

23 Ιουνίου 1984

[ΤΡΙΑΝΤΑΦΥΛΛΙΔΗΣ, Πρ.]

ΑΝΑΦΟΡΙΚΑ ΜΕ ΤΟ ΑΡΘΡΟΝ 146 ΤΟΥ
ΣΥΝΤΑΓΜΑΤΟΣ.

ΜΕΤΑΞΥ: ΜΟΔΕΣΤΟΥ ΠΙΤΣΙΛΛΟΥ.

Αιτητή.

και

ΤΗΣ ΚΥΠΡΙΑΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ, ΜΕΣΟΝ
1. ΓΕΝΙΚΟΥ ΕΙΣΑΓΓΕΛΕΑ,
2. ΑΡΧΗΓΟΥ ΤΗΣ ΑΣΤΥΝΟΜΙΑΣ,

Καθ' ών η Αίτηση,

(Υπόθεση Αρ. 575/83).

5 Διοικητικό Δίκαιο—Διοικητική Πράξη—Εκτελεστή— Άρ-
θρον 146.1 του Συντάγματος—Πράξη προπαρασκευασ-
τική δικαστικής διαδικασίας—Εκφεύγει της δικαιο-
δοσίας δυνάμει του Άρθρου 146.1—Πράξη, πληροφο-
ριακού χαρακτήρα, δεν είναι εκτελεστή.

10 Με επιστολή του ημερομηνίας 19.9.83 ο αιτητής υπό-
βαλε παράπονο στον Αρχηγό της Αστυνομίας για την
μη ανεύρεση των δημοσίων υπαλλήλων, που σύμφωνα
με τον ισχυρισμό του αιτητή, άλλαξαν το όνομα και
την ταυτότητα του στους εκλογικούς καταλόγους που
ετοιμάστηκαν για την αναπληρωματική εκλογή Προέ-
δρου Δημοκρατίας κατά το 1977.

15 Με επιστολή του ημερομηνίας 19.10.83 ο Αρχηγός
της Αστυνομίας πληροφόρησε τον αιτητή πως δεν προ-
έκυψε μαρτυρία εναντίον οποιουδήποτε μέλους της
αστυνομικής δυνάμεως για αμέλεια καθήκοντος.

Με την παρούσα προσφυγή ο αιτητής προσβάλλει την
πίο πάνω απόφαση του Αρχηγού της Αστυνομίας.

20 ΑΠΟΦΑΣΙΣΘΗΚΕ: (1) Επειδή αν η αστυνομία κα-
τάληγε στην διαπίστωση πως για την αλλαγή του ονό-
ματος και της ταυτότητας του αιτητή στους πιο πάνω
εκλογικούς καταλόγους ευθύνετο συγκεκριμένο άτομο,
τούτο δυνατό να οδηγούσε σε δικαστική δίωξη του α-
τόμου αυτού, η επιστολή του Αρχηγού της Αστυνομί-
25 ας είναι πράξη φύσεως προπαρασκευαστικής σχετιζο-
μένη με τη δυνατότητα ενάρξεως δικαστικής διαδικα-

* An English translation appears at pp. 2815-2818 post.

σίας και γι' αυτό δεν εμπίπτει στα πλαίσια της δικαιοδοσίας του Ανωτάτου Δικαστηρίου δυνάμει του Άρθρου 146 του Συντάγματος.

(2) Εν πάση περιπτώσει η εν λόγω επιστολή είναι έγγραφο πληροφοριακού χαρακτήρα και γι' αυτό δεν είναι εκτελεστή διοικητική πράξη. 5

Η προσφυγή απορρίπτεται.
Ουδεμία διαταγή για έξοδα.

Αποφάσεις αναφερόμενες στην απόφαση:

- Ξενοφώντος v. Δημοκρατίας, 2 Α.Α.Σ.Δ. 89, 10
Χατζηπαναγή v. Δημοτικής Επιτροπής Λευκωσίας
(1974) 3 Α.Α.Δ. 366,
Οικονομίδης v. Δημοκρατίας (1980) 3 Α.Α.Δ. 219,
Κυπριανίδης v. Δημοκρατίας (1982) 3 Α.Α.Δ. 611,
Παυλίδης v. Δημοκρατίας (προσφυγές 107/79 και 15
131/79, μη δημοσιευθείσες ακόμα).

Προσφυγή.

Προσφυγή εναντίον του περιεχομένου επιστολής του Αρχηγού της Αστυνομίας ημερομηνίας 19.10.1983 σχετικά με διαμαρτυρία του αιτητή για τη μη ανεύρεση των δημοσίων υπαλλήλων που, σύμφωνα με τον ισχυρισμό του αιτητή, άλλαξαν το όνομα του και την ταυτότητα του στους εκλογικούς καταλόγους που ετοιμάστηκαν για την αναπληρωματική εκλογή Προέδρου της Δημοκρατίας το 1977. 20

Ο αιτητής ενεφανίσθη αυτοπροσώπως. 25

Μ. Φλουρέντζος, Ανώτερος Δικηγόρος της Δημοκρατίας και Α. Βασιλειάδης για τη Δημοκρατία.

Cur. adv. vult.

ΤΡΙΑΝΤΑΦΥΛΛΙΔΗΣ Πρ. ανέγνωσε την ακόλουθη απόφαση. Με την παρούσα προσφυγή ο αιτητής παραπονείται για το περιεχόμενο επιστολής του Αρχηγού της Αστυνομίας ημερομηνίας 19 Οκτωβρίου 1983 σχετικά με διαμαρτυρία του αιτητή για τη μη ανεύρεση των δημοσίων υπαλλήλων που, σύμφωνα με ισχυρισμό του αιτητή, άλλαξαν το όνομά του και την ταυτότητά του στους εκλογικούς κατα- 30
35

λόγους που ετοιμάστηκαν για την αναπληρωματική εκλογή Προέδρου της Δημοκρατίας κατά το 1977.

5 Το παράπονό του ο αιτητής το υπέβαλε στον Αρχηγό της Αστυνομίας με επιστολή του ημερομηνίας 19 Σεπτεμβρίου 1983, κατόπιν υποδείξεως του Γενικού Εισαγγελέα της Δημοκρατίας που περιέχεται σε επιστολή του ημερομηνίας 30 Αυγούστου 1983.

10 Στο παράπονο του αιτητή γίνεται αναφορά και σε διαγωγή αστυνομικών οργάνων σχετικά με τη διερεύνηση του ισχυρισμού του περί αλλαγής του ονόματος και της ταυτότητάς του στους εκλογικούς καταλόγους.

15 Με επιστολή ημερομηνίας 19 Οκτωβρίου 1983 ο Αρχηγός της Αστυνομίας πληροφόρησε τον αιτητή ότι δεν προέκυψε μαρτυρία εναντίον οποιουδήποτε μέλους της αστυνομικής δυνάμεως για αμέλεια καθήκοντος.

20 Στην επιστολή αυτή υπάρχει μια ανακρίβεια, χωρίς όμως ουσιαστική σημασία, γιατί αναφέρεται ότι η αγωγή 2184/82 του αιτητή απορρίφθηκε από το Ανώτατο Δικαστήριο, ενώ στην πραγματικότητα είχε απορριφθεί από το Επαρχιακό Δικαστήριο Λευκωσίας, το οποίο αποφάνθηκε ότι δεν υπήρχε μαρτυρία για συνωμοσία υπαλλήλων της Δημοκρατίας σχετικά με αλλαγή της ταυτότητας και του ονόματος του αιτητή στους εκλογικούς καταλόγους. Αναφέρεται επίσης στην απόφαση του Επαρχιακού Δικαστηρίου ότι η προσφυγή του αιτητή (247/77) για το ίδιο θέμα απορρίφθηκε από το Ανώτατο Δικαστήριο γιατί ο αιτητής έπρεπε να είχε αποταθεί στο Εκλογοδικείο, και ότι τούτο επιβεβαιώθηκε από το Ανώτατο Δικαστήριο στην Αναθεωρητικής Δικαιοδοσίας Έφεση 268.

30 Εάν η Αστυνομία κατέληγε στη διαπίστωση ότι ευθύνετο συγκεκριμένο άτομο για την αλλαγή του ονόματος και της ταυτότητας του αιτητή στους εκλογικούς καταλόγους τούτο δυνατό να οδηγούσε—όπως ήτο και η απαίτηση του αιτητή που περιέχεται στην επιστολή του ημερομηνίας 19
35 Σεπτεμβρίου 1983—σε δικαστική δίωξη του εν λόγω ατόμου. Ως εκ τούτου η επιστολή του Αρχηγού της Αστυνομίας ημερομηνίας 19 Οκτωβρίου 1983 είναι πράξη προπαρασκευαστικής φύσεως η οποία σχετίζεται με τη δυνα-

τότητα ενάρξεως δικαστικής διαδικασίας και γι' αυτό δεν εμπίπτει στα πλαίσια της δικαιοδοσίας του Ανωτάτου Δικαστηρίου δυνάμει του Άρθρου 146 του Συντάγματος (βλ. Ξενοφώντος κατά Δημοκρατίας, 2 Α.Α.Σ.Δ. 89, 92, 93, Πορίσματα Νομολογίας του Συμβουλίου της Επικρατείας της Ελλάδος, 1929-1959, 230, και Κυριακοπούλλου Ελληνικό Διοικητικό Δίκαιο, 4η έκδ., τόμ. Γ, 91, 92).

5

Εν πάση περιπτώσει η ως άνω επιστολή ημερομηνίας 19 Οκτωβρίου 1983 είναι έγγραφο πληροφοριακού χαρακτήρα και γι' αυτό δεν είναι εκτελεστή διοικητική πράξη. Ως εκ τούτου δεν είναι δυνατό να αποτελέσει το αντικείμενο προσφυγής δυνάμει του Άρθρου 146 του Συντάγματος (βλ. Χατζηπαναγή κατά Δημοτικής Επιτροπής Λευκωσίας, (1974) 3 Α.Α.Δ. 366, Οικονομίδης κατά Δημοκρατίας, (1980) 3 Α.Α.Δ. 219, Κυπριανίδης κατά Δημοκρατίας, (1982) 3 Α.Α.Δ. 611, και την απόφαση στις προσφυγές (107/79 και 131/79) Παυλίδη κατά Δημοκρατίας, η οποία εκδόθηκε στις 5 Απριλίου 1984).

10

15

Για όλους τους ανωτέρω λόγους η παρούσα προσφυγή απορρίπτεται.

20

Επειδή ο αιτητής άνκαι στερείται επαρκών νομικών γνώσεων επέλεξε να εμφανιστεί άνευ συνηγόρου δεν θα τον καταδικάσω να καταβάλει το έξοδα της παρούσης υποθέσεως.

Προσφυγή απορρίπτεται. 25

This is an English translation of the judgment in Greek appearing at pp. 2811-2814 ante.

1984 June 23

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

MODESTOS PITSILLOS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. ATTORNEY-GENERAL,
2. COMMANDER OF POLICE,

Respondents.

(Case No. 575/83).

Administrative Law—Administrative Act—Executory act—Article 146.1 of the Constitution—An act of a preparatory nature relating to the possibility of commencement of Judicial Proceedings is not within the ambit of Article 146.1—An act of an informative nature lacks executory character.

5

By letter dated 19.9.1983 the applicant complained to the Commander of Police that there had not been traced the public officers who, according to his allegation, had altered his name and identity card in the electoral lists, prepared for the by-election for President of the Republic in 1977.

10

By letter dated 19.10.83 the Commander of Police informed the applicant that there had not been found evidence against any member of the Police Force regarding neglect of duty.

15

Hence the present recourse.

Held, dismissing the recourse (1) If the Police had

reached the conclusion that a particular person was responsible for the alteration in the electoral list of applicant's name and identity card, this could result in the prosecution of such a person. Consequently the letter of the Commander of Police is an act of a preparatory nature related to the possibility of commencement of Judicial Proceedings and, therefore, it does not fall within the ambit of the jurisdiction of the Supreme Court under Article 146 of the Constitution. 5

(2) In any event the said letter is of an informative nature and, therefore, is not an executory administrative act. 10

*Recourse dismissed.
No order as to costs.*

Cases referred to:

Xenophontos v. The Republic 2 R.S.C.C. 89;

HadjiPanayi v. The Municipal Committee of Nicosia
(1974) 3 C.L.R. 366;

Economides v. The Republic (1980) 3 C.L.R. 219;

Kyprianides v. The Republic (1982) 3 C.L.R. 611; 20

Pavliades v. The Republic, still unreported (recourses
107/79 and 131/79).

Recourse.

Recourse against the contents of the letter of the Commander of Police regarding the protest of the applicant that there had not been traced the Public Officers who had altered applicant's name and identity card in the electoral lists which had been prepared for the by-election for President of the Republic in 1977. 25

Applicant appeared in person. 30

M. Florentzos, Senior Counsel of the Republic with
A. Vassiliades, for the respondent.

Cur. adv. vult.

5 TRIANTAFYLLOIDES P. read the following judgment. By means of the present recourse the applicant complains about the contents of a letter of the Commander of Police, dated 19th October 1983, regarding a protest of the applicant that there had not been traced the public officers who, according to the applicant's allegation, had altered his name and his identity card in the electoral lists which had been prepared for the by-election for President of the Republic in 1977.

10 The applicant submitted his complaint to the Commander of Police by his letter dated 19th September 1983, after a suggestion to that effect by the Attorney-General of the Republic, which is contained in his letter dated 30th August 1983.

15 In the complaint of the applicant there is made, also, reference to conduct of police officers in relation to the investigation of his allegation regarding the alteration of his name and his identity card in the electoral lists.

20 By his letter dated 19th October 1983 the Commander of Police informed the applicant that there had not been found evidence against any member of the police force regarding neglect of duty.

25 In this letter there exists an inaccuracy, which is not, however, of material significance, because it is stated that the action of the applicant 2184/82 was dismissed by the Supreme Court, whereas in fact it had been dismissed by the District Court of Nicosia, which found that there was no evidence of conspiracy of officers of the Republic in relation to the alteration of the identity card and of the
30 *name of the applicant in the electoral lists*. It is, also, stated in the judgment of the District Court that a recourse of the applicant (247/77) for the same matter was dismissed by the Supreme Court because the applicant ought to have applied to the Electoral Court and that this was affirmed
35 by the Supreme Court in Revisional Jurisdiction Appeal 268.

If the Police had reached the conclusion that any particular person was responsible for the alteration of the name and of the identity card of the applicant in the ele-

ctoral lists this could result—(as was, indeed, the demand of the applicant contained in his letter dated 19 September 1983)—in the prosecution before a Court of such person. Consequently the letter of the Commander of Police dated 19th October 1983 is an act of a preparatory nature which is related to the possibility of commencement of judicial proceedings and, therefore, it does not fall within the ambit of the jurisdiction of the Supreme Court under Article 146 of the Constitution (see *Xenophontos v. The Republic*, 2 R.S.C.C. 89, 92, 93, *Conclusions from the Case-Law of the Council of State in Greece, 1929-1959*, 230, and Kyriacopoulos on Greek Administrative Law, 4th ed., vol. C, 91, 92).

In any event the aforesaid letter dated 19th October 1983 is a document of informative nature and for this reason it is not an executory administrative act. It, therefore, cannot be the subject of a recourse under Article 146 of the Constitution (see *Hadjipanayi v. The Municipal Committee of Nicosia*, (1974) 3 C.L.R. 366, *Economides v. The Republic*, (1980) 3 C.L.R. 219, *Kyprianides v. The Republic*, (1982) 3 C.L.R. 611, and the judgment in recourses (107/79 and 131/79) *Pavlidis v. The Republic*, delivered on 5th April 1984).

For all the foregoing reasons the present recourse is dismissed.

As the applicant, even though he has no adequate legal knowledge, has chosen to appear without counsel I will not order him to pay the costs of the present case.

Recourse dismissed.

No order as to costs.

1985 October 15

[A. LOIZOU, SAVVIDES, LORIS, STYLIANIDES, KOURRIS, JJ.]

MODESTOS PITSILLOS,

Appellant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE ATTORNEY-GENERAL OF THE REPUBLIC,
2. THE COMMANDER OF POLICE,

Respondents.

(Revisional Jurisdiction Appeal No. 409).

*Administrative Law—Administrative act—Art. 146.1 of the
Constitution—Failure to institute criminal proceedings not
within the ambit of said Art. 146.1—Document containing
information as to the outcome of police investigations—
Not an executory act.*

In response to a complaint by the appellant that mem-
bers of the Police Force had been involved in the change
of his name and his identity card from the list of voters pre-
pared for the by-election of President of the Republic in
1977 the Chief of Police informed the appellant by letter
dated 19.10.83 that there had not been secured evidence
against any member of the Police Force for any neglect
of duty.

The President of this Court dismissed a recourse* filed
by the appellant as a result of the said letter. Hence the
present appeal.

Held, dismissing the appeal (1) In so far as the letter
of the Chief of Police contains a decision not to prosecute
on account of nondiscovery of the persons responsible for
the act complained of by the appellant constitutes a failure
to institute Criminal proceedings, the exercise of such

* See Pitsillos v. The Republic (1985) 3 C.L.R. 2811.

authority by the appropriate organ is not within the ambit of paragraph 1 of Art. 146 of the Constitution.

(2) In so far as the said letter contained information regarding the outcome of police investigations it is not an executory administrative act.

Appeal dismissed.

No order as to costs.

Cases referred to:

Xenophontos v The Republic, 2 R.S.C.C. 89.

Appeal.

Appeal against the judgment of the President of the Supreme Court (Triantafyllides, P.) given on the 23rd June, 1984 (Revisional Jurisdiction Case No. 575/83)* whereby appellant's recourse against the contents of the letter of the Chief of Police dated 19.10.1983 relative to appellant's complaint for the non detection of the Public Officers who, according to his contention, changed his name and identity card from the list of voters that had been prepared for the by-election of President of the Republic in 1977, was dismissed.

Appellant appeared in person.

M. Flourentzos, Senior Counsel of the Republic with
A. Vassiliades, for the respondent.

Cur. adv. vult.

A. LOIZOU J.: The recourse of the appellant was dismissed by the learned President of this Court, who tried the case in the first instance, on the ground that the decision contained in the letter of the Chief of Police dated the 19th October, 1983, challenged by him under Article 146 of the Constitution was an act of a preliminary character relating to the possibility of the commencement of judicial process and as such not falling within the revisional jurisdiction of this Court under Article 146 of the Constitution.

* Reported in (1985) 3 C.L.R. 2811.

In support of this conclusion he referred to the case of *Xenophontos v. The Republic*, 2 R.S.C.C. 89 at pp. 92-93, to the *Conclusions from the Case Law of the Greek Council of State* (1929-1959) p. 230 and to *Kyriacopoulos, Greek Administrative Law*, 4th Edition, Volume III pp. 91-92.

Moreover the said letter was found by the learned President to be, in any event, a document of informative character and consequently not an executory administrative act and as such it could not be the subject of a recourse under Article 146 of the Constitution. This he based on the constant Case Law of this Court and reference was made in that respect to the cases of *HadjiPanayi v. The Municipal Committee of Nicosia* (1977) 3 C.L.R. 366; *Economides v. The Republic* (1980) 3 C.L.R. 219; *Kyprianides v. The Republic* (1982) 3 C.L.R. 611 and the as yet unreported judgment in *Pavlidis v. The Republic* Recourses Nos 107/79 and 131/79, delivered on 5th April 1984.

The relevant facts of the case are briefly these. The appellant submitted to the Chief of Police a letter dated 19th September 1983, upon the suggestion of the Attorney-General of the Republic to whom he had originally addressed his complaint, to the effect that members of the Police Force and other public officers had been involved in the change of his name and his identity card from the list of voters that had been prepared for the by-election of President of the Republic in 1977.

In response to the aforesaid complaint of the appellant the Chief of the Police by letter dated the 19th October 1983, informed him that there had not been secured evidence against any member of the Police Force for neglect of duty.

It was as against the alleged "act/or decision of the respondents dated 19th October, 1983, on the protest of the applicant with reference to the judgment of the Court in Civil Action 2184/82, that intentionally the appropriate officers changed his name and identity card for the Presidential by-election of 1977 and the discovery of the said organs," that the recourse of the appellant was filed.

We have given, to the incomprehensible at times arguments of the appellant our best consideration and we have perused the relevant documents and we have come to the conclusion that there is no merit in this appeal.

Having regard to the subject matter of the said complaint contained in the letter of the appellant, and the reply to it by the Chief of the Police, we have come to the conclusion in so far as the said letter contains a decision not to prosecute on account of the nondiscovery of a concrete person or persons as being responsible for the acts complained of by the appellant, same constitutes in effect, as held in the *Xenophontos case* (supra), a failure to institute criminal proceedings and the exercise of such authority by the appropriate organ of the Republic which in this respect is so closely related to judicial proceedings in criminal cases, is not within the ambit of paragraph 1 of Article 146 of the Constitution and therefore this Court was rightly found by the learned President not to have jurisdiction to entertain such recourse under the said Article. 5
10
15

On the other hand in so far as however, the said letter of the Chief of Police contains merely information regarding the outcome of police investigations as regards the complaint of the appellant, and this appears to be the more certain in our view nature of it, it is not, and in any event it cannot purport to communicate to the appellant an executive administrative act and being only a document of an informative nature, it is not capable of being the subject of a recourse under paragraph 1, of Article 146 of the Constitution. 20
25

For all the above reasons this appeal is dismissed with no order as to costs. 30

Appeal dismissed.

No order as to costs.