

1988 November 17

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NEOPHYTOS TRAKOSHIS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE ATTORNEY-GENERAL,
2. THE SPECIAL SERVICE FOR THE CARE AND REHABILITATION OF DISPLACED PERSONS,

Respondents.

(Case No. 505/84).

Legitimate interest—Analysis of principles applicable.

Legitimate interest—Scheme for financial assistance to refugees—Applicant has no legitimate interest to impugn a refusal to grant him assistance because his income exceeded the limit set down by the scheme.

Constitutional Law—Equality—Constitution, Art. 28—Does not exclude reasonable differentiations—Treating in same manner unequal situations may result to inequality—Scheme for financial assistance to refugee married after the invasion—Refugee, whose wife is not a refugee, not qualified for assistance—Such differentiations did not exceed permissible limits.

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The applicant is a refugee. His wife is not. His application for a loan for erection of a family house was turned down on the ground that he was not qualified under the relevant scheme, because his wife was not a refugee. It must be noted that the applicant's gross emoluments exceeded the limit set down by the scheme as a qualification for the loan.

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Held, dismissing the recourse: (1) The applicant has no legitimate interest to challenge the sub judice refusal, because his gross emoluments were beyond the limit provided for in the relevant scheme.

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(2) In the light of the aforesaid conclusion, the issue of discrimination is examined in case it is found that this Court erred as far as the question of the legitimate interest is concerned.

5 (3) The principle of equality of treatment is violated if the distinction has no objective and reasonable justification. Bare equality of treatment regardless of the inequality of realities is neither justice nor homage to the constitutional principle.

10 (4) In this case the differentiation is not on a gender base classification. The differentiation is between displaced and not displaced wives or fiancées. The facts disclose a differential treatment between these two classes. The Scheme was intended to assist displaced persons in rehabilitation and housing.

The assistance, however, is given on the basis of the family as a social unit.

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Recourse dismissed.

No order as to costs.

Cases referred to:

Kritiotis v. Municipality of Paphos (1986) 3 C.L.R. 322;

Constantinidou and Others v. Republic (1974) 3 C.L.R. 416;

Republic v. Demetriades (1977) 3 C.L.R. 213;

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Matsis v. Republic (1969) 3 C.L.R. 245;

Mikrommatis v. The Republic, 2 R.S.C.C. 125;

Fekkas v. The Electricity Authority of Cyprus (1968) 1 C.L.R. 173;

Panayides v. The Republic of Cyprus (1965) 3 C.L.R. 107;

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

Johnston v. Chief Constable of the Royal Ulster Constabulary (Case 222/84) C.M.L.R., Vol. 47 (1986:3), p.240; paras. (18) and (38);

State of Kerala v. Haji K. Kutty Naha AIR, 1969 SC 378.

Recourse.

Recourse against the decision of the respondents whereby applicant's application for financial assistance for the erection of a family house under the Government Scheme was rejected on the ground that his wife is not a refugee. 5

P. Angelides, for the applicant.

D. Papadopoulou (Mrs.), for the respondents.

Cur. adv. vult.

STYLIANIDES J. read the following judgment. The applicant seeks the annulment of the decision of the Respondents, whereby his application for financial assistance for erection of a family house under the Government Scheme was rejected, on the ground that his wife is not a refugee. 10

Due to very acute housing conditions, that were created in consequence of the Turkish invasion and the occupation of 37% of the country by the Turkish forces, the Government of the Republic approved a Scheme for assistance for housing of the refugees. 15

Under such Scheme grant and long term loan with a very low interest are given to, inter alia, new families, i.e. families created after the invasion, for erection of a house on self-owned building sites. 20

The applicant was born in 1955 at Philia village, where he had his residence. In 1974, the year that brought the catastrophe to this island, he and his co-villagers were uprooted from their homes and chased to the south by the Turkish invading forces. He joined the Police Force and in 1977 he married to a girl who is not a refugee. From this marriage a child was born in the following year. 25

The applicant on 9th January, 1984, lodged an application with the Respondents, whereby he sought a loan under the said Scheme, in order to build a house on a building site indicated in the forms attached to his application, situate at Anthoupolis. Though he was not the registered owner of the building site, the condition with regard to building site was considered as satisfied.

His such application was turned down by the Respondents No. 2 on 7th September, 1984, on the ground that assistance ceased to be given to a displaced person whose wife was not a refugee.

Counsel for the applicant submitted that the sub judge decision is tainted with illegality, as it violates the principle of equality safeguarded by Article 28 of the Constitution.

Counsel for the Respondents, on the other hand, contended that this recourse could not be entertained by the Court, as the applicant had no legitimate interest, in the sense that he did not satisfy the financial qualification set down by the said Scheme and that, though there is a differential treatment, it was made after reasonable classification by the Authorities and Article 28 was not infringed.

Legitimate Interest:

Paragraph 2 of Article 146 of the Constitution provides that "... a recourse may be made by a person whose any existing legitimate interest... is adversely and directly affected...".

Expression is thereby given to the basic condition precedent of the annulment jurisdiction of an Administrative Court, viz. the existence of an interest of an applicant. A recourse for annulment requires in respect of the applicant a legitimatio ad causam. A citizen can contest the validity of an administrative act if he possesses the quality of legitimate interest. A recourse is admissible by an Administrative Court only if the applicant possesses a direct, present, concrete legitimate interest. Lack of legitimate in-

terest deprives the Court of the power to deal with a recourse - (*Kritiotis v. Municipality of Paphos and Others* (1986) 3 C.L.R. 322).

It is upon the applicant to satisfy the Court that he has a legitimate interest.

As the existence of legitimate interest is a sine qua non for the exercise by the Administrative Court of its jurisdiction, the presence of an existing legitimate interest has to be inquired into by the Court even *ex proprio motu* - (*Mary Constantinidou and Others v. Republic (Public Service Commission)* (1974) 3 C.L.R. 416).

The Scheme was established by Decision of the Council of Ministers; Respondents No. 2—Authority—was set up to operate it.

In order to qualify for assistance—grant, or loan payable with- in a long period with very low interest—for erection of a family house on a self-owned building site, certain financial criteria were laid down.

Under a Decision of the Council of Ministers, No. 21.264, of 14th January, 1982, the ceiling of the gross annual income for a person to qualify is £4,000.-; for a family consisting of three persons—the couple and a child aged under twelve—the income should not exceed £2,700.-, plus £180.- for the child and an allowance up to £600.- for loans contracted for housing purpose payable annually. In the case, therefore, of the present applicant, if his gross annual family income exceeded £3,480.-, he would not qualify.

On 19th June, 1984, the figures were revised. The gross income was increased to £4,500.-; for a family of three, to £3,150.- and for a child under twelve £17.- per month, i.e. £204.-. To qualify, the total gross income should not exceed, including the allowance for loan contracted for housing purpose, £3,954.-.

The applicant is a member of the Police Force. His gross emoluments from his service in the Police Force, calculated on the basis of his salary advice of March 1984, which was produced as an Exhibit, was £4,136.73.

5 He applied on 9th January, 1984. The application was determined and the applicant was informed of the sub judice decision on 7th September, 1984.

10 The financial criteria is, either the one obtaining within reasonable time from the date of the filing of the application, or at the date of the sub judice decision. On any view of the matter, he did not qualify, as his gross income exceeded the income prescribed by the Scheme.

In view of the above, the applicant has no legitimate interest. This Court has no jurisdiction to entertain this recourse.

15 In case, however, this Court erred on the issue of legitimate interest, I consider pertinent to examine the ground of violation of the principle of equality.

20 On 8th August, 1979, it was decided to discontinue the grant of financial assistance for housing on self-owned building sites to displaced persons whose wife/fiancee is not displaced.

This assistance is given to cases as the one of the applicant, only if the wife or fiancee is a displaced person. The quality of a husband as a displaced person or not is completely disregarded.

25 Counsel for the applicant submitted that this is a discrimination which violates the principle of equality as enshrined by Article 28 of the Constitution.

30 Counsel for the Respondents, on the other hand, though admitted the differentiation, submitted that the State had a very broad power of classification in the field of taxation and in socio-economic policy. Relying on pronouncements in *Republic (Min-*

ister of Finance and Another) v. *Demetrios Demetriades* (1977) 3 C.L.R. 213 and *Andreas Matsis v. Republic (Minister of Finance and Another)* (1969) 3 C.L.R. 245, she submitted that the different treatment is not either unreasonable, or arbitrary and the right of equality was not infringed.

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Article 28 pronounces and safeguards the right of equality. It is not only equality before the Law, but equality of treatment in Law and by the Administration.

This Article was judicially considered in a number of cases, starting from *Argiris Mikrommatis and the Republic (Minister of Finance and Another)*, 2 R.S.C.C. 125 - (see, inter alia, *Andreas Matsis v. Republic (Minister of Finance and Another)* (1969) 3 C.L.R. 245; *Yiannis Fekkas v. The Electricity Authority of Cyprus* (1968) 1 C.L.R. 173; *Ioannis Panayides v. The Republic of Cyprus* (1965) 3 C.L.R. 107; *Republic (Minister of Finance and Another) v. Demetrios Demetriades* (supra); *Papaxenophontos and Others v. Republic* (1982) 3 C.L.R. 1037).

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Article 28 does not forbid every difference in treatment. The principle of equality of treatment is violated if the distinction has no objective and reasonable justification. The existence of such justification must be assessed in relation to the aim and effects of the measure under consideration, regard being had to the principles which normally prevail in democratic societies. Article 28 is likewise violated when it is clearly established that there is no reasonable relationship of proportionality between means employed and the aim sought to be realized - (see European Court of Human Rights *Belgian Linguistic Case*, Series A, Volume 6, p. 34, paragraph 10, with regard to Article 14 of the European Convention. See, also, *Johnston v. Chief Constable of the Royal Ulster Constabulary* (Case 222/84) C.M.L.R., Volume 47 (1986:3), p. 240, paragraphs (18) and (38).

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In *Mikrommatis* case it was said at p. 131:-

"In the opinion of the Court the term 'equal before the law'

5 in paragraph 1 of Article 28 does not convey the notion of exact arithmetical equality but it safeguards only against arbitrary differentiations and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things. Likewise, the term 'discrimination' in paragraph 2 of Article 28 does not exclude reasonable distinctions as aforesaid."

10 Bare equality of treatment regardless of the inequality of realities is neither justice nor homage to the constitutional principle. Classification is for governmental or legislative judgment. It ordinarily becomes a judicial question only when it has been drawn and is then subject to relevant constitutional tests. Where objects, persons or transactions essentially dissimilar are treated uniformly, discrimination may result, for, in our view, refusal to make a rational classification may itself in some cases operate as denial of equality - (*State of Kerala v. Haji K. Haji Kutty Naha* AIR 1969 SC 378, as per Shah, J.).

20 The differentiation is not on a gender base classification. The differentiation is between displaced wives or fiancées and not displaced ones. The facts disclose a differential treatment between these two classes. The Scheme was intended to assist displaced persons in rehabilitation and housing.

The assistance, however, is given on the basis of the family as a social unit.

25 Having regard to the realities of life in this country since 1974, I am of the view that so far the discrimination had not exceeded the reasonable proportionality, though apparently there is a differential treatment between a male and a female displaced person.

30 Having regard to all the circumstances, I am of the view that the differentiation was reasonably justifiable and the classification neither unreasonable, nor arbitrary and the factor of proportionality has so far been satisfied.

In view of the foregoing, the recourse fails. It is dismissed.

In all the circumstances of the case let there be no order as to costs.

Recourse dismissed.

No order as to costs.

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