

1986 February 15

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION.

ARCHIGOS KOMMATOS DIKEOSINIS, AS
THE REPRESENTATIVE OF THE WORKERS,
MEMBERS OF THE "KOMMA DIKEOSINIS,"

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF LABOUR AND
SOCIAL INSURANCE,

Respondent.

(Case No. 513/85).

Constitutional Law—Constitution, Article 29—When a default to reply within the 30 day period provided in Article 29 is justiciable under Article 146—"Competent Court" in Article 29.2—Meaning of.

5 By letter dated 26.3.85 the applicant complained to
the Minister of Labour and Social Insurance that promises
by the Director of Social Insurance respecting criminal
proceedings against a number of self-employed persons
had not been kept and requested that such criminal pro-
10 ceedings be suspended or discontinued.

 As no reply was given to the said letter the present
recourse was filed on 6.5.85 for a declaration that the omis-
sion to reply within the 30 day period provided by Article
29.1 of the Constitution is unconstitutional and for an
15 order requiring the respondent to reply under Article 29*.
The second prayer has been rendered superfluous as a
reply was given to the said letter on 9.5.85. The sole
remaining issue is the justiciability of the first prayer.

* A further relief was summarily dismissed (*Justice Party v. The Republic* (1985) 3 C.L.R. 1621.

Held. dismissing the recourse (1) Article 29 of the Constitution does not per se confer a right of action. A competent Court in the sense of Article 29.2 is one having jurisdiction under the Constitution and laws made there-
under to take cognizance of the substance of the request or
complaint. 5

(2) For the default to be justiciable under Article 146 the matter on which the authorities are petitioned should be in the domain of public law and refer to the exercise of executive or administrative competence. In such a case the party aggrieved may have recourse under Article 146 with-
out proof of further prejudice, i.e. the party is relieved of
the burden of proving that the decision or omission affects
a present legitimate interest in the sense of Article 146.2. 10

(3) As criminal proceedings, and matters precedent, in-
cidental and ancillary thereto are wholly outside the ambit
of Article 146, the First Prayer is not justiciable under
Article 146. 15

Recourse dismissed.

No order as to costs. 20

Observations of the Court: The dismissal of the re-
course does not exonerate the Administration of its failure
to reply. The reply of 9.5.85 mitigates the gravity of the
default. Heeding the exercise of the right to petition the
authorities under Article 29 is all the more important
nowadays because of the expansion of society, its corpora-
teness and the risk inherent thereto to individual rights. 25
An independent committee or other body should be set
up for scrutinizing default to reply within the 30 days
period where no right to judicial review accrues from such
default. 30

Cases referred to:

Justice Party v. The Republic (1985) 3 C.L.R. 1621;

Kyriakides and The Republic, 1 R.S.C.C. 66;

Xenophontos and The Republic, 2 R.S.C.C. 89; 35

Pikis v The Republic (1965) 3 C.L.R. 131;

Papadopoulos v. The Republic (1965) 3 C.L.R. 309;

Sevastides v. The Republic (1968) 3 C.L.R. 309;

Yialousa Savings Bank Ltd. v. The Republic (1977) 3 C.L.R. 25;

5 *Pitsillos v. C.B.C.* (1981) 3 C.L.R. 614;

Pitsillos and Others v. Municipality of Nicosia (1982) 3 C.L.R. 754.

Recourse.

10 Recourse for a declaration that the omission of the respondent to reply to applicant's letter requesting that proceedings instituted against the workers, members of the "Komma Dikeos'inis" is unconstitutional and for an order requiring the respondent to comply with the obligations under Article 29 of the Constitution.

15 *Applicant* appeared in person.

D. Papadopoulou (Mrs.), for the respondent.

Cur. adv. vult.

20 PIKIS J. read the following judgment. The applicant addressed on 26th March, 1985, a letter to the Minister of Labour and Social Insurance complaining personally and on behalf of a number of self-employed persons that promises given by the Director of Social Insurance respecting criminal proceedings against them were not kept, requesting that criminal proceedings instituted against them under the
25 Social Insurance Law be suspended or discontinued. As no reply was given to this letter, the present recourse was instituted on 6.5.1985 for a declaration that the omission to reply to their aforementioned letter within the 30-day period provided for by Article 29.1 of the Constitution is
30 unconstitutional and an order requiring them to comply with their obligations under Article 29. Furthermore, an order was sought for the suspension of criminal proceedings pending the determination of this recourse. The last relief was summarily dismissed on 4th July, 1985, as frivolous
35 pursuant to the powers of the Court in Article 134.2 of

the Constitution⁽¹⁾. For the reasons indicated therein criminal proceedings, matters precedent, incidental and ancillary thereto are wholly outside the ambit of the jurisdiction of this Court under Article 146.

The second prayer for an order directing them to comply with the provisions of Article 29 has been rendered factually superfluous for a reply was given by the respondents on 9.5.1985. Of course, the reply does not remedy the default to answer within the 30-day period but stops the continuance of the omission. The sole issue remaining for decision is the justiciability of the first prayer, to repeat the failure to reply within 30 days to the letter of 26th March, 1985. Article 29 belongs to Part II of the Constitution guaranteeing fundamental rights and liberties. It safeguards the right of the person to petition State authorities and imposes a corresponding obligation upon them to deal with it as expeditiously as possible and make reply thereto the latest within 30 days. In the event of default para. 2 of Article 29 confers a right to the aggrieved citizen to have recourse to "a competent Court in the matter of such request or complaint". There is plethora of authorities on the interpretation and application of Article 29(2). The principles emerging therefrom on the actionability of a complaint for failure on the part of the Administration to comply with its obligations under Article 29, are the following—I lay stress on the justiciability of a complaint for that is the only issue arising for consideration; otherwise there is no doubt respondents failed to answer the letter of the applicant within the 30-day period laid down in the Constitution:-

- (a) Article 29 does not per se confer a right of action and does not legitimize a recourse under Article 146 on every occasion there is default to make re-

⁽¹⁾ Justice Party v. Republic (1983) 3 C.L.R. 1621.

⁽²⁾ Kyriakides and The Republic, 1 R.S.C.C. 66; Xenophonos and The Republic, 2 R.S.C.C. 89; Costas M. Pikis v. The Republic (1965) 3 C.L.R. 131; Papadopoulos v. Republic (1965) 3 C.L.R. 309; Sevastides v. Republic (1968) 3 C.L.R. 309; Yialousa Savings Bank Ltd. v. Republic (1977) 3 C.L.R. 25; Pitsillos v. C.B.C. (1981) 3 C.L.R. 614; Pitsillos and Others v. Municipality of Nicosia (1982) 3 C.L.R. 754.

ply within the 30-day period. A competent Court is one having jurisdiction under the Constitution and laws made thereunder to take cognizance of the substance of the request or complaint.

5 (b) For the default to be justiciable under Article 146 the matter on which the authorities are petitioned must be in the domain of public law and further refer to the exercise of executive or administrative competence. If that be the case and there is default
10 to make reply,

(c) An aggrieved party may have recourse under Article 146 without proof of further prejudice. The detriment to his interest to have a speedy reply validates judicial review. This is the one aspect of Article 29
15 that has direct jurisdictional implications by removing the burden otherwise cast on a party having recourse to Court to prove that the decision or omission, as the case may be, affects a present legitimate interest in the sense of para. 2 of Article 146.

20 The subject matter for the unanswered letter of the applicant is not referable to any executive or administrative competence or discretion of the Minister of Labour and Social Insurance but to criminal proceedings, the review of which as well as of matters antecedent, incidental and
25 ancillary thereto, is outside the jurisdiction of the Court under Article 146. It is for that reason that prayer of the recourse was summarily dismissed for the reasons indicated in the decision of the Court of 4th July, 1985.

The dismissal of the recourse does not exonerate the
30 Administration of failure to reply to the applicant within the 30-day period provided for in Article 29.1 of the Constitution. The reply of 9th May, 1985, mitigates, of course, the gravity of the default. The right safeguarded by Article 29.1 is an important aspect of the rights of man
35 safeguarding the right of audience, by written communication, before the authorities exercising the powers of the State. The right to petition the authorities, as well as the right to complain of mal-administration, have an ancient origin deriving from the recognition of man as an organic

entity in society. Heeding the exercise of this right by the individual or group of individuals and responding thereto efficiently, is all the more important nowadays, because of the expansion of society, its corporateness and the risk inherent thereto to individual rights. The lack of amenity of judicial review of every default of the Administration to reply within the 30-day period for the reasons explained earlier in this judgment, does not diminish the gravity of the obligation of the Administration in the interest of the effective entrenchment of the right safeguarded by Article 29.1 and expeditious administration. It is right there should be set up an independent Complaints Committee or other body with responsibility for scrutinizing failure to reply within 30 days where no right for judicial review accrues from the default to the aggrieved citizen.

The recourse is dismissed. Let there be no order as to costs.

*Recourse dismissed.
No order as to costs.*