

1988 November 23

[KOURRIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANASTASSIOS ANASTASSIOU,

Applicant,

v.

KYPRIAKOS ORGANISMOS ANAPTYXIS GIS

Respondent.

(Case No. 596/88).

Acts or decisions in the sense of Art. 146.1 of the Constitution—The Cyprus Land Development Corporation established by Law 42/80—It is a public corporate body and an "organ" in the sense of said Article—Appointment of its officers—An act in the domain of public law.

5 *General principles of administrative law—Administrative act or decision—Until its communication, an act or decision is an internum of the administration and can be freely revoked—Therefore before communication, no-one possesses a legitimate interest to impugn it—The decision in Zachariades v. The Republic (1984) 3 C.L.R. 1195 did not affect the said principles.*

10 *Legitimate interest—There does not exist, if the sub judice act or decision, had not been communicated, because, in such a case the act is an internum of the administration which can be freely revoked.*

15 *Revocation of an administrative act—It should be duly reasoned—Implied revocation of a decision to appoint applicant to post—Such revocation effected by a decision to advertise afresh the vacancy for the post in question—Notwithstanding that the revoked act had not been communicated to the applicant, the latter possessed legitimate interest to impugn the revocatory decision.*

20 The Board of the respondent corporation decided to appoint applicant to the post of Civil Engineer, 2nd Grade. The decision, however, was not

communicated to the applicant. Some time later the Board proceeded to advertise the said post afresh. Hence this recourse, whereby the applicant impugned: (a) The failure to proceed with implementation of the decision to appoint him, and (b) The decision to advertise afresh the vacancy.

In the light of the principles summarized in the hereinabove headnote the Court dismissed the recourse in so far as it was directed against the said failure, but annulled, for lack of due reasoning, the decision to advertise, which amounted to a revocation of the decision to appoint the applicant. 5

Order accordingly

Cases referred to: 10

Republic v. M.D.M. Estate (1982) 3 C.L.R. 642;

Westpark Ltd. v. Republic (1987) 3 C.L.R. 1473;

Zachariades v. The Republic (1984) 3 C.L.R. 1195;

Republic v. Geodelekian (1970) 3 C.L.R. 64;

Republic v. Panaghides (1973) 3 C.L.R. 378; 15

Panaghides v. Republic (1972) 3 C.L.R. 467;

Vakis v. The Republic (1985) 3 C.L.R. 534;

Moschovakis v. C.B.C. (1988) 3 C.L.R. 750;

Kazan Carton Industry v. Cyprus Ports Authority (1988) 3 C.L.R. 1559.

Recourse. 20

Recourse against the decision of the respondents to revoke the decision of the Board of Directors dated 4.3.1988 whereby applicant was selected for appointment to the vacant post of Civil Engineer, 2nd Grade and to advertise again the filling of the said post. 25

A. S. Angelides, for the applicant.

R. Michaelides, for the respondent.

Cur. adv. vult.

5 KOURRIS J. read the following judgment: Applicant by the present recourse claims the following reliefs:

10 (A) Declaration of the Court that the decision of the respondent authority not to proceed with the filling of the vacant post of Civil Engineer, 2nd Grade, with the implementation of his appointment, having selected him for such appointment, is null and void and whatever omitted to do it must do it.

(B) Declaration of the Court that the decision of the respondent authority to advertise again the post in the Official Gazette of the Republic on 1/7/1978 for the submission of new petitions is null and void and without any legal effect.

15 The Cyprus Land Development Corporation was established under Section 4 of the Cyprus Land Development Corporation Law, 1980 (Law 42 of 1980). Respondent authority on 9/10/1987 advertised in the official gazette of the Republic for the filling of the vacant post of Civil Engineer, 2nd Grade, and invited applications by candidates. Among the candidates was a certain
20 Anastassios Anastassiou, the applicant in this recourse. The applicant was interviewed repeatedly by the Board of Directors of the respondent authority and the Board of Directors at their meeting of 4/3/1988 selected the applicant as the best candidate and
25 they decided to appoint him in the post of Civil Engineer, 2nd Grade. The board of directors also decided not to communicate their decision to the applicant before the approval of the budget of the respondent authority by the House of Representatives.

30 On 1/5/1988 the Council of Ministers appointed new members of the board of directors who on 22/6/1988 revoked the decision of the previous board of directors of 4/3/1988 and decided to ad-

vertise again for the filling of the said post which they did in the official gazette of the Republic of 1/7/1988.

The applicant feeling aggrieved filed the present recourse whereby he prays for the aforesaid reliefs.

With regard to the first relief claimed, counsel for the respondent authority submitted that the applicant has no legitimate interest in the present proceedings as the decision of the respondent authority of 4/3/1987 was not communicated to him and it did not cease to be *internum* of the administration. 5

Regarding the second relief claimed, counsel for the respondent authority submitted that the revocation of the decision of 4/3/1987 was lawfully made. 10

Before proceeding to examine the said issues I propose to deal with another point raised by counsel for the respondent authority which is the following: that the respondent authority is not a public corporate body and that its decisions do not fall within the domain of public law. 15

Counsel for the respondent authority argued that the Cyprus Land Development Organization is in substance an estate and land developing company - Section 17 of Law 42/80 - and it cannot be regarded in law as the agent of the State for the performance of functions belonging to the State. 20

I have no doubt in my mind that the respondent authority is a public corporate body because it was established by law, the board of directors are appointed by the Council of Ministers and its functions by regulations made by the Council of Ministers, it is under the supervision of the Minister of Interior (see Article 9 of the Law), the initial capital was paid by the Republic and that such capital may be increased by a decision of the Council of Ministers (see Section 19). 25 30

I have no doubt in my mind that the respondent authority has

been established to serve the public interests under the supervision of the State.

With regard to the decision under consideration it is an appointment governed by Section 16 of Law 42/80 and regulations made by the Council of Ministers (Κ.Δ.Π. 183/82) within the ambit of public law. In particular a number of regulations refer to the Public Service Law 1967 (Law 33/67). Consequently the respondent authority is an "organ" within the ambit of Article 146 of the Constitution (see also *Republic v. M.D.M. Estate* (1982) 3 C.L.R. 642 and *Westpart Limited v. Republic* (1987) 3 C.L.R. 1473).

I turn now to the first issue before me which is the legitimate interest of the applicant. Counsel for the respondent authority argued that the applicant has no legitimate interest to file a recourse because the decision of the respondent authority of 4/3/1987 has not been communicated to him and it was at the time an internum of the administration.

Counsel for the applicant argued that the principles of the case of *Zachariades v. The Republic* (1984) 3 C.L.R. 1195 apply in the present case and consequently the applicant has a legitimate interest. He went on to say that the decision of *Zachariades* case (supra) reversed the decisions *Republic v. Geodekian* (1970) 3 C.L.R. 64 and *Republic v. Panaghides* (1973) 3 C.L.R. 378.

In accordance with the principles of the administrative law only when the will of the administration is declared, i.e. when outward direction is given to it towards one or more persons, with the purpose that by its will their position will be affected, it is that this will has social significance and the law is interested in it and its consequences. Until so declared, the administrative act constitutes internum of the administration and can be freely revoked. After however of its communication it becomes binding on the administration and it is then that the act came into existence (see Kyriacopoulos - Greek Administrative Law, 4th Edition, pages 396, 397 and Stassinopoulos, the Law of Administrative

Acts 1951, p. 366. See also *Petrakis Panaghides v. The Republic* (1972) 3 C.L.R. 467 at page 482). Relevant are also the provisions of Section 37(1) of the Public Service Law (1967) (Law 33/67) and the provisions of Section 44(5) of the same law.

At this stage it should be noted that the regulations of the respondent authority published in K.Δ.Π. 183/82 refer to the Law 33/67 for appointment on probation (Regulation 11), seniority (Regulation 14), acting appointment (Regulation 15), cost of living allowance and 13th salary (Regulation 24), the disciplinary proceedings (Regulation 56(6)).

The decision in the *Zachariades* case (supra) contrary to the argument of learned counsel for the applicant does not seem to have reversed the principles of the administrative law that an appointment is implemented with its communication to the candidate; also, it did not reverse the administrative principles that before the communication of the decision to the candidate it is an internum of the administration. In the *Zachariades* case it was decided that the unlawful interference by the Minister of Interior which prevented the applicant from being appointed to a post for which he had been selected by the Public Service Commission and, as a result of which the Commission did not in the circumstances proceed to the formalities necessary for the implementation of his appointment as already decided by it, it was an act which has adversely and directly affected in the sense of Article 146(2) an existing legitimate interest of the appellant: i.e. in the *Zachariades* case (supra) the Court decided that the non-implementation of the appointment of the appellant by the Public Service Commission was due to the unlawful intervention by an incompetent organ, the Minister of Interior.

In the present case the facts are different and the decision of the *Zachariades* case is distinguished. In the present case the appointment of the applicant has not been communicated to him i.e. no outward direction was given to it towards one or more persons. It was still an internum of the administration and the respondent authority could revoke it and I hold the opinion that the

non-communication of the decision of the respondent authority to the candidate deprives him of legitimate interest to file a recourse. Therefore, this point cannot stand.

5 Turning now to the second issue, it appears that the new advertisement inviting applications by candidates for the post of Civil Engineer, 2nd Grade, amounts to a revocation of the previous decision of 4/3/1988 of the board of directors. Indeed, counsel for the respondent in his written address, concedes that there has been a revocation of the decision of 4/3/1988.

10 The applicant was a candidate for the post in question and there is no doubt at all that he had a legitimate interest for the continuation of the process for the purpose of filling the vacant post in question.

15 Counsel for the applicant argued that the revocation of the decision is not reasoned and as such is liable to be annulled.

The principles of administrative law examining revocations have been expounded in a series of cases by our Supreme Court. Suffice it to refer to the case of *Vakis v. The Republic* (1985) 3 C.L.R. 534 where the Court at page 538 said as follows:

20 "A revocatory decision constitutes of itself an executory act liable to review at the instance of a party prejudiced thereby...."

25 Also relevant is the case of *Aristos Moschovakis v. C.B.C.* (1988) 3 C.L.R. 750 and *Kazan Carton Industry v. Cyprus Port Authority* (1988) 3 C.L.R. 1559 where Pikis, J., said as follows at p.1563:-

30 "A revocatory decision must, like every other executory decision, be reasoned. It can be argued that the reasoning of a revocatory decision must be as explicit as it could be. For by a process of a revocatory decision the rights of those affected regarded as settled are, in essence, upset. The Administration

must address itself specifically to the reasons warranting revocation of an earlier decision, the justification for the measure and the effect on the rights of those affected."

In the present case there is nothing by way of reasoning explaining the necessity for the revocation of the decision of 4/3/1988 (see appendix "E" to the written address of counsel for the applicant). It appears that the board of directors of the respondent authority treated the advertising of the post in question on 1/7/1988 as the first publication for the post in question and they were oblivious of the decision of 4/3/1988.

For these reasons the applicant succeeds on this point and in the circumstances the decision for the advertisement of the post in question on 1.7.1988 is declared to be null and void. Therefore, the recourse succeeds, but with no order for costs.

Sub judice decision partly annulled. 15
No order as to costs.