

1981 December 23

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LEFKOS P. GEORGHIADES,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS, AND ANOTHER,

Respondents.

(Case No. 352/79).

Legitimate interest—Article 146.2 of the Constitution—Acceptance of administrative act or decision without protest—Deprives acceptor of legitimate interest to file recourse against it.

5 *President of the Republic—Executive power exercised by—Article 48 of the Constitution—Whether President of the Republic has authority to conclude agreements on behalf of the Republic or in any way bind it.*

10 The applicant joined the Cyprus Civil Service in 1941 and resigned in 1953 in order to join the United Nations Organisation as a Statistics Expert. As a result of his resignation, he had his pension rights forfeited, though his contributions to the widows' and Orphans' Fund were returned to him. On the 18th February, 1961, he was appointed as a Development Officer to a newly created post in the Republic, and from 11.7.1963 15 to 1.3.1979, when he retired, having reached the retiring age, he served as an Ambassador in the Foreign Service of the Republic.

20 When he accepted the post of Development Officer in the Ministry of Finance, he did not put forward any counter-conditions to those set out in the offer made to him. Para. 6 of the said offer, which was dated the 18th February, 1961

and which was headed "age of retirement and pension constant", read:-

"The age of retirement is 55 years. The Government may, at its discretion, call upon an officer to retire at any time after he attains the age of 50 years or retain the services of an officer after the age of 55 years. The pension constant is 1/600th for each completed month of pensionable service". 5

Again, when the applicant was offered the post of Ambassador, he accepted the offer without any counter-conditions. 10

When the applicant retired from the civil service on the 1st March, 1979 his pensionable benefits were calculated on the basis of his service as from the 18th February, 1961. By his letter dated 7th February, 1979 to the President of the Republic, the applicant asked that his service as from November 1941 to September 1953 be recognised as pensionable, alleging that in 1960 the President of the Republic, when he offered him the post of Development Officer in the Ministry of Finance, promised to him that his said service would be recognised and, therefore, the applicant abandoned his post as an Expert with the United Nations. 15 20

The Council of Ministers turned down the above claim of applicant and hence this recourse.

Held, that if a person accepts an administrative act or decision without protest he no longer possesses a legitimate interest entitling him to make a recourse against it (see, *inter alia*, *Neocleous and Others v. The Republic* (1980) 3 C.L.R. 497); that as the applicant in 1961 accepted the offer of appointment to the post of Development Officer in the Ministry of Finance unreservedly he has acquired no legitimate interest and, therefore, he cannot avail himself of the provisions of Article 146.2 of the Constitution, which gives to the citizens the right of recourse to this Court; accordingly the recourse should fail. 25 30

Held, further, that having in mind the provisions of Article 48 of the Constitution, this Court finds that the President of the Republic has no authority to conclude agreements on behalf of the Republic or in any way to bind it; that, therefore, the applicant even if the alleged agreement between him and the late President of the Republic was reached, has acquired no 35

legitimate interest as a result of the alleged act of the President, who exercises executive authority, and thus, he cannot avail himself of the provisions of Article 146 of the Constitution.

Application dismissed.

5 Cases referred to:

Tomboli v. Cyprus Telecommunications Authority (1980) 3 C.L.R. 266;

Neocleous and Others v. The Republic (1980) 3 C.L.R. 497;

Piperis v. The Republic (1967) 3 C.L.R. 295 at p. 298.

10 Recourse.

Recourse against the decision of the respondents dismissing applicant's claim that his services with the Government during the period 26.11.41–9.11.53 should be taken into consideration for pension purposes.

15 *E. Karaviotis*, for the applicant.

M. Kyprianou, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

20 DEMETRIADES J. read the following judgment. By his present recourse the applicant prays for an order that the decision of the respondents, whereby his claim that his service with the Government during the period 26.11.41 to 9.11.53 should be taken into consideration for pension purposes was dismissed, is null and void and of no effect whatsoever.

25 The applicant bases his application on the following grounds of law:

- “1. That the *sub-judice* decision is contrary to the principles of administrative law in that it is not duly or sufficiently reasoned and/or not reasoned at all.
- 30 2. That the respondents wrongly interpreted and/or applied the law to the facts of the case.
3. That the *sub-judice* decision was taken under a misconception of law and fact.
- 35 4. That the *sub-judice* decision is contrary to the principles and/or notion of good administration and/or principles of equity.

5. That the *sub-judice* decision was taken in abuse of the powers vested in the respondents.
6. That the *sub-judice* decision was taken without the proper and/or sufficient and/or due enquiry.
7. That the *sub-judice* decision was taken without sufficient deliberations". 5

The facts upon which he relies are:

- "1. The applicant is a Government pensioner having retired from the Government Service with effect from 1.3.1979.
2. In 1960 the late Archbishop Makarios III, President of the Republic, asked the applicant to come to Cyprus to assist in the economic development of the Island. At the time the applicant was serving with the United Nations as a Statistics Expert. One of the reasons that made the applicant relinquish his appointment with the United Nations and take up employment with the Government of Cyprus was the express promise given to him by the Archbishop Makarios III, President of the Republic, that applicant's previous service with the Government of Cyprus would be taken into consideration for pension purposes. 10
3. Relying on the above promise the applicant rejoined the service of the Republic on the 18th of February, 1961. 15
4. On the 7th of February, 1979, the applicant wrote a letter to the President of the Republic (APPENDIX 'A') requesting that his aforesaid prior service with the Government of Cyprus be taken into account when considering his pension benefits as agreed with the late President. Respondents by their letter dated 31st July, 1979 (APPENDIX 'B') informed the applicant that the Council of Ministers after considering the applicant's claim at its meeting of 31.5.1979 decided NOT to accept his claim and informed the applicant accordingly". 25 30 35

The application was opposed by the respondents who alleged that the *sub judice* decision was taken lawfully and in accordance

with the legislative provisions governing pensions and the regulations made thereunder and that the said decision is duly reasoned and was reached in accordance with the principles of Administrative Law and after due inquiry on all relevant
5 facts and circumstances of the case.

The respondents, in their relevant opposition, rely on the following facts: That the applicant retired from the civil service on the 1st March, 1979 and that his pensionable benefits were calculated on the basis of his service as from the 18th
10 February, 1961; that by his letter dated 7th February, 1979, the applicant asked that his service as from November 1941 to September 1953 be recognised as pensionable, alleging that in 1960 the President of the Republic, when he offered him the post of Development Officer in the Ministry of Finance, promised
15 to him that his said service would be recognised and, therefore, the applicant abandoned his post as an expert with the United Nations. Further, the applicant alleged that the late President had promised him in 1962 that he would give him a proper post and secure his pension before his retirement. The respondents, by their opposition, allege that the post that was offered
20 to him was that of an Ambassador, in which the applicant had assumed duties on the 11th July, 1963 and that his application for the recognition of his 12 years' service for pension purposes was submitted to the Council of Ministers which, by its decision
25 No. 18.014 of the 31st May, 1979, rejected it. The aforesaid letter of the applicant of the 7th February, 1979, is attached to the application as Appendix 'A' and the relevant letter of the respondent containing the *sub judice* decision is attached to the opposition as Appendix 'B'.

30 The applicant called two witnesses, namely Mr. Loukis Papastratis, a friend of his, and Mr. Leonidas Papadouris, a Senior Administrative Officer posted in the Public Service Commission, who has been performing the duties of the secretary of the Commission.

35 Mr. Papastratis gave evidence in support of the allegation of the applicant that, both in 1960 and 1962, the late President of the Republic Archbishop Makarios had promised the applicant, in consideration of his accepting the post of Development Officer in the Ministry of Finance, that his 12 years of service,

during the British Administration, was to be recognised for pension purposes.

Mr. Papadouris gave evidence regarding the service of the applicant.

The facts of the case, as they appear from the evidence adduced and the written addresses filed, are briefly the following: The applicant joined the Cyprus Civil Service in 1941 and resigned in 1953 in order to join the United Nations Organisation as a Statistics Expert. As a result of his resignation, he had his pension rights forfeited, though his contributions to the Widows' and Orphans' Fund were returned to him. 5 10

On the 18th February, 1961, the applicant was appointed as a Development Officer to a newly created post in the Republic, and from 11.7.63 to 1.3.79, when he retired, having reached the retiring age, he served as an Ambassador in the Foreign Service of the Republic. 15

As it appears from the evidence of Mr. Papadouris and the documents contained in his file, the applicant, when he accepted the post of Development Officer in the Ministry of Finance, did not put forward any counter-conditions to those set out in the offer made to him. Para. 6 of the said offer, which is dated the 18th February, 1961 and which is headed "age of retirement and pension constant", reads:- 20

"The age of retirement is 55 years. The Government may, at its discretion, call upon an officer to retire at any time after he attains the age of 50 years or retain the services of an officer after the age of 55 years. The pension constant is 1/600th for each completed month of pensionable service". 25

Again, when the applicant was offered the post of Ambassador, he accepted the offer without any counter-conditions. 30

In view of the position as it appears above, the first question that has to be decided is whether the applicant has a legitimate interest entitling him to challenge the *sub judice* decision.

In the cases of *Tomboli v. The Cyprus Telecommunications Authority*, (1980) 3 C.L.R. 266 and *Neocleous and others v. The Republic*, (1980) 3 C.L.R. 497, it was held by Savvides J. that if a person accepts an administrative act or decision without 35

protest he no longer possesses a legitimate interest entitling him to make a recourse against it.

The same view was held by Triantafyllides J. (as he then was), in the case of *Piperis v. The Republic*, (1967) 3 C.L.R. 295, 298.

In the present case, as the applicant accepted the offer made to him unreservedly, he has acquired no legitimate interest and, therefore, he cannot avail himself of the provisions of Article 146.2 of the Constitution, which gives to the citizens the right of recourse to this Court.

In view of the complaint of the applicant that the Council of Ministers, by the *sub judice* decision, has deprived him of or refused him the pension of 12 years' service to which he is lawfully entitled, a right which he claims he acquired as a result of the promise and/or the agreement he reached with Archbishop Makarios, one has to look and find what are the executive powers reserved by the Constitution to the President after the establishment of the Republic of Cyprus. These powers are given to the Head of the State by Article 48 of the Constitution, which provides as follows:-

“The executive power exercised by the President of the Republic consists of the following matters, that is to say:-

- (a) designation and termination of appointment of Greek Ministers;
- (b) convening the meetings of the Council of Ministers as in Article 55 provided, presiding at such meetings and taking part in the discussions thereat without any right to vote;
- (c) preparing the agenda of such meetings as in Article 56 provided;
- (d) right of final veto on decisions of the Council of Ministers concerning foreign affairs, defence or security as in Article 57 provided;
- (e) right of return of decisions of the Council of Ministers as in Article 57 provided;
- (f) right of final veto on laws or decisions of the House

- of Representatives concerning foreign affairs, defence
or security as in Article 50 provided;
- (g) right of return of laws or decisions of the House of
Representatives or of the Budget as in Article 51
provided; 5
- (h) right of recourse to the Supreme Constitutional Court
as in Articles 137, 138 and 143 provided;
- (i) right of reference to the Supreme Constitutional
Court as in Article 141 provided;
- (j) publication of the communal laws and decisions of 10
the Greek Communal Chamber as in Article 104
provided.
- (k) right of reference to the Supreme Constitutional Court
of any law or decision of the Greek Communal
Chamber as in Article 142 provided; 15
- (l) right of recourse to the Supreme Constitutional Court
in connection with any matter relating to any conflict
or contest of power or competence arising between
the House of Representatives and the Communal
Chambers or any of them and between any organs 20
of, or authorities in, the Republic as in Article 139
provided;
- (m) the prerogative of mercy in capital cases as in Article
53 provided;
- (n) the exercise of any of the powers specified in Article 25
47 conjointly with the Vice-President of the Republic;
- (o) addressing messages to the House of Representatives
as in Article 79 provided”.

Having in mind the provisions of Article 48 of the Constitu-
tion, I find that the President of the Republic has no authority 30
to conclude agreements on behalf of the Republic or in any
way to bind it. The applicant, therefore, even if the alleged
agreement between him and the late President of the Republic
was reached, has acquired no legitimate interest as a result
of the alleged act of the President, who exercises executive 35

authority, and, thus, he cannot avail himself of the provisions of Article 146 of the Constitution.

In the result, I find that the respondents were right in rejecting the applicant's application to them and this recourse fails and
5 is dismissed with costs.

Application dismissed with costs.