

1982 September 1

[TRIANTAFYLLOIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

YIANNAKIS LOUCA,

*Applicant,*

v.

THE PRESIDENT OF THE REPUBLIC,

*Respondent.*

(Case No. 32/82).

5 *Public Service Commission—Member of—Appointed under Article 124 of the Constitution—Reappointed as member of the Public Service Commission created by means of section 4 of the Public Service Law, 1967 (Law 33/67)—Whether his services can be terminated by the President of the Republic on the ground of misconduct, contrary to section 8 of Law 33/67—Whether Article 124.5 of the Constitution continues to be operative—Directions for re-opening of hearing of recourse in order to hear further argument on certain issues.*

10       The applicant in this recourse challenged the decision of the respondent President of the Republic to terminate his services as a member of the Public Service Commission and, also, to appoint as members of the Commission two other persons. The applicant was first appointed, under Article 124 of the Constitution, as a member of the Public Service Commission on 15 November 4, 1960 and he continued to be a member of the Commission until his services were terminated as above. He was last reappointed, under section 4\* of the Public Service Law, 1967 (Law 33/67) on June 20, 1979, for the period commencing on July 1, 1979 and ending on June 30, 1985. The 20 sub judice termination of his services was made under the powers granted to the President of the Republic by virtue of s.4(3) of Law 33/67 because the applicant was engaged in business

\* Section 4 is quoted at pp. 908–909 post.

ventures, contrary to section 8 of Law 33/67 and it was in the Public interest to terminate the services of the applicant on this ground. Following the conclusion of the hearing the Court reserved its judgment but as , inter alia:

- (a) There was nothing in the relevant Articles of the Constitution which empowered the President of the Republic to terminate the appointment of a member of the Public Service Commission in the public interest, as it is laid down in section 4(3) of Law 33/67. 5
- (b) It was obvious that the power of the President of the Republic under section 4(3) related to members of the Public Service Commission which was created by Law 33/67. 10
- (c) There could be no doubt that when the applicant accepted reappointment under Law 33/67 as a member of such Public Service Commission the provisions of section 4(3) became applicable to him even though he had initially been appointed as a member of the Public Service Commission which was set up under Article 124 of the Constitution. 15  
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- (d) Neither, however, the President of the Republic nor the Council of Ministers are empowered to terminate the services of a member of the Public Service Commission on the ground of misconduct contrary to the said section 8, whereas in relation to conduct contrary to section 13(1) of Law 33/67 the President of the Republic is expressly empowered to terminate the appointment of a member of the Commission. 25
- (e) From the very much limited in scope special provision in section 13(1) of Law 33/67, there exists no provision of a general nature as regards the termination of the services, on the ground of misconduct, of a member of the Public Service Commission set up under it. 30
- (f) With regard to the Public Service Commission envisaged by Article 124 of the Constitution a member thereof could be removed from office on grounds of misconduct (see Articles 124.5 and 153.7 and (8) of the Constitu- 35

tion) the Court directed reopening of the hearing of the recourse with a view to giving to counsel for the parties opportunity to advance further arguments on issues relating to (a)-(f) above (pp. 912-913 post).

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*Order accordingly.*

Cases referred to:

*Koupepidis v. The Republic* (1980) 3 C.L.R. 258 at p. 263.

### Recourse.

10 Recourse against the decisions of the respondent President of the Republic whereby applicant's services were terminated and the interested parties were appointed as members of the Public Service Commission.

*E. Efstathiou with A. Gavriel (Miss)*, for the applicant.

15 *Cl. Antoniadis with R. Gavrielides*, Senior Counsel of the Republic, for the respondent.

*X. Xenopoulos*, for the interested parties.

*Cur. adv. vult.*

20 TRIANTAFYLIDIS P. read the following judgment. In this case, which was filed on January 20, 1982, the applicant, by the motion for relief, as it was amended on February 25, 1982, challenges, in effect, the decisions of the respondent President of the Republic to terminate his services, as from January 18, 1982, as a member of the Public Service Commission and, also, to appoint as members of the said Commission Yiannis Serghides and Christakis HadjiProdromou, who are interested parties  
25 in the present proceedings.

The applicant was first appointed, under Article 124 of the Constitution, as a member of the Public Service Commission on November 4, 1960, and he continued to be a member of  
30 the Commission until his services were terminated as aforesaid. He was last reappointed, under section 4 of the Public Service Law, 1967 (Law 33/67), on June 20, 1979, for the period commencing on July 1, 1979 and ending on June 30, 1985.

35 It is common ground that the President of the Republic terminated the services of the applicant as from January 18, 1982, by a letter dated January 15, 1982. The text of the said letter is as follows:

“Σᾶς πληροφορῶ μὲ τὴν παρούσα ἐπιστολὴ μου ὅτι, δυνάμει

του άρθρου 4, έδαφιο 3, του περι Δημοσίας 'Υπηρεσίας Νόμου του 1967, τερματίζω τὸ διορισμὸ σας ὡς μέλους τῆς 'Επιτροπῆς Δημοσίας 'Υπηρεσίας ἀπὸ τῆς 18ης 'Ιανουαρίου 1982.

Μὲ τὴν εὐκαιρία αὐτὴ ἐκφράζω εὐχαριστίες γιὰ τὶς ὑπηρεσίες ποὺ προσφέρατε". 5

("I inform you by this letter that, by virtue of section 4, subsection 3, of the Public Service Law of 1967, I terminate your appointment as a member of the Public Service Commission as from January 18, 1982. 10

I take occasion to express thanks for the services which you have rendered").

The termination of the services of the applicant was published (see No. 87) in the Official Gazette of the Republic of January 22, 1982. 15

On January 15, 1982, the President of the Republic appointed as members of the Commission the two interested parties and their appointments were published (see No. 86) in the Official Gazette of January 22, 1982.

It is useful to set out, at this stage, the relevant provisions of Law 33/67, which are subsections (1), (2) and (3) of section 4 and section 8: 20

"4.-(1) Συνιστᾶται 'Επιτροπὴ Δημοσίας 'Υπηρεσίας συνισταμένη ἐξ ἑνὸς Προέδρου καὶ τεσσάρων ἑτέρων μελῶν διοριζομένων ὑπὸ τοῦ Προέδρου τῆς Δημοκρατίας. 25

(2) 'Η θητεία τῆς 'Επιτροπῆς εἶναι ἑξαετῆς.

(3) 'Ο Πρόεδρος τῆς Δημοκρατίας δύναται, ἀνεξαρτήτως τῆς διατάξεως τοῦ ἐδαφίου (1) τοῦ άρθρου 13, καθ' οἷονδήποτε χρόνον νὰ τερματίσῃ τὸν διορισμὸν τοῦ Προέδρου ἢ οἰουδήποτε ἑτέρου μέλους τῆς 'Επιτροπῆς, ἐὰν θεωρῇ ὅτι τοῦτο εἶναι πρὸς τὸ δημόσιον συμφέρον: 30

Νοεῖται ὅτι πᾶν μέλος τῆς 'Επιτροπῆς δύναται νὰ ὑποβάλλῃ ὅποτεδήποτε ἰδιογράφως παραίτησιν ἀπευθυνομένην πρὸς τὸν Πρόεδρον τῆς Δημοκρατίας".

("4.-(1) There shall be a Public Service Commission consist- 35

ing of a Chairman and four other members appointed by the President of the Republic.

(2) The term of office of the Commission shall be six years.

5 (3) The President of the Republic may, notwithstanding the provision of sub-section (1) of section 13, at any time terminate the appointment of the Chairman or of any other member of the Commission if he considers it to be in the public interest:

10 Provided that any member of the Commission may at any time resign his office by writing under his hand addressed to the President of the Republic”).

15 “8. ‘Ο Πρόεδρος και τὰ λοιπὰ μέλη τῆς Ἐπιτροπῆς δὲν ἐπιτρέπεται νὰ ἀσκῶσιν οἰουδήποτε ἐπάγγελμα ἢ ἐπιτήδευμα ἢ νὰ ἀσχολῶνται εἰς οἰανδήποτε ἐμπορικὴν, βιομηχανικὴν ἢ γεωργικὴν ἐπιχείρησιν ἢ νὰ δέχωνται οἰανδήποτε ἄλλην ἐπὶ πληρωμῇ ἀπασχόλησιν ἐκτὸς τῶν καθηκόντων αὐτῶν, εἰμὴ μόνον τῇ ἀδείᾳ τοῦ Ἑπιτροπικοῦ Συμβουλίου”.

20 (“8. Except with the consent of the Council of Ministers, the Chairman and the other members of the Commission shall not engage in any trade, profession or business or employ themselves in any commercial, industrial or agricultural undertaking, nor shall they accept on payment any other employment or engagement outside their duties”).

25 Section 13(1) of Law 33/67, which is referred to in section 4(3) of the said Law, reads as follows:

30 “13.—(1) Ὄταν ὁ Πρόεδρος ἢ ἕτερον μέλος τῆς Ἐπιτροπῆς παύσῃ νὰ κατέχη τὰ διὰ τὴν θέσιν αὐτοῦ ἀπαιτούμενα προσόντα ἢ ἀπουσιάξῃ ἀδικαιολογῆτως ἐκ τριῶν συνεχῶν συνεδριάσεων τῆς Ἐπιτροπῆς, ὁ Πρόεδρος τῆς Δημοκρατίας τερματίζει τὸν διορισμὸν αὐτοῦ καὶ προβαίνει εἰς νέον διορισμὸν διὰ τὸ ὑπόλοιπον χρονικὸν διάστημα τῆς θητείας τῆς Ἐπιτροπῆς”.

35 (“13.—(1) Where the Chairman or any other member of the Commission becomes disqualified from holding office or is unjustifiably absent from three consecutive meetings of the Commission, the President of the Republic shall

terminate his appointment and proceed to make a new appointment for the unexpired period of the term of office of the Commission”).

According to the facts stated in the Application in the present recourse, which were verified as true by means of an affidavit of the applicant dated January 20, 1982, the applicant was summoned to a meeting with the President of the Republic on January 15, 1982, at which the President informed him that it had been decided to reconstitute the Public Service Commission and asked the applicant to submit his resignation. When the applicant refused to do so the President of the Republic told him that, though he had nothing against him, he would have to terminate his appointment; and thanked him for his services. Later, on that same day, the applicant received the aforementioned letter of termination of his services.

In the Opposition the above version of the applicant is denied and it is stated that the President of the Republic, having been informed that the applicant was engaged in business ventures contrary to section 8 of Law 33/67 and considering that it was in the public interest to terminate, on this ground, the services of the applicant as a member of the Public Service Commission, called the applicant, on January 15, 1982, to his office and informed him accordingly.

In respect of the version which is set out, as above, in the Opposition no evidence was adduced by way of an affidavit or orally.

It has been contended by counsel for the respondent that the termination, as aforesaid, of the services of the applicant by the President of the Republic was not amenable within the judicial control exercised under Article 146 of the Constitution, because it is an “act of Government”.

It is to be noted that the power to appoint a member of the Public Service Commission was vested in the President and the Vice-President of the Republic by Article 47(f) of the Constitution in respect of the Public Service Commission envisaged by Article 124 of the Constitution, which is no longer functioning, and such power is now vested in the President of the Republic under section 4(1) of Law 33/67 in respect of the

Public Service Commission which was set up under this Law and which, as already decided in the past by this Court, is not the same organ as that which is envisaged by Article 124 of the Constitution (see, inter alia, *Koupepides v. The Republic*, 5 (1980) 3 C.L.R. 258, 263).

As regards the Public Service Commission, which was envisaged by Article 124 of the Constitution, the following provision was made by paragraph 5 of the said Article:

10 “5. Τὰ μέλη τῆς ἐπιτροπῆς δὲν δύνανται νὰ ἀπολυθῶσιν, εἰμὴ ὑφ’ οὗς ὄρους καὶ καθ’ ὄν τρόπον οἱ δικασταὶ τοῦ Ἀνωτάτου Δικαστηρίου”.

(“5. A member of the Commission shall not be removed from office except on the like grounds and in the like manner as a judge of the High Court”).

15 In my view the effect of the said paragraph 5 was that it rendered applicable, in relation to the termination of the services of members of the Public Service Commission appointed under Article 124 of the Constitution, the relevant provisions of paragraphs 7 and 8 of Article 153 of the Constitution, under which 20 misconduct is one of the grounds for such termination.

There is nothing in the relevant Articles of the Constitution which empowers the President of the Republic to terminate the appointment of a member of the Public Service Commission in the public interest, as it is laid down in section 4(3) of Law 25 33/67.

It is obvious that the aforesaid power of the President of the Republic under section 4(3), above, relates to members of the Public Service Commission which was created by Law 33/67; and there can be no doubt that when the applicant 30 accepted reappointment under Law 33/67 as a member of such Public Service Commission the provisions of section 4(3) became applicable to him even though he had initially been appointed as a member of the Public Service Commission which was set up under Article 124 of the Constitution.

35 Had it not been for the fact that there was put forward in the Opposition the version that the services of the applicant were terminated due to contraventions by him of section 8

of Law 33/67, I would have had to decide, first, as a preliminary issue of jurisdiction, whether or not the termination of his services in the public interest, under section 4(3) of Law 33/67, is an "act of Government" outside the ambit of the revisional jurisdiction created by Article 146 of the Constitution. 5

In view, however, of the said version in the Opposition, I am faced with the situation that the services of the applicant, as a member of the Public Service Commission which was set up under Law 33/67, were terminated under section 4(3) of such Law because of misconduct consisting of alleged breaches 10 by him of the provisions of section 8 of the same Law.

It has to be noted that the organ empowered, under section 8 of Law 33/67, to permit the applicant to engage in business ventures is not the President of the Republic but the Council of Ministers; neither, however, the President of the Republic 15 nor the Council of Ministers are empowered to terminate the services of a member of the Public Service Commission on the ground of misconduct contrary to the said section 8, whereas in relation to conduct contrary to section 13(1) of Law 33/67 the President of the Republic is expressly empowered to termi- 20 nate the appointment of a member of the Commission.

It is to be observed, further, that, apart from the very much limited in scope special provision in section 13(1) of Law 33/67, there exists no provision of a general nature as regards the termination of the services, on the ground of misconduct, of 25 a member of the Public Service Commission set up under it.

Having considered carefully all the material at present before me I find that in fairness to them I should give to counsel for the parties the opportunity to advance further arguments on the following issues: 30

(1) Since no specific provision is made in Law 33/67 about the termination of the services of a member of the Public Service Commission on the ground of misconduct, such as a contra- 35 vention of section 8 of Law 33/67, could it have been the intention of the Legislature that in this respect paragraph 5 of Article 124 of the Constitution was to continue to be operative or is such misconduct to be treated as a matter of public interest in the sense of section 4(3) of Law 33/67.



(2) Assuming that paragraph 5 of Article 124 of the Constitution has, in effect, been substituted by section 4(3) of Law 33/67, was such a course justifiable on the basis of the "law of necessity" which led to the setting up, under Law 33/67, of a new Public Service Commission.

(3) Assuming that a contravention of section 8 of Law 33/67 comes within the notion of public interest in section 4(3) of the same Law, can the services of a member of the Public Service Commission be terminated by the President of the Republic for such a contravention without the member concerned—in this instance the applicant—being given, in accordance with the rules of natural justice, an opportunity to refute the accusations against him in this connection.

(4) Is the termination of the services of a member of the Public Service Commission under section 4(3) of Law 33/67 for a contravention of section 8 of the same Law an "act of Government" outside the ambit of the jurisdiction of Article 146 of the Constitution, even assuming that otherwise the termination of the services of a member of the Public Service Commission, under the said section 4(3), in the public interest, for a reason other than contravention of section 8, could be found to be an "act of Government".

(5) Assuming that I find that the services of the applicant were wrongly terminated do I have to terminate the appointments of both interested parties or of one of them, and in such a case of whom.

In the light of the foregoing I reopen the hearing of this case accordingly.

*Order as above.*