[VASSILIADES, P., JOSEPHIDES, STAVRINIDES, HADJIANASTASSIOU, JJ.]

GEORGHIOS MARKOU AND ANOTHER,

Appellants,

and

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF FINANCE,

Respondent.

(Revisional Jurisdiction Appeal No. 31).

Recourse under Article 146 of the Constitution—Appeal—Successful party in the proceedings at first instance appealing against judgment granting him the relief sought i.e. annulling the decision complained of—Such appeal taken on the ground that the trial Court proceeded to determine extent of Appellant's (Applicant's) right to education grant—Successful party debarred from appealing—Whether not only the operative part of the Judgment annulling the administrative decision but also the reasoning of such Judgment and the directions contained therein are binding on the administration—Res judicata—Extent.

Appeal—Appeal against a judgment annulling an administrative decision—Whether successful party debarred from appealing—See above.

Res judicata—Binding force of a judgment annulling the administrative decision challenged by a recourse under Article 146 of the Constitution—Extent to which such judgment is binding—See above.

Public officers—Education grant—See above under Recourse under Article 146 of the Constitution.

Practice—Appeal against judgment annulling the administrative decision complained of—Appeal by successful party in a recourse under Article 146 of the constitution—See above.

This is an unusual appeal by the successful party in the proceedings at first instance. The Appellants (Applicants) succeeded in their recourse under Article 146 of the Con-

stitution and were granted the relief sought i.e. a declaration by the trial Judge to the effect that the decision of the Respondent complained of was *null* and *void* and of no effect whatsoever (see Article 146, paragraph 4(b) of the Constitution). The grounds on which the appeal was taken are two:-

(1) The trial Judge erred in holding that "what has been safeguarded in favour of public officers such as the Applicants under Article 192 (of the Constitution) is not a fixed yearly amount, but a contribution by Government to a certain extent of the cost of educating abroad their children".

(2) The trial Judge erred in deciding that the Appellants (Applicants) are entitled to education grant which bear the same relation to the cost of educating their children in Greece as the relation between £130 and £440 per year". (See the Judgment in (1967) 3 C.L.R. 497).

Counsel for the Appellants argued, *inter alia,* that the dilemma in which he found himself was that at a later stage he may be faced with an argument that, if he did not take the present appeal, the two points raised above might be considered as *res judicata.*

In dismissing the appeal, the Court, (Stavrinides J. dissenting as to the reasons only):-

Held, I. Per Vassiliades P.:

1(α) Εκ μέρους τοῦ ἐφεσιβλήτου προβάλλεται ὁ ἰσχυρισμὸς ὅτι σκοπὸς τῆς προσφυγῆς ἦτο ἡ ἀκύρωσις τῆς διοικητικῆς πράξεως. Καὶ ἐφ' ὅσον αὕτη ἐκηρύχθη ἄκυρος τοῦτο πρέπει νὰ σημαίνῃ τὸ τέλος τῆς παρούσης διαδικασίας.

(β) Κλίνομεν ὑπὲρ τῆς ἀπόψεως ὅτι ὁ ἰσχυρισμὸς οὗτος εὐσταθεῖ δεδομένου ὅτι ἡ διοικητικὴ πράξις ἐκηρύχθη ἄκυρος καὶ ἐστερημένη παντὸς ἐννόμου ἀποτελέσματος καί, οὕτω, διὰ τῆς προσβαλλομένης ἀποφάσεως τοῦ πρωτοδίκου Δικαστοῦ τὸ θέμα παραπέμπεται ἐκ νέου εἰς τὴν διοίκησιν.

(2) Καθ' ὅσον ἀφορᾶ εἰς τὰς ἄλλας παρατηρήσεις

τοῦ δικαστοῦ ὅστις ἐξεδίκασε τὴν ὑπόθεσιν, δὲν νομίζομεν ὅτι δυνάμεθα σήμερον νὰ ἐπιληφθῶμεν τοῦ θέματος τούτου. Ἐκεῖνο τὸ ὁποῖον καλούμεθα νὰ ἀποφασίσωμεν εἶναι κατὰ πόσον ἡ ἀπόφασις δι' ἧς ἠκυρώθη ἡ διοικητικὴ πρᾶξις εὐσταθεῖ ἢ ὄχι. Καὶ οὐδεμία περὶ τούτου ὑπάρχει ἀμφιβολία. Συνεπῶς ἡ ἔφεσις δὲν εὐσταθεῖ καὶ ἀπορρίπτεται.

Held, II. Per Josephides J.:

(1) I am of the view that, once the decision of the Respondent has been declared *null* and *void* and it is his duty to re-examine the matter, the whole matter should be left open.

(2) If the Appellants are aggrieved by any fresh decision of the Administration then they will have the right to file a fresh recourse under Article 146 of the Constitution; and if the Court is satisfied that the complaint has been proved it has the power to declare such fresh decision *null* and *void*. I would therefore dismiss the appeal.

Held, III. Per Stavrinides J.:

(1) I agree that the appeal should be dismissed. But I am unable to agree that the Appellants were debarred from appealing merely because the Judgment annulled the administrative decision challenged by their recourse under Article 146.

(2) It is a settled principle of administrative law that the administration is bound not only by the operative part of a Judgment but also by its reasoning and any directions contained therein. Accordingly, so long that the Judgment stood, the appellants would not be entitled tc question a fresh decision of the administration making grants to them in accordance with the reasoning, and indeed the directions, contained in the Judgment appealed from, their sole remedy being to appeal, as they have done, for variation of the Judgment.

(3) On the other hand the Appellants must fail on the substance of the matter, as to which I agree with the reasoning of the learned trial Judge.

Held, IV. Per Hadjianastassiou J.:

I agree that the appeal should be dismissed for the reasons given in the Judgment of the President and Mr. Justice Josephides.

Appeal dismissed with £8 costs in favour of the Respondent.

Cases referred to:

Loizides and The Republic, 1 R.S.C.C. 107.

Appeal.

Appeal from the judgment of a Judge of the Supreme Court of Cyprus (Triantafyllides J.) given on the 19th August, 1967 (Cases No. 32/67 and 33/67) whereby the decision of the Respondent refusing to pay Applicants education grant was declared to be *null* and *void*.

A. Triantafyllides with *D. Papachrysostomou*, for the Appellants.

A. Frangos, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

ΑΠΟΦΑΣΙΣ

'Ανεγνώσθησαν αί άκόλουθοι 'Αποφάσεις :-

ΒΑΣΙΛΕΙΑΔΗΣ, Π. : 'Η παροῦσα ἔφεσις ἀσκεῖται ἐναντίον τῆς ἀποφάσεως* ἑνὸς δικαστοῦ τοῦ Δικαστηρίου τούτου, ὁ ὁποῖος ἤκουσεν τὴν ὑπόθεσιν δυνάμει τοῦ ἄρθρου 11 τοῦ Νόμου 33/64.

'Ο ἐφεσείων ἰσχυρίζεται ὅτι παρ' ὅλον ὅτι ἐπέτυχε διὰ τῆς προσφυγῆς του νὰ ἀκυρώσῃ τὴν διοικητικὴν πρᾶξιν, ἐν τούτοις ἡ ἀπόφασις παραβλάπτει τὰ δικαιώματά του καθ' ὅτι προχωρεῖ περισσότερον καὶ ἀποφασίζει τὴν ἔκτασιν τοῦ δικαιώματός του δι' ἐκπαιδευτικὸν ἐπίδομα.

'Εκ μέρους τοῦ ἐφεσιβλήτου προβάλλεται ὁ ἰσχυρισμὸς ὅτι σκοπὸς τῆς προσφυγῆς ἦτο ἡ ἀκύρωσις τῆς διοικητικῆς πράξεως. Καὶ ἐφ' ὅσον αὕτη ἐκηρύχθη ἄκυρος τοῦτο πρέπει νὰ σημαίνῃ τὸ τέλος τῆς παρούσης διαδικασίας.

Κλίνομεν ὑπὲρ τῆς ἀπόψεως ὅτι ὁ ἰσχυρισμὸς οὗτος εὐστα-

Note: Judgment reported in (1967) 3 C.L.R. 497.

θεῖ, δεδομένου ὅτι διὰ τῆς ἐκδοθείσης ἀποφάσεως τὸ θέμα παραπέμπεται ἐκ νέου εἰς τὴν διοίκησιν. Τὴν ἄποψιν ταύτην ἐνισχύει καὶ ἡ συνήθως χρησιμοποιουμένη φρασεολογία, ὅτι ἡ διοικητικὴ πρᾶξις τῆς ὁποίας τὸ κῦρος ἀμφισβητεῖται, κηρύττεται ἄκυρος καὶ ἐστερημένη παντὸς νομικοῦ ἀποτελέσματος. Καθ' ὅσον ἀφορᾶ εἰς τὰς ἄλλας παρατηρήσεις τοῦ δικαστοῦ, ὅστις ἐξεδίκασε τὴν ὑπόθεσιν, δὲν νομίζομεν ὅτι δυνάμεθα σήμερον νὰ εἰσέλθωμεν.

Ἐκεῖνο τὸ ὁποῖον καλούμεθα ν' ἀποφασίσωμεν εἶναι κατὰ πόσον ἡ ἀπόφασις δι' ἧς ἠκυρώθη ἡ διοικητικὴ πρᾶξις εὐσταθεῖ ἢ ὄχι. Καὶ οὐδεμία περὶ τούτου ὑπάρχει ἀμφιβολία. Συνεπῶς ἡ ἔφεσις δὲν εὐσταθεῖ καὶ ἀπορρίπτεται.

JOSEPHIDES, J.: I concur and I would like to state briefly my reasons for doing so. This is an unusual proceeding in that it is an appeal by the successful party. No authority has been cited to us from any country applying administrative law, in which such a proceeding has been taken.

The Appellant (Applicant) in this case was asking the Court to declare that the decision of the Respondent was *null* and *void* and of no effect whatsoever, under the provisions of Article 146, paragraph *4(b)*, of the Constitution. In fact the learned Judge, who heard this case at first instance, made the declaration sought in favour of the Appellant. Once the decision has been declared *null* and *void* it is now the duty of the Administration to reconsider the matter.

The grounds on which the appeal was taken before us were the following:

> "1. It is respectfully submitted that the finding of the Court that 'what has been safeguarded in favour of public officers such as the Applicants under Art. 192, is not a fixed yearly amount, but a contribution by Government to a certain extent of the cost of educating abroad their children' is wrong, when such statement is coupled with the decision of *Loizides case* (1 R.S.C.C. 107) whereby the U.K. was substituted by Greece and Turkey".
>
> "2. It is respectfully submitted that the trial Court erred in deciding that the Appellants are entitled to education grant 'which bear the same relation to the total cost of educating their children in Greece as the relation between £130 and £440 per year' ".

Learned counsel for the Appellant in arguing the appeal to-day stated that the dilemma in which he found himself was that at a later stage he may be faced with an argument that, if he did not take the present appeal, the two points raised in his appeal might be considered as *res judicata*.

I am of the view that, once the decision of the Respondent has been declared *null* and *void* and it is his duty to re-examine the matter, the whole matter should be left open. If the party concerned i.e. the Appellant, is aggrieved by any fresh decision of the Administration then he will have the right to file a fresh recourse under the provisions of Article 146, if he can bring himself within the ambit of that Article, which provides that, on a complaint against an administrative decision that it is contrary to any of the provisions of the Constitution or of any law or was made in excess or abuse of powers, this Court has power to examine the matter and, if satisfied that the complaint has been proved, declare such decision *null* and *void*. I would, therefore, dismiss the appeal.

STAVRINIDES, J.: I agree that the appeal should be dismissed. But I am unable to agree that the Appellants were debarred from appealing merely because the judgment annulled the administrative decision to which their application related. It is a settled principle of administrative law that the administration is bound not only by the operative part of a judgment but also by its reasoning and any directions contained therein. Accordingly, so long that the judgment stood, they would not be entitled to question a fresh decision of the administration making grants to them calculated in accordance with the reasoning, and indeed the directions, contained in that judgment, their sole remedy being to appeal for variation of the judgment in so far as it had a bearing on the amounts payable to them.

On the other hand the Appellants must fail on the substance of the matter, as to which I agree with the reasoning of the learned trial judge.

HADJIANASTASSIOU, J.: I agree that the appeal should be dismissed for the reasons given in the judgment of the President of this Court and Mr. Justice Josephides and, therefore, I need not add anything more myself.

VASSILIADES, P.: In the result the appeal fails and is dis-

1968
April 9
—
GEORGHIOS MARKOU AND ANOTHER
v.
REPUBLIC (MINISTER OF FINANCE)
—
Vassiliades, P.

missed. As to costs we think that the Respondent is entitled to £8.- costs and we order accordingly. It is understood, we hope, that the order for costs made in the trial Court remains undisturbed.

Appeal dismissed. Order for costs as aforesaid.