

1981 February 26

[TRIANTAFYLIDES, P., L. LOIZOU, HADJIANASTASSIOU, A. LOIZOU,
DEMETRIADES, JJ.]

ANDREAS AZINAS,

Appellant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE COUNCIL
OF MINISTERS,

Respondent.

(*Revisional Jurisdiction Appeal No. 235*).

5 *Co-operative Societies—Registrar—Interdiction—Appointment of
Acting Registrar—Lies with Council of Ministers—Under
powers impliedly given by section 3(1) of the Co-operative
Societies Law, Cap. 114 (as amended by Law 28/59) and, also,
when section 3(1) is read in conjunction with sections 19 and
20 of the Interpretation Law, Cap. 1.*

10 *Interpretation Law, Cap. 1—“Person” and “public authority”
in section 19 of the Law—Meaning in conjunction with section
3(1) of the Co-operative Societies Law, Cap. 114 (as amended
by Law 28/59).*

*Co-operative Societies—Registrar—Appointment of Acting Regi-
strar—Validity—Whether affected because of form of publi-
cation in the official Gazette in the sense of section 3(1) of the
Co-operative Societies Law, Cap. 114.*

15 The appellant has since March 1961 been holding the post
of Registrar of the Greek Co-operative Societies upon
his appointment to such post by a decision of the Council of
Ministers under section 3(1) of the Co-operative Societies Law,
Cap. 114 (as amended by Law 28/59). By means of a decision
20 of the Council of Ministers, communicated to him by a letter
dated June 5, 1980, he was interdicted from acting as Regi-
strar of Greek Co-operative Societies and, also, a certain

Michael Erotokritos was appointed as Acting Registrar of Greek Co-operative Societies.

The trial Judge dismissed his recourse which was directed against the above decision and hence this appeal :

Held, (1) that though in section 3(1) of Cap. 114 there does not exist any express provision enabling the termination or the suspension of an appointment of Registrar of Greek Co-operative Societies made under it, as no provision in this respect is made by any other section of any Law applicable to this matter, section 3(1) impliedly empowers the Council of Ministers to interdict from the performance of his duties a person such as the appellant, who was appointed by the Council as Registrar of Greek Co-operative Societies ; that, moreover, this Court is in agreement with the trial Judge that when the said section 3(1) is read together with section 19* of the Interpretation Law, Cap. 1, the inevitable conclusion is that the Council of Ministers was empowered to interdict the appellant from performing the duties of his post as has been done in the present instance ; and that, further, the expressions "person" and "public authority" in section 19, above, should not be given such a narrow meaning as would exclude action by the Council of Ministers by applying section 3(1) of Cap. 114, in conjunction with section 19 of Cap. 1 ; accordingly there is no merit in that part of the appeal relating to the interdiction which must be dismissed.

(2) That, regarding the acting appointment of Erotokritos as Registrar of Greek Co-operative Societies, it was possible in law for the Council of Ministers to make such appointment under section 3(1) of Cap. 114 when it is read in conjunction with section 20** of Cap. 1 because the interdiction of the appellant rendered him unable, in the sense of section 20 of Cap. 1, to perform the functions of the office of Registrar of Greek Co-operative Societies ; accordingly the appeal relating to the interdiction must, also, fail.

Held, with regard to appellant's contention that the appointment of Erotokritos was invalid because a relevant order in the

* Quoted at p. 244 *post*.

** Quoted at p. 245 *post*.

sense of section 3(1) of Cap. 114, has not been published in the official Gazette :

5 That as in the Fourth Supplement to the Official Gazette of June 13, 1980, there has been published, under No. 36, the decision of the Council of Ministers for the appointment of Erotocritos as Acting Registrar of Greek Co-operative Societies the publication of such decision is regarded as an order, in the sense of section 3(1) of Cap. 114, enabling Erotocritos to perform all the duties of the Registrar specified in section
10 3(2) of Cap. 114 ; accordingly this contention must fail.

Appeal dismissed.

Appeal.

15 Appeal from the judgment of a Judge of the Supreme Court of Cyprus (Savvides, J.) given on the 23rd September, 1980 (Revisional Jurisdiction Case No. 174/80) whereby appellant's recourse against the decision of the respondent to interdict him from the post of Registrar of Co-Operative Societies and appoint Mr. M. Erotokritos as Deputy Registrar of Co-Operative Societies was dismissed.

20 *L. Clerides* with *St. Charalambous*, for the appellant.
V. Aristodemou, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

25 TRIANTAFYLLIDES P. read the following judgment of the Court. The appellant appeals from the first instance judgment* of a Judge of this Court by means of which there was dismissed his recourse against the decision of the Council of Ministers (communicated to him by a letter dated June 5, 1980) to interdict him from acting as Registrar of Greek Co-operative Societies
30 and, also, against the decision of the Council of Ministers to appoint a certain Michael Erotokritos as Acting Registrar of Greek Co-operative Societies.

35 The appellant had been appointed to the post of Registrar of Greek Co-operative Societies by a decision of the Council of Ministers dated March 9, 1961, under section 3(1) of the Co-operative Societies Law, Cap. 114, as amended by the Co-operative Societies (Amendment) Law, 1959 (Law 28/59).

It is correct that in section 3(1), above, there does not exist

* See (1980) 3 C.L.R. 510.

any express provision enabling the termination or the suspension of an appointment of Registrar of Greek Co-operative Societies made under it. We are, however, of the opinion that, as no provision in this respect is made by any other section of any Law applicable to this matter, section 3(1) impliedly empowers the Council of Ministers to interdict from the performance of his duties a person such as the appellant, who was appointed by the Council as Registrar of Greek Co-operative Societies. 5

We agree, moreover, with the trial Judge that when the said section 3(1) is read together with section 19 of the Interpretation Law, Cap. 1, the inevitable conclusion is that the Council of Ministers was empowered to interdict the appellant from performing the duties of his post as has been done in the present instance. 10

Section 19 reads as follows:- 15

“Where any Law confers upon any person or public authority power to make appointments to any office or place the power shall be construed as including the power to determine any such appointment and to suspend any person appointed, and to re-appoint or reinstate him, and to appoint another person temporarily in the place of any person so suspended, and to appoint another person to fill any vacancy in the office or place arising from any other cause: 20

Provided that where the power of the person or public authority to make any such appointment is only exercisable upon the recommendation or subject to the approval, consent or concurrence of some other person or authority the power of determination or suspension shall, unless the contrary intention appears, only be exercisable upon the recommendation or subject to the approval, consent or concurrence of that other person or authority.” 25 30

We are not prepared to accept as correct the submission of counsel for the appellant that we should give the expressions “person” and “public authority” in section 19, above, such a narrow meaning as would exclude action by the Council of Ministers by applying section 3(1) of Cap. 114, in conjunction with section 19 of Cap. 1. 35

We find, therefore, no merit in that part of this appeal which relates to the interdiction of the appellant. 40

Regarding, next, the acting appointment of Erotocritos as Registrar of Greek Co-operative Societies, we take the view that it was possible in law for the Council of Ministers to make such appointment under section 3(1) of Cap. 114 when it is read in conjunction with section 20 of Cap. 1, which, as modified by virtue of Article 188 of the Constitution, provides as follows:-

“Where the Council of Ministers is satisfied that the holder of any public office is unable for any cause to perform the functions of that office, it shall be lawful for the Council of Ministers either to appoint another person to that office or to direct that the said functions shall be performed by a person named by it or by the person for the time being holding or lawfully performing the functions of, some other public office; and all the functions of the first mentioned office shall accordingly vest (subject to any conditions, exceptions or qualifications which the Council of Ministers may prescribe) in such person until his appointment or the direction, as the case may be, is terminated by the Council of Ministers”.

The interdiction of the appellant rendered him unable, in the sense of section 20 of Cap. 1, to perform the functions of the office of Registrar of Greek Co-operative Societies.

Lastly, we find no merit in the submission that the appointment of Erotocritos to act as Registrar of Greek Co-operative Societies is invalid because, as contended by counsel for the appellant, there was not published in the Official Gazette of the Republic a relevant order in the sense of section 3(1) of Cap. 114. As a matter of fact in the Fourth Supplement to the Official Gazette of June 13, 1980, there has been published, under No. 36, the decision of the Council of Ministers for the appointment of Erotocritos as Acting Registrar of Greek Co-operative Societies and we regard the publication of such decision as an order, in the sense of section 3(1) of Cap. 114, enabling Erotocritos to perform all the duties of the Registrar which are specified in section 3(2) of Cap. 114.

In the light of all the foregoing reasons this appeal is dismissed with no order as to its costs, since no costs have been claimed by counsel for the respondent.

Appeal dismissed. No order as to costs.