

1986 July 14

[KOURRIS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

STELIOS VASSILIOU.

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE COUNCIL OF MINISTERS,

*Respondent.**(Case No. 641/85).*

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- Cyprus Organisation for Standards and Control of Quality—  
The Cyprus Standards and Quality Control Law 68/75 as  
amended by Laws 6/77 and 16/83—Sections 8(1) and 23  
—Section 23 does not oblige Council of Ministers to make  
regulations as to the termination of the appointment of the  
Director of the Organisation—In view of this and in  
the absence of a provision relating to such termination,  
section 19 of the Interpretation Law, Cap. 1 applies—  
Council of Ministers has power to terminate the appoint-  
ment of Director under said section of Cap. 1.* 5 10
- Administrative Law—Reasoning of an administrative act—  
Wrong legal reason in support of—Act would be upheld if  
it could have been validly reached on the basis of some  
other legal reason.*
- Executory act—Cyprus Organisation for Standards and Control  
of Quality—Director—Appointment of Public Servant by  
Council of Ministers—It does not affect status of appointee  
—It is neither a promotion nor appointment, but merely  
an assignment of duties—The appointment and the ter-  
mination of such appointment lack executory character.* 15 20
- Cyprus Organisation for Standards and Control of Quality—  
Director of—Scheme of service—Contemplates appoint-*

*ment of Senior Industrial Officer—Annulment of the promotion to the said post of the person appointed as Director of the Organisation—Termination of his appointment justified.*

5 In view of the fact that the applicant was at the time holding the post of Senior Industrial Officer in the Ministry of Commerce and Industry the Ministry recommended to the Council of Ministers the appointment of the applicant as Director of the Cyprus Organisation for Standards and Control of Quality. As a result the applicant was appointed as Director of the said Organisation as from 10 1.7.1983.

15 As the applicant's promotion to the said post of Senior Industrial Officer was annulled by the Supreme Court the Ministry proposed the termination of his said appointment as Director. The Council of Ministers accepted the proposal, terminated the said appointment and appointed the Director of Industry, a certain P. Koutouroushis, as Director of the Organisation.

20 The scheme of service of the post suggests that it was in the contemplation of the Council of Ministers that the assignment of duties of the Director of the Organisation would be made to the person holding the post of Senior Industrial Officer.

25 The applicant challenges by means of this recourse both the termination of his appointment and the appointment of Koutouroushis.

30 It should be noted that the appointment of Koutouroushis was terminated, when a certain Karis, who replaced him, was promoted to the post of Senior Industrial Officer.

35 *Held, dismissing the recourse:* (1) As there was no provision for the termination of the appointment of the Director of the Organisation in Law 68/75 and as section 23(1) of the said law did not oblige the Council of Ministers to make regulations about the termination of the appointment of the Director, section 19 of the Interpretation Law, Cap. 1 is applicable and the Council of Mini-

sters had power thereunder to terminate applicant's appointment. The argument that the Council had not in mind section 19 of Cap. 1 does not help the applicant because if an administrative decision could not have been validly based on the legal reason stated in support of it, it nevertheless should be upheld, if it could be reached validly on the basis of some other legal reason. 5

(2) An appointment by the Council of Ministers leaves the status of a public officer unaffected. It is neither an appointment nor a promotion, but merely involves the assignment of further duties to the public officer concerned. It follows that the sub judice decisions are not of an executory nature. 10

(3) In the light of the scheme of service for the assignment of duties of the Director of the Organisation it was perfectly legitimate for the Council of Ministers to terminate applicant's appointment upon cancellation of his appointment to the post of Senior Industrial Officer. 15

*Recourse dismissed.*

*No order as to costs.* 20

**Cases referred to:**

*Christodoulides and Others v. The Republic* (1984) 3 C.L.R. 1297;

*Makrides and Another v. The Republic* (1984) 3 C.L.R. 677. 25

**Recourse.**

Recourse against the decision of the respondent to terminate the services of the applicant as Director of the Cyprus Organisation for Standards and Control of Quality.

*A. S. Angelides*, for the applicant. 30

*A. Papasavvas*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

KOURRIS J. read the following judgment. This is a recourse against the decision of the Council of Ministers 35

to terminate the appointment of the applicant as a Director of the Cyprus Organisation for Standards and Control of Quality.

5 The Council of Ministers took a decision under No. 23268 (Appendix 2 of the Opposition) by virtue of which they appointed the applicant as from 1.7.83 as Director of the Cyprus Organisation for Standards and Control of Quality under s. 8(1) of the Cyprus Standards and Quality Control Laws 1975 (Law 68/1975) as amended by Laws  
10 6/77 and 16/83).

At the material time the applicant was holding the post of Senior Industrial Officer at the Ministry of Commerce and Industry and according to the proposal to the Council of Ministers by the Minister of Commerce and Industry,  
15 the applicant was recommended to serve also as a Director of the said Organisation. The recommendation was made in view of the fact that the applicant was holding the post of Senior Industrial Officer in the Ministry of Commerce and Industry.

20 On 11.4.1985 the Minister of Commerce and Industry proposed to the Council of Ministers to terminate the services of the applicant as a Director of the said Organisation because the Supreme Court in Recourse No. 309/83,<sup>\*</sup> which was filed by a certain Ioannis Karis against the  
25 appointment of the applicant in the post of Senior Industrial Officer by the Public Service Commission, gave judgment on 28.3.1985 annulling the appointment of the applicant (See Appendix 3 of the Opposition). As a result of the said annulment the Public Service Commission notified the  
30 applicant by letter dated 3rd April, 1985 that he will hold the post of Industrial Extension Officer, 1st Class, a post which he held before his promotion.

The Minister of Commerce and Industry proposed the termination of the appointment of the applicant and  
35 suggested that until the appointment of another Senior Industrial Officer to appoint a certain Panayiotis Koutouroushis as a Director of the said Organisation in addition to his duties as Director of Industry. The Minister of Commerce and Industry explained that his proposal was based

\* Reported in (1985) 3 C.L.R. 496.

on the Scheme of Service which was approved by the Ministerial Council by its decision No. 21184 dated 17.12.1981 to the effect that the holder of Senior Industrial Officer will perform the duties of the Director of the said Organisation.

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The Council of Ministers by its decision No. 25708 dated 18.4.85 terminated the appointment of the applicant as Director of the said Organisation and decided to appoint Koutouroushis, the Director of Industry in the Ministry of Commerce and Industry as Director of the said Organisation (Appendix 4 of the Opposition).

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On 24.7.85 the Minister of Commerce and Industry proposed to the Council of Ministers to terminate the appointment of Koutouroushis as Director of the Organisation and to appoint as Director of the Organisation a certain Ioannis Karis who, in the meantime, has been promoted to the post of Senior Industrial Officer, and this in accordance with the Scheme of Service; the Council of Ministers on 2.8.85 decided to terminate the appointment of Koutouroushis and to appoint as Director of the said Organisation Ioannis Karis as from 1.8.85.

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The applicant challenges not only the decision of the Council of Ministers to terminate his appointment as Director of the said Organisation but also challenges the decision of the Council of Ministers to appoint in his place Panayiotis Koutouroushis, Director of Industry.

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Hence, the present recourse.

Before proceeding any further, I would like to state that counsel for the respondents abandoned the allegation that the applicant has no legitimate interest.

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The main legal points on which the present recourse is based are the following:-

(1) The decisions of the Council of Ministers are contrary to the law and were taken in excess and/or abuse of power and

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(2) The decisions are the result of misconception of law and facts.

But, also whether the decision to terminate the appointment provided it was open to the Council of Ministers, was executory.

5 Counsel for the applicant contended that the Council of Ministers lacked competence to terminate the appointment of the applicant as Director of the said Organisation because Law 68/75 by virtue of which the said Organisation was established, gave no such power to the Council of Ministers and consequently, the Council of Ministers in  
10 terminating the appointment of the applicant acted in excess and/or abuse of their power.

He went on to say that the Council of Ministers were empowered under s. 23 (2) to make regulations making provision, inter alia, for the termination of the appointment  
15 of the Director of the Organisation to be published in the Official Gazette of the Republic and they failed to do so.

Counsel for the respondents argued that the Council of Ministers were empowered to make regulations for the better carrying out of the provisions of the said Law and  
20 in particular they could make regulations for the matters set out in subsections 2 and 3 of s. 23 but so far as the termination of the appointment of the Director, there is no mention and consequently, the provisions of s. 19 of the Interpretation Law, Cap. 1 are applicable which provides  
25 that where any law confers upon any person or public authority power to make appointments to any office or place the power shall be construed as including the power to determine any such appointment.

He argued that it was not a case where there is a special law providing for the termination of the appointment  
30 in which case prevails over the general law, the Interpretation Law, Cap. 1, in the present case.

On this point I accept the argument of counsel for the respondents that as there was no provision for the termination of the appointment of the Director of the Organisation  
35 in Law 68/75 and as s. 23 (1) of the said Law did not oblige the Council of Ministers to make regulations about the termination of the appointment of the Director of the

Organisation, then s. 19 of the Interpretation Law, Cap. 1 is applicable and I am of the view that the Council of Ministers had power to determine the appointment of the applicant. The allegation of counsel for the applicant that the Council of Ministers had not in mind s. 19 of Cap. 1 when they determined the appointment of the applicant but they had in mind and acted upon the Scheme of Service, cannot stand 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 (See *Christodoulides and others v. The Republic*, (1984) 3 C.L.R. 1297).

I now propose to deal whether the decision to terminate the appointment provided it was open to the Council of Ministers, was executory. An appointment by the Council of Ministers leaves the status of a public servant entirely unaffected. It is neither an appointment nor a promotion. It merely involves the assignment of further duties to a public servant by a basic organ of Government, that is the Council of Ministers. Provided that it was permissible under the Scheme of Service, such appointment could validly be made. If the assignment of duties had any implication on the status of the public servant, it would have been wholly impermissible for the Council of Ministers to make appointments or promotions (See *Makrides and another v. The Republic* (1984) 3 C.L.R. 677).

Only the Public Service Commission is competent under the Constitution and the Law, to make appointments and promotions in the Public Service. Therefore, the decision was not executory and as such non justiciable.

The last question which falls for determination is, assuming that the decision was justiciable, whether the decisions of the Council of Ministers are the result of misconception of law and facts.

I am of the view that it was perfectly legitimate to the Council of Ministers to terminate applicant's appointment upon cancellation of his appointment to the post of Senior Industrial Officer. As the Scheme of Service for the post,

made by the Council of Ministers suggest it was in the contemplation of the Council of Ministers that assignment of duties of the Director of the Organisation would be made to the person serving in the post of Senior Industrial Officer.

In the circumstances the Council of Ministers did not act under a misconception of law and fact and this contention is unmerited.

For all the above reasons the recourse is dismissed with no order for costs.

*Recourse dismissed.*

*No order as to costs.*