

1986 November 14

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ELEFTHERIOS VASSILIOU AND OTHERS,

v.

Applicants,

THE MINISTER OF INTERIOR,

Respondent.

(Cases Nos. 104/80, 105/80).

5 *Administrative Law—Competency—Lack of—Ground of annulment of an administrative act or decision—Withholding of emoluments of members of Police Force during their interdiction pending disciplinary charges against them under the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Law, 1977—Minister of Interior not competent to order forfeiture of such withheld emoluments upon review of disciplinary convictions and sentences—Though decision of Minister superseded by a decision to the same effect of the Council of Ministers the decision of the Minister has to be annulled.*

10 *Administrative Law—Public Information Office—Communique of—Cannot be treated as tantamount to an administrative decision of the Council of Ministers.*

15 Disciplinary proceedings under the Certain Disciplinary Offences (Conduct of Investigations and Adjudication) Law, 1977 (Law 3/77) as amended and the Police (Disciplinary) Regulations, 1958 to 1977 were brought against each of the three applicants, who were members of the
20 Police Force, after they had been interdicted under Reg. No. 23(c) of the said Regulations.

Each of the applicants was found guilty on various counts. Applicant Vassiliou was, as a result, sentenced to a total fine of £500, applicant Efstathiou was sentenced
25 to demotion to the bottom of the scale of his rank and

applicant HjiSavvas was also sentence to such demotion as aforesaid

The Minister of Interior reviewed the said convictions and sentences in virtue of his powers under the aforesaid Regulations His decision was reserved on 11 8 79 On 31 1 80 he Council of Ministers terminated on ground of public interest the services of a number of Public Officers and members of the Police Force The applicant's were not among those whose services were terminated as aforesaid On the same day a communique was issued by the Public Information Office containing a statement to the effect that any further disciplinary prosecutions in respect of complaints against Public Officers for participation in the Coup d' Etat will not be pursued

In February 1980 the Minister of Interior confirmed the conviction of each of the three applicants as well as the sentence of applicant Vassiliou and HjiSavva and varied the sentence of applicant Efstathiou by substituting it with a fine of £400 The respondent Minister decided also that all emoluments withheld during applicant's interdiction be forfeited

Hence the present recourse Counsel for applicant's argued that the Minister acted contrary to the said decision of the Council of Ministers, which in accordance with the submission of counsel had decided to stop all further prosecutions under Law 3/77 They also, argued, as regards the forfeiture of the emoluments, hat in the light of the decisions in *Veis and Others v The Republic* (1979) 3 CLR 380 and *Georghiadis and Another v The Republic* (1979) 3 CLR 418 the respondent Minister had no competence to decide the forfeiture of the emoluments, which had been withheld from the applicants during the period of their interdiction

It must be noted that on 10 4 80 the Council of Ministers decided "not to approve the payment of the withheld emoluments to interdicted members of the Police Force" The three applicants were included in the list appended to such decision

Held, (1) As regards the first relief sought by the applicants, namely annulment of the decision confirming the

convictions and varying or confirming the sentence the recourses should fail, because the factual premise on which the applicants base their case does not exist. There has never been any decision that all other prosecutions should be discontinued. The Communique of the Public Information Office cannot be held to be tantamount to an administrative decision of the Council of Ministers.

(2) The decision of the respondent Minister to forfeit the withheld emoluments was superseded by the decision of the Council of Ministers dated 10.4.80. As, however, the Minister had no competence in the matter his decision has to be annulled, although such annulment would not have any practical significance as the withholding of the emoluments was fully justified in virtue of the decision of the Council of Ministers.

*Sub judice decision
annulled in part.
No order as to costs.*

Cases referred to:

- 20 *Veis and Others v. The Republic* (1979) 3 C.L.R. 380;
Georgiades and Another v. The Republic (1979) 3 C.L.R. 418;
Theofanous and Others v. Minister of Interior, Case 101/80 unreported.
- 25 *Christodoulou v. Greek Communal Chamber and Another* (1967) 3 C.L.R. 50;
Phoenicia Hotels Ltd. and Another v. Republic (1978) 3 C.L.R. 94.

Recourses.

30 Recourses for declaration of the Court that the confirmation by the respondent of their conviction and sentence by the Disciplinary Committee and the decision to withhold the emoluments of the applicants during the period of their interdiction is null and void and without any
35 legal effect.

G. Korfiotis, for applicant in Case No. 104/80.

E. Vrahimi (Mrs.), for applicants in Case No. 105/80.

S. Matsas, for the respondents.

Cur. adv. vult.

A LOIZOU J read the following judgment These two
recourses have been heard together by direction of the
Court as they present common questions of law and fact

Applicant Vassiliou (Recourse No 104/80), joined the
Police Force in 1945 and holds the rank of Chief Inspector 5
In January 1974 disciplinary proceedings were instituted
against him under the Certain Disciplinary Offences (Con-
duct of Investigation and Adjudication) Law 1977 (Law
No 3 of 1977) as amended, and the Police (Disciplinary) 10
Regulations 1958 to 1977, after he had been interdicted
under the provisions of Regulation 23 (c) of the said Re-
gulations The applicant was found guilty on five counts
out of the seventeen with which he was charged and he
was sentenced to pay a fine totaling £500 The Minister of
Interior in the exercise of the powers vested in him under 15
the aforesaid regulations reviewed the conviction and the
sentence imposed by the Disciplinary Committee and on
the 8th February 1980, he decided to confirm both the con-
viction and the said sentence and he further decided that
the emoluments of this applicant withheld during the period 20
of his conviction be forfeited This decision was commu-
nicated to the applicant by the Chief of Police by letter
dated the 11th February 1980, (Appendix A)

Applicant Efstathiou and applicant HadjiSavvas (Re-
course No 105/84) joined the Police Force in 1962 and 25
1952 respectively and applicant Efstathiou was first pro-
moted to the rank of Sergeant and in 1972 to Acting
Inspector, whereas applicant HadjiSavvas was promoted
to the rank of Sergeant in 1960 and to that of Inspector 30
on the 1st March, 1967. In the beginning of 1979 they
were likewise prosecuted for a number of disciplinary of-
fences by virtue of the provisions of the same laws and re-
gulations here above referred to in respect of applicant
Vassiliou and they were also interdicted as from the 9th 35
November, 1978 Applicant Efstathiou was ultimately found
guilty on three counts and the sentence imposed on him
was that of demotion to the bottom of the scale of the
rank of Sergeant Applicant HadjiSavvas was found guilty 40
on four counts and the sentence imposed on him was that
of demotion to the bottom of the scale of the rank of In-
spector

The Minister of Interior in the exercise of the powers vested in him under the aforesaid regulations reviewed the conviction and the sentence imposed by the Disciplinary Committee and on the 8th February, 1980, decided as regards applicant Efstathiou to confirm his conviction and vary the sentence of demotion imposed on him by substituting same with a fine of four-hundred pounds and decided further that his emoluments which were withheld during the period of his interdiction be forfeited. The decision in question was communicated to the applicant by letter dated the 11th February 1980, Appendix "A". As regards applicant HadjiSavvas the Minister of Interior confirmed his conviction and the sentence imposed on him and decided that his emoluments withheld during his interdiction be forfeited. This decision of the Minister was communicated to this applicant by letter dated the 11th February 1980, Appendix "B". In the said letters all the applicants were informed that they could lodge an appeal against the said decision of the respondent Minister to the Council of Ministers within seven days from that date by virtue of Regulation 38 of the aforesaid Regulations.

It appears that all applicants had appealed against the decision of the Disciplinary Committee and the decision of the respondent on their appeals had been reserved by him on the 11th August 1979. These appeals had been filed before the Council of Ministers issued on the 31st January 1980, their decision No. 18.767 (part of exhibit "X"), which reads as follows:

"Termination of services of Public Officers and members of the Police Force in the public interest.

The Council of Ministers in the exercise of its powers given to it by sections 6(f) and 7 of the Pensions Law, Cap. 311 (as subsequently amended) and every other power given to it and after a thorough examination of the elements produced to it which constituting State's secrets cannot be disclosed and having taken into consideration the circumstances of the public service, the usefulness of those mentioned in the first part of the Schedule public officers and in

the second part of the Schedule members of the Police and generally all the circumstances, came to the conclusion that retaining them in the Public Service or the Police Force not only it would not give any usefulness to the Public Service and the Police respectively but it would be very damaging for them and decided that their services be terminated in the public interest as from the 1st February 1980.” 5

On the 21st April, 1980, the applicants filed the present recourses and the remedies sought by them are for a declaration of the Court that the confirmation by the respondent of their conviction and sentence by the Disciplinary Committee communicated to them by his letters of the 11th February 1980, is null and void and without legal effect, and that the decision to withhold the emoluments of the applicants withheld during the period of their interdiction is null and void and with no legal effect. 10 15

As regards the first relief sought it is the case for the applicants that the confirmation of the decision of the Disciplinary Committee by the respondent is null and void and contrary to the decision of the Council of Ministers that preceded it, regarding the question of the examination of complaints against public officers for participation in the Coup d'etat. It was contended that by the said decision the Council of Ministers decided to terminate the services in all sixty-one public officers on grounds of public interest and also not to pursue any further the prosecutions against any other reported member of the Public Service, the Educational Service and the Security Forces. The latter part of this argument is based on the contents of a communique issued by the Public Information Office dated 31st January 1980. (Appendix B). In fact it was claimed that prosecutions against other officers were stopped. 20 25 30

The grounds relied upon were the following:

“(a) that the respondent Minister acted contrary to the said decision which is that of a hierarchically superior competent organ and which precluded such action by an individual Minister; and 35

(b) that the decision of the respondent constitutes discrimination against the applicants the case of whom in no way differs from the rest of the cases which in the light of the aforesaid decision of the Council of Ministers were discontinued.”

As regards the second relief sought by this recourse the applicant's case is that the respondent had no competence to decide about the fate of the emoluments withheld during the period of his interdiction. The authorities relied upon in this respect are the cases of *Veis and Others v. The Republic* (1979) 3 C.L.R. 380 and *Georghiades and Another v. The Republic* (1979) 3 C.L.R. 418, where it was decided that matters of interdiction in relation to the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Law, 1977 was within the competence of the Council of Ministers. More so it was argued since the appeals filed by the Attorney-General against the judgments in these cases, (Revisional Appeals 215, 216) were withdrawn.

In reply to the aforesaid arguments it was contended on behalf of the respondent that there is no other decision of the Council of Ministers besides the one of the 31st January, 1980, already referred to which in no way refers to the discontinuance of any such prosecutions. Consequently in the absence of such a decision there was no impediment for the respondent Minister to proceed under the relevant Regulations with the reviewed ultimate confirmation of the conviction and the sentence imposed by the Disciplinary Committee.

It is true that such a statement is contained in the communique issued by the Public Information Office, but same cannot be considered in any way as a decision of the Council of Ministers, nor could it be treated from whichever angle of Law is viewed that it can supplement, amend or in any way affect this or any decision of the Council of Ministers.

On the contrary the Council of Ministers by another Decision under No. 18.990 of the 10th April 1980, confirmed its intention not to discontinue the prosecutions already

commenced on the basis of Law No. 3 of 1977 as amended. This decision reads:

“Payment of the withheld emoluments to members of the Police Force which had been interdicted.

32. With reference to paragraph 42 of the minutes of the meeting of the Council dated 13th March, 1980, on the aforesaid subject the Council discussed same exhaustively, as well as the advice of the Attorney-General of the Republic, attached to the aforesaid Submission and decided not to approve the payment of the withheld emoluments to interdicted members of the Police Force. The Council, also decided that the same Decision be applicable also for the category of officers whose names appear in Appendix D of the Submission, who had been interdicted in relation to offences under the ‘Katharsis’ Laws.”

The three applicants are included in the list appended thereto, thus no doubt is left as to the application of this decision on the three applicants in these recourses.

The Council of Ministers decided in this way not to approve the payment to the applicants of the emoluments withheld during their interdiction and its aforesaid decision being that of a hierarchically superior and competent organ superseded that of the respondent Ministers challenged by these recourses and in respect of which the second relief is sought. In fact the said decision of the Council of Ministers was taken before the present recourse was filed and as claimed by counsel for the respondent, and there is nothing to contradict it, it was by virtue of this decision that the emoluments in question were withheld. As the decision, however, in question was taken by a person having no competence in the matter and in this respect I follow the approach of HadjiAnastassiou, J., in recourse No. 101/80, *Argiris Theofanous and Others v. Minister of Interior*, as yet not reported, I am of the view that declaration to that effect could be made and the said decision annulled, although that would have no practical significance as the withholding of the emoluments was fully justified on the basis of Decision 18.990 of the Council of Ministers.

of the 10th April 1980. There is hardly a need to refer to any authority regarding the issuing of an act or decision by a person having no competence in the matter. If need be, reference may be made to the cases of *Christodoulou v. The Greek Communal Chamber and Another* (1967) 3 C.L.R. 50, and *Phoenicia Hotels Ltd., and Another v. Republic*, (1978) 3 C.L.R. 94.

As regards the first relief sought directed against the approval by the Minister of the conviction and sentence imposed on the applicants the recourse should fail on the ground that the factual premise on which the applicants base their case does not exist in the sense that there has never been a decision to the effect that all prosecutions or relevant prosecutions should be discontinued. The contents of the communique of the Public Information Office not having any legal bearing in effect on the issues before me as it cannot be held to be tantamount to an administrative decision of the Council of Ministers.

For all the above reasons these recourses fail partly and partly succeed in the sense that I have already said, but in the circumstances there will be no order as to costs.

*Recourses succeed in part.
No order as to costs.*