

1987 April 3

[SAVVIDES J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS GEORGHIOU,

Applicant,

v

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS,

Respondents

(Case No 141/85)

*Recourse for annulment—Two distinct and independent of each other acts—
Cannot be challenged by one and the same recourse—Principle not
applicable when the acts are not entirely independent of each other—
Dismissal of appeal against disciplinary sentence of «requirement to resign
from Police Force» followed by dismissal of application for pension benefits—* 5
The two acts not entirely independent of each other

*Legitimate interest—Acceptance of an administrative act—Implied acceptance in
the exercise of applicant's free volition—Deprives applicant of his legitimate
interest—Dismissal of applicant's appeal against his disciplinary sentence of
«requirement to resign» from Police Force—Application for pension* 10
benefits—Amounts to implied acceptance of the dismissal of the appeal

*Time within which to file a recourse—Letter posted on 21 11 84—Allegation that
it was received on 23 11 84—In the absence of evidence to the contrary, the
allegation is well founded*

On 25 6 84 the applicant, a member of the Police Force, pleaded guilty to 15
a charge of corruption. As a result the Disciplinary Committee sentenced him
to deferment of increment until 1 11 85, but the Minister of Interior increased
the sentence to that of «requirement to resign». The applicant appealed to the
Council of Ministers

By letter dated 21 11 84 the applicant was informed that his appeal had 20
been dismissed. On 26 11 84 the applicant applied for his pension and other
retirement benefits on the basis of his years of service in the Police Force. The
Council of Ministers turned down the said application. Hence the present
recourse, which was filed on 4 2 85 and whereby the applicant challenges 25
both decisions, that is the one dismissing his appeal and the other dismissing
his application

Counsel for the respondent raised a number of preliminary objections, 30
namely that the recourse is as regards prayer A out of time, that the applicant
has no legitimate interest to pursue prayer A and that the recourse cannot
proceed as it challenges two unconnected and independent administrative
acts

5 Held, (1) Even if it is assumed that the decision dismissing the appeal of the applicant was communicated to the latter on the day when the relevant letter was posted, i.e. on 21 11 84, *again the recourse is not out of time* In any event and in the absence of evidence to the contrary applicant's allegation that he received the letter on 23 11 84 is well founded

10 (2) The applicant, instead of challenging the decision dismissing his appeal, he applied for pension and retirement benefits Such conduct amounts to implied acceptance of such decision in the exercise of applicant's free volition It follows that the applicant has lost any legitimate interest to challenge such decision

15 (3) One cannot challenge two independent and unconnected administrative acts by one and the same recourse, but in this case the two acts in question are not entirely independent of each other as the claim for pension can only arise in case of retirement from the service Irrespective of the desirability that the two acts should have been challenged by different recourses, this formal defect is not enough to nullify the proceedings as regards Prayer B

20 *Prayer A of recourse dismissed*
Directions that Prayer B of recourse
be heard on the merits

Recourse.

25 Recourse against the decision of the respondent to affirm the decision of the Minister of Interior imposing upon applicant the sentence of requirement to resign and the rejection of applicant's application for the payment of pension and gratuity benefits in respect of his service in the Police Force.

L. Clerides, for the applicant.

A. Vladimirov, for the respondents.

Cur. adv. vult.

30 SAVVIDES J. read the following decision. The applicant was a police constable from 1973 till the 6th September, 1984 when, as a result of disciplinary proceedings against him the sentence of requirement to resign was imposed on him. The facts which led to his conviction are briefly as follows:

35 On the 22nd December, 1983 the Minister of Interior appointed a Disciplinary Committee under Regulations 10A and 32 of the Police (Discipline) Regulations to try disciplinary charges against the applicant consisting of-

- (a) abuse of trust,

(b) corruption and

(c) improper conduct.

On the 25th June, 1984 after the applicant pleaded guilty to the charge of corruption the Disciplinary Committee sentenced him to deferment of increment until the 1st November, 1985. The said conviction was reviewed by the Minister of Interior according to Regulation 36 of the Police (Discipline) Regulations, who increased the sentence to that of requirement to resign. The decision of the Minister of Interior dated 6.9.1984 was communicated to the applicant on 10.9.1984, who, then appealed to the Council of Ministers.

The applicant was informed by letter of the Minister of Interior that he could, if he wished, submit written representations in support of his appeal which he did by letter of his counsel. The applicant's appeal was considered on the 1st November, 1984 by the Council of Ministers which decided to affirm the sentence imposed by the Minister of Interior and dismissed the appeal. The decision of the Council of Ministers was communicated to the applicant by letter dated 21st November, 1984.

After such decision was communicated to the applicant counsel on his behalf, addressed a letter to the Minister of Interior dated 26.11.84, requesting the grant to the applicant of pension and retirement benefits on the basis of his years of service in the Police Force. The applicant's request was submitted by the Minister of Interior to the Council of Ministers which examined it at its meeting of 17.1.1985 and decided to reject same. The decision of the Council of Ministers was communicated to the applicant by letter dated the 26th January, 1985. As a result the applicant filed the present recourse whereby he challenges -

(a) The decision of the Council of Ministers communicated to the applicant by letter dated 21st November, 1984, whereby the council of Ministers affirmed the decision of the Minister of Interior imposing upon the applicant the sentence of requirement to resign.

(b) The decision of the Council of Ministers communicated to the applicant by letter dated 26th January, 1985 informing him of the rejection of his application for the payment of pension and gratuity benefits in respect of his 12 years of service in the Police Force.

Applicant prays for the annulment of the above said two decisions as being null and void and of no legal effect on the ground that they are not duly reasoned; that the proposals of the Minister of Interior to the Council of Ministers in both cases were
 5 prejudicial and unfavourable to the applicant; that the Council of Ministers acted under misconception of fact; that the Council of Ministers violated the rules of natural justice as it failed to afford the applicant the opportunity of being heard orally before it.

10 Counsel for the respondent raised the following preliminary objections.

(a) The recourse cannot proceed as the applicant challenges two independent and unconnected administrative acts by one recourse.

(b) The first prayer of the applicant is out of time.

15 (c) The applicant has no legitimate interest to pursue prayer A of his recourse as the prerequisites of Article 146 are not satisfied.

On the joint application of both counsel the above points of law were set down for hearing as preliminary to the hearing of the substance of the case.

The arguments advanced by counsel for the respondent in support of the preliminary grounds raised by him are briefly as follows:

The applicant could not challenge by the same recourse two
 25 independent and unconnected administrative acts. The decision of the Council of Ministers affirming the decision of the Minister of Interior to require the applicant to resign was by itself a complete and independent administrative act. The second decision of the Council of Ministers, that of dismissing the applicant's application
 30 for the payment to him of pension and retirement benefits is again a different, complete and independent administrative act. On the basis of the established administrative principles, counsel submitted, as emanating from the Greek authorities, when two unconnected administrative acts are being challenged by the same recourse, then, the prayer in respect of the second one
 35 should fail and should automatically be dismissed and the court can only deal with the first act or decision complained of.

Dealing with the first prayer, counsel submitted that the recourse in respect thereof was filed outside the 75 days time limit

fixed by the Constitution. He further contended that the applicant by having submitted an application for the payment to him of pension and retirement benefits without any reservation had impliedly accepted the decision for his resignation and, therefore, he has lost any legitimate interest to challenge such decision. 5

Counsel for the applicant, on the other hand, submitted that two independent administrative acts may be challenged by the same recourse, if they are related to each other. In the present case, counsel submitted, the decision refusing the grant to him of pension and retirement benefits, is the consequence of the disciplinary sentence imposed upon the applicant which led to his retirement from the service. He rejected the submission of counsel for the respondent that the recourse was out of time concerning the first prayer, as the decision of the 1st November, 1984 was communicated to the applicant by letter dated 21.11.84 which was received on the 23rd November, 1984 and the material time is the time when a person comes to know about a decision on the matter. As to the contention of counsel for the respondent that the applicant by having accepted the sub judice decision in Prayer A has deprived himself of his legitimate interest, counsel for applicant in his written address has not advanced any argument to the contrary. The only mention made by him is verbatim as follows: 10
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«Prayer B can only proceed in case Prayer A should fail.» 25

I shall deal first with the relief prayed under paragraph (A). The contention of counsel for the respondent that Prayer A is outside the time limits prescribed under the Constitution, is untenable. The sub judice decision was communicated by letter dated the 21st November, 1984 and once it was communicated by post, the allegation of counsel for applicant that it was received on the 23rd November, 1984 is, in the absence of any evidence to the contrary well founded. The recourse was filed on the 4th February, 1985. As from the 23rd November, 1984 till the 4th February, 1985 the time that elapsed is 73 days in which the day of the communication of the decision and the day of the filing of the recourse are included. 30
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Even if we assume that the decision was communicated on the day it was posted, again the whole period is not outside the 75 days time limit prescribed by the Constitution.

The next question which poses for consideration concerning Prayer A is whether the applicant has lost his legitimate interest to challenge the present recourse.

5 It is well settled by a line of cases of this court that an express or implied acceptance of an administrative act or decision without any reservation of rights, provided it emanates out of the free will of a party, deprives him of any legitimate interest to challenge such decision. In the present case the decision of the Council of Ministers was communicated to the applicant on the 23rd
10 November 1984. The applicant instead of challenging the said decision filed an application to the Council of Ministers requesting the grant to him of his pension and retirement benefits. The conduct of the applicant amounts to a clear implied acceptance by him of the decision of the Council of Ministers, in the exercise of
15 his free volition.

I therefore accept the submission of counsel for the respondent in this respect and I find that the applicant has lost any legitimate interest to challenge such decision.

20 I come next to consider the second prayer of the recourse of the applicant.

I agree with the argument advanced by counsel for the respondent that one cannot challenge two independent and unconnected administrative acts by one and the same recourse. In the present case, however, the question which arises is whether
25 the two acts are entirely independent of each other or whether the one is related to the other in that the second cannot have any substance in case the first one succeeds and that the second is consequential of the result of the first.

30 The claim of the applicant for pension and retirement benefits could only arise in the case of his retirement from the service whether compulsorily or voluntarily. I have therefore come to the conclusion that, irrespective of the desirability that the two acts should have been challenged by different recourses and the second one should remain in abeyance pending the result of the
35 first, this formal defect is not enough to nullify the proceedings in respect of prayer B. It has been held time and again by this court that formal defects should not be allowed to be used as a means of defeating a claim which a party may have against an administrative act or decision.

40 Before concluding I ought to mention that counsel for applicant

has filed, after judgment was reserved on the preliminary points, an additional ground that the Police (Discipline) Regulations 1958-1983, on which the applicant was convicted and sentenced to requirement to resign, had been declared void by the Supreme Court. This ground, however, goes to the substance of prayer A, which, as I have already found, cannot proceed. **5**

In view of my findings as above, Prayer A of the recourse is hereby dismissed. The preliminary objection as to the validity of prayer B, however, fails and the recourse may proceed for the hearing of prayer B on its merits. There will be no order for costs on the preliminary issues. **10**

Order as above.