

1988 May 7.

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS E. MICHAEL,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE REDUNDANCY FUND,

2. THE DIRECTOR OF SOCIAL INSURANCE DEPARTMENT,

3. THE MINISTER OF LABOUR AND SOCIAL INSURANCE,

*Respondents.*

*(Case No. 148/86).*

5 *Acts or decisions in the sense of Art, 146.1 of the Constitution—Monetary disputes—Outside its ambit—The Termination of Employment (Redundancy Fund) Regulations, 1977, Reg. 14—Refusal to reissue a cheque, which had not been presented for payment within the time limited by such regulation—The issue is monetary in nature.*

10 In this case the question that was raised and determined by the Court was the justiciability of the refusal of the respondents 1 to re-issue a cheque for £2,883.33, which the applicant had failed to present for payment within six months of its issue. The basis of the refusal was Reg. 14 of the Termination of Employment (Redundancy Fund) Regs. 1977.

Held, *dismissing the recourse*: The aforesaid regulation provides for prescription or extinguishment of a right to payment, if a cheque is not presented for payment in time.

15 This recourse questions the legality of the reasoning that on the basis of the said regulation the right to payment was extinguished or prescribed. It follows that the dispute is a monetary dispute. As such and in accordance with the case law of the Greek Council of State it cannot be reviewed by

this Court under Art. 146.1 of the Constitution.

*Recourse dismissed.*

*Cases referred to:*

*In re Ali Ratip*, 3 R.S.C.C. 102;

*Evlogimenos v. The Republic*, 2 R.S.C.C. 139;

*Stavrou v. The Republic* (1976) 3 C.L.R. 66;

*Fekka v. E.A.C.* (1986) 1 C.L.R. 173;

*Mavrogenis v. The Republic* (1984) 3 C.L.R. 1140;

*Ioannou v. The Republic* (1983) 3 C.L.R. 80;

*Cases 2466/1965 of the Greek Council of State.*

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**Recourse.**

Recourse against the decision of the respondents not to re-issue the cheque for £2,883.33 which was issued for the benefit of the applicant for payment on account of redundancy.

*A.Ladas*, for the applicant.

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*A. Pappasavvas*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

A. LOIZOU P. read the following judgment. The applicant has since the 16th June, 1964, been working with the Hellenic Mining Company (E.M.E.) On the 15th July 1984 his services were terminated on the ground of redundancy. Following his application to the Redundancy Fund for payment on account of redundancy on the 30th October 1984, the Redundancy Fund issued in his name a cheque (No. 25218) for the sum of £2,883.33. The applicant did not cash the said cheque until the 13th December 1985, when by letter of the same date he requested from the re-

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spondents to re-issue the cheque. In reply the latter informed the applicant that "under Regulation 14 of the Termination of Employment (Redundancy Fund) Regulations, 1977 when a person in whose name a cheque was issued does not cash within six  
5 months from the date of its issue then he loses his right to payments and that the period of six months may be extended for a further period of six months if there is reasonable cause for the delay". The applicant was further informed that more than one year's time had elapsed since the date of the issue of the cheque  
10 and, therefore, by virtue of the said Regulation 14, he had lost his right to payment and it was not possible to renew the validity of the cheque in question or to make a new payment to him due to redundancy.

As a result of the above stand of the respondents, the applicant  
15 filed the present recourse whereby he prays for the following relief:

"(a) A declaration of the Court that the decision of the respondents not to re-issue the cheque for £2,883.33, which was issued for the benefit of the applicant, as appearing in the letter  
20 of the 19th December 1984, is null and void and of no legal effect whatsoever.

(b) A declaration of the Court that the omission of the respondents to re-issue the said cheque is null and void and whatever has been omitted should have been performed."

25 Learned counsel for the respondents raised the preliminary objection that the sub judice act and/or omission does not fall within the frame-work of an executory administrative act which is provided by Article 146 of the Constitution because it is a liquidated "monetary dispute".

30 The main contentions of counsel for the applicant were:

(a) That the said Regulation 14(2) is unconstitutional as being contrary to article 23(1) and (2) of the Constitution.

(b) That the said Regulation 14(2) is ultra vires the enabling enactment.

Elaborating on contention (a) above learned counsel for the applicant submitted that from the moment the right - of a beneficiary - to payment from the Fund has been ascertained and crystal- 5  
lized as being a certain amount, such amount or the right of collection thereof as a debt of the Fund to the beneficiaries, constitutes property of the beneficiary within the meaning of the term "property" in Article 23(1) of the Constitution; and that the result of Regulation 14(2) is the deprivation of property contrary 10  
to Article 23(2) of the Constitution. Learned counsel cited in support of his above submission the case of *In re Ali Ratip*, 3 R.S.C.C. 102, at p. 104, and the case of *Evlogimenos v. Republic*, 2 R.S.C.C.139, in which it was held that the right of property which is safeguarded by Article 23 of the Constitution, "is 15  
not a right in abstracto but a right as defined and regulated by the law relating to civil law rights in property and the word 'property' in paragraph 1 of Article 23 has to be understood and interpreted in this sense". It was further held that paragraph 2 of Article 23 "protects the aforesaid right to property from deprivation or re- 20  
striction or limitation effected in the interests of the State or Public Bodies and not merely under a law regulating civil law rights in property."

Another submission of learned counsel was that the right to payment of a particular debt, which at Common Law is called "chose 25  
in action" constitutes property of the beneficiary. He finally submitted that the provisions of Regulation 14(2) cannot be considered as "regulating civil law rights to property" as was decided in the *Evlogimenos case* with regard to section 24 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, be- 30  
cause they clearly fall within the sphere of administrative law as well as within the sphere of public law because they refer to the relations between the administration and the subject and not to relations between citizens.

I shall first deal with the preliminary objection. Before stating 35  
the law thereon I must remind the parties that this Court in *Stav-*

*rou v. The Republic* (1976) 3 C.L.R. 66 has exactly dealt with the same situation. It must be added though that in the *Stavrou* case the question of the justiciability of the recourse had not been raised.

- 5 The question of justiciability of a money dispute was dealt with as follows by *Loris, J., in Mavrogenis v. The Republic* (1984) 3 C.L.R. 1140 at pp. 1145-1146:-

10 "The respondents in their opposition raise the preliminary objection that the decision impugned does not constitute an administrative decision within the ambit of Article 146.1 of the Constitution, but simply refers to 'monetary dispute' which falls within the ambit of private law, and it is therefore not justiciable.

As the above objection goes to the root of the jurisdiction of this Court I shall be dealing with it first.

- 15 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 the 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.
- 20 Ever after this principle was reiterated in a number of cases (*Valana v. Republic*, 3 R.S.C.C. 91, *Aspoftas 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. 25 540, *Tekkis & Another v. The Republic* (1982) 3 C.L.R. 680; and most recently by the Full Bench in the case of *Galanos v. CBC* (1984) 3 C.L.R. 742).

- 30 Of course it is 'primarily the nature and character of a particular act or decision which determines whether or not such act or decision comes within the scope of paragraph 1 of the 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 C.L.R. 164).

Thus in the case of *Galanos v. C.B.C.* (supra) it was held by the majority of the Full Bench of this Court that 'In fixing the prices for the time of advertisements and in applying a uniform standard practice as to the advertisements on television, the Corporation is not exercising an imperium but only it operates as a commercial enterprise in the domain of private law'.

According to the case law of the Greek Council of State the dispute as to the existence or not of a monetary claim constitutes a monetary dispute which falls within the jurisdiction of the civil Courts (vide Dagtoglou on General Administrative Law 1981 ed. Volume 'Γ' at pages 268-269).

Even in cases of monetary disputes emanating from a unilateral act of the Administration, effected on the basis of rules of administrative law, when the object of the dispute is eliminated to a claim of a specified amount of money and there is no other repercussion from the administrative act attacked, the competence vests with the civil Courts (vide the Decisions of the Greek Council of State 1929-1959 at p. 235).

In the work of Tsatsos Administration and Law 1979 ed. at pages 263 to 265, where the developments of case Law on monetary disputes are being examined, it is clearly stated that the modern case law employs the term 'monetary dispute' in order to denote the jurisdiction of the civil Courts to the exclusion of the jurisdiction of the Greek Council of State' to adjudge on such a dispute' (vide 2nd paragraph at page 264). In this connection reference is made to the case of the Greek Council of State Σ.Τ.Ε. 930/38 where it is stated verbatim that

'Διοικητικά πράξεις παρέχουσαι λαβήν εις απλώς χρηματικής διαφοράς - δεν είναι προσβληταί δι' αιτήσεως ακυρώσεως, μόνα δε τα αστικά Δικαστήρια είναι αρμόδια να επιλύσωσι τας διαφοράς ταύτας'.

('Administrative acts giving rise to simple monetary disputes - are not amenable to a recourse for annulment, only the Civil Courts are appropriate to solve these disputes).'

In Case No 2466/1965 of the Greek Council of State the Administration rejected the claim of the applicants for the refund to them of a certain amount of money on the ground that the claim against the administration has since 1954 been prescribed in view of the provisions of the Public Accounts Law (section 69 of Law 218). The relevant part of this decision of the Greek Council of State reads:

"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 έτους 1954 εις την πενταετή παραγραφήν του νόμου περί δημοσίου λογιστικού (άρθρον 69 Ν. 218), δια 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 αναρμοδιότητάς του δικαστηρίου τούτου, απορριπτέα, ως απαράδεκτος".

(" 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.)" 5

What was the reasoning of the sub judge act in this case? That under Regulation 14 of the Termination of Employment (Redundancy Fund) Regulations, 1977, "When a person in whose name a cheque has been issued does not cash same within six months, then he loses his right to payment". In other words the regulations provided for prescription or extinguishment of the right to payment if same is not exercised within six months. And what is the applicant seeking by means of the recourse? He merely questions the legality of the above reasoning. Such questioning, however, refers to the question whether the right of applicant to be paid a certain amount - in this case £2,888.33 by the administration has been extinguished or prescribed - on account of the provisions of the said Regulation 14(2). Therefore applying the principles 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. 10 15 20 25

It should be added that in *Ioannou v. The Republic* (1983) 3 C.L.R. 80 the Full Bench of this Court dealt with an appeal against the dismissal of a recourse in which the sole issue was whether Regulations 9 and 10 of the Government Lotteries Regulations 1956, providing for the period within which payments of winning tickets could be made, were ultra vires the Lotteries Law, Cap. 74. Again in that case, however, the question of the jurisdiction of the Court has not been raised. 30 35



Having reached this conclusion I need not proceed to examine the merits of the recourse, suffice it to say, however, that the question of the constitutionality of periods of limitation was extensively examined in the case of *Fekka v. The Electricity Authority of Cyprus* (1968) 1 C.L.R. 173 and reference is made  
5 therein to a number of decided cases, both Cypriot and American and it may be useful to consider what was said therein, if and when the constitutionality of such and relevant matters arise.

In the result the recourse fails due to lack of jurisdiction.

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*Recourse dismissed.*