1987 June 13
[A LOIZOU, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS DAMIANOS AND ANOTHER,

Applicants,

v

THE CYPRUS BROADCASTING CORPORATION THROUGH THE ADMINISTRATIVE BOARD OF THE CORPORATION,

Respondent

(Cases Nos 78/86, 79/86)

Administrative act — Annulment of — Obligation of the administration — Reinstatement of matter to legal situation in force before the annulled decision

Revisional Jurisdiction — Court does not pronounce on what the decision should have been, but on whether the sub judice decision is proper and correct or not

Collective agreements — Do not by themselves create any rights at public law

Following a collective agreement reached between the respondent Corporation and the trade union of its employees, whereby the restructuring of the service was agreed, the respondent emplaced the applicants, who, at the time, held the post of Programme Officer (Scale 6/7) to the new post of Programme Officer A on a combined scale 8/9

The applicants who felt aggrieved by reason of their non emplacement to the new post of Programme Officer A, Scale 10, filed a recourse to this Court, as a result of which the applicants' said emplacement was annulled (See *Evangelou and Others v C B C* (1985) 3 C L R 1410)

The respondent Corporation filed an appeal and decided that pending appeal the applicants should be re-emplaced to their previous post of Programme Officer but on scale 8/9, instead of their old scale 6/7

By means of these recourses the applicants challenge the aforesaid decision to re-emplace them in their old post

Held, *dismissing the recourses* (1) It is a general principle of administrative law that upon annulment of an administrative act, the administration has an obligation to reinstate the matters to the legal situation that was in force, before the annulled decision was reached

(2) This Court in its revisional jurisdiction is not a Court of Appeal. It does not decide what the decision ought to have been, but whether the sub judice decision was proper and correct or not.

(3) The effect of *Evangelou* case, supra was not that the applicants should have been emplaced in the post of Programme Officer A, scale 10, but that their emplacement to the post of Programme Officer A, scale 8/9 was null and void.

(4) In the light of the *Evangelou* case, supra the post of Programme Officer which the applicants originally held, was not abolished by the re-structuring, because a collective agreement by itself cannot create, modify or abolish any right, obligation or any other legal relation in the domain of public law *(Evangelou,* supra, p. 1423).

(5) Strictly speaking following the annulment by the decision in the *Evangelou* case, supra, the respondent all it had to do was to emplace the applicants to their old post on scale 6/7. It was not even obliged to emplace them on scale 8/9.

Recourses dismissed.
No order as to costs.

Cases referred to:

Evangelou and Others v. C.B.C. (1985) 3 C.L.R. 1410;

Pantazis v. The Republic (1986) 3 C.L.R. 239.

Recourses.

Recourses against the decision of the respondent to re-emplace applicants in the post of Programme Officer by the existing scheme of service on scale A 8/9.

K. Talarides, for the applicants.

P. Polyviou, for the respondent.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By these two recourses which were heard together the applicants seek a declaration of the Court that the decision of the respondent Corporation of the 28th November, 1985, to re-emplace the applicants in the post of Programme Officer by the existing Schemes of Service and on scale A8/9, is null and void and of no legal effect whatsoever.

The facts so far as relevant are as follows:

The applicants held the post of Programme Officer (Scale 6/7) with the respondent Corporation. On or about September 1982, with the object of the restructuring of the posts of its employees, a collective agreement was reached between the respondent Corporation and the Union of the Employees (EVRIK) according to which the proposed restructuring would be completed up to the end of March 1983, and would have retrospective effect as from 1st January 1981. Following such agreement the said restructuring was accordingly effected. The post of Programme Officer was abolished and seven organic posts were created bearing the title of Programme Officer A, with salary scale A 10; all remaining holders of the post of Programme Officer were to hold the title of Programme Officer A on a combined scale A8/9 as from the 1st January 1981 and became eligible for promotion to the post of Programme Officer A, Scale A 10.

The applicants who were accordingly emplaced on Scale A 8/9 objected and filed as a result recourses Nos. 170/83, and 258/83.

It was held by the Court, annulling the said decision, that in the restructured establishment no post existed as the one to which the applicants had been appointed, who were entitled by virtue of their vested rights in the previous post, to be emplaced to an existent organic post under the new structure. (See *Evangelou and others v. C.B.C.* (1985) 3 C.L.R. 1410 at p. 1427).

Following such annulment, the respondent Corporation filed an appeal against the above decision (which, however, was subsequently abandoned). Meanwhile the matter was reconsidered by it on 28th November 1985 in the light of the annulling decision of the Court and it was decided that until the conclusion of the appeal the applicants would be re-emplaced in the position they held before, of Music Programme Officer with the existing scheme of service and on Scale A 8/9, instead of their old Scale of 6/7 and furthermore that the matter would be reconsidered after the conclusion of the appeal.

As a result of this decision the applicants filed the present recourse claiming that the sub judice decision was reached contrary to the aforesaid Court decision (*Evangelou* (supra), with which the respondents failed to comply, in that the applicants were wrongly emplaced back to their old position of Programme

Officer which had been abolished by the reorganisation, whereas the new organic post in the new structure corresponding in duties and responsibilities to the old post is Programme Officer A, Scale A 10, in which the respondent Corporation had a duty to emplace the applicants in order to comply with the decision of the Court.

On the other hand it was argued by counsel for the respondent Corporation that there had in fact been full compliance with the decision of the Court which in any case was to the effect that the sub judice decision was annulled. It was submitted that the powers of the Court under Article 146 of the Constitution could not go as far as to order that the applicants be emplaced in any other particular post. In any event it was further stated, the applicants had in fact suffered no detriment as in effect they were receiving a higher salary than they originally did.

It is a general principle of administrative law that the administration upon the annulment of its decision by the Court has an obligation to reinstate the matters to the legal situation which was in force, before the annulled decision was reached. See *Pantazis v. Republic* (1986) 3 C.L.R. 239 at 245 et seq., where extensive reference is made therein to the obligation of the administration to comply with the decisions of the Court.

The Supreme Court in its revisional jurisdiction in administrative law matters is not a court of appeal, it therefore cannot reach a decision as to how the decision of the administrative organ ought to have been. It only decides whether in the circumstances such decision of the organ under recourse was proper and correct or not. If such decision is annulled, the organ itself is the appropriate organ to reconsider the matter in the light of the judgment of the Court and to reach a new decision.

Consequently the effect of the aforesaid judgment in cases Nos 170/83 and 258/83, was only that such decision of the respondent Corporation was wrong and was therefore annulled and not that the applicants should have been emplaced in the post of Programme Officer A, A 10, as alleged.

As it transpires from the facts, seven Programme Officers were in accordance with the restructuring placed in the post of Programme Officer A, A 10. The applicants are not challenging this; what they are in fact challenging is their nonemplacement in Scale A 10 and their wrong, as they allege, emplacement in their

old post of Programme Officer, which they also allege, had been abolished as a result of the restructuring.

Before proceeding any further I consider it pertinent to refer to what was stated in the aforesaid judgment

It is stated therein at p. 1422:

«It is common ground that the restructuring was based on a collective agreement between the Corporation through its management, on the one hand and the Trade Unions of C.B.C., namely EVRIK and SYTYRIK, on the other. Such agreement has not been embodied in any regulations made by the respondent Corporation in the matter provided by law and, therefore it has not acquired the force of Law.»

And at p. 1423:

«It is clear from the above the collective agreement by itself cannot create, modify or abolish any right, obligation or any other legal relation in the domain of public Law, a fortiori in case where there are statutory provisions which regulate the internal structure of the service and the relevant powers of a Corporation, as in the present case.»

And the Court concludes at p. 1425:

«In my opinion the re-structuring which in effect amounts to a reformation of the service and a re-evaluation of the position of the employees, in a much wider sense than a mere appointment or promotion or any other change in the service, falls within the powers envisaged by section 3 of Law 61/70. The only possible and legal way that this could be done was by means of regulations which eventually and necessarily should be approved by the Council of Ministers and should be published in the official Gazette, which are prerequisite conditions for their promulgation. The collective agreement is nothing more than the expression of intention of the Corporation to proceed with the restructuring of the service and cannot by itself be a sufficient legal basis on which the re-structuring could be validly founded.»

I would therefore consider in the circumstances and in the light of the above judgment that the post of Programme Officer which the applicants originally held and to which they were re-emplaced after such judgment could not have been abolished by the

restructuring, as contended. Consequently the respondent Corporation in complying with the judgment of the Court correctly emplaced the applicants in their old post.

Furthermore I cannot see how it would be possible in the circumstances for the applicants to claim any rights under the collective agreement. The question of collective agreements has been considered by the Courts on numerous instances in the past and if not embodied in any regulations as provided by law, they are considered as unenforceable and as not creating any rights at public law.

Strictly speaking, such agreement being unenforceable, the respondent Corporation in complying with the decision of the Court, all it had to do was to emplace them to the post they held prior to the sub judice decision, that is that of Programme Officer scale 6/7. It was not even obliged to emplace them in the Scale of A 8/9, but I expect it emplaced them at a higher salary scale in order to keep some balance salary wise in the hierarchy of the service.

I therefore find that the sub judice decision was correct in all respects and is confirmed. These recourses therefore fail and are hereby dismissed with no order as to costs.

Recourses dismissed.
No order as to costs.