9.

Article 28 safeguards, inter alia, the principle of equality before the law and the administration and the notion of «equal pay for

equal work» in relation to public officers is an integral part of such principle (*Jenny Xinari v. The Republic*, 3 R.S.C.C. 98, at p. 100).

The outmoded belief that a man, because of his role in society, should be paid more than a woman, even though his duties are the same, is contrary to modern thought and inconsistent and contrary to our Constitution.

Differential based on seniority on the totality of the circumstances of a case is permissible and does not infringe the principle of equality.

With regard to the allegation for discrimination contrary to Article 28 of the Constitution we find, as the trial Judge did, that there was no differentiation due to sex. The differentiation by the emplacement of the two other employees, who by coincidence happened to be male, was reasonably justifiable. The distinction in the salary scale of the two - Koukkides and Meletiou - who were the holders of the post of Newsreader radio and television since 1971 and 1978 respectively, many years before the appellants, is objective and reasonable.

In view of the final outcome of the recourse, we need not embark on the issue raised by the cross appeal, whether the appellants were divested of their legitimate interest to pursue the claim for the relief, on the ground of infringement of the principle of equality by the acceptance of the act, or decision and we leave it open as it is unnecessary for the determination of this appeal.

For the foregoing the appeal and cross appeal are dismissed and the sub judice decisions are confirmed under Article 146.4(a) of the Constitution.

Let there be no order as to costs.

Appeal and cross-appeal dismissed. No order as to costs.