1965
June 10,
July 15

CHARALAMBOS PAPADOPOULLOS *and* THE REPUBLIC OF CYPRUS, THROUGH - (a) THE COUNCIL OF MINISTERS, (b) THE MINISTER OF THE INTERIOR

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHARALAMBOS PAPADOPOULLOS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH

(a) THE COUNCIL OF MINISTERS,

(b) THE MINISTER OF THE INTERIOR,

Respondent.

(Case No. 63/63).

Administrative Law—Firearms—Firearms Law, Cap. 57—Decision of Council of Ministers not to issue to applicant a special permit to possess a firearm under section 14 of the Law—Relevant discretion exercised after paying due regard to the relevant considerations and without taking into account irrelevant factors—No abuse of powers in taking such decision.

Constitutional Law—Constitution, Articles 6 and 28 and the Firearms Law, Cap. 57, section 14—Discrimination or unequal treatment—No discrimination in the sense of Article 6 or 28 has been made against Applicant by reason of the fact that special permits under section 14 of the Law have been granted to certain of his co-villagers under different circumstances.

Constitutional Law—Constitution, Article 29—Reasons for decision—Applicant has not been prejudiced, in the circumstances of this case, by the failure of Respondent to give reasons for the sub judice decision.

On the 2nd June, 1937, the Applicant was convicted under the Firearms Law, Cap. 57, of the offence of possessing a revolver without a permit. Having been convicted of such an offence the provisions of section 14 of Cap. 57 (vide paragraph (j) thereof) applied to him and he was incapacitated from possessing a firearm without a special permit under the said section.

On the 5th September, 1962, the Applicant applied to the Council of Ministers for such a special permit under section 14 of Cap. 57. His application was referred, in

the first instance, in accordance with the usual procedure, to the District Officer and the Commander of the Gendarmerie, both of whom did not recommend the issue of such a special permit to the Applicant. The matter was then considered, again in accordance with the usual procedure, by a Sub-Committee of the Council of Ministers consisting of the Ministers of Interior, Justice and Defence. This Sub-Committee, advised the Council of Ministers that the recommendations of the District Officer and the Commander of the Gendarmerie, to the effect that a special permit under section 14 of Cap. 57 should not be issued to the Applicant, be approved by it.

The Council of Ministers at its meeting on the 21st February, 1963, considered the Applicant's case, and the Applicant was informed by letter dated the 4th March, 1963 that his application for a special permit had been rejected, but no reasons were given in the said letter for the said decision. Against this decision of the Council of Ministers the Applicant has made the present recourse to the Court.

At the hearing of this recourse counsel for Applicant has attacked the decision in question of the Council of Ministers mainly on the following three gounds:

(i) that the Council of Ministers has acted *"in abuse of powers"*;

(ii) *discrimination* or unequal treatment, contrary to Articles 6 and 28 of the Constitution;

(iii) faillure of the Respondent to give *reasons* for such decision, contrary to Article 29 of the Constitution.

Held, I. As regards ground (i) (Abuse of powers):

(a) The Council of Ministers, in deciding to exercise its descretion in the manner in which it did in this Case, has done so after paying due regard to all relevant considerations and without taking into account irrelevant factors and it has not been shown to my satisfaction that it has acted in abuse of powers in taking the decision in question.

II. As regards ground (ii) (Discrimination or unequal treatment):

No discrimination, in the sense of Article 6 or 28 of the

Constitution, has been made against the Applicant by reason of the fact that special permits under section 14 of Cap. 57 have been granted to certain of his co-villagers under different circumstances.

III. As regards grounds (iii) (Failure of Respondent to give reasons) :

(a) Applicant has not been prejudiced, in the circumstances of this Case, by the failure of the Respondent to give reasons for the decision communicated to the Applicant by the letter of the 4th March, 1963.

Order : This Application cannot succeed and it is hereby dismissed accordingly.

Application dismissed.

Cases referred to:

Salih Shukri Saruhan and The Republic, 2 R.S.C.C. p. 133 at p. 136;

Phedias Kyriakides and The Republic 1 R.S.C.C. p. 66 at p. 77.

Recourse.

Recourse against the decision of the respondent dated 4th March, 1963, to refuse a special permit for an import licence for a gun to the applicant.

Ph. N. Clerides for the applicant.

K.C. Talarides, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:—

MUNIR, J.: By this recourse under Article 146 of the Constitution the Applicant applies for:—

"(A) A declaration of the Hon. Court that the decision of the respondents dated 4th March, 1963, to refuse a special permit for an import licence for a gun to the applicant amounts to an abuse of the powers vested in the respondents, and as such is unconstitutional.

(B) A declaration of the Hon. Court that the decision of the respondents dated 4th March, 1963 to refuse a Special permit for an import licence for a gun to the applicant is discriminatory and as such is unconstitutional.

(C) A declaration of the Hon. Court that the decision of the respondents dated 4th March, 1963, to refuse a Special permit for possession of a firearm without giving any reason at all is unconstitutional".

The uncontested facts of this Case are as follows:—

On the 2nd June, 1937, the Applicant was convicted under the Firearms Law, Cap. 57, of the offence of possessing a revolver without a permit. Having been convicted of such an offence the provisions of section 14 of Cap. 57 (vide paragraph (*j*) thereof) applied to him and he was incapacitated by the said section 14 from possessing a firearm without a special permit under the said section.

On the 5th September, 1962, the Applicant applied to the Council of Ministers for such a special permit under section 14 of Cap. 57. His application was referred, in the first instance, in accordance with the usual procedure, to the District Officer and the Commander of the Gendarmerie, both of whom did not recommend the issue of such a special permit to the Applicant. The matter was then considered, again in accordance with the usual procedure, by a Sub-Committee of the Council of Ministers consisting of the Ministers of Interior, Justice and Defence. This Sub-Committee, after examining the matter and after taking into consideration, *inter alia*, the reports of the District Officer and the Commander of the Gendarmerie, advised the Council of Ministers that the recommendations of the District Officer and the Commander of the Gendarmerie, to the effect that a special permit under section 14 of Cap. 57 should not be issued to the Applicant, be approved by it.

The Council of Ministers at its meeting on the 21st February, 1963, considered the Applicant's case, together with other applications under section 14 of Cap. 57, and decided to approve the recommendations made by the Sub-Committee and the District Officer and the Gendarmerie. The Applicant was duly informed by letter dated the 4th March, 1963 (*Exhibit* 2) that his application for a special permit had been

considered by the Council of Ministers and that it had been rejected, but no reasons were given in the said letter for the said decision. It is against this decision of the Council of Ministers that the Applicant has made the present recourse to the Court.

The Respondent does not deny the allegation of the Applicant that a certificate of registration of a firearm had been issued to the Applicant sometime between 1940 and 1942 and that such certificate of registration had subsequently been cancelled sometime in 1949. It is also not in dispute that the Applicant was a rural constable between the 24th April, 1957, and the 3rd October, 1958, when he resigned.

At the hearing of this recourse counsel for Applicant has attacked he decision in question of the Council of Ministers mainly on the following three grounds:—

(*i*) that the Council of Ministers has acted "*in abuse of powers*";

(*ii*) *discrimination* or unequal treatment, contrary to Articles 6 and 28 of the Constitution;

(*iii*) failure of the Respondent to give *reasons* for such decision, contrary to Article 29 of the Constitution.

Counsel for Applicant, in support of ground (*i*) above, i.e. concerning "abuse of powers", has made the following submissions:—

(*a*) that the Council of Ministers had erred in interpreting Cap. 57 and in regarding it as a "repressive prohibitive law". He submitted that the provisions of section 14 of Cap. 57 did not impose an absolute prohibition on the granting of a special permit to the Applicant to possess a firearm and that it was open to the Council of Ministers to grant such a permit to the Applicant "subject to such terms and conditions" as the Council of Ministers may think fit. He submitted that, for example, conditions could have been imposed by the Council of Ministers as regards the period of duration of such special permit or conditions could have been imposed regarding the hours during which the Applicant could possess a firearm or the

area in which he could possess a firearm. In support of this submission counsel for Applicant cited from the English translation of "The Administrative Act" by Professor Forsthoff (1963) at p. 61;

(*b*) that the rules of natural justice had been contravened in that neither the Council of Ministers, the Sub-Committee of the Council of Ministers, the District Officer nor the Commander of the Gendarmerie had given the Applicant the opportunity to be heard in a matter in which his character was involved;

(*c*) that the previous convictions of the Applicant in respect of the offences which he had committed between the years 1937 and 1961 had wrongly been taken into account because none of the previous convictions, subsequent to the original conviction of possessing a revolver without a licence in 1937, involved the use of firearms;

(*d*) that the decision of the Council of Ministers is unreasonable having regard to the fact that—

(*i*) the Applicant has committed no offence since 1961;

(*ii*) a petition dated the 17th June, 1963 (*Exhibit* 9) was signed by many villagers from Galini and Potamos-tou-Kampou, including the Mukhtar and the village priest, supporting the Applicant's application for a special permit to possess a firearm;

(*iii*) a certificate of good character was issued to Applicant by the Mukhtar and Azas of Galini village on the 16th June, 1963 (*Exhibit* 10);

(*iv*) a certificate of registration of a firearm had been issued to the Applicant sometime between 1940 and 1942 and which had remained in force until 1949;

(*v*) the Applicant had been a rural constable between the 24th April, 1957 and the 3rd October, 1958.

Counsel for Applicant generally submitted that the matter was not fully investigated and that in the circumstances the decision was unreasonable. In support of this contention

counsel for Applicant cited from "Judicial Review of Administrative Acts" by S.A. De Smith, at p. 118.

With regard to the question of discrimination, counsel for applicant submitted that although Applicant's request for a special permit had been refused, such special permits had been granted to some of his co-villagers, such as C.H. Topouzos, Th. Christodoulou, Menelaos Demosthenous, Charalambos Gavriel, Ioannis Sofocleous and Patroclos Christodoulou, notwithstanding the fact that they had previous convictions. Such discriminatory treatment was, he submitted, contrary to Articles 6 and 28 of the Constitution.

Counsel for Applicant finally submitted that the failure of the Respondent to give reasons for its decision was contrary to Article 29 of the Constitution and in support of this contention he cited from Forsthoff "The Administrative Act" (1963) at p.49.

Counsel for Respondent has denied that the Council of Ministers has acted in abuse of powers and has submitted that once section 14 of Cap. 57 prohibits persons who have committed any of the offences listed therein from possessing a firearm (except with a special permit from the Council of Ministers) it is up to the person applying for such a special permit to satisfy the Council of Ministers that his conduct subsequent to his conviction has been such as to warrant the issue to him of a special permit. Counsel for Respondent has explained the procedure followed by the Council of Ministers for considering applications for a special permit under section 14 of Cap. 57 and the factors which the Council takes into account in reaching a decision in such cases. Counsel for Respondent also explained the circumstances in which a permit had been granted to the Applicant to possess a firearm from 1940 to 1949 and also the circumstances in which the Applicant had been appointed a rural constable from the 24th April, 1957 to the 3rd October, 1958.

With regard to the question of alleged discrimination, counsel for Respondent also explained the circumstances in which special permits under section 14 of Cap. 57 had been granted to certain co-villagers of the Applicant notwithstanding their previous convictions and in this connection produced a detailed report from the Gendarmerie dated the 29th July, 1963 (*Exhibit* 17 and its enclosures).

With regard to the question of the alleged contravention of Article 29 of the Constitution by reason of the decision in question not being "duly reasoned", counsel for Respondent submitted that the decision in question of the Council of Ministers was not contrary to Article 29 of the Constitution merely because it was not duly reasoned in the letter (*Exhibit* 2) sent to the Applicant on the 4th March, 1963.

Dealing first with the submission of counsel for Applicant that the decision in question of the Council of Ministers was taken "in abuse of powers", I have carefully considered this aspect of the matter, including the four grounds on which counsel for Applicant has based this submission, and I have come to the conclusion, for the reasons given hereinafter, that the Council of Ministers has properly exercised the discretion vested in it by section 14 of Cap. 57 and has not acted "in abuse of powers" in deciding to exercise that discretion in the manner in which it did.

It is useful at this stage to examine the provisions of section 14 of Cap. 57, which reads as follows:-

"14. Subject to the provisions of this Law, no person shall, save under a special permit from the Governor"—now the Council of Ministers—"and subject to such terms and conditions as he may think fit, have in his possession, custody or control or shall carry or use a firearm who has been convicted of any of the following offences, that is to say—

(*a*) abduction;

(*b*) arson;

(*c*) manslaughter;

(*d*) membership of an unlawful association;

(*e*) murder or attempt to murder;

(*f*) riot;

(*g*) robbery;

(*h*) sedition;

(*i*) treason;

(*j*) an offence under section 3(2) or 4(2) or 5(4);

(*k*) any other offence declared by the Governor in

Council"—now the Council of Ministers—"to be an offence for the purposes of this section, and any firearm the property of any person convicted of any such offence shall be forfeited".

It will be seen from the above provisions that the Applicant, having been convicted of the offence of possessing a revolver without a permit, is prohibited from possessing, having in his custody or control or carrying or using a firearm unless he has first obtained a special permit from the Council of Ministers, that the Council of Ministers is given a discretion whether or not to grant such a special permit and that such special permit may be made subject to such terms and conditions as the Council of Ministers may think fit.

The procedure followed by the Council of Ministers in considering applications for a special permit under section 14 of Cap. 57 is clearly explained in the following terms in paragraph 2 of the note prepared for the Attorney-General by the Minister of Justice on the 24th November, 1964 (*Exhibit* 14).

"2. All applications for special permits under s.14 of the Firearms Law, Cap. 57, are dealt with in the following manner:

(*a*) A Ministerial Sub-Committee (consisting of the Ministers of Interior, Defence and Justice) goes through the cases and examines them on the basis of the following criteria—

(*i*) nature of the offence—e.g. whether it was a violent offence (such as murder, armed robbery, etc.) or not;

(*ii*) the length of time which has elapsed since the commission of the last offence, and the conduct of the applicant since he has been out of prison as reported by the Police and the District Officer. In the case of violent offences, 10 years is considered to be a safe period, otherwise 6-8 years;

(*iii*) the recommendation of the District Officer and the Police.

. ....

The recommendations of the Ministerial Sub-Committee then go to the Council of Ministers which takes the final decision".

I consider that all the factors referred to in the above-mentioned note are relevant factors which can, and should, in my opinion, properly be taken into account in considering applications of this nature.

The offences listed in section 14 of Cap.57 would all appear to be offences of a violent or serious nature the commission of which would appear to indicate a dangerous disposition on the part of the person committing such offences.

It is stated in paragraph 3 of the above-mentioned note by the Minister of Justice (*Exhibit* 14) that—

> "3. In this particular case, the Applicant was reported to be 'a habitual drunkard not enjoying a good reputation in the village; considered to be dangerous to the public, not a proper person to possess a firearm'. He was *not* recommended by the District Officer and the Gendarmerie.
>
> Since the commission of the offence which incapacitated him (in 1937), the applicant has committed several other offences ranging from aggravated assault to drunkenness. The last recorded offence at the time of consideration of his application by Council in February, 1963, being for drunkenness and assault for which he was convicted on 27/6/1961.
>
> The Sub-Committee therefore did *not* recommend the grant of a special permit".

The above extract from Exhibit 14 gives cogent reasons for the decision in question of the Council of Ministers.

It may well be that of the Applicant's 19 previous convictions the 17 convictions for offences which he commited subsequent to the material one of the 2nd June, 1937 did not, as submitted by Counsel for Applicant, involve the use of a firearm and also that no further convictions are recorded against the Applicant since 1961, but the long and formidable list of previous convictions between 1937 and 1961 for offences ranging from unlawful wounding and aggravated assault to drunkenness, certainly do not, to my mind, give a very pleasant picture of the character and conduct of Applicant nor do they inspire confidence as to his capability to be entrusted with a firearm. A person who is so prone to drunkenness and various forms of assault does not

appear to me to be a person who can lightly be trusted with a firearm.

As regards the question of the issuing to the Applicant a certificate of registration for a firearm in 1940 or 1942, the following explanation is given in paragraph 5 of the letter written by the Acting Commander, Cyprus Gendarmerie, to the Attorney-General on the 13th June, 1962 (*Exhibit* 15) which reads as follows:—

> "With regard to the allegation of Mr. Papadopoulos that between 1940-1949 he possessed a shotgun I have carried out enquiries and although the relative documents have been destroyed yet I am informed by S.G. Lefka that in fact Papadopoulos managed under unknown circumstances to have a firearm registered in his name *but his certificate of registration was later cancelled by the then Chief Constable because of his conviction*".

It will be seen from the above explanation that the Applicant "managed under unknown circumstances to have a firearm registered in his name" and that as soon as the matter came to light his certificate of registration was cancelled in 1949 because of his previous conviction. I do not consider that what appears to have been a mistake or oversight on the part of the authorities concerned some twenty years ago should now operate so as to affect the proper merits of the case now.

With regard to the question of the appointment of the Applicant as a rural constable of his village from the 24th April, 1957, to the 3rd October, 1958, this is explained in the following passages from a report, dated the 16th September, 1963, made by the District Officer, Nicosia-Kyrenia, to the Director-General of the Ministry of the Interior, (*Exhibit* 16):

> "On the 4th April, 1956, the then Rural Constable of Galini, a certain Michael K. Makris resigned his post for political reasons. The post remained vacant until the 24th April, 1957, when the applicant—Charalambos Papadopoullos—was appointed as Rural Constable, in spite of Police objections; probably because there was no other candidate willing to serve as Rural Constable owing to the then prevailing political situation. On the 3rd October, 1958, he resigned and during the short period of his service—nearly 1 1/2 years—he managed to add

two more convictions to the 17 previous ones he had prior to his appointment, most of which related to assaults, insults and drunkenness.

The vacancy thus created was filled in by Loucas Michael Pillis as from the 15th May, 1959 and the applicant was also among the candidates for consideration in the filling of this vacancy. On the 18th May, 1959 and after the post had been filled in, he re-applied for this post and was informed that there existed no vacancy".

The above history of the Applicant's short-lived career as a rural constable puts the matter in a proper perspective and in my view, if anything, tells against him rather than in his favour.

As regards the petition (*Exhibit* 9) signed by his co-villagers, I agree with counsel for Respondent that too much weight cannot be given to such petitions in considering issues of this nature, especially where, as in this particular case, there is other specific material by which to judge the suitability or otherwise of the person concerned to possess a firearm. I am inclined to agree with counsel for Respondent that petitions of this kind, which are circulated among villagers, are very often readily signed by a villager without his giving much thought to the matter and without, very often, the signatories being able or willing to substantiate what is stated in the petition by a proper investigation or otherwise. It is interesting to observe that the District Officer in his above-mentioned report of the 16th September, 1963 (*Exhibit* 16) touches on this point and states as follows:—

> "To my mind no much weight can be given to petitions signed by any number of his co-villagers to the effect that he is of good character. In fact there is filed in my records a petition dated the 13th March, 1959 signed by 125 villagers of Galini in which they recommend Mr. Loucas Michael Pillis for appointment as Rural Constable".

It has been stated by the Supreme Constitutional Court in the case of *Salih Shukri Saruhan and the Republic*, 2 R.S.C.C. p.133, at p. 136, that when the organ, authority or person concerned "has exercised its discretion in reaching a decision, after paying due regard to all relevant considera-

tions and without taking into account irrelevant factors, this Court will not interfere with the exercise of such a discretion unless it can be shown to the satisfaction of the Court that such exercise has been made in disregard of any provision of the Constitution or of any law or has been made in excess or in abuse of the powers vested in" the organ, body or person concerned.

I am satisfied, having regard to all the relevant circumstances of this Case, that the Council of Ministers, in deciding to exercise its discretion in the manner in which it did in this Case, has done so after paying due regard to all relevant Considerations and without taking into account irrelevant factors and it has not been shown to my satisfaction that it has acted in abuse of powers in taking the decision in question.

Coming now to the question of alleged discrimination or unequal treatment which counsel for Applicant submits has been made against the Applicant in contravention of Articles 6 and 28 of the Constitution, in that special permits were granted to certain co-villagers of the Applicant notwithstanding the fact that they also had previous convictions which incapacitated them from possessing a firearm without a special permit under section 14 of Cap. 57, I would point out that, in the exercise of a discretion such as that vested in the Council of Ministers by section 14 of Cap. 57, each case must be considered on its own merits and having regard to all relevant factors and circumstances of each particular case. In his report (*Exhibit* 17) of the 29th July, 1963, to the Director-General of the Ministry of Interior, the Commander of the Cyprus Gendarmerie gives full details of the circumstances in which the cases of Menelaos Demosthenous, Charalambos Gavriel, Ioannis Sofocleous, all of Potamos-tou-Kampou, were granted special permits by the Council of Ministers. In the case of Patroclos Christodoulou, also of Potamos-tou-Kampou, it appears that although his application for a special permit under section 14 of Cap. 57 was originally refused in 1963, the grant of such a special permit to him was subsequently recommended in 1964 (after the filing of this recourse) by the District Officer and the Police (*vide Exhibits* 17A and 17B). With regard to C. H. Topouzos and Th. Christodoulou, Mr. Xenophon Ropalis, Inspector of Gendarmerie, who had the custody of the records of previous convictions of the persons in question, has stated in evidence (vide Appendix "A" of the record of

the Presentation proceedings, at p.8) that neither Topouzos nor Th. Christodoulou has any previous conviction recorded against him in respect of an offence falling within section 14 of Cap. 57. I have carefully considered this aspect of the case concerning the allegation of discrimination and I am satisfied, having regard to the evidence which has been adduced and to the fact that each such case must be considered on its own merits, that no discrimination, in the sense of Article 6 or 28 of the Constitution, has been made against the Applicant by reason of the fact that special permits under section 14 of Cap. 57 have been granted to certain of his co-villagers under different circumstances.

With regard to the question of reasons not being given under Article 29 of the Constitution for the decision in question, it will be recalled that the provisions of Article 29, and its relationship to Article 146, has been fully considered by the Supreme Constitutional Court in the case of *Phedias Kyriakides and the Republic* (1 R.S.C.C., p. 66, at p. 77). In that case the Supreme Constitutional Court in its Judgment expressed the opinion that where "a person who has not received a reply as provided under Article 29, has proceeded under Article 146 in respect of the substance of the matter for which a reply had been sought then it cannot be said that such a person continues any longer to have 'any existing legitimate interest', as provided by paragraph (2) of Article 146, unless as a result of such failure itself he has suffered some material detriment which would entitle him to a claim for relief under paragraph (6) of Article 146 after obtaining a judgment of this Court under paragraph (4) of the same Article". The Supreme Constitutional Court then proceeded to point out that such a person cannot, therefore, "as a rule, claim under Article 146 a distinct and separate decision of this Court in respect of the failure to comply with Article 29 when he has proceeded in respect of the substance of the matter for which a reply had been sought". In the above-mentioned case of *Phedias Kyriakides* the failure of the authority concerned to comply with Article 29 was that of failing to reply at all in writing. In the Case now before me the failure to comply with Article 29 is that the decision in question, as conveyed to the Applicant by the letter of 4th March, 1963 (*Exhibit* 2), was not "duly reasoned" as required by Article 29. Applying the principle laid down by the Supreme Constitutional Court in the *Phedias Kyria-*

kides Case to this Case, I am of the opinion that, as the Applicant (like the Applicant in the *Phedias Kyriakides* Case) has contested by this Application the substance itself of the matter in respect of which he complains that the decision in question was not "duly reasoned", as required by Article 29, and as further there is no evidence showing that he has suffered any material detriment as a result of the failure of the Respondent to give a decision which was "duly reasoned", the claim of the Applicant for a distinct and separate decision of this Court on this issue fails.

In any event I would observe that having regard to all the circumstances of this particular case and in particular to the fact that the Applicant must be presumed to have been aware of the existence of his previous convictions, I am satisfied that the Applicant has not been prejudiced, in the circumstances of this Case, by the failure of the Respondent to give reasons for the decision communicated to the Applicant by the letter of the 4th March, 1963.

For all the reasons given above this Application cannot, in my opinion, succeed and it is hereby dismissed accordingly.

Application dismissed.
No order as to costs.