

1984 September 14

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS MAVROMMATIS AND OTHERS,
Applicants,

v.

1. THE LAND CONSOLIDATION AUTHORITY,
2. THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE AND/OR
THE MINISTER OF AGRICULTURE AND NATURAL
RESOURCES,

Respondents.

(Case No. 420/83).

OLGA MAVROMMATI,
Applicant,

v.

THE LAND CONSOLIDATION AUTHORITY,
Respondents.

(Case No. 447/83).

GEORGHIOS ELIADES,
Applicant,

v.

THE LAND CONSOLIDATION AUTHORITY,
Respondents.

(Case No. 480/83).

Administrative Law—"Omission" in the sense of Article 146 of the Constitution—Meaning.

Legitimate interest—Article 146.2 of the Constitution—Acceptance of administrative act unreservedly—Deprives acceptor of a legitimate interest entitling him to make a recourse against it—

Acceptance of a decision by Trade Union—Deprives the Trade Union and its members of any legitimate interest in the sense of the above Article.

5 *Industrial Relations—Collective Agreement—Does not create rights of public law.*

Land Consolidation Law, 1969 (Law 24/69)—Land Consolidation Authority—Acts or decisions of, relating to the structure of the services and the posts of the Authority—Are subject to the approval of the Council of Ministers—Section 4(1)(b) of the Law.

10 *Legislative Power—Does not consist only of the enactment of laws by the legislative organ but, also, includes preparatory and ancillary activities in the course of the legislative process—Consideration by the Council of Ministers of a bill, to be introduced to the House of Representatives, is an act preparatory to legislation*
 15 *—And does not amount to the exercise of “executive or administrative authority” in the sense of Article 146.1 of the Constitution.*

20 The applicants were servants of respondent 1, the Land Consolidation Authority, which is a Corporation of Public Law established by the Land Consolidation Law, 1969 (Law 24/69).

After negotiations between the trade union of the servants of the Authority and respondent No. 1 a collective agreement was reached for the job evaluation and conversion of the salaries of the servants of the Authority, including the applicants.

25 The Council of Ministers, however, decided to emplace the servants of the Authority in the civil service of the Republic and did not approve steps for the implementation of the collective agreement. On the 26th July, 1982, the trade union of the applicants accepted the emplacement of the servants of the
 30 Authority in the public service subject to certain terms, and agreed to the suspension of the job evaluation and restructure of the service of the respondent Authority. The agreement between the union and the Director of Public Administration and Personnel dated 25th April, 1983 was finally approved at
 35 a general meeting of the members of the trade union concerned.

The above agreement was approved by the Council of Ministers by its decision of 23.6.1983; and in furtherance of this

decision a bill was introduced to the House of Representatives by the Minister of Agriculture and Natural Resources providing inter alia, for the establishment of a Consolidation Department under the Ministry of Agriculture and Natural Resources.

On 20th June, 1983 counsel for the applicants addressed a letter to the Minister of Finance, the Minister of Agriculture and Natural Resources and the Chairman of the Land Consolidation Authority, objecting to the intended emplacement of agronomists/topographers engineers of the Authority on Government scales A8-A10 by the intended emplacement of the servants of the respondent Authority in the public service. 5 10

On 26th August, 1983, he addressed another letter to the Chairman of the Authority in which he referred to the proposal by the Ministry of Finance for the emplacement of the servants of the Authority in the public service and the intended restructure of the service of the Authority, alleging that this was unlawful. 15

In reply the Director-General of the Ministry of Agriculture and Natural Resources by his letter* of 16.9.1983 informed Counsel that the officers of the Land Consolidation Authority continue to serve under the terms and conditions of service, the schemes of service and the scales at which they had been originally appointed; that following negotiations they decided to be emplaced in the Public Service; that applicants will be informed of their scale of emplacement after the approval of the relevant Bill and the completion of the required formalities; and that the question of the structure of the various posts in the new Government Land Consolidation Department is within the competence of the Minister of Finance. 20 25

Thereafter applicants filed the above recourses for a declaration of the Court declaring as invalid and/or illegal the continuous refusal and/or omission of respondent No. 1 to proceed with the evaluation/reorganization of the posts, scales and salaries of the applicants prior to the emplacement of applicants in the Public Service following the amendment of the Law. 30

Counsel for the respondents in his opposition contended that the act or omission complained of was not a decision, act or 35

The letter is quoted at pp. 1019-1020 post.

omission within the sense of Article 146.1 of the Constitution and, therefore, was not justiciable; and further that the applicants lacked legitimate interest as they consented to their em-
 5 placement and/or posting on the corresponding scales of the civil service.

On the preliminary objection:

Held, (1) that an "omission" in the sense of Article 146 of the Constitution means an omission to do something required by Law, as distinct from the non-doing of a particular act
 10 or the non-taking of a particular course as a result of the exercise of discretionary powers; and that "omission" presupposes a duty imposed by law and failure to perform that duty.

(2) That if a person accepts an administrative act or omission unreservedly, he no longer possesses a legitimate interest entitling him to make a recourse against it in the sense of Article 146.2 of the Constitution; that acceptance by the trade union
 15 of the new agreement, as aforesaid, is acceptance by each one of the members separately and at any rate deprives their union and the applicants from any legitimate interest, if they had any; that the applicants were not adversely affected; that they continued to be on the scales that they were, and they have
 20 no legitimate interest; and that accordingly act or omission complained of is not justiciable.

Held, further, (1) that a collective labour agreement does not create rights of public law; that, moreover, any act or decision
 25 of the Authority relating to the structure of the services and the posts of the Authority, the scheme of service, the general rules of service, etc. are subject to the approval of the Council of Ministers (see section 4(1)(b) of the Law Consolidation Law, 1969 (Law 24/69)); that failing such approval they are not legally
 30 valid, not binding even on the Authority and not creating any legal results; accordingly the applicants derived no right from the alleged collective agreement.

(2) That legislative power consists not only of the deliberation and enactment of laws by the legislative organs but, in a wider
 35 sense, it also includes the preparatory and ancillary activities in the course of the legislative process; that, therefore, the consideration by the Council of Ministers of the Bill in question

to be introduced to the House of Representatives was an act preparatory to legislation and for this reason it does not amount to the exercise of "executive or administrative authority" in the sense in which such words are used in paragraph 1 of Article 146.

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Applications dismissed.

Cases referred to:

- Kontemeniotis v. C.B.C.* (1983) 3 C.L.R. 1027 at p. 1032;
Paphitis and Others v. Republic (1983) 3 C.L.R. 255 at p. 261;
Republic v. Menelaou (1982) 3 C.L.R. 419 at p. 431; 10
Cyprus Tannery v. Republic (1980) 3 C.L.R. 405;
Argyrou and Others v. Republic (1983) 3 C.L.R. 474 at p. 484;
Myriantthis v. Republic (1977) 3 C.L.R. 165;
Tomboli v. CYTA (1982) 3 C.L.R. 149;
Ionides v. Republic (1979) 3 C.L.R. 679; 15
Papaphilippou v. Republic, 1 R.S.C.C. 62.

Recourses.

Recourses for a declaration that the refusal and/or omission of respondent No. 1 to proceed with the evaluation/restructuring of posts, scales and salaries of the applicants before their, by the amendment of the law, emplacement in the Public Service is null and void. 20

A. S. Angelides, for applicants in Cases Nos. 420/83 and 447/83.

P. Angelides, for applicant in Case No. 480/83. 25

Ch. Kyriakides, Counsel of the Republic, for the respondents.

Cur. adv. vult.

STYLIANIDES J. read the following judgment. The applicants, servants of respondent No. 1, the Land Consolidation Authority, were and are members of a trade union. 30

Respondent No. 1 is a corporation of public law, established by Law No. 24/69. Its functions are set out in s.4 thereof. Section 4(1)(b), as amended by Law No. 8/73, reads:-

"4.-(1) Τηρουμένων τῶν διατάξεων τοῦ παρόντος Νόμου ἡ Ἀρχὴ ἀσκεῖ τὰς λειτουργίας:

35

(α) -----

(β) Τῆ ἐγκρίσει τοῦ Ὑπουργικοῦ Συμβουλίου, διορίζει ὑπαλλήλους καὶ ἀντιπροσώπους πρὸς πραγμάτων τῶν σκοπῶν τῆς Ἀρχῆς, καὶ διὰ Κανονισμῶν καθορίζει—

5 (i) τὴν διάρθρωσιν τῶν ὑπηρεσιῶν καὶ τὰς θέσεις τῆς Ἀρχῆς, καὶ καταρτίζει σχέδια ὑπηρεσίας διὰ τὰς τοιαύτας θέσεις.

10 (ii) τοὺς γενικοὺς ἔρους ὑπηρεσίας τῶν ὑπαλλήλων καὶ ἀντιπροσώπων τῆς Ἀρχῆς, τὰ ὠφελήματα ἀφυπηρετήσεως τῶν ὑπαλλήλων αὐτῆς ὡς καὶ τὰ τῆς ἐπ' αὐτῶν ἀσκήσεως πειθαρχικῆς ἐξουσίας.

15 (iii) περὶ ἰδρύσεως διὰ τοὺς ὑπαλλήλους τῆς Ἀρχῆς ταμείου προνοίας, ταμείου ἰατροφαρμακευτικῆς περιθάλψεως καὶ οἰουδήποτε ἑτέρου ταμείου τὸ ὅποῖον ἡ Ἀρχὴ θὰ ἔκρινεν ἀναγκαῖον διὰ τοὺς σκοποὺς τῆς ὑπηρεσίας αὐτῶν:

20 Νοεῖται ὅτι ἡ Ἀρχὴ δύναται, ὡς ἤθελεν ὀρισθῆ διὰ καινισμῶν, νὰ ἀναθέτῃ τὴν ἀσκήσιν τῶν δυνάμει τῶν ὑποπαραγράφων (i) καὶ (ii) τῆς παρούσης παραγράφου ἀρμοδιοτήτων αὐτῆς εἰς Ἐπιτροπὴν συνισταμένην ἐκ τοῦ Προέδρου τῆς Ἀρχῆς καὶ οὐχὶ ἐλιγωτέρων τῶν τεσσάρων ἐκ τῶν μελῶν αὐτῆς”.

“(—(1) Subject to the provisions of this Law the Authority shall exercise the following functions:

25 (a) _____

(b) with the approval of the Council of Ministers to appoint officers and agents for accomplishing the objects of the Authority and regulate by rules—

30 (i) the structure of the services and posts and prepare schemes of service for such posts;

(ii) the general conditions of service of the officers and agents of the Authority, the retirement benefits of its officers as well as the exercise of disciplinary control over them;

35 (iii) the establishment of the officers of the Authority of a provident fund, a medical treatment fund and any other fund which the Authority might

consider necessary for the purposes of their service:

Provided that the Authority may, as might be fixed by rules, delegate the exercise of its powers under sub-*paras.* (i) and (ii) of this paragraph to a committee composed of the Chairman of the Authority and not less than four of its members”).

After prolonged negotiations between the trade union of the servants of the Authority and respondent No. 1 a collective agreement was reached for the job evaluation and conversion of the salaries of the servants of the Authority, including certainly the applicants.

From the material before me it is plain that the Council of Ministers decided to emplace the servants of the Authority in the civil service of the Republic and did not approve steps for the implementation of the collective agreement; on the contrary, it discouraged the Authority from doing so. Thus, the approval of the Council of Ministers for this collective agreement, which is a prerequisite, was not given.

On 26th July, 1982, the trade union by Appendix 15 accepted the emplacement of the servants of the Authority in the public service subject to certain terms, and agreed to the suspension of the job evaluation and restructure of the service of the respondent Authority.

The agreement between the union and the Director of Public Administration and Personnel dated 25th April, 1983 (Appendix 19) was finally approved at a general meeting of the members of the trade union concerned, and the union sent the following letter on 19th May, 1983 (Appendix 20):-

“Θέμα: Ένταξη των Υπαλλήλων της Αρχής Αναδασμού στη Δημόσια Υπηρεσία

Επιθυμούμε να αναφερθούμε στις επιστολές σας με ημ. 25.4.1983 και 14.5.1983 με αρ. φακ. 6003/71/C/II σχετικά με το πιο πάνω θέμα και να σας πληροφορήσουμε τα εξής:

1. Η γενική συνέλευση των μελών της Ε.Υ.Α.Α.Κ. αποφάσισε να αποδεχθεί την ένταξη των υπαλλήλων της Αρχής Αναδασμού στη Δημόσια Υπηρεσία σύμφωνα με τις πρόνοιες

και όρους που περιλαμβάνονται στην έκθεση της Τεχνικής Επιτροπής που ετοιμάστηκε για το θέμα, καθώς και τους όρους που συμφωνήθηκαν κατά τις διαπραγματεύσεις μεταξύ του Ανώτερου Λειτουργού της Υπηρεσίας Δημόσιας Διοίκησης και Προσωπικού κ. Δ. Αβραάμ και της Διοικουσας Επιτροπής της Ε.Υ.Α.Α.Κ., που μας στάληκαν με την επιστολή σας ημ. 25.4.1983 και αρ. φακ. 6008/71/C/II, με τις ακόλουθες προϋποθέσεις:

- 5
- 10 (α) Στον όρο 'οργανωτική διάρθρωση', που αναφέρεται στη παράγραφο (γ) του συνημμένου κειμένου στην επιστολή σας με ημ. 25.4.1983 με αρ. φακ. 6008/71/C/II, εννοούμε ότι περιλαμβάνονται: I. Η οργανωτική διάρθρωση του νέου Τμήματος Αναδασμού, II. Η βαθμολογική αναδιάρθρωση των θέσεων των υπαλλήλων του νέου Τμήματος.
- 15
- (β) Κατά τη βαθμολογική αναδιάρθρωση των θέσεων θα εφαρμοστούν τα ίδια κριτήρια και οι ίδιες φόρμουλες που εφαρμόστηκαν στη Δημόσια Υπηρεσία.
- 20 2. Για το θέμα του Ταμείου Ευημερίας σας πληροφορούμε ότι αποδεχόμαστε την προσφορά που μας γίνεται με την επιστολή σας ημερ. 14.5.1983 και αρ. φακ. 6008/71/C/II.
- 25 3. Σας παρακαλούμε να πρώωθήσετε τη διαδικασία για την ένταξη των υπαλλήλων της Αρχής στη Δημόσια Υπηρεσία, το συντομότερο και οπωσδήποτε μέσα στα πλαίσια που αναφέρονται στη παράγραφο (ι) του συνημμένου κειμένου στην επιστολή σας με ημερ. 25.4.1983 και αρ. 6008/71/C/II.
- 30 4. Γίνεται αντιληπτό ότι, όπως συμφωνήθηκε με τον κο. Δ. Αβραάμ, η Δ. Επιτροπή θα εφοδιασθεί με αντίγραφο του Νομοσχεδίου που θα ετοιμαστεί, προτού τούτο υποβληθεί στο Υπουργικό Συμβούλιο".

("Subject: *Emplacement of Officers of the
Land Consolidation Authority
in the Public Service*

35 We wish to refer to your letters dated 25.4.1983 and 14.5.1983 under File No. 6003/71/C/II with reference to the above subject and to inform you as follows:

1. The general meeting of the members of E.Y.A.A.K.

decided to accept the emplacement of the officers of the Land Consolidation Authority in the Public Service in accordance with the provisions and conditions included in the report of the Technical Committee prepared on the subject, as well as the conditions agreed upon during the negotiations between a Senior Officer of the Public Administration and Personnel Service Mr. D. Avraam and the managing Committee of E.Y.A.A.K. sent to us by your letter dated 25.4.1983 and file No. 6008/71/C/II on the following conditions:

- (a) In the term 'organic structure', which is referred to in paragraph (c) of the text of your letter dated 25.4.1983 and file No. 6008/71/C/II, we understand that it includes: I. The organic structure of the new Section of Land Consolidation, II. The evaluation of the restructuring of the posts of the officers of the new Section.
- (b) To use at the evaluation of the restructuring of the posts the same criteria and the same formulas used in the Public Service.
2. As regards the subject of the welfare fund we inform you that we accept the offer made to us by your letter dated 14.5.1983, file No. 6008/71/C/II.
3. You are requested to move the procedure for the emplacement of the officers of the Authority in the Public Service the soonest possible and in any way within the framework referred to in paragraph (i) of the attached text of your letter dated 25.4.1983, ref. No. 6008/71/C/II.
4. It is to be understood that, as agreed with Mr. D. Avraam, the managing committee will be supplied with a copy of the Bill to be prepared before it is submitted to the Council of Ministers").

The contents of the said agreement were submitted to the Council of Ministers by the Ministry of Finance and by its Decision No. 23.326 dated 23.6.1983 it approved and authorized the Minister of Finance to take the necessary steps for the implementation of its decision and the agreement approved. Thereafter, in furtherance of the said decision the Council of Ministers

by Decision No. 23.332 (Appendix 24) approved a Bill and authorised the Minister of Agriculture & Natural Resources to introduce it to the House of Representatives. This Bill was published in Supplement No. 6 to the Official Gazette of 15.7.1983. It is Appendix No. 25 to the opposition. The short title thereof is "The Land Consolidation of Rural Properties (Amendment) Law, 1983".

The provisions of this Bill relevant to this case are that a Consolidation Department is established under the Ministry of Agriculture & Natural Resources. A new s. 54 is added that reads as follows:-

"54.-(1) Παν πρόσωπον το οποίον αμέσως προ της ημερομηνίας ενάρξεως της ισχύος του παρόντος Νόμου ετέλη εις την υπηρεσίαν της Αρχής ως μέλος του προσωπικού αυτής μεταφέρεται από της ημερομηνίας ταύτης, εις την υπηρεσίαν της Δημοκρατίας και τοποθετείται έπειτα υπό της αρμοδίας αρχής της Δημοκρατίας ανεξαρτήτως οιασδήποτε διατάξεως οιοιδήποτε ετέρου νόμου, εις θέσιν η οποία θα περιλαμβάνεται εις τον προϋπολογισμόν του Τμήματος, και διά δε το εναλλάξιμον και λογιστικόν προσωπικόν της Αρχής εις θέσιν η οποία θα περιλαμβάνεται εις τον Τακτικόν Προϋπολογισμόν της Δημοκρατίας, το καθεστώς και αι λειτουργίαι της οποίας θα είναι ανάλογοι προς τας λειτουργίας της κατεχομένης θέσεως εις την υπηρεσίαν της Αρχής και θα λαμβάνη την αντιμισθίαν αυτού παρά της Δημοκρατίας.

(2) Η παρά τη Αρχή υπηρεσία ή προηγουμένη παρά τη Δημοκρατία υπηρεσία οιοιδήποτε προσώπου επί εκτάκτου, προσωρινής ή μονίμου βάσεως αναγνωρίζεται διά πάντας τους σκοπούς των περί Δημοσίας Υπηρεσίας Νόμων του 1967 έως 1983 ή οιοιδήποτε ετέρου νόμου, τηρουμένων των προνοιών των εν λόγω Νόμων ως και οιοιδήποτε Κανονισμών εγκριθέντων επί τη βάσει οιοιδήποτε Νόμου, ή ετέρων Κανονισμών ρυθμιζόντων τοιαύτα θέματα καθώς και των προνοιών των εδαφίων 3 και 4 του παρόντος άρθρου. Παν τοιοῦτο πρόσωπον μέχρι της κατά το παρόν άρθρον τοποθετήσεως του εξακολουθεί να κατέχη την θέσιν την οποίαν κατείχε ευθύς αμέσως προ της ενάρξεως ισχύος του παρόντος Νόμου:

Νοείται ότι η αντιμισθία της θέσεως την οποίαν το πρόσω-

πον τούτο κατείχε ως εμφανίζεται εις τον τελευταίον προϋπολογισμόν της Αρχής θεωρείται ως προσωπική αντιμισθία του προσώπου τούτου:

Νοείται περαιτέρω ότι μέχρις ότου διενεργηθή και εγκριθή μελέτη αναθεωρήσεως/αναδιοργανώσεως των υπηρεσιών του Τμήματος, περιλαμβάνουσα και αξιολόγησιν και εναρμόνισιν των παρ' αυτώ θέσεων και εγκριθώσι σχέδια υπηρεσίας και κλίμακες μισθοδοσίας, το Υπουργικόν Συμβούλιον δύναται να τροποποιήση τα υφιστάμενα σχέδια υπηρεσίας διά της απαλείψεως εξ αυτών της αναφοράς εις την Αρχήν και της αντικαταστάσεώς της με αναφοράν εις το Τμήμα και να καταργήση υφιστάμενα σχέδια υπηρεσίας του εναλλαξίμου και λογιστικού προσωπικού της Αρχής, διατηρώντας όμως την υφιστάμενην διάρθρωσιν των υπηρεσιών της.

(3) Η παρά τη Δημοκρατία υπηρεσία παντός τοιούτου προσώπου θεωρείται ως άνευ διακοπής συνέχισις της παρά τη Αρχή υπηρεσίας αυτού ως και της τυχόν υπηρεσίας αυτού παρά τη Δημοκρατία, υφ' οιοσδήποτε όρους, προ της ιδρύσεως της Αρχής:

Νοείται ότι παν τοιούτο πρόσωπον, επιλέξαν υπηρεσίαν, ή διορισθέν παρά τη Αρχή λαβόν επί τούτω οιοδήποτε επίδομα λόγω αποχωρήσεως (εν τοις εφεξής καλούμενον ως 'ωφέλημα επί τη αποχωρήσει') αναφορικώς προς περίοδον χρόνου υπηρεσίας εις την Δημοκρατίαν προ του διορισμού του εις την Αρχήν, δύναται εντός ενός μηνός από της μεταφοράς του εις την υπηρεσίαν της Δημοκρατίας, ως ανωτέρω καθορίζεται, όπως επιλέξει ή την επιστροφήν του ληφθέντος ωφελήματος επί τη αποχωρήσει, οπότε διά σκοπούς ωφελημάτων επί τη αποχωρήσει, ως περίοδος υπηρεσίας αυτού θα λογίζεται ολόκληρος η υπηρεσία αυτού εξ υπαρχής, ή να μή επιστρέψη το τοιούτον ωφέλημα επί αποχωρήσει, οπότε διά τοιούτους σκοπούς η περίοδος υπηρεσίας αυτού θα λογίζεται ως αρχομένη από της ημερομηνίας αναλήψεως υπηρεσίας παρά τη Αρχή.

Η ως άνω επιστροφή οιοσδήποτε ποσού γίνεται μεθ' απλού τόκου, προς τοσούτον επιτόκιον όσον ο Υπουργός Οικονομικών ήθελεν εκάστοτε καθορίσει, υπολογιζομένου από της ημερομηνίας καθ' ην τούτο είχε καταβληθή μέχρι της ημερομηνίας της επιστροφής ολοκλήρου του ποσού.

Ο χρόνος και ο τρόπος της επιστροφής καθορίζονται υπό του Υπουργού Οικονομικών.”

5 (“54.(1) Every person who was, immediately before the coming into force of this Law, was in the service of the Authority as a member of its staff is transferred from that date in the service of the Republic and is placed later by the appropriate authority of the Republic, irrespective of any provision of any other law, to a post which is included in the budget of the section and for the interchangeable and accounting staff of the Authority to a post which is included in the Ordinary Estimates of the Republic, the status and functions of which will be analogous to the functions of the post held in the service of the Authority and will receive his salary from the Republic.

10 (2) The service with the Authority or previous service with the Republic of any person on a casual, temporary or permanent basis are recognised for all purposes of the Public Service Laws, 1967–1983 or any other law, subject to the provisions of the said laws as well as any rules approved on the basis of any law or other rules regulating such matters as well as the provisions of sections 3 and 4 of this section. Every such person until his emplacement in accordance with this section continues to hold the post which he held immediately before the coming into force of this law:

15 Provided that the salary of the post which this person held as it appears in the estimates of the Authority is considered as personal salary of this person.

20 Provided further that until the study on the revision/restructuring of the services of the section is approved, including also evaluation and harmonization of the posts under it and the schemes of service and the salary scales are approved, the Council of Ministers may amend the existing schemes of service by the deletion from them the reference to the Authority and its substitution with reference to the Section and to repeal existing schemes of service of the interchangeable and accounting staff of the Authority but preserving the existing structure of its services.

25 (3) The service with the Republic of every such person is considered as continuation without a break of his service

with the Authority and of his service with the Republic, if any, under any terms, before the establishment of the Authority.

Provided that every such person, who has chosen service or was appointed by the Authority received for this purpose any retirement benefit (hereinafter called as 'retirement benefit') in respect of the period of his service in the Republic before his appointment with the Authority may within one month of his emplacement in the service of the Republic, as fixed above, elect either the refund of the retirement benefit when for retirement benefits, as period of service will be considered all his service from the beginning or not to refund the retirement benefit when for such purposes his period of service will be considered as starting from the day he takes up duty with the Authority.

The above refund of any sum is made with simple interest at such an interest as the Minister of Finance might from time to time fix, to be calculated from the day it had been paid until the day of the refund of the whole amount; the time and mode of refund are fixed by the Minister of Finance").

On 20th June, 1983, counsel for the applicants addressed a letter to the Minister of Finance, the Minister of Agriculture & Natural Resources and the Chairman of the Land Consolidation Authority, objecting to the intended emplacement of agronomists-topographers engineers of the Authority on Government scales A8-A10 by the intended emplacement of the servants of the respondent Authority in the public service.

On 26th August, 1983, he addressed another letter to the Chairman of the Authority in which he referred to the proposal by the Ministry of Finance for the emplacement of the servants of the Authority in the public service and the intended restructure of the service of the Authority, alleging that this is unlawful.

Mr. Karouzis, Senior Officer of the Authority, sent on 9th September, 1983, to the Director-General, Ministry of Finance, as Chairman of the Authority, a memorandum of the evaluation of the posts of the servants-employees—of the Authority (Appendix 33) and on 10th September, 1983, he submitted a

second memorandum which was intituled "Posts Evaluation—
Servants of Land Consolidation (Legal Points)".

On 16th September, 1983, the Director-General of the
Ministry of Agriculture & Natural Resources sent the following
5 letter (Appendix 36) to counsel for the applicants in answer
to his previous letters and communicated the contents thereof
to the Director-General of the Ministry of Finance, the Chair-
man of the Authority and the Senior Officer of the Authority:—

10 "Έχω εντολή από τον Υπουργό Γεωργίας και Φυσικών Πόρων
ν' αναφερθώ στις επιστολές σας, με αρ. 40/83, ημερομηνίας
30.6.1983 και 26.8.1983, σχετικά με την ένταξη των
υπαλλήλων της Αρχής Αναδάσμου στη Δημόσια Υπηρεσία
και να σας πληροφορήσω ως ακολούθως:—

15 (α) Οι υπάλληλοι της Αρχής Αναδάσμου εξακολουθούν
να υπηρετούν με τους όρους Υπηρεσίας, τα Σχέδια
Υπηρεσίας και τις κλίμακες που αρχικά διορίστηκαν.

20 (β) Ύστερα από διαπραγματεύσεις που έγιναν από τη
Συντεχνία των Υπαλλήλων (Ε.Υ.Α.Α.Κ.), οι υπάλληλοι
της Αρχής Αναδάσμου οι οποίοι ενημερώθηκαν από
τη Συντεχνία τους για τις λεπτομέρειες της ένταξης
στη Δημόσια Υπηρεσία, αποφάσισαν, κατά πλειο-
ψηφία, σε γενική συνέλευσή τους, να ενταχθούν στη
Δημόσια Υπηρεσία.

25 (γ) Οι πελάτες σας, οι οποίοι κατέχουν θέση Λειτουργού
Αναδάσμου και όχι Τοπογράφου-Μηχανικού, θα πληρο-
φορηθούν για την κλίμακα τοποθέτησής τους όταν
θα τους προσφερθεί επίσημα διορισμός στη Δημόσια
Υπηρεσία, μετά την έγκριση του σχετικού Νομοσχεδίου
και τη συμπλήρωση των απαιτούμενων διαδικασιών.
30 Η ένταξή τους στη Δημόσια Υπηρεσία θα γίνει με τους
ίδιους όρους ως και για τους υπόλοιπους Λειτουργούς
Αναδάσμου.

35 (δ) Το θέμα της βαθμολογικής και μισθολογικής διάρθρωσης
τών θέσεων στο νέο Κυβερνητικό Τμήμα Αναδάσμου
είναι αρμοδιότητα του Υπουργείου Οικονομικών στο
οποίο διαβιβάστηκε αντίγραφο των πιο πάνω επιστολών
σας".

("I am instructed by the Minister of Agriculture and Natural

Resources to refer to your letters, ref. No. 40/83 dated 30.6.1983 and 26.8.1983 in respect of the emplacement of the officers of the Land Consolidation Authority in the Public Service and to inform you as follows:

- (a) The officers of the Land Consolidation Authority 5
continue to serve with the conditions of service, schemes of service and the scales with which they were originally appointed.
- (b) After negotiations between Union of Employees 10
(E.Y.A.A.K.), the officers of the Land Consolidation Authority who were informed by their Union for the details of their emplacement in the Public Service, decided by majority, in a general meeting, to be emplaced in the Public Service.
- (c) Your clients, who hold the Post of Land Consolidation 15
Officer and not Topographer-Engineer, will be informed of the scale of their posting when an offer is officially made to them by the Public Service Commission after the approval of the relevant Bill and the completion of the necessary procedure. Their emplace- 20
ment in the Public Service will be made on the same terms as for the rest Land Consolidation Officers.
- (d) The subject of the evaluation and salary structure of 25
the posts in the new Government Land Consolidation Department is within the competence of the Ministry of Finance to which a copy of your above letters has been forwarded").

On the following day, 17th September, 1983, the Chairman of the respondent Authority addressed a letter of similar contents to counsel for the applicants in Cases No. 420/83 and 447/83. 30

Thereafter these recourses were filed whereby the applicants pray:-

- “1. Δήλωση του Δικαστηρίου με την οποία να κηρύσσεται άκυρη και/ή παράνομη η διαρκής άρνηση και/ή παράλειψη του καθ’ ού η αίτηση No. 1 να προχωρήσει σε αξιολόγηση/ 35
αναδιοργάνωση των θέσεων, κλιμάκων και μισθών των αιτητών πριν την με την τροποποίηση του Νόμου ένταξη των αιτητών στην Δημόσια Υπηρεσία.

2. Δήλωση του Δικαστηρίου πως ότι παραλήφθηκε έπρεπε και πρέπει να διενεργηθεί.

3. Δήλωση του Δικαστηρίου με την οποία να κηρύσσεται σαν παράνομη και άκυρη η απόφαση των καθ' ών η αίτηση και/ή οποιονδήποτε από αυτούς με την οποία κατατάχτησαν ή εντάχτησαν οι αιτητές σε κλίμακες αντίστοιχες με της Δημόσιας Υπηρεσίας χωρίς να τηρηθεί η Νόμιμη διαδικασία βάσει του Νόμου 24/69 (όπως τροποποιήθηκε από 52/71, 8/73 και 18/83) και/ή χωρίς να τους δοθεί η ευκαιρία να ακουστούν και/ή χωρίς να προηγηθεί η αξιολόγηση/αναδιοργάνωση των κλιμάκων θέσεων και μισθών της Αρχής Αναδασμού.

4. Δήλωση του Δικαστηρίου με την οποία να μη επικυρώνεται η παράλειψη και/ή απόφαση των καθ' ών η αίτηση όπως στα υπό (1), (2) και (3) πιο πάνω αναφέρονται".

("1. A declaration of the Court that the continuing refusal and/or omission of respondent No. 1 to proceed with the evaluation/restructuring of posts, scales and salaries of the applicants before their emplacement in the Public Service by the amendment of the Law is void and/or unlawful.

2. A declaration of the Court that what was omitted ought and must be done.

3. A declaration of the Court that the decision of the respondents and/or any of them whereby the applicants were placed and or posted on scales corresponding to those of the Public Service without observing the legal procedure under Law 24/69 (as amended by Laws 52/71, 8/73 and 18/83) and/or without being given a chance to be heard and/or without the precession of the evaluation/reorganisation of the scales of the posts and salaries of the Land Consolidation Authority is declared unlawful and null.

4. A declaration of the Court whereby the omission and/or the decision of the respondents under (1), (2) and (3) above should not be ratified").

Counsel for the respondents in his opposition contended that the act or omission complained of is not a decision, act or omis-

sion within the sense of Article 146.1 of the Constitution and, therefore, is not justiciable, and further that the applicants lack legitimate interest as they consented to their emplacements and/or posting on the corresponding scales of the civil service.

These points were taken up as preliminary points of law and counsel filed written addresses thereon. 5

A collective labour agreement does not create rights of public law. By itself, an agreement creates neither rights nor does it impose obligations in the field of public law.

In *Kontemeniotis v. C.B.C.*, (1982) 3 C.L.R. 1027, at p. 1032, a Full Bench case, the Court in dealing with a collective agreement between a trade union and the Cyprus Broadcasting Corporation had this to say:- 10

“In our judgment, the provisions of a collective agreement lack the force of law in that, unless adopted as part of the regulations of a public body, they have no application in the domain of public law”. 15

Rights in the domain of public law are derived from the Constitution, the statute laws and the subsidiary legislation made thereunder. (See further *Paphitis & Others v. The Republic*, (1983) 3 C.L.R. 255, at p. 261). 20

A collective agreement is distinguished from a “public contract” as this expression is used in the U.S.A. and adopted in the *Republic v. Menelaou*, (1982) 3 C.L.R. 419, at p. 431.

There is a further obstacle to the contention of the applicants that they acquired any rights in the sphere of public law: Section 4(1)(b) of the Land Consolidation Law, No. 24/69, as amended by s.2 of Law No. 8/73, subjects all acts and decisions of the Authority to the approval of the Council of Ministers. Therefore, any act or decision of the Authority relating to the structure of the services and the posts of the Authority, the scheme of service, the general rules of service, etc., are subject to the approval of the Council of Ministers. Failing such approval they are not legally valid, not binding even on the Authority and not creating any legal results. The applicants derived no right from the alleged collective agreement. 25
30
35

An “omission” in the sense of Article 146 of the Constitution means an omission to do something required by law, as distinct

from the non-doing of a particular act or the non-taking of a particular course as a result of the exercise of discretionary powers. "Omission" presupposes a duty imposed by law and failure to perform that duty—(Stassinopoulos—*The Law of*
 5 *Administrative Disputes*, 4th edition, (1964), p. 195; *Greek Council of State Cases* No. 1137/63, 91/62 and 1862/63; *Cyprus Tannery v. Republic*, (1980) 3 C.L.R. 405; *Argyrou and Others v. Republic*, (1983) 3 C.L.R. 474, at p. 484).

10 If a person accepts an administrative act or omission unreservedly, he no longer possesses a legitimate interest entitling him to make a recourse against it in the sense of Article 146.2 of the Constitution.

Acceptance by the trade union of the new agreement, as
 15 aforesaid, is acceptance by each one of the members separately and at any date deprives their union and the applicants from any legitimate interest, if they had any.

Triantafyllides, P., in *Myrianthis v. The Republic*, (1977)
 3 C.L.R. 165, said:—

20 "It is well established, by now, in the administrative law of Cyprus, on the basis of relevant principles which have been expounded in Greece in relation to a legislative provision there (section 48 of Law 3713/1928) which corresponds to our Article 146.2 above, that a person, who, expressly or impliedly, accepts an act or decision of the
 25 administration, is deprived, because of such acceptance, of a legitimate interest entitling him to make an administrative recourse for the annulment of such act or decision".

See, also, *Tompoli v. C.Y.T.A.*, (1982) 3 C.L.R. 149; and *N. Ionides v. The Republic*, (1979) 3 C.L.R. 679.
 30

The two Ministers on the authorisation of the Council of Ministers dealt with the matter and introduced Bill No. 17 to the House for the emplacement of the servants of the respondent Authority in the civil service of the Republic. Though
 35 the function of the Council of Ministers under Art. 54(f) is described as "executive power", a function preparatory to, and connected with, the enactment of legislation, is the exercise of a legislative power. Legislative power consists not only

of the deliberation and enactment of laws by the legislative organs but, in a wider sense, it also includes the preparatory and ancillary activities in the course of the legislative process. This is recognized in all countries with constitutions drawn up on the basis of the doctrine of the separation of powers. Therefore, the consideration by the Council of Ministers Bills to be introduced to the House of Representatives is an act preparatory to legislation and for this reason it does not amount to the exercise of "executive or administrative authority" in the sense in which such words are used in paragraph 1 of Article 146—(*Papaphilippou v. The Republic*, 1 R.S.C.C. 62). 5 10

The applicants were not adversely affected. They continue to be on the scales that they were, and they have no legitimate interest.

For the reasons aforesaid I am of the view, and so hold, that the applicants have no legitimate interest and that the act or omission complained of is not justiciable. 15

In the result these recourses are dismissed but in the circumstances I make no order as to costs.

Recourses dismissed. No order as to costs. 20