

1984 July 14

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KYRIACOS KIKAS AND OTHERS,

Applicants,

v.

1. THE CYPRUS BROADCASTING CORPORATION,
2. THE ADMINISTRATIVE BOARD OF THE CYPRUS
BROADCASTING CORPORATION,

Respondents.

(Cases Nos. 403/83, 457/83, 466/83).

Administrative Law—Annulment of administrative act complained of in one proceeding—Causes the abatement of the subject matter of every other proceeding for judicial review of the same act—Prerequisites for claiming damages under Article 146.6 of the Constitution.

5

The sole issue for consideration in this recourse was whether the annulment of an administrative act, in one proceeding, wipes out the subject matter of an extant recourse directed against the validity of the same administrative act.

Held, that the annulment of the administrative act complained of in one proceeding, causes the abatement of the subject matter of every other proceeding for judicial review of the same act.

10

Per curiam: Bearing in mind the content of Article 146.6 of the Constitution challenge of the act before an administrative Court by a party claiming damages thereunder, is essential for the validation of his suit; although the act need not have been annulled at his instance.

15

Applications dismissed.

Cases referred to:

Malliotis and Others v. Municipality of Nicosia (1965) 3 C.L.R. 75 at p. 91;

20

- Christodoulides v. Republic* (1978) 3 C.L.R. 190;
Attorney-General v. Markoullides (1966) 1 C.L.R. 242 at pp. 253,
 254;
Hapeshis and Others v. Republic (1979) 3 C.L.R. 550;
 5 *Decisions of the Greek Council of State Nos. 1627/63, 200/70,*
 620/70 and 3467/70.

Recourses.

Recourses against the decision of the respondent to promote
 the interested parties to the post of Senior Programme Officer
 10 in preference and instead of the applicants.

L. Papaphilippou, for applicant in Case No. 403/83.

P. Ioannides, for applicant in Case No. 457/83.

L. N. Clerides with C. Clerides, for applicant in Case
 No. 466/83.

15 *P. Polyviou*, for respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. A question of exception-
 al legal importance must be decided in order to determine the
 fate of these proceedings. It is this:

20 Does the annulment of an administrative act, in one proceed-
 ing, wipe out the subject matter of an extant recourse directed
 against the validity of the same administrative act?

It is common ground the decision complained of in each one
 of these cases, was set aside in its entirety by a decision of the
 25 Supreme Court, in the exercise of its revisional jurisdiction, in
 Case No. 417/83.*

Neither the researches of counsel nor those of the Court
 brought to notice any Cyprus authority deciding directly the
 issue at hand. Only indirectly was the matter touched upon in
 30 some cases not aimed at furnishing an answer to a question
 similar to the one before us. Jurisprudence on administrative
 law in Greece, has settled the matter long ago. The annulment
 of an administrative act in one proceeding, it has been repeatedly
 held, extinguishes the litigable cause in every other proceeding
 35 directed against the same act. A more apt picturing of what

* Now reported in (1984) 3 C.L.R. 635.

actually happens is this: With the annulment of the act, the subject matter of every other proceeding questioning the same act, eclipses and is no longer noticeable in law. In consequence, the litigant forfeits the interest necessary to pursue the recourse and ceases to have a legitimate interest to seek its review - See, 5
inter alia, the *Decisions of the Greek Council of State* 1627/63, 200/70, 620/70, 3467/70, and *Conclusions from the Jurisprudence of the Greek Council of State* 1929-59 p. 275. *Dagtolou - General Administrative Law*, 107; *Stassinopoulos - Law of Administrative Acts* 1971, p. 373. As *Prof. Tsatsos* explains*, the annulment of the act causes its disappearance in law and renders pending proceedings abortive, irrespective of the implementation of the Court order. 10

The solution adopted in Greece was evolved on analysis of the implications stemming from the judicial nullification of an administrative act. Consideration of the relevant provisions of the law on the effect of judgments of the Greek Council of State proclaiming them as universally binding, leads to the same conclusion (Law 3713/28 - s.50, sub-section 4 in particular). In virtue of para. 5 of Article 146 of the Constitution, judgments of the Supreme Court in the exercise of its revisional jurisdiction, are likewise binding, operating erga omnes. They are binding on all Courts, organs and authorities of the Republic, who are under a duty, as well as everyone concerned to give effect to them. 15
20
25

Unless there is some rule of law dictating another course, the similarity between the pertinent provisions of Greek and Cyprus law (the Constitution in the case of Cyprus), on the effect of Court judgments in this area, and the applicability of similar principles of administrative law in the two jurisdictions, suggest the adoption of a similar solution in Cyprus to that evolved in Greece, mentioned above. To my comprehension, there is no conceivable reason justifying the adoption of a different course in Cyprus. On the contrary, the sustenance of litigation following the obliteration of the act complained of, would be an exercise in futility, while it is axiomatic in law that Courts do not operate in vain. 30
35

The effects of annulment were debated by Triantafyllides, J.,

* *Application for Annulment*, 3rd ed., paras 189-191.

as he then was, in *Christos Malliotis and Others v. Municipality of Nicosia* (1965) 3 C.L.R. 75, 91. The learned Judge observed that the disappearance of the sub judice act, on account of physical or legal destruction, causes the disappearance of the subject matter for all purposes.

Notwithstanding the disappearance of the act under consideration, Mr. Papaphilippou argued that the recourse has not lost its subject matter litigation may continue in view of the provisions of para. 6 of Article 146 of the Constitution that has no parallel in Greek law. Para. 6 defines the prerequisites for a civil remedy for damages for injuries suffered as a result of an invalid administrative act. In the submission of counsel, para. 6 postulates, as a prerequisite, annulment of the act at the instance of the party pursuing a civil remedy; therefore, formal annulment at his instance, is essential for the accrual of a right under para. 6. A corollary of this proposition if accepted, would be that an applicant retains a legitimate interest to pursue a recourse for purposes other than the nullification of the act complained of, that is, for a secondary purpose. Dicta in *Christodoulides v. The Republic* (1978) 3 C.L.R. 190, lend some support to this view. However, the observations were obiter in that they were not made for the purpose of deciding the issue in the case. The Court was concerned to decide whether belated release of a soldier from the ranks of the National Guard obliterated in law the cause under review, that is, initial refusal to release the applicant contrary to law. Annulment, on the other hand, it must be said, obliterates the decision ab initio and causes its disappearance in law. The decision in *Christodoulides* supra, does not decide otherwise. Obiter dicta in *Attorney-General v. Andreas Markoullides* (1966) 1 C.L.R. 242, 253, 254, and *Hapeshis and Others v. The Republic* (1979) 3 C.L.R. 550, in relation to the justiciability of a cause after annulment, must be treated with equal reservation.

The case of *Frangoulides v. Republic* (1982) 1 C.L.R. 460, may be noticed in so far as it sheds some light on the prerequisites of an action under para. 6 of Article 146. Recovery of damages, it was held, is dependent upon -

- (a) Annulment of the injurious administrative act by a Court of competent jurisdiction, and

- (b) failure on the part of the Administration to eradicate injury flowing therefrom.

The usefulness of the decision lies in the fact that it does not tie recovery of damages, under para. 6, to the annulment of the administrative act at the instance of the plaintiff. 5

Article 146.6 does not, on a grammatical construction, postulate annulment of the act complained of at the instance of the claimant as a prerequisite for the recovery of damages. Further, it does not qualify the meaning of "legitimate interest" in para. 2 of the same article, directly linked to the interest of the applicant to pursue the extinguishment of the act in law. Para. 6 does not purport to confer an interest to pursue judicial review where none exists under para. 2. 10

In my judgment, the annulment of the administrative act complained of in one proceeding, causes the abatement of the subject matter of every other proceeding for judicial review of the same act. And this disposes of the question before me. However, I think it right to put on record, bearing in mind the context of para. 6, that challenge of the act before an administrative Court by a party claiming damages thereunder, is essential for the validation of his suit; although the act need not have been annulled at his instance. 15 20

For the reasons indicated above, the recourses have been sapped of their subject matter and must, therefore, be dismissed as abated. 25

The recourses are dismissed. Let there be no order as to costs.

Recourses dismissed with no order as to costs. 30