

1987 May 2

{STYLIANIDES, J.}

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PANAYIS K. PANAYI AND OTHERS,

*Applicants,*

v.

THE CYPRUS TELECOMMUNICATIONS AUTHORITY,

*Respondents.*

*(Cases Nos. 126/85, 127/85).*

*Time within which to file a recourse— Commencement of.*

5 *Collective agreement — Does not by itself create rights of public law — Cyprus Telecommunications Authority — The Cyprus Telecommunications Authority General Regulations 1982, Reg. 57 — In the light of Reg. 57 a collective agreement relating to the salary scales and grades of the lower, middle and higher personnel of the Authority is creative of rights.*

*Acts or decisions in the sense of Art. 146.1 of the Constitution — Collective agreements and their contents — Outside ambit of Art. 146.1.*

*Vested right — Meaning of — Should not be confused with a mere expectation.*

10 *Constitutional Law — Equality — Constitution, Art. 28.1. — Does not preclude distinctions which are objectively and reasonably justified — Collective agreement reached in August 1982 providing for the increase of salary as from 1.1.82 of those serving with the respondent as on 1.1.82 — Expiration of previous Collective Agreement on 31.12.81 — As no one received any*  
15 *increase for the period before 1.1.82 there was no differentiation between those serving on 1.1.82 and those who retired before that date — Assuming such differentiation, the distinction between the aforesaid two classes of persons was reasonable.*

20 *The applicants were in the service of the respondent Authority. They all retired, having attained the prescribed age, after 1.1.80 and before 31.12.81.*

*After 31.12.81 negotiations took place between the respondent and the Trade Union of its employees. On 6.8.82 an agreement on principle was reached. Its duration was set for the period 1.1.82 - 31.12.83. Clause 1 of the agreement provided for adjustment of scales, clause 2 for fringe benefits*  
25 *and clause 3 for compensation and other allowances.*

Paragraph 4 of Clause 1 of the said agreement provided that «no emplacement of the personnel which retired or resigned before 1 1 82 will be made on the basis of paragraph 3 above »

The part of the agreement that related to the pension scheme and provident fund was incorporated into regulations published on 27 5 83

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On 16 3 82 A S Michaelides who later became Secretary of the Trade Union of the pensioners of the respondent addressed a letter to the respondent requesting an increment in the new scales and complaining of the exclusion of the retired members from the new salary scales His request was rejected by letter dated 22 3 83

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On 30 5 83 the said Michaelides, acting in his capacity as Secretary of the the Union complained by letter to the chairman of the appropriate Committee of the House of Representatives of the agreement, particularly of para 4 of Clause 1 and the new pension scheme The Authority, to which the said letter was communicated, replied by letter dated 16 11 84

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On 5 4 84 the advocate of applicant Phiniotis wrote a letter to the respondent inquiring «whether there was a revision in the C.Y.T.A salary as at 1st September 1981 when the said officer was pensioned off» By letter dated 6 12 84 the Authority replied that there had been no such revision but that according to the said agreement there had been an adjustment of the salary scales of those in the service on 1 1 82

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On 20 12 84 the same advocate on behalf of all applicants informed the Authority that the contents of the collective agreement were brought to his clients' notice after the receipt of the letter dated 6 12 84 and requested a reconsideration of para 4 of clause 1 of the agreement

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As there was no reply, the present recourses were filed, seeking the annulment of the exclusion of emplacement of the applicants in the new salary scales as per para 4 of clause 1 of the said agreement

Held dismissing the recourses (1) There is no merit in the respondent's contention that, as the Regulations were published in May 1983, these recourses are out of time The relief sought does not refer to the pensions or Regulations, but only to para 4 of clause 1 of the collective agreement The peremptory period of 75 days commences from the date that the decision or act was published or, if not published, from the date, when it came to the knowledge of the applicant With the exception of the letter dated 16 3 83 by Michaelides, who at the time was not the Secretary of the Union, there is no evidence that the part of the agreement relating to the new salary scales was published or communicated to the applicants There is no material before the Court that the applicants had knowledge of it before the Communication to applicant Phiniotis

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5 2) A collective agreement does not create rights of public law. A collective agreement and its contents are not by themselves amenable to the jurisdiction of this Court. In the case of the respondent Authority and in the light of Regulation 57\* of the Cyprus Telecommunications Authority General Regulations, 1982 a Collective Agreement relating to the salaries and grades of the lower, middle and higher personnel of the respondent creates rights if such rights emerge from its contents

10 3) The complaint of the applicants that their vested rights were violated by para 4 of clause 1 of the Collective Agreement in question cannot be accepted. A right vests, if the process of the law for its acquisition has been completed. A vested right should not be identified with a mere expectation. At the time of their service the applicants have not acquired any rights and they had no vested right that after their retirement they would receive increases retrospectively

15 4) Finally applicants' complaint of violation of the principle of equality must also be rejected. Art 28 1 of the Constitution does not preclude distinctions and classifications, which are objectively and reasonably justifiable. In accordance with the said Collective Agreement there was no increase in the salaries paid to anyone prior to 31 12 81 and, therefore, there was no distinction during the period the applicants were entitled to draw a salary. Assuming the existence of a difference between the applicants and those, who were in the service on 1 1 82, the differential treatment had a reasonable and objective classification. In this respect it must be remembered that 31 12 81 was the date of expiration of the previous Collective Agreement

*Recourses dismissed*  
*No order as to costs*

*Cases referred to*

- Kontemeniotis v C B C* (1982) 3 C L R 1027,  
*Paphitis and Others v The Republic* (1983) 3 C L R 255,  
30 *Mavrommatis and Others v The Land Consolidation Authority* (1984) 3 C L R 1006,  
*Evangeliou and Others v C B C* (1985) 3 C L R 1410,  
*The Republic v Menelaou* (1982) 3 C L R 419,  
*Economides v The Republic* (1972) 3 C L R 506,  
35 *Mikrommatis v The Republic*, 2 R S C C 125,  
*The Republic v Nishan Arakian and Others* (1972) 3 C L R 294,

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\* Quoted at pp 897-898 post

*Papaxenophontos and Others v. The Republic* (1982) 3 C.L.R. 1037;

*Apostolides and Others v. The Republic* (1984) 3 C.L.R. 233.

### Recourses.

Recourses against the decision of the respondents to exclude applicants' emplacement in the new salary scales as per para. 4 of the collective agreement between the respondents and E.P.O.E.T. (the trade union of the employees). 5

*E. Karaviotis*, for the applicants.

*A. HjiIoannou*, for the respondents.

*Cur. adv. vult.* 10

STYLIANIDES J. read the following judgment. In these recourses 40 retired employees of the respondent Authority pray for the following identical relief:-

«A declaration that the Respondents' decision to exclude the emplacement of the Applicants in the new salary scales as per para. 4 of the collective agreement between the Respondents and E.P.O.E.T. (Ελευθέρα Παγκύπριος Οργάνωσις Εργατοϋπαλλήλων Τηλεπικοινωνιών) dated 6th August, 1982, is null and void and of no effect whatsoever». 15 20

The applicants were in the service of the respondent Authority. They all retired, having attained the prescribed age, after 1.1.80 and before 31.12.81.

After the expiration on 31.12.81 of a Collective Agreement of two years' duration, negotiations between the Authority and the trade union of the employees of the Authority (E.P.O.E.T.) took place. On 6.8.82 an agreement in principle was reached which would be put into operation on its approval by the Authority and the trade union. A memorandum of this provisional agreement is Appendix No. 8. 25 30

Clause 1 provides for adjustment of scales, Clause 2 for fringe benefits and Clause 3 for compensation and other allowances. The duration of this provisional Collective Agreement was set 1.1.82 - 31.12.83. The first clause reads as follows:-

«I. *Εναρμόνισης Κλιμάκων*

1. Η επιτευχθείσα συμφωνία εμφανίζεται εις το συνημμένον «Παράρτημα Α».

5 2. Η ένταξις των υπαλλήλων εις τας νέας κλίμακας (Α) θα γίνη επί τη βάσει των Κανονισμών εντάξεως οίτινες ίσχυσαν εις την Δημοσίαν Υπηρεσίαν.

3. Η ένταξις εις τας νέας κλίμακας θα επιτευχθή από της 1/1/1980 άνευ όμως της πληρωμής αναδρομικών και οιαδήποτε διαφορά ήτις θα προκύψη εις την μισθοδοσίαν του Προσωπικού λόγω της εντάξεως θα αρχίση να καταβάλλεται από 1ης/1/82.

10 4. Βάσει της παραγράφου (3) ανωτέρω δεν θα γίνη ένταξις του προσωπικού το οποίον αφυπηρέτησε ή παρητήθη από ή προ της 1ης/1/1982».

(«I. *Adjustment of Scales*

15 1. The agreement reached appears in the attached «Appendix A».

2. The emplacement of the employees in the new scales (A) will be made according to the Regulations of emplacement which applied in the Civil Service.

20 3. The emplacement in the new scales will be effected as from 1.1.80 without, however, any retrospective payment and any difference in the salaries of the personnel due to the emplacement shall commence being payable as from 1.1.82.

25 4. No emplacement of the personnel which retired or resigned before 1.1.82 will be made on the basis of paragraph 3 above»).

Clause 2 provides for a new pension scheme, for the existing pension scheme, for the provident fund of the monthly paid employees and the health fund.

30 On 16.3.82 A. S. Michaelides, who by the end of that month became the Secretary of the trade union of pensioners of CY.T.A., which is a branch of E.P.O.E.T., the trade union of the personnel, addressed a letter to the General Manager requesting an increment in the new scales and complaining of the exclusion of the retired members of the personnel from the new salary scales.

35 His request was rejected by the Authority by letter dated 22.3.83.

The part of the Memorandum of 6 8 82 which related to the pension schemes and provident fund was incorporated into Regulations which, after approval by the Council of Ministers, were published in the Official Gazette on 27th May, 1983, under K Δ.Π. 124/83 and K.Δ Π. 125/83 (See 1983, Supplement No III(I) pages 335 and 357) 5

On 30 5 83 the aforesaid Michaelides, in his capacity as Secretary of the Union of Pensioners of CY T A , addressed a confidential letter to the Chairman and Members of the Committees of Communications & Works and Finance and Budget of the House of Representatives complaining again of the agreement of 6 8 82, particularly paragraph 4 of Clause No 1, excluding the retired personnel, and the new pension schemes, and asking the assistance of those Committees Copy of that letter was communicated by the Director-General of the House of Representatives to the Director-General of the Ministry of Communications & Works and ultimately to the General Manager of CY T A 10 15

The respondent Authority replied by letter dated 16 11 84 that the provisions of the agreement signed on 6 8 82 were the result of long negotiations between the Authority and E P O E T , the trade union that represents the totality of the personnel and the pensioners of the Authority, and that the provisions of the said agreement could not be changed 20

On the instructions of applicant Phiniotis in Recourse No 127/ 85, his advocate addressed letter dated 5 4 84, inquiring «whether there was a revision in the CY T A salary scales of the various posts as at the 1st September, 1981, when the said officer was pensioned off» 25

The Authority replied by letter dated 6 12 84 (exhibit No 3), informing counsel that no revision of salary took place on 1 9 81 but, according to a Collective Agreement of 6 8 82, which was concluded with E P O E T , the trade union, which represents the personnel of the pensioners of the Authority, adjustment of the salary scales of the Authority was made to those of the Government for the personnel that was in the service on 1 1 82. 30 35

On 20th December, 1984, the same advocate on behalf of the applicants by letter addressed to the Personnel Manager of the respondent Authority informed him that the contents of the agreement between CY T A and E P O E T had been brought to 40

their notice after the receipt of the letter to him dated 6th December, 1984, concerning Mr Demetrakis Phiniotis. As they considered sub-paragraph 4 of paragraph 1 of the agreement unfair, they requested the reconsideration of the said decision

5 This request was not favoured with any reply. Hence these recourses

The relief sought is plain and unambiguous. It is the annulment of the exclusion of emplacement of the applicants in the salary scales, as per paragraph 4 of the Collective Agreement of 6 8 82

10 Though in the addresses of counsel other matters partly relating to the pensions, etc., were referred to, I will not deal with any of them as the Court has to confine itself to the relief sought by the applicants

It is the contention of counsel for the applicants. -

15 (a) That, as they were for part of the time after 1 1 80 serving with the Authority, they were entitled to the new salary scales.

(b) That the applicants had a vested right by virtue of the said agreement which could not be taken away from them in an arbitrary manner, and,

20 (c) That the Collective Agreement in question is unreasonable, discriminatory and violates the principle of equality safeguarded by Article 28 1 of the Constitution

Counsel for the respondent objected that no legitimate interest, no public right, could be derived from a Collective  
25 Agreement, that the said Collective Agreement is not an act or decision of executory, administrative nature and is not amenable to judicial review under Article 146 of the Constitution, that the recourse is out of time in view of the fact of the publication in the Official Gazette No 1867 of 27 5 83 of the Pensions Regulations  
30 and lastly that the Collective Agreement referred to and regulated the terms of service of those employees who were in the service at the material time and it is not contrary to Article 28 of the Constitution as the position of the two classes was intrinsically different

35 I find no merit in the contention that the recourse is out of time as the relief sought does not refer to the pensions or to the Regulations but only to paragraph 4 of the Collective Agreement which relates only to the non-emplacement of the retired personnel in the new salary scales. With the exception of the letter

of Michaelides of 16th March, 1983. who at the time was not holding any office in the trade union of the pensioners, there is no material before this Court that the part of the Collective Agreement relating to the new salary scales was either published in the Official Gazette or communicated to the applicants. The computation of the 75 days' peremptory period prescribed by para. 3 of Article 146 within which a recourse should be filed, commences from the date that the decision or act was published or, if not published, when it came to the knowledge of the person making the recourse, and there is no material before the Court that the applicants had knowledge of it before the communication of the respondents to applicant Phiniotis.

It has been said time and again by this Court that a Collective Agreement does not create rights of public law. It lacks the force of law.

In *Kontemeniotis v. C.B.C.*, (1982) 3 C.L.R. 1027, at p. 1032, the Court in dealing with a collective agreement between the trade union and the Cyprus Broadcasting Corporation, had this to say:-

«In our judgment, the provisions of a collective agreement lack the force of law in that, unless adopted as part of the regulations of a public body, they have no application in the domain of public law».

In *Paphitis and Others v. The Republic*, (1983) 3 C.L.R. 255, it was said:-

«On principle and authority, a collective labour agreement does not create rights at public law. The Constitution, the Statute Laws and Regulations made thereunder, are the only source for the genesis of rights in the domain of public law. Legislation is the province of the legislative assembly. At best, a collective agreement between Government and Unions of public officers, signifies, so far as Government is concerned, its intent to promote before the House of Representatives appropriate legislation to implement it. By itself, the agreement creates neither rights nor does it impose obligations in the field of public law».

In *Georghios Mavrommatis & Others v. The Land Consolidation Authority, etc.*, (1984) 3 C.L.R. 1006, at page 1022, it was said:-



5 «A collective labour agreement does not create rights of public law. By itself, an agreement creates neither rights nor does it impose obligations in the field of public law ... The applicants derive no right from the alleged collective agreement».

(See, also, *Evangelou and Others v. C.B.C.* (1985) 3 C.L.R. 1410)

10 The applicants cannot have recourse to this Court against the contents of a collective agreement. A collective agreement and the contents thereof by themselves are not amenable to the jurisdiction of this Court. Only a decision or omission of the respondents, coming within the ambit of paragraph 1 of Article 146, can be judicially reviewed by this Court

15 In accordance with the Personnel of the Cyprus Telecommunications Authority General Regulations, 1982, published in the Official Gazette — (See Notification No. 220 of the Official Gazette No. 1792 of 26th July, 1982, Supplement No. 3) — the personnel of the Authority consists of the following five categories: Highest personnel, higher personnel, middle  
20 personnel, lower personnel and personnel of general service — (See Regulation 4(2)).

The highest personnel consists of the General Manager and the Deputy General Manager, and the personnel of general services comprises the messengers.

25 Regulation 57 reads:-

30 «57. Το εκάστοτε ισχύον μισθολόγιον του Προσωπικού της Αρχής καταρτίζεται και εγκρίνεται υπό του Διοικητικού Συμβουλίου αυτής. Αι μισθολογικά κλίμακες και βαθμίδες του Κατωτέρου, Μέσου και Ανωτέρου Προσωπικού ως και το ύψος των πάσης φύσεως επιδομάτων εμφανίζονται εις τας επί μέρους μετά του Προσωπικού εκάστοτε υπογραφομένας συλλογικές συμβάσεις».

35 «57. The salary scales of the Personnel of the Authority for the time being in force is made and approved by the Board of the Authority. The salary scales and grades, of the lower middle and higher personnel as well as the level of allowances

of any nature whatsoever appear in the respective Collective Agreements with the personnel of the Authority, which will be signed from time to time»).

In view of the provision of Regulation 57, a Collective Agreement relating to the salary scales and grades of the lower, middle and higher personnel may be validly taken as creating rights, if such rights emerge from the contents of such Collective Agreement. 5

Had the applicants any vested right?

The expression «vested right» connotes rights that accrued in law. Rights may be accrued both in civil and public law. A right may be deemed to vest if the process of the law for its acquisition has been completed. Such right crystallizes thereafter and vests in the subject who becomes its beneficiary in law — (*The Republic v. Menelaou*, (1982) 3 C.L.R. 419). 10 15

An officer has a vested right, e.g. on his salary, his pension. A vested right should not be identified with a mere expectation of the citizen — (*Kyriacopoulos - Greek Administrative Law*, Volume 1, 4th Edition, pp. 95 and 97).

A right is the one given by Law and the protection afforded to it is that the recognized legal state cannot be changed to the detriment of the person having it — (*Economides v. The Republic*, (1972) 3 C.L.R. 506, 520). 20

The applicants during their service with the Authority were receiving the salaries as provided in the previous Collective Agreements and under Regulation 57. It goes without saying that the power is conferred on the Authority to fix and approve the salaries and the salary scales. At the time of their such service they have not acquired any right; and further they had no vested right that after their retirement they would receive increases retrospectively; neither the law nor the regulations nor any administrative act created for them any right of increase of their salaries or emplacement in other salary scales than the ones they had at the time of their retirement. The Collective Agreement of 6.8.82 expressly excluded them. 25 30 35

I turn lastly to the contention that Clause 4 of the provisional Collective Agreement which, as it appears was finally approved, violates the principles of equality, as being discriminatory for the applicants. .

Article 28 1 enshrines and safeguards the principle of equality between equal matters or intrinsically equal in their nature. It is open, however, to the legislator and the Administration to make distinctions and classifications which are objectively and reasonably justifiable.

The Authority by the Collective Agreement made a distinction of two classes: the members of the personnel who were in the active service on 1 1 82 and those who retired or resigned prior thereto. It must be remembered that 31 12 81 was the date of the expiration of the previous Collective Agreement. No payment would be made retrospectively prior to 1 1 82 to any class. Only those who were in the active service on 1 1 82 and afterwards would be emplaced retrospectively in the new salary scales with effect with from 1 1 80.

There was no increase in the salaries paid to anyone prior to 31 12 81. Only the salaries of the employees in the service after 1 1 82 were increased as from that date. Therefore, there was no distinction during the period the applicants were entitled to draw salaries.

Assuming that by Clause I different treatment was extended to the applicants, is that discriminatory?

In 1982 the applicants were not in the same position, being pensioners, as the personnel of the Authority who were still in actual service. Equality entails the equal or similar treatment of all those who are found to be in the same situation. The applicants were not in the same situation as the personnel who would be emplaced in the new salary scales with effect as from 1 1 80. Though there are some similarities between them, intrinsically they were two different classes. The differential treatment has an objective and reasonable justification. The distinction does not constitute discrimination. It does not violate the principle of equality and is not contrary to or inconsistent with Article 28 1 of the Constitution - (See, inter alia, *Mikrommatis v The Republic*, 2 R S C C 125, *The Republic v Nishan Arakian and Others*, (1972) 3 C L R 294, *Papaxenophontos and Others v The Republic*, (1982) 3 C L R 1037, *Apostolides and Others v The Republic*, (1984) 3 C L R 233).

For the foregoing reasons these recourses fail and are hereby dismissed but in all the circumstances no order as to costs is made.

**40** *Recourses dismissed*  
*No order as to costs*