IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANTONIS MOZORAS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE PUBLIC SERVICE COMMISSION,

Respondent.

(*Case No.* 194/66).

Public Officers—Public Service Commission—Disciplinary proceedings against public officer convicted of the offence of official corruption by the District Court under section 100(*a*) *of the Criminal Code Cap.* 154*—Dismissal of the officer based on independent inquiry into the facts by the Public Service Commission—Dismissal annulled on the ground that the mode of such inquiry as distinct from the decision to hold one, was irregular—Notwithstanding that the said Commission was at liberty to make no such inquiry at all and, merely, to adopt the District Court's findings* (*see* Morsis and The Republic, 4 *R.S.C.C.* 133)*—Not legally possible after such annulment for the Public Service Commission to go back on its former choice by dispensing with such inquiry into the facts and proceed to dismiss the officer in question this time by merely adopting the District Court's findings on which the officer's said conviction had been based.*

Administrative Law—Public Officers—Public Service Commission—Disciplinary proceedings against public officer convicted by the District Court of official corruption—Courses open to the Public Service Commission—Dismissal—Recourse against dismissal—Successful on the grounds set out hereabove under Public Officers.

Disciplinary proceedings against public officer—Convicted of criminal offence—See above.

Public Service—See above.

By this recourse the Applicant challenges the validity of the decision of the Respondent Public Service Commission dismis-

sing him from the Public Service. On October 15, 1963, the Applicant, a public officer, was convicted by the District Court of Nicosia of official corruption under section 100(a) of the Criminal Code, Cap. 154 and sentenced to a fine of £50. On appeal by the Applicant against his conviction and a cross-appeal against sentence by the Attorney-General, the Supreme Court on December 12, 1963, by majority affirmed the conviction and increased the sentence of fine to a sentence of one year's imprisonment (see (1963) 1 C.L.R. 114). On June 19, 1964 the Applicant attended before the Public Service Commission in response to a letter from it informing him that it was contemplating his dismissal from the public service on account of that conviction and requesting him to appear before it that day "in order to give reasons why he should not be dismissed". On the 7th of the following month the Public Service Commission decided to dismiss him from the service as from the date of his conviction. On the 31st July 1964, the Applicant challenged his said dismissal by a recourse to this Court on the ground, *inter alia,* "that the proceedings before the Commission on June 19, 1964 (*supra*) had not been properly conducted." That recourse was heard by Triantafyllides, J., who annulled the dismissal of the Applicant holding that the proceedings before the Commission had been in the nature of an inquiry into the question whether the Applicant had in fact been guilty of the offence of which he had been convicted; that the mode of that inquiry had been irregular; and although, on the authority of *Morsis and The Republic,* 4 R.S.C.C. 133, the Public Service Commission had been under no obligation to hold an inquiry, but had been entitled to adopt the District Court's findings of fact, yet, having chosen to conduct an inquiry and the mode of the inquiry having been irregular, its decision to dismiss the Applicant having been based on that inquiry, had been irregular and must be annulled (see *Mozoras and The Republic* (1965) 3 C.L.R. 458). The Public Service Commission appealed but the Supreme Court stood evenly divided and accordingly dismissed the appeal (see (1966) 3 C.L.R. 356). It is, therefore, clear that the decision in *Morsis* case (*supra*) stands.

That was the position, when the Respondent Commission reconsidered the Applicant's case, but this time, coming back on its former choice, it elected to make no inquiry on the facts, merely adopting the District Court's findings; ultimately the Commission took the subject decision dismissing the

Applicant from the public service. It is against that decision that the Applicant filed the present recourse. It was argued on his behalf that the Respondent Commission, once having chosen not to adopt the findings of the District Court but to hold its own inquiry into the question whether the Applicant had been guilty of official corruption, having held such an inquiry, and having given a decision based on its result, was not entitled, following the annulment of that decision by this Court, to go back on that choice and merely adopt the District Court's findings.

The Court upholding this submission and annulling the dismissal complained of –

Held, it is clearly undesirable that an administrative authority, having chosen and pursued one of two courses open to it should be allowed to go back on that choice following a judicial decision declaring that the mode in which that course had been pursued, as distinct from the choice itself, was wrong; and in the absence of any legislative provision to the contrary it seems to me clear that it is legally impossible (Reasoning in the decision of the Greek Council of State in case No. 923/57, reported in part 2 of the 1957 volume of the official reports of the decisions of the Greek Council of State, at pp. 215, 216, *followed*).

Sub judice decision annulled.

Cases referred to:

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

Mozoras v. The Republic (1965) 3 C.L.R. 458;

The Republic v. Mozoras (1966) 3 C.L.R. 356.

Decision of the Greek Council of State No. 923/57.

Recourse.

Recourse against the decision of the Respondent Public Service Commission to dismiss the Applicant from the Public Service.

A. Triantafyllides, for the Applicant.

K. Talarides, Senior Counsel of the Republic, for the Respondent.

Cur. adv. vult.

1969
Jan. 7
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ANTONIS MOZORAS
v.
REPUBLIC
(PUBLIC SERVICE COMMISSION)

The following judgment* was delivered by:

STAVRINIDES, J.: This case has a long history, which I must summarise as briefly as possible. On October 15, 1963, the Applicant was convicted by the District Court of Nicosia of official corruption under s. 100(a) of the Criminal Code in that "being employed in the public service and being charged with the performance of the duties of Driving Examiner by virtue of such employment," he "did corruptly receive from one Stelios Keravnos of Nicosia the sum of £8 on account of the fact that he the accused in the discharge of his duties of office had passed (three named persons) in their driving test who were students of the said Stelios Keravnos". He was fined £50. He appealed against the conviction, and the Attorney-General cross-appealed against the sentence ((1963) 1 C.L.R. 114). On the Applicant's appeal the Supreme Court was equally divided, but Wilson, P., being one of the Judges who were for dismissing it, the conviction was upheld. On the cross-appeal the Judges who were for upholding the conviction considered that the fine should be set aside and a sentence of imprisonment for one year should be substituted for it; the other two Judges, because of the view they took of the conviction, expressed no opinion on the cross-appeal, except that Vassiliades, J., as he then was, said that "he shared the view that the offence of bribery, especially bribery by a civil servant was a serious crime and he associated himself with the view that the sentence of £50 fine in that case was inadequate punishment". Accordingly the fine was set aside and a sentence of one year's imprisonment was passed on the Applicant in its place. That was in December 12, 1963.

On June 19, 1964, the Applicant, who in the meantime, on May 15, had been discharged from prison under a remission of his sentence by the President of the Republic, attended before the Public Service Commission (hereafter "the Commission") in response to a letter from it informing him that it was contemplating his dismissal from the public service on account of that conviction and requesting him to appear before it that day "in order to give reasons why he should not be dismissed". On the 7th of the following month the Commission decided to dismiss him from the service "as from the date of his conviction, viz. with effect from October 15, 1963", and

* For final decision on appeal see (1970) 8 J.S.C. 738 to be published in due course in (1970) 3 C.L.R.

informed him of that decision by a letter dated the 10th of that month. On the 31st of the same month he applied to this Court (application No. 93/64) seeking to set aside the dismissal decision on the ground, *inter alia*, "that the proceedings before the Commission on June 19, 1964, had not been properly conducted". That application was heard by Triantafyllides, J., who held, in effect, that the proceedings before the Commission had been in the nature of an inquiry into the question whether the Applicant had in fact been guilty of the offence of which he had been convicted; that the mode of that inquiry had been irregular; and that although, in accordance with the decision of the former Supreme Constitutional Court in the case of *Morsis* v. *Republic*, 4 R.S.C.C. 133, the Commission had been under no obligation to hold an inquiry, but had been entitled to adopt the District Court's findings of fact, yet, having chosen to conduct an inquiry and the mode of the inquiry having been irregular, its decision to dismiss the Applicant from the public service, having been based on that inquiry, had been irregular and must be annulled ((1965) 3 C.L.R. 458).

The Commission appealed ((1966) 3 C.L.R. 356). Two of the four Judges who formed the appellate bench, viz. Zekia, P., and Josephides, J., were for allowing the appeal on the grounds, in effect, that the Commission had been bound by the findings of the District Court, so that it had had no business to hold the inquiry, and that there had been no irregularity about the mode in which it had been conducted. The other two Judges, viz. Vassiliades and Munir, JJ., were for dismissing the appeal on the grounds that the Commission had not been bound by the findings of the District Court and that the mode of the inquiry had been irregular. Accordingly the appeal was dismissed, and it is clear that the decision in *Morsis's* case stands.

That being the position, the question arises whether the Commission, once having chosen not to adopt the findings of the District Court but to hold its own inquiry into the question whether the Applicant had been guilty of official corruption, having held such an inquiry, and having given a decision based on its result, was entitled, following the annulment of that decision by this Court, to go back on that choice and adopt the District Court's findings. On this question counsel for the Applicant cited a decision of the Greek Council of State, No. 923/57, reported in part 2 of the 1957 volume of the official

reports of decisions of the Greek Council of State, at pp. 215, 216, which, although not concerned with disciplinary proceedings, is based on a principle that seems to me to be applicable in this case and, with respect, I consider eminently wise. The facts as well as the principle involved sufficiently appear from the third paragraph of the report, which reads:

> "..... It is true that, in principle, the administration was not bound..... to fill the vacant posts of Inspector of Elementary Education, it being a matter for it to determine whether it was necessary to fill the above vacant posts; yet, having indicated, by the appointment of fifteen inspectors, its intention of filling the corresponding fifteen vacant posts, it was bound, after the annulment of the appointment (of one person), to fill the fifteen posts by the appointment of the applicant, he being the next on the list, and further to do so on the basis of the position, factual and legal, existing at the time of the original appointment of the fifteen."

While no reflection is intended to be cast on the Commission, it is clearly undesirable that an administrative authority, having chosen and pursued one of two courses open to it, should be allowed to go back on that choice following a judicial decision declaring that the mode in which that course had been pursued, as distinct from the choice itself, was wrong; and in the absence of any legislative provision to the contrary it seems to me clear that it is not legally possible.

For these reasons I think that the subject decision must be, and hereby is, annulled. It follows that it is unnecessary to go into any of the other arguments advanced on either side. The Respondent to pay the Applicant £15 costs.

Sub judice decision annulled; order for costs as aforesaid.