1986 February 13

[TRIANTAFYLLIDES, P., A. LOIZOU, SAVVIDES, PIKIS, KOURRIS, JJ.]

LEONIDAS CHRYSANTHOU AND OTHERS,

Appellants-Applicants,

v.

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

Respondents.

(Revisional Jurisdiction Appeal No. 406).

Construction of Statutes—The Coup d'Etat (Special Provisions) Law 57/75—Not intended to restore situations unlawfully terminated during the coup d'etat, but in respect of which remedial action was taken by lawful organs of the Republic prior to its enactment.

Legitimate interest—Acceptance of an act or decision—The fact of acceptance may be inferred from conduct—Members of the Police Force serving as acting sergeants prior to the Coup d'Etat—Unlawful termination of the acting appointments and unlawful dismissal from the force during the Coup d'Etat—Retrospective reinstatement by lawful Commander as members of the force, but not given back their acting appointment—Served for years after such reinstatement as Police Constables without pursuing by any legal remedy their claim for reinstatement to the said rank—Acceptance of the decision (23.9.74) to reinstate them inferred—Such acceptance deprived them of a legitimate interest as regards their reinstatement to the rank of acting sergeant.

Time within which to file a recourse—Executory act—Confirma-

tory act—The sub judice decision, whereby the appellants' application for reinstatement to the rank of acting sergeant in the Police Force was turned down, is as regards appellants 1 and 9 confirmatory of earlier decisions turning down previous applications for such reinstatement and as regards all appellants confirmatory of the decision 23.9.1974 by the lawful Commander of the Police Force, whereby the appellants, who during the Coup d'Etat were unlawfully deprived of their rank as acting sergeants of the Police Force and unlawfully dismissed from the force, were reinstated as members of the Force, but not to their previous rank of acting sergeants.

Executory act—Confirmatory act—A confirmatory act cannot be made the subject of a recourse under Article 146 of the Constitution.

Executory act—Informatory act—An informatory act lacks executory nature and, therefore, cannot be made the subject of a recourse under Article 146 of the Constitution.

Police Force—The Police (General) Regulations 1958—Regulation 11—Police Commander the only competent organ to decide appointments to rank of acting sergeants in the force—A negative reply by the Director-General of the Ministry of Interior turning down an application to the Minister for appellants' reinstatement as acting sergeants does not amount to a negative decision by the competent organ.

At the time of the coup d'etat of the 15.7.74 the appellants were members of the Police Force, attached to the Tactical Reserve Unit, serving with the rank of Acting Sergeant. The person who during the coup d'etat was "appointed" unlawfully to the post of "Commander of Police" terminated the acting appointments of the appellants and, eventually, dismissed them from the Police.

When the lawful Commander of the Police resumed his duties after the coup d'etat he reinstated on the 23.9.74 all the appellants as members of the force. The appellants, however, were not given back the rank of acting sergeant as, apparently, at the time the exigencies of the functioning

of the Police did not require the making of temporary appointments to such rank as aforesaid.

Ever since, the appellants have been serving as police constables having, obviously, accepted the decision of their reinstatement. Appellants 1 and 9 applied in 1975 and 1979, respectively, to be appointed acting sergeants, but when the Commander of the Force turned down their applications, they did not file a recourse to this Court against the said refusal.

By letter of their counsel dated 4.12.81 the appellants applied for their reinstatement to the rank of acting sergeant in the Police Force, and after a negative reply given on the 4.2.82, they filed recourse 148/82. The recourse was dismissed. Hence the present appeal.

It should be noted that appellant 3 resigned from the force before the filing of the said recourse.

Held, dismissing the appeal, Pikis, J. and Kourris, J. dissenting: (1) The effect of the Coup d'Etat (Special Provisions) Law 57/75 was not and could not have been intended to be to restore situations, which were unlawfully terminated during the coup d'etat, but in respect of which remedial action was taken by lawful organs of the Republic prior to its enactment. It was not intended that lawfully functioning organs or lawfully taken decisions during the period from the return to legality after the coup d'etat and the enactment of the said law, should be treated as obliterated by such law and that by operation of this very law there would automatically be reinstated in their place whatever was in force prior to the coup d'etat.

(2) Even though there may not exist any document expressly indicating acceptance by the appellants of the decision of the 23.9.74, such acceptance can be infallibly and inevitably inferred by their acceptance to serve for many years after the 23.9.74 as police constables, and not as acting sergeants, without pursuing by any legal remedy their claim for reinstatement to such rank. It follows that the appellants lack, due to their conduct, legitimate interest in the matter. Furthermore, appellant 3, deprived himself

of such interest by reason of his resignation from the force prior to the filing of the recourse.

(3) As regards appellants 1 and 9 their recourse is out of time as the sub judice decision is confirmatory of the previous nagative replies given to them and, therefore, it lacks executory character.

(4) Furthermore and as regards all the appellants the sub judice decision is confirmatory of the decision of the 23.9.74, and, therefore, lacks executory character.

(5) Moreover perusal of the letter dated 4.2.82 leads to the conclusion that such letter was of a merely informatory nature, especially as it was written by the Director-General of the Ministry of Interior in reply to counsel's letter to the Minister and it does not amount to a negative decision of the Commander of the Police, who, under Regulation 11 of the Police (General Regulations) 1958 was the only competent organ to decide about acting appointments to the rank of sergeant.

Appeal dismissed. No order as to costs.

Cases referred to:

Liasi v. *Attorney-General* (1975) 3 C.L.R. 558;

Platis v *Republic* (1978) 3 C.L.R. 384;

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

HadjiConstantinou v. *Republic* (1980) 3 C.L.R. 184;

Neocleous v. *Republic* (1980) 3 C.L.R. 497;

Ayoub v. *Republic* (1985) 3 C.L.R. 70;

Demetriou Dairy Products Ltd. v. *Republic* (1985) 3 C.L.R. 758;

Karatzia v. *Republic* (1985) 3 C.L.R. 987;

Pierides v. *Republic* (1985) 3 C.L.R. 1275;

Phylaktides v. *Republic* (1984) 3 C.L.R. 1328;

Asaad v. *Republic* (1984) 3 C.L.R. 1529;

Constantinides v. *Republic* (1985) 3 C.L.R. 644;

Shiekkeris v. *Republic* (1985) 3 C.L.R. 1218;

Mavrogenis v. *Republic* (1984) 3 C.L.R. 1140;

PapaAdamou v. *Republic* (1985) 3 C.L.R. 1285;

Photiou v. *Republic* (1985) 3 C.L.R. 1401;

Anastassiou v. *Demetriou and Another* (1981) 1 C.L.R. 589;

Grigoropoullos v. *Republic* (1984) 3 C.L.R. 449;

Civil Action 1095/75—District Court Larnaca.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Loris, J.) given on the 11th June, 1984 (Revisional Jurisdiction Case No. 148/82)* whereby appellants' recourse against the refusal of the respondents to reappoint and/or re-emplace and/or reinstate appellants as from 23.7.1974 in the rank and/or posts they were holding prior to the coup d'etat of July, 1974 was dismissed.

E. Efstathiou, for the appellants.

A. Vladimirou, for the respondents.

Cur. adv. vult.

The following judgments were read:

TRIANTAFYLLIDES P.: I shall deliver this judgment on behalf of the majority of this Court, consisting of my brother Judges A. Loizou J., Savvides J. and myself, our brother Judges Pikis J. and Kourris J. having dissented.

The appellants have appealed from the first instance judgment of a Judge of this Court by means of which there was dismissed their recourse (No. 148/82), under Article 146 of the Constitution, against the decision of the respond-

* Reported in (1984) 3 C.L.R. 666.

ent Ministry of Interior not to re-appoint them retrospectively to the rank of acting sergeant in the Police, which they held prior to the abortive coup d'etat of the 15th July 1974.

The sub judice decision was communicated to the appellants through their counsel, by a letter of the Director-General of the Ministry of Interior, dated 4th February 1982, which was written in answer to a letter of counsel for the appellants dated 4th December 1981.

It is common ground that on the 15th July 1974 the appellants were holding the rank of acting sergeant in the "Tactical Unit" of the Police and that the person who during the coup d'etat was "appointed" unlawfully to the post of "Commander of Police" terminated the acting appointments of all the appellants and, eventually, dismissed them from the Police.

When the lawful Commander of Police resumed his duties after the coup d'etat he reinstated all the appellants as members of the Police, with retrospective effect, but the appellants were not given back their rank of acting sergeant as, apparently, at that time the exigencies of the functioning of the Police did not require the making of temporary appointments to the rank of acting sergeant.

From an appendix which is attached to the Opposition it appears that the appellants were reinstated in the Police on the 23rd September 1974, or soon thereafter in 1974, with the exception of three of them who were reinstated early in 1975.

Ever since the appellants have been serving as police constables having, obviously, accepted the decision of the Commander of Police to reinstate them without reappointing them as acting sergeants, too.

It is correct that two of them applied, in 1975 and 1979, respectively, to the Commander of Police to be appointed acting sergeants but when their applications were turned down neither of them proceeded to challenge the decision

of the Commander of Police by means of a recourse under Article 146 of the Constitution.

Then, all the appellants applied for reinstatement to the rank of acting sergeant by means of the aforementioned letter of their counsel dated 4th December 1981, and, after a negative reply was given on the 4th February 1982, their present recourse, No. 148/82, was filed on the 24th March 1982.

On the 31st October 1975, long after all the appellants had been reinstated in the Police, there was promulgated in the Official Gazette of the Republic the Coup d'Etat (Special Provisions) Law, 1975 (Law 57/75), by means of which it was ordained that the coup d'etat and the "coup d'etat Government" did not have any legal foundation whatsoever and that any act of the "coup d'etat Government" was unfounded and non-existent.

As regards the effect of Law 57/75 we subscribe fully to what has been said already in this respect in, inter alia, *Liasi* v. *Attorney-General of the Republic*, (1975) 3 C.L.R. 558, 574, and *Platis* v. *The Republic*, (1978) 3 C.L.R. 384, 393.

We really cannot accept that the effect of such Law was, or could have been intended to be, to restore situations which were unlawfully terminated during the coup d'etat but in respect of which remedial action was taken by lawful organs of the Republic prior to the enactment of Law 57/75.

In the present instance all the appellants were, as already stated, reinstated as members of the Police by the lawful Commander of Police, but they were not also reinstated to their rank of acting sergeant simply because at that time the Commander of Police did not think that there existed exigencies justifying their appointments to the rank of acting sergeant, and, of course, not because the Commander of Police had in any way endorsed or ratified the earlier unlawful deprivation of the appellants of their rank of acting sergeant.

We cannot, however, accept as correct the view that

Law 57/75 obliterated the decision of the lawful Commander of Police, by means of which the appellants were reinstated as policemen but were not, also, appointed once again as acting sergeants, and that Law 57/75 has automatically reinstated the appellants to the rank of acting sergeant. If that could be so then Law 57/75 would, in effect, become applicable in a manner leading to rather incongruous consequences; for example, it would have to be held that by virtue of the enactment of Law 57/75 there was automatically reinstated in office the Council of Ministers which existed lawfully immediately prior to the coup d'etat in July 1974 and that the differently composed, and equally lawfully formed, Council of Ministers which existed when Law 57/75 was enacted had ceased to exist by operation of such Law.

In our opinion it was not at all intended by the Legislature that lawfully functioning organs or lawfully taken decisions during the period lasting from the return to legality after the coup d'etat and the enactment of Law 57/75 should be treated as obliterated by virtue of such Law and that by operation of this very same Law there would automatically be reinstated in their place whatever was in force prior to the coup d'etat.

During the proceedings before the learned trial Judge there was raised the issue of whether or not the appellants by accepting their reinstatement in the Police as effected by the decision of the Commander of Police dated the 23rd September 1974 have divested themselves of a legitimate interest, in the sense of Article 146.2 of the Constitution, entitling them to institute the present proceedings.

The trial Judge, after referring to case-law, such as *Paschali* v. *The Republic*, (1966) 3 C.L.R. 593, *Hadji-Constantinou* v. *The Republic*, (1980) 3 C.L.R. 184, and *Neocleous* v. *The Republic*, (1980) 3 C.L.R. 497, held that, with the exception of appellant No. 3 who had resigned from the Police on the 16th February 1982, more than a month prior to the filing of the present recourse on the 24th March 1982, there was no sufficient material indicating that the remaining appellants had

voluntarily and unreservedly accepted the aforesaid decision of the Commander of Police.

The principle that the acceptance of an administrative act or decision deprives the person who accepts it of the legitimate interest needed under Article 146.2 of the Constitution for the purpose of challenging such act or decision by a recourse has been reiterated not only in the just referred to case-law but, also, in cases such as *Ayoub* v. *The Republic*, (1985) 3 C.L.R. 70, 75, *Demetriou Dairy Products Ltd.* v. *The Republic*, (1985) 3 C.L.R. 758, 763, *Karatzia* v. *The Republic*, (1985) 3 C.L.R. 987, 990, and *Pierides* v. *The Republic*, (1985) 3 C.L.R. 1275, 1283.

We are of the opinion that, even though there may not exist any document expressly indicating the acceptance by the appellants of the aforementioned decision of the Commander of Police of the 23rd September 1974, the acceptance by all the appellants of their reinstatement in the Police without the rank of acting sergeant can be infallibly and inevitably inferred by their acceptance to serve for many years after the 23rd September 1974 as police constables, and not as acting sergeants, without pursuing by any legal remedy their claim to reinstatement to the rank of acting sergeant; and certain representations made in this respect by appellants Nos. 1 and 9, which, however, were not pursued any further by them, cannot alter our conclusion that they, too, accepted to serve only as police constables.

Consequently, the recourse and appeal of all the appellants has to be dismissed on the ground of lack of legitimate interest due to their conduct in the matter and, furthermore, in respect of appellant No. 3 they have to be dismissed on the additional ground that he deprived himself of any further legitimate interest in the matter through his resignation from the Police prior to the filing of the recourse.

As regards appellants Nos. 1 and 9 their recourse would, also, have to be found to be out of time, under Article 146.3 of the Constitution, in relation to the ne-

gative replies given, respectively, to their aforesaid representations by the Commander of Police on the 14th May 1980 and 21st April 1975; and, moreover, in relation to these two appellants the letter of the Director-General of the Ministry of Interior, dated 4th February 1982, in respect of which this recourse was filed, has to be treated as confirmatory of the said negative replies and, thus, as lacking the executory nature which is necessary in order to make it the subject-matter of a recourse under Article 146 of the Constitution (see, inter alia, in this respect, *Phylaktides* v. *The Republic*, (1984) 3 C.L.R. 1328, 1332, *Asaad* v. *The Republic*, (1984) 3 C.L.R. 1529, 1531, *Constantinides* v. *The Republic*, (1985) 3 C.L.R. 644, 650 and *Shiekkeris* v. *The Republic*, (1985) 3 C.L.R. 1218, 1225).

Furthermore, we agree with the learned trial Judge that in respect of all the appellants the said letter of the 4th February 1982 has to be treated as confirmatory of the earlier decision of the Commander of Police of the 23rd September 1974 and, therefore, in relation to all the appellants the letter of the 4th February 1982 cannot be treated as conveying an executory decision which could be challenged by their present recourse.

Also, a careful perusal of the contents of the aforementioned letter of the 4th February 1982 has led us to the conclusion that such letter is of a merely informative nature and this is yet another reason for which it cannot be treated as conveying an executory decision which can be challenged by the present recourse of the appellants (see, in this respect, *Phylaktides* case, supra, *Mavrogenis* v. *The Republic*, (1984) 3 C.L.R. 1140, 1148, *Papa-Adamou* v. *The Republic*, (1985) 3 C.L.R. 1285, 1295 and *Photiou* v. *The Republic*, (1985) 3 C.L.R. 1401, 1407). Especially as the said letter was written by the Director-General of the Ministry of Interior in answer to a letter of counsel acting for the appellants, which was addressed to the Minister of Interior on the 4th December 1981, and it does not, therefore, amount to a negative decision of the Commander of Police who, under regulation 11 of the Police (General) Regulations 1958, was the only com-

petent organ to decide about acting appointments of the appellants to the rank of sergeant.

For all the foregoing reasons this appeal has to be dismissed but we feel that we should record our great sympathy with the appellants for the way in which they were treated unlawfully by an organ of the "coup d'etat regime"; and it is now up to the Government of the Republic to consider what ex gratia action may be taken to alleviate any detriment which they have suffered in this connection as regards their careers in the Police or otherwise, if such action has not already been taken.

We shall not make any order as to the costs of this appeal.

PIKIS J.: A neat question of law of great constitutional importance has to be decided, affecting the character and implications of decisions of the coup d'etat government and its organs. The answer will guide us to determine the effect of a decision of the Chief of the Police, dated 23.9.74, purporting to amend a decision of an organ of the coup d'etat government[1], and a subsequent one of 4.2.82 of the Minister of the Interior confirming the decision of 23.9.74. The validity of the latter decision was the immediate subject of review in these proceedings.

The learned trial Judge, while acknowledging that the relevant decisions of an organ of the coup d'etat government of 23.7.74 and 1.9.74—a certain Pantelides who assumed office as Chief of the Police in usurpation of the powers of the true holder of the office—were void, he took the view that the decision that followed it in September, 1974, was executory. Therefore, the subsequent decision of the Minister of the Interior communicated by the Director-General on 4.2.82 was non justiciable because it merely confirmed the aforementioned executory decision.

Exposition of the facts will highlight the nature of the problem before us and will suggest, I believe, the answer, not too difficult to seek, in view of judicial authority and the law on the subject. At the time of the coup d'etat

[1] Taken at two stages on 23.7.74 and 1.9.74.

the applicants were members of the police force, attached to the Tactical Reserve Unit, serving with the rank of Acting Sergeant. Soon after the usurpers of power assumed control of the Offices of State first stripped them of their rank and then dismissed the applicants; the first decision was taken on 23.7.74 and published in the Official Gazette[1], also in the hands of organs of the coup d'etat government at the time; subsequently, on 1.9.74, they were dismissed from the force.

After being restored to his position the Chief of the Police, Mr. Antoniou, sought to remedy, by a decision of 23.9.74, the worst effects of the above decisions, notably the dismissal of the applicants from the force. On the other hand, he did not eradicate the decision in its entirety, leaving in force the effects of the decision with regard to the stripping of the applicants of the rank of Ag. Sergeant.

Dissatisfied with the decision the applicants kept pressing for the unqualified revocation of the decision of 23.7.74 and their restoration to the rank of Acting Police Sergeant. A definitive answer as on the stand of the Administration to the claim of the applicants was given by the Minister of the Interior in a letter addressed to the applicants on his behalf by the Director-General of the Ministry, on 4.2.82. By this decision the Administration signified that it adhered to the position adopted by the Chief of the Police in his decision of 23.9.74. Consequently, the request of applicants for restoration to the position they had in the force at the time of their unlawful dismissal in July-Sept., 1974, was dismissed. The present proceedings are directed against the validity of this decision.

The learned trial Judge, as noted earlier, dismissed the recourse for the sole reason that the decision of February, 1982, lacked executory character being confirmatory of the earlier executory decision of 23.9.74. Otherwise, the Judge was in no doubt the dismissal of the applicants by organs of the coup d'etat government was illegal and de-

[1] Publication 1.8.74.

void of legal effect. The sole question we are required to resolve in this appeal is whether the decision of 23.9.74 was executory. If the answer is in the affirmative the Judge was evidently right to hold that the decision of February, 1982, was confirmatory of that of 23.9.74. If not, the decision of February, 1982, was justiciable being definitive of the position of the Administration vis-a-vis the status and position of the applicants in the force. On consideration of the decision of the Chief of the Police of 23.9.74 and its effects, there can be no doubt that what the Chief of the Police purported to accomplish was to modify, and in point of fact did amend the decisions of July, 1974 and 1.9.74. His decision was not confined to acknowledgment of their nullity and eradication of their effects. Were the decisions of 23.7.74 and 1.9.74 amenable to modification or amendment? The answer is, on principle and authority, "No". In *Anastassiou* v. *Demetriou and Another*[1] the Supreme Court proclaimed the coup d'etat aimed to upset legal order and its organs and functionaries operated in the vacuum of lawlessness. They adopted the decision of the District Court of Larnaca, given by myself[2], to the effect that the action of usurpers of State power can never generate rules of law or valid administrative acts. Their actions fell in the legal vacuum that envelopes the lawlessness of their acts. The Supreme Court, moreover, adopted the reasoning behind the judgment of the trial Court that they reproduced almost verbatim in their judgment. To some of these principles I had occasion to refer in *Grigoropoullos* v. *The Republic*[3]. Not only on authority but as a matter of statutory law, too, the actions of the coup d'etat government and its organs are devoid of legal effect. The House of Representatives proclaimed, in 1975[4]—no doubt as an act of faith to the rule of law—that the coup d'etat and its government had no legitimacy whatever; further, that its actions, whether of a legislative or administrative nature, were unlawful and inexistent in law. Therefore, the decision of the usurper of the office of the Chief of the Police of 23.7.74 was inexistent.

[1] (1981) 1 C.L.R. 589.
[2] Civil Action No. 1095/75 — Larnaca District Court.
[3] (1984) 3 C.L.R. 449.
[4] Law 57/75.

As a matter of logic, an inexistent act is one that does not exist for any purpose. And as such it cannot be heeded —legislatively, administratively or judicially. A nullum is both in logic and law a void for all purposes. You cannot modify, amend or alter an inexistent state of affairs and any attempt to do so falls in the same vacuum of inexistence. Otherwise, we would be attaching, by a side-door, legal effect to acts of the coup d' etat government and its organs.

As earlier explained, the decision of the Chief of the Police of 23.9.74 purported to amend the aforementioned inexistent decision. This was not possible in law and the decision could have no different fate from the void one it purported to amend. In effect, the decision of 23.9.74 purported to modify the inexistent decision by removing its worst implications, the dismissal, while acknowledging some of its side effects, the removal of the rank of Ag. Police Sergeant from the applicants.

In the absence of a valid decision terminating the acting appointments of the applicants, the applicants were entitled to enjoy, formally and substantively, the attributes of their position. These attributes were denied them. By the omission of the respondents to restore them to the position of which the inexistent decision of the organ of the coup d'etat government sought to deprive them, they perpetuated the illegal state of affairs introduced on 23.7.74 and 1.9.74 contrary to our caselaw and the provisions of Law 57/75. By the decision of 4.2.82 they sought to formalise this illegal state of affairs. This decision was not confirmatory of any earlier executory decision for, as explained above, the decision of 23.9.74 was not executory being as invalid as the decision of 23.7.74 and 1.9.74 that it purported to modify. Therefore, the decision of 4.2.82 was justiciable albeit liable to be set aside for the reasons indicated in this judgment.

The appeal succeeds. The judgment of the trial Court is set aside, as well as the decision of the Minister of the Interior communicated on 4.2.82.

KOURRIS, J.: I had the advantage of reading in advance the judgment of Pikis, J. I find myself in full agreement with it and have nothing to add.

Appeal dismissed by majority.
No order as to costs.