[TRIANTAFYLLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CLEANTHIS GEORGHIADES (No. 2)

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH:

1. THE PUBLIC SERVICE COMMISSION,

2. THE COUNCIL OF MINISTERS,

Respondent.

(Case No. 115/65).

Administrative Law—Practice—Evidence—Ruling on issue concerning admissibility of extrinsic evidence in relation to *minutes already in evidence.*

During the hearing of this Case, Counsel for Respondent sought to produce and put in evidence a statement adopted by the Public Service Commission interpreting and clarifying the sub judice decision of such Commission which was put in evidence earlier during the hearing of the present case.

Counsel for Respondent declared that this statement was sought to be produced not by way of reasoning of the Commission for its decision, but by way of clarification and interpretation thereof.

Counsel for Applicant objected to the admission of the statement in question. He referred the Court to the decision in *Kyriakides and the Republic,* (1 R.S.C.C., p. 66 at p. 69) concerning the law and rules of evidence applicable in proceedings of this nature, stressing that it would not be proper to allow the Commission to take the course of interpreting its decision by means of a statement such as the one sought to be put in evidence.

He, further, argued that there was, in any case, no ambiguity in the decision of the Commission, and, therefore, there was no need for any clarification; the interpretation of such decision was a matter for the Court only. He objected also to any oral evidence being adduced on the point.

Counsel for the Interested Party did not intervene in the matter.

Held, I. On the admissibility of the statement:

(a) It is correct that a collective administrative organ—such as the one involved in the present Case—may in a proper case interpret or explain a previous decision of its own provided it does not seize itself anew of the substance of the matter concerned or make new provision in relation thereto (vide Decision of the Greek Council of State 669/1930). In other words, a collective administrative organ may revert on any of its decisions—even if by law they are to be considered as final and irrevocable—for the purpose of interpreting or explaining any ambiguities or errors, without, however, being allowed to alter its original decision or to issue a new decision under the guise of interpretation of its aforesaid original decision (vide Decision of the Greek Council of State 661/1932).

(b) In applying the above principles to the present matter I think the essential thing to be borne in mind is that this is not an instance where it is sought to place before the Court a subsequent decision of an organ, interpreting or explaining a previous decision thereof, and where both the original and the subsequent decision were reached for the sake of proper administration, before and independently of any court proceedings, as was the case with the above-referred to precedents in Greece. This is an instance where, in view of the sub judice decision of the Commission having been put in evidence and in view of certain alleged ambiguities having been noticed therein in the course of the proceedings, the Commission has adopted a statement clarifying, interpreting or otherwise explaining such decision for the purpose of such proceedings and not for purposes of proper administration independently of any court proceedings.

(c) The present Case is clearly and decisively different and, thus, distinguishable from the two Decisions of the Greek Council of State referred to earlier.

II. On whether or not sworn evidence may be adduced instead.

(a) The decision concerned, does not, as recorded, provide a complete picture. We are not told, in particu-

lar, what were the qualifications which the Commission found that they were not possessed by the Interested Party, in relation to the post of Director-General, nor are we told on what grounds the Commission felt bound under section 16(1) of Law 12/65 to appoint, nevertheless the said Interested Party to such post.

(b) It is permissible therefore, for counsel for Respondent to adduce, by means of the proper procedure, evidence concerning the aforesaid *lacunae* in the record of the decision of the Commission.

(c) At this stage the Court is not ordering that evidence be adduced in relation to the two aforementioned lacunae in the relevant record of the Commission; it is only permitting it to be adduced if desired. Whether or not it will find it necessary to order that such evidence should be adduced, is a matter to be decided later in the light of the eventual relevancy of the said *lacunae* to the outcome of these proceedings.

Order in terms.

Cases referred to:

Kyriakides and The Republic, 1 R.S.C.C. p. 66 at p. 69;

Decisions of the Greek Council of State 669/1930, 661/1932 and 845/1957;

Papapetrou and The Republic, 2 R.S.C.C. p. 61;

Theodossiou and The Republic, 2 R.S.C.C. p. 44;

Saruhan and The Republic 2 R.S.C.C. p. 133.

Ruling.

Ruling on the admissibility in evidence of a statement adopted by the respondent Public Service Commission interpreting and clarifying a *sub judice* decision of such commission which had been put in evidence earlier during the hearing of the recourse.

L.N. Clerides with A. Triantafyllides for the applicant.

K.C. Talarides, Counsel of the Republic, for the respondent.

G. Tornaritis for the Interested Party.

Cur. adv. vult.

The following Ruling was delivered by:—

TRIANTAFYLLIDES, J.: During the hearing of this Case on the 7th September, 1965, the relevant decision of the Public Service Commission was put in evidence as exhibit 13; it reads as follows:

"*Placement of officers of the former Greek Communal Chamber on the new posts created in the Service of the Republic.*

Ref. letter No. 37 of 1.6.65 and enclosures from the Minister of Education.

The Commission considered the placement of Messrs. P. Adamides, Director-General (Administrative Officer) and Cl. Georghiades, Director of the Education Office of the former Greek Communal Chamber on the new posts created in the Service of the Republic under the provisions of Law 12/65.

With reference to Mr. Adamides, the Commission considered carefully his duties under the Chamber and the duties of the Director-General in the Ministry as described in the schemes of service and has come to the conclusion that although he was doing the work of administration in the Chamber still he does not possess all the qualifications required in the new post of Director-General but the Commission from reading Section 16(1) of Law 12/65 feels bound, in compliance with that Section, to appoint him to the post of Director-General in the Ministry of Education.

The Commission after considering the duties and functions of the post held by Mr. Cl. Georghiades under the Chamber decided, under the provisions of Section 16(1) of Law 12/65, that Mr. Georghiades be placed on the new post of Director of Education whose duties and functions were considered by the Commission to be analogous to the duties and functions of the post held by him under the Chamber. The placement to take effect from 1.7.65".

Counsel for Respondent, while addressing the Court on

such decision, on the 7th September, 1965, stated that the phrase "does not possess all the qualifications" does not mean the qualifications in the scheme of service but means that there was no complete identity between the duties of the old post of Mr. Adamides, the Interested Party, and of the new post; that he had not discharged educational duties. He also stated that the expression "feels bound", in such decision, indicated that the Commission had felt that there was sufficient analogy between the old post and the new post so as to lead the Commission to the appointment of the Interested Party.

He added, however, that this was his opinion at the time about the meaning of exhibit 13 and, before binding himself to a view on the point, he would like to consult further the Chairman of the Public Service Commission.

On the resumption of the hearing, on the 13th September, 1965, counsel for Respondent informed the Court that he had placed the matter before the Chairman of the Public Service Commission who had then put it before the Commission and that the Commission had decided on that day to adopt a statement interpreting and clarifying its aforesaid decision, exhibit 13. He sought to produce and put in evidence such statement, which has been marked "A" for identification for the purpose of enabling its examination with a view to deciding whether to admit it or not.

Counsel for Respondent declared that this statement is sought to be produced not by way of reasoning of the Commission for its decision, exhibit 13, but by way of clarification and interpretation thereof.

He has referred the Court on this point to Stasinopoulos on the Law of Administrative Disputes (1960), p. 228, Kyriakopoulos on Greek Administrative Law, 4th Edition, Volume 2, p. 412, Tsatsos on Recourse for Annulment, 2nd Edition, p. 162 and Sandulle on Administrative Law, 6th Edition, p. 305.

He ended by saying that the Chairman of the Commission and any member of it, who might be required to do so, were ready to give evidence on this matter.

Counsel for Applicant objected to the admission of the statement in question. He referred the Court to the decision in *Kyriakides and the Republic*, (1 R.S.C.C., p. 66 at p. 69)

concerning the law and rules of evidence applicable in proceedings of this nature, stressing that it would not be proper to allow the Commission to take the course of interpreting its decision by means of a statement such as exhibit "A".

He, further, argued that there was, in any case, no ambiguity in exhibit 13 and, therefore, there was no need for any clarification; the interpretation of such decision was a matter for the Court only. He objected also to any oral evidence being adduced on the point.

Counsel for the Interested Party did not intervene in the matter.

I have reserved my Ruling on the point for consideration until to-day.

Exhibit 13 is an extract from the minutes of the meeting of the Public Service Commission held on the 18th June, 1965.

There is no legislative or other provision regulating the keeping of such minutes and, therefore, it is not possible to hold exactly what were the things which had to be recorded therein.

It may be assumed, however, that the Commission in its minutes records what it deems to be of substance in relation to its deliberations and relevant decisions on various matters considered by it. So, exhibit 13 in this Case may be properly regarded as containing what the Commission, at the material time, considered as being necessary to be recorded in its minutes in relation to the emplacement of Applicant and the Interested Party.

Can, then, what is stated therein be enlarged upon by the Commission subsequently?

It is correct that a collective administrative organ—such as the one involved in the present Case—may in a proper case interpret or explain a previous decision of its own provided it does not seize itself anew of the substance of the matter concerned or make new provision in relation thereto (vide Decision of the Greek Council of State 669/1930). In other words, a collective administrative organ may revert on any of its decisions—even if by law they are to be considered as final and irrevocable—for the purpose of interpreting or explaining any ambiguities or errors, without, however, being allowed to alter its original decision or to issue a new

decision under the guise of interpretation of its aforesaid original decision (vide Decision of the Greek Council of State 661/1932).

In applying the above principles to the present matter I think the essential thing to be borne in mind is that this is not an instance where it is sought to place before the Court a subsequent decision of an organ, interpreting or explaining a previous decision thereof, and where both the original and the subsequent decision were reached for the sake of proper administration, before and independently of any court proceedings, as was the case with the above-referred to precedents in Greece. This is an instance where, in view of the *sub judice* decision of the Commission having been put in evidence and in view of certain alleged ambiguities having been noticed therein in the course of the proceedings, the Commission has adopted a statement clarifying, interpreting or otherwise explaining such decision for the purpose of such proceedings and not for purposes of proper administration independently of any court proceedings.

In view of the above I am of the opinion that the present Case is clearly and decisively different and, thus, distinguishable from the two Decisions of the Greek Council of State referred to earlier.

Nor can the statement, exhibit "A", be properly regarded as a very belated disclosure of the reasoning supporting an administrative decision, such as exhibit 13.

It is correct that, as an exception, such reasoning may be put forward even during the relevant court proceedings, as it was allowed to be done by the Greek Council of State in case 845/1957. This is one of the cases referred to by Stasinopoulos in his treatise on the Law of Administrative Disputes (1960) (in a footnote at p. 228) which has been relied upon by counsel for Respondent. In that case supplementary reasoning was put forward before the Council by means of memoranda filed with the Council by Respondent. Such reasoning consisted of specific events relating to the conduct of Applicant and justifying his suspension from service, against which he had filed a recourse; all such events were already to be found mentioned in the relevant official files and, thus, they were before the organ which decided on such suspension.

As it will be seen at once the said memoranda were filed with the Council by way of factual particulars providing supplementary reasoning, in the same way as this could be done in Cyprus in a proper case—and actually memoranda are means of pleading in proceedings before the Council of State (vide Tsatsos on Recourse for Annulment, 2nd edition, p. 234). In the present Case, however, counsel for Respondent has stated that he is not adducing supplementary reasoning and I fully agree with his view because the statement, exhibit "A", cannot be regarded, when looked upon as a whole, as supplementary reasoning by way of factual particulars or otherwise.

What is sought to be done, in reality, by means of exhibit "A", is to adduce evidence before this Court supplementing or explaining the written record of the relevant administrative decision of the Commission (*exhibit* 13). This is clear both from its contents and its heading, which reads "Explanatory note on the P.S.C.'s decision regarding the placement of Messrs P. Adamides and Cl. Georghiades on the posts of Director-General and Director of Education in the Ministry of Education".

In the case of *Kyriakides and The Republic* (*supra*) it was held that the law and rules of evidence applicable to civil or criminal proceedings are not directly applicable to constitutional or administrative proceedings and in view of the difference between the above two categories of proceedings the said law and rules of evidence will be, of course, looked upon for guidance but may be relaxed or departed from if this is deemed necessary for the proper discharge of the constitutional or administrative judicial competences.

I have, therefore, borne in mind the law and rules of evidence relevant to the admission of extrinsic evidence in relation to documents (vide Phipson on Evidence, 10th edition pp. 723 & 756 et seq.). They are not directly applicable to the present matter but they are of guidance value in stressing the need for caution and restraint in allowing in such extrinsic evidence.

In the past in more than one case (vide e.g. *Papapetrou and The Republic*, 2 R.S.C.C. p.61, *Theodossiou and The Republic*, 2 R.S.C.C. p. 44, *Saruhan and The Republic* 2 R.S.C.C. p.133) evidence by members of the Public Service Commission concerning the action taken or the decisions reached in particular

matters has been received for the purpose of completing the picture of such action or decisions of the Commission, where, in the opinion of the Court, such picture was not sufficiently complete on the basis only of the written records; such evidence has been received mainly for the purpose of ascertaining the elements which did really influence the exercise of the discretionary competence of the Commission, when it was not possible to be certain about, or to deduce, such elements on the basis only of the relevant records. Thus, a rule of evidence, peculiar to this kind of proceedings, has evolved which I think is most necessary for the proper determination thereof.

Whenever, however, such evidence has been received it has always been received under oath and subject to cross-examination and I certainly do not think that it would be at all proper to depart from such procedure and allow in evidence by way of a statement such as exhibit "A", which is not even an affidavit (in which case any party could had requested to cross-examine the affiant).

The production, therefore, of the statement, exhibit "A" for identification, is disallowed.

There remains to examine the question whether or not sworn evidence may be adduced instead.

In my opinion, the decision concerned, exhibit 13, does not, as recorded, provide a complete picture. We are not told, in particular, what were the qualifications which the Commission found that they were not possessed by the Interested Party, in relation to the post of Director-General, nor are we told on what grounds the Commission felt bound under section 16(1) of Law 12/65 to appoint, nevertheless, the said Interested Party to such post.

I think, therefore, that it is permissible for counsel for Respondent to adduce, by means of the proper procedure, evidence concerning the aforesaid *lacunae* in the record of the decision of the Commission, exhibit 13. At this stage the Court is not ordering that evidence be adduced in relation to the two aforementioned *lacunae* in the relevant record of the Commission; it is only permitting it to be adduced if desired. Whether or not it will find it necessary to order that such evidence should be adduced, is a matter to be decided later in the light of the eventual relevancy of the said *lacunae* to the outcome of these proceedings.

Order in terms.