

1983 March 18

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

[A. LOIZOU, J.]

PANOS A. RAZIS AND ANOTHER,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR,

Respondent.

(Case No. 461/82).

Judge—Disqualification—Pronouncement on legal issue should not disqualify a Judge from entertaining the same legal question or questions in a subsequent case, whether that be between the same parties or other parties.

5 Before the commencement of the hearing of this recourse
a request has been made by Counsel for the applicants that the
trial Judge ought to refrain from taking up the case as the legal
issues that arise with regard to the substance of the recourse
came under judicial pronouncement by the same Judge in a
10 previous recourse which was filed by the same applicants.

15 *Held*, that the pronouncement on a legal issue should not
disqualify a Judge from entertaining the same legal question
or questions in a subsequent case whether that be between the
same parties or other parties; if a different view was taken there
would be hardly Judges available to try cases as time and again
the same legal issues come up for determination by the Courts;
that, furthermore, in the case of the exercise of the jurisdiction
of this Court under the present set up, an odd situation may
occur when another Judge would be asked to pronounce on
20 the same issues and then I may find myself sitting on an appeal
filed from his judgment and so be called to pronounce through
an indirect process from a judgment of my own whether he
follows my previous legal approach or not; that in any event,

there is the further safeguard of the right of appeal to the Full Bench from the judgment that I shall deliver in this case; that for all these reasons I cannot accede to the very courteous request of counsel and I intend to proceed with the hearing of this recourse.

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Order accordingly.

Cases referred to:

Razis and Another v. Republic (1979) 3 C.L.R. 127;

Razis and Another v. Republic (1982) 3 C.L.R. 45.

Application.

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Application by applicants' counsel that the trial Judge refrains from taking up the case as the legal issues that arise regarding the substance of the recourse came under judicial pronouncement by the same Judge and as the Full Bench of this Court which entertained the appeal from that judgment did not pronounce on the substance.

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L. N. Clerides with *N. Clerides*, for the applicant.

N. Charalambous, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult. 20

A. LOIZOU J. read the following ruling. By the present recourse the applicants seek:

(a) A declaration that the act and/or decision of the Principal Migration Officer that being citizens of the Republic of Cyprus they are liable to Military Service which was communicated to their counsel by letter dated 16.8.1982, received on 17.8.1982, is null and void and with no legal effect.

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(b) A declaration that the omission of the Principal Migration Officer to re-examine the application of the applicants dated 20.7.1982 that they are not liable to Military Service, constitutes an omission to act what he was duty bound to do and that he had a legal obligation to do so.

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The first prayer for relief is in substance identical to the one sought in Recourse No. 345/78, except that the decision challenged by that recourse was an earlier one dated 14.7.1978.

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That recourse was tried by me and the judgment delivered is reported as *Razis & Another v. The Republic* (1979) 3 C.L.R., p. 127. From that judgment an appeal was filed to the Full Bench of this Court under section 11(2) of the Administration of Justice (Miscellaneous Provisions) Law 1964, (Law No. 33 of 1964), which was determined and its judgment is reported as *Panos Razis & Another v. The Republic* (1982) 3 C.L.R., p. 45.

Before the commencement of the hearing a request has been made by counsel for the applicants that I might refrain from taking up the case as the legal issues he contended that arise regarding the substance of this recourse came under judicial pronouncement by me in the aforesaid recourse and as the Full Bench of this Court which entertained the appeal from that judgment did not pronounce on the substance but dismissed same on the ground that the sub judice administrative decision was not an executory one and therefore was not an act or decision in the sense of Article 146.1 of the Constitution and so it could not be the subject of a recourse. This point was taken up by me *ex proprio motu*, as before the recourse I dealt with, there had been filed by the two applicants another recourse on the 17th August, 1977, which was withdrawn and dismissed on the 22nd April, 1978, upon a statement being made by both counsel that they had seen the Attorney-General of the Republic and he had agreed to a re-examination of the case.

Indeed the legal issues which arose in the previous recourse and this is not in dispute, are likely to be the same as the issues raised by the one in hand, apart from the question of the second prayer of relief which turns on the alleged omission of the Migration Office to re-examine the case upon the applicants' subsequent application. The pronouncement, however, on a legal issue should not, in my view, disqualify a Judge from entertaining the same legal question or questions in a subsequent case, whether that be between the same parties or other parties; and in fact, I do not feel as precluded from entertaining the present recourse. Consequently I intend to proceed with its hearing. If a different view was taken, I feel that there would be hardly judges available to try cases as time and again the same legal issues come up for determination by the Courts. Furthermore, in the case of the exercise of the jurisdiction of

this Court under the present set up, an odd situation may occur when another Judge would be asked to pronounce on the same issues and then I may find myself sitting on an appeal filed from his judgment and so be called to pronounce through an indirect process from a judgment of my own, whether he follows my previous legal approach or not. In any event, there is the further safeguard of the right of appeal to the Full Bench from the judgment that I shall deliver in this case. 5

For all these reasons I cannot accede to the very courteous request of counsel and I intend to proceed with the hearing of this recourse. 10

Heeding to the request of counsel for both sides that a direction might be made for written addresses to be filed, I hereby direct that (a) a written address on behalf of the applicants be filed within one month from to-day. Failing to do so within the time so specified, will be deemed as an abandonment of the recourse which will then stand dismissed on that ground. 15
(b) A written address be filed on behalf of the respondents within one month from delivery to them of the written address of the applicants, and (c) Written address in reply, if any, be filed within 15 days from the delivery of the written address of the respondents. 20

The case is fixed for oral clarifications and evidence, if any, on the 11th June, 1983, at 9 a.m.

Order accordingly. 25