

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DEMETRAKIS PANTELIDES AND OTHERS (No. 1),

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS,

Respondent.

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AND OTHERS
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v.
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(Case No. 422/71).

Public Officers—Retirement—Compulsory retirement—Pensions Law, Cap. 311 (as amended)—Decision of the respondent Council of Ministers under section 8 (4) of the Law allowing a public officer to remain in the service after attaining the age of compulsory retirement—Within the discretion of the Council of Ministers—Nothing on record to show that in the exercise of their discretion they did not take properly into consideration all relevant factors—Or that they acted in abuse or excess of powers—Reasonably open to the Council to reach the sub judice decision—Not open to this Court to substitute its own discretion for that of the respondent Council—Cf. section 8 (4) of the Pensions Law, Cap. 311 as set out in section 7 of the amending Law 9/1967:

Compulsory retirement of public officers—Prolongation of the period of service after the date of compulsory retirement—Discretion under section 8 (4) of Cap. 311 (supra)—See supra.

Discretionary powers vested in the Administration—Judicial control—Scope of such control—Approach of the Court—See supra.

Administrative acts or decisions—Due reasoning—Does not necessarily have to be set out in the text of the decision itself—Necessity for due reasoning is satisfied if the reasons for the decision are to be found in the relevant official records—Sub judice decision under section 8 (4) of the Pensions Law, Cap. 311 (as amended), allowing public officer to remain in the service for a period of three years after the date on which he attains the age of compulsory retirement—A duly reasoned one—Reasons therefor clearly set out in the relevant records—Principle now well settled—Cf. further supra.

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Reasoning of administrative acts or decisions—Due reasoning—See immediately hereabove.

Recourse under Article 146 of the Constitution—Legitimate interest in the sense of Article 146.2 of the Constitution—Notion of legitimate interest a very wide one—It includes moral as well as material interest—Principles well established.

Legitimate interest within paragraph 2 of Article 146 of the Constitution—Moral and material interest—See immediately hereabove.

By this recourse the applicants public officers complain against the decision of the respondent Council of Ministers dated June 28, 1971, to allow the interested party, Mr. Kythreotis, to remain in the public service for a period of three years after he would attain the age of compulsory retirement (February 1, 1972). The interested party was at all material times to this recourse the District Officer of Nicosia. Section 8 (4) of the Pensions Law, Cap. 311 (as set out in section 7 of the amending Law 9 of 1967) reads as follows:

“ 8 (4) Notwithstanding the provisions of this section, the Council of Ministers may, if it considers it desirable in the public interest, allow an officer to remain in the service for such time after the date on which he attains the age of compulsory retirement, as to the Council may seem fit”.

On behalf of the applicants it was argued, *inter alia*, that the *sub judice* decision (a) is not reasoned and/or its reasoning is defective, (b) amounts to a defective exercise of the discretionary powers vested in the Council of Ministers, especially in view of the existence of able and excellent candidates for the post of District Officer in no way inferior to the interested party, Mr. Kythreotis. On the latter's behalf it was objected, *inter alia*, that the present recourse is not maintainable on the ground that the applicants have no legitimate interest in the sense of Article 146.2 of the Constitution, because there were persons in the service who were senior to the applicants and held similar posts who did not file a recourse. Paragraph 2 of Article 146 of the Constitution reads as follows:

“ 146.2. Such a recourse may be made by a person whose any existing legitimate interest, which he has either as a person or by virtue of being a member of a Community, is adversely and directly affected by such decision or act or omission”.

The learned Judge did not subscribe to the argument put forward on behalf of the interested party in support of the preliminary objection regarding lack of legitimate interest and held the present recourse maintainable. He proceeded, however, to dismiss it on the merits, holding that the *sub judice* decision was duly reasoned as supplemented by the material in the relevant file; and, further, that it was taken in the proper exercise of the relevant discretionary powers.

Held, I: As regards the preliminary objection that the applicants had no legitimate interest in the sense of Article 146.2 of the Constitution (supra):

I think I may say at once that I find no merit in this ground; it is now well settled that the notion of 'legitimate interest' is a very wide one and includes *moral* as well as *material* interest (see Stassinopoulos, *Law on Administrative Disputes*, 4th ed. at p. 200. Reference may also be made to the case of *Papassavas v. The Republic* (1967) 3 C.L.R. 111, and on appeal *Lyssioutou v. Papassavas* (1968) 3 C.L.R. 173).

Held, II: On the merits:

(1) (A) The reasoning does not necessarily have to be set out in the text of the decision itself. The necessity for due reasoning is satisfied if the reasons for the decision are to be found in the official records related to the case (see, *inter alia*, *Papaleontiou v. The Republic* (1967) 3 C.L.R. 624; *Christodoulou v. The Republic* (1968) 3 C.L.R. 603).

(B) In the present case the reasons for the decision complained of are clearly set out in *exhibits* 2 and 3; and it is not in my view correct to say that there is no indication in the *exhibits* why the decision was considered to be in the public interest.

(2) (A) As to the submission regarding defective exercise of the relevant discretionary powers vested in the respondent Council under section 8 (4) of the Pensions Law, Cap. 311 (as amended), there was ample material before them on which they could decide as they did in the present case; and there is nothing on record to show that in the exercise of their discretion the Council did not take into consideration all relevant factors or that they acted in excess or abuse of such powers.

(B) In the circumstances it is not open to this Court to substitute its own discretion for that of the respondent or to interfere therewith. This principle has been adopted, *inter alia*,

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in *Savvidou v. The Republic* (1970) 3 C.L.R. 118; *Constantinou v. The Greek Communal Chamber* (1965) 3 C.L.R. 96 and *Araouzos v. The Republic* (1968) 3 C.L.R. 287; see also Kyriacopoulos on Greek Administrative Law, Vol. A, at p. 209 and the *Decisions of the Greek Council of State* Nos. 362/1939 and 363/1939.

Recourse dismissed. No order as to costs.

Cases referred to:

Papasavvas v. The Republic (1967) 3 C.L.R. 111; and on appeal: *Lyssiottou v. Papassavas* (1968) 3 C.L.R. 173;

Papaleontiou v. The Republic (1967) 3 C.L.R. 624;

Christodoulou v. The Republic (1968) 3 C.L.R. 603;

Savvidou v. The Republic (1970) 3 C.L.R. 118;

Constantinou v. The Greek Communal Chamber (1965) 3 C.L.R. 96;

Araouzos v. The Republic (1968) 3 C.L.R. 287;

Decisions of the Greek Council of State: Nos. 362/1969 and 363/1939.

Recourse.

Recourse against the decision of the respondent to allow the interested party, Mr. Kythreotis, to remain in the service after he attained the age of compulsory retirement.

M. Christofides, for the applicants.

L. Loucaides, Senior Counsel of the Republic, for the respondent.

K. Michaelides, for the interested party.

Cur. adv. vult.

The following judgment* was delivered by:—

L. LOIZOU, J.: By this recourse the applicants seek a declaration that the decision of the respondent to allow the interested party, Mr. Kythreotis, to remain in the service after he

* For final judgment on appeal see p. 510, in this Part *post*.

attained the age of compulsory retirement is *null* and *void* and of no effect.

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The grounds of law on which the application is based are:

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- (a) There did not exist the prerequisites and there was no urgent need serving the public interest justifying or rendering desirable the decision complained of and this amounts to a contravention of section 8 of the Pensions Law.
- (b) The decision and/or act challenged by the recourse is not reasoned and/or the reasoning is defective.
- (c) The decision and/or act challenged, particularly the length of the period of the extension of the services, amounts to a defective exercise of discretionary powers especially in view of the existence of able and excellent candidates for the post of District Officer in no way inferior to the interested party with regard to the formal and actual qualifications.
- (d) The extension of the services was made on the application of the interested party mainly for personal reasons and the extension on the basis of such reasons amounts to excess and abuse of powers.
- (e) In deciding that it was in the public interest or that the personal reasons and other circumstances of this particular case rendered desirable in the public interest such extension the respondent proceeded on a wrong legal estimation of the real facts.

In the course of the hearing of the recourse, after he perused the exhibits, learned counsel for the applicants abandoned ground (d) and that part of ground (e) which relates to the same point.

The respondent based their Opposition on the following grounds of law:

- (1) That the recourse is out of time.
- (2) That the applicants do not fulfil the requisites of Article 146.2 of the Constitution.
- (3) That in any case the decision complained of was lawfully taken under the provisions of section 8 (4) of the Pensions

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Law, Cap. 311 and Laws 17 of 1960, 9 and 18 of 1967, 51 and 119 of 1968 and 9 of 1971.

- (4) The control of the expediency or the necessity of the decision challenged does not lie with the Supreme Court in its Revisional Jurisdiction.
- (5) The decision challenged is duly reasoned.

The decision challenged by the recourse is decision No. 10.571 dated 28th June, 1971. It is *exhibit 1* in these proceedings.

The relevant facts and the events which led up to the Council's decision are briefly as follows:

The interested party was at all material times holding the post of District Officer and was posted in Nicosia. He was due to retire on the 1st February, 1972, as he would attain the age of 60, which is the age for compulsory retirement, on the 25th January, 1972. On the 9th October, 1970, he addressed the letter *exhibit 5* to the Director-General, Ministry of Interior, offering to continue his services after attaining the age of compulsory retirement and submitting that due to his experience and his knowledge of the prevailing conditions in the Republic especially those created after the events of December, 1963, it would be in the public interest if the Council of Ministers were to allow him to remain in the service.

On the 12th October, 1970, the then Minister of the Interior wrote the letter *exhibit 2* to the Minister of Finance forwarding the interested party's application. In his letter the Minister of the Interior describes the interested party as one of the most capable administrative officers and states that he possesses qualities not often met in the public service and suggests that his services be extended for a period of three years. It would appear from the correspondence that the Minister of Finance supported the extension of the services but for a period of two years.

In his submission to the Council of Ministers dated 17th June, 1971, *exhibit 3*, the Minister of the Interior repeats that he considers the interested party as one of the most capable administrative officers and stresses that he possesses qualities to such a degree that is not easy to meet in the public service and moves the Council to allow him to remain in the public

service for a period of three years after he attains the age of compulsory retirement.

On the basis of the submission the Council, on the 28th June, 1971, decided to allow, in the public interest, under the provisions of section 8 (4) of the Pensions Law, the interested party to remain in the service for a period of three years after the date of his compulsory retirement.

Sub-section (4) of section 8 of the Pensions Law (as set out in section 7 of Law 9 of 1967) reads as follows:

“ 8 (4) Ἀνεξαρτήτως τῶν διατάξεων τοῦ παρόντος ἀρθροῦ τὸ Ὑπουργικὸν Συμβούλιον δύναται ἐὰν θεωρεῖ τοῦτο ἐπιθυμητὸν πρὸς τὸ δημόσιον συμφέρον, νὰ ἐπιτρέψη εἰς ὑπάλληλον ὅπως παραμείνῃ ἐν τῇ ὑπηρεσίᾳ μετὰ τὴν ἡμερομηνίαν καθ' ἣν συμπληροῦνται ἡ ἡλικία ἀναγκαστικῆς ἀφυπηρητήσεως αὐτοῦ ἐπὶ τοσοῦτο χρονικὸν διάστημα ὅσον τὸ Συμβούλιον ἤθελεν ὀρίσει”.

(“ 8 (4). Notwithstanding the provisions of this section, the Council of Ministers may, if it considers it desirable in the public interest, allow an officer to remain in the service for such time, after the date on which he attains the age of compulsory retirement, as to the Council may seem fit”).

With regard to grounds (a) and (b) it was contended on the part of the applicants that the decision challenged by the recourse is contrary to the provisions of section 8 of the Pensions Law, Cap. 311, as amended by section 7 of Law 9 of 1967 as it merely says “ in the public interest” without any other details as to why it was in the public interest; and that the only reasoning is that appearing in *exhibits 2 and 3 i.e.* the letter addressed by the Minister of the Interior to the Minister of Finance and the submission to the Council of Ministers which refer to the qualities and ability of the interested party without any reference to the requirements of the service. It was further contended that if what is stated in *exhibits 2 and 3* may be considered as reasoning then such statements amount to a conclusion and arbitrary description which is contrary to the real facts.

With regard to ground (c) all the learned counsel had to say was that the extension of the services of the interested party for three years was made at a time when there were suitable candidates in the service for promotion to the post of

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District Officer who, at least on paper, had more qualifications than the interested party. Learned counsel did not have anything to say with regard to his grounds (d) and (e). It may be added that at a later stage of the proceedings learned counsel for the applicants made a statement to the effect that he did not dispute the statement in *exhibits* 3 and 5 to the effect that the interested party was one of the most capable civil servants.

Finally learned counsel for the applicants referred to a decision of the Council of Ministers dated 4th May, 1967, No.6593, *exhibit* 4, which is to the effect that in so far as public officers are concerned the criterion on the basis of which it should be decided whether the extension of the services of an officer is desirable in the public interest remains the likelihood of serious prejudice to the service as a result of the loss of the services of the officer in question and submitted that the Council of Ministers were bound by this decision.

On the part of the respondent, on the other hand, it was submitted that the Council of Ministers could, in the circumstances, legitimately exercise their discretion under the relevant provisions of the Pensions Law and extend the services of the interested party; and that the appreciation by the administration, in the exercise of their discretionary powers, of the necessity or expediency of an administrative act and generally the material appreciation of the actual facts justifying the exercise of their discretion one way or the other is not subject to judicial control. With regard to grounds (b) and (c) it was submitted that the decision was duly reasoned and that such reasoning is to be found in *exhibit* 3 and that the undisputed fact that the ability and qualities of the interested party were exceptional is sufficient reason for the decision complained of. It was further added that the Court does not interfere in any case with the exercise of discretionary powers unless there is abuse of powers in the sense that the powers were exercised for reasons other than those dictated by the law or in an arbitrary way or in cases of misconception of facts and that no such ground had been established in the present case.

The ground of legitimate interest was not argued by learned counsel for the respondent but it was submitted on behalf of the interested party that the Applicants have no legitimate interest in the sense of Article 146.2 of the Constitution because there were persons in the service who were senior to the applicants and held similar posts who did not file a recourse. I

think I may say at once that I find no merit in this ground; it is now well established that the notion of legitimate interest is a very wide one and includes moral as well as material interest. See Law on Administrative Disputes by Stassinopoulos, 4th ed. at p. 200. Reference may also be made to the case of *Papasavvas v. The Republic* (1967) 3 C.L.R. 111 and on appeal *Lyssiou v. Papasavvas* (1968) 3 C.L.R. 173.

Regarding the issue of time-limit which was raised in the Opposition I can only assume that such ground has been abandoned as it has not been argued by any of the parties and no such conclusion can be reached from the material on record once the allegation as to when the applicants came to know of the decision complained of, which does not appear to have been published, has not been challenged.

The issue, therefore, that I have to decide is whether the decision challenged is contrary to the provisions of section 8 (4) of the Pensions Law (as amended by section 7 of Law 9 of 1967) and whether it is duly reasoned. In so far as the latter point is concerned the position is that the reasoning does not necessarily have to be set out in the text of the decision itself and that the necessity for due reasoning is satisfied if the reasons for the decision are to be found in the official records related to the case. See, *inter alia*, *Papaleontiou v. The Republic* (1967) 3 C.L.R. p. 624 and *Christodoulou v. The Republic* (1968) 3 C.L.R. 603. In the present case the reasons for the decision are clearly set out in *exhibits* 2 and 3; and it is not in my view, correct to say that there is no indication in the *exhibits* why the decision was considered to be in the public interest. It seems to me that the reference to the interested party's exceptional ability and qualities bears a direct relation to the needs of the service and the public interest.

Grounds (a) and (c) of the Application may conveniently be dealt with together.

There can be no question that the Council of Ministers have a discretion in the matter by virtue of the provisions of section 8 (4) of the Pensions Law and the question that falls for consideration is whether in the circumstances this Court can interfere with the exercise of such discretion.

It is well settled that where an administrative organ acts within the limits of its statutory discretion and not in excess or in abuse of its powers the Court will not interfere, nor indeed

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is it open to the Court to interfere. See Kyriacopoulos on Greek Administrative Law, vol. A at p. 209. Also to the point are cases Nos. 362/39 and 363/39 of the Greek Council of State. Useful reference may also be made to the Digest of Decisions of the Greek Council of State 1935–1952, vol. 1 at p. 41, paragraph 251 and p. 42, paragraphs 274, 275 and 276 and p. 723 paragraph 2239. The above principle has been adopted, *inter alia*, in *Savvidou v. The Republic* (1970) 3 C.L.R. 118, *Constantinou v. The Greek Communal Chamber* (1965) 3 C.L.R. p. 96 and *Araouzos v. The Republic* (1968) 3 C.L.R. 287.

In the present case the Council of Ministers acted in exercise of the power vested in them by section 8(4) of the Pensions Law, there was material before them on the basis of which they could decide, and there is nothing on record to show that in the exercise of their discretion they did not take into consideration all relevant factors or that they acted in excess or in abuse of such powers. In the circumstances it is not open to this Court to substitute its own discretion for that of the respondent and in the result I must hold that it was reasonably open to them to reach the decision complained of; nor do I think that such decision is in any way inconsistent with the decision contained in *exhibit 4*.

In the light of all the foregoing this recourse fails and it is hereby dismissed. In all the circumstances I do not propose to make any order for costs.

Application dismissed. No order as to costs.