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[TRIANTAFYLIDIS, J.]

MODESTOS SAVVA
PITSILLOS
v.
REPUBLIC
(ATTORNEY-
GENERAL
AND OTHERS)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MODESTOS SAVVA PITSILLOS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE ATTORNEY-GENERAL OF THE REPUBLIC,
2. THE MINISTER OF INTERIOR,
3. THE COMMANDER OF POLICE,

Respondents.

(Case No. 113/66).

Constitutional and Administrative Law—Article 29 of the Constitution—Article 146 of the Constitution and the competence of the Court thereunder—Wrongful omission by the Commander of Police to accede to a reasonable request of the Applicant for the names of police constables involved in an incident between the Applicant and the Police—And whose names Applicant had duly noted down—Such omission, without any reason being given therefor, constitutes a breach of the provisions of Article 29 of the Constitution—The Commander, in the circumstances of this case, ought either to grant Applicant's said request or refuse it with due reasoning—On the other hand, the aforesaid request of the Applicant for the names in question was made in respect of a subject-matter within the jurisdiction of this Court on a recourse under Article 146 of the Constitution—The Court, therefore, has competence to entertain the instant recourse against the aforesaid failure of the Commander of the Police—See, also, herebelow.

Constitutional and Administrative Law—Article 146 of the Constitution—Competence thereunder—Acts relating to judicial matters and the exercise of judicial authority, outside the competence under Article 146 of the Constitution—Claim for damages—Also outside the competence under Article 146 in view of paragraph 4 of this Article.

Competence—Competence under Article 146 of the Constitution—See above.

Damages—Award of damages outside the competence of the Court

under Article 146 of the Constitution—Article 146.4—See, also, above.

Judicial Authority—Matters relating to the exercise of—Outside the competence of the Court under Article 146 of the Constitution—See, also, above.

Constitutional and Administrative Law—Recourse under Article 146 of the Constitution—Time—Seventy-five days period within which the recourse must be filed—Article 146.3 of the Constitution—Provision as to time mandatory—Suspension of the running of the said period—The fact that the Applicant in the present instance, before filing his recourse, had complained about his arrest, detention and ill-treatment by the Police to the Commander of Police, and expected a reply thereto, cannot entail, in the circumstances of this case, the prevention of the running, in the meantime, of the time laid down in Article 146.3—Because it was not physically possible to reverse, by administrative review, the acts against which the Applicant had then complained to the Commander and against which, now, a part of his recourse to this Court is directed—Thus, the complaint to the Commander of Police cannot be regarded as a recourse for higher administrative review depriving, while it is pending, the acts concerned of their finality or effectiveness—In the result, this recourse in so far as it relates to the said acts, which occurred on the 5th February, 1966, is out of time as having been filed on the 19th May, 1966, i.e. after the expiration of the seventy-five days period provided in Article 146.3 of the Constitution.

Time—Recourse under Article 146 of the Constitution—Provision as to time mandatory—Suspension of the running of the said period—Article 146.3—Administrative Review—Its impact on the running of the time under that paragraph of Article 146—See immediately above; and herebelow.

Administrative Review—Higher Administrative Review—Running of the time under Article 146.3 of the Constitution—Circumstances in which a complaint to higher authority does not amount and cannot amount to a request for a higher administrative review of the acts complained of—Namely where in view of the nature of the acts aforesaid it is physically impossible to reverse those acts by administrative review—In which case, such complaint cannot be said to deprive, pending a reply, the acts concerned of their finality or effectiveness, so as to prevent the running of the time under Article 146.3 of the Constitution—See, also, above.

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By his several claims in this recourse, drafted in a somewhat confused manner, the Applicant appears to seek relief as follows

Claims 1 and 2 relate to the institution and prosecution against the Applicant of criminal case No 6998/66 in the District Court of Nicosia, in respect of an incident on the 5th February, 1966, which took place between him and the Police

By claims 3A and 3B the Applicant complains against an omission of the Commander of Police to investigate properly certain matters raised by the Applicant in his letters to the Commander of Police dated the 12th February, and the 17th March, 1966, respectively, the matters in question relate to the aforesaid incident of the 5th February. In this connection the Applicant complains, also, against the replies given to him by the Commander of Police to his aforesaid letters, as well as against the failure of the Commander to disclose to him the names of certain police constables involved in the incident in question.

By claim 3C the Applicant complains against arrest, detention and ill treatment by the Police in relation to the said incident of the 5th February, 1966, also against the destruction by the Police, on the same day, and in the course of such incident, of property of his, namely, a glass-case and pastry therein, which the Applicant was selling as a hawker

By claim 3D the Applicant complains against the failure of the Police to obtain statements from the Applicant himself, and from certain witnesses of his, in relation to the aforesaid incident of the 5th February, 1966, and, also against the failure of the Police, on the 16th March, 1966 to take down the answer made by the Applicant to a relevant charge, which was read out to him on that day

By claim 3E there seems to be challenged an alteration of the charge made against the Applicant, *ie* that he was charged for an offence different than the one for which he was later prosecuted, as above

By claim 3F the Applicant complains that the police on the 5th February, 1966, sent him off a certain locality, where the incident in question took place while he was offering for sale his pastry to pupils

By claim 3G the Applicant claims damages in relation to the abovementioned matters

The instant recourse under Article 146 of the Constitution was filed on the 19th May, 1966

Paragraphs 1, 3 and 4 of Article 146 of the Constitution provide:

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“1. The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person.”

“3. Such a recourse shall be made within seventy-five days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse.”

“4. Upon such a recourse the Court may, by its decision:—

(a) confirm, either in whole or in part, such decision or act or omission; or

(b) declare, either in whole or in part, such decision or act to be null and void and of no effect whatsoever; or

(c) declare that such omission, either in whole or in part, ought not to have been made and that whatever has been omitted should have been performed.”

Article 29 of the Constitution reads as follows:

“1. Every person has the right individually or jointly with others to address written requests or complaints to any competent public authority and to have them attended to and decided expeditiously: an immediate notice of any such decision taken duly reasoned shall be given to the person making the request or complaint and in any event within a period not exceeding thirty days.”

“2. Where any interested person is aggrieved by any such decision or where no such decision is notified to such person within the period specified in paragraph 1 of this Article, such person may have recourse to a competent court in the matter of such request or complaint.”

In dismissing the recourse,—with the exception of the complaint regarding the omission by the Commander of Police to supply to Applicant the names of three constables whose

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numbers the latter had duly noted down, (*supra* claims 3A and 3B,—the Court:

Held, (1). Claims 1 and 2 (*supra*) do not relate to matters within the competence of this Court under Article 146 of the Constitution, but to judicial matters (see *Kyriakides* and *The Republic*, 1 R.S.C.C. 66; *Gavris* and *The Republic* 1 R.S.C.C. 88); therefore these claims fail on this ground.

(2)(a) Regarding claim 3A (*supra*) it appears from the Commander's letter to the Applicant of the 19th April, 1966, that he has duly examined the complaint of the Applicant.

(b) The contention however of the Applicant that the Commander of Police has failed to make known to him the names of the police officers concerned, whose numbers the Applicant had noted down in relation to the events of the 5th February, 1966, seems to be well founded. The Commander did not either supply the names of these three police constables—as applied for by the Applicant—or refuse to do so for any given reason. In my opinion the Commander is, in the circumstances guilty of a breach of Article 29 of the Constitution, through having failed to attend to the relevant request of the Applicant, and either grant it or refuse it with due reasoning. As this was matter which related to proper administration, in the sense that it involved the conduct of the Commander, as head of the particular service, in a situation which has arisen in the course of duty between his subordinates, the police constables, and a citizen, the Applicant—who presumably required the names of the constables with a view of possible proceedings against them—I am prepared to hold that the request of the Applicant for the names in question, was made in respect of a subject-matter within the jurisdiction under Article 146 of the Constitution, and that, therefore, this Court has competence under Article 146 to entertain the Applicant's recourse against the Commander's failure to attend to Applicant's aforesaid request (see *Xenophontos* and *The Republic*, 2 R.S.C.C. 89); and as indicated such failure is wrongful, being contrary to Article 29 of the Constitution, and entitles the Applicant to succeed in this point.

(3) Regarding claim 3B (*supra*) I am of the opinion that the Applicant failed to discharge the burden of proving that the Commander has acted wrongly in taking the view which he appears to have taken when replying to Applicant. This claim, therefore, fails.

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(4)(a) The events on which claim 3C (*supra*) is based took place on the 5th February, 1966. Therefore, this recourse which was filed on the 19th May, 1966, is, in this respect, out of time having been filed after the expiration of the seventy-five days period laid down by Article 146.3 of the Constitution; and the Court is bound to apply the relevant time-limit (*Moran and The Republic*, 1 R.S.C.C. 10).

(b) The fact that the Applicant complained in the matter to, and expected a reply from, the Commander of Police cannot entail, in the circumstances of the present case, the prevention of the running, in the meantime, of the time laid down under paragraph 3 of Article 146 of the Constitution, because it was not physically possible to reverse, by administrative review, the acts against which the said claim 3C (*supra*) is directed (see *Xenophontos and The Republic, supra*): thus, the complaint to the Commander of Police cannot be regarded as a recourse for higher administrative review which deprived, while it was pending, the acts concerned of their finality or effectiveness, so as to prevent the running of the time under Article 146.3 of the Constitution.

(5) Claim 3D (*supra*) relates to matters so closely connected with the—at the time when the recourse was filed—pending judicial proceedings against the Applicant (Criminal Case No. 6998/66, *supra*) that they are outside the competence of this Court under Article 146 of the Constitution (see *Kyriakides'* case, *supra*; and *Gavris'* case, *supra*). This claim fails, therefore, on this ground; and the same is the fate, for the same reason, of claim 3E (*supra*).

(6) Claim 3F (*supra*) relates to what took place on the 5th February, and it is, therefore, out of time for the same reasons as claim 3C (see above under (4)): the sending off of the Applicant by the police, on that date, appears to be an oral direction, given in the context of the events of that day and not a Police order of duration which, to be of any effect at all—if otherwise valid—ought to have been in writing and duly reasoned; thus no question of reversing by administrative review such sending off could arise, so as to consider whether the aforementioned complaint of the Applicant to the Commander could affect the question of this claim being out of time.

(7) Lastly, claim 3G (*supra*), being a claim for damages, is outside the competence of this Court under Article 146 of the Constitution (see paragraph 4 of Article 146 of the Constitution and *Gavris'* case, *supra*).

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(8) In the result this recourse fails except to the extent that it has succeeded as against the aforesaid omission by the Commander of Police to attend to the Applicant's request for the names of the three police constables (see above under (2)). I award to the Applicant £2,450 mils out-of-pocket costs plus £3.- for time lost during his attendance in Court in relation to these proceedings.

*Order, and order as to costs,
in terms.*

Per curiam: Though claim 3C (*supra*) has been found to be out of time, sight should not be lost of the remarks of the Supreme Court, on appeal, in the related criminal proceedings (Criminal Case No. 6998/66, *supra*, and Criminal Appeal No. 2832 reported in (1966) 2 C.L.R. 50 sub-nom *Pitsillos v. The Police*). It is up to the appropriate authority to consider whether or not it is necessary, in the circumstances, to make an *ex gratia* gesture to Applicant by Government.

Cases referred to:

Kyriakides and The Republic 1 R.S.C.C. 66;
Gavris and The Republic 1 R.S.C.C. 88;
Moran and The Republic 1 R.S.C.C. 10;
Xenophontos and The Republic 2 R.S.C.C. 89;
Pitsillos v. The Police, (1966) 2 C.L.R. 50.

Recourse.

Recourse against, *inter alia*, the institution and prosecution against Applicant of Criminal Case No. 6998/66, in the District Court of Nicosia, and the omission of the Commander of Police to investigate properly certain matters raised by Applicant in his letter to the Commander of Police.

Applicant in person.

K. Talarides, Counsel of the Republic, for the Respondents.

Cur. adv. vult.

The following Judgment was delivered by:-

TRIANTAFYLLOIDES, J.: By his several claims in this recourse— which are drafted in a somewhat confused manner— the Applicant appears to seek relief as follows:-

Claims 1 and 2 relate to the institution and prosecution against the Applicant of criminal case 6998/66, in the District Court of Nicosia, in respect of an incident on the 5th February, 1966, which took place between the Applicant and the Police.

By *claims 3A and 3B* the Applicant complains against an omission of the Commander of Police to investigate properly certain matters raised by the Applicant in his letters to the Commander of Police dated the 12th February and the 17th March, 1966 (see *exhibits 1 and 3*); the matters in question relate to the aforesaid incident of the 5th February, 1966. In this connection the Applicant complains, also, against the replies given to him by the Commander of Police and dated the 22nd February, the 23rd March and the 19th April, 1966 (see *exhibits 2, 4 and 5*), as well as against the failure of the Commander to disclose to him the names of certain police constables involved in the incident in question.

By *claim 3C* the Applicant complains against arrest, detention and ill-treatment by the Police in relation to the incident of the 5th February, 1966; also against the destruction by the Police, on the same day, and in the course of such incident, of property of his, namely, a glass-case and pastry therein, which the Applicant was selling as a hawker.

By *claim 3D* the Applicant complains against the failure of the Police to obtain statements from the Applicant, and from certain witnesses of his, in relation to the said incident of the 5th February, 1966, and, also, against the failure of the Police, on the 16th March, 1966, to take down the answer made by the Applicant to a relevant charge, which was read out to him on that day.

By *claim 3E* there seems to be challenged an alteration of the charge made against the Applicant, *i.e.* that he was charged for an offence different than the one for which he was later prosecuted, as above.

By *claim 3F* the Applicant complains that the Police on the 5th February, 1966, sent him off a certain locality, where the incident in question took place while he was offering for sale his pastry to pupils.

By *claim 3G* the Applicant claims damages in relation to the above-mentioned matters.

The Applicant has conducted these proceedings throughout in person.

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Claims 1 and 2 of the Applicant do not relate to matters within the competence of this Court under Article 146 of the Constitution, but to judicial matters which are outside such competence (see *Kyriakides* and *The Republic*, 1 R.S.C.C., p. 66; *Gavris* and *The Republic*, 1 R.S.C.C., p. 88; therefore these claims fail on this ground.

Regarding *claim 3A* of the Applicant no omission of the Commander of Police to deal with the complaint made by the Applicant has been established; on the contrary, as it appears from his letter to the Applicant dated the 19th April, 1966, (see *exhibit 5*) the Commander has duly examined such complaint.

The contention, however, of the Applicant that the Commander of Police has failed to make known to him the names of the police constables concerned, whose numbers the Applicant had noted down in relation to the events of the 5th February, 1966, seems to be well-founded. The Commander in his last letter to the Applicant (see *exhibit 5*) stated that it had been found that the police constables had acted in the lawful execution of their duties; but he did not either supply their names—as applied for by the Applicant—or refuse to do so for any given reason. In my opinion the Commander is, in the circumstances, guilty of a breach of Article 29 of the Constitution, through having failed to attend to the relevant request of the Applicant, and either grant it or refuse it with due reasoning. As this was a matter which related to proper administration, in the sense that it involved the conduct of the Commander, as head of the particular service, in a situation which had arisen in the course of duty between his subordinates, the police constables, and a citizen, the Applicant,—who presumably required the names of the constables in relation to possible proceedings against them in vindication of his legal rights, if any—I am prepared to hold that the request of the Applicant, for the names of the police constables in question, was made in respect of a subject-matter within the jurisdiction under Article 146, and that, therefore, this Court has competence under Article 146 to entertain the Applicant's recourse against the Commander's failure to attend to the Applicant's aforesaid request (see *Xenophontos* and *The Republic*, 2 R.S.C.C. p. 89); and as indicated, already, such failure is wrongful, being contrary to Article 29 of the Constitution, and entitles the Applicant to succeed in this point.

Regarding *claim 3B* I have not been satisfied, on the material before the Court, that the Commander of Police, in taking

the view which he appears to have taken when replying to the Applicant, has acted wrongly in any way; it was up to the Applicant to discharge the relevant burden of proving his case on this point, and he has failed to do so.

The events on which *claim 3C* is based took place on the 5th February, 1966, in the course of, and in relation to, the relevant incident on that day between the Police and the Applicant, and, therefore, this recourse, which was filed on the 19th May, 1966, is, in this respect, out of time, having been filed after the expiration of the seventy-five days' period laid down by Article 146.3 of the Constitution; and the Court is bound to apply the relevant time-limit (see *Moran and The Republic*, 1 R.S.C.C. p. 10).

The fact that the Applicant complained in the matter to, and expected a reply from, the Commander of Police cannot entail, in the circumstances of the present Case, the prevention of the running, in the meantime, of the time laid down under Article 146.3, because it was not physically possible to reverse, by administrative review, the acts against which *claim 3C* is directed (see *Xenophontos and The Republic, supra*): thus, the complaint to the Commander of Police cannot be regarded as a recourse for higher administrative review which deprived, while it was pending, the acts concerned of their finality or effectiveness, so as to prevent the running of the time under Article 146.3.

Claim 3D relates to matters which are so closely connected with the—at the time when the recourse was filed—pending judicial proceedings against the Applicant (case 6998/66, above) that they are outside the competence of this Court under Article 146 of the Constitution, by virtue of which this recourse has been made (see *Kyriakides and The Republic, supra*, p. 73; *Gavris and The Republic, supra* p. 93); this claim, therefore, fails on this ground; and the same is the fate, for the same reason, of *claim 3E*.

Claim 3F of the Applicant relates to what took place on the 5th February, 1966, and it is, therefore, out of time for the same reasons as *claim 3C*; the sending off of the Applicant by the Police, on that date, appears to be an oral direction, given in the context of the events of that day, and not a Police order of duration which, to be of any effect at all—if otherwise valid—ought to have been in writing and duly reasoned; thus, no question of reversing by administrative review such sending

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off could arise, so as to consider whether the aforementioned complaint of the Applicant to the Commander of Police could affect the question of this claim being out of time.

Lastly, *claim 3G* is outside the competence of this Court under Article 146, being a claim for damages (see paragraph (4) of Article 146 and *Gavris and The Republic, supra*).

In the result this recourse fails except to the extent that it has succeeded as against an omission of the Commander of Police to attend to the request of the Applicant for the names of the three police constables involved in the events of the 5th February, 1966, whose numbers the Applicant, as already stated, had noted down. It is declared, therefore, that the omission in question ought not to have been made and whatever has been omitted should have been performed; it is now up to the Commander of Police to attend to the relevant request of the Applicant and to decide whether to grant it or not.

Before concluding I would like to state that though *claim 3C* of the Applicant has been found to be out of time sight should not be lost of the remarks of the Supreme Court, on appeal, in the related criminal proceedings (case 6998/66, criminal appeal 2832*—see *exhibit 6*). It is up to the appropriate authority to examine whether or not it is necessary, in the circumstances, to make an *ex gratia* gesture to Applicant by Government.

Regarding costs it is ordered—subject to the order for costs against Applicant made on the 15th June, 1966—that the Applicant be paid by the Republic £2.450 mils out-of-pocket costs plus £3.—for time lost during his attendances in Court in relation to these proceedings.

Order, and order as to costs, in terms.

*Vide *Pitsillos v. The Police*, (1966) 2 C.L.R. 50.