

1984 June 11

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LEONIDAS CHRYSANTHOU AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR AND/OR
THE COMMANDER OF POLICE AND/OR
THE MINISTRY OF INTERIOR,

Respondents.

(Case No. 148/82).

Administrative Law—Administrative acts or decisions—Executory act—Confirmatory act—Meaning—Acting Sergeants in the Police Force—Dismissal—Subsequent decision reinstating them in the Police Force but not giving them acting appointments as Police Sergeants—No recourse against such decision—Request for reinstatement as Acting Sergeants made 8 years later and refused—Such refusal a confirmatory decision of the previous executory decision and as such is not justiciable 5

Legitimate interest—Article 146.2 of the Constitution—Recourse against refusal to reinstate to post of Acting Sergeant in the Police Force—Applicant resigning from the Police Force before the filing of the recourse—No legitimate interest to file a recourse. 10

All applicants were on the 15th July, 1974 acting sergeants in the Cyprus Police Force. On the 1st August, 1974 a person who was appointed as "Chief Constable" by "the person who during the coup d' etat unconstitutionally and illegally assumed the office of the President of the Republic" terminated the acting appointments of all applicants as from 23.7.1974; furthermore the said person on 1.9.1974 dismissed the applicants altogether from the Police Force. On 23.9.1974 Mr. Savvas Antoniou the person lawfully holding the office of Chief Constable issued an order whereby the applicants were reinstated in the Police 15 20

force with retrospective effect but they were not given acting appointments as Police Sergeants. No recourse was filed against this decision. On 4.12.1981 Counsel for all applicants applied to the Minister of Interior for the reinstatement of all applicants in the temporary posts of acting Police Sergeants i.e. the posts they were holding up to the 23.7.1984. The Minister of Interior turned down the application on the 4.2.1982 and hence this recourse which was filed on 24.3.1982. In the meantime applicant No. 3 resigned from the Police Force on 16.2.1982.

On the preliminary objections raised in the opposition to the effect that

(1) The executory act was the decision of the Chief Constable of 23.9.1974.

(2) The decision of the Minister of 4.2.1982 was only of a confirmatory nature and, therefore, non justiciable.

(3) All applicants upon their reinstatement in the Cyprus Police Force have accepted to be replaced as Police Constables and therefore they have been deprived of their "existing legitimate interest" envisaged by Article 146.2 of the Constitution. In particular applicant 3, has no present existing legitimate interest, having resigned from the Police Force on the 16.2.1982.

Held, after dealing with the meaning of executory and confirmatory act—vide pp. 674-675 post; that the decision of the Chief Constable dated 23.9.1974 was a decision of an executory character, that is a decision expressing the will of the administrative organ in question, aiming at producing a legal situation which was in fact produced; that the sub-judice decision of 4.2.1982 is merely a confirmatory decision of the earlier executory one, signifying the adherence of the administration to a course already adopted; and that, therefore, the present recourse is non justiciable on this ground and is, therefore, doomed to failure.

Held, further, that though voluntary and unreserved acceptance of an administrative decision deprives the person concerned of the legitimate interest entitling him to file a recourse of annulment of that decision under Article 146.2 of the Constitution as regards all applicants in the present recourse, with the exception of applicant No. 3, there is no sufficient material indicating

that they have voluntarily and unreservedly accepted the decision of 23.9.1974; but that as applicant No. 3 has resigned from the Cyprus Police Force on 16.2.1982, that is more than a month prior to the filing of the present recourse, which was only filed on the 24.3.1982, he had no "existing legitimate interest adversely and directly affected" as envisaged by Article 146.2 of the Constitution, either at the time of the filing or at the hearing of the present recourse, and his recourse must also be dismissed on this ground as well. 5

Application dismissed. 10

Cases referred to:

Liasi and Others v. Attorney-General of the Republic and Another (1975) 3 C.L.R. 558;

Tseriotis Ltd. v. Republic (1984) 3 C.L.R. 693;

Papasavvas v. Republic (1967) 3 C.L.R. 111; 15

Christofides v. C.Y.T.A. (1979) 3 C.L.R. 99;

Paschali v. Republic (1966) 3 C.L.R. 593;

HjiConstantinou and Others v. Republic (1980) 3 C.L.R. 184;

Neocleous and Others v. Republic (1980) 3 C.L.R. 497.

Recourse. 20

Recourse against the refusal of the respondents to reappoint and/or re-employ and/or reinstate the applicants as from 23.7.1974 in the rank and/or the posts they were holding prior to the coup d' etat of July, 1974.

N. D. Stylianidou (Miss) for E. Efstathiou, for the applicants. 25

A. Vladimirov, for the respondents.

Cur. adv. vult.

LORIS J. read the following judgment. All 14 applicants impugn by means of the present recourse the decision of the respondents dated 4.2.1982 (which is attached to the recourse marked "A") whereby the respondents allegedly "refused to reappoint and/or re-employ and/or reinstate the applicants, as from 23.7.1974 in the rank and/or the posts they were holding" prior to the coup d' etat of July 1974. 30

The bare facts stripped of the extreme eloquence with which they are being presented in "the statement of facts" of the present recourse are as follows: 35

All applicants were on 15.7.1974 acting sergeants serving with the Cyprus Police Force.

5 By an order issued on 1.8.1974 by a person appointed by the coup d'etat regime as "Chief Constable" the acting appointments of the applicants as aforesaid, were terminated with effect as from 23.7.1974.

10 The applicants on 4.12.1981 applied to the respondents for their reinstatement in their aforesaid acting rank and the respondents refused to accede to their request by virtue of the sub judice decision dated 4.2.1982.

15 The oversimplification of the facts by the applicants coupled by their omission in mentioning all other undisputed relevant facts may lead to confusion on the issues; that is why I made specific reference to the facts set out by the applicants and I shall now proceed to list all substantive uncontested facts as they emerge not only from the statement of facts set out by applicants but also as stated by the respondents and as they appear in the relevant documents before me to which specific reference will be made in due course in the present judgment.

20 Thus all the undisputed substantive facts of the present case are as follows:

- 25 1. All 14 applicants enlisted in the Cyprus Police Force (Tactical Reserve Unit) on several dates during the years 1972 and 1973; their enlistment was effected in accordance with regulation 7 of the Police (General) Regulations, 1958, (as amended).
- 30 2. Owing to existing vacancies at the time in the Tactical Reserve Unit and the consequential needs thereof, all applicants were posted as acting sergeants in the aforesaid unit; the said acting appointment in respect of several applicants was effected in 1973, whilst the remaining were so appointed during the first six months of 1974; all the acting appointments in question were made pursuant to regulation 11 of the Police (General) Regulations 1958, (as amended). (For dates of initial appointments of applicants as well as for dates of acting appointments vide appendix "A" attached to the opposition; in this respect it must be noted that the picture in appendix "A" refers to 13 applicants only as applicant No. 3

in the present case, namely Pavlos Mala, has resigned from the Police Force on 16.2.1982 i.e. more than a month before the filing of the present case on 24.3.1982).

3. A person who was appointed as "Chief Constable" by "the person who during the coup d'etat unconstitutionally and illegally assumed the office of the President of the Republic" by a purported order dated 1.8.1974, published in the Cyprus Police Gazette, terminated the acting appointments of all applicants as from 23.7.1974; furthermore the said person on 1.9.1974 dismissed the applicants altogether from the Police Force (vide appendix "A" attached to the opposition). 5
4. On 23.9.1974 Mr. Savvas Antoniou, the person lawfully holding the office of Chief Constable issued an order which was published in the Police Gazette under No. 38 Volume XV page 253 (vide Appendix 'Γ' attached to the opposition) whereby the applicants were reinstated in the Police force with retrospective effect; with the nature and effect of this order/decision of the lawful Chief Constable, I shall be dealing later on in the present judgment; sufficing to say at this stage that by means of the said order dated 23.9.1974 and/or as a result of same all applicants were reinstated with retrospective effect in the Police Force where they are still serving (with the exception of applicant No. 3 who has resigned from the Force on 16.2.1982) in posts assigned to them according to the exigencies of the service (vide appendix "A" attached to the opposition). 15
5. Due to the fact that, inspite of their reinstatement in the Police Force with retrospective effect, the applicants were not given acting appointments as Police Sergeants (in view of several factors to which I shall revert later on in the present judgment, the paramount of which was obviously the abolition of Tactical Reserve Unit) some of them applied to the Chief Constable praying for acting appointment in the rank of Police Sergeant. 20

In particular applicant No. 1 in the present case submitted for this purpose written applications on 25.7.1979 and 22.4.1980; on 14.5.1980 a refusal of the Chief Constable 35

was communicated to him (vide Appendix "Δ" attached to the opposition) explaining the reasons for such refusal.

A similar refusal dated 21.4.1975 was addressed to applicant No. 9 in the present case in reply to his application dated 3.4.1975.

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6. Counsel for all applicants addressed on their behalf on 4.12.1981 a letter to the Minister of Interior (marked 'B' attached to the recourse) praying for the reinstatement of all applicants in the temporary posts of acting Police Sergeants i.e. the posts they were holding up to the 23.7.1984.

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A reply was communicated to learned counsel of applicants on 4.2.1982 (marked 'A' attached to the recourse) turning down the aforesaid request for the grounds therein stated; and the applicants filed on 24.3.1982 the present recourse praying for the annulment of the aforesaid decision of 4.2.1982 (exh. A).

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Before proceeding further I feel that I should recapitulate the decisions in respect of the applicants.

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Firstly we have two decisions taken by a person who was appointed as 'chief constable' by the Coup d' etat regime. The first of these purported orders and/or decisions dated 1.8.1984 published in the Cyprus Police Gazette, terminated the acting appointments of all applicants as from 23.7.1984; furthermore, the same person on 1.9.1974 dismissed the applicants altogether from the Police Force. Both these decisions are legally non-existent as they were made by a person who was unlawfully appointed by the Coup d' etat regime (vide Coup d' etat Regime (Special Provisions) Law, 1975 (Law No. 57/75).

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Section 3 and 4 of the said law provide as follows:

"3. The Coup d' etat and the Coup d' etat Government have no legal basis whatsoever.

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4. The act made by the Coup d' etat government by invoking its powers or duties is legally non-existent".

According to the definition section of this law "Coup d' etat

government means the person who during the coup d' etat unconstitutionally and illegally assumed the office of the President of the Republic and the Ministers unconstitutionally and illegally appointed by him and the Under-Secretary and it includes every member thereof".

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"Act", according to the definition, "includes every act or decision of legislative or administrative nature". It is clear therefore, that the said decisions of 23.7.1974 and 1.9.1974 were not legally existent as made by a usurper of power (*Aristides Liasi and others v. The Attorney-General of the Republic and another* (1975) 3 C.L.R. 558).

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The third decision dated 23rd September, 1974 which appears in appendix 'Γ' attached to the opposition is the decision of the lawful chief constable of the Republic. By virtue of this decision all applicants were reinstated in the Cyprus Police Force. It is true that on being so reinstated they were not given their acting appointments as Police Sergeants. The reason for such decision which appears not only in Appendix 'Γ' but in other subsequent documents such as appendix 'Δ' appears to be three-fold:

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A. The fact that the original enlistment of the applicants in the Police Force was effected pursuant to regulation 7 of the Police (General) Regulations, 1958. The relevant part of this regulation reads as follows:

"7.-(1) Notwithstanding anything in regulation 5 of these Regulations contained and subject to the provisions hereinafter contained, the Chief Constable may, at his discretion, enlist a person as a constable for an initial period not exceeding three years but, at the expiration of that period, the person enlisted may, if he has given satisfactory service and if his services are further required by the Chief Constable, upon giving three months' previous notice in writing to the Chief Constable, opt for re-engagement for another like period:

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Provided that the Chief Constable may, at any time, upon giving the person enlisted thirty days' notice in writing, determine the engagement of such person.

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(2).....(3).....(4).....(5)..... "

B. Their posting in the acting appointment of Police Sergeants was effected by virtue of regulation 11 of the Police General Regulations, 1958 (as amended) the material part of which reads as follows:

- 5 “11.-(1) A member of the Force who is required to perform the duties of a higher rank due to the temporary absence of the holder of that rank, may be appointed to act in the rank by the Divisional or Unit Commander:

Provided that—

- 10 (a) All such appointments are made with the approval of the Chief Constable;
- (b) notification is sent to Force Headquarters for the purposes of pay and maintaining records.
- (2) Any service in the acting rank shall not—
- 15 (a) be deemed as approved service in the higher rank;
- (b) be subject to allowance applicable to the higher rank.
- (3).....(4).....(5)..... ”

C. The fact that the Tactical Reserve Unit was abolished in consequence of the Coup d' etat.

- 20 In short the lawful chief constable of the Cyprus Police Force on 23.9.1974 reinstated all applicants in the Cyprus Police Force and taking into consideration that the original enlistment of the applicants in the Police Force was made pursuant to regulation 7 of the Police (General) Regulations, and that the exigencies of the Cyprus Police Force did not require temporary
- 25 appointments in the rank of police sergeants, the Tactical Reserve Unit having been abolished, exercised his discretion in not emplacing the applicants anymore in the acting rank of Police Sergeants.

- 30 This to my comprehension is the decision of the Chief Constable dated 23.9.1974 . I need not comment on it any further. I shall confine myself in observing the following:

- (a) That this decision was taken by the Chief Constable shortly after the chaotic situation which was brought about by the coup d' etat.

- (b) The aforesaid decision of the Chief Constable might not be happily worded but it must always be borne in mind that same was given as early as 23.9.1974, whilst Law 57/75 was only promulgated on 31.10.1975.
- (c) Such a decision has never been impugned by anyone of the applicants. 5

Applicants failed for more than 8 years to claim redress of their grievance with the exception of applicants No. 1 and 9 who confined themselves in addressing relevant letters to the Chief Constable as stated in the statement of facts above; and then there came the application of counsel on behalf of all applicants in December, 1981 raising the matter before the Minister of Interior; the relevant reply is the sub judice decision of 10.2.1982. 10

Learned Counsel for respondents raises three preliminary objections in opposition alleging that 15

- (1) the executory act was the decision of the Chief Constable of 23.9.1974.
- (2) That the decision of 10.2.1982 contained in exh. A attached to the recourse is only of a confirmatory nature and therefore non justiciable. 20
- (3) That all applicants upon their reinstatement in the Cyprus Police Force have accepted to be emplaced as Police Constables and therefore they have been deprived of their "existing legitimate interest" envisaged by Article 146.2 of the Constitution. In particular applicant 3, namely Pavlos Mala, has allegedly no present existing legitimate interest, having resigned from the Police Force on the 16.2.1982. 25

As these objections go to the Jurisdiction of this Court I intend to examine them first. 30

"Executory acts are those acts by which the will of the administrative organ is declared, intending the creation of legal consequence towards the subjects involving its direct execution by administrative means". 35

(Vide Conclusions of the Council of State 1929-1959 at

p: 237). A confirmatory act is one which repeats the contents of a previous executory act and signifies the adherence of the administration to a course already adopted. (*Stassinopoulos on the Law of Administrative Disputes*, 4th ed. at p. 174).

5 I need not cite here cases decided by our Supreme Court on this topic as all these cases have been referred to; in my recent decision in the case of *Tseriotis Ltd., v. The Republic*, Case No. 400/82 decided on 29.5.1984 (still unreported).*

10 From the facts of the present case it is abundantly clear that the decision of the Chief Constable dated 23.9.1974 was a decision of an executory character, that is a decision expressing the will of the administrative organ in question, aiming at producing a legal situation which was in fact produced. The
15 sub judice decision of 4.2.1982 is merely a confirmatory decision of the earlier executory one, signifying the adherence of the administration to a course already adopted. Therefore, the present recourse is non justiciable on this ground and is therefore doomed to failure:

20 As already stated the present recourse is being impugned on another ground, notably lack of "existing legitimate interest adversely and directly affected" as envisaged by Article 146.2 of the Constitution.

25 In this connection the requirements of Article 146.2 of the Constitution must be satisfied at the time of the filing and hearing of the recourse (*Papasavvas v. The Republic* (1967) 3 C.L.R. 111, *Christofides v. CYTA* (1979) 3 C.L.R. 99).

30 It has also been repeatedly held by our Supreme Court that voluntary and unreserved acceptance of administrative decision deprives the person concerned of the legitimate interest entitling him to file a recourse of annulment of that decision under Article 146.2 of the Constitution. (Vide *Paschali v. The Republic* (1966) 3 C.L.R. 593, *HjiConstantinou and others v. The Republic* (1980) 3 C.L.R. 184, *Neocleous and others v. The Republic* (1980) 3 C.L.R. 497).

35 As regards all applicants in the present recourse, with the exception of applicant No. 3, there is no sufficient material

* Now reported in (1984) 3 C.L.R. 693.

before me indicating that they have voluntarily and unreservedly accepted the decision of 23.9.1974; anyhow the position with regard to applicant No. 3 is different: He has resigned from the Cyprus Police Force on 16.2.1982, that is more than a month prior to the filing of the present recourse, which was only filed on the 24.3.1982; therefore, he had no "existing legitimate interest adversely and directly affected" as envisaged by Article 146.2 of the Constitution, either at the time of the filing or at the hearing of the present recourse, and his recourse must also be dismissed on this ground as well.

In the result, the present recourse fails and is accordingly dismissed; in the circumstances of the present case I have decided to make no order as to the costs thereof.

*Recourse dismissed with no order
as to costs.*