

(1988)

1988 September 22

[HADJITSANGARIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PARASKEVAS ANASTASSIOU,

Applicant,

v.

THE REPUBLIC OF CYRPUS, THROUGH

1. THE MINISTER OF LABOUR AND SOCIAL INSURANCE,
2. THE DIRECTOR OF SOCIAL INSURANCE,

Respondents.

(Case No. 204/87).

Acts or decisions in the sense of Article 146.1 of the Constitution—Refusal to honour cheques based on regulation providing that the right of payment is extinguished, if a cheque is not presented for payment within six months of its issue—Not justiciable under Art. 146.1

The facts of this case appear sufficiently from the headnote hereinabove. Having adopted *Michael v. The Republic* (1988) 3 C.L.R. 921, the Court dismissed the recourse.

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Recourse dismissed.

No order as to costs.

Cases referred to:

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Michael v. The Republic (1988) 3 C.L.R. 921.

Recourse.

Recourse against the decision of the respondents whereby they failed to allow payment to applicant of a number of cheques.

M. Papapetrou, for the applicant.

A. Vassiliades, for the respondents.

Cur. adv. vult.

5 HADJITSANGARIS J. read the following judgment. By this
recourse the applicant prays for a declaration of the Court that the
decision of the respondents which is contained in letters dated
9.2.87 and 12.2.87 addressed to the applicant by virtue of which
the respondents failed to allow payment to the applicant of a num-
ber of cheques which appear in schedule "A" attached to this peti-
10 tion is null and void and of no effect whatsoever. The grounds
upon which the recourse is based are:

(1) That the decision is illegal and contrary to the provisions of
Law 41/80.

(2) That the decision was taken in excess of power.

15 (3) That it does not accord with the facts.

(4) That it was taken in abuse of discretionary power if such
discretionary power exists.

(5) That the decision was not duly reasoned.

20 The respondents deny all the above allegations and in answer
allege that the only substantial complaint of the applicant is that
rule 4(2) of the Regulations 243/80 which were published in the
3rd schedule of the Official Gazette of the Republic dated 29.8.80
No. 1285 are ultra vires of Law 41/80. The said Rule 4(2) pro-
vides a period of 6 months during which cheques should be pay-
25 able otherwise the right to payment is extinguished. They main-
tain that the said rules are perfectly legal.

The facts of the case are very short and it is common ground
that the applicant is in possession of a certain number of Social

Insurance cheques which appear in schedule "A" of the petition. These cheques represent small sums of money and were issued by the respondents to certain beneficiaries of Social Insurance. The applicant endorsed them and presented them for payment after 6 months from the date of issue of such cheques. The respondents failed to pay the said cheques and the applicant through his advocate requested their payment by virtue of letters dated 16.1.87 and 26.1.87. The respondents by their letters dated 9.2.87 and 12.2.87 refused payment alleging that the 6 month time limit provided by Rule 4(2) had passed and therefore applicant's right to payment has been lost.

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The case has been mainly argued on the question whether Rule 4(2) is ultra vires or not but I have had in the meantime the benefit of reading a recent decision of by brother A. Loizou P. dated 7.5.88 in Case No. 148/86 between *Andreas E. Michael v. The Republic* (1988) 3 C.L.R. 921. This case raised as a preliminary issue the question whether a claim for payment in respect of cheques presented after the 6 month period (Rule 4(2)) upon a refusal of the administration of such payment is within the jurisdiction of this court or of a civil court having jurisdiction in monetary claims.

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This question has not been raised in these proceedings but the facts of the two cases are virtually identical and I feel that since this question resolves the whole case as touching on the jurisdiction of the Court I should deal with it on my own motion before going on the merits.

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The view taken by A. Loizou P. was that the refusal of the administration to allow payment in the above circumstances is not an administrative act within the ambit of article 146(1) of the Constitution but simply refers to a monetary dispute within the jurisdiction of the Civil courts. In particular he had this to say at pages 925-926 discussing the general principle involved in the light of the case law.

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"It was held as early as 1962 (*Achilleas HjiKyriakou and*

Theologia HjiApostolou, 3 R.S.C.C. 89) that 'an act or decision in the sense of paragraph 1 of Article 146 is an act or decision in the domain only of public-law and not an act or decision of a public officer in the domain of private law.

5 Ever after this principle was reiterated in a number of cases (*Valana v. Republic*, 3 R.S.C.C. 91, *Asproftas v. The Republic* (1973) 3 C.L.R. 366, *Republic v. M.D.M. Estate Developments Ltd.* (1982) 3 C.L.R. 642, *Charalambides v. The Republic* (1982) 3 C.L.R. 403, *Chiratis v. The Republic* (1982) 3 C.L.R. 540, *Tekkis & Another v. The Republic* (1982) 3
10 C.L.R. 680; and most recently by the Full Bench in the case of *Galanos v. CBC* (1984) 3 C.L.R. 742).

Of course it is primarily the nature and character of a particular act or decision which determines whether or not such
15 act or decision comes within the scope of paragraph 1 of Article 146 of the Constitution. The same organ may be acting either in the domain of private law or in the domain of public law depending on the nature of its action. (*The Greek Registrar of the Co-operative Societies v. Nicos Nicolaidis* (1965) 3
20 C.L.R. 164).

He then referred to the position in Greece on this point citing from Tsatsos Administration and Law, 1979 ed., at pages 263 to 265 and from the decision of the Greek Council of State in case No. 2466 to the following effect:

25 "Εξ άλλου η Διοίκησης, ως δείκνυται εκ των προσβαλλομένων πράξεων, απέρριψε το αίτημα περί αποδόσεως του ανωτέρω χρηματικού ποσού, επί τω λόγω ότι η τοιαύτη
εις βάρος του Δημοσίου αξίωσις έχει υποκύψει από του
30 έτους 1954 εις την πενταετή παραγραφή του νόμου περί δημοσίου λογιστικού (άρθρον 69 Ν. 218), διά δε της υπό κρίσιν αιτήσεως αμφισβητείται η νομιμότης της αιτιολογίας ταύτης και, ειδικώτερον, υποστηρίζεται ότι η ανωτέρω υποχρέωσις δεν υπόκειται εις παραγραφήν. Η τοιαύτη όμως αμφισβήτησις, αναφερομένη εις το εάν η υπό τας

ανωτέρω συνθήκας προκύψασα υποχρέωσις του Δημοσίου προς απόδοσιν ωρισμένου χρηματικού ποσού υπέκυψεν ή μη εις την πενταετή παραγραφήν του νόμου περί δημοσίου λογιστικού, συνιστά προδήλως χρηματικήν διαφοράν, η επίλυσις της οποίας υπάγεται εις την αποκλειστικήν αρμοδιότητα των πολιτικών δικαστηρίων, δι' ο και η υπό κρίσιν αίτησις, λόγω αναρμοδιότητος του δικαστηρίου τούτου, απορριπτέα, ως απαράδεκτος." 5

("On the other hand the administration as appearing from the sub-judice acts, rejected the claim for the refund of the said amount, on the ground that such claim against the state has since 1954 yielded to the five years prescription of the Public Accounts Law (section 69 Law 218) and by means of the present application the legality of this reasoning is questioned and, particularly, it is argued that the above obligation is not subject to prescription. Such dispute which refers to the question whether the obligation of the State to refund a certain amount, which has emanated under the above circumstances has yielded or not to the five years prescription of the Public Accounts Law manifestly constitutes a monetary dispute, the resolving of which comes within the exclusive jurisdiction of the Civil Courts and for this reason this application must be dismissed as unacceptable due to lack of jurisdiction of this Court.)" 10 15 20

He then concluded at page 928 applying the above principles by saying: 25

"Therefore applying the principle enumerated in the above case of the Greek Council of State I hold that the subject matter of the recourse constitutes a monetary dispute which falls within the jurisdiction of the Civil Courts. This recourse should therefore fail as unacceptable due to lack of jurisdiction of this Court." 30

Having considered the matter in the light of the above decision I share the views of A. Loizou P. and hold that the claim in this

recourse is not within the jurisdiction of this court. I therefore do not propose to enter into the merits of the recourse and in particular as to the question of the illegality of rule 4(2) and hold that the recourse should be dismissed.

- 5 In the result the recourse fails and is hereby dismissed but in the circumstances I make no order as to costs.

Recourse dismissed.

No order as to costs.