

1981 October 24

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS PARASKEVAS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTRY OF EDUCATION,

2. THE EDUCATIONAL SERVICE COMMITTEE,

Respondent.

(Case No. 261/76).

*Educational Officers—Probationary appointment for two years—
 Whether it becomes automatically permanent, after the lapse
 of two years, without confirmation—Disciplinary conviction and
 sentence of officer serving on probation—Head of Department not
 recommending him for permanent appointment—Respondent Com-
 mittee deciding to terminate his services, affording him opportunity
 to make representations against such termination and terminating
 his services after hearing his representations—Nothing improper
 in such course of action—Section 30 of the Public Educational
 Service Law, 1969 (Law 10/69).*

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*Natural Justice—Rules of—Rule that no one is to be punished twice
 for the same offence—Public Officers—Disciplinary punishment
 —And administrative measure taken in the interest of the public
 service—Distinction—Disciplinary conviction and sentence of
 public officer serving on probation—Head of Department not
 recommending him for permanent appointment and his services
 terminated—Such termination not a disciplinary punishment
 but an administrative measure—Above rule not violated.*

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*Public Officers—Disciplinary conviction and punishment—And admi-
 nistrative measure taken in the interest of the Public Service—
 Distinction.*

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*Administrative measure—Disciplinary conviction and punishment—
 Distinction.*

The applicant has since August, 1972 been serving on proba-
 tion as a teacher of theological lessons in Secondary Education
 Schools. By a decision of the Council of Ministers dated
 September 20, 1973 his services were terminated in the public
 5 interest by the Council of Ministers. By a decision of another
 Council of Ministers, which was appointed after the Coup d'etat
 to July 15, 1974, the termination of his services was annulled
 and he resumed his duties in October, 1974. In May, 1976
 he was found guilty by the respondent Educational Service
 10 Committee of certain disciplinary offences concerning neglect
 of duty and for activities amounting to breach of duty or obliga-
 tions of an educational officer and the sentences of stoppage
 of increment, fine, reduction of his salary scale and disciplinary
 transfer were imposed on him. Following this conviction and
 15 sentence the Inspector of Theological lessons by letter dated
 May 28, 1976, addressed to the Head of the Department of
 Higher and Secondary Education expressed his intention not
 to recommend the applicant to the permanent post of teacher
 of theological lessons. This letter was transmitted for action
 20 to the respondent Committee which decided* in accordance
 with section 30(2) of the Public Educational Service Law, 1969
 (Law 10/69) to terminate the appointment on probation of the
 applicant and also to give him notice calling upon him to make
 any representations he wished to make against such termination.
 25 The applicant appeared before the Committee on August 25,
 1976 and made his representations through an advocate. After
 taking into consideration these representations the Committee
 found that there existed no reason to reconsider its previous
 decision and decided that the appointment on probation of the
 30 applicant be terminated as from the 1st September, 1976. Hence
 this recourse.

Counsel for the applicant mainly contended:

- (a) That section 30 of the Public Educational Service Law, 1969 (Law 10/69) was totally inapplicable.
- 35 (b) That in taking the *sub judice* decision the respondent Committee took into account the disciplinary punishment which it had itself imposed on the applicant and so he was punished twice for the same offences;

* The decision is quoted at p. 425 *post*.

** Section 30(2) is quoted at pp. 427-28 *post*.

and that in so doing the Committee violated the rules of natural justice as it could have dismissed him there and then when he was found guilty of the disciplinary offences of which he was found guilty.

- (c) That the final decision to dismiss applicant was taken on June 28, 1976 and before the applicant was called upon to make his representations. 5

Held, (1) that the Committee had not dealt with the question of confirmation, extension or termination of applicant's appointment as there were disciplinary proceedings pending against him up to May, 1976 and, consequently, the submission of the final confidential report in accordance with section 36(2) of Law 10/69 could not be submitted earlier; that, moreover, there is nothing in law 10/69 to indicate that after the lapse of two years of service an appointment on probation becomes automatically permanent without the educational officer concerned being confirmed; accordingly contention (a) should fail. 10
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(2) That the principle that no one is punished twice for the same offence (non bis in idem) has no application when for the same offence for which the civil servant was punished disciplinarily an adverse administrative measure is also about to be imposed, because the administrative measures which are taken by the Administration not for the purpose of exercising disciplinary authority but for the sake of the interest of the public service as it is the transfer, suspension of service, etc., do not amount to disciplinary punishment; that, consequently, an act for which the disciplinary punishment has been imposed may legally justify the additional taking of the administrative measures (see Conclusions from Case Law of the Greek Council of State 1929 to 1959 page 368); that, therefore, the dismissal of the applicant in the present case was an administrative measure and the allegation that the applicant was punished twice for the same offence cannot stand; accordingly contention (b) should fail. 20
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(3) That it is clear from the relevant minutes of the Meeting of 28th June, 1976, that the Committee expressed the intention to terminate the services of the applicant; that this intention was communicated to the applicant together with the reasons for such intention and he was called upon to make his representations; that in so doing the Committee acted in full conformity 35
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with the provisions of section 30(2) of the law and took the final decision on August 25, 1976; accordingly contention (c) should, also, fail.

Application dismissed.

5 Cases referred to:

Decision of the Greek Council of State in Case No. 1005/1933.

Recourse.

10 Recourse against the decision of the respondents whereby applicant's services as a teacher of secondary education were terminated and/or applicant was dismissed from such service.

L. N. Clerides with C. Adamides, for the applicant.

A. S. Angelides, for the respondents.

Cur. adv. vult.

15 MALACHTOS J. read the following judgment. The applicant in this recourse claims a declaration of the Court that the act and/or decision of the respondents by which they terminated his services as a teacher of secondary education and/or dismissed him from such service, which is contained in the letter of 26th August, 1976, is null and void and of no legal effect whatsoever.

20 The relevant facts of the case as they appear in the documentary evidence adduced are the following:

The applicant, who is a Theologist, was first appointed on contract as a teacher of Theological lessons in secondary education on 15.3.65 for the period ending 9.5.65 in replacement of
25 another teacher at the 1st Gymnasium of Paphos. He was then reappointed on contract as from 1.9.65 to 31.8.67 in a private school and as from 15.9.67 to 31.8.71 at the English School in Nicosia. He was again reappointed on contract
30 from 23.9.71 to 31.8.72 at the Paralimni and Lysi Gymnasium and the Technical School in Nicosia. On 22.9.72 he was offered by the respondent Authority permanent appointment on probation on scale BIO as from 21.8.72 which he accepted by letter dated 26.9.72. According to section 30(1) of the Public Educational Service Law, 1969 (Law 10/69) the probation period
35 was for two years as from 21.9.72.

By Decision No. 12684 of the Council of Ministers dated 20.9.73, the services of the applicant were terminated as from that date in the public interest. This decision, as stated therein,

was based on section 8 sub-section 1(e) and 2 of the Pensions of Secondary Education Teachers' Law of 1967 (Law 56/67).

As against this decision the applicant filed on 19.11.73 Recourse No. 550/73.

Before the determination of that recourse by the Court, 5
another Council of Ministers, which was appointed after the
coup d'état of 15th July, 1974, by its Decision No. 13421, which
was published in the 4th Supplement of the Official Gazette
of the Republic on the 2nd August, 1974, annulled Decision
No. 12684 and in consequence thereof applicant on 18.10.74 10
resumed his duties as a teacher of secondary education at the
Agricultural Gymnasium of Nicosia.

On 28.2.75 as a result of accusations against the applicant
for disciplinary offences, the Inspector of Theological Lessons
Mr. A. Mitsides, was appointed by the Committee of Educational 15
Service, as the appropriate authority, as investigating officer
by virtue of paragraph 1 of Part I of the Second Schedule of
the Public Educational Service Law of 1969, to carry out the
relevant investigations.

As a result of the said investigations the applicant was charged 20
under four counts before the respondent Committee and was
finally on 6.5.76 sentenced on all of the counts as follows:

On count 1, stoppage of his annual increment for a period
of six months, on count 2, £50.—fine, on count 3 to a
reduction of his salary scale and on count 4, disciplinary 25
transfer as from 1.9.76, to the Paralimni Gymnasium.

The decision of the respondent Committee was communicated
to the applicant by letter dated 13.5.76.

In view of the above conviction and sentence of the applicant,
the Inspector of Theological Lessons by letter dated 28th May, 30
1976, addressed to the Head of the Department of Higher
and Secondary Education, expressed his intention not to recom-
mend the applicant to the permanent post of Teacher of Theolo-
gical Lessons Secondary Education. This letter was transmitted
for further action to the Chairman of the Committee of Educa- 35
tional Service on 26th June, 1976, and as a result a meeting
on this subject was convened by the said Committee on 28th

June, 1976 and, as it appears from its Minutes, it decided as follows:

- 5 “(i) Whereas the final report of the Inspector together with an attached note thereto has already been submitted, and
- (ii) Whereas as the teacher was found guilty of disciplinary offences concerning neglect of duty and for activities amounting in a way to breach of duty or obligations of an educational officer (see minutes of 16th April, 10 1976), and he was sentenced by the Committee to:—
- (a) stoppage of his annual increments for a period of six months—
- (b) a fine of £50.—
- (c) reduction of his salary scale; and
- 15 (d) disciplinary transfer (see minutes of 16th April, 1976),
- (iii) Whereas from all the service and other elements and documents which were put before the Committee it transpires that the behaviour of the teacher during 20 his period of probation was not such as it ought to be, and
- (iv) Whereas after studying the personal file and confidential reports of the teacher the Committee reached the conclusion, in view of the above mentioned, that 25 his stay in schools is not for the benefit of education,

For all these, the Committee decides that, in accordance with section 30(2) of the Public Educational Service Law (10/69) the appointment on probation of the above teacher be terminated on 31st August, 1976, and that, according 30 to the same section, notice be given of the intention for termination of his services, and the teacher be called upon to make representations that he may wish to submit as against such termination.

It is further decided that the Committee fix an appointment with the teacher at 9 a.m. on 20th August, 1976, in order that he may present verbally if he so wishes, his 35 representations before it”.

A copy of the above decision was transmitted to the applicant by letter dated 28th June, 1976. On 20th August, 1976, the applicant appeared in person before the Committee and made his representations and he was given time up to 30th August, 1976 to appear before the Committee represented by an advocate, when on that day the Committee would take a final decision.

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On 25th August, 1976, the applicant again appeared before the Committee represented by advocate and made his representations.

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As it appears from the Minutes of 25th August, 1976, the Committee after taking into consideration the representations of the applicant and his advocate found that there existed no reason to reconsider its decision of the 28th June, 1976, for the termination of his services. So, it decided that the appointment on probation of the applicant be terminated as from 1st September, 1976, for the reasons appearing in its decision dated 28th June, 1976. This decision was verbally communicated to the applicant and his advocate there and then. Applicant was also informed in writing of the above decision of the respondent by letter dated 26th August, 1976. As a result the applicant on the 30th October, 1976, filed the present recourse.

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Counsel for applicant in arguing this recourse submitted that the decision of the respondent Committee should be declared null and void because section 30 of Law 10/69 was totally inapplicable to the facts of the case as the status of the applicant at the material time was governed by the decision of the Council of Ministers No. 13421, which status was that of a permanent teacher of Theology who was in continuous service since 1965. This decision which revoked the previous decision of the Council of Ministers that purported to terminate the services of the applicant on the ground of public interest, is to the effect that there was no break in his service. This is the correct interpretation of the latter decision of the Council of Ministers.

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Section 30 of Law 10/69 is dealing with appointments of educational officers on probation and is as follows:

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“30.—(1) Μόνιμος διορισμός γίνεται επί δοκιμασίας διά διετή χρονικήν περίοδον:

Νοείται ότι ή 'Επιτροπή δύναται εις πάσαν ειδικήν περι-

πτωσιν τῆ συμβουλῆ τῆς ἀρμοδίας ἀρχῆς καὶ συμφώνως πρὸς οἰασδήποτε γενικὰς ἐπὶ τούτῳ ὁδηγίας διδομένης ὑπὸ τοῦ Ὑπουργικοῦ Συμβουλίου, νὰ μὴ ἀπαιτήσῃ χρονικὴν περίοδον δοκιμασίας ἢ νὰ μειώσῃ ἢ παρατείνῃ ταύτην.

5 (2) Ὁ διορισμὸς ἐκπαιδευτικοῦ λειτουργοῦ ὑπηρετοῦντος ἐπὶ δοκιμασίᾳ δύναται νὰ τερματισθῇ καθ' οἰονδήποτε χρόνον διαρκούσης τῆς χρονικῆς περιόδου δοκιμασίας, ἀλλὰ, πρὶν ἢ γίνῃ ὁ τοιοῦτος τερματισμὸς, δεόν νὰ δοθῇ εἰς τὸν ἐκπαιδευτικὸν λειτουργὸν εἰδοποιήσις τῆς πρὸς τερματισμὸν
10 προθέσεως περιέχουσα τοὺς λόγους καὶ καλοῦσα τοῦτον ὅπως προβῇ εἰς οἰασδήποτε παραστάσεις, τὰς ὁποίας θὰ ἐπεθύμει νὰ ὑποβάλλῃ ἐναντίον τοῦ τοιοῦτου τερματισμοῦ. Ἐπὶ τῇ λήψει καὶ ἐξετάσει οἰωνδήποτε παραστάσεων ἢ Ἐπιτροπῇ δύναται εἴτε νὰ τερματίσῃ τὸν διορισμὸν εἴτε
15 νὰ παρατείνῃ τὴν χρονικὴν περίοδον δοκιμασίας διὰ τοσαύτην χρονικὴν περίοδον, μὴ ὑπερβαίνουσαν τὰ δύο ἔτη, ὅσῃν ἢ Ἐπιτροπῇ εἰς ἑκάστην περίπτωσιν ἤθελε θεωρήσῃ κατάλληλον. Αἱ διατάξεις τοῦ παρόντος ἐδαφίου ἐφαρμόζονται ἐπὶ πάσης παραταθείσης περιόδου δοκιμασίας.

20 (3) Ἐντὸς ἑνὸς μηνὸς ἀπὸ τῆς λήξεως τῆς χρονικῆς περιόδου δοκιμασίας ἢ Ἐπιτροπῇ ἀποφασίζει κατὰ πόσον ὁ διορισμὸς ἐκπαιδευτικοῦ λειτουργοῦ ὑπηρετοῦντος ἐπὶ δοκιμασίᾳ θὰ ἐπικυρωθῇ, παραταθῇ ἢ τερματισθῇ. Ἐὰν ὁ διορισμὸς ἐπικυρωθῇ ἢ τερματισθῇ, εἰδοποιήσις περὶ τούτου δημοσιεύεται εἰς τὴν ἐπίσημον ἐφημερίδα τῆς δημοκρατίας.”
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(“30(1) Permanent appointment is made on probation for the period of two years.

30 Provided that the Committee may in every special case on the advice of the appropriate authority and in accordance with any general instructions on this matter given by the Council of Ministers, not require any period of time of probation or to reduce or extend such period.

35 (2) The appointment of an educational officer serving on probation may be terminated at any time during the period of probation, but, before such termination is effected, it should be given to the educational officer notice of the intention to terminate containing the reasons and calling him to make any representations which he might wish to

submit against such termination. Upon receiving and after examination of any representations, the Committee may either terminate the appointment or extend the period of time of probation for any such period of time not exceeding two years, to the extent the Committee in any given case would consider proper. The provisions of the present subsection apply on every extension of the period of probation.

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(3) Within one month from the expiration of the period of time of probation the Committee decides as to whether the appointment on probation of an educational officer will be confirmed, extended or terminated. If the appointment is either confirmed or terminated, a notification is published in the Official Gazette of the Republic”).

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I must straight away say that I find no merit in the above submission of counsel. The fact that the applicant was offered permanent appointment on probation to the post of teacher of Theological Lessons in Secondary Education as from 21.9.72, which offer was accepted by him, cannot be disputed and the relevant offer and acceptance appear in the personal file of the applicant and are blues 57 and 58, respectively. His previous appointments were temporary and on a contractual basis. He had completed two years of service on probation in July, 1975 since for the period from 20.9.73 up to July, 1974 was dismissed by virtue of a Decision of the Council of Ministers.

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The Committee did not deal with the question of confirmation, extension or termination of his appointment as there were disciplinary proceedings pending against him up to May, 1976 and, consequently, the submission of the final confidential report of the Inspector of Theological Lessons in accordance with section 36(2) of Law 10/69, could not be submitted earlier.

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Furthermore, there is nothing in Law 10/69 to indicate that after the lapse of two years of service an appointment on probation becomes automatically permanent without the educational officer concerned being confirmed.

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Counsel for applicant further submitted that if it is found by the Court that the applicant was at the material time serving on probation and that section 30 of the Law was applicable,

the decision complained of should again be declared null and void as it conflicts with the provisions of sub-sections 1 and 2 of this section. He argued that in the first place the respondent Committee in issuing the decision complained of, took into
5 account the disciplinary punishment which this very same Committee had imposed on the applicant and so he was punished twice for the same offences. In so doing the Committee violated the rules of natural justice as it could have dismissed him there and then when he was found guilty of the disciplinary
10 offences of which he was charged.

He further argued that in the second place, the respondent acted contrary to the provisions of sub-section 2 of section 30 of the Law, as it terminated his appointment before giving him the opportunity to be heard and make his representations as
15 provided by the said sub section.

The principle that no one is punished twice for the same offence (*non bis in idem*) has no application when for the same offence for which the civil servant was punished disciplinarily an adverse administrative measure is also about to be imposed. Because
20 the administrative measures which are taken by the Administration not for the purpose of exercising disciplinary authority but for the sake of the interest of the public service, as it is the transfer, suspension of service, etc., do not amount to disciplinary punishment. Consequently, an act for which the disciplinary
25 punishment has been imposed may legally justify the additional taking of the administrative measures. (See Conclusions from Case Law of the Greek Council of State 1929 to 1959 page 368). This view finds support in Case No. 1005/1933 of the Greek Council of State reported in Volume B III 878
30 where at page 881 we read:

“Not only the administrative measures are not excluded as a result of previous disciplinary proceedings, which are taken by the Administration in order to secure the proper
35 functioning of the Public Service in general, but on the contrary, the real circumstances on the basis of which disciplinary proceedings were instituted, the Administration may later take into account and use them for the purpose of taking administrative measures, such as dismissal, discharge from the military service, demotion, transfer,
40 etc.”.

In view of the above principles I consider the dismissal of the applicant in the present case as an administrative measure and the allegation, therefore, that the applicant was punished twice for the same offence cannot stand.

Finally, I must say that I do not agree with the submission of counsel that the final decision to dismiss the applicant was taken on 28th June, 1976, and before the applicant was called upon to make his representations. It is clear from the Minutes of the Meeting of 28th June, 1976, that the Committee expressed the intention to terminate the services of the applicant. This intention was communicated to the applicant together with the reasons for such intention and he was called upon to make his representations. In so doing the Committee acted in full conformity with the provisions of section 30(2) of the Law. The final decision of the Committee was taken on 25th August, 1976 and was communicated to the applicant by letter dated 26th August, 1976.

For all the above reasons, this recourse is dismissed with no order as to costs.

*Application dismissed. No order
as to costs.*