

1985 June 28

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

CHARLES DE CHEDID AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE
DIRECTOR OF CENTRAL PRISONS AND OTHERS,

Respondents.

(Case No. 661/84).

5 *Administrative Law—Administrative acts or decision—Execu-
tory act—Decision of Committee set up under regulations
140-146 of the Prisons (General) Regulations, 1981—Re-
fusing a prisoner the right, under regulation 144, to be
prepared for rehabilitation and reintegration into society
and to earn a living whilst serving a sentence—An execu-
tory act which can be attacked by a recourse under Ar-
ticle 146 of the Constitution.*

10 *Prisoners—Employment outside the Prisons—Regulation 144
of the Prisons (General) Regulations, 1981—Requirements
thereof regarding exemplary behaviour and industry during
stay in prison—Not fulfilled by applicants—Decision of
respondents refusing their application for employment out-
side the prison sustained.*

15 *Administrative Law—Administrative acts or decisions—Reason-
ing—Other than the one of the sub judice decision—Derived
from material existing in the files of the administration.*

20 The applicants, who were foreign nationals serving
sentences of imprisonment imposed on them by Courts of
the Republic, submitted an application to the respondents
by which they requested that they be selected for employ-
ment outside the prison, as they were eligible for such
treatment in that they were fulfilling the requirements of

regulation 144 of the Prison (General) Regulations, 1981. The respondents rejected their application and hence this recourse. Under the said regulation 144 a prisoner may be selected for employment outside the prison if during his stay in prison he has proved trustworthy and has shown exemplary behaviour and industry. The reasons for refusing applicants' applications, as appearing in the relevant files were that the applicants being aliens and having not secured employment permits were not entitled to work outside the prison. 5 10

Held (1) on the contention of counsel for the respondents that the sub judice decision is not an administrative act and, therefore, not one that can be the subject of a recourse to this Court:

That since the intention of the legislature in introducing regulations 140-146 was to set up a body termed the "Committee", the duty of which is- 15

(a) the establishment of a Prisoners' Guidance Centre, the purpose of which is to prepare prisoners for their rehabilitation and reintegration in the community, and 20

(b) to allow prisoners to earn a living whilst serving their sentence, the decision of the Committee, once taken, gives or refuses a prisoner the right to be prepared for rehabilitation and reintegration into society and to earn a living whilst serving his sentence; and that, therefore, any decision of this nature taken by the Committee is an executory act which can be attacked by a recourse under Article 146 of the Constitution. 25

(II) On the merits of the recourse:

That from the material placed before this Court there does not appear that anyone of the applicants had secured an employment permit, but as there is another legal reasoning, which may be derived from the material in the personal files of the applicants, which, it is presumed, were before the Committee when it reached the sub judice decision, namely that the applicants do not fulfil the requirements provided for by regulation 144, in that they have not shown exemplary behaviour and industry during their stay in prison, there is no need to express an opi- 30 35

nion as to whether or not they are entitled to work outside the prison despite the fact that they have not secured an employment permit; accordingly the recourse must fail.

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Application dismissed.

Recourse.

Recourse against the refusal of the respondents to select applicants, who are serving sentences of imprisonment imposed on them by Courts of the Republic, for employment outside the prison.

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A. Eftychiou with N. Papamiltiades, for the applicants.

E. Loizidou (Mrs.), for the respondents.

Cur. adv. vult.

DEMETRIADES J. read the following judgment. This recourse was originally filed by six applicants who were and/or are still serving sentences of imprisonment imposed on them by Courts of the Republic.

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Applicants 4, 5 and 6 have, since the filing of this application, been released and deported from Cyprus and their counsel, at the close of the hearing, sought leave to withdraw their application which, as a result, was dismissed.

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Applicant No. 1, Charles De Chedid, was sentenced by the Limassol Assizes to 18 months' imprisonment for uttering false documents and obtaining money by false pretences. Applicant No. 2, Jean Jacques Chenier, was sentenced by the Limassol Assizes to 18 months' imprisonment for uttering false documents and obtaining money by false pretences. Applicant No. 3, Joseph Farah, was sentenced by the Limassol Assizes to five years' imprisonment for unlawful possession of controlled drugs with the intent to supply same to others.

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All the applicants are foreign nationals and on the 13th November, 1984, through their counsel, applied to the Director of Prisons, in his capacity as such and as Chairman of the Committee for the "Prisoners' Guidance Cen-

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tre, Working-out Scheme and Temporary Release", to be selected by the Committee for employment outside the prison on the ground that they fulfil the prerequisites required or provided by regulation 144 of the Prisons (General) Regulations, 1981 (see No. 18 in the Third Supplement, Part 1, to the Official Gazette of the 30th January, 1981). 5

As the request and/or application of the applicants was turned down by the Committee, they have filed the present recourse by which they seek a declaration that the said decision of the Committee and/or their refusal to select the applicants for employment outside the prison, which decision and/or refusal was communicated to their counsel by letter dated the 24th November, 1984, is null and void. 10

The applicants base their recourse on the following legal grounds:- 15

- (a) The sub judge decision was reached in violation of Article 28 of the Constitution in that it amounts to a discriminatory and unequal treatment of the applicants vis a vis the other prisoners for national, racial and other reasons which are contrary to the provisions of the Constitution. 20
- (b) The sub judge decision was taken contrary to the provisions of regulations 3(1) and 144 of the Prison (General) Regulations, 1981, in that although the applicants fulfil the requirements of these Regulations, they were not selected by the respondents for work outside the prisons. 25
- (c) The sub judge decision was reached in violation of the principles of equality and of equal treatment. 30
- (d) The sub judge decision is not duly reasoned, and
- (e) the sub judge decision was reached in abuse and/or excess of powers.

On the 13th November, 1984, the applicants, through their counsel, submitted an application to the respondents by which they requested that they be selected for employment outside the prison, as they were eligible for such treatment, in that they were fulfilling the requirements of 35

regulation 144 of the Prisons (General) Regulations, 1981.

On the 24th November, 1984, the Director of Prisons, in his said capacity and as Chairman of the "Committee of New Institutions", a term nowhere appearing in the said Regulations, addressed a letter to counsel for the applicants by which he informed them the following:

«Αναφορικά με την επιστολή σας ημερ. 13.11.1984 προς την Επιτροπή Νέων Θεσμών με την οποία ζητείτε την ένταξη στην Εξωίδρυματική Απασχόληση έξη αλλοδαπών πελατών σας, σας πληροφορούμε ότι η πιό πάνω Επιτροπή εξέτασε την αίτηση στη συνεδρία που έγινε στις 23.11.1984 και ασκώντας την διακριτική της έξουσία απέρριψε την ένταξη τους στο Κέντρο Εξωίδρυματικής Απασχόλησης.

Διευθυντής Φυλακών,
Πρόεδρος Επιτροπής Νέων Θεσμών».

("With reference to your letter dated 13.11.1984 addressed to the Committee of New Institutions, by which you request the emplacement of six alien clients of yours to the Working-out Scheme, I wish to inform you that the above Committee examined the application at the meeting which took place on the 23.11.1984 and in the exercise of its discretionary power, rejected their emplacement to the Working-out Scheme Centre.")

Regulations 3(1) and 144 of the Prisons (General) Regulations, 1981, read as follows:-

«Μέρος 1. — ΚΡΑΤΟΥΜΕΝΟΙ

Γενικαί Διατάξεις

3.— (1) Οί παρόντες Κανονισμοί θα εφαρμόζονται άμερολήπτως. Ουδέμία δυσμενής διάκρισις εις θάρσ οίουδήποτε κρατουμένου έπιτρέπεται ένεκα τής φυλής, του χρώματος, του φύλου, τής γλώσσης, τής θρησκείας, τών πολιτικών ή άλλων πεποιθήσεων, τής εθνικής ή κοινωνικής καταγωγής, τής περιουσίας, τής γεννήσεως αυτού ή ένεκα οίουδήποτε άλλου λόγου. Αντιθέτως, ένδεικνυται ό σεβασμός τών θρησκευτικών

πεποιθήσεων και ήθικων άρχων της ομάδας εις την όποιαν άνήκει ό κρατούμενος.»

(“Part 1. — PRISONERS

General Provisions

3.-(1) These Regulations shall be applied impar- 5
tially. There shall be no discrimination on grounds of
race, colour, sex, language, religion, political or other
opinion, national or social origin, property, birth or
other status, On the other hand, it is necessary to res- 10
pect the religious beliefs and moral precepts of the
group to which a prisoner belongs.”)

«144. - (1) Κρατούμενος έκτίων ποινήν φυλακίσεως—

(a) μή υπερβαίνουσαν τούς έΞ μήνας ή

(β) υπερβαίνουσαν τούς έΞ μήνας έφ' όσον έξέτισε 15
τό έν τρίτον της ποινής του, δύναται, εάν κατά
την διάρκειαν της παραμονής του εις τάς Φυλα-
κάς άπεδείχθη αξιόπιστος και επέδειξεν έξαιρετι-
κήν συμπεριφοράν και εργατικότητα, να έπιλεγη
ύπό της Έπιτροπής προς άπασχόλησιν έκτός των 20
Φυλακων τηρουμένων τοιούτων όρων ώς ήθελον
έπιβληθη ύπό της Έπιτροπής.

(2) Η Έπιτροπή δύναται να διακόψη κατά πάντα 25
χρόνον την άπασχόλησιν κρατουμένου έκτός των Φυ-
λακων λόγω της κακής αυτού συμπεριφοράς ή δια-
πράξεως ύπ' αυτού οίουδήποτε ποινικού ή πειθαρχικού
άδικήματος ή παραβάσεως οίουδήποτε έπιβληθέντος
έπ' αυτού όρου ή περιορισμού.»

(“144. - (1) A prisoner serving a sentence of impris-
onment -

(a) not exceeding six months; or 30

(b) exceeding six months if he has served one third
thereof, may, if during his stay in Prison he has
proved trustworthy and has shown exemplary
behaviour and industry, be selected by the Com-
mittee for employment outside the Prison, sub- 35

ject to such conditions as the Committee may impose.

- 5 (2) The Committee may at any time interrupt the employment of a prisoner outside the Prison as a result of bad behaviour or the committal by him of any criminal or disciplinary offence or as a result of the contravention of any condition or restriction imposed on him.”)

Counsel for the respondents submitted that -

- 10 (a) The sub judice decision is not an administrative one falling within the provisions of Article 146 of the Constitution and that it cannot be made the subject of a recourse to this Court.
- 15 (b) Assuming that it falls within the domain of administrative Law, the sub judice decision
- (i) was lawfully taken, it is in accord with the provisions of the Constitution and the principles of administrative Law and was taken in the exercise of the discretionary powers of the respondents,
- 20 (ii) is duly reasoned and was taken after due inquiry into all facts and circumstances of the case.
- (c) The applicants being aliens and having not secured employment permit, are not entitled to work outside the prison.

- 25 I propose to deal with the first submission of counsel for the respondents, namely that the sub judice decision is not an administrative act and, therefore, not one that can be the subject of a recourse to this Court.

- 30 It has been repeatedly decided by the Supreme Court of Cyprus that administrative acts and decisions can only be dealt with by it if they are of an executory nature, that is if they produce legal results concerning the citizen which consist of the creation, amendment or abolition of rights and obligations of an administrative character.

- 35 This principle of the Law has been introduced from

Greece and adopted by our Court in a great number of cases dealt with by it.

Counsel for the respondents submitted that decisions relating to the mode and conditions of serving a sentence imposed by Courts are not executory administrative acts and based her submission on a number of judgments of the Council of State in Greece and on Greek legal literature. 5

The circumstances of this case, however, in my view take it outside the realm of the authorities on which counsel for the respondents relied on. As it appears from the provisions of Part VI of the Prisons (General) Regulations 1981, which is headed "PRISONERS' GUIDANCE CENTRE, WORKING-OUT SCHEME AND TEMPORARY RELEASE", the intention of the legislature in introducing this part of the Regulations (Regulations 140-146) was to set up a body termed the "Committee", the duty of which is 10 15

- (a) the establishment of a Prisoners' Guidance Centre, the purpose of which is to prepare prisoners for their rehabilitation and reintegration in the community, and 20
- (b) to allow prisoners to earn a living whilst serving their sentence.

Although I do not lose sight of the fact that not every prisoner is entitled to these privileges, because he has to fulfil certain requirements provided by the Regulations, still I feel that the decision of the Committee, once taken, gives or refuses a prisoner the right to be prepared for rehabilitation and reintegration into society and to earn a living whilst serving his sentence. It is, therefore, my view that any decision of this nature taken by the Committee is an executory act which can be attacked by a recourse under Article 146 of the Constitution. 25 30

Having come to this conclusion, the next issue that poses for decision is whether the sub judice decision is duly reasoned. 35

After the close of the case and as when studying the written addresses submitted by counsel I read in the address of counsel for the respondents that ample reasoning for

the sub judge decision existed and could be found in the file of each applicant, I ordered the re-opening of the case so that the personal files of the applicants be produced.

5 I have gone through such files and I have noticed that as regards applicant No. 3, Joseph Farah, the reasons, amongst others, for non acceding to his request, were that he did not possess employment permit and that there existed, also, in his case security reasons.

10 *Counsel for the respondents had raised, by means of ground (c) in her opposition, the issue that the applicants being aliens and having not secured employment permits are not entitled to work outside the prison.*

15 From the material placed before me there does not appear that anyone of them had secured such an employment permit, but as there is another legal reasoning, which may be derived from the material in the personal files of the applicants, which, it is presumed, were before the Committee when it reached the sub judge decision, namely that the applicants do not fulfil the requirements provided
20 for by regulation 144, in that they have not shown exemplary behaviour and industry during their stay in prison, there is no need to express an opinion as to whether or not they are entitled to work outside the prison despite the fact that they have not secured an employment permit.

25 Having found that the applicants do not fulfil the requirements of regulation 144, I do not think that there arises a question of discrimination or of unequal treatment in the case of the applicants.

30 In the result, the recourse is dismissed but with no order as to its costs.

*Recourse dismissed.
No order as to costs.*