

1984 July 21

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTODOULOS ARGYROU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF FINANCE AND
THE MINISTRY OF INTERIOR,*Respondents.*

(Case No. 159/81).

Constitutional Law—Equality—Principle of equality—Article 28 of the Constitution—It safeguards only against arbitrary differentiations—Nothing submitted by applicant to bring his case within above principle.

Administrative Law—Administrative acts or decisions—Reasoning— 5
Supplemented by the material in the file which was before the respondents at time sub judice decision was taken.

After terminating applicant's services as a police Inspector, in the public interest, the Council of Ministers decided to approve payment of pension to him but refused him payment in respect 10 of his vacation leave to which he was entitled on the day of the termination of his services. Hence this recourse which was directed against such refusal.

Counsel for the applicant contended:

- (a) That the sub judice decision was contrary to Article 28.1 15 of the Constitution.
- (b) That the sub judice decision was not duly reasoned.

Held, that equality before the Law in paragraph 1 of Article 28 of the Constitution, does not convey the notion of exact arithmetical equality but it safeguards only against arbitrary 20 differentiations and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things;

that nothing relevant has been submitted by Counsel for applicant to bring his case within the above principle; and that on the contrary, it is clear from the decision of the respondents that to all the officers whose services were terminated by the said decision, payment in respect of their vacation leave to which they were entitled, was not granted; accordingly contention (a) must fail.

(2) That the reasoning for the sub judice decision is supplemented by the material in the file which was before the respondents at the time the decision complained of was taken; accordingly contention (b) must, also, fail.

Application dismissed.

Cases referred to:

Mikrommatis v. Republic, 2 R.S.C.C. 125;

Republic v. Arakian and Others (1972) 3 C.L.R. 294.

Recourse.

Recourse against the decision of the respondents refusing payment to applicant in respect of his vacation leave to which he was entitled on 31.1.80 when his services were terminated by the Council of Ministers in the public interest.

N. Clerides, for the applicant.

A. Vassiliades, for the respondents.

Cur. adv. vult.

MALACHTOS J. read the following judgment. The applicant in this recourse seeks a declaration of the Court that the decision of the respondents dated 20.2.81 to refuse him payment in respect of his vacation leave to which he was entitled up to 31.1.80, is null and void and of no legal effect whatsoever.

The relevant facts of the case are as follows:-

The applicant enlisted in the Police Force on 12.5.52 and on 20.9.60 he was promoted to the rank of Sergeant. On 1.7.62 he was promoted to Sub-Inspector and on 5.7.74 he was promoted to Inspector.

'By its decision' No. 17867 and dated 31.1.80 the Council of Ministers terminated the services of the applicant as from 1.2.80 in the public interest.

By letter dated 11.2.80 the applicant was notified accordingly by the Chief of Police.

On 13.3.80 the Council of Ministers decided to approve payment of pension to the applicant in accordance with section 7 of the Pensions Law, Cap. 311. The Minister of Interior by letter dated 3.5.80 notified the applicant that the Minister of Finance had given his approval to grant him an annual pension of £1,319.230 mils as from 1.2.80 and a gratuity of £5,496.800 mils. However, by the same decision of 13.3.80 the Council of Ministers also decided not to approve payment in respect of the accumulated leave which was due to all dismissed officers, including the applicant.

The applicant on the date of termination of his services had to his credit 340 1/2 days of accumulated leave which he earned on the basis of regulation 13(3) of the Police (General) Regulations, 1958.

By letter dated 30.5.80 the applicant, through his counsel, wrote to the Minister of Finance claiming payment of the said accumulated leave. The Minister of Finance by letter dated 20.2.81, rejected the claim of the applicant. This letter reads as follows:

“I have been instructed to refer to your letter dated 30.5.80 concerning the claim of your client, Mr. Christodoulos Argyrou, a former Inspector of Police, for payment in respect of leave which he had to his credit on 31.1.80, and to inform you that the Council of Ministers at its meeting of the 13.3.80, at which it decided to approve the granting of retirement benefits which each one of the officers, whose services were terminated in the public interest, had earned by his service, has also decided not to approve payment in respect of vacation leave due to the above officers as on the 31.1.80. Therefore, we regret that we are unable to satisfy the claim of your client”.

As a result the applicant on the 3.4.81 filed the present recourse.

The grounds of law on which the present recourse is based, as argued by counsel for applicant, are the following:-

1. That the sub judice decision is contrary to Article 28.1 of

the Constitution which provides that all persons are equal before the Law, the Administration and Justice and are entitled to equal protection thereof and treatment thereby; and

2. That the sub judice decision is not duly reasoned.

5 As regards the first ground of law, i.e. the application of the principle of equality, this has been considered in the case of *Mikrommatis v. The Republic*, 2 R.S.C.C. 125 where it was stated that equality before the Law in paragraph 1 of Article 28
10 of the Constitution, does not convey the notion of exact arithmetical equality but it safeguards only against arbitrary differentiations and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things.

In the case of the *Republic v. Nishan Arakian and Others* (1972) 3 C.L.R. 294, the authorities on this principle were reviewed by
15 the Full Bench of this Court. At page 299 of the report we read:

“In Case 1273/65 it was stated that the principle of equality entails the equal or similar treatment of all those who are found to be in the same situation.

20 In Case 1247/67 it was held that the principle of equality safeguarded by Article 3 of the Greek Constitution of 1952 - which corresponds to Article 28.1 of our Constitution - excludes only the making of differentiations which are arbitrary and totally unjustifiable and exactly the same was
25 held in Case 1870/67.

In Case 2063/68 it was held that the principle of equality was not contravened by regulating differently matters which were different from each other.

30 In Case 1215/69 it was held that the principle of equality is applicable to situations which are of the same nature.”

In the present case nothing relevant has been submitted by counsel for applicant to bring his case within the above principle. On the contrary, it is clear from the decision of the respondents that to all the officers whose services were terminated by the
35 said decision, payment in respect of their vacation leave to which they were entitled, was not granted.

Needless to say that the granting of pension, gratuity, or other

allowances in cases as the present one, is discretionary as provided by section 7 of the Pensions Law, Cap. 311.

Coming now to the second ground of law, that the decision of the respondents is not duly reasoned, I hold the view that this ground cannot stand either as the reasoning is supplemented by the material in the file which was before the respondents at the time the decision complained of was taken. 5

For the reasons stated above, this recourse fails and is dismissed but under the circumstances, I make no order as to costs.

Recourse dismissed. No order as to costs. 10