

1985 November 13

[TRIANTAFYLIDIS, P., SAVVIDES, LORIS, STYLIANIDES,
KOURRIS, JJ.]

YIANNAKIS G. DANOS.

Appellant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF INTERIOR.
2. THE COMMANDER OF POLICE,

*Respondents.**(Revisional Jurisdiction Appeal No. 527).*

Practice—Recourse for annulment—Service of, on interested parties—Governed by rule 19 and not by rule 18 of the Supreme Constitutional Court Rules—The Direction of the Supreme Court to its Registry dated 24.7.85—Adopted judicially under rule 19—Amenity to issue special directions in the interest of Justice.

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Practice—Recourse for annulment—Costs—Augmented costs of service on interested parties justifiably incurred—A factor to be taken in consideration in deciding whether to award costs in favour of a successful applicant or not to award costs against an unsuccessful one.

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This is an appeal against the refusal of a Judge of this Court to direct that the interested parties should be notified about the recourse through the Commander of Police and not by normal service through the Registry of this Court.

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For many years in the past the interested parties were notified by means of notices sent to them by the Registry of this Court either through their Heads of Department or through the post. As on some occasions interested parties complained that they had not been actually notified about a recourse affecting their interests, the Supreme Court on

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24.7.85 decided to direct its Registry that interested parties should be served with copies of a recourse, after payment by the applicant of the Court fees for such service.

5 *Held, dismissing the appeal:* (1) The fact that in the past an applicant was not burdened with the cost of service is not a good enough reason for perpetuating a practice which was unsatisfactory and, also, unjust, in the sense that an applicant was allowed to use gratis for his benefit state services. The cost of service is not in itself
10 prohibitive and it is to be observed that the number of interested parties can, to a certain extent, be determined by the applicant himself. If an applicant incurs justifiably augmented cost of service, this is a factor to be taken in
15 consideration in deciding to award costs in favour of a successful applicant or not to award costs against an unsuccessful applicant.

(2) In view of the basic difference between the nature of proceedings in a recourse and the nature of civil proceedings the course to be adopted in relation to the notification of the interested parties is not governed by rule
20 18, but by rule 19 of the Constitutional Court Rules of Court. Acting under rule 19 this Court adopts judicially the direction to the Registry of this Court dated 24.7.85.

(3) In an exceptional case, if for some reason service in a normal manner is not feasible, the Judge dealing with the case may issue under rule 19 such directions as the interests of Justice may require.
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*Appeal dismissed.
No order as to costs.*

30 Cases referred to:

Josephides v. The Republic, 2 R.S.C.C. 72;

Theodorides v. Ploussiou (1976) 3 C.L.R. 319;

Bagdades v. Ploussiou (1984) 3 C.L.R. 1156;

Rousos v. The Republic (1985) 3 C.L.R. 119;

35 *Christoudias v. The Republic* (1985) 3 C.L.R. 1615.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Pikis, J.) given on the 7th October, 1985 (Revisional Jurisdiction Case No. 794/85)* whereby appellant's application for leave to effect substituted service on the interested parties, members of the Police Force, was dismissed.

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A. S. Angelides, for the appellant.

M. Florentzos, Senior Counsel of the Republic, for the respondents.

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Cur. adv. vult.

TRIANAFYLLIDES P. read the following decision of the Court. The appellant has appealed against the refusal of a Judge of this Court—who is dealing in the first instance with recourse No. 794/85 under Article 146 of the Constitution—to direct that the “interested parties” should be notified about the recourse through the Commander of Police and not by normal service through the Registry of the Supreme Court.

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The practice of notifying an interested party, that is a party whose interests may be affected by the outcome of a recourse under the said Article 146, appears to have been initiated in *Josephides v. The Republic*, 2 R.S.C.C. 72, 75, and such practice has been considered in, inter alia, *Theodorides v. Ploussiou*, (1976) 3 C.L.R. 319, 330 and *Bagdades v. Ploussiou*, (1984) 3 C.L.R. 1556, 1558.

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For many years in the past the interested parties were being notified by the Registry of the Supreme Court by means of notices which were sent to them either through their Heads of Department or which were posted to them directly; and we take judicial notice of the fact that there were some occasions when interested parties complained that they had not been actually notified about recourses affecting their interests. Consequently, the Supreme Court on the 24th July 1985 decided to issue a direction to the

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* Reported in (1985) 3 C.L.R. 2062.

Registry of this Court that an interested party should be notified about a recourse through service on him of copy of the recourse, after payment by the applicant of the Court fees for such service, that is in the same way as judicial process is served on parties thereto.

By filing the application which was refused by the trial Judge the appellant was, in effect, seeking to avoid compliance with the new arrangements regarding service on interested parties, which are now in force as a result of the said direction, and he was seeking to notify the interested parties in the present case through their Head of Department, who is the Commander of Police.

It is correct that in the past an applicant was not burdened with the cost of notifying interested parties about his recourse, whereas now, by virtue of the aforementioned direction of the Supreme Court, which was issued on the 24th July 1985, an applicant will be burdened with the cost of serving notices on them.

The fact, however, that in the past an applicant in a recourse was not required to pay for the cost of notifying the interested parties is not a good enough reason for perpetuating a practice which was unsatisfactory and, also, unjust, in the sense that an applicant was allowed to use gratis for his personal benefit, State services existing at the expense of all the citizens and paid for by each one of them when using them in relation to other forms of judicial process.

The cost of service is not in itself prohibitive and it is to be observed that the number of the interested parties can, to a certain extent, be determined by an applicant himself when he files a recourse: If, for example, by an administrative decision there have been promoted numerous persons such decision may be challenged as regards only one or some of them and not in relation to all of them. If, however, an applicant decides to challenge such administrative decision in respect of all, or most of, those who have been promoted by means of it and, therefore, renders them interested parties, it is only fair that he should be burdened with the increased fees needed for service on such interested parties.

It may be pointed out that if an applicant justifiably incurs rather augmented costs due to having to pay for service on many interested parties this is a factor to be taken into consideration when deciding whether to award costs in his favour if he has been successful, or whether not to award costs against him if he has been unsuccessful.

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In view of the basic difference between the nature of the proceedings in a recourse and the nature of civil proceedings, as it has been explained in, inter alia, *Rousos v. The Republic*, (1985) 3 C.L.R. 119, and *Christoudias v. The Republic* (case 159/84, not reported yet),* we do not think that the correct course to be adopted in relation to the notification of interested parties in a recourse could have been treated as being regulated by the Civil Procedure Rules, which under rule 18 of the Supreme Constitutional Court Rules of Court have been rendered applicable, mutatis mutandis, so far as circumstances permit or unless the Court or a Judge otherwise directs, to the proceedings in a recourse.

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We are of the opinion that the notification of interested parties is a matter coming within the ambit of rule 19 of the aforementioned Rules of Court; and, acting under such rule 19, we endorse and adopt judicially the direction which was given as aforesaid to the Registry of the Supreme Court on the 24th July 1985 and we affirm that the interested parties in this case should be served as directed by the Supreme Court on the 24th July 1985. There is, therefore, upheld, in effect, the view that was reached by the learned trial Judge when he dismissed the application of the appellant for what was described by counsel for the appellant as "substituted service" on the interested parties.

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Before concluding we should add that though the aforementioned direction of the Supreme Court of the 24th July 1985, which has now been clothed with, also, the force of judicial pronouncement, should be adhered to in all cases, if, in an exceptional case, service in the normal manner on an interested party, in accordance with the said direction, is not, for some reason, feasible, the Judge dealing with such case may give, under rule 19 of the

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* Reported in (1985) 3 C.L.R. 1615.

Supreme Constitutional Court Rules of Court, such directions for the notification of an interested party as the interests of justice may require.

5 In the light of all the foregoing this appeal has to be dismissed: but we will not make any order as to its costs.

Appeal dismissed with no order as to costs.