

1987 August 26

[DEMETRIADES, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MICHALAKIS GEORGHIOU,

Applicant,

v

THE REPUBLIC OF CYPRUS, THROUGH
1 THE COUNCIL OF MINISTERS,
2 THE MINISTER OF INTERIOR,
3 THE COMMANDER OF POLICE,

Respondents

(Case No 398/82)

Police Force — Vacation leave — The Police (General) Regulations, 1958 — Regulations 17(2) and (3) — The leave is not granted as a matter of right — A constable cannot accumulate leave in excess of 42 days, unless the Commander of the Force had previously permitted the accumulation — Save in exceptional circumstances servants of the Republic cannot demand compensation moneywise for not taking their vacation leave

The applicant was a member of the Police Force until 1 2 80, when he was dismissed from the Force by a decision of the Council of Ministers

10 By letter of his advocate dated 20 8 82 the applicant asked that he be paid «all sums due to him relating to the existing to his credit, until his dismissal, vacation leave», that is for 231 days, which he had accumulated during his service in the post. The request was turned down. Hence this recourse.

15 Held, *dismissing the recourse* (1) Leave of absence of members of the Police Force, other than special constables, below the rank of Assistant Superintendent, are governed by Regulations 17(2) and (3)* of the Police General Regulations, 1958. Regulation 17 was amended on 26 9 85 by the addition of a new paragraph 6.

20 (2) A police constable is not entitled under regulation 17 to vacation leave as of right. Moreover, a Police Constable cannot accumulate vacation leave in excess of 42 days, unless the Commander of the force had previously permitted such accumulation.

* Quoted at p 1011 post

(3) As the applicant never applied for such a permission for accumulation the applicant had lost by the end of 1979 all rights to any vacation leave. The applicant as on the day of his dismissal was only entitled to 2 1/2 days leave for serving in the Force during January, 1980

(4) Servants of the Republic unless they take their vacation leave cannot demand, save in exceptional cases, to be compensated moneywise 5

Recourse dismissed
No order as to costs

Recourse.

Recourse against the refusal of the respondents to pay all sums due to applicant relating to the existing to his credit, until his dismissal, vacation leave 10

A Eftychiou, for the applicant

K Michaelides, for the respondents

Cur adv vult 15

DEMETRIADES J read the following judgment. The Applicant was a member of the Police Force of the Republic until the 1st February, 1980, when, after disciplinary proceedings had commenced against him, he was dismissed from the Force by a decision of the Council of Ministers No 18 767, on the ground that his further stay in the service would be detrimental and contrary to the public interest 20

The decision of the Council of Ministers was communicated to the applicant by a letter addressed to him by the Director-General of the Ministry of Interior, dated the 11th February, 1980. On the 20th August, 1982, the applicant, through his counsel, wrote a letter to the Commander of Police and asked that he be paid «all sums due to him relating to the existing to his credit, until his dismissal, vacation leave», that is for 231 days' leave which he had accumulated during his service in the Force. By letter dated the 6th September, 1982, the Commander of Police informed applicant's counsel that in view of the decision of the Council of Ministers No. 18 907, dated the 13th March, 1980, no sum in lieu of accumulated leave was payable to a member of the Force who was dismissed in the public interest. Against this decision the applicant filed the present recourse by which he prays for a declaration by the Court that the said decision is null and void and 25 30 35

of no effect and that anything that was omitted to be done ought to be done.

5 What regulates leave of absence of members of the Force, other than special constables, below the rank of Assistant Superintendent, is regulation 17(2) and (3) of the Police (General) Regulations 1958, published in Supplement No. 3 to the Cyprus Gazette No. 4128 of the 30th April, 1958, under Notification 279. This regulation provides:

10 «17.-(1) Leave to Gazetted Officers and expatriate officers of other ranks who are entitled to return passages to the United Kingdom, shall be governed by General Orders in force from time to time:

15 Provided that the Chief Constable shall be permitted to grant leave to an officer who has not completed his minimum tour of service but has completed not less than fifteen months resident service since his first appointment or his last return from overseas leave, where the Chief Constable is satisfied that the granting of such leave is in the interest of the efficiency of the Force:

20 Provided further that in such cases the Chief Constable shall notify the Government that such leave has been granted.

25 (2) Members of the Force, other than special constables, below the rank of Assistant Superintendent, and not included in paragraph (1) of this regulation, may be granted vacation leave of 42 days each year.

(3) Without the previous permission of the Chief Constable leave shall not be accumulated-

30 (a) in respect of officers to whom paragraph (1) of this regulation applies beyond the period provided in General Orders;

(b) in respect of all other officers beyond a maximum of 42 days.

35 (4) Leave shall not be granted to any member of the Force who is undergoing punishment or who is charged with any offence which has not been finally dealt with.

(5) Leave accumulated before the coming into force of these Regulations may be granted at the discretion of Divisional or Unit Commanders.»

By Notification No 177, published in Supplement No III(I) to the Official Gazette No 1223 of the 26th September, 1975, regulation 17 was amended by the addition of a new paragraph which, at its maternal part, reads as follows

«(6)-(α) Ανεξαρτήτως των διατάξεων των άνω παρα- 5
 γράφων του παρόντος Κανονισμού, παν μέλος της
 Δυνάμεως, ασχέτως του εάν έχη υποβάλει αίτησιν δι'
 άδειαν ή όχι, λαμβάνει υποχρεωτικώς κατά την διάρ-
 κειαν της υπηρεσίας του πάσαν άδειαν εις ην δικαιού- 10
 ται, ο χρόνος δε κατά τον οποίον λαμβάνεται τοιαύτη
 άδεια ορίζεται υπό του Αρχηγού της Αστυνομίας:

Νοείται ότι εις περίπτωσιν καθ' ην το μέλος της
 Δυνάμεως πρόκειται να αφυπηρητήσιν συντόμως και
 τοιαύτη άδεια δεν ελήφθη προηγουμένως αύτη λαμβά- 15
 νεται κατά τοιούτον χρόνον ώστε να συμπληρούται
 κατά την ημερομηνίαν της αφυπηρητήσεώς του.»

«(6)-(a) Notwithstanding the provisions of the above
 paragraphs of the present Regulation, every member of the
 Force, irrespective of the fact that he had applied for leave or
 not, takes compulsorily during his service all leave to which he 20
 is entitled, and the time during which such leave is taken is
 fixed by the Commander of Police

Provided that in case the member of the Force will retire
 soon and such leave has not been taken previously it will be
 taken at such time so that it be completed at the time of his 25
 retirement »)

The legal grounds on which the recourse is based are

(a) The sub judge decision was taken in contravention of the
 provisions of regulation 17

(b) It lacks sufficient and/or legal reasoning 30

(c) It was taken in excess or abuse of power, and

(d) It was taken after a misconception of the real facts and/or of
 the legal aspect of the case of the applicant

In his address counsel for the applicant, after making reference
 to the provisions of regulation 17 and giving his own interpretation 35
 of them, argued that as the Commander of Police rejected
 repeatedly applicant's request for leave on the excuse that the

exigencies of the service did not permit the absence of the applicant, the failure of the Commander of Police to grant to the applicant his accumulated leave prior to his dismissal was unlawful in that the provisions of para 6(a) of regulation 17 were
5 contravened.

Counsel for the respondents, on the other hand, argued that in view of the provisions of regulation 17 the applicant was not entitled to accumulated leave without the consent of the Commander of Police; that in any event, if he was so entitled, such
10 leave could not exceed 42 days and that the applicant ought to have challenged the decision not to be granted his earned accumulated leave prior to the termination of his services in the Police Force.

As counsel for the applicant has very rightly conceded - and I
15 fully adopt this view - a Police Constable is not entitled, as of right, under the provisions of regulation 17 of the Police (General) Regulations 1958, as amended, to vacation leave. It is further my view that in the light of the clear and unambiguous wording of regulation 17, a Police Constable cannot accumulate vacation
20 leave in excess of 42 days unless the Commander of Police had previously permitted the accumulation of such leave.

In the present case, there is no evidence before me that the applicant had ever applied to the Commander of Police for vacation leave or for the grant to him of vacation leave that he had
25 accumulated and that the Commander of Police gave or refused permission for either case. Therefore, the allegation made by the applicant's counsel in his address that the applicant's application for vacation leave was rejected by the Commander of Police is untenable.

30 Further, there is no evidence before me that the applicant, on receiving the letter by which he was informed of his dismissal, asked the Commander of Police to be granted any vacation leave to which he was entitled up to the day his dismissal became effective.

35 Considering now that Police Officers of the rank which was held by the applicant are entitled to vacation leave for 42 days every year; that they cannot accumulate, as of right, vacation leave and that the applicant has never applied for the permission of the Commander of Police to accumulate such leave, I find that by the

end of 1979 he had lost all rights to any vacation leave and, therefore, his claim cannot stand. In the circumstances, therefore, the maximum of leave to which he might be entitled was 2 1/2 days, that is the proportion of the leave he would be entitled for serving in the Force for one month, that is January 1980.

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Counsel for the applicant did not base the claim of the applicant that he was entitled to be compensated in money in lieu of vacation leave, on any law, custom or precedent. As far as I know, servants of the Republic, unless they take their vacation leave to which they may be entitled, cannot demand, except in exceptional cases, to be compensated moneywise.

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In the result, the recourse is dismissed but, in the circumstances of the case, there will be no order as to costs.

Recourse dismissed.

No order as to costs.

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