

1981 May 21

[TRIANTAFYLLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MODESTOS PITSILLOS,

Applicant,

v.

THE CYPRUS BROADCASTING CORPORATION,

Respondent.

(Case No. 134/81).

Constitutional law—Written requests or complaints to public Authorities—Need to be attended to and decided expeditiously—Article 29 of the Constitution—Failure of administration to reply to cable sent by applicant—Applicant proceeding by recourse, under Article 146 of the Constitution, in respect of the substance of his case—Since failure to reply to him has not caused him any material detriment he no longer possesses a legitimate interest, in the sense of Article 146.2 of the Constitution, in respect of such failure. 5

Constitutional law—Equality—Principle of—Article 28 of the Constitution—Communications—Broadcasting—Political party leader—Exclusion from television program by taking into account certain criteria—Such criteria sufficient to justify a classification of leaders of political parties which does not offend, as being arbitrary or invidious, Article 28 of the Constitution—Section 19(3) of the Cyprus Broadcasting Corporation Law, Cap. 300A. 10 15

The applicant was the leader of the “Justice Party” which was founded in 1969. In the general election for members of the House of Representatives in 1970 the applicant was the candidate of his party in the Nicosia constituency and he received over 1250 votes. In the general election for the members of the House of Representatives, which was to be held on May 24, 1981, he was not a candidate but his party has nominated as a candidate in respect of the Nicosia constituency a certain 20

5 Petros Kailas. By means of a cable dated March 3, 1981 to the respondent corporation applicant sought to be given the same opportunity to appear on television as other leaders of political parties in the "Meet the Press" series of television programs, because he was contemplating to be a candidate himself in the general election. The respondent corporation failed to reply to the above cable and hence this recourse by means of which applicant sought a declaration that the failure of the respondent to reply to a cable of his dated March 3, 1981, contravened Article 29 of the Constitution, and that the refusal of the respondent to include the applicant, as a political party leader, in the "Meet the Press" series of television programs, contravened Article 28 of the Constitution.

Applicant contended:

- 15 (a) That the failure of the respondent to reply to his cable in question contravened Article 29.1* of the Constitution.
- 20 (b) That his exclusion from the above program constituted a contravention of Article 28** of the Constitution, as well as section 19(3)*** of the Cyprus Broadcasting Corporation Law, Cap. 300A.

25 Amongst the criteria, on the basis of which leaders of other political parties were invited to participate in the "Meet the Press" series of television programs, was either the fact that their parties had, at that time, Members of their own in the House of Representatives, or the fact that invitations had been extended to them by the President of the Republic to participate, and they had indeed participated in the past, in meetings of the National Council. Actually, all the leaders of political parties who appeared in the "Meet the Press" programs had been invited by the President of the Republic to participate in the National Council, and had so participated in the past, and their parties, with the exception of one of them, were represented in the House of Representatives.

35 On the other hand, the political party of which the applicant

* Article 29.1 is quoted at p. 618 *post*.

** Article 28 is quoted at p. 620 *post*.

*** Section 19(3) is quoted at p. 620 *post*.

is the leader was not, at that material time, represented in the House of Representatives, nor has the applicant ever been invited by the President of the Republic to participate in a meeting of the National Council.

Held, (1) that the applicant cannot succeed in this recourse in respect of the failure of the respondent to reply to his said cable, because having proceeded, by means of the present recourse, in relation to the substance of the matter for which a reply to his cable had been sought by him, he no longer continues to have any existing legitimate interest in respect of the failure to reply to his cable, in the sense of Article 146.2 of the Constitution, since it has not been shown that the failure to reply to him has caused him any material detriment, which would have entitled him to claim relief under paragraph 6 of Article 146, after having obtained a judgment in his favour in this recourse under paragraph 4 of Article 146.

(2) That in the light of the relevant principles regarding the application of the doctrine of equality, which is safeguarded by Article 28 of the Constitution (see, *inter alia*, *Republic v. Arakian* (1972) 3 C.L.R. 294) both the above criteria are reasonable and that either of them is sufficient to justify a classification of leaders of political parties which does not offend, as being either arbitrary or invidious, Article 28 of the Constitution; accordingly the recourse must fail.

Application dismissed.

Cases referred to:

- Kyriakides v. The Republic*, 1 R.S.C.C. 66 at p. 77;
Papadopoulos v. The Republic (1965) 3 C.L.R. 401 at p. 414;
Georghiades v. The Republic (1966) 3 C.L.R. 153 at p. 173;
Iacovides v. The Republic (1966) 3 C.L.R. 191 at p. 196;
Sevastides v. The Republic (1968) 3 C.L.R. 309 at p. 318;
Ioannides v. The Nicosia Municipality (1968) 3 C.L.R. 551 at p. 554;
Sofocleous v. The Republic (1974) 3 C.L.R. 63 at p. 70;
Cullen v. The Republic (1974) 3 C.L.R. 101 at p. 105;
Red Lion Broadcasting Co. v. The Federal Communications Commission (No. 2), 23 L. Ed. 2d 371 at p. 377;
Columbia Broadcasting System v. Democratic National Committee, 36 L. Ed. 2d 772 at p. 789;

- The Republic v. Arakian* (1972) 3 C.L.R. 294;
Anastassiou v. The Republic (1977) 3 C.L.R. 91;
The Republic v. Demetriades (1977) 3 C.L.R. 213;
Ioannides v. The Republic (1979) 3 C.L.R. 295;
5 *Antoniades v. The Republic* (1979) 3 C.L.R. 641;
American Party of Texas v. White, 39 L. Ed. 2d 744 at p. 760;
Ferguson v. Skrupa, 10 L. Ed. 2d 93 at p. 98.

Recourse.

- 10 Recourse for a declaration that the refusal of the respondent to reply to applicant's cable dated 3.3.1981 and to include applicant, as a political party leader, in the "Meet the Press" series of television programs contravened Articles 29 and 28 of the Constitution.

Applicant appeared in person.

- 15 *P. Polyviou*, for the respondent.

Cur. adv. vult.

- 20 TRIANTAFYLIDIS P. read the following judgment. The applicant by means of the present recourse seeks, in effect, a declaration that the failure of the respondent to reply to a cable of his dated March 3, 1981, contravened Article 29 of the Constitution, and that the refusal of the respondent to include the applicant, as a political party leader, in the "Meet the Press" series of television programs, contravened Article 28 of the Constitution.

- 25 As it appears from the material before me the applicant is the leader of the "Justice Party", which was founded in 1969.

- 30 In the general election for Members of the House of Representatives in 1970 the applicant was the candidate of his party in the Nicosia constituency and he received over 1250 votes.

- 35 In the general election for the Members of the House of Representatives, which is to be held on May 24, 1981, the applicant is not a candidate, but his party has nominated as a candidate in respect of the Nicosia constituency a certain Petros Kailas.

By means of the aforementioned cable the applicant was seeking to be given the same opportunity to appear on television

as other leaders of political parties, because he was contemplating to be a candidate himself in the general election; and, he signed the cable in his capacity as a leader of his party.

It is an undisputed fact that the respondent failed to reply to this cable of the applicant. It has been contended, in this respect, on behalf of the respondent, that the address of the applicant was unknown to the respondent, as it was not stated in the cable, but it has been proved by the applicant, by means of documentary evidence which he has produced before me, that his address ought to have been known, in fact, to the respondent, through correspondence which was exchanged between them on another occasion. 5 10

It has been submitted by the applicant that the failure of the respondent to reply to his cable in question contravenes Article 29.1 of the Constitution, which reads as follows: 15

“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”. 20

The applicant cannot, however, succeed in this recourse in respect of the failure of the respondent to reply to his said cable, because having proceeded, by means of the present recourse, in relation to the substance of the matter for which a reply to his cable has been sought by him, he no longer continues to have any existing legitimate interest in respect of the failure to reply to his cable, in the sense of Article 146.2 of the Constitution, since it has not been shown that the failure to reply to him has caused him any material detriment, which would have entitled him to claim relief under paragraph 6 of Article 146, after having obtained a judgment in his favour in this recourse under paragraph 4 of Article 146. 25 30

In *Kyriakides v. The Republic*, 1 R.S.C.C. 66, the following were stated in this respect (at p. 77):- 35

“In the opinion of the Court paragraph 2 of Article 29 gives, *inter alia*, an aggrieved person a right of recourse

5 to a competent Court in respect of the failure to furnish him with a reply in accordance with paragraph 1 of such Article. It is clear that, where the competent public authority, which has failed to reply as above, is one of those referred to in paragraph 1 of Article 146, then this Court is the competent Court in question and proceedings lie before it under Article 146 in respect of such failure itself to reply.

10 Where, however, 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.

20 Therefore such a person cannot, 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".

25 The approach adopted, as above, in the *Kyriakides case*, *supra*, has been followed in, *inter alia*, *Papadopoulos v. The Republic*, (1965) 3 C.L.R. 401, 414, *Georghiades v. The Republic*, (1966) 3 C.L.R. 153, 173, *Iacovides v. The Republic*, (1966) 3 C.L.R. 191, 196, *Sevastides v. The Republic*, (1968) 3 C.L.R. 309, 318, *Ioannides v. The Nicosia Municipality*, (1968) 3 C.L.R. 551, 554, *Sofocleous v. The Republic*, (1974) 3 C.L.R. 63, 70 and *Cullen v. The Republic*, (1974) 3 C.L.R. 101, 105.

35 The other complaint of the applicant, namely that he was not afforded the opportunity to appear, like other leaders of political parties, in the "Meet the Press" series of television programs is based on the argument that his exclusion from such programs constitutes a contravention of Article 28 of the Constitution, as well as of section 19(3) of the Cyprus Broadcasting Corporation Law, Cap. 300A. The material parts of Article 40 28, above, are its paragraphs 1 and 2 which read as follows:-

"1. All persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby.

2. Every person shall enjoy all the rights and liberties provided for in this Constitution without any direct or indirect discrimination against any person on the ground of his community, race, religion, language, sex, political or other convictions, national or social descent, birth, colour, wealth, social class, or on any ground whatsoever, unless there is express provision to the contrary in this Constitution".

Section 19(3) of Cap. 300A, above, reads as follows:-

"(3) The Corporation shall at all times keep a fair balance in the allocation of broadcasting hours as between any political parties".

In my opinion the true effect of section 19(3) of Cap.300A is that the respondent should not discriminate against any political party in a manner which would now be inconsistent with the provisions of Article 28 of the Constitution.

A corresponding to section 19(3), above, provision in the United States of America is section 315 of the Communications Act of 1934.

It is pertinent, at this stage, to observe that the said section 315 has been held to be distinct from what is known in U.S.A. constitutional law as the "fairness doctrine" in relation to broadcasting.

In *Red Lion Broadcasting Co. v. The Federal Communications Commission* (No. 2), 23 L. Ed. 2d 371, Mr. Justice White said the following in delivering the opinion of the U.S.A. Supreme Court (at p. 377):-

"The Federal Communications Commission has for many years imposed on radio and television broadcasters the requirement that discussion of public issues be presented on broadcast stations, and that each side of those issues must be given fair coverage. This is known as the fairness doctrine, which originated very early in the history of broadcasting and has maintained its present outlines for

some time. It is an obligation whose content has been defined in a long series of FCC rulings in particular cases, and which is distinct from the statutory requirement of para. 315 of the Communications Act that equal time be allotted all qualified candidates for public office.”

As has been pointed out in *Columbia Broadcasting System v. Democratic National Committee*, 36 L. Ed. 2d 772, the “fairness doctrine” is based on the right of the public to be informed rather than on the right of any particular individual to broadcast his own views on any matter. In that case Mr. Chief Justice Burger stated the following (at p. 789):-

“Thus, under the Fairness Doctrine broadcasters are responsible for providing the listening and viewing public with access to a balanced presentation of information on issues of public importance. The basic principle underlying that responsibility is ‘the right of the public to be informed rather than any right on the part of the Government, any broadcast licensee or any individual member of the public to broadcast his own particular views on any matter..... Report on Editorializing by Broadcast Licensees, 13 FCC 1246, 1249 (1949). Consistent with that philosophy, the Commission on several occasions has ruled that no private individual or group has a right to command the use of broadcast facilities”.

As it appears from the material that has been placed before me in the present case, amongst the criteria, on the basis of which leaders of other political parties were invited to participate in the “Meet the Press” series of television programs, was either the fact that their parties had, at that time, Members of their own in the House of Representatives, or the fact that invitations had been extended to them by the President of the Republic to participate, and they had indeed participated in the past, in meetings of the National Council. Actually, all the leaders of political parties who appeared in the “Meet the Press” programs had been invited by the President of the Republic to participate in the National Council, and had so participated in the past, and their parties, with the exception of one of them were represented in the House of Representatives.

On the other hand, the political party of which the applicant

is the leader was not, at that material time, represented in the House of Representatives, nor has the applicant ever been invited by the President of the Republic to participate in a meeting of the National Council.

I find both the aforementioned criteria as reasonable and that either of them is sufficient to justify a classification of leaders of political parties which does not offend, as being either arbitrary or invidious, Article 28 of the Constitution. I have reached this view in the light of the relevant principles regarding the application of the doctrine of equality, which is safeguarded by Article 28, above; and these principles were expounded in, *inter alia*, *The Republic v. Arakian*, (1972) 3 C.L.R. 294, *Anastasiou v. The Republic*, (1977) 3 C.L.R. 91, *The Republic v. Demetriades*, (1977) 3 C.L.R. 213, *Ioannides v. The Republic*, (1979) 3 C.L.R. 295 and *Antoniades v. The Republic*, (1979) 3 C.L.R. 641.

An instance of the application of the doctrine of equality in relation to political and electoral matters is to be found in the case of *American Party of Texas v. White*, 39 L. Ed. 2d 744, where Mr. Justice White in delivering the opinion of the U.S.A. Supreme Court, adopted (at p. 760) the following dictum of Mr. Justice Black in *Ferguson v. Skrupa*, 10 L. Ed. 2d 93, 98:-

“ Statutes create many classifications which do not deny equal protection; it is only ‘invidious discrimination’ which offends the Constitution’ ”.

For all the foregoing reasons I find that the present recourse of the applicant cannot succeed and it is dismissed accordingly but, in view of the issues which have been raised by him, I am not prepared to make any order of costs against the applicant and in favour of the respondent.

Application dismissed. No order as to costs.