1968
June 22

ANDREAS HADJIGEORGHIOU
v.
REPUBLIC
(PUBLIC SERVICE COMMISSION)

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS HADJIGEORGHIOU

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 324/66).

Public Officers—Dismissal from the service—Dismissal with retrospective effect—The principle against retrospectivity—Exceptions—In the present case the decision complained of is outside those exceptions—It offends, therefore against the rule of non-retrospectivity of administrative acts—Termination of Applicant's appointment—In the circumstances the matter was of a disciplinary nature—Therefore, the relevant proceedings before the Public Service Commission were rightly treated as disciplinary proceedings, governed by the rules of natural justice—Public Service Commission—Defective constitution of the said Commission due to vacancies—Invalidity of a decision taken by a collective organ not properly constituted as aforesaid—Cf. the Public Service Commission (Temporary Provisions) Law, 1965, (Law No. 72 of 1965), section 5.

Public Service—See above and herebelow.

Public Service Commission—Defective quorum—Defective constitution due to vacancies—Requirement that a collective organ should be properly constituted—Vacancies—Cf. Article 124.1 of the Constitution—Cf. Law No. 72 of 1965, section 5, supra—See, also, above and herebelow.

Administrative Law—Collective organs—Rule that a collective organ should be properly constituted, otherwise it cannot validly function and its decisions are void ab initio—Vacancies—Effect—See also above.

Collective organs—Proper constitution—Vacancies—Effect—See above.

Administrative Law—Administrative acts—Retrospective effect of administrative acts or decisions—Principle against retrospectivity—Exceptions to the general rule—See, also, above under Public Officers.

Administrative acts—Retrospective effect of—Rule against—See above.

Retrospectivity—Rule against retrospectivity of administrative acts—Exceptions—See above.

Natural justice—Principles of—Applicable to disciplinary proceedings—See, also, above under Public Officers.

Public Service—General Orders—Not laws for the purposes of Article 188 of the Constitution—Provisions being of a purely administrative or procedural nature, are, in a sense, kept alive by administrative practice.

General Orders—See under Public Service immediately above.

Vacancies—Vacancies in a collective organ—Effect—See above.

Disciplinary proceedings—When an inquiry before the Public Service Commission is of a disciplinary nature—See, also, above under Public Officers.

In this recourse under Article 146 of the Constitution the Applicant challenges the validity of the decision of the Respondent Public Service Commission dated the 7th October, 1966 (and communicated to him on the 19th October 1966), terminating Applicant's probationary appointment as an Accounting Officer, 2nd Grade, Treasury Department, with retrospective effect *i.e.* with effect from December 6, 1964.

The salient facts of the case are very shortly as follows: On September 14, 1964 the Public Service Commission decided to terminate Applicant's aforesaid appointment as from December 6, 1964 on account of inefficiency, incomptetence and untrustworthiness. The Applicant feeling aggrieved filed a recourse No. 146/64 against his said dismissal; Judgment was delivered on May 24, 1966 (see *Hadjigeorghiou and The Republic,* (1966) 3 C.L.R. 504) annulling the decision complained of, on the sole ground that it "was taken by the Respondent Public Service Commission meeting without a proper quorum; and as a re-

sult such Commission "was not properly constituted at the material time. Whether or not the Commission at the material time, was, also, not properly constituted for reasons other than lack of quorum is a question which does not need to be decided in this case and I need leave it open" (See *supra* at p. 511).

It was, indeed, a common ground in that case No. 146/64 that there were only five members of the Commission present when the decision of the 14th September, 1964, to terminate Applicant's appointment was taken, because two of the seven Greek members' seats had already been vacated earlier, one through death and the other through resignation, and there had not been participation of the three Turkish members since December, 1963. (Cf. Article 124.1 of the Constitution).

On October 7, 1966, the Public Service Commission met and for the same reasons as aforesaid reached their new decision to terminate Applicant's appointment with effect from the 6th December 1964.

It was argued by counsel for the Applicant, *inter alia,* that (a) there has been a violation of the principles of natural justice, *(b)* in any case, the Respondent in taking a decision with retrospective effect acted contrary to well settled principles of administrative law.

In annulling partly the *sub-judice* decision *i.e.* only in so far as its retrospective effect is concerned, the Court:-

Held, (1). In my view the Respondent Commission rightly treated the proceedings before it as being of a disciplinary nature. But on the material before me the Commission fully complied with the principles of natural justice by afording the Applicant the safeguards ensured to him by the procedure applicable to disciplinary matters.

(2) On the other hand, on the evidence adduced, I am of the opinion that in the circumstances it was reasonably open to the Respondent Commission to reach the decision it reached on October 7, 1966, to terminate the services of the Applicant.

(3) But, in the absence of legislation, the decision complained of could not, in my view, be made retrospective for the following reasons:-

(a) The well established principle in administrative law is that as a rule administrative acts cannot validly be given retrospective effect, subject to certain well recognised exceptions, (See Kyriakopoulos, on Greek Administrative Law, *4th edition*, Vol. 2 p. 400; Stasinopoulos on the Law of Administrative Acts 1951 p. 370; Conclusions from the Jurisprudence of the Greek Council of State 1929—1959 at p. 197 and the decisions of the Council of State quoted).

(b) The aforesaid exceptions to the general rule against retrospectivity may be summarised as follows:

"On the annulment of an administrative act by the Council of State for formal reasons, for example for lack or insufficiency of reasoning or for defective constitution of a collective organ, the results of the new act since it relates to the same subject—matter as the annulled one and once it is decided within reasonable time from the original one and on the basis of the same facts and law, *it can relate back to the time of the original act* (see decisions 551, 1691/1952, 543, 1016/54)". (Vide conclusions from the Jurisprudence of the Greek Council of State 1929-1959 p. 197).

(c) Going through the record, and relying on the authority of *Theofylactou and The Republic,* (1966) 3 C.L.R. 801 I find that at the material time *(i.e.* on September 14, 1964 when the Public Service Commission originally decided to dismiss the Applicant with effect from the 6th December, 1964) the Public Service Commission was not properly constituted, and, therefore, could not function validly due to the existence of the two vacancies referred to in the Judgment of the Court annulling the first decision of the Commission (see *HadjiGeorghiou and The Republic,* (1966) 3 C.L.R. 504). The aforesaid *first* decision of the 14th September 1964 to terminate the service of the Applicant was taken contrary to law and to the Constitution. In my opinion such decision is, for reasons of substance and not for merely formal ones, a complete nullity, contrary to law and void *ab initio.*

(d) Consequently, upon the principles set out hereabove the *new* decision of the Respondent Commission dated the 7th October, 1966, the subject matter of the present recourse, to dismiss the Applicant from the service,

is clearly outside the exceptions to the general rule against retrospectivity and, therefore, it could not have been given retrospective effect i.e. from the 6th December 1964, which is the date prescribed by their *first decision* of the 14th September 1964 *(supra)*. It should be noted at this stage that section 5 of the Public Service Commission (Temporary Provisions) Law 1965 (Law No. 72 of 1965) has not cured the defect which vitiated the Respondent's aforesaid decision (See *Theophylactou and the Republic, supra)*.

(e) I would like further to add that, even if I were to take the view that the original decision of the Respondent (that of the 14th September, 1964, *supra)* was invalid for only formal reasons, I would still have reached the same conclusion, because the decision complained of in the present recourse was taken after the lapse of unreasonable time from the original one.

(4) In the result the *sub-judice* decision of the 7th October, 1966, has to be annulled but as regards only its retrospective effect; thus, the Applicant's dismissal will remain effective as from the date on which the relevant decision was communicated to him, *i.e.* from October 19, 1966. (Principle laid down by Triantafyllides J. in *Morsis* and *The Republic,* (1965) 3 C.L.R. 1 at p. 13, adopting the decision of the Greek Council of State No. 160/35. *applied*).

Cases referred to:

HadjiGeorghiou and The Republic, (1966) 3 C.L.R. 504;

Markoullides and The Republic, 3 R.S.C.C. 30, at p. 35;

Rex v. Gaskin (1799) 8 Term Rep. 209;

General Medical Council v. Spackman [1943] 2 All E.R. 337, at p. 340, per Viscount Simon L.C.;

Board of Education v. Rice [1911] A.C. 179, at p. 182, per Lord Loreburn L.J.;

Kalisperas and The Republic, 3 R.S.C.C. 146;

Pantelidou and The Republic, 4 R.S.C.C. 100;

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

Kanda v. Government of Malaya [1962] A.C. 322, at p. 337;

Ridge v. Baldwin and Others [1964] A.C. 40, at p. 79, per Lord Reid;

Shareef v. Commissioner for Registration of Indian and Pakistani Residents [1966] A.C. 47, at p. 60;

Dr. Loizides and Others and The Republic, 1 R.S.C.C. 107;

Kallouris and The Republic, 1964 C.L.R. 313 at p. 325;

Theophylactou and The Republic, (1966) 3 C.L.R. 801;

Morsis and The Republic, (1965) 3 C.L.R. 1 at p. 13 per Triantafyllides J.

Decisions of the Greek Council of State: 160/35, 681/36, 551/52, 1691/52, 543/54, 617/54, 1016/54 and 888/56.

Recourse.

Recourse against the decision of the Respondent Public Service Commission terminating Applicant's probationary appointment, as an Accounting Officer, 2nd Grade, with retrospective effect.

L. Papaphilippou, for the Applicant.

L. Loucaides, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:-

HADJIANASTASSIOU, J.: In this recourse under Article 146 of the Constitution, the Applicant challenges the validity of the decision of the Public Service Commission, made on October 7, 1966, and communicated to him on October 19, 1966, by letter dated the 13th October, 1966.

The relevant facts are as follows:-

The Applicant was appointed in the public service of the Republic, to the temporary post of Accounting Officer, 2nd Grade, in the Treasury, on August 14, 1961. In April, 1962, he was appointed to the post he was already holding on

an unestablished basis, and was put on probation for a period of two years.

On April 4, 1964, *exhibit 11*, the Accountant-General prepared a six monthly report from October 1, 1963 to April 30, 1963, regarding the work of the Applicant. He wrote after the heading "service of Respondent — satisfactory" and after the heading "Suitability for confirmation in due course: Probationary period to be extended for six months. Although, as certified above, his services during the period covered by this report have been satisfactory, certain irregularities in connection with his previous duties on Bank Reconciliation for which there is evidence that they were knowingly and intentionally made have been brought to light. These irregularities are very serious and I wish to consider the matter further before I can make a recommendation of his suitability for confirmation". It would be observed that the probationary period of the Applicant was ending on March 31, 1964.

On June 4, 1964, the Accountant-General addressed a letter to the Applicant, *exhibit 14*, which reads:

> "I would like to bring to your notice that during the period of your duty as an Accounting Officer responsible for bank reconciliation work in the Accounts Branch, you failed to carry out your duties conscientiously. It appears that you purposely prepared statements purportedly showing that the cash book balance of the Government General A/c. was reconciled with the Ottoman Bank statement for the same A/c. whereas you must have known that in fact it was not so. In particular, the mistakes shown in the attached statement were found to have been made and I would like to have your explanations on each item".

As there was no reply the Accountant-General wrote to the Applicant on June 9, 1964, *exhibit 16*, requesting him to submit his explanations not later than June 16, 1964.

On June 17, 1964, the Applicant replied and in his long letter, *exhibit 17*, after trying to explain to the Accountant-General what has happened to the various cheques, and after dealing with the complaints with regard to his work, he says:-

> "I very much regret for the discrepancies as regards

the Reconciliation Statement which are due to the very heavy duties I was asked to perform. Believe me I have not done this purposely and there was no intention of stealing. This is partly due to a heavy pressure of other accounting duties. Some mistakes were noticed by me but under the impression that my inability to effect the reconciliation might be against me I did not pay much attention and no effort was made to trace them.

I hope that whatever mistakes or omissions on my part will not be taken very seriously and I can assure you that they will never happen again".

It would be observed, that at the end of the letter of the Applicant, a note appears to have been written by Mr. Stavros Nathanael, who it is evident, wanted to assist the Applicant. It reads:

".....

It was a note by me as Accountant in charge of the Exam. Section commending Mr. HjiGeorghiou's work and initiative taken in persistently pursuing queries raised in connection with the employment of unregistered power-driven machinery by Government Departments or the engagement of machinery of lesser engine capacity than that specified in the relative contracts".

On July 10, 1964, the Commission wrote to the Applicant and in their letter *exhibit 20*, after informing the Applicant that the Public Service Commission contemplated the termination of his probationary appointment, because of the irregularities committed by him in connection with the preparation of Bank Reconciliation Statements, during his probationary period, had this to say:

"I am to request you to appear before the Commission on 20th July, 1964, at 9.30 a.m. in order to put before the Commission any representations which you may wish to make in connection with this matter".

On July 20, 1964, it appears from the minutes of the Public Service Commission, *exhibit 21*, that the Applicant appeared before them in person and, after the Chairman explained to him the reasons of that meeting, he went on to say that the Commission would consider a number of

mistakes committed by him, and it may decide to terminate his probationary appointment, which meant that he may be dismissed. The Applicant replied, that he fully understood why he was before the Commission. He then went on to say:

"..... I was attached to the Stock Verification Section and later to section A, Bank Reconciliation Branch. This happened before I was appointed on probation. When I started work there was nobody to hand over to me the accounts. I started work on my own and I met some difficulties. It was at the time when the Ottoman Bank employees went on strike and the Government had to open a new account with the Bank of Cyprus; thus there were two Accounts — one with the Ottoman Bank and one with the Bank of Cyprus. Following the mixing up of the cheques by the responsible clerk, I sought the help of Mr. Dickran Tatarian who helped me to sort them out. When I started work, the bank reconciliation was in arrear by 1-2 months. With the help of Mr. Tatarian we closed the accounts of one month and then he went back to his work, leaving me working on my own. The number of cheques issued every month total thousands and some of them remain outstanding at the end of the month. I had not sufficient time to prepare a list showing which of the cheques were outstanding. Previously, this work had been performed by two officers with the exception of Mr. Mikellides who had done it for a time by himself. In September, 1962, the Accounts Officer who was in charge of the Crown Agents Accounts was absent and this work was given to me. Because of this my own work fell into arrear by about one month.

There are a number of cheques representing the same amount of money and may be you may pass the wrong cheque. It happened that some time the reconciliation did not agree and I had to make it twice over again. The Supervisor of Accounts has never come to offer me any help. I think it is easier for somebody else to find the mistakes. When the checking is carried out by two persons one does the checking of the cheque Nos. in the Register. I think in October, 1962, help was given to me by those appointed on daily wages. I had to trust the totals of the amount of the outstanding

cheques. In December, 1962, when I was preparing the reconciliation statement, a number of mistakes occurred which had not come to my knowledge. A number of outstanding cheques were not accounted for in the adding machine. The reconciliation was effected in spite of these mistakes by mere chance and without any effort on my part to effect the reconciliation by entries.

In June, 1963, I was transferred to another section. When the auditors audited the Reconciliation they discovered the mistakes. In September, 1963, I was transferred back to the Reconciliation Section to assist the person entrusted with the reconciliation to discover the mistakes. I cannot say whether the Reconciliation Statements upto November, 1962, were found to be correct. I took no interest in the statement foi the month of December, 1962. There were also some mistakes in the statement for December as discovered by the auditors. I want to mention to the Commission that a number of other officers made mistakes but a chance was given to them to correct them. I request the Commission to be lenient with me and give me a chance to improve".

I have given a rather long extract from the statement of the Applicant, because these facts have been adopted by the Applicant when he presented his case at the second meeting conducted by the Commission on July 25, 1966.

On September 14, 1964, the Commission reached its decision, *exhibit 22*. It reads:

"The Commission is persuaded on the evidence before it that the whole behaviour and action of this officer in dealing with his work in preparing Bank Reconciliation Statements, showed inefficiency, incompetence and behaviour which is tainted with untrustworthiness, trying within his knowledge to falsify the accounts, and shows that he is not a suitable officer for permanent retention in the service. The Commission is unable to accept his explanation about pressure of work. For these reasons the Commission decided not to confirm Mr. Hji Georghiou in his appointment and that his probationary appointment be terminated as from 6.12.64. Mr. Hji Georghiou should be granted any leave due to him before that date. The Commission further noted that

this officer has failed to pass the examinations in General Orders and Financial Instructions required under the terms of his appointment".

On September 17, 1964, the Commission addressed a letter to the Applicant, *exhibit 8*, informing him of their decision not to confirm him and, that they terminated his services in that post as from December 6, 1964.

On September 29, 1964, the Applicant wrote to the Commission, *exhibit 24*, putting forward that he was never warned either orally or in writing that he did not carry out his duties satisfactorily. He then repeated what he had mentioned earlier, and asked for a re-examination of his case and reconsideration of their decision.

On October 21, 1964, the Commission replied to the Applicant, *exhibit 26*, informing him that no reason existed for reconsideration of their decision.

The Applicant feeling aggrieved filed a recourse No. 146/64 on December 3, 1964; and Judgment was delivered on May 24, 1966, *exhibit 1*, before me. Mr. Justice Triantafyllides had this to say in his Judgment at p. 4:*

> "It is common ground in this Case that there were only five members of the Commission present when the decision to terminate Applicant's service was taken, because two out of the seven Greek members' seats had already been vacated earlier, one through death and the other through resignation, and there has not been participation of Turkish members since December, 1963.
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> On the basis, therefore, of the view already adopted by the aforesaid jurisprudence, I find that the decision to terminate the service of Applicant was taken by the Respondent Commission meeting without a proper quorum; and as a result such Commission was not properly constituted at the material time. Whether or not the Commission at the material time, was, also, not properly constituted for reasons other than lack of quorum is a question which does not need to be decided in this Case and I leave it open".

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*Note: *Vide HadjiGeorghiou and The Republic*, (1966) 3 C.L.R. 504 at pp. 510-11.

Later on, he says at p. 8:*

> "In the light of all the foregoing the *sub judice* decision of the Commission has to be declared *null* and *void* and of no effect whatsoever.
>
> In the circumstances of this Case I do not think it proper to express a view on any other of the issues raised before me, because I do not wish to anticipate any decision of the Commission which it may take on dealing afresh with the matter. Of course, anything advanced before me may properly be placed before the Commission and be taken into account by it, so long as it relates to facts existing when it came to reach its *sub judice* decision".

Following the decision of the Supreme Court, the Commission met on July 11, 1966, and decided to reconsider whether or not Applicant's probationary appointment should be terminated, and invited the Applicant to appear before them on July 25, 1966, in order to hear him further. On July 25, 1966, the Applicant together with his counsel, appeared before the Commission. Present at the meeting, was also Mr. St. Nathanael appearing for the Accountant-General. It appears from the minutes of that meeting, that after the Chairman of the Commission had explained the reasons of that meeting, he addressed the Applicant in these terms:

> "There are two ways in which we can proceed. Either you may elect to accept now whatever you said at the time when the Commission has considered your case, whatever you said and your letters and everything that is before the Commission together with the right to add to it anything you like and bring any other evidence, or to hear the whole case from the beginning which means rather a waste of time. What do you prefer"?

Then counsel for the Applicant intervened, and asked for a short adjournment; after advising his client, he stated that his client was willing to adopt everything which was put before the Commission at the meeting of July 20, 1964; and be taken into consideration by the Commission to-day, with the right to expand on it, and put before the Commission

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Note: Vide HadjiGeorghiou and The Republic, (1966) 3 C.L.R. 504 at p. 514.

any other suggestion. Then after counsel for the Applicant has completed his address to the Commission, the Chairman said:

> "I understand that these are arguments on the evidence given and the statements already made by Mr. Hji-Georghiou on the 20th July, 1964. Otherwise I would like Mr. HjiGeorghiou to make a statement himself".

He then addressed the Applicant in these terms:

> "Do you want to make any further statement to what you have already stated on the 20th July, 1964?"

and as the Applicant replied in the negative, the Chairman went on:

> "Have you any evidence to produce before the Commission?"

and as the Applicant replied again in the negative, the case was adjourned for consideration and decision.

On October 7, 1966, the Commission met and reached their decision. The minutes, *exhibit 7*, read as follows:

> "It was proved beyond any doubt and admitted by Mr. A. HjiGeorghiou, Accounting Officer, 2nd Grade, that in the execution of his duties as a reconciliation clerk finding himself in difficulty to reconcile the accounts of the Bank of Cyprus with the accounts as shown in the papers of the Treasury, he tried by falsification or faulty entries and arrangement of the different accounts to bring about the reconciliation required. He has done this with easy conscious and with full knowledge without considering the detrimental results of the actual state of the accounts between the Bank and the Treasury. His actions were in fact defeating the main purpose for which these reconciliation processes were invented, whereas he should ask for immediate advice and help by referring the matter to his superiors, when found in difficulty. He failed to do it.
>
> The way he has dealt with this matter shows lack of responsibility, efficiency and ability to carry out his duties, qualifications which are mainly demanded by an officer with responsibilities as those of Mr. A. Hji-Georghiou.

The Commission, after considering the above and bearing in mind the seriousness of the actions of Mr. HjiGeorghiou, decided not to confirm Mr. HjiGeorghiou in his appointment and that his probationary appointment to the post of Accounting Officer, 2nd Grade, be terminated w.e.f. 6.12.64.

The Commission before reaching the above decision, has taken into consideration the alleged recommendation as to his efficiency given by his superior when he was engaged on a different line in the Treasury but the Commission considers that this cannot relieve him of his serious responsibility for his actions under consideration".

On October 13, 1966, the Commission wrote to the Applicant informing him of their decision not to confirm his appointment and to terminate his probationary appointment as from December 6, 1964.

The Applicant finding himself aggrieved once again, because of the decision of the Commission, communicated to him by a letter dated October 13, 1966, filed the present recourse on December 30, 1966, seeking the following relief:

"A) Declaration that the decision or act of the Respondent contained in *Exh.* 1 attached hereto and communicated to the Applicant on the 19th October, 1966 is *null* and *void* and of no effect whatsoever.

B) Declaration that the decision or act of the Respondent to terminate the appointment of the Applicant in the Public Service of the Republic of Cyprus retrospectively as from the 6.12.1964 is *null* and *void* and of no effect whatsoever.

C) Declaration that the appointment of the Applicant in the Public Service of the Republic of Cyprus should be confirmed as from the 6.12.1964".

The Opposition was filed on February 2, 1967, to the effect that the decision to terminate Applicant's appointment in the public service of the Republic, complained of, was properly taken after all relevant facts and circumstances were taken into consideration.

The case came before me for hearing on October 9, 1967.

The main argument of counsel for the Applicant, was that the decision of the Commission to terminate the services of the Applicant was *null* and *void*, because the Commission has failed to follow the accepted procedure governing dismissal of public officers; and because the Applicant failed to follow the procedure laid down in the General Orders II/1. 26,27.

Counsel for the Respondent on the contrary has argued, that the Commission in inquiring into the case of the Applicant, in order to decide whether his appointment should be confirmed, was not bound to observe such procedure because the inquiry was not of a disciplinary nature or control.

It is not in dispute, that the Commission in inquiring into the case of the Applicant, has acted under the provisions of para. 1 of Article 125 of the Constitution. The relevant provisions read as follows:

> "1. Save where other express provision is made in this Constitution with respect to any matter set out in this paragraph and subject to the provisions of any law it shall be the duty of the Public Service Commission to make the allocation of public offices between the two Communities and to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer, retire and exercise disciplinary control over, including dismissal or removal from office of, public officers".

It would be observed, that the Commission, is not only entitled but bound to exercise its competence under Article 125 and has a duty to inquire into the conduct of a public officer concerned, in order to confirm him or terminate his services. In the absence of any statutory provisions, laying down the procedure to be followed and as to how it should conduct such inquiry, the Commission could exercise and perform its powers and duties provided for in the Constitution, as best as it could, and in accordance with the existing principles of natural justice and administrative law.

As it has been said time after time in decided cases, the Commission in exercising disciplinary control has to comply with certain well-established principles of natural justice and the accepted procedure governing dismissal of public officers. See *Andreas A. Markoullides and The Republic (P.S.C.)*, 3 R.S.C.C. 30 at p. 35.

The rules or principles of natural justice are usually expressed "that no man shall be judge in his own cause; and both sides shall be heard or otherwise put *audi alteram partem*, which principle Lord Kenyon C.J. referred to in *Rex* v. *Gaskin*, 1799 8 Term Rep. 209, as one of the first principles of justice. Furthermore the parties must have due notice on when the tribunal will proceed with the inquiry; and the accused person must have notice of what is accused of. I would further add that the principles of natural justice represent the forensic way of saying "fairplay".

The trend of the authorities — and I shall be citing recent authorities in due course — is that in applying the rules of natural justice there is no obligation on the tribunal to adopt the regular forms of judicial procedure; it is sufficient if the hearing is made in accordance with the principles of substantial justice, and the duty is discharged by hearing evidence viva voce or otherwise, vide *General Medical Council* v. *Spackman*, [1943] 2 All E.R. 337, per Viscount Simon L.C. at p. 340. In short, it is not required of a tribunal to conduct itself as a Court or to conduct a trial. Provided they act in good faith, they can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view (per Lord Loreburn L.C. in *Board of Education* v. *Rice* [1911] A.C. 179 at p. 182).

I shall now proceed to deal with cases decided by the Supreme Constitutional Court:

In *Nicos Kalisperas and The Republic* (P.S.C. and Another), 3 R.S.C.C. 146 it was held—

> "Where a transfer was about to be made both for reasons of misconduct and for other reasons and the line could not easily be drawn the rule to be applied should be the essential nature and predominant purpose of the particular transfer, cases of doubt being always resolved by treating the transfer as one for disciplinary reasons".

In *Maro N. Pantelidou and The Republic* (P.S.C.), 4 R.S.C.C. 100, a decision directly in point, the Court held that—

> "Inefficiency, as such, should not, in the absence of any express provision to the contrary, be treated as a disciplinary matter necessitating the giving of an oppor-

tunity to the officer concerned to be heard before his services were terminated, provided the decision by the Public Service Commission to terminate such services was taken after full examination of all relevant facts in the matter; and where the termination of the services of an officer in the public service was made both for reasons of inefficiency and for misconduct and there was a doubt as to the essential nature and the predominant reason for such termination, as in the instant case, such doubt should be resolved by treating such termination of services as if it was for disciplinary reasons thus affording the officer concerned the safeguards ensured to him by the procedure applicable to disciplinary matters, even though the reason for dismissing a public officer, might, *prima facie*, be so overwhelming as to render it improbable that anything would be forthcoming from him which would render his dismissal unnecessary".

In *Stelios Morsis and The Republic* (P.S.C.), 4 R.S.C.C. 133 the Court had this to say at p. 137:

"This Court has already held that the Commission in exercising disciplinary control 'has to comply with certain well-established principles of natural justice and the accepted procedure governing dismissal of public officers, because dismissal by the Commission is a matter of public law and not of private law' (vide *Andreas A. Markoullides and The Republic*, (Public Service Commission) 3 R.S.C.C. p. 30 at p. 35): that the rules of natural justice 'which also under Article 12 are made applicable to offences in general, should be adhered to in all cases of disciplinary control in the domain of public law' and that the procedure applicable in the particular matter must be applied subject to the said rules (vide *Nicolaos D. Haros and The Republic* (Minister of the Interior), 4 R.S.C.C. p. 39 at p. 44); that 'strict adherence to the principle concerned is most essential, in spite of the fact that such a course may occasionally result in causing some delay and that the reasons for dismissing a public officer may sometimes be, *prima facie*, so overwhelming as to render it improbable that anything will be forthcoming from him which would render his dismissal unnecessary', (vide *Maro N. Pantelidou and The Republic* (Public Service Commission), 4 R.S.C.C. p. 100 at p. 106)".

Reverting back to English cases, in *Kanda* v. *Govt. of Malaya* [1962] A.C. 322, Lord Denning delivering the judgment of their Lordships in the House of Lords had this to say at p. 337:

> "The rule against bias is one thing. The right to be heard is another. Those two rules are the essential characteristics of what is often called natural justice. They are the twin pillars supporting it. The Romans put them in the two maxims: *Nemo judex in causa sua*: *and Audi alteram partem.* They have recently been put in the two words, Impartiality and Fairness. But they are separate concepts and are governed by separate considerations. In the present case inspector Kanda complained of a breach of the second. He said that his constitutional right had been infringed. He had been dismissed without being given a reasonable opportunity of being heard.
>
> If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them. This appears in all the cases from the celebrated judgment of Lord Loreburn L.C. in *Board of Education* v. *Rice* ([1911] A.C. 179, 182) down to the decision of their Lordships' *Board in Ceylon University* v. *Fernando* ([1960] 1 All E.R. 631, P.C.). It follows, of course, that the judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other. The court will not inquire whether the evidence or representations did work to his prejudice. Sufficient that they might do so. The court will not go into the likelihood of prejudice. The risk of it is enough".

Later on he has this to say at p. 338:

> "Applying these principles, their Lordships are of opinion that inspector Kanda was not in this case given a reasonable opportunity of being heard. They find themselves in agreement with the view expressed by Rigby J. in these words: 'In my view, the furnishing of a copy of the findings of the board of inquiry to the ad-

judicating officer appointed to hear the disciplinary charges, coupled with the fact that no such copy was furnished to the plaintiff, amounted to such a denial of natural justice as to entitle this court to set aside those proceedings on this ground. It amounted, in my view, to a failure to afford the plaintiff a reasonable opportunity of being heard in answer to the charge preferred against him which resulted in his dismissal".

In *Ridge* v. *Baldwin & Others*, [1964] A.C. 40, Lord Reid delivering his speech in the House of Lords, and after dealing with the principles of natural justice, had this to say at p. 79:

> "Next comes the question whether the respondents' failure to follow the rules of natural justice on March 7, was made good by the meeting of March 18. I do not doubt that if an officer or body realizes that it has acted hastily and reconsiders the whole matter afresh, after affording to the person affected a proper opportunity to present his case, then its later decision will be valid. An example is De *Verteuil's* case, [1918] A.C. 557. But here the appellant's solicitor was not fully informed of the charges against the appellant and the watch committee did not annul the decision which they had already published and proceeded to make a new decision. In my judgment what was done on that day was a very inadequate substitute for a full rehearing. Even so three members of the committee changed their minds and it is impossible to say what the decision of the Committee would have been if there had been a full hearing after disclosure to the appellant of the whole case against him".

In *Shareef* v. *Commissioner for Registration of Indian and Pakistani Residents*, [1966] A.C. 47, Lord Guest delivering the judgment of their Lordships in the Privy Council had this to say at p. 60:

> "The deputy commissioner in fulfilling his duties under the Act occupies an anomalous position. In his position as a member of the executive he regulates the investigation into the matters into which he considers it his duty to inquire and as an officer of state he must take such steps as he thinks necessary to ascertain the truth. When conducting an inquiry under section 10, 13 or 14 he is acting in a semi-judicial capacity. In

this capacity he is bound to observe the principles of natural justice. In view of his dual position his responsibility is increased to avoid any conduct which is contrary to the rules of natural justice. These principles have often been defined and it is only necessary to state that they require that the party should be given fair notice of the case made against him and that he should be given adequate opportunity at the proper time to meet the case against him (*Ridge* v. *Baldwin*)".

The question, therefore is, has the Commission complied with the principles of natural justice or not? If the answer to this question is in the negative, then I have no difficulty at all to hold that disregard by the Commission of the principles of natural justice amounts, in my view, to that, that its decision is contrary to the Constitution and is void and of no effect whatsoever.

It appears from the material placed before me that the Commission having to enquire into the complaints by the Accountant-General against the Applicant, both for charges of inefficiency and of misconduct, quite rightly and prudently in my view, the Commission treated such enquiry as being of a disciplinary nature, affording the Applicant the safeguards ensured to him by the procedure applicable to disciplinary matters.

It would be observed, that the Commission, in compliance with the principles of natural justice, had before it during its second meeting the letter of the Accountant-General addressed to the Applicant, dated June 4, 1964, together with an attached statement showing all the mistakes allegedly made by the Applicant, the reply of the Applicant contained in his long letter, *exhibit 17*, explaining what has actually happened to the various cheques, as well as his mode of work. The oral statement made by the Applicant on the facts of his case before the Commission on July 20, 1964, and adopted by him in his second statement; the oral defence submitted by his counsel dealing, *inter alia*, also, with the point of the faulty adding machine; and the statement of the Applicant that he did not wish to call any evidence.

In these circumstances, in my view, the Commission has not failed to observe either any of the well-established principles of natural justice or that they have not afforded the Applicant every facility to meet the complaints against him;

furthermore he was defended by counsel of his choice. After going through the record, I am satisfied that he was given a fair hearing. The Commission had before it, both documentary and oral evidence, given by the Applicant on both occasions and was given at all times a reasonable opportunity of being heard, and of correcting or contradicting the case against him.

Having reached the conclusion, in view of all the material before me including the evidence of Mr. Hardjiotis, that it was reasonably open to the Commission to reach a decision to terminate the services of the Applicant on October 7, 1966, I am of the opinion that the submission of counsel fails, because it cannot be said that their decision is either contrary to any of the provisions of the Constitution or of any law, or was made in abuse of powers. I would, therefore, uphold their decision terminating the services of the Applicant.

With regard to the second complaint of counsel, that the Applicant was not given all possible facilities for acquiring knowledge of his duties, and that he was not under continual and sympathetic observation and guidance, and that the head of the department never warned the Applicant of any shortcomings during the period he was serving under probation, I would like to make two observations: First, with regard to the validity of the General Orders, the Supreme Constitutional Court held in *Dr. P. Loizides and Others and The Republic (Council of Ministers)*, 1 R.S.C.C. 107, that the General Orders were not laws for the purposes of Article 188 and, therefore, they ceased to exist upon the coming into force of the Constitution. And, at p. 112, the Court pointed out that it might be said that those provisions in the General Orders which are of a purely administrative or procedural nature are, in a sense, kept alive, because the authorities in that sphere by continuing to act upon them have thereby adopted them since the 16th August, 1960, as established practice.

Secondly, the attitude taken by the public officer contrary to the interest of the service, and in contravention of his duties, laid upon him by the terms of his appointment. He carried out his duties in the most incompatible way. He has, therefore, himself to blame for acting both to the detriment of the service, and against his own personal interest.

In hiding his shortcomings and other irregularities during

the execution of his duties, he acted, to say the least, most irresponsibly, because as he put it, he was afraid that his mistakes if found, would have been handicapping his chances of confirmation.

Having taken the view that the General Orders have no longer the force of law, I would also dismiss, this contention of counsel for the Applicant.

Counsel for the Applicant has further contended, that the decision of the Commission made retrospectively as from the date of their original decision, is contrary to the established principles of administrative law; and furthermore that the case in hand does not fall within the exceptions to the general rule, because the original decision of the Commission was a nullity due to lack of proper constitution.

Counsel for the Respondents on the other hand, has argued that as the decision of the Commission to terminate the Applicant's services was based on the same facts, which led to the original decision being annulled by this Court, their second decision to dismiss the Applicant could be made retrospective to the date of the first dismissal; and because the original administrative act, being of the same content would have taken effect had it not been annulled for formal reasons only. He relied on the Decisions of the Greek Council of State No. 1016/1954 and 617/1954.

I would like at this stage to reiterate the principle that as a rule administrative acts cannot validly be given retrospective effect. See Kyriakopoulos on Greek Administrative Law 4th ed. vol. 2, at p. 400; Stasinopoulos on the Law of Administrative Acts 1951 at p. 370; see also the Decisions of the Greek Council of State upholding the principle against retrospectivity, which are to be found in Conclusions from the Jurisprudence of the Greek Council of State 1929-1959 under the heading «Κατὰ χρόνον ἰσχὺς τῶν διοικητικῶν πράξεων» at p. 197. There are, however, certain recognised exceptions to the general rule enumerated at p. 197Γ. It reads:

> "On the annulment of an administrative act by the Council of State for formal reasons, for example for lack or insufficiency of reasoning, or for defective constitution of a collective organ, the results of the new act since it relates to the same subject-matter as the annulled one

and once it is decided within reasonable time from the original one and on the basis of the same facts and law, it can relate back to the time of the original act (551, 1691 (52), 543, 1016 (54))".

The question, therefore, in the absence of legislation in Cyprus, is whether or not the decision of the Commission to dismiss the Applicant could be made retrospective.

In the case No. 1016/54 reported in Decisions of the Council of State 1954 B, the Council held at p. 1234:

«Τὸ Β. Διάταγμα τοῦτο καὶ ἡ ἐφ' ἧς ἐστηρίχθη γνωμοδότησις τοῦ Α. Σ. 'Αέρος ἠκυρώθησαν διὰ τῆς ὑπ' ἀριθ. 1802 ἀποφάσεως τοῦ Δικαστηρίου τούτου, δημοσιευθείσης τὴν 15 'Οκτωβρίου 1953 διὰ κακὴν σύνθεσιν τοῦ γνωμοδοτήσαντος Α. Σ. 'Αέρος.

Αἱ προσβαλλόμεναι πράξεις (ὑπ' ἀριθ. 280 τῆς 16 Δεκεμβρίου 1953 καὶ τὸ ἀπὸ 8 'Ιανουαρίου 1954 Βασ. διάταγμα) ἐξεδόθησαν ἐντὸς εὐλόγου χρόνου ἀπὸ τῆς δημοσιεύσεως τῆς ἐν λόγῳ ἀκυρωτικῆς ἀποφάσεως, δοθέντος δέ, ὅτι ἡ ἀκύρωσις τῶν προηγουμένων διοικητικῶν πράξεων ἐγένετο διὰ τυπικοὺς λόγους, νομίμως διὰ τοῦ προσβαλλομένου Βασ. διατάγματος ὁρίζεται ὡς χρόνος ἀποστρατείας τοῦ αἰτοῦντος ἀναδρομικῶς ἀπὸ τῆς πρώτης κρίσεως, ὡς παγίως ἐνομολογήθη ὑπὸ τοῦ δικαστηρίου τούτου (ὑπ' ἀριθ. 2098/1951, 1298/1952, 618/1954 καὶ ἄλλαι ἀποφάσεις). Ὅθεν ὁ περὶ τοῦ ἀντιθέτου λόγος ἀκυρώσεως εἶναι ἀπορριπτέος ὡς ἀβάσιμος».

It would be observed that the decree was declared to be invalid by the Council of State because of defective composition of the council. But subsequently the decree was reissued with a retrospective effect and was upheld by the Council of State because the annulment of the first decree had taken place for formal reasons.

In the case No. 617/54 reported in the Decisions of the Greek Council of State, 1954 A, the Council held at p. 725:

«'Επειδὴ ὁ αἰτῶν διὰ Βασ. Διατάγματος τῆς 20 'Ιανουαρίου 1953 εἶχε τεθῆ εἰς αὐτεπάγγελτον ἀποστρατείαν. Τοῦτο ἠκυρώθη διὰ τῆς ὑπ' ἀριθ. 1303/1953 ἀποφάσεως τοῦ Συμβουλίου τῆς 'Επικρατείας λόγῳ κακῆς συνθέσεως τοῦ Α. Σ. 'Αέρος, εἰς τὴν γνωμοδότησιν τοῦ

ὁποίου ἐστηρίχθη. Αἱ προσβαλλόμεναι ἤδη πράξεις ἐξεδόθησαν ἐντὸς εὐλόγου χρόνου ἀπὸ τῆς δημοσιεύσεως τῆς ἀνωτέρω ἀκυρωτικῆς ἀποφάσεως δοθέντος δὲ ὅτι ἡ ἀκύρωσις τοῦ προηγουμένου Β. Διατάγματος ἐγένετο διὰ τυπικοὺς λόγους, νομίμως τὸ προσβαλλόμενον ἤδη τοιοῦτον ὁρίζει τὴν ἀποστρατείαν τοῦ αἰτοῦντος ἀναδρομικῶς ἀπὸ τῆς πρώτης κρίσεως, ὡς παγίως ἐδέχθη τὸ Συμβούλιον τῆς Ἐπικρατείας ἐπὶ ὁμοίου θέματος (ὑπ' ἀριθ. 2098/1951 καὶ 1298/1952 κ. ἄλλαι ἀποφάσεις).

Ἐπειδή, κατὰ τὴν παγίαν νομολογίαν τοῦ Δικαστηρίου τούτου, ἡ ἐπὶ τῇ βάσει τῆς διατάξεως τοῦ ἄρθρου 14 τοῦ ν. διατάγματος 1041/1949 γενομένη ἀποστρατεία ἰσοῦται πρὸς ἀπόταξιν, ἑπομένως νομίμως τὸ προσβαλλόμενον Β. διάταγμα κατ' ἐφαρμογὴν τῆς διατάξεως ταύτης καὶ τῆς τοῦ ἄρθρου 43 παρ. 4 τοῦ νόμου 3102/1942 διαγράφει τὸν αἰτοῦντα ἀπὸ τὰ στελέχη τῆς ἐφεδρείας, καὶ ὁ περὶ τοῦ ἀντιθέτου λόγος ἀκυρώσεως εἶναι ἀπορριπτέος ὡς ἀβάσιμος».

I would like to point out that in both these decisions relied upon by counsel for the Respondent, the annulment by the Council of State was made for formal and not for essential or substantial reasons. See also *Kallouris and The Republic*, 1964 C.L.R. 313 at p. 325 where the principle formulated from the above two decisions was quoted by Mr. Justice Triantafyllides with approval.

It is not in dispute that the decision of the Commission to terminate the services of the Applicant was made retrospective. I would like to observe that in going through the Judgment of the Court annulling the first decision of the Commission, I find no order directing the Commission that their new act ought to have been made retrospectively. On the contrary the Judgment of the Court supports the opposite view. Mr. Justice Triantafyllides has this to say at p. 7.* It reads:

"It appears, anyhow, that, in this Case, the view was taken that Applicant's intentions behind the said irregularities did not warrant his immediate removal from any contact with Treasury work; so, more than five months were allowed to elapse between the date when the matter in question came to be dealt with for the first time and

Note: Vide HadjiGeorghiou and The Republic, (1966) 3 C.L.R. 504 at p. 513.

the date when it was decided to dismiss Applicant, and he was allowed to continue working in the meantime.

In the circumstances, the de facto extension of Applicant's service, without confirmation to his post, which commenced from the 1st April, 1964, — after the two years' probationary period ended — and lasted while his case was examined, could have been turned formally into an extention of his probationary service until the Commission were in a position to decide the matter with proper quorum".

In view of the fact that the point with regard to the proper constitution of the Commission was left open by the trial Court annulling the first act of the Commission, I would consider it now because of its relevancy in the solution of the problem with which I am now confronted.

An indispensable prerequisite for the lawful functioning of a collective organ is its lawful constitution. When a law prescribes the number of persons required for the constitution of a collective organ a prerequisite of the lawful composition and functioning, and of the legality of the decisions, is its constitution with all the persons, which have been prescribed by law, in order to enable it to acquire the substance and form of a collective organ. In effect, therefore, a collective organ like the Public Service Commission, cannot function validly if there exist vacancies in its constitution due to death or resignation, as it is a requirement of legality and substance that a collective organ should be fully constituted. See Stasinopoulos on Discourses of Administrative Law, 1957, at p. 234: and Kyriakopoulos on Greek Administrative Law, 4th ed. vol. 2 at p. 20-21.

In case No. 681/36 reported in the Decisions of the Greek Council of State 1936 A. II the Council held at p. 655:

«'Επειδὴ ἐκ τοῦ προσβαλλομένου περὶ τοῦ προσφεύγοντος πίνακος τῆς 17 'Οκτωβρίου, 1935 ἀποδεικνύεται, ὅτι οὗτος συνετάγη ὑπὸ πέντε ἐκ τῶν μετὰ ψήφου μελῶν του, ὡς ἄνω, 'Ανωτάτου Στρατιωτικοῦ Συμβουλίου προβιβασμῶν ὑπὸ τῶν ἐν τῷ φακέλλῳ δὲ σχετικῶν ἐγγράφων τοῦ 'Υπουργείου τῶν Στρατιωτικῶν βεβαιοῦνται, ὅτι τὰ ὑπόλοιπα μετὰ ψήφου τρία μέλη τοῦ Συμβουλίου αὐτοῦ, οἱ τρεῖς Γεν. 'Επιθεωρηταὶ τοῦ Στρατοῦ, δὲν μετέσχον οὐδ' ἐκλήθησαν νὰ μετάσχωσιν εἰς τὸ Συμβούλιον τοῦτο, ὡς μὴ ὑπάρχοντες τότε, ἅτε τεθέντες εἰς διαθεσιμότητα διὰ Δ τῆς 14 'Οκτωβρίου 1935, καὶ μὴ ἀντικατασταθέντες

μέχρι τῆς ὡς ἄνω συνεδριάσεως τοῦ ἐν λόγῳ Συμβουλίου. Οὕτως ὅμως τὸ Συμβούλιον αὐτὸ κατὰ τὴν σύνταξιν τοῦ προσβαλλομένου πίνακος παρὰ τὸν Νόμον συνετέθη, εἴτε εἶχεν ἐπέλθει ἡ διαθεσιμότης τῶν μὴ συμμετασχόντων εἰς τὸ αὐτὸ τριῶν, ὡς ἄνω, μελῶν, εἴτε ὄχι, ἐν μὲν τῇ πρώτῃ περιπτώσει, διότι δὲν ὑπῆρχον τρία ἐκ τῶν ὡς ἄνω, συγκροτούντων τοῦτο μετὰ ψήφου μελῶν, ἐν δὲ τῇ δευτέρᾳ περιπτώσει, διότι δὲν ἐκλήθησαν νὰ μετάσχωσιν τοῦ Συμβουλίου τὰ τρία αὐτὰ μέλη. Συνεπῶς διὰ τὴν παράβασιν ταύτην οὐσιώδους τύπου, διατεταγμένου περὶ τὴν ἐνέργειαν τῆς πράξεως, ἀκυρωτέος εἶναι ὅ,τε ἀνωτέρω, πίναξ καὶ τὸ κυρῶσαν αὐτὸν Ν.Δ. κατὰ τὸν σχετικὸν νόμιμον καὶ βάσιμον λόγον τῆς ὑπὸ κρίσιν προσφυγῆς, δεκτῆς διὰ τοῦτον καθισταμένης».

In case No. 888/55 reported in the Decisions of the Greek Council of State 1956 B the Council held at pp. 238-39:

«Ἐπειδή, ὡς βεβαιοῦται, διὰ τοῦ ὑπ' ἀριθ. 488 τῆς 28 Μαρτίου 1956 ἐγγράφου τῆς Ἀνωτάτης Ἐπιτροπῆς τελωνειακῶν ἀμφισβητήσεων πρὸς τὸ δικαστήριον τοῦτο, κατὰ τὸν χρόνον τῆς ἐκδόσεως τῆς προσβαλλομένης ἀποφάσεως ἡ τοιαύτη θέσις ἦτο κενὴ λόγῳ θανάτου τοῦ πρότερον διωρισμένου ὡς 'εἰδικοῦ' μέλους τῆς Ἐπιτροπῆς. Ἐλλείποντος οὕτω τοῦ μέλους τούτου, τοῦ ὁποίου, ὡς προσωπικῶς διοριζομένου, δὲν ὑφίστατο δυνατότης νομίμου ἀναπληρώσεως, ἡ Ἐπιτροπὴ αὕτη δὲν ἦτο νομίμως συγκεκροτημένη καὶ συνεπῶς μὴ νομίμως ἐπελήφθη αὕτη τῆς ὑπὸ κρίσιν ὑποθέσεως. Οὐδεμίαν δ' ἀσκεῖ ἀπὸ τῆς ἀπόψεως ταύτης ἐπιρροὴν τὸ ὅτι τὰ μετασχόντα λοιπὰ μέλη τῆς Ἐπιτροπῆς ἐκάλυπτον τὴν ὑπὸ τοῦ νόμου ἀπαιτουμένην ἀπαρτίαν, διότι προϋπόθεσιν ταύτης ἀποτελεῖ ἡ νόμιμος συγκρότησις τοῦ συλλογικοῦ ὀργάνου καὶ ἡ πρόσκλησις πάντων τῶν κατὰ νόμον συγκροτούντων αὐτὸ μελῶν. Συνεπῶς ἀκυρωτέα τυγχάνει ἡ προσβαλλομένη ἀπόφασις λόγῳ κακῆς συνθέσεως τῆς ἐκδούσης ταύτην Ἐπιτροπῆς, κατὰ τὸν βασίμως προσβαλλόμενον λόγον ἀκυρώσεως, ἀλυσιτελοῦς καθισταμένης οὕτω τῆς ἐρεύνης τῶν λοιπῶν λόγων ἀκυρώσεως».

Going through the record, and relying on the authority of *Theophylactou and The Republic* (P.S.C.), (1966) 3 C.L.R. 801, I find that at the material time the Public Service Commission was not properly constituted and, therefore, could not function validly due to the existence of the two vacancies

referred to in the judgment of the Court annulling the first decision of the Commission. The decision to terminate the service of the Applicant was taken contrary to law and to the Constitution. In my opinion their decision is a complete nullity, contrary to law and *void ab initio.*

In my opinion, therefore, the new decision of the Commission to dismiss the Applicant could not have been given retrospective effect as from the date of their first decision, because section 5 of the Public Service Commission (Temporary Provisions) Law, 1965 (Law 72/65) validating any decision of the Commission taken during the period between the 21st December, 1963 and the date of the enactment on 16th December, 1965 of such law has not cured the defect. See *Theophylactou and The Republic (supra).* Furthermore in view of the reasons I have given the case in hand does not come within the recognised exceptions to the general rule. I would like further to add that even if I would have been persuaded that the original administrative act was annulled for only formal reasons, I would still not be prepared to follow the decisions relied upon by counsel for the Respondent and would have reached the same conclusion, as the new decision was taken after the lapse of unreasonable time from the original one.

In my view, for the reasons I have given, this is a case in which there were substantial reasons and not formal ones, and in view also of the time which had intervened, it takes the present case outside the exceptions referred to earlier in this Judgment.

In the result, the decision of the Commission with regard to retrospective effect of Applicant's dismissal has to be annulled as from the date the decision was communicated to the Applicant i.e. 19th October, 1966. See on this issue the Judgment of Mr. Justice Triantafyllides in *Stelios Morsis and The Republic*, (1965) 3 C.L.R. 1 at p. 13, adopting with approval the decision of the Greek Council of State in Decision No. 160/35.

With regard to costs, I have decided in the circumstances of this case not to award any costs in favour of the Applicant. The Order of the Court is: Each party his own costs.

Order in terms. Each party to bear own costs.