

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DEMETRIOS CHARALAMBOUS AND ANOTHER

Applicants,

and

THE CYPRUS TELECOMMUNICATIONS AUTHORITY,

Respondent.

DEMETRIOS
CHARALAMBOUS
AND ANOTHER
v.
CYPRUS
TELE-
COMMUNICATIONS
AUTHORITY

(Cases Nos. 239/70, 240/70).

Constitutional Law—Separation of powers—Principle of—Judicial power—Unconstitutional interference with independence of—By retrospective legislation validating ex post facto administrative decisions—Section 4 of the Public Corporations (Regulation of Personnel Matters) Law, 1970 (Law 61/70) not unconstitutional as offending against the said principle—Because the recourse had not yet been filed at the time, when it was enacted, after the making of the sub judge promotion.

Separation of powers—See under “Constitutional Law”.

Judicial Power—Unconstitutional interference with independence of—See, also, under “Constitutional Law”.

Retrospective Legislation—Validating ex post facto administrative decisions—See, also, under “Constitutional Law”.

It was common ground in this recourse that the decision for the *sub judge* promotion was taken by the Board of the respondent Authority at a time when it was not competent to do so.

Counsel for the respondent submitted that such promotion was validly made and he relied, in this respect, on the provisions of section 4 of the Public Corporations (Regulation of Personnel Matters) Law, 1970 (Law 61/70) (quoted in full in the judgment *post*). On the other hand, counsel for the applicants contended that as Law 61/70 was promulgated on June 12, 1970, that is after the *sub judge* decision had been taken by the Board of the respondent at a time when it was not empowered to do so, section 4 of Law 61/70 cannot be validly given such retrospective operation as to legalize *ex post facto* the promotion in question.

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What the Court had to decide was whether, in view of the principle of “separation of powers”, which is an inherent part of our constitutional structure, it would not result in an unconstitutional interference with the independence of the Judicial Power if section 4 of Law 61/70 were allowed to have the retrospective effect claimed by counsel for the respondent.

Held, as the recourse had not yet been filed at the time when section 4 of Law 61/70 was enacted, after the making of the *sub judice* promotion, I can see no reason for holding that it would be unconstitutional, as offending against the principle of “separation of powers”, to treat section 4 as applicable in relation to the validity of such promotion. (See Case No. 1762/1954 of the Greek Council of State). *Inter alia*, *Cl. Georghiadis v. The Republic* (1966) 3 C.L.R. 252 at p. 279 and *Poutros v. The Cyprus Telecommunications Authority* (1970) 3 C.L.R. 281, at pp. 289–290, *distinguished* because when the Law concerned was sought to be applied in those cases the administrative decisions were *sub judice* and the judgment of the Court had already been reserved).

Order accordingly.

Cases referred to:

Messaritou v. The Cyprus Broadcasting Corporation (1972) 3 C.L.R. 100;

Cl. Georghiadis v. The Republic (1966) 3 C.L.R. 252 at p. 279;

J. Georghiadis v. The Republic (1966) 3 C.L.R. 317 at p. 323;

HadjiGeorghiou v. The Republic (1966) 3 C.L.R. 504 at p. 511;

Papantelis v. The Republic (1966) 3 C.L.R. 515 at p. 518;

Iosif v. The Cyprus Telecommunications Authority (1970) 3 C.L.R. 225, at pp. 233–234;

Poutros v. The Cyprus Telecommunications Authority (1970) 3 C.L.R. 281, at pp. 289–290;

Theofylactou v. The Republic (1966) 3 C.L.R. 801 at p. 810;

Decision of the Greek Council of State No. 1762/1954.

Recourses.

Recourses against the decision of the respondent Authority whereby the interested party was promoted to Foreman in the

service of the Cyprus Telecommunications Authority in preference and instead of the applicants.

Chr. Demetriades, for the applicants.

A. HadjiIoannou with *M. Vassiliou*, for the respondent.

Cur. adv. vult.

The following decision was delivered by:—

TRIANTAFYLLIDES, P.: By these two recourses, which are being heard together in view of their nature, the applicants seek a declaration that the decision of the respondent, taken on June 1, 1970, by means of which Andreas Marcou, of Famagusta, was promoted to Foreman in the service of the respondent, is *null* and *void* and of no effect whatsoever.

It is common ground that the decision for the promotion in question was taken by the Board of the respondent Authority at a time when it was not competent to do so.

Counsel for the respondent has submitted that such promotion was validly made and he has relied, in this respect, on the provisions of section 4 of the Public Corporations (Regulation of Personnel Matters) Law, 1970 (Law 61/70); on the other hand, counsel for the applicants has contended that as Law 61/70 was promulgated on June 12, 1970, that is after the *sub judice* decision had been taken by the Board of the respondent at a time when it was not empowered to do so, section 4 of Law 61/70 cannot be validly given such retrospective operation as to legalise *ex post facto* the promotion in question.

In this Decision I shall deal with the preliminary issue which has arisen in view of the above conflicting contentions of counsel:

Section 4 of Law 61/70 reads as follows:—

- “ 4. Οιαδήποτε πράξεις ή παράλειψις Ὀργανισμοῦ ὡς πρὸς τὸν διορισμὸν, ἐπικύρωσιν διορισμοῦ, ἔνταξιν εἰς τὸ μόνιμον προσωπικόν, προαγωγὴν, μετάθεσιν, ἀπόσπασιν καὶ ἀφυπηρέτησιν τοῦ προσωπικοῦ τοῦ Ὀργανισμοῦ ὡς καὶ τὴν ἐπ’ αὐτοῦ ἀσκησιν πειθαρχικοῦ ἐλέγχου περιλαμβανομένων τῆς ἀπολύσεως ἢ τῆς ἀπαλλαγῆς ἀπὸ τῶν καθηκόντων μελῶν τοῦ προσωπικοῦ, γενομένη πρὸ τῆς ἐνάρξεως τῆς ἰσχύος τοῦ παρόντος Νόμου, θὰ θεωρῆται ὡς γενομένη βάσει τῶν διατάξεων τοῦ παρόντος Νόμου”.

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“ 4. Any act or omission of a Corporation concerning the appointment, confirmation of appointment, emplace-ment on permanent establishment, promotion, transfer, secondment and retirement of personnel of the Cor-poration, as well as the exercise by it of disciplinary control over, including dismissal or removal from office of members of its personnel, which has taken place before the coming into force of this Law, shall be deemed to have been made under the provisions of this Law”).

On this occasion I am not concerned with the constitutionality, as such, of section 4 of Law 61/70 (which has already been upheld in *Messaritou v. The Cyprus Broadcasting Corporation* (1972) 3 C.L.R. 100), but with the constitutionality of its appli-cation to a situation such as the one in the present case.

What I have to decide is whether, in view of the principle of “ separation of powers”, which is an inherent part of our constitutional structure, it would not result in an unconstitu-tional interference with the independence of the Judicial Power if section 4 of Law 61/70 were allowed to have the retrospective effect claimed by counsel for the respondent.

In all the previous cases in which, because of the principle of “ separation of powers”, this Court has refused to give retrospective effect to section 4 of Law 61/70, or to a statutory provision of the same nature as section 4—and, in this connec-tion, useful reference may be made to *Cl. Georghiades v. The Republic* (1966) 3 C.L.R. 252, 279, *J. Georghiades v. The Re-public* (1966) 3 C.L.R. 317, 323, *HadjiGeorghiou v. The Republic* (1966) 3 C.L.R. 504, 511, *Papapantelis v. The Republic* (1966) 3 C.L.R. 515, 518, *Iosif v. The Cyprus Telecommunications Authority* (1970) 3 C.L.R. 225, at pp. 233–234, *Poutros v. The Cyprus Telecommunications Authority* (1970) 3 C.L.R. 281, at pp. 289–290—judgment had already been reserved when the statutory provision concerned was sought to be applied and it was held that to do so would be contrary to the principle of “ separation of powers”, as the Legislature cannot by legislation render valid *ex post facto* a decision of which the validity is already a matter for determination by the Judiciary. The same result was reached in *Theofylactou v. The Republic* (1966) 3 C.L.R. 801, 810, where judgment had not yet been reserved when the relevant statutory provision was enacted, but a re-course had already been filed and the specific defect, which the

said provision was intended to remedy retrospectively, had already been relied on, in such recourse, by the applicant.

In the present cases, however, the recourses had not yet been filed at the time when section 4 of Law 61/70 was enacted, after the making of the *sub judice* promotion. I can see, therefore, no reason for holding that it would be unconstitutional, as offending against the principle of "separation of powers", to treat section 4 as applicable in relation to the validity of such promotion.

I am strengthened in this view by the fact that in Greece the trend of the case-law is that, even when recourses are already pending, legislative provisions rendering valid retrospectively acts of the administration are not treated as amounting to an unconstitutional interference with the Judicial power if such provisions are of general application and are not aiming at validating a particular administrative act which is already *sub judice* (see, for example, the decision of the Greek Council of State in case 1762/1954).

For the foregoing reasons I find that the aforementioned contention of counsel for the applicants cannot be sustained.

Order accordingly.

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