

1987 April 27

[DEMETRIADES J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION  
GEORGHIOS NICOLAOU,

*Applicant,*

v

THE REPUBLIC OF CYPRUS, THROUGH  
1 THE MINISTER OF INTERIOR AND DEFENCE,  
2 THE CHIEF OF POLICE,

*Respondents*

*(Case No 496/83)*

*Executory act — Confirmatory act*

5 By letter dated 26 7 83 the Chief of Police informed the applicant that he was prepared to accept his resignation from the Police Force on condition that the applicant paid the sum of £536 825 mils, being reasonable compensation in respect of the expenses sustained by the Government in the form of salaries, meals, uniform and training at the Police School

10 By letter dated 1 8 83 the applicant requested the Chief of Police to reduce the said amount, but as the latter by letter dated 17 8 83 turned down the aforesaid request, the applicant, on the 19 8 83, signed a declaration to the effect that he accepts to pay the said sum and did pay it without protest or reservation of his legal rights

15 By letter dated 15 9 83 counsel for the applicant demanded the return of the money paid by the applicant on the ground that his client was forced illegally to accept the condition as to payment and was not given the opportunity of making the same without prejudice

By letter dated 24 9 83 the Chief of Police denied the allegations of counsel and informed the latter that the money was paid by the applicant on his own free will

20 Hence the present recourse, whereby the applicant impugns the decision to reject his claim for the return of the money paid as aforesaid by him

Held, *dismissing the recourse* (1) The decision to impose the payment of the sum of £536 825 mils as a condition for his consent for the resignation of the applicant from the Police Force was taken and communicated to the applicant by the letter of the Chief of Police dated 26 7 83

(2) The said decision was confirmed not only by the letter dated 24.9.83, but also by the letter dated 17.8.83. It follows that the decision attacked by this recourse is of a confirmatory and not of an executory nature.

(3) In view of the above findings this recourse is out of time

*Recourse dismissed. No order as to costs* **5**

*Cases referred to*

*Ioannou v. The Republic* (1983) 3 C.L.R. 150.

**Recourse.**

Recourse against the decision of the respondents to reject applicant's claim for the return to him of the sum of £536.825 mils paid by him on his resignation from the Police Force. **10**

*A.S. Angelides*, for the applicant.

*A. Vladimirov*, for the respondents

*Cur. adv. vult.* **15**

DEMETRIADES J. read the following judgment. The applicant, who at all material times was a member of the Police Force of the Republic, joined the Force as a constable on the 28th April, 1981, after signing a declaration by which he accepted the conditions of service contained in a notice given to him by virtue of regulation 5(h) of the Police (General) Regulations 1958. Under regulation 7 of the relevant Regulations his enlistment was for an initial period of three years. **20**

A term contained in the said notice was that the applicant could not resign without the written consent of the Chief of Police who had the discretion of rejecting the application for resignation or accept it, in which case he could demand that before his resignation the applicant had to pay reasonable compensation for expenses sustained by the Government during the period of his training. **25**  
**30**

On the 18th July, 1983, the applicant, by letter, photocopy of which is Appendix B to the Opposition, informed the Chief of Police that because of his qualifications - he possessed the Intermediate Certificate of the City and Guilds of London Institute he was selected for appointment by the Cyprus **35**

Telecommunications Authority and that he intended to accept the offer. By his said letter the applicant requested from the Chief of Police to consent to his resignation from the Force.

5 By his letter dated the 26th July, 1983, which is Appendix C' to the Opposition, the Chief of Police informed the applicant that he was prepared to accept his resignation on condition that the applicant paid the sum of £536.825 mils being reasonable compensation on account of the expenses sustained by the Government in the form of salaries, meals, uniform and training at  
10 the Police School.

The applicant, by his letter dated the 1st August, 1983, which is Appendix D' to the Opposition requested the Chief of Police to reduce the amount of compensation which he had to pay, in view, as he said, of the services he rendered during his enlistment.

15 By his letter dated the 17th August, 1983, which is Appendix E' to the Opposition, the Chief of Police informed the applicant that he could not accede to his request and that his application for resignation could be approved only if he paid the sum of £536.825 mils and signed the declaration attached to his letter.

20 On 19th August, 1983, the applicant signed the said declaration (see Appendix F' to the Opposition) and paid the sum of £536.825 mils for which he was given receipt (exhibit No. 1 before me).

The declaration (Appendix F') reads:

«Δ Η Λ Ω Σ Η

25 «Με το παρό δηλώνω ότι αποδέχομαι να καταβάλω προς την Κυβέρνηση το ποσό των £536.825 μιλς σαν λογική αποζημίωση έναντι των εξόδων που υπέστη η Δημοκρατία της Κύπρου υπό μορφή μισθών, σίτισης, στολής και εξάρτησης κατά τη διάρκεια της φοίτησης  
30 μου στην Αστυνομική Σχολή μεταξύ 5.7.82 - 6.11.82.»

(«DECLARATION

35 «I hereby declare that I accept to pay to the Government the amount of £536.825 mils as reasonable compensation towards the expenses which the Government of Cyprus sustained in the form of salaries, meals, uniform and equipment during my training at the Police School between 5.7.82 - 6.11.82.»).

The receipt issued to the applicant for the payment by him of the sum of £536 825 mils states that this amount was paid «in respect of charges for his training since he has not completed the three years in service»

It is to be noted that the applicant paid the above sum without protest or reservation of his legal rights, if he was entitled to any 5

On the 15th September, 1983, counsel for the applicant addressed a letter to the Chief of Police, by which he was demanding the return of the money paid by the applicant, on the ground that his client was forced illegally to accept the term imposed by him and that he was not given the opportunity to pay the sum without prejudice 10

By his letter dated the 24th September, 1983, the Chief of Police denied the allegations of counsel and informed him that the money was paid by the applicant on his own free will 15

By his present recourse the applicant prays for a declaration of the Court that the decision and/or act of the respondents to reject the claim of the applicant for the return of the sum of £536 825 mils when he resigned from the Force, is null and void and of no effect and for a declaration that the refusal and/or failure of the respondents to return to the applicant the sum of £536 825 mils which the applicant was forced to pay against his will is null and void and of no effect. 20

Counsel for the respondents raised two preliminary objections (a) that the decision challenged by the applicant is a confirmatory one and (b) that the applicant has no legitimate interest 25

Counsel for the applicant submitted that his case is within the four corners of *Ioannou v The Republic*, (1983) 3 C L R 150 The facts of the present case, however, are distinguishable from the facts of the *Ioannou* case, supra In that case the applicants paid the compensation imposed by the Chief of Police as a condition for their resignation with reservation of their rights Here, the applicant paid the money without making any reservation 30

Before proceeding with the grounds of law on which the present recourse has been based, it is pertinent to examine, at this stage, the preliminary objections raised by counsel for the respondents It has been submitted in this respect by him that the sub judice decision is not of an executory nature as it simply confirms a 35

previous decision in the same matter and, therefore, it cannot be made the subject of a recourse under Article 146 of the Constitution. Reference has been made, in this respect, to the Conclusions from the Case-law of the Council of State in Greece, 5 1929 - 1959, where the following are stated (at p. 240):-

«Πράξεις βεβαιωτικά. Απαράδεκτως προσβάλλονται δι' αιτήσεως ακυρώσεως, ως στερούμενοι εκτελεστού χαρακτήρος, αι βεβαιωτικά πράξεις, ήτοι αι πράξεις αι 10 έχουσαι το αυτό περιεχόμενον προς προεκδοθείσαν εκτελεστήν, επιβεβαιούσαι ταύτην, ανεξαρτήτως του αν εκδίδονται αυτεπαγγέλτως ή τη αιτήσει του ενδιαφερομένου. Ούτω είναι βεβαιωτική η πράξις η συνιστώσα απλήν επανάληψιν προγενεστέρας, η στηριζομένη επί της αυτής πραγματικής και νομικής 15 βάσεως. Πράξις δηλούσα απλήν εμμονήν της Διοικήσεως εις προηγουμένην πράξιν, έστω και μη επαναλαμβάνουσα το περιεχόμενον ταύτης, αποτελεί επίσης βεβαιωτικήν πράξιν, ως λ.χ. η εμμονή εις προγενεστέραν άρνησιν. Ούτω εκρίθησαν βεβαιωτικάί 20 πράξεις ή άρνησις της Διοικήσεως όπως ανακαλέση προηγουμένην εκτελεστήν πράξιν, η απόρριψις απλής ιεραρχικής προσφυγής ή αιτήσεως θεραπείας.»

(«Confirmatory acts. Unacceptably they are attacked by recourse for annulment, as lacking executory character, 25 confirmatory acts, i.e. acts which have the same contents with a pre-issued executory one, confirming same, irrespective of whether they are issued on the motion of the administration or on the application of the interested party. Thus confirmatory is an act which consists of a mere repetition of a previous one, 30 based on the same factual and legal basis. An act stating a mere persistence of the administration to a previous act, even though it does not repeat its contents, also constitutes a confirmatory act, as for instance the persistence to a previous refusal. Thus the refusal of the Administration to revoke a 35 previous executory act, the dismissal of a simple hierarchical recourse or an application for relief were considered as confirmatory acts»).

It is abundantly clear that the decision of the Chief of Police to impose the payment of the sum of £536.825 mils as a condition for 40 giving his consent for the resignation of the applicant from the

Force was taken and communicated to the applicant by his letter dated the 26th July, 1983 and that this decision was confirmed not only by his letter to Counsel for the applicant dated the 24th September, 1983; but, also, by his letter dated the 17th August, 1983, when he rejected the application of the applicant for reduction of this sum. 5

Considering this, I find that the decision attacked by this recourse is a confirmatory one and not of an executory nature.

In view of my above finding I am of the view that the recourse was filed out of time, that is after the lapse of the seventy-five days envisaged by Article 146 of the Constitution. 10

In the result, the recourse is dismissed and I make no order as to costs.

*Recourse dismissed.*  
*No order as to costs.* 15