

1984 October 31

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS MAVROGENIS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR AND/OR
THE MINISTER OF THE PRESIDENCY AND/OR
THE DIRECTOR OF PRESS OFFICE AND INFORMATION
SECTION,

Respondents.

(Case No. 197/83).

*Act or decision in the sense of Article 146.1 of the Constitution—
—Which can be made the subject of a recourse thereunder—
Monetary disputes arising “ex contractu”—Are within the domain
of private law and are not justiciable under the above Article—
Unilateral act of the administration whose object is eliminated
to a claim of a specified amount with no repercussions to the indi-
vidual concerned amounts to a monetary dispute and again is
not amenable to the jurisdiction under the above Article.*

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*Administrative Law—Administrative acts or decisions—Executory
acts or decisions—Informatory or confirmatory act—Does not
contain an executory decision and cannot be made the subject
of a recourse under Article 146.1 of the Constitution.*

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*Legitimate interest—Article 146.2 of the Constitution—Express
or implied acceptance of an administrative act or decision—
Deprives acceptor of a legitimate interest entitling him to make
a recourse for the annulment of such act or decision.*

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On 5.2.1983 a meeting was convened at the Press and Informa-
tion Office, Nicosia with a view to arranging matters connected
with the publication in the local press of the “notice of poll”

envisaged by the relevant legislation, in the contested Presidential elections to be held on the 13th February, 1983.

5 At the said meeting the Director of Press and Information Office informed the 5 or 6 owners and/or representatives of the local press present, of the decision of the "Returning Officer" of the Elections as to the number of local newspapers in which the "notice of poll" was to be published, the date of the proposed publication, the rate of remuneration laying stress to that part of the decision which provided that weekly newspapers will be
10 paid only 50% of the remuneration payable to daily newspapers.

All journalists present at the meeting, including the applicant in the present case, who was at the material time the owner and publisher of the weekly newspaper "Satyriki", accepted the aforesaid offer of the Director of Press and Information Office, at
15 least tacitly.

Complying with the above decision, the applicant published on 7.2.1983 in his said weekly newspaper the "notice of poll" in question.

20 When applicant was paid only 50% of the remuneration by his letter dated 18.4.1983 he claimed the alleged balance of 50%.

Respondents turned down his claim by their letter dated 26.4. 1983 and hence this recourse.

25 *On the preliminary objection that the decision impugned did not constitute an administrative decision within the ambit of Article 146.1 of the Constitution, but simply referred to a "monetary dispute" which fell within the ambit of private law, and it was therefore not justiciable:*

30 *Held*, that the nature of the dispute that arose in the present case is substantially a monetary one; that if the decision in question is considered as an offer by the Administration which was accepted by the applicant albeit tacitly, a binding contract was thus created; and that monetary disputes arising "ex contractu" are definitely within the domain of private law and
35 therefore not justiciable under Article 146.1 of our Constitution; that if on the other hand, the said decision of the Returning Officer is considered as unilateral act of the administration same is eliminated to fixing the remuneration to be paid to weekly

newspapers and it has no other repercussions to the individual concerned i.e. the applicant; and that if the individual chooses to challenge the said decision—as the applicant in fact did—then the nature of the dispute is merely “a monetary dispute” which is not amenable to the jurisdiction under Art. 146.1 of the Constitution; accordingly the present recourse is doomed to failure and must be dismissed. 5

Held, further, (1) that the letter of the respondents dated 26.4.1983 which is being impugned by means of the present recourse, does not contain any new decision of the administration; it simply denotes the adherence of the administration to the decision of 5.2.1983; that the letter of 26.4.1983 has therefore an informatory and/or confirmatory character and does not contain an executory decision; that in view of the fact that the executory decision of the Returning Officer was communicated to the applicant as early as the 5th February, 1983 and the present recourse was filed on the 19th May, 1983 the latter is definitely out of time having been filed after the lapse of the time margin envisaged by Article 146.3 of our Constitution. 10 15

(2) That on 5.2.1983 when the aforesaid decision was communicated to the applicant the latter tacitly accepted it and he voiced no disagreement or reservation at the time; that it is well settled that a person who expressly or impliedly accepts an act or decision of the administration is deprived, because of such acceptance, of a legitimate interest entitling him to make a recourse for the annulment of such act or decision; and that, therefore, the present recourse is doomed to failure on the additional ground that the applicant lacks “the existing legitimate interest” envisaged by Article 146.2 of the Constitution. 20 25

Application dismissed. 30

Cases referred to:

- HjiKyrjakou v. HjiApostolou*, 3 R.S.C.C. 89;
- Valana v. Republic*, 3 R.S.C.C. 91;
- Asproftas v. Republic* (1973) 3 C.L.R. 366;
- Republic v. M.D.M. Estate Developments Ltd.* (1982) 3 C.L.R. 642; 35
- Charalambides v. Republic* (1982) 3 C.L.R. 403;
- Chiratis v. Republic* (1982) 3 C.L.R. 540;

Tekkis and Another v. Republic (1982) 3 C.L.R. 680;
Galanos v. C.B.C. (1984) 3 C.L.R. 742;
Greek Registrar of Co-operative Societies v. Nicolaidis (1965)
 3 C.L.R. 164;

5 *Constantinidou and Others v. Republic* (1974) 3 C.L.R. 416;
Neocleous and Others v. Republic (1980) 3 C.L.R. 497;
HjiConstantinou and Others v. Republic (1980) 3 C.L.R. 184;
Five Bus Tours Ltd. v. Republic (1983) 3 C.L.R. 793.

Decision of the Greek Council of State No. 930/38.

10 **Recourse.**

Recourse against the decision of the respondents whereby the rate of remuneration for the publication of the "notice of poll" of the Presidential elections of the 13th February, 1983 to be published in the weekly newspapers was fixed at 50%

15 of the remuneration payable to daily newspapers.

A.S. Angelides, for the applicant.

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

Cur. adv. vult.

20 LORIS J. read the following judgment. On 5.2.1983 a meeting was convened at the Press and Information Office, Nicosia, with a view to arranging matters connected with the publication in the local press of the "notice of poll" envisaged by the relevant legislation, in the contested Presidential elections to

25 be held on the 13th February, 1983.

At the said meeting Mr. Psyllides (R.W.1), the Director of Press and Information Office informed the 5 or 6 owners and/or representatives of the local press present, of the decision of the "Returning Officer" of the Elections (vide Appendix "A" attached

30 to the written address of respondents) as to the number of local newspapers in which the "notice of poll" was to be published, the date of the proposed publication, the rate of remuneration laying stress to that part of the decision which provided that weekly newspapers will be paid only 50% of the remuneration

35 payable to daily newspapers.

All journalists present at the meeting, including the applicant in the present case, who was at the material time the owner and publisher of the weekly newspaper 'Satyriki' accepted the

aforesaid offer of the Director of Press and Information Office, at least tacitly; on the same day, after the said meeting, officials of all newspapers concerned were notified accordingly through telephone by the Press and Information Office.

Complying with the above decision, the applicant published on 7.2.1983 in his said weekly newspaper the "notice of poll" in question. 5

On 8.2.1983 the applicant addressed to the respondent a bill claiming £9,720.- for the said publication of 7.2.1983. (vide Appendix 'B' attached to the written address of the applicant). 10

The Director of Press and Information Office furnished the applicant with cheque No. 127870 for the amount of £4,819.500 mils in full satisfaction of the aforesaid publication. A relevant receipt was signed by the applicant (vide Appendix 'Γ' attached to the written address of the applicant). It must be stated here, that underneath his signature on the receipt, the applicant inserted the words "without prejudice of rights for the balance of the amount which is referred to in the invoice issued". 15

It is abundantly clear that the amount of £4,819.500 mils, paid to the applicant as above, represented payment by respondents in full satisfaction of applicant for the aforesaid publication of 7.2.1983, pursuant to the decision of the Returning Officer of the Elections to the effect that weekly newspapers will be paid only 50% of the remuneration payable to daily newspapers, a decision which was communicated to the applicant on 5.2.1983 and was accepted by him at least tacitly, at the time. 20 25

It seems that on 18.4.1983 counsel for applicant addressed to the Ministry of Interior a letter claiming on his client's behalf, the alleged balance due, after the payment of £4,819.500 mils, as per the invoice of 8.2.1983. 30

Although such a letter was never produced before me the contents thereof can be inferred from the letter dated 26.4.1983 addressed by the Director-General of the Ministry of Interior to applicant's counsel which was produced and it is ex. 2 before me, by virtue of which said applicant's claim was turned down for the reasons therein stated. 35

Now the applicant by means of the present recourse impugnes the decision contained in ex. 2 dated 26.4.1983 praying for a declaration of this Court to the effect that (a) the aforesaid decision of 26.4.1983 is null and devoid of any legal effect.

5 (b) The omission of the respondents "to pay the balance of £4,900.- (to the applicant) is illegal and what was omitted ought to have been done".

The respondents in their opposition raise the preliminary objection that the decision impugned does not constitute an administrative decision within the ambit of Article 146.1 of the Constitution, but simply refers to "monetary dispute" which falls within the ambit of private law, and it is therefore not justiciable.

10 As the above objection goes to the root of the jurisdiction of this Court I shall be dealing with it first.

It was held as early as 1962 (*Achilleas HjiKyriakou and Theologia HjiApostolou*, 3 R.S.C.C. 89) that "an act or decision" in the sense of paragraph 1 of Article 146 is an act or decision in the domain only of public law and not an act or decision of a public officer in the domain of private law.

Ever after this principle was reiterated in a number of cases (*Valana v. Republic*, 3 R.S.C.C. 91, *Asproftas v. The Republic* (1973) 3 C.L.R. 366, *Republic v. M.D.M. Estate Developments Ltd.*, (1982) 3 C.L.R. 642, *Charalambides v. The Republic* (1982) 3 C.L.R. 403, *Chiratis v. The Republic* (1982) 3 C.L.R. 540, *Tekkis & Another v. The Republic* (1982) 3 C.L.R. 680; and most recently by the Full Bench in the case of *Galanos v. CBC* (1984) 3 C.L.R. 742).

Of course it is "primarily the nature and character of a particular act or decision which determines whether or not such act or decision comes within the scope of paragraph 1 of Article 146 of the Constitution. The same organ may be acting either in the domain of private law or in the domain of public law depending on the nature of its action." (*The Greek Registrar of the Co-operative Societies v. Nicos Nicolaidis* (1965) 3 C.L.R. 164).

Thus in the case of *Galanos v. CBC* (supra) it was held by the majority of the Full Bench of this Court that "In fixing the

prices for the time of advertisements and in applying a uniform standard practice as to the advertisements on television, the Corporation is not exercising an imperium but only it operates as a commercial enterprise in the domain of private law.....”

According to the case law of the Greek Council of State the dispute as to the existence or not of a monetary claim constitutes a “monetary dispute” which falls within the jurisdiction of the civil Courts (vide Dagtoglou on General Administrative Law 1981 ed. Volume ‘Γ’ at pages 268–269).

Even in cases of monetary disputes emanating from a unilateral act of the Administration, effected on the basis of rules of administrative law, when the object of the dispute is eliminated to a claim of a specified amount of money and there is no other repercussion from the administrative act attacked, then competence vests with the civil Courts (vide the Decisions of the Greek Council of State 1929–1959 at p. 235).

In the work of Tsoutsos “Administration and Law” 1979 ed. at pages 263 to 265, where “the developments of case Law on monetary disputes” are being examined, it is clearly stated that the modern case law employs the term “monetary dispute” in order to denote the jurisdiction of the civil Courts to the exclusion of the jurisdiction of the Greek Council of State “to adjudge on such a dispute” (vide 2nd paragraph at page 264). In this connection reference is made to the case of the Greek Council of state Σ.Τ.Ε. 930/38 where it is stated verbatim that

“Διοικητικάί πράξεις παρέχουσαι λαβήν εις άπλάς χρηματικάς διαφοράς— δέν είναι προσβληταί δι’ αίτήσεως άκυρώσεως, μόνα δέ τά άστικά Δικαστήρια είναι άρμόδια νά επιλύσωσι τάς διαφοράς ταύτας”.

(Administrative acts giving rise to simple monetary disputes _____ are not amenable to a recourse for annulment, only the Civil Courts are appropriate to solve these disputes”).

In the present case the decision to pay to weekly newspapers 50% of the remuneration payable to daily ones for the publication in question, was taken by the Returning Officer of the Elections undoubtedly a public organ.

Independently of the fact that the applicant, to whom the aforesaid decision was communicated on 5.2.1983, tacitly consented to it, (a matter which will be dealt with later on in the present judgment) the nature of the dispute that arose in the present case is substantially a monetary one.

If we consider the decision in question as an offer by the Administration which was accepted by the applicant albeit tacitly, a binding contract was thus created; and monetary disputes arising "ex contractu" are definitely within the domain of private Law and therefore not justiciable under Article 146.1 of our Constitution.

If on the other hand the said decision of the Returning Officer is considered as unilateral act of the administration same is eliminated to fixing the remuneration to be paid to weekly newspapers and it has no other repercussions to the individual concerned i.e. the applicant. If the individual chooses to challenge the said decision—as the applicant in fact did—then the nature of the dispute is merely "a monetary dispute" which according to the authorities cited above, which I adopt, is not amenable to the jurisdiction under Art. 146.1 of our Constitution.

For all the above reasons the present recourse is doomed to failure and must be accordingly dismissed.

Before concluding, I feel it my duty to inquire into two more issues which although not raised or argued before me can be raised by the Court acting ex proprio motu as touching the justiciability of the present recourse.

These issues are (a) Time within which to file a recourse (vide Holy See of *Kitium v. Municipal Council of Limassol*, 1 R.S.C.C. 15) (b) Presence of legitimate interest under Article 146.2 of the Constitution (vide *Constantinidou and Others v. Republic* (1974) 3 C.L.R. 416).

A. Time

I hold the view that the administrative decision to pay weekly newspapers 50% of the remuneration payable to the daily papers for the publication in question was taken by the Returning Officer on 5.2.1983 or shortly before that date and was com-

municated to all those present at the meeting, including the applicant on 5.2.1983.

The letter of the Director-General of the Ministry of Interior addressed to applicant's counsel on 26.4.1983 (ex. 2), which is being impugned by means of the present recourse, does not contain any new decision of the administration; it simply denotes the adherence of the administration to the decision of 5.2.1983. The letter of 26.4.1983 has therefore an informatory and/or confirmatory character and does not contain an executory decision.

In view of the fact that the executory decision of the Returning Officer was communicated to the applicant as early as the 5th February, 1983 and the present recourse was filed on the 19th May, 1983 the latter is definitely out of time having been filed after the lapse of the time margin envisaged by Article 146.3 of our Constitution.

B. *Legitimate Interest*

As already stated at the beginning of this judgment the applicant was present together with other owners and or representatives of the local press at the meeting convened on 5.2.1983 at the Press and Information Office, Nicosia when Mr. Psyllides, the Director of Press and Information Office communicated the decision of the Returning Officer which provided inter alia that weekly newspapers will be paid only 50% of the remuneration payable to daily newspapers.

In giving evidence before me Mr. Psyllides (R.W.1) stated clearly, and I have no reason to disbelieve him, that all those present accepted the decision communicated to them at least tacitly; no one including the applicant voiced then and there, either disapproval or any reservation whatsoever.

The applicant in giving evidence before me in spite of his evasive answers admitted in cross-examination that he was present at the said meeting of 5.2.1983; in an attempt to explain his failure to voice any disagreement or reservation at the time to the decision communicated to him he stated verbatim:

“Μά δεν ήτο ο κ. Ψυλλίδης που θά συζητούσα μαζί του αν θά πληρωνόμουν από τήν κυβέρνηση τά μισά ή οχι. Δεν ήτο τό ενδεδειγμένο πρόσωπο για να συζητήσω μαζί του”.

(“But it was not Mr. Psillides with whom I would discuss if I would be paid by the Government one half or not. He was not the appropriate person to discuss with”).

5 It is a fact which is apparent from Appendix “Γ” (attached to the written address of the applicant) that considerable time after the 5th February 1983, the applicant inserted on the receipt for the amount of £4,819,500 mils, the words “without pre-
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judice of rights for the balance of the amount which is referred to in the invoice issued”; nevertheless the fact remains that on 5.2.1983 when the aforesaid decision was communicated to the applicant the latter tacitly accepted it and he voiced no disagreement or reservation at the time.

It is well settled that a person who expressly or impliedly accepts an act or decision of the administration is deprived because of such acceptance, of a legitimate interest entitling him to make a recourse for the annulment of such act or decision (vide *Neocleous & Others v. Republic* (1980) 3 C.L.R. 497, *HjiConstantinou & others v. Republic* (1980) 3 C.L.R. 184, *Five Bus Tours Ltd. v. Republic* (1983) 3 C.L.R. 793).

20 So the present recourse is doomed to failure on the additional ground that the applicant lacks “the existing legitimate interest” envisaged by Article 146.2 of the Constitution.

In the result the present recourse is dismissed for the reasons above stated; in the circumstances I have decided to make no
25 order as to the costs thereof.

Recourse dismissed. No order as to costs.