

1981 January 12

[A. LOIZOU, DEMETRIADES AND SAVVIDES, JJ.]

DEMETRAKIS CHRISTOFIDES,

*Appellant-Plaintiff,*

v.

THE ATTORNEY-GENERAL OF THE REPUBLIC,

*Respondent-Defendant.*

(Civil Appeal No. 6053).

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*Constitutional Law—Judgment annulling an administrative act in a recourse under Article 146.1 of the Constitution—Compliance of the Administration with—Principles applicable—Paragraphs 5 and 6 of the said Article 146—Judgment annulling promotions of Public Officers upon a recourse by appellant—Reconsideration of the matter by Public Service Commission—Fact that appellant has not again been promoted does not amount to non-compliance with the annulling judgment of the Court—And does not give the appellant a right to damages under Article 146.6.* 5

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*Administrative Law—Recourse for annulment—Judgment annulling administrative act—Compliance of administration with—Principles applicable—Whether annulment can affect situations which came into existence subsequently to the issue of the annulled act on the basis of lawful acts of the administration—Paragraphs 5 and 6 of Article 146 of the Constitution.* 10  
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At all times material to these proceedings the appellant was a Welfare Officer. By means of a decision taken in January, 1963 the Public Service Commission promoted Charilaos Kitromilides and Christakis Ierides to the post of Senior Welfare Officer. The validity of these promotions was challenged by a recourse, under Article 146 of the Constitution, by one of the unsuccessful candidates, Frangoullides, and they were annulled by the Supreme Court. There followed an amendment of the schemes of service and in November 1967 the Public Service Commission filled two vacancies in the post of Senior Welfare Officer by the promotion of Christoforos Michael

and Christos Konis; but did not interview, or even consider, the appellant and certain other candidates, as they did not possess the new qualifications required by the amended scheme of service. These promotions were, again annulled by the  
5 Supreme Court in 1975 upon a recourse by the appellant and other unsuccessful candidates. Following the second annulment the Commission at its meeting of the 22nd April, 1977 examined the position afresh and promoted to the post of Senior Welfare Officer Christoforos Michael and Christakis  
10 Ierides. Christos Konis was no longer a candidate at that time as, in the meantime, he had been promoted to the post of Principal Welfare Officer and later to that of Director of Welfare Services.

The appellant did not challenge this latter decision of April  
15 22, 1977 by means of a recourse but filed an action in the District Court of Nicosia for damages and restitution under Article 146.6 of the Constitution. The District Court concluded that the appellant was not entitled to damages and dismissed the action. Hence this appeal.

20 Counsel for the appellant mainly contended:

That Christos Konis whose promotion to Senior Welfare Officer was declared void in 1967 should have been treated by the respondent as still being a Welfare Officer, in spite of his two successive promotions, be reverted to the post of Welfare  
25 Officer and be considered as a candidate once more; that in this way the appellant would have had an opportunity for promotion to a third vacancy in the post of Senior Welfare Officer; and that as this had not been done there was no compliance with the judgment of the Supreme Court.

30 *Held*, (1) that an annulment of an administrative act has no influence on the situations which came into existence, subsequently to the issue of the annulled act, on the basis of lawful in themselves acts of the administration; that, therefore, the annulment of a promotion does not affect further promotions  
35 of public servants, which promotions are not connected with the annulled one as in the present case where the annulment of the promotion to the post of Senior Welfare Officer could not operate also as an annulment of the promotion of Christos Konis to the post of Principal Welfare Officer and Director  
40 of Welfare Services.

(2) That the duty of the administration under paragraphs 5 and 6 of Article 146 of the Constitution is to give effect to and act upon any decision by the Court given under Article 146, paragraph 4 of the Constitution; that the obligation of the administration is to comply strictly with the annulling decision which was issued by the Court and which obligation consists in the disappearance of its results, that is an obligation to restore the situation existing previously to the annulled decision; that this was done by the Public Service Commission in the present case because it gave effect to the decision of the Supreme Court and filled the vacancies in the post of Senior Welfare Officer on the factual and legal situation that existed at the time that the annulled decision was originally taken; that the decision consisted in the exercise of an administrative discretion which for all intents and purposes was taken in accordance with the Law; that the fact that they did not choose the appellant does not amount to non-compliance with the judgment of the Supreme Court and at that does not give to the appellant the right to damages; accordingly the appeal must be dismissed.

*Appeal dismissed.* 20

Cases referred to:

*Frangoullides (No. 2) v. The Republic* (1966) 3 C.L.R. 676;  
*Kitromelides and Others v. The Republic* (1975) 3 C.L.R. 531.

### Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Stylianides, P.D.C. and Fr. Nicolaides, D.J.) dated the 15th December, 1979 (Action No. 3079/77) whereby his claim for just and equitable damages and restitution under Article 146.6 of the Constitution was dismissed.

*C.P. Erotokritou*, for the appellant. 30

*Cl. Antoniadis*, Senior Counsel of the Republic, for the respondent.

A. LOIZOU J. gave the following judgment of the Court. This is an appeal against the judgment of the Full District Court of Nicosia, by which the action of the plaintiff for just and equitable damages and restitution under Article 146.6 of the Constitution, was dismissed. 35

The facts of the case as they appear from the judgment of the trial Court and which are not in dispute, are as follows:

The appellant was a Welfare Officer. The Public Service Commission at its meeting of the 24th January 1963, promoted Charilaos Kitromilides and Christakis Ierides to the post of Senior Welfare Officer with effect from the 1st February, 1963.

5 A recourse by one of the unsuccessful candidates was filed in the Supreme Court under Article 146 of the Constitution, and the Supreme Court, eventually, on appeal, (Revisional Appeal No. 10, reported as *Charilaos Frangoullides (No. 2) and the Republic of Cyprus*, (1966) 3 C.L.R. p. 676), annulled the  
10 decision challenged by that recourse. We do not intend to deal with the details of that recourse, suffice it to say that the relevant scheme of service was later on revised and the post of Senior Welfare Officer which was previously a promotion post, was converted to a first entry and promotion post. By  
15 the amendment of the scheme of service, a certificate or diploma of a University or other equivalent educational qualification was also made a necessary qualification for the post.

The Public Service Commission then, at its meeting of the 20th November, 1967, proceeded with the filling of two vacancies  
20 in the post of Senior Welfare Officer, but did not interview, or even consider, the appellant and certain other candidates, as they did not possess the new qualification added by the afore-said amendment of the scheme of service.

Recourses were then filed by the appellant and two other  
25 of the unsuccessful candidates and also by Frangoullides, challenging once more the validity of these new promotions.

The Supreme Court in its administrative jurisdiction on the 22nd December 1975, by its judgment reported as *Charilaos Kitromelides and others v. The Republic* (1975) 3 C.L.R. p. 531  
30 annulled the promotion of the two interested parties who had been promoted in lieu of the appellant the applicant, namely, Christoforos Michael and Christos Konis, having held that the question of the qualifications of the various candidates should have been decided as at the material time, i.e. at the time of the annulment of the previous appointment which  
35 was set aside by the decision of the Supreme Court, in Revisional Appeal No. 10, (*supra*) that is, as the scheme of service was on the 24th January 1963.

The Public Service Commission examined the position afresh at its meeting of the 22nd April, 1977, and promoted, to that post, Christoforos Michael and Christakis Ierides. Christos Konis was no longer a candidate at that time, as in the meantime, he had been promoted to the post of Principal Welfare Officer and later to that of Director of Welfare Services, obviously senior posts to the one under examination and consequently no longer available for the old post. 5

The appellant did not challenge under Article 146 of the Constitution this decision, but filed, in lieu, the present action in the District Court of Nicosia against the Attorney-General of the Republic, claiming damages and restitution under Article 146.6 of the Constitution. 10

The trial Court after dealing with the legal aspect of the case and the principles governing the duty of the administration to comply with the judgments of the Supreme Court given in the exercise of its administrative jurisdiction under Article 146 of the Constitution, with which we shall be shortly dealing, concluded that the appellant was not entitled to damages and dismissed the action. 15 20

It has been argued on behalf of the appellant that Mr. Konis whose promotion to Senior Welfare Officer had been declared void in 1967 should have been treated by the respondent Commission on the 2nd April 1977, as still being Welfare Officer in spite of his two successive promotions to higher posts and that he should have been as counsel put it, reverted to the post of Welfare Officer and be considered as a candidate once more. In this way, he said, the appellant would have had an opportunity for promotion to a third vacancy in the post of Senior Welfare Officer. As this had not been done there was no compliance with the judgment of the Supreme Court, hence his claim for damages. 25 30

We are not in agreement with this argument as the promotion of Mr. Konis to the post he was holding in April 1977, was not annulled, nor was annulled his previous promotion to Principal Welfare Officer, and for all intents and purposes he was and is the lawful holder of the present post, and his position could not in Law be affected by the annulment by the Supreme Court of the decision, whereby he was promoted to the post of Senior Welfare Officer. 35 40

As pointed out by Vegleris in his textbook, Compliance of the Administration to the Decisions of the Council of State (1934), p. 103.

5 “ Ἄλλ’ ἡ Διοίκησις ὑποχρεοῦται ἐν ταῖς ἐνεργείαις αὐτῆς  
πρὸς ἐπαναφορὰν τῶν πραγμάτων εἰς τὴν προτέραν των  
κατάστασιν νὰ σεβασθῇ τὰς μεταγενεστέρως τῆς ἐκδόσεως  
τῆς ἀκυρωθείσης πράξεως νομίμως δημιουργηθείσας κατα-  
στάσεις. Ἡ ἀπαγγελθεῖσα ἀκύρωσις δὲν ἔχει ἐπιρροὴν  
10 ἐπὶ τῶν καταστάσεων αἰτίνας ἔλαβον ὑπαρξίν μεταγενεστέρως  
τῆς ἐκδόσεως τῆς ἀκυρωθείσης πράξεως ἐπὶ τῇ βάσει νομίμων  
καθ’ ἑαυτὰς πράξεων τῆς Διοικήσεως. Ἡ ἐπίδρασις τῆς  
ἀκυρώσεως δὲν ἐκτείνεται, πράγματι, πέραν τῶν πράξεων  
καὶ τῶν καταστάσεων, αἰτίνας ἔχουν ὡς ἄμεσον ἔρεισμα  
15 τὴν ἀκυρωθεῖσαν πράξιν καὶ μετέχουν συνεπῶς τῶν ἐλατ-  
τωμάτων καὶ τῆς ἀκυρότητος ἐκείνης”.

Which in English reads:

20 “But the administration is bound in its actions to restore  
the things in their previous situation to respect the acts  
lawfully created subsequent to the issue of the annulled  
decision. The announced annulment has no influence  
on the situations which came into existence subsequently  
to the issue of the annulled act on the basis of lawful in  
themselves acts of the Administration. The effect of the  
annulment does not extend in fact beyond the acts and  
25 the situations which have as an immediate foundation  
the annulled act and consequently share the defects of  
its nullity”.

30 Furthermore from the same textbook at p. 104 and with  
reference to the case of the French Conseil d’ Etat in *Rodiere*  
(C.E. 26 December, 1925), Vegleris says the following:

“Προδήλως ἡ ἀκύρωσις αὕτη δὲν ἠδύνατο ν’ ἀνακόψη,  
καθ’ ὄλον τὸ μακρὸν διάστημα τῆς προδικασίας τῆς προ-  
σφυγῆς τοῦ μὴ προαχθέντος ἐν νομίμῳ χρόνῳ ὑπαλλήλου,  
τὴν σταδιοδρομίαν τῶν συναδέλφων του”.

35 (“Obviously this annulment could not suspend, during  
the long period of litigation of a recourse by a non-  
promoted at a lawful time civil servant the career of his  
colleagues”).

It is clear from the aforesaid exposition of the general principles of Administrative Law that the annulment of a promotion does not affect further promotions of public servants, which promotions are not connected with the annulled one as in the present case where the annulment of the promotion to the post of Senior Welfare Officer could not operate also as an annulment of the promotion of Christos Konis to the post of Principal Welfare Officer and Director of Welfare Services. 5

Relevant to the examination, however, of the issue as to whether there has been compliance of the administration or not to the decision given in a recourse under Article 146 of the Constitution are paragraphs 5-6 of the said Article, which reads as follows: 10

“5. 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. 15

6. Any person aggrieved by any decision or act declared to be void under paragraph 4 of this Article or by any omission declared thereunder that it ought not to have been made shall be entitled, if his claim is not met to his satisfaction by the organ, authority or person concerned, to institute legal proceedings in a Court for the recovery of damages or for being granted other remedy and to recover just and equitable damages to be assessed by the Court or to be granted such other just and equitable remedy as such Court is empowered to grant”. 20 25

The duty of the administration under the aforesaid provisions of the Constitution is to give effect to and act upon any decision by the Court given under Article 146, paragraph 4 of the Constitution. The obligation of the administration is to comply strictly with the annulling decision which was issued by the Court and which obligation consists in the disappearance of its results, that is an obligation to restore the situation existing previously to the annulled decision. This was done by the Public Service Commission in the present case. It gave effect to the decision of the Supreme Court and filled the vacancies in the post of Senior Welfare Officer on the factual and legal situation that existed at the time that the annulled decision was 30 35

originally taken. The decision consisted in the exercise of an administrative discretion which for all intents and purposes was taken in accordance with the Law. The fact that they did not choose the appellant does not amount to non-compliance to the judgment of the Supreme Court and at that does not give to the appellant the right to damages.

Consequently this appeal is dismissed with no order as to costs as none have been claimed by the respondent.

*Appeal dismissed. No order as to costs.*

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