1983 April 18

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTAKIS PAPACHARALAMBOUS AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF DEFENCE,

Respondent.

(*Case No.* 102/83).

Provisional Order—Negative administrative decision—Cannot be suspended by means of a provisional order—Refusal to exempt applicants from service in the National Guard—A negative decision of the administration—Cannot be suspended by a provisional order—Flagrant illegality—It must be palpably identifiable—Irreparable damage—It must be specifically and succinctly pleaded—

Administrative acts or decisions—Presumption of regularity.

The applicants in this recourse attacked the decision of the respondent Minister which was to the effect that they could not be exempted from service in the National Guard and they, also, applied for a provisional order, under rule 13 of the Supreme Constitutional Court Rules, suspending their enlistment in the National Guard pending the hearing and determination of the recourse.

On the application for a provisional order:

Held, that no application for a provisional order can be entertained for negative administrative acts or decisions; that the sub judice decision is a refusal of the respondent Minister to exempt the applicants from service in the National Guard; that such refusal tentamounts to a negative decision of the Administration; that since it is not possible to suspend by means of a provisional order under rule 13 of the Supreme

Constitutional Court Rules, a negative administrative decision, the application for a provisional order must fail.

Held, further, that the sub judice decision is not flagrantly illegal because the illegality if any is not "palpably identifiable", far from being a "flagrant" one; that, moreover, it is not flagrantly illegal, though signed by the Director-General, and not the respondent Minister, because it was written according to the instructions of the Minister and according to the presumption of regularity it was taken by the Minister and not by the Director-General of the Ministry.

(2) That though irreparable damage may be either financial or moral such damage must be specifically and succinctly pleaded in the application for a provisional order; and that in this case the applicants confined themselves in mentioning simply that they will "suffer irreparable harm" if the application is refused and they have not indicated either the right violated or the nature of such alleged loss.

Application dismissed.

Cases referred to:

Christou and Others v. Republic (1982) 3 C.L.R. 365; (1982) 3 C.L.R. 634 (C.A.);

Michaelides v. Republic (1980) 3 C.L.R. 430;

C.T.C. Consultants Ltd. v. The Cyprus Tourism Organization (1976) 3 C.L.R. 390 at p. 393;

Aspri v. Republic, 4 R.S.C.C. 57;

Georghiades (No. 1) v. Republic (1965) 3 C.L.R. 392;

Sofocleous v. Republic (1971) 3 C.L.R. 345;

Papadopoulos v. Republic, (1975) 3 C.L.R. 89;

Yerasimou v. Republic (1978) 3 C.L.R. 36;

Prokopiou & Others v. Republic (1979) 3 C.L.R. 686;

Prodromou v. Republic (1981) 3 C.L.R. 38;

Soteriou v. Republic (1981) 3 C.L.R. 70;

Sofocleous v. Republic (1981) 3 C.L.R. 360;

Artemiou (No. 2) v. Republic (1966) 3 C.L.R. 562;

Tyrokomou v. Republic (1976) 3 C.L.R. 403;

Karram v. The Republic (1983) 3 C.L.R. 199;

Frangos v. Republic (1982) 3 C.L.R. 53;

Kousoulides v. Republic (1967) 3 C.L.R. 438;

Papallis v. Republic (1970) 3 C.L.R. 424; 5

Petrolina Ltd. and Another v. The Republic (1977) 3 C.L.R. 173;

Pieris v. Republic (1979) 3 C.L.R. 91:

Application for a provisional order.

Application for a provisional order suspending the enlistment of applicants in the National Guard pending the final deter- 10 mination of a recourse against the decision of the respondent to call up the applicants for service in the National Guard.

L. N. Clerides, for applicants.

A. Vladimirou, for respondent.

Cur. adv. vult. 15

LORIS J. read the following decision. All 183 applicants. Greek Cypriots, who profess to be Jehova's Witnesses filed the present recourse on 16.3.1983 attacking the decision of the respondent Minister dated 10.3.1983, communicated to counsel acting on their behalf, praying for a declaration of this Court 20 that the said decision of the respondent to the effect that the applicants could not be exempted from service in the National Guard is "null and devoid of any legal effect whatever".

On 23.3.1983 applicants also filed present application for provisional order under r. 13 of the Supreme Constitutional 25 Court Rules praying for an order "suspending the enlistment of applicants in the National Guard pending the hearing and determination of this recourse".

The application for a provisional order, which is being supported by an affidavit sworn by 18 out of the 183 applicants, 30 was served on the respondent who filed an opposition to it as directed by this Court on 31.3.1983; on the same day the hearing of the application for the issue of a provisional order was fixed on 14.4.1983.

On 12.4.1983—that is two days prior to the hearing—learned counsel for applicants filed what purported to be a "notice" addressed to the respondent informing him that at the hearing of the application for the provisional order "applicants will claim an ancillary order... staying all criminal prosecutions pending before the Military Court against all or any of the applicants for non-compliance with the call to enlist in the National Guard until the hearing and final determination of this recourse".

When the application for the provisional order came before me in the morning of 14.4.1983 counsel for respondent stated that the "Notice" of the applicants dated 12.4.1983 was received by the respondent short while age.

At this stage it was hinted to counsel for applicants, by Court, that the said "Notice-Application" of 12.4.1983 (which did not bear on it any reference to Law or rule of Court and for which the leave of the Court was never asked or obtained) savoured rather of proceedings connected with the issue of prerogative writ envisaged by Article 155.4 of the Constitution and could not in any way be treated as an "ancillary" matter within the competence of the Court in its revisional jurisdiction. Upon this counsel for applicant withdrew his said Notice-Application reserving the rights of applicants to take other steps and the hearing of the application for provisional order as originally filed was proceeded with.

Counsel for applicant referred at length to the affidavit sworn on 23.3.1983 in support of this application and produced several documents (apart from the sub judice decision of the respondent which was already in the file—marked exh. 1) as follows:-

(i) A copy of the letter addressed by counsel for applicants to respondent dated 7.3.1983 (exh. 2).

(ii) Copy of a decision of the Council of Ministers under No. 19018 dated 24.4.1980 (exh. 3).

(iii) Copy of a letter dated 15.1.1983 addressed to the respondent Minister by the parents association of all applicants (exh. 4).

(iv) Copy of letter dated 28.2.1983 addressed by the respondent Minister to the parents association of applicants in reply to their letter exh 4 (exh 5)

Counsel for applicants also made a statement to the effect

(a) that all applicants belong to conscription classes of 1970-1982.

(b) that the last call for conscription was made by the Council of Ministers in October 1982

This statement of counsel for applicants was not disputed by counsel appearing for the respondent

Furthermore counsel for applicants referred the Court to the decision of L. Loizou, J. in the case of *David Christou and others* v. *The Republic*, (1982) 3 C.L.R. 365, informing the Court at the same time that the 135 applicants out of the 183 in the present recourse were the same applicants in Recourses 414/81, 459/81 and 468/81 in which the above cited decision was given on 3 6.1982, learned counsel also laid stress to the fact

(1) that in the aforesaid cases one of the grounds of the said recourses was abandoned as follows

"A last ground of law to the effect that decision 19018 of the 24.4.1980 of the Council of Ministers which exempts Maronites, Armenians and Latins from military service covers also Jehova's Witnesses has been abandoned"

(Vide *David Christou and others* v. *The Republic* (supra) at p p. 372, lines 27-30)

(2) That the present recourse of the applicants relies on the then abandoned ground on which the Court never pronounced due to its abandonment

Relying on all the above material learned counsel for applicants submitted that the sub judice decision of the respondent is flagrantly illegal for two main reasons.

(a) It is clear, he submitted,—from the sub judice decision of the respondent (exh. 1) and in particular from the second para. thereof that the respondent was labouring

under a misconception of fact notably that the Court in the *Christou* case (supra) adjudicated on the issue abandoned and thus reached his decision without bothering to inquire into the matter at all. The legal effect of non-examination by the respondent of this crucial point—counsel maintained—and his misconception to the effect that in fact it had been examined and adjudicated upon by the Court in the said case earlier, amounts to a glaring illegality which vitiates respondent's decision which in substance—he emphasized—is no decision at all.

(b) Exh. 1—the sub judice decision—is just signed by Director-General of the Ministry of Defence and does not anywhere say that the signatory is acting for and on behalf of the Minister; "although in my letter exh. 2", counsel argued, "I deliberately asked the placing of my aforesaid application on behalf of the applicants before the Minister of Defence for his consideration", a reply, exh. 1, was received signed only by the Director General of the Ministry of Defence purporting to be his decision, i.e. it is a decision emanating from an organ of no competence to make such a decision.

Counsel for applicants further maintained that if the provisional order applied for is not granted his clients will suffer irreparable damage. In support of this submission he referred the Court to the cases of *Michaelides* v. *The Republic* (1980) 3 C.L.R. 430 and *David Christou and Others* v. *The Republic*, (1982) 3 C.L.R. 634 laying stress on the last part of the aforesaid decision which appears at p. 640 (lines 15-20).

Counsel appearing for the respondent addressed the Court and relied mainly on the ground that the sub judice decision of the respondent contained in exh. 1 is a negative administrative decision and as such cannot be suspended by means of a provisional order.

Counsel for the respondent further submitted several other grounds on account of which the provisional order applied for should not be issued. These additional grounds may be conveniently summarised as follows:

(a) There is no illegality in the sub judice decision; a fortiori so there is no flagrant illegality as no illegality appears on the face of it. A flagrant illegality must be palpably identifiable and the Court should not go into the merits of the main recourse in deciding this issue because that would in effect mean contravention of rule 13 of the Supreme Constitutional Court Rules which provides that the Court in examining an application for a provisional order should not dispose of the case on its metits.

(b) There is no material before the Court indicating that the applicants will suffer irreparable damage if the provisional order is not made. The only material before the Court in the present application is the statement of the affiants appearing in para. 8 of the affidavit in support of the present application where it is stated that if the present application is refused applicants will "suffer irreparable loss"; and the respondent in the affidavit filed in opposition of present application denies such "irreparable loss".

(c) A glance on the sub judice decision will indicate that the decision attacked is not of an executory nature but is merely informatory.

(d) From the statement of counsel of applicants and from the relevant exhibits placed before the Court it is clear that the recourse is out of time.

Before examining the material before me and the addresses of learned counsel in favour and against the present application for a provisional order I feel that it is necessary to deal briefly with the legal aspect governing the issue of provisional orders.

The making of a provisional order under rule 13 of the Supreme Constitutional Court Rules 1962, which continue in force under s. 17 of the Court of Justice (Miscellaneous Provisions) Law 1964, Law No. 33/64, involves the exercise of judicial discretion on the basis of the circumstances of the particular case and in the light of the principles which should guide an administrative Court when dealing with such application. (*C.T.C. Consultants Ltd.* v. *The Cyprus Tourism Organisation*, (1976) 3 C.L.R. 390, at page 393).

Such principles have been expounded and applied as early as 1962 in the case of *Aspri* v. *The Republic*, 4 R.S.C.C. 57, by the then Supreme Constitutional Court, and after the enactment of Law No. 33/64 by our Supreme Court, commencing from the case of *Cleanthis Georghiades* (*No.* 1) v. *The Republic* (1965) 3 C.L.R. 392, and in a great number of cases thereafter.

> "A provisional order is an extraordinary measure designed to forestall the enforcement of administrative action in the interests of justice and administrative legality...... With the exception of instances of flagrant illegality in the sense above outlined, the likelihood of irreparable damage is a prerequisite to the grant of an interlocutory order. Such damage must be specifically and succinctly pleaded in the application...... The merits of the case are not evaluated at this stage except to the extend they undisputably emerge on the face of the proceedings. The forum for the evaluation of the merits is the trial of the recourse". (*Frangos and others* v. *The Republic* (1982) 3 C.L.R. 53 at pp. 60–61).

The principle that the flagrant illegality of an administrative act is a ground for granting a provisional order even if no irreparable damage will be caused, if it is not granted, and even where serious obstacles would be caused to the administration, was enunciated in the case of *Sophocleous* v. *The Republic*, (1971) 3 C.L.R. 345. This principle is to be found also in the cases of *Papadopoulos* v. *The Republic*, (1975) 3 C.L.R. 89; *Yerasimou* v. *The Republic* (1978) 3 C.L.R. 36; *Prokopiou & Others* v. *The Republic* (1979) 3 C.L.R. 686; *Michaelides* v. *The Republic* (1980) 3 C.L.R. 430 and recently in the cases of *Prodromou* v. *The Republic* (1981) 3 C.L.R. 38, *Soteriou* v. *The Republic*, (1981) 3 C.L.R. 70 and *Sofocleous* v. *The Republic* (1981) 3 C.L.R. 360.

It was stressed though on several occasions that flagrant illegality is a ground to be approached with the utmost caution, as it may tantamount to disposing of the case on its merits, something discouraged by rule 13 of the Supreme Constitutional Court Rules, though this rule cannot be held as divesting this Court from being the watch-dog of legality. (Vide *Sophocleous* v. *The Republic* (1971) 3 C.L.R. 345, at p. 353).

Of course before proceeding to examine whether essential requisites for the granting of a provisional order exist, it must always be borne in mind (a) that every applicant for a provisional order must have exercised a parallel application for annullment (Vide Provisional Protection in Revisional Litigation by Skouris 1979 ed. p. 28). (b) No application for a provisional order can be entertained for negative administrative acts or decisions. (Vide Skouris (supra) at pp. 31-33).

This latter principle was follwed in a number of cases amongst which I shall confine myself in referring to *Artemiou* (*No.* 2) v. *The Republic* (1966) 3 C.L.R. 562; *Tyrokomou* v. *The Republic* (1976) 3 C.L.R. 403 and the recent case of *Riad Karram* v. *The Republic* (1983) 3 C.L.R. 199.

The reason for the rule that the negative decisions cannot be suspended by a provisional order is based on the reasoning that if a negative decision is suspended this would in effect mean that the Administration is indirectly forced to grant the demand or request; and the judicial power, a quite distinct power of the state cannot invade the domain of the Administration by enjoining the latter to do things that the Administration has refused to do.

In this respect the following are stated by Tsatsos in his work "The Recourse for annulment before the Council of State" 3rd ed. at p. 424:

> "Διὰ τοῦτο: αἴτησις ἀναστολῆς κατὰ ρητῆς ἔστω, ἀλλὰ ἀρνητικῆς πράξεως τῆς Διοικήσεως μηδὲ κατὰ τὸ γράμμα τοῦ νόμου συγχωρεῖται, μηδὲ λογικῶς εἶναι νοητή, ὡς ἐπαγομένη ἐὰν ἐγίνετο δεκτή, τὸν ἐξαναγκασμὸν τῆς διοικήσεως, ὅπως προβῇ εἰς ἐνέργειαν τινά, τοῦθ' ὅπερ ἀντιφάσκει πρὸς τὴν ἔννοιαν τῆς ἀναστολῆς".
>
> ("For this reason: application to suspend even an express negative act of the administration cannot be excused either in accordance with the letter of the law or is it logically comprehensible as leading, if accepted, to the compulsion of the administration to proceed to any act which is contrary to the notion of suspensions").

Reverting now to the present application I have to examine in the first place the nature of the sub judice decision, which is exhibit 1 before me. Irrespective of the allegation of the respondent that same is not of an executory nature and leaving 5 aside for a moment the grounds on account of which it is being impugned by the applicants it is crystal clear that the decision in question is a refusal of the respondent Minister to exempt the applicants from service in the National Guard. Such refusal tantamounts to a negative decision of the Administration; 10 and as stated above it is not possible to suspend by means of a provisional order under rule 13 of the Supreme Constitutional Court Rules, a negative administrative decision.

Although this my finding disposes of the present application which is thus doomed to failure, I intend to proceed further 15 and examine the submissions advanced by learned counsel of applicants which, as already stated, touch the issues of flagrant illegality and irreparable damage.

Flagrant Illegality:

In examining this issue exceptional heed must be paid to the 20 provisions of rule 13 of the Supreme Constitutional Court Rules, which provide inter alia that the Court can make a provisional order "not disposing of the case on its merits"; I do not intend therefore to decide for the pruposes of the present application whether the sub judice decision is purely con- 25 firmatory or merely informatory as submitted on behalf of the respondent as that would in effect mean going into the merits of the case and pronouncing on the question as to its being executory or not which would inevitably lead to disposing of this case on its merits.

30 Coming now to the submission of counsel for applicants on the issue of flagrant illegality, I feel that logically I should commence with the consideration of the second leg of the submission, notably the allegation that as the sub judice decision is signed by the Director-General of the Ministry of Defence 35 it purports to be his decision and thus "it is a decision emanating from an organ having no competence to make such a decision".

Careful perusal of the sub judice decision, exh. 1, indicates that the letter in question was written by the Director-General

of the Ministry of Defence on behalf of his Minister. Exh. 1 commences as follows:

"Κύριε,

Ἔχω ὁδηγίες νὰ ἀναφερθῶ στὴν ἐπιστολή σας τῆς 7.3.1983 ________________________________".

("Sir,

I am directed to refer to your letter of 7.3.1983________ ________________________________").

I cannot loose sight of the fact that (a) the letter of 7.3.1983 which is referred to in the sub judice decision is the letter (exh. 2) addressed by counsel for applicants to the Director of the Ministry of Defence asking him to place it before his Minister for a decision on the matter. (b) The letter of 10.3.1983 containing the sub judice decision is addressed to counsel for applicants by the Director-General of the Ministry of Defence stating verbatim "Ἔχω ὁδηγίες νὰ ἀναφερθῶ κ.λ.π.______" thus although the sub judice decision is signed by the Director-General of the Ministry of Defence it is quite apparent that it was written according to the "instructions" of his Minister. Therefore according to the presumption of regularity expressed by the maxim "omnia praesumuntur rite et solenniter esse acta" (All acts are presumed to be done rightly and regularly) the sub judice decision was taken by the Minister and not by the Director-General of the Ministry.

Now as regards the first leg of the submission of learned counsel for applicants on flagrant illegality, the short answer to that is that the illegality must be "palpably identifiable" (*Frangos* v. *The Republic* (1982) 3 C.L.R. 53). The illegality, if any, must appear clearly on the sub judice decision. In the present case counsel for applicants had to produce several documents (exh. 2, exh. 3, exh. 4, exh. 5) and make a statement (referred to earlier on in the present decision) in order to be enabled to advance his argument to the effect that "the respondent was labouring under a misconception of fact and thus did not bother to take any decision at all", an argument which is not warranted by the sub judice decision and it is a fortiori so in view of the presumptions of regularity (*Kousoulides* v. *The Republic* (1967) 3 C.L.R. 438c and correctness ([illegible]allis v. *The Republic* (1970) 3 C.L.R. 424).

I am not intending for the purposes of the present application to pronounce at this stage on the effect of exh. 3 or the substance of the additional exhibits produced or on counsel's statement with particular reference to the time of call up of the applicants
5 in the National Guard, a course which if adopted results in plunging deeply into the merits of the case for which the appropriate forum is the hearing of the main recourse; instead I shall confine myself in observing that the invocation of other material in order to support subtle argument pointing at alleged
10 illegality of the impugned decision confirms that the illegality, if any, of the decision, is not "palpably identifiable" therefore far from being a "flagrant" one.

For the above reasons the applicants failed to establish "flagrant illegality" a necessary prerequisite for the issue of the
15 provisional order.

Irreparable damage:

It is well settled that the irreparable damage may be either financial or moral (*Petrolina Ltd. and another* v. *The Republic* (1977) 3 C.L.R. 173). Such damage must be specifically and
20 succinctly pleaded in the application for a provisional order. (*Frangos* v. *The Republic* (1982) 3 C.L.R. 53). Vague statements will not do. (*Sofocleous* v. *The Republic* (1971) 3 C.L.R. 345).

In the present application the applicants confine themselves in mentioning simply that they will "suffer irreparable loss"
25 if this application is refused. (Vide para. 8 of the affidavit in support of the application dated 23.3.1983). Nothing else whatever is referred to in the application indicating either the right violated or the nature of such alleged loss.

It is true that in the letter of counsel for applicants addressed
30 to the respondent Minister on 7.3.1983 (exh. 2) a general vague allegation is made (vide page 2 para. e) to the effect that the "religious believes of the applicants do not permit them enlisting in the National Guard" but no further material exists substantiating the aforesaid vague allegation in exh. 2. I have
35 been referred by counsel for applicants to the case of *Michaelides* v. *The Republic* (1980) 3 C.L.R. 430. I have considered this case but I must say, with respect, that the facts thereof are completely different from the facts of the present case. In the case of *Michaelides* (supra) the Court found the sub judice

decision flagrantly illegal as being prima facie unconstitutional following a previous decision on a similar matter decided by another Court. (*Pieris* v. *The Republic* (1979) 3 C.L.R. 91) I am not in a position to know what was pleaded in Michaelides case (supra) in respect of irreparable damage nor do I know what were the facts before the Court in that respect; the only thing I can observe from the relevant report is that the Court in the case of Michaelides had satisfactory material before him in order to decide on irreparable damage, which is not the case in the application in hand. Further I was referred by counsel for applicants to the decision in the application for a provisional order in *Christou* v. *The Republic* (1982) 3 C.L.R. 634 decided on 15.7.1982 by the learned President of this Court after the dismissal of the main recourse in that case and whilst an appeal against the said dismissal (R.A. 283) was then still pending.

Counsel laid emphasis on the following passage of the said decision appearing at p. 640 (lines 15–25) which reads as follows:

> "By the statement made, as aforesaid, on January 9, 1982, on behalf of the respondent Minister of Interior and Defence, that no action would be taken against the appellants for a period of six months there was, in effect, suspended for six months the obligation of the appellants to do military service; and this is a very strong indication that there exists no pressing need to secure their services, as conscripts or reservits, in the National Guard. Consequently, no real harm to the public interest will be caused if, for a further period which, normally would not exceed a few months, the appellants were to be allowed not to enlist for military service pending the determination of their appeal, R.A. 283".

I do not loose sight that the aforementioned applicants–appellants in R.A. 283 are the 135 applicants out of the 183 applicants of the case in hand, but at the same time I have to remember the following facts as well:

(i) R.A. 283 was dismissed on 21.9.1982.

(ii) On 23.2.1983 the respondent Minister addressed to the Parents Association of applicants exh. 5 in reply to their letter exh. 4. In the last three lines of the first para. of exh. 5 we read the following:

"Οἱ περιστάσεις τοῦ τόπου εἶναι τόσο δύσκολες πού καθιστοῦν τή στράτευση ὅλων τῶν ὑπόχρεων γιά ὑπηρεσία στήν Ε.Φ. ἀπαραίτητη".

("The circumstances of the country are so difficult that render the enlistment of all liable to serve in the National Guard necessary").

and the letter continues in para. 2 as follows:

2. Θά εὐχαριστηθῶ ὅπως τό θέμα ἀντικρυσθεῖ ἀπό τή δική σας πλευρά στά πλαίσια τοῦ Ἐθνικοῦ συμφέροντος καί συνεργασθεῖτε πλήρως γιά τήν κατάταξη ὅλων ὅσων ἔχουν κληθεῖ ἤ θά κληθοῦν γιά κατάταξη".

("I shall be pleased if the matter is faced on your part within the framework of the national interest and co-operate fully for the enlistment of all those who have been called or will be called for enlistment").

From the above it is abundantly clear that on 9.1.1982 a statement was made in the case of *Christou* v. *The Republic* (1982) 3 C.L.R. 365 on behalf of the respondent Minister substantially suspending for a period of six months as from 9.1.1982 the obligation of the applicants to do military service. One can assume from the aforesaid statement of the respondent Minister that there was no pressing need for the securing of the services of the applicants in the National Guard during this period (9.1.1982–9.7.1982) and in the absence of any indication to the contrary (and in view of the fact that the recourse of the applicants was dismissed on 3.6.1982) the learned President of the Court was right in assuming on 15.7.1982 that "no real harm to the public interest will be caused" if the enlistment of the applicants in the National Guard was suspended a few more months pending the determination of their appeal.

But now the situation has changed; on the one hand this time we have the responsible statement of the respondent Minister on 28.2.1983 appearing in exh. 5 to the effect that "the circumstances of the country are so difficult that render the service of all obliged to serve in the National Guard indispensable"; on the other hand R.A. 283 was dismissed more than seven months ago.

Concluding on this issue I feel that I should also add that as it appears from the report of *David Christou and Others* v. *The Republic* (1982) 3 C.L.R. 634 the question of suspending by means of a provisional order a negative decision of the Administration was never raised before the learned President of this Court and consequently such an issue was never decided in that case.

For all the reasons I have endeavoured to explain above the present application fails and it is accordingly dismissed.

In the circumstances I shall make no order as to costs.

Recourse dismissed. No order as to costs.