

1983 November 5

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PAVLOS STOKKOS,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE PRESIDENT OF THE REPUBLIC,
2. THE COUNCIL OF MINISTERS,
3. THE MINISTER OF INTERIOR,

Respondents.

(Case Nos. 439/82, 490/82, 272/83).

5 *Deputy Commander of Police—Termination of appointment—Vested, by Article 47(f) of the Constitution, in the President of the Republic—Not possible for Council of Ministers to decide to retire compulsorily the applicant, under the Pension Legislation, unless such decision had been reached practically contemporaneously, and in conjunction, with a decision of the President of the Republic under the said Article 47(f), terminating his services as Deputy Commander of the Police.*

10 *Administrative Law—Executory act—Compulsory retirement of Deputy Commander of Police by virtue of a decision of the Council of Ministers—Subsequent declaration of President of the Republic confirming adoption of said decision—Is not of an executory nature and cannot be made the subject of a recourse under Article 146 of the Constitution.*

15 *Act of Government—Deputy Commander of Police—Appointment of, by the President of the Republic under Article 131.1 of the Constitution—An exercise of “political power” granted to the President by the Constitution—Is an “act of Government” not amenable within the judicial control vested in the Supreme Court*
20 *under Article 146.1 of the Constitution—Said appointment an act of Government even if powers of President under the above Article exercised in circumstances rendering them valid by virtue of the “law of necessity”.*

Practice—Annulment of administrative act—Stay of execution of judgment pending period during which any party may file an appeal and if an appeal is filed until the final determination of the appeal

By means of the above three recourses the applicant challenged. 5

- (a) The decision of the Council of Ministers to require him to retire from the post of Deputy Commander of Police as from the 14th October, 1982. This decision appears to have been based on the provisions of section 8 of the Pensions Law, Cap. 311, as amended, in particular, by section 7 of the Pensions (Amendment) Law, 1967 (Law 9/67) and by section 7 of the Pensions (Amendment) Law, 1981 (Law 39/81). 10
- (b) The decision of the President of the Republic to appoint, as from the 12th November 1982, the Assistant Commander of Police, Phanis Demetriou ("the interested party") to the post of Deputy Commander of Police. 15
- (c) The constitutional validity of a written declaration of the President of the Republic, dated 4th April, 1983, which was placed before the Court by counsel for the respondent on 21st April 1983 during the hearing of the first two recourses of the applicant. By means of such declaration it was confirmed by the President of the Republic that he adopted, as from the date on which it was reached, the decision of the Council of Ministers regarding the compulsory retirement of the applicant. 20
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Held, (1) that the power to terminate the appointment of the applicant is vested by Article 47(f) of the Constitution in the President of the Republic; that it was not possible for the Council of Ministers to reach, in a manner consistent and compatible with Article 47(f) of the Constitution, its sub judice decision regarding the compulsory retirement of the applicant unless such decision had been reached practically contemporaneously, and in conjunction, with a decision of the President of the Republic, under the said Article 47(f), terminating the services of the applicant as Deputy Commander of the Police, that as the sub judice decision of the Council of Ministers for the 30
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compulsory retirement of the applicant appears to have been intended, when it was taken, to have on its own and by itself the effect of terminating the services of the applicant and the Council of Ministers has, thus, exercised powers which could only have been exercised under the Constitution by the President of the Republic under Article 47(f), the decision in question of the Council of Ministers is regarded as a decision which was taken in excess of its powers, by applying the relevant provisions of the Pensions legislation in a manner contrary to an express provision of the Constitution, namely Article 47(f); accordingly the sub judice decision of the Council of Ministers must be annulled.

(2) That the declaration of the President of the Republic dated 4th April 1983 is only of evidential nature, and not, in any way, of an executory nature; and that, therefore, for this reason, and irrespective of anything else, it cannot be treated as an act or decision which could be challenged by a recourse under Article 146 and, so, the applicant's recourse, 272/83, by means of which there is being sought its annulment, cannot be entertained by this Court and has to be dismissed.

(3) That the decision of the President of the Republic to appoint the interested party as the Deputy Commander of Police, under Article 131.1 of the Constitution, is an exercise of "political power" granted to him by the Constitution and is, therefore, an "act of Government" which is not amenable within the judicial control vested in our Supreme Court by means of Article 146.1 of the Constitution.

Held, further, (1) that the fact, however, that the President of the Republic has exercised his powers under Article 131.1 of the Constitution in circumstances rendering valid, by virtue of the "law of necessity", the exercise of such powers in the way in which he has used them, does not deprive the appointment of the interested party as Deputy Commander of Police of the basic characteristic of a decision of the President of the Republic reached in the course of the exercise of "political power" vested in him directly by the Constitution (*Louca v. Republic* (1983) 3 C.L.R. distinguished).

(2) Because of the constitutional importance of some of the issues which have been raised in these proceedings and which

have been pronounced on in this judgment, and in view of the upheaval that could be caused to the normal functioning of the Police in case, as a result of the annulment of the termination of his services, the applicant would resume at once, again, the duties of the Deputy Commander of Police, with the consequence that the interested party would be prevented from exercising such duties, the execution of this judgment in so far as it relates to the annulment of the termination of the services of the applicant should be stayed, and its effect should be suspended, pending the period during which any party to these proceedings may file an appeal; and if an appeal is filed then such order will continue in force until the final determination of the appeal or until a further order to the contrary (see section 47 of the Courts of Justice Law, 1960 (Law 14/60) rules 13 and 18 of the Supreme Constitutional Court Rules of Court, rules 18 and 19 of Order 35 of the Civil Procedure Rules and the Appeals (Revisional Jurisdiction) Rules of Court of the Supreme Court, 1964).

Recourse 439/82 *succeeds.*
Recourses 490/82, 272/83 *dismissed.*

Cases referred to:

Attorney-General of the Republic v. Ibrahim, 1964 C.L.R. 195;
In re Gcorghiou (1983) 2 C.L.R. 1;
Attorney-General of the Republic v. Sampson (1973) 2 C.L.R. 92;
Louca v. President of the Republic (1983) 3 C.L.R. 783.

Recourses.

Recourses against the decision of the respondents whereby applicant was required to retire from the post of Deputy Commander of Police.

L. Papaphilippou with *A. Spyridakis* and *C. Demetriades*, for the applicant.
L. Loucaides, Deputy Attorney-General of the Republic with *A. Papasavvas*, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment. The first two of these three recourses (439/82 and 490/82) were heard

together and after judgment had been reserved in respect of them the remaining recourse (272/83) was, also, heard; and, now, all these three closely related cases will be determined by means of the present judgment.

5 By his first recourse (439/82) the applicant challenges the decision of the Council of Ministers to require him to retire from the post of Deputy Commander of Police as from the 14th October 1982. This decision (No. 22.309) was reached on the 13th October 1982 and was communicated to the applicant
10 by means of a letter of the Minister of Interior dated 14th October 1982.

The said decision of the Council of Ministers appears to have been based on the provisions of section 8 of the Pensions Law, Cap. 311, as amended, in particular, by section 7 of the Pensions
15 (Amendment) Law, 1967 (Law 9/67) and by section 7 of the Pensions (Amendment) Law, 1981 (Law 39/81).

It is stated in the text of such decision that the Minister of Interior proposed to the Council of Ministers the retirement from the service of the applicant for reasons of security, which
20 he explained at length at the meeting of the Council on the 13th October 1982.

By his second recourse (490/82) the applicant challenges the decision of the President of the Republic to appoint, as from the 12th November 1982, the Assistant Commander of Police,
25 Phanis Demetriou (to be referred to hereinafter as "the interested party") to the post of Deputy Commander of Police.

By his third recourse (272/83) the applicant challenges, in effect, the constitutional validity of a written declaration of the President of the Republic, dated 4th April 1983, which was
30 placed before the Court by counsel for the respondent on 21st April 1983 during the hearing of the first two recourses of the applicant (439/82 and 490/82). By means of such declaration it is confirmed by the President of the Republic that he adopted,
35 as from the date on which it was reached, the decision of the Council of Ministers regarding the compulsory retirement of the applicant.

The joint hearing of the first two of these cases (439/82 and 490/82) has been lengthy and protracted because of the multi-

tude of legal arguments which were elaborately advanced by both sides and of the evidence that was called by them regarding matters which they considered to be material in relation to the outcome of the cases; and I allowed such evidence to be adduced as till the completion of the hearing of these cases I did not reach a final decision about any of the issues that had been raised before me and, therefore, I did not wish to exclude anything which might be found later by me to be of some significance regarding the final determination of the cases concerned.

In view of the conclusions which I have, eventually, reached as regards the fate of these three recourses I will not deal in detail with the evidence adduced and I will limit myself to observing that the oral and documentary evidence that was placed before this Court establishes, on the one hand, that the Minister of Interior and the Council of Ministers were of the view that the circumstances in which, on instructions of the applicant, there had been photocopied a secret police document were so suspicious as to shake the confidence of the Government in the applicant in his capacity as the Deputy Commander of Police, but, on the other hand, it does not establish that the applicant has actually committed any criminal or disciplinary offence by using a photocopy of such document.

The applicant was appointed as Deputy Commander of Police on the 31st December 1975, as from the 1st January 1976, by the late President of the Republic Archbishop Makarios, under paragraph 1 of Article 131 of the Constitution.

The power to terminate the appointment of the applicant is vested by Article 47(f) of the Constitution in the President of the Republic.

The relevant powers of the President of the Republic under the aforesaid Articles 131.1 and 47(f) of the Constitution are, also, vested jointly in the Vice-President of the Republic, but both when the applicant was appointed to the post of Deputy Commander of Police and, also, when he was retired Compulsorily therefrom there was not in office a Vice-President of the Republic due to the abnormal situation which has been prevailing in Cyprus at all material times and, consequently, the President of the Republic could, on the strength of the "law

of necessity" exercise on his own such powers (see, inter alia, *Attorney-General of the Republic v. Ibrahim*, 1964 C.L.R. 195 and *In re Georghiou*, (1983) 2 C.L.R. 1).

5 In my opinion it was not possible for the Council of Ministers to reach, in a manner consistent and compatible with the aforementioned Article 47(f) of the Constitution, its sub judice decision regarding the compulsory retirement of the applicant unless such decision had been reached practically contemporaneously, and in conjunction, with a decision of the President
10 of the Republic, under the said Article 47(f), terminating the services of the applicant as Deputy Commander of the Police.

An analogous situation had arisen in the case of *The Attorney-General of the Republic v. Sampson*, (1973) 2 C.L.R. 92, where
15 the Full Bench of the Supreme Court had to examine the validity of the extension of the services, after his age of retirement, of Mr. Cr. Tornaritis as Attorney-General of the Republic by means of a decision of the Council of Ministers taken under section 8 of the Pensions Law, Cap. 311, as amended by the Pensions (Amendment) Law, 1967 (Law 9/67). It is useful
20 to quote the following passage from the judgment of the Court (at pp. 97, 98):

“As has been already stated, on the 9th April, 1970, the Council of Ministers, by its decision No. 9577, decided
25 the extension of the services of Mr. Tornaritis as Attorney-General for a period of three years, after the 27th May, 1970, when he would have attained the age of retirement, namely until the 27th May, 1973, if the President of the Republic would extend, for the same period, the already existing appointment of Mr. Tornaritis as Attorney-
30 General. On the 10th April, 1970, by act No. 103/70, the President of the Republic, being the appropriate organ under the Constitution, extended until the 27th May, 1973, the services of Mr. Tornaritis as Attorney-General.

In view of the fact that the Attorney-General was serving
35 under conditions which included the possibility of the extension of his services, by virtue of section 8(4) of the Pensions Law, and as, also, such extension was made by the organs vested with the relevant powers, namely the Council of Ministers and the President of the Republic,

we are of the view that the services of the Attorney-General were lawfully extended until the 27th May, 1973. The same applies, too, to the subsequent extension of the services of Mr. Tornaritis as Attorney-General until the 27th May, 1976, by another decision of the Council of Ministers, No. 12174, taken on the 8th March, 1973, and by another act of the President of the Republic, No. 136/73, of the 13th March, 1973". 5

Likewise, in the present case, the sub judice decision of the Council of Ministers could conceivably be validly reached on the 13th October 1982 only if the President of the Republic had terminated, or would terminate, then, contemporaneously and in conjunction with such decision of the Council of Ministers, the services of the applicant and the purpose of the decision of the Council of Ministers would have been to regulate, under the relevant provisions of the Pensions legislation, the terms of the termination of the services of the applicant, by enabling him to receive, as it appears to have been intended to do in the present instance, what was due to him by way of retirement benefits. 10 15 20

I have no hesitation at all in accepting as true in every respect the aforementioned written declaration of the President of the Republic, dated 4th April 1983, but, in my view, such declaration is not an official act of the President of the Republic terminating the services of the applicant as envisaged and required under Article 47(f) of the Constitution; and it is to be noted that there was not published in the official Gazette of the Republic a decision of the President of the Republic terminating the services of the applicant, as should have been done for obvious reasons of essential formal validity if the President of the Republic had acted to terminate the services of the applicant under Article 47(f), above. 25 30

As the sub judice decision of the Council of Ministers for the compulsory retirement of the applicant appears to have been intended, when it was taken, to have on its own and by itself the effect of terminating the services of the applicant and the Council of Ministers has, thus, exercised powers which could only have been exercised under the Constitution by the President of the Republic under Article 47(f), I have to regard the decision 35

in question of the Council of Ministers as a decision which was taken in excess of its powers, by applying the relevant—already referred to earlier—provisions of the Pensions legislation in a manner contrary to an express provision of the Constitution, namely Article 47(f); and, of course, the said provisions of the Pensions legislation could not be applied in a manner limiting the powers of the President of the Republic under Article 47(f), even with his concurrence.

In the light of all the foregoing the sub judice decision of the Council of Ministers has to be, and it is hereby, annulled under Article 146 of the Constitution and as a result recourse 439/82, which has been made against it, succeeds.

I shall deal, next, briefly, with case 272/83: In my view the aforementioned declaration of the President of the Republic dated 4th April 1983 is only of evidential nature, and not, in any way, of an executory nature; therefore, for this reason, and irrespective of anything else, it cannot be treated as an act or decision which could be challenged by a recourse under Article 146 and, so, the applicant's recourse, 272/83, by means of which there is being sought its annulment, cannot be entertained by this Court and has to be dismissed.

There remains to decide the fate of recourse 490/82 which has been made against the appointment, as from 12th November 1982, of interested party Demetriou to the post of Deputy Commander of Police:

There exists only an external causative nexus between the compulsory retirement of the applicant and of the appointment of the interested party, in the sense that the appointment of the interested party was made because of the vacancy in the post of Deputy Commander of Police which was created by the compulsory retirement of the applicant.

I cannot, anyway, proceed to examine whether or not to annul the appointment of the interested party, even though I have just annulled the decision of the Council of Ministers regarding the compulsory retirement of the applicant, because in my opinion the decision of the President of the Republic to appoint the interested party as the Deputy Commander of Police, under Article 131.1 of the Constitution, is an exercise

of "political power" granted to him by the Constitution and is, therefore, an "act of Government" which is not amenable within the judicial control vested in our Supreme Court by means of Article 146.1 of the Constitution.

In a judgment which I have delivered recently in the case of *Louca v. The President of the Republic* (1983) 3 C.L.R. 783, I referred to the notion of "act of Government" and in that case I found that the decision of the President of the Republic to terminate the services of a member of the Public Service Commission, under the Public Service Law, 1967 (Law 33/67) was not an "act of Government".

It must not be overlooked that in the present instance, unlike what happened in the *Louca* case, *supra*, the President of the Republic in appointing the interested party has acted in the exercise of powers vested directly in him by virtue of a provision in the Constitution, namely Article 131.1, and not merely in the exercise of powers vested in him by a Law which was enacted as a legislative measure justified by the "law of necessity", such as Law 33/67.

That the appointment of a Deputy Commander of Police is an "act of Government" escaping judicial control under Article 146 of the Constitution becomes, I think, obvious when it is borne in mind that in normal times such an appointment would be made in the course of the exercise of "political power" by the Greek Cypriot President of the Republic and the Turkish Cypriot Vice-President jointly; and it would certainly be beyond the scope of the exercise of judicial control, such as that by virtue of Article 146 of the Constitution, to pronounce on the various policy considerations which would make the President and the Vice-President of the Republic agree to appoint a particular person, from one or the other Community, as the case might be, to the post of Deputy Commander of Police.

It is true that in the present instance the President of the Republic acted on his own in appointing the interested party as Deputy Commander of Police and that he appointed the interested party, who is a Greek Cypriot, even though under Article 131 of the Constitution a Turkish Cypriot would normally have been appointed to the post concerned, as the Commander of Police is a Greek Cypriot. As, however, due

to the prevailing, at the material time, abnormal situation there was no Turkish Cypriot Vice-President and the Turkish Cypriots were not participating in the Government, in the public service and the security forces of the Republic, the course
5 adopted, as aforesaid, by the President of the Republic by appointing the interested party as Deputy Commander of Police is justifiable on the strength of the "law of necessity".

The fact, however, that the President of the Republic has exercised his powers under Article 131.1 of the Constitution in
10 circumstances rendering valid, by virtue of the "law of necessity", the exercise of such powers in the way in which he has used them, does not deprive the appointment of the interested party as Deputy Commander of Police of the basic
15 characteristic of a decision of the President of the Republic reached in the course of the exercise of "political power" vested in him directly by the Constitution.

The position in the present case is in my view essentially and vastly different from the position in the *Louca* case, *supra*, because, as already stated, the President of the Republic has
20 exercised powers vested in him directly by the Constitution, and not powers which were not granted to him by the Constitution but which were vested in him only by means of a Law enacted by virtue of the "law of necessity", as was the position
25 in the *Louca* case, *supra*, where the sub judice in that case decision, not being an exercise of constitutional powers, was, for the reasons set out in my judgment in that case, not considered to be an "act of Government".

On all, therefore, the above grounds the present case is quite clearly distinguishable, in my opinion, from the *Louca* case.

30 For all the foregoing reasons recourse 490/82 of the applicant against the appointment of the interested party as Deputy Commander of Police has to be dismissed.

Because of the constitutional importance of some of the issues which have been raised in these proceedings and which
35 have been pronounced on in this judgment, and in view of the upheaval that could be caused to the normal functioning of the Police in case, as a result of the annulment of the termination

of his services, the applicant would resume at once, again, the duties of the Deputy Commander of Police, with the consequence that the interested party would be prevented from exercising such duties, and, then, if, for any reason, it is held on appeal that the termination of his services ought not to have been annulled the applicant would once again cease to be the Deputy Commander of Police and the interested party would resume his duties as Deputy Commander of Police, I have decided to make the following order: 5

The execution of this judgment in so far as it relates to the annulment of the termination of the services of the applicant should be stayed, and its effect should be suspended, pending the period during which any party to these proceedings may file an appeal; and if an appeal is filed then such order will continue in force until the final determination of the appeal or until a further order to the contrary. 10 15

I have made the above order both in the exercise of the inherent powers of this Court and of its expressly laid down relevant powers, such as those under section 47 of the Courts of Justice Law, 1960 (Law 14/60), and under rules 13 and 18 of the Supreme Constitutional Court Rules of Court, as well as under rules 18 and 19 of Order 35 of the Civil Procedure Rules and the Appeals (Revisional Jurisdiction) Rules of Court of the Supreme Court 1964 (see No. 2, Second Supplement to the Official Gazette of 19th November 1964). 20 25

Taking everything into consideration I have decided that I should not make any order as to the costs of the present proceedings.

Order accordingly.