

1985 December 9

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

COSTAS KOUKOURIS AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF HEALTH AND/OR
MINISTRY OF HEALTH
2. THE COUNCIL OF MINISTERS AND/OR
3. THE DIRECTOR OF MEDICAL SERVICES,

Respondents.

(Case No. 236/82).

Constitution, Article 29—Omission to reply—In the circumstances, especially the long and unreasonable delay on the part of the administration to take a decision on applicants' claim for special allowance for dangerous work, a declaration, to the effect that the omission to reply to applicants' relevant letter ought not to have been made, would be

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All applicants comprised the whole staff of the Occupational Therapy Department of the Psychiatric Services and have their place of work in the Psychiatric Institutions of Athalassa. On 12.2.1982 they addressed to the respondent Minister a letter requesting the grant to them of special allowance for dangerous work. The applicants received no reply to their above letter until the 28.5.1982, when they filed the present recourse.

Counsel for the applicants argued that the omission to reply was an omission within the meaning of Article 29 of the Constitution and that as a result of such omission the applicants' claim remained unsatisfied which amounts

to discrimination against them vis-a-vis other members of the staff of the Psychiatric Institutions.

Counsel for the respondents stated that a reply was given to the applicants on 16.2.1984 and submitted that as the respondents never refused to pay the allowance claimed the matter was still pending and, therefore, there is no administrative act that can be made the subject of the recourse and that the applicants' claim amounts to a claim for a legislative activity and, therefore, any omission by the respondents to satisfy it is not amenable to be reviewed under Article 146.1 of the Constitution.

Held, (1) The reply given on 16.2.1984 cannot be taken into consideration because it is a fact subsequent to the filing of the recourse.

(2) The payment of the special allowance to other members of the staff of the Psychiatric Institution is made on the basis of Decision 3496 of the Council of Ministers, dated 14.1.63, which is an act of an executive function. Applicants' claim is not a claim for a legislative activity.

(3) There is no administrative act in the present case. It follows that the applicants are not entitled to a declaration relating to the respondents' omission to grant to them the special allowance.

(4) As it emanates from the material before the Court applicants claim for special allowance for dangerous work was raised some years ago and the respondents, although not rejecting it, have not yet reached any decision in the matter. In the light of the circumstances of this case, especially the long and unreasonable delay on the part of the administration and following the dictum in *Lambrou v. The Republic* (1969) 3 C.L.R. 497 at 499-500 the applicants are entitled to a declaration under Articles 146 and 29.2 of the Constitution that the omission to reply to their letter dated 12.2.82 ought not to have been made.

Declaration accordingly.
£100 costs in favour of applicants.

Cases referred to:

Lambrou v. The Republic (1969) 3 C.L.R. 497.

Recourse.

5 Recourse against the omission of the respondents to reply to applicants' application dated 17.2.1982 for the grant to them of a special allowance for dangerous work which is granted to the members of the staff of the Psychiatric Institutions of Cyprus and/or the refusal or omission of the respondents to grant to applicants such allowance.

10 *E. Efsthathiou*, for the applicants.

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

Cur. adv. vult.

15 SAVVIDES J. read the following judgment. The applicants hereby challenge the omission of the respondents to reply to their application dated 17.2.1982 for the grant to them of a special allowance for dangerous work which is granted to the members of the staff of the Psychiatric Institutions of Cyprus and/or the refusal or omission of the respondents to grant to them such allowance.

20 All applicants, 16 in number, whose names are listed in Appendix "A" attached to the application, comprised the whole staff of the Occupational Therapy Department of the Psychiatric Services and have their place of work in the Psychiatric Institutions of Athalassa.

25 The applicants applied by letter dated the 12th February, 1982, addressed to the Minister of Health by their counsel, for the grant to them of special allowance for dangerous work. They based their application on the ground that the allowance is granted to other members of the staff of the
30 Psychiatric Institutions such as nursing staff, and also the fact that they, the applicants, due to the nature of their work are exposed to greater danger than other members of the staff, in view of the fact that their patients with whom they come into contact usually carry tools and on a number

of occasions they had been attacked and wounded by the patients.

The applicants received no reply to their above letter until the 28th May, 1982, when they filed the present recourse. 5

The recourse is based on the grounds that the act and/or omission of the respondents is unlawful, in excess and/or abuse of powers, contrary to the principles of good administration and discriminatory against the applicant.

Counsel for applicants contended, in his written address, that the omission to reply to the letter of the applicants amounts to an omission within the meaning of Article 29 of the Constitution. Counsel further argued that as a result of such omission, the claim of the applicants remained unsatisfied which amounts to a discrimination against the applicants vis-a-vis other members of the staff of the Psychiatric Institutions. He submitted, lastly, that the applicants are in a substantially equal or equivalent situation with other members of the nursing staff of the Institutions and they should have been treated equally. 10
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In his written address, counsel for the respondents stated, with regard to the first part of the complaint of the applicants that a reply was given on 16.2.85 attaching a photocopy of such reply. With regard to the second part of the complaint, counsel argued that the respondents never refused to pay the allowance claimed by the applicants but they were informed in the past that the matter was still pending and no decision was taken. In view of this, counsel submitted, there is no administrative act which can become the subject matter of a recourse, and, also no omission on the part of the respondents to satisfy applicant's claim. 25
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In the alternative, counsel contended that claim of the applicants amounts to a claim for a legislative activity and, therefore, any "omission" by the respondents to proceed and grant such allowance is not amenable under Article 146.1 of the Constitution. 35

Before proceeding to consider the case, I wish to observe

that the letter of the Ministry of Health, dated 16.2.1984 to which counsel for respondents referred, is a fact subsequent to the recourse and cannot, therefore, be taken into consideration.

5 Coming now to consider the case on its merits, I will start with the second part of the claim of the applicants, the omission of the respondents to grant to them the special allowance claimed. I find myself in disagreement with
10 the view taken by counsel for the respondents that it is a claim for a legislative activity. The payment of the special allowance to the staff of the Psychiatric Institutions is made on the basis of Decision No. 3496 of the Council of Ministers, dated 14.11.1963 which is an act of an executive and not legislative function.

15 I do agree, however, that there is no administrative act in the present case. As it seems from the documents attached to the written address of counsel for the respondents, this claim was raised some year ago, and the applicants were informed by letter of the Director-General of the Ministry
20 of Health dated the 10th October, 1979, that the matter should be examined by the Personnel Department. It is not a matter, therefore, of a refusal of the respondents or any of them, either to deal with the matter or grant the claim of the applicants, but an unreasonable delay in dealing
25 with the matter. As a result, the applicants are not entitled to a declaration in respect of the second part of their claim, relating to the omission of the respondents to grant to them the special allowance. See, in this respect, the case of *Lambrou v. The Republic*, (1969) 3 C.L.R. 497, at p. 499.

30 With regard to the first part of the claim of the applicants that is, the omission of the respondents to reply within 30 days, to their letter dated the 12th February, 1982, I wish to make reference to the case of *Lambrou v. The Republic* (supra) where Triantafyllides, J., as he then
35 was, said the following at -pp. 499-500.

40 "In the circumstances, I cannot grant the exact relief claimed by the recourse, as there did not exist at the time of the filing of the recourse a decision of the respondent refusing his application for transfer to Larnaca. But on the other hand I cannot overlook the

serious omission to deal with, and reply to, the application of the applicant expeditiously; and Rule 17 of the Supreme Constitutional Court Rules, 1962, provides that 'If the justice of the case so requires the Court may give any Judgment of Decision, under any Article granting it competence, whether or not such Judgment or Decision has been sought in the proceedings before it.'

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In the context of the material before the Court, and especially of the relevant dates, I think this is an obvious case in which the Applicant is entitled to succeed under Article 146 and 29.2 of the Constitution (see, also, *Pikis v. The Republic* (1965) 3 C.L.R. 131).

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The applicant had applied for a transfer well in advance of the, at the time, ensuing school-year 1969/1970 and yet no decision was taken, or communicated to him, in respect of his application, even up to the 18th September, 1969, after the commencement of the said school-year on the 1st September, 1969.

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In the circumstances it is declared that such an omission ought not to have been made."

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Reverting to the facts of the present case, it emanates from the material before me that the claim of the applicants was, as I said earlier, raised some years ago, and the respondents, although not rejecting it, have not yet reached any decision in the matter.

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I am in full agreement with the above dictum in *Lambrou* case and I find that in the light of the circumstances of the present case, especially the long and unreasonable delay on the part of the administration, the applicants are entitled to a declaration under Article 146 and 29.2 of the Constitution. It is, therefore, declared that such an omission ought not to have been made.

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Before concluding, I wish to observe that such long and unreasonable delays by the administration to deal with a matter placed before it, are incompatible with the principle of good and proper administration. The respondents should have dealt with the claim of the applicants promptly and

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resolve finally their demand a long time ago. It is up to the Council of Ministers to reconsider its previous decision No. 3496, if it so deems fit, to satisfy applicants' claim by extending the application of such decision to the case of the applicants as in the case of other members of the personnel of the Psychiatric Institutions.

In the circumstances, and taking into consideration the long and unreasonable delay on the part of the respondents to give a reply on the substance of applicants' claim, I award £100 costs in favour of the applicants.

Declaration accordingly.

Respondents to pay £100.- costs.