1983 November 4

[TRIANTAFYLLIDES, P., HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, DEMETRIADES, JJ.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PETROS CHRISTODOULIDES AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE COUNCIL OF MINISTERS,

Respondent.

(*Cases Nos.* 64/80, 65/80, 70/80, 77/80, 81/80, 84/80, 85/80, 95/80, 96/80, 113/80, 119/80).

Public Officers—Disciplinary Offences—Termination of services—Once Council of Ministers duly empowered to terminate the services of applicants by virtue, in any event, of section 5 of the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Laws 1977 to 1978 (Suspension of Proceedings) Law, 1978 (Law 57/78) not necessary to examine scope of the other legislative provisions invoked in the sub judice decision —Because even if an administrative decision could not have been validly based on the legal reason which was actually stated in support of it such decision should be upheld judicially if it could be reached validly on the basis of some other legal reason—Sub judice termination of services not a disciplinary measure—Though applicants ought to have been given an opportunity to put forward their own version—And though the Council of Ministers did not specifically invite each applicant to make his representations nevertheless each applicant had on divers occasions in the past been informed of the allegations against him and he had the opportunity to refute them.

Administrative Law—Administrative acts or decisions—Reasoning—May be derived from the relevant administrative records.

The applicants in these recourses, who were in the service of the Republic, challenged the decision of the Council of Ministers to terminate their services. The relevant decision was to the effect that, after a thorough consideration of the material which had been placed before it, the Council of Ministers reached the conclusion that it would be very detrimental to allow the applicants to remain in the service of the Republic and, consequently, it decided that their services should be terminated in the public interest as from the 1st February 1980. It was, also, stated in the decision that it has been taken in the exercise of the powers under sections 6(f) and 7 of the Pensions Law, Cap. 311, and of any other powers vested, in this respect, in the Council of Ministers.

Among the provisions conferring relevant powers to the Council of Ministers, in addition to those vested in it by virtue of Article 54 of the Constitution, were sections 4 and 5 of the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Laws 1977–1978 (Suspension of Proceedings) Law, 1978 (Law 57/78).

Held, (1) that it can be concluded from reading together sections 4 and 5 of Law 57/78 that under section 5 the Council of Ministers may decide to terminate the services of a public official for reasons of public interest under the provisions of any Law, irrespective of whether or not there was lodged against such official a complaint pursuant to the provisions of the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Laws 1977 to 1978 (Laws 3/77, 38/77 and 12/78); that it follows, therefore, that even assuming, without so deciding, that any one of the legislative provisions referred to by the Council of Ministers in its relevant decision could not support adequately the termination of the services of any one of the applicants, the Council of Ministers was, in any case, duly empowered to terminate the services of each one of the applicants in these cases by virtue, in any event, of section 5 of Law 57/78 and, consequently, it is not necessary to enter into a detailed examination of the scope of the aforementioned legislative provisions; because it is a firmly established principle of Administrative Law that even if an administrative decision could not have been validly based on the legal reason which was actually stated in support of it such decision should still be

upheld judicially if it could, nevertheless, be reached validly on the basis of some other legal reason.

(2) *On the contention that the termination of their services was in the nature of a disciplinary measure and that, therefore, it could not have been effected by means of administrative measures such as the sub judice decisions of the Council of Ministers:*

That the relevant decisions of the Council of Ministers, when viewed in the context of all relevant considerations, cannot be found to be disciplinary measures; that, unlike disciplinary measures, they were not intended to punish the applicants but only to remove from the service of the Republic persons who could no longer, for reasons of public interest, be retained in it.

(3) That even though the decisions in question of the Council of Ministers were administrative measures not of a disciplinary nature the modern notions of Administrative Law require that the person against whom an adverse administrative measure is to be taken should have an opportunity to put forward his own version, if he wishes to do so, so that the administration when proceeding to decide on such administrative measure will have before it all relevant considerations; and that, though the Council of Ministers did not specifically invite each applicant to make his representations regarding the possibility of the termination of his services by the Council of Ministers, nevertheless each applicant had on divers occasions in the past been informed of the allegations against him and he had had the opportunity to refute them, if he wished to do so; and that, therefore, at least to the minimum extent necessary there has been substantial compliance with the need to ensure that each one of the applicants knew about the allegations concerning him and has had an opportunity to answer them; and that whatever each one of the applicants had had to say, on various occasions, in this respect, was before, and must have been considered by, the Council of Ministers prior to reaching its sub judice decisions.

Held, further, that even if on the face of them the sub judice decisions do not appear to contain specific reasons in relation to the termination of the services of each and every one of the applicants, nevertheless such reasons are to be derived from the relevant administrative records which have been placed

before this Court; and that these reasons rendered, in each particular case, reasonably open to the Council of Ministers to terminate the services of the applicant concerned; accordingly the recourses should be dismissed.

Applications dismissed.

Cases referred to:

Pikis v. *Republic* (1967) 3 C.L.R. 562 at p. 575;

Spyrou (No. 1) v. *Republic* (1973) 3 C.L.R. 478 at p. 484;

Akinita Anthoupolis Ltd. v. *Republic* (1980) 3 C.L.R. 296 at p. 303;

Paraskevopoulou v. *Republic* (1980) 3 C.L.R. 647 at pp. 661, 662;

Vassiliou v. *Republic* (1982) 3 C.L.R. 220 at pp. 228, 229;

Petrides v. *Republic* (1983) 3 C.L.R. 216 at p. 220;

Marangos v. *Republic* (1983) 3 C.L.R. 682 at p. 692;

Decisions of the Greek Council of State Nos: 2976/66, 1452/67 and 1009/72.

Recourses.

Recourses against the decisions of the respondent Council of Ministers to terminate the services of the applicants with the Republic.

A. Markides with *St. Leptos* and *Chr. Hadjianastassiou*, for the applicants in Case Nos. 64/80 and 70/80.

G. Michaelides, for the applicants in Case Nos. 65/80 and 85/80.

E. Markidou (*Mrs.*), for the applicant in Case No. 77/80.

L. Clerides, for the applicant in Case No. 81/80.

E. Vrahimi (*Mrs.*), for the applicant in Case No. 84/80.

A. Eftychiou, for the applicants in Case No. 95/80.

K. Koushios, for the applicant in Case No. 96/80.

G.A. Georghiou, for the applicants in Case No. 113/80.

M. Christophides, for the applicant in Case No. 119/80.

A. Papasavvas, Senior Counsel of the Republic, for the respondent in Case Nos. 64/80, 70/80, 77/80, 85/80 and 96/80.

S. Matsas, for the respondent in Case Nos. 65/80, 81/80, 84/80, 95/80, 113/80 and 119/80.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment of the Court. All these related cases have been heard together in view of their nature.

During their hearing case 88/80, which was also being heard together with them, was withdrawn and was, consequently, dismissed.

Likewise, there was withdrawn and dismissed case 95/80, in so far as it relates to applicants 1, 2, 3 and 4, and case 113/80 in so far as it relates to applicants 2 and 4.

All the applicants complain that their services were unconstitutionally and unlawfully terminated by decisions of the Council of Ministers.

The applicant in case 81/80 and applicant 6 in case 95/80 were members of the public service of the Republic and the applicant in case 65/80, applicant 5 in case 95/80 and applicants 1, 3 and 5 in case 113/80 were members of the police; and the services of all of them were terminated by decision No. 18.767 of the Council of Ministers, dated 31st January 1980.

The applicant in case 119/80 was a member of the Army of the Republic and his services were terminated by decision No. 18.768 of the Council of Ministers, dated 31st January 1980.

The applicant in case 84/80 was a member of the public educational service, at the secondary education level, and his services were terminated by decision No. 18.769 of the Council of Ministers, dated 31st January 1980.

The applicants in cases 64/80, 70/80, 77/80, 85/80 and 96/80 were members of the public educational service, at the elementary education level, and their services were terminated by decision No. 18.770 of the Council of Ministers, dated 31st January 1980.

All the aforementioned decisions are to the effect that, after a thorough consideration of the material which had been placed before it, the Council of Ministers reached the conclusion that

it would be very detrimental to allow the applicants concerned to remain in the service of the Republic and, consequently, it decided that their services should be terminated in the public interest as from the 1st February 1980.

In decision No. 18.767 it is stated that it has been taken in the exercise of the powers under sections 6(f) and 7 of the Pensions Law, Cap. 311, and of any other powers vested, in this respect, is the Council of Ministers; and decisions Nos. 18.768, 18.769, 18.770 are practically identical except that in decision No. 18.768 reference is made to section 6 of the Army of the Republic (Constitution, Enlistment and Discipline) Laws, 1961–1975, in decision No. 18.769 reference is made to sections 8(1)(e) and (2) of the Pensions (Secondary School Teachers) Laws, 1967–1979, and in decision No. 18.770 reference is made to sections 51(1)(e) and (f) of the Elementary Education Law, Cap. 166.

Among the provisions conferring relevant powers to the Council of Ministers, in addition to those vested in it by virtue of Article 54 of the Constitution, are sections 4 and 5 of the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Laws 1977 to 1978 (Suspension of Proceedings) Law, 1978 (Law 57/78).

It can, in our opinion, be concluded from reading together sections 4 and 5 of Law 57/78 that under section 5 the Council of Ministers may decide to terminate the services of a public official for reasons of public interest under the provisions of any Law, irrespective of whether or not there was lodged against such official a complaint pursuant to the provisions of the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Laws 1977 to 1978 (Laws 3/77, 38/77 and 12/78). Because section 5 was enacted in order to provide to the Council of Ministers an alternative method, other than those enumerated in section 4 of the same Law, for achieving the objects set out in the preamble of Law 57/78. If under section 5 of Law 57/78 there could only be terminated in the public interest the services of a public official against whom a complaint has been lodged under the aforementioned Laws 3/77, 38/77 and 12/78, then there would be no reason at all to enact section 5 in addition to section 4 of Law 57/78, since as regards a public official against whom such a complaint was lodged it is expressly

provided in section 4 that the Council of Ministers is empowered to terminate his services in the public interest or to retire him compulsorily in accordance with existing legislation.

It follows, therefore, that, even assuming, without so deciding, that any one of the legislative provisions referred to by the Council of Ministers in its relevant decision could not support adequately the termination of the services of any one of the applicants, the Council of Ministers was, in any case, duly empowered to terminate the services of each one of the applicants in these cases by virtue, in any event, of section 5 of Law 57/78 and, consequently, it is not necessary to enter into a detailed examination of the scope of the aforementioned legislative provisions; because it is a firmly established principle of Administrative Law that even if an administrative decision could not have been validly based on the legal reason which was actually stated in support of it such decision should still be upheld judicially if it could, nevertheless, be reached validly on the basis of some other legal reason (see, inter alia, in this respect, *Pikis* v. *The Republic*, (1967) 3 C.L.R. 562, 575, *Spyrou (No. 1)* v. *The Republic*, (1973) 3 C.L.R. 478, 484, *Akinita Anthoupolis Ltd.* v. *The Republic*, (1980) 3 C.L.R. 296, 303 and *Paraskevopoulou* v. *The Republic*, (1980) 3 C.L.R. 647, 661, 662).

It has been contended, next, on behalf of the applicants that the termination of their services was in the nature of a disciplinary measure and that, therefore, it could not have been effected by means of administrative measures such as the sub judice decisions of the Council of Ministers.

We cannot agree that, in the present instance, the relevant decisions of the Council of Ministers, when viewed in the context of all relevant considerations, can be found to be disciplinary measures. In our opinion, unlike disciplinary measures, they were not intended to punish the applicants but only to remove from the service of the Republic persons who could no longer, for reasons of public interest, be retained in it; and this is why some of the applicants had their services terminated by the sub judice decisions of the Council of Ministers even though disciplinary proceedings against them had been concluded without the imposition of the punishment of the termination of their services or of compulsory retirement, and in respect of some others of them disciplinary proceedings were commenced but

never concluded due to the termination of their services in the meantime by the Council of Ministers.

Even though the decisions in question of the Council of Ministers were administrative measures not of a disciplinary nature the modern notions of Administrative Law require that the person against whom an adverse administrative measure is to be taken should have an opportunity to put forward his own version, if he wishes to do so, so that the administration when proceeding to decide on such administrative measure will have before it all relevant considerations (see, for example, the decisions of the Greek Council of State in cases 2976/1966, 1452/1967 and 1009/1972); and this approach is not only consonant with proper administration but, also, with basic notions of natural justice.

In the present cases we have perused thoroughly all the material which has been placed before us and we have reached, after very careful and anxious consideration, the conclusion that, though the Council of Ministers did not specifically invite each applicant to make his representations regarding the possibility of the termination of his services by the Council of Ministers, nevertheless each applicant had on divers occasions in the past been informed of the allegations against him and he had had the opportunity to refute them if he wished to do so.

We are, therefore, quite satisfied that at least to the minimum extent necessary there has been substantial compliance with the need to ensure that each one of the applicants knew about the allegations concerning him and has had an opportunity to answer them; and that whatever each one of the applicants had had to say, on verious occasions, in this respect, was before, and must have been considered by, the Council of Ministers prior to reaching its sub judice decisions.

Before concluding this judgment we might add that even if on the face of them the sub judice decisions do not appear to contain specific reasons in relation to the termination of the services of each and every one of the applicants, nevertheless such reasons are to be derived from the relevant administrative records which have been placed before us (see, inter alia, in this respect, *Vassiliou* v. *The Republic*, (1982) 3 C.L.R. 220, 228, 229, *Petrides* v. *The Republic*, (1983) 3 C.L.R. 216, 220

and *Marangos* v. *The Republic*, (1983) 3 C.L.R. 682, 692); and we are of the view that these reasons rendered, in each particular case, reasonably open to the Council of Ministers to terminate the services of the applicant concerned.

For all the foregoing reasons these recourses fail and are dismissed accordingly; but we have decided not to make any order as to their costs.

Recourses dismissed with no order as to costs.