

1981 February 11

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

STAVROS ANILIADES,

Applicant,

v.

THE CYPRUS TELECOMMUNICATIONS AUTHORITY,

Respondent.

(Case No. 446/78).

5 *Cyprus Telecommunications Authority—Officers of—Absence abroad on approved leave—Sick leave in the course of such absence—Procedure—Article 15 of the General Personnel Regulations of the Authority—Absence of officer abroad without leave—Termination of services—Article 33 of the said Regulations—Compensation for “meritorious services”—Procedure for payment of—Article 9 of the said Regulations.*

10 *Legitimate interest—Article 146.2 of the Constitution—Unreserved acceptance of administrative act—Deprives the acceptor of legitimate interest to file a recourse.*

15 The applicant, who was holding the post of Inspector in the respondent Authority, was granted leave of absence to be spent abroad which expired on the 14th August, 1978; and though he applied several times for extension of such leave, giving as grounds for the extension applied for personal reasons, such applications were refused and his attention was repeatedly drawn to the fact that if he failed to attend his work his services would be terminated. After the expiration of his leave of absence and after he was informed that the Authority was
20 considering the termination of his services, the applicant on the 7th September, 1978, that is 24 days after his failure to attend his work, by a letter sent through his advocate, advanced for the first time reasons of health in support of his application

for extension of his leave of absence, enclosing two medical certificates. One of these certificates referred to the condition of his health in 1971 and not to any sickness from which he suffered at the material time when he made his application. The other certificate was a certificate from a doctor in Athens which referred to complaints about chronic spondyloarthritis which required long-term treatment and it concluded that due to his health condition and his family circumstances he suffered nervous shock and was unable to work for the time being. The respondent Authority by letter dated 12th September again rejected the application for extension of leave and, also, informed the applicant that any "allegation advanced after the events as justification 'for reasons of health' cannot be accepted and restore and cure the effect of his conduct towards his employer because in case of illness of the personnel there are respective provisions in the Regulations which should have been followed".

The applicant never returned to Cyprus to resume his duties and the respondent Authority by letter dated 22nd September, 1978 terminated his employment as from the 20th September, 1978 in accordance with the Personnel Regulations of the Authority informing him, at the same time, that arrangements could be made for payment to him of all the benefits to which he was entitled. In reply counsel for applicant informed the respondent Authority that applicant accepted such termination with the only reservation to claim compensation in respect of "meritorious services". The respondent Authority refused to pay him any compensation for "meritorious services" and hence this recourse which was directed against the decision of the respondent to terminate applicant's services and against the refusal to pay him any compensation for "meritorious services".

Under Article 33(4)(b) of the General Personnel Regulations of the respondent Authority, any unjustified absence from work or the failure of the employee to keep the time table in accordance with the Regulations applicable, are considered to be disciplinary offences which may lead to the dismissal of such employee; and under Article 15 of the same Regulations, sick leave can only be granted to employees, who are abroad on approved leave of absence, if the employee reports to the Diplomatic Services of the Republic on whose request he has to be examined by a doctor recommended by them and who has to prepare

a medical report which has to be submitted through them to the Authority.

5 Compensation for meritorious services is granted in accordance with the provisions of Article 9 of the above Regulations by virtue of which the Personnel Council of the Authority is empowered to prepare lists of employees who have ended their career satisfactorily and who are entitled to meritorious services benefit. This article, also, provides that "the provisions for meritorious retirement in respect of all ranks of the personnel are applicable 10 only in cases of mutual consent (Authority and employees)"; and that, further, those employees who have been considered as having completed their career meritoriously are retired compulsorily in accordance with Article 20.

Held, (1) with regard to the termination of applicant's services:

15 That as the applicant in applying for sick leave has not complied with the procedure provided by the General Personnel Regulations because he has never reported the matter to the Diplomatic Authorities of the Republic and he has never supplied the respondent Authority with a medical certificate of a doctor to whom 20 he had to be referred by the Diplomatic Services of the Republic, his services have been rightly terminated, in accordance with the said Regulations, due to his failure to resume his duties.

25 *Held, further, that the applicant by his letter through his advocate accepted the termination of his employment, reserving only his right to claim compensation in respect of "meritorious services"; and that, therefore, by accepting such termination of employment without any reservation as to any other claim he is estopped from alleging that the act of the Authority by terminating his employment is null and void.*

30 (2) *With regard to the claim for compensation for "meritorious services".*

35 That it is clear from the relevant Regulations that for a person to be placed on the list of employees who have meritoriously completed their career, there must be a mutual agreement of the employee and the Authority in view of the effect that such 35 emplacement will have on the continuation of employment of the employee as the result of such emplacement is the compulsory retirement of the employee; that in this case it is clear that applicant never applied to the Authority for his emplacement

on such list in view of his retirement or that there ever was any mutual agreement to that end between the Authority and the applicant; that the services of the applicant were terminated as a result of his failure to resume his duties which were considered by the Authority as essential and had to be continued; that, therefore, the respondent Authority in refusing to pay the applicant any compensation for meritorious services did not act either arbitrarily or in breach of the Regulations, as the name of the applicant did not appear on the list of persons entitled to such benefit in accordance with the procedure contemplated by the Regulations but his services had been terminated due to his failure to resume his duties; accordingly his recourse must fail. 5 10

Application dismissed.

Recourse.

Recourse against the decision of the respondent whereby the services of the applicant were terminated. 15

L.N. Clerides, for the applicant.

A. Hadjioannou, for the respondent.

Cur. adv. vult. 20

SAVVIDES J. read the following judgment. Applicant by the present recourse claims—

- (a) a declaration that the act or decision of the respondents communicated to the attorney of the applicant on the 23rd September, 1978 whereby the services of the applicant were terminated on the 20th September, 1978 is null and void and of no legal effect. 25
- (b) A declaration of the Court that the omission of the respondents to pay the applicant all the benefits and compensation for meritorious services to which applicant was entitled under the law and the Regulations, should not have been made. 30

The facts of the case are briefly as follows:

The applicant originally took employment with the Cable and Wireless on the 9th September, 1947 as wireless operator. On the 1st April, 1961 he was transferred to and became an employee of the respondent Authority and on the 1st July, 35

1962 he was promoted to the post of Inspector. He continued working in such post at the automatic telephone centre of Nicosia till the 15th August, 1976 when, on his application, he was granted one year's leave of absence abroad without pay which expired on the 14th August, 1978. Such leave of absence was extended by the Authority, at the request of the applicant, for a further period of one year expiring on 14.8.1978, by letter dated 10th June, 1977. Under para. 2 of the said letter which is part of a bundle of documents produced as *exhibit* 3, the applicant was informed that in case he did not return to resume his duties after the expiration of such leave of absence, his services would be terminated. The material part of this letter reads as follows:

“Εστω εις γνωσιν υμῶν ὅτι εις περιπτώσιν καθ’ ἣν δὲν θὰ ἀναλάβητε τὰ καθήκοντά σας μετὰ τὸ πέρασ τῆς παραχωρηθείσης ἀδείας ἀπουσίας ἀνευ ἀπολαβῶν αἱ ὑπηρεσίαι σας θὰ τερματισθοῦν”.

The English translation of which is as follows:

(“You should bear in mind that in case you will not resume your duties after the expiration of the leave of absence without pay granted to you, your services will be terminated”).

On the 27th June, 1978 the applicant submitted a new request for further extension of his leave without pay which was refused by the respondent Authority by its letter dated 10th July, 1978 which reads as follows:

“Ἀναφέρομαι εις τὴν ἐπιστολὴν σας ἡμερομηνίας 27ης Ἰουνίου 1978 διὰ τὸ ὡς ἄνω θέμα καὶ πληροφορῶ ὑμᾶς ὅτι ἡ αἴτησις σας διὰ παράτασιν τῆς παραχωρηθείσης εις ὑμᾶς ἀδείας ἀνευ ἀπολαβῶν δὲν δύναται νὰ ἐγκριθῇ καθ’ ὅτι τὸ ἀνώτατον ὄριον τῆς παραχωρουμένης ἀπουσίας ἀνευ ἀπολαβῶν βάσει τῆς ὑπ’ ἀρ. ἀν. ΓΔ.5/2/75 ἐγκυκλίου ἡμερομηνίας 15ης/4/75 δὲν δύναται νὰ ὑπερβῇ τὰ δύο ἔτη.

Οὕτω βάσει τῶν ὄρων τῆς παραχωρηθείσης εις ὑμᾶς ἀδείας θὰ πρέπει νὰ ἀναλάβητε τὰ καθήκοντα σας τὴν 15ην Αὐγούστου, 1978, καθ’ ὅτι εις περιπτώσιν καθ’ ἣν δὲν θὰ ἀναλάβητε τὰ καθήκοντα σας μετὰ τὸ πέρασ τῆς παραχωρηθείσης ἀδείας, αἱ ὑπηρεσίαι σας θὰ τερματισθοῦν”.

The English translation of which is:

“I refer to your letter dated 27th June, 1978 in connection with the above subject, and I wish to inform you that your application for extension of the leave granted to you without pay, cannot be approved, in view of the fact that the maximum leave which can be granted without pay in accordance with Circular No. CD.5/2/75 dated 15.4.75, cannot exceed a period of two years. 5

Therefore, in accordance with the terms of the leave granted to you, you must resume your duties on the 15th August, 1958, otherwise, in case you fail to resume your duties after the expiration of your leave, your services will be terminated”). 10

The applicant on the 30th July, 1978 addressed to the respondent Authority the following letter: 15

“I refer to Cyta’s letter LP/A6/4 of 10th instant in reply to mine of 27th June, 1978, in which I applied for a further six months extension to my two years leave without pay which ends on the 15th August, 1978 and request your urgent reconsideration to your negative decision, bearing in mind that such extensions have been granted, to the best of my knowledge, to Messrs: A. Embedoklis, Phivos Loizou, G. Georghiades for reasons which could not be more valid and serious than my family’s. 20

The particular reason of my original application was on the very serious compassionate grounds which affected my family after the killing of my elder son during the events of 15th July, 1974, five days before he was due to terminate his two years service with the National Guard. 25

Without elaborating at present, I cannot imagine what more serious reasons made possible further extensions over and above the two years or if they were more valid than my 29 years of satisfactory service and the performance, faithfully may I say, along with those who were present at the airport during the Turkish invasion, of our duty towards our Authority and Country. 30 35

I applied for a further six months extension to enable me, if possible to finalise my family’s circumstances and

apply to be considered for pension on the terms of satisfactory service 'Evdokimos Ipiresia' at the appropriate time, if finally I find myself unable to return to Cyprus.

5 I fully realise that it is the prerogative of CYTA to accept or turn down any such requests for extensions or consideration for Pension on the grounds of 'Evdokimos Ipiresia', but I also believe that such decisions should be based on the merits and reasons involved and with this in mind, I request your reconsideration for an extension and the
10 possibility of being pensioned on the grounds mentioned above.

Sincerely looking forward to your reply at your earliest convenience to make it possible for me to make the necessary appropriate arrangements".

15 In reply to such letter, the respondent Authority informed the applicant by letter dated 9th August, 1978 that his application could not be reconsidered in view of the fact that the Authority could not grant leave of absence abroad for a period extending two years, drawing his attention, once more, to the fact that in
20 case of his failure to resume his duties on the 15th August, 1978, his services would be terminated.

On the 14th August, 1978 the applicant sent the following telegram to the respondent:

25 "Chairman Board,
CYTA Nicosia.
Reference your letter LP/AX/4 9/8/1978.

30 Not extending my unpaid leave as granted others regret last minute difficulties beyond my control prevent me resume duty 15/8/78 stop Mr. Stelios Stylianides holding my power of Attorney will contact CYTA".

On the 7th September, 1978 applicant sent a letter to the respondent Authority, through his advocate, referring to the previous correspondence between the applicant and the Authority requesting the respondent Authority to reconsider their
35 decision giving new reasons for which the applicant could not return to Cyprus to resume his duties. The material part of such letter reads as follows:

"Ο πραγματικός λόγος, διά τον οποίον ό ρηθεις πελάτης

μου και υπάλληλος τῆς Ἀρχῆς ἐζήτησε νέαν παράτασιν τῆς ἀδείας ἀνευ ἀπολαβῶν εἶναι ὅτι οὗτος εἶναι ἀσθενῆς και χρῆζει συνεχοῦς θεραπείας και παρακολούθησεως ὑπὸ ἐιδικῶν Ιατρῶν.

Ἐπισυνάπτω πρὸς τοῦτο σχετικὰ φωτοτυπικὰ πιστοποιη- 5
τικὰ ἄτινα ὀμιλοῦν ἀφ' ἑαυτῶν, διὰ τὸ εἶδος και τὴν παροῦσαν
κατάστασιν τῆς υγείας τοῦ εἰρημένου ὑπαλλήλου.

Ὅθεν, παρακαλεῖσθε, ὅπως ἐν ὄψει τῶν νέων προσκο-
μισθέντων στοιχείων, ἦτοι τῶν Ιατρικῶν πιστοποιητικῶν, 10
ἐπανεξετάσετε τὴν ἐν λόγῳ ὑπόθεσιν και ἐγκρίνετε τὴν ζητη-
θεῖσαν ἀδειαν, δι' ὅσον χρόνον χρειάζεται θεραπεία και παρα-
κολούθησιν ὁ ρηθεὶς ὑπάλληλος”

(“The real reason for which my said client and employee
of the Authority applied for a new extension of his leave
without pay, is that he is sick and needs continuous treat- 15
ment and follow-up by specialists.

I enclose, in this respect, photocopies of medical certifi-
cates which speak for themselves as to the present condition
of the health of the said employee.

You are therefore, requested, in the light of the new facts 20
put before you, that is, the medical certificates, to re-exa-
mine the said case and approve the leave applied for,
so long as it is required by the said employee for his treat-
ment”).

The two medical certificates attached to the said letter, were 25
one from a medical practitioner in Athens, in handwriting,
dated 5.9.1978 whereby it is mentioned that the applicant was
suffering from chronic spondyloarthritis and that he needed
continuous and long treatment and that a year earlier he was 30
operated in London for larynx trouble and that ever since he
was attended by a doctor in London every six months and it
concluded as follows:

“Ὡς ἐκ τῶν ἀνωτέρω παθήσεων ὡς και ἄλλων οἰκογενειακῶν
καταστάσεων οὗτος ἔχει ὑποστει νευρικὸν κλονισμόν και 35
κατέστη ἀνίκανος δι' ἐργασίαν πρὸς τὸ παρὸν εὕρισκόμενος
ὑπὸ ἐντατικῆν Ιατρικῆν παρακολούθησιν και γιὰ διάστημα
ἀκόμη ὀλίγων μηνῶν”.

(“In the light of the above sickness and for other family

reasons he has suffered from nervous breakdown and he has become unable, for the time being, to work and he will be under intensive medical observation for a period of a few months”).

- 5 The other is a photocopy of a letter dated 7th July, 1971 from the Orthopaedic Department of the Royal Masonic Hospital which reads as follows:

10 “This patient came to see me on a visit to London because of persistent pain in his neck and down the right arm for six months. This is associated with impairment of sensation in the right and little fingers of the right hand.

15 On examination, his neck moves fairly freely in all directions. There was one or two trigger sports in the arm and forearm on the outer side and his biceps reflex is diminished. His X-Ray shows narrowing of the disc space between 06 and 07.

20 I have advised him to have some more traction when he gets home, and if he continues to have a lot of trouble, one might have to consider fusing the affected vertebrae. I would gladly see him again any time you wish”.

25 The respondent Authority replied to counsel for the applicant by letter dated 12th September, 1978 reminding him of the correspondence so far exchanged between the Authority and the applicant and informing him that the applicant failed to comply with his terms of employment and the directions given to him to resume his duties and concluded as follows:

30 “Οὕτω καὶ ἐν ὄψει τῶν ὡς ἄνω ἡ περίπτωσης τοῦ κ. Ἀνιλιάδη ὅστις ἐγκατέλειψε τὴν ὑπηρεσίαν ἐξετάζεται βάσει τῶν ὄρων τῆς παραχωρηθείσης ἀδείας καὶ τῶν κανονισμῶν τῆς Ἀρχῆς, οἰαδῆποτε δὲ ἐκ τῶν ὑστέρων, ἡδιὰ λόγους ὑγείας ἡ δικαιο-
λογία, δὲν δύναται νὰ γίνῃ δεκτὴ καὶ νὰ ἐπανορθῶσῃ τὴν ἀπέναντι τῆς ὑπηρεσίας στάσις του καθ’ ὅτι καὶ εἰς τὰς περιπτώσεις ἀσθενείας τοῦ προσωπικοῦ ὑπάρχουν οἱ σχετικοὶ κανονισμοὶ οἵτινες θὰ ἔπρεπε νὰ ἀκολουθηθοῦν”.

35 (“Therefore, in the light of the above, the case of Mr. Aniliades who left his work is considered on the basis of the conditions of the leave granted to him and the Regulations of the Authority, any allegation advanced after

the events as justification 'for reasons of health' cannot be accepted and restore and cure the effect of his conduct towards his employer because in case of illness of the personnel there are respective provisions in the Regulations which should have been followed").

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The applicant never returned to Cyprus to resume his duties and the respondent Authority by letter dated 22nd September, 1978 terminated applicant's employment as from the 20th September, 1978, in accordance with the Personnel Regulations of the Authority informing him at the same time that arrangements could be made for payment to him or to his attorney of all the benefits to which he was entitled in accordance with the Regulations of the Provident Fund of the monthly personnel of the Authority.

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In reply to such letter, counsel for applicant informed the respondent Authority by letter dated 10.11.1978 that applicant accepted such termination with the only reservation to claim from the respondent Authority compensation in respect of "meritorious services". Such letter reads as follows:

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"Ενετάλην παρά τοῦ πελάτου μου κ. Ἀηλιιάδη, νά ἀναφερθῶ εἰς τήν ἐπιστολήν Ὑμῶν ὑπό ἡμερ. 22ας Σεπτεμβρίου, 1978 καί εἰς ἀπάντησιν νά ἀναφέρω τά ἑξῆς:

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1. Ὁ ρηθεις πελάτης μου μέ πλήρη ἐπιφύλαξιν ἀπάντων τῶν δικαιωμάτων του ὅπως διεκδικήση παρά τῆς Ἀρχῆς ἀποζημιώσεις δι' εὐδόκιμον ὑπηρεσίαν, ἀποδέχεται ὅπως λάβη ἀπαντα τά ὑπόλοιπα ὠφελήματα ἅτινα δικαιούται συμφώνως ἰσχυόντων Κανονισμῶν.

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2. Πρὸς τοῦτο ἐπισυνημμένως ἀποστέλλω πρὸς ὑμᾶς φωτοαντίγραφον πληρεξούσιον ἐγγραφον δυνάμει τοῦ ὁποίου ὁ πληρεξούσιος ἀντιπρόσωπος ἐν Κύπρῳ τοῦ εἰρημένου πελάτου μου κ. Στέλιος Στυλιανίδης δικαιούται νά παραλάβη ἀπαντα τά ὠφελήματα τοῦ πελάτου μου, ὡς προεῖρηται, καί ὑπογράψῃ πᾶν ἀναγκαῖον ἐγγραφον ἢ ἀπόδειξιν πρὸςπραγμάτωσιν τοῦ σκοποῦ τούτου.

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3. Ὅθεν, καλεῖσθε ὅπως τὸ ταχύτερον ἐνεργήσητε διὰ τὴν πληρωμὴν πρὸς τὸν πληρεξούσιον ἀντιπρόσωπον τοῦ πελάτου μου τὰ δικαιούμενα ὠφελήματα ὡς προεῖρηται".

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("I have been instructed by my client Mr. Aniliades to

refer to your letter dated 22nd September, 1978 addressed to him and in reply to bring to your notice the following:

- 5 1. My said client with full reservation of all his rights to claim from the Authority compensation for 'meritorious service' accepts to receive all the other benefits to which he is entitled in accordance with the Regulations in force.
- 10 2. For such purpose, I enclose herewith photocopy of a general power of attorney by which the attorney in Cyprus of my said client, Mr. Stelios Stylianides is authorised to collect all the benefits to which my client is entitled as above, and sign any necessary document or receipt to give effect to such purpose.
- 15 3. You are, therefore, asked, as soon as possible to effect payment to the attorney of my client of the benefits to which he is entitled as hereinabove").

20 The respondent Authority paid to the applicant the benefits provided by the Provided Fund of the permanent monthly employees but refused to pay to him any compensation for "meritorious service". Hence, the present recourse.

The legal grounds on which the recourse is based, as set out therein are as follows:

- 25 "(a) The act and/or decision of the Respondent Authority to terminate the employment of the applicant as from the 20th September, 1978 is contrary to para. 3 of Article 21 of the General Regulations for the Personnel and in consequence it is illegal and devoid of any legal effect.
- 30 (b) The applicant served meritoriously for twenty-nine continuous years in the Respondent Authority (and also in Cable and Wireless). For such services he was entitled to payment of compensation for meritorious services. In the case of another employee, namely, Throumbos and under similar circumstances, such compensation was paid and in consequence, the failure of the Respondent Authority to pay the applicant similar compensation, creates a question of discrimination within the meaning of Article 28(2) of the Constitution".
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The respondent Authority by its opposition, relied on the following legal grounds:

- “(1) The act and/or decision complained of was lawful and was taken in accordance with the law and the respective General Regulations of the Authority, Article 21, paras. 2 & 3. 5
- (2) The Authority will rely on Article 9, para. 7 of the General Regulations and the reservation in the said paragraph whereby it is provided that the provisions for meritorious services are applicable only after mutual consent of the Authority and the employees. 10
- (3) The case of the applicant is entirely different from that of Throumbos because the Respondent Authority decided that the services of applicant were indispensable and the circumstances of his case were of such a nature that the Respondent Authority could not consent to the retirement of the applicant from the service ‘with the benefit of meritorious services’ ”. 15

Counsel for the applicant submitted that the applicant was entitled to sick leave on the basis of the medical certificates submitted by him which leave the respondent Authority refused to grant to him in breach of regulations 15–21 of the General Personnel Regulations and in consequence the act of the respondent Authority to terminate the employment of the applicant was unjustified and should be declared null and void. 20 25

Dealing with the second part of his prayer, that is, the failure of the Authority to pay him compensation for “meritorious services” counsel for applicant maintained that the respondent Authority by refusing such compensation, acted in contravention of Article 9(7) of the Regulations, in view of the fact that applicant due to his long and meritorious service was entitled to such compensation and that in similar cases, and in particular in the case of one ex employee of the Authority, namely, Throumbos the Authority, under similar circumstances, paid to him such compensation. 30 35

Counsel for the respondent Authority in his address submitted that the services of the applicant were terminated due to his failure to attend his work after his leave of absence expired and after he was repeatedly warned of the consequences of such

failure and that the allegation of medical grounds was an after-thought which, in any event, did not comply with the Regulations of the Authority concerning such cases. As to the question of compensation for meritorious services, it was his submission
5 that applicant was not entitled to it as of right but this was a discretion given to the respondent exercised through its personnel council who moves first and fills the relevant tables or lists with the names of members of the personnel who under the provisions of rule 7 are entitled to be placed on it. He also
10 differentiated the case of the applicant and that of Throumbos in that in the case of Throumbos he retired, having reached the normal age of retirement, whereas applicant's services were considered as still necessary to the respondent Authority and he was not an employee retiring after reaching the normal age
15 of retirement, but an employee whose services were terminated by the Authority after he refused to carry on his duties.

Extensive reference has been made by both counsel to the General Personnel Regulations of the Authority and, in particular, to the Articles concerning termination of employment,
20 sick leave, retirement on medical grounds and compensation for meritorious services. I shall therefore refer briefly to such Regulations.

Article 21 of the General Personnel Regulations deals with the retirement of employees of the Authority. Paragraph 3
25 of such Article which is material for the purposes of the present recourse, provides that absence of an employee from his work without justification for a period exceeding 30 working days continuously or at intervals within the same year, will be deemed as an act of resignation of the employee.

30 The provisions as to sick leave are contained in Articles 15, paragraphs 14-21. Under such provisions an employee is entitled to sick leave with pay for a maximum period of 42 days per annum (paragraph 4). In case of sickness extending over a period of 42 days sick leave can only be granted on the
35 advice of the doctor of the Authority or the Health Committee of the Authority, for a period upto a maximum of six months with full pay, after the expiration of which, at the discretion of the Health Committee of the Authority, it may be extended for a further period of six months on half pay. After the expiration
40 of such further period his services are either terminated

or if in the opinion of the Health Committee his health may be restored, then a further period of one year without pay may be granted (paragraph 15). In the case of employees who are abroad on approved leave of absence sick leave can only be granted if the procedure mentioned therein is adhered to. Such procedure is as follows: 5

The employee has to report to the Diplomatic Services of the Republic on whose request he has to be examined by a doctor recommended by them and who has to prepare a medical report which has to be submitted through them to the Authority. 10

As to the dismissal of an employee on medical grounds provision is made in Article 20 paragraph 1(b) that in cases of bodily or mental disease rendering the employee unable to perform his duties or any other duties in another kind of work, the employee is dismissed from the employment of the Authority. Such incapacity for work has to be ascertained by the Health Committee consisting of one Government doctor as Chairman, the doctor of the Authority and one doctor recommended by the Trade Union of the Personnel in which the employee belongs, or by the Personnel of the Authority. Provision is also made as to the examination of employees residing at the time away from the place of the principal office of the Authority and who cannot attend such examination by delegating the examination to two members of the Committee who have to go on the spot, examine the employee and submit their opinion. 15 20 25

Under Article 33 provision is made for disciplinary offences which give power to the Authority to dismiss an employee under the provisions of Article 20(1)(c). Under paragraph 4(b) of Article 33, there is provision that any unjustified absence from work or the failure of the employee to keep the time table in accordance with the Regulations applicable, or the unjustified delay or refusal of a person transferred to attend his new post, are considered to be disciplinary offences which may lead to the dismissal of such employee. 30

With the above Regulations in mind and the facts before me, I am coming to consider the first part of the recourse that is, whether the decision of the Authority to terminate the employment of the applicant is null and void and of no legal effect. 35

It is clear from the letters granting leave of absence to the

applicant that it was repeatedly pointed out to him that such leave of absence could not be extended for a period exceeding two years and that in case he did not resume his duties at the expiration of his leave of absence his services would be terminated.

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Though the applicant applied several times to the Authority for extension of his leave of absence giving as his grounds for such application personal reasons, such applications were refused and his attention was repeatedly drawn to the fact that if he failed to attend his work his services would be terminated. After the expiration of his leave of absence and after he was informed that the Authority was considering the termination of his services, the applicant on the 7th September, 1978 that is 24 days after his failure to attend his work, by a letter sent through his advocate, advanced for the first time reasons of health in support of his application for extension of his leave of absence, enclosing the two medical certificates referred to earlier in this judgment. One of these certificates refers to the condition of his health in 1971 and not to any sickness from which he suffered at the material time when he made his application. The other certificate is a certificate from a doctor in Athens which refers to complaints about chronic spondyloarthritis which required long-term treatment and it concludes that due to his health condition and his family circumstances he suffered nervous shock and is unable to work for the time being.

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It is clear that the procedure provided by Article 21(3) of the General Personnel Regulations has not been complied with. The applicant never reported the matter to the Diplomatic Authorities of the Republic and he has never supplied the respondent Authority with a medical certificate of a doctor to whom he had to be referred by the Diplomatic Services of the Republic. The certificate which was produced could not, in any event, be taken into consideration by the Authority. Irrespective of that, considering the whole correspondence between the parties up to the time of his failure to resume his duties and the termination of his employment, it is evident that the question of health was never raised by the applicant and I have no doubt that this was an afterthought for remedying the breach of his conditions of service which had already been committed and whereby his services were deemed as ended.

Notwithstanding the above, however, there is one more ground for which his claim under paragraph (1) of the recourse should fail. The applicant by his letter through his advocate dated 10.11.1978 the full text of which has already been mentioned, earlier in this judgment, accepted the termination of his employment, reserving only his right to claim compensation in respect of "meritorious services". Therefore, by accepting such termination of employment without any reservation as to any other claim he is estopped from alleging that the act of the Authority by terminating his employment is null and void.

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I come now to the second leg of the recourse which refers to his claim for compensation for "meritorious services". The relevant provision to which counsel have referred in respect of compensation for meritorious services, is Article 9, paragraph 7(d). Under such provision, the Personnel Council, in addition to its powers contained in paragraphs (a) (b) and (c) concerning the preparation of lists of employees entitled to promotion and those who should remain at the same post, is empowered to prepare lists of employees who have ended their career satisfactorily and, who are entitled to meritorious services benefit. There is, however, an express provision to such paragraph as follows:

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"Νοεῖται ὅτι αἱ διατάξεις περὶ εὐδοκίμου ἀφυπηρητήσεως δι' ἅπαντας τοὺς βαθμοὺς τοῦ Προσωπικοῦ ἐφαρμόζονται μόνον εἰς περιπτώσεις ἀμοιβαίας συγκαταθέσεως (Ἀρχῆς καὶ Ὑπαλλήλων)".

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("Provided that the provisions for meritorious retirement in respect of all ranks of the personnel are applicable only in cases of mutual consent (Authority and employees)").

Further, provision is made under paragraph 15 of Article 9 that those employees who have been considered as having completed their career meritoriously are retired compulsorily in accordance with Article 20, paragraph (1)(f) of the Regulations which deals with the dismissal of the employees of the Authority. It is clear from the said Regulations that for a person to be placed on the list of employees who have meritoriously completed their career, there must be a mutual agreement of the employee and the Authority in view of the effect that such emplacement will have on the continuation of employ-

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ment of the employee as the result of such emplacement is the compulsory retirement of the employee.

5 In the present case it is clear that applicant never applied to the Authority for his emplacement on such list in view of his retirement or that there ever was any mutual agreement to that end between the Authority and the applicant. The services of the applicant were terminated as a result of his failure to resume his duties which were considered by the Authority as essential and had to be continued.

10 In the case of Throumbos to which reference has been made by the applicant, the procedure contemplated by the Regulations was properly followed and his name was included in the list of personnel who meritoriously completed their career by mutual consent and upon his emplacement on such list he
15 compulsorily retired from the service of the respondent Authority. The respondent Authority in refusing to pay the applicant any compensation for meritorious services did not act either arbitrarily or in breach of the Regulations, as the name of the applicant did not appear on the list of persons entitled to such
20 benefit in accordance with the procedure contemplated by the Regulations but his services had been terminated due to his failure to resume his duties, as I have already mentioned in this judgment.

25 In the result, this recourse fails but in the circumstances of the case, I make no order for costs.

Application dismissed. No order as to costs.