

1986 September 20

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

NEOPHYTOS SOFOCLEOUS.

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE DISTRICT WELFARE OFFICE AND/OR
THE MINISTER OF LABOUR AND/OR
THE SOCIAL SERVICES DEPARTMENT,

Respondents.

(Case No. 76/85).

*Constitutional Law—Right to decent existence—Constitution.
Article 9—Prevents discontinuance of public assistance, if
it entails deprivation of means of decent existence.*

5 *Administrative Law —General Principles—Good administration
—Wife of person receiving public assistance failed to com-
ply with request to find a new job—Assistance disconti-
nued—Husband cannot be penalized for behaviour of wife
—Principles of good administration violated, even if de-
10 cision could be justified under sections 3(2)(b), 12(1)(b)
or 3(2)(g) of the Public Assistance and Services Law
10/75.*

15 The applicant, who became completely unable to work
was receiving C£34.- per month as public assistance. The
payments were discontinued as from 1.10.84 under sec-
tions 3(2)(b) and 12(1)(b) of Law 10/75 on the ground
that applicant's wife, who under the relevant legislation
was responsible for the maintenance of her husband and
their children, failed to comply with the requirements of
20 a welfare officer, namely that, if her income from dress-
making was not sufficient for the purpose of such main-

tenance, she should find another job and, if the state of her health prevented her from doing so, she should produce a medical certificate to that effect.

Hence the present recourse. Counsel for the respondent argued that if the said legal provisions do not justify the sub judge decision, such decision may be justified under s. 3(2) (g) of the same Law. 5

Held, annulling the sub judge decision: (1) The aforesaid provisions of the law cannot be applied or resorted to in a manner penalizing the applicant for the behaviour of his wife. Even if the sub judge decision could have found justification thereunder it was reached contrary to the principles of good administration. 10

(2) Irrespective of the extent to which Article 9 of the Constitution imposes a positive duty for public assistance, it definitely prevents discontinuance of such assistance in a manner depriving the applicant of the means of decent existence. The application of any of the aforesaid provisions of the law in a manner warranting such a course offends against Article 9. 15 20

*Sub judge decision annulled.
No order as to costs.*

Recourse.

Recourse against the decision of the respondents to discontinue the payment to applicant of the sum of £34.- per month by way of public assistance. 25

N. Stylianides (Miss), for the applicant.

A. Vassiliades, for the respondents.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment. In the present case the applicant is challenging the decision of the District Welfare Office which was communicated to him on the 15th December 1984 and by means of which there was discontinued the payment to him of the amount of £34.- per month by way of public assistance. 30 35

At the material time the applicant was forty-eight years old, he was married and had three children, eighteen, sixteen and fourteen years old, respectively.

5 His elder son had enlisted in the National Guard in July 1984 and his other two children were pupils at a secondary school.

10 The applicant had been working in the past as a mason but in 1973 he was injured in a traffic accident and he became unable to do any work; and he was granted public assistance in order to meet his financial needs and those of his family.

15 The amount of public assistance originally granted to the applicant was C£64 per month but as from August 1984, in view of the enlistment of his son in the National Guard and as his wife was working part time as a dress maker, the said amount was reduced to C£34 per month

20 Then, a welfare officer, who had been visiting the applicant and his wife at home, explained to them that under the provisions of the relevant legislation the wife of the applicant was responsible for the maintenance of her husband and her children she should find other work if her income from dressmaking was not sufficient for this purpose and if the state of her health prevented her from doing other work she should produce a medical certificate to that effect.

25 As the wife of the applicant did not comply with the requirements of the welfare officer the payment of public assistance to the applicant was discontinued as from the 1st October 1984, under sections 3(2)(b) and 12(1)(b) of the Public Assistance and Services Law, 1975 (Law 30 10/75), which provide, respectively, that no one is granted public assistance for any period for which he is remaining voluntarily unemployed and that a wife is responsible for the maintenance of her husband and her 35 children, under the age of eighteen years, to the extent to which her husband is unable to do so.

Counsel for the respondents has argued that even if the aforementioned legislative provisions have been wrong-

ly applied in the present case the sub judge decision to discontinue the payment of public assistance to the applicant could be upheld under other relevant legislative provisions, such as section 3(2)(g) of Law 10/75 which lays down that nobody is granted public assistance if he refuses to undertake remunerative work. 5

It is not disputed that the applicant due to the state of his health is completely unable to work and that, therefore, he does not remain voluntarily unemployed, nor can it be said that he refuses to undertake remunerative work. 10

Irrespective of the attitude of the applicant's wife towards the matter of finding full time or more remunerative work, and without generalizing regarding the application of the aforementioned legislative provisions, I cannot accept that in the present case such provisions could be properly applied, or resorted to, so as to, in effect, penalize this helpless applicant for the behaviour of his wife. I, therefore, have no hesitation in holding that, even assuming that from the strictly legal point of view the sub judge decision could have found justification on the strength of any one of the said legislative provisions, the said decision was reached contrary to the principles of proper administration and in excess and abuse of powers and has to be annulled 15
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Moreover, such decision conflicts with Article 9 of the Constitution which provides that every person has the right to a decent existence, because irrespective of the extent to which the said Article 9 imposes a positive duty to make available public assistance in a particular case, it definitely prevents the discontinuance of public assistance in a way entailing deprivation of the means necessary for decent existence; and the application of any of the aforesaid legislative provisions in a manner warranting such a course would appear to offend against Article 9 25
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In the light of all the foregoing the sub judge decision must be annulled, but I shall not make any order as to its costs 35

*Sub judge decision annulled
No order as to costs*