CASES
DECIDED BY
THE SUPREME COURT OF CYPRUS
IN ITS REVISIONAL JURISDICTION AND IN ITS REVISIONAL APPELLATE JURISDICTION

[TRIANTAFYLLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

STELIOS MORSIS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 104/63)

Public Officers—Disciplinary proceedings—Retrospective disciplinary dismissal of a Public Officer—Validity.

Administrative Law—Grounds of invalidity in Article 146(1) of the Constitution to be widely interpreted so as to include contravention of basic principles of administrative law.

Administrative Acts—Non-retrospectivity thereof—Certain exceptions to general rule.

The Applicant was a bailiff and process-server posted at the District Court of Famagusta, when on the 17th March, 1962, he was convicted of the offence of false swearing and was sentenced to a fine of £10. An appeal against his conviction was dismissed on the 4th June, 1962.

On the 12th July, 1962, the Public Service Commission' dismissed him as from the 17th March, 1962.

Applicant filed a recourse, against the said decision of the Commission, Case 232/62, which was determined on the 22nd February, 1963; as a result the dismissal of Applicant was annulled on the ground that he had not been afforded an opportunity to be heard in the matter.

On the 28th February, 1963, a letter was addressed to Applicant informing him that his dismissal was being con-

templated by the Commission on the ground of his conviction on the 17th March, 1962; he was requested to appear before the Commission on the 8th March, 1963 in order to put before it any representations which he might wish to make. Applicant duly appeared, and on the 27th March, 1963, the Commission decided to dismiss him from the service as from the 17th March, 1962.

Applicant filed this recourse against such dismissal; the validity of such dismissal is challenged only in so far as it was made retrospectively.

Counsel for Applicant has alleged, at the Presentation and at the hearing, that making the dismissal retrospective contravenes the relevant established principles of administrative law and is also an attempt to legalize ex post facto the first dismissal which has already been declared to be invalid in the previous recourse, Case 232/62.

Counsel for Respondent while agreeing that, on principle, administrative acts cannot be made with retrospective effect, has submitted that this is a case coming under an exception to the general rule in that the decision in question was given retrospective effect in order to comply with the Judgment in the said Case 232/62.

Held, I. On the retrospectivity of administrative acts:

(a) That administrative acts cannot, as a rule, be validly given retrospective effect is well established as a basic principle in administrative law.

(b) The said principle of administrative law should be adopted and applied as part of the still evolving system of administrative law in Cyprus.

(c) As it appears that, under Article 146, the process of judicial review of administrative acts, existing in Continental countries such as Greece, France or Germany, has been introduced in Cyprus, it is reasonable to hold that principles of administrative law, evolved in the said countries and applied there and elsewhere with such degree of consistency and universal applicability as to render them part of the science of administrative law, can, in a proper case, be adopted and applied by this Court, not as foreign law applied in Cyprus, but as Cyprus law laid down by the Court of Cyprus.

(d) Contravention of a principle, such as the above, may properly be held to amount to a ground of invalidity within the ambit of Article 146(1); otherwise, it would mean to defeating the very purpose of Article 146, in view of the fact that essential principles of administrative law are not to be found specifically laid down in any enactment—and this holds good not only in Cyprus but also in other countries with much longer development on the administrative law sphere.

(e) The expressly stated grounds of invalidity in Article 146(1) must be interpreted widely, so as to include contravention of basic principles of administrative law.

II. *On the question whether the decision complained of could have retrospective operation:*

(a) Having found that the principle prohibiting retrospective operation of administrative acts should be applied by this Court and bearing in mind that the decision of the Public Service Commission, which is the subject-matter of this recourse, clearly is a decision intended to have retrospective operation, there can be no doubt that the said decision should be declared to be invalid, to the extent to which it is retrospective, unless it falls under any of the recognized exceptions to the principle in question.

(b) The first dismissal of Applicant has not been annulled for formal invalidity but for substantial invalidity and, therefore, the second dismissal could not have been made retrospective.

(c) The Commission did not make its new decision, the subject-matter of this recourse, with effect back to the date when it first decided to dismiss Applicant, but with effect back to the date of his conviction by the criminal court, before his first dismissal. Such a course, not being warranted by express legislative provision for the purpose, could not in any case, have been warranted, even if all other necessary prerequisites were satisfied, under any of the exceptions to the general principle against retrospectivity.

(d) This Court in a recourse such as the present can either confirm or annul, in whole or in part the subject-matter of the recourse. It cannot put a new correct

decision in its place. So even if I had held, which is not so, that it was possible for the Commission to make the new dismissal of Applicant retrospective to the date of its first decision for the purpose, I would still have had to annul the retrospective effect of Applicant's dismissal, with reference back to the date of his conviction, the 17th March, 1962, and would not have been entitled to make the dismissal of Applicant retrospective with effect from the 12th July, 1962, the date of his first dismissal.

(e) As the decision in question of the Public Service Commission clearly offends against the principle of non-retrospectivity of administrative acts and as such decision does not fall within any recognized relevant exception to the said principle, the said decision has to be annulled to the extent to which it has been made to have retrospective effect before the date when it was taken, the 27th March, 1963;

(f) It was not necessary in this Case to annul the whole decision of the Public Service Commission concerning the dismissal of Applicant. It need only be annulled in part. Such course is open under Article 146(4)(b).

III. As regards costs:

(a) Applicant, is entitled to his costs, which I fix at £40.

Decision complained of annulled in part as stated above.

Cases referred to:

Decision 250/1949 *of the Greek Council of State:* (Decisions, Council of State Volume 1949 A p. 389);

Decision 379/1949 *of the Greek Council of State:* (Decisions, Council of State Volume 1949 A p. 656);

Decision 263/1955 *of the Greek Council of State:* (Decisions, Council of State Volume 1955 A, p. 345);

Decision 1310/1956 *of the Greek Council of State:* (Decisions, Council of State Volume 1956 B, p. 700);

Decision of the French Council of State in the case of "Ville de Lisieux (28th February, 1947);

Decision of the French Council of State in the case of Societe du Journal l' "Aurore" (25th June, 1948);

Decision of the French Council of State in the case of "Dame Silvestre, dite Irene Brillant" (3rd February, 1956);

Marcoullides and The Republic (3 R.S.C.C. p. 30 at p. 35);

Kalisperas and The Republic (3 R.S.C.C. p. 146);

Haros and The Republic (4 R.S.C.C. p. 39);

Pantelidou and The Republic (4 R.S.C.C. p. 100);

Nedim and The Turkish Communal Chamber (5 R.S.C.C. p.1);

Rallis and the Greek Communal Chamber (5 R.S.C.C. p.11);

Morsis and The Republic (4 R.S.C.C. p. 133 at p. 137);

Decisions 37/1932, 1170/1934 *and* 476/1950 *of the Greek Council of State;*

Decision of the French Council of State in the case of "Rodiere" (26th December, 1925);

Decision of the French Council of State in the case of "Veron —Reville" (27th May, 1949);

Decision of the Greek Council of State in case 1016/1954 (Decisions, Council of State Volume 1954 B, p. 1232);

Decision 617/1954 *of the Greek Council of State* (Decisions, Council of State Volume 1954 A, p. 724);

Kallouris and the Republic (1964 C.L.R 313);

Decision 160/1935 *of the Greek Council of State* (Decisions, Council of State, Volume 1935 A I p. 359);

Decisions 164/1932, 912/1934, 263/1955 *of the Greek Council of State.*

Recourse.

Recourse against the decision of the Respondent to dismiss applicant from the Public Service as from the 17th March, 1962.

M. Papas for the Applicant.

M. Spanos, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:-

TRIANTAFYLLIDES, J.: The Applicant in this Case applies for a declaration that the decision of the Respondent, the Public Service Commission, to dismiss him from the public service on disciplinary grounds, as from the 17th March, 1962, is null and void.

The Applicant was a bailiff and process-server posted at the District Court of Famagusta, when on the 17th March, 1962, he was convicted of the offence of false swearing and was sentenced to a fine of £10. An appeal against his conviction was dismissed on the 4th June, 1962.

On the 12th July, 1962, the Public Service Commission, without affording the Applicant an opportunity to be heard in the matter, decided to dismiss him as from the 17th March, 1962, and such decision was communicated, by letter dated the 18th July, 1962, to Applicant.

Applicant filed a recourse, against the said decision of the Commission, Case 232/62, which was determined on the 22nd February, 1963; as a result the dismissal of Applicant was annulled on the ground that he had not been afforded an opportunity to be heard in the matter.

On the 28th February, 1963, a letter was addressed to Applicant informing him that his dismissal was being contemplated by the Commission on the ground of his conviction on the 17th March, 1962; he was requested to appear before the Commission on the 8th March, 1963 — when the Commission would consider the matter — in order to put before it any representations which he might wish to make. Applicant duly appeared, according to the above notification, and on the 27th March, 1963, the Commission decided to dismiss him from the service as from the 17th March, 1962.

In this recourse the validity of the said dismissal is challenged only in so far as it was made retrospectively.

Counsel for Applicant has alleged, at the Presentation (see p.3 of the Statement of Case) and at the hearing, that making the dismissal retrospective contravenes the relevant established principles of administrative law and is also an attempt to legalize ex post facto the first dismissal which has already been declared to be invalid in the previous recourse, Case 232/62.

Counsel for Respondent while agreeing that, on principle, administrative acts cannot be made with retrospective effect, has submitted that this is a case coming under an exception to the general rule in that the decision in question was given retrospective effect in order to comply with the Judgment in the said Case 232/62. He did not insist on the contention,

which was advanced at the Presentation, that the Court had no competence to try the present recourse.

That administrative acts cannot, as a rule, be validly given retrospective effect is well established as a basic principle in administrative law. Reference may usefully be made in this connection to Kyriakopoulos on Greek Administrative Law, 4th edition volume II, p.400; Stasinopoulos on the Law of Administrative Acts (1951) p.370; Waline, on Administrative Law, 8th edition, p.431, para. 709.

In particular, the Greek Council of State in a series of Decisions has upheld the application of the aforesaid principle; reference may be made in this connection to Decisions 250/1949, 379/1949, 263/1955, 1310/1956 (which are referred to hereinafter) and, in general, to the Conclusions from the Jurisprudence of the Greek Council of State (1929-1959) p.197.

In Decision 250/1949 (Decisions, Council of State volume 1949A p. 389) it was held that an administrative act «δὲν δύναται κατ' ἀρχήν, ἄνευ εἰδικῆς ἐξουσιοδοτήσεως, νὰ ἐκδοθῇ μετὰ δυνάμεως ἀνατρεχούσης εἰς χρόνον προγενέστερον τῆς συντελέσεώς της» ("cannot in principle, without specific authority, be issued with effect referring back to a time previous to its making") and in Decision 379/1949 (Decisions, Council of State volume 1949A p.656) it was held that «κατὰ γενικὴν τοῦ διοικητικοῦ δικαίου ἀρχὴν αἱ διοικητικαὶ πράξεις δὲν δύνανται νὰ κέκτηνται ἀναδρομικὴν δύναμιν πλὴν ἂν ρητῶς ὁ νόμος ὁρίζῃ τὸ ἀντίθετον» ("in accordance with a general principle of administrative law, administrative acts cannot have retrospective effect unless the law ordains to the contrary").

Decision 263/1955 (Decisions, Council of State volume 1955A, p.345) concerned the termination of the services of a charwoman employed by Government and it was held that, in the absence of a provision of law permitting the making of the termination with retrospective effect, such termination could not have been made retrospectively.

In Decision 1310/1956 (Decisions, Council of State volume 1956B, p.700) it was held that a disciplinary dismissal of a public officer could not have been made retrospectively so as to take effect at a point of time prior to the decision for such dismissal.

The same principle was upheld by the French Council of State in a number of cases such as the case of "Ville de Lisieux" (28th February, 1947), the case of "Societe du Journal l'Aurore" (25th June, 1948) and the case of "Dame Silvestre, dite Irene Brillant" (3rd February, 1956).

In my opinion the said principle of administrative law should be adopted and applied as part of the still evolving system of administrative law in Cyprus.

As it appears that, under Article 146, the process of judicial review of administrative acts, existing in Continental countries such as Greece, France or Germany, has been introduced in Cyprus, it is reasonable to hold that principles of administrative law, evolved in the said countries and applied there and elsewhere with such degree of consistency and universal applicability as to render them part of the science of administrative law, can, in a proper case, be adopted and applied by this Court, not as foreign law applied in Cyprus, but as Cyprus law laid down by the Courts of Cyprus.

Contravention of a principle, such as the above, may properly be held to amount to a ground of invalidity within the ambit of Article 146(1); otherwise, it would mean to defeating the very purpose of Article 146, in view of the fact that essential principles of administrative law are not to be found specifically laid down in any enactment — and this holds good not only in Cyprus but also in other countries with much longer development on the administrative law sphere. In my opinion the expressly stated grounds of invalidity in Article 146(1) must be interpreted widely, so as to include contravention of basic principles of administrative law.

Such a course has already been clearly adopted in the past. The judgments in *Marcoullides and The Republic* (3 R.S.C.C. p.30 at p.35) — where the contravention of basic principle was treated as abuse of powers — *Kalisperas and The Republic* (3 R.S.C.C. p.146), *Haros and The Republic* (4 R.S.C.C. p. 39), *Pantelidou and The Republic* (4 R.S.C.C. p.100), *Morsis and The Republic* (4 R.S.C.C. p.133), *Nedim and The Turkish Communal Chamber* (5 R.S.C.C. p.1) and *Rallis and The Greek Communal Chamber* (5 R.S.C.C. p.11) have consistently laid down that disregard of basic principles, viz. the rules of natural justice, as applicable to disciplinary proceedings in administrative law, entails annulment under

Article 146. Actually in *Haros and The Republic* (above) it was also held that express legislative provisions — the provisions of regulation 20 of the Police (Discipline) Regulations 1958 to 1960 — should be applied subject to the rules of natural justice.

Such a broad view of the notion of validity of administrative acts is inseparably interwoven with the very concept of an administrative court, which has as its mission not only to apply the strict letter of existing legislation but also to lay down the rules of proper administration, where no specific legislative provision exists regulating the particular matter; this is why its competence is described also as "pouvoir pretorien" by parallelism with the "Praetors" of ancient Rome (see the Opening Address of the President of the Greek Council of State on the 17th May, 1929 and Begleris "Observations on Jurisprudence of Public Law" (1955) pp.37, 57).

Useful guidance may, indeed, be derived from the position as it has developed in Greece, where the relevant provisions (section 47 of Law 3713/1928) are closely similar to the corresponding provisions of Article 146(1) of our Constitution. The view has prevailed there that contravention of general principles of administrative law entails invalidity and consequent annulment of the administrative action concerned, (see in this respect Kyriakopoulos on Greek Administrative Law, 4th edition, volume III p.136; Tsatsos on the Recourse for Annulment, 2nd edition, p.199 — where the principle of non-retrospectivity is expressly mentioned — and Stasinopoulos on the Law of Administrative Acts (1951) pp. 15, 17).

The Greek Council of State has in a multitude of cases resorted to general principles of administrative law. By way of illustration reference may be made to Decisions 250/1949 and 379/1949, cited already in this Judgment.

Having found that the principle prohibiting retrospective operation of administrative acts should be applied by this Court and bearing in mind that the decision of the Public Service Commission, which is the subject-matter of this recourse, clearly is a decision intended to have retrospective operation, there can be no doubt that the said decision should be declared to be invalid, to the extent to which it is retrospective, unless it falls under any of the recognised exceptions to the principle in question.

In this respect only those exceptions which might have some relevancy to Applicant's dismissal need to be conssidered.

It has, therefore, to be examined, first, whether or not any specific legislative provision expressly permitted the retrospective effect of the dismissal of Applicant. As a matter of fact, no such provision exists or has been relied upon by Respondent's counsel. The relevant Colonial Regulations — which appear to provide for a limited scope of retrospective dismissals — could not, in any case, be held to amount to the requisite legislative provision, because, as found in *Morsis and The Republic* (4 R.S.C.C. p. 133 at p. 137), they have not continued in force as laws, under Article 188, but they may be acted upon by way of established practice, in cases where they regulate purely administrative or procedural matters; such practice can no longer be resorted to in contravention of basic principles of administrative law, such as the one involved in this Case.

Another recognised exception to the said principle is that an administrative act may be made retrospective in order to comply with a decision of an administrative court in the relevant matter; moreover, in certain cases such a course is not only possible but imperative and if it is not adopted this fact may give rise to a new recourse (see in this respect Kyriakopoulos on Greek Administrative Law, 4th edition, volume II, p. 400; Stasinopoulos on the Law of Administrative Acts (1951) p. 371). Also reference may be made to the Decisions, of the Greek Council of State, in cases 37/1932, 1170/1934 and 476/1950 and the Decisions of the French Council of State in the cases of "Rodiere" (26th December, 1925) and "Veron-Reville" (the 27th May, 1949).

The said exception to the rule against retrospectivity has been developed, as it appears also from the above text-books and Decisions, with particular reference to instances where there have been annulments of administrative decisions not to promote public officers. It has been constantly held that the administration, in such a case, has a duty to promote the particular public officer retrospectively, so as to secure to him the same advancement to which he would have been otherwise entitled had he been duly promoted in the first place. In other words this exception to the relevant general principle aims at enabling the administration to effect restitution

after one of its decisions has been declared void on recourse.

In the present case, however, no question of making restitution to Applicant, in respect of the consequences of his first dismissal, had arisen before the Commission when it decided to dismiss him once again, on the 27th March, 1963. Nor, compliance with the judgment annulling Applicant's first dismissal required making the second dismissal with retrospective effect, as from the date when Applicant was convicted by the criminal court, i.e. the 17th March, 1962 — and this is what the Public Service Commission did. All that compliance with the said judgment required was that the disciplinary case against Applicant should not be determined by the Public Service Commission without affording the Applicant an opportunity to be heard in his own defence. In this respect the Commission has now duly complied with such judgment and until this had been done no proper disciplinary proceedings could be deemed to have taken place; there could, therefore, be no question of antedating the dismissal of Applicant back to the date of his conviction by way of compliance with the judgment on his first recourse.

Counsel for Respondent has referred to the Decision of the Greek Council of State in case 1016/1954 (Decisions, Council of State volume 1954B, p. 1232) and, on the basis of the course adopted by the Greek Council of State in that case, he submitted that the dismissal of Applicant had properly been given retrospective effect. That was a case where a decree, which had been based on the opinion of the Supreme Air Council, was eventually declared to be invalid by the Council of State because of defective composition of the Air Council. Subsequently the decree was re-issued with retrospective effect, back to the date of the decree which had been annulled. The retrospectivity was upheld by the Council of State on the ground that the annulment of the first decree had taken place for formal reasons. The same course was adopted by the Greek Council of State for the same reasons, in Decision 617/1954 (Decisions, Council of State volume 1954A, p. 724).

The possibility of making a new administrative act to take effect on the date when a previous administrative act, of the same content, would have taken effect had it not been annulled for only formal reasons, is, indeed, an exception to the general rule against retrospectivity; it has been touched

upon by this Court in the judgment in *Kallouris and the Republic* 1964 C.L.R. 313.

In my opinion, however, the first dismissal of Applicant has not been annulled for formal invalidity but for substantial invalidity and, therefore, the second dismissal could not have been made retrospective, on the strength of the above. It was not a case where defective composition or other formal defect had prevented, an otherwise properly taken decision, from being valid, but it was a case where no proper disciplinary proceedings had taken place at all, because the Applicant had not been afforded an opportunity to be heard.

It may be observed at this stage, that the Commission did not make its new decision, the subject-matter of this recourse, with effect back to the date when it first decided to dismiss Applicant, but with effect back to the date of his conviction by the criminal court, before his first dismissal. Such a course, not being warranted by express legislative provision for the purpose, could not in any case, have been warranted, even if all other necessary prerequisites were satisfied, under any of the exceptions, discussed above, to the general principle against retrospectivity.

This Court in a recourse such as the present can either confirm or annul, in whole or in part, the subject-matter of the recourse. It cannot put a new correct decision in its place (see Tsatsos, above, p. 251). So even if I had held, which is not so, that it was possible for the Commission to make the new dismissal of Applicant retrospective to the date of its first decision for the purpose, on any of the grounds discussed earlier in this Judgment, I would still have had to annul the retrospective effect of Applicant's dismissal, with reference back to the date of his conviction, the 17th March, 1962, and would not have been entitled to make the dismissal of Applicant retrospective with effect from the 12th July, 1962, the date of his first dismissal.

In all the circumstances of this Case, as the decision in question of the Public Service Commission clearly offends against the principle of non-retrospectivity of administrative acts and as such decision does not—for the reasons stated already in this Judgment—fall within any recognized relevant exception to the said principle, I have reached the conclusion that the said decision has to be annulled to the extent to which it has been made to have retrospective effect before

the date when it was taken, the 27th March, 1963; in this respect the submission of counsel for Applicant that the dismissal could only have been made retrospective with effect from the date when the Applicant appeared before the Commission, i.e. the 8th March, 1963, is in my opinion, not well founded, because once it is a decision which could not have been made with retrospective effect, it could not have been made with effect from any date prior to its being taken.

Regarding the taking of effect of the decision in question, once it has been held not to be retrospective, I would state only, for guidance, that an individual administrative act, which need not be perfected by publication, takes effect, as a rule, when it has been communicated to the person concerned. A useful example of the application of this rule, is Decision 160/1935 of the Greek Council of State (Decisions, Council of State volume 1935 A I p. 359).

It was not necessary in this Case to annul the whole decision of the Public Service Commission concerning the dismissal of Applicant. It need only be annulled in part, as stated above. Such course is open under Article 146(4)(b); it has been followed in relation to cases where the retrospective effect of administrative acts has been successfully challenged before the Greek Council of State, (Decisions 164/1932, 912/1934, 250/1949, 379/1949, 263/1955) as well as, in similar circumstances, in the aforementioned cases of "L' Aurore" and "Dame Silvestre", before the French Council of State.

On the question of costs, I think that Applicant, who has already been through a long litigation in the matter, is entitled to his costs, which I fix at £40. Such award of costs is not intended to reflect in any way on the motives of the Public Service Commission in this matter. I am satisfied that the Commission has acted, in the way which it did, in good faith on the strength of the view that a person who had been convicted of the offence of false swearing, in a manner meriting his dismissal, should not have been treated as a member of the public service after such conviction. May be this is what it was meant by Counsel for Respondent when he alleged at the Presentation that the retrospective effect of the decision in question was part of the punishment imposed on Applicant. Such contention has not been pressed further at the hearing, and quite rightly so, because

though it might have appeared to be punishment from a moral point of view, such punishment could not have been imposed contrary to the general principle which excludes retrospectivity of administrative decisions and it would have been punishment beyond the scope of the relevant powers of the Commission.

In conclusion, it may be stated that nothing in this Judgment should be taken as affecting any interdiction imposed on Applicant pending the disciplinary proceedings.

Decision complained of annulled in part as stated above.
Order for costs as aforesaid.