1969
April 19
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IOANNIS CONSTANTINOU
v.
REPUBLIC (COUNCIL FOR THE REINSTATEMENT OF DISMISSED CIVIL SERVANTS)

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IOANNIS CONSTANTINOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE CHAIRMAN OF THE COUNCIL FOR THE REINSTATEMENT OF DISMISSED CIVIL SERVANTS,

Respondent.

(*Case No.* 58/68).

Dismissed Public Officers Reinstatement Law, 1961 (*Law* 48/61)—*Policeman's resignation in* 1955 *from Police Force—Ostensibly voluntary retirement under section* 8(1) *of the Pensions Law, Cap.* 288—*In reality a compulsory retirement due exclusively to political reasons within section* 2 *of the Dismissed Public Officers Reinstatement Law,* 1961—*Consequently the decision of the Respondent Council, rejecting Applicant's claim for reinstatement under that Law, declared null and void and annulled by the Court holding that Applicant was an "entitled officer" within the definition in section* 2 *of the said Law* 48/61—*Compulsory retirement exclusively due to political reasons within the said section—See also herebelow.*

Council for Reinstatement of Dismissed Public Officers under the aforesaid Law 48/61—*Earlier decision of the Council annulled by the Court—Reconsideration of the matter by the Council—Council bound to follow directions of the Court—Council not bound to hear Applicant and his witnesses afresh in the absence of an application by the Applicant to place new evidence before them—See also herebelow.*

Council for Reinstatement of Dismissed Public Officers—Law 48/61, supra—*Application for reinstatement—"Entitled Officer"—Onus on officer to satisfy Council that he is an "entitled officer" within the definition in section* 2 *of the statute,* supra—*Upon Council to evaluate the evidence adduced before it—Review of Council's determination or findings by the Court—Approach—Principles applicable—See also herebelow.*

Administrative Law—Collective organ—Inquiry—What is required of an administrative organ such as the Council of Law 48/61 (supra) *conducting an inquiry—Principles laid down in* Board of Education *v.* Rice [1911] *A.C.* 179, *at p.* 182 *per Lord Loreburn L.C.* applied—*Cf. section* 3 *of the said Law* 48/61—*Evidence before such organ—Evaluation of—Findings by the said organ—The Court will not interfere if there was any evidence upon which the organ could reasonably have come to the conclusion to which it has—If, however, there was no such evidence before it or if it has misconceived the effect of the facts before it, or if it has misdirected itself on a question of law, then the determination of such organ can be reviewed by this Court—And in the present case the Respondent Council acted under a misconception of fact and law—Therefore, their sub judice decision has to be annulled.*

Constitutional and Administrative Law—Recourse under Article 146 *of the Constitution—Administration bound to comply with decisions of the Court—Article* 146 *paragraphs* 4 *and* 5 *of the Constitution.*

Collective Organ—Conducting an inquiry—What is required of such organ—Principles applicable—Evidence before such organ—Evaluation of—Principles upon which the Court will interfere with the determination made by such organ in the present case by the Respondent Council of Law 48/61 (supra)—*See also hereabove.*

Words and Phrases—"Entitled Officers" within section 2 *of Law* 48/61 supra—*"Retired compulsorily" within the same section—"Political reasons" or "due exclusively to political reasons" within the same section.*

Inquiry—Administrative organ conducting an inquiry—What is required of such organ—Evidence before it—Evaluation of—Determination and findings—Principles upon which the Court will interfere—See also hereabove.

Public Officers—Dismissed Public Officers—Entitled Officers—Reinstatement—Law 48/61 supra—*See above.*

By this recourse under Article 146 of the Constitution, the Applicant a retired police officer, seeks to challenge the decision of the Respondent Council, communicated to him by letter dated December 15, 1967 that he is not an "entitled officer"

under the provisions of the Dismissed Public Officers Reinstatement Law, 1961 (Law 48/61 enacted on December 7, 1961); and that therefore, he is not eligible under that Law to be reinstated in the police force as claimed.

The Applicant joined the police force in 1926. On January 1, 1956 he retired from the service in the circumstances outlined herebelow and fully set out and explained in the judgment of the Court. It is common ground that the said Law 48/61 was intended to give redress to all those public officers who suffered in their career on account of their participation in, or association with, the EOKA liberation struggle against the British rule (April 1, 1955—February 19, 1959).

Section 2 of the Dismissed Public Officers Reinstatement Law, 1961 (*supra*) provides *inter alia*:-

> "'An entitled officer' means a public officer who at the prescribed period -
>
> (a) was dismissed or whose services were terminated, or
>
> (b) having left the public service was considered as dismissed, or
>
> (c) retired compulsorily, or
>
> (d) was demoted; exclusively due to political reasons;
>
> '*Prescribed period*' means the period between the 1st April, 1955, and the 19th February, 1959 both dates inclusive;
>
> '*Political reasons*' means every reason relating to the real or presumed participation in or association with a certain group or organization considered by the then government of the Colony of Cyprus as promoting political objects or to the real or presumed participation directly or indirectly in activities considered by such Government as instigated by political motives."

On the other hand, section 3 of the same Law No. 48/1961 (*supra*) provides:

> 3(1) "There is established a council consisting of three members appointed by the Council of Ministers (out of whom one is designated as the Chairman of the Council) which inquires into and decides as to whether a person is an entitled officer.

(2) The Council regulates its procedure and all its decisions are taken by majority vote."

On August 20, 1955 the Applicant, apparently feeling the strain of his association with the liberation struggle then going on, applied for permission to retire from the service under the Pensions Law, Cap. 288. On September 1955 he was duly informed that the Governor of the then Colony of Cyprus had been pleased to allow him as requested to retire from the police force under section 8(1) of the said Pensions Law, Cap. 288 with effect from the 1st of January 1956.

When the Dismissed Public Officers Reinstatement Law 1961 was enacted (almost one and a half years after the establishment of the Republic of Cyprus) the Applicant applied to the Council (now Respondent) for reinstatement claiming that he was an "entitled officer" within the provisions of the said Law. It was the case of the Applicant all along that he had to resign in 1955 (*supra*) because the British authorities came to know of his activities in favour of EOKA and that he was afraid that he would lose all his rights and benefits if he did not resign in time. In doing so, he was advised by the then Inspector of Police, Mr. Costas Efstathiou who was the officer in command of the area in which the Applicant was then posted. In due course Mr. Costas Efstathiou fully corroborated the allegations of the Applicant. But the Council took the view that the Applicant's case did not come within the definition of "entitled officer" in section 2 of the aforesaid Law 48/61 (*supra*) and, therefore, rejected Applicant's claim for reinstatement. The Applicant feeling aggrieved filed a recourse No. 223/62 against this decision of the Council, which recourse, however was withdrawn on April 10, 1965, on the undertaking of the Respondent to re-examine the Applicant's case in the light of all the material before it. As a result of this undertaking the Council on January 10, 1966, reconsidered the case, heard evidence by the Applicant, but did not think fit to call and hear evidence by the said Police Inspector Mr. Costas Efstathiou (*supra*). On January 28, 1966, the Council informed the Applicant that, after reconsidering his case, they had reached the decision that he was not an "entitled officer" within the definition in section 2 of the said Law 48/61 (*supra*).

On February 10, 1966 the Applicant filed a further recourse No. 28/66 challenging the last mentioned decision of the Respondent Council. The case was fully argued before a Judge

of this Court and evidence was given by the Applicant himself and two other witnesses on his behalf, one of whom was the aforementioned Mr. Costas Efstathiou, the officer in command of the area in which the Applicant was serving at the material time in 1955, and whose unchallenged evidence fully supported the Applicant's story. Eventually on November 12, 1966 the Court delivered judgment whereby the Respondent's decision complained of was annulled (see *Constantinou* v. *The Republic of Cyprus through the Chairman of the Council for the Reinstatement of Dismissed Public Officers* (1966) 3 C.L.R. 793). In delivering his judgment in that case Mr. Justice Triantafyllides had this to say:

> "On the material before me I am satisfied that the Applicant decided to retire (Note: that is to say in 1955, *supra*) because of the very difficult situation in which he found himself due to his connection with the liberation struggle and that this was not a case of normal retirement. In the circumstances, I am of the opinion that the Respondent, in dismissing Applicant's claim for reinstatement, was labouring under a basic misconception of fact; it decided the claim of Applicant out of, and contrary to its correct context, and divorced from its true background.
>
> .....
>
> By deciding this recourse in this manner I am not to be taken as deciding also, whether the circumstances of the Applicant's retirement entitled him to be treated as an 'entitled officer' i.e. whether they are such as to amount to a compulsory retirement in the sense of the relevant definition in section 2 of Law 48/61 (*supra*).....
>
> .....
>
> It is for the Respondent to reconsider the matter in its proper context and decide whether or not in the circumstances the Applicant retired exclusively for 'political reasons' in the sense of Law 48/61 (*supra*); I am leaving these issues entirely open". And further down: "..... I think that it was not proper to regard the formal documents in Applicant's personal files..... as telling the whole story; in view of Respondent's failure to call before it the witnesses suggested by the Applicant—and particularly Mr. Costas Efstathiou (Note: the Inspector referred to above)—I would consider annulling the *sub judice* decision

of Respondent as being defective due to lack of proper inquiry on the part of Respondent; I need not however, go as far since I have already annulled such decision on the ground of misconception of facts as explained earlier in this judgment."

On October 11, 1967 following the said judgment of the Supreme Court the Respondent Council met and took the desision rejecting again the Applicant's claim for reinstatement which was communicated to him on December 15, 1967 (*supra*) and is now the subject-matter of the present recourse. It should be observed that the council in reaching its said decision had before it the personal file of the Applicant; the oral statement of the Applicant as well as the notes of the evidence given by him and by Mr. Costas Efstathiou respectively before Mr. Justice Triantafyllides at the hearing of the recourse No. 28/66 (*supra*); and the latter's judgment in that case (*supra*).

It was argued on behalf of the Applicant that the decision complained of to the effect that he was not an "entitled officer" should be declared *null* and *void* on three grounds:

(1) Because the Respondent Council in re-examining the case failed to carry out a proper or sufficient inquiry by calling to hear the Applicant and his witnesses;

(2) because it has failed to comply with the directions of the Court in the aforesaid case No. 28/66 (*supra*); and

(3) because the Council (Respondent) acted on a misconception of fact and of the law.

Rejecting the first and second submissions but upholding the third and annulling on that ground the decision complained of, the Court:–

Held, as to the submission under (1) *hereabove:*

(1) A collective organ such as the Respondent Council is not required 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 to 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).

(2) However the matter in the present case is regulated by statutory provision (see section 3(1) and (2) of the Dismissed Public Officers Reinstatement Law, 1961 (*supra*)).

(3) In view of the wording of this section 3 (*supra*) it seems to me that the Respondent Council was not bound in law to hear afresh the Applicant and his witnesses, in the absence of an application by the Applicant that he intended to place new evidence before them.

Held, as to the submission under (2) *hereabove:*

The evidence of the Applicant and that of his witnesses were already before the Council (Respondent) when they were re-examining the last time the Applicant's case. There is nothing in the judgment of Mr. Justice Triantafyllides in the previous recourse No. 28/66 (*supra*) laying down any direction to the Council beyond that.

Held, as to submission under (3) *hereabove i.e. whether the Respondent Council in taking the decision complained of was acting under a misconception of facts or of the law:*

(1) The onus remains on the Applicant to satisfy the Council that he has retired from the service compulsorily—admittedly not in the narrow technical sense of section 8 of the Pensions Law, Cap. 311 (*supra*)—viz. because of pressure or compulsion put on him by the then Colonial Authorities and that such compulsion was put exclusively for "political reasons" (see section 2 of the said Law 48/61 (*supra*)).

(2) The evaluation of the evidence as it has been laid down in a number of cases remains within the province of the Council. This Court would not interfere if there was evidence on which the Council could reasonably have come to the conclusion to which they did. If on the other hand there was no such evidence or if they have misconceived the effect of the facts before them, or they misdirected themselves on the question of the law, then their decision can be reviewed by this Court.

(3) On the material before me I have reached the view that the Respondent Council was acting under a misconception of the real facts in holding that the activities of the Applicant did not amount to a direct or indirect participation in the liberation struggle; and that there was no clear evidence that the then government had either formed such a view or suspected

the Applicant; or that pressure was brought upon him to retire.

(4) The unchallenged evidence of Mr. Costas Efstathiou (*supra*) made it quite clear that the Applicant was suspected by the Authorities; Mr. Efstathiou was told in so many words by Mr. Bowring, a superior officer, that he was going to dismiss the Applicant from the police; thus indirectly putting pressure upon the Applicant to retire due exclusively to political reasons.

(5) Consequently, I am of the view that the Respondent Council was acting in the present case on a misconception of fact and law; and that its decision complained of was taken contrary to the provisions of the constitution and of the law and was taken in abuse and excess of powers.

Sub judice decision annulled.

Cases referred to:

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

Constantinou v. *The Republic* (1966) 3 C.L.R. 793.

Recourse.

Recourse against the validity of the decision of the Respondent council to the effect that Applicant was not an "entitled officer" within the provisions of the Dismissed Public Officers Reinstatement Law, 1961 (Law 48 of 1961).

L. Clerides, for the Applicant.

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

Cur. adv. vult.

The following judgment was delivered by:-

HADJIANASTASSIOU, J.: In this recourse, under Art. 146 of the Constitution, the Applicant seeks to challenge the validity of the decision of the Respondent council, communicated to him by a letter dated December 15, 1967, that he was not an "entitled officer" within the provisions of the Dismissed Public Officers Reinstatement Law 1961 (Law 48/61).

The facts are, as shortly as possible, as follows:-

The Applicant joined the police force of Cyprus in 1926, and after serving for a number of years in various places, he found himself posted in Ypsonas village within the district of Limassol, during the uprising of EOKA against the British administration.

On August 20, 1955, the Applicant, apparently feeling the strain of the liberation struggle, applied to the Commissioner of police for permission to retire, and in his letter he says:-

> " I, the respectfully undersigned P.C. 124 Ioannis Constantinou, stationed at Ypsona police post, Limassol, have the honour to request you to accept my resignation as from 31.12.55, according to the Pensions Law.
>
> 2. I am 50 years old (born on 25.8.05) and on the date I apply for resignation I will have 29 years 4 months and 6 days service. (I was enlisted on 2.9.26). I spent 19 years in the mounted branch and I have served nearly 24 years at the Out-stations.
>
> 3. The reason of my application is excessive fatigue due to hardships I suffered during my long service. I assure you, Sir, that I am unable to continue the performance of my duties without difficulty.
>
> 4. I am aware of the existing emergency and that it is not the proper time for one to apply for resignation but, I regret, I cannot do otherwise.
>
> 5. Hoping that my application will meet your favourable consideration.....".

On the same date, Mr. Hassabis the superintendent of Limassol police, as he then was, made this endorsement on the application:-

> " Commissioner of Police,
>
> Submitted. He is the P.C. i/c Ypsonas Post. A month ago he received a threatening letter not to hoist the Union Jack at the police station. He is a good policeman but the present situation has apparently broken his nerves."

On September 3, 1955, Mr. Robins, the Commissioner of Police, wrote to the Applicant in these terms:-

"With reference to your letter dated 20th August, 1955, please note that his Excellency the Governor has been pleased to allow you to retire from the police force under Section 8(1) of the Pensions Law, Cap. 288 with effect from the 1st January, 1956."

On February 7, 1956, Mr. Papagavriel wrote this to the Applicant:-

"I am directed to refer to your retirement from the service and to inform you that the Government has been pleased to grant you a reduced pension at the rate of £250.200 mils per annum with effect from the 1st January, 1956, and a gratuity of £1042.500 mils. The Accountant-General is being requested to arrange payment accordingly."

When the Dismissed Public Officers Reinstatement Law 1961, was enacted on December 7, 1961, the Applicant applied to the council for reinstatement claiming that he was an "entitled officer" within the provisions of Law 48/61; but the council, after having considered the application, turned it down. The Applicant, feeling aggrieved, filed a recourse No. 223/62, which was finally withdrawn on April 10, 1965, on the undertaking of counsel for the Respondent to re-examine his case in the light of all material before it.

As a matter of fact, as a result of this undertaking, the council met on January 10, 1966, in order to examine his case, and the Applicant was called and gave evidence about his nationalistic activities. On January 28, 1966, the Respondent wrote to the Applicant informing him that after reconsidering his case, they had reached a decision that he was not an "entitled officer".

On February 10, 1966, the Applicant filed a further recourse No. 28/66 claiming a declaration of the Court that he was an "entitled officer" within the provisions of the law. This case was fully argued before a Judge of this Court, and evidence was given by the Applicant, Mr. Costas Efstathiou, and Mr. Eftychios Yiannakis.

On November 12, 1966, the Court delivered its reserved judgment. (Vide (1966) 3 C.L.R. 793). Mr. Justice Triantafyllides had this to say at pp. 798–99:

"On the material before me I am satisfied that the

Applicant decided to retire because of the very difficult situation in which he found himself due to his connection with the liberation struggle, and that his was not a case of normal retirement. In the circumstances, I am of the opinion that the Respondent, in dismissing Applicant's claim for reinstatement, was labouring under a basic misconception of fact; it decided the claim of Applicant out of, and contrary to its correct context, and divorced from its true background. As a result, this Court has no alternative but to annul the *sub jusdice* decision of Respondent, as having been taken contrary to law viz. the basic principles of administrative law (see *Morsis* v. *The Republic* (1965) 3 C.L.R. 1 and *PEO* v. *Board of Film Censors* (1965) 3 C.L.R. 27) and in abuse and in excess of powers, through a defective exercise of Respondent's relevant discretion.

By deciding this recourse in this manner I am not to be taken as deciding, also, whether the circumstances of Applicant's retirement entitle him to be treated as an "entitled officer", i.e. whether they are such as to amount to a compulsory retirement in the sense of the relevant definition in section 2 of Law 48/61. The application of the legislation in question to the facts of each particular case is a matter, in the first instance, for the Respondent, and this Court will not proceed to do so in this case at this stage. It is for the Respondent to reconsider the matter in its proper context and decide whether or not, in the circumstances, the Applicant is an 'entitled officer' and also whether or not the Applicant retired exclusively for 'political reasons', in the sense of Law 48/61; I am leaving these issues entirely open."

Because the council has delayed the reconsideration of the case, counsel for the Applicant wrote on March 2, 1967, a letter (*exhibit* 3) calling upon them to reconsider the case of his client in the light of the judgment of the Court. As there was no reply, the Applicant made another recourse No. 102/67, which was again withdrawn on July 1, 1967, after a statement was made that the case was re-examined by the council and their decision was to be communicated shortly to the Applicant.

On October 11, 1967, following the decision of the Supreme Court, the council met and its decision is now recorded in the minutes in the file *exhibit* 13.

It would be observed that the council, in reaching its decision, had before it the personal file of the Applicant, schedule 'A' containing a list of his nationalistic activities as well as the names of the persons who could give evidence in support of his case; the oral statement of the Applicant as well as the notes of his evidence given before the trial Court; the evidence of Mr. Efstathiou, and the judgment of the Court in the case No. 28/66.

It was the case of the Applicant all along that he had to resign because the British came to know of his activities in favour of EOKA, and that he was afraid that he would lose all his rights if he did not resign in time. In doing so, he was advised by the then inspector of police, Mr. Costas Efstathiou, who was the officer in command of that area.

I propose to read extracts from the evidence of this witness. He said:-

> " I have known him since 1944. I know that he resigned from the police in 1955. I advised him to do so. I did so because the superintendent of police at Limassol, a certain Mr. Bowring, was against him because he suspected him, together with other policemen, of being members of EOKA. I advised him to leave the police so that he would not lose his pension later.
>
> Once, I was sent to Ypsonas for the purpose of a search, in August or September, 1955; I left the British police officers and auxiliary policemen who were with me outside Ypsonas, I went and found the Applicant and showed him a list of houses where we were intending to search. He said that these people had weapons in their houses; so he tore the list, he prepared a new one of people who were not hiding anything; I took back the list to the British officer; he could not make out any differences in names, and we made a search accordingly."

Questioned by counsel for the Respondent, he said:-

> "When Superintendent Bowring heard that Applicant had sent away the Turkish auxiliary policemen and locked up the station at Ypsonas, he became very angry. He said that he would do away with him."

Later on he says:-

"The Applicant, had he not resigned, he would have been dismissed from the police; he had no chance. That is why I advised him to resign himself.

.....

" I do not know if Mr. Hassabis knew better the intentions of Mr. Bowring towards Applicant, but I knew them. I do not know what was his relationship with the British superintendent at the time.

As I was the section commander of the area, Mr. Bowring told me frankly that he was going to do away with Applicant, i.e. to dismiss him from the police."

I would like to add at this stage, that the evidence of this officer who was directly connected with EOKA, must have weighed a lot in the mind of the trial Court in reaching its decision that the Applicant decided to retire because of the very difficult situation in which he found himself due to his connection with the liberation struggle.

As it appears, on December 15, 1967, the council informed the Applicant by a letter, *exhibit* 1, that he was not an "entitled officer" within the provisions of Law 48/61. It reads:-

« Ἐν σχέσει πρὸς τὸ αἴτημά σας ὅπως ἀποκατασταθῆτε δυνάμει τῶν προβλέψεων τοῦ Νόμου 48 τοῦ 1961, ἔχω τὴν τιμὴν νὰ σᾶς πληροφορήσω ὅτι τὸ Συμβούλιον ἔχει ἐξετάσει ἐκ νέου τὴν αἴτησίν σας ὑπὸ τὸ φῶς ὅλων τῶν στοιχείων τῶν ὑποβληθέντων ὑφ' ὑμῶν ἐγγράφως ἢ προφορικῶς ὡς καὶ ἐκείνων τὰ ὁποῖα ἐξετέθησαν ἐνώπιον τοῦ Ἀνωτάτου Δικαστηρίου καὶ ἀπεφάσισεν ὁμοφώνως ὅπως ἀπορρίψη πάλιν τὸ ἐν λόγῳ αἴτημά σας διὰ τοὺς ἑξῆς λόγους:

1. Ἔχομεν πεισθῆ ὅτι αἱ δραστηριότητες ἢ/καὶ ἐνέργειαί σας κατὰ τὴν περίοδον ἀπὸ τῆς 1ης Ἀπριλίου 1955, καὶ μέχρι τῆς 31ης Δεκεμβρίου, 1955, ἡμερομηνίας τῆς ἀφυπηρετήσεώς σας δὲν δύνανται νὰ θεωρηθοῦν ὡς συμμετοχὴ ἀμέσως ἢ ἐμμέσως εἰς τὸν Ἀπελευθερωτικὸν Ἀγῶνα ὁ ὁποῖος διεξήγετο ὑπὸ τῆς EOKA. Ἐπίσης δὲν ἔχει ἀποδειχθῆ ὅτι ἡ τότε Ἀποικιακὴ Κυβέρνησις εἶχε λάβει γνῶσιν τῶν δραστηριοτήτων ἢ ἐνεργειῶν σας ὡς ὁ ἰσχυρισμός σας.

2. Δὲν ἔχομεν πεισθῆ ὅτι ἡ τότε Ἀποικιακὴ Κυβέρνησις ἐξήσκησεν οἱανδήποτε πίεσιν διὰ νὰ σᾶς ἐξαναγκάση νὰ ὑποβάλητε αἴτησιν τὴν 20ην Αὐγούστου, 1955, δι' ἀφυπη-

ρέτησιν ἐπὶ συντάξει. Ἐπίσης ἡ ἐκ μέρους τῆς τότε Κυβερνήσεώς ἀποδοχὴ τῆς παρακλήσεως σας δὲν δύναται νὰ ἀποδοθῇ εἰς πολιτικοὺς λόγους.

3. Πιστεύομεν ὅτι αὐτοβούλως ὑπεβάλετε αἴτησιν πρὸς ἀφυπηρέτησιν καὶ ἡ τότε Κυβέρνησις ἀπεδέχθη τὴν παράκλησίν σας καὶ ἀφυπηρετήσατε συμφώνως τῶν προνοιῶν τοῦ ἐδ. 8(1) καὶ τῶν ἄλλων προνοιῶν τοῦ περὶ Συντάξεως Νόμου Κεφ. 311.

4. Οὕτω τὸ Συμβούλιον κατέληξεν εἰς τὸ συμπέρασμα ὅτι δὲν ἀφυπηρετήσατε ἀναγκαστικῶς καὶ ἀποκλειστικῶς ἐκ λόγων πολιτικῶν ἀλλὰ ἐξ ἰδίας πρωτοβουλίας καὶ συνεπῶς δὲν κέκτησθε τὴν ἰδιότητα τοῦ δικαιομένου ὑπαλλήλου ὡς καθαρῶς προσδιορίζεται ὑπὸ τοῦ Ἄρθρου 2 τοῦ Νόμου 48 τοῦ 1961.»

On February 26, 1968, Applicant made the present recourse. The opposition was filed on April 13, 1968, and the hearing of the case started on November 18, 1968.

The main contention of counsel for the Applicant, was that the decision of the council that the Applicant was not an "entitled officer" was *null* and *void* because, in re-examining the case, it has failed to carry out a proper or sufficient inquiry by calling to hear the Applicant and his witnesses; and because it has failed to comply with the directions of the trial Court in the case No. 28/66..

I consider it pertinent to state what is required of a tribunal when conducting an inquiry: 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 p. 182). However, the matter is now regulated by statutory provision laying down the procedure to be followed and as to how the council should conduct such inquiry in order to decide as to whether a person is an "entitled officer".

Section 3 of Law 48/61 is in these terms in English:-

3.(1) " There is established a council consisting of three members appointed by the Council of Ministers (out of

whom one is designated as the Chairman of the Council) which inquires into and decides as to whether a person is an 'entitled officer'.

3(2) The council regulates its procedure and all its decisions are taken by majority vote."

In my view, it would be observed from the wording of this section, that the council was not bound in law to hear afresh the Applicant and his witness Mr. Costas Efstathiou, or indeed, any other witness, in the absence of an application by the Applicant that he intended to place new evidence before them. I would, therefore, dismiss this contention of Applicant's counsel.

Let us now consider the second contention of counsel, who relies on a passage from the Judgment of Mr. Justice Triantafyllides, particularly at pages 799-800.

I would, however, before reading the relevant passage, like to observe that the legal position in Greece appears to be, according to Kyriakopoulos on the Greek Administrative Law, 4th ed. vol. III at p. 153, that the administration is bound to comply with the decisions of the Greek Council of State. And, in Cyprus, this principle has received a constitutional recognition and force. Para. 5 of Article 146 reads:-

" Any decision given under paragraph 4 of this Article shall be binding on all Courts and all organs or authorities in the Republic and shall be given effect to and acted upon by the organ or authority or person concerned."

Now the Court had this to say:-

" Lastly, I would like to observe that it would be advisable, where an officer's personal file is not such as to put the essential nature of the matter beyond doubt, and where an Applicant for reinstatement tenders witnesses who can give to the Respondent the full facts, that Respondent should proceed to examine such witnesses in order to make its inquiry as full as possible; it is, of course, a matter for the Respondent to regulate its own proceedings in each specific case as it may deem best.

In this particular case, in view of the comment made, as aforesaid, when the resignation of the Applicant was forwarded (*exhibit* 3a), and bearing also in mind that

Applicant did invite the Respondent's attention to the existence of certain material evidence (see *exhibit* 2), I think that it was not proper to regard the formal documents in Applicant's personal files (*exhibits* 10*a* & 10*b*) as telling the whole story; in view of Respondent's failure to call before it the witnesses suggested by the Applicant—and particularly Mr. Efstathiou—I would consider annulling the *sub judice* decision of Respondent as being defective due to lack of proper inquiry on the part of Respondent; I need not, however, go as far, since I have already annulled such decision on the ground of misconception of facts as explained earlier in this judgment."

With the greatest respect to counsel's argument, I hold a different view on this issue. It would be observed, from the passage I have just read, that the learned trial Judge, having earlier annulled the *sub judice* decision of the Respondent council, proceeded to make his own observations for the guidance of the administration, and how to deal in future when examining cases of that nature. Therefore, in my view, it should not be taken that the Court was laying down any directions to the council in this case, particularly so, since the evidence of the Applicant and his witness were already before it when they started re-examining the case of the Applicant. In the light of the conclusion I have just reached, I would again dismiss the contention of counsel on this point.

The next point which arises is: Is the decision of the Respondent council *null* and *void* because it was acting under a misconception of facts and of the law?

I consider it constructive to deal first with s. 2 of Law 48/61. This section, which is the definition section, so far as relevant, is in these terms in English:-

"An 'entitled officer' means a public officer who at the prescribed period -

(a) was dismissed or whose services were terminated or

(b) having left from the public service was considered as dismissed or

(c) retired compulsorily or

(d) was demoted; exclusively due to political reasons;

'Prescribed period' means the period between the 1st April, 1955, and the 19th February, 1959, both dates inclusive; 'Political reasons' means every reason relating to the real or presumed participation in or association with a certain group or organization considered by the then Government of the Colony of Cyprus as promoting political objects or to the real or presumed participation directly or indirectly in activities considered by such Government as instigated by political motives."

It is not in doubt that the purpose of the law was to give redress to all those public officers who have suffered during the liberation struggle. But the onus remains on the Applicant to satisfy the council that he has retired from the Service compulsorily—admittedly not in the narrow technical sense of Section 8 of the Pensions Law Cap. 311—because of pressure or compulsion put on such officer by the then Colonial Authorities, and that such compulsion was put on a public officer exclusively for political reasons.

With regard to the question whether or not the council has been acting under a misconception of facts, I propose reading some extracts from the reasoned decision of the council dated 11th October, 1967.

" In the present case, the members do not disbelieve that Applicant must have been a sympathiser of EOKA but, at the same time, are convinced that Applicant's activities did not amount to a direct or indirect participation in the liberation struggle, and the then Government had neither formed such a view in respect of Applicant nor suspected him that he did so. No clear evidence has been given in this respect and moreover, no indications were observed that pressure was brought upon him to retire. The then Government could retire him on pension under Section 8(1) of Cap. 311 without any difficulty. Of course, if the Government had concrete evidence for misconduct etc. would dismiss him.....".

Later on, they had this to say:–

" The council had also knowledge of the advice given to Applicant by the then Inspector of Police Costas Efstathiou. The council could not either confirm or refute the said statement and whatever this was, did not deem it to be in favour of the Applicant and in any event it did not

reinforce the Applicant's position within the meaning of and requisites of the provision of the law. That civil servants run the risk of dismissal or detention, or punishment for their nationalistic beliefs and activities, had not escaped the attention of the council. The law, however, was not and is not to be construed to reinstate those who left their posts on the mere guess of their own, for reasons which then suited them, and irresponsible advices. In connection with Mr. Efstathiou's statement it must be added here that Mr. H. K. Bowring, District Commander, arrived at Limassol in the middle of September, 1955, to replace Mr. Hassapis and officially he took over the District on 1.10.55, after the lapse of a good time from the date on which Applicant exercised his option and the date on which he was allowed to retire, and in effect, during the time the Applicant was enjoying his long leave prior to retirement on 31.12.55. This being so, we cannot but think that Applicant must have been a victim of his own misconceptions and miscalculations.

The council maintained, and still maintains, that Applicant's retirement on pension was not the result of exclusive political reasons. The political situation may have induced him to elect to leave the service and he took the decision having in his mind the immediate and concrete benefits available to him."

I would like to reiterate once again what has been said in a number of cases, that the evaluation of the evidence remains the province of the council, and that the Court, in reviewing the determination of the council, would not interfere if there was any evidence on which the council could reasonably have come to the conclusion to which they did. If, on the other hand, there was no evidence upon which they could reasonably have arrived at that conclusion or they have misconceived *the effect of the facts* before them, or they misdirected themselves on the question of the law, then their decision can be reviewed by this Court.

Having had the advantage of perusing carefully all the material before me, and after having reviewed the determination of the council, I have reached the view that it was acting under a misconception of the real facts, that the activities of the Applicant did not amount to a direct or indirect participation in the liberation struggle; and that there was no clear evidence

that the then Government had neither formed such a view nor suspected the Applicant; and that pressure was brought upon the Applicant to retire.

As it has been already said, the Applicant, who was until that time a good policeman, had decided to retire because of the very difficult situation in which he found himself due to his connection with the liberation struggle. He was not only a sympathiser, but he has gone much further in order to help the struggle against the Colonial Government; further more, there is the undisputed evidence to that effect and, therefore, his retirement cannot by any standard be described as being a normal retirement. The mere fact that the Applicant, having taken the advice of his immediate superior, has retired with benefits, does not in any way retract from the fact that had it not been for the political events prevailing at that time, he would not have thought of retiring from the service.

I would like to add, that it must not be lost sight of the fact, that the evidence of Mr. Costas Efstathiou remains before the council and this Court unchallenged. In my view, the evidence of this officer who was also an active member of EOKA, supports the reasonable conclusion that the Applicant took an active participation in the liberation struggle; particularly so, because of his daring stand when he tore the list prepared by the British police; and as a result he saved those persons who were hiding guns from arrest and other unpleasant consequences. The evidence, further shows in a most positive way, that the advice given to the Applicant was not of an irresponsible nature; but it was given as a result of the psychological pressure exercised by Mr. Bowring, a superior officer, and that it was intended to reach the Applicant in order to compel him to retire from the force. That this was so, became very clear because the Applicant's normal date of retirement would have been some time in 1960, and as a result of that pressure he was forced to retire from the police five years earlier. I have no doubt at all that although the reasons given by the Applicant in his application for retirement, that it was due to excessive fatigue, nevertheless the truth remains that he has retired from the police force exclusively for political reasons and as a result of pressure put upon him by the Authorities. If I need repeat myself again, the evidence of Mr. Efstathiou, made it very clear that the Applicant was suspected by the Authorities, and Mr. Efstathiou was told in

so many words by Mr. Bowring that he was going to dismiss the Applicant from the police; thus, indirectly putting pressure upon the Applicant to retire due exclusively to political reasons.

For the reasons I have endeavoured to advance, and in the light of all the material before me, I am of the view that the council was acting under a misconception of the law, and that this has been responsible for its determination. I would, therefore, accept the submission of counsel for the Applicant and reverse the decision of the council that the Applicant was not an "entitled officer" within the provisions of the law, because from the whole evidence before them the only true and reasonable conclusion contradicts the determination of the council.

In the light of my finding, I am of the view that the decision of the council was taken contrary to the provisions of the constitution and of the law and was made in abuse of powers and is, therefore, *null* and *void* and of no effect whatsoever. With regard to costs, I have decided to award in favour of the Applicant an amount of £15.000 only.

Sub judice decision annulled;
order for costs as aforesaid.