1978 September 9

[TRIANTAFYLLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTAS PLATIS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE COUNCIL OF MINISTERS,

Respondent.

(*Case No.* 77/73).

Administrative Law—Recourse for annulment—Applicant contending that decision challenged thereby ceased to be of any effect, ab initio, *because of its revocation by a subsequently reached decision—So, no longer possible for him to try to secure annulment of sub judice decision, even though normaly damages under Article* 146.6 *of the Constitution can only be claimed after annulment of relevant decision and even though the notion of legal remedies parallel to that under Article* 146 *is excluded by the contents of the said Article—Recourse abated—Doctrine of approbation and reprobation.*

The sole issue in this recourse was whether it has been abated because of intervening developments. It was filed on March 17, 1973 and it was directed against the decision of the respondent Council of Ministers, taken on March 15, 1973, to terminate applicant's services as a member of the Cyprus Police Force. It was eventually adjourned sine die to await the outcome of six other cases, which were heard by the Full Bench of the Supreme Court and judgment was reserved on March 1, 1974.

Before the delivery of the reserved judgment in those cases there intervened the coup d' etat of July 15, 1974, which was followed on July 20, 1974, by the Turkish invasion of our Country.

By a decision* taken on August 2, 1974, the then Council of

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* Quoted at p. 388 *post.*

Ministers revoked both the decision challenged in this recourse and the decisions challenged in the said six recourses; and as a result the applicant was allowed to resume his duties.

On April 4, 1975, Counsel for the parties in those six recourses appeared before the Full Bench of this Court and submitted that because of the above decision of the Council of Ministers those recourses have been abated. Thereupon the Court struck out the said recourses as abated (see *Andreou & Others* v. *The Republic* (1975) 3 C.L.R. 108).

On October 31, 1975 there was promulgated the Coup d' Etat (Special Provisions) Law, 1975 (Law 57/75) by means of which it was enacted* that the coup d' etat and the coup d' etat government had no lawful existence whatsoever and that any act of the coup d' etat government made in the purported exercise of its powers or duties is unfounded and non existent.

Following a direction** of the Court, made on April 13, 1976, that Counsel for the parties should give in writing full reasons "as regards why the present recourse is not to be treated, also, as abated, but should proceed to be determined", both counsel by their written and oral pleadings, that followed, agreed, each one for reasons of his own, that this recourse should not be treated as having been abated***.

Counsel for the respondent contended that the said decision of August 2, 1974, which was taken by the Council of Ministers while it was presided over by the at the time President of the House of Representatives Mr. Glafkos Clerides, but while at the same time it was composed of the Ministers of the coup d' etat Government, has been invalidated by Law 57/75, and, therefore, the revocation, by virtue of such decision, of the termination of the services of the applicant in this case is devoid of any effect whatsoever.

Counsel for the applicant, on the other hand, contended that on August 2, 1974, there was no longer in existence the Government which resulted from the coup d' etat of July 15, 1974, in

* See the relevant sections at pp. 392-93 *post*.

** See pp. 389-90 *post*.

*** *Note:* In spite of the above consensus the Court proceeded to reach its own conclusions on the legal as well as the factual aspects of this case (see *Dafnides* v. *Republic*, 1964 C.L.R. 180 at p. 185).

the sense in which such Government is defined in Law 57/75, and, therefore, the revocation of the termination of the services of the applicant, that is the legal situation as it existed when the *Andreou* case was decided, has not been affected by the subsequent enactment of Law 57/75.

Held, (1) that though it is correct that, normally, the applicant in order to become entitled to claim compensation under Article 146.6, in respect of the termination of his services, he would have to secure first, under the said Article 146, the annulment of the relevant decision of the Council of Ministers dated March 15, 1973 (see *Kyriakides* v. *Republic*, 1 R.S.C.C. 66 at p. 74); and that though the notion of legal remedies parallel to that under Article 146 of the Constitution is excluded by the contents of the said Article as well as by other related provisions of the Constitution, so long as counsel for the applicant maintains that the decision of the Council of Ministers revoking the termination of his services, which was taken on August 2, 1974, was validly reached and its effect and validity remain unaffected by the subsequent enactment of Law 57/75, it follows that he cannot contend, also, simultaneously that the present recourse has not been abated because of the said decision as the applicant cannot be allowed to approbate and reprobate at one and the same time.

(2) That, thus, it is no longer possible, in this case, for the applicant to try to secure the annulment by this Court as an administrative Court, under Article 146 of the Constitution, of the decision terminating his services, which decision, according to his own contention, ceased to be of any effect, *ab initio*, in view of its alleged revocation on August 2, 1974; and that, accordingly, the only conclusion that can be reached, as a result of the applicant's own contentions is that which was reached by the Full Bench of this Court in the *Andreou* case, namely that the present recourse has, also, been abated.

Recourse abated.

Cases referred to:

Andreou and Others v. *The Republic*, (1975) 3 C.L.R. 108;

Dafnides v. *The Republic*, 1964 C.L.R. 180 at p. 185;

Liasi and Others v. *The Attorney-General of the Republic and Another* (1975) 3 C.L.R. 558 at p. 561;

Kyriakides v. *The Republic*, 1 R.S.C.C. 66 at p. 74;
Ouzounian v. *The Republic* (1966) 3 C.L.R. 553.

Recourse.

Recourse against the decision of the respondent to terminate applicant's services as a member of the Cyprus Police Force.

L. Papaphilippou, for the applicant.

N. Charalambous, Counsel of the Republic, for the respondent.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment. The applicant in this recourse challenges the decision, taken on March 15, 1973, by the respondent Council of Ministers, to terminate his services as a member of the Cyprus Police Force.

The issue which I have to deal with, at the present stage of the proceedings, is whether this recourse has been abated because of intervening developments; and, in this respect, this case has been heard by me together with cases 431/71, 432/71, 80/73, 81/73, 299/73, 304/73, 305/73, 308/73-322/73, 324/73-335/73, 337/73, 350/73, 389/73, 391/73-393/73, 395/73 and 396/73, which are all cases of the same nature and in relation to which there has arisen the same issue.

The history of the proceedings in the present case is as follows:

The recourse was filed on March 17, 1973, and after the Opposition had been filed on June 14, 1973, the case was fixed for directions on September 12, 1973, when it was "adjourned sine die to await the outcome of cases 73/73, 74/73, 97/73 and 180/73."

The said four cases were heard together with two other similar cases (303/73 and 437/73) by the Full Bench of the Supreme Court and judgment was reserved on March 1, 1974.

It is to be noted that counsel who appears for the applicant in the present case appeared for the applicants in cases 73/73 and 303/73, above, whereas counsel who appears now for the respondent did not appear for the respondent in any one of the aforementioned six cases.

Before the delivery of the reserved judgment in those six cases there intervened the horrid coup d' etat of July 15, 1974, which was followed, on July 20, 1974, by the Turkish invasion of our country; and, eventually, the reserved judgment in the six cases in question was not delivered, but they were struck out as abated (see *Andreou and others* v. *The Republic*, (1975) 3 C.L.R. 108). On that occasion the following were stated, on April 4, 1975, by the Full Bench of the Supreme Court:-

"In these six cases, which were heard together, judgment was reserved on the 1st March, 1974. Subsequently, on the 2nd August, 1974, there was published in the Fourth Supplement to the Official Gazette (Not. 66) a decision of the Council of Ministers revoking, *inter alia*, the decisions challenged in these proceedings.

The said decision of the Council reads as follows:

' 'Ανάκλησις 'Αποφάσεων 'Υπουργικοῦ Συμβουλίου δι' ὧν ἐτερματίσθησαν αἱ ὑπηρεσίαι Δημοσίων 'Υπαλλήλων, 'Εκπαιδευτικῶν, 'Αστυνομικῶν καὶ Δεσμοφυλάκων.

'Απόφασις ὑπ' 'Αρ. 13.421.

Τὸ Συμβούλιον ἀπεφάσισεν ὅπως ὅλαι αἱ ἀποφάσεις αἱ περιγραφόμεναι εἰς τὸν Πίνακα ἀνακληθῶσι ἀπὸ τῆς ἡμερομηνίας καθ' ἣν αὗται ἐλήφθησαν καὶ θεωρηθῶσιν ἀπὸ τῆς ἐν λόγῳ ἡμερομηνίας ὡς ἄκυροι καὶ ὡς μὴ ὑφιστάμεναι παντὸς ὅπερ ἐγένετο δυνάμει τῶν ρηθεισῶν ἀποφάσεων θεωρουμένου ὡς μὴ γενομένου καὶ παντὸς ὅπερ παρελείφθη νὰ γίνῃ ἕνεκεν τῶν ρηθεισῶν ἀποφάσεων διατατομένου ὅπως γίνῃ.'

('Revocation of Decisions of the Council of Ministers by means of which there were terminated the services of Public Officers, Educationalists, Policemen and Prison-Warders.

Decision No. 13.421.

The Council decided to revoke all the decisions described in the Schedule as from the date on which they were taken and they should be regarded as from the said date as *null* and non-existent and everything done by virtue of the said decisions should be regarded as not having been done and it is ordered that there

should be done whatever was omitted to be done because of the said decisions'.)

Counsel on both sides have submitted that because of the above decision of the Council these recourses have been abated; they argued that this was the inevitable conclusion in view of the wording and effect of such decision; in this respect reference was made, *inter alia*, to Tsatsos on Recourse for Annulment to the Council of State (Θ. Τσάτσου – 'Η Αἴτησις 'Ακυρώσεως 'Ενώπιον τοῦ Συμβουλίου τῆς 'Επικρατείας) 3rd ed., pp. 370–372.

In the light of what counsel have submitted we agree that their common view as to the outcome of these cases is correct; so, the reserved judgment will not be delivered and the cases are hereby struck out as abated."

Then, on February 9, 1976, the Chief Registrar requested counsel for the present applicant to inform him, within one month, of the course he intended to take in relation to this case, which stood adjourned sine die, and counsel for the applicant applied, on February 17, 1976, that it should be fixed for hearing.

On April 13, 1976, I made the following order:–

" Whereas the present case was adjourned sine die pending the outcome of case 73/73,

and whereas the said case was treated as having been abated, and was struck out accordingly, in *Andreou and Others* v. *The Republic*, (1975) 3 C.L.R. 108,

and whereas, nevertheless, counsel for the applicant in the present case has applied that it should be fixed for hearing,

it is hereby directed

(a) that counsel for the applicant should file in writing (with copy to counsel for the respondent), within three weeks from today, full reasons as regards why the present recourse is not to be treated, also, as abated, but should proceed to be determined,

(b) that counsel for the respondent should reply in writing on the above issue within three weeks thereafter."

After the above order had been complied with, I heard, also, oral arguments from counsel on January 15, 1977, and my decision as regards the fate of this case was reserved until today.

It is to be noted that, both by their written and oral pleadings, counsel for the applicant and the respondent agreed, each one for reasons of his own, that this recourse, as well as the other aforementioned recourses which were heard by me together with it as regards the abatement issue, should not be treated as having been abated. I should stress, in this respect, that I am not bound by this consensus, because, sitting as a Judge of an administrative Court, I have—without, of course, overlooking what has been stated by counsel for the parties—to reach my own conclusions on the legal, as well as the factual aspects, of a case such as the present one (see, *inter alia*, *Dafnides* v. *The Republic*, 1964 C.L.R. 180, 185 and *Liasi and Others* v. *The Attorney-General of the Republic and Another*, (1975) 3 C.L.R. 558, 561).

It is useful to refer, next, to certain relevant developments before and after the above quoted pronouncement of the Full Bench of this Court in the *Andreou* case, *supra:*

The applicant was allowed to resume his duties in the Police Force as a result of the decision of the Council of Ministers (No. 13.421) which was taken on August 2, 1974, and the text of which has already been quoted in the passage reproduced above from the judgment in the *Andreou* case.

Then, on May 15, 1975, the Council of Ministers took the following decision (No. 13.996):

" 'Εν σχέσει μὲ τὰς ὑποβληθείσας ἀπαιτήσεις ἐκ μέρους ἀπολυθέντων ἀξιωματικῶν καὶ μελῶν τῆς 'Αστυνομικῆς Δυνάμεως Κύπρου καὶ δημοσίων ὑπαλλήλων διὰ λόγους δημοσίου συμφέροντος διὰ τὴν πρὸς αὐτοὺς πληρωμὴν τῶν μισθῶν, οἵτινες καλύπτουν τὴν περίοδον καθ' ἣν οὗτοι δὲν ἔχουν ἐργασθῆ, τὸ Συμβούλιον ἀπεφάσισεν ὅτι, ἐν ὄψει τοῦ γεγονότος ὅτι ἡ ἐπαναπρόσληψις τούτων ἐγένετο ὡς πρᾶξις καλῆς θελήσεως καὶ ἐντὸς τοῦ κλίματος τῆς πολιτικῆς ἑνότητος τοῦ Κυπριακοῦ

λαοῦ, δέν δύναται νά ἀποδεχθῆ τάς τοιαύτας ἀπαιτήσεις. Συναφῶς διηυκρινίσθη ὅτι ἡ Κυβέρνησις ἠκολούθησε τήν ἰδίαν τακτικήν καί εἰς τήν περίπτωσιν ἄλλων μελῶν τῆς 'Αστυνομικῆς Δυνάμεως, οἵτινες ἐπαναπροσελήφθησαν πρό τῆς 15.7.74. Τό γεγονός τῆς ἐπαναπροσλήψεως τῶν διά λόγους δημοσίου συμφέροντος ἀπολυθέντων ἀποτελεῖ πρᾶξιν ἐπιεικίας καί χαριστικήν ἐνέργειαν, καί οὐδεμίαν ὑποχρέωσιν δύναται νά ἐπιβάλη εἰς τήν Κυβέρνησιν διά τήν πληρωμήν τῶν ὑποβληθεισῶν ἀπαιτήσεων. Περαιτέρω ἡ Κυβέρνησις, λαμβάνουσα ὑπ' ὄψιν ὅλας τάς συνθήκας ἑκάστης περιπτώσεως, δέν δύναται νά ἀποδεχθῆ αἴτησιν διά πληρωμήν μέρους τῶν τοιούτων ἀπαιτήσεων, ἔστω καί χαριστικῶς, διότι ἡ σημερινή τραγωδία τῆς Κύπρου καί τά προκύψαντα οἰκονομικά προβλήματα καί αἱ ἀνάγκαι τῶν χιλιάδων ἐκτοπισθέντων δέν ἐπιτρέπουν οἱανδήποτε περαιτέρω χαριστικήν ἐνέργειαν πρός αὐτούς."

("As regards the claims for their emoluments, during the period when they were not carrying out their duties, which were submitted on the part of officers and members of the Cyprus Police Force and of public officers who had been dismissed on grounds of public interest, the Council decided that, in view of the fact that their re-employment was a gesture of goodwill made in a spirit of political unity of the people of Cyprus, it cannot accept those claims. It was clarified in this connection that Government had followed the same practice in, also, the cases of other members of the Police Force who were re-employed before 15.7.74. The re-employment of those dismissed on grounds of public interest constitutes an act of leniency and an *ex gratia* course of action, and it cannot create any duty on the Part of the Government to meet the claims which were submitted. Furthermore the Government, taking into consideration all the circumstances of each case, cannot accept the request for part payment of such claims, even *ex gratia*, because the present tragedy of Cyprus and the financial problems which have ensued, and the needs of the thousands of displaced persons, do not permit any further *ex gratia* action towards the claimants.")

Later on, on October 31, 1975, there was promulgated the Coup d' Etat (Special Provisions) Law, 1975 (Law 57/75), which reads as follows:-

" 'Αριθμὸς 57 τοῦ 1975.

Η ΒΟΥΛΗ ΤΩΝ ΑΝΤΙΠΡΟΣΩΠΩΝ

Ἔχουσα ὑπ' ὄψιν ὅτι τὸ πραξικόπημα τῆς 15ης 'Ιουλίου, 1974 καὶ ἡ ἐξ αὐτοῦ προελθοῦσα πραξικοπηματικὴ κυβέρνησις δὲν εἶχε συνταγματικὴν καὶ νόμιμον τὴν προέλευσιν καὶ ἐπὶ οὐδενὸς λαϊκοῦ ἐρείσματος ἐστηρίζετο δι' ὃ καὶ κατέρρευσε.

ΨΗΦΙΖΕΙ ΩΣ ΑΚΟΛΟΥΘΩΣ

1. Ὁ παρὼν Νόμος θὰ ἀναφέρηται ὡς ὁ περὶ τοῦ Πραξικοπήματος (Εἰδικαὶ Διατάξεις) Νόμος τοῦ 1975.

2. 'Εν τῷ παρόντι Νόμῳ, ἐκτὸς ἐὰν ἐκ τοῦ κειμένου προκύπτῃ διάφορος ἔννοια –

'πραξικόπημα' σημαίνει τὸ κατὰ τὴν 15ην 'Ιουλίου, 1974, διαπραχθὲν πραξικόπημα κατὰ τοῦ Προέδρου τῆς Δημοκρατίας 'Αρχιεπισκόπου Μακαρίου καὶ τῆς Κυβερνήσεως Αὐτοῦ καὶ διὰ τοῦ ὁποίου προσωρινῶς ἀνετράπη ἡ συνταγματικὴ τάξις·

'πραξικοπηματικὴ κυβέρνησις' σημαίνει τὸν κατὰ τὸ πραξικόπημα ἀναλαβόντα ἀντισυνταγματικῶς καὶ παρανόμως τὸ λειτούργημα τοῦ Προέδρου τῆς Δημοκρατίας ὡς καὶ τοὺς ὑπ' αὐτοῦ ἀντισυνταγματικῶς καὶ παρανόμως διορισθέντας 'Υπουργοὺς καὶ τὸν 'Υφυπουργὸν καὶ περιλαμβάνει πᾶν μέλος αὐτῆς·

'πρᾶξις' περιλαμβάνει πᾶσαν νομοθετικῆς ἢ διοικητικῆς φύσεως πρᾶξιν ἢ ἀπόφασιν.

3. Τὸ πραξικόπημα καὶ ἡ πραξικοπηματικὴ κυβέρνησις οὐδεμίαν νόμιμον ὑπόστασιν ἐκέκτητο.

4. Πρᾶξις τῆς πραξικοπηματικῆς κυβερνήσεως γενομένη ὑπ' αὐτῆς κατ' ἐπίκλησιν ἐξουσιῶν ἢ καθηκόντων αὐτῆς εἶναι ἀνυπόστατος καὶ ἀνύπαρκτος."

("No. 57 of 1975.

THE HOUSE OF REPRESENTATIVES

Having in mind that the coup d' etat of July 15, 1974, and the coup d' etat government which resulted from it, had no constitutional and legal origin and were not based on any popular support and have consequently collapsed.

VOTES AS FOLLOWS

1. This Law may be cited as the Coup d' Etat (Special Provisions) Law, 1975.

2. In this Law, unless the context otherwise requires –

'coup d' etat' means the coup d' etat carried out on July 15, 1974, against the President of the Republic Archbishop Makarios and His Government, by means of which the constitutional order was temporarily upset;

'coup d' etat government' means the person who during the coup d' etat assumed unconstitutionally and illegally the office of the President of the Republic, as well as the Ministers and the Under-Secretary who were unconstitutionally and illegally appointed by him, and includes every member of it;

'act' includes every act or decision of a legislative or administrative nature.

3. The coup d' etat and the coup d' etat government had *no lawful existence whatsoever.*

4. Any act of the coup d' etat government made in the purported exercise of its powers or duties is unfounded and non-existent.")

The effect of Law 57/75 has been examined in the *Liasi* case, supra, where it was held that such Law had invalidated the termination of the services of the applicants in that case as special constables, since it was effected by a Divisional Commander of Police appointed by the Chief of Police who was appointed by the coup d' etat Government in the place of the person lawfully holding such office.

My learned brother A. Loizou J., who delivered the judgment in the *Liasi* case, *supra*, did not have to deal in that case directly with the issue of whether the Council of Ministers composed till August 8, 1974, of those who had been appointed as Ministers of the coup d' etat Government, but presided over, as from July 23, 1974, by Mr. Glafkos Clerides, the at the time President of the House of Representatives, who had assumed the duties of President of the Republic in view of the absence

from Cyprus of the late President of the Republic Archbishop Makarios, did come, because of the participation in it of the Ministers of the coup d' etat Government, within the definition of the coup d' etat Government in Law 57/75.

In the present case counsel for the respondent has alleged that the aforementioned decision of the Council of Ministers, No. 13.421, on August 2, 1974, which was taken by the Council of Ministers while it was presided over by Mr. Glafkos Clerides, but while at the same time it was composed of the Ministers of the coup d' etat Government, has been invalidated by Law 57/75, and, therefore, the revocation, by virtue of such decision, of the termination of the services of the applicant in this case is devoid of any effect whatsoever; on the other hand, counsel for the applicant has argued that on August 2, 1974, there was no longer in existence the Government which resulted from the coup d' etat of July 15, 1974, in the sense in which such Government is defined in Law 57/75, and, therefore, the revocation of the termination of the services of the applicant, that is the legal situation as it existed when the *Andreou* case, *supra*, was decided, has not been affected by the subsequent enactment of Law 57/75.

It is correct that, normally, the applicant in order to become entitled to claim, by an action before a civil Court, compensation from the Republic, under paragraph 6 of Article 146 of the Constitution, in respect of the termination of his services, he would have to secure first, under the said Article 146, the annulment of the relevant decision of the Council of Ministers dated March 15, 1973, as he could not have sued directly, in this connection, under Article 172 of the Constitution (see, *inter alia*, *Kyriakides* v. *The Republic*, 1 R.S.C.C. 66, 74). As was already pointed out by this Court on earlier occasions, the notion of legal remedies parallel to that under Article 146 of the Constitution is excluded by the contents of the said Article, as well as by other related provisions of our Constitution (see, *inter alia*, the *Kyriakides* case, *supra*, 74 and *Ouzounian* v. *The Republic*, (1966) 3 C.L.R. 553).

So long, however, as counsel for the applicant maintains that the decision of the Council of Ministers revoking the termination of his services, which was taken on August 2, 1974, was validly reached and its effect and validity remain unaffected by the subsequent enactment of Law 57/75, it follows

that he cannot contend, also, simultaneously that the present recourse has not been abated because of the said decision; the applicant cannot be allowed to approbate and reprobate at one and the same time.

Thus, in my view, it is no longer possible, in the present case, for the applicant to try to secure the annulment by this Court as an administrative court, under Article 146, of the decision terminating his services, which decision, according to his own contention, ceased to be of any effect, ab initio, in view of its alleged revocation on August 2, 1974; relying, as he does, on his contention that the said decision of August 2, 1974, was, and is still, a valid one, he may sue directly in a civil court claiming compensation for the allegedly subsequently revoked ab initio termination of his services; and then, in the relevant civil proceedings there would arise, most probably, the need to decide, for the purpose of such proceedings, the questions of the validity of the decision of the Council of Ministers dated August 2, 1974, and of the effect on its validity of the provisions of Law 57/75.

I should, also, stress that the subject matter of the present recourse is only the decision of the Council of Ministers of March 15, 1973, to terminate the servises of the applicant, and neither the aforesaid decision of the Council of Ministers of August 2, 1974, nor its later decision of May 15, 1975, can, in any way, be treated as being sub judice in the present case; and, the latter decision is already the subject matter of other recourses pending before the Supreme Court (Nos. 129/75 to 136/75 and 143/75 to 146/75), in which judgment has by now been reserved by another Judge of the Court and nothing contained in this judgment of mine should be taken as, in any way, amounting, directly or indirectly, to a pronouncement as regards the validity of such decision.

In the light of all the foregoing, I think that the only conclusion that I can reach, as a result of the applicant's own contentions in this case, is that which was reached by the Full Bench of this Court in the *Andreou* case, *supra*, namely that the present recourse has, also, been abated.

I do not propose to make any order as to the costs of this case.

Recourse abated.
No order as to costs.